

ABA PUBLISHED BY THE AMERICAN BAR ASSOCIATION SECTION OF DISPUTE RESOLUTION

DISPUTE RESOLUTION

VOLUME 17, NUMBER 2

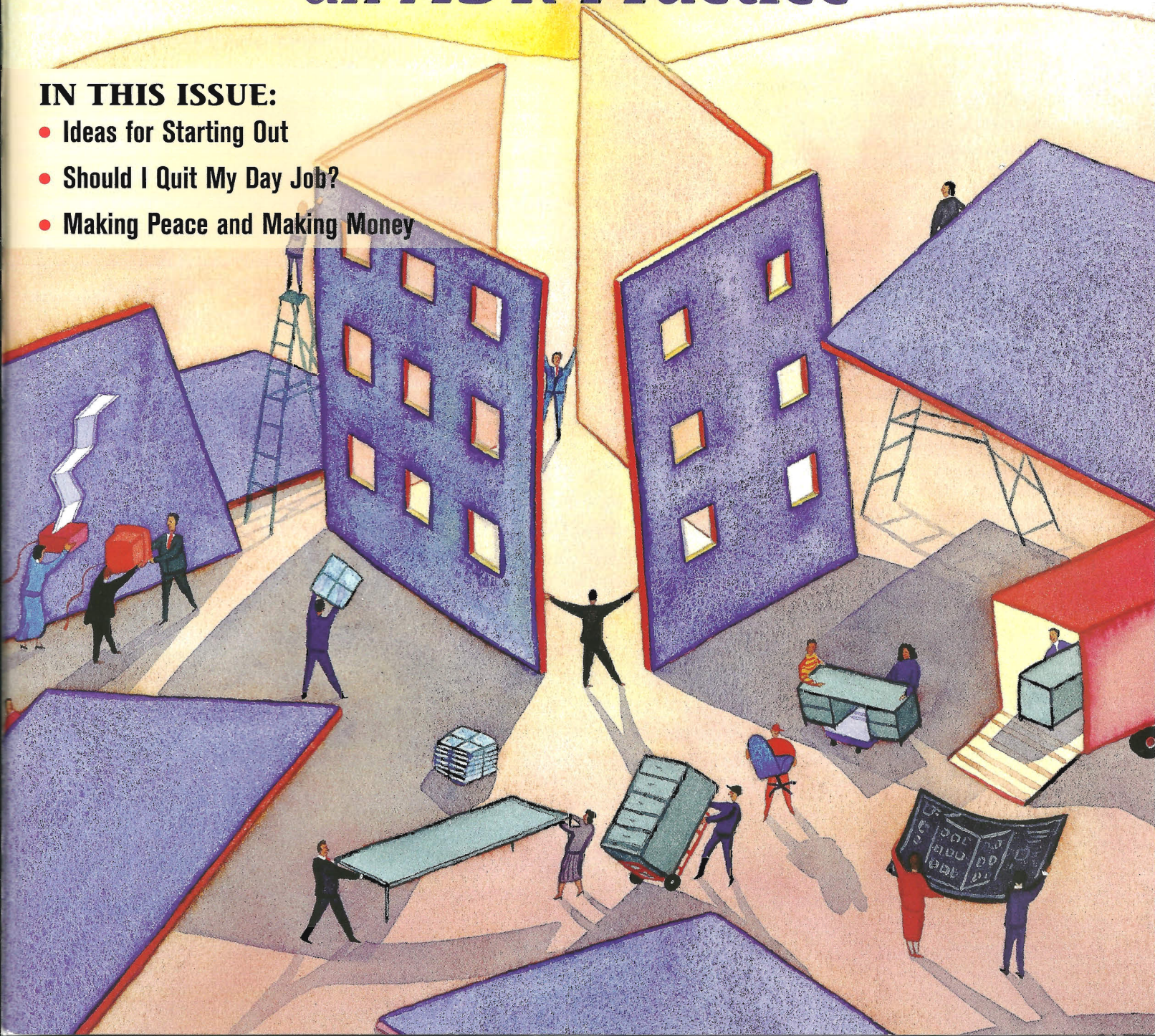
MAGAZINE

WINTER 2011

Building and Marketing an ADR Practice

IN THIS ISSUE:

- Ideas for Starting Out
- Should I Quit My Day Job?
- Making Peace and Making Money



"Could we have lunch some time? I have been thinking that I would like to be a mediator, and I was wondering if you could give me an hour of your time so that I can learn to do what you do."

