

Introduction

This book explains how to mediate legal disputes—cases serious enough for parties to hire lawyers to represent them—and describes the techniques you can use to resolve them.

What Makes This Book Unique?

This book explains how to mediate legal disputes—controversies involving issues serious enough for parties to hire lawyers and threaten or file lawsuits. It provides beginning mediators, experienced neutrals, and advocates with the techniques they need to resolve difficult cases.

In recent years, commercial mediation has exploded in popularity. Disputes over business contracts, personal injuries, employment, intellectual property, construction, and other issues go to mediation today as a matter of course. When peoples' strong hopes and disappointments combine with legal warfare conducted by professional combatants, the result is often a toxic brew. To settle such disputes, parties often need the assistance of a professional neutral.

Much of the writing about mediation focuses on teaching how to promote communication and help people to develop creative solutions. Such methods can be very helpful, especially when parties have a strong incentive to repair a troubled relationship. This approach is not well-suited, however, to resolving serious legal disputes. Mediators must be able to facilitate dialogue in such cases, but to achieve settlement must be able to apply other techniques as well.

This book teaches how to manage adversarial bargaining and overcome other barriers that frustrate legal settlements. You will learn how to:

- Mediate effectively between parties who will not talk with each other.
- Deal with “insulting” first offers, “backward steps,” and other tactics used by hard bargainers.

- Change how parties assess their legal cases, using both facilitative and evaluative techniques.
- Add value to settlements and respond to hidden emotional issues.
- Overcome impasse through specialized tactics ranging from confidential listener to a mediator's proposal.

Case Examples

You'll find the teaching points illustrated by examples from actual cases in which mediators used the methods described to settle a wide variety of disputes.

Unique Video Resources

You will be able to view excerpts from videos in which leading mediators apply these techniques.

Three Books in One

This book is in three parts, designed to focus on information for novices, experienced mediators, and people working in specific practice areas.

- *Part I* gives an overview of a basic strategy and the stages of a typical legal mediation.
- *Part II* focuses on complex barriers that frustrate legal negotiators and sophisticated techniques to deal with them.
- *Part III*, authored by leading mediators, gives specialized advice about how to resolve employment, personal injury, environmental, intellectual property, and "mega" cases.

A Note about Writing Style

Almost all of the examples in this book are drawn from my own practice. I've changed names and details to protect confidentiality and written in the third person to make it easier for readers to place themselves in the mediator's role.

I also refer to "court" or "trial" as the most likely alternative if parties do not settle. These terms are meant to include all alternatives to settlement.

For purposes of clarity, I also assume that mediations are conducted in person and involve only two parties. Chapter 2 explores differences when cases are mediated virtually, using video, and Chapter 5 describes the special issues that arise in multiple-party disputes.

You will find it extraordinarily rewarding, at the end of a difficult day, to bring litigants to a peaceful resolution of a difficult conflict. But it is a complex and challenging task. This book is meant to give you the tools to perform it well.