

How to Make Money as a Mediator (and Create Value for Everyone)

30 Top Mediators Share Secrets
to Building a Successful Practice

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Jeffrey Krivis and Naomi Lucks

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*To our friends and colleagues at the
International Academy of Mediators*

Acknowledgments

This book is a result of a unique collaboration with prominent practitioners who have shared their unvarnished insight into the ideas, attitudes, and approaches that have made them successful. This unique collaboration seeks the larger objective of helping our fellow mediators achieve their goals of prosperity and productivity. For this reason, the men and women who contributed to this book deserve a standing ovation: the sum total of their cumulative knowledge far exceeds what two people writing this type of work could have brought to the field.

We are truly grateful to many of our friends and colleagues at the International Academy of Mediators, who have provided unconditional access to their years and years of experience in the marketplace.

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How to Make Money as a Mediator (and Create Value for Everyone)

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.

Extreme Mediation

What Top-Tier Mediators Know That You Can Learn

I am as excited about my 3,700th mediation as I was about my first. This is a bring-your-A-game business. You have to be as strong on Friday as you are on Monday. If you make them know you are glad to see them and psyched for the task at hand, they'll be back.

Eric Galton

You're a natural: you know in your bones how to bring a room full of chaos and conflict to harmonious closure, and you just keep getting better and better. You've been a professional mediator for a while now, and there doesn't seem to be an upper limit to your improvement. You love what you do, and people want to be around you—you radiate energy. They'll even pay a lot of money to work with you and learn from you. You don't have to think about it: life is good. There's nothing else you would rather be doing.

This is how every single top-tier mediator I know experiences his or her profession. If this is how mediation makes you feel, you've got a real shot. But please note: these super-successful mediators are standing at the top of a pyramid that has a very broad base.

You've probably heard the 80-20 rule: 20 percent of the people do 80 percent of the work. That's as valid in mediation as it is anywhere, and perhaps more so. In mediation—whether it's commercial, employment, family law, dispute resolution, or any another



You Gotta Have Heart

You've got to have fun doing it. You have to have a passion. You put your energy where your heart is. You put your treasure where your heart is. If your interest is truly there, you put your resources there. Money will not give you a mediation business. It requires your time and effort in interacting with other people.

Robert Jenks

specialty—the mediators on the bottom tier of the pyramid are constantly scrambling for work, losing heart, and returning to their former careers or searching for a new path. Those who do manage to rise up to the small middle tier—about 15 percent—stay busy, make a good living, but never quite break through. Meanwhile, the top 5 percent—for our purposes, the highest earners in a given region—have calendars that are filled months in advance and bank accounts that are bulging at the seams.

Some of this success depends on one's niche. It's no surprise that mediators who work primarily on panels or part-time or in family law or neighborhood disputes are unlikely ever to see the kind of money that a full-time mediator who settles multiparty construction cases brings in regularly—even if their negotiation skills and personalities are in every other way equal. That may not seem fair, but—at least for now—that's the way the mediation market is set up.

Mediation is an extreme career. Many describe it as a calling. It's a field in which you *can* be wildly successful—think Tiger Woods, Martina Navritolova, Lance Armstrong—but only a relative few make it to that top tier and thrive. Those who do can't imagine

doing anything else. Like Paul Monicatti of Michigan, they say, “Mediation is my passion, and it is also so much fun for me that if I didn’t have to pay bills, I’d do it for free.”

If you can say the same, then you’ve found your calling as a mediator. If you don’t have the energy, the love, the passion for mediation that the top people have, the truth is that you’ll probably never join them.

FALLING OFF THE MEDIATOR BANDWAGON

It seems as though everybody wants to jump on the mediator bandwagon these days. As New Orleans mediator Robert Jenks says wryly, “You can’t swing a cat without hitting a mediator, but you can swing a lot of cats without hitting a good mediator.” Toronto’s Cliff Hendler agrees: “Virtually every lawyer who appears before me in mediation says, ‘I could do that.’” And in Minnesota, Michael Landrum says, “I can’t remember the last time I was in a mediation when one of the lawyers didn’t say, ‘Well, I’m a mediator too!’” I, too, have had this experience many times over.

