

SAY YES – PROVIDE VALUE

Keys to Building a Mediation Practice

By

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Building a successful a mediation practice might have some elements that overlap with other businesses—but first and foremost, you are a peacemaker. If you “walk the mediation walk” in your strategic planning and business operations, clients and referral sources will know it. This is particularly important since the skills that are required to resolve disputes (listening, patience, flexibility to client needs and concerns) may be initially seen as being incompatible with the entrepreneurial characteristics (risk-taking, hard-driving, results-oriented) needed for operating a small business.

Although it may be counter-intuitive, the same concepts that you use for resolving conflict can apply to building your practice. By using your mediation self, your marketing will have congruence with your craft. In his recent article in the Harvard Negotiation Journal (July 2005), Professor Stephen Goldberg of Northwestern Law School identifies trust in the mediator and the mediator’s integrity as the qualities that parties most value. A key element of both integrity and trust is the peacemaker’s positive---even optimistic---belief that conflict can be resolved. With warring parties, often it is solely the mediator’s commitment to a successful settlement that can motivate parties to make constructive movement (often in baby steps) toward peace.

Using this same positive approach toward practice building may make the sole difference between the noble struggle for financial survival and achieving a profitable and secure mediation practice. Your commitment as a peacemaker and having peacemaking be your day job can provide you with the motivation and staying power to turn your dream into a day-to-day reality.

TIPS FOR USING YOUR MEDIATIVE PERSPECTIVE

- Be a mediator in all professional and social settings. If you commit to be a mediator, you are a mediator regardless of whether you have attended a basic training or you have been at the table for 15 years.
- Introduce yourself as a mediator at professional functions and parties. People are interested learning from and about peacemakers. Your energy and expertise revealed in such social conversations may lead to referrals and certainly will leave the true impression that you are engaged in a profession that cares about helping people and society—this positive feeling about you and your work is the essence of building a professional reputation
- Use the title mediator on your business cards and stationary. If mediation is your primary focus, let people know it.
- Treat lawyers, companies, governmental officials and others outside the dispute resolution field as allies. Many mediators unfortunately develop a competitive “we versus them” approach in describing adversarial attorneys or top-down policies by some businesses or public agencies. Even when you disagree on an

issue, use your mediative side in acknowledging positive initiatives or common goals as a foundation for offering creative and alternative solutions.

- When you feel you have something to contribute to discussion of public importance, provide your input in a centered and mediative manner. Regardless of your viewpoint, the way you make comments at local meetings or letters to newspapers reflects your peacemaking approach
- Collaborate rather than compete with peacemaker colleagues. Pejorative or negative personal comments about other mediators will hurt the growth of your practice, regardless of your hard work and talent. Mediators are major referral sources to other mediator and a battle won in a committee or forum can severely retard your practice growth---and you will never know about the referrals that you do not receive. (See Mosten and Kichaven, "Our Communication Is Important Too!" Southern California Mediation Association Journal, November 1997.)

TREAT PARTIES AND LAWYERS AS CONSUMERS

Similar to modeling positive behavior in growing your practice, your willingness to achieve congruence between meeting parties' needs at the table and in your practice development will translate to your bottom line. Too many mediators try to fit mediation parties into a mold learned at their first training or from a "wise elder" in the field.

Training can prepare you to offer quality services and veterans can offer helpful tips.

However, your ultimate practice success will depend on whether you truly value parties and their right to exercise their consumer power in selecting the best service product that

they perceive will best meet their needs at the best price in the most accessible and proactively competent manner.

The following are some strategies that might help you work toward this multi-faceted goal. Just as John Haynes taught that premature negotiation often leads to impasse, in the same way, impetuous marketing or self promotion can lead to negative results. You must walk the walk of a peacemaker in every aspect of practice building. You are “selling” resolution, fairness, patience, integrity, trust, strength, and good judgment. The way you ”sell” will ultimately determine whether you have clients who are willing to make the ultimate consumer commitment: PURCHASING YOUR SERVICES.

QUALITY OF YOUR SERVICES IS YOUR BEST MARKETING

The best mediators I know are continually in training. When they attend conferences, they are front and center in the presentations and workshops put on by their peers. They are current in mediation literature and can discuss new theories and techniques on a high level. They are knowledgeable on pending legislation and model rules and write articles, practice materials, and other contributions to the field. They consult with colleagues in difficult cases and seek out new approaches in situations that the less motivated would consider “routine.” They are learners both inside and outside the mediation room.

