



THE

HABITS

OF

HIGHLY

EFFECTIVE

MEDIATION

MARKETERS

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THE SEVEN HABITS OF HIGHLY EFFECTIVE MEDIATION MARKETERS¹

by

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¹ Apologies to Stephen Covey, author of *The Seven Habits of Highly Effective People* (Simon and Schuster 2008).

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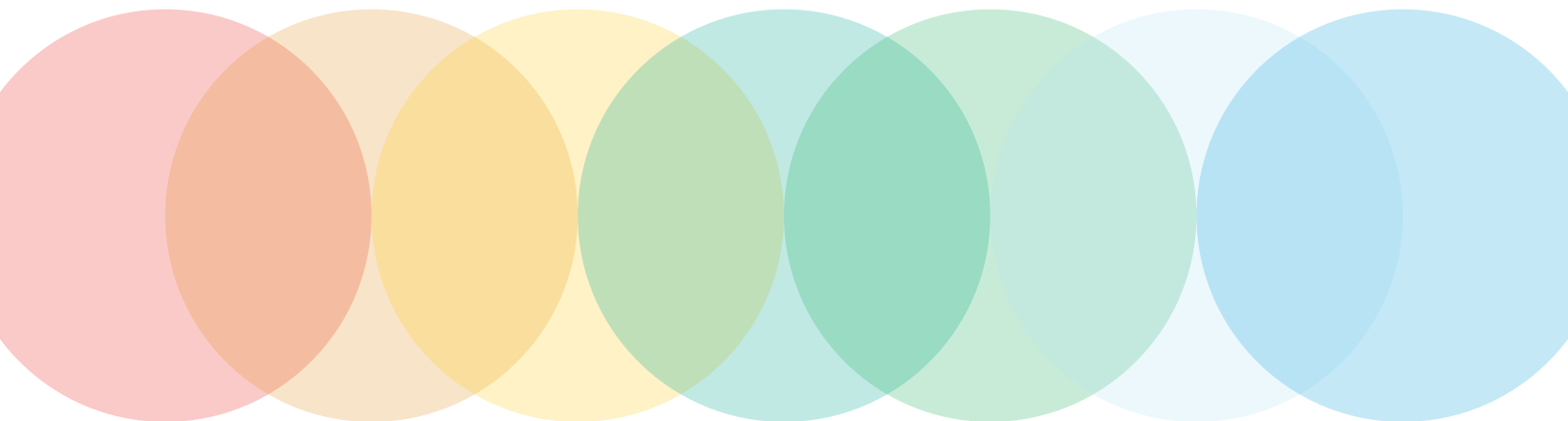


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Introduction

Mastering the skills of a mediator is the key to a successful mediation practice. Without a mastery of fundamental mediation skills, all of the marketing tips in the world will not help you build and sustain a successful mediation practice. However, merely mastering the skills of a mediator is not enough. This chapter will help you learn what else you need to do to market your mediation practice.

How you define success determines the level to which you choose to actively market your mediation practice. Marketing is not just something you do occasionally but is something you never stop doing.

As mediators, we are aware of the truth that we cannot persuade another person to change. “Each of us guards a gate of change that can only be opened from the inside. We cannot open the gate of another, either by argument or by emotional appeal.”³ You have to agree to open your own gate of change from the inside to accept and implement a conscious marketing plan.

Many of the lessons shared here can be applied to building not only your mediation practice, but also your legal practice and your relationship with others. Read this chapter with that broader perspective in mind

Even before becoming the best mediator you can, you need to “*begin with the end in mind.*” Here is an exercise to help you accomplish that skill:

In your mind’s eye, see yourself going to the funeral of a loved one. Picture yourself driving to the funeral parlor or chapel, parking the car, and getting out. As you walk inside the building, you notice the flowers, the soft organ music. You see the faces of friends and family as you pass along the way.

³ Marilyn Ferguson, *quoted in* Stephen Covey, *The Seven Habits of Highly Effective People* 60–61 (2008).

You feel the shared sorrow of loss, and the joy of having known, that radiates from the hearts of the people there.

