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The Evolving Field of Mediation in the United States

Abstract

Historically in the United States, we have used the court system as the way to settle disputes. As a society we are coming to recognize that this system is not working to our advantage and we are turning to mediation as a far superior method of resolving conflict. Within the last two decades, mediation has grown exponentially and continues to become entrenched in our schools, courts, businesses, governmental agencies - in every area of our lives.

As mediation evolves as a profession, there are key issues and trends that you must be aware of and factor into your career planning in order to maximize your mediation practice.

This article will focus on a few of the hot issues currently swirling in the field.

Keywords

mediation, current issues, United States

THE EVOLVING FIELD OF MEDIATION IN THE UNITED STATES⁺

By Forrest S Mosten⁺

Historically in the United States, we have used the court system as the way to settle disputes. As a society we are coming to recognize that this system is not working to our advantage and we are turning to mediation as a far superior method of resolving conflict. Within the last two decades, mediation has grown exponentially and continues to become entrenched in our schools, courts, businesses, governmental agencies - in every area of our lives.

As mediation evolves as a profession, there are key issues and trends that you must be aware of and factor into your career planning in order to maximize your mediation practice.

This article will focus on a few of the hot issues currently swirling in the field. Some of the issues are being debated and decided within the mediation community itself. However, most trends are impacted by forces outside the mediation field such as legislatures, the courts, the legal profession, consumer groups and the media.

Your understanding and ability to discuss the issues in this article can affect your mediation career and skill development in several ways:

- You can better plan for appropriate education and training;
- You can maximize your investment into private practice by being ahead of the curve;
- You can increase your referrals;
- You can improve your client intake success rate.

⁺ This article is an adaptation of the Epilogue in Forrest S Mosten, *Mediation Career Guide* (Jossey-Bass, 2001), All Rights Reserved.

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While your mediation practice is symbiotically linked to the growth of the mediation profession, and issues affecting one affect the other, this article has been divided into two categories: trends that affect the profession are set out first and those that more directly affect your mediation practice follow.

Issues for the Profession

If you check regularly on a mediation listserv¹ or any mediation website,² you will be struck by the changes that are occurring and the debates beginning in our profession on nearly a daily basis. Here are just a few.

Certification/Regulation of Mediators

Permitting ‘a thousand flowers to bloom’ has been mediation’s history. Growing out of society’s need for options to the legal system, you could hang a shingle to mediate without a state license - actually without any training at all. The proliferation of different styles and backgrounds has been a blessing and a curse for consumers. There is an abundance of choice and virtually no accountability. With the increasing interest and entry of lawyers into the profession, many wonder if mediation might become a subspecialty of law, rather than an independent peacemaking profession.

Practice Tip

Check out your own jurisdiction’s approach to monitoring the competency of mediators and/or limiting entry into the profession.

- What are the requirements to mediate in court or community programs?
- Is there a certification program that specifies necessary training or experience to permit you to be labeled “Certified Mediator?”
- If so, what are the benefits of being certified and how does it affect the marketplace for mediation services?
- What are the estimated out-of-pocket costs and time commitments to become certified?
- If there is no licensure, determine the attitude toward licensing mediators in the future. What agency or profession would be in charge?
- Determine whether it benefits you to belong to a mediation organization in your state to qualify for certification or competency.
- What do you need to do to qualify for certification of competency by a voluntary mediation organization? For example, the Association for Conflict Resolution (www.acresolution.org) has standards for Practitioner Membership and Advanced Practitioner Membership. Do you qualify? What benefits would you get if you did qualify?

¹ See adr@aba.net.

² See Appendix of Forrest S Mosten, *Mediation Career Guide*, (2001).

Uniform Mediation Act

One signal that mediation is here to stay is the movement to establish a model act on mediation that states can use as a template in drafting their own legislation. The drafting of this law has been a joint effort by the National Conference of Commissioners on Uniform State Law and the American Bar Association. Professor Nancy Rogers of Ohio State and Professor Richard Reuben of the University of Missouri have served as official reporters and there has been a national effort to include diverse interests and points of view.

