Civil Mediation Made Accessible

By Kelso L. Anderson, Litigation News Contributing Editor

Last year, the ABA Section of Litigation published Representing Clients in Mediation to rave reviews. The encomiums were well-deserved as this book provides attorneys and other professionals involved in civil mediation with a how-to and what-not-to-do guide on all aspects of civil mediation from soup to nuts.

The book’s author, Spencer Punnett, a former Editor-in-Chief of Litigation News, delivers a generously detailed and pragmatic book that draws on insights from counsel, mediators, and program administrators.

Parties involved in mediation may consult one of twelve chapters called “steps” to receive practical solutions to issues they may face. All of the steps are organized sequentially in the order of a typical mediation, allowing litigants easy access to specific information. For example, step one is entitled “Check Out the Governing Rules and Plan Accordingly,” which identifies three types of mediation: (1) court-annexed (mandatory), (2) contractual, and (3) voluntary. It then provides specific sub-steps on procedural rules of each that are useful in planning an initial mediation strategy.

If a litigant is satisfied with the initial strategy in step one, then step two, “Agree on a Mediator (If You Have a Choice),” provides guidance that the litigant might not have previously considered. Within each step are sidebars, or first-hand accounts on mediation scenarios or advice from mediation experts that are specific to each step. For example, sidebar 7-1 in step seven, “Prepare with Your Client,” is a checklist of questions for client, written by a seasoned mediator who offers tips for preparing with a client.

Punnett deftly positions the talents and stories of the guest authors and interviewees in the sidebars to maximize the utility of each step. For skeptical or just curious readers, biographies of the authors and interviewees enhance the text’s credibility. The book pays deference to the findings of the ABA Section of Dispute Resolution’s Task Force on Improving Mediation Quality and its application to the mediation process. An expanded table of contents offers additional detail about the content in each step, making it easy for readers to find the subject matter they need. In addition, Punnett offers bibliographic references on mediation for those interested in doing further research and three appendices with useful mediation tips.

Despite the depth of analysis provided, the 591-page book is easy to use and digest. As former speaker of the house Tip O’Neill once observed about politics, Punnett, too, is keenly aware that all mediation is local. Nonetheless, this book is not a compilation of all local rules concerning mediation, as that would have made for a heftier and less user-friendly book.

Instead, Punnett marshals the perspectives of experts on mediation techniques from across the country and layers their considered views throughout the steps, sub-steps, and sidebars to substantiate theories on evaluative versus facilitative mediation techniques; arbitrage in mediation; and blended lawyer/client presentations, among other theories and practices.

With down-to-earth descriptions of substantive issues that arise in the mediation process, the book provides readily relatable examples to parties involved in mediation, resulting in a resource for attorneys that will likely be more helpful (and used far more often) than a book on mediation rules and commentary.

Punnett encourages counsel to learn how much involvement a client wants in the mediation selection process and to solicit input from the client as appropriate. Assuming a mediator is selected, Punnett suggests that, when possible, the parties agree on tailored rules for the mediation. With respect to mediation briefs, parties are encouraged to aim for brevity rather than a lengthy exegesis of their claims. A key what-not-to-do topic discussed is emotions. Punnett reminds his readers that mediation is a conciliatory process, and adversarial skills should not trump agreeable resolution skills.

This book is a reliable primer on the subject of mediation practice. Given how pervasive mediation and other forms of alternative dispute resolution have become in the practice of law, and given the practical manner in which Punnett presents his subject matter for practitioners, Punnett might want to consider future volumes or even a sister volume on arbitration.

This book’s collaborative scholarship is highly readable and balanced in its approach. It is a must-read for litigants engaged in mediation. L