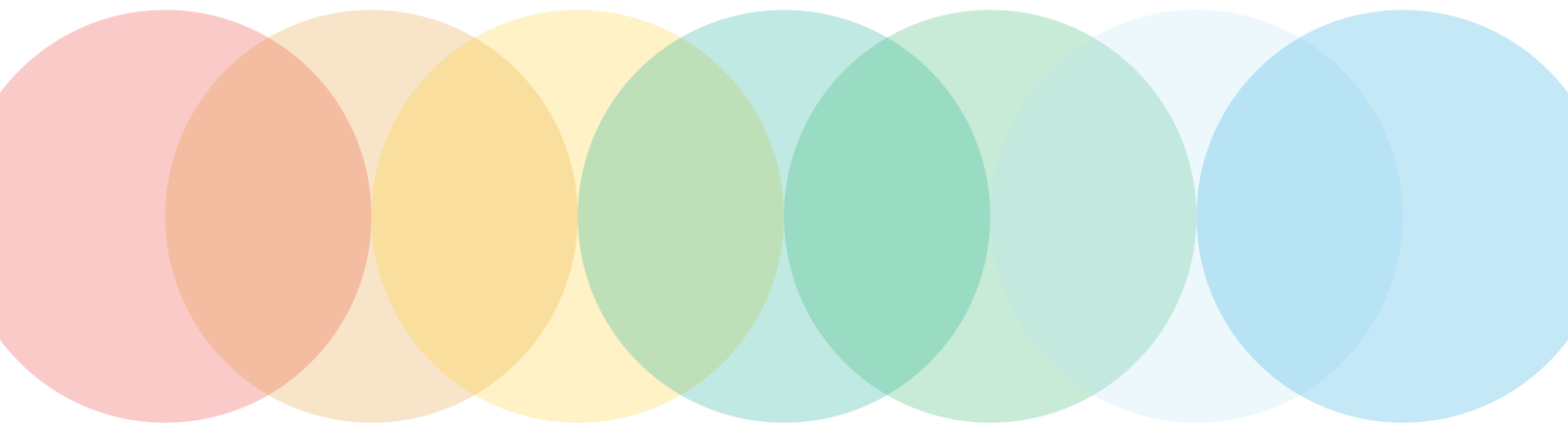
As you walk down to the front of the room and look inside the casket, you suddenly come face to face with yourself. This is your funeral, three years from today. All these people have come to honor you, to express feelings of love and appreciation for your life.

As you take a seat and wait for the service to begin, you look at the program in your hand. There are four speakers. The first is from your family—spouse, children, siblings, parents, nephews, nieces, aunts, uncles, cousins, and grandparents—who have come from all over the country to attend. The second speaker is one of your friends, someone who can give a sense of what you were as a person. The third speaker is from your professional life. And the fourth is from your church or some community organization where you’ve been involved in service.

Now think deeply. What would you like each of these speakers to say about you and your life? What kind of spouse or parent would you like their words to reflect? What kind of son, daughter, or cousin? What kind of friend? What kind of colleague?

What character would you like them to have seen in you? What contributions, what achievements would you want them to remember? Look carefully at the people around you. What difference would you like to have made in their lives?

Before you read further, take a few minutes to jot down your impressions. It will greatly increase your personal understanding of “beginning with the end in mind.”⁴



⁴ *Id.* at 96–97



Habit 1: **Be the Best Mediator You Can Be**

What do you want the lawyers and their clients to say about you as a person and a mediator the day after the mediation? Whether the case settled on the day of mediation or not, you want their comments to be positive.

You want the lawyers and their clients to say that:

- you worked hard and did not give up;
- you were prepared;
- you had a clear understanding of the law and how it applied to the facts;
- you were impartial;
- you maintained confidentiality in all rooms;
- you respected the parties; and
- you were continuously positive about a successful outcome.

If the case settled on the day of mediation, you want the lawyers and their clients to attribute that success to you. If the case did not settle on the day of mediation, you don't want the lawyers or their

clients blaming you for the impasse. If everyone at the mediation thinks you did the best job you could, you will not be blamed for an impasse. Instead, they will each blame the other side.

