Title: The Ethics of Structured Settlements

Description: A mediation cannot be successful without a measure of trust in the mediator and between the parties. On this edition of Ringler Radio, host Larry Cohen and co-host, Teddy Snyder, Esq. welcome Seth J. Davis, a private mediator and the sole proprietor of ADJ Mediation Services, to discuss the ethics of structured settlements for lawyers and mediators. Larry, Teddy and Seth take a look at the preparation of a structured settlement proposal, the duties of the plaintiff attorney when advising the plaintiff on a structured settlement, the area of public benefits and the impact of the ethical rules on mediations.

Host: Larry Cohen

Co-Host: Teddy Snyder

Guest: Seth Davis

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Larry Cohen: Well, hello everyone and welcome to Ringler Radio. I'm Larry Cohen, head of Ringler Associates northeast operations. We're certainly glad you could join us again today. We're broadcasting live from the Ringler Associates 2011 Annual Meeting in beautiful Newport Beach, California. After being in my snowy northeast for the last week and a half, I can say it's quite a nice respite. Ringler Radio brings you the hottest topics and the most knowledgeable guests from the structured settlement industry. You can find every Ringler Radio show on our website, ringlerassociates.com, or on the Legal Talk Network at legaltalknetwork.com. We're here today to talk about something very important to everyone in the litigation world and that's the subject of ethics and, more specifically, the ethics of structured settlements for lawyers and mediators. Joining me today as my co-host is my Ringler colleague, Teddy Snyder. Teddy is a settlement annuity specialist in the Beverly Hills Ringler office and brings a unique perspective and creativity to designing, presenting and negotiating structured settlements. As an attorney, she has more than 20 years of litigation experience, including more than 100 trials. That's pretty impressive Teddy. Welcome to Ringler Radio.

Teddy Snyder: Thanks Larry.

Larry: Our special guest today is Seth Davis. Seth is a private mediator and the sole proprietor of ADJ Mediation Services in Woodland Hills, California. As a private mediator, Seth serves on the Los Angeles County Superior Court ADR panel, is a Beverly Hills Small Claims Court mediator and is on the mediator panel for Resolute Systems. He's also an arbitrator with the
Mandatory Free Arbitration program for the San Fernando Valley, Los Angeles, Beverly Hills and the California Bar Association. You sound like a very busy man Seth.

Seth Davis: Every now and again. Thank you Larry.

Larry: Welcome to Ringler Radio, too. Let's get started, Seth, with kind of a review for our audience… What are the applicable ethical rules that we're really talking about here?

Seth: Sure. Thank you, Larry. The American Bar Association model rules of professional conduct, and I believe this is true in all the states as well, have two provisions which apply to this context. Section 1.1 deals with competence. It states, "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." The second principle that applies is rule 1.4, which is communications. This rule requires a lawyer to keep the client informed about the litigation and consult with the client on the course the litigation, including settlement. The rule requires that a lawyer shall explain the matter to the extent reasonably necessary to permit the client to make an informed decision regarding the representation.

Rule 1.0 requires that lawyers have communicated adequate information and explanation about the material risks of reasonably available alternatives. Explanation of all the reasonably available alternatives and the risks of those choices is pivotal. Beyond this, there are the issues of civility and honesty in communication and, of course, not to mention just being plain old polite and of course the Golden Rule.

Larry: The Golden Rule is certainly important, and I sense from this that there are a lot of logical comments you're making here about professional conduct, communication especially to the clients. I find oftentimes that clients or claimants will tell me that their lawyers haven't communicated an offer, for example. These ethical rules are very important. I'm glad you spelled them out. Teddy, let's talk about how this plays out in a negotiation or mediation. When you're asked to prepare a structured settlement proposal, what information do you typically include so that the attorney can meet these requirements that Seth just talked about?

Teddy: Larry, a typical proposal will show cash up front...

Larry: Right.

Teddy: ...which is going to be paid right away. Sometimes I don't have all the information, but if I have it I break that out according to what's going into the plaintiff's own pocket, what's going for attorney's fees, what's going to liens...

Larry: Mm-hm.

Teddy: ...and then the periodic payments. That would include everything to be paid out in the future and then there would, in most cases, probably be a column showing how much it cost to buy the structured settlement. Now, in years past that was really an issue for a lot of people.

