

PRESIDENT'S MESSAGE
STEPHEN SHIELDS
TAPM President 2012-2013

November 2012



Legal Information or Legal Advice?

That is the question. And it is one that frequently arises when mediating legal disputes. On the one hand, mediators are permitted to offer legal “information”. But mediators must also steer clear of giving legal “advice.” So the question becomes: How does one tell the difference between the two? What if basic “information” favors one party over the other: Does that change the nature of the information into legal advice? And should mediators stop offering legal information altogether out of an abundance of caution?

This could obviously be a slippery slope — particularly if either party is unrepresented. In my experience, going through mediation rarely if ever minimizes the importance of the law to a party who has sought the law’s protection by filing a lawsuit. This means that mediators will continue to be confronted with this and other questions testing the boundaries between giving “legal information” and offering “legal advice.” Thankfully, TAPM is presenting a seminar on this subject on December 6, 2012. The course is being offered both “in person” at the Institute for Conflict Management, Lipscomb University, Ezell Center, or via “conference call” and has been approved for 1 hour dual CLE/CME. Please visit our website, www.tenmediators.org for details and registration.

Tools For Your Toolbox

I again want to bring to your attention our Annual Seminar, which is scheduled for February 21, 2013. Nina Meierding will be our featured speaker. She is incredibly experienced as a mediator and as a trainer and will provide us with many practical tools to apply in our practice. I can assure you that her presentation is one that you will want to make every effort to attend.

Your Ideas

As I indicated in my first President’s Message, the best way to benefit from this organization is to get involved. Accordingly, I again invite your ideas and suggestions about topics, etc., for upcoming seminars as well as any other proposals that you may have about how we can improve our level of service and our relationship with our members. Please feel free to email me your ideas at sshields@jsyc.com.

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MEET THE MEDIATOR ROBERT A. CLADWELL



Robert A. Caldwell, CPA is a Rule 31 Listed Family Mediator and a practicing CPA. He is a partner in Caldwell & Bryant Financial Advisors and a partner in Caldwell and Caldwell Mediation and Conflict Resolution. His practice focuses on trusts, estates, inheritance, gifting, and related tax services for individuals, families, attorneys, financial advisors, and bank trust departments. Robert is vitally interested in the psychological, emotional, and spiritual aspects of money and how it affects families and individuals. His mediation practice interests include inheritance conflicts, family money issues, elder issues, business disputes, and divorce. He is specially trained in domestic violence mediation. Robert currently serves as Chair of the Board of the West Tennessee Healthcare Foundation. He is a graduate of Lambuth University and the National Graduate Trust School at Northwestern University. Robert practices and lives merrily in Jackson, Tennessee, where he enjoys reading, writing, cooking, traveling, and gardening.

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

I am a big believer in using visual tools to reinforce concepts and make points. For example, I often use a tailor's tape measure, cut off to 87 inches, which represents the average life expectancy. To a client I might say, "Mrs. Smith, you have told me that you are now 40 years old. How many years of your remaining life do you wish to continue to deal with the issues that brought you here today?" My favorite tool in mediation is a sense of humor! Appropriately used humor is a great tension breaker, and helps people to relax. Humor helps us to see beyond ourselves, and not to take ourselves too seriously. I believe that if I can help people to laugh, it can help them open up.

Once you have been selected as the mediator, what do you do to prepare the attorneys and their clients for the mediation?

I send them a handout explaining the mediation process, the ground rules (civility, courtesy, no interrupting, use of proper names instead of "him," "her," etc.). My handout discusses fees, confidentiality, what mediation is and what it is not, etc. I do what I can to help reduce the apprehension that many people feel in participating in mediation.

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

My name would be "Peacemaker," and my slogan would be "Blessed are the peacemakers for they shall be called children of God"

What is your pet peeve in mediation?

Rudeness, incivility, and a "win at all costs" mindset.

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

I have been married to the most beautiful woman in the world for 39 years. We have a lovely daughter and a fine son-in-law. We have only one dog, and I think we should have at least six. However, the lady of our home disagrees, so we have one.

(Caldwell I Continued from page 2)

Why did you become a mediator?

