



CONSUMER MEDIATION FOR LOUISIANA PRACTITIONERS:

A PLAYBOOK WITH PROVIDER FRAMEWORK AND COSTS

By Tracey Frisch
and
Anthony DiLeo¹

In an era where consumers and businesses increasingly seek swift, informal, and cost-effective ways to resolve disputes, mediation has emerged as a preferred alternative to litigation. To meet this demand, alternative dispute resolution services, such as the American Arbitration Association's (AAA) Consumer Mediation Procedures, can provide a streamlined, affordable, and accessible process for resolving consumer-business disputes. This article outlines best practices for engaging in consumer mediation, with alternative dispute resolution season always underway.

BEST PRACTICES FOR CONSUMER MEDIATION

Whether you are serving as counsel or are a party directly involved, preparation is essential in ensuring that the consumer mediation achieves its goal of providing an efficient and cost-effective resolution. Counsel can add real value by helping clients create a game plan for what matters most: clarifying the issues in dispute, setting realistic expectations, and preparing a concise summary of facts and key documents that will aid the mediator in understanding the case quickly. Businesses should enter the process ready to discuss not only legal defenses but also practical business considerations — such as customer relationships, reputational impacts, or future dealings — that may shape a creative settlement. In turn, consumers should consider what outcomes will meet their needs in advance, distinguishing between "must-haves" and areas where compromise is possible.

Because these mediations are intentionally designed to be prompt and streamlined, over-preparation or introducing unnecessary complexity

can undermine efficiency. A best practice is to keep submissions short and focused, avoid excessive procedural posturing, and come prepared to engage in candid dialogue rather than adversarial argument. Both sides should also recognize the advantages of virtual mediation formats where available: ensure technology is tested ahead of time, set aside uninterrupted time for the session, and use the logistical flexibility to involve decision-makers directly. Above all, parties and their counsel should embrace the spirit of mediation — listening actively, remaining flexible, and remembering that the goal is not to "win," but to resolve the matter fairly, promptly, and at a fraction of the cost of litigation.

A FOCUS ON AFFORDABILITY: Low Fees, High Impact

At the core of consumer mediation offerings is the principle of affordability. The cost structures associated with such programs are typically designed to remove financial barriers that might deter consumers and businesses from pursuing dispute resolution.

The comparatively lower fees for a consumer-focused mediation contrast to the often substantial litigation or commercial arbitration costs, in an effort to avoid having the price of admission outweigh the excitement of the main event.

THE UPSIDES OF VIRTUAL MEDIATION: Accessibility and Flexibility

A key strategy more frequently employed these days in the realm of

alternative dispute resolution is the use of virtual mediation. This choice reflects both technological evolution and the realities of modern life. By eliminating the need for physical attendance, virtual mediation removes geographic, logistical, and financial obstacles that often plague traditional dispute resolution processes.

Virtual mediation offers several advantages:

Convenience: Parties can participate from their homes or offices, minimizing disruption to daily life.

Speed: Scheduling is more flexible, which expedites the resolution timeline.

Cost Savings: Eliminates travel and venue costs for all parties.

Accessibility: Consumers with mobility limitations or those residing in remote areas can still participate fully.

Though inherently more flexible, virtual mediation still requires that the logistical Xs and Os be mapped out. To that end, mediators and parties alike must confirm technology access and ability to navigate it, and specific attendees should be identified in advance so that all players are on the same page. Of course, while a valuable option to have, virtual mediation is not the only way to realize the benefits of consumer mediation. Parties generally may agree to an in-person session if all prefer it, preserving the option for traditional face-to-face resolution when appropriate.

SIMPLICITY AND INFORMALITY:

Streamlined Process for Consumer Disputes

Consumer-focused mediation aims to make dispute resolution more accessible and user-friendly for consumers, especially those who are self-represented and may be unfamiliar with mediation. For example, key features of a program like the AAA's Consumer Mediation Procedures include:

► *Simplified Initiation:*

Consumers can initiate mediation online using a straightforward submission form.

► *Mediator Appointment:*

The AAA appoints a mediator from its consumer mediation panel, reducing delay.

► *Timelines:*

Mediations may be scheduled within weeks from filing, offering prompt resolution.

► *Process Control:*

While the mediator facilitates the process, the parties retain control over the outcome, ensuring mutual satisfaction.

This informality is intentional, and it contrasts with the more involved procedures commonly associated with commercial mediation, which can involve higher fees and more complex issues. It makes the process approachable for consumers unfamiliar with legal proceedings while offering businesses a fair and structured forum.

PRACTICE TIPS FOR THE PLAYBOOK

As with any playbook, there are some red flags to keep an eye out for, as well as go-to strategies that parties and counsel alike can use to foster success.

