

The Professional FAMILY MEDIATOR

FALL 2012



APFM's First President's Message

By Rod Wells

To begin, I want to thank the Board for their vote of confidence in granting me the position as the Academy's first President (Please note that Steve Abel has been added to the Board and has replaced me as Treasurer, freeing me up to take this new position). With this honor, I join a line of past presidents of a number of other mediation organizations, of which our Board is comprised. They bring great depth and breadth of knowledge to our work, so my job is more that of a facilitator of great talents.

Since our earliest conceptual beginnings as an organization last October, there has been much to do. Long before the conference, it seemed a daunting challenge for any one of us to be president, and we were happy just operating as a team; consensus has and continues to come easy to us, with everyone responsibly showing up to make things happen and get things done. However, our founding conference brought us to a new level of partnership. We asked those present to make a commitment to the different interest and action groups, and the overwhelming response has been inspiring, heartwarming, and more than gratifying. Just as you all showed up to make the launch of our Academy happen, you already have been volunteering your time and energy to realistically make the Academy's goals in reach.

Remembering the axiom, "Many hands make light work," can soothe even the worst of worriers. So, what seemed daunting then now seems do-able. It is just a matter of offering a structure to support the synergies of your energy and creative juices. Each Board member has chosen an area of specific interest to work on, and one of our Board

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members will be in contact with the volunteers in each interest group. This is an exciting opportunity to be creative and contribute to a new era for Family Mediators. If you were not at the conference, or missed the sign-ups, you can still join an interest or action group, via the website. You will meet new colleagues, learn new things, and make good things happen.

The overall evaluations from the Founding Conference reflected high marks and yielded many compliments about the high quality of presentations and the richness of content. Many attendees also expressed deep gratitude for the opportunity to be with their colleagues from different states and different countries. The resulting cross-pollination from practitioners of diverse backgrounds coming together allowed us to share a full range of approaches to the processes and methods of mediation. This was a wonderful added benefit to a conference that, by consensus, was a phenomenal success.

There is something special about our membership being drawn to work with families in distress. You all share a particular capacity for compassion and empathy that supports authentic connection within our community. The conference hotel staff noticed it and expressed their appreciation for our group's unusual warm energy. You'll be glad to know that we are already planning on doing this again, as our next conference is scheduled for October 3-6, 2013 in Den-

ver, Colorado. Mark your calendars now. Maybe plan an extra day to two before or after the conference to visit some of the great attractions in the mile-high city and the surrounding countryside. And, watch your mailbox for our request for proposals for the 2013 conference sessions, coming soon.

Even though a lot of attention has been given to the Founding Conference, much more has been happening to manifest our organization's goals. Some of us thought we might take a breather when the conference was over, but, instead, the conference generated an awesome list of new ideas and plans. Too much excitement to slow down! Nevertheless, some of our more cautious souls have wondered if we should slow down a bit. Which brings to mind a couple other axioms: "Haste makes waste," and "Don't bite off more than you can chew." We had to consider that many believe we are at critical moment in time to establish family mediation as a distinct profession. We have agreed to go forward, but thoughtfully. So, I promised the Board that I would map out a couple of thoughtful, deliberative, interlaced, but concurrent action paths that offer small bites that will be more easily digested. Of course, we're counting on lots of help with chewing and lots of all-you-can-eat work parties. We'll be sharing the plans with you as they unfold in the coming months.

(Cont. on Pg. 10)



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The Professional Family Mediator

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Editorial Policy

In efforts to present a wide range of perspectives on the many issues facing family mediators, the views expressed by each contributing author are intended to encourage consideration and debate but do not necessarily represent the views of the Academy of Professional Family Mediators or its editorial staff.

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The Professional FAMILY MEDIATOR

TABLE OF CONTENTS | FALL 2012

President’s Message 1
 “APFM’s First President’s Message”
 - Rod Wells

Table of Contents 2

Editor’s Notes 3
 “Our After the Founding Conference Edition”
 - Don Saposnek

The Ethical Edge: Where Would You Land? 4
 “Mediation is Voluntary and Neutral”
 - Bill Eddy

The Creative Solution 5
 “In the Beginning”
 - Chip Rose

Mojo Marketing & Management 6
 “Don’t Leave Home Without Them - I Mean “Business Cards”
 - Ada Hasloecheer

Standards of Practice..... 7
 “Keeping Your Roles Clean”
 - Steve Erickson

Book Review 8
 Bill Eddy and Don Saposnek’s “Splitting America; How Politicians, Super PACS and the News Media Mirror High Conflict Divorce”
 - Ken Neumann

Book Review 9
 Eric R. Galton and Lela P. Love’s “Stories Mediators Tell”
 - Elisa Frischling

A Call for Submissions to *The Professional Family Mediator* 12

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Editor's Notes

"Our After the Founding Conference Edition"

By Don Saposnek

Well, it is over, and it is just beginning. Our Founding Conference was soundly found! Our APFM Board members have been frolicking for weeks in the reality that we actually pulled it off—so early, so successfully. It clearly attests to the hard, diligent, and persistent spirit of our mission to make Family Mediation a genuine, widely respected profession. And, with your continuing support we are on our way!