Such model acts further signal the acceptance and institutionalization of mediation in our society.

Practice Tip

Next Steps:

- Study the current draft of the Uniform Mediation Act and compare its provisions to current law and practice in your state;
- Amend any of your agreements and office forms to conform with the Uniform Act unless such amendments would be contrary to your current state law;
- If your state law does vary from the Uniform Act, contact local law reform and mediation groups and take an active role in any legislative activity concerning the Uniform Act in your state so that your views can make a difference.

Professional Standards

In an effort to have the mediation profession regulate itself, many of the leading organizations have adopted their own standards of conduct. Aspirational in nature, these standards are published and often are utilized by courts and legislatures and Administrative bodies in setting guidelines. Two examples are: The Standards of Conduct (1994) jointly approved by the ABA, SPIDR and the AAA; and the Standards of Conduct for Family Mediation (DRAFT) that are state of the art and can be applied to areas outside of family mediation.

Practice Tip

- Study both sets of Standards
- Review your office materials to conform to these Standards
- Consider including a copy of these Standards (or those from another organization) in your client marketing packet. It will affirm your knowledge and desire to be accountable to the highest level of practice.

Emerging Duty to Advise About Mediation

Despite the obvious benefits of mediation, its relatively low usage is due to the fact that most people just don't know what mediation is or how it could be used to solve their conflicts. Since the lawyer's office remains the gateway to most conflict decision making, proponents of mediation have long believed that if lawyers and their clients just had a conversation about mediation and how it compares to other alternatives, clients would use mediation more often.

Legislatures, bar associations, and courts are now encouraging or requiring lawyers to tell clients about mediation before even filing a court action. This early client education is consistent with the benefits of use of mediation early in the life of a conflict. In Texas, for example, in their first court appearance, all litigants must file an affidavit indicating that they have been informed of mediation and have made an informed choice to nevertheless proceed with litigation. Colorado has a bar association rule requiring such advice by lawyers. Other bar associations such as the Beverly Hills Bar Association have voluntary ADR pledges that encourage lawyers to use mediation whenever it is appropriate, and many trade associations and individual corporations have also developed mediation pledges. These pledges are commitments to discuss mediation with clients, use it in one's own organization or in disputes with others, and to work at avoiding conflict in the first place. The pledge can be a wonderful public relations tool for professionals and organizations resulting in favorable press and the encouragement for members to display their framed pledge in their offices and for the public to look for a mediation pledge in choosing with whom they wish to do business.

As more professionals such as therapists, accountants, and insurance adjustors become aware of and successfully utilize mediation for themselves and their clients, the increased use of voluntary and required incentives to use mediation may develop.

Practice Tip

Find out what law firms and businesses in your community have developed a Mediation Pledge and get a copy of each.

- Put those pledges in a notebook that can be displayed in your waiting room or client library.
- Inform these progressive firms and companies of your efforts to tell your clients about their enlightened approach. Inquire how you might help them fulfill their pledge.
- If you perform services or sell products other than mediation (law, therapy, ice cream), sign up to take a Mediation Pledge yourself and display a framed copy prominently. Also, mention your pledge in your marketing materials and have an acknowledgment of the pledge in any contract for services.

- Contact professional groups and businesses within your target market and encourage them to develop and implement a mediation pledge program.
- Write a story or develop a presentation on the option of mediation and use of Mediation Pledges and send out an announcement of your availability to speak on this topic.

The Multi-Door Courthouse

In a 1979 article arising out of the historic Pound Conference on Perspective on Justice in the Future, mediation pioneer Professor Frank Sander of Harvard dreamed of a Multi-Door Courthouse. In his prophesy, Sander argued that courts should serve society by offering a number of choices at intake: negotiation, conciliation, mediation, and arbitration, as well as traditional courtroom litigation.

