

BOOK REVIEW

RESOLVING CONFLICT ONCE AND FOR ALL: A PRACTICAL HOW-TO GUIDE TO MEDIATING DISPUTES

By Mark Stein and Dennis J. Ernst
Harmony House Publishers, 1996, 140 pp.

*Reviewed by Herbert R. Brown**

Resolving Conflict, authored by mediation consultant Mark Stein along with free lance writer Dennis J. Ernst, offers (1) a simple explanation of mediation, (2) a plea for the expanded use of mediation, (3) recommendations concerning conflict situations where mediation can be useful and (4) exposition of the techniques which work in the mediation process.

Mr. Stein identifies himself as the president of Mediation First (a comprehensive mediation firm located in Louisville, Kentucky), a consultant for the U.S. Departments of Justice and Education, a trainer of over one thousand business managers and community leaders, the mediator of thousands of disputes and facilitator to the creation of mediation programs in fourteen states.

The book is easy-to-read and the author uses fictitious conflicts to illustrate his claims for mediation and his suggested techniques.¹ The book, although geared toward the beginner rather than the experienced mediator, still manages to provide sound observations. Moreover, the ideas Mr. Stein presents comprise a sort of "check-list" that even an experienced mediator might consider when conducting a mediation session.

In the introductory session, mediation is touted as fast, low-cost, successful, productive of long-term solutions, a method of keeping outcome-control in the hands of the disputants and a vehicle for attaining "win-win" solutions. Mediation is placed in context with its alternatives:

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¹ The first of the fictitious conflicts is a spat between two employees about sharing workload, excessive personal telephone calls and taking telephone messages. The second arises from bickering between neighbors over the responsibility to rake leaves which fall from a tree (the tree is on property A, the leaf-fall goes on to property B).

negotiation, arbitration, litigation and anarchy. The hypothetical disputes are described and there is a first look at the types of disputes which should and should not be mediated.

Perhaps the most useful section of the book discusses how to conduct the mediation session. The section is consistent with the rest of the book in its simplicity, focusing on the basics with attention to "welcoming remarks," creating hope for the disputants, establishing the mediation in the role of neutral-facilitator and laying out the ground rules for the session.

Mr. Stein recommends letting each party state that party's view of the facts. The parties then may ask questions of each other and respond to those questions. "Now it's time to find out how they really feel," says Mr. Stein as he encourages them to "relive the incident."² Stein believes a proactive approach, such as asking leading questions, should be used to elicit these feelings.

After the venting of feelings ("verbal outbursts and terse exchanges during a session can be therapeutic")³, the next step is called "Resolution."⁴ It is in this leap that the text fails to distinguish the successful mediation from the unsuccessful one. One must question how a resolution is plucked, liked a ripened orange, after artful opening remarks, disputant expositions of fact, an opportunity to ask questions and emotional cathartics. What more is required? What problems frequently arise? How are they handled?

In fairness, Mr. Stein concedes that such questions are difficult to deal with in text. "There is a saying on the Far East that trying to explain some things is like scratching your foot through your shoe. When I train mediators and supervisors in the mediation process I find that it is better to show them the process rather than tell them."⁵ Thus Mr. Stein puts his finger on the limitations of his text. He has settled for helpful hints on how to conduct a mediation.

The helpful hints are further developed on the section entitled "The Dynamics of Mediation." Location, lighting, color, seating arrangement, body language and whether or not to use a table are the topics he skims in describing "a favorable mediation environment."⁶

² MARK STEIN AND DENNIS J. ERNST, *RESOLVING CONFLICT ONCE AND FOR ALL: A PRACTICAL HOW-TO GUIDE TO MEDIATING DISPUTES* 42 (1996).

³ *Id.* at 75.

⁴ *See id.* at 46.

⁵ *Id.* at 27.

⁶ *Id.* at 59-66.

Mr. Stein's enumeration of the qualities of a successful mediator, though seemingly self-evident, are worthy of reflection by anyone who attempts to mediate. They are, says Mr. Stein: be a good listener, be compassionate, be a facilitator, remain neutral, respect confidentiality, establish structure and exude confidence.⁷ Mediators should focus, probe, explore and provide perspective.

There is a section on the uses of caucuses (where the mediator meets separately with each party) and Mr. Stein recognizes the value of the technique. This technique, and its proper use, may well be key to a successful outcome in every complicated, hostile, or deadlocked mediation. The subject would be worthy of at least as much space as the entirety of *Resolving Conflict*, but given Mr. Stein's intent and the readership he seeks, it is probably a wise decision to reduce his thoughts on caucusing to generalities.

Mr. Stein also advocates a methodology called "visualization." Visualization is defined as an attitudinal perspective wherein the mediator visualizes a successful outcome. Although Mr. Stein labels this section in the book "Advanced Mediation," it is hardly the stuff worthy of advanced mediation by anyone's criteria.

The final section addresses applications for mediation and the appropriateness of using internal or external mediators in those settings. Some of the applications he discusses include: the work place, schools, counseling therapy, legal practice, victim/offender situations, divorce, health care, commercial disputes, personal injury, property damage, franchise disputes, business partnerships, product liability and securities disputes. Some applications, such as the work place and the school setting, are discussed in greater detail of how mediation can address the variety of disputes that arise.

The book contains no footnotes, and for the most part, the absence is not detrimental to a text which comes from experience, is based on opinion and is obviously written to provide readers a first exposure to mediation. However, a loss of credibility is suffered by the random use of statistics to bolster the conclusions offered. For example, Mr. Stein states that "upwards from 90% of those who have been through a mediated settlement emerge satisfied with the outcome,"⁸ and that the mediation model he advocates successful seventy-five to ninety percent of the time. He also boasts that the automatic caucus model of mediation is "less successful than

⁷ See *id.* at 68.

⁸ *Id.* at 15.

other models with only a 50 to 75% success rate.”⁹ One would like to know the basis for such pronouncements. It is like being told that a baseball team is successful 50 to 75% of the time or that the team won 75 to 90% of their games.

Notwithstanding its limitations, *Resolving Conflict* does provide an easy to read introduction to mediation and a survey of areas where mediation, or mediation techniques, can be helpful. Although the book is not written for attorneys, the publicity it has received through such shows as Oprah Winfrey make this book important in advocating the growing use of mediation. Although not a “scholarly work,” its contribution may be equally as important in influencing the general public perception of ADR.

⁹ *Id.* at 23.