



So, you want to be a mediator

Should you even be a mediator? And practical advice on beginning your practice if you decide to try

BY NANCY YEEND

More and more attorneys are abandoning the practice of law and migrating to mediation, while others are attempting to offer mediation along with their other legal services. How many will make it as professional mediators, how many will successfully build even a part-time practice, or how many will ever get a case? Statistics show that a high percentage of new businesses fail, so how can a mediator improve the odds of developing a viable practice?

Switching careers and/or starting a new business comes with risks. The primary reasons that people fail when moving from the practice of law to mediation is the same as it is for any new business venture – people neglect the basics: conducting a personal assessment, creating a business plan and developing a marketing strategy.

Personal assessment

It does not matter if one is considering setting up shop alone, partnering with others, or joining an existing mediation group, a personal assessment is the foundation that makes or breaks a career change. Many find it difficult to hold up the proverbial mirror and critique oneself, but it is so important to do it.

To make the self-assessment exercise easy, compare yourself to a box of cereal. Yes, a box of cereal. If someone is walking down the cereal aisle, what will make that shopper select you, as opposed to one of the other types of cereal on display? Are you sugar free, is there a prize inside, no GMO, gluten free, or on sale?

Conducting a personal assessment allows you to determine who you are as a mediator and as a businessperson. Typical questions that you might ask yourself during the assessment include: “Who am I as a mediator?” “What are my

strengths and weaknesses as a mediator?” “How am I different from all the other mediators out there?” An assessment is critical no matter if you are thinking about opening your own mediation office, or just planning on adding mediation as an additional service. Next, ask these same questions regarding your abilities as a business owner: what are your strengths and weaknesses?

After you have completed your assessment, create a short resume, typically one page for every 10 years of experience. For those new to the mediation field, short resumes will be the norm – they have little experience in their new practice area. “What is my mediation training, and what actual ‘hands-on’ experience do I have as a mediator?” “Who knows me as a mediator?” “Is my name recognized, within the profession, or by the public as a mediator?” Do not become discouraged if you are not known as a mediator. Honestly answering these questions will help a new mediator



develop a business plan, and more importantly, identify areas to focus on in the marketing strategy.

Answering these basic questions not only allows a new mediator to begin to see how he/she is unique from all the other mediators, but will also assist with the decision of either going it alone as a sole practitioner or joining a mediation firm. For those who have a strong entrepreneurial spirit and know how, a sole practice makes a lot of sense. For those who do not want to be bothered with the day-to-day operation of a business, or who have no experience with running a business, then joining an existing group may be the better option.

Business plan

There is a lot of information on the internet to help you create a business plan. There are also courses that have as part of their curriculum a requirement to create a business plan. Once you complete the course, you will have a viable road map for your mediation practice. There is also the “jug of wine” method for developing a business plan, memorialized on a paper napkin, and although a more relaxing method for writing a plan, it often is not as comprehensive as one might need.

Business plans typically include three topics: type of ownership and related management matters, initial funding or financing of the new enterprise, and identification of the marketplace (those who will be hiring you as a mediator). The plan needs to be written, with established measurable goals, and have specific time lines for accomplishing those goals.

When considering going solo, it is important to explore your strengths and weaknesses as a business owner. During your initial assessment, some of these positive attributes and deficiencies will have surfaced. If you decide on going it alone, then ask yourself, “*Do I need to be surrounded by a team of professionals who have skills that I do not possess?*” For example, will you need a bookkeeper or

technology support? Other considerations are the location of the business, and whether you are going to work out of your home, rent office space, join a group that provides office space on an as-needed basis, or will you buy a building?

Many new business owners grossly underestimate the cost of running a business. There are a few key questions to ask and answer regarding the amount of capital needed. Those who do not have enough money to completely fund their business for at least one year, as well as have sufficient resources to cover their living expenses, so they can maintain their present lifestyle, are doomed to failure. It can take a mediator anywhere from one to three years to establish a viable and profitable mediation practice. The financial community is loath to make loans to new businesses, unless there are significant tangible assets that are backing the loan.

Today, with companies like Regus and SpacesWorks, it is easy to have a place to receive mail, secretarial services, and have a nice office or mediation rooms on an “as needed” basis. To keep costs down, some mediators get a mailbox at a local mail drop company, thus providing them with a “business” address rather than using their home address. Typically, your mailbox number is listed as an office suite number.

Frequently, the discussion regarding finances drives many new mediators to seriously consider joining with others to create a firm, and spread the expense, or to join an existing firm. Even if a mediator explores joining an existing mediation firm, understanding the costs of doing business may help with negotiating the services the firm will provide and the fee split percentage.

Existing firms are usually interested in taking in new mediators who will be “rainmakers.” They are expecting mediators to have name recognition within the community, enjoy a solid reputation, and be able to attract business to the firm. They are not expecting to be the source for providing cases to their mediators.

Identifying the specific marketplace is another important element of the business plan. You want to be paid for your services, but who is going to hire you? Do not forget your initial assessment: you are that box of cereal; what makes you different from all the other boxes of cereal/mediators?