In the near quarter century since the Pound Conference, courts are beginning to understand Sander's wisdom. Many jurisdictions now require neutral courthouse facilitators to serve as counselors and ombudspersons to citizens in helping them select options to litigation to resolve their disputes. The Maricopa Superior Court (Phoenix, Arizona) has devoted an entire floor of its courthouse to a Self-Service Center. In this consumer-friendly environment, litigants are referred to as 'customers' and are provided information (in both English and Spanish) in easy to read pamphlets, videos, and accessible computer programs. Customers are offered community resources of mediators, lawyer coaches, and social agencies. In other courthouses throughout the country, client libraries and dispute resolution offices are housed in the courthouse as both symbols and resources for citizens to make informed choices in how to resolve their disputes. As judges and court personnel become more mediation-friendly, this attitude symbiotically supports the growth in the private sector as well.

Practice Tip

Take a field trip down to your local courthouse.

- Conduct a consumer-friendly impact study as to how someone with conflict would feel walking down those halls. Is there a neutral court facilitator? Are there settlement rooms with round tables, flip charts, and readily available computers and copiers? Are there easy to access and readable consumer friendly materials in a client library format?
- Meet with other local mediators to share impressions of the conflict resolution features of your courthouse. Come up with consensus recommendations for making the courthouse more mediation-friendly. Arrange for a group of mediators to meet with the presiding judge of the court to present and discuss your recommendations.

- Write an article about how mediation can be injected into your local court system—make reference to your group recommendations and be free with credit and attribution of others.
- Volunteer as a mediator in your local courthouse program. When you are ‘on-duty’ model a mediation environment. Arrange for a flip chart - or bring your own. Provide coffee and some cookies or pretzels. Bring a small array of mediation books and literature for litigants and their lawyers to browse while waiting. Offer a conflict wellness check-up (to parties whom you are helping).

Private v Public Justice

Many critics of mediation feel that mediation offers a two tiered brand of justice: private justice for the wealthy and upper income disputants and public justice in the court systems for the poor and working people. Others feel that the privacy of mediation allows issues of public policy to be dealt with behind closed doors rather than in the openness and setting of precedent that the court system requires.

As awareness of domestic violence, environmental protection, and other public issues emerge, you will be faced with this legitimate concern. What cases should you turn down due to their policy importance? How far should you go in mediating issues of tax evasion, health dangers, or other issues affecting society when both parties want to keep the discussion private rather than have reporters or others in their industry learn about their trouble? In addition to being a mediator trying to make a living you are also a citizen in this society - and when do the two roles conflict?

Practice Tip

- Learn about your jurisdiction’s laws for prohibiting or permitting the ‘sealing’ of court cases from public view;
- Find out what types of cases must stay in the court system and which settlements must be carefully approved by a judicial officer;
- Talk with a local judge about the views of court personnel toward mediation and assuring equal access to both private and public justice;
- Reflect on your own fees. Are they so high that many people cannot afford to use your mediation services? Do you have sliding scales or do you make special payment terms for people who cannot pay your fees.

Mediation and the Process of Court and Law Reform

Legislators and judges are looking to mediation for principles and processes to make the justice system more responsive to the needs of citizens. Oregon reformed its state family law system from top to bottom using the mediation principles of self-determination, empowerment of diverse stakeholders, and by providing non-judgmental and safe places to have discussions to explore options in steps. Other jurisdictions are now also looking to mediation as a model for this important reform work.³

Practice Tip

- Find out what type of law reform efforts are ongoing in your state and in your area of interest. You might want to start with efforts in the mediation area — particularly in the promulgation of professional and legislative standards for the practice of mediation and training of mediators.
- Inquire whether those in charge have consulted with mediation professionals to help conduct the reform process by including those with differing points of view and integrating the use of mediation in any legislative package;
- Monitor ongoing reform efforts and volunteer to help investigate and draft reform language;
- Write articles and present on topics currently being considered by the legislature and prepare presentations on how that affects mediators, lawyers, businesses, and other target markets within your practice.

