

PRESIDENT'S MESSAGE
STEPHEN SHIELDS
TAPM President 2012-2013

September 2012



Grayfred B. Gray Article: "Conflict Resolution With Minimal Harm" is one of the themes of the article that appears in this newsletter by the esteemed former Professor of Law at the University of Tennessee College of Law, Grayfred B. Gray. It is one of the longer articles that we have published; however, it provides interesting historical insight and poses future realities about our profession. He notes that each professional mediator will be in a position to choose which of those "realities" to follow. As is always the case with Professor Gray's articles, this article is forward looking and thought provoking.

Annual Seminar: I mentioned in my last message that our Annual Seminar is scheduled for February 21, 2013. Since then, I have read several of our speaker's (Nina Meierding) publications. I can assure you that you will not want to miss her training. She has amazing credentials and experience and will provide us with invaluable insights and sharpen our mediation skills. The registration form for the Annual Seminar is included with this newsletter.

Neuroscience and Mediation: Many of us have developed an interest in other disciplines; in particular, the one discipline that seems to be making significant contributions to our practice is neuroscience. One of the leading writers on the subject is Richard Birke. In his article, *Neuroscience and Settlement: An Examination of Scientific Innovations and Practical Applications*, 25 Ohio St. Journal 477 (2010), he discusses the application of neuroscience findings to each stage of the mediation process - the best article regarding the application of neuroscience to mediation I have read so far. Well, I have good news. Birke has accepted an invitation to speak in Memphis on November 28th. He will fill an entire day discussing neuroscience and how the mind works and what the scientific literature has to offer us. If anyone is interested, please email me at sshields@jsyc.com and I will send you details of the program.

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MEET THE MEDIATOR

JOE JARRET

TAPM member Joe Jarret is a Federal Mediator, Arbitrator and Tennessee Rule 31 Listed Civil Mediator who has been practicing law and mediation for over 21 years. Joe has served three different public entities as chief legal counsel both in Tennessee and Florida and has conducted mediations as both a public and private mediator.

Joe has practiced law before the Tennessee Supreme Court, and lower state appellate, trial and federal courts and has appeared before the Florida Governor and his Cabinet. He has served as a mediator both in Florida and Tennessee and is the past-president of the Tennessee Valley Mediation Association, and a member the Knoxville Bar Association's ADR section.

Joe has provided CME-certified trainings on behalf of Supreme Court, ADR Commission, the Tennessee Valley Mediation Association, the Tennessee & Knoxville Bar Associations, and the Florida Supreme Court, Alternative Dispute Resolution Commission. He has published widely in the field of ADR in several professional journals, including the Tennessee Alternative Dispute Resolution Commission newsletter.

He is a former active duty United States Army Armored Cavalry Officer and former United States Air Force Special Agent with service overseas.

Joe holds a Bachelor of Science Degree, a Masters in Public Administration degree, a Juris Doctorate degree and a post-Graduate Certificate in Public Management.

Joe is an adjunct lecturer for UT's Political Science Department, and has lectured at the UT Law School, and is an award-winning writer who has published over 85 articles in various professional journals. He serves various veterans groups in both Knox County and E. Tennessee.

He is the 2009 recipient of the Gordon Johnston Award for Excellence in the practice of Local Government Law.

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

I am not committed to one mediation style. Rather, once I come to grips with the hand I've been dealt, I will employ a mediation style and the various techniques and tools that come with it in their own right.

One of my favorite tools/questions I put to the parties is: "In your opinion, why has this dispute not settled so far?"

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

I require the attorneys/parties to fill out a confidential mediation statement. I then follow-up with a phone call to discuss those matters the parties are reluctant to put in writing.

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

"Empowerment Man" "Don't get mad, get a mediator!"

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What is your pet peeve in mediation?

Attorneys or representatives of the parties who arrive woefully unprepared/unwilling to mediate and who inflate their clients' expectations.

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

Married to Wife Amanda for 24 years, no kids, blind cat

Why did you become a mediator?

As an attorney, I quickly noticed that the adversarial system did not inure to the benefits of my clients.

What is your favorite mediation read and why?

"Getting to YES: Negotiating Agreement Without Giving In" The book zeros in on the fundamentals of mediation: Separate the parties from the problem while focusing on interests, not positions.

What are you most afraid of in mediation?

