

## ABA Section on Dispute Resolution Journal

### Practice Development, Business of Mediation and Skill Development Committee Columns

#### Recession Advice for Mediators

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While many believe that mediation is a recession-proof business, the truth is that a difficult economy slows every business and practice as people have less money to pay for things. When a mediation practice slows, there are three things that mediators can do to make productive use of increased down time. They can increase their marketing efforts (attend more networking events, update websites, etc.), improve or update the administrative infrastructure of their practices, and they can hone their skills.

Continued training for mediators is critical only to those mediators who want continued success. The marketplace is fickle, and mediators who continue to grow and add new tools to their toolboxes thrive, while those who plateau find their practices ebbing. Users of mediation services – litigators, adjusters, house counsel, executives – become disinterested if they think that they know all of a mediator’s tricks. Mediators must stay fresh and grow or be left behind. This is the reason for many mediator panels and organizations requiring minimum continuing mediator education (CME) for their members. But even absent such a requirement, each mediator should have such a goal or requirement for themselves.

Just as lawyers don’t know everything about the practice of law after law school and doctors don’t know everything about the practice of medicine after medical school, mediators don’t know everything about being masterful mediators after a 40-hour course or even after a master’s degree.

The start of a new year is a good time for every mediator to take an honest inventory of their strengths and weaknesses. Those who used post-mediation evaluations should revisit them to see what clients are telling them, and the mediations that ended without resolution should be contemplated (see “Impasse is a Fallacy” at [www.mediationtools.com/articles/impasse.html](http://www.mediationtools.com/articles/impasse.html)).

The first question might be, “What do you wish your mediation training had included?” I recently asked this question on the International Arbitrators and Mediators Listserve (<http://groups.yahoo.com/group/ArbitratorsAndMediators>) and invite readers here to add to the ongoing list.

The second question might be, “If I could add one new tool to my repertoire, what would it be?” And the third question might be, “Who would I like to study with to learn some new tools?”

In founding the new American Institute of Mediation, I spent a lot of time discussing these issues with our other core faculty members (Erica Fox, Ken Cloke, Jim Melamed, Woody Mosten, Doug Noll, and Mel Rubin), and decided that as we were building this new training institute from the ground up, we might rethink how training is done. Mediators may want to look at their

own training experience in this way in deciding what metaphorical muscles need building or toning.

### **Back to fundamentals.**

As mediation training has grown in the academic settings, and more private mediators seek out their training there, rather than community mediation programs, the experience has become more like academic instruction than hands-on training. With this shift, the emphasis on core skills such as listening deeply, skillful reframing and maintaining a balance between inquiry and advocacy has been substantially reduced. These skills are a mediator's real secret weapons. Even experienced mediators can get into a rut after a while, focusing on thinking about how to solve a problem on an intellectual level, that dialogue becomes more like debate. A workshop that emphasizes the core fundamentals upon which mediators rely can impact a mediator's practice immediately.

### **Advanced Skills.**

It is often said that we don't know what we don't know. What better way to find out than to take a great advanced skills course? But for really new skills, stretch outside of your box and take a course from someone whose background and style are completely different from yours. Unless, of course, you want to get better at doing what you already know.

### **Specialization Skills.**

When the market is quiet, it is a great time to brush up on an area of law that has not been an emphasis for you to this point. Investigate legal updates in employment law, intellectual property law, family law, real property, lending and land use law, professional malpractice, construction, and any area of law that might be a logical next step. In addition to the substantive knowledge, consider seeking out mediation courses that specialize, in order to learn insights into effective mediation tools in those areas, usually taught by mediators experienced in that niche.

### **The Business of Mediation.**

Nobody likes to market and network. But it still beats accounting, budgeting and projecting any day. When was the last time you had a workshop on building your practice or looked into a tool like the Mediator's Start Kit or Woody Mosten's Mediation Career Guide to help streamline the paperwork and correspondence that a practice requires? A mediation practice is a business and it must be treated as one. The truth is that many mediators today have moved laterally from law, psychology or other fields where business management wasn't necessarily a priority in the degree track. Good business people say that it's not how much you make, but how much you bring home that counts.

### **Deeper Learning.**

If you always wanted to learn more about the psychology of conflict, reading body language, neuro-science of the brain, neuro-linguistic programming, heart-mind coherence, connecting wisdom traditions to conflict resolution or any other deeper learning, this is a great time for that. What makes mediators truly masterful is understanding what is going on behind the curtain for

the people at the table. Reading the non-verbal signs that people are offering gives a mediator an insight that cannot be measured. Wouldn't you want to know more about what people are really thinking and feeling?

### **Work on You.**

I have told the professionals who study with me for years that the people at the table are making up their minds about you as you are introducing the process to them. Whether in joint session or private sessions, while you're covering confidentiality and your role as the mediator, they are sizing you up: *Is she smart enough? Is he compassionate enough? Is he old enough? Does she like me? Why does he seem so stiff? Can I trust her if I tell her the truth?* What a mediator brings into the room with them, from self-confidence, temperament, body language, voice, presence and energy affects what participants think of the mediator, it affects what information the mediator does and does not get to hear, it affects the effort they put into the session, and it affects their optimism about getting a resolution. Most of what a mediator brings into the room is unconscious. Masterful mediators meditate or do something to cleanse themselves before walking into a mediation. Learning more about one's self and working on one's energy and temperament can send a very different tone for the day, and often bring about a completely different path for the day's events.

In the end, the marketplace for mediation is a competitive one. Asking attorneys or clients why they picked a certain mediator over the others, the answers are often mumbled. The primary answer in commercial mediation is because that mediator settled the last case. The nuances listed above are what makes the difference between settling 90% or more as opposed to 75% of the time.

In family law, the answers lean more to the experience and the mediator's temperament. Those answers lie above, too.

Here's wishing you all a very happy new year, with lots of successful resolutions, and hoping you will take the time to carve out some time for you – to grow and develop further and add some tools to that toolbox. As the great UCLA basketball coach John Wooden once said, "It's what you learn after you know it all that counts."

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