

Upsizing: Upsizing: How to Build and Operate an Increasingly Profitable, Sustainable ADR Practice

Presenters: Diana Mercer, Attorney-Mediator, Los Angeles, CA, Founder, Peace Talks Mediation Services, Inc.; and Dennis McCue, Certified Management Consultant, President, Dynamic Firm Management, Inc., Newport Beach, CA.

Program Description: You've started your ADR practice and you've got a few cases, but how do you make ADR a profitable, full time business? Join a full time mediator and a law firm management consultant to learn how to transition from an entrepreneurial startup to a vibrant, mature and profitable ADR business.

Program Outline:

- Lawyer becoming mediator or arbitrator: What is the attraction? What is the personality?
- Have a compelling WHY.
- The differences between entrepreneurial venture and mature ADR practice
- Your ADR practice should be run as a business. Use profit as your beacon.
- How do your beliefs shape what is possible?
- Who do you say that you are? What role do/will you play?
- Professionalize your operations and management systems
- ROI: Using metrics to measure your progress
- The planning process: from business plan to strategic plan
- Commitment: Its critical role.
- Roles of accountability, responsibility, and effective delegation
- Putting it all in motion and keeping it moving

How the Journey Began

Diana Mercer started a successful family law practice in 1993, at the age of 29. Noyes & Mercer, PC (New Haven, CT) was so successful, in fact, that her first paycheck was twice as large as those from the law firm she'd left. So why was starting a successful mediation practice so illusive?

Two years ago Diana decided it was time to stop hanging around with lawyers if she really wanted to get her then six year old mediation practice -- Peace Talks -- off the ground. So she started to associate with business people. She applied for -- and won -- the "Make Mine a Million \$ Business" Award. One of the prizes was business coaching. While her initial experience with the business coach was fine, to go to the next level she knew she'd be better served using a local consultant.

A series of inquiries led her to Dennis McCue, a business consultant known for his work with attorneys. After discovering that another attorney's income had doubled within a few months of working with Dennis, Diana decided to engage his help.

But where to start? And how does this story end? To learn, visit www.peace-talks.com/ABADRS.

March 24, 2008 update: Peace Talks' gross revenues have increased by over 90% year to date (January-March 2007 to 2008).

Introduction

While mediation has matured as a profession, with numerous books, top-level training programs, conferences and international professional organizations, mediation as a business is in its infancy. For the field to mature from niche solo practitioners and boutique firms into successful, profitable, and notable businesses, mediators need to learn how to start, operate and grow a thriving mediation practice.

If the goal is to become a full-time ADR practitioner or to invigorate an existing part-time ADR practice, then an entrepreneurship education is in order. **YOU MUST BEGIN TO THINK AS A BUSINESS!**

What are some characteristics of successful entrepreneurs, and how do these translate into the business of mediation? In short, successful entrepreneurs are self-reliant, motivated, confident, disciplined, creative and tolerant. But to successfully start a business, and then transition it from entrepreneurial startup into a mature, growing enterprise takes a special set of skills. The business concept has to be well developed before any entrepreneurial activities are begun and it has to be designed to both change and sustain itself. This requires a mindset that begins with suspending the belief that you know what to do and move into a mode of understanding that you only have some vague (or maybe clear) idea of where you want to be. With the end in mind, you can begin to develop the roadmap (business and strategic plans) that will help you get from today's circumstances to the mediation business you would like to have.

What is the entrepreneurial cycle in the context of an ADR practice? It starts with identifying a hole in the market place, a need that is evident yet unfilled. From here, specific opportunities are identified, beginning with gaining a better understanding of the need, with exploring ones own personal circumstances, skill level, interests and motivations for wanting to move in a particular direction, and with thoroughly researching the business environment: present condition and future trends.

The analysis starts with the marketplace: For example, where are the opportunities in your community?

- Can my new ADR practice find a place in a well developed market? or,
- Can my practice be one of the first in a new market?
- What do I have to offer that will set me apart from other providers?
- How can I be accepted into a maturing market as an equivalent service provider?

Given the opportunities, are you in a position to take advantage of them?

- Are my personal and professional responsibilities compatible with my pursuit of this venture? If not now, when and under what circumstances?
- Can I afford the investment of my time, my money and lost opportunity?
- Am I ready to start over in a new career or field?

And what about your tolerance for business risk?

- What will happen if I fail? Do I have the fortitude and emotional make up to weather the disaster?

And your tolerance for business growth?

- If I am wildly successful, then what? Are you willing to give up your concept of who you are so that you can become the person you will need to be?

Let's say that you have now learned everything you need to know about yourself and your circumstances and you understand your market. You are prepared to move forward. At this point, focus on management issues is essential. For example:

- What is the purpose of my business?
- What values are important to me?
- What is my vision of success?
- What resources will it take to get there?
- What are the external and internal environmental factors which will influence the success of my business?

In building a solid business plan, you'll answer each of these questions with specificity--all before you spend your first dollar on office supplies.

