

Meditation Logistics:



Facilities, Food, and Other Forgotten Details

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Table of Contents

Introduction	1
Survey Method.....	1
Food	2
Facilities	4
First Impressions	6
Not-so-forgotten Details.....	7
Conclusion	8

Introduction

What does it take to be *successful* as a mediator? Being successful can mean that you have a practice that provides for your financial needs, without the necessity of engaging in another profession. On the other hand, one can be the greatest mediator the world has ever seen, but that does not necessarily mean that the world's greatest mediator is a successful one.

So what are the differentiators that can take us to this next level of success? The available training and literature teach us how to mediate cases and resolve disputes, but far less has been written on where to resolve disputes and how logistics might facilitate a settlement.

To narrow the gap, we reached out to several successful mediators, hoping to gain further insight. We coupled this information with our own experiences from the other side of the table—as advocates and clients—to identify those elements that we most appreciated and aspire to replicate.

Survey Method

We conducted an informal survey of 77 mediators. Admittedly, our list was not a comprehensive list of successful mediators, but it included many, but not all, of the individuals who have been recognized by peers through sources such as the State Bar of Texas's ADR Section, *D Magazine's "Best of," H Magazine's "Best of,"* the Texas Academy of Distinguished Neutrals, *Super Lawyers*, and contributors to *Stories Mediators Tell*. We expanded the scope of the survey so that, while it primarily included mediators who practice in Texas, questionnaires were also sent to mediators who practice in other states.

Instead of simply asking for guidance on how to be a successful mediator, we expanded the scope of the question. Each participant was asked to provide us with five tips on running a successful mediation *facility*. We requested responses both in-person and through email, and we found that our industry peers were happy to share their thoughts with us. By no means do we mean to imply that the results from this informal panel are scientifically accurate. That said, we did find certain tips and tools to be fairly consistent across the panel. Unless they have specifically consented to being referenced, we have summarized their opinions for you below.



Food

Food is our common ground, a universal experience. –James Beard

Without question, successful mediators think about the food they provide—this was the most mentioned response in our survey. Interestingly, food was talked about in two ways: quantity and quality.

Having a good variety of food is important. Snacks such as chips, fruit, fresh-baked cookies, and a good selection of drinks should be readily available throughout the day, for all parties. This makes sense because, through neuroscience, we understand that the brain uses glucose (sugar) when we think. Mediators must provide a good variety of items that will appeal to different palates, so that people keep eating and keep the brain fed.

Quality of food is also important. The majority of our respondents said that a box-lunch sandwich isn't conducive to an effective mediation practice. Instead, the food that the mediator provides should get people moving. We received suggestions for buffet-style lunches, with healthy options such as interesting salads. Yes, even a salad can be interesting if a variety of veggies, nuts, and croutons are in it.

Some of our successful mediators have small chocolate candies available throughout the day, and some let the parties know that the special chocolate will be available only if settlement happens. Participants noted that chocolate can have a magical effect in making someone feel much better.

Parties appreciate when a mediator has considered a party's dietary restrictions so that they have options among the food provided. Does a party require vegetarian, vegan, or kosher meals? Are there food allergies? Decaf or regular; diet or full-strength? Successful mediators know that people come with all sorts of food and drink preferences, and they prefer to have those preferences respected.

What about an intentional food or coffee break? Sometimes, the parties and their counsel simply need a break. Ask them, "Would you like to grab a cup of coffee with me?" This type of a break can help ease tensions and change the focus. If you want to be very bold, ask both parties to break at the same time and to have some coffee with you. It's difficult to be too mad at someone when you are sharing a cup of coffee or a meal.

It seems that the emphasis on food really comes down to something more important—a larger goal that separates successful mediators from those who aren't as successful.

Successful mediators show that they care about the parties.

Successful mediators make the time to ask people what they want and then provide it.

Successful mediators go “all in” with the parties that are before them that day and that hour.

There's no standing order with the building deli for four bologna sandwiches (no offense to bologna sandwiches). But to distinguish their practices, and perhaps their results, mediators must distinguish their food.



Facilities

This office is smaller than the last one I had. I'm not trying to impress people. I want to be close to them. –Steve Wynn

Think about your mediation space. What does it say about you? Does it provide a safe space for the parties, one where they can independently discuss issues and solve conflicts together?

An effective facility was almost as important to our survey respondents as food. A number of respondents provided practical feedback about a successful mediator's facilities.

Among them were suggestions on technology that should be present within the facility.

- Provide fast wi-fi that works and is easy to access, and avoid confusing passwords. For example, a password like "tree123@" can cause a user to ask if the "@" is an "@" symbol, or the word "at."
- Have webcams so parties can conduct face-to-face conferences over the web.
- Make presentations convenient for the parties and their counsel. To do this, have screens, projectors, or large displays available where a laptop or tablet can be easily linked and used to show documents or a slide presentation.
- Even simpler, more primitive technology like copiers, printers, and shredders in or near each room can make a difference to the mediation experience.