That I will one day be unable to resist the urge to throttle parties who mediate in bad faith!

How do you debrief yourself after a mediation?

With brutal candor and honesty, ouch!

Personal or professional accomplishments you are particularly proud of:

10 years active duty military service overseas; I feel as a mediator and attorney I have been afforded the opportunity to do some good for the unheard.

Please complete these sentences:

ōI have a burning desire to **"finish the novel I started some years ago"**

ōPeople tell me I look like **"Rodney Dangerfield"**

ōIf I could have a 30 minute conversation with anyone (alive or otherwise, famous or not), I would want to speak with **My Uncle Freddy (my dad's oldest brother) who was killed in action slugging his way up the beaches of Normandy in 1944 and who was my inspiration for joining the military."**

What do you see for the future of mediation?

I believe as more non-lawyers enter the mediation profession, thus bringing with them new innovations and conflict resolution techniques and ideas, we will see a positive growth in new conflict areas that can only benefit from the inclusion of a mediator in the mix.

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

Without any hesitation or reservation whatsoever.

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

I can't think of a more rewarding profession than mediation. It is the quintessential win-win!

TAPM article-083012sent

A Mediation Purist's Confession

by Grayfred B. Gray, J.D.

Introduction

This essay began as a talk to the Coalition for Mediation Awareness in Tennessee and the Tennessee Association of Professional Mediators on March 9, 2012. Hopefully I have written it in the personal way I presented my reflections to the delightful and engaged audience of mediators and friends after the luncheon at Lipscomb University.

My story begins with a bit about my discovery of mediation which I think parallels that of many lawyers, winds through some mediation history, my picture of the current state of the mediation profession, and ends with dreams. I relate it partly to confess how, as a budding mediation purist and for many years an advocate, I missed the implications of important things that I knew and supported a narrow view of the mediation profession, and finally how I have moved to a broader view in which I see mediation as a vital slice of a larger new profession with uncertain boundaries.

My slow learning about mediation

I came to mediation about 20 years after passing up an opportunity to study it under *Professor Paul H. Sanders* ([en1](#)) as a law student in the 1960's. I passed it up because I thought mediation was a process in which the underdog was practically bound to lose. I'd gone to law school to be able to help underdogs win, and the courtroom seemed the only hope because I was assured

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by the law faculty that court was the forum of reason, the legislature the forum of power.

My first experience of the courtroom came as a law clerk to the Honorable Harry Phillips, Judge on the U.S. Court of Appeals for the Sixth Circuit. It generally confirmed the law school assurance. I learned that there is also a kind of non-partisan politics in appellate court decision-making. I also learned trial court judges could get away with improper conduct that was beyond the reach of appellate correction. When I got into law practice as a Legal Services lawyer, I found that the forum of reason was not what I found even in courts with judges of the highest repute. My disillusionment with the judicial system was underway, and my admiration for the intestinal fortitude of trial lawyers was born.

Teaching law students to teach law to high school students and how to work with it in Street Law (en2) finally brought me to see that the mediation process creates a forum in which reason is just as important as it is in court. Even better the apparent underdog is not bound to lose. Teaching about divorce mediation brought home that it offered a better way than a trial for most people to go through that tragic situation. Sponsoring and observing 24 hours of high school peer mediation training let me see for myself the power of mediation. I also saw that non-lawyers can mediate well, even in high school.

In 1986 I heard about the concept of restorative justice in the form of victim-offender reconciliation which its proponents thought of as mediation. As a victim's rights advocate, I saw it as a crime victim's chance to confront an offender directly and for both of them to begin to recover from the crime. (en3) I became an advocate for victim-offender mediation.

I served on the Tennessee Bar Association Special Committee on Alternative Dispute Resolution 1990 to 1992. That sealed my commitment to the mediation profession as I saw it

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and led to my taking professional caliber divorce mediation training in 1991 at the Academy of Family Mediators' Presidential Institute. As I met and learned from non-lawyer mediators who had mediated for a fee for years as well as lawyer-mediators who did the same work in the same kind of cases, I became convinced that mediation was a new profession apart from the practice of law, and I wanted to do all I could to support that. That was the beginning of my years as a mediation purist. I saw mediation separate from all other forms of dispute resolution and wanted it outside the courts, a distinct point on the continuum of how to address conflict.