If you are considering a career in this profession, you should emulate the learning approaches and actions of successful practitioners. With the understanding that your mediation training is never over, you should be continually saying “Yes” to new courses,

books, and opportunities to improve your competence. The Japanese call this approach *Kaisen*--that is, an approach of ongoing improvement. Try to incorporate *Kaisen* in every aspect of your evolving competence. *Kaisen* is not only continually stimulating but it will never let you settle for the known and familiar. Ultimately, regardless of your marketing or your practice management, your success in the field will be how effective you are at mediating.

MAKE YOUR SERVICES ACCESSIBLE and AFFORDABLE

You have your own personal standards and financial needs that deserve to be met. It may seem ironic, but you might meet those needs better by making compromises and changes to the way you have been taught and have been practicing. Recently I went to Wendy's and was impressed by a consumer sign: Don't agonize if you want it different from the menu. Ask us and we'll make your food the way you want it."

Since mediation is not yet well understood as a consumer service, you may need to go the extra mile to either have potential parties engage you or keep them in the process. Some TIPS for Saying Yes to consumers:

- Make it clear that your mediation contract is negotiable. You may utilize confidential caucuses and one or more both parties may be suspicious of such confidentiality. If the parties are comfortable changing your standard process---are you? You may typically charge by the hour and the parties would like a set fee per day—are you willing to discuss this option? You generally charge a \$250 fee if parties cancel within 72 hours. The parties express discomfort with such a fee but are willing to live with a shorter time period or no cancellation fee at all.

You may be “mediative” when the parties’ interests are at stake---do you have a different approach when your own interests are the subject of discussion?

- Unbundle Your Mediation Services When Appropriate

Unbundled legal services (also called discrete tasks or limited scope representation) is one of today’s hottest legal access developments. (See Forrest S. Mosten, Unbundling Legal Services, ABA 2000, [www. Unbundledlaw.org](http://www.Unbundledlaw.org), and the ABA Louis M. Brown Legal Access Award.

<http://www.abanet.org/legalservices/delivery/brown.html>.) The many innovative lawyers who are unbundling their services to meet the needs of middle income consumers are also helping build your practice as many people would not mediate without the affordability and accessibility of limited scope representation to coach and represent mediation parties.

Following the lead of these legal access innovators, you can break up your standard service in ways that might help grow your practice in the following ways:

- Like Santa Barbara peacemaker, Brian Burke, you might offer case evaluation services that are unbundled from your resolution work. Couples or individuals come to Brian to learn about options and professional choices available. He will offer such education with the understanding that another mediator will be selected. People are happy to pay for this information—most of us have a consumer conflict of interest—we educate parties about the process of mediation and hope that they will select us to mediate. Brian generates income without that conflict.

- Many trained and talented mediators fill their professional time by serving as coaches, consultants and representatives of one party in a mediation (of course in cases other than when serving as a neutral). You do not have to be a lawyer to offer these coaching services. Mental health and financial professionals formally serve as coaches in the collaborative law process (see Paula Tessler, Collaborative Law, ABA 2003 and International Academy of Collaborative Professionals www.collaborativepractice.com). Since you are familiar with the mediation process, you are an ideal professional for whom many parties are willing to pay (and listen to) to successfully get through the mediation process. While non-lawyers in some states still face challenges from possible charges of unauthorized practice of law, the trend toward consumer access to mediation is ameliorating or eliminating these concerns.
- Many mediators are demonstrating their peacemaking talents by serving as consultants, case managers, or evaluators for one party when another mediator is serving as the neutral. Mediators with a mental health background can serve as Confidential Mini Evaluators for parenting and financial professionals can do the same in evaluating businesses or real estate. (See Mosten, Complete Guide to Mediation (ABA 1997) and Mosten, Confidential Mini Evaluations, Family Conciliation and Court Review, July, 1992). Mediators with legal background can offer legal case assessments, issue by issue or for the entire matter.

Many mediators so value their neutral and facilitative role that they would rather wait for a neutral assignment rather than helping one party or taking on evaluative functions. However, if you feel you can maintain your peacemaking role in

taking on these different roles, you might find that SAYING YES to these opportunities might relieve some of the financial strain that allows you to better build your practice.