Mediation has been around for thousands of years, and yet, it still feels new and fresh. I suppose that each re-iteration of it allows us to re-search and re-create the principles of mediation anew. Certainly, our on-going efforts at certification have forced us to re-examine the core values and principles of this practice, giving us a chance to further refine our thinking about our practices.

However, not all is well in the larger Camelot!, We ironically, are at the cusp of a never-before-so-drawn-out-in-the-media Presidential Election, with its endless, high-conflict, re-cycling of the candidates' promises to save us from disaster, and from each other. We mediators often listen to this with pain in our hearts, since we know that such escalating conflict is not good for families, and certainly not good for our nation. Yet, we feel helpless to do anything about it. With all our collective mediation skills, it seems that we should be able to do something—and something profound. Yet, I remember when ACR established its central offices in Washington, D.C., with the intent to be right next to the center of politics of our nation, and with the ambition to have a major influence on the political discourse and steer it into effective forms of communication that would bring together politicians in compromise—helping them to be able to actually cooperate in getting things done for our country. As far as I can tell, that strategic move to Washington was an abysmal failure. I know of no single action that ever approached the intended goal.

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What was this about? Why did nothing significant happen? Why did the collective wisdom of the leaders of 7,000 ACR mediators (at the time of the merger) fail to make a significant dent in the political discourse? I remain puzzled. And, the problems haven't gone away. They have, in fact, escalated into almost absolute gridlock, with our federal tax money simply supporting inaction! And, we mediators seem impotent to do anything about it. Bill Eddy and I recently focused our efforts on analyzing this dilemma and have written about the parallels between the current high conflict politics and high conflict divorces, with which we are all so very familiar (see Ken Neumann's review, in this issue, of our recently published book on this topic). While Bill and I have offered some solutions for politicians, individuals, and society in general that we have extrapolated from our work as family mediators, the complexity of the national and international problems still seem so daunting. I would like to challenge each of us to step up to the plate and try to come up with creative ways to assist our leaders in deescalating the rhetoric, increasing cooperation, and, frankly, becoming more functional. As mediators, we do this in our offices every day—why can't we figure out ways to use our knowledge and skills to do our work on a larger systemic scale? I do hope some of you stretch your thinking and reveal some creative solutions to this plight. Bill and I believe that, unless we do, our nation could well be in peril.

On a more hopeful note, though, I am pleased with the contributions of our columnists in this issue of *The Professional Family Mediator*. We lead off with the announcement of our first APFM President, Rod Wells, whose tireless work on helping to fashion our new organization makes him well deserving of the presidency. He will make things happen! Please respond to his request for help on our

various interest work-groups. You, our members, ultimately will build on and maintain what our Board members initiate.

In her second edition column, "Mojo Marketing and Management," Ada Hasloecher highlights the critical importance of your business cards and she encourages you to always have them with you, for you never know when you'll need to whip them out to cement a new professional contact. Chip, in his Creative Solution column, details the importance of the initial consultation in "selling" the value of your service and forging the structure of the mediation process ahead.

In this edition of Steve Erickson's column on Standards, he brings up the issue of keeping our professional roles clean and clear. He asserts that, according to our Standards, one should never conduct mediation together with therapy or arbitration within the same case. He notes that there is quite a bit of controversy about this particular Standard. We welcome your input and ideas on this notion.

So, with business card in hand, a carefully crafted consultation contact, and absolute clarity about your mediation role, you are ready to engage in your work as a professional family mediator. But, wait, Chip, there's more! Bill Eddy's column, *The Ethical Edge*, received four reader responses to the ethical dilemma that he offered in the Summer 2012 issue. Those responses are presented and discussed in his column and then followed by his new ethical edge issue: Should mediators write divorce agreements? This interesting issue also remains in considerable controversy in our field and was the topic of one of our panels at the Cape Cod conference.

(Cont. on Pg. 10)

The Ethical Edge: Where Would You Land?

“Mediation is Voluntary and Neutral”

By Bill Eddy

In my column in the Summer 2012 issue (“The In-Your-Face Deed”), I gave the example of a husband who came to a second mediation session with two deeds that he demanded his wife sign as part of a “generous” proposal he sprang on her—and he had a notary scheduled to show up an hour into the appointment to seal the deal! He wanted the mediator to convince her it was a good deal, while he left to sit in the waiting room.

I received four reader responses, which I will quote, in part, here:

Sheldon E. Finman, APFM member in Florida, wrote: “...The mediator has a duty to insure a level playing field. Tom's ultimatum is out of line. I would keep that thought to myself and ask Tom to tell us what he is thinking, where his thoughts are, how his proposals might work for him and for Mary and for their children. I would want to get him to start talking and have a dialogue. I would tell Mary I will be asking her questions shortly after I was able to ask Tom a few questions. I would not caucus at this time.”

“...I would want Tom to understand that mediation is not a traditional positional negotiation in my view and practice preference, but a facilitative process which allows complete freedom of choice to both sides after compiling all facts and information and developing options. I will tell Tom it is not my role to tell Mary to do anything and certainly not to accept or reject any offers...I will let him know I am not evaluating his proposals, which in the end, might be very fair, and even overly generous. However, the process has not had an opportunity to take place [yet].”