As a CPA, I have worked with estates, trusts, and beneficiaries for almost 35 years. It is heart breaking to see so many families torn apart over money and property issues. My initial interest in becoming a mediator was to help families mediate, resolve, and prevent inheritance conflicts.

What is your favorite mediation read and why?

High Conflict People in Legal Disputes, by Bill Eddy. The author is a licensed clinical social worker, an attorney, and a mediator. This fine book is of great value in understanding the various personality types that one encounters in mediation.

What are you most afraid of in mediation?

Finding myself at a loss for words, and losing control of the mediation.

How do you debrief yourself after a mediation?

As soon as possible, I make a list of what I did right, what I did wrong, and what I could have done better. I then write a letter to myself discussing those points.

Personal or professional accomplishments you are particularly proud of:

My greatest pride of accomplishment comes from the things that I have written.

Please complete these sentences:

“I have a burning desire to *walk the 546 mile pilgrimage from Roncevalles, France to Compostella de Santiago in Spain. Called the “Way of Saint James,” it is said to be a challenging and life changing experience.*

ōPeople tell me I look like *Donald Southerland. That’s what my wife says.*

“If I could have a 30 minute conversation with anyone (alive or otherwise, famous or not), I would want to speak with *Martin Luther. He is said to have been both the last medieval man and the first modern man. Luther remains one of the most complex and fascinating characters in history.*

What do you see for the future of mediation?

I clearly see mediation as a steadily growing field with a very bright future. In twenty-first century America, technology has given us an instantaneous, in your-face culture. Families and individuals are beset with economic pressures and the social dislocations of mobile lifestyles. The result is that as a culture, we are increasingly edgy, angry, and feel out-of-control. Unfortunately, this leads to more conflicts that need to be resolved. As a profession, I see mediation attracting people of various backgrounds who sincerely are interested in doing what they can to make our society more civil and thus a better place to live and work. The two areas that I see rapidly growing are elder mediation and workplace mediation.

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

That's a good question, for I am still trying to decide what I will be when I grow up. If I were able to change career paths at this point, I would become a psychotherapist.

Is there anything else that you want to tell TAPM members about yourself?

I have long been haunted by the words of psychologist and author Mary Pipher, who wrote: "We all go through life with broken hearts." Mediators sit with clients during some of the most heart-breaking times of their lives. Helping parties in conflict seek resolution to those conflicts is a most noble calling, for it will help ease their pain. That's what we do, and we should be proud to do it.

New Methods for Dealing with High Conflict Disputes

Bill Eddy is the head of the High Conflict Institute in Arizona. He spoke to the TAPM annual meeting in 2009 where he helped us determine who was a high conflict personality and how to deal with them in mediation. The article below is the culmination of a five year study which Eddy has done to provide a actual structure in how to deal with these folks in our mediations. It is very enlightening and practical. If you wish to learn more, he has a training in November. See the bottom of the article.

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*Mediating high-conflict disputes requires a more structured process than that used in most ordinary conflicts. This is especially true when disputes involve ongoing relationships, such as parenting issues in divorce, elder law decision-making, business conflicts, workplace disputes and neighbor disputes. When these relationship disputes become "high-conflict" (extremely intense or prolonged), it is usually because one or more individuals lack conflict self-management skills, because of being temporarily overwhelmed or having a long-standing high-conflict personality pattern. This article explains **New Ways for Mediation™**, a new, highly-structured method I have been developing in my professional family mediation practice over the past five years. It is specifically designed for mediating high-conflict disputes by guiding the parties in using simple self-management skills to their maximum ability.*

Mediation Self-Management Skills

People engaged in high-conflict disputes appear to lack the four key skills that are listed in the chart below on the left, and their resulting high-conflict behaviors are on the right.

Self-Management Skills:

Reflecting on one's own behavior
Flexible thinking and solutions
Moderate negotiation behaviors
Managed emotions

High-Conflict Behaviors:

Preoccupation with blaming others
All-or-nothing thinking and solutions
Extreme negotiation behaviors
Unmanaged emotions

Everyone gets upset sometimes and may display some of these high-conflict behaviors. However, some people appear to have high-conflict personalities, so that they repeat these behaviors over and over again in their lives because they lack these self-management skills. I believe it is helpful to think of them as high-conflict people (HCPs) so that your expectations for conflict resolution are not based on them managing themselves. Therefore, mediators need to provide a more structured process for them, rather than operating on the assumption they can manage themselves if they just try hard enough or are reprimanded or are allowed to speak until they get it off their chests.