Why did I want mediation based outside the courts? As a lawyer and law professor I knew the strength of the legal profession and of the courts' power to control what is involved in the judicial domain and to protect its own power. It seemed clear that lawyers assume that mediation should be done by lawyers, and it was clear to me that mediation was a new profession that a non-lawyer could practice well. A non-lawyer can mediate well because fundamentally mediation requires a set of skills and attitudes that exist in many people outside the bar and are not part of a law school curriculum to develop. The courts seemed to me unlikely to open fully to non-lawyer mediators, especially in courts of record. [\(en4\)](#)

Part of the beauty of mediation is the capacity parties find in it to open to agreements beyond what courts could order. If mediation was to be based in courts, it was going to have to fit within the conceptual framework of courts and the limitations of the justice and litigation model. Mediation is not about justice but about workable problem solving. That commonly means minimizing the destruction caused by the dispute resolution process. Separation of mediation from the courts seems a more promising way to preserve that capacity and to minimize destruction..

Finally I wanted mediation outside the courts because the judicial system is not open, in fact, to a large part of the population, including much of the middle class. Like medical special-

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ists the costs of using the courts, largely because of the cost of legal services, are beyond the reach of the public unless they have insurance, and legal insurance is not commonly available. As for Legal Services or Legal Aid programs they are so inadequately funded and often so restricted in what they are permitted to do that they only scratch the surface of the needs of the poor and are closed to the middle class person.

Arbitration, the well established conflict resolution profession outside the courts that does not require one to be a lawyer, was a ready model for the new profession. (en5) Like mediation, arbitration is the use of an independent neutral, not necessarily a lawyer, to help resolve a dispute. Arbitration had been going on for centuries and widened its reach once government gave its decisions finality. Arbitration's popularity comes from a variety of reasons, including dissatisfaction with having to use courts to decide disputes because of their being destructive to relationships, slow to finality, and expensive.

A Bit of Mediation History

My feet now into the fray, I learned a bit of mediation history. The concept is ancient, but what is most relevant is modern. Until the 1960's labor mediation was, I think, the major form of mediation in the United States. In the 1960's and 70's social pressure came for wider use and availability of mediation services. One thrust was from outside the legal system. On the one hand from those who were troubled by having to submit their disputes to government which disempowered them with respect to important matters in their lives, problems they had in their families, neighborhoods, and with landlords and merchants. They wanted community-based ways to settle disputes without lawyers, and mediation in the community by non-lawyers was something

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they wanted.

On the other hand government officials troubled by community disruptions and sometimes riots also wanted ways to get the community more involved in solving the problems behind such events. Community mediation centers were thought to be an answer, but funding was a barrier. That led largely to such centers using volunteer mediators for a wide variety of disputes, including neighborhood disputes among groups.

The other thrust came from wider dissatisfaction with litigation, often among those who had clear access to the courts and used it. One result of that thrust was the presidential Commission on Law Enforcement and the Administration of Justice in 1965, which focused attention on the burdens on the courts. Again mediation came to be seen as a partial solution, one of an array of Alternative Dispute Resolution methods that could be used. ADR, with mediation as perhaps its main innovation, came to be embodied in federal and state legislation to supplement or replace litigation.

Experiments were proposed that included creating community mediation programs or centers, but they often went further as in the Multi-Door Court program in Washington, DC, and the Atlanta Justice Center. Some provided more than mediation to help with resolving disputes. Even when these programs were publicly funded, it was not uncommon to find volunteer mediators and arbitrators, including non-lawyers, as a major part of the service providers.

In 1972 the Society of Professionals in Dispute Resolution (SPIDR) was founded. It included negotiators, arbitrators, mediators and other neutral intervenors. Membership was not limited to lawyers who performed such roles.

In 1974 O.J. Coogler, a lawyer and a marriage and family counselor in Atlanta, Georgia, set up a private practice center offering divorce mediation which had previously been offered by some

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therapists in the US. While his innovation was not universally welcomed. Some lawyers objected that there were ethical problems, for example in Tennessee where a lawyer and counselor proposed to be in practice together doing divorce mediation. Still the idea of divorce mediation by someone was growing in popularity outside the legal profession and among judges. Soon the national Family Mediation Association was created.

Divorcing couples quickly saw mediation as better for them than negotiation between lawyers or trial—cheaper, faster, simpler, more flexible, less destructive to their continuing relationships, less destructive to their children. On the positive side research showed what common sense suggested: that marital dissolution agreements arrived at in mediation were complied with better than those arrived at by other means.

