

INDEX

ADVOCACY IN MEDIATION

- client preparation, 78
- client, negotiating with, 90
- counsel preparation, 79-81
- counsel, role of, 75-77
- do's and don'ts, 87-90
- documenting settlement, 95-97
 - • counsel, role of, 96
 - • options re, 95
- failed mediation, learning from, 97
- lawyer-client problems, 91
- mediation brief, contents and style, 81-84
- mediation-arbitration, advocacy in, 95
- mediator, using, 92-95, 97
- post-mediation use of mediator, 97
- problems, anticipation of, 86
- problem-solving advocacy, 84-86
- timing of, 77

ADVOCATE

- mediation. *See* ADVOCACY IN MEDIATION
- negotiation and settlement advocacy, 167
- role of. *See* UNREPRESENTED PARTIES

ARBITRATION, *see also* MED/ARB IN PARENTING COORDINATION PROCESS

- creative arbitration, 37
- factors in choice of, 34-39
- mediation-arbitration, 40-42, 95
- role of arbitrator, 5

BATNA

- client understanding of, 156
- negotiating plan and, 27
- preparation and, 215, 219
- problem-solving advocacy and, 84-85

BUSINESS VALUATION. *See* FINANCIAL EXPERTS

CLIENT, *see also* UNREPRESENTED PARTIES

- client's interest, determining 14
- difficult, dealing with
 - categories of difficult, 204-208
 - angry client, 204
 - dependant client, 206
 - depressed client, 207
 - mentally ill client, 207
 - obsessed client, 205
 - secretive/deceitful client, 206
 - unrealistic client 208
 - unruly client, 208
 - vengeful client, 204
 - generally, 199
 - identifying difficult client, 200
 - issues, 199
 - sanity tips, 200-204
 - self-protection strategies, 200-204
 - three-step involvement, 200
- lawyer-client problems, 91
- obligation to inform of ADR, 33
- professional-client relationship, elements of, 153-158
- preparation of, 78
- settlement preparation of. *See* SETTLEMENT PREPARATION

COLLABORATIVE PROCESS

- choice of, 44
- communication techniques/strategies, 164-167
- counsel, relationship between, 159
- described, 153
- negotiation and settlement advocacy, 167
- neutrals, 159
- process and procedures, 160-164
- professional-client relationship, elements of, 153-158

COOPERATIVE PARENTING PLANS, *see also* MED/ARB IN PARENTING COORDINATION PROCESS

- assumptions/biases, 134
- domestic violence context, 151
- external/social influences, 134-141
 - children, meetings with, 139-141
 - lawyers, meetings with, 134-137
 - new partners/grandparents, meetings with, 137-139
- generally, 133
- interpersonal history, 141-150
 - contracting meeting, 143
 - individual meetings, 145

- intake call, 142
- parenting plan meetings, 146-150
- parents, meetings with, 141
- intrapersonal factors, 150-151
- power imbalance context, 151

COUNSEL

- client relationship, elements of, 153-158
- difficult. *See* MEDIATOR
- lawyer-client problems, 91
- preparation, 79-81
- relationship between, 15, 60, 159
- role of, 5, 75-77, 96

DISCLOSURE, 3, 18-20, 68, 226

DISPUTE RESOLUTION PROCESS CHOICES, *see also* JUDICIAL
DISPUTE RESOLUTION (ALBERTA)

- arbitration, factors in choice of, 34-39
- collaborative process, choice of, 44
- creative arbitration, 37
- factors, 31-33
- judicial dispute resolution, 42
- mediation vs. settlement conference, 43
- mediation, non-suitable disputes, 34
- mediation-arbitration, factors in choice of, 40-42
- mediator, factors in choice of, 51-53
- obligation to inform client of ADR, 33
- power imbalances, screening for, 45-50

