The Professional
FAMILY MEDIATOR

Feature Article

FALL 2014

APFM
ACADEMY OF PROFESSIONAL FAMILY MEDIATORS

Shared Parenting and Mediation: Lawyers and Judges Support Reforms

By Rachel Birnbaum, Nicholas Bala, John-Paul Boyd, and Lorne Bertand

There is considerable concern in Canada about how to reduce the adversarial nature of family law proceedings and promote better relationships between separating parents. We report here on a recent survey of Canadian legal professionals that reflects support for mediation and certain amendments to the parenting provisions of the Divorce Act.

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Context

Mediation is playing an increasingly significant role in the resolution of disputes between separating parents. A number of Canadian jurisdictions, such as Alberta, British Columbia, and Ontario have increased government support to mediation, especially for lower income groups, and established parenting education programs to encourage use of mediation. There are, however, concerns about whether victims of family violence are being appropriately screened before being sent to mediation. There are also questions about whether legally trained professionals, as key "gate-keepers of dispute resolution" are supportive of mediation.

There is also a growing interest in various forms of shared parenting. British Columbia's new Family Law Act, which came into force in 2013, establishes a presumption of mutual parental guardianship, before and after separation. Like Alberta's Family Law Act, which came into force in 2005, the B.C. law uses the concepts of "parenting time" and "parental responsibilities" as the basis for post-separation parenting arrangements. However, the parenting provisions of the federal Divorce Act are almost three decades old and continue to use the concepts of "custody" and "access," language that does not reflect present values and practices on post-separation parenting. In the spring of 2014, a Private Member's Bill (C-560) that would have created a presumption of "equal parenting time" was defeated in Parliament, with professional groups, like the Canadian Bar Association opposed to its enactment. There are questions about whether legal professionals support reform, or prefer to continue to use the language of "custody" and "access."

CRILF Survey Participants: Views and Practices

With the support of the CRILF (Canadian Research Institute for Law and the Family), we surveyed family law lawyers and judges who attended the National Family Law Program in Whistler, BC, in July 2014, to learn about their views and experiences with shared parenting, mediation and self-representation in family courts in Canada. In this article, we present a summary of the results of the survey regarding shared parenting and mediation data.

One hundred seventy four of the attendees, about a third of program registrants, responded to the survey: 83% were lawyers, 13% were judges and 4% were from other professions. The relatively high response rate from a busy group of professionals suggests a strong interest in sharing their views about these important topics.

The respondents consisted of 72% females and 28% males, with an average of 18 years of experience in their current practice, and 82% of their case load involved family law matters—

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a significant group of very experienced family law lawyers and judges. There was somewhat more representation from the West (55% were from BC or Alberta).

Mediation

Respondents reported that, in 38% of their family law cases, mediation is attempted for some or all of the issues. Of those cases referred to mediation, 49% resulted in a complete resolution of all issues, and 17% resulted in the resolution of no issues. The balance of cases resulted in settlement of some issues.

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The Professional Family Mediator

The Professional Family Mediator is the newsletter of the Academy of Professional Family Mediators, a professional organization dedicated entirely to the practice of Family Mediation as a profession. The newsletter is published quarterly as a member service.

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.

Legal Disclaimer

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By Don Saposnek

Donald T. Saposnek, Ph.D., is a clinical-child psychologist and family therapist in practice since 1971, a family mediator, trainer and consultant since 1977, and a Founding Board Member of APFM. He is the author of *Mediating Child Custody Disputes: A Strategic Approach*, and co-author of *Splitting America: How Politicians, Super Pacs and the News Media Mirror High Conflict Divorce*. He has been teaching on the Psychology Faculty at the University of California, Santa Cruz, since 1977 and is Adjunct Professor at Pepperdine University School of Law, Straus Institute for Dispute Resolution.

Dear Readers,

At our San Diego conference, there were many discussions regarding certification of family mediators and how the end-game of APFM would be establishing a well-recognized field of professional family mediation. The notion is that regardless of one's profession of origin (traditionally law or mental health), we all would be Family Mediators. Supporting that goal has been the increasing presence of college and university programs that offer graduate degrees in Conflict Resolution—
See: http://www.gradschools.com/search-programs/conflict-peace-studies --and the promise of an actual incomed future in mediation, suggested by the Bureau of Labor Statistics who claim that in May 2010 mediators earned an annual median salary of $55,800, and that jobs for mediators are predicted to grow by 15% between 2010 and 2020. Typical of these graduate programs is the M.A. degree in Conflict Resolution offered by Georgetown University. This program "…seeks to equip its graduates with the theoretical and practical tools necessary to better understand the nature of and solutions to many types and degrees of conflict." This program, which is "…offered in conjunction with many other departments and schools at Georgetown, is designed to be intensive and small in size. Core and elective courses are taught in the departments of Government, Psychology, Theology, Philosophy, Sociology and Communication, Culture & Technology, as well as at the Law Center, Business School, School of Foreign Service and the McCourt School of Public Policy."—quite a Renaissance training, eh?

So, my curiosity in all of this has been fueled over the years by questions asked of me by my undergraduate university students who want to become mediators. They ask: "What undergraduate courses and degree should I pursue to become a family mediator?" In exploring good answers to this question, I learned that Georgetown requests that "applicants for the Conflict Resolution Program should hold B.A. degrees from a variety of fields, such as Government, Psychology, Business, Philosophy, Theology, History, Sociology, Anthropology, Communications, or Economics."

Given that we family mediators mostly are lawyers and/or therapists, how would you (my dear reader) answer this question, and how would you advise my students? What is the best undergraduate degree to prepare one to become a Professional Family Mediator? I really would like some reader feedback. Thank you in advance.

While you ponder this question, take a look at the contents of this Fall 2014 Issue of TPFM. We start off with our feature article written by our esteemed Canadian family researcher colleagues, Rachel Birnbaum, Nick Bala, John-Paul Boyd, and Lorne Bertrand, that explores the views of Canadian judges and lawyers regarding shared parenting and mediation. It gives us a cross-cultural insight into how much progress we've made in our professional mission. Steve Abel's President's Column then gives a nice overview of our stimulating and very successful San Diego conference; those of you who were unable to attend missed out on a great event, but we look forward to seeing you at our 2015 conference in Washington, D.C. Following this, we present the next installment of our interviews with New Board Members; in this issue we present Debra Synovec and Bob Horwitz, who share with you their respective, colorful backgrounds and motivations to serve you on the Board.

In a number of past issues of TPFM, we've included insightful articles written by Larry Gaughan, one of the very first mediators and one of the founders of our field. Because I have really liked what he has to say, I invited him to become our newest Columnist, which he graciously accepted. He chose to title his Column "The Legal Stuff Matters." In this Column, Larry intends to highlight aspects of our mediation work that specifically have to do with legal issues—which appear to have been underrepresented, in our efforts to pull away from the Court system. I believe that this new Column will provide a nice balance of perspectives to our on-going innovations in the mediation field. In Larry's first official Column, he discusses the matter of managing disclosure/discovery issues. Ironically, Bill Eddy, independently, submitted his Ethical Edge Column which explores the very same issue; so we get too heavy-hitters presenting their respective perspectives on this very interesting issue of "Discovery"—a key issue that clearly needs to be newly addressed by mediators. I do hope this elicits some "Letters to the Editor," with your own thoughts on the matter.

