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MAGAZINE

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a "Broad Array of Disputes"

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Privatization of Dispute Resolution

The Court of Appeal's Settlement Conference Program

Preparing for Your Next Mediation

The RCBA Fee Arbitration Program



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# CREATING A SUCCESSFUL MEDIATION PRACTICE BEFORE THE BABY BOOMER ONSLAUGHT

by Shirish Gupta



Shirish Gupta

Mediation is a highly competitive field, and it is about to get a lot more crowded. In the next few years, baby boomer attorneys will start to retire, and, rather than give up the law entirely, many will try their hand at mediation. Why not? They've practiced for 30-plus years and are experts in their field. And many of them will likely be volunteering their time. Faced with that incoming wave, it is crucial to build your practice now.

I had a bit of head start by leaving big firm life and opening my own mediation and litigation practice in 2008. I'm happy to share what I've learned in the past four years in the hope that you can apply them to your mediation practice. Although this article is designed for neutrals just starting out, it also applies to people considering becoming neutrals.

## Success

For me, a successful mediation practice is one where I'm consistently getting interesting disputes and getting paid for my services. I don't have visions of world domination or creating the next AAA. I simply want to help people resolve their disputes while making a living.

## Geography

When I started out, keeping costs down was crucial, so I operated from an office near my home. I've since expanded my practice to include mediation centers in Irvine, San Mateo and Sacramento. This leads to increased travel, marketing, networking and localization costs, but it opens up a lot of opportunities. For example, but for the Sacramento location, I wouldn't be considered by parties in the Central Valley. The Irvine office allows me to cover all of Southern California, and the San Mateo office straddles the border of Silicon Valley and San Francisco.

What I'm trying to say is, choose your office location based on the clientele you plan to service. For example, for family law matters, parties and counsel balk at traveling 30 miles, so you might need to have multiple locations in a tight geographic area, such as one in Riverside, another in Corona and a third in Moreno Valley. Again, this costs money, but see if you can pool your resources with other neutrals or, alternatively, rent conference room space as needed. The Riverside County Bar Association's offices are available, and they're centrally located – that's where I conduct all my county fee arbitrations.

Alternatively, focusing just on one geographic area and practice group can greatly reduce your overhead and market-

ing costs – it's a lot easier to get known by all the real estate litigators in Palm Springs than county-wide.

## Shadowing

Soon after I began mediating, I shadowed an experienced mediator. Watching him manage the parties and their attorneys, using not only his subject-matter knowledge but also his soft skills, was eye-opening. Just sitting back and watching a master at work can be invaluable. The other benefit is that, depending on how you hit it off, that person can serve as a mentor or sounding board in the future.

## Volunteer

Another option is to volunteer and apply for mediation panels. Again, there are several panels (e.g., OCBA, BASF) that won't even consider you if you don't have at least ten mediations. Many other panels are simply closed, including the Riverside Superior Court's Civil Mediation panel. On a personal note, my wife and I financially supported a community dispute resolution service for ten years, so I thought it shouldn't be too hard to get on their panel. Not only was their panel full, they were culling it because there weren't enough cases for everyone on the panel. Another service said they'd consider my application only after I took their \$600 training course – it didn't matter that I had already completed a 40-hour course offered by a stellar provider.

However, there are always opportunities. For example, I happily donate my services to the Riverside County Bar Association's Fee Arbitration program. They're looking for more fee arbitrators, especially family law arbitrators. While it isn't mediation, many of the soft skills are the same – evaluating the veracity of the witnesses/parties and gaining their trust and confidence so that they feel that the process is fair, regardless of the result. Also, it takes a while to get comfortable wearing a neutral's skin. Fee arbitrations are a good way to get that experience. You don't get paid for fee arbitrations and will incur out-of-pocket costs, but it's a small price to pay for the experience. Also, you get to work with unrepresented parties, which is a valuable skill in itself.

I started out getting on one fee arbitration panel. From there, I've been accepted to 12 arbitration and mediation panels. In sum, the fee arbitration panels are a great way to grow your mediation practice, especially before the baby boomer wave hits.

*Shirish Gupta is a mediator with Flashpoint Mediation ([flashpointmediation.com](http://flashpointmediation.com)) and has mediation centers in Orange County, Silicon Valley and Sacramento. He is the only Super Lawyers Rising Star in ADR in all of California. He is an alumnus of Corona High School.*

