



Themes in Mediation

By Michael Scott

Hidden beneath the arguments of a couple in mediation there is a repeating theme. The argument is like Joseph's coat of many colors. Each disagreement on the surface appears to be about something different, like one of the many colors on the coat. Under the coat, however, there is only Joseph, who remains mostly unchanged.

Over the course of the three decades I have been doing mediation, I have noticed an interesting pattern shown by couples during conflict. Arguments revolve around specific events which occurred at some point in their relationship. Regardless of the event being generated, the intent of each individual's perception is to prove that the other is to blame. "Winning" the argument means one person is "right" and the other is "wrong." Each party maintains a great deal of importance in being "right." Both individuals have positions, based on their respective perceptual realities and their subjective personal experience. Regardless of the event at issue, the argument has little if anything to do with fact. If it were verifiable by an actual concrete source, then there would be nothing to disagree about; you can't easily argue a verifiable fact.

I consider the arguing of one's perception of an event to be similar to wave-particle duality theory, which can be utilized by the mediator to understand what is going on between the couple. Bob Dylan said it far more poetically in his song, One Too Many Mornings-- "You are right from your side and I am right from mine; we're just one too many mornings and a thousand miles behind."

When listening for the conflict dynamic, rather than for the content within each event being argued, a repeated "theme" begins to emerge from beneath the "position" presented by each party. In fact, regardless of the number of events presented, each individual typically has only one or two life-long themes permeating and motivating every "position" of each event presented in any disagreement.

Some common themes are:

1. Lack of trust.
2. Fear of being abandoned.
3. Fear of intimacy
4. Need to control.
5. Fear of being controlled.
6. Feeling worthless.
7. Feeling superior.
8. Feeling non-existent (not seen and not heard).

A person's "themes" color the way that individual interprets life experiences. "Themes" are the driving force or the "why" a person takes a "position" to seek what s/he wants in a relationship.

Beneath each theme lies a number (perhaps five or six) of "core values" that are unique to the individual. They evolve from impactful childhood experiences and are influenced by family and cultural mores, and they are expressed as enduring beliefs that are mostly

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unchanging and non-negotiable throughout one's lifetime. Some examples are:

1. Living a Healthy Lifestyle vs. Not Valuing Health.
2. Maintaining or Rejecting Monogamy.
3. Embracing or Rejecting Religious or Spiritual Beliefs.
4. Embracing of, or Aversion toward, Human Differences.
5. Relationship to Money.

When two parties differ significantly in their core values, their repetitive arguments about events rigidify into on-going themes that, in mediation, get expressed as positions.

Maintaining awareness of themes helps both parties move beyond the event du jour to compromise and negotiate solutions more effectively. When a "theme" (why I want something) is identified by the mediator as motivating the "position" (what I want), it becomes evident to the couple that, to solve the problem, both parties need to modify their respective positions to ones that address and satisfy the theme(s) of the other party. When each party realizes that "I may not get everything I want, but I can live with the results," both themes are addressed. A mutual solution has been achieved.

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The Professional FAMILY MEDIATOR

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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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Editor's Notes

SUMMER 2014

By Don Saposnek

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Dear Readers,

WAITING! This is a two-fold concern. First-fold: For this Issue and contrary to what I promised in our last Issue, due to delays in setting up our online formatting we must wait a bit longer before *The Professional Family Mediator* goes fully digital. Second-fold: Having just returned from a week in Los Angeles, I have been acutely aware of how difficult it is these days for people to wait for most anything. This seems truer of the younger generation, who has grown up with the expectation that everything should be instantaneous. It is doubtless fueled by the exponential increase in electronic gadgets that seem to have a goal of doubling the speed of information processing with each new iteration. Along with this expectation for always greater speed is the expectation for instant gratification; it seems that this culture has shifted its expectations such that it mistakes wants for needs. And, when a want arises, the response is infantile—I must have it NOW!!

This serious reduction in emotional self-regulation and impulse-control manifests in crazy, erratic driving on the freeways, in road rage, in general rudeness when having to wait in line or on-line, in the impulsive increases in violent crimes with lethal weapons, and even, perhaps, in the increased break-ups of many good-enough families, when individual adult wants override overall family needs.

