



Top Ten Ways to Improve Your Mediation Skills

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Traditional mediation theories (such as facilitative, evaluative, and transformative mediation) are incomplete at best and misleading at worst, providing mystifying descriptions of what mediators actually do. They focus on only a few behaviors during mediation sessions. They don't recognize the many variations of mediators, parties, and cases. Many mediators ignore these models because they are confusing or unhelpful.

An alternative – Real Practice Systems (RPS) theory – provides a broad framework to help mediators, parties, and attorneys realistically understand variations in mediation processes and act accordingly. This article describes RPS theory, which can help you understand and optimize your mediation practice. It is adapted from [*Helping You Do the Best Mediation You Can*](#).

1. Recognize That You Have a Complex Practice System.

Whether you know it or not, you have a complex mediation practice system if you mediate regularly. Mediation is not “just” what you do during mediation sessions when all the participants have convened.

You have unconscious routine procedures and conscious strategies for dealing with recurring challenges that you use before, during, and after mediation sessions.

Your system is based on your personal history, values, goals, motivations, knowledge, and skills as well as the parties and the cases in your mediations. You have developed categories of cases, parties, and behavior patterns that led you to develop your system. All of this has grown out of your experiences and has evolved over time.

Experienced mediators have sophisticated systems enabling them to develop deeply intuitive perceptions and skills to help parties work together to reach good agreements. Some mediators have simplistic systems in which they operate largely on “auto-pilot,”

treating cases pretty much alike rather than addressing the unique circumstances of each party and case.

2. Watch a 20-Minute Video to Understand Real Practice System Theory.

The following video is designed to help you understand and improve your mediation practice system. It is applicable in every type of case and at every stage of practice, from novice to mid-career to senior mediator.

It describes three hypothetical mediators' systems and the "careers" of their systems. Mediators have careers as they progress through engagement with different employers, clients, and cases. Mediators' **practice systems** have parallel careers. Mediators start with basic training, observations, and/or intuitive understandings. Over time, they develop more sophisticated insights about the process. Their cases may become more complex and specialized by type of case. They develop conscious and unconscious norms and routines.



3. Read an Eight-Page Article to See Illustrations of Practice Systems of Ten Experienced Mediators.

Read [*Ten Real Mediation Systems*](#), which summarizes accounts of ten experienced mediators who identify factors affecting their mediation practice systems. It includes links to the mediators' detailed accounts of their systems.

4. Complete a Self-Assessment Questionnaire to Get an Overall Understanding of Your Practice System.

Complete [this 18-question self-assessment worksheet](#) to help you recognize basic elements of your practice system. It asks you to reflect on your background, motivations, mediation practice, common patterns in your cases, and your procedures.

5. Read the Real Practice System Menu of Mediation Checklists.

The [Real Practice Systems Project Menu of Mediation Checklists](#) is a detailed menu of checklists for mediators, including mediators' actions before, during, and after mediation sessions. The checklists also include items about information to provide on websites, compliance with ethical requirements, and reflection and improvement of mediation techniques. They are intended to help you become more conscious and intentional in your work, leading you to develop routines and strategies for dealing with recurring problems.

In a short article, [Practitioners Tell Why Real Practice System Checklists Are So Useful](#), fourteen current and former practitioners describe how the checklists can help you carefully design your unique practice system. You can use the checklists throughout your career to improve your skills through systematic planning and reflection.

6. Develop Your Own General Mediation Checklist.

You can use the RPS checklists to consciously develop your own general checklist based on the typical cases and parties in your practice and the procedures you find useful. Choose some items and modify others from the RPS checklists. The RPS checklists cannot be exhaustive, so add any other items relevant to your practice.

Gary Doernhoefer, the founder of ADR Notable, noted that there are two kinds of checklists. A **prescriptive checklist** helps people remember rote tasks like following cookbook recipes. You normally follow all the steps, though you may use your judgment about whether to add some ingredients or change the amounts. In mediation, you may generally use a standard routine for initiating mediation sessions but vary the procedure based on factors in particular cases.

An **inspirational checklist** prompts people to consider issues in particular situations and then make judgments or decisions. A mediation checklist might remind you of questions you might ask or strategies you might use. For example, mediators often struggle when the process feels stuck, and an inspirational checklist can remind you of things you might do to jumpstart the process.