Important Note: Mediators don't need to determine whether someone's lack of skills is personality-based or just situational in using the New Ways for Mediation method. (In fact it may be harmful to tell someone you think he or she has a high-conflict personality.) The New Ways for Mediation method can be applied with anyone in any case. The principles involved in this method

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are intended to be in addition to the mediator's toolbox of methods and skills, rather than a replacement. If the parties manage well, the structure can be easily loosened. It's easier to start with too much structure than it is to tighten up when there has been too little structure.

The focus of the New Ways for Mediation method is on the working relationship with the parties, rather than on the actual outcome . the decisions . of the dispute. By letting go of the outcome, mediators avoid the power struggles of trying to drive the parties toward a quick settlement . or any settlement . just to get them out of the mediator's office. High-conflict people pick up on this frustration and quickly develop adversarial relationships with mediators (and other professionals) who push them in directions they don't want to go. This method avoids fighting with high-conflict clients by giving them clearer responsibility for making their own decisions, while the mediator focuses more clearly on maintaining a positive and productive relationship with the clients at all times.

Structured Steps

The basic steps for New Ways for Mediation are common to many mediation methods. The main difference is the structure *within* each step, which guides the parties in using simple self-management skills and blocking the use of high-conflict behaviors.

Pre-Mediation Coaching

The parties need to be oriented to the structure and skills+approach of New Ways for Mediation in advance, for it to be most successful. This can be done in separate sessions by the mediator, by an intake staff member, by a lawyer for each party, by a counselor or by a conflict coach. For a more detailed description of this pre-mediation step see the article:

[Pre-Mediation Coaching by Bill Eddy \(2012\).](#)

Step 1: Signing Your Agreement to Mediate

This step generally takes longer than in other mediation formats, as the mediator is bonding with the parties through the process of questions and explanations, as well as establishing that the mediator has tight control of the process. For example:

>Welcome to mediation. Before we get started I want to emphasize three key aspects of the mediation process. #1: You folks are the decision-makers. I won't make decisions for you, I won't pressure you to make decisions and you don't have to persuade me of anything. #2: I may have information on the subjects you are trying to decide today, and I am happy to share what knowledge I have about how other people have handled similar issues . but it is all information and not advice. #3: If you are dealing with a court case, it is helpful to know that the courts encourage mediation and will accept almost any out-of-court agreements you make, because you have more flexibility than a judge has so long as you both agree. Do you have any questions about these key aspects of mediation before we proceed?+

This introduction reinforces the importance of the parties as decision-makers and the mediator's role as not that of the ultimate decision-maker. Most parties don't have any questions at this point and say they like these aspects of mediation. But if they do have questions about these three aspects, they can be thoroughly discussed. Some high-conflict participants are very anxious, so that discussing and resolving their concerns at this very fundamental level of the process can be kept simple.

Next, the mediator should have the parties review and sign the Agreement to Mediate together, which clarifies specific issues, such as confidentiality, how the mediator is to be paid, communication between sessions and so forth. This often raises concerns for clients and discussing these procedural matters allows further opportunity for questions and answers . additional opportunities

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for the mediator to connect with the parties. Up to this point, the mediator has redirected complaints, proposals, questions about their specific cases and so forth for later discussion. This reinforces that the mediator is in charge of the process and has a plan to really hear from each party at the appropriate time.

After signing the Agreement to Mediate, the mediator explains the general process of the mediation, such as the following:

The focus of mediation is on the future, so that we will spend most of our time on each of you making proposals and refining your proposals until they can become agreements. I will help you with this process and explain more about this as we go. Also, when you hear a proposal, try to focus on responding simply with a Yes, No, or I think about. Again, I will help you with this process. Think of me as responsible for the process and the two of you as responsible for making your decisions. Any questions about any of this?+

There can be more explanation of the process, including ground rules for communicating (trying not to interrupt, taking breaks and so forth) and other house-keeping matters (such as note pads for writing ideas while others are speaking and so forth). Usually the parties . even high-conflict parties . are mostly listening by now, because the mediator has made it clear that their concerns will be respectfully listened to momentarily, but these introductory explanations will help them be more effective.

