

# Introduction

## *How I Found My Dharma in Mediation*

*When I found my dharma in mediation, everything  
fell into place.*

*Jeff Krivis*

It's a given: *no one* goes into mediation to make their fortune. Virtually every successful mediator I know—whether their specialty is employment, entertainment, insurance, personal injury, family law, public policy, or something else—was drawn to the field for its richness and possibility. Each one of them thinks of mediation not just as a job but as a vocation: a calling. Many of them—including former litigators who were making a lot more money taking cases to court—stay in the field despite the fact that they are not earning anywhere near their former salaries.

Still, a small but growing number of mediators today are making a very comfortable living in the low to middle six figures, and a few are enjoying returns verging on and even achieving seven figures. How do they do it?

And how can *you* do it?

That's what this book is about. We spoke to some of the most successful mediators in the business and asked them to share their experiences, their advice, and even their secrets. And we discovered something interesting in the process: despite the fact that we all began in different fields (including corporate business, commercial litigation, teaching, insurance adjusting, and social work) and

practice in different geographical areas (from California to Michigan to Hawaii, from Canada to New Zealand), we all share similar feelings about what it takes to become a successful mediator.

## MY STORY

I never planned to become a mediator. When I was in law school and for the first years of my practice, mediation wasn't an option. In fact, it wasn't even a field. Then, in 1989, everything changed.

At age thirty-three, I had a successful litigation practice earning a respectable six-figure income—that was, and is, a lot of money for a young guy, and there was no monetary reason for me to change what I was doing. But when I thought about my future, I just couldn't see myself summarizing depositions and responding to interrogatories for the next thirty years.

Then a client asked me to settle a case through a mediator. A mediator? We didn't have those in California, I told him, but I knew that other states did. I looked around, asked a few questions, and eventually the client referred a mediator from Texas, Richard Falkner, to work with me. It didn't take me much time to discover that the process worked and to find that I admired its authenticity. In short, mediation felt right, and I connected to it.

When the case was settled, I asked Richard, "Do you really do this for a living?"

"Yes," he replied. "It's part of our state court system." And then a great thing happened: he invited me to go to Texas and get training in the mediation process with his partner, Gary Kirkpatrick; this personal approach was pretty much the only kind of training there was in those days. I jumped at the chance, hopped on a plane, and spent a few days attending an interactive workshop on mediation. Those few days illuminated my future, showing me a vision of what was possible and what my life could look like. I returned home inspired. I would be a mediator.

## Getting Started

After I came back I investigated around the country to see who was doing this for a living. I soon discovered the Connecticut Mediation Project, which had been started by the state's insurance industry to get trial lawyers to come to the table and mediate their cases instead of litigating. It was organized by Don Reder, a nonlawyer, who became one of the key mediators in this highly successful program. He eventually started his own firm, Dispute Resolution Services. It had a roster of professional mediators, mostly retired judges, and Don. Marketing people handled the phones, and administrators scheduled cases. It was quite an operation. When I called, my obvious interest touched a nerve, and Don invited me to spend a couple of days observing. I sat in literally every office of his business and watched his people work. I asked questions and sat in on mediations. Now I had a business model. There was nothing in California like this, and the experience really helped me understand where the market could go. It was an exciting time, and I couldn't wait to get started.

I had a young family, a wife and two small daughters, and I knew I had to sustain them, but my own vision wasn't about the money: it was about doing something I was called to do and felt I could do well. If I made money, great. If not, well, I had a lifetime ticket that allowed me to return to the grind of trial work.

I like innovation, and I like to be involved in creating things. Like other successful people in this field, I don't mind taking a risk. At that time, however, becoming a mediator was more about saving my life than it was about starting a new career. In my law practice, I felt I was becoming a slave to the bureaucracy of corporate America. I was losing my character, and fast.

