

SO YOU WANT TO BE A MEDIATOR?

by Edward A. Fernandez

It seems like everyone wants to be a mediator these days. You've been to places like Judicate West, JAMS, ADR Services and IVAMS and it looks simple; just grab a cup of coffee and walk back and forth between a couple of rooms trading numbers, right? Not so fast. Mediation can be a very rewarding practice and for a fortunate few, a financially lucrative practice. For what it's worth, here's my story.

Like many of you, I was a litigator who tried my fair share of cases. With the clients our law firm had, I was able to handle cases in various counties and was also able to mediate many cases with some of the great mediators out there. Like you I thought to myself, "I can do this".

The mediation practice is an interesting one. You don't have to become licensed as a mediator and technically, no training is required. Although it seems like it was just yesterday, I took the Straus Institute for Dispute Resolution Mediation Program in November of 2008. For those of you that have taken it, you know that it is one of the best mediation programs around. I think that mediation training is the critical first step to becoming a mediator. There are a number of good training providers (including the American Institute of Mediation) and it is important for a mediator to continue to receive on-going education.

Although I had started to do mediations before the Strauss Institute, I decided to "jump in" and do as many as I could handle through the Riverside Superior Court ADR Program. Over the past few years, I have done over a hundred of them for the Court but I tried to do them differently from some of the court mediators; I treated them like I was being paid (not just the \$150.00 stipend). I would take as long as it took to try and get a case settled, many of them lasting more than 4 hours. By their very nature, the court-ordered mediations are more difficult to settle than the private ones. I also followed up on the ones that did not settle. After I got home, I would send out e-mails to the parties to check on the status and to see what I could do to get the case resolved. I had a couple that took six to nine months to get done.

I also took the opportunity to work with some of the well-known mediators like Tim Corcoran of RAMS.

Through Tim, I met Kym Adams who at the time ran Inland Valley Justice Center who had the contract to do the court-mediations for San Bernardino County. I spent many Fridays in San Bernardino and Mondays in Rancho Cucamonga doing all kinds of mediations, sometimes doing two to three at one time.

Slowly but surely, people started calling me to see if I would do private mediations. I joined as many mediation organizations as I could including the Southern California Mediation Association which has a great fall seminar with fantastic instructors. In addition to going to some of the local bar association functions, I attended some of the functions put on by the various trial lawyer associations where I could meet attorneys while "wearing my new mediation hat".

I also networked with some of the people I thought were the great mediators (Bob Tessier, Tom Dillard, etc.) and actually had Var Fox, one of the owners of Judicate West, shadow me on a mediation (that will make you nervous). I created a mediation website called "TopPickMediator.com". If you are going to be a mediator you need a mediation website. If you have ever used me as a mediator, you know that my business cards are guitar picks and I have guitars hanging in my mediation rooms; I wanted to do something else to distinguish myself from the pack of mediators out there. Although I play more saxophone than guitar these days, I was reading a guitar magazine one night and it had an article called "Top Pick Guitars". The light bulb went off and people seem to like the picks and guitars (although I have had some requests for amplifiers since the guitars are all electric).

Well, it got to the point where I found myself doing mediations almost every day. I hired a Case Manager, Tracie Grossi, who previously worked for a successful mediator in the Inland Empire. In addition, I was fortunate to be recognized by the Riverside Superior Court as being one of the top mediators for the last few years.

What about my litigation practice? I have been fortunate to have a number of good lawyers in my firm that have been able to handle the day-to-day activities on my cases but as most of you know, the client wants the

partner to try the case. With my mediation skills, I was able to settle virtually all of the cases that were scheduled for trial. I did have one, however, that was set to go a few months ago and I notified the client that I would not be able to handle it because I was switching over to a full-time mediation practice. The client ended up transferring the case to another law firm but that comes with the territory.

Currently, I am usually doing three to four private mediations a week and a couple of the court-ordered mediations. Instead of waking up in the middle of the night worrying about how a trial is going or thinking about an upcoming deposition, I now wake up thinking about the cases that did not get settled at mediation and what I can do to get them done. Almost every single day I walk out of a mediation room wondering to myself, “where in the world is this case going?” The mediation business is hard work. After an all-day mediation, I go home exhausted, only to jump on the computer to read briefs for the mediations the next day and to send out follow-up e-mails on the ones I am still working on. On the other hand, there is nothing more satisfying to me than to present the parties with a copy of the settlement agreement where everyone walks out satisfied.

In closing, I would note that every mediation is different as is every mediator. Learn from the good mediators but have your own style. Be willing to modify your approach; the same “cookie cutter” approach just does not work anymore. Perhaps most importantly, listen to the parties, be patient and build trust and confidence.

Please see the bio of Mr. Fernandez on page 26.



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