Larry: We remember it well. When they said you can't disclose the cost and all those issues. How do you deal with that today?
Teddy: I think that that viewpoint, that maybe that disclosure triggered constructive receipt has pretty much gone to the wayside.

Larry: Yes, I agree.

Teddy: I think there's some psychological reasons in that claimant's eyes do literally go to the bottom line, so you might want to communicate the cost either verbally or even if you just hand-wrote the number on the printed proposal in a corner or something. You could still disclose it without having that cost column if somebody is worried that there's a psychological problem in getting people focused on how much they're going to get. I don't really see any long-term benefit in not doing that, and I think that communicating everything requires disclosure of that information.

Larry: I don't think there's any question, and I think the biggest issue in that is credibility, the credibility you have when you present a proposal with a cost on it. First of all, it shows you're not hiding anything, you don't have that psychological impact, plus you're credible in that you're proposing and you're laying all the chips on the table. I think that's much more important and trumps any of this issue about maybe not letting, or not wanting, the other side to know the cost. Seth, what do you do if the defense counsel wants to bring in a proposal without the cost disclosure?

Seth: Larry, actually you've touched on a couple of those issues. I think a mediation cannot be successful without a measure of trust in the mediator and between the parties. In general, I would perform any reasonable request that a party would ask. However, I would dissuade a refusal to disclose the cost of the defense of a structured settlement proposal to defense counsel. This could create a trust issue. The perception from the plaintiff's perspective is that the defense is hiding the true cost of the annuity. Since it's going to have to be disclosed at some point, why not do it sooner and eliminate this potential negative perception.

Larry: Plus, there's another issue. Isn't it the concept that, if you were going to be presented with a structured settlement, wouldn't you want to know what the cost was? How could you possibly make a decision without knowing whether the value of the case was appropriate to how you thought the case was going to settle?

Seth: You're absolutely correct. You mentioned before that the eye immediate gravitates to that bottom line and everybody is always interested in that bottom line. Usually when I present a structured settlement proposal to the plaintiff and, for instance, if the defense is the only one who brought a broker with them, I inform the plaintiff of this and I indicate that there will be numerous proposals for the settlement funds. I emphasize that the broker is independent and has no interest in favoring one side or the other and is there to make the best use of the money for the plaintiff. I inform the plaintiff that a variety of funding options are available. In fact, I encourage the structured settlement broker to be introduced to all parties early on so that the broker can listen to the needs of the plaintiff and create a financial plan to meet those specific needs.

Larry: Let me ask you about that. When you're in the process of the mediation, sometimes, I would assume, the defense broker asks whether they can be taken into the other room to explain the nuances of the structure, maybe some of the specifics that may not be as self-evident. Do you typically try to make that happen?
Seth: I would always try to make that happen. It's usually discouraged in mediation, especially when you're dealing with sensitive personal injury cases, to have an initial joint session. Mediations tend to now begin with individual caucuses. If a mediation begins with an individual caucus, I would encourage the defense to have me immediately introduce the structured settlement broker to the plaintiff's side and to any other parties that are at the mediation.

Larry: You know, you raise another good point. We've done these mediations, Teddy, you and I, for years and years and a lot of times there were these joint sessions where there were some contentious comments across the table and things got off on the wrong foot by defense and plaintiff. Now I agree. I think we're seeing the trend go away, but the problem with that is that, where we would normally be introduced in that formal joint session, oftentimes we don't even see the other side for a period of time. If you're saying that you want to make sure that someone like the structure broker gets introduced to that side, that's a plus. That's a good thing.

Seth: Yes, it is, and I will bring them in as soon as I possibly can, usually in the first or second meeting with the plaintiff.

Larry: Great. Now Teddy, what about when you propose and send a proposal in to the other side, do you disclose the identity of the life company and it's rating and the overall rate of return? What about those issues? They're a little different than just the cost itself.

Teddy: Right. Sometimes we get questions about those and if we get any questions, I'm happy to disclose those things quite promptly.

Larry: Right.

Seth: Absolutely. Again, it's going to have to be disclosed at some point, so why not do it sooner than later and wait around until the eleventh hour.

Larry: Exactly. It's the old issue; we've talked about it before. No one wants to hide the ball or be accused of having hidden the ball. One of the things I always like to tell the other side is, we are quoting right now with company X because we need to do one company to make this thing work, but we'll test the market later on and talk about other companies. That's a big plus as well. What about multiple proposals, Teddy? What are the ethical issues when there are multiple proposals going into the room, different types of plans? Some people might say, well, is that confusing the other side? What are the ethics of showing different ideas?