The feel of the office is also important. What colors are on your office walls? Do they deliver a calm, relaxing atmosphere, or are they more harsh and corporate? What message does your artwork send? Are there inspirational quotes and messages on your wall or tables that the parties can easily reflect upon?

Consider also the size and location of your facilities: Are they easy to find? Is parking accessible and easy? Does your facility promote qualities that are light and airy, or are the rooms dark and dingy? Did

you provide a clear map and directions so that people unfamiliar with your location can easily find their way there?

One mediator suggested the use of large, spacious, and comfortable caucus rooms. Have you made sure that the heating and air conditioning work well? Do the caucus rooms have their own climate control to create a comfortable environment for the parties? Is your mediation space “business comfortable,” with a combination of sofas, round conference tables, and comfortable chairs?

What about toys and things for the parties to fiddle with during the mediation? Many successful mediators think these are crucial items to create a settlement-friendly environment. For example, puzzles, mind games, toys, gizmos, and even a putter with golf balls can go a long way to creating a comfortable, interesting, and engaging atmosphere.

Also consider having a variety of reading materials. Everything from *Time*, *The Wall Street Journal*, *People*, to *Architectural Digest* were among some of the publications mentioned. Magazine and newspaper subscriptions are relatively cheap. Your parties will appreciate a range of reading materials, so they can keep their mind distracted for a moment or two during the mediation. Perhaps you should consider subscriptions to negotiation-related magazines and journals, and your parties will learn how to be better negotiators during the process. Some may say—and one of our successful mediators did—that with everyone having smart phones, tablets, and laptops, the need for these types of distractions aren’t as important as they once were. This may be true, but it’s clear that having interesting gizmos for folks to play with can evoke positive childhood memories, and help focus the mind on something new and creative.

The successful mediator also thinks about the logistics of where the parties will be during the day. For those mediators who use a caucus model, make sure that the parties, who may not want to see each other at all, are spaced far apart. At a minimum, make sure that the parties aren’t in adjoining rooms so that they aren’t fearful of being overheard. To ensure this, provide rooms that are soundproof, so your parties to have a feeling of secure privacy for internal discussions.

Sometimes, the attorney needs or wants to get away from the client. Do you have a private room available for the attorney to use, one that’s equipped with a door and a phone? Can the lawyers get outside to make a quick call to a different client, or to a partner working on something else?

And finally, successful mediators tell us that there needs to be something unique about your facility. Is there a relaxing place where you and the parties can go to walk—perhaps an area with a fountain, a park, or trees? This type of environment can help decrease the stress level, and help the parties think about matters in a more natural, contemplative setting. One successful mediator advised that parties should be offered the opportunity to “step out into the sunshine” as needed.



First Impressions

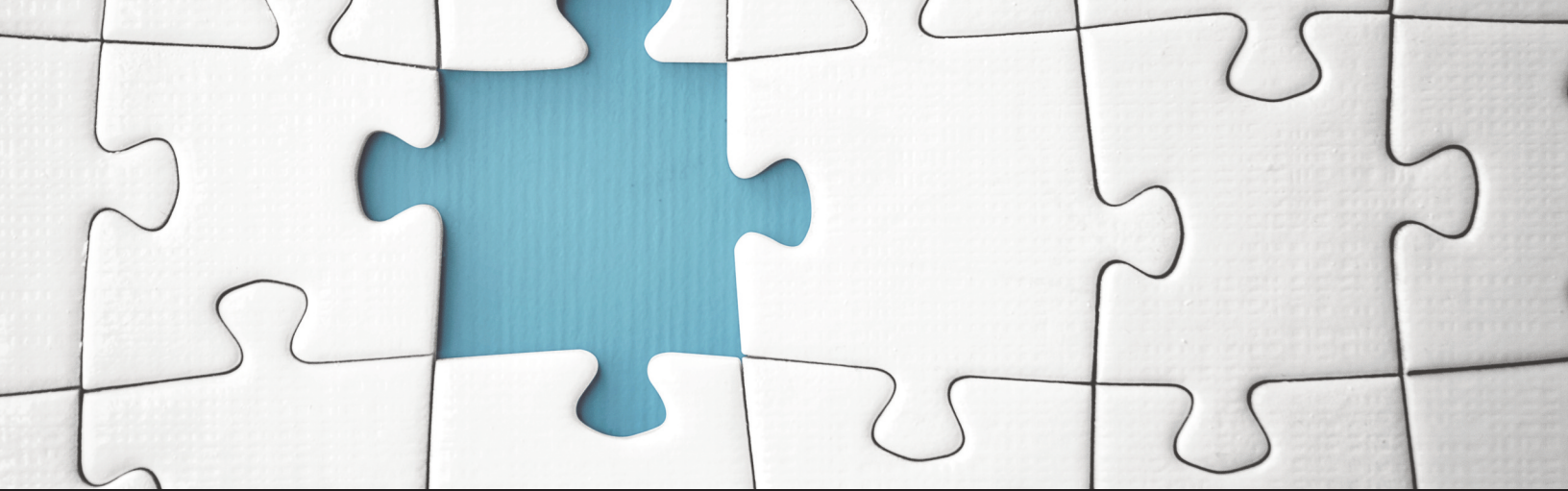
You never get a second chance to make a good first impression. –Will Rogers