The first “Victim Offender Reconciliation Program” began in Ontario, Canada in 1976, a restorative justice program (RJ). From that beginning as a faith-based program RJ has blossomed into the international Victim Offender Mediation Association based in the US where there are many such programs. (en6) It began between crime victims and convicted persons. Today its advocates use it in a wide variety of settings outside the criminal justice system. The victim-offender mediation (VOM) process is also called Victim Offender Dialogue.

Victim-offender reconciliation strikes me as important to the idea of the mediation profession because it deals with criminal and juvenile court cases, is often called mediation, (en7) is done largely by non-lawyer volunteers, and deals with thousands of cases a year. Interestingly enough some of its leaders in Pennsylvania reject the idea that there is actually a dispute among the participants in VOM.

In 1981 the national Academy of Family Mediators (AFM) was founded. Membership was not limited to lawyer mediators and may have been composed primarily of non-lawyer family me-

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diators. Other specialized mediation associations such as Conflict Education Resource Network (CRENet), which focused on mediation in education settings, came to be. There were also state mediation associations in many states outside the bar associations.

The ABA's Section of Dispute Resolution was created in 1993. Today its website says that its objectives “include maintaining the ABA's national leadership role in the dispute resolution field; providing information and technical assistance to members, legislators, government departments and the general public on all aspects of dispute resolution” and others. (en8) In 1994 the ABA, SPIDR and the American Arbitration Association (AAA) adopted the *Model Standards of Conduct for Mediators* (en9) the first general ethical standards proposed for mediators here.

In 2001 AFM, SPIDR and CRENet merged to form the Association for Dispute Resolution outside the American Bar Association (ABA) to enhance the practice and public understanding of conflict resolution. ACR aims to encompass all forms of dispute resolution practice. It is now the primary national organization of mediators and other dispute resolution professionals, both paid and volunteer, and does not require that mediators be lawyers.

The Mediation Profession Now

For me a picture of the mediation profession now is that it is generally recognized in the conflict resolution field and outside it as a profession, though there is still not a regulatory system supporting it. Mediation is not a word commonly understood among the populace and publicizing it is not easy. Most mediators do not come from another recognized profession such as law or psychology. So mediation's reputation is being created primarily by people who are not being paid for performing mediation—the volunteer mediators—because they have mediated most of the cases of face

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to face mediation among individuals. “Fairly Legal,” a TV program that began in 2011 may help people know the word better, but whether it will enhance mediation's reputation is not clear.

While pioneers in the bar with respect to mediation beyond labor disputes dreamed of a bar association mediation section, there were already many non-lawyer mediators in the general population. “In 2006, twenty-five thousand individuals mediated in six hundred community mediation centers around the United States, mostly as volunteers.” (en10) In the years since the centers opened, it is reasonable to infer that many times that number had mediated who were no longer doing so given the age out point of volunteers averaging ten years. By comparison the ABA Dispute Resolution Section in 2012 has over 19,000 members, (en11) and in 2001 AFM had more than 4,000 members, mostly non-lawyer mediators.

In 2009 most of those who mediate for pay do not make a reasonable living even mediating full time, about 10,000 earn \$50,000 or more per year, including those who are full time employees (em12) Of the 10,000 about 2,000 mediators are government employees averaging \$55,000 and up, and corporations, unions, universities, and law firms employ about 2,000. Lawyers predominate paid mediation, particularly for cases going to or in court. (en13)

The bar has concluded that mediation by non-lawyers is not *per se* unauthorized practice of law and developed its own legal ethics standards for lawyers as mediators as well as approving the *Model Standards of Conduct for Mediators that apply to both lawyer and non-lawyer mediators*. Lawyers who undertake to mediate are likely to be required to have mediation training beyond what they get in law school to take on the responsibilities of a mediator. Law firms began to separate their lawyer-mediators from other lawyers in the firm in order for the mediators to perform mediation at the level that the firm wanted. Some law schools offer mediation clinics beyond ADR survey courses and mediation law courses.

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Two dreams about the mediation profession

My first dream, one I don't enjoy, is that the mediation profession will go on as it is, dominated by lawyer-mediators but with expanding room for paid non-lawyer mediators. Likewise community mediation will continue. Most mediators will not be doing as well financially as they want. The community programs will continue to live hand-to-mouth financially and to close up here and open there, driven by the forces that have driven them since the 1960's.

