Winning at Mediation

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Pat Siuta is an experienced trial attorney and nationally prominent mediator, arbitrator, and ADR trainer who has served as a neutral in more than 800 cases. Ms. Siuta has experience mediating complex and multi-party cases, with as many as 65 people participating in the process. She has resolved several high-level disputes at the Pentagon, and mediated numerous cases involving governmental agencies. She has served as a mediator for the U. S. District Court and for the Georgia Superior Court. Ms. Siuta is also an approved mediator for the United States Air Force, Equal Employment Opportunity Commission, and the Post Office. She served as an arbitrator for Ford Motor Company's Dispute Settlement Board for three years. Ms. Siuta is registered with the Georgia Office of Dispute Resolution as a mediator and arbitrator**.** She has mediated and arbitrated a wide variety of disputes including personal injury, insurance, premises liability, commercial and contractual disputes, consumer, construction, employment, intellectual property, professional liability, real estate, environmental, probate, and family law matters.

In addition to serving as a mediator, arbitrator, and case evaluator, Ms. Siuta has trained thousands of others to serve in these roles. She has trained many of the lawyers, judges, and other professionals who practice mediation and arbitration in Georgia, and also provides training nationally. Ms. Siuta has provided training for many law firms, corporations, insurance companies, and governmental agencies. Among the programs she has taught are Civil Mediation, Winning at Mediation, Advanced Mediation Training, Divorce Mediation, Employment Mediation, Advanced Negotiation Skills Training, Arbitration Training, Neutral Case Evaluation, Mastering Mediation Advocacy, Conflict Prevention and Management, and Diversity Training.

Ms. Siuta graduated from the University of Notre Dame Law School, and began practicing law in Minnesota in 1975. She has extensive litigation experience representing clients in a broad variety of areas. Ms. Siuta has successfully tried several class action lawsuits and litigated cases in state and federal courts. She is admitted to practice in Georgia and Minnesota, and in the United States District Court and U.S. Court of Appeals.

In 1984 she began teaching law at Hamline University College of Law in St, Paul, Minnesota where she was Director of Clinical Programs, and taught litigation and other courses. In 1987, Ms. Siuta was appointed Director of Lawyer Skills Programs at Georgia State University College of Law where she taught Trial Advocacy, and numerous other courses. She served on the Georgia State Law School faculty until 1991. Since leaving Georgia State she has specialized in alternative dispute resolution. Prior to her current position as President of the Training & Consulting Division of Henning Mediation & Arbitration Service, Inc., she was Senior Vice President of Resolution Resources Corporation, and Vice President of Resolute Systems, Inc. where she mediated, arbitrated, and led their training and consulting programs.

Pat Siuta also serves as a consultant, working with companies in creating private dispute resolution programs for resolving disputes with employees, customers and others.

Winning at Mediation

Advantages of Mediation over Litigation

- Quicker
- Less expensive
- Less adversarial
- Greater party satisfaction with the process
- Parties retain control over decisions
- High resolution rate: 70-80%
- Parties retain right to use other processes if conflict is not resolved
- Can help repair relationships

Success in mediation depends on a number of factors, including the skill of the mediator. Perhaps as important as the skill of the mediator are the skills of the attorneys, claims representatives, and others who will be participating in the mediation. Many lawyers have received instruction on trial advocacy skills while in law school, but few have been instructed in mediation advocacy. Law firms have even begun to advertise their attorneys' skills in the mediation area. For example, the international law firm of Fulbright & Jaworsky, L.L.P., notes on its web page that, "because of the importance of mediation to our litigation practice, we provide rigorous training in mediation for all of our litigators."[1]

The purpose of this presentation is to help attorneys increase their effectiveness in the mediation process so that they can "win" at mediation. How is "winning at mediation" defined? Because there will be no settlement in mediation unless it is acceptable to both parties, most would say that they had "won" at mediation if they reached a settlement in mediation. Even when settlement is not reached at mediation, it frequently follows shortly after the mediation

[1] www.fulbright.com

session, because of progress made at the mediation. With this in mind, other ways of winning at mediation include:

- Substantially narrowing the settlement gap so that settlement can occur
- Learning information that will lead to settlement
- Significantly improving the relationship between the attorneys or the parties so that settlement is possible.