Generic Mediation Advertising

Think about the impact that the American Dental Association has had on dental hygiene with its ads promoting fluoride and semi-annual check-ups. Can anyone ever forget the anti-tobacco ads featuring patients lying in hospital beds speaking through holes in their trachea?

Generic advertising about mediation is in its infancy. There are some excellent videos on mediation but they are generally limited to viewing in a few courthouses, mediation centres, or a few law offices. Some community and local governmental mediation programs have developed Public Service Announcements that local television and radio stations air, usually during late night or Sunday time periods.

What if President Jimmy Carter or Michael Jordan endorsed mediation in professionally-produced advertising spots aired during prime time? In addition to

³ See Forrest S Mosten, 'Mediation and the Process of Family Law Reform', 37 *Family Courts Review* 429 for a proposed agenda for law reform.

Judge Judy or Ally McBeal, the impact of a TV series on mediation and conflict resolution could burn this alternative into the minds of citizens worldwide. As mediation continues to grab the attention of policy makers and legislators, mass media's recognition and support of mediation may not be far behind - particularly as school mediation programs continue to flourish educating future voters about the benefits of mediation.

As in all public awareness advertising, funding must come from the government and corporate sectors. No single mediator or even any single mediation firm can afford to educate the public about the concept of mediation. Future opportunities for public discussions and promotion of mediation are not far away, particularly with the merger of major mediation organizations into the Association for Conflict Resolution (ACR) in Washington, D.C. with increased funding and political clout.

Practice Tip

- Work within your local mediation organization, bar association, or with ACR to develop concepts and production plans for generic advertising on mediation.
- Check with local mediation groups about the presence of advertising in your locale - work with them collaboratively to contact local media to air ads off the shelf, develop new ads or even just copy for station announcers to read.
- Contact non-profit funding sources and local governmental agencies with pro-mediation policy to allocate monies for mediation advertising and programs.
- Remember: if generic advertising expands the market for mediation services, your own career will benefit.

Turf Wars

Now that mediation is on the rise, some conflicts are emerging within the profession and between mediation and other professions. These conflicts are having major impact on the quality, accessibility, and development of the profession and the ability to offer conflict resolution help to those who need it.

Struggles Within the Mediation Field

Mediators are often in conflict with each other over a range of matters including: policy issues regarding professional standards and certification, funding from government and foundations, appointments on key committees, who will be included on a conference program - and on and on.

In some way, such conflict is to be expected. Mediators are human beings, not saints. Just as the shoemaker's children may do without shoes, in a new and robust field, conflict among mediators may be expected. Many practicing mediators chose this line of work due to their own horror stories as litigants in their own conflicts. Finally, psychoanalysts may have deeper explanations for the motivations of many mediators entering the field such as an effort to resolve our own inner conflicts and troubles with others.

Whatever our backgrounds or our motivations, walking the walk starts with the way we handle our own trouble within our professional family. When we act as if we have better insights or answers than lawyers or we treat others as adversaries we are neither building our own practices, nor building the field. To broaden the scope of mediation at large, it is essential to model mediative behavior within and without the mediation community. That is the only way to gain the confidence of those we are seeking to serve.

Struggles with Related Professions

As a profession, we must remember that for the last 25 years, mediators have been on a campaign to inform lawyers and other helping professionals about the benefits of mediation. Maybe we should have been careful what we wished for because today many believe that lawyers are trying to take over the mediation profession. It seems as if every bar association has a mediation committee or task force. Many mediation programs require a law license to offer services (even on a voluntary basis). Mediation standards and training programs are being evaluated for their compatibility to existing lawyer roles and ethical rules. Lawyers have now gotten the message so well that they see mediation as a key career enhancement for the next decade, a way to regain market share lost to non-lawyers and self-representers, and a public relations coup to improve the reputation and integrity of the profession.