Teddy: I think that it's very important to show different ideas. All of us here have talked about multiple proposals, but the ethical issue that I've seen is sometimes on the defense side, people get confused as to whose decision it is. Claims people and defense counsel sometimes will look at a range of proposals which I've created and they'll say, oh no, that one's not good, this one's good, do it this way, don't do it that way, and then they only want to send in one. The ethical issue I think here is whether that's an improper substitution of the presenter's view for the claimant having all the information necessary to make an informed decision and then the claimant exercising their own judgment. Not to send in all of the proposals that the broker has created, I think, improperly withholds information from the claimant.
Larry: Although there is probably a fine line between overwhelming the other side with too many options, too many ideas, and maybe narrowing it down. The way I like to address it is, I say let's give them chocolate and vanilla and hope that they eat the ice cream, you know. I don't want to get 32 flavors because it's too many to choose from. I can't even choose when I'm literally getting ice cream if there are too many flavors in the box.

Teddy: Right. Another thing that happens sometimes is, the defense will ask for specific kinds of proposals. But the broker...I like to say my experience is an inch wide and an acre deep. We know what kind of proposals are most likely to fly, and it is important that their proposal goes in because it is the one, based on our experience, that is most likely to satisfy the needs of the claimant.

Larry: Well Seth, how do you deal with that? What Teddy's bringing up is an interesting ethical, I think, question. That is, the defense attorney or the defense claimant, a claim person might have their own ideas about what should go in and yet we have, let's say, the expertise based on the situation to maybe want to do it a different way. Obviously, we typically do what our client wants us to do, but isn't there an ethical consideration on our part to raise that issue with them and say, you might want it that way, but that's not the most efficient or best way to propose it?

Seth: There's an ethical consideration for that, but there's also a real life approach to it. The real benefit, in my experience with multiple proposals at a mediation, is to get everyone's creativity flowing. Seeing different ways that the payoff can be scheduled gets people thinking about what the plaintiff's real needs are and how to structure the settlement dollars to meet those specific needs. One structure does not fit all.

Larry: No not at all. You're right.

Seth: The real benefit of having the broker there is the opportunity to respond to the individual's needs and their spontaneous statements and to create a personalized plan. There should be no doubt in anyone's mind that the broker is there to get the best benefit for the plaintiff from the available funding dollars.

Larry: You're absolutely correct on that. Now let's talk about the plaintiff attorney's responsibilities. What are the duties of the plaintiff attorney regarding advising the plaintiff when they've been offered a structured settlement? This is the biggest issue. We oftentimes hear said that we'll give the mediator a proposal, they'll go in the other room and we hear later that they never even showed it to the... The plaintiff attorney never showed it to the client. So, how do you deal with all that? What are their responsibilities?

Seth: On your last statement, that's why it's good to have the broker with you.

Larry: Yes.

Seth: So, your broker can be your own witness.

Larry: Sure.
Seth: But, there are several areas where I think that the plaintiff attorney needs to educate themselves more on. One is understanding risk and reward. Besides all the usual risks in going to trial including delays and especially the risk of relinquishing control of the outcome of a case to 12 strangers with the driver's license which is also known as jury. There is also the time value of money. An amount of money say… $300,000 today and $300,000 in a few years does not have the same value. When money is being paid over an extended period of time, investment income earning the earliest years of a stream of periodic payments has the effect of enlarging all the payments due to the power of compounding. A settlement now could result in much more money to the claimant that a larger verdict later in the future.

Teddy: And I have to say gentlemen, I've had this experience in a number of cases and typically, and typically involves minors because the statute of limitations can be like 15 years or even more away and so, nobody seems to see any rush. So, I had one. It was an eye out case for a minor and the policy in that case of $350,000 was offered and I think the kid was 12 at that time and we could have gotten a pay out of over a million dollars. And then five years later, the claim had still not settled. The kid was on the brink of turning 18 and now, it would be impossible to duplicate that return and the plaintiff's side was just like so lackadaisical and the attorney claimed...

Oh, this was a different case actually where there's another potential defendant who we knew had no insurance. Everybody knew had no insurance, but the attorney said he has to do his due diligence and we couldn't see that he was doing anything. And while he was doing his "due diligence."