If high-conflict parties (one or both parties) are insisting that the mediator vary his or her process by moving forward more quickly or making evaluative comments or deviating in some other way, the mediator can calmly reaffirm that this is what he or she has learned is most effective in helping people manage their disputes and that the structure will free them to focus on their concerns in a step by step manner towards resolution. This step does not need to take a long time (it can be as short as 5 minutes or up to half an hour). It just needs to be used to demonstrate that the mediator is in control of the process, is very interested in working with the parties and is happy to answer questions and provide guidance and information that may help along the way as they focus on making proposals to resolve their dispute.

Step 2: Making Your Agenda

This step puts the responsibility directly on the parties to raise issues and agree on which issues they will discuss, including the order in which they will discuss them. By keeping this responsibility on the parties, rather than on the mediator, it builds momentum for them making proposals and agreements. Each step of this process reinforces practicing small skills of communication and decision-making. This is especially important with people with high-conflict personalities, because they tend to demand that professionals take responsibility for their problems and decisions . then blame them for doing it wrong. By instead emphasizing that it is the parties' dispute and decisions to be made, the mediator reinforces the expectation that they will be responsible for the outcome, not the mediator.

Within this step is the mediator's opportunity for listening to each party's concerns and questions. The mediator encourages each party to look at and speak to the mediator (in the presence of the other party), so the mediator can really concentrate on the party who is speaking. This also discourages sniping comments back and forth, as the parties are not looking at each other and simply reacting to each other. This further trains the parties to take turns and listen without interrupting throughout the process. It is also a time to predict and normalize disagreement . and that disagreements can be resolved. The mediator can introduce this as follows:

Now is when you can each tell me the concerns you wish to discuss today and any questions you may have for me about them. This is often the hardest part of the process because you may hear points of view that you disagree with. That's fine and normal at this stage, as most people start out disagreeing and most people eventually reach agreements in mediation.

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So if you have a reaction or idea while the other person is talking, feel free to make a note of anything you wish, so that you can just listen without interrupting. After I hear from each of you, we will make our agenda of what you jointly agree you wish to discuss. You can raise any issue for discussion, and you can say "no" to any issue you do not wish to discuss. Who wants to go first?+

Then, the mediator really takes time to focus on each person's concerns and understanding them, while still having good eye contact with each party, rather than focusing exclusively on the person speaking. If the mediator tends to say something like "Okay" as he or she listens to a person, it helps to mention to both parties that saying "Okay" just means that the mediator hears what you are each saying, without agreeing or disagreeing.

With high-conflict people there will be a lot of interrupting during this step, even though they have been instructed not to interrupt. (Remember, unmanaged emotions are common for some.) It is helpful at this point to show comfort with managing the process and calmly reinforce the benefit of each person speaking thoroughly, so that the mediator can really understand each one's point of view. "This helps me think more effectively of ways that I might help the two of you resolve the problems you want to address today." It's important not to show anger or irritation with the interrupter, but rather to take an educational approach to explaining how important this step is in the process. "It's normal to feel frustrated at this stage of the process, yet it usually helps each of you in thinking about the proposals that you're going to make and most people eventually reach agreement in this process.+"

After each party has had an opportunity to state their concerns and questions, the mediator can take a turn at summarizing what each party said and/or educating the parties on standards that relate to the issues they have raised. For example, in divorce mediation, the mediator can explain the basics of parenting plans, property division, child support and other issues, so that the parties narrow their expectations and get to ask more questions. By focusing on issues, questions and answers, the process itself blocks sniping back and forth over each other's past behavior or angry positions about the future . replacing these with information.

Rather than getting angry with the parties, the mediator can simply interrupt at such times and say: "You've raised an important subject and here's how it is commonly handled" +By focusing on explanations of standards and options before the parties make their proposals, it saves them embarrassment and unrealistic expectations. It also helps the mediator avoid appearing to take sides.