Being quiet and waiting are skills increasingly absent in children and youth, perhaps best characterized by the classic Stanford University study in which a child was offered a choice between one small reward—e.g. a marshmallow—that is provided immediately, or two small rewards if he or she waited until the tester returned (after an absence of approximately 15 minutes). In follow-up studies, the researchers found that children who were able to wait longer for the preferred rewards tended to have better life outcomes, as measured by SAT scores, educational attainment, body mass index (BMI) and other life measures. (To witness the classical “Marshmallow Test” see:

https://www.youtube.com/watch?v=QX_oy9614HQ

And, for a fuller explanation, check out: http://en.wikipedia.org/wiki/Stanford_marshmallow_experiment)

Moreover, a recent study reported on NPR demonstrated that, like children, adults also have trouble delaying gratification; they are so attached to their cell phones, that when challenged to not touch them for 5 minutes, most were unable to resist.

Perhaps, as a small remedy, we should heed the wisdom of the ancient mathematician, Blaise Pascal, who said: “All the troubles of life come upon us because we refuse to sit quietly for a while each day in our rooms.”

But, wait no longer; this Summer Issue of *The Professional Family Mediator* has much to gratify your intellectual needs—Right Now!!

As our lead, feature article, mediator and therapist Michael Scott offers a fresh angle on how to assess what is going on between the couple in mediation sessions. His article, “Themes in Mediation” presents a useful analysis and prescriptive scripts for utilizing these themes for effective interventions. Next, as a new feature, we introduce by way of email interview format two of your new APFM Board Members. You will learn all about them professionally, as well as some about them personally.

Susan Zaidel, our Israeli colleague, next writes about two very interesting cases she has worked on that challenge us to consider the fine line between doing family therapy and family mediation—an issue that periodically has surfaced in debates at conferences over many decades. Bill Eddy then, in his Ethical Edge Column, challenges us to consider what we would do when the sticky allegation about child abuse pops up within a mediation case in which we are involved. While he does ask, “What would you do?”, he also presents his own analysis of the issues in his presented case.

Our prolific and periodic contributor, Larry Gaughan, once again shares his wisdom in an overview article titled “The Changing Frontiers of Divorce Mediation.” After first giving a brief history of the field, he concludes with his take on what

we as a field need to do to promote family mediation to the next level. Next, we have Chip’s Creative Solution Column, in which he presents “The Perfect Mediation”—this time sans the humor in our video past by the same name. Chip’s case appears to be as perfect a mediation as one could ask for. Do you agree?

Ada’s Mojo Marketing Column, this round titled “Networking 101-4 The Dreaded Elevator Speech,” represents the next chapter in her ongoing theme of helping us with the skills and methods for building our individual mediation practices. In this series, Ada continues offering support and apologies for pushing us toward success, against our own resistant instincts—the way that only a native New Yorker could do!

Following Ada’s message, we have a Social Media Update, by Virginia Colin, in which she shares the latest ways to promote your practice with an ongoing blog, supported by LinkedIn, Facebook, Twitter and other such social media that most 14 year-olds could naturally teach you about. Virginia also encourages us to regularly utilize the Facebook and Twitter pages set up by APFM, as we as an organization continue to develop our webpages in these outreach media for our membership. Last, Bill Eddy offers his review of the latest Advanced Training presented for APFM by him and two of our Canadian colleagues, Hilary Linton and Claudette Reimer. The topic was “Power Imbalance in Family Mediation,” and Bill’s review also has specific guidelines to follow when managing cases of power imbalance (especially in cases of domestic violence).

I leave you with this thought:

“The only people with whom you should try to get even with are those who have helped you.” - John E. Southard

Enjoy,
Don Saposnek
Editor

The Professional Family Mediator

APFM's President's Message

By Steve Abel

From October 13 to October 19, 2014, San Diego, the site of our annual conference, will be engulfed with mediators, financial divorce professionals, and the National Association of Women Judges. The incredibly rich variety of speakers and workshops scheduled at our conference will make a trip to San Diego a great chance to learn and meet the best people in the entire fields of family mediation and financial planning.

