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*Mediator, speaker, and co-founder of
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as a Mediator
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by Victoria Pynchon and Joe Kraynak



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Dedication

To my husband, Stephen N. Goldberg.

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Introduction

Welcome to the theory, practice, and business of mediation. Whether you've just taken your first 28-hour mediation course or completed your LL.M in dispute resolution, this book is your guide, reminder, resource, cheat sheet, and magic talisman to jump-start a new career or revive a flagging one.

If you, like me, have been foolhardy enough to launch yourself into a new career in an uncertain economic climate; if you don't care how flooded with mediators the market supposedly is; if you believe you've been called to this work by your better angels; and if you could use the companionship of like-minded people and advice from battle-scarred survivors who are flourishing in their practices, you've come to the right place.

Within these pages you'll find something I never did — easy-to-follow, comprehensive, field-tested principles and practices that set the standard all mediators should strive to meet. Because this profession is an accidental one, having grown out of informal neighborhood justice centers and formal courtroom practices, opinions about what “true” mediation practice really is are as plentiful as recipes for turkey stuffing.

I made my own way to mediation through the adversarial system, in which mediators focus on a single issue (usually money) and negotiate with each party in separate caucus, shuttling offers and counteroffers back and forth until the parties hammer out a deal. This approach remains the method of choice, at least in the Los Angeles market. Dissatisfied with the old settlement conference model in which judges lower everyone's expectations before coercing them into settlements that satisfy no one, I returned to school to learn as much as I possibly could about collaborative models, in which the mediator teams up with the parties to develop solutions (often beyond the confines of money) to satisfy each party's interests.

In short, I've studied and practiced all the approaches to mediation — directive, evaluative, facilitative, and transformative — and I know the strengths and weaknesses of each model. I'm also well-versed on the tools of the trade — the skills and techniques proven to be most effective in reopening the channels of communication, identifying issues and interests, engaging with the parties in collaborative problem-solving, and breaking through the parties' inevitable impasse. I fill you in on all these facets of mediation in this book.

In addition, I present everything you need to know to turn your passion into a good-paying profession. You discover when and how to launch your mediation business, how to market yourself and your services, and how to network with clients and colleagues to generate business.

As you begin your own journey to success as a mediator, never abandon hope that your clients can, with your assistance, find their own way to resolution. Always create for your clients a safe space in which to explore their dispute, no matter how hostile they may be and how bleak the outlook. Listen for the cry for help buried deep within every accusation. Know that accountability, recognition, apology, forgiveness, amends, and reconciliation are the natural processes of humankind. If it weren't so, competing needs would have doomed the human race to extinction long before humans started scratching numbers and letters on stone tablets.

Remember that *you* are the magic, that the entirety of your mindful experience is the technique, and that every conflict over which you preside presents you with the opportunity to bring peace into the world, or at least into your little corner of it.

About This Book

Achieving success as a mediator requires a two-pronged approach. You need to master your trade while at the same time strive to achieve commercial success, primarily through marketing and networking. When you're a great mediator and everyone in your market knows it, you've reached the pinnacle of your profession.

Success as a Mediator For Dummies addresses both sides of success. If you're just beginning to set your sights on mediation as a career, this book helps you get there. If you're already in the field, this book makes you better at your profession. And if you have everything required to be a top-notch mediator but you have no idea how to manage and market a business, this book shows you how to shore up the business end of success.

Conventions Used in This Book

I use several conventions in this book to call your attention to certain items. For example:

- ✓ *Italics* highlight new, somewhat technical terms, such as *anchoring* and *logrolling*, which I follow up with straightforward, easy-to-understand definitions.
- ✓ **Boldface** text indicates key words and phrases in bulleted and numbered lists.
- ✓ `Monofont` highlights web and e-mail addresses.
- ✓ When this book was printed, some web addresses may have needed to break across two lines of text. If that happened, rest assured that I haven't put in any extra characters (such as hyphens) to indicate the break. So, when using one of these web addresses, just type in exactly what you see in this book, pretending as though the line break doesn't exist.

What You're Not to Read

You can safely skip anything you see in a gray shaded box. I stuck this material in a box (called a *sidebar*) for the same reason that most people stick stuff in boxes — to get it out of the way so you don't trip over it. However, you may find the brief asides in the sidebars engaging, entertaining, and informative.

If you're exclusively looking for how-to information, you can probably skip the many examples in the book, but I wouldn't recommend it. Seeing techniques and skills applied in real-world mediations is extremely valuable in learning when and how to use the techniques and skills to the greatest advantage.