DOMESTIC VIOLENCE, 151

EXPERTS. *See* FINANCIAL EXPERTS

FAMILY LAW CASE

- acceptance of, 9
- adverse party's interest, determining, 15
- client's interest, determining 14
- facts, determining, 9
- family professional support, 13
- financial statement, 10-12
- first meeting, 7
- game-plan, developing 16
- legal issues, determining, 12
- opposing counsel, understanding, 15
- preliminary expert advice, 13
- understanding, 7

FINANCIAL EXPERTS

- business valuation, documents required for, 227-229

- • corporate, 227
- • financial, 228
- • operations, 228
- business valuation reports
 - • category of, 233
 - • calculation valuation report, 235
 - • comprehensive report, 234
 - • estimate valuation report, 234
 - • sections of, 230-233
 - • type required, 233
- chartered business valutors practice standards, 222
- choice of, 236
- critique reports, 235
- disclosure process, role in, 226
- discussions between, 236
- engagement letters, 237
- expert report, 223, 235
- expert's file, 224
- expert's role, 221-226
- joint retainers, 238
- role of, 221
- trial preparation, involvement in, 229
- use of, 221

IMPASSE, OVERCOMING

- best private offer technique, 250
- educating parties, 246
- feelings, acknowledgment of, 255
- final offer selection mediation, 251
- give and take memorandum, 252
- high conflict personalities, 240
- higher authority, invoking, 244
- higher value, invoking, 243
- listening and observing, 242
- misunderstandings, acknowledging, 256
- money issues 246-248
- nature/source of impasse, 239
- new partners context, 241
- reframing problems, 245
- role playing, 242
- strategies, 241
- structure of mediation/environment, changing, 250
- symbols, use of, 245
- time to worry and think, allowing, 251
- unilateral concession, making, 253
- unrealistic expectations context, 254
- unresolved emotional issues, appreciating, 248

- victim paradigm, 241
- what if question, 252
- why vs. what questions, 249

JUDICIAL DISPUTE RESOLUTION

- Alberta, in. *See* JUDICIAL DISPUTE RESOLUTION (ALBERTA)
- generally, 42

JUDICIAL DISPUTE RESOLUTION (ALBERTA)

- accessing JDR program, 126-128
- Alberta *Rules of Court*, 127
- background to, 123-125
- downside of, 128
- ethical issues, 129-132
- history of, 125
- statistics re, 129
- success of, 128

MED/ARB IN PARENTING COORDINATION PROCESS

- cost, 177
- jurisdiction issues, 172
- model of med-arb, 174
- natural justice and engagement of parties, 175-177
- nature of work, 173
- parenting coordination described, 169
- qualifications, 173
- retainers, 170
- review procedure, 171
- scope of, 170

MEDIATION, *see also* DISPUTE RESOLUTION PROCESS CHOICES

- advocacy. *See* ADVOCACY IN MEDIATION
- client preparation and. *See* SETTLEMENT PREPARATION
- impasse. *See* IMPASSE, OVERCOMING
- mediation-arbitration. *See* MED/ARB IN PARENTING COORDINATION PROCESS
- mediator. *See* MEDIATOR

MEDIATOR

- choice of, factors, 51-53
- commencing mediation, information and issues, 105-107
- counsel use of, 92-95, 97
- difficult counsel, dealing with, 113-116
 - • aggressive counsel, 114
 - • bad-faith negotiator, 116
 - • conflicted counsel, 115
 - • inexperienced counsel, 114
 - • passive counsel 115
 - • tactics for, 116

- evaluations, 107-109
 - benefits and dangers 108
 - described, 107
 - techniques for, 108
- failure of mediation, reasons for, 119-121
- high conflict mediation, techniques, 116-119
- impasse. *See* IMPASSE, OVERCOMING
- lines used by, 109-114
 - custody and access issues, 112
 - deal-making, 113
 - finessing difficult situations, 110
 - help requests, 112
 - litigation problems, 111
 - opening statements, 109
- pre-mediation knowledge, 100-104
 - context, 100
 - law, 101
 - feelings and emotions, 102
 - subject matter, 102
 - parties, 101
 - impasse avoidance, 101
 - nature of own authority, 103
 - consequences of no deal, 103
 - attitude of parties, 103
 - cultural issues, 104
 - sub-surface issues, 104
- role of, 5
- self-knowledge, 99