Red flags in consumer mediation often signal when the process may be less



effective or even inappropriate. Power imbalances are a common concern, such as when the consumer feels intimidated and participates far less in the discussion. Bad faith participation can also derail progress, with parties attending merely to delay litigation, regulatory action, or to gather information without any intent to settle. Another challenge arises from unrealistic demands: consumers may insist on remedies beyond their legal entitlement, such as punitive damages. At the same time, a business may categorically refuse to acknowledge responsibility or extend even a minimal goodwill gesture. Emotional escalation can also derail the mediation process. When consumers are too angry or distrustful to engage constructively, or when company representatives minimize or dismiss the consumer's experience, the dialogue can quickly break down. However, many of these red flags can be overcome in mediation by a skilled mediator taking the time to understand the underlying interests behind these problematic behaviors and

refocusing the parties on how to best meet their own interests rather than "beat" the other party.

Supporting the process to achieve the best possible outcome is critical, and it begins with preparing clients thoughtfully by setting expectations — helping them understand that mediation is not about "winning" but about finding workable solutions. That preparation includes reality-testing the strengths and weaknesses of their case so they aren't caught off guard, and ensuring emotional readiness by framing mediation as problem-solving rather than a battle. Counsel should also be candid about underlying interests, moving beyond legal positions to articulate what truly matters, whether timing, confidentiality, or preserving relationships. In the room, it's important to be zealous yet civil, demonstrating respect for the mediator, the process, and the opposing party while balancing speaking time to make clients feel heard. Sharing relevant concerns, obstacles, or interpersonal dynamics

can give the mediator essential context, and constructive feedback helps adjust strategies if an approach isn't working. As settlement proposals emerge, counsel should reality-test them with their clients, clarifying risks and benefits while keeping BATNA (Best Alternative to a Negotiated Agreement) and WATNA (Worst Alternative to a Negotiated Agreement) in focus, and also highlight the value of non-monetary terms — such as apologies, creative business arrangements, or future safeguards — that can make agreements more durable and meaningful.

Also important is thinking ahead of time about things like confidentiality clauses and any Louisiana-specific issues (or those of other states, where applicable) which can benefit all in the long run. For instance, it is helpful to be transparent up front about the need for confidentiality — no one likes a late-in-the-game curveball on that front. State-specific quirks are also something to watch out for and any possible tax implications of which a consumer might not be aware.

In short, preparation is key, and mediations work best with a well-prepared set of parties, whether consumer-focused or otherwise.

CONTINUED EVOLUTION AND OPPORTUNITY

As technology continues to reshape the dispute resolution landscape, consumer mediation possibilities are poised to evolve alongside it. Innovations in online dispute resolution (ODR) and AI-assisted

settlement platforms could enhance the experience.

At the same time, legal practitioners and business leaders have a role to play in promoting awareness and understanding of these procedures. Mediation is not merely an alternative to litigation — it is an essential part of a modern, efficient justice system.

CONCLUSION

Consumer-focused mediation programs make dispute resolution more accessible, affordable, and efficient for consumers and businesses. With lower fees vis-à-vis traditional litigation, the availability of virtual mediation, and user-friendly processes, these procedures break down traditional barriers and foster a culture of resolution over confrontation.

For Louisiana attorneys, familiarity with these procedures is vital for advising consumers or corporate clients. Embracing mediation not only serves clients more effectively but also advances the broader goal of delivering justice that is timely, equitable, and accessible to all.

FOOTNOTES

1. References: American Arbitration Association. "Consumer Mediation Procedures and Costs, effective April 1, 2025." <https://www.adr.org/media/cbndvmee/2025-consumer-mediation-procedures-feeschedule.pdf>

Note: One co-author is employed by the American Arbitration Association. This article is intended as provider-neutral practical guidance; any provider specifics are descriptive, not endorsements.

Anthony M. (Tony) DiLeo, with Anthony M. DiLeo, APC, has arbitrated and mediated hundreds of disputes arising from some 37 states. Chambers USA in the category of "Mediation Nationwide" has named him as one of only 50 mediators in the nation. (tony@tonydileo.com; New Orleans La.)



Tracey Frisch is Division Vice President of Mediation at the American Arbitration Association's mediation business. Prior to this role, Tracey was the Associate General Counsel for the American Arbitration Association involved in a variety of legal matters that impacted the Association. Tracey is the Executive Director of the AAA-ICDR Foundation. Tracey also served as an Adjunct Professor at Pace University Law School teaching Commercial Arbitration Law and Benjamin N. Cardozo School of Law supervising law student mediators. Tracey is a member of the U.S. District Court for the Southern District of New York pro bono mediation panel specializing in employment discrimination cases, a member of the New York County Lawyers Association Part 137 Attorney/Client Fee Dispute pro bono mediation panel and is a New York State certified community mediator. Tracey has mediated cases at many of Metropolitan New York's community mediation centers, Small Claims and Civil Courts. Tracey has authored and spoken on numerous ADR focused topics. Tracey earned her law degree, cum laude, from Benjamin N. Cardozo School of Law and B.A. from Tulane University, magna cum laude.



LSBA Member Services

The mission of the Louisiana State Bar Association (LSBA) is to assist and serve its members in the practice of law. The LSBA offers many worthwhile programs and services designed to complement your career, the legal profession and the community.



In the past several years, the legal profession has experienced many changes. The LSBA has kept up with those changes by maturing in structure and stature and becoming more diverse and competitive.

**For more information,
visit www.lsba.org**