
Book reviews

Mediating with Families by Linda Fisher and Mieke Brandon (3rd ed, Lawbook Co., 2012)

I write this review as a now semi-retired legal practitioner, a registered family dispute resolution practitioner (FDRP), and a mediator with close to 30 years' experience in family mediation. There is much in this book for the seasoned practitioner, as well as for new mediators.

Both family law and mediation continue to change. The authors of *Mediating with Families* have undertaken the "daunting responsibility" of addressing these changes in the third edition of their highly acclaimed book.

Among these changes are the new dispute resolution and conciliation processes introduced in the Care & Protection jurisdiction in the New South Wales Children's Court, introduced to avoid matters having to go through an adversarial process. These are complex multi-party conferences which may involve extended family members, Department of Family Services Care Workers, lawyers, and independent children's lawyers (ICLs).

Another expanding area for family mediation that has been included in this third edition involves couples who cannot have their own children, and who are increasingly resorting to surrogacy. As the authors point out, this presents legal problems and mediation challenges. The legislation covering this situation is a complex arrangement of State and federal statutes. For example, there is no uniform requirement among the States for obtaining parentage orders in surrogacy arrangements.

As surrogacy is often used by same-sex couples, if the relationship breaks down the problems that follow can be complex and need to be handled with sensitivity. As the authors point out, mediation of all types of disputes between same sex couples is increasing, and requires special qualities in the mediator. As well, mediators need to understand the legal issues and to be aware of special considerations such as the threat of "outing".

The discussion on ethical dilemmas, such as maintaining confidentiality and the limits of impartiality and confidentiality, is extended in this third edition. Another ethical issue which troubles FDRPs is that of issuing the appropriate certificate to clients. The authors do not presume to have the answers, but raise questions to encourage the reader to think through the difficulties and to reach their own conclusions.

On a very different topic, the authors discuss how new technology now provides more ways of offering mediation, such as online family dispute resolution. Technologies such as Skype, videoconferencing, or computers with cameras enable the parties to increase their understanding of each other through virtual face-to-face contact – something that telephone mediation does not allow.

Important changes have been made to Appendix 15, which addresses the increasing problem of family violence. In their discussion, Linda and Mieke refer to the 2011 amendments to the *Family Law Act 1975* (Cth) which expanded the definition of family violence.

They emphasise the importance of understanding the complexities of violence and its many forms. Each category of violence is briefly discussed, as are patterns of recurrent violence. The authors also emphasise that it is crucial for mediators to assess the type of violence and its impact.

Family violence poses the vexing question to mediators of whether the matter is suitable for mediation. A practical example is given of working through the intake process to establish whether a case is appropriate for mediation. This very detailed and useful example runs for more than five pages and includes a number of very helpful suggested questions for every stage of the intake interview, up to the final assessment.

As all FDRPs are now required to have access to a complaints handling process, they will find the examples in Appendix 19 a useful source of information. Perhaps it may have been useful for new mediators to know that they also are now required to have professional indemnity insurance.

A feature of this third edition is the greatly expanded information and discussion on the practice of mediating parental disputes. Difficulties frequently arise as the person most affected, the child, is not present. To give the child her own voice (as opposed to the parties offering a usually partisan interpretation of the child's "wishes") can help the parents to focus on the child's needs, not their own.

The authors discuss various ways of doing this: one way is for the mediator to use techniques that bring the child symbolically into the room. Another technique is child informed practice, using a child consultant, that is, a specialist in working with children. This is a new process, which is discussed in detail.

A useful addition to the discussion on giving the child a voice could have been information on the role of an ICL. These specialist lawyers are widely used in highly conflicted disputes, and represent the children's interests in the proceedings. Many of these intractable disputes are referred to family dispute resolution, and it is helpful for mediators to understand their role. For example, the ICL can be more interventionist in a mediation session than a mediator in representing the children's interests.

I have one minor disagreement with the section on parenting plans. It includes information that they are recognised under the *Family Law Act 1975* as "one of the ways that parents can record a legally binding agreement". I do not consider that this is correct, and would prefer to see the words "a morally binding agreement". The subsequent paragraph says that a parenting plan is "not legally enforceable", which I see as correct, and compatible with my preferred phrase.

I have focused on just some of the pages that I consider to be of particular relevance to family dispute resolution practitioners. I acknowledge that throughout the book there are many other relevant and highly useful additions for mediators who work in other areas of family mediation, such as adoption, elder mediation, parent-adolescent disputes, wills and estates, interfamily disputes, and siblings and elderly parents.

As well, the book has a strong theoretical basis, and a great emphasis on practical problems and skills. The two chapters on "Practice Considerations" and the two on "Language and Culture" are extensive. Throughout the book there are numerous case studies, examples, exercises and questions to consider. All practitioners, whatever their level of experience, can benefit from this book.

Linda and Mieke do not pretend to have all the answers to the many problems that daily confront family mediators. Instead, they pose many questions which require readers to find their own answers. They respect the reader, and there is humility in this. At the same time, their experience and erudition is apparent.

Mediating with Families already has a wide audience. I believe it will stand beside the many "classics" which it lists as recommended reading.

Peter Irving