For example, if a mediator says that community property laws state that spouses shall share any retirement benefits earned during the marriage, then it makes it slightly less likely that an employee-spouse will demand sole ownership of the retirement benefits and slightly less likely that the employee-spouse will claim that the mediator has taken the other person's side+by sharing this information. It helps to know that such information will often have to be repeated several times before an upset party absorbs it.

Don't let these issues become power struggles. Instead, say that you are simply sharing information you believe will help them understand their options and make proposals that can become agreements. Encourage them to seek the advice of separate lawyers to get more detailed information on what you are generally telling them.

Step 3: Making Your Proposals

Once there has been a discussion of issues and standards, and the parties have set their agenda priorities, it is time for making proposals. This may seem premature to many mediators who are used to spending a lot of time on discussing each party's feelings about the dispute or identifying their interests. However, the New Ways for Mediation method reverses somewhat these other approaches, based on the realities of high-conflict people. HCPs usually start out with a clear idea of what they want and

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don't want. They are usually too upset to manage discussions of feelings productively (they just get more flooded with emotion) and too rigid to recognize both parties' interests. Therefore, this method lets them present their proposals, but then the mediator assists them with understanding the underlying parts (essentially interests) to the extent that the parties disagree.

A structured way to do this is for the mediator to really focus on understanding a proposal before allowing the other person to officially respond. For example:

"Hang on, Dan. Don't respond yet to Emily's proposal until I really understand it. I want to make sure I'm absorbing all the parts of her proposal, which may help me help you two refine your proposals until you are ready to reach an agreement. Sometimes a proposal itself is not agreed to, but it helps us find another solution that will work for you both. So, Emily, tell me what it would look like if your proposal was put into action. What would your picture be? What you would do, what would Dan would do and anyone else involved."

Then, after hearing Emily's proposal in depth and making some notes about it, the mediator can turn to Dan and say:

"Do you have any questions for Emily about her proposal? Do you think you understand it pretty clearly? Ok, then what are your thoughts about it? Would this be a 'Yes, I can do it' or 'No, I won't do it' or 'I'd think about it.' And if you want to think about it, when do you think you'd have an answer for her? And if your answer is a 'No,' then of course I'd be asking you next what your proposal would be."

By making this process go so thoroughly, each party learns that what is important is making proposals and responding to proposals slowly and respectfully. By being confident in this structure, the mediator helps the parties grow more confident that their proposals will be taken seriously and that sniping at each other just doesn't fit. By ignoring interruptions and negative comments, and focusing on this proposal process, the mediator can manage the parties' conversations without having to reprimand them or feel responsible for solving their problems.

In the New Ways for Mediation method, the mediator is clearly managing the process with a very direct approach, while not taking any responsibility for the outcome. That belongs to the parties. Ironically, by taking this highly-structured approach, the mediator actually makes the process simple and more user friendly for the parties, while also protecting them from each other's (and their own) negative impulses.

Step 4: Finalizing Your Agreements

This step often feels like the easy part, but it can take as long as the whole mediation process leading up to it in high-conflict cases. This is often a written process and may involve several edits and several people involved in the editing process, such as lawyers and other advisers.

It is important for the mediator to remain calm and steady throughout this final step. Reminding oneself that the mediator is responsible for the process and not responsible for the outcome can be helpful. High-conflict people can resolve most of their disputes, but we have learned that they often take twice as long . if not longer . to reach final agreements. In a sense, they have two conflict resolution processes: one is focused on logical problem-solving and the other is focused on relationship defensiveness. These seem to be associated with different parts of the brain.

Therefore, after they have done logical problem-solving with professionals, they often go home and start thinking alone about

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relationship defensiveness and become upset again as they interpret their agreement negatively in terms of the relationship (feeling abandoned, disrespected, ignored, dominated, etc.). Then, when they are around their reasonable advisers again, their tentative agreements look reasonable again. But then, on their own again, they feel a personal loss again. This process sometimes has to go round and round several times before both parties will actually sign a settlement of their dispute.

Conclusion

Using this highly-structured . yet simple . four-step process, mediators can help even high-conflict parties (or any parties) reach agreement. By making it repeatedly clear that the mediator is responsible only for the process and that the parties are responsible for making decisions, everyone involved can be more effective and less frustrated. In many ways, this process is an educational one in which the parties' interactions are focused on answering questions, asking questions, gathering information, discussing options, considering consequences . and then repeating and repeating this process until there is a resolution. Efforts to blame and criticize each other, and to focus too heavily on the past, are blocked by simply re-directing the parties into making proposals and gathering more information to make more refined proposals.

