

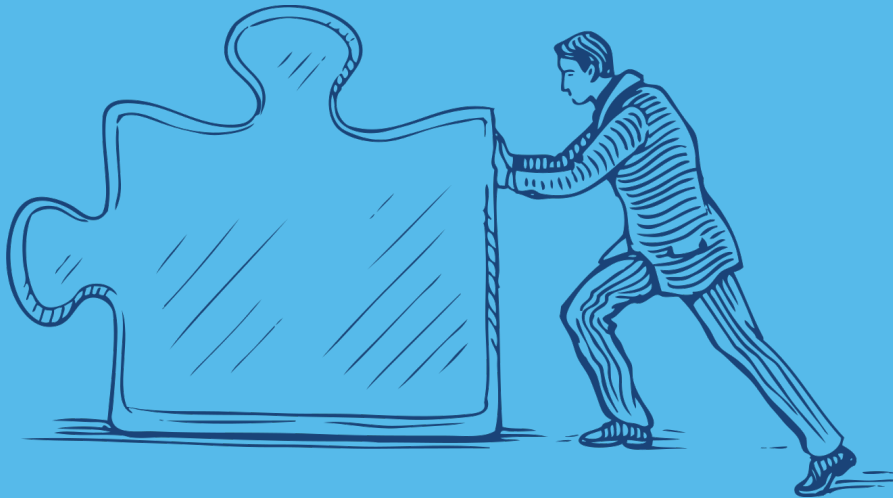
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# 8 Tips for a Successful Mediation

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A five-minute guide that  
could save you thousands!



**First Edition**

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## **Preface**

After being involved in 1,000+ mediations, I've seen a lot of what works and what doesn't. Despite the tone of the guide (lighthearted mostly), the tips (pitfalls) are based on my experience as a mediator over the course of many years.

The information/examples provided in the guide are for general information and entertainment purposes only.

In the guide, there are several references to parts of the Florida Statutes. Nothing in the guide is intended or being provided as legal advice regarding the interpretation/applicability of statutes, case law, case outcome, etc. The laws of every state differ, and every case is different. Also, statutes and laws can change over time.

Any reader of the guide specifically agrees that no attorney-client privilege is established between the reader and Steven A. Leitman or Steven A. Leitman, P.A.

## The Mediation Labyrinth



Resolving a case at mediation is typically not a straight line. If parties agreed on everything, then chances are they would not be in mediation.

At the beginning of mediation, the exact outcome is rarely known. Typically, there is a certain amount of "searching" required and "dead ends" to be encountered in a mediation before getting to a settlement.

Imagine a labyrinth where each party starts from a different place with the goal of meeting in the middle (or somewhere close thereto). I suspect that's what mediation may feel like to you.

If you find yourself in the labyrinth...don't give up.

Keep searching. You can usually find your way through!

## **The roller coaster ride (I want my day in court!)**

In the mind of some people, court is a magical mystical place where all wrongs will be made right.

However, going to court is not like taking a casual boat ride on the calm waters of "It's a Small World" at Disney World.

For some, it will feel more like an endless set of turbulent loops.



When I hear people tell me they want their day in court, they are in essence telling me they want to go on a long and expensive stomach churning roller coaster ride.

I am not talking about the three-minute exciting kind where you get off and regain your balance.

I am talking about the kind of ride that lasts for months...sometimes years!

The rides aren't free either. You will be buying a ticket to ride (in the form of attorney's fees) each go around!

Usually better to get off the ride early, when possible!

## **Would you buy a used set of pots and pans for \$500.00?**

Let me preface the question by saying we are talking about your everyday type of used pots and pans (the kind with scratches and dents!), not some expertly crafted European chef inspired set which includes an iron skillet with a gold encrusted handle.

Conducting a quick search on Amazon, I found this 5-star rated 17 piece set for under \$200.00.



Sponsored ⓘ

**T-fal Ultimate Hard Anodized  
Nonstick 17 Piece Cookware Set,  
Black**

★★★★★ ~ 9,670

**\$199<sup>99</sup>**

Sadly, in mediation, people will pay their attorney hundreds of dollars per hour plus their share of mediation fees because they must have their used pots and pans or some other easily replaced item of personal property.

Here's a tip, save the \$500.00 in fees and buy a new set for \$199.99!

## Principal > Principle



Here are a couple of important definitions for you...

*Principal - a capital sum earning interest*

*Principle - a fundamental truth or proposition that serves as the foundation for a system of belief or behavior or for a chain of reasoning.*

A party who is angry or hurt can spend tens of thousands of dollars (seriously it happens!) on *their* truth or proposition.

Often this results with very little in return except for enriching the attorneys, delaying the divorce, and ruining the chances of a good working relationship with the other side.