Rachel Green, APFM Member in New York, wrote: “First, I would reflect back to Tom his evident desire to ‘get this done’. I would normalize these feelings by telling them both that virtually everyone who comes into my office wants this done last week, at half the cost, and that this can be a difficult and painful process,

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which is one of the reasons that mediation is not right for everyone...Tom has come in with some ideas for settlement, and certainly I share his hope, and I'm sure Mary does too, that we can come to a swift resolution of all open issues between them.”

“Next, I would say something like, ‘Mediation is not for everyone. It requires that you be willing to sit in the room together and listen to the other's point of view. (ToTom) If you are not willing to give Mary whatever time she needs to think about and respond to your proposal, then you are not open to truly listening to her point of view, and this makes me question whether mediation is the right process for the two of you.’”

“Tom, by announcing that you are going to leave the room, and by asking (ordering) me to convince Mary of the wisdom of accepting your offer, you are asking me to become your representative, and to argue with Mary to convince her to accept a particular result. But, as your mediator, that is not my role’.” “At that point— if Tom agreed to stay— I would turn to Mary and begin to work with her, to elicit her responses to Tom's proposal, her thoughts, ideas, feelings, about both of the properties, her financial needs (hopefully in light of expense forms that both already completed)...I believe pretty strongly that the only way to have an ethical mediation practice is to be conscious and honest about the fact that everyone can't mediate - and to know when you can.”

Linda Gryczan, APFM member in Montana, wrote: “Congratulations and many thanks for all the work involved in forming a new (and more responsive) organization.”

“Before Tom leaves the room, I would explain to him that as a neutral, I am not going to try to ‘sell’ the proposal to Mary. I would

ask him if he would like to stay and explain it himself, or take a break first. Perhaps I would caucus to see why he is so anxious. After the proposal is on the table, I would remind both parties that they are making decisions that will affect them for the rest of their lives. ‘Do you both know what you are gaining in this proposal?’ ‘Do you know what you are giving up?’ ‘Do you know how it will affect you now, and in the future, especially at retirement?’ ‘How does this suggestion for child support match with this state's Child Support Enforcement Division (CSED) calculation?’ ‘Since no one knows the answers to all of these questions, ethically, I must stop this mediation, and ask both of you to invest in an hour with separate attorneys.’ ‘Tom, thank you for presenting such a well thought out proposal. Could we meet in two weeks after you have answers to these questions?’ ‘If you both fill out this CSED affidavit, I can calculate child support according to what the state requires.’

Susan Zaidel, APFM member in Haifa, Israel, wrote: “While I agree with Bill Eddy that ethical issues often are ‘on the edge’, and not clear-cut, the example presented about Tom and Mary is hardly ‘on the edge’, in my opinion. Mediation is not simply negotiation in the market place, where anything goes. It is a process with clear guidelines about the need for relevant information on the table and with the need to be understood by all before the parties make decisions. Even more essential to the mediation process is the absence of threats or pressure. In any legal agreement, for that matter, one of the clauses states that the agreement is being signed freely, without any pressure. These points are inherent to the mediation process and the mediator must be sure that they are fulfilled.”

(Cont. on Pg. 10)

THE CREATIVE SOLUTION

“In the Beginning”

By Chip Rose

As I write this, we are all basking in the glow of the success of our Founding Conference on Cape Cod. On a number of past occasions, I have written in this column about the beginning of the process and how it informs as to the end. Those discourses have, for the most part, focused on the critical elements that need to be put in place at the beginning of the mediation process in order to achieve the client objectives at the end of the process. There is a necessary precondition to that first session that deserves some attention, and that is the initial consultation. The real beginning, if you will.

Three decades ago, when I first heard about this process called mediation, I embraced it intuitively, not having a clue as to how one was supposed to do it. In 1980, there was no internet, and no news west of the Rockies that Steve Erickson, O.J. Coogler, and others, were creating training models in Atlanta. The message to me was that mediation conveyed a way to help clients through their very painful divorces with a simple goal of adding no further damage to what they were already going through. After spending the better part of a month designing what I was going to do, I decided to structure my workday.

I decided that I wanted to have specifically designed mediation modules, and I decided, in a burst of optimism, that I would work in hour-and-a-half increments so that I could have two mediation sessions in the a.m. and two in the p.m. That left me a half-hour in the morning and another in the afternoon during which I could see clients for an initial consultation. Thirty-two years later, I am still working in that same appointment structure, since I never found reason to modify it. So, the challenge for me was to maximize my use of that 30 minutes which was dedicated to consulting with new clients, and to figure out how to “sell” this process within the constraints of that narrow window of time.

I am ever so grateful that there are no record-

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ings of those early consultations. I shudder to think of how I used the time. What I do know is that clients were attracted to what they heard, and slowly but surely I was able to build a practice that has sustained me all these years. However, it was not until the early 90s, when our inimitable editor of this publication, Don Saposnek, asked me to do a workshop with him in which I acquired a “mindfulness” of what I was regularly doing in my everyday practice. Becoming conscious and aware of what I was doing as a mediator, in order to teach those experiences to others, was the second profound change in my professional life. With a higher consciousness about the importance of the initial consultation, in conjunction with the fact that I had designed the workday to only allow 30 minutes for that exchange, I created a kind of haiku approach to that task. The challenge was to make every word and every response I gave the clients in response to their questions and their needs as targeted and strategic as I could make them. The success of the consultation was directly measured by the number of clients who then made appointments for their first mediation session.