Every experienced mediator has fielded such a phone call on many occasions.

Often the caller is an older litigation attorney who has participated in several mediations and has come to believe that mediation is better than litigation. Not necessarily suffering from litigation burnout, the attorney is looking to expand the scope of his or her practice with the eventual goal of moving to the middle and becoming a "full-time" mediator. Sometimes the caller is younger—someone who has experienced mediation through a law school course, community service, or work as a second chair in a mediation. Sometimes the caller is a person who has heard and rejected the old advice, "Don't give up your day job."

In all cases, many people want to know how to enter a profession that has no prescribed path. The theme of this issue of the *Dispute Resolution Magazine* is "Marketing Mediation." Authors offer insights on this topic from various perspectives. This article focuses on the basics: recommended first steps for those who want to enter this field.

1. Write a Short Essay to Yourself

Topics: Why I want to be a mediator and why anyone would employ me as a mediator. The purpose of this essay is to answer those questions for yourself. Give yourself a short deadline.

Many people muse about mediation and whether they have the right stuff and should try to be a mediator. There is no correct answer to these questions. Those who actually decide to become mediators usually have diverse reasons to do so and varied packages of skills or experience to offer. The answers you give yourself will help shape what you then do to fulfill your goals. If you have a mentor or coach, you might want to share a copy of your essay with that person. Continue with the next steps only if you feel a strong personal sense of commitment, even passion, about your desire to be a mediator.