Having mediated hundreds of cases, I have had numerous opportunities to observe attorneys, claims representatives, clients, and other mediation participants. I have also trained thousands of people in mediation skills and make it a point to ask them to share their experiences regarding what others did in mediation that was effective and ineffective. I have also have had the opportunity to consult with many experienced mediators to get their input on mistakes they've seen and the keys to mediation success. Following is a compilation of "mistakes" that people make in mediation, followed by a discussion of the keys to mediation success. The term "mistake" is used to describe those things that make it more difficult to reach a settlement in mediation.

Fifteen "Mistakes" Participants Make in Mediation

1. Not participating in the selection of the mediator
2. Failing to understand what is important in mediator selection
3. Not adequately preparing for mediation
4. Not having the client participate actively in the mediation.
5. Trying to stop the mediator from talking directly to the client
6. Making the same type of opening statement at mediation that would be made at trial.
7. Failing to understand the difference between trial advocacy and mediation advocacy.
8. Not understanding whom he or she needs to persuade
9. Impatience in the mediation process: Failing to understand that the mediation process takes time
10. Making a proposal in the joint session before discussing it with the mediator
11. Failing to use the mediator effectively. Not letting the mediator know what help is needed.
12. Failing to keep a flexible bottom line
13. Focusing on their client's needs to the exclusion of the other party's needs.
14. Trying to embarrass an attorney, claims representative, or party.
15. Giving up too easily when there is an apparent impasse

Twenty-five Keys to Mediation Success

1. Select The Right Mediator For Your Case

A. Participate in the Selection Process

Too often parties fail to put any effort into the mediation selection process. This frequently is the case when the parties are ordered to mediation by the court or a government agency. Sometimes court appointed or agency appointed mediators lack the mediation experience and substantive knowledge to help the parties reach resolution. **You have options!** Most courts give parties the opportunity to select a mediator and appoint one only if the parties do not make the selection within a specified period of time. Although a mediator employed by a state agency may be provided at no charge, you should also consider selecting and paying for a private mediator if you really want to get the matter resolved.

Even in cases where the parties have voluntarily decided to go to mediation, too often attorneys leave the selection of the mediator up to the other party, reasoning that all that is important is for the other side to have confidence in the mediator. **To have the greatest chance of success, select a mediator whom you can trust, not just one in whom the other side has confidence.**

Over the last twenty years the number of people practicing mediation has increased enormously. When selecting a mediator many people focus on whether the mediator has subject matter knowledge, and ignore other factors, such as mediation process expertise, and the mediator's style, both of which can have an impact on whether there is a successful outcome during mediation.

B. Mediation Process Expertise

Many are unaware that ***mediation process expertise*** is much more important than subject matter expertise, e.g., knowledge of personal injury law when mediating a personal injury dispute. Mediators are prohibited by ethical rules from giving legal advice, although they may engage in "reality testing" the parties. An experienced mediator can mediate any type of dispute. There are different types of mediation process experience: experience as an attorney in mediation, and experience as a mediator.

Clearly, the role of a mediator is different from the role of an advocate in mediation. If you think it is important to have an experienced mediator in a particular case, ask whether the mediator's mediation experience has been gained primarily by serving as an advocate in mediation or by serving as a mediator. Also keep in mind that an attorney who practices exclusively as a neutral will have substantially more experience than those whose primary activity is the practice of law.

C. One Style Does Not Fit All: Facilitative & Evaluative Styles of Mediation

1. Facilitative Mediation

Mediation, in its traditional form, is a facilitative process in which the mediator does not render an opinion as to the issues, facts, law, or ultimate outcome. Rather, the mediator's job is to facilitate the parties in arriving at a decision that each is comfortable with without the mediator expressing an opinion as to what is likely to occur if the parties fail to reach settlement. In this style of mediation the mediator engages the parties in problem solving, encouraging them to generate a variety of options that could potentially meet the interests and needs of both parties. A good facilitative mediator will also engage in reality testing of the parties, but will do so by asking questions designed to help the

parties understand the weaknesses in their case, the other side's strengths, and risks involved in the position they are taking.

2. Evaluative Mediation

As the practice of mediation has expanded, and as more lawyers have entered the profession, a different style of mediation, known as "evaluative" has developed and generated controversy within the profession. Evaluative mediators frequently tell the parties, sometimes, without first being invited to do so, what they think the outcome of the dispute will be should the parties not resolve the matter voluntarily in mediation. Some evaluative mediators go further and provide their opinion on the law, as well as how a jury or other decision-maker will view the facts. When a mediator offers an opinion without being invited to do so by the participants, the opinion may not be welcomed. Additionally, evaluative mediators who focus exclusively on what the law is or what the likely outcome would be at trial may reach impasse when there are other interests and factors holding up resolution. As noted above ethical codes for mediators prohibit the giving of legal advice by the mediator.

