

Caucus Mediation: The Zen of Peacemaking Mediation

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*A summary of the original article
by Richard Calkins, Esq.*

Caucus mediation is an excellent alternative to litigation. It incorporates the art of conciliation and peacemaking into the mediation process. Compared to litigation, caucus mediation is time-efficient and creates an atmosphere not only most conducive to creative settlement outcomes, but one that supports the healing and reconciliation of the parties to a dispute. According to Richard Calkins (Esq.), author of "Caucus Mediation-Putting Conciliation Back into the Process: The Peacemaking Approach to Resolution, Peace and Healing" using caucus mediation can also reduce stress on parties and their counsel because it is less formal, provides an atmosphere that is less adversarial, and promotes ongoing communications and cooperation. A key factor that contributes to a success rate exceeding 90% with some mediators is that non-confrontational peacemaking tools are introduced into the process by a mediator who then encourages parties to utilize those tools to enhance communication, negotiations and settlement.

The general format of caucus mediation is (1) pre-mediation contacts, (2) opening joint session, (3) private caucuses and (4) closing joint session. The opening joint session begins with all parties together in a conference with the mediator. The mediator makes opening remarks and then invites attorneys to make opening statements on behalf of their clients. After this, the parties and their attorneys are separated into different rooms, often referred to as breakout rooms. The mediator visits each party to conduct confidential sessions called private caucus sessions until the case is settled. During the private caucus sessions, parties are able to speak more candidly with the mediator. The mediator asks open-ended questions in order to identify possible obstacles to settlement or new information that might enhance settlement discussions. During private caucus sessions, parties often share confidential information about their case, the strengths and weaknesses, as well as their own needs and motivations. The

caucus session can be a safe place for parties to vent volatile emotions that often create obstacles to settlement. The mediator is able to diffuse the emotions through active-listening, and acknowledgement, allowing the parties to move into a more constructive mind-set for brainstorming about resolution. Information shared in a private caucus may only be conveyed to the other side by the mediator with authorization from the party. With the mediator's help, and in the privacy of a caucus session, parties can begin to think more constructively about shaping a negotiated settlement. Parties can then "use" the mediator to shuttle authorized information back and forth between the two rooms. This allows the mediator to mitigate any setbacks or negative confrontations as settlement terms are communicated and negotiated back and forth. By acting as the "messenger" the mediator can convey information in an objective fashion. In addition, the mediator can facilitate productive negotiation tactics while still remaining neutral about the outcome and substance of the dispute.

Once settlement is reached, all parties meet again in conference with the mediator to confirm the terms of settlement; draft and sign the settlement agreement. Throughout the process, the mediator remains non-judgmental and allows the parties to evaluate the case and reach their own conclusions as to the best way to resolve their dispute.

Calkins outlines the benefits of caucus mediation combined with peacemaking techniques, especially where there will be an ongoing relationship between the parties. He suggests that caucus mediation is highly successful in most types of cases including personal injury, professional malpractice, antitrust, securities, trademark, employment, business/commercial and contract disputes. According to Calkins there are ten key benefits to the use of peacemaking techniques and caucus mediation to reach a settlement:



- Caucus mediation can best reincorporate the lost element of conciliation into the mediation process.
- The mediator utilizes “peacemaking techniques” that can help the parties find not only resolution, but conciliation, peace and healing through the mediation process.
- In caucus mediation, the mediator is more than a dispute resolver; he/she seeks to be a peacemaker. Peacemaker techniques avoid adversarial and confrontational methods of persuasion and are based on the premise that everything the mediator does should lead to the establishment of peace and healing between the parties.
- Caucus mediation is designed to be a kinder, gentler, user-friendly approach to resolution. Whereas in litigation, the goal is to impeach, discredit and undermine the opponent to make them a loser, the goal in peacemaking is to be supportive of the opponent to make them a winner so that both parties can walk away from the dispute reasonably “whole”- emotionally as well as substantively.
- The mediator works with parties and counsel to build rapport and trust, while not putting them on the defensive. This gives the mediator the ability to later “reality-check” the parties if necessary.
- The well-trained caucus mediator utilizes their knowledge of body language, human nature and intuition to explore beyond the verbal “no” to determine if it is really a silent “maybe” or a disguised “yes”.
- The caucus mediation or peacemaking process encourages the spirit of cooperation which grows as the mediation progresses.
- Through confidential caucus the mediator can speak candidly with each side to gain information about the case in order to give meaningful guidance to reach a fair settlement.
- Caucus mediation is a venue for parties to vent and express their feelings which is not possible in court, or in an alternative process that keeps all parties in the same room.

- In situations where parties continue to work together after the mediation such as in on-going employment or business relationships, caucus mediation offers a venue to not only resolve the dispute but promote healing of the relationship between parties.

In his article, Mr. Calkins seeks to introduce the caucus method of mediation as the process most conducive to conciliation and peacemaking. He suggests that the mediator become more than a neutral facilitator; they are a guide to and creator of a process that seeks not only resolution, but healing and peace between the parties. For those mediators who put on the mantle of peacemaker, a profound change in one’s personal life can occur. By focusing energy on making others “winners”, one may find an exceptional shift in one’s approach to life, work and all conflict resolution.

Note: This article is an interpretation and summary of ideas discussed in “Caucus Mediation-Putting Conciliation Back Into the Process: The Peacemaking Approach To Resolution, Peace and Healing” authored by Richard Calkins (Esq.) and summarized in this article by Rena Barron and edited by Jennifer Morrow, MDR. See 54 Drake Law Review 259 (2006).

Richard Calkins is an active neutral who has conducted over 1600 mediations and arbitrations. He has trained over 250 mediators/arbitrators now practicing throughout the country. He is co-author of Mediation: A Quest for Peace. Mr. Calkins is available for mediation and arbitration services through ADR Systems of America. For more information, a copy of Mr. Calkin’s complete article or to schedule a case, please contact Jennifer at (312) 960-2262 or visit www.adrsystems.com.