Professional mediators are also looking over our shoulders and speculating at the impact of this profound interest of lawyers. At the 1999 Annual Conference of the Academy of Family Mediators in Chicago, there was a workshop, 'Is Mediation Becoming a Sub-Specialty of the Legal Profession' at which two past AFM presidents Lynn Jacob (mediator with background as social worker, Chicago), Steve Erikson (mediator with lawyer background, Minneapolis) and I discussed this issue (audio tape is available from ACR). One of the reasons for the formation of ACR was to provide a less unequal balance of power between mediators and lawyers in shaping the future of mediation in this country.

As with our internal struggles within our profession, the way mediators approach this issue may affect the outcome. It is very satisfying to witness a lowering of adversarial tension between mediators and lawyers over the last two decades. I can recall when many mediators saw lawyers as the devil incarnate - blaming the legal profession and the court system for exacerbating the pain of people in conflict rather than as

collaborative allies with whom mediators can work to improve the system. Unfortunately, lawyers contributed to this struggle by ignoring the public's growing demand for mediation, or worse, actively opposing it.

As more lawyers are being exposed to the effective work of mediators and actually receiving mediation training themselves, the intense debate between lawyers and mediators is evolving into more constructive dialogue. The 'we versus them' mentality is giving way to a common approach to helping the public.

Issues for your Practice

It is not uncommon for the work and even understanding of issues facing the mediation profession to be left to those few mediators with the interest and energy to make a public contribution. Although these profession-wide issues affect your practice, you may be more concerned with those trends that more directly impact the way you practice. Some of these trends follow here.

Confidentiality

One of mediation's great benefits to participants is its privacy. The issue of confidentiality, and admissibility in court of mediation communications, is dealt with in statutes, court rulings, cases, professional standards, professional ethics opinions, and in the mediation literature. There is a growing movement for national standards to guide the promulgation of confidentiality standards on the state and local levels. With the growth of court mediation, litigants, lawyers, and mediators are facing the tension between the expectation of confidentiality and the court's need for efficiency and gaining compliance of court ordered mediation. Since more mediators are getting their professional start as a volunteer in court programs or receiving paid referrals from judges, this tension between court rules and best mediation practices is a fact of life. You can use your court mediation work to build your reputation with judges, lawyers, and others in your community - but only if are fully conversant with the nuances of confidentiality.

Practice Tip

Find out the rules for confidentiality in your state.

- Do you have an omnibus mediation confidentiality statute or do you have to search cases, different statutes, court rules and other sources to figure out what to do?
- Make sure your practice complies with the requirements for confidentiality. Is your written mediation contract in compliance with your state law and professional standards of mediator organizations? Do you give proper notices of limitations of confidentiality?

- Have you drafted your mediated agreement to be enforceable in court due to non-compliance of the parties, or do rules of confidentiality hand-cuff the parties from using a settlement to enforce the agreement? Learn what the limits of confidentiality are in your state. For example, can you promise confidentiality if the parties are later involved in a criminal or administrative case, in a Federal or tax action, or other limitation?
- Look up Uniform Mediation Acts and National Standards for mediation confidentiality to get a broader perspective on how other jurisdictions treat confidentiality.
- Determine how you will handle disclosures of confidential information by the parties themselves. May they talk about mediation communications to the press, to family members, to consulting professionals such as lawyers or therapists, to clergy, or to others in the community?

Co-Mediation

Co-mediation is utilized in a variety of ways. Mediators team up combining different genders, backgrounds, levels of experience, and styles. Some mediation programs require co-mediation to both benefit parties with a breadth of perspective and as a teaching tool for beginning mediators. Some co-mediators in private practice reduce their combined fee and others charge their ordinary fees.

Those who co-mediate often report increased efficiency by sharing areas of expertise and having two problem-solvers in the room. Positive communication between co-mediators can model collaborative behavior for participants. While one mediator handles the communication and negotiation dynamics the other can record progress on the flip chart and observe and monitor what is working and what needs to be changed.

