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PERSPECTIVE

## The wild gold rush of the mediation profession: Strike it rich or bust?

By Joël Bertet

Daily Journal Staff Writer

“Go west young man, haven’t you been told California’s full of whiskey, woman, and gold” are the lyrics from the song “I Should’ve Been a Cowboy” by the recently deceased country superstar Toby Keith. The lyrics describe the draw to Mediation by so many recovering attorneys. I have been a recovering attorney for 25 years with most of that sobriety spent in business. Let’s see, continue to fight with lawyers all day over every matter no matter how trivial, endless depositions and discovery requests, run after clients to pay their bills, find new clients, appear in court, try to get court dates before the year 3,000 and all the while balance your personal life and family obligations. Versus, show up to a mediation get paid some big bucks and call it a day. Seems like an easy decision which explains abandoning of the traditional practice of law in search of mediation gold.

Seems like everyone is hitching up their wagon loading up the pickaxes, gold pans, shovels, and going off to strike it rich in mediation. Some are gonna strike it rich. Many are going to go bust. Do we need all these new mediators? Is the market being flooded with too many mediators? Where are they all coming from? Mediators used to be the exclusive realm of the retired judge. Many lawyers still look for the respected word “Honorable” in front of the mediator’s name. Respected mediation services such as Jams, Signature and Adjudicative West take pride in their roster of highly



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respected and highly paid retired Judges. The legal profession seemed to take the view that mediation was the reward reserved for the retired judge who earned the respect and right to move from the bench to mediation. Even today I am questioned: “How can you be a mediator if you weren’t a judge?”

Growth in the field of mediation has been primarily fueled by lead-

ing mediation programs such as Pepperdine School of Law. Conflict disclosure: I was certified at Pepperdine under the tutelage of Professors Blondell and Dr. Singh. You would be hard-pressed to find higher caliber teachers passionate in their mission to heal the world through teaching resolution of conflict. There are many other fine mediation programs in the United

States and worldwide and they are all pumping out motivated and excited young mediators looking to help mediate disputes and strike it rich in the process. Not so long ago, certified mediation courses and degrees in mediation were not readily available. In the early years, the profession was trail-blazed by mavericks and unique peacemakers that broke through

the impenetrably conservative and slow-moving legal profession to reveal the value of resolving dispute outside of the court system. Today it's part of the legal practice to settle cases through mediation. Fast forward to today and there are many law schools and other trade schools offering training and certification in mediation. Mediator training and certification is a whole business in itself and they are pumping out hundreds of new mediators every year. Heck, you don't even have to be a lawyer to be a mediator. The question is: Can the market handle all these new mediators and are they needed?

Let's look at it from a different angle. According to Statista.com, as of 2023 there are 1.33 million lawyers in the United States and new law school graduates have added roughly 35,000 per year from 2020 to 2022. Onelegal.com reports there are 40 million lawsuits filed in the USA every year. That's a lot of lawyers and a lot of lawsuits. It's no wonder our court system is overwhelmed. Consider the average 12-18 months for a typical civil trial date extending further out with lawyers arguing over every possible issue.

One doesn't need to be an economist to look at these numbers and realize mediation has an important role to play in simply relieving this pressure. We need more mediators, less lawyers. There I said it. It's not a good idea to bite the hand that feeds you so maybe I should modify my statement. We need more lawyers seeking mediators rather than the court system to resolve their disputes. Voila, sounds better and also works better. Take it a step further. We need lawyers to better understand the role mediators can play at all stages of the litigation process. Early on during discovery a mediator can facilitate the exchange of information and help the parties be heard so that the dispute is clearly defined. Allowing the parties to tell their story to a mediator and allowing the mediator to get the parties to agree on the scope and issues of their disagreement can save invaluable court time and legal costs to both sides. No motions to compel, no amended complaints, a streamlined discovery road map. Next the mediator has the parties reach out for a formal mediation to settle the case after the facts in discovery have

been revealed to everyone's satisfaction. Imagine the speed at which the matter can be resolved in this context. Instead of litigation fatigue, it's early mediator intervention that leads to a successful resolution.

Getting back to our gold-digging prospecting mediator question: Can the market handle all these new mediators? Being very conservative, assume that only 50% of our current case load goes to mediation. That's 20 million of the 40 million cases yearly. Still more conservatively, cut that number again in half to 10 million cases. Next, assume that each mediator has a full caseload of 5 mediations per week, which equals 230 mediations per year. (Formula: 52 weeks minus six weeks for holidays, vacation and sick days=46 work weeks x 5 cases/week=230 per year.) Based on this formula we would need 43,478 mediators each working full time and handling a full load of 230 mediations per year.

Yes, the gold rush is on for good reason. The demand is enormous. Now, whether you strike gold as a mediator is a story for another day. Just like the days of the gold rush, only a select few made it big while most lost it all. How to build a

successful mediation practice and garner your share of the gold rush is a tale for another day. I, for one, am happy to have saddled up and joined my colleagues in the gold rush. In the words of another Tobey Keith song: "Raise up our glasses against evil forces singing whiskey for my men beer for my horses." Cheers to being a peacemaker.

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**Joël Bertet** is a mediator/arbitrator at [Resolvebertet.com](http://Resolvebertet.com).



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