Chip's Creative Solutions Column nicely summarizes the rich discussions that we were able to elicit in our recent Conference Workshop on "Great Train Wrecks in Mediation." Facilitating substantive discussions with a bunch of very experienced mediators was a delight for both Chip and me and, apparently, they were well-received by the attendees, as well. We hope to offer that kind experience again in future conferences. Next, our fearless social media pusher (she lurks in back alleys checking out Tumblr), Ada Hasloecher (in Mojo Marketing), digresses from her next installment on Networking in order to discuss a pressing, emotional issue that will leave you puzzled about the psychology of certain individuals; it is titled "What NOT to do at a Networking Event." And, last, Steve Abel, our able president, gives us an analysis of a very interesting mediation case that will challenge your thinking about neutrality, balance, and bias.

I leave you with this thought:

"People who say it cannot be done should not interrupt those who are doing it."

--George Bernard Shaw

Enjoy.
Don Saposnek
Editor
The Professional Family Mediator

APFM's President's Message
"Our Recent, Great Conference"

By Steve Abel

Dear Members and Friends:

I must start with the biggest thank you possible to Ken Neumann and Donna Petrucelli for chairing our annual conference in San Diego. Together, we spent hundreds of hours organizing every detail. The result was worth the effort. More than 210 mediators from all across the United States, Canada, Europe and Australia traveled to California. Without Ken and Donna, this conference could not have occurred.

We had help from handful of volunteers, particularly Lisa Wolman of New Jersey, who coordinated the exhibitors and advertisers, Virginia Colin of Virginia, who worked on social media outreach, and Glenn Dornfeld of New York, who worked on the Proceedings Book and flash drives. APFM's IT consultant Cliff Rohde was also invaluable in setting up audio-visual needs and every sort of technical issue that came our way.

Those details are eclipsed by the enormous contribution of dozens of workshop and institute presenters who all worked without any payment, whatsoever. My humblest thanks to you all! I'm hardly an unbiased observer, but I was incredibly impressed that this all went down without a significant hitch or a glitch (OK, there's always something—on the first day we ran out of box lunches, and it took a while to get some extras).

A notable first was our collaboration with the Association of Divorce Financial Planners. This was engineered by Ken Neumann, who is a member of both groups. ADFP started their conference on the Monday before APFM's conference, with our Bill Eddy as their lead-off speaker. We then invited ADFP members to attend our Pre-Conference Institutes on Friday and about 50 accepted our invitation. The result was that a number of them stayed for the rest of our conference. We are hoping to continue this collaboration next year.

Another key facet for me was that we were able to provide nine scholarships from our Diversity Scholarship fund. Large contributions at last year's conference and donations from ADFP made that possible. That brings me to some critical thinking. We asked everyone who attended to evaluate the conference, on Survey Monkey. Some 54 people responded (what happened to the rest?). A number of people commented that they did not like the public request for donations at the lunch meeting. I'm sorry that some of you were offended. Maybe we can come up with something better next year. On the other hand, the raffle, silent auction and the public "ask" raised more than $6,900 for scholarships next year.

My personal highlight was in presenting our annual award to Forrest "Woody" Mosten. His contributions to family mediation are just incalculable. The best part was seeing his pleasure in being honored. His keynote address on The Next 30 Years was pure inspiration.

Some of us are factoid junkies, so here are some I'd like to share: We asked when to hold the next conference, both on Survey Monkey and on paper. About 70% prefer October to July. No other time was even close. More than half of the attendees were first-timers, more than half were lawyers, and more than half came to the conference alone. The overall evaluations of the conference were: Excellent= 37%, Good=37%, and Fair=22%. The single highest rating went to Woody Mosten, who was rated Excellent by 60%. The favorite workshops were Great Train Wrecks, created by Chip Rose and Don Saposnek, with Bill Eddy's offerings a close second.

The negative comments included a dislike of presenters who were also selling books, and the lack of sufficient break time to talk to each other.

Thank you for this feedback; we can use all of this information in planning our next conference. I hope to see you then.

Peace,
Steve Abel

Steven Abel is a founding member of the new Academy of Professional Family Mediators and is a divorce mediator and family law attorney with more than 40 years' experience. He is the editor of Federal Family Law and one of the co-authors of The Friendly Divorce Guidebook for New York, and author of articles on divorce law (including "Social Security Retirement Benefits"), and several Blumberg law forms for divorce, including Child Support Worksheets. Steve is a past President of the New York State Council on Divorce Mediation. He is a founder of the New York State Chapter of AFCC.

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, the author will be requested to sign a Permission to Publish agreement and submit a photo and a brief Bio.

New Board Member Interviews

DEBRA SYNOVEC:

Who are you? Where do you come from? What is your background?

I am from Minnesota. I founded Whole Mediation & Consulting Services, P.C., a business in which I provide mediation, facilitation and financial consulting for divorce and family issues. My professional status now is: Family and Divorce Mediator and Certified Divorce Financial Analyst (CDFA), located in Seattle, Washington. I have a background as an attorney, CPA and social worker, to provide services for family and divorcing couples that have issues requiring compassion and pragmatism.

What do your current professional practice and activities look like?

I am a solo practitioner, 100% committed to helping families through mediation and other cooperative conflict resolution methods. I offer clients a progressive, productive, and peaceful process to resolve divorce and family challenges and create a more balanced, empowering approach to conflict resolution.

I am a member of the Academy of Professional Family Mediators, the Collaborative Professionals of Washington, the King County Lawyers ADR Section, the Washington State Bar Association-ADR Section (former chair), and currently, I am a member of an ad hoc committee working on advance early stage mediation in the courts in King County.

How did you first learn about mediation?

I first learned about divorce and family mediation in law school, then I interviewed Steve Erickson and Marilyn McKnight about the profession, then took their training in 1987 and worked with them for about 1½ years before I moved to Bloomington, IL where, much to my chagrin, I had to practice law in order to make a living.

What do you hope to accomplish as a Board Member of APFM?

I hope to help APFM flourish by creating a sound foundation for the organization. I see my role as someone who will help the board set policies and maintain the overall direction. When I get asked to join a Board, it usually is to help the Board create a sound infrastructure in order to ensure that plans and programs are implemented—I think that was the case here. But, part of the reason I became a Board member is, hopefully, to inspire best mediation practices here in Washington.

Where do you see the field of Family Mediation going?

I see family mediation becoming more mainstream and inclusive. Not just a practice in which a lone mediator and two clients work together (nothing wrong with this), but instead, a process that is flexible and embraces originality so that people with diverse needs and challenges have a process to use that meets their diverse needs. I see mediation and collaborative law becoming more "cooperative" with each other in order to give clients alternatives that meet their needs.

What do you like to do when you are not mediating?

Many activities: walking with my husband and our dogs, reading good books, fiction and non-fiction alike, having a cinnamon roll and coffee while reading the N.Y. Times on Sunday morning, practicing yoga, bicycling, traveling short, and long distances (we go to the warm weather of Desert Hot Springs about three times a year), entertaining friends and family, watching a well-done drama such as The Sopranos, Spiral or The Wire, and just hanging out, hopefully in some sunshine.

NEW BOARD MEMBERS Interview #2

BOB HORWITZ:

Who are you? Where do you come from? What is your background?