Few of the lawyer-mediators in law firms will be satisfied in their work, and more lawyer-mediators will go into ADR firms that will be searching for safe ways to employ non-lawyer mediators. Many of the lawyer-mediators in the ADR firms may find that the arbitrator and mediator mix causes their mediation practice costs to be higher than they could be in pure mediation firms. There will be a potentially increasing cultural tension in the ADR firm as the mediators' vision expands with the mediator role while the arbitrators' vision may stay focused in a judicial system mode.

Mediation will have fragmented further along the lines laid out in Urška Velikonja's, *Making Peace and Making Money* article in 2009, instead of there being a general mediation professional organization for all. Perhaps a sign of that is already here in the March 2012 birth of the Association for Professional Family Mediation (APFM). It was created by national leaders in family mediation who became disappointed in the way ACR has served their field. Non-lawyer mediators will still feel disrespected and most of the lawyer-mediators may be members of the ABA SDR instead of ACR.

Still, things look pretty good for lawyer-mediators now, as I see it, except that the ecology

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of the dispute resolution system, including the judiciary, has changed and has changed the conflict resolution field. As Canadian Professor and mediator Julie Macfarlane, author of *The New Lawyer*, brought to my attention in her presentation on “Working with the 'New Lawyer'” and in a conversation before I delivered my talk at the CMAT-TAPM luncheon, a change took place in the population.

After World War II there were millions of beneficiaries of the GI Bill and business workers, including women, all of whom had grown up during the cost conscious days of the depression and survived the war. They became more capable because they flooded into college on top of their adult experiences. A much larger portion of the public than before began to get college and graduate degrees. They satisfied themselves that they can do many things, including legal research and understanding legal rules. They and their descendants grew up less deferential to professionals such as lawyers and more confident in their own ability to learn whatever they needed.

In the late 1960's the idea of Law-Related Education began to take hold . Courses began to be offered in high schools across the country in the law itself and how to use it. They also covered the legal system and by the 1970's included mediation as an alternative to courts that citizens could use. Universities may have been expanding such offerings, too, as shown by the fact that by 1980 the University of Tennessee at Knoxville, as I recall a study done at that time, showed several hundred undergraduate and graduate law classes in the catalog outside the College of Law catalog.

The development of law office practice systems, including the use of specialized paraprofessionals whom the ABA called Legal Assistants, produced an increase in the number of people trained to work in specific areas of the law, including performing legal research and drafting pleadings. In 1972 the ABA published educational standards for three kinds of law office paraprofessionals where there had been only the traditional legal secretary who might have no specialized training other what

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they got on the job.

With all those changes and legal literacy actually expanding far beyond the bar, it is no surprise that, as Professor Macfarlane's research has shown, there has also been a substantial increase in the number of pro se litigants in cases in which parties would have had lawyers in the past if the cases were brought. And those law office paraprofessionals have learned that they can offer services on their own to private parties without being lawyers.

Those law office systems by the 1990's began to be available on personal computers which became ubiquitous, including forms for most kinds of litigation. The private citizen could now easily prepare professional sounding pleadings. With the availability of law books for citizens, videotapes on how to present evidence and argue cases they could do pretty well and many were satisfied with their results.

As a college educated friend in California told me in the 1960's, why go to a lawyer for a no fault divorce when we agree and can copy the pleadings from a case that is like ours and completed? In the 1990's she might have said, "Why go to a lawyer-mediator?" Were they as good as lawyers at advocacy? Of course not sometimes, but they were good enough and numerous enough that courts began to adapt to their presence and to facilitate their preparation of pleadings. They were good enough that their numbers keep expanding. In the private mediation market the non-lawyer mediators are, I believe, likely to provide high quality mediation at a lower price in many cases than lawyer-mediators can.

My second dream, one I like better, is of a conflict resolution profession that includes the mediation profession and does not build walls between mediators and other professionals who

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help people deal better with conflict by helping them reach decisions and obtain the resources to do so. Lawyer-mediators will have moved out of law firms, though arbitrators may remain in them.

This dream builds off acceptance of the ecological changes just described and a proposition that I believe to be a fact. The proposition is that most people who seek third party help with a problem, other than a lawyer, are not looking for mediation and do not need it, but they want help that a conflict resolution resource could help with.