3. Recommendation Regarding Mediator's Style:

Most participants in mediation want the mediator to take an active rather than passive role in the mediation. Good facilitative and evaluative mediators will take an active role and will challenge the parties to consider whether their positions, evaluations, and offers are realistic. The difference is that the facilitative mediator will do so without offering an opinion on the merits or other issues, while the evaluative mediator will usually provide an opinion. ***Neither style has a market on effectiveness.*** Mediation is

not a process in which one style works equally well for all people and cases. **I recommend that you select a mediator who is skilled in both the facilitative and evaluative styles of mediation.** This provides the mediator with the flexibility to respond to the needs and desires of the parties, advocates, and the requirements of the case.

D. Mediator Training and Continuing Education

In Georgia and most states, there is no requirement that a person have any mediation training if they are engaged in the private practice of mediation. Training requirements have been established only for mediators involved in court-ordered mediations. While there are some people with no formal mediation training who have developed into good mediators, as a general rule, you should select a mediator who has received quality mediation training, and who continues to keep abreast of developments in the field by attending continuing mediator education programs.

E. Affiliation With An Experienced & Respected ADR Provider or Recommendations from Other Attorneys

Some mediators practice independently while others affiliate with an ADR provider. Although there are excellent independent mediators, it can take more time to locate the best mediator for your case if you have to contact numerous mediators. One short cut to finding a high quality, experienced mediator is to contact an experienced and respected ADR provider, such as Henning Mediation & Arbitration Service, Inc., and let the provider recommend a mediator that will be best for your case. Because of the desirability of being affiliated with a well-known and respected provider, there is a great

deal of competition for a spot on the company's mediation panel, which means that such a company can choose from the best of the best. The experienced case administrators will be knowledgeable about the skills and expertise of the mediators on their panel, and can recommend an appropriate mediator for your case. If you prefer non-affiliated mediators, you can get information regarding their skills by consulting with other attorneys who have used them or who are aware of their reputation.

F. Summary: What to Look for in a Mediator When You Need to Resolve a Difficult Case

1. Substantial experience as a mediator, not just as an advocate in mediation
2. Skilled in multiple styles of mediation
3. Mediation training & continuing mediator education
4. Affiliation with a respected ADR provider or recommendations from other attorneys
5. Familiarity (not necessarily expertise) with the subject matter of the dispute

2. Prepare For Mediation As Diligently As You Would For Trial.

At mediation the other party is not only evaluating your case, but evaluating you and your client. It is important that you prepare carefully for the mediation. Attorneys or claims representatives who simply pick up their case file and head out the door, not only adversely affect their ability to settle the case at mediation, but also damage their ability to settle the case for maximum value to the client at a later time, because of the message that has been sent, i.e., this is a lawyer or representative who is unprepared and does not highly value the case.

Provide the mediator with information about the case well in advance of the mediation. Although some mediators may not want to receive anything prior to mediation, most will appreciate receiving a memo, as long as it does not arrive the evening before the mediation. Some mediators also like to have a pre-mediation conversation with each attorney. **In your memo or conversation with the mediator, let the mediator know what is holding up settlement!** Other aspects of preparation include:

- Carefully reviewing & organizing the case file
- Preparing exhibits, demonstrative evidence, e.g., videos, photos, etc.
- Preparing your Opening Presentation
- Consider making a PowerPoint presentation during the opening session
- Incorporating all elements of your preparation into a Mediation Notebook
- Consider using an expert. If you will be bringing an expert to the mediation, inform opposing counsel prior to the mediation to avoid surprising and alienating counsel.
- Preparing the Client (see checklist which follows)

CLIENT MEDIATION PREPARATION CHECKLIST[2]