Those mediators who start as specialists are often more successful than those who claim, “*I can mediate anything!*” The generalist, the person who says he/she can mediate anything, is competing with more mediators: all the other generalists and the specialists! When mediators specialize and only handle certain types of cases, they are competing with fewer people. After a mediator has established a business and solid reputation, then he/she can expand into other subject matter areas. A critical step is to link all of your past experience to the area of specialization: employment, intellectual property, construction, family, etc.

Marketing strategy

As you develop your business plan and identify the market place, it is important to develop a strategy that will attract people to your business. Figuring out who will actually contract with you for your mediation services is the key for developing a marketing strategy.

Remember that everyone is listening to the same radio station, WII-FM, “*What’s in it for me?*” In other words, your marketing strategy needs to show potential clients that you offer specific benefits to them. Go back to your initial assessment. What makes you unique?

Another significant point to consider is that different clients will focus on different benefits. For example, an attorney will look at your legal experience. It should not be forgotten that “like hires like.” Here is your advantage over a non-attorney who may offer mediation services for the same types of cases that comprise your area of specialization.

Being able to play the numbers game is critical. Ask yourself, “*How many cases have I mediated?*” If you are just starting



out as a mediator, you may be competing with mediators who have been in practice for a number of years and who have mediated hundreds of cases. Since it is a numbers game, start mediating for a community-based program or get on a court panel where you may initially be mediating small cases pro bono. Being able to say that you have mediated a specific number of cases will help you play the numbers game. If you have not mediated many cases, then stress the number of years that you have been an attorney, and emphasize the number of times that you have successfully represented clients in mediation. You can build on being able to say that you have represented clients in “hundreds” of mediations and linking this to how well you understand the process, what makes a “good” mediator, and the positive impact on the client.

The cost of marketing today is actually much less than it was 30 years ago. The primary reason is that the less expensive internet has replaced expensive print advertising. Developing and maintaining a website is a cost effective means for marketing. At a minimum, there are three elements to include in your website: area of specialization, identifying experience with resume, and various modes for contacting you. If technology is not your forte, then hire someone to develop the website for you.

With all marketing strategies, continually keeping your name in front of potential clients is a fundamental requirement. Your website must be frequently updated, so that your name will go towards the head of the line, when clients do a search. Ask new clients how they learned about your services. If clients are coming from one or two primary sources, be sure to focus your marketing in those areas. All marketing needs to be done on a consistent and frequent basis.

Create a potential client list, and initially target no more than 200 people. These might include past clients, attor-

neys who handle the types of cases you want to mediate, other business professionals and mediators who *do not* handle the types of cases that you will mediate. Plan on contacting everyone on your potential client list every three to four months. Have your marketing material provide the potential client with a benefit: copy of an article you wrote or found interesting, upcoming talk or presentation you will be giving; create a checklist or other short educational piece related to mediation. Gradually increase your list as you meet people. Maintaining a highly productive contacts list of 500 people is usually sufficient to help a mediator sustain a viable practice. Do not forget to also edit the list. There is no benefit to keeping names on a list that are not potentially viable clients. A mediator who does not keep his/her name in front of potential clients on a regular basis, is quickly forgotten.

Do not overlook having a good supply of business cards. They are inexpensive and easy to carry and hand out. You can put a note on the back to remind the person about where you met or the topic you discussed, which in turn will increase the probability that they will contact you. Always ask anyone you meet for their business card, so that you can add them to your client list! Printing on the business card needs to be in at least a 12-point font, so people can easily read it. Remember, the people who are most likely to hire mediators are over 45, so be sure that they can easily read the information on your business card. You only need to include the following: your name, business address, phone, and email. Having a mailing address makes you look like you are in business and not just working out of your house. A logo might help, but is not necessary. With business cards – less is more.

Personal appearances generate business. You establish credibility and build rapport with people who get to meet and hear you talk, and this in turn increases

the probability that they will contact you. Giving talks at local civic groups or trade associations is often a great place to start. Naturally, giving a talk at the local bar association or other professional groups also helps get your name circulating. Again, do not forget to give a benefit for people listening to you. Provide a handout (checklist, copy of an article, or some other tangible item) and never forget to have your business cards available.

Review and modify

Even though you have done a self-assessment, developed a business plan, and created a marketing strategy, you cannot leave it on the shelf. It must be reviewed regularly. Check and see if you are meeting your target goals: number of cases, number of names on your client list, etc. Are you meeting your goals within the time frame you established; are you staying within your budget, and are you generating the income that you anticipated?

Review, evaluate and modify as necessary. Take a look at what is working and what is not. Consider what changes you need to make to get back on target. Did you underestimate how long it would take to get your first paying client, or is your marketing strategy not effective? Begin by reviewing your accomplishments on a quarterly basis, and continue this routine for the first year, or longer, if you are not meeting your goals. Once you start meeting your goals, you can cut back to semi-annual review, and ultimately to once a year.

Conclusion

Although the three steps to start a mediation practice seem simple, skipping any one of them decreases your chance for success. Initially focus on your self-assessment, business plan and marketing strategy. Create measurable goals, set specific timelines to accomplish those goals, and remember that everyone is listening to WII-FM!



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