All APFM members should have received a complete brochure for our Third Annual Conference, but if have not yet received yours, contact me (president@apfmnet.org) or you can see it one online at <http://www.apfmnet.org/docs/APFM-2014-annual-conference-sandiego-brochure.pdf>. All registrations and payments can be made online. And, we know that computer glitches can sometimes get in the way of successful registration. If you get stuck somewhere in cyber land, call me (845-638-4666) and I'll try to help you immediately, or as soon as I'm available.

I'm tempted to trumpet a few of our Pre-Conference Institute and our Workshop offerings, but I got stuck trying to pick specific ones from so many great offerings. I really hope you'll look at the full menu and find the ones that fill the gaps in your own knowledge and experience. Personally, I'm hoping that the Trainers' Forum will give me a few more good techniques for teaching mediation to newbies. I plan to share one of my favorite techniques for adult learning that I picked up many years ago from Vicki Lewin (now happily retired) at an AFM conference, possibly the first one I attended in Washington, DC. This is the technique that keeps people awake after lunch.

On a different note, I would like to thank Rod Wells and Bill Eddy for organizing two superb advanced trainings in July. Rod coordinated a New York City workshop on the "Conversation Analytic Role-Play Method" created and led by Professor Elizabeth Stokoe from Loughborough University in

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.



England, in which 21 participants learned specific techniques to engage current and potential clients in the mediation process.

At nearly the same time, APFM Board members Bill Eddy and Hilary Linton, along with Claudette Reimer, presented in Seattle on "Power Imbalance in Family Mediation." This two-day training focused on unearthing and dealing with abuse and power imbalance.

I attended this one myself. Despite 36 years in the domestic violence movement, I learned new pieces that will change my approach.

I hope to see you all in San Diego.

Sincerely,
Steve Abel

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

STACEY LANGENBAHN:

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

I was born and raised in Florida. I attended the University of North Carolina at Chapel Hill, and the Washington College of Law at the American University in Washington DC. Over the last twenty-four years, I have practiced in Texas as a civil trial lawyer, collaborative practitioner, family lawyer, and most recently, as a professional family mediator. I am also licensed in Florida and speak fluent Spanish. I have been married to my childhood sweetheart for almost twenty-five years, and we have two (challenging) teenage children.



2) What do your current professional practice and activities look like?

I do divorce, separation, and reconciliation mediations in a different way. When I finally made the decision to leave litigation in 2008 and become a full time family mediator, there was no established early mediation process in Texas, where couples could avoid court altogether and do the financial and parenting legwork themselves with the help of neutral professionals. Likewise, there was no separation or marriage reconciliation mediation for those who wanted more professional help than therapists or clergy could offer to save their marriage or relationship.

To meet the need, I designed a unique, interdisciplinary, "collaborative mediation" that combines the best strategies of mediation and collaborative law (without an attorney withdrawal requirement). The foundation of my model of collaborative mediation is an attorney-mediator and couples' therapist co-mediation team (with financial, child, parenting, and other specialists joining in when needed). The parties decide if, when, and how they wish to use divorce lawyers, which gives them control over decision-making and costs.

The collaborative mediation model I developed has proved to be cost-effective and efficient, with a greater settlement rate than collaborative law or traditional mediation. The

participants report high levels of satisfaction. I also have had success with online mediations, that allow me to serve families all over the state. Read more about collaborative mediation here.

In 2014, my co-mediator, Linda Miller-deBerard, L.C.S.W. and I were thrilled to begin training others how to do collaborative mediation. We plan another live interactive online training in the fall of 2014, after the APFM annual conference. I am currently writing about collaborative mediation for a chapter of the State Bar of Texas's ADR Handbook.

Please join Linda and me at the APFM conference as we present the collaborative mediation model with our parenting specialist Bradley Craig, L.C.S.W. For a more in-depth look into how to make a team mediation practice work with interdisciplinary professionals, come to the full day pre-conference institute where we will co-present "team mediation" with Jerry Cohen (a financial professional).

3) How did you first learn about mediation?

In 1990, I began to practice insurance defense in Texas. Mediation was in its infancy. I advocated for clients in hundreds of mediations as a trial lawyer over the next seventeen years. I enjoyed that role, but honestly, I longed to be the mediator.

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

One of my goals as member of the APFM Board is to develop a robust mentoring program for our APFM members. Every mediator, young or old, new or experienced, benefits from a mentor. I will forever be grateful for the invaluable advice, assistance, and support of my mentors, Chip Rose, Forrest "Woody" Mosten, and the late Gay Cox.

