

DAILY REPORT

Settlements That Stick: Hot Tips for Achieving Mediation Success

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As courts continue to look for ways to deal with a burdensome backlog of cases, settlement conferences are proving to be a highly attractive means of lightening the load. For example, according to [government](#) sources, 61 district courts operated alternative dispute resolution (ADR) programs, with 60 of those districts conducting mediation or judge-hosted settlement conferences in 2023.

Whether a settlement is reached through a private mediation session or a judicially hosted settlement conference, having an agreement that will be enforceable is key. To gain greater insight into how the courts views ADR and how attorneys can maximize mediation success, we solicited input from four distinguished former judges who now serve as [JAMS](#) mediators. They shared their perspectives on what lawyers can do to craft enforceable settlement agreements and other mediation best practices.

The Opportunity for Settlement Begins During Case Preparation

Judges play a crucial role in managing litigation, working to keep cases on track for trial.



Attorneys can support these efforts by utilizing settlement conferences to their advantage, if they are offered one.

Hon. Gail S. Tusan, a senior judge in Fulton County and JAMS neutral, said that “senior judges in [Georgia](#) have historically played a role in resolving cases for active judges, often serving as case evaluators to facilitate settlements.” In her experience, “success largely depends on practitioner preparedness. Those treating it like a mediation in good faith tend to achieve better outcomes, whereas reluctant participants often

face less effective resolutions.” Hon. Clifton B. Newman (Active/Retired), who served over 23 years on the South Carolina Circuit Court, now a JAMS neutral, emphasized that a genuine willingness to settle is key. According to Judge Newman, “court-ordered mediations may lack such willingness, making resolution harder.”

Mediation Best Practices

Once a **mediation** is scheduled, there are several best practices that can facilitate a productive session. “Skip opening statements,” suggested Judge Tusan. “They are often unhelpful. Instead, prioritize pre-mediation calls so you can help familiarize the mediator with the case, parties and key issues, allowing for a more focused and efficient mediation process.”

Judge Wendy L. Shoob, also a senior judge in Fulton County and JAMS neutral, recommends using the pre-mediation call to clarify key issues and address unanswered questions. In her role as a mediator, she tells lawyers to “prepare your clients by setting realistic expectations. Mediation is about resolution, not aggressive advocacy. Have discussions about settlement goals, potential concessions and the opposing perspective to shift clients into a settlement mindset.” Judge Shoob also asks lawyers to be upfront about any challenges they face with their clients, such as difficult personalities and sensitive topics, as this helps the mediator build rapport and navigate discussions more effectively.

The location of mediation can also play a role in settlement. Judge Newman urges counsel to “choose a neutral location where neither party feels at a disadvantage.” For example, JAMS’ Resolution Centers offer a comfortable, yet professional setting that is neutral ground. These facilities offer highly trained case management staff who help make the entire process go smoothly, allowing the parties to focus on reaching a settlement without having to be concerned about logistics.

Another recommended best practice is being sure to organize and share information effectively. This is crucial for the mediator as well as the parties. Hon. Beverly B. Martin (Ret.), a retired Eleventh Circuit Court of Appeals judge and JAMS neutral, suggested using spreadsheets to help track key details and updates in real time, improving clarity and efficiency. Judge Tusan added that “extra preparation, including structuring data and being ready to revise agreements during mediation, gives attorneys an advantage in guiding the process and influencing the outcome.”

Keep the Courts in Mind When Crafting Settlement Agreements

In cases where settlements need to be approved by the court, counsel should keep certain things in mind when crafting the agreement. Judge Martin, drawing on her federal experience as a district court judge in the Northern District of Georgia, commented on class action settlements, stating, “Rule 23 requires court approval, making sure that the settlement is fair, reasonable and adequate. The credibility of a settlement is enhanced by reputable mediators.” This highlights the importance of choosing neutrals with strong credentials and outstanding reputations.

Judge Martin noted that an understanding of jurisdictional nuances should also be taken into account. She commented that “whether a settlement can include compensation to the named plaintiffs varies from jurisdiction to jurisdiction. The court whose job it is to evaluate any proposed settlement will do its own assessment of the settlement in light of the risks and costs of litigation, as well as the delay brought on by litigation, and the court will be mindful of this issue as well.”

From a state court perspective, it should be noted that judges generally favor settlement agreements in business cases, as public policy supports resolution and clearing overburdened dockets. Judge Shoob said that “unless an objection is raised,

judges typically approve agreements in commercial cases since both parties and their attorneys have already consented.” She added that from her experience as a family court judge, one of the few exceptions is when settlements involve **family law**. “Those settlement agreements undergo greater scrutiny over child support or visitation concerns,” stated Judge Shoob. Business cases rarely present such issues. “Judges may not have in-depth case details, so unless a party raises a problem, settlements are usually approved without issue,” concluded the judge.

Dotting Your I’s and Crossing Your T’s

To enforce a settlement agreement, be certain that you have the signed agreement, supporting evidence and affidavits, if necessary, then promptly file a motion and request a hearing. Courts generally favor enforcement, unless key issues were omitted, such as the attorney lacked settlement authority or claims of coercion arise. Common objections include buyer’s remorse, financial changes and attempts to delay proceedings. Judge Shoob said, “It’s crucial to push for a timely hearing to prevent unnecessary delays and support the path to resolution.” To prevent challenges, Judge Newman suggests “making sure a settlement agreement is clearly written and signed by all parties before leaving mediation.”

Court rules generally prohibit rescinding a valid agreement, which must be either written or stated in open court and made part of a court order. Jurisdictions vary on whether attorneys can bind clients. Some, like Georgia, are more flexible, while others require direct client approval. Clarity and compliance with court rules are essential for enforceability, reducing the risk of future challenges.

The judges agreed that conducting thorough discovery before mediation helps prevent disputes

over withheld or misrepresented information. Judge Shoob observed that “parties sometimes regret settlements after uncovering missing details, but courts are unlikely to grant relief if they never requested the information in discovery.” Settling without deposing key witnesses or verifying critical facts creates risk, making early mediation without adequate discovery a potential pitfall. Proper case preparation strengthens enforceability and reduces post-settlement objections.

Judge Martin serves as an arbitrator, mediator, special master/referee and neutral evaluator at JAMS, handling federal, appellate, business/commercial, employment, bankruptcy, insurance and product liability cases.

Judge Newman serves as an arbitrator, mediator and special master at JAMS, handling construction, business/commercial, personal injury and torts, class action/mass torts, insurance, wrongful death, shareholder actions/business divorce and health care cases.

Judge Shoob serves as a mediator, arbitrator and special master at JAMS in a variety of practice areas, including business/commercial, employment, family law, insurance, personal injury, probate and professional liability.

Judge Tusan serves as a mediator, arbitrator and special master at JAMS across various areas, including business/commercial, construction, employment, family law, insurance, medical malpractice, personal injury, products liability and premises liability.