If you assume that you had only thirty minutes in which to interact with new clients, how would you optimize that opportunity, so that the clients would choose to engage your services as a mediator to deal with their circumstances? What would be your strategy? How would the design of your process interface their concerns and needs? What would be the critical components of that design that would address the behavior of the parties, and what components would address the specific issues that need to be resolved? Obviously, this is not a chicken-and-egg proposition. The prerequisite to an effective consultation is the development of an effective process structure. Viewed in this way, the consultation becomes a litmus test for

the quality of the process as a whole. Given the debilitating role that emotions can play in subverting the best of process designs, the part of a process framework that addresses behavior needs to be front

and center in the consultation. In order for the clients to embrace the prescriptions of that framework, they need to see that their most important outcome objectives will be directly affected by adhering to the framework and its guidelines for effective behavior.

In the same context, the clients need to feel the connection between the framework for addressing specific outcome concerns (e.g. parenting arrangements, support, and property division) and the fears they have attached to these topics. The process design needs to have a direct and specific response to these fears, and a consultation needs to be able to describe that design in a concise and meaningful way that allows the clients to move beyond their fears, even if only on an intellectual level.

Although the frameworks for guiding behavior and addressing the specific issues are the two most important, a thorough process design also needs to have frameworks for negotiation and agreements. The key to striking a balance in the consultation between the clients’ perceived needs and their real needs, is something which this column has addressed before, and that is the difference between the micro view, such as wanting an answer to how much support will be required, and the macro view, such as reaching a settlement which maximizes the financial benefit to each of the parties.

A good consultation requires a good process structure. Having a limited amount of time in which to describe that process while insuring that it will resonate with the fears and concerns of the clients is good test of how thorough, strategic, and effective one’s process structure is or, inversely, how much further one has to go to have designed such a process.

Mojo Marketing and Management

Don't Leave Home Without Them - I Mean "Business Cards"

By Ada Hasloecher

Before I leave my home or office, I always check to make sure I have a sufficient number of business cards with me. In fact, I generally keep a stack of them wrapped in a rubber band (not very glamorous, I know, but practical) in all of my purses, attaché cases, glove compartments, and the various tote bags I tend to schlep around - just in case. The business card is usually the first item of introduction. It represents us and our practice.

Whether attending an organizational meeting, a networking event, or meeting someone for the first time, when it comes time to exchange business cards, I'm always surprised by how many business professionals don't have their cards at the ready - or even with them at all. They start rifling through their handbag or digging into their pockets or wallet and coming up short. And oh, the excuses!

1. I forgot to bring them with me.
2. I left them in my other bag, other jacket/on my desk/ (fill in the blank).
3. I must have just given out my last one.
4. I know it's in here somewhere (while not finding it).
5. I have to order more... I've been meaning to do that.

So now, what do you do?

1. Stand there while they try to find something they clearly don't have, while attempting to make them feel okay about it?
2. Dash off somewhere to find a cocktail napkin and scribble their information on that?
3. Take the time to input their information into your smart phone?

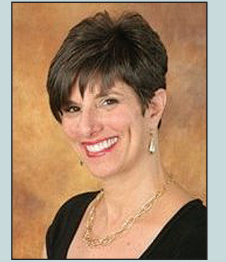
And, what does that say about their intention, preparedness and readiness to do business? What first impression do they impart if they forgot to bring a basic calling card with them to an event where the main order of business is doing business? Before you think that I'm making way too much of this, please indulge me while I make my case. What, fundamentally, is any personal meeting or professional

gathering but an opportunity to meet new people, exchange information, find common ground, share resources, and refer business—otherwise known as “networking?”

So, what's the big deal? They forgot their business cards. But, what comes to your

tedly, is not an entrepreneur, but she did set out to see if she could get something off the ground. When I asked her to read my first draft of this article, she shared an interesting insight with me for which she gave me permission to share with you. She confessed that she was one of those people who always

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mind when you're standing there with your card extended waiting for them to find theirs (or not)? What impression are you left with? For me, I'm assessing whether or not I want to do business with someone who didn't think things through and come prepared. I'm concerned that they may be the sort of business person that could drop the ball. I'm wondering if they may be sloppy in their approach to their work. Do I want that person on my team? Would I refer one of my precious clients to them? Can I count on them to follow through? You may be thinking, “Boy, Ada, are you judgmental! Aren't you being a little rough here? After all, they only forgot their business cards - they didn't kill anyone!” LOL! Fair enough.

I'd like to suggest that, as human beings, we are also judgment machines, whether we realize it or not, or like to admit it or not. I'm willing to cop to it - I realize it and I'm admitting it. We're always making judgments about people and about our situation. That's part of the human survival mechanism - it's as reflexive as the fight or flight instinct. And, although we're not being chased by tigers any more, we still assess situations to decide whether something is good for us or bad for us. I have a friend who attempted to start a fledgling business using a particular skill she honed after years and years of working in corporate America. She, admit-

went digging to the bottom of her bag trying to come up with one of her cards (not even being sure she had them on her). She said she was ambivalent about her new business and realized, while reading my draft, that she probably imparted that uncertainty to potential clients, and hence, her business never got off the ground. It wasn't so much that not having her business cards with her was the cause of the demise of the business, per se, but rather that she never considered she may have transmitted a subliminal message that her heart was not really in it. This was a real eye-opener for her.