I have been a licensed psychologist in New Haven, Connecticut, since 1978, specializing in family therapy and couples therapy, as well as psychotherapy with individual adults. I work a lot with children and adolescents. I have been doing divorce and family mediation since the mid-1990's, starting off as a volunteer with the Regional Family Trial Docket in Connecticut (attorney-psychologist teams volunteering to help high-conflict couples turn their pre-trial date into a full-day, trial-preventing, mediated settlement opportunity). I did my formal ACR-approved basic mediation training with Carl Schneider, and then did advanced mediation training with Woody Mosten and Nina Meierding, followed by many subsequent workshops, including several with John Fiske and Diane Neumann, as well as basic and advanced trainings in interdisciplinary collaborative divorce, and in parenting coordination. I have a Ph.D. in Clinical and Developmental Psychology from Yale (1976) and a BA from Yale (1968). I also taught 4th grade for 2 years (1968-70). My dissertation was a study of long-term psychological effects of "open classroom" teaching on primary school children, and I am still very interested in the impact of school environment on children and how our schools can do a better job of preparing our kids to be creative problem-solvers and peacemakers.

What do your current professional practice and activities look like?

After 6+ years working in a crisis intervention program for young adolescents and their families in New Haven, where I learned even more than I had previously learned in my family of origin about conflict resolution and intense emotion, I went into full-time private practice in 1983. I have a refreshingly varied practice, serving all ages and a wide range of cultural and socio-economic groups. My mediation work is limited to helping parents figure out how they want to separate/divorce and how they can craft developmentally appropriate plans for their children. I have developed a reluctant specialty in dealing with high-conflict couples, having managed to help settle parenting disputes in a large number of cases that had been in protracted litigation. I'm conversant with the fundamentals of child support/ alimony/ spousal support, etc., but leave financial mediation to my attorney-mediator and financial professional colleagues.

I've also been very active in statewide professional associations, including serving as president of the Connecticut Psychological Association (CPA) and the Connecticut Council for Divorce Mediation (CCDM)—recently renamed the Connecticut Council for Non-Adversarial Divorce [CCND]), and founding board member and current treasurer of the new Connecticut chapter of the Association of Family and Conciliation Courts (AFCC).

How did you first learn about mediation?

One of Connecticut's distinguished judges, Joseph Steinberg, started a program in the Middletown, CT courthouse to try to settle cases involving custody and visitation disputes that were headed for trial. He recruited mediation-friendly attorneys and psychologists to offer their services for a full day, designated as the "pre-trial" to see if these cases might settle.

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The Legal Stuff Matters

Managing Disclosure Issues

By Larry Gaughan

Larry Gaughan, was admitted to practice law in Montana in 1957 and in Virginia in 1967. He was a tenured full professor at Washington & Lee and George Mason Law Schools. As an attorney he is rated by Martindale-Hubbell, the national rating service for lawyers, as "AV® Preeminent™." Larry has been a family mediator since 1980 and is a Founding Member of APFM. He is a member of APFM's Professional Mediator Board of Standards.

One of the concerns in every divorce settlement is whether "all the cards are on the table." A key element of any fair settlement is that each of the parties has all of the relevant information about the other's financial situation. If the case were to be handled by the courts, that would be a matter for what is called civil discovery – especially interrogatories and requests for production of documents. Interrogatories are written questions that the other party is required to answer under oath, and documents are what provide verification. Another discovery mode is depositions – examinations under oath with a court reporter present. Civil discovery often adds immensely to the costs of litigation because the standard of relevance that the courts enforce is very broad.

Some mediations are carried on while the court case is still progressing, and each client brings boxes of discovery documents to the mediation sessions. But, in most mediations, the mediator must handle disclosure issues when they arise or when they are suggested by the facts of the parties' situations. In many mediations, this is not a problem because each spouse has sufficient knowledge of the marital finances, and trusts the other to be forthcoming with any needed information or documents.

Many mediators have at least two spreadsheets, both normally in MS Excel. One is a general financial profile, and the other is a monthly income & expense worksheet. The latter is used if there are support issues – especially spousal support. My stepson, Eric Segal, who is a computer specialist, assisted me in constructing a (hopefully) user-friendly, general spreadsheet (spreadsheet.xlsx), the file of which may be downloaded on my website, www.lg-mediation.com. Anyone who downloads this may use it, and any suggestions for improvements will always be welcomed.

Often, one or both of the parties come in with their own spreadsheets, which frequently make the use of the mediator's form unnecessary. But, the mediator has an obligation to intervene in two common situations: The first is where one or both of the parties raise disclosure issues, and the second is where the figures just don't add up. There are also situations that may require specific disclosures; examples are when there are questions about a party's real income, when a party seeks to trace separate property that has been commingled with marital property, and when there are issues of misuse of marital assets.

The general standard for disclosure is that it covers all of the parties' assets, income, and obligations. For example, if a party has substantial property that has been gifted or inherited or was brought into the marriage, the other party has a right to know the details. Income from a family trust fund is still income for support purposes even though it may be a party's separate property.

Disclosure becomes more important in those marriages in which the parties have a very unequal involvement in the family finances, and especially in which there have been issues of control. The more reluctant a party is to provide such information, the more necessary it may be for the mediator to insist on it. For example, a party may insist that his or her closely held business or professional practice is off limits for discussion, in terms of the settlement. However, to the extent that such an entity was developed or expanded during the marriage, it is marital property and is thus a legitimate issue for the mediated settlement.

There are some documents that are often needed in mediated cases. These include the parties' personal federal and state income tax returns, their pay slips, tax returns for a party's business or professional practice, mortgage statements, credit card bills, and appraisals. If income is an issue for spousal and/or child support purposes, it is important to remember that state law generally provides a broad definition of "income" that includes salaries, bonuses, commissions, self-employment draws, family gifts, investment and retirement income, and so forth. In general, reasonable business expenses may be deducted from self-employment income. Documentation also may be required for certain expenses such as work-related child care, the costs of health insurance coverage, and the cash flow for rental and vacation properties.

At times, the mediator may see income and expense worksheets in which a party's income is way less than his or her (or the family's) expenses. The discrepancy may be explained by credit card debt, but there are also occasions when the mediator may sense that there has been substantial unreported income. These can be difficult cases, although confidentiality prevents the mediator from reporting the problem to the IRS. Another kind of case is when a tax return shows investment income, but there has been no disclosure of the related investment.

One of the most difficult situations is when one party accuses the other of dissipating marital assets. For example, there may be allegations of an affair in which one of the parties has provided a third party with extensive and/or expensive gifts. Or, a party in a second marriage may be showering money and/or property on a child from a former marriage. These are examples of cases in which the mediator may need to involve a financial expert, such as an accountant, as a neutral to do the necessary tracing.

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The Ethical Edge:
Mediation Before Discovery? Is it Ethical?

By Bill Eddy

Bill Eddy, L.C.S.W., J.D., has been mediating family disputes since 1979. He is a therapist, a lawyer and the Senior Family Mediator at the National Conflict Resolution Center in San Diego, and he is a Founding Board Member of the Academy of Professional Family Mediators. As President of the High Conflict Institute, he provides training in managing and mediating high conflict disputes. He is the author of several books, including *High Conflict People in Legal Disputes*. His website is: www.HighConflictInstitute.com.

In the final general session at the October APFM Annual Conference in San Diego, I suggested that we should promote the idea of "Mediation First!" and that legislatures and courts should require separating and divorcing parties to attempt to mediate all issues before they are allowed to appear in court and argue their case—not just parenting issues, as some courts, such as those in California, already require. One panel speaker briefly suggested that this is a good idea for parenting issues, but that such a requirement might harm one or both parties on financial issues – because of the lack of sufficient discovery without the potential for court involvement.

