



Sotomayor Law

Rande S. Sotomayor, Esq.



Mediation, Arbitration and Business Dispute Services

Paris Report No. 2 (the 2016 ICC Commercial Mediation Competition) – A World of Mediation Attitudes and Processes

February 13, 2016

Many of us often get caught up in our own way of doing things. In Southern California mediation practice, while there are often differences in process determined by counsel, party, or mediator preferences, most participants follow a pretty regular road to mediation in the first place. That's because the prevailing experience at home is that either courts or a contract "force" everyone into mediation, with the effect of allowing all of the players to remain stalwart in their positions, at least at the outset.

At the International Chamber of Commerce, I met commercial mediators from France, England, Germany, Australia, Italy, Brazil, Spain, India, Greece, Japan, Sweden, Israel, Singapore, Nigeria, Canada, Russia, and well beyond. They report that in many parts of the world, mediation is in its infancy, while arbitration is well established as the "alternative" dispute resolution procedure of choice. Many at home claim that arbitration, with its trial-like procedures and the possibility of tremendous cost and even delay, is nearly antiquated, especially insofar as the procedure removes control over the outcome from the parties, as in court.

International mediators also report that while mediation is gaining a foothold in various countries, convincing participants of its worthiness is challenging. This is similar to the frustrations we mediators in California often feel as well, but we are well along in the education process. Unrepresented parties routinely comb the internet in search of a mediator, typically for divorce/custody as well as commercial disputes.

A contrasting example is the case of neighboring Canada, traditionally a compromise-oriented country, where mandatory mediation is embraced and even codified in many jurisdictions. Americans might be surprised to learn that in the U.K., mediation, while widespread, is not as well accepted, generally perceived as a process that ought to be entirely voluntary, with parties determined to achieve an outcome that is "rights" oriented, as opposed to an outcome that satisfies as many of the parties' "interests" as possible.

Similar issues confront mediators everywhere. Should mediation be mandatory or voluntary? Should there be laws governing the procedure? What kinds of credentials should mediators have? Should we have joint sessions, private caucuses, client-to-client caucuses, lawyer-to-lawyer caucuses? Should the mediator be facilitative, evaluative, or directive? What role should a lawyer play in the mediation?

Many American lawyers would be surprised to see the frequency with which the clients guide the commercial mediation process in other countries, with the lawyers' roles limited to addressing legal – as opposed to factual and relational – issues.

The ICC International Commercial Mediation Competition presents a marvelous opportunity for mediators to share their experiences, discover new ideas and techniques, acknowledge and embrace differences, and advance a dispute resolution procedure proven to succeed in all cultures. The Competition is, above all, an educational training ground that helps to develop a sensitivity and collaborative spirit among future lawyers and business people to seek new ways of resolving differences in commercial disputes. What an honor and a gift it has been to be a part of this valuable global mission.

Sotomayor Law

Rande S. Sotomayor, Esq.

466 Foothill Blvd., #162 | La Cañada, CA 91011

Phone: 626-791-5519 | Fax: 626-794-3789 | Mobile: 626-616-5843

E-mail: Rande@SotomayorLaw.com | Website: www.SotomayorLaw.com