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Turning Business Away

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Diana Mercer, Attorney-Mediator, is the founder of Peace Talks Mediation Services in Los Angeles (www.peace-talks.com) and the co-author of *Your Divorce Advisor: A Lawyer and a Psychologist Guide You Through the Legal and Emotional Landscape of Divorce*, (Fireside 2001).

Turning Business Away

When in doubt, don't take the case. Trust your intuition. Or, if you're hungry enough for new business, take the cases you're not sure you should take, determined to be both thoughtful and mindful in your trial-and-error. It's an irony that we often learn more from the cases which fall out of mediation and from the cases we work too hard to keep in mediation than we do from the successful cases, after all.

Before you plunge your practice into bankruptcy by turning away too many cases, though, also ask yourself why you won't take the case. Is it because the clients are a bad fit for your services, you don't think you can help them, or is it because you are unwilling to challenge yourself enough?

Keep a good list of referrals for other mediators and related divorce and family professionals. What goes around comes around. Make referrals out, and referrals will come back in. By choosing only cases that seem like a good fit for your signature style, you have a better chance for success as a mediator, and the parties have a better chance at success for their agreement.

When to Let Clients Go, Both Temporarily and Permanently

Not every client is worth working with. Seasoned practitioners have their own boundaries (and horror stories) about which clients are worth working with and which are best refused. One rule of thumb is that the cases which are too difficult to convene are that way for a reason; you could spend as much time trying to get some parties to agree to mediate as they spend mediating their

case. We call those clients “suspects” rather than “prospects”¹. Is that client on the phone really a potential client, ready to mediate, with a spouse, partner or adverse party who’s ready to mediate, and who can afford your services? As the demand for mediation grows, and our practices grow, it’s natural to stop trying to convene these more reluctant cases sooner and sooner into the convening process.

By setting limits on how hard you’ll work at convening cases, you also regulate your office workflow. Resources are dedicated to convening cases. Could they be better allocated toward providing better, speedier, more thorough service to existing clients, or in cultivating new clients or referral sources?

Price is not as important as you’d think. In Western culture, people believe that they get what they pay for. If it’s free or inexpensive, it surely has no value. Prospective clients who are 100% price sensitive are always going to be a problem. You’re never going to build a practice on price competition.

Ironically, turning business away can also result in new respect from clients. When we recently told a very unpleasant couple who were entrenched in telling us how awful the other parent was that we didn’t think we could help them, it seemed to shock them back to reality and they agreed to work their clergy to get prepared to mediate before rushing in. With our refusal to work with them, they realized that they weren’t ready to mediate. To have taken that case would have resulted in impasse or nonstop bickering in the mediation room, leaving the clients with the message that mediation doesn’t work or that we’re unskilled mediators. By turning down their business, we did both the clients and ourselves a favor.

Setting limits on the *types* of cases you’ll take is also important: will you handle every type of mediation case, from collections to medical malpractice? Will attorney-mediators handle any litigation cases in the “non-mediation” portion of their practices? Will therapist-mediators have any individual therapy clients? For example, if you’re a family law mediator, will you handle cases that have domestic violence issues, or emotional abuse claims? Will you handle same-sex union cases, or just divorces? As an attorney-mediator, how deeply will you delve into hotly contested custody disputes? As a therapist-mediator, how deeply will delve into the financial issues?

Specialize. It’s easier to hone your expertise in what interests you and in a way that interests you. It’s also easier to market that way. It makes it all the more clear to know to whom you should say, “no, let me refer you to someone else.”

¹ *Selling the Invisible: A Field Guide To Modern Marketing*, by Harry Beckwith (Warner Business Books 1997)



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It's counter-intuitive, but as we've narrowed the services that Peace Talks offers, we've increased our income. In 2005 our gross income is ahead from 2004 year to date, yet we've *cut back* on the services that we offer and insisted on co-mediation in every case. The less we do, the more we make. It makes sense when you think about it, because the less you do the easier it is to describe what you do, including the value, benefits and results, and the easier it is for clients to conclude, "yes, this mediator can help me."

And, at what point will you give up on cases that seem to be falling out of mediation? How hard will you—or should you--push clients to come back into mediation? What are some of the strategies you will use to encourage clients to come back?

As we work our way through this particular issue in our own practice, we use varying degrees of follow up with clients whose cases are becoming more contentious rather than moving toward resolution. Much of our effort depends on the mindset of the clients themselves, and our own assessment of the likelihood of success in mediation if the clients are convinced to come back to mediation. At what point are you wasting a client's time and money mediating a case that the client swears cannot be resolved? How do you promote mediation, when resolution looks very far away to the client, in way that doesn't make you look like you're simply a fee-hungry professional?

Learning to turn away business is tough but rewarding.