In some cases, it is helpful to ask the parties to bring in outside advisers, including lawyers, financial advisers, parenting experts and others to the mediation sessions. This teamwork can add to the momentum of settling the disputes, even though it continues to be up to the parties to make the final decisions. Sometimes with high-conflict cases, it is necessary to have a more thorough, collaborative process, before the parties feel comfortable reaching resolution. Fortunately, as mediators and collaborative professionals become more comfortable working with each other, some high-conflict clients are able to stay completely out of court with cases that looked impossible for settlement in the past.

In some ways New Ways for Mediation may seem like nothing new. In other ways, this may be a huge paradigm shift for mediators. New Ways for Mediation is focused on the mediator's relationship with the parties, rather than on the outcome of their dispute. By letting go of the outcome, mediators focus more strongly on the process and how they communicate with the parties. When a mediator can effectively structure and manage this relationship with high-conflict clients, the parties themselves can use their skills to make the decisions they need to move forward in their lives . and get the credit for their success. Ironically, the less the mediator has focused on the actual outcome of the case, the more often it has been that the parties had a positive and lasting outcome.

Bill Eddy will be presenting this method at two 2-Day Trainings in November: [Nov 13-14 in Calgary, Canada and Nov 19-20 in San Diego](#). The Calgary Training is available by contacting lomaxlawcorp@telus.net. The San Diego Training is available now for [Online Registration!](#)

Bill Eddy is a lawyer, therapist and mediator. He is the President of the High Conflict Institute based in San Diego, which trains legal, workplace, healthcare and education professionals in managing high-conflict people. He is the author of several books, including [It's All Your Fault! 12 Tips for Managing People Who Blame Others for Everything](#). For more information about his books, or information about seminars and consultation, see www.HighConflictInstitute.com.

VORP CUMBERLAND COUNTY, TENNESSEE

I would like to introduce you to VORP which is an acronym for victim offender reconciliation program. Our program is located in Cumberland County; we were the second VORP in Tennessee. We have provided free access to justice for over 23 years.

What makes us so unique is that for a rural county, our community embraced mediation from the beginning. Judges enthusiastically welcomed mediation to their courts, seeing the value for the system and especially for the participants. Volunteers eagerly invested their time, talents and most impressive, their compassion. The odd thing about mediation here was it was not a polarized group; our center was neither politically conservative nor liberal, everyone saw the value of mediation. The need for mediation here in Cumberland County was recognized by our State Senator Anna Bell O'Brian (Democrat and wife of Supreme Court Judge Charles O'Brian) and State Representative Shirley Duer (Republican) both from Cumberland County, through their knowledge and understanding of the power of mediation they helped secure funding for VORP's to be accessible across Tennessee. Shirley Duer served on our board of directors, until her recent passing.

All community mediation centers are a little different; however we all have the common thread of wanting to provide access to justice that is free, neutral, confidential and voluntary. Our center takes an average of 5 – 10 volunteer mediators to court each week. The judge, local bar, public defender and district attorney's make referrals for mediation they feel are appropriate. Types of mediations range from theft, assault, animal cases, harassment etc. and the mediations are completed at court. VORP staff monitor for compliance.

While the need for access to justice is on the increase, services are on the decrease due to lack of funding everywhere. It is sometimes difficult in this depressed economic climate to convey the value of community mediation, especially in rural areas to the general public. Consider this example. What is the cost to the community and taxpayers if an offender steals an item from a national store? The value of the item taken is under \$10 and upon arrival in court a public defender is requested and appointed, and the case travels through the system with the cost of district attorney prosecuting, the judge, clerks and bailiffs, at what cost?

When the same case is referred to community mediators, the store receives restitution, paid by the offender, the offender takes a course in financial literacy (so they can better manage resources), perhaps completes community service to give back to the community. The cost savings over the earlier scenario is substantial and the costs are now where they belong, with the defendant, and not the taxpayer.

