

Use PETSM to Improve the Quality of Decision-Making in Mediation

Theory-of-Change Symposium

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January 19, 2020



[Michaela Keet](#), [Heather Heavin](#), and [John Lande](#) describe problems with the common unplanned one-stage mediation procedure and the benefits of planned early two-stage mediations (PETSM). PETSM enables parties to carefully consider the issues and make better-informed decisions, while reducing the risk of “buyer’s remorse,” renegeing on mediated agreements, and complaints against lawyers and mediators. It also may be more satisfying for mediators. Michaela is a Professor at the University of Saskatchewan College of Law. Heather is Associate Dean of Research and Graduate Studies and Associate Professor at the University of Saskatchewan College of Law. John is the Isidor Loeb Professor Emeritus at the University of Missouri School of Law.

Problems with Unplanned One-Session Mediations

There is a strong norm in many practice settings of trying to settle in one mediation session if possible. In cases following the one-session norm, people sometimes endure marathon mediations lasting late into the evening. When parties don’t have enough information or aren’t ready to make confident decisions, they may feel pressured to settle their cases.

Even when mediators avoid intentionally exerting pressure, parties can feel pressed to settle if everyone assumes that mediation normally should involve only one session. This can cause “buyer’s remorse,” leading parties to renege on agreements, perform them inadequately, file suit to rescind them, or even sue neutrals or lawyers.

These problems generally can be avoided if everyone plans for two possible mediation sessions. People now sometimes have *unplanned* two-session mediations, where they unsuccessfully push to settle in one session and mediate again later. Although this may eventually produce good resolutions, it does not provide the benefits of a *planned* early two-session mediation (PETSM) process of being better organized and more humane.

How Can You and Your Clients Get the Benefits of PETSM?

In a PETSM process, the first session should occur soon after the parties have done some basic fact-finding and legal research.

At the first session, the parties may be ready to settle. If so, a second mediation session would not be needed. If parties plan for the possibility of a second session, they are less likely to feel pressured to settle.

In the first session, everyone could plan “homework” to be completed before the second session. Mediators can identify critical uncertainties and potentially unrealistic assumptions and encourage people to check them out. This should reduce problems from mediators providing their own assessments and pressing parties to settle.

To maximize the benefits of PETSM, participants need to change their expectations about how mediation would work. Mediators can post information on their websites explaining the process and provide materials to help people plan for particular mediations.

Many savvy parties would be happy to take a little more time to get a more deliberate, predictable, and possibly more efficient process. Some mediators would really enjoy managing a PETSM process and might be in demand if they develop a reputation for doing them especially well.

For further detail, see [this post](#) or our book, [*Litigation Interest and Risk Assessment: Help Your Clients Make Good Litigation Decisions*](#).