Foolish Assumptions

In writing this book, I made a few foolish assumptions, mostly about your motivation and how much you already know about mediation:

- ✓ You want to be a peacemaker, and you think you have what's required to be an excellent mediator.
- ✓ You want to make mediation your day job. You don't merely want to be an excellent mediator; you also want to be a commercial success. The two really do go hand in hand. Without a lot of clients, you're not going to get the experience you need to become a master mediator.
- ✓ You're dedicated to becoming the best in your field and your market. You're reading this book, so you're obviously driven to excel.

How This Book Is Organized

This book is organized so you can read it from cover to cover or skip around to only those parts, chapters, or sections that capture your interests or serve your present needs.

As you'll soon discover, developing the skills required for understanding and practicing mediation — and doing it well — isn't always a linear path. In the process of discovering new strategies and techniques, you often must skip back to review what you thought you already knew and understood. This book is optimized for skipping around to find exactly what you need whenever you happen to need it.

To further assist you in finding specific information, I divide the chapters into the following five parts.

Part I: Acquiring the Keys to Mediation Success

The chapters in this part help you build a successful practice on a firm foundation. You discover what “success as a mediator” means, find out how to choose a market that matches your interests and holds the greatest potential for your commercial success, and explore resources for obtaining the training required to pursue your chosen market.

Part II: Becoming a Master Mediator

Part II equips you with the tools of the trade, so you have everything you need to conduct an effective mediation:

- ✓ Knowledge of the overall process.
- ✓ What to expect, whether you're mediating a litigated or nonlitigated dispute.
- ✓ Various mediation styles, including facilitative, transformative, and evaluative, along with guidance on when and how to conduct mediation in joint session and separate caucuses.
- ✓ Fundamental techniques, including anchoring, framing, trust-building, brainstorming, problem-solving, and logrolling.
- ✓ A deeper understanding of the conflict dynamics that often lead to disputes and make them more difficult to resolve.

Part III: Improving Your Success Rate

Skills and techniques are useful only if you know when and how to apply them in real-world disputes. In this part, I present various situations that you have to navigate during a mediation. In every mediation, you need to establish and maintain your own authority while also helping the parties find the authority and wisdom within themselves to solve their own dispute on their own terms; help the parties sort out the often confusing differences among rights, remedies, issues, and interests; use your people skills to deal with the human factor; and help the parties identify and solve problems.

Because the parties will inevitably reach *impasse* — the chasm that neither party believes can be crossed — you need to know how to help the parties break through what appears to be an impossible barrier to the achievement of a mutually satisfactory resolution. The chapters in this part explain how to do all this and more.

Part IV: Launching Your Own Mediation Practice

As a mediator, you're also a small-business owner, so you need to know how to set up shop, market yourself and your services, and grow your business through networking and referrals. The chapters in this part address the business end of mediation.

Part V: The Part of Tens

Every *For Dummies* title has a Part of Tens — a group of chapters, each of which provides a list of ten valuable tips, strategies, techniques, or related snippets of interest.

This particular Part of Tens presents ten practices of the super mediator, ten big mediation no-no's, and ten tips for breaking through impasse.

Icons Used in This Book

Throughout this book, you'll spot icons in the margins that call your attention to different types of information. Here are the icons you'll see and a brief description of each.



Everything in this book is important (except for the stuff in the shaded boxes), but some information is even *more* important. When you see this icon, read the text next to it not once but two or three times to tattoo it onto your gray matter.



Tips provide insider insight from behind the scenes. When you're looking for a better, faster way to do something, check out these tips.



This icon appears when you need to be extra vigilant or seek additional guidance before moving forward. Don't skip this important information — I'm warning you.



Throughout the book, I provide plenty of examples to show you as well as tell you how to conduct an effective mediation. Look for the examples to see how it's done.

Where to Go from Here

Success as a Mediator For Dummies is designed to take you from ground zero to master mediator. If you're just getting started, check out the chapters in Part I. For techniques and skill-building, set your sights on Part II. For guidance on how to deal effectively with situations you're likely to encounter, turn to the chapters in Part III. And when you're ready to start building or expanding your mediation business, head to Part IV.