Lack of adequate funding is killing community mediation centers. Free mediation is not free to provide. Please help save VORP in Tennessee. Contact your State Representatives and make them aware of the need to fully fund VORP. Our legislators need to know how important access to justice is.

Phone 931 484 0972.

Address by appointment only: 584 Highway 70 East - Crossville, TN 38555

E mail: vorp.crossville@gmail.com

Tennessee Association of Professional Mediators

Presents

"Annual TAPM Ethics Seminar: Exploring Section 10(b)(3) of Rule 31 -- Legal Advice by a Mediator"

Presented by:

Bruce Shine: Review the wording of Section 10(b)(3). Discuss how and when it has been interpreted by the Alternative Dispute Resolution Commission. Participate in a panel review of scenarios that may represent prohibited giving of legal advice by a mediator.

Edward P. Silva: Discuss how mediators can improve their knowledge of this issue. Discuss what a mediator should do to resolve questions about whether the making of specific types of statements constitutes "giving legal advice". Participate in a panel review of scenarios that may represent prohibited giving of legal advice by a mediator.

Sandy Arons: Discuss special issues/concerns that apply to non-attorney mediators. Participate in a panel review of scenarios that may represent prohibited giving of legal advice by a mediator.

Some of the issues that will be covered in the panel review of scenarios: what qualifies as "legal advice"? What is the role of the parties' attorneys--if they participate in the mediation or do not? What if the parties are unrepresented? Who can a mediator ask if troubled by a concern about how to present information in a way that does not constitute legal advice? Do we all agree on what constitutes "legal advice" in this context --or not? Does it make a difference if the mediator is an attorney or is not an attorney?

December 6, 2012

PARTICIPATE IN PERSON OR VIA CONFERENCE CALL

11:30 - Lunch Served

Noon - 1:00 p.m. – Presentation/Conference Call

(Ethics Seminar Continued from page 12)

12:00 NOON - CONFERENCE CALL
On December 5, you will be sent the Conference Call Instructions

**1 hr Dual CLE/CME Approved
Institute for Conflict Management
Lipscomb University
Ezell Center
Room 363
3901 Granny White Pike
Nashville, TN 37204-3951**

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**Cash or check payable to TAPM at the door
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www.tennmediators.org

\$25.00 TAPM Member
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Audio Conference Fee

**On December 5, 2012, you will be sent the Telephone Conference call in number with
password and a link to download the conference materials.**

\$20.00 TAPM Member
\$25.00 Non TAPM Member



February 21, 2013

Annual Meeting CLE/CME

Featuring

Nina Meierding

Presenting

**Advanced Methods for Identifying
and Moving Beyond Obstacles to Settlement**

**Full Day of Advanced Skills Training Workshop
Approved 6 Hours General CLE/CME**

Ezell Center - Lipscomb University Room 301
3901 Granny White Pike
Nashville, TN 37204-3951

[Directions to Campus and Campus Map ó Click Here](#)

**PARKING INFORMATION:
PARK AT THE LIPSCOMB FOOTBALL FIELD
1013 Caldwell Lane, Nashville, TN 37204
(Caldwell Lane is off of Granny White)
Shuttle service will run every 15 minutes**

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About This Workshop

This interactive, one-day training moves beyond the fundamental 10 Techniques for Breaking Impasse workshop to explore complex obstacles and mindsets that can generate resistance to settlement, including strategies for effectively avoiding, conquering, or resolving such impediments. This pioneering training will include a modern take on traditional concepts, such as Boulewarism and mismanagement of expectations, as well as a discussion of innovative approaches derived from the latest research in the field of psychology, ranging from topics such as high emotionality and the endowment effect to confirmation bias and cognitive dissonance. The training will also challenge attendees to consider how gender and cultural issues might foster miscommunications, creating resistance and reactive devaluation.

The training will focus on proactive techniques, such as setting the stage and accurately assessing a client's readiness for negotiation, as well as responsive techniques customized to target a client's specific reasons for resistance. For example, the training will cover when and how to apply anchoring, reframing, or incubation to effectively overcome a client's resistance to settling. Other advanced techniques discussed will include reality testing and the use of timing to the art of engagement through sensory modality, matching and mirroring, unilateral concessions, and much, much more.



