The complete guide to mediation

Certified Family Law Specialist

THE COMPLETE GUIDE TO MEDIATION

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JUST RELEASED in 2015 FROM THE ABA!

By Forrest S. Mosten and Elizabeth Potter Scully
2015, American Bar Association (326 Pages)
Special Author Price – $64.95
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This cutting-edge Treatise provides a conceptual, policy and skill-building overview of the field of mediation. Focusing on the role of lawyers as both client representatives and neutrals, this book contains a wealth of information, resources and practice forms for mediators, therapists, lawyers and other professionals.

Read what others have to say about this book and look at the overview of contents.

“Mr. Mosten's Guide is a blueprint for establishing and operating a mediation practice that works to benefit the entire community.”

Roberta Cooper Ramo, Past President, American Bar Association

“At last there is a book which clearly explains the role of the lawyer in mediation as either a consumer or provider. Well documented, the book explains the details of mediation and should certainly be on the bookshelf of every practicing attorney. It fills a much needed gap in the literature for lawyers.”

John M. Haynes, Ph.D.
Author, Fundamentals of Family Mediation
Founding President of the Association for Conflict Resolution, Northport, NY

“The Compete Guide to Mediation is a state of the art comprehensive sourcebook written by a knowledgeable and highly respected authority. In clear, concise language - without legal jargon--and with compassion and wit, Mosten provides a detailed road
map through the complex process of mediation. Although intended as an introductory guide for lawyers, therapists and experienced mediators will find this volume an indispensable resource.

Dr. Constance R. Ahrons
The Good Divorce, Los Angeles, CA

“The Complete Guide to Mediation is helpful for lawyers and non-lawyers alike. Forrest Mosten has managed to capture in readable language the essence of today’s mediation process. This new guide will be on my desk where I can readily find it!”

Honorable Frank G. Evans
Houston, TX

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Preface by Barbara Stark

Twenty years since the first edition of Complete Guide to Mediation!

The last twenty years have sped by, characterized by growing acceptance and use of mediation within the family law field … in no small part due to this book written in 1994-1995 and published in 1997.
Many of Woody Mosten’s cutting edge ideas in the first edition—unbundling, mediation in the courts, and the lawyer’s role in representing clients—were ground-breaking foundations for statutory and judicial reforms and changing family law practices nationally and internationally.

In 1994, I was serving on the ABA Section of Family Law’s publication board when one of our members, Frieda Gordon, told us about the innovations and robust mediation practice of a Los Angeles Family Lawyer, Forrest (Woody) Mosten. Many of us on the Pub Board were familiar with Woody’s articles and teachings, but he had never before authored a book. Frieda approached Woody and reported that he was willing to take on this project within our timeframe.

The book that Woody authored surpassed all of our expectations. As the Pub Board member responsible for the manuscript, I was knocked out by the comprehensive forward-looking approach presented in an accessible, friendly style. The quality of the book was so good that the immediate Past ABA President, Rita Cooper Ramo, put her prestige on the line by both writing the Preface and endorsing it on the Book Cover. The list of other leaders in both family law and mediation who endorsed the book paved the way for its success.

I now have the honor of writing this Preface to the Second Edition, and I must say that this is not really a 2nd Edition at all. It is a brand new book with fresh ideas and complete updates for 2015. Due to mediation’s development since 1994, Woody and his co-author, Elizabeth Potter Scully, have chosen to focus the book exclusively on the role and practice of family lawyers. This makes sense for two reasons. First, since 1994, there have been a plethora of superb books on mediation, many of them building on the 1st Edition. Second, while there are good books for commercial lawyers’ role in mediation, Woody and Liz’ Second Edition addresses the use of mediation in the family law context. They provide a multitude of strategies and resources for us to put to immediate use in our family law practices.

The book also benefits from Woody’s growth in the last 20 years as a national leader in family law and Liz’s fresh look at the subject. Since the first edition, Woody has received two ABA prestigious awards, Lawyer as Problem Solver and Lifetime Legal Access Award and has published three additional books in the field. In addition to teaching mediation at UCLA School of Law, his reputation as an international trainer and conference keynote of lawyers and mediators has been unparalleled in our field. Most importantly, he has an additional 20 years of practice experience as a mediator and peacemaking lawyer who never goes to court. This experience is shared generously with the readers on every page.

Liz’s full involvement in this book offers the profession’s next generation’s perspective and insight about the lawyer’s role in mediation. A magna cum laude Classics graduate of Harvard, Liz adds her clarity and nuance of writing with a keen wit that makes the book even more readable and useful for professionals. It is one of life’s evolutionary coincidences that Liz’s law partner, Jeffrey Jacobson, was acknowledged in the First Edition for research contributions he made while still a law student prior to establishing himself as a major presence in our field in his own right.

The Family Law Section has every reason to be proud of this publication. I am ... and I look forward to Section programs and conferences that will further apply the lessons and wisdom of this book to add to the competence and consumer responsiveness of the family law field.

Barbara Stark
New Haven, Connecticut

Introduction

Harmony may be difficult to obtain in our adversarial system and our heterogeneous society… We as lawyers must embrace our role as peacemakers as vigorously as our roles as advocates.

Roberta Cooper Ramo, President, American Bar Association, December 1995

It should be clear that I care more, much more, for the people that the profession is here to serve, than I do for the profession itself. Yet I believe that the help the profession can supply gives the profession a basis for its existence in our complex society of people.