Larry: Time was ticking.

Teddy: Time was ticking. The time value of money was diminishing the amount that the plaintiff could get. So, I think it's really important for attorneys on both sides of the table to get an understanding of what is the time value of money and to promote if you are the defense or evaluate if you are on the plaintiff side. Evaluate those offers with time value of money in mind.

Larry: No question.

Seth: And a related issue is understanding the tax consequences of settlement to the plaintiff. Some plaintiff attorneys tell me that they have in their retainer agreement that they don't provide tax advice. Quite frankly, I really don't think that this gets him off the hook. There are tax consequences to settlement and not competently dealing with them, I really do believe it's a breach of ethics. Minimally, the attorney has to recognize the issue particularly with the unsophisticated plaintiff. They need to stir them or get them the proper advice giver. A proper advice giver is one who understands how a structured settlement works. Not all accountants and financial planners do. The brokers actually are the one with the most in depth knowledge of the tax ramifications of different types of settlements. The financial adviser can consult with the structured settlement broker on the case to get more information.

Larry: And we do that constantly. We talk to financial adviser on the other side, but you are right. And most plaintiff attorneys have the experience of knowing that their clients, prior clients have either blown cash settlements or not taking advantage of the tax free aspects and you would think that they would learn to be able to apply those life lessons to their future clients and I think
that's a good point. They always have to be aware of the tax consequence. What about the whole area of public benefits?

**Seth:** Right. Now, you bring up a very interesting point especially nowadays with our population getting older. The other issue is public benefits, public benefits that the plaintiff maybe receiving. This could include supplemental, security income, Medicaid, Medical and Medicare, and even such benefits as aid a housing. There's a well known taxes legal malpractice case in Ray Cristina Grillo where it was alleged that the plaintiff's attorney had not conveyed the structured settlement offer to his client, Ms. Grillo. The plaintiff took all the cash and consequently lost Medicaid benefits which was of much greater value to her than the actual cash settlement. In that case, believe it or not, there was a seven figure settlement of that legal malpractice action. There are many ways to use the structured settlement. Sometimes, combined with a trust to preserve the plaintiff's ongoing access to public benefits.

**Larry:** Like the Special Needs Trust.

**Seth:** Exactly. The attorney has a professional duty to recognize that issue and properly advice his client which could include bringing in additional professionals such as a structured settlement broker or a trust attorney.

**Larry:** Well, what about other issues that would ethically require a plaintiff's attorney to explore the use of a structured settlement? For example, we talked about it a minute ago, the concept of when most claimants get cash even though they are well meaning, that money tends to go a lot more quickly. What is the ethical consideration of a plaintiff council in that regard?

**Seth:** Sure. Yes, typically, when somebody does receive a large chunk of money, they will spend it rather quickly but there is another area of ethical issues that the plaintiff attorney needs to be aware of. And that is to prevent premature dissipation of the plaintiff's funds. Certainly, where the attorney knows that his or her client is a drug or gambling addict or has a mental disability which would prevent proper money management. It makes sense to bring the structured settlement broker to create a plan. Even when there isn't such an extreme situation, ethical practice should include a knowledgeable explanation to the client of the structured settlement option.

**Teddy:** So, what we are really talking about here is that ethical duty of competence. A really understanding everything and of communication to being able to knowledgeably communicate it. Now, it certainly encouraged the attorneys in our audience to look at those sections of their state ethics codes and look at some of the comments in the cases. In fact, you don't need the extreme situation like Seth was talking about to appreciate the value, the structured settlement brings to the claimant. Most people really underestimate the rates of return and that's due to the power of compounding. So, the attorney advising the claimant would really be best advised to consult the structured settlement broker to create proposals for the plaintiff's review.

And remember, there is absolutely no fee to anyone for that service. There's, no obligation to go forward with it. So, it's like a win-win. There's no way the plaintiff's attorney would lose out by bringing in this expertise.
Larry: No question about that. You're right about the people underestimate the rate of return. They don't quite sense the value that they're getting. And a lot of it has to do with skepticism but also a lot of it has to do with maybe they're getting feed advice from the brother-in-law who is the stock broker. So, there are other aspects here that are impacting decision making and you as the mediator Seth, I'm sure knowing all that... How often do you actually sit and counsel the claimant in the other room when they say to you for example, "My brother-in-law is a stock broker and he got other ideas for the money." Are you advocating that they at least explore more closely the structure?

