



SECTION  REVIEW
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LAW PRACTICE MANAGEMENT

How to become a mediator and incorporate mediation into your law practice

BY NICOLE CROWLEY AND CYNTHIA T. RUNGE

More and more litigants are choosing mediation as a way to resolve their disputes rather than following the traditional litigation route through the courts. While the benefits to the parties may seem obvious, both emotionally and financially, there are also benefits to attorneys who develop a mediation practice. Mediation gives clients another option to consider when deciding which process to engage in for their particular situation. Being a mediator also opens up new referral sources for your office since you can offer to mediate cases for your litigator colleagues, and your mediator colleagues can refer clients to you who need a “legal review” of their mediated agreement.

This article explores how attorneys can incorporate mediation into their practice, and is a summary of the recent MBA program “How to Become a Mediator and to Incorporate Mediation into Your Practice.”

How and Why To Get Trained as a Mediator

In order to become a mediator and to be covered by the mediation confidentiality statute, which protects the disclosure of a mediator’s work product and communications with the parties, the mediator must comply with M.G.L. c. 233, § 23C. Specifically, the mediation statute requires, among other things, that mediators: 1) complete 30 hours of mediation training and 2) have either four years of professional experience as a mediator or be accountable to a dispute resolution organization that has been in existence for three years or has been

appointed by a judicial or governmental body. A list of most community mediation programs, some of which may also provide mediation training, can be found on the Massachusetts Office of Public Collaboration website at https://www.umb.edu/mopc/what_we_do/projects.

Mediation training is not only essential for mediators because it is required under the mediation statute, but also because it helps practitioners learn to begin to make the shift from being an advocate to becoming a neutral. As Chuck Doran, executive director and lead trainer at Mediation Works, Inc., explains, lawyers and mediators use a different set of skills when working with parties. “Lawyers are trained to ask questions to which they already know the answers. Mediators ask questions about what they don’t know. Curiosity is an essential skill of a mediator.” Basic mediation training helps attorneys learn an entirely new set of skills, which helps them facilitate parties coming to agreement.

How to Incorporate Mediation Into Your Law Practice

Once trained, there is no one “right way” to begin incorporating mediation into your law practice. Some areas of law, such as family law, may be more conducive to mediation while other practitioners, such as litigators, may find it more difficult to market themselves as a mediator. Gail Packer, MSW, executive director of Community Dispute Settlement Center in Cambridge, says, “The reality is that a mediation career path is not paved. It requires creativity, ingenuity, and thinking about what area of practice to specialize in, and to develop a network to help pave the road for one’s



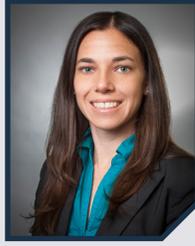
future practice.” However, there are some general guidelines to think about as you begin incorporating mediation into your practice.

Attorney Justin Kelsey of Skylark Law and Mediation in Framingham, suggests that it is difficult to generate business as a mediator without broadcasting your practice as one that includes mediation. “Attorneys must actively market themselves as mediators, in both their firm name and on business cards, in order to bring in business.” Additionally, Kelsey recommends that an attorney may want to have different intake forms and conference room set-ups for mediation vs. litigation, because mediation requires a different environment to meet the parties’ needs. “Litigation is focused on privacy whereas mediation is about openness. As a mediator, the attorney will want to foster collaboration.” He will want to provide a conducive environment for the parties to work together to reach a mutually agreeable solution.

There are many professional mediation organizations available to help new mediators get advanced training, find mentors, and gain experience, such as CDSC, MWI, and the Massachusetts Bar Association’s

Dispute Resolution Section. Moreover, CDCS and MWI, among other mediation training centers, offer opportunities for new mediators to gain pro bono experience mediating cases, in a co-mediation model, including some opportunities in the courts.

Mediation services is an excellent addition to help you grow and expand your law practice as clients continue to look for more cost effective and less contentious ways to resolve their disputes. If you're interested in learning more about incorporating mediation into your law practice and finding out about other resources, check out the program "How To Become A Mediator and Incorporate Mediation Into Your Law Practice" on the MBA's On Demand portal. ■



Nicole Crowley is an associate at Tucker, Saltzman, Dyer & O'Connell, LLP. Her practice focuses on insurance defense and coverage analysis.



Cynthia T. Runge is a divorce mediator, family and collaborative attorney who has practiced for over 26 years. Cynthia is a member of the Massachusetts Bar Association Law Practice Management Section; a member of the Board of Directors of the Massachusetts Council of Family Mediation; a member of the Access to Collaborative Committee, a project of the Massachusetts Collaborative Law Council; a member of the New England Association of Conflict Resolution, the Massachusetts Juvenile Bar Association; and the Massachusetts Guardianship Association.