OFFER INTANGIBLE VALUE TO YOUR CLIENTS

When I first started mediating in 1979, people interested in mediation were often just thrilled just to find a mediator---comparative shopping was much less common. Today, referral sources often provide a party with 2-4 names of qualified mediators and the small intangible benefits that parties receive may make the difference in selection. Here are a few ideas:

Return telephone inquiries yourself—and promptly

Regardless of how busy you are, hearing your voice and receiving your support and advice on initiating the process may make the difference in whether you open a new file. People appreciate the effort of professionals to handle their own calls—they understand the benefit they are receiving in comparison to those who have an untrained assistant call back—or have to wait for over a day to get a return call. If you are engaged behind closed doors or on vacation, arrange to have calls returned by someone else who will provide an expectation of when the call will be returned---and by whom.

Have Your Office Staff Trained in Mediation

Think about how you feel when you call your doctor and the nurse competently and empathically handles your inquiry before you can see the doctor. Diana Mercer and Tara Fass of Peace Talks Mediation in Los Angeles know how important such office support can be. They pay for all of their support staff to attend my 40-hour

Mediation Training. Tara and Diana believe that such investment of out of pocket dollars and expensive release time pay off in both intakes and client service that translates to the bottom line. Staff who are trained in mediation know more about what you do behind closed doors and can better sell your services and offer quality help to your mediation participants.

Make Your Office a Client Educational Classroom

Wherever I am training mediators, I ask how many participants in the room have client libraries. Fifteen years ago, very few hands went up. Today, more and more peacemakers are making it easier for parties to make informed choices by dedicating expensive office space and buying costly books and videos for client education. Even more mediators are providing value to clients by offering brochures, books, and other mediation oriented materials in the waiting room. Consumers appreciate the effort and generosity of mediators who arrange for learning materials rather than just put out Field and Stream, the Wall Street Journal or other publications that the mediator subscribes to and gives to clients as an afterthought.

Buy Lunch for Everyone

As lunchtime nears, retired judicial officer, Jill Robbins gets out menus and invites parties, lawyers, and experts to order off a menu. Jill is an excellent mediator---the lunch benefit is only an added reason why lawyers put her at the top of their list. An ancillary benefit for the mediation participants is dining together ---somehow conflictual positioning seems to lessen when people break bread together. As a budgetary savings alternative, arrange for the parties or lawyers to provide lunch—in this way, each party

has an opportunity to have special needs met by the other side---this “reach across the table” can have positive benefits after dessert as well.

Walk Parties Out to the Elevator

Most mediators personally greet the mediation participants---how do participants leave your office? When I had the opportunity to train mediators in China, I was impressed that after every meeting, my host would walk me out of the inner office, out the suite door, down the stairs or elevator, and accompany me to my car or bus. I have adapted this practice to try to escort participants at least to the elevator, press the button, and wait for them to get in. Such a gesture (and many like it) costs nothing and provides a feeling of caring and connection with between the mediator and the participants.

Call the Parties After the Mediation Ends

Think about the last time you had a dental procedure. Did you receive a call from the dentist finding out how you are feeling? When it happens to me, even though I know that Dr. Lewis calls every patient, I am still appreciative of his concern—and sometimes I have a question or concern that needs his help. Several years ago I started calling parties and lawyers after the mediation. When agreement is reached, such a call can often deal with post-session remorse when a party concentrates on what is left on the table rather than the positive elements of the deal—this call itself may keep a deal from unraveling. When agreement is not reached, often such call can re-stimulate discussion. Either way, such calls (off-clock) seem to be appreciated can become part of your mediation signature leading to the growth of your practice.

Seek Consumer Evaluation of Your Performance

You will rarely stay at a hotel without a consumer satisfaction card readily available with encouragement for you to fill it out. Hotels, airlines, and other service companies are hungry for this information to make their companies. Do you have evaluation forms prepared for parties and lawyers and do you encourage their use? If so, how do you adjust your services to meet concerns that are expressed? In a recent training that I conducted in Michigan, an experienced mediator, Ellen Craine, shared her standard process of proactively making time for a debriefing discussion with parties and their lawyers to find out how the process and her actions met their needs. (It is probably no coincidence that Ellen also reported that following her commitment to market and invest in her practice a year previously, the increase in business has been significant). Other successful mediators meet regularly with key referral sources to find out how what these “indirect” consumers are finding helpful and what problems have been reported. Your willingness to think about your referral source’s needs and use their feedback to improve your service will not only be appreciated more than a holiday bottle of wine and certainly will keep you refresh in their minds.

CONCLUSION

We are fortunate that the service that we offer helps people in their time of need—and perhaps can make a lasting difference in their lives. By maintaining a positive and adaptable approach and offering extra value with a consumer-oriented approach, you can enhance your practice and watch it grow.

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