Since this was a passing comment in the context of other issues, my idea and this objection were not discussed any further. So I decided to bring this dilemma to you, our APFM Newsletter readers! What do you think? Please email me your thoughts (even a sentence or two). Here are my thoughts:

The Value of Discovery

I agree with the basic idea of discovery. Requesting and requiring information with which to make informed decisions seems essential to ethical decision-making in many areas: law, medical care, police work, politics, and so forth. In family law, this can include bank records, credit card records, tax returns, all types of income reporting, retirement accounts, the nature of expenses and personal spending, and even child-related information, such as school records, medical records and therapy records. It seems hard to argue against the idea of having significant information for decision-making. The ethical value of "informed consent" would appear to support the concept of discovery.

Can You Meaningfully Mediate Before Discovery?

In civil lawsuits, such as for personal injuries or business contracts, discovery is routine, and both sides expect it. The parties expect it, and the lawyers expect it. It can be a relatively matter-of-fact process or a highly contested process. But, mediation of civil cases commonly occurs after much or all of this discovery process is accomplished, so that meaningful decisions can be made in a single session, sometimes taking a full day. The facts are in, so realistic decisions can be made. In family mediation, it is common to start out with no discovery. This gives the mediator an opportunity to explain the required information exchange, including forms and documents required by state law. The mediator may explain discovery procedures at the start, or only when it appears that they may become necessary, because of a gap of information, or a controversy in the case—or to let the parties know what might happen in court if they went there, in hopes of encouraging them to stay out of court and make their own decisions.

The Process of Discovery

The formal process of discovery can become an issue in any case. There are endless federal and state laws and rules regarding discovery, the enforcement of discovery, sanctions for the abuse of discovery, deadlines for discovery, and court procedures for arguing about all of this. Discovery can include sending written demands for production of documents, subpoenas for bank records, taking depositions of the "opposing party" and others who might have relevant information (such as accountants, relatives, new partners), as well as other formal procedures. These procedures are primarily adversarial and almost always increase conflict between the parties. Most occurrences of discovery do not involve a voluntary process. One side can demand it over the objection of the other.

An Assumption of Mistrust

Discovery is based on the assumption that information will not be produced voluntarily. But, it is also based on the assumption that the information will be produced through the formal process of discovery. In other words, the conniving husband who may have hidden money or assets somewhere will, of course, talk honestly about it when there is a court reporter present during a deposition—Right? The shifty wife will, of course, have left her secret accounts in a bank that will be found out when sent a subpoena—Right?

We all know that an assumption of mistrust can create mistrust. And, mistrust can drive secretive and manipulative behavior. This assumption may damage trust that might have helped resolve one or more issues. In other words, the adversarial process of discovery often escalates the case irreversibly and discourages the peaceful and cooperative resolution of issues. The California Attorney Guidelines for Rules of Civility and Professionalism Section 19 state: "…[I]n family law proceedings an attorney should seek to reduce emotional tension and trauma and encourage the parties and attorneys to interact in a cooperative atmosphere, and keep the best interests of the children in mind." Since most discovery activities can occur without court appearances (it is built into the laws to start before court involvement), it is very easy for it to become misused as an adversarial weapon in an unethical manner. Abuse of the discovery process and enforcement of discovery requirements is increasing litigation in all types of law.

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THE CREATIVE SOLUTION

"Train Wrecks"

By Chip Rose, J.D.

"Train Wrecks" is the title that Don Saposnek and I gave to the three workshops we facilitated at the just concluded Third Annual APFM Conference in San Diego— Conference chair Ken Neumann's long held desire to create some master classes at our conferences aimed at the most experienced mediators. Putting our heads together, we decided to facilitate a kind of peer review in which several participants would put forth cases or circumstances that were troubling for them. They would then ask the other very experienced participants to engage in a dialogue with them by probing deeper into the mediator's experience of the case and offering ideas and suggestions as to what other's might have done differently—where different was helpful and/or appropriate.

Two categories of cases emerged from the group discussions. The first category included the kinds of cases that turned out badly, not because of any errors or omissions on the part of the mediator, but rather as a result of a client's decisions, choices, or actions that caused the case to end unsuccessfully at best, or become a train wreck at worst. The second category involved case circumstances in which the mediator hesitated to act when it would have been beneficial to do so, or took action that produced consequences unintended by the mediator, which may have contributed to the case turning out badly. Hindsight, of course, is a beautiful thing, and the participants who volunteered their thoughts during the case discussion were reminded of how much easier it is to review the work of another than to be the mediator. Although not all of the participants met this criterion, our requested filter for signing up for the workshop was that participants have numerous years of experience mediating and consider themselves advanced practitioners. The primary objective was to put accomplished professionals in a peer setting where the participants created a safe environment in which the members who volunteered cases would know that their willingness to be vulnerable and exposed was deeply respected and honored by their colleagues. Another objective of the workshop was to brainstorm intervention strategies, using the collective talent and experience of all the participants in each workshop. From the feedback of the participants, it was clear that these objectives were met.

Out of the open dialogue responses to the cases presented, a number of strategic interventions were proffered as alternatives to the ones used when they unfolded, imploded, or exploded, depending on the particular case being reviewed.

Chip Rose, J.D, has a private mediation practice in Santa Cruz, CA, and is currently providing training throughout the United States and Canada on the emerging practice of Collaborative Family Law. He is a Founding Board Member of the Academy of Professional Family Mediators.

Preemption strategies are perhaps the ultimate act of hindsight, since it is easy to hypothesize a different outcome as a response to something that was not tried and therefore did not fail. Nonetheless, preemptive strategies can be very effective methods for taking the wind out of the clients' emotional sails when an emotional tornado is about to brew. Take, for example, an issue such as spousal support or alimony. In jurisdictions that have support as part of the Family Code, it is more often than not a hot button issue that can carry with it strong surges of emotion. A preemptive approach would be for the mediator to lead a conversation with the parties in which the impact of being obligated to pay support and the impact of being dependent on someone for support can be articulated by the mediator as an introduction of the subject matter, framing the experiences at each end of the support spectrum in a manner that normalizes the strong and diametrically opposed feelings of the parties. Modeling an empathic and constructive tone for this introduction, the mediator can significantly alter the environment, in which the clients are encouraged to express their individual perspectives, feelings, goals, and objectives.

Framing is another intervention strategy that can pay dividends and contribute to a constructive process that stays on the rails rolling forward. The process design, which is fundamental to the structural design of my mediation process, provides the clients with two macro frames within which they have the opportunity to maximize their collective success. The first frame addresses how each of the participants, as well as the mediator, should choose to behave during the mediation, if their dual goals of maximizing the outcome to each and completing the divorce process in a manner that was as beneficial for the children as possible is to be achieved. This frame addresses the emotional forces that come into the session with the clients like their shadows in the low sun of a clear winter day.

Understanding the cause and effect correlation between their emotions and their strategic objectives in the process will aid the clients in becoming mindful of the powerful and subversive impact their emotions will have on the attainment of resolved disputes and successful agreements. The second frame provides the clients with a roadmap showing how their substantive issues (parenting, financial, cash flow, etc.) will be developed from the initial meeting to a settled and signed agreement. These kinds of frames help clients orient themselves during the psychological and emotional freefall that attends the breakup of a marriage or long-term relationship.

Reality-Testing was a third intervention suggested in the workshops. In one of the case studies, the parties were considering a significant change in their parenting arrangement that involved grandparents and a temporary change in the residence of the child to another country. Even though both clients were on board with the original plan and even memorialized it with a homemade, signed agreement, one of the parents unilaterally altered the planned return of the child, which generated a great deal of emotional trauma and intense litigation.