Not surprisingly, our profession is packed with people who are trying to get a piece of the ever-expanding mediation pie. If you’re a mediator, you’ve probably been through at least some basic mediation training. The number of trainers and programs seems to be exploding, and they are turning out hopeful new mediators almost daily. For many would-be mediators, this career choice seems like a no-brainer. Unlike the person getting a credential to become a teacher or a law degree to become a lawyer, or putting in years of study to become a doctor, you don’t need years of dedicated schooling and a special degree to set up a practice. And look at the payoff: the most successful mediators are shining examples of what might be—they’re making a lot of money, they seem to enjoy their work, and they make it look easy.



Only a Few Survive

The mediation pie can expand, but the number of people eating that pie expands geometrically. So if business doubles, we've got quadruple the number of people wanting to be mediators. But only a small number of people are going to sustain themselves as mediators long term in the private sector. The volume of people interested in being mediators is always going to exceed the number who are really able to do it.

I think too many people go out there and train as a source of income—and you can make an okay amount of money. If people are taking the training to skill enhance, that's fine. But I get a résumé once a week from a person who says, "I've just been through mediation training; I want to get into this field. Do you have any jobs for me? If you don't, can you give me advice?" And I do give them advice. But the truth is, making a good living in mediation is a very difficult thing to do.

Robert A. Creo

Crash! Most of the freshly minted newcomers who burst out of basic programs raring to go stumble at the first gate. What they're stumbling over is their own skewed idea of the reality of a mediator's life and what it takes to achieve success.

The first hard lesson newcomers learn is that experience and success count for a lot in this business, and they have yet to acquire it. Southern California mediator Nina Meierding says, "I receive dozens of calls from people who want to 'take me out to lunch' so that I can tell them how to be an instant success. The brutal reality is that there is no instant success—it takes commitment, a



Field of Dreams

I, too, initially had the *Field of Dreams* approach: “If I build it (mediation), they (the public) will come.” I believed that the concept of mediation was so good and so right that anyone would immediately see its value. This is not true. The need for mediation is greater than the demand; and if you are to make your career in mediation, you must be strategic, thoughtful, thorough, and self-evaluative in your approach.

Nina Meierding

healthy dose of risk tolerance, a solid business perspective, and faith in yourself.” Chris Moore, who specializes in dispute resolution at CDR Associates in Boulder, Colorado, says, “One of the things that makes the biggest difference is a track record. Which means that it’s harder for a new mediator to leap in and have a successful business. You need to estimate that it’s going to be about five years before you have a sustainable practice—if you get there.”

Five years?

For Geoff Sharp, a successful commercial mediator in Wellington, New Zealand, the first few years were anything but glamorous. “My story,” he says, “involves lonely days at the afternoon movies in my first year of practice, wearing suits to an empty office and putting the kids’ school fees on Visa. Seven years later it involves doing rewarding work in my chosen field and telling wannabe mediators to get staunch, do the hard yards, and realize this is no ordinary profession with established pathways to practice.”

Getting a track record of successful settlements entails having clients—and that means courting contacts, and that means getting

out there and doing the hard marketing: selling yourself, but in the most effective and personable way possible. And, for many, it also means learning how to run a business and keep it going on a very short shoestring. Often it means working more hours than you sleep and staying sharp enough to do it all again the next day.

The majority of people who say, “Hey, I could do that!” and complete a forty-hour basic mediation course quickly discover that making a living in this profession is not nearly as easy as it looks from the outside. In fact, it’s not easy at all. Sooner or later, those for whom the hard work outweighs the fun drop away.

NOT FOR THE FAINT OF HEART

As the old saying goes, “Many are called; few are chosen.” Pursuing a truly successful mediation career is not for the faint of heart. As Geoff Sharp says, mediation is no ordinary profession—and there is no one golden road to success, financial or otherwise. Each of the relative handful of super-successful mediators has his or her own road story to tell. Some left successful litigation practices because helping people resolve disputes without rancor felt better than arguing one side over the other. Philadelphia lawyer-turned-mediator Ben Picker recalls, “I became a lawyer primarily because of my desire to work with individuals in a collaborative effort to solve their problems. Until I began my mediation practice, the greatest satisfaction I received from the practice of law was from my work on public interest and pro bono matters. As a mediator, far more so than when I was a trial lawyer, I engage in a collaborative effort to solve problems and in a process where the people are as important as the issues. As a consequence, I feel more than at any other time in my professional life that I am adding value to the profession.”

Some, like former insurance professional Cliff Hendler, left actuarial or accounting careers because they found a truer calling in working with people around the same issues they used to resolve on