If the clients are happy with you and your work as a mediator, regardless of the result, the clients will be happy with their lawyers for selecting you as the mediator. Happy clients make for happy lawyers, which make for the lawyers selecting you to mediate again.

Focusing Your Efforts

The *Pareto principle* states that roughly 80% of the effects come from 20% of the causes. This principle was named after the Italian economist Vilfredo Pareto, who in 1906 observed that 80% of the land in Italy was owned by 20% of the population, and that 20% of the pea pods in his garden contained 80% of the peas.⁵

It is a common rule of thumb in business that 80% of your sales come from 20% of your clients, which is known as the Pareto distribution.⁶

This means that 80% of your business comes from 20% of your clientele. Also, it means that a mere 20% of your effort will keep this 80% of your business in the form of repeat clientele. Conversely, it takes 80% of your effort to add new clients. In other words, it is easier to keep the clients you already have than to get new ones. Do the best job for the clients you already have, so they will return and refer new business to you.

“Be the best mediator you can be” is the first habit because it is the most important and the most basic. Everything else flows from there. The other habits are the 80% effort that you exert to add to the 20% of your existing clientele. If you don’t master this first habit, you will not have a mediation practice to market.

⁵ Nick Bunkley, *Joseph Juran, 103, Pioneer In Quality Control, Dies*, N.Y. Times, Mar. 3, 2008, at 23, available at <http://www.nytimes.com/2008/03/03/business/03juran.html>.

⁶ See e.g., Richard Koch, *The 80/20 Principle* (2011).



Habit 2:

Exceed Others' Expectations

Only after you first commit yourself to being the best mediator you can be, can you build on that commitment. Once committed, you can begin to set goals and expectations for yourself.

To build and grow a successful mediation practice requires constant awareness of how you are viewed by the people you are mediating with. That is why it is essential that all parties and their attorneys are treated with the utmost respect and professionalism. Treat them as if they were guests in your home. This type of treatment is not what most clients are expecting in a mediation environment. This is a way you can exceed their expectations.

You only have one chance to make a first impression, so make sure it is a good one. That first impression? Most often, it's not you, it's your assistant who is making it. A good assistant will be invaluable to your practice. They can turn a request for a half-day mediation into a full-day mediation just by discussing the nature of the case, the number of parties, status of development of the case, and the amount in controversy. Many requests for half-day mediations are an understandable and misguided effort to save on the mediation fee. However, if the parties are not given enough time to analyze their relative positions and unlock their gate from the inside, the mediation is doomed from the start. A good assistant can spot and avoid that potential for disaster and double your business at the same time.

A good assistant is also your best business-development tool. The assistant is the one who speaks to the attorneys and their staff many times before the mediator even knows about the case. A good assistant is a friend to the lawyer's staff when they need help coordinating multiple parties and lawyers

to schedule the mediation. A good assistant knows about the needs and interests of the lawyer and their staff. This is another way you can exceed expectations.

A good assistant is pleasant and cheerful. They are that smiling face that is the first thing people see when they walk into your office. A good assistant sets people at ease and sets the tone for the day. This is not what clients are expecting when they come to the mediator's office. Use your assistant's demeanor to exceed their expectations.

If you as the mediator never give up, even if the case does not settle on the day of mediation, you will exceed the lawyers' expectations. We all know that well over 95% of all civil cases never go to judgment. Just because it did not settle on the day of mediation does not mean it will not settle. Some cases just have a longer gestation period. The mediator who continues to communicate with the lawyers after the day of mediation will be there when the case does settle. Lawyers don't expect a mediator to work for free after the day of mediation. Exceed their expectations with your tenacity, persistence, and genuine desire to be of service. Sometimes this even turns into the lawyers returning to mediate the same case with you a second or third time, as the case matures.



Habit 3: Provide Added Value

Some lawyers select a mediator based on their style, their skill, and their intellect. Some lawyers select a mediator for the lunch they serve, their location, free parking or their internet speed. Be glad for whatever reason you are selected; just know what the reason is and keep doing it.