As your planning continues, you'll answer these questions:

- What is my start-up strategy?
- Which legal structure is best?
- What is my financing strategy?
- Who are my trusted advisors, and what do they think of my plans? Pay particular attention to those who seem negative or demanding... they are probably your best friends. (Many advisors are inclined to tell you what you want to hear.)

And, once you're ready to actually open your office:

- What kind of facility and staff will I have?
- What is a reasonable marketing budget?
- What marketing methods will be most beneficial?

No successful business starts without an end in mind. Although the one constant in business is change, employing metrics to measure, evaluate, and re-evaluate each of your business strategies and plans is crucial to ongoing success, growth, and maturation with the marketplace. Beginning with the end in mind, you'll ask and answer:

- What is my ultimate goal?
- What is my growth strategy?
- How can I measure my progress?
- How can I continue to monitor the marketplace and evaluate my services in the context of the internal and external environment?
- How can I find and evaluate new opportunities within the field?
- What is my exit strategy?

As you go through the phases from startup to mature enterprise, you'll use your business plan (Make sure that you have one – written out, not just in your head!) over and over again as a guide as to which activities create value, and which aspects put you at risk for destroying the value you have created. For example, does a particular activity increase cash flow, increase your expected growth rate, give a competitive advantage for a longer period of time or reduce costs? If so, then the activity adds value. If not, perhaps it is time to consider a different service or strategy. Your success in the early months or even years will be measured by how closely your operations match your business plan. It is not as simple as asking whether or not you are operating in the red. Evaluation and reevaluation will allow you to answer the question: Am I on track for economic health? Using your plan in this way will help you to work smarter, to avoid quagmires and to direct your attention to value creating activities, plus it will help you to stay positive and motivated.

Let's say you have achieved a sustainable practice. The transition from startup to mature business can be tricky. The same entrepreneurial energy may or may not serve you well as you set up business systems, evaluate new business opportunities, and grow your business. How can you evaluate your business impartially, and make sure it's poised for future success, without letting emotions cloud your vision?

Repeating the same steps initially undertaken to start the business will inform your decisions. Asking such questions as:

- Do I want to simply maintain my current level of activity?
- Am I interested in branching out into new geographical or specialty areas?
- Are there other areas of unmet needs that I could address through my practice and which may represent business opportunities?
- Have I lost my focus?
- Are my services still relevant to consumers?
- Does my practice need to be revitalized?

- Have I fallen into the trap of expert bias?

The answers to these questions could reveal that it's time to reassess and reevaluate your practice, and to update your strategic plan. If planned well, letting go of some aspects of your practice may be the best thing for you and for the business. You may find yourself personally energized by a collaborative relationship with another provider or strategic partner.

The goal for *Upsizing* is that practitioners will have the luxury to make a good living doing work that they love, and that they are able to build a successful business which meets the needs of their community and consumers at the same time.

Resources:

Books:

Really useful general business books:

The E-Myth Revisited: Why Most Small Businesses Don't Work and What to do About it, by Michael Gerber (Harper Collins 1995). See also www.e-myth.com.

Growing Pains: Transitioning from an Entrepreneurship to a Professionally Managed Firm, 4th Edition, by Eric G. Flamholtz and Yvonne Randle (Jossey-Bass 2007). Consultant Yvonne Randle is especially insightful and helpful: contact: yr@mgtsystems.com see also www.mgtsystems.com

Books about starting or operating a mediation practice, with mini-reviews:

Becoming a Mediator, by Peter Lovenheim and Emily Doskow (Nolo Press 2004) and *Becoming a Mediator*, by Peter Lovenheim (Jossey-Bass 2002). The Nolo Press book is an update and addition to the earlier title. Both are great books, but they don't go into much detail beyond setting up an office, and they don't discuss or evaluate the business operations protocols and metrics which mediators need in order to run a successful, profitable business that offers mediation services (as opposed to working as a mediator who happens to be in business). www.nolo.com

Mediation Career Guide, by Forrest S. Mosten (Jossey-Bass 2001). A terrific book aimed at helping a budding mediator decide whether or not to make a career transition to mediation. This book contains very little about setting up and running a practice, even less than *Becoming a Mediator*, and nothing at all about the entrepreneurial business decisions involved in operating a practice.

The Complete Guide to Mediation, by Forrest S. Mosten (ABA 1997). Again, a terrific book, but its focus is different than *The Business of Mediation*. Other than a chapter on setting up a mediation-friendly law office, the focus of *The Complete Guide to Mediation*

is on mediation skills, lawyers as mediators, training, and some paperwork and drafting issues, not on setting up a mediation office as a business.

The Fundamentals of Family Mediation, John M. Haynes (State University of New York Press 1994). The late Dr. Haynes published this classic that is still a favorite among practitioners. This book is geared toward divorce mediation professionals; its emphasis is on family law mediation skills and devotes only a few pages to running a mediation practice.