However, since consumers and professionals are accustomed to mediators working alone, many are not willing to pay for an extra mediator to be in the room. Many bar associations and other professional groups have restrictions against multi-disciplinary practices or fee sharing, inhibiting this form of practice. Many who have tried co-mediation express concerns about incompatibility or control struggles with their co-mediator that adds to rather than reduces conflict in the mediation room.

Practice Tip

Find out about co-mediation practitioners in your community and inquire about their process and ask to observe them work. Whenever you are volunteering to mediate in a community or court program, ask to co-mediate with someone else on the panel.

- Look out for co-mediator partners with whom you can study, prepare cases, de-brief, and market together.
- Research the local rules on multi-disciplinary practice and work out your fee arrangements to avoid disciplinary trouble or civil liability. If the restrictions prevent you from sharing fees, you might consider working toward changing the law.⁴
- Offer your clients the option of co-mediation upon their request or as part of your overall inventory of services.

Transformative vs Evaluative Mediation Styles

Attend any mediation conference and you will probably find a workshop discussing the virtues and problems with the transformational approach pioneered by Robert Baruch Bush and Joseph Folger in their groundbreaking book, *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition*⁵. Bush and Folger define 'true mediation' as the growth of the participants rather than the reaching of an agreement. They endorse a facilitative approach to resolving conflict in mainly joint sessions where the parties can communicate directly and learn from each other.

On the other end, judges, lawyers, and many consumers want mediators to be evaluative in their process and to use their experience (mainly as litigators and judges) to tell the parties the strengths and weaknesses in their case. Settlement is not considered a dirty word - in fact pressure and muscle are fully expected to be employed in mainly a caucus style format in which the parties are separated and the mediator shuttles back and forth.

Both the facilitative and evaluative approaches to mediating conflict exist. There are many mediators who fit in between these polar extremes using different approaches for different situations - the tool box school of mediation. While mediators throughout

⁴ For background, see the American Bar Association Commission on Multi-Disciplinary Practice (MDP) and *Multidisciplinary Practice: Staying Competitive and Adapting to Change* by Gary A Munneke and An L MacNaughton (ABA, 2000).

⁵ Jossey-Bass, San Francisco, (1994).

the spectrum have much more to share than to contest, unfortunately, the communication between the schools is often more of a debate than a dialogue.⁶

Practice Tip

Attend a program or a training session in both facilitative and evaluative mediation. Be a student. Be there to learn, not to debate.

- Once you are familiar with the policy and skill components of each approach, meet with other mediators in a study group or informally to discuss and refine your understanding of both approaches.
- Write out your own resolution of your mediation style and determine how it fits on the grid of evaluative-facilitative, broad-narrow spectrum.⁷
- Practice explaining the evaluative-transformational dialectic to clients. First, you have to understand it.
- When in session, think about what is happening in the room and how you might adjust your interventions toward or away from the facilitative or evaluative direction.

Use of Experts in Mediation

Experienced lawyers know that factual disputes make it difficult to predict the outcome of a case in court. These differences often bring parties to the edge of impasse in mediation since neither side is prepared to accept the other's perspective of how much an asset is worth, the value of damages, the impact of a particular custody plan on the children, or other areas of factual disagreement.

Regardless of whether you practice within the facilitative or evaluative school, alone or with a co-mediator, you might consider involving neutral experts in your mediations. Most parties would rather debate facts within the mediation room rather than spend the money for two dueling experts who trot out their competing reports (replete with bells and whistles) and no one knows what will ultimately happen.

You can involve experts in numerous ways. The emerging models of mediated case management and expert models are being utilized more frequently in both court ordered mediations and those starting voluntarily in the private sector.

⁶ See Linda Ellinor and Glenna Gerard, *Dialogue* (1998).

⁷ See Leonard Riskin, 'Understanding Mediator Orientations, Strategies and Techniques: A Grid for the Perplexed' 1 *Harvard Negotiation Law Review* 7 (1996).