Added value can be little things like fast internet, soft drinks, great coffee, good snacks, and candy in each conference room. Comfortable chairs, attractive furnishings, desk toys, and a relaxed atmosphere make the client more at ease and glad that their lawyer selected you as the mediator. If the client is impressed with the lawyer's choice of a mediator, that lawyer will probably choose you to mediate their next case.

Leave take-aways in each room. These can be coffee mugs, glassware, pads, pens, calculators, post-its, and golf balls. As long as these take-aways have your name and website or phone number on them, you should be happy to see them disappear.

At the end of every mediation, send a letter to each lawyer either congratulating them on a successful outcome, or regretting that the case did not settle and committing to follow-up with them to assist in continued settlement discussions. Also, send a letter to the court in which the case is pending, advising them of the outcome of the mediation. This lets the court know what is going on with its cases and presents the mediator as a conscientious professional to the court.

It is also appropriate to send a small token of your appreciation to the lawyers who selected you to mediate. Remember, the lawyer is part of the 80% that you want to retain as a client.



Habit 4: Fish Where the Fish Are

Marketing is the process of communicating the value of a service to customers for the purpose of selling that service. Marketing is the science of choosing target markets, understanding consumer behavior, and providing superior customer value.⁷

Mediation is a service industry to a service industry. As mediators, we serve the needs of lawyers, who serve the needs of their clients. Therefore, since lawyers are our true clients, those are the people we need to be marketing to. If we want to market to lawyers, then we need to go to where the lawyers, our fish, are.

It is vital to get out of your comfort zone and force yourself to attend social functions where lawyers will be. Depending on the size of your local bar, there may be multiple functions monthly or weekly. These can be CLE events, practice-group luncheons, social functions, and judicial fundraisers. It is imperative that you attend these bar functions and introduce yourself to other lawyers.

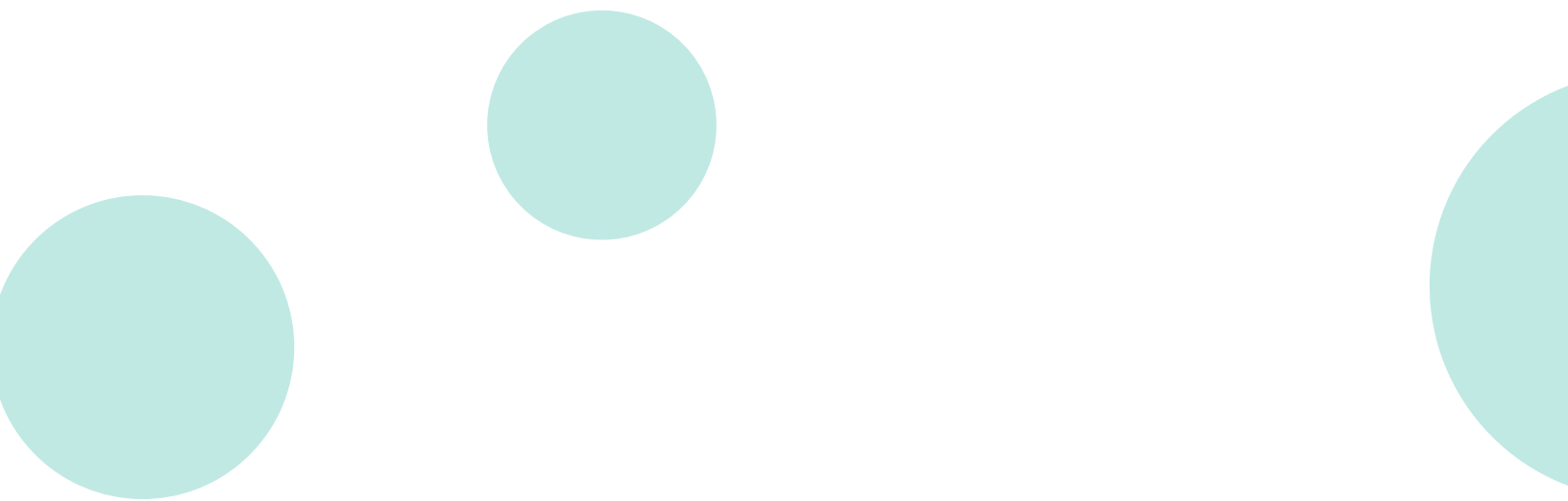
When introducing yourself, say something informative about yourself first, then slowly say, "my name is ____." Wait for the other person to introduce themselves, listen carefully to their name, and take the time to process it. Next, use their name when asking the question, "Tell me (name), what brought you here today?" Make sure you eventually ask for their business card. That way, you have the contact information to send a follow-up e-mail. It also reminds them to ask you for your card. When you receive

