

Advocacy in Negotiation and Mediation

Advocacy in Negotiation and Mediation

A Practical Approach

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Carolina Academic Press

Durham, North Carolina

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LIBRARY OF CONGRESS CATALOGING-IN-PUBLICATION DATA

Names: Herman, G. Nicholas, author.

Title: Advocacy in negotiation and mediation : a practical approach / by
G. Nicholas Herman.

Description: Durham, North Carolina : Carolina Academic Press, [2021]

Identifiers: LCCN 2021035349 (print) | LCCN 2021035350 (ebook) |

ISBN 9781531023263 (paperback) | ISBN 9781531023270 (ebook)

Subjects: LCSH: Dispute resolution (Law)--United States. |

Negotiation--United States. | Mediation--United States.

Classification: LCC KF9084 .H464 2021 (print) | LCC KF9084 (ebook) |

DDC 347.73/9--dc23

LC record available at <https://lcn.loc.gov/2021035349>

LC ebook record available at <https://lcn.loc.gov/2021035350>

Carolina Academic Press
700 Kent Street
Durham, North Carolina 27701
(919) 489-7486
www.cap-press.com

Printed in the United States of America

This book is dedicated to Bob and Jennifer Forsman

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Acknowledgment

The author gratefully acknowledges Professor Emeritus Mark W. Morris, for his selfless review and contributions to this work.

Preface

This book replaces a previous work, titled *Legal Counseling, Negotiating, and Mediating: A Practical Approach*. The new book focuses exclusively on advocacy in negotiating and mediating because these skills are now typically taught in a course that is separate from a course on the skills associated with legal counseling. The new book, however, covers the lawyer's counseling function as it specifically pertains to negotiating and mediating.

Most of the literature on 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 highly anecdotal and sometimes lacks discussion of 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 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 negotiating and mediating.

This book tries to do that. Two factors shape its content. 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 will use their law degree in business or other professions. Therefore, the book strives to be eminently practical in the descriptive and prescriptive treatment of these skills, including the ethical and client-counseling ramifications. At the same time, it is important to encourage broader and more creative thinking by discussing some of the more important theoretical approaches to negotiation. The primary goal in this effort, however, is to emphasize a blend of theory and practice that is most *meaningful and useful* to effective client representation in negotiating and mediating.