BY DAVID C. SARNACKI

“There are people who make things happen, there are people who watch things happen, and there are people who wonder what happened. To be successful, you need to be a person who makes things happen.”
--Jim Lovell, Commander of Apollo 13

Making Your Plan
Now that the order for mediation has arrived, do you know how to really help your client? Do you have a plan for the mediation? Not helping and not having a plan leads to unfortunate consequences—client dissatisfaction, loss of confidence, failure to reach agreements, or settling for bad outcomes.

Forrest Mosten took his guide to mediation and, with the help of Elizabeth Potter Scully, completely overhauled the 20-year classic. The resulting The Complete Guide to Mediation: How to Effectively Represent Your Clients and Expand Your Family Law Practice is an effective guide for planning our mediations. The 12 chapters stay very practical, inspire us to reach further, and include specific sections covering the practice tips to implement. “If you reach just a bit further—reach to become a peacemaker—you have a profound change to transform the lives of the families you serve as well as your own.”

Mosten and Scully use key core values to enhance the role of the peacemaker. These values include such items as these values include such items controlling your own destiny, working together, providing choices, and communicating about difficult issues. They help us help clients prepare for mediation, focus on tolerance and forgiveness and personal integrity, and promote active listening.

Mosten and Scully lead us through the process for establishing competence, becoming mediation friendly, meeting the judge’s expectations, and satisfying clients. They cover such concepts as practice management and forms, dispute resolution, confidentiality, common scenarios and problems, unbundling, collaborative lawyering, building agreements, negotiations, drafting, anticipating future conflict, and acting as a peacemaker. They conclude with 23 appendices centered on implementing theory and concepts into our practices.

This 326-page update was 20 years in the making. Mosten and Scully want to help us help clients by planning for success. Use their knowledge and skills to get more clients and to help those clients move forward with their lives.

Making Preparations
When the case that should have settled doesn’t, what do you do? Where do you start? Trial preparations usually hit as if a thousand things need to be done all at the same time. The worry is that you will miss something, you will be frazzled, you and your client will lose confidence, and you will miss opportunities for successful outcomes.

Steven Peskind brings order to our universe. He has authored several books, including the ABA’s primer on evidence: The Family Law Trial Evidence Handbook. In his One Hundred Days Before Trial: A Family Lawyer's Guide to Preparation and Strategy, he reveals his systematic approach to trial preparations, planning and strategy. He tells us: “My message is simple: start early with the end in mind, develop a plan, and maintain self-discipline to work the plan on a regular basis.”

Peskind’s laser focus is on doing what must be done, in the proper order, with the proper attention, and with persuasive skill. His chapters are order by the countdown to trial: 100 days before trial, 90 days before, 60 days before, 30 days before, 7 days before, and then concluding the case. Each chapter concludes with its own specific and detailed checklist, and the checklists are combined into the appendix.

Peskind wants us to think about the issues, the strategy options, and the goals for the particular client. With a focus on planning, he takes us through the specific issues for family law trials. He breaks down the general property issues, the family lifestyle, business valuation, taxes, and child custody in successive fashion. He moves through issues of evidence: relevancy, reliability and he provides guidelines for preparing witnesses. He brings a focus to final preparations, advising tools of visualization, rehearsal, notetaking, and other personal preparations. This 158-page guide shows family lawyers how to prepare and how to implement their strategies systematically through effective checklists.


David C. Sarnacki practices family law, mediation and collaborative divorce in Grand Rapids, Michigan. He is a past Chairperson of three State Bar Sections: Family Law, Litigation, and Law Practice Management Section. He is listed in Best Lawyers in America.