⁷ Marketing, Wikipedia (accessed on Jan. 8, 2014), <http://en.wikipedia.org/wiki/Marketing>.

the other lawyer's card, look at it intently and make a positive comment about something you learned by reading their card.

Join bar sections where you can be visible to other lawyers and contribute to the organization. Attend the meetings regularly. Force yourself to sit next to someone you do not know at every meeting. That way you can introduce yourself and leave with another card.

Make a point to have lunch with a different lawyer once a week. It can be someone you just met at these bar functions, a colleague, a classmate, or a judge you already know well. Just keep fishing and mediations will come to you. It may not happen immediately, but eventually you'll catch your fish.

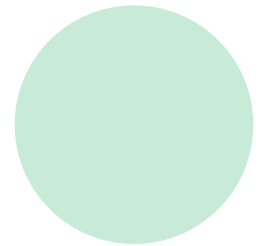
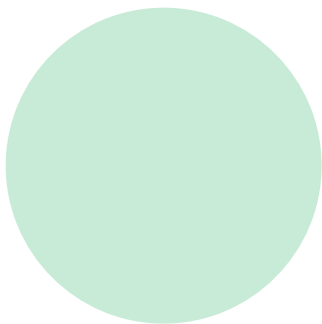




Habit 5: Be a Valuable Resource

Bar sections and law firms are always looking for speakers with papers that can be distributed at their meetings for CLE credit. Write papers on mediation topics helpful to lawyers or their clients. You can then self-publish these papers to hand out at your office. When you volunteer to speak for that bar section or law firm, you can also distribute your papers to all who attended. Make sure your contact information is in the paper.

Teach at a local law school. This makes you a recognized expert to the bar. Your law students will graduate and also need your services one day. They will also be hired by law firms where they can recommend you as a mediator.





Habit 6: Advertise Responsibly

In our digital world, it is essential that people can find you any time of the day or night, any day of the week, and on any digital device. There is an expectation that someone can learn everything they need to know about you with just a few clicks on a mouse. Do not disappoint them.

A website is your most valuable and accessible advertising tool. Do not go low tech or low price on your website. It is a direct reflection of you. Often, it's the first impression someone gets of you, and the only chance you have to be selected for a mediation.

Place institutional advertisement in local-bar publications, state-bar publications, and your law-school alumni publications.

Utilize social media as if you were interviewing for a job, since you are. However, this is not the place to share all of your personal activities. Using social media is about controlling your presence on the web. Conversations about reputation, relationships and referrals are moving to social media. Potential clients/lawyers will be Googling or Binging you before they call you.

Using social media through LinkedIn, Facebook, or Twitter is just another channel and opportunity for you to present yourself as a committed and caring mediator who is knowledgeable and can help.

Remember that the seed for your next mediation was sown in the mediation you just conducted. Lawyers will remember who they saw, or heard about, or read about, or worked with last when picking their next mediator.

Start exploring social media as a way of presenting yourself to a broader audience. Learn about how to build a Facebook audience, use of Google Ad Words, CRM email lists, and review sites like Yelp and Avvo.

Consider using Twitter's 280 characters to become recognized as a valuable resource and connect with influencers online who will retweet your advice.

LinkedIn is a valuable resource and professional approach to social media advertising where you can limit the information you post, who can see your information, and who you chose to connect with.





Habit 7: Be the Best Mediator You Can Be

By now you realize that the first Habit is the most important of all, which is why it bears repeating at the end. Without a firm grasp and commitment to this Habit, the others are only window dressing to an empty window.

Remember the fundamentals that you learned in your mediation training. Remember that your purpose is to be of service to others. Only then can you start to become a highly effective mediation marketer.