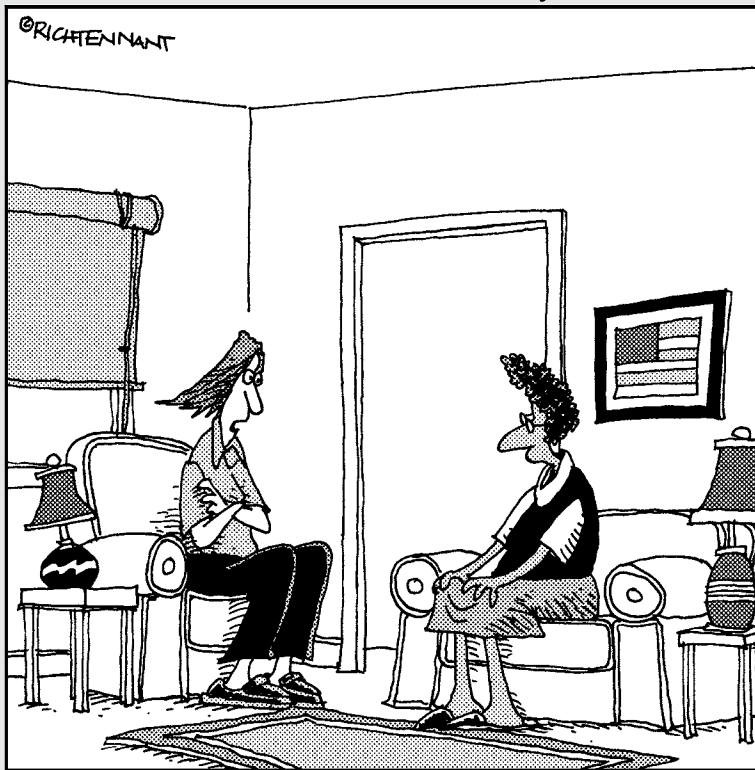
Otherwise, read the book from cover to cover, skip around using the table of contents as your guide, or consult the index if you need direction on a more specific topic.

Part I

Acquiring the Keys to Mediation Success

The 5th Wave

By Rich Tennant



“My husband thinks I’d make a good mediator; my mother doesn’t. So I sat them at a table and got them both to agree. Now, neither one of them thinks I’d make a good mediator.”

In this part . . .

To become a master mediator, you need to start by being a mediator, and that's what this part is all about. Here I paint a picture of what success as a mediator looks like and describe some of the paths you can take to achieve that goal. I also assist you in selecting a mediation market that's right for you and in obtaining the required training to pursue that market.

In short, the chapters in this part ensure that you build a successful practice on a firm foundation.

Chapter 1

Achieving Success as a Mediator

In This Chapter

- ▶ Deciding whether you have the skills and personality to be a mediator
- ▶ Finding career opportunities in mediation
- ▶ Acquiring essential mediation skills, training, and education
- ▶ Launching and marketing your mediation business

Ask a dozen people what *success* means, and you're likely to get a dozen different definitions. For some, success means lots of money. Others define it in terms of happiness or freedom from worry. For others, success means spending quality time with loved ones. When focusing on success as a mediator, however, the word means two things:

- ✔ You're good at facilitating dispute resolution.
- ✔ You earn enough money to make mediation your career or, at a minimum, a significant source of new income.

To be a great mediator, you need to master the skills, techniques, and strategies required to assist parties in resolving their disputes. To earn enough money to make mediation a worthwhile career, you need to market yourself and network in ways that attract clients who can pay what your services are worth.

This book is dedicated to empowering you to achieve success as a mediator in both areas. This chapter serves as the *CliffsNotes* version, getting you up to speed in a hurry.

Do You Have What It Takes?

Not everyone has the makeup to be a mediator. Some people lack patience, are uncomfortable with conflict, or are unable to remain impartial. Others lack essential abilities, including critical thinking, problem-solving, and communication skills. Sure, you can develop some of what you may lack through education, training, and experience, but much of what's required to be a mediator is born and bred — it has to do with personality and attitude. In the following sections, you take a personality and skills inventory to see whether you have what it takes to be a master mediator.

Assessing your personality

Some people prefer to work in relative isolation, never having to deal with the messiness of human interaction and relationships. They focus on the task at hand and accomplish a great deal. The world needs people like that, but mediation doesn't. To be a great mediator, you need to be good with people, and that means having the following personality traits:

- Ability to inspire
- Curiosity
- Dogged determination
- Emotional stability/maturity
- Empathy/sympathy
- Impartiality
- Integrity
- Open-mindedness
- Optimism
- Patience
- Persistence
- Sensitivity

In short, you need to genuinely like people and enjoy helping them solve their problems and get along with one another.

Taking inventory of your skills

In an emergency, people with relevant skills tend to be more helpful than the average Joe. Doctors, nurses, emergency medical technicians (EMTs), police, and firefighters have the skills, equipment, and experience necessary to respond to disaster and help the victims. Those without the skills required for the task tend to just get in the way. Similarly, you need a few fundamental skills to help parties in dispute, which is a crisis in human interaction, including the following:

- ✓ **Interviewing:** You should possess the ability to ask open-ended, curiosity-driven questions and to follow up those questions with more inquiries to elicit detailed narratives along with the emotions and subjective perceptions driving the conflict story. If you're naturally curious about people and what motivates their behavior, you're probably good at interviewing people.