Consider the message someone sends when they are not prepared. And, more importantly, consider what internal judgment you have about the message they are sending. The key here is to just be aware of the feelings you have and the assessments you are making of them. It's in those subtle interactions that many of our decisions are made, unwittingly. I say, bring them to consciousness! We want to be as aware and conscientious in our interactions with potential business relationships as we are in our mediation practice.

So, where are your business cards???

My next Column will be on Business Card Etiquette.

Standards of Practice

“Keeping Your Roles Clean”

By Steve Erickson

In the past month, all APFM members received a letter from me requesting feedback on the proposed Standards of Practice. Many of you have sent detailed comments which we plan to soon post, or at least summarize, on the APFM website. We also successfully completed the first APFM conference in Cape Cod. The conference was a resounding success, with about 250 mediators in attendance from around the U.S, Canada, Israel, Holland, Sweden and Great Britain. There was intense interest in Standards, Certification, and Mediator Ethics, as evidenced by the sign-up sheets on which members were asked to indicate their areas of interest so they could become a part of the decision-making and ongoing work that will center on this important issue. Thirty-three mediators signed up for the “Standards, Ethics and Certification” category. For any of you that were not at the conference and wish to participate or lend a helping hand, please send me an email and I will add your name to the committee.

In addition to the work on Standards of Practice, this column will attempt to provide an update summary of the issues and questions raised as we continue to work on Standards and the related task of Certification. Perhaps through this ongoing column, all of us can participate, or at least be informed about the continuing work of defining acceptable and expected mediator behavior, leading to a program of certification and a system for handling ethical complaints. Indeed, it seems that the task ahead is to find and adopt words that become the measuring rods that define the accepted role and function of the Professional Family Mediator, regardless of whether or not fees are collected by the mediator.

One of the continuing problems I hear being raised by members of APFM around the country, and in Canada and Europe (Yes, indeed, they are confronting the same problems in Europe) is that anyone can claim to be a mediator. Without any training or commitment to certain standards of behavior, anyone can hang out a sign, call themselves a mediator and begin collecting fees. This has created

confusion in the public about what mediation really is and how it

works. Moreover, it has often led to blurring of the lines between the professions of law, therapy, and mediation. I think this is because the underlying assumptions that guide one in the role of a Professional Family Mediator are not understood, or are simply disregarded by some.

In “Standard VI: Quality of the Process,” two paragraphs address the problem of mixing the role of mediator with other roles. The language that the Board set forth in an effort to get feedback from the membership is as follows:

Standard VI, Section B:

1. The role of the mediator differs substantially from other professional roles. Combining the role of a mediator with another professional role within the same case is prohibited and thus, a mediator shall not undertake an additional dispute resolution role in the same matter with the same participants, because such change in role may result in carrying out duties and responsibilities that may be governed by different professional standards that could be in conflict with those of the mediator.

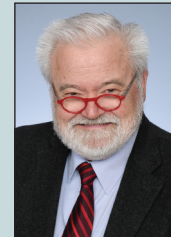
2. A family mediator shall not conduct psychotherapy or engage in any adjudicatory role with any of the participants during a mediation process.

In “Standard XI: Advertising and Solicitation,” which governs what one says about themselves to the public, new language has been added:

Standard XI:

A. Family Mediators should refrain from promises and guarantees of results. A family mediator should not advertise statistical settlement data or settlement rates. A professional mediator should advertise as a mediator only and not attach “mediator” or

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“mediation” to any other professional designation in advertisements, literature, brochures, calling cards, websites or other forms of communication with the public. Representing oneself as a “Therapist-Mediator”, “Attorney-Mediator”, or “Retired Judge-Mediator” is confusing to the public and mixes the roles of different professions.

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D. A family mediator shall not label or describe a dispute resolution process it offers to the public as mediation when such process is adjudicative, coercive, or predicts outcomes in court.

E. A family mediator shall not conduct or offer a dispute resolution procedure other than mediation, while labeling it as mediation, in an effort to gain a marketing advantage, or to gain the protection of rules, statutes, or other governing authorities pertaining to mediation. All of the above language is designed to correct a problem that has been growing for many years. It is a problem that Marvin Johnson and I referred to as adjudicatory procedures seeping into the mediation process. For example, one would expect that no judge would ever lean over from the bench and instruct an attorney in the middle of trial to help her opponent because the other side isn’t doing a very good job presenting the case, as this would violate the rules and long-standing procedures of an adversarial litigation process. Likewise, one should not expect that, in the midst of a structured mediation process, the mediator would lean over and say, “By the way, when I am not mediating, I also practice law and I predict that you would have a very difficult time persuading a judge to see it your way. The case law is just not on your side.” Not only would this violate accepted good practices, it would be mixing the profession of mediator and lawyer.

(Cont. on Pg. 11)

Book Review

Bill Eddy and Don Saposnek's *SPLITTING AMERICA: How Politicians, Super PACs and the News Media Mirror High Conflict Divorce* (2012 Paperback--HCI Press, Scottsdale, AZ, available for \$12.95 at www.hcypress.com or amazon).