Practice Tip

- Assemble a list of local experts who would be available for consultation and evaluation within your mediations.
- Find out their experience and commitment to being neutrals as well as the extent of their own mediation training.
- Attend conferences and trainings for experts to learn how they are being educated and trained to perform in mediations. There are local meetings of accountants, business and real estate appraisers, child custody evaluators, and others in your own community;
- Put on a presentation with your favorite expert or co-write an article. You will both learn how each other works and get out the word about your availability to offer this expert option within your mediations.

Prevention and Avoidance of Conflict

In your role as peacemaker, when does the prevention and avoidance of conflict enter your career and practice? Is your job done when you have mediated a resolution to a current dispute but the parties have other sources of conflict raging in their lives ready to erupt? Are you just a negotiation facilitator or can you be a true healer of conflict to help parties around your table lead more satisfying lives?

In his powerful autobiography, *Lawyering Through Life*,⁸ the late Professor Louis M Brown dreamed of the day when the United States would have a Department of Legal Health to study the causes of legal disease and discover cures and ways to prevent legal trouble. As mediators, we have that opportunity daily but we have to widen our lenses as to what we see and what we can do.

Conflict Wellness Check-ups (such as the sample set out in Appendix II) are being studied and utilized in many forms throughout the world. What if such a conflict diagnosis were provided every time we renewed our driver's license, in public libraries, and in professional offices that dealt with the symptoms of conflict? If mediators are steadily replacing litigators as the consumer's first stop in times of conflict, you need to learn about conflict prevention as well as conflict resolution and use it daily with your clients.

Practice Tip

- Take the Conflict Wellness Checkup yourself. How is your own legal health? Share your experience with other mediators - give them a copy of the check-up and discuss their results;

⁸ (1986).

- Find a way to give the Check-up to clients when they first come to you and when you have resolved their presenting conflict;
- Set up office procedures to monitor your clients' conflict wellness. Schedule follow up compliance meetings for the agreements you mediate as well as asymptomatic life cycle (marriage, birth of a child, college age, retirement) consultations to discuss how disputes can be prevented;
- Think about ways to offer dispute resolution design and audit services to prevent disputes in businesses and other organizations.

Future of the Mediation Profession

If I were investing in the future, I would put my money on the future of mediation. If you still have lingering doubts, let me share some reality, circa 2001. The Los Angeles Daily Journal is the largest daily legal newspaper in the world. Each Wednesday, it has a supplement called *Verdicts and Settlements* that features and reports on recent cases. The readership is primarily litigators who want to see what's going on in the courthouses and mediation tables around the state. On just page 11, the following display ads for mediators ran in the issue of February 14, 2001:

Judicate West – Panel of Retired Judges and Lawyer-Mediators
 Jeffrey Palmer, JD, MBA – Family Business and Partnerships
 Linda S Kilbanow, attorney – Labor and Employment.

Mediation will continue to grow in use and job opportunities for the following reasons:

- People cannot afford lawyers' fees;
- People who can afford lawyers' fees do not want to pay them;
- More lawyers are referring clients to mediation both because clients are demanding it and lawyers know mediation works;
- Courts are overcrowded and budget increases are not in the tea leaves;
- People are becoming better consumers and like having the choices that mediation offers;
- In a world where privacy and control over one's life is in short supply, mediation offers people in conflict these benefits;
- Mediators are becoming even more consumer friendly in the services and intangible benefits that they provide;
- As demand increases for mediation, more and more talented peacemakers are entering the field giving clients more quality choices;
- Students who have learned about mediation first hand in school mediation programs are both recommending mediation to their parents and others as well as entering the field itself;

- As major companies and government agencies use mediation to solve their institutional disputes and those external to the organizations, mediation is becoming part of the workplace culture that filters into personal disputes;
- Marketing of mediation services is driving down the prices of dispute resolution services both for mediation and in other professions;
- National mediation organizations such as ACR will wield more political clout putting mediation on the policy and funding radar screens;
- National attention to legislation (Uniform Mediation Act) and other mediation policy issues will both institutionalize mediation and increase its professionalism;
- As mediation matures into a profession, it will not seem so risky for consumers to give it a try and experience will produce more procedural and ethical protections for the public as well for mediators, lawyers, and other professionals;
- Mediation education and training will further develop to refine teaching techniques, curriculum and relevance in the workplace;
- Since user satisfaction is so high, the cumulative population of satisfied users will provide a steady and growing base of referral sources so that mediation will become used more frequently and earlier in the conflict process.