NEGOTIATION

- advocacy, 167
- bad-faith negotiator, 116
- client, with, 90
- creative techniques, 61-65
- first offer, 57
- meeting, place of, 57
- modes of, 56
- offers to settle, 71
- opposing counsel, with, 60
- order of, 57
- plan, BATNA and, 27
- planned early negotiation, 65
- positional negotiation, 58
- principled negotiation, 59
- process, 219
- ten commandments, 72-74
- third party problems, 66-72

- bankruptcy/insolvency, 68
- cheerleaders, 67
- child welfare issues, 71
- criminal charges, 70
- claims by/against third parties, 67
- disclosure from third parties, 68
- income tax issues, 69
- timing, 55

NEUTRALS

- collaborative process and, 159
- role of. *See* UNREPRESENTED PARTIES

PARENTING. *See* COOPERATIVE PARENTING PLANS; MED/ARB IN PARENTING COORDINATION PROCESS

POST-SETTLEMENT

- documentation of settlement, potential problems, 259-261
- future variations and reviews, 261
- implementation of settlement, 261
- post-settlement letter, 262

POWER IMBALANCE, 45-50, 151

PREPARATION

- BATNA, 215, 219
- client, of, 78
- counsel, by, 79-81
- advocate, by. *See* UNREPRESENTED PARTIES
- settlement, for. *See* SETTLEMENT PREPARATION
- trial preparation, financial expert involvement in, 229

SETTLEMENT

- counsel, role of, 5
- difficulties, sources of
 - dispute resolution process, 2
 - financial pressures, 2
 - issues in dispute, 1
 - relationships between parties, 1
 - unfinished business, 2
- documenting. *See* ADVOCACY IN MEDIATION
- judges and arbitrators, role of, 5
- mediator, role of, 5
- negotiation. *See* NEGOTIATION
- preparation. *See* SETTLEMENT PREPARATION
- sweeteners. *See* SETTLEMENT SWEETNERS
- timing, reasons for
 - dispute resolution styles, 4
 - emotional pre-maturity, 3

- exhaustion, 3
- financial disclosure, 3
- ineffective legal advice, 3
- unrealistic expectations, 4

SETTLEMENT PREPARATION

- client coaching, 29
- client education, 20
- client preparation, 25-29
 - factual information, completing, 25
 - joint evaluation of case, 27
 - mediation basics, 25-27
 - mediation team, finalizing, 28
 - negotiation plan, agreeing on, 27
 - productive attitude, encouraging, 29
 - strength of case, strategizing re, 28
- client rapport, 23
- disclosure, 18-20
 - early disclosure, 18
 - right disclosure, 19
 - tips, 19
 - wrong disclosure, circumstances, 19
- emotions, control of, 22
- first letter, 17
- opposing client rapport, 24
- pre-negotiation letter, 21

SETTLEMENT SWEETENERS

- equalization payments options, 179-182
- non-court benefits, 186-191
- personal and inter-personal motivations, 194-198
- resolving unresolvable issues, 191
- taxation strategies, 182-186

TIMING

- mediation, of, 77
- negotiation of, 55
- settlement, of. *See* SETTLEMENT

UNREPRESENTED PARTIES

- advocate, role of, 211-215
 - procedural preparation, 211-214
 - substantive preparation, 214
- court case, existence of, 219
- family law dispute resolution principles, 210
- generally, 209
- negotiation process, 219
- neutral, role of, 215-220

- • procedural preparation, 215-218
- • substantive preparation, 218-220
- separation continuum, 219

VALUATION. *See* FINANCIAL EXPERTS