Successful mediators strive to make a positive first impression. This starts with the first phone call to the mediator’s office, and the first communication from the mediator. One mediator commented that we are in a service industry and should think of what we, as patrons, expect when visiting other service groups, like restaurants or dentist offices. This mediator noted that those first moments matter—even something as mundane as the way in which your phone call to the restaurant was answered when you called ahead for seating. As such a provider, eliminate the things in your own practice that, as a consumer, would make you think ill of the group providing you with service.

Participants told us how important it was to be “in the moment” and to focus your attention on the parties who are present. However, they noted that in order to accomplish this, it takes time to prepare in advance of the arrival of any party. Take 30 minutes prior to the mediation to sit, contemplate, and center yourself before you walk into the mediation room.

Because of the variety of needs, interests, and wants that clients may have, making the right first impression requires a somewhat flexible environment. Yet, there are certain key items that are standard considerations, and some of them include:

- What message does my website send? Is it directed to the right audience?
- What impression does my staff make? Do they anticipate the client’s needs? Are they readily available? Do they respond to the client’s demands in a timely manner? Is my office staff exhibiting the highest level of customer service?
- What impressions do my emails make? Are emails returned timely? Do emails reflect a positive, professional attitude?
- What impressions do my written documents make? Have I paid attention to detail? Will clients feel that I’ve personalized the email to their needs, and that this is not simply another form that’s been generated? Have I checked—and double checked—for spelling and grammatical errors? Are the names of the parties and the style of the matter correct?



Not-So-Forgotten Details

The details are details. They make the product. The connections, the connections, the connections. It will in the end be these details that give the product its life. –Charles Eames

Our survey participants also focused on the details that aren't necessarily tangible, but that they felt give life to the mediation process and that, ultimately, lead to a successful mediation.

Be prepared. Read the materials that are sent to you ahead of time. They were prepared for you to read and internalize. Show the parties that their time in putting the materials together was worth it.

Contact the parties or their attorneys before the mediation. A phone call or lunch meeting prior to the mediation can do wonders towards reaching a settlement further into the process. At the mediation session, a successful mediator will have already met the parties or their counsel.

Contact the parties or their attorneys after the mediation. Regardless of whether there was a full settlement, a partial settlement, or no settlement, contact the parties or their counsel after the mediation. Are there loose ends that can be tied up? See if there's any additional services that you can provide in this case, or any future case.

Confirm timing. Are there time constraints, such as a party's departing flight? Do any of the parties need to pick up children from day care? Have a candid communication prior to the mediation about these time limitations and, when time constraints exist, consider having a large clock in the room so participants can be aware of the time constraints and will not be surprised as the end of the allotted mediation time period approaches.

Stay authentic. While the suggestions in this Chapter are provided to give some informal insight into the tips and tricks used by some of our peers, participants will respond to your own authenticity.

Be flexible. Allow the parties the freedom to craft their own resolution. Let go of your own preconceived notions of how this matter should or ought to settle, and keep your mind open and unattached to particular outcomes.

Be positive. The parties have been facing conflict for some time. In many situations, nasty and unflattering things may have been said about either party. They may be at a point where they are unable to help themselves resolve the situation, but they are at your office to see if resolution is possible. You may be the only positive influence that they have had. Keep a positive attitude about the situation, while acknowledging their hurt. Your positive attitude can help the parties see that a better day is possible.

Never give up. Don't let an impasse stop you. An impasse can mean that you've reached a point of equilibrium between the parties. This means that you are close to a resolution. Even if the mediation is stopped for one session, follow up later and keep showing the parties that you are interested in them and in the resolution of their conflict.

Conclusion

We all aspire to achieve a high level of success in the sometimes difficult work of mediation. We're thankful to those successful mediators who took the time from their practices to participate in the survey with their thoughts on success. Perhaps more importantly, these participants are helping to continue to breathe life into the profession by sharing their knowledge and experience with others, so that the craft of mediation can continue, and continue successfully.

