

The Fine Print

Practice guide is mediation's magnum opus

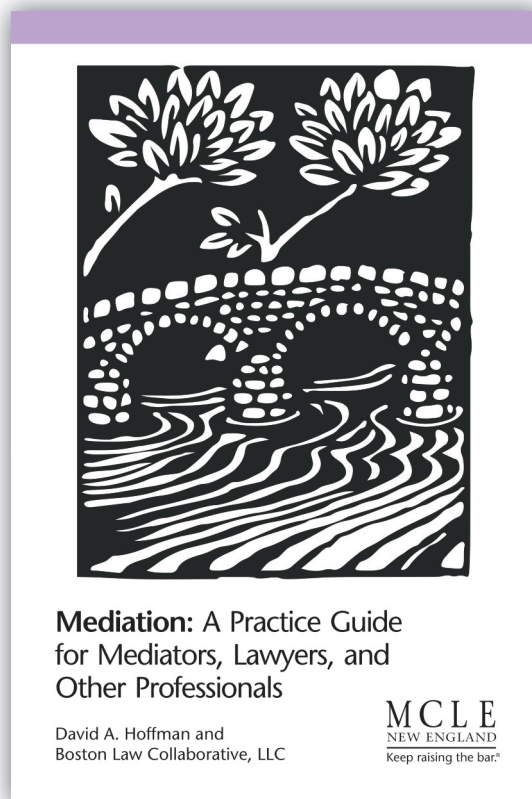
By Les Wallerstein

Like most emerging professions, mediation has spawned an abundant literature of mediocre merit that is often ignored and easily forgotten. By contrast, "Mediation: A Practice Guide for Mediators, Lawyers and Other Professionals" by David A. Hoffman and Boston Law Collaborative is an extraordinary tour de force brimming with insight and wisdom.

As lead author, Hoffman draws on his wellspring of experience with contributions from colleagues at the Boston Law Collaborative he founded. (Contributing authors are attorneys Israella Brill-Cass, Nicole DiPentima, Annie O'Connell and Katherine Triantafillou and clinical psychologist Richard Wolman.)

Hoffman weaves a tapestry touching on virtually every aspect of mediation, from the minutia of seating arrange-

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ments to the intricacies of confidentiality and privilege, from representing clients in mediation to ethics, ranging from a theoretical overview of mediation to a discussion of its underlying principles.

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"Mediation: A Practice Guide for Mediators, Lawyers and Other Professionals"

By David A. Hoffman and Boston Law Collaborative
MCL E New England, 2013
752 pages; \$65

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His focus is on both family and civil cases (commercial, personal injury, etc.), and he interweaves stories of both types of mediation into the fabric.

The uniform structure of the book makes it eminently readable as well as practical. Each chapter begins with a detailed table of contents and a

chapter précis titled "Scope Note." The text is enhanced by numerous "Examples" and "Practice Notes" to illustrate the hands-on work of mediation.

The book includes extensive appendices stocked with technical resource

materials. And while “Practice Guide” addresses universal issues in mediation, its jurisprudence is grounded in Massachusetts law, a special benefit for the Massachusetts mediation community.

The inherent strengths and weaknesses of any practice guide stem from a common source — the need to cover an enormous amount of material in limited space, which requires the distillation of complex concepts that warrant book-length analyses. Rather than skirting the issue, this book strives to ameliorate that reality with frequent invitations for the reader to explore subjects in greater depth, by providing plentiful references to primary source material.

Here are four short examples of what awaits the willing reader:

The provocative question, “Why screen for domestic violence?” receives the following analysis from several authors:

“Because of the potential danger associated with disclosing a history of domestic violence to a mediator or third party, as well as feelings of shame associated with a history of such violence, mediators seldom learn about this aspect of the parties’ past unless they inquire. There are two primary reasons why mediators should screen for domestic violence. First, if the mediator is unaware of the problem, she could elicit information in a joint session that would put one of the parties in danger of reprisal. Second, the mediator could be unaware of a power dynamic related to a history of domestic violence that puts one of the parties at a severe

disadvantage regarding her ability to safely assert her own interests ...” (§3.2.3(a))

In his consideration of the “stages in the mediation process,” Hoffman advises mediators of the need for delivering bad news gracefully: “Another vital skill in helping the parties and counsel assess the value of their case is for the mediator to communicate reality-testing questions with more than impartiality — with compassion. The parties and counsel may have invested considerable time and effort in developing their claim or defense. They may lack an objective view of the case. Any questions that you raise — even if invited — may be viewed with skepticism or defensiveness, or as an attack on their judgment or ability. Therefore mediators need to tread lightly, but candidly, in providing this type of feedback.” (§4.7.2(b))

Hoffman’s creative, out-of-the-box problem-solving skills are well illustrated in his story of bringing a husband’s mother-in-law into the process:

“In a marital mediation case in which the parties wished to remain married, the parties told the mediator that one of their major problems was the tension between the husband and the wife’s mother. The next two mediation sessions were held at a bagel shop near the mother-in-law’s home, and the only attendees were the mediator, the husband, and his mother-in-law. The bagels were excellent, the discussion was productive, and the parties are still married.” (§4.9.1(b))

Lastly, in a chapter entitled “The

Psychology of Mediation,” after an examination of the power of belief and expectations of clients and attorneys, the authors focus their attention on the often-overlooked subject of mediator expectations in a section entitled “The Psychologically-Minded Mediator”:

“In order for agreement to emerge from the thought, experiences, and creativity of the parties, the mediators must achieve a psychological stance that is difficult to achieve. The mediator must learn to detach herself from the outcome of the mediation ...” (§7.3.1(d))

Everyone with any curiosity about mediation will find something of interest and lessons to be learned. Mediator aspirants will find practical advice from the ground up, considering every conceivable aspect of how to establish and maintain a mediation practice. Seasoned practitioners will discover thoughtful analyses of conundrums and contradictions of the human condition that pervade all mediations.

No one who has had the pleasure of rubbing shoulders with Hoffman will be surprised to learn that his new book is available both in the traditional format of the printed word as well as digitally, as an eBook, revised “with regularity.”

The overarching strength of this magnum opus is the authors’ humanity that permeates its pages, enriched by real tales from the trenches. If you could have but one book in your library on the subject of mediation, or only one in your digital collection, this should be the one. **MLW**