An informal survey of the community-based mediation centers in Pennsylvania showed that most of the callers did not get mediation. (en14) Some didn't because they called without knowing what mediation was and decided they had called the wrong place, some because they decided not to accept it with a full explanation, some because another party didn't accept mediation. But the callers almost invariably had a problem involving another person, commonly a dispute. In the urban areas the ratio of calls to mediation was 2.9 to 1, (en15) in the small town settings it was 21.9 to 1. Clearly there is a market for conflict resolution services, and just as clearly mediation is a bit like neurosurgery—a narrow specialty that is not commonly known about and probably never will be—for which there is a much smaller market.

My dream then is that mediators, including lawyer-mediators, lead in the development of the full range of dispute resolution services that can be provided to such callers, i.e., “conflict coaching,” meaningful screening and preparation for referral to lawyer and other professional and agency services, conflict accompaniment, problem-solving and conflict resolution training, etc. I envision this being accomplished through two kinds of vehicles:

- (1) private practice conflict resolution services that employ lawyer-mediators free from lawyer ethical inhibitions on the form of business (en16) as well as non-lawyer mediators, and

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other conflict resolution specialists, and

(2) community conflict resolution centers with a similar array of services.

The mediation profession itself, including all mediators, whether paid or volunteer, will be a single profession allowing for many professions of origin among the mediators. The profession will be based on the nature of mediators' work rather than the legal system's needs.

Community conflict resolution centers, built around volunteers as mediators and in other conflict resolution specialist roles, effective computerization and use of the internet, could be, at least in part, publicly funded because they will become the central referral system for people with problems that involve other people and will generate savings from the public's dealing better with daily problems and conflict. Providing vastly more actual service to more people will also create more justification for increased private donations. Between public and private funding the centers will be able to reduce their energies spent on fund raising.

**As I said these are dreams, but I believe either of them can be realities and one will be. Professional mediators are in a position to lead in making the choice as to which. So I conclude with an apology. I'm sorry for my mistakes, especially in my purist view of mediation. Now I have a view of mediation that fits into the larger field I think most mediators actually care about—
conflict resolution with minimal harm.**

END

END NOTES
A Mediation Purist's Confession

by Grayfred B. Gray, J.D.

1. Professor Paul H. Sanders, Vanderbilt University School of Law, was noted in labor law as an arbitrator and mediator.
2. Street Law is a law school course created in 1972 by law students working with Professor Jason Newman at Georgetown University School of Law. Its text has been published since 1975 as Street Law: A Course in Practical Law by the Street Law Program and West Publishing Company, an eminent publisher of law books. Now it is published by McGraw-Hill/Glencoe.
3. Still naive about the critical nature of neutrality in mediation, I did not see that the victim-offender process facilitator had an agenda that was not necessarily shared by either of the parties to get them to reconcile. As I learned later the agenda included to get the offender to take responsibility for the offense and commonly to pay something called restitution, which does not meet civil liability standards of restitution.
4. The Tennessee Supreme Court, on recommendation of the TBA Special Committee and the Court's Commission, did open to non-lawyer mediators in Rule 31.
5. Sadly, though outside the courts, arbitration is basically no more available to the poor or the middle class than the courts because arbitration adds the cost of the arbitrators to the costs its parties otherwise pay. It may also have the destructive impacts that judicial procedures do.
6. <http://voma.org/index.htm>
7. I have trouble, since being trained to do victim-offender work and learning more about it, seeing the "mediator" role as free from conflict of interest and fully neutral. It is important to bear in mind that restorative justice quickly outgrew any notion that it was limited to criminal victim-offender reconciliation. Its claim also spread to being a different approach to criminal and juvenile offender justice. RJ is not focused entirely on a mutually agreed on resolution but on restoration of the victim, offender, and community. The person who facilitates the process, by whatever title, actually has an agenda beyond resolution and neither party may have it.
8. http://www.americanbar.org/groups/dispute_resolution/about_us.html (August 30, 2012).
9. The MSCM was revised in 2005 by the ABA, ACR (as successor to SPIDR), and AAA.
10. Ur-ka Velikonja, Making Peace and Making Money: Economic Analysis of the Market for Mediators in Private Practice, p. 9 (2008), accessible at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1302891#%23 from [72 Albany Law Review 257 \(2009\)](#)
11. The DR Section does not know how many are mediators according to a telephone conversation with the membership staff person on Aug. 30, 2012.
12. Ur-ka Velikonja, pp. 3 (of those who decide to become [paid] mediators, 80% cannot make a living solely as mediators), 8.
13. *Ibid.*
14. The writer conducted the survey by telephone and email in 2009. There are many problems in the data, but the writer is confident that overall the high number of unserved people as against the number served by mediation is accurate. It also matches the writer's experience working full time for about two years in one of the centers and documenting all the calls for nearly a year.
15. This ratio is skewed to a closer one because one of the centers got most of its cases on referral from the courts whereas most of the centers got most of their cases from individual callers seeking help.
16. The business structure should not be limited as the form of law firms now is because the lawyer-mediators would not engage in the practice of law at all.