Reviewed by Ken Neumann

*“Dysfunctional Families,
Dysfunctional Politics”*

Bill Eddy and Don Saposnek, two seasoned Family Mediators, one a psychologist and one a family law attorney, recently joined forces to author their new book, *Splitting America - How Politicians, Super PACs and the News Media Mirror High Conflict Divorce*. They start off by pointing out that the trend is towards a more “nasty” America, and as part of this, we have “high-conflict” divorces. They then make the leap to politics where they point out that well-funded politicians are promoting high-conflict campaigns to which adults and children are exposed on a daily basis.

One of their implied goals is for us to use the skills developed by family mediators that help divorcing couples avoid a high-conflict divorce and apply them to the Democrats and the Republicans in their campaign struggles. The authors present their plans for this ambitious undertaking by first establishing the similarities between high-conflict divorce and high-conflict politics. They start off with a thorough analysis as how divorce gets so ugly and then spell out three types of high-conflict divorces. If nothing else, this book serves as a primer for anyone wanting to really understand the dynamics of high-conflict divorce, as explained in simple step-by-step language by two very experienced practitioners. No other book comes to mind that makes this process so clear.

The authors are always working towards us

understanding the link between high-conflict divorce and high-conflict politics. They start with the fact that divorcing spouses typically blame each other for everything that has gone wrong, and that this is mirrored by the two political parties. And, if all you do is blame, there is not any likelihood of finding any common ground. The authors then, in a step-by-step method, cleverly make the link between different personality styles in high-conflict divorce and high conflict politics (e.g. narcissistic personality disorders morph into narcissistic leaders).

The two-page chart, the “Similarity of High-Conflict Divorce and Elections,” shows in detail the parallels between the two systems. When you go through the chart you can only say to yourself, “This is so obvious, doesn’t everyone see it?” And for many of us, more importantly, we need to ask, “What can we do about this?”

With many examples—some of them quite recent (e.g. Gabby Gifford's shooting in 2011)—the authors make the point that much of today's violence is prompted or even encouraged by the war-like rhetoric of politicians. The authors show how unlimited money that became available as a result of the 2010 Supreme Court Decision all but eliminated restrictions on how Super PAC money could be spent. And, this money has been spent on “attack ads,” which, generally, have been shown to be more effective than more reasonably informative types of ads. They then go on to explain the phenomenon of “Factoids,” that is, “...an item of unreliable information that is repeated so often that it becomes accepted as fact” (Compact Oxford Dictionary), and they

then go on to show how Factoids are used in both high-conflict divorce and in high-conflict politics. They then show how Family Court itself “perpetuates polarization.” The authors again make their point in chart form



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by showing how the “Strategies in the News Media” mirror the “Strategies in Family Court.”

The final analogy made by the authors is that we have “A Nation of Alienated Voters and Alienated Children” (Chapter 7). Here, they first describe each of the behaviors of an alienated child whose parents have gone through a high-conflict divorce, and then painstakingly show the political parallel. And, they reintroduce the concept of “splitting,” a theme which runs throughout the book whereby each parent or each political party is seen by the other as “all good” or “all bad.” The last chapter, “Healing a Split Nation,” highlights the fact that, until both Democrats and Republicans see the benefits of working together, we will continue to have the kind of divisive elections and “politics as usual.”

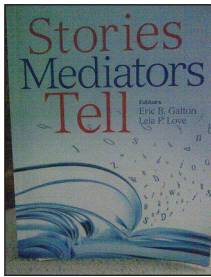
The book ends with the introduction of a cleverly constructed “High Conflict Politician Scorecard”, with which you can rate the traits of politicians, such as “All-or-nothing solutions” and “Doesn't play well with others,” and then derive a score. It would be quite a victory for all of us if we took this Scorecard into the voting booth with us.

(Cont. on Pg. 11)

Book Review

Eric R. Galton and Lela P. Love's *"Stories Mediators Tell"*

(2012 Paperback, American Bar Association, Chicago, IL, available for \$49.95 under the subject of Law/Reference at www.ShopABA.org)



Reviewed by Elisa Frischling

If you're a mediator, you've probably experienced it; a gradually increasing anxiety that surfaces somewhere during the early phases of a mediation session, when you recognize that a middle ground possibly is not reachable in the time allotted...and very possibly not reachable at all. You are not alone.

Stories Mediators Tell by Eric R. Galton and Lela P. Love offers mediators and their clients a view of the trials, triumphs and turnarounds that define the mediation process for us all, with a thoughtfully assembled compilation of shared stories from the field. Replete with accounts of successes, flubs, and, perhaps my favorite feature, careful rethinking after the fact, Galton and Love remind us that the best results depend on deftness, an ability to think in fresh new ways, often on the fly, and an emphasis on mutual engagement. It is clear that the same holds true for clients, who, as we can see, must also be ready. We must keep our minds open in each new mediation experience, no matter how many sessions we have facilitated.

Perhaps the most valuable point gleaned from Galton and Love's book is the acknowledgement of the skill needed to help clients to recognize that the desired outcomes articulated at the beginning of a process may not actually get them what they really want most at the end. As we all know, the real issues of conflict are not always stated. With carefully-selected stories that touch on the complexities of working with clients who may not themselves be fully cognizant of all they hope to achieve, Galton and Love share with readers some

of the most artful, imaginative and touching techniques used to open communication, deconstruct problems and reshape conflict. Their stories provide

a glimpse into the more remarkable tools that successful mediators deploy to help opponents see each other's point of view, or transform seemingly insurmountable obstacles into common ground (or, when things go very well, into shared goals). Sometimes, mediators simply provide great insight into what can be the hardest task of all—helping clients get 'unstuck'.