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Mojo Marketing and Management

Networking 101-5
The Dreaded Elevator Speech On Hold:
Instead: What NOT to Do at a Networking Event: 101-6

By Ada Hasloecher

Forgive me dear readers, but I must digress. I know I was supposed to give you the bones of a good, solid elevator speech in this installment, and I will get to it in a near future newsletter – I promise.

The reason for my delay in addressing the elevator speech is that it's networking season again—YAY! Okay, not yay. But it is that post-summer, back to school, back to work, back to everything time of year, and I'm engaged again, as I hope you are too. I want to share several incidents that have occurred recently that illustrate really curious, fascinating and unsettling networking behavior. To say that these situations actually stunned me at the time they were unfolding before my very eyes, and almost, but not quite, rendered me speechless…well, you should know already!

I understand that it's not easy out there, even for a seasoned veteran such as I. So, I share these stories to prepare you. In both cases, as they left me momentarily stymied, caught me a bit off-guard, and challenged my ability to respond quickly enough to save the day, if not save our respective face(s). However, I realized that these were great "teaching" moments and perfect examples to illustrate the finer points of networking. It's kind of the "What NOT to do," if you will.

In telling these stories, there is no endeavor on my part to judge the "perpetrators." I know they are doing the best they can, under the circumstances. Perhaps they were not taught how to make the most of a networking opportunity, or they are so excruciatingly introverted that the fact that they are even at a networking event is enough to send them swooning. In the latter case, kudos to them for even showing up. But, what a shame to attend the meeting and then miss the prospects that the event provides. In the former case, listen up!

The good news is that, as mediators, we learn over and over again with each client who walks in our door about the need to sometimes fly by the seat of our pants. No matter how much we prepare for an unsolicited incident, or a situation with which we may not be fully prepared to deal at the moment, deal with it we must. It takes time to learn how to do it, so networking is not dissimilar to our mediation experiences. We get better and better at it the more of it we do. Shying away, or running away from uncomfortable situations doesn't improve our abilities. In fact, it impedes them. Practicing these skills does advance our cause to personally develop and improve. At the very least, you'll have a sense of humor about it all, and it will likely not throw you for a loop.

Just a little preamble before I start. As I've mentioned in previous Columns, networking events generally have three aspects to them:

1. The arrival time and the pre-presentation, general networking opportunity;
2. The scheduled presentation by a noted speaker (usually lasting not more than an hour);
3. Another, important, occasion to network again before you leave.

The pre- and post-presentation times are your opportunities to meet and greet new and prospective resources. It's always a good idea to arrive a little early, so you have time to do just that. It's also a good idea to leave enough time after the presentation, so you have time to connect with someone you either didn't have time to meet when you arrived, or who, after they introduced themselves to the group during the round-robin, you realized is someone whose acquaintance you should make.

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So without any further ado, here are my stories:

Story #1:
I arrive early (of course) for one of my monthly organizational dinner meetings with a women's group of financial professionals. It's a great networking resource for me, and their scheduled speakers/presenters have increased my comfort and understanding in an arena that does not always come easily to me.

Now that it was kick-off September, I was looking forward to seeing my colleagues again after the long summer, meeting new attendees, and hearing the presentation on "The Art of Negotiation." I also have to mention that the meeting was arranged at a location that was a little bit of a pain for me to get to, but you know me, I'm not going to let a little thing like that stop me (and neither should you). The restaurant where the event was being held was excellent and they have valet parking. So far, so good.

I walk into the private meeting room and there were maybe 10 women there already. I recognized some of them, not all of them, and, as I was signing in, there was a flurry of hellos, introductions, and the like.

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ON NEUTRALITY & ENGAGEMENT

By Steve Abel

Last month, a couple came to me to mediate a pre-nuptial agreement. Although most of my mediations involve divorces, I've done about two or three dozen pre-nups over the years. So, I didn't think anything particular about this one until part way through the first session.

I had explained the need for full financial disclosure, and when I asked who wanted to start describing their assets, the wife-to-be (from now on I'll call her Wendy, far from her real name) said "Now the big reveal." The new husband (I'll call him Harry) looked as quizzical as I felt. Wendy then told us that she was the beneficiary of about $5 million in trusts and $3 million in real estate, including the mortgage-free house in which they were living. That's all quite a surprise from a social worker earning about $40,000 a year. While my experience includes a few situations involving multi-millionaires, this was one of the biggest surprises announced in my office (the only one nearly comparable was a wife who came out as gay to her soon-to-be ex-husband).

Harry's finances were much, much more modest. He earns about $65,000 a year as a web consultant and he had accumulated less than $100,000 in assets. He had three children from a prior marriage. This was Wendy's first marriage.

The result of this situation was a mediation that tested my understanding of neutrality, impartiality and helpful presence. Shortly before this mediation began, a hot topic developed on the NY Dispute Resolution list-serv.

Frank Hanna posted this question:
"In describing the role of the Mediator, would anyone draw a distinction between the words "neutral" and "impartial" in describing the Mediator's position?"

The response that grabbed my attention came from Robert Benjamin (you don't have to be from NY to join this list-serv):

"An interesting discussion. I would suggest that the terms 'neutral' and 'impartial' are both risky, and the discussion of their use is more than academic. There are practical implications that affect a mediator's effectiveness in three ways: First, by constraining their thinking about what their role is or should be; second, by limiting their range of creative approaches to managing issues; and third, by lessening their attention to their own "predictable irrationality"—their heuristic biases—the validity of what they accept as "conventional wisdom," as Daniel Kahneman suggests.

The use of terms 'neutral' and 'impartial' is itself a sign of an outworn and invalid heuristic bias, and while it may be O.K. for judges to perpetuate the Myth of Neutrality, it goes against the grain of what mediators need to be doing in gaining a basic level of trust with each of the parties—not so much for being neutral, but dynamically "balanced" and engaged with all concerned, and able to project the authenticity necessary. Being a neutral, impartial, and above-the-fray expert doesn't cut it, especially in the hard cases. These terms aren't even worthy of aspiration."

I'll admit that I had to look up "heuristic." Wikipedia says it "…refers to experience-based techniques for problem-solving, learning, and discovery that give a solution which is not guaranteed to be optimal."

Harry and Wendy's pre-nuptial wound up testing my limits of neutrality mostly because I could not overcome my bias in favor of their completing the process, signing the papers, and going on to get married. I'm really convinced that being fully engaged with their hopes for the future made the mediation work, far more than being "neutral." I spoke about my bias several times during the mediation, which resulted in their affirmation that marriage is what they wanted.

On reflection, I thought that the realistic discussion of money before getting married would likely help keep their marriage intact.

Here's some of what happened after Wendy's big "reveal."

We began exploring what they would want to provide in the two main areas of concern in pre-nups: what happens financially upon death, or upon divorce.

Wendy had thought out some proposals. Upon her death, Harry would receive a percentage of her estate that increased with the length of the marriage. Upon divorce he would receive a lump sum of $100,000 after two years of marriage. At this first session, Harry was too shell-shocked to offer a real response.

At the second session, Wendy said her attorney had told her she was offering too much. Harry had not spoken to an attorney (and never did) but said he was disappointed in the amount Wendy was offering. This got me to ask them if them if they wanted to know what the law said about this situation. They said yes, and I told them nothing. Literally, nothing. There is no law about how much is appropriate in a pre-nups—at least not in New York. Quite simply, you can't go to court and get a judge to rule on what should go into a pre-nup.

I found myself unable to rely on one of my two strongest points—good knowledge of the law, and how to use it creatively to suggest multiple options. (My other strong point is learned silence and listening, something native New Yorkers find quite alien). Without a legal leg to stand on, and options slightly curtailed by the nature of pre-nups, I was forced to do "pure" mediation.