Louis M. Brown, Lawyering Through Life (1986)

In the last half century, the single most dramatic change in the practice of law has been the use of computers. In 1972 (the year Liz was born) when Woody started his legal career, the most sophisticated high-tech component in most law offices was the electric memory typewriter. Copies were made using carbon paper. Same-day letters were delivered by messenger. Accounting ledgers were prepared with pencil on lined paper. Telephones had rotary dials. Law libraries were made up of heavy books. Words like modem and Internet were not even in our lexicon. There were no uniform child support guidelines, let alone support calculations available on computer terminals. It seems like yesterday, but much has
changed since then. Computers were a familiar concept to lawyers, but few could have predicted how much we and our clients would be impacted by them.

In 1972, another practice revolution began. Len Jacoby, the late Stephen Meyers, and Woody formed a law partnership called the Legal Clinic of Jacoby and Meyers (aka Meyers, Jacoby and Mosten). Building on the consumer movement, legal clinics were so successful that the pioneering techniques that were lauded (and feared) by the legal profession twenty years ago are now integrated into law office culture throughout this country. Previously labeled the "forgotten middle class," clients of moderate means have become an increasingly important source of revenue for the American lawyer, which (ironically) is now being threatened by the pro se movement and nonlawyer providers, also descendants of the legal clinic movement.

In 1972, except for its role in labor dispute and occasional use in international diplomacy, mediation was also barely in the family lawyer's lexicon. By 1981, the same year that IBM introduced its first personal computer, a few courts had initiated embryonic child custody mediation programs, and there were a scattering of divorce mediators in the private sector. These mediators were generally anti-lawyer, and the family law bar was definitely anti-mediation. The public was as likely to confuse mediation with meditation, and consumer use of mediation was limited to those with the courage and foresight to find out about mediation, locate someone who would mediate, and withstand pressure from family lawyers and well-meaning friends and family who equated mediation with other risky innovations such as natural childbirth and homeopathic medicine. "Mediation is a noble concept. But don't take chances with your children or your economic security. Get a good divorce lawyer!" The mindset was that one had a choice: mediation or a lawyer. This mind-set may be best illustrated by a marketing survey done in 1987 by a family lawyer and mediator "It's a terrific idea. It's needed. It's wonderful," was the general response toward mediation reported in The Wall Street Journal. But when the same people were asked what they would do if divorcing, "They said, 'I'd get the meanest person in the valley to rip his throat out.'" (Wall Street Journal, March 27, 1990, at B1.)

Today the word mediation can be heard inside judges' chambers, at clerks' windows, and in the nation's courtrooms. Mediation is a top priority for policy and programs in bar associations and family lawyer professional organizations in most states. Lawyers ranging from fellows of the Academy of Matrimonial Lawyers to small-town general practitioners to the staff lawyers at pro se document centers are all generally familiar with mediation. Most important, due to the increased awareness of the public through the press and mediation success stories from friends and coworkers, clients are asking about mediation and expect their family lawyers to be mediation-friendly, knowledgeable, and competent.

Today the field of mediation is where the computer industry was in 1971. Lawyers are learning to appreciate and use mediation to stay ahead of the curve, just as the most progressive businesses and firms learned computers nearly years ago.

This book is written as sourcebook and guide for practicing lawyers who are committed to practicing family law and who want to gain the knowledge and skills to attract the sizable number of clients interested in mediation and to represent those clients competently. As family lawyers who also practice mediation we have written this book directly to our family law colleagues. We hope that other professionals, mediators, and students will read this book because they will want to know how family lawyers think about and approach mediation. We try to provide hands-on tips and practice tools to give lawyers a running start in advising and representing clients through the mediation process and perhaps to motivate some lawyers to take further training and to consider adding mediation as a source of professional satisfaction and income.

We have updated and modified this book significantly since the first edition was published in 1996. This edition has its own chapter on mediation confidentiality due to the large number of court decisions on this issue that have come out since 1996.

We have also included chapters on how you can use unbundled and Collaborative Law approaches to representing clients during mediation.

Finally, we have concluded our book with a chapter on the use of peacemaking values and approaches that we hope will help you not only better negotiate, but also more profitably develop your law practice for many years to come.

As so eloquently stated by ABA President Roberta Cooper Ramo, mediation is more than just a settlement tool. Mediation is a higher and more effective paradigm of principles, ethics, and behavior by which to approach our clients, colleagues, families, communities, and the society which we live.

Forrest S. Mosten and Elizabeth Potter Scully
Los Angeles, California
"Forrest Mosten's book is comprehensive, user-friendly and informative. It is a must read for every lawyer and mediator."

Cinnie Noble
Lawyer, Toronto, Canada

“This is a great book for lawyers. Mr. Mosten has performed a service by introducing this book to allay the fears of many lawyers that mediation will cut into their revenues.”

Nancy Manning
Lawyer, Rapid City, South Dakota

Introducing Guided Meditations. If meditation can make you a happier, healthier, and more well-balanced person, why isn’t everyone doing it? The truth is, many of us give up on meditation because it seems impossible to quiet our thoughts, or we’re unsure if we’re “doing it right.” Fortunately, with guided meditations you don’t have to go it alone, and it isn’t all that complicated to do. As you listen to guided meditations, you actually access your subconscious mind, which is the principle generator for creativity, healing, self-improvement, and self-empowerment. Whatever your aim for meditation, guided meditations for specific goals — for anxiety, stress, self-healing, better sleep, etc. — is a useful (and cheaper) alternative to target-specific conventional medicine.