The book's "Second Thoughts" segment, in which each mediator reflects on the process after the fact, is perhaps the most human and enlightening of all. It is here that we are reminded that, even for these talented practitioners, the process doesn't always go as expected. Culled from a group of experienced and successful mediators from a range of backgrounds, including lawyers and non-lawyers alike, the text touches on the spoken as well as the unspoken issues of conflict, while shining a careful spotlight on the ways in which interpersonal relationships can shape mediation. And, dutifully, but not always comfortably, the authors do not fail to give us a window into the murky realms in which our own filters, biases and orientations may cloud our better judgment.

Ultimately, write the authors, mediation is all about focusing on "conflict engagement," rather than on "settlement negotiation." Conflict engagement, they explain, creates a bridge between what people truly need and the legal system which often blocks them from getting those needs met. It's a refreshing view. To illustrate the point, the authors offer a vignette titled, "The Other Sarah," a moving account of a

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tragic accident in which a driver, in a car with her daughter, kills a cyclist named Sarah. As the story begins, we are introduced to Sarah's father, overwhelmed and angry at the loss of his daughter's life, and the driver, who has no idea how to manage her own fear, remorse or finances while also helping daughter cope with the trauma of that evening's events. Through a mediator's artful approach, the parties progress beyond a provocative interchange and work together with shared purpose to establish a college fund in memory of Sarah. For the father, loss was now met by renewed purpose in his daughter's honor. For the driver, a deep but unfocused guilt would migrate into a larger good. Such an approach, say Galton and Love, shifts the emphasis to engagement rather than resolution, creating an outcome much more rewarding than the financial remuneration alone.

This book is highly recommended for mediators who focus on all types of cases, from business to family issues, from malpractice to contract disputes. It will also be helpful for practicing mediators, lawyers and clinicians who deal with high conflict cases, as well for as non-mediators who simply wish to learn options for better dispute resolution. A priceless resource for mediators, *Stories Mediators Tell* can help even the most experienced among us gain an added measure of insight into our own struggles and limitations, with new options for tactical as well as strategic intervention and opportunities become better negotiators in practice.

“APFM’s First President’s Message” Cont. from Pg. 1

Just to whet your appetite: The Academy is now a member of the Institute for Credentialing Excellence. Marilyn McKnight and I are attending the Institute’s Annual Educational Conference, from November 6-9, 2012. Upon our return, we will be reaching out to everyone that has expressed an interest in realizing an accredited credential for family mediators, along with an educational schema to support achieving the credential.

Please remember to offer us your comments about the proposed Standards of Practice, that are posted on our website. The standards have been the result of much hard work at brainstorming and refining our ideas. And, we are investigating ways to fulfill our goals of promoting public awareness of mediation and the competence and successful practices of our members. This last goal is embodied in one of the APFM ban-

ners at our Founding Conference, “Family Mediators Doing Well Doing Good.” The phrase encompasses the many values, goals and aspirations of our Academy and the culture we are building as a community of professionals. Let’s make it happen together.

With respect and appreciation,

Rod

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“Our After the Founding Conference Edition” Cont. from Pg. 3

Some practitioners get quite fired-up about this topic. But, here at The Professional Family Mediator, we love “fired-up” and “controversy!” So, please respond with your responses to this issue. We will publish them!

Last, we have two book reviews. The first, mentioned above, is Ken Neumann’s review of *Splitting America: How Politicians, Super PACS, and the News Media Mirror High Conflict Divorce*, co-authored by Bill Eddy and me. The second is Elisa

Frischling’s review of *Stories Mediators Tell*, by Eric R. Galton and Lela P. Love, an interesting book of shared stories of the successes and failures of experienced mediators.

Please send your responses to any and all of these articles, as well as your ideas for new features to our newsletter to me at: dsaponek@mediate.com, and be sure to include your name and location. We intend to publish your responses and get a dialogue going on these and other matters of concern to our

readership of family mediators.

I leave you with this thought:

“You do not need a parachute to skydive. You only need a parachute to skydive more than once.”

- Anonymous

Enjoy.

Don Saposnek

Editor

The Professional Family Mediator

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“Mediation is Voluntary and Neutral” Cont. from Pg. 4

“The issue is not whether Tom’s proposed package deal is a good one for Mary or not, or what her chances are in a court-imposed divorce. I would not allow parties to agree about property division without first obtaining objective data about the actual monetary value of the properties and any other relevant information.” Alimony and child support should be based on actual needs—and must be specific amounts—certainly not on what the husband considers to be ‘generous’.

“Tom clearly is trying to control the process and the outcome of the mediation, both of which are unacceptable in terms of my understanding of mediation. Going to court is always an option but is not to be used as a threat to pressure the party that prefers to avoid litigation. Even parties who are not represented have the right, and should have the opportunity, to consult with an attorney

before signing a divorce agreement. In any event, they should have time to think about any given proposal and to consult with others (whether professionals, family or friends) before signing an agreement.”

“While no one can prevent Tom from ‘bulldozing’ Mary into an arrangement that he dictates, this should not occur in the context of mediation with a professional mediator.”