- ❑ Meet or speak with the client at least several days prior to the mediation.
- ❑ Review with the client what his or her goals, objectives, and desired outcome are.
- ❑ Help the client prioritize his or her interests & needs. Explain to the client that if there is to be a negotiated resolution, the other party generally must have some of its interests met or gain something.
- ❑ Brainstorm options or solutions that might satisfy at least some of the interests of both parties
- ❑ Describe the mediation process and the role of the mediator. Explain that the mediator does not have the power to decide the case, and that to settle the case the other side must agree on a resolution.
- ❑ Explain that an attorney's advocacy in mediation has to be different than at trial or in arbitration, because he or she is trying to persuade the opponent, not a neutral person.
- ❑ Discuss what role each of you will play during the mediation.
- ❑ Consider allowing your client to make a portion of the opening presentation, and review what the client will say.
- ❑ Depending on the circumstances of the case, discuss whether the client, attorney, or claims representative should make a sincere statement of concern or regret regarding what the other party has experienced, or an apology.
- ❑ Review matters that you want to be kept confidential. Explain that when you meet with the mediator privately that you may share confidential matters with the mediator.
- ❑ Consider whether the client needs to be advised regarding such things as appropriate demeanor and attire for the mediation.
- ❑ Ask your client to listen carefully and respectfully to what the other party has to say.
- ❑ Explain your negotiation strategy, and discuss what your opening offer or demand will be, and how this is different from what your actual evaluation of the case is. Explain that the evaluation that you have provided to your client about the case may change as you learn additional information during the mediation.
- ❑ Explore what leverage sources there are, i.e., what factors are likely to affect the parties' willingness to reach an agreement.
- ❑ Identify what your client's options are if you walk away without agreement: including the best, worst, and most probable outcomes.
- ❑ Identify your opponent's options if there is no agreement.
- ❑ Engage in reality testing, if necessary, so that your client has reasonable expectations.
- ❑ Advise your client that if there is no agreement in mediation, you want to end negotiations on a cordial note, leaving the door open to resume negotiations later.

Keys to Mediation Success

3. **Bring the person who has authority to the mediation.**

If the person with ultimate authority or other important person cannot be present at the mediation, consider video conferencing that person so that he or she has the ability to observe, as well as hear, what is happening at the mediation. Some mediation providers, such as Henning Mediation and Arbitration Service, Inc., have video conferencing equipment at their facilities and such equipment is readily available in most communities. The mediator will have more success in helping the parties reach resolution if he or she has the ability to observe and speak directly to the person with authority.

4. **Be willing to commit the time necessary for the mediation process.**

Mediation takes time if the mediator is doing more than simply being a message carrier. Some have suggested that mediation should be scheduled to begin in the afternoon, rather than the morning, because it is often not until then that offers are exchanged. These people fail to understand the valuable work that is going on prior to the time the offers are being exchanged.

Mediators often find it can facilitate resolution to meet with the parties outside the presence of the other party. Private meetings with a mediator, known as caucuses, can be particularly time consuming, but can be essential to the success of mediation.

What is the Mediator Doing in Caucus & Why is it Taking So Long?

The mediator has a large number of tasks to accomplish during the private meetings with the parties. Following are some of the things that a mediator does in caucus:

- Builds trust and rapport with the parties and their representatives
- Addresses non-productive behavior in a private setting
- Allows for the venting of emotion
- Gathers further information about the dispute from a party, such as sensitive or confidential information which the party might be unwilling or reluctant to disclose in joint session
- Probes for a hidden agenda
- Controls the communication and the information that is exchanged between the parties; by doing so the mediator can choose not to convey information that would be harmful to the negotiation process, such as offensive comments
- Helps parties focus on problem solving without them being distracted by the other side
- Determines each party's interests, needs, concerns, and priorities, which the parties are often unwilling to share with each other
- Helps the parties understand common interests
- Develops proposals and assist the parties in analyzing them.
- Allows parties to test their solution on the mediator
- Tests reality
- Explores possible movement
- Provides parties with a greater sense of security and safety
- Helps parties "save face"

Keys to Mediation Success

5. **Come With The Right Frame Of Mind. Expect Success And Assume That The Other Side Is There To Negotiate In Good Faith.**

6. **Listen To The Mediator's Opening Statement For Suggestions On How To Conduct The Mediation.**

7. **Remember Whom You Need To Persuade, And How To Persuade.**

Keep in mind that you must persuade the other party, and don't focus your efforts on persuading the mediator. The mediator has no power to make a decision, but does have the power to influence the mediation process. The mediator will be focused on trying to reach a solution that is acceptable to both parties. Always treat the other side with respect.

8. **Deliver An Opening Statement That Will Keep Them At The Table.**

An opening statement in mediation must be different from an opening statement in trial. Keep the following in mind:

- Watch your tone. It should be respectful and cordial.
- Keep in mind that this is an opportunity for you to directly address and influence the other party.
- Deliver the message that you have come to listen with an open mind.
- Let the others know that you have come in good faith to negotiate. Tell them that you want to reach a fair and reasonable result.
- Discuss the strengths of your case.
- Acknowledge any of your weaknesses or problems of which they are aware, and tell them that you have factored these into your evaluation of the case.
- Do not lecture the other side.