Neighborhood Reconciliation Services, Inc.

Neighborhood Reconciliation Services, Inc. works to introduce the practice of Restorative Justice to the community as an effective instrument of conflict resolution. NRS works with a variety of community organizations including courts, schools, and institutions of higher learning, law enforcement agencies, churches, correctional institutions, and neighborhoods.

Currently we have three programs. All employ non-adversarial processes that focus on identifying the harm done by an offense and repairing that harm (rather than punishment) and are conducted in a context of respect for the dignity and worth of all involved. These programs lead to strong accountability for actions, reparation, and attention to the perspectives of the victim, the offender and the community. A brief description of each program follows; details of these programs may be found on our website.

Restorative Justice Conferencing: When an offense or harm has been committed, a restorative justice conference may be conducted to repair the harm and restore the relationship between offender, the victim and the community.

Restorative Practice in Response to Truancy: In East Tennessee, local courts are looking to restorative practices to help end the cycle of truancy. While traditional methods for dealing with truancy often include fines and removal of the child from his or her home, restorative practices focus on finding solutions to the causes of truancy from the perspectives of all involved parties.

Community Service Program for Juvenile Offenders: NRS provides the opportunity for juvenile offenders to complete their court-mandated community service hours. Working with an adult volunteer, juveniles learn about restorative justice and ways to make the harm they have done right again.

If you are interested in becoming a restorative justice conference facilitator, NRS provides training in the Real Justice Conferencing method. A representative can also speak your group about restorative justice and restorative justice practices. If you or your group is interested in learning more, please contact us.

Contact Information

Neighborhood Reconciliation Services, Inc.

P.O. Box 5721

Johnson City, TN 37602

(423) 202-4964

nrs@nrsinc.org

Mediation Statute Index

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- Delinquent children, compacts, TN ST § 37-4-101
- Divorce, confidential or privileged information, TN ST § 36-4-130
- Domestic abuse, divorce, separate maintenance, TN ST § 36-4-131
- Financial institutions department, customer disputes, commis... TN ST § 45-1-302
- Health facilities, certificates of need, contested case hear... TN ST § 68-11-1610
- Marriage, divorce, confidential or privileged information, TN ST § 36-4-130
- Records and recordation, open records counsel office, TN ST § 8-4-601
- Schools and school districts, special education, TN ST § 49-10-605
- Schoolteachers, labor disputes, TN ST § 49-5-613
- Trusts and trustees, TN ST § 35-15-816
- Victim offender mediation center, TN ST § 16-20-101 et seq.
- Workers compensation, benefit review con... TN ST § 50-6-239 TN ST § 50-6-237
 - Specialists duties, TN ST § 50-6-236
- Zoning and planning, comprehensive growth plans, municipalit... TN ST § 6-58-104

TENNESSEE ASSOCIATION OF PROFESSIONAL MEDIATORS

Presents

**WHAT EVERY MEDIATOR AND ADVOCATE
SHOULD KNOW ABOUT
PUBLIC SECTOR MEDIATION**

Presented by:

Stephen L. Shields
President – Tennessee Association of Professional Mediators
Jackson, Shields, Yeiser & Holt

John Blankenship
Vice-President—Tennessee Association of Professional Mediators
Mediator and Arbitrator
Blankenship & Blankenship

Joe Jarret
Federal & Rule 31 Listed Civil Mediator
Attorney At Law

October 9, 2012

11:00 – Box Lunch Served
11:30 – 1:00 p.m. – Presentation

1.5 hr General CLE/CME Approved

Ezell Center – Lipscomb University
Room 363
3901 Granny White Pike
Nashville, TN 37204-3951