This is where Robert Benjamin's point that neutrality is not enough comes into play. We also have to be engaged with our clients in way that lets them know we really care about them. That means we care about them individually, and as a couple. My late business partner, Howard Yahm, put it best: "I'm not on his side, I'm not on her side, I'm on both of their sides."

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"Shared Parenting and Mediation" Cont. from Pg. 1

In addition, respondents reported that, in only 6% of their mediated cases does the mediator meet with the child, and that in another 17% of their cases the mediator makes other arrangements for ensuring that parents have independent information about the children's wishes and views. It is clear that in large majority of cases mediators assist parents in making parenting plans without ensuring that children's views of the arrangements are considered.

The majority of participants reported that government supported or subsidized mediation is available where they practice, with a relatively small minority indicating that only private mediators are available in their jurisdiction. Participants' comments were generally very supportive of mediation, though they reflected an awareness of its limitations, including these:

• "Judges and courts need to put their money where the government's mouth is — Kick out of the courts parties who ought to be in mediation and ADR…" (italics in original)
• "The mediation offered by court is fairly popular, and is a new program…"
• "I recommend mediation to my clients 100% as an alternative to court…"
• "It [mediation] does not work for all situations."

When asked if they screen for domestic violence before referring a case to mediation, the majority of participants reported that they always screen (77%), though most of those who screen (64%) said that they do not ask standardized questions or use a standardized form.

Shared Parenting

There is only limited and incomplete Canadian data available on the incidence of various types of parenting arrangements. Swiss & Le Bourdais (2009) reported between a 9-15% prevalence rate of equal parenting time.

In our survey, the respondents reported that an average of 46% of their cases involve some form of equal parenting time ("joint physical custody," "shared custody," or "shared residence," in which the children spend at least 40% of their time with each parent). They also reported that an average of 68% of their cases involve some form of shared parenting ("joint legal custody" or "joint guardianship," in which both parents play a role in decision-making).

The lawyers and judges surveyed also reported a substantial increase in the use of equal parenting time over the past five years: 31% of participants reported a substantial increase in such arrangements; 53% reported somewhat of an increase; 16% reported no change; and less than 1% reported a decrease in such arrangements.

An overwhelming 78% of the participants said that they support the amendment of the Divorce Act to use language other than "custody" and "access," suggesting instead terms like "parental responsibility" or "parenting time." However, the vast majority of participants (77%) did not support the enactment of legislation like Bill C-560 that would amend the Divorce Act to create a presumption of equal parenting time.

Comments on the need to change the language used to describe post-separation parenting arrangements included the following:

• "Custody and access make me think of prison. Using parenting language is a frequent reminder for some people of what their role really is;"
• "Parties find that custody/access language is loaded with negative implications, including winner/loser."

Other comments expressed concern that legislation imposing a presumption of equal parenting time would cause harm to children:

• "An equal presumption could be dangerous in certain circumstances. I believe it is more prudent to protect children who may be in a dangerous situation from the outset;"
• "Should be no presumptions;"
• "Some children do not function well in this type of schedule, and it would lead to substantially more litigation, in my opinion, if we had to start with that presumption."

Many of the comments expressed a concern that whatever concepts are used should be consistent between the Divorce Act and the different provincial family law statutes; coordination between the federal and provincial governments should reduce the confusion resulting from different concepts and principles. Many comments also support changing the legislation to address the present "winner takes all" mentality.

Policy Implications: Support for Mediation and Divorce Act Reform

While this survey only provides a limited picture of the attitudes and experiences of family law lawyers and judges, it potentially has significant policy implications.

The survey reveals broad support among these legal professionals for the utilization of mediation. This would suggest that there is support for discussions about changes in court rules and in the professional culture to encourage more use of mediation. Other issues that need to be addressed include how to involve children in mediation, and how to ensure that there is adequate screening for cases of domestic violence. And, there is strong support for reform of the parenting provisions of the Divorce Act to promote some form of shared parenting, but not establish a presumption of equal parenting time.

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"New Board Member Interviews" Cont. from Pg. 5

I had known Judge Steinberg for years, because he happened to be a member of my family's synagogue; but, before he became a judge, he also was the only attorney I knew who regularly attended the same training workshops in family therapy that I attended. He really cared deeply about helping families get healthier, and he inspired many of us in both the mental health and legal professions to use whatever skills and techniques we had to help disputants find common ground.

Before being drafted to be one of Judge Steinberg's mediators, I guess I vaguely knew what mediation was, but, after doing a few cases, I knew that I needed to learn a lot more, and I started asking about where to get training. I found my way to Carl Schneider and other mentors, and, the rest is history.

What do you hope to accomplish as a Board Member of APFM?

I am impressed with the APFM's mission to forge a new professional identity for family mediators, despite their varying professions of origin. The field of family mediation is different from family law, family therapy, or civil mediation, yet draws its strength from the wisdom of those fields and the synergy of professionals working together. I know from experience here in Connecticut that to make an organization with a good mission work, volunteers need to be willing to invest their time. I'm stretched, like everyone else, but willing. My particular passion is to offer the highest quality training available to our members, and I am honored to serve as the incoming co-chair (with Hilary Linton) of APFM's training committee.

Where do you see the field of Family Mediation going?

For those of us who do mediation, it is tempting to believe that this method of resolving disputes is so obviously superior to litigation that it is destined to replace it. That's probably unrealistic, but there are hopeful signs. APFM's commitment to develop certification standards for family mediators is particularly important. I worry about how easy it is for anybody, with or without training, to declare himself/herself a mediator in states such as mine, with no certification or licensing.

However, I am also worried about poorly crafted mediation certification laws that could unreasonably restrict the practice of mediation, and here in Connecticut, we have resisted the temptation to introduce mediator certification legislation for fear the legislative process might amend our proposal and make things worse. I think it's high time our professional association created its own process for certification and, perhaps, model legislation for statewide associations to adapt and promote locally.

What do you like to do when you are not mediating?

I have been very happily married to the same wonderful woman (Carla Horwitz) for 43 years, and though we are both overworked professionals (she teaches child development classes at Yale and directs Yale's Calvin Hill Day Care Center) we do a lot of fun things together, including traveling all over the world, as much as we can. We have a deep interest in archeology and a strong preference for sunny weather, nice beaches, and good food, so we've spent a lot of time in Italy, Greece, Turkey, and Croatia, as well as in France, Spain, Portugal, Mexico, Peru, Israel, Morocco, and Egypt, to name just a few. We also live in a city and region filled with music, art, and theatre, and we enjoy these immensely. We have two great daughters, now in their 30s, married and living ten minutes away from each other in Boston, and we have one adorable grandson, now 3, and another on the way.

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"The Legal Stuff Matters" Cont. from Pg. 6

However, the party charged with dissipating is often reluctant to have such a third party involved in the mediation. The mediator may need to remind the party that if the matter were to go to court the disclosure costs could be much, much higher. In order for the role of any such third party to be covered by mediator confidentiality, he or she would have to be designated in some way as a co-mediator.

Not every party who agrees to mediate is necessarily fully honest. And, it is not uncommon for one mediation client to mistrust the other, even when the other party has provided reliable information. In either case, the first duty of the mediator is to determine what documentation will resolve the matter. Often the willingness or unwillingness of a party to provide the documentation or to involve a financial specialist to check the figures will assist the mediator in determining whether or not that party is being forthright. The failure of a party to disclose relevant information, or his or her furnishing inaccurate or misleading information is indeed a serious problem. In such cases, the mediator may need to confront that party in a private session, and failing to resolve the matter, may consider terminating the mediation.