- In your opening try to avoid discussing things that will cause an extremely negative or hostile reaction. Tell the mediator these things privately and have the mediator raise them. **The objective in mediation is to make a deal, not to make the other side angry.**

- In an appropriate case, consider making an apology or a sincere statement of sympathy for the pain or injury suffered by the other party. In workers compensation cases or personal injury cases showing empathy for the injured plaintiff can be crucial.

- If you can, compliment the other side. Say something nice about the other lawyer or party if you can do so sincerely.

- Ideally, you want them to feel that you can be trusted

- You don't want the other party or attorney to leave the joint session thinking that you or your clients are jerks or untrustworthy.

9. **Consider Permitting and Encouraging Your Client to Participate in the Joint Session.**

Allowing the client to speak in mediation can be very helpful as long as the attorney has carefully prepared the client prior to mediation. If you represent an insurer, the claims representative should consider directly addressing the other party.

10. **Listen Carefully & Respectfully When The Other Party Is Speaking**.

Not only will this help you establish rapport and trust, but it will also provide you with valuable information. Cases frequently settle in mediation because of new information that is acquired.

11. Let The Mediator Do Her Job!

Let the mediator talk directly to your client so that she can establish rapport and a relationship with your client. This will be beneficial to you later if the client is not on the same page as you regarding settlement or the realities of the case. Let the mediator

communicate directly with the person who has ultimate settlement authority, because the mediator can frequently get this person to move when the attorney is unable to do so.

12. Share information!

Give the mediator broad discretion to share information you provide to her with the other side. You should also share information with the mediator, even if you are not willing to share it with the other side. One of the primary reasons cases resolve in mediation is that the parties learn some new information during the course of the mediation. The mediator will not share information that a party wants to remain confidential. Mediators vary in how they treat information revealed to them in caucus, so be sure to let the mediator know if some piece of information is **not** to be shared. The mediator can often help parties understand how it can benefit them to share particular information with the other side. **Skilled mediators will know what information to share, when to share it so that it will have maximum impact, and how the information can best be communicated.**

13. Avoid Making A Proposal While In Joint Session.

As a general rule, it is better to discuss a proposal with the mediator in private, and allow the mediator to convey the proposal. This gives the mediator a chance to discuss and influence the proposal prior to it being conveyed, and it permits the mediator to present it to the other side in such a way that it will be received in the best way possible. In a private meeting the mediator will be examining the parties settlement proposal to try to determine the impact such proposal will have on the course of the negotiations.

14. **Make A Realistic Opening Proposal.**

Remember that the first demand or offer will set the tone for the mediation and can have an impact on whether the negotiations will be successful. The opening offer should be realistically related to where you would like to end up at the end of the day. Playing "high ball" or "low ball" will simply irritate the other side, and cause them to question whether you have come to negotiate in good faith.

15. Let The Mediator Know What Help You Need, And Let The Mediator Help You.

Meet privately with the mediator and let the mediator know if you need her help in doing additional reality testing with your client. **Work with the mediator when she engages in reality testing your client.** It is unproductive to take the position that one's case has no weaknesses. Every case has some area of concern for an advocate if the matter goes to trial. If the attorney takes the position that his case has no weaknesses, the mediator will likely spend additional time with him, trying to help him appreciate the weaknesses in his case or the position he is taking, as well as the risks involved.

Let the mediator know if you are concerned about taking a stronger position with your client because of client relation and retention concerns. The mediator can often help by letting the client know that the lawyer is doing a good job in the negotiations, but the facts of the case, or weaknesses in the party's legal position require more movement.

16. Keep The "Advocacy Phenomenon" In Mind, And Realize There Are Limitations On Your Ability To Objectively Evaluate Your Case.

Researchers have concluded that what party an attorney or other professional is representing will affect his or her perception of the value of a case. This is known as the "advocacy phenomenon." In one study an identical case file was given to a large group of lawyers. The lawyers were instructed to evaluate the case. One-half of the group was told that they represented the plaintiff and one-half was told that they represented the defendant. Those told that they were representing the plaintiff evaluated the case higher than those told that they were representing the defendant. Attorneys and claims professionals should keep the "advocacy phenomenon" in mind when evaluating a case, and realize that their evaluations may be colored by which party they are representing in the dispute. The mediator will engage the parties in reality testing to help them take a more objective look at their case.