For example, to make sure my corporate clients felt comfortable, I had to keep my office decor bland and nonthreatening. Standard furniture, conventional prints framed and hung on the wall, no personal effects to hint at my personality, nothing too extravagant—

an uninspiring picture calculated not to offend the sensibilities of a corporate bureaucrat. My office did put the clients at ease, but it didn't feel like home to me. I grew increasingly dispirited, and wished that instead of dragging myself to the office I could wake up every day inspired and motivated to go to work and feel good about myself. Time felt precious; I didn't want to waste another minute.

Mediation was my ticket out. It let me find my own voice and not be the voice of an industry, a hired gun. As I mediated one case after another, I began to find that I could have fun with the process, trying different approaches and expressing aspects of myself I hadn't even known were there. I soon discovered that I thrived on building the intimate relationships that develop in mediations. People trusted me; they wanted to reveal their secrets and goals, and my job was to help them realize these goals. I also discovered that I didn't mind dealing with the ambiguity that arose when I put myself in the center of the tug-of-war between the conflicting parties. I'm also an idea juggler; I like having a lot of balls in the air. So that part of the process—going from one room to the next, understanding how each party was thinking, trying to help them reach multiple goals—suited me perfectly. To make a long story short, I found my groove in mediation, and the money seemed to follow naturally.

When I began, I had a goal. And I told myself that if I wasn't moving forward and creating progress, I could always stop and go back to the practice of law. But every year I did make progress, even baby steps, so I kept going.

### **Growing a New Profession**

Fortunately, I wasn't alone. I was one of a small group of people who were trying to change the prevailing mind-set—that the courthouse was the only option available to resolve a case—and create a new field of practice in the civil justice system: mediation. I immersed myself in the idea of putting mediation on the map in California and got involved with the brand-new Southern California Mediation Association (SCMA), which had started at Pepperdine Uni-

versity School of Law. I joined with others in the legislative efforts to require the largest court in the country—the Los Angeles Superior Court—to mandate the use of mediation in all civil actions, and I found a receptive audience in the courts, in the trial lawyers' association, and in the insurance industry. The courts were already leaning toward mediation because of the obvious advantage of closing cases faster, saving administrative costs, and generally giving their customers—the public—more client satisfaction. At that time they were beginning to explore the process with retired judges, using mediation as a kind of settlement conference. It was a start, but to my mind this was just scratching the surface of what the process could be.

From a business standpoint, I realized that if I could get the courts to accept the idea of mediation as a valid process in its own right, I would be there to catch the fruit that fell from the trees. So I got involved in educating lawyers and judges about the process, spending a lot of time trying to convince the California courts to mandate mediation. They generally thought this idea was something of an oxymoron, because mediation is voluntary by nature. How do you *force* people to negotiate? We argued that two other states, Texas and Florida, were already successfully mandating mediation. Clearly we needed to educate lawyers about the process quickly if we were going to get the ball rolling in California.

We knew that if we got lawyers involved in mediation, the process would sell itself. So we pushed hard for two or three years, an informal but relentless effort by a group of highly motivated and committed individuals—the SCMA, Pepperdine, the Los Angeles County Bar Association, community leaders—getting together and asking, What can we do to institutionalize this process?

This effort opened some important professional doors. More and more lawyers got to know and trust me, and that began to pay off in cases coming my way. A big personal turning point came 1992, when a large insurance company decided that it wanted to settle hundreds of cases at once and wanted one mediation firm to handle

the whole thing. A request for proposal was sent out to various mediation providers, and I was selected. That introduced me to a lot of lawyers—one for each case. I got on the phone and invited trial lawyers to attend a voluntary mediation, with me serving as the impartial mediator. They were reluctant at first, but in the end 70 to 80 percent of the cases agreed to mediate, *and they all settled*—not so much because of my skills as a mediator, but because the insurance company was motivated to settle. These lawyers, however, gave me more credit than I was perhaps due, and started referring more business to me.