Seth: As far as counseling the claimant in the other room, mediators' drive is not so much to counsel them but to bring to their attention all the possible options and ramifications of a particular offer that is on the table. And I think it's important to bring in written offers to the plaintiff in their caucus room. Obviously, in order for the plaintiff attorney to make or to explain all the terms or conditions of a structured offer, they need to go over the written plan with the client in detail.

I make sure that the plaintiff sees the plan and also that the written offers remains with the plaintiff to review and compare with subsequent offers as the mediation continues. Sometimes, I bring in the broker to explain the plan to the plaintiff and to counsel and to answer any questions they may have.

Again, I continue to go back to the broker because I do believe in some of the larger exposure cases especially where there are periodic payments involved that the structured settlement broker is the expert and you should go to that expert during the course of the mediation.

Larry: That's good to hear because there are a lot of lawyers that do and mediators, they do take into consideration the fact that we've done so many of these that we have something to add. That's somewhat even handed in our approach to try to help educate those people. So, let's take a quick break right now and we'll be right back with more in the ethics of structured settlements with our guests Teddy Snyder and Seth Davis.

Larry: Welcome back to Ringler Radio. I'm your host, Larry Cohen. Glad you could join us. I'm here with Seth Davis, the founder of ADJ Mediation Services in Woodland Hill, California and my Ringler Associates colleague Teddy Snyder from Los Angeles. Our topic is the ethics in structured settlements. So, let's continue the conversation by discussing a couple of other issues that are important to the topic. Seth, how important is for mediators to bring a written offer?

I think we touch it briefly but I think there are some special rules on the ethical side of things that our audience ought to hear. The concept of bringing a written offer to the plaintiffs in the other room...

Seth: Sure, I'll have Teddy discuss the ethical part of it but bringing in a piece of paper with the structured settlement to the plaintiff and to plaintiff's counsel is I think very important. The typical person needs to have something to touch the very visual so having them in front of them I think really does help them quite a bit.

Larry: Good. I agree with that.
Teddy: I think lawyers need to really look at what the ethical rules are in their jurisdiction. In California for example, there are different rules that apply as to whether the offer is in writing in which case it must be... All the terms must be explained to the plaintiff every time versus a verbal offer in which case the plaintiff attorney only has to pass it on if he deems it's significant. If you on the defense side think just making a settlement offer is significant which actually is the view I favor… then you have to put it in writing to make sure it gets communicated. And frankly, for mediators, I have seen some mediators. They don't leave the written offer with the plaintiff. They don't always take it in.

And I know, if I see that happen, I always ask for them to take a pick because as we've indicated, there's a psychological advantage in having that piece of paper with the numbers in front of the plaintiff so they can look at it and they can consider it...And if their adviser, their counsel says to them, "Well, it's too low." Then that's important for them to know too but at least they have that to consider.

Larry: Yes. Now, Seth, let me follow up on that just a second from your perspective. Oftentimes, I'll have mediators say it's too early to put the structured settlement on the other side of the table. The offer is not significant enough level to pique the interests of the other side, where a too wide a gap and they would recommend, that mediator recommend that we wait a few moves down the road before that happens. I happen to concur that there are times when it doesn't make a lot of sense to bring the structure right away. What is your philosophy on that?

Seth: No mediation is the same as is no case is the same. And that does happen quite a bit. There might be a time to bring a written proposal in, like you said two or three exchanges later. But I do want to come back to, in the very beginning to explain to plaintiff's counsel and their client that there is a broker there.

Larry: And they will be seeing proposals.

Seth: And they will be seeing proposals so they're not all of a sudden surprised when we do believe that it's the right time to present that offer, all of a sudden they are handed a three page proposal and they're wondering where this came from.

Larry: I think that's a very good policy to follow. Now, Seth, let me talk now about I think one of the biggest issues in this whole area of ethics. So, more than anything I think we've talked about so far, that is that you'll sometimes have a casualty carrier who says that this case if it's going to settle has to settle with the structured settlement. The insistence upon it. How do you introduce that to the other side of the table and what are you r feelings about the ethics of that?