Featured Speaker

Nina Meierding has assisted in the resolution of thousands of disputes and has conducted training throughout the world, including Canada, Sweden, Ireland, England, Scotland, the Netherlands, and India. She has consulted and trained many groups, including court systems, corporations, medical agencies, governmental agencies, small and large business entities, and individuals in the areas of conflict resolution, cross cultural issues, management skills, and negotiation skills.

Nina is an Adjunct Professor at Pepperdine University School of Law in Malibu, California (courses in Negotiation, Domestic Relations Dispute Resolution, Advanced Mediation, and Cross Cultural Issues in Dispute Resolution), in both Southern Methodist University's Dispute Resolution program in Dallas, Texas (courses in Gender and Culture, Mediation, Advanced Negotiation, Advanced Family Mediation, Divorce Mediation) as well as SMU's Counseling program (Counseling Diverse Communities), and at Lipscomb University in Nashville, Tennessee (Cross Cultural Issues in Dispute Resolution). She has been a guest instructor at many other universities and law schools. Nina has also been an instructor at the National Judicial College in Reno, Nevada and the California Judicial College, and has been a plenary speaker and presented workshops at judicial and state bar conferences.

She is a Past President of the Academy of Family Mediators, has served on the Executive Committee and Board of Directors of the Association for Conflict Resolution, and has also served on the boards of the Southern California Mediation Association, the Ventura County Bar Association, and the California Dispute Resolution Institute. She was awarded the Peacemaker Award in 1992 by the Southern California Mediation Association for her outstanding work in the conflict resolution field. In 2005 she was awarded the John Haynes Distinguished Mediator Award, which is an international award given annually by the Association for Conflict Resolution.

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From 1985 to 2007, Nina was the Director and Senior Mediator at the Mediation Center in Ventura where she handled over 4,000 disputes. In the 1990s, Nina also served as a mediator for the California Department of Education's special education mediation program. She is now the mediation consultant and mediation partner for the Wisconsin Special Education Mediation System (WSEMS).

Nina is a Life Member of the Association of Family and Conciliation Courts and was a founding member and President of the Board of Directors of the Ventura Center for Dispute Settlement, the first non-profit community mediation center in Ventura County, California.

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1. TAPM Member Renewing 2013 Dues \$150.00 CLE/CME Fee \$100.00 2012 Dues \$250.00 TOTAL	6. TAPM Member Renewing 2013 Dues \$175.00 CLE/CME Fee \$100.00 2012 Dues \$275.00 TOTAL
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SCHEDULE OF THE DAY

8:00 a.m. – 8:30 a.m.	Registration
8:30 a.m.—9:45 a.m.	Diagnosing Sources of Resistance In order to correctly strategize how to move through impasse, one must first identify possible sources of resistance. Our morning session will discuss many sources including mismanagement of expectations, externalities, emotionality, self serving bias, confirmation bias, Boulewarism and the endowment effect and we will explore how to discover these sources through macro and micro focusing, active listening, and strategic questioning.
9:45 a.m.—10:00 a.m.	Morning Break
10:00 a.m.—11:45 a.m.	“Setting the Stage” – The Beginning Impacts the End This section will focus assessing readiness and evaluating client levels of reactive devaluation, commitment, focus and listening abilities. We will then discuss proactive techniques in convening, mediation design, and in the opening statement that will prevent many forms of impasse from developing.
11:45 a.m.—Noon	Pre-Lunch Break
Noon– 1:15 p.m.	TAPM Annual Meeting and Luncheon Program co-sponsored by Coalition for Mediation Awareness in Tennessee (CMAT) presenting Grayfred Gray Public Service in Mediation Award
1:15 p.m.— 3:00 p.m.	Moving Beyond Impasse The entire afternoon will focus on specific techniques to break impasse, including anchoring, reframing, reality testing, engagement, situational rules of fairness, outside opinion, linkage, unilateral concessions, unbundling, temporary agreements, offer matching, and non-specific compensation. We will customize the strategies to the source of resistance.
3:00 p.m. –3:15 p.m.	Afternoon Break
3:15 p.m.– 4:30 p.m.	Moving Beyond Impasse continued See description under 1:15 – 3:00.
4:30 p.m.	Closing Comments



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