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# Kluwer Mediation Blog

## 7 Ways to Make Your Next Mediation Successful

Jeffrey Krivis (First Mediation Corporation) · Sunday, November 16th, 2014

On 24th September Kluwer and the International Academy of Mediators (IAM) hosted their inaugural mediation webinar – ‘7 Ways to Make Your Next Mediation Successful’. Attendees joined from all over the world. Don’t worry if you couldn’t attend on the day – we’ve posted the webinar on YouTube, and it can be viewed [here](#).

### 1. PRE-QUALIFY CASE

- a. Internal (client) v. External (counsel)
  - i. What does tomorrow look like if dispute resolved?
  - ii. Discuss client’s fantasies about case/outcome
  - iii. Justice?
  - iv. Rewrite the past?
  - v. Mourning process
- b. Selection of mediator
- c. Have mediator talk to other side
- d. Identify who is attending from each side
- e. What materials might be useful to give to the other side in advance; to the mediator privately
- f. Avoid ambushing the other side with new reports from experts
- g. Research the people and personalities in advance

### 2. IMPEDIMENTS/BARRIERS

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- a. Structural
  - b. Procedural
  - c. Legal (motions, etc)
  - d. Notify mediator of anticipated barriers
  - e. Perceived v. real barriers

### 3. INFORMATION OVERLOAD

- a. Create punch list
- b. Written submissions
- c. Dumping depositions, etc on mediator the night before
- d. What to provide the other side by way of submission
- e. Separate “confidential” submission to mediator

### 4. EARLY EXCHANGE OF WRITTEN SETTLEMENT AGREEMENT

### 5. CHANGES IN DYNAMICS/ANALYSIS BEFORE MEDIATION

- a. Don't blindsides the other side
- b. Discuss with counsel and/or mediator before session
- c. Problems with right people attending in person; by phone
- d. Options: cancel, reset, notify

### 6. NEGOTIATION PLANNING

- a. Don't be a prisoner....
- b. Preparing client for role of mediator, advocate, etc
- c. Timing and pacing discussion
- d. Your presentation: powerpoint; length; tone; temperament

e. Dynamics

## 7. SOCIAL MEDIA

## 8. MANAGING THE SESSION FROM COUNSEL'S PERSPECTIVE

- a. Calculating options; batna
- b. Inflection points: case turns on 1, 2 or 3 key issues; the rest are irrelevant
- c. No argument—use conversational tone
- d. Strategize with mediator to turn difficult participants into allies of process
- e. Be transparent when managing expectations

## 9. MANAGING SESSION FROM MEDIATOR'S PERSPECTIVE

- a. Let parties know whenever they are endangering process by tactics they display
- b. Explain risks of bad behavior in order to help convince other stakeholders of positions
- c. Let them know when we are playing devil's advocate and why/impact

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