Research is needed to study and validate these and many other trends that I believe will make mediation much more established in the coming years than any of us could ever predict.

Conclusion

These trends and issues are only the tip of the iceberg. Mediation's rapid growth is being catalyzed by a developing literature. Your career as a practitioner is linked to the theoretical development of mediation. Your daily peacemaking work plays a symbiotic role with the growth of the field. As mediation grows, so does the expanded need for your services. And as your career grows, your experience can be shared to help researchers learn what is really happening around the mediation table so that theory, training, and practice materials can be adapted and enriched to better meet your needs - and those of your clients.

Peacemaking is truly an exciting and challenging journey - one baby step at a time.

Appendix I

Peacemaker Pledge

I will *think* about peace, why peace is important and how it works.

I will help *use* my peacemaker efforts to help people in conflict:

In my family
In my [school] [work]
In my community

I will *be* a Rodef Shalom – an active pursuer of peace.

Date: _____ By: _____

DIRECTIONS: Place the signed Peacemaker Pledge into a Sealed Envelope. Put the envelope into a safe place. On the One-Year anniversary of your Pledge, open the envelope, take out your signed pledge think about your last year's peacemaking efforts and then re-sign for another year.

Appendix II

CONFLICT WELLNESS AND LEGAL HEALTH CHECK-UP

We are dedicated to not only solving your disputes, but also ensuring your on-going legal health and conflict wellness. Like a legal thermometer, this check-up helps you assess your current legal health so that we can work as a team to prevent or minimize trouble in your life. Please take a few minutes to complete this confidential check-up.

Date: _____ Name: _____

- | | | |
|--|-----|----|
| 1. Do you have a will which has been revised within the past three years? | Yes | No |
| 2. Do you currently have any concerns about your job or business? | Yes | No |
| 3. Do you have adequate life insurance protection? | Yes | No |
| 4. Do you have adequate medical insurance? | Yes | No |
| 5. Do you presently have a written and current listing of all important future dates concerning your legal and financial matters? | Yes | No |
| 6. Do you have a file, stored in a secure and fireproof location, containing all important documents (wills, titles, securities, contracts, marriage, divorce papers, deeds, pension plans, profit sharing plans, etc.)? | Yes | No |

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|-----|--|-----|----|
| 7. | Within the last three years have you reviewed the beneficiary designations on insurance policies, pension plans, bank accounts and other important documents? | Yes | No |
| 8. | Do you have a complete and current personal financial statement which lists in detail all of your personal assets and liabilities? | Yes | No |
| 9. | Do you currently have a monthly budget, which details your current income and all expenses? | Yes | No |
| 10. | Do you have any concerns about your debts? | Yes | No |
| 11. | Do you have a complete and current inventory of all your physical possessions sufficient to support a claim in the event of a loss? | Yes | No |
| 12. | Do you have concerns about the academic, emotional, or social development of your child(ren)? | Yes | No |
| 13. | Are there currently extraordinary emotional pressures and stresses in your life? | Yes | No |
| 14. | After reviewing these questions, are there any matters or issues which you believe should be updated, reconsidered or brought to the attention of your mediator? Please explain below. | Yes | No |
| 15. | Have any of these questions caused you to consider taking some action or making some further review? Please explain below. | Yes | No |
| 16. | Is there an other legal, financial, or personal concern which you believe should be brought to the attention of your mediator? Please explain below. | Yes | No |

On the lines below, please expand on any answers which you believe would give your mediator a better picture of your current legal health.

Mediator's Notes: _____