17. Focus On Interests And Needs, Rather Than Positions.

Remember that if there is to be a mediated settlement, each side must feel that it has had some of its interests met, or gained something. A lawyer must focus not only on his or her own client's interests and needs, but also on those of the other participants in mediation. Focusing on positions rather than interests will stall the negotiations.

18. Be Aware Of How "Reactive Devaluation" Can Affect How Your Proposal Is Received.

Proposals that are made by an adversary are usually quickly discounted or devalued. A party will usually give more favorable consideration to a proposal made by a mediator, because the mediator is neutral. When the negotiation is coming to a critical point, consider

asking the mediator to float a proposal as her own to avoid it being immediately devalued by the other side.

19. Maintain A Flexible Bottom Line.

It is important for participants to come into mediation with an open mind and a flexible bottom line. A bottom line should be determined on the basis of the information available. As new information is received, the bottom line should be reevaluated.

20. Be Careful About Using Negotiation Tactics In Mediation, And, If They Are Used On You, Respond Appropriately.

The use of aggressive negotiation tactics or trying to overpower the other side is often ineffective in mediation, usually angers the other side, and may lead to impasse. Common negotiation tactics include:

- High-ball; low-ball
- Increasing or decreasing offer from previous negotiations
- Threatening walk-out
- Demanding that a party bid against itself
- Intimidation

Resist the urge to respond in kind if you are the target of negotiation tactics. Calmly name their tactics, and let them know that although you could respond in kind, you have chosen not to. Stick to your game plan, and don't play their game.

21. **Be Patient And Don't Give Up Easily. Have Faith In Your Mediator.**

The mediation process takes time. It is common for negotiations to slow down during mediation and to reach what may appear to be an impasse where neither party is willing to move further. This is when the true test of a mediator begins. When this happens some

mediators or attorneys will give up and declare the mediation over. The most skilled mediators realize that this is often just a normal part of the process and when the mediator really begins to earn her fee.

22. **Be Familiar With Techniques for Getting Past Impasse.**

If negotiations appear to be at an impasse consider the following techniques:

- Ask the mediator to meet privately with just the attorneys
- If your client is holding up settlement, ask for a private meeting with the mediator, discuss the problem, and encourage the mediator to do some additional reality testing of your client
- If lack of authority is a problem, make a phone call and get more authority. It can often be helpful for the mediator to speak directly to the absent representative who has more authority.
- If you have what you perceive to be a smoking gun, consider revealing it.
- Suggest a negotiation range or bracket. For example, advise the mediator, "You can tell the other party that we will go to X dollars, if they will go to Y dollars."
- Explore creative non-monetary solutions.
- Be honest with the mediator about your bottom line
- If the mediator has not already done so, consider asking the mediator to share her opinion as to what the likely result would be at trial
- Ask the mediator to propose a settlement figure or range
- Help the other side save face. For example, compliment the other side on what tough negotiators they have been.
- In an appropriate case, consider agreeing to the appointment of a neutral expert
- Consider continuing the mediation until a later time.
- If it is a case involving money and you have substantially narrowed the negotiating range, consider using the ending points of the negotiation as the basis for a "high-low agreement" and arbitrating the dispute with another neutral to resolve the matter.

23. Leave The Door Open For Further Negotiations

If you reach real impasse, end the mediation on a cordial note, leaving the door open for further negotiations.

24. If The Case Does Not Settle At Mediation, Make Time For The Mediator After The Mediation.

Cases frequently settle within a short time of mediation because of information learned during the mediation process. Skilled mediators will often check in with the attorneys after mediation if it appears that settlement may be possible, to explore the possibility of further negotiations. Be sure to make time to talk to the mediator after the mediation.

25. If The Mediation Does Not Result In Settlement, Consider Mediating It At A Later Date With A Different Mediator.

Up until recently, attorneys would attempt to mediate a case, and then if it failed to settle, they would proceed to resolve the case through either arbitration or litigation. Many more attorneys seem to recognize that if mediation is not successful at one point, it may be at a later time. Lately, I have been mediating cases that have been mediated two and even three times before by other mediators, and been able to assist the parties in reaching resolution. If a case doesn't resolve at mediation, consider the possibility of mediating again at a later date with another mediator.

Summary

Success in mediation is not just a product of the mediator's skill, but also the skills of the lawyers, claims representatives, and other mediation participants. By following the foregoing suggestions, you can increase your chances of winning at mediation. To realize substantial cost savings, mediation must be used systematically, and not just occasionally.