The anticipated roll out of the APFM mentorship program will be at the October conference. Members who are interested in helping to organize the program and those of you who want to become mentors are welcome to contact me at shl@DetenteMediation.com.

5) Where do you see the field of Family Mediation going?

We are at a Malcolm Gladwell "tipping point" for professional family mediation. The recovery in the housing and stock markets and the increase in employment rates have yielded

more financial stability for lots of people who waited to separate or divorce until they felt they could reasonably afford two households. There is no doubt that the recent recession has made people smarter about how they spend their money, and advances in technology have enabled them to easily find the professionals who best meet their needs and budgets. The days are long gone when the only choice was to hire expensive lawyers to handle divorce, separation, child and spousal support, custody, elder care, probate, and family business succession. Carpe diem, mediators!

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

Okay, I admit it. I like to read books on negotiating. I also enjoy traveling, cooking, snow skiing, hiking, scuba diving, and experiencing a nice day on a beach or a mountain anywhere.

Stacey H. Langenbahn, J.D. - Stacey H. Langenbahn, J.D., is the President of Détente Mediation Services, LLC in Southlake, Texas and is a Founding Member and a Board Member of the Academy of Professional Family Mediators. She is an international trainer and speaker on collaborative law, and on her unique creation, collaborative mediation, which offers a fresh, new approach to separation, reconciliation, and divorce.

VICKI COLEMAN

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

I am Victoria D. Coleman, "Vicki," and I hail from the state of Michigan, specifically, the Detroit area. Throughout my educational and professional endeavors, I have also lived in nine states, including the East Coast, Midwest, Rocky Mountain West, Nevada, and California. My background is multidisciplinary, with experience in the behavioral and social sciences. An undergraduate degree in political science with a minor in U.S. history and Spanish established a strong and unique foundation for graduate training in U.S./Latin American history, counselor education, and counseling psychology.



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The Road from Estrangement to Reconciliation

By Susan Zaidel, Ph.D.

In 2002, Laura Davis wrote a wonderful book about the road from estrangement to reconciliation, titled, *I Thought We'd Never Speak Again*, in which she maps out the reconciliation process through stories of people who had reconciled under a wide variety of difficult circumstances. According to Davis, the qualities needed for reconciliation include maturity, discernment, determination, courage, communication and compassion. In the stories she related, no mediators were involved.

I receive an occasional phone inquiry about mediation for estranged adult siblings, or an adult child who has cut off from his or her parents. Most of the inquiries of that sort do not become mediation cases, but recently I had two cases of sibling estrangement which raised the issue (for me) of whether my role was that of a mediator or of a family therapist. Most likely, I was chosen as “the mediator” in these cases because I am also a psychologist and a family therapist, but the concept of mediation seemed more relevant to the clients. I will describe the processes involved in the two cases and suggest reasons for the success in one case and the limited progress in the other. After the case descriptions, I will present my view regarding the nature of the process and whether I functioned as a mediator or as a family therapist.

Case 1

The family consisted of a 79 year-old widow and her two married children – a daughter of 55 years who has three adult children of her own and one grandchild, and a 50 year-old son, the father of two minor children. The problem began when the mother decided to move from her home to an assisted living residence and debated whether or not to sell her home in order to purchase a flat in the senior residence complex. She consulted with each of her two children and found that they had opposing views. The daughter considered sale of the home as a terrible mistake, financially, and offered other solutions for financing the new living arrangement. The son was in favor

of selling the home and opposed any other financial combinations that would involve becoming a partner with his sister in future inheritance of the family home in which they had grown up. When the mother decided to sell the home, the daughter was very angry and didn't help her mother with the move from the family home to the senior residence home. The mother-daughter relationship became extremely strained, and the son totally cut off from his sister because of her bad treatment of their mother. Nearly a year had passed since the relationships had deteriorated.