Seth: Well Larry, it's the job of the mediator to bring in the offer or demand that the party has formulated. It's not my job to substitute my idea of what the offer is or what the offer should be. If the defense is telling me that the carrier must have a portion of the settlement placed in annuity with XYZ company then that's the information that I need to convey to the plaintiff's room. The other side can accept or reject or even counter that offer. The mediator, it's not my job to rearrange the terms of an offer or rearrange the terms of a demand. Part of my job is to keep those negotiations moving forward. So long as there's money being offered back and forth, in any format and from any carrier, the negotiations will continue until the parties reach a resolution.
Larry: So that essentially is whatever keeps the ball rolling is important. But Teddy, I'm sure you might have clients that they are saying, that this case is going to settle with the structure. From your ethical perspective, from the perspective of ethics in the process, do you have a problem with that or is that you see part of the negotiation process and perfectly permissible?

Teddy: Well, I have to agree with Seth. I'm not there if I'm hearing something from the defense. And they say they have to have it a certain way then it isn't my job to substitute. I can advise them and sometimes I'll say to them, "Well with this amount of money on the table, an appropriate amount to suggest this structure might be X" as supposed to perhaps they have suggested to something which maybe is not so appropriate.

Larry: Well, the counsel of suggesting is one thing but insisting is another so...

Teddy: That's it.

Larry: So, the insistence is the issue where sometimes I have mediators in certain jurisdictions say we can't condition the settlement of this case upon the acceptance of a structured settlement. We can say, you need to at least acknowledge that there could be a structured settlement or maybe entertain the concept of a structure but not insist on it. What's the rule out here in California for example around that issue of insistence on a percentage or a piece of it being structured?

Teddy: It's not an ethical rule, it's a contract. It's a concept of the law of contracts and as Seth pointed out, an offer is formatted in certain way. It can be accepted. It can be rejected. There can be a counter but what I think it very important for mediators who are listening is that an offer has certain terms and it is not up to the mediator for example to say, "Oh, yeah but they would pay that in cash because I have been in mediations like that and in fact that's not the offer and they wouldn't pay in cash."

Larry: I hear you and that's important and you're right. There are some mediators that want to convert whatever is being said to make the thing a little easier in their behalf.

Teddy: So, the ethical perspective of the mediator is that they should not substitute their idea of what the offer is for what have been offered.

Larry: Well said. Seth, are there any duties from the ethical standpoint towards the broker, the structured settlement broker. Tell us about that.

Seth: I think that if an attorney or a client brings in a broker, it makes sense for that broker to continue to stand the loop of the mediation and to not exclude the broker. There is no fee for the broker services. He or she earns a commission when the structure is funded. Common courtesy, which seems to dictate that you allow that person to create proposals for presentation when the claim is ready to settle… Similarly, you wouldn't ask a broker to provide a free service and then switch to another broker mid case. During the course of the mediation, the broker pretty much sits on a solid fence regarding ethics because they really don't have a dog in the fight. They want to see the case settled. They don't care particularly if it's going to favor one side or the other, they want to see that money funded.
Larry: And is it true that they also response from assigning that confidentiality document in the beginning of the mediation? They are also party to that process so even though they are not lawyers or parties to the case, they have a stake there. So, they do have to sign that, isn't that correct?

Seth: Absolutely. In California and this is similar in many states, mediations are strictly confidential. Any participant to the mediation that includes spouses, children over the age of 18 and other professionals such as a structure settlement broker actually must sign the confidentiality statement.

Larry: That's exactly... I guess every jurisdiction probably has that rule. I've seen it all over. Teddy, how does it work and what are the complicating factors when both sides have structure settlement brokers there. Is that a helpful thing or is it... How do you find it in your experience?

Teddy: Well, it actually can be helpful. What confuses some people is if they already have a broker and then the other side brings a broker, they don't necessarily go back to their own broker to say OK, what happens in this situation? There is some confusion and this is a good opportunity to spell that confusion which is if you have a broker and then the other, if the other side has a broker then you just tell the other side, "Well then fine have your broker contact my broker." Then the brokers... it happens all the time work out a cooperation agreement regarding the duties and the compensation and as we've said now several times, there's still no cost to any party.

Larry: Not at all, and it's interesting. Try to relate it to the real estate environment where, typically, both sides have their own broker. In those instances where there are co-brokers, most structured settlement brokers who deal in this business everyday are very used, as you said Teddy, to sharing things on some basis.

Seth: That's a good example.