These responses emphasize two of the most central ethical points about the mediation process: It is voluntary, and the mediator is neutral. What I liked about all of them is that they made an effort to patiently explain the process and these values, rather than criticizing them for not understanding these principles of mediation.

Since this was an actual case of mine (with

names changed), I’ll let you know what I did. I explained to them both together that I appreciated their urgency and frustration. However, there would have to be time for Mary to think about Tom’s proposal—at least 24 hours, with time to get consultation—and that any deed that was signed today would likely be easily set aside as not voluntary (educating them about consequences), so I would not allow it to occur in my office today (setting limits).

I agreed to then meet separately, as Tom had requested, and I encouraged Mary to get outside advice on Tom’s proposal, which I said might be a good one, but it would take time to analyze. I also asked her if there was a history of coercion from Tom, and, while she denied it, I was skeptical.

(Cont. on Pg. 11)

“Keeping Your Roles Clean” Cont. from Pg. 7

Indeed, if one goes back to the previous mediator standards accepted by the ACR, AAA and the ABA in 2005, the prohibition against mixing roles was not only mentioned, but was also discouraged.

While less prevalent, other seeping crossover problems have occurred in relationship to the mental health professions. For example, a person may be appointed by the court or by the parties as a parenting consultant to “facilitate, mediate and investigate the circumstances of the minor children in an attempt to establish the children’s

true wishes, as well as help the parties co-parent the minor children, and if impasse is reached between the parents, the mediator shall submit a written report to the court recommending who shall have custody” (I have actually seen such a sentence in a court document). While some may not have a problem with such a role description, others would see this as flagrant mixing of the role of mediator with the role of a mental health professional.

Finally, the section on advertising further addresses the prohibition of mixing the

roles. However, this section has caused some dissension within the current Board of Directors of APFM, with some saying that there should be no prohibition on advertising, while others felt that the prohibition against mixing roles extended to what is said when holding oneself out to the public.

If any APFM members that were not present in Cape Cod wish to help out with the Standards and Certification committee’s enormous tasks ahead, please send me an email and I will try to put you to work. Thank you.

tpFM

“Splitting America: How Politicians, Super PAC’s and the News Media Mirror High Conflict Divorce” Cont. from Pg. 8

In summary, we actually have three books here. One is a primer on the personalities that become involved in High-Conflict Divorce, along with an excellent summary for both the professional and non-professional. The second book is a fascinating look on how dys-

functional the American political system really is, even in the toned-down language of the authors. And finally, “*Splitting America - How Politicians, Super PACs and the News Media Mirror High Conflict Divorce*” is a thoughtful integration of how two apparently

unrelated systems, certainly two that function independently from each other, have so much in common. This book will leave you wondering about many things.

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“Mediation is Voluntary and Neutral” Cont. from Pg. 9

I recommended that she consult with an attorney to help her deal with Tom’s aggressive energy and to analyze his proposals. Then, I met with Tom and empathized with his frustration and encouraged him to also consult with an attorney to help him explain the benefits of his proposal to Mary. We scheduled another mediation session.

Afterwards, I heard that Tom continued to be very demanding, so, while in court, Mary’s attorney obtained a restraining order against Tom and he ran out of the courtroom before the hearing was over. I had encouraged them to return with their lawyers, but they never came back.

I wondered if there was something else I could have done, or whether keeping them together in the session might have produced a different result. However, I agree that some cases cannot be mediated and that a level playing field is an essential factor for medi-

ation. Sometimes, we have to set limits to ensure the integrity of the process – especially when one (or two) clients lack the most basic impulse control.

On the other hand, more recently, I have had similar mediations with lawyers present who are “mediation friendly” and/or with restraining orders and certain safety precautions in place, that resulted in successful outcomes. I am pleased to say that the case of Tom and Mary was just one of the rare times in which saying “You can’t do this in my office” was necessary.

NEW Fall 2012 Ethical Question: “Should Mediators Write Divorce Agreements?”

Within this general question, I have four specific questions for members to consider, and hopefully write in about, for the next Newsletter. These were suggested to me by an attendee at the APFM Founding Confer-

ence in Cape Cod and I thought they cut to the essence of the drafting debate:

1. Can a lawyer-mediator ethically draft the divorce agreement to be filed with the court?
2. Should a lawyer-mediator draft the divorce agreement, as a “best practice?”
3. Can a non-lawyer-mediator ethically draft the divorce agreement to be filed with the court?
4. Should a non-lawyer-mediator draft the divorce agreement, as a “best practice?”

I am interested in Yes or No answers from as many mediators as possible, but also include why you say Yes or No. Please write to me directly at: billeddy@highconflictinstitute.com, and we will include your responses in the Winter, 2013 issue of *The Professional Family Mediator*.

Where Would You Land?

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A Call for Submissions

to *The Professional Family Mediator*

We invite you to submit previously unpublished articles related to family mediation, including clinical insights, innovative programs, research studies, practice ideas, news updates, and letters to the editor with your responses to any of our published articles or columns. The editor will review submissions as they come in and will consider for publication those submissions that offer unique and innovative ideas for practicing family mediators. Please send your materials by email to the Editor, Don Saposnek at: dsaposnek@mediate.com. Authors should include name, city and state/province, and other materials as requested by the Editor. If an article is selected for publication, author will be requested to sign a Permission to Publish agreement and to submit a photo and brief bio.