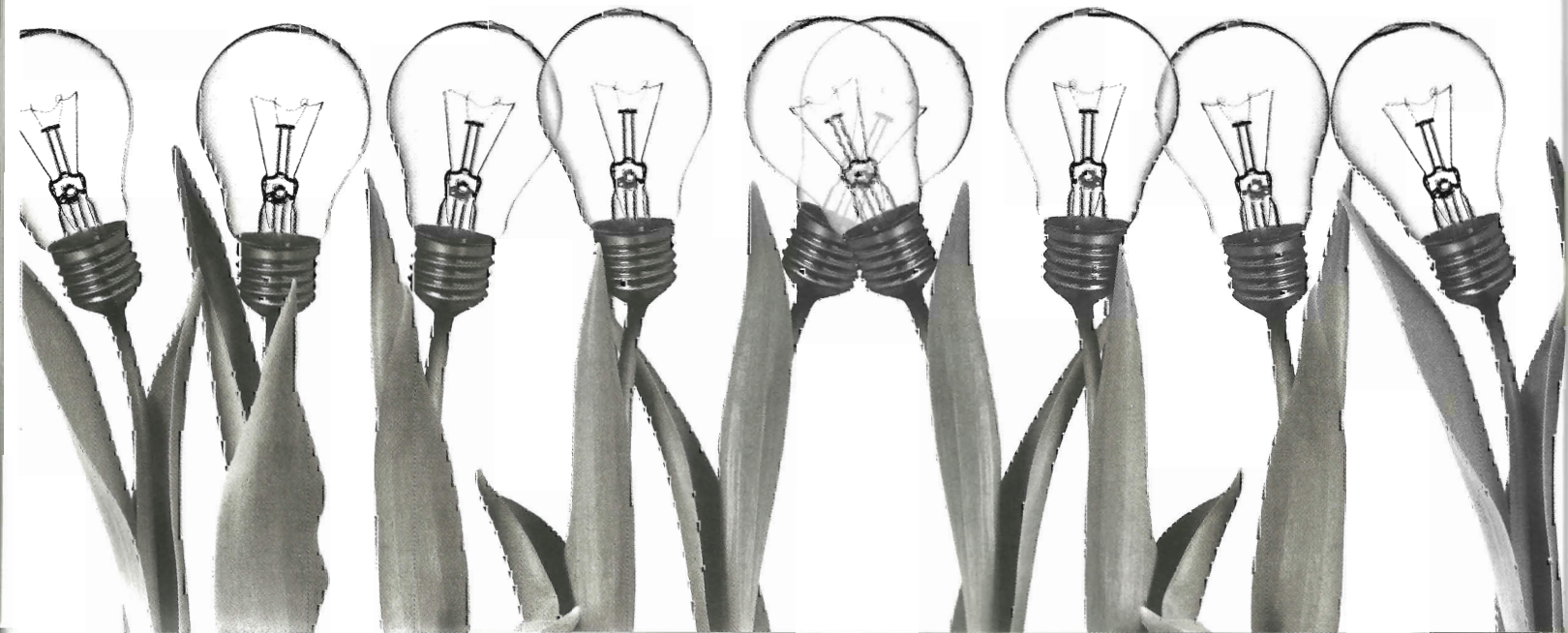
2. Write Your Mediator Bio

Take a current bio or CV, keep your name, delete all remaining text, and save as "My mediation bio." Go online to websites for mediation service providers and read 20 to 30 different mediators' bios from three or more websites. Pick the best sample(s) and create your template. Be honest. When you start to write your own bio, you will necessarily have many blanks—gaps in your training and experience. Filling in those gaps with

Mediation Marketing

Ideas for Starting Out

By James E. McGuire



real substance is the beginning of your training and marketing plan. For now, even if you have not mediated a case, you may have relevant subject-matter expertise based on work that you did in negotiating business deals or litigating cases in specific areas. The combination of your subject-matter expertise and solid mediation training may be enough to obtain your first engagements as a mediator. This is a profession that is built more on personal reputation than paper credentials. Honesty and a commitment to the process are the essential attributes of any successful mediator.

3. Take a Basic Mediation Training Course

All responsible, credible mediators do so. Those who think that 25 years on the bench or at the bar somehow qualify as mediation training are wrong. Our code of ethics requires that we be trained. The marketplace will reward those who are. Besides, it is fun. If you have taken a basic course, look for training and skills enrichment courses.

4. Start Reading

The mediation field is rich in written resources. A trained and qualified mediator is expected to be conversant with our literature. Have you read *Getting to Yes*?¹ Good. Have you read *Getting Past No*?² That's the book you read to know what to do when the other side hasn't read *Getting to Yes*. If you are serious about being a mediator, you cannot afford to wait to learn the language. Your training course will assume you know something about the language, the theory, the process, and the pitfalls. [If you send me an email referencing this article, I will send you my suggested reading list. It is like the *Sunday New York Times*; you don't have to read it all, but it is nice to know that it is all there.]

5. Get Connected

At the national level, you should become a member of the ABA Section of Dispute Resolution, and perhaps a member of the Association for Conflict Resolution as well. At the state and local level, you should become a member of the dispute resolution group of your state or local bar association. You also should become a member of some nonlegal mediation or ADR group. You also should get a mentor or a coach. Many organizations

provide matching services. As you make connections, you also can ask for help. Most experienced mediators have helped others get started in this profession.

6. Pay Your Dues: Volunteer to Mediate

The fastest way to gain mediation experience is to volunteer to mediate. In most jurisdictions, court-connected mediation programs depend upon volunteer mediators for small claims and lower-level trial court cases. Most mediators have provided free services, either because it was the right thing to do or because it was a way of getting started. Many find mediation to be a rich and rewarding experience without being paid for their services. Your answers to yourself in the essay you will write will help you understand where, when, and how much volunteer mediation will make sense for you.

7. Practice in Your Own Backyard

If you are a member of a law firm (partner or associate) or a member of a corporate law department, you have major opportunities to sharpen your skills, market yourself as a mediator, and help your own organization starting immediately. Most likely, your firm does not now have a well-developed ADR practice group. If it does, join that group. If it does not, create that group. An ADR practitioner should become the firm resource center for ADR. Internal educational programs are a very effective way to sharpen skills and make the firm aware of your skills as a mediator and ADR specialist. Developing materials for the business lawyer on drafting ADR clauses, training partners and associates on mediation advocacy techniques, conducting internal negotiation training, and providing presentations to members of the firm on ADR topics are just some of the ways to increase your ADR presence in the firm and through the firm to the legal community.

8. Look for Educational and Speaking Opportunities

Even in the twenty-first century, people collectively still need to know more about mediation: what it is, how it works, how to prepare for and participate in it, what it costs, and how to find a good mediator. There is a logical link between the practice you are trying to build and the places where you want to speak. In your preferred practice area, who are the gatekeepers? Who are the people that those in need of mediation services are likely to seek out for advice? Put education first and prepare talks that offer some substance—some practical tips and



James E. McGuire is a mediator and arbitrator with JAMS, *The Resolution Experts*, in Boston, Massachusetts, and a member of the editorial board of *Dispute Resolution Magazine*. He concentrates on the resolution of business disputes. He can be reached at jmcguire@jamsadr.com.

