

# JOINT SESSION OR CAUCUS? FACTORS RELATED TO HOW THE INITIAL MEDIATION SESSION BEGINS

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## FACTORS RELATED TO HOW THE INITIAL MEDIATION SESSION BEGINS

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#### Abstract

*The use of traditional joint opening sessions to begin the first formal mediation session has declined in recent years, with a corresponding increase in initial separate caucuses. Mediators and lawyers have offered several possible explanations for this change and have suggested rationales for and circumstances under which either initial joint sessions or initial caucuses should be used. To date, however, empirical research exploring these issues has been quite limited. The present Article reports the findings of the first study to examine whether a wide range of factors, including dispute and mediator characteristics as well as pre-session communications and other aspects of the mediation, are related to the use of initial joint sessions versus initial separate caucuses. The study involved the survey responses of more than 1,000 mediators who conducted court-based and private mediations in general civil and family cases in eight states.*

*The findings show that a majority of mediators in both civil and family cases say that they themselves have the most influence on how the mediation begins, and many mediators say that they often or always begin the first mediation session in the same way throughout their mediation practice. Moreover, the mediators' customary approach to the initial mediation session is the factor most strongly related to whether the mediation in a particular case begins in joint session or in separate caucuses. Overall, the strong role played by factors that apply broadly across the mediators' practice, especially the mediators' usual approach to the opening session and the state where the mediation took place, might explain why case characteristics and other case-specific factors do not have stronger relationships with how the mediation begins. The findings suggest that recommendations to structure the initial mediation session on a case-by-case basis often are disregarded.*