It is quite difficult in most states to get a mediated agreement set aside. The most common way this can happen is if there is willful failure to make an accurate disclosure of income or property that would have been relevant to a fair settlement. The parties need to know this, if a disclosure issue arises. Mediator ethics require a mediator to be aware of the importance of complete, current and accurate disclosure, and to integrate into the mediation an appropriate way of managing disclosure whenever it becomes an issue.

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"Mediation Before Discovery" Cont. from Pg. 7

Can Mediation Produce Sufficient Information?

Given human nature, mistrust can create more mistrust, but trust can also create more trust. If the parties starts mediation without any background information, they can be educated by the mediator on the minimum amount of information that must be exchanged before decisions can be made. No formal discovery process is needed to fulfill this minimum level of information exchange.

But, what about the need for detailed information on some subjects, such as a family business, complicated income, bank accounts, or check stubs and statements from years ago? In mediation, each person can just ask to see that.

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"Mediation Before Discovery" Cont. from Pg. 12

It is very common for the parties to make lists of documents they would like to see from the other party, who then brings them to the next meeting.

When it would be helpful, it is not uncommon to have an accountant or a divorce financial planner attend a mediation session to help explain information and help gather additional information – especially in high-end divorce mediation cases. When the documents are explained to the couple, they usually agree to bring them in, if they know where to look for them. It does not have to be a formal or an adversarial process.

What about Antisocial Personalities?
These are the people who really do manipulate their finances, manipulate the children and manipulate the professionals. They do hide money. They do hide children. They lie, steal and cheat. Formal discovery may become necessary in some of these cases. However, it may be insufficient to find what's been hidden, even when people know something has been hidden. However, there is nothing wrong (or very unusual) when the mediator, or one of the parties, or a lawyer says: "We can't go any further in the mediation until we have some answers to questions that can only be obtained through the discovery process."

Occasionally, I have had cases that took a break from mediation to engage in some formal discovery. They almost never come back to mediation, and in many cases they proceed to spend a few months or years in family court.

Starting in mediation before such discovery has occurred does not harm the parties, and it may help them to narrow some issues so that discovery could focus on fewer items at lesser cost.

You Can Always Go To Court, if Necessary
If mediation does not resolve all issues, then the couple can always go to court. I don't see any harm that can be done by starting in mediation first, without discovery, so long as both parties provide the information needed as they go along. They can always engage in discovery, or even go to court, if necessary.

By going to mediation first, parties can agree on a non-adversarial approach. Since family mediation often involves more than one session, the lack of needed information in one session can be resolved in the next by producing the documents or the other needed information. The parties can begin to work on building trust (instead of mistrust) by trying mediation first for all issues.

Let me know what you think. billeddy@high-conflictinstitute.com.

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"The Creative Solution" Cont. from Pg. 8

The crisis was not the result of anything the mediator did, as the parties reached their own agreement outside of the last mediation session. A suggested intervention combined preemption and reality-testing, by having the mediator take the clients' proposed agreement and imagine a worst case scenario, in which one of the parties—or the third party grandparents—unilaterally changed the agreement. Asking the clients, in such a circumstance, to identify their options and examine the consequences if such an eventuality occurred is an intervention that serves to pull them out of the comfort of the proposed agreement and challenges them to consider the risks inherent in such an agreement. With hindsight, it is easy to see the naiveté of one of the parties having entered into an agreement that the other party subsequently breached. However, it is important for the mediator to engage in reality-testing with skill and sensitivity when the parties are asked to assume hypothetically that the other breaches their agreement. Reality-testing is less risky when the testing involves having the clients consider the market forces that are affecting their real estate or financial investments when, for example, that is the subject matter of the agreement.

Two things that became clear from the open dialogue of all the participants in each of the three workshops are: 1) there are always new and different strategies that a skilled mediator can bring to the process; and 2) there is no guarantee that a mediation can avoid the proverbial train wreck if either of the parties chooses to cause one. My former office mate and colleague was fond of telling clients that working together in the mediation process is like climbing together up the face of El Capitan—the 3,000 foot granite monolith in Yosemite. Her cautionary note went like this: "It takes all three of us roped together to succeed and any one of us can cause us to fail badly."

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"Mojo Marketing and Management" Cont. from Pg. 9

Small tables were arranged around the room with seating for four to five people. A buffet was set up and several waitresses were circling the room taking drink orders. I chatted with some women I knew, catching up on our summers, our families, and how it felt to be "back to work." So far, so good.

Most of my groups take a break over the summer, usually ending with a meeting in June, and then resuming again in September. When this happens, I take the opportunity to reach out to some of my colleagues to meet for breakfast or lunch, so we can spend time together and continue to deepen our relationship.

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"Mojo Marketing and Management" Cont. from Pg. 13

For those of us who don't play golf or tennis, socializing in this way is the equivalent—it's casual, informal and fun. Some of these women have become good friends, by now.

There are always new faces at these events and I was eager to meet as many of them as I could. There was a woman—I'll call her Margie—who was sitting alone at one of the tables. I walked over and asked her if the seat next to her was taken. It wasn't, so I introduced myself and sat down. So far, so good.

As I tried to engage her in conversation, it became increasingly clear to me that this was going to be agony for me—and for her. Now anyone who knows me knows that I can talk a dead frog back to life! I tried everything in the book to get a conversation flowing.

I asked her how she found out about this group, who invited her, if this was her first time attending (I had never seen her before, but I had missed some meetings, and not everyone comes every time). I finally was able to find out that she was just starting a new job on Monday. Okay – good topic! So I asked her what she did, how she liked it, how she got into it, where she worked before, was she looking forward to her new gig, where did she live, was her commute better than before. I asked as many open ended questions as I could think of, and yet, every attempt was pretty much a dead end. So far, NOT so good.

I then tried a different tack—I told her how I came to this group and what I liked about it. I explained what I did and how this group has helped enhance my practice. She said very little, if anything at all, and she asked me nothing. Finally, other women came over and sat down with us and, as they engaged in conversation, Margie continued to sit there and say virtually nothing. In my exhausted stupor, I didn't even realize that someone was tapping me on the shoulder to summon me to another table to introduce me to their guest. I gratefully excused myself and got outta Dodge!

In thinking about this episode on my drive home, I wondered why Margie even attended the meeting. Perhaps she only wanted to hear the speaker and had no intention to meet and engage with anyone. Okay. But this is a networking type of event, so there had to be some expectation that she was going to meet people. The entire time that I tried to engage with her I kept things light, smiled all the while, and did my best to find a topic of conversation to encourage her participation, even when none was coming.

Some people don't do well in social situations with lots of people, and I get that. However, when I first sat down, it was just the two of us for about 7 minutes or so until others joined us, and still it was torture to get a dialogue going. When you find yourself in this situation, try not to take it personally. Be polite, and excuse yourself with as much finesse as you can muster. As in: "I think I hear my mother calling me for dinner…and she lives in Florida!" Just kidding. Hopefully you'll be rescued as I was and can make a clean break. No rescue? Excuse yourself, go to the facilities and when you return, wind your way to another table. I doubt Margie noticed my absence, or she was grateful for it!

Note to Margie: I'm really sorry if I did anything or said anything that made you uncomfortable. I do hope you can find a way to be more at ease in these situations.