Larry: Exactly. How about some final thoughts, Seth? You've been doing this for a while. You've seen a lot of cases come to your office. Give us some final thoughts on the ethics in the mediation field that you want to pass to our audience.

Seth: Sure. I think that it's very important for the parties to bring a structured settlement broker to the mediation, again, especially when we're talking about a large exposure or periodic payments. Brokers who attend mediation can listen to the other side's concerns and reflect them in proposals that are created on the spot. Brokers are very typically experienced in the law or in claims or in both, so this is another person who can bring their experience and knowledge to the table for the benefit of all the parties. Give the broker plenty of notice of the location and the time of the mediation so that he can personally attend. Many mediators, myself included, feel that when we want a greater knowledge of the financial dynamics of a settlement, we tend to talk to the structured settlement brokers. Like the mediator, the broker is motivated to get the case settled and can identify issues and possible solutions.

Larry: I think that's true and I think often times especially in those cases, Teddy, where there are economic reports and lifecare plans, the brokers are very instrumental often times in trying to get some measure around those issues so that the settlement can take place. Teddy, one final
thought from you… What do you think is the element of…you'll hear from time to time where sometimes a mediator will say or the defense attorney will say, "I don't want to bring the structured settlement broker to this meeting because they'll think there's a lot of money here that might be paid." Have you heard that, and what's the ethics of that in trying to keep someone away?

Teddy: I can tell you yes, I have heard it, and the answer is that no structured settlement broker has ever made anybody pay more money than they wanted to pay.

Larry: [laughs] Exactly.

Teddy: [chuckles] That is based on the information that Seth talked about where the structured settlement brokers bring another pool of knowledge to help the parties come together, and it doesn't cost anything. It's foolish to spurn that additional resource.

Larry: Seth, I'm sure from time to time you've heard that same comment that it's going to indicate there's more money on the table than we want to indicate. But haven't you also said that a structured settlement broker can take a small amount of money and make use of it for the benefit of the plaintiff?

Seth: And with their magic, make it look like a bigger amount. But I always find that comment to be rather amusing, that there's the perception that there's a lot of money to be paid. You know what, like we said earlier, put it on the table, let's know what the problems are and deal with the problems as they come.

Larry: I think we've just summed up the ethics of the process.

Teddy: Larry, I do want to tell our listeners that besides the ABA Model Standards of Conduct for attorneys, there's also Model Standards of Conduct for Mediators. Additionally, the states have codes of conduct. The American Bar Association maintains a database of ethics opinions which is searchable online, and you can also search for standards of conduct for mediators for your state. The Boise State University, Department of Public Policy and Administration maintains a website with a database with all of such codes of conduct.

Larry: That's good information, and I'm sure our audience will make use of it. I think to sum it up though, Seth, what we're really talking about is disclosure. Around the ethics, it's always disclosure, credibility, honesty and working in good faith. That's what it's about.

Seth: That's absolutely true. As soon as you start hiding something or not disclosing something, the settlement discussions will fall apart.

Larry: Well said. Seth, if someone wanted to get in touch with you or your company, how would they do that?

Seth: Thank you. My telephone number in Southern California, in Woodland Hills is (818)225-7756. I also have a website, www.adjmediator.com. That's ADJ Mediator. I do travel, so if people in other jurisdictions do have cases, I will be happy to go out to other jurisdictions or other venues to assist them with their matters.
**Larry:** It's good to know, and I think you've given them some good information to get in touch. Teddy, how would someone get in touch with you?

**Teddy:** I'm in the Beverly Hills office of Ringler Associates. I have a toll free number, (888) 734-3910 and anybody can email me at tsnyder@ringlerassociates.com or reach us through our website, www.ringlerassociates.com.

**Larry:** You know, Teddy, we have a new website coming out, too, which is really an exciting thing for Ringler Associates. You can reach any Ringler associate on that website, ringlerassociates.com, and find the services of a broker that might be helpful to you. You can listen to these Ringler radio shows by clicking the link on ringlerassociates.com or legaltalknetwork.com and be able to hear this show and many, many others. Download to your iPod and hear Seth as you walk around the park. So, with that, Seth thanks for joining us.

**Seth:** My pleasure. Thanks for having me.

**Larry:** Teddy, thank you again.

**Teddy:** Thanks, Larry.

**Larry:** The rest of you out there, have a great day.

Transcription by CastingWords