Starting Your Own Mediation Practice: A Workbook, Sarah Childs Grebe (Casamar Enterprises 1985), appears to be out of print and neither Mercer nor McCue has even seen a copy.

The Divorce Mediation Handbook: Everything You Need to Know, Paula James (Jossey Bass 1997), focuses on how to mediate divorces, not the business of setting up and operating a divorce mediation practice from a business perspective.

Marketing and Maintaining a Family Law Mediation Practice, Paula James (American Lawyer Media 1994) appears to be out of print. This book is a decent primer on the basics of setting up a practice, but offers little detail on the business of running and growing a mediation practice as a profitable business.

How to Start and Build A Law Practice 5th Edition, Jay G. Foonberg (ABA Press, 2004) is similar in focus to *The Business of Mediation*. It's also one of the ABA Press' most popular titles and a solid seller on Amazon.com. It's the book Diana Mercer used when she started Noyes & Mercer, PC, and it continues to be a great resource.

How to Make Money as a Mediator (And Create Value for Everyone): 30 Top Mediators Share Secrets to Building a Successful Practice, Jeffrey Krivis and Naomi Lucks (Wiley Jossey Bass 2006) is a nice complement to *The Business of Mediation*. The anecdotal stories shared by the mediators in *How to Make Money as a Mediator* focus on the skills, personality traits, and practices which have made some of the country's top mediators successful. It does not, however, outline how to set up a business, how to design and implement office protocols, engage in strategic planning, or grow a business from a business perspective.

Program materials: www.peace-talks.com/ABADRS

Appendix:

Role Descriptions: <http://peace-talks.com/employment>

Online Resources: www.mgtssystem.com identify the pyramid of organizational development for your individual firm, how to identify strengths and weaknesses, and learn what to do to fix them.

Examples of employment ads and job descriptions: www.peace-talks.com/employment

Duct Tape Marketing & Duct Tape Newsletter: www.ducttapemarketing.com

www.nawbo.org National Association of Women Business Owners

www.countmein.org and www.makemineamillion.org dedicated to helping 1,000,000 women-owned businesses reach \$1 million in gross revenue by 2010

Coaching Resources:

Dynamic Firm Management, www.dynamicfirm.com.

Coach Connection, www.findyourcoach.com, ask for Bill Dueease.

Program Presenters:

Diana Mercer is an Attorney-Mediator and founder of Peace Talks Mediation Services in Los Angeles (www.peace-talks.com). A veteran litigator, she now devotes her practice solely to mediation. She is the co-author of *Your Divorce Advisor: A Lawyer and a Psychologist Guide You Through the Legal and Emotional Landscape of Divorce* (Fireside 2001). She's an Advanced Practitioner Member of the Association for Conflict Resolution (ACR) and is admitted to practice law in California, New York, Connecticut, Pennsylvania and before the Supreme Court of the United States.

Dennis McCue, CMC, is a management consultant to law firms and other professional service firms. For over 20 years, he has helped hundreds of firm leaders develop their vision for the future, plan strategies and provide effective management, business development and growth for their firms. He is a Certified Management Consultant (CMC), a certification awarded by the Institute of Management Consultants USA. He's a former president of the Southern California Chapter and recently completed his tenure as Board Chairman. Dennis has served as a member of the executive committee of the Los Angeles County Bar Association's Law Practice Management Section. He has published in legal publications in Los Angeles and Orange County, CA as well as in several national legal journals.

Dennis is a member of the Los Angeles County Bar Association (associate), the California State Bar (Law Practice Management Section), the Association for Accounting Marketing, the Association for Accounting Administration, the American Management Association and the California Society of CPAs.

A 1974 graduate of the University of Dayton with major emphasis in theology and philosophy, he did graduate work in business at the University of Pittsburgh. He has studied extensively in management, personal growth, sales and consulting.

Firm Profile: Peace Talks Mediation Services, Inc.

Peace Talks Mediation Services creates peace in the world one family at a time providing constructive, forward-thinking and peaceful ending to family conflicts.

Peace Talks provides mediation services for all family conflicts: divorce, custody, cohabitation and LGBT dissolutions, premarital agreements, estate planning, estate administration and family business disputes.

Our unique multi-disciplinary approach teams lawyers, accountants and therapists as mediators to help families resolve conflicts and couples resolve divorce and custody issues in a sane, sensible and fair way at a reasonable cost.

Peace Talks was founded in 2000 by Diana Mercer. Peace Talks is one of the country's only full time, mediation-only law firms, and one of even fewer co-mediation practices.

Peace Talks is frequently featured in the press and is a 2006 recipient of the Make Mine a Million \$ Business Award from Count Me In, OPEN by American Express and Cisco Systems.

Our Mission: Peace Talks Mediation Services is dedicated to providing a constructive, forward-thinking and peaceful ending to relationships. Marriages may end, but families endure. We provide a confidential, efficient and impartial atmosphere to help people resolve conflict and to create solutions with integrity and dignity for everyone concerned.

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