Story #2:
I'm attending a monthly organizational meeting of therapists, social workers and psychologists. It's a first Friday of the month, early morning meeting, and I have not been able to attend for quite a while, as those Fridays seemed to conflict with other commitments. But, it's September and I've cleared my calendar to get back to the group and attend on a regular basis. This is a perfect group for a mediator—the speakers and topics are always informative and intriguing, and I always learn something to enhance my understanding of human nature and the human condition.

It's the usual set up: Buffet breakfast, informal meet-and-greet, and round-robin introductions before the presentation. There are a few new faces and a number of people I know and do business with on a regular basis. During the introductions, there is a woman I'll call Ellen, who tells the group that she is a therapist who specializes in couple therapy, especially couples who are separating. Additionally, she conducts post-divorce therapy for individuals and in groups. To quote the character, Sheldon Cooper, on The Big Bang Theory: "Bahzinga!"

When the presentation is over, I work my way over to Ellen to introduce myself and remind her that I am a divorce and family mediator. I ask her for her business card. She tells me that she forgot to bring them with her. Uh huh. I ask her if she would like to take mine so she can email me her contact information; she accepts my card. Hard as it is to believe, the following is the almost verbatim exchange we had with each other:

Me: I would love to meet one day for breakfast, lunch or a cup of coffee to get more acquainted and discuss our practices.

Ellen: Why?

Me: (Thinking: Is she kidding? How do I answer that? Can she be blowing me off? Let me try again) Well, I thought that, given the synergy of the work we both do, I'd like to know more about your process and the work you do with your couples, as I often refer my clients to therapists to help my clients through their divorce process. I'm always looking for resources to help my clients.

Ellen: Can't we talk now?

Me: (Thinking: Is she kidding? Stand here and give her the Reader's Digest version of what I do and how we can be good resources for each other??) Oh. Well, I wasn't prepared for this morning's presentation to go so far over the time. I had to schedule a conference call at noon and I have to head back to my office shortly, so this wouldn't be a good time for me right now. Perhaps we can schedule a convenient time.

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"Mojo Marketing and Management" Cont. from Pg. 14

Ellen: (Staring at me). Um, well, I'm really just so busy.

Me: (Thinking: Okay, she IS blowing me off. One more try?) Yes, of course. My schedule is a bit hectic as well. Would a conversation over a cup of coffee at a Starbucks for a half hour or so work for you?

Ellen: I don't know.

Me: (Thinking: Definitely blowing me off – Okay Ada, gracefully disengage). I see. Well, it was nice meeting you Ellen. If you do have some time, please give me a call. Perhaps we'll see each other again at the next meeting.

Yowsa! I'm still in a bit of shock over this whole episode as I drive back to my office. Those rides are when I debrief with myself, and several things come to mind as I mull this exchange over. I've been told (by other therapists) that, as a general rule, they tend to work in isolation (meaning private practices and not many opportunities for business engagement), they are not particularly entrepreneurially savvy or comfortable with the whole networking "thing." Moreover, they ARE busy with rather hectic, erratic schedules and emotionally demanding patients (not unlike our clients), so finding time during their weekly "down" time is difficult. Fair enough.

But who doesn't need more business, if not now, then for some point in the future? We network not so much for business immediately, but to keep the portals open for the future. I guess Ellen doesn't need the business. Good for her.

Or perhaps she doesn't need MY business. Maybe she is inundated with other mediators who want to do business with her and I'm just another in a string of networkers who makes her feel put upon, and she is rebuffing the perceived pressure to spend time together. I hope that's not it, but I will never know. Maybe she was just having a bad day, something in her personal life was amiss, and she was not herself that morning. I will never know that either.

But I do know this—I will probably never hear from her. Needless to say, I never received an email with her contact information. I will not take it personally. She doesn't know me enough to rebuff me for personal reasons. If and when I see her again, I will be polite, say hello, and more importantly, take my cues from her in terms of engagement. If there is no advance on her part, I will simply move on.

Note to Ellen: I'm really sorry if I did anything or said anything that made you uncomfortable. I do hope you can find a way to be more at ease in these situations.

I share these two incidents and bring them to your attention for a number of reasons:

1. You are not the only one that these things happen to—welcome to the club!;

2. It rocks you when it does, but you can still keep your composure and be polite;

3. Don't give up because you have one experience like this… or even two;

4. It's important to be aware that when you see this type of behavior, that you examine your own behavior and see if you could be coming across this way to someone else;

5. Be compassionate, be understanding, and be friendly—no matter what;

6. When you debrief yourself afterward, allow for the humanity in yourself and others;

7. And, most importantly of all—cut yourself some slack, give others grace, don't take this kind of thing too seriously, and have a good laugh. It's good for the soul!

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"On Neutrality & Engagement" Cont. from Pg. 10

It's almost always one of the difficult pieces of mediation to recognize that we have our own judgments and biases, and work to exclude them from influencing the result. But, being engaged and on both sides allows us to clearly state our hope for a successful mediation. We can constantly work on the positive side. We can point to the value of compassionate communication and freely-given compromises.

At the second session, Wendy offered more, despite her lawyer's advice. Her offer provided for Harry to get the income on one-quarter of her estate upon death and very modest amounts upon divorce. I also caucused separately to learn if there were unspoken concerns. Harry wanted to know if he was being taken advantage of, since Wendy had more than enough money. Without legal rules, this is a tough question. So we talked about entitlement, and Harry's view of what Wendy owed him. Without much money of his own, Wendy's money was immense. But he got around to seeing it was not his, and most importantly, that her learning about money management did not mean she did not love him

Wendy explained that she was taught not to spend principal. Two of her relatives had spent their principal and now had nothing left. She could not really move on this concept, but she too was willing to compromise a little, because she really wanted the marriage,

Terms were agreed upon and I wrote a draft. Wendy's lawyer asked for cosmetic changes and detailed the asset disclosure. Harry chose not to consult a lawyer. At the third session, Harry also made detailed changes in assets. But, by then, the signing was a happy moment.

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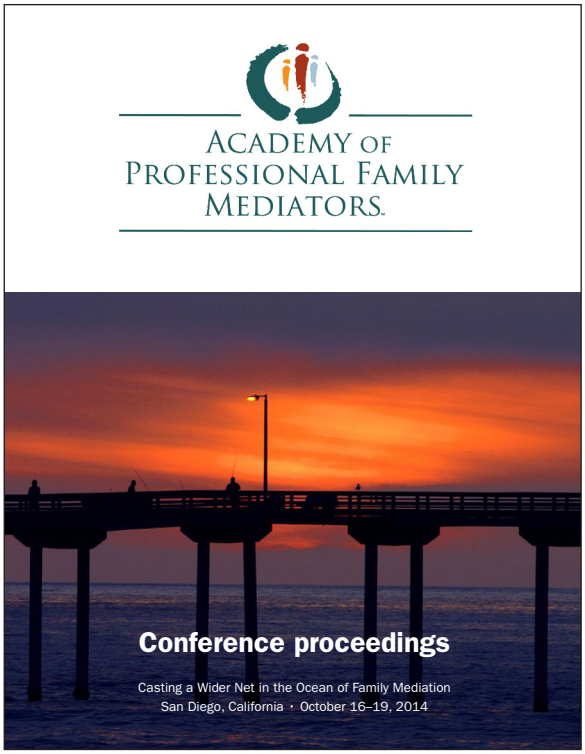
ANNOUNCEMENT

The Conference Proceedings Book from the 2014 San Diego APFM Annual Conference is available for purchase for $25.



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Thank you.

Our 2015 APFM Annual Conference will be held in the Washington D.C. area, and the dates will be forthcoming, as soon as they are firmed up.