

Mediation Matters
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*“The real art of conversation is not only to say
the right thing in the right place but to leave unsaid
the wrong thing at the tempting moment.”*

— Dorothy Nevill

**So You Want to be a Mediator:
Don't Quit Your Day Job**

Many a family law attorney, tired of the “divorce wars” thinks about changing professions. They think about counseling, mediating, anything but litigating. Trying to become a mediator poses many challenges. At nearly the same speed that “born again” mediators come to peacemaking, many leave and return to jobs that pay the bills.¹

Should you decide that becoming a mediator is what you want to do there is much to do.

Research

You can research the practical way. Talk to people who have been through litigation. Ask them if they thought it worked for them. Check with litigators and judges and their staff. Did citizens think litigation was the way to go? Did they try mediation? Which worked better? Talk to judges and their staff. Did they think litigation trumped mediation? Did they believe litigation furthered the court's goals?

Look for other research. For example, the American Bar Association (ABA) did research and found when people use attorneys prior to litigation, satisfaction is high. When issues are litigated, satisfaction with the court system and attorneys falls dramatically.²

The range of solutions is far wider in mediation. Mediation also ends disputes more quickly.³

You should conclude from your field work and research that mediation works better and people want more choices. Will that translate into more family law mediations being available in the future to increase the need for more mediators? It should, but there are statistics showing fewer couples getting married; fewer couples getting divorced; more children in single parent households. It is hard to know if that bodes well for more mediation being needed.

What Makes a Mediator

You must want to be a person who wants to help people solve their problems. Of course you must obtain the skills by reading books, particularly mediation textbooks by experienced mediators, and by obtaining necessary certification training and making a business plan.⁴ It also helps to have role models. All the skills in the world won't get you chosen to do family law mediations. You will want to find ways to bring in mediation business. Activities which may be helpful are: giving speeches to community groups; having brochures available; writing mediation articles; mediating for free for the court and other organizations; providing a mediation website for interested people; letting judges know you are interested; teaching a class to children about mediating their own disputes.

How To Know If You Can be a Mediator

In addition to being neutral, mediators have to be listeners. They have to be able to handle conflict. You should try to figure out if you really try to listen or do you spend most of your time trying to convince others of your position? When a conversation isn't going well, it may be a good idea to give it up for a while and suggest a shared lunch break,

then re-frame the issue and re-start negotiations.

Another serious consideration is communication skills. Being able to ask the right questions without offending is paramount. Some appropriate questions might be: “If you could write a script what kind of parenting schedule would you want in the future?” or “What do you think your spouse needs to do that so you can be a better parent?” If questions along these lines are easy for you, you are on your way to being able to do the job. If not, you’ll need to work on your communication skills.

For Pay or For Free

You may have a commitment to a career as a mediator which usually means you need to earn a living doing it. However, the history of mediation has shown that most people early on in mediation thought mediators should facilitate for free. Unfortunately the notion that mediators should be volunteers and that there is an abundance of volunteers, has not changed much since the early days of mediation. Can you afford to ply your trade for free? If so, you’ll find lots of work. If you’re like the rest of us you’ll need to be paid. There are not many mediation jobs which pay. Certain Friends of the Court use their Friend of Court attorneys as mediators. They are paid. Some other non-profit organizations do the same. In the family law area, practicing law and mediating or a combination of mediating and training others is usually the way most mediators who are full-time or trying to be full-time mediators make their living. Full-time mediating jobs are not widely available.

Role Models

For those who want to mediate full-time need you should try to find several people who have full-time practices. Contact them. Ask for help. Find more of them by joining

mediation organizations such as the Family Mediation Center - Michigan and local family bar associations.

Until you have enough work to pay the rent and support yourself and family don't quit your day job.

1. Mosten, Forrest, *Mediation Career Guide* (San Francisco, CA: Jossey-Bass, 2001), Ch1 and Folberg, Milne, Salem, *Divorce and Family Mediation Models, Techniques and Applications*, (New York: The Guilford Press, 1, 2004)
2. ABA, Legal Needs and Civil Justice, A Survey of Americans, Major Findings from the Comprehensive Legal Needs Study, 1994
3. Massachusetts Office of Dispute Resolution Progress Report 1998-2000, 2000
4. Lovenheim and Doskow, *Becoming a Mediator: Your Guide to Career Opportunities*, (Berkeley, CA: Nolo, 1, 2004); Krivis and Lucks, *How to Make Money as a Mediator (And Create Value for Everyone): 30 Top Mediators Share Secrets to Building a Successful Practice*, (San Francisco, CA: Jossey-Bass, 1, 2006); Mosten, Forrest, *Mediation Career Guide* (San Francisco, CA: Jossey-Bass, 2001), Ch1; Lenski, Ed. D, *Making Mediation Your Day Job: How to Market Your ADR Business Using Mediation Principles You Already Know*, (i-Universe Books, 2009)