

Setting Up a Private Mediation Practice

A Guide for Retiring and Retired Judges

Presented at the NAWJ Midyear Conference

Holland America MS Nieuw Amsterdam — Alaska Cruise, May 17–24, 2026

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FIRST STEPS: BUSINESS FORMATION

- **Choose a business structure.** Consult with a business attorney in your state about whether to operate as a sole proprietorship, LLC, or professional corporation — each carries different liability and tax implications.
- **Register your business name** with your state's secretary of state office and obtain any required local business licenses.
- **Open a dedicated business bank account** to separate personal and business finances, which simplifies tax reporting and billing.
- **Hire a CPA** familiar with self-employment and small business taxes; discuss deductible expenses (home office, travel, technology, training) and estimated quarterly tax payments.
- **Create a billing and tracking spreadsheet** or use accounting software (QuickBooks, Wave, FreshBooks) to log income, invoices, and expenses.
- **Develop an invoice template** with your name/firm, services rendered, hourly or daily rate, payment due date, and accepted payment methods (check, Zelle, ACH transfer).
- **Set your fee structure.** Research prevailing rates in your region and specialty areas; consider a half-day rate, full-day rate, and hourly rate for phone/email pre-mediation work.

TECHNOLOGY & VIRTUAL PRACTICE

- **Purchase a Zoom Pro or Business account**, which provides unlimited meeting time and supports the large number of participants common in multi-party mediations.
- **Master Zoom breakout rooms** — essential for private caucuses with individual parties, a staple of virtual mediation practice.
- **Use a professional video background or dedicated space** with good lighting and sound; first impressions matter on video just as in a courtroom.
- **Invest in a quality microphone and webcam** even if your laptop has built-in options; audio clarity is critical.
- **Use a calendar scheduling tool** (Calendly, Acuity) to allow parties and counsel to self-schedule and reduce back-and-forth emails.
- **Establish a secure document-sharing system** (Google Drive, Dropbox, or a legal-specific platform) for exchanging mediation briefs and exhibits confidentially.

- **Test technology with all parties in advance** of the mediation date; a brief pre-session tech check avoids costly delays.

ADMINISTRATIVE SYSTEMS

- **Draft a confirmation email template** that includes: date/time and Zoom link (or location); deadline for the mediation brief; brief format requirements (page limits, issues, exhibits); for family matters — proposed parenting plan and asset/liability distribution; your mediation agreement/contract.
- **Draft a mediation agreement (contract)** defining scope, confidentiality, fees, and cancellation/rescheduling policy. Have it reviewed by legal counsel for compliance with your state's mediation statutes.
- **Establish a cancellation/rescheduling policy** with clear deadlines and fees to protect your time.
- **Create a standard mediation brief template** to send to counsel outlining what you expect, so briefs are actually useful to you.
- **Set up a professional email address** using your business domain (not Gmail or Yahoo) to project credibility.

TRAINING & CREDENTIALS

- **Consider a refresher mediation intensive**, even with prior settlement conference experience. Programs include: Pepperdine University's Mediating the Litigated Case; Harvard Law School Program on Negotiation; AAA training courses; JAMS Institute; your state bar association trainings.
- **Identify your practice specialties:** civil/commercial, family, employment, probate, real property, construction — and market yourself accordingly.
- **Familiarize yourself with your state's mediator certification requirements**, if any; some states maintain rosters of certified mediators for court referrals.
- **Join relevant professional organizations:** the Association for Conflict Resolution (ACR), the ABA Section on Dispute Resolution, and your state's mediation association.

MARKETING & VISIBILITY

- **List yourself in national mediator directories:** Mediate.com; ADR Notable; AAA (mediation.org); JAMS; NADN (National Academy of Distinguished Neutrals); Avvo; Lawsuit.com.
- **Create a Google Business Profile** with your mediation services, location, and contact information.
- **Build a simple professional website** with your biography, practice areas, fee information, and contact form; your judicial background is a significant marketing asset.
- **Solicit reviews** from satisfied counsel and parties on your directory profiles and Google listing — reviews build credibility and increase referrals.
- **Network with the bar.** Introduce yourself to local and state bar association members, family law sections, civil litigation sections, and plaintiff/defense bars — attorneys are your primary referral source.
- **Offer free or reduced-fee mediations** initially to build a track record and gather testimonials.
- **Consider speaking at CLE programs and bar association events** — your judicial experience is valuable to practitioners and raises your profile.
- **Use LinkedIn** to announce your new practice and connect with attorneys statewide and nationally.

PRACTICE MANAGEMENT TIPS

- **Define your mediation style upfront** (facilitative, evaluative, transformative) and communicate it to counsel so they select you with accurate expectations.
- **Prepare a standard opening statement** that sets the tone, explains confidentiality, clarifies your role, and establishes ground rules.
- **Develop form settlement agreement templates** for common case types (personal injury, employment, family) to expedite drafting when a deal is reached.
- **Track your case outcomes** (settled, impasse, continued) to identify patterns and refine your approach.
- **Establish an impasse protocol** — know how you will document and close a mediation that does not resolve, including any follow-up steps you offer.
- **Consider a co-mediation model** for complex commercial or family matters to expand your capacity and provide backup.

FINANCIAL & LEGAL CONSIDERATIONS

- **Obtain professional liability (E&O) insurance — this is critical.** Private mediators do NOT enjoy broad immunity from civil liability. Judicial immunity does not follow a judge into private practice. Once you accept a fee as a private neutral, you are a private contractor. Mediator immunity statutes vary widely by state and many provide limited protection. Coverage at competitive group rates is available through: ABA Member Insurance Programs (ABA Dispute Resolution Section); ACR (Association for Conflict Resolution); JAMS and affiliated ADR provider programs; your state bar association E&O programs; specialty legal malpractice carriers offering mediation riders.
- **Review mediator immunity laws in your jurisdiction** and include appropriate limiting language in your mediation agreement.
- **Review your judicial retirement/pension rules** regarding post-retirement income to ensure compliance with any earnings limitations.
- **Establish a retainer policy:** requiring a deposit upfront, especially for full-day or multi-session mediations, protects against last-minute cancellations.

This outline is a starting point. Adapt it to your state's laws, court rules, and mediation statutes.

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