



## Have Creativity, Will Mediate

In my experience, mediators are (or should be) some of the most creative people on earth. That was recently affirmed at June's TAPM Civil Peer Mediator lunch in Nashville. L. Scott Lucas, a Rule 31 mediator and TAPM member, illustrated how an enterprising mediator does not need legislative mandates to become an impartial service provider in addressing the mortgage crisis.

Scott is a lawyer, MBA, mediator and financial workout consultant serving those in the real estate sector. <http://www.newpdpartners.com/> While some are lobbying to create legislative solutions to the mortgage crisis which will require mediation in foreclosure, Scott is doing what mediators do: convening parties (mortgage lenders and borrowers) and negotiating these difficult situations to successful outcomes voluntarily.

Scott's remarks at the Civil Peer Mediation luncheon reminded us all of the primary work of mediators. Although many see mandatory mediation as the solution to the underemployment of mediators, effective mediators market their services to potential clients unable to resolve their problems and persuade unwilling parties to "come to the table" where the magic of mediation can happen.

Regardless of the power imbalance in mortgage lending disputes, both the mortgagee and the mortgagor have "below the line" interests in avoiding foreclosure, losing asset value and retaining an income producing revenue stream. Skillful negotiators and mediators performing mortgage foreclosure mediation will explore those interests and can influence even the most resistant commercial interests to reach a better outcome than a "walkaway" borrower and an abandoned property. Scott knows this can be done and can show how he has been doing it for years.

Scott's success should be an example to all of us that mediators are undaunted problem solvers responsible for marketing their unique services including the skills of balancing the table and correcting power imbalances to the mutual interest of both parties.

Thank you, Scott for your example.  
Larry W. Bridgesmith

JULY  
2010

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## MEET THE MEDIATOR

### JOCELYN WURBURG

#### **What is in your mediator tool kit? What is your favorite or most used tool?**

Empathy, Listening to what is not being said, NLP (neural linguistic programming). My favorite/most used tool is a flip chart upon which I may just be making unintelligible markings. I use charts because I don't know if I have a right brain or left brain learner in front of me. Some learn through hearing, some seeing, some both.

#### **If you were a superhero/mediator what would be your name and slogan?**

In Memphis, I am currently being called the "grandmother of mediation." I liked it better when I was called the Queen of it.

#### **What is your pet peeve?**

Attorneys who don't believe in empowering their clients to make perfectly good decisions. No attorney I know, of course, but some attorneys are known to screw up good/valid agreements to impose their own prejudices (and, I hate to articulate, make more money in the exacerbation of a case).

#### **Are you married/do you have kids/pets etc?**

Three children and three grandchildren. Not married, but been "dating" Bobby for the last 27 ½ years.

#### **What are your hobbies?**

I play a competent stereo (mostly jazz and newgrass), and I am a beginner banjo and guitar player. I have just taken up art lessons. And I like to flower garden.

#### **Why did you become a mediator?**

As a late in life lawyer, I got my first job in 22 years doing the firm's "other problems," which meant divorce. After my first four trials, which my bosses said I won, my firm declared I was the latest barracuda in town. So why was I going home and throwing up? Having adult children testify their alcoholic father beat up their mother was so repulsive to me. Thus in 1982, I hung out my own shingle in uncontested divorce work; if someone (like myself) had to get a divorce, I would help them with an easier, saner way. In 1984, I discovered there was a mechanism to do better what I was already doing – Mediation – with time tested techniques and procedures.

#### **What is your favorite mediation read?** ACR and Mediate.Com newsletters.

#### **What is your phobia?** Missing the most effective intervention.

(WURZBUG Continued from page 2)

**What is your favorite vacation spot?**

It used to be Playa del Carmen, Mexico, until it became Cancun. Used to rent a \$40.00 a room on the beach, but I took my own sheets! Now it is Europe – especially Paris.

**What are the personal or professional accomplishments you are particularly proud of?**

I drafted Tennessee's first enforceable anti-discrimination law in employment and public accommodation back in 1973. It passed in 1979. After I became a lawyer, I added housing as a jurisdiction to enforce in 1981. Gov. Bredesen has reappointed me to the enforcing commission, the Tennessee Commission on Human Rights, so I now get to help enforce a piece of legislation I authored 37 years ago.

I am also proud of bringing mediation to Memphis in 1984 and being a founder the Mediation Association of Tennessee with Lynn Barton, Jan Walden, and Carol Berz.

Also, President Gerald Ford appointed me to the National Commission for the Observation of International Women's Year, 1976. I helped put on the 1977 Houston Conference on Women – to reveal the barriers that prohibited women from full participation in American Society. On the commission were (at various times) Bella Abzug, Coretta Scott King, Gloria Steinam, Jean Stapleton. I was in high cotton!