Mediators' checklists necessarily vary based on many factors including the subject matter, complexity, typical legal issues, participation of attorneys, and amount of time

before mediation sessions, among others. As a result, some mediators' general checklists are longer and more complex than others.

7. Customize Your General Mediation Checklist for Each Case.

Review your general checklist before each mediation session to consider any modifications you might make based on what you know about the particular case you are about to mediate.

8. Read Articles in the Real Practice System Annotated Bibliography.

You can get a deeper understanding of practice systems generally and your own practice system by reading practical publications. The [Real Practice Systems Project Annotated Bibliography](#) organizes publications about various topics including:

- ! Overview of Real Practice System theory
- ! Critiques of traditional dispute resolution theories
- ! Promotion of party decision-making
- ! Litigation interest and risk assessment
- ! Preparation for mediation sessions
- ! Technology systems

Most of the pieces are short blog posts and articles, though it also includes law review articles and books. There are links for the entries so you can access them in one or two clicks.

9. Participate in an Ongoing Educational Practice Group.

Most mediators do not have observers who can give feedback about their mediation techniques. Some mediators participate in practice groups to get feedback and learn from each other.

These groups vary in size. I think that 5 to 8 people is about right, though groups might prefer a different size. I think that it's a good idea to have a fixed membership with a commitment to participate for an extended time such as at least 6 to 12 months. This should help people feel comfortable sharing sensitive experiences.

Groups should consider what similarities or differences they want in the members. Similarities provide a common knowledge base and differences can help provide valuable insights. For example, I participated in a group in which we all handled family cases in different professional roles. We included mediators, mental health professionals, and attorney-advocates (though some people served in multiple roles). Some groups may prefer to include only people serving in the same role (such as mediators).

Groups should consider whether to meet in person or by video. Meeting in person provides the opportunity for physical connection, not to mention refreshments. Meeting by video offers convenience and the opportunity to interact with people over long distances (but no shared food and drinks).

Groups also should consider the types of activities they do. For example, my group discussed cases and also did other things such as discussing readings, talking with guests, and having social get-togethers. Some groups might discuss issues in the self-assessment questionnaire or mediation checklists.

Some groups may focus primarily or exclusively on discussing cases. In particular, they may want to use “reflective practice” techniques. Laurel Tuvín Amaya described this approach in [this short article](#). She wrote that in reflective practice groups, “practitioners help each other find their own answers to their practice problems. When a member identifies challenging problems in his or her case, colleagues ask questions to elicit the member’s own evaluation of the situation rather than offering their ideas and suggestions. This helps practitioners dig deeper and see things that may have eluded them.” The [Reflective Practice Institute](#) provides valuable resources for people who want to use this approach. The [RPS menu of mediation checklists](#) includes a lot of questions to promote mediators’ self-assessments.

The reflective practice process is very helpful, in part by practicing good mediation skills of helping people develop their own insights. Groups may use it to start discussion of challenging cases. After some discussion, it can be helpful for members to share their experiences in similar situations and brainstorm strategies for dealing with difficult situations.

Court ADR programs, bar and mediation groups, and ADR panels can help mediators organize educational practice groups. The organizations can identify mediators who want to participate in such groups, help them connect with each other, and train them how to organize and run them. The RPS checklists identify considerations in forming and operating practice groups. In part, this is a function of a synergy of interests, personal chemistry, and serendipity.

10. Share Your Experiences.

Sharing one’s experiences is a valuable way to learn. This might include giving talks, participating in trainings, teaching courses, or writing articles. These activities require reflection, which can produce new insights. Interactions with people at educational programs often stimulates thinking as well.

This [blog post](#) includes materials that instructors can use to help students prepare to mediate, advocate in mediation, and negotiate.



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The American Bar Association published his books, *Lawyering with Planned Early Negotiation: How You Can Get Good Results for Clients and Make Money* and *Litigation Interest and Risk Assessment: Help Your Clients Make Good Litigation Decisions* (with Michaela Keet and Heather Heavin).

He frequently writes for the [Indisputably blog](#). You can download articles on a wide range of dispute resolution topics from [his website](#). He has received many awards for his scholarship, most recently the American Bar Association Section of Dispute Resolution's award for outstanding scholarly work.