Here is something sobering to know – a judge doesn't care about a party's principle! They are going to rule on the facts (as they see them) and apply the law to the facts.

It is always cringe worthy for me to hear a party say..."I don't care how much it costs; it is the principle of the matter"

Fortunately, most attorneys will talk their client from going down the "principle" road because they don't want their client to waste money. A client who litigates on principle stands to lose a ton of **principal!**

From my perspective, **principal > principle** is the same as...**preserving assets > throwing money away!**

## **I Fought the Law (And the Law Won)**

The title is the refrain from the popular 1960's top ten hit song by the Bobby Fuller Four Band.

It also applies to certain matters in a divorce case.

Here are three examples I see often.

A home held by the parties as tenants by the entireties is presumed to be a marital asset and subject to equitable distribution. This applies to a home owned individually prior to marriage, but then titled in joint names of the parties after the marriage. Not fair you say? Here's what the "law" says (in part) ...

*All real property held by the parties as tenants by the entireties, whether acquired prior to or during the marriage, shall be presumed to be a marital asset. If, in any case, a party makes a claim to the contrary, the burden of proof shall be on the party asserting the claim that the subject property, or some portion thereof, is nonmarital.*

Retirement benefits accrued during the marriage are marital assets subject to equitable distribution. On occasion (actually quite often) a party will argue that is not fair, however, here is what the "law" says (in part) ...

*All vested and nonvested benefits, rights, and funds accrued during the marriage in retirement, pension, profit-sharing, annuity, deferred compensation, and insurance plans and programs are marital assets subject to equitable distribution.*

Unless a party voluntarily waives their rights to the other party's retirement benefits accrued during the marriage from equitable distribution, it is pointless not to settle just because the other side wants their share of the retirement or a tradeoff for other assets.

Another common complaint is the amount of child support. Child support is calculated pursuant to a child support guideline. Complaints on this one goes both ways! One party believes the amount is too low and other party believes the amount is too high. Regardless, here is what the "law" says (in part) ....

*The child support guideline amount as determined by this section presumptively establishes the amount the trier of fact shall order as child support...*

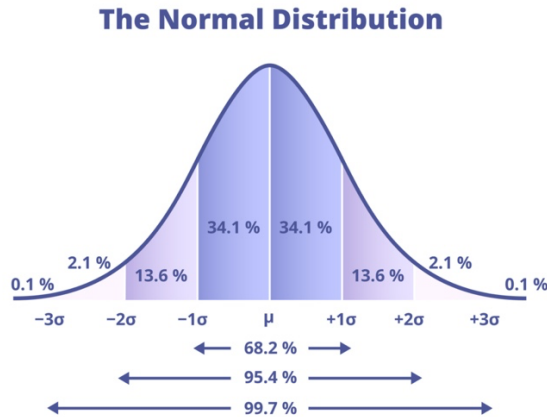
The point is, arguing that something the law provides is unfair is usually just a waste of everyone's time. A "threat" by one party that they are going to court over the matter almost always fails, because the other party's attorney knows with a high probability the likely outcome in court.

Not facing reality, will most likely having you singing "I Fought the Law (And the Law Won)" Have a listen :) <https://hi.switchy.io/7XCp>



## Negotiating outside the bell curve - Part I

Remember the bell curve from school?



Mediation negotiations sometimes remind me of the bell curve. The closer parties get to the middle (in range of each other), the better chance they have of settling. Although the percentages for each case may be different, the bell curve serves as a helpful example.

A judge can rule in many ways. However, there is a high probability that a judge will rule in a certain range (e.g., in this example it would be at the middle of or within one of the 34.1% quadrants).

Sometimes mediations take double (or even triple) the time necessary or end quickly because a party insists on trying to relentlessly negotiate for their great day in court scenario (see 13.6% probability), best case scenario (see 2.1% probability), or even beyond their best-case scenario (see 0.1% probability). This tactic almost never works and just causes the other side to give an equally unrealistic counteroffer or none.

Experienced attorneys know the realistic range and rarely will let their client settle out of the middle range.

Let's use an example. If there are marital assets totaling \$100,000.00, what do you think provides the best chance of settling?

Scenario A.

Party 1: \$50,000.00

Party 2: \$50,000.00

Scenario B.

Party 1: \$60,000.00

Party 2: \$40,000.00

Scenario C.

Party 1: \$70,000.00

Party 2: \$30,000.00

Scenario D.

Party 1: \$90,000.00

Party 2: \$10,000.00

Scenario E.

Party 1: \$100,000.00

Party 2: \$0.00

If you answered anything besides Scenario A, please ask yourself why would a judge order otherwise?

Before answering, let me add that Florida Statute 61.075 (1) says in part...

*...in distributing the marital assets and liabilities between the parties, the court must begin with the premise that the distribution should be equal, unless there is a justification for an unequal distribution based on all relevant factors...*

Every case is different and so maybe there are relevant factors indicating the result should be something other than 50/50, but from my experience it is rare for a judge to deviate.