**Where are you from and how did you end up in Memphis?** 5<sup>th</sup> generation Memphian.

**Please complete these sentences:**

"I have a burning desire to see more of the world."

"If I could have a 30 minute conversation with anyone (alive or otherwise, famous or not), I would want to speak with the Obamas." They are so smart and so cool!

**What is your favorite TV show?**

Rachael Madow. Used to be West Wing and then Boston Legal.

**What is your favorite food/restaurant?** All ethnic foods.

**What is your favorite flavor of ice cream?** Coffee-favored.

**Knowing what you now know about life etc., would you choose the same career path? If not, what would you like to do?**

I love being a mediator. As a diagnosed "rescuer," I am probably in the perfect profession.

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## COMMUNITY MEDIATION IN WEST TENNESSEE

By

LINDA WARREN SEELY

Relative to east and middle Tennessee, West Tennessee is a virtual desert when it comes to community mediation. The only formal program in existence is through the Mediation and Restitution and Reconciliation Services of Memphis (MARRS) which serves only the population of juveniles convicted of non violent offenses using a Victim Offender Reconciliation Program (VORP) model. A very few mediations are referred out through the legal services providers such as the Community Mediation Center or Memphis Area Legal Services. However, the statistical data on these referrals is sketchy and not well documented. Legal Services funded agencies do not receive case credit for referring out mediations and these are not considered to be a priority for those agencies.

In response, a group of concerned citizens created a non-profit entity called the Conflict Resolution Center of West Tennessee (CRC). Unfortunately, this Center has received no funding and has not as of yet been referred any cases. The Center has been able to work with the Jackson/Madison County School System and helped sponsor Peer Mediation training for students and hopes to continue the relationship with the system and continue to provide ongoing peer and student mediation services. Starting out, the CRC has yet to take a true foothold in either Jackson or Memphis. West Tennessee mediations are usually conducted by for profit mediators, usually Rule 31 listed, with some pro bono mediations occurring sporadically. It is difficult to predict, absent concerted efforts by a dedicated staff person to the development and implementation of programs to grow the CRC in West Tennessee from its current shell structure to a more vibrant and working nonprofit, whether or not community mediation has a future in West Tennessee. Grant funds from the state are extremely limited and other mediation centers reluctant to support a new program when existing funds barely cover program costs. Local County Commissioners have expressed some support for a mediation center and have developed some local legislation to fund the same using the dollar bill court filing fee statutory scheme, however, those efforts have also bogged down due to competing interests and related issues.

It is unfortunate that in the most populated and poverty stricken part of the state that no community mediation center is able to effectively provide mediation and conflict resolution services in a meaningful fashion. Government funds to create new ways to resolve problems or to remove the same from the judicial system are certainly not forthcoming given the current economic climate and it is not expected that any new funds will be available any time soon.

The Community Mediation Centers of Tennessee have met, albeit sporadically, to create a plan for funding mediation centers in Tennessee. The hope is that with the help of TAPM and other professional mediation groups the Centers will be able to take their place among other legal services providers as a viable option for problem solving and conflict resolution for many, if not most people. The Centers and their advocates are hopeful with the recent Access to Justice initiative of the Tennessee Supreme Court that additional funding, as well as support, will soon come their way.

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## COMBINING INTELLECTUAL PROPERTY CONFLICT WITH ADR

By [Jay Barry](#)

Importance of combining intellectual property and alternative dispute resolution:

Alternative dispute resolution (ADR) can serve the needs of parties to intellectual property disputes in many cases, especially when the preservation or creation of business relationships, such as a relationship between a licensor and licensee, is desirable. ADR provides litigants liberties and advantages that are unavailable in traditional court proceedings. With intellectual property disputes, the most significant benefits often include conservation of resources, confidentiality, control over selecting and tailoring the process, selecting the neutral, and determining the outcome. Patent infringement litigation can routinely exceed a million dollars for litigation with the discovery in the hundreds of thousands of dollars. With this large cost as well as the knowledge that the trial verdict could make or break a business, the crafting of a settlement that could benefit both parties becomes very attractive. These benefits include faster resolution, resolutions that are flexible as well as creative, and also resolutions that contain privacy for the parties.

Basics of intellectual property:

The value of intellectual property predates our constitution as demonstrated by the nation's founding fathers including patents and copyrights in the original United States Constitution. Typical areas of intellectual property include patents, trade secrets, trademarks and service marks, trade dress, and copyrights. These areas can be further broken down. Patents may include: Utility patents, design patents and plant patents. Patents are applied for with the United States Patent and Trademark Office. When the patent application is allowed and then issued as a patent, the owner may exclude others from making, using or selling within the United States the property described in the claims of the patent for a limited period of time. In contrast to patents, trade secrets involve a business or company maintaining confidential formulas, devices, methods, information, machines, or processes and the business does not give this information to the public. These trade secret rights last as long as the business keeps the object of the trade secret confidential so that the public does not have access to it. Trademarks and service marks result from value assigned to an item or service because of the particular source of the item or service. Therefore a big consideration as to mark infringement and litigation is the likelihood of confusion with regard to the consumer as to the source of the product. The trademark and service mark duration begins with use of the mark and continues as long as the mark is used. The earlier user of the mark typically has rights over subsequent users of the mark as long as the mark was not abandoned. Federally registered marks may be renewed while the mark continues to be used. Copyright protection results from use or federal registration. The duration of the protection is typically for the life of the author plus seventy years.