Program Description

Experienced Rule 31 Listed Mediators and Advocates will discuss the unique aspects of public sector mediation and address the following questions: Who is the client? Under what circumstances can a mediator or advocate meet privately with the public body? May a mediator or advocate meet “privately” with the public body to resolve a “threatened lawsuit” or pending lawsuit? May the mediator order all persons with settlement authority to participate in the mediation? To what extent does the Tennessee Public Records Act require public disclosure of a mediated settlement agreement? To what extent does the attorney work product and/or attorney/client privilege protect communications between an attorney and a mediator or third parties?

How To Register

You may participate in the program live or via teleconference.

RSVP to TAPM tapm@tennmediators.org

Cash or check payable to TAPM at the door

Or Pay Online:

Using MC/VISA by clicking option below:

In Person Fee:

\$25.00 TAPM Member

\$30.00 Non TAPM Member

Audio Conference Fee

On October 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

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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
7:30 a.m. - 8:30 a.m.
11:30 a.m. – Noon
1:15 p.m. - 2:00 p.m.
4:30 p.m. - 5:30 p.m.

(Continued from page 22)

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.

(Continued on page 24)



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.

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.

SCHEDULE OF DAY

8:00 a.m. ó 8:30 a.m.	Registration
8:30 a.m.ó 9:45 a.m.	<p>Diagnosing Sources of Resistance</p> <p>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.</p>
9:45 a.m.ó 10:00 a.m.	Morning Break
10:00 a.m.ó 11:45 a.m.	<p>“Setting the Stage” ó The Beginning Impacts the End</p> <p>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.</p>
11:45 a.m.ó Noon	Pre-Lunch Break
Noonó 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.ó 3:00 p.m.	<p>Moving Beyond Impasse</p> <p>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.</p>
3:00 p.m. ó3:15 p.m.	Afternoon Break
3:15 p.m.ó 4:30 p.m.	<p>Moving Beyond Impasse continued</p> <p>See description under 1:15 ó 3:00.</p>
4:30 p.m.	Closing Comments

TAPM ANNUAL MEETING & CLE/CME REGISTRATION FORM

Pay Online by visiting our website, [www.tennmediators.org/annualmeeting 2013](http://www.tennmediators.org/annualmeeting2013), or mail a check to:

TAPM, P. O. Box 150626, Nashville, TN 37215
615-383-TAPM (8276)

PAID ON OR BEFORE February 8, 2013	PAID AFTER FEBRUARY 8, 2013
<p>1. TAPM Member Renewing 2013 Dues</p> <p style="padding-left: 40px;">\$150.00 CLE/CME Fee \$100.00 2012 Dues \$250.00 TOTAL</p> <p>2. Previously Renewed TAPM Member</p> <p style="padding-left: 40px;">\$150.00 CLE/CME Fee</p> <p>3. Associate (Non Voting) Member</p> <p style="padding-left: 40px;">2013 Dues & CLE/CME \$150.00 CLE/CME Fee \$ 50.00 2012 Dues \$200.00 TOTAL</p> <p>4. NON TAPM MEMBER</p> <p style="padding-left: 40px;">\$300.00 CLE/CME Fee</p> <p>5. Lunch ONLY \$30.00</p>	<p>6. TAPM Member Renewing 2013 Dues</p> <p style="padding-left: 40px;">\$175.00 CLE/CME Fee \$100.00 2012 Dues \$275.00 TOTAL</p> <p>7. Previously Renewed TAPM member</p> <p style="padding-left: 40px;">\$175.00 CLE/CME Fee</p> <p>8. Associate (Non Voting) Member</p> <p style="padding-left: 40px;">2013 Dues & CLE/CME \$175.00 CLE/CME Fee \$ 50.00 2013 Dues \$225.00 TOTAL</p> <p>9. NON TAPM Member</p> <p style="padding-left: 40px;">\$325.00 CLE/CME Fee</p> <p>10. Lunch ONLY \$35.00</p>

PLEASE REGISTER ME FOR THIS CONFERENCE UNDER OPTION NO. _____.

A CHECK IN THE AMOUNT OF \$_____ IS ENCLOSED.

NAME _____

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EMAIL: _____



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