In some negotiations, a party might settle for Scenario B because they are ready for the case to be over with. However, what incentive would a party have in settling for Scenario C, D, or E?

Persistently negotiating the outer limits of the bell curve just causes frustration and results in a waste of time and expense.

This bell curve analysis also applies to support, timesharing, etc.

## **Negotiating outside the bell curve - Part II - "They are not negotiating in good faith"**

I probably hear this line or some version of it at least once a week.

Using the same example of \$100,000.00 for marital assets (assume no relevant factors would sway a judge to a division that is not 50/50). Also, assume everyone in the mediation knows it (but one side wishes to ignore it)!

Party 1 starts the negotiation and asks for \$95,000.00 of the \$100,000.00.

Party 2 rejects the offer and asks for \$60,000.00 of the \$100,000.00.

Party 1 rejects the offer and asks for \$80,000.00 of the \$100,000.00.

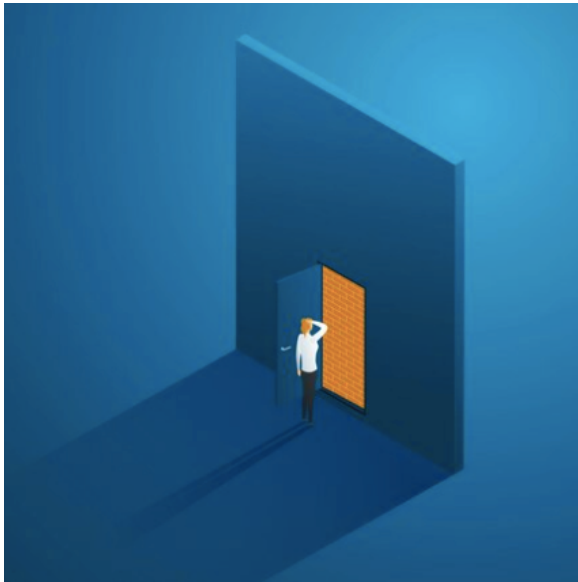
Party 2 rejects the offer and asks for \$55,000.00 of the \$100,000.00.

Then it happens...

Party 1 complains the other side is not negotiating in good faith, and says...

"We reduced our offer \$15,000.00 and they only came down \$5,000.00."

Want to skip "hitting the brick wall" in negotiations.



Don't be like party 1 - it is only causing frustration!

## **Beware of Shadow Advisors**

Normally, only the parties and their attorneys attend mediation. There is no "call a friend" or "ask the audience for help".

A party has to make their own decisions.

Sometimes the influence of a shadow advisor gets in the way of decisions being made.



The shadow advisor is not an attorney, financial advisor, or other qualified professional. Instead, the shadow advisor is lurking behind the scenes and can be a new love interest, a friend, a second cousin in Cincinnati, or even some unknown person on a Reddit forum.

Be careful of a shadow advisor "advising" you to go to court unless you get exactly what you want at mediation.

Shadow advisors are not part of the mediation process, so they don't know how the negotiation is unfolding, what the other side is saying, how the law is applied, or the costs/risks in going to court compared to what is being offered at mediation.

You've hopefully hired a good attorney. Consider their advice and then make your own decision on what is best for you!

## Read the Fine Print



Here is a question where the answer seems easy at first (until you read the fine print) ...

Question:

Would you accept \$5,000.00 at mediation, when you could get \$15,000.00 in court?

Answer:

\$5,000.00 today would actually (maybe surprisingly to you) be better than \$15,000.00 in court, once you've read the fine print!

Fine print:

*There is actually no guarantee you will get \$15,000.00. You will have to wait at least another 6 months to get to court and it will cost you \$10,000.00 in attorney's fees to find out.*

Whenever considering any deal at mediation compared to what you might get in court, always find out the "true" cost and time required to go to court - financially, emotionally, and otherwise!

## **Meet Steve**



Mediation,  
Cooperative  
Divorce,  
Collaborative  
Divorce,  
Low Conflict  
Divorce,  
and  
Uncontested  
Divorce

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Mediator & Attorney

Steven A. Leitman is a Florida attorney focusing on mediation and low (and no) conflict divorce.

Steve is certified by the Florida Supreme Court as a Family Law Mediator. He works with parties and their attorneys to resolve disputes out of court.

Steve formerly served as an Assistant State Attorney in the Fourth Judicial Circuit and has served as a court-appointed Special Magistrate.

Steve received an AV® Peer Review Rating from Martindale-Hubbell. According to the Martindale-Hubbell website, an AV® certification mark is a significant rating accomplishment and a testament to the fact that a lawyer's peers rank him or her at the highest level of professional excellence.

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