Challenges of intellectual property alternative dispute resolution:

There are situations when ADR is not the right choice for resolving the dispute. These include: when there is a need to secure a decision in a public setting or to establish precedent or articulate public policy such as invalidation of an issued patent; where a vital corporate interest is involved such as a "bet the company" case; where there is a need for court supervision or full discovery; or where criminal, civil rights or constitutional rights or issues are involved.

## ADR Ethics Info You Can Use

Troubled by a mediation ethics enigma? State ADR rules a little vague? Take advantage of the free online ADR ethics resources from the ABA Section of Dispute Resolution outlined in an article by TAPM member Marnie Huff, "Do the 5 Step: ABA ADR Ethics Resources" at <http://www.mediate.com:80/articles/huffM1.cfm>.

### *(INTELLECTUAL PROPERTY Continued from page 5)*

Solutions for intellectual property alternative dispute resolution:

Most types of ADR are useful for intellectual property disputes. These include negotiation; mediation; early neutral evaluation; advisory arbitration; mini-trial; summary jury trial; a combination of mediation and arbitration; arbitration; private judging; and special master.

In addition, early case assessment is an effect way to analyze the issues in the dispute. It is a good process for helping to resolve the issues with the right type or types of ADR. By using ADR settlements the parties are no long slaves to the pleadings or proceedings. There are several recommendations that should be applied with early case assessment. It is recommended that the parties maintain a BUSINESS PERSPECTIVE from the beginning. This helps to keep the parties focused on the future not the past. This also helps to keep the parties aware of the cost of the dispute verses the winning or losing perspective. It is also recommended that PREPARATION is important from the beginning through the completion of the dispute. This includes being ready to brainstorm, getting the right people involved and being ready to settle at any stage in the process of the dispute. Another recommendation is CREATIVITY. Creativity is important in many areas such as generating options, creating new business relationships, business certainty and control, access to intellectual property rights, expansion of business, generating value for the company by ceasing the forbidden activity, and positive public attention to name a few areas. With early case assessment, it will be easier to identify the best path and the right ADR for your dispute. Some types of ADR are more common for intellectual property. These are early neutral evaluation, mediation, arbitration, a combination of mediation and arbitration, and special master to name just a few.

The use of ADR with intellectual property is increasing but the future offers even more potential for quicker, less expensive resolution of intellectual property disputes benefiting all of the parties in the dispute.

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**SAVE THE DATE!**



**HOW MEDIATION CAN ASSIST CONFLICT IN THE CHURCH**

**Conflicted churches offer some of the most complex and satisfying interventions in the field. The conflict specialist who is flexible, committed, and can navigate the complex politics, can help these organizations immensely.**

**Presented by  
Larry Bridgesmith and Steven Joiner  
Institute for Conflict Management  
Lipscomb University**

**September 23, 2010  
11:30 a.m. – 1:00 p.m.  
1 hr CLE/CME pending**

**Ezell Center  
Lipscomb University**



**TAPM MISSION STATEMENT:**

The Tennessee Association of Professional Mediators exists to promote mediation as a valuable and effective process empowering people in resolving disputes.

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**FAMILY PEER GROUP**

**JULY 15, 2010**

**Noon—1:00 p.m.**

**Oasis Center**

**1704 Charlotte Ave.**

**Nashville, TN 37214**

**CIVIL PEER GROUP**

**JULY 22, 2010**

**11:30—1:00 p.m.**

**Loews Vanderbilt Hotel—EAT Restaurant**

**Ruth Jenkins**

**Presents**

**“Employment Mediation”**

**Lunch cost “DUTCH”**

**1 Hr CLE/CME**

**TAPM QUARTERLY**

**LUNCH & LEARN**

**September 23, 2010**

**11:30 a.m.—1:00 p.m.**

**Lipscomb University—Ezell Center**

**1 Hr. CLE/CME Pending**

**“CONFLICT IN THE CHURCH”**

**TAPM Mediation News** will be published on the following dates:

**September 15, 2010**

**November 15, 2010**

**Newsletter Editor  
Regina Newson**

**If you would like to submit an article or be featured as the Mediator of the Month, please let TAPM know by emailing tapm@tenmediators.org.**

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