

LEGAL COUNSELING,
NEGOTIATING, AND
MEDIATING:
A PRACTICAL APPROACH

LEGAL COUNSELING, NEGOTIATING, AND MEDIATING: A PRACTICAL APPROACH

Second Edition

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DEDICATIONS

This book is dedicated to:

Mrs. Bette Bower

— GNH

George W. Danser

— JMC

PREFACE

Most of the literature on legal counseling, negotiating and mediating falls into one of three categories: the academic literature, the practice literature, or the lay literature. The academic literature, largely drawn from the disciplines of psychology, economics, and sociology, is often highly conceptual and theoretical. The practice literature is largely based on professional experience and thus is usually too anecdotal and devoid of pertinent ethical and legal ramifications. The lay literature, particularly on negotiating, is typically aimed at providing general advice about how to improve one's interpersonal relationships and negotiate in everyday affairs. Within all three categories, albeit to varying degrees, there are many works that are insightful, thought provoking, and useful.

However, a common criticism of much of the literature is that, upon close reading, what often sounds good and even may be quite interesting, frequently is not very helpful in terms of teaching one *how* to engage in effective legal counseling, negotiating, and mediating. For example, notable exceptions aside, a good bit of the academic literature is quite difficult to understand and tends to supplant reality with heuristic simulations of limited utility. Similarly, the practice literature often places too much reliance on personal “war stories” that are not representative of the most common situations encountered in practice, and the lay literature tends to be dominated by general shibboleths and postulates that are often too abstract to apply in a meaningful way. Thus, there is a need to heed these criticisms to take a more understandable, realistic, and practical approach in writing about legal counseling, negotiating, and mediating.

This book tries to do that. In writing it, we have kept in mind two obvious facts. First, the topics at hand are, at bottom, “practical skills” that are integral to effective legal representation. Second, while most law students will become practicing lawyers, some will become judges, academicians, or use their law degree in business or other professions. Therefore, in writing about legal counseling and negotiating (including negotiating during mediation and plea bargaining), we have, first and foremost, sought to be eminently practical in our descriptive and prescriptive treatment of these skills, including their ethical and legal ramifications. At the same time, we have sought to encourage broader and more creative thinking about these subjects by discussing some of the more important theoretical approaches to them. That is, notwithstanding the difficulty of achieving the best balance among theory, practice, ethics, and law, this book addresses all to try to close the gaps in between. In treating these matters, however, the overall effort has been to emphasize that blend of theory, practice, ethics, and law that is most *meaningful* in the sense of having real-life application to effective client representation.

— GNH
— JMC

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