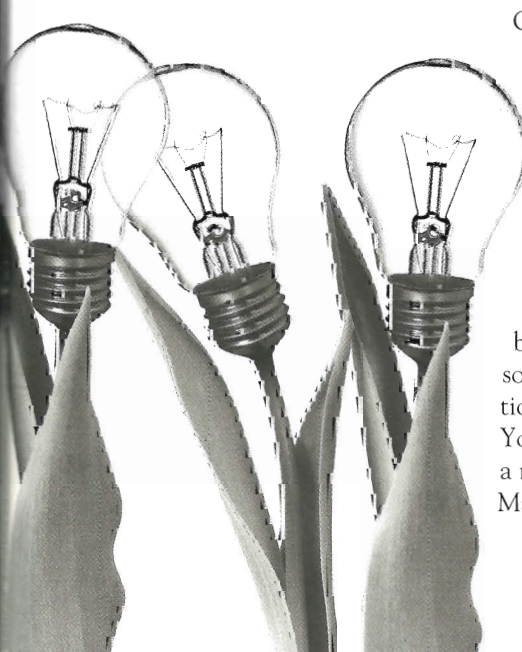


Image: iStock

advice relevant to the group. Build on the work you have done inside your own organization. Your presence and presentation (and your contact information) are still the best forms of soft and effective marketing.

9. Write Something

Articles written by you on topics important to you also will find a receptive audience. Avoid the disturbing current trend of paying some organization lots of money to write and place articles that are “yours” in name only. *The Model Standards of Conduct for Mediators* provides in Rule IX that mediators should do things that advance the practice of mediation. Mediators may

helps to have a mentor or a coach, even if just for the purpose of having someone with whom to share your success stories. The very process of creating and sharing your work plan with another makes it more likely that you will follow it.

12. Web Awareness

In the twenty-first century, promoting any service requires consideration of the Internet for marketing and communications. In the articles that follow in this issue, others will provide insights on what to do and what to avoid in using the Internet as part of your marketing program.

There is a logical link between
the practice you are trying to build and
the places where you want to speak.

meet this obligation by “participating in outreach and education efforts to assist the public in developing an improved understanding of, and appreciation for, mediation.”

10. Primacy and Recency

People are most likely to contact the person who first introduced a useful idea or the person who most recently discussed that idea. As applied to mediation, that means marketing is an ongoing process. People who first heard about mediation or thought about using it in their future disputes because of something you said or wrote are more likely to contact you. People that used you as a mediator for their first mediation will likely use you again if they can remember who you are and how to contact you. For most mediators, the best sources of new business are contacts from old business—satisfied participants in a mediation process. So an effective marketing strategy must include some way for you to keep track of who those people are and some way to keep your name in their brains or at their fingertips so that they think of you when the actual need arises.

11. Plan Your Work. Work Your Plan.

To become an effective and experienced mediator requires developing and implementing a plan to acquire the necessary training, experience, and public awareness. Although the process can be fun and should be interesting, those who create plans are most likely to succeed. The milestones that you create will be your best indicator of how successful you are in implementing your plan. Be realistic about how much you can do, but challenge yourself with real dates and deadlines. It

After you’ve completed these steps, or if you have already taken these steps and are looking for ways to establish and grow your mediation practice, what’s next? In this issue, authors with experience in building and marketing mediation services provide some guidance.

Experienced mediators Lisa Brogan and Alex Yaroslavsky compare notes on two different pathways into the profession. Continuing to compare notes, they offer different insights on training, on the importance of mentors, and on other resources that helped them build successful mediation practices.

Joshua Gordon, a younger mediator now specializing in sports conflict management (Competition Not Conflict), stresses the importance of personal reputation as the key to marketing success. He also discusses the importance of finding the right niche by specializing in areas where you have a personal passion.

Judy Bodenhamer, a professional marketer with experience working with ADR practices, provides a “twelve-step” program for marketing. She stresses the need to develop a marketing plan and then implement that plan.

We hope that you will share with us your comments about this issue and the focus on marketing mediation. *Dispute Resolution Magazine* is considering making marketing a regular feature in future issues. Will you please let us know your thoughts? ♦

Endnotes

1. ROGER FISHER & WILLIAM URY, *GETTING TO YES: NEGOTIATING WITHOUT GIVING IN* (1991).

2. WILLIAM URY, *GETTING PAST NO: NEGOTIATING IN DIFFICULT SITUATIONS* (1993).