# Table of Contents

Foreword.........................................................................................................................v
Preface .............................................................................................................................ix
Acknowledgements .........................................................................................................xi

1 Introduction — Mediation Representation in Complex Situations: Advocate, Ally or Both? ................................................................. 1
   1. Mediation in a Nutshell...........................................................................3
   2. History of the Mediation Movement..................................................8
   3. Representation in Mediation...............................................................9
      (a) Opportunity for Client Voice..................................................11
      (b) Preparation...........................................................................12
   4. Complexity.......................................................................................14
   5. Conclusion.......................................................................................16

PART I — SELF-REPRESENTED PARTIES

2 Advocates and Self-represented Persons — What to Do in Mediations with Asymmetrical Representation ........................................ 19
   1. Preparation...........................................................................................22
      (a) Preparing Materials....................................................................23
      (b) Initial Communication................................................................25
      (c) Preparing Clients.......................................................................26
   2. The Mediation Session.......................................................................27
      (a) Fairness in Mixed Representation Mediation.................................28
      (b) Zealous Advocacy for Clients....................................................31
   3. Agreement............................................................................................33
      (a) Informed Consent........................................................................33
      (b) Enforcement and Compliance Issues...........................................34
      (c) Drafting: An Advocate’s Role?....................................................36
   4. Conclusion............................................................................................37

3 Unbundled Legal Services and the Self-Represented Person in Mediation ......................................................................................... 39
   1. What Are Unbundled Legal Services?..................................................41
      (a) Access to Justice.........................................................................43
      (b) New Business Models.................................................................45
   2. Recent Research and Reports on Unbundled Legal Services..................46

xiii
### TABLE OF CONTENTS

1. Accommodating the Needs of Clients with Hearing Loss .......................... 108
2. Accommodating the Needs of Clients with Vision Disabilities ..................... 114
3. Accommodating the Needs of Clients with Intellectual Disabilities .............. 118
4. Accommodating the Needs of Clients with Mental Health Disabilities  .......... 120
5. Accommodating the Needs of Clients with Physical and Mobility Disabilities 123
6. Accommodating the Needs of Clients with Communication Disabilities .......... 125
7. Accommodating the Needs of Clients with Autism ................................. 127
8. Accommodating the Needs of Clients with Learning Disabilities in Mediation 130
9. Conclusion — Towards Universal Accessibility........................................ 131

#### 7 Dispute Resolution, Disability and Democratic Values: An Examination of Mediation Through a Critical Disability Lens 133

1. Defining and Conceptualizing Disability and Critical Disability Theory ............ 137
2. Analysis of Traditional Critiques of Mediation Through a Critical Disability Lens 140
   (a) Privacy ........................................................................ 141
   (b) Informality ................................................................... 143
   (c) Protection of Vulnerable Parties ...................................... 146
3. A Democratic Values-based Defense of Mediation for People with Disabilities 149
   (a) Participation .............................................................. 151
   (b) Personal Autonomy .................................................... 153
   (c) Citizenship .................................................................. 155
4. Conclusion — Where Does This Lead Us? .............................................. 158

#### PART III — MULTI-PARTY MEDIATIONS

8 When Complexity Multiplies — The Multi-Party Environment in Complex Mediations ......................................................... 163

1. Preparation ............................................................................. 165
   (a) Selecting a Mediator or Team of Mediators ...................... 166
   (b) Determining a Best Alternative to a Negotiated Agreement (BATNA) 167
   (c) Charting Relationships .................................................. 169