### **Personal Success in a Burgeoning Field**

In 1994, the field really took off when a group of ambitious mediators got the California court system to sign off on mandated mediation as a new law in Los Angeles County. The same year, I also became affiliated with Pepperdine University, where I had done a workshop in dispute resolution. After that, I was invited to teach a class and direct a six-day program called “Mediating the Litigated Case.” Although I had never taught before, it seemed to come naturally and challenged me to stretch my abilities to connect with an audience, something all mediators need to do. Through that affiliation I was able to find institutional credibility in the marketplace: Pepperdine would regularly send out brochures about the course, with my picture prominently displayed, and it was terrific public relations at no cost to me. This was an unexpected bonus that helped me market myself and make money.

By 1996, I was fairly well known in the Southern California marketplace, and one of the few full-time mediators. In fact, the *Daily Journal*—read by every lawyer in Los Angeles—did a full-page profile about my practice called “A Full-Time Mediator Is a Rarity in California.” In addition, I wrote a lot of articles for a variety of publications about mediation techniques and skills, learned to be a public speaker, became president of the SCMA—and all just because I truly enjoyed my work. It’s great to wake up every day and look forward to what you’re doing.

Today I'm making more money as a mediator than I did as a lawyer, yet ironically I'm more active in the law than I was when I was actually practicing law. I regularly read appellate decisions in order to stay updated on the various areas of the law I practice in, and I get to enjoy personal relationships with a wide variety of people. Like any entrepreneur, I have my ups and downs. If the phone doesn't ring for a day, I used to be concerned. Now I realize it's part of the rhythm of the business.

## GETTING IN THE DOOR

Some mediators are seen as fringe players in the civil justice system until they become established. Other mediators, many with excellent skills, *never* become established. So the question is, what does it take to get established, to be the name that repeatedly shows up on the ledgers of people who are looking for mediators?

You need to begin by thinking of yourself as a professional mediator, believing in yourself, and living the part every day. You need to develop a reputation for mediating well and staying with a case until it closes. But beyond these fundamentals, you need to understand how to market yourself as a mediator: what it takes to get the power players on your side and what you need to do to be seen as—and become—part of their group.

To take a very simple example, I wear a suit and tie to work every day because when people go to court, they wear a suit and a conservative tie. I would be far more comfortable in khakis and an open-collar shirt, but I would also be viewed as a fringe player by the established players—lawyers—by whose good graces I survive. Because I want to be part of the established legal circle that views me as the head of the table, I dress accordingly. That doesn't mean I have to conduct the process in a staid and conservative manner—far from it. But dressing the part gets me in the door.

Here's another example. When I decide to write an article on mediation, I don't try to get it published on the op-ed page of the *Los Angeles Times*, but in the journals that my clients read every day.

I might reach thousands more with the *Times* article, but I won't be reaching the people who decide which mediator gets the case. Being perceived as an authority by potential clients gets me in the door.

The point is, do what you can to get in the door! Once you're inside the caucus room, you own it. You can work the room to your heart's content and be as creative and imaginative as you need to be to settle the case. But that involves another set of skills, not the ones we're talking about in this book.

Your ability to open the door and walk through it—your grasp on what it takes to market yourself as a mediator and manage your business well—will make or break your career. Making money as a mediator isn't the whole ball game, but it's a sign that your skills are recognized by your peers, that you have a high degree of business and marketing savvy, and that you're 100 percent committed to the practice of mediation. You've distinguished yourself from the mass of mediators and made it to the top: you've got the right stuff.

If you want to make money as a mediator—and achieve the success and satisfaction that come with the privilege of being able to work every day at a job you are passionate about—you'll do well to follow the models set by the thirty top mediators who were gracious enough to share the secrets of their success in this book. Nobody wants to give away the store to his or her competition, but the best mediators understand that they're not in competition with anyone but themselves. They understand that the practice of mediation is all about people and that sharing their wealth of knowledge and experience to help other talented people reach the top can only help the profession as a whole.

Every successful mediator I know—myself included—feels “lucky” to be able to work every day in a field as rewarding as this one. We all join in wishing you the very best of that luck in your chosen career.