The mother phoned for an appointment with the presenting problem, at first, being the mother-daughter relationship. She came in with her daughter. We began the first of two sessions with mother and daughter, both of whom wanted to restore their relationship, but with each having had to absorb a lot of hurt from the other during the previous year. After hearing all the stories of who did what to whom, it was clear that the spouses of the siblings also had a role in the conflict. I then met the son with his wife and heard their perspectives of what had occurred during the previous year, and how the son felt about his sister and her husband. Apparently, the sister's husband had a central role in the conflict between the mother and daughter, and there was a high degree of dislike and distrust between the son and his sister's husband. Additionally, it appeared to me that the son was enjoying his current relationship with his mother, as they had become closer as a result of the rift between mother and daughter. He did not appear interested in resuming contact with his sister, and certainly not with his brother-in-law. The fourth session was with the daughter and her husband (indeed a “difficult” person). While the daughter was ready to reconcile with her brother, in spite of the various things he did during the past year that hurt her deeply, her husband wanted no connection at all with his wife's mother or brother.

The fifth session was with the mother

alone. I gave her some feedback about how I saw the situation, and she shared with me some family history, focusing on sibling jealousy, the daughter's dependency on her husband and the impact of her husband's death (eight years earlier) on the family.

I had another two sessions with mother and daughter, whose relationship began to improve as a result of the sessions and the ef-

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forts both were making at rebuilding trust between them. At that point, the brother refused to come to a session with his sister, so the contact between us stopped for a few months. I encouraged the mother to try to convince her son to meet with his sister in my office.

When the son finally agreed to come, which he did primarily out of love and respect for his mother, I thought it best to have the mother present but not as an active participant in the session. Lots of anger was expressed between the siblings, and hurtful things were said. Perhaps there was more understanding of one another's feelings by the end of the session, but neither sibling made any gesture towards reconciling and there was no sense of progress towards that goal. No further appointment was set, as it appeared that the siblings needed time to process what they had heard during the session.

Two months later, I received a phone call from the mother, who told me that while her children didn't want to meet again with me (perhaps it was the son who didn't want to come again), they did agree to meet at her home, in her presence.

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During that meeting, each of them apologized to the other for the things they had done that hurt the other, and then they agreed that their two families would meet at her home for the upcoming holiday (without the daughter's husband, who remained adamant that he didn't want any contact with his wife's mother or brother). The mother was very pleased at the progress and was hopeful that she will be able to meet with both her children and their families together – at least for holidays and other special occasions – and in a pleasant atmosphere.

Case 2

The person who contacted me about this case was the husband of the youngest of three sisters who was estranged from her two older sisters for several years for no apparent reason. Apart from the pain that the estranged sister was experiencing, the elderly parents (82 and 83 years old) of the women were also suffering from the split in the family and were the ones who were urging mediation, and who paid for the mediation as well. In fact, from the standpoint of the two older sisters who enjoyed a good relationship with one another and with their respective families, the real motivation for their participation in the mediation was for the sake of their parents—to make them happy. They clearly did not suffer from the cut-off from the third sister and were wary of renewed contact with her.

In this case, because of the hurt, anger and lack of trust between the youngest sister (48 years old) and her older sisters (51 and 57 years old), and because the three of them reside in different cities, I decided to begin with separate sessions with each of them and with the parents (to hear their perspective as well). I had hoped to understand what caused the rift, and to understand the interests that each had in the disconnect and in the possibility of reconciliation.

As with all extended families, there was childhood history to take into account regarding the relationships among the three daughters, the impact of the spouses each had married, the personalities of the three

sisters, the involvement of the parents in the sibling relationships, and the various incidents and “stories” that preceded and followed the gradual distancing and eventual estrangement. Although there were personality clashes, there were no direct conflicts, no issues of property or money, no clear-cut cause of the disconnect between the youngest sister and the two older ones. While the youngest sister felt like it was “two against one” and felt victimized and excluded by her sisters, the older sisters saw the rift as having been caused by the younger sister, as though she, herself, cut off from them. While there was some truth in both perspectives, it was clear to everyone that the younger sister had been isolated and left out of family gatherings (except for weddings), and that she was deeply hurt and angry at both her sisters, and at her parents, who would meet with the other two daughters and their families while she and her family were deliberately excluded.

Within a month, I had seen each sister separately, the parents in their home, and the youngest sister for a second time to figure out how to proceed. Although she was extremely skeptical about the sincerity of her sisters' expressed wish to include her once again in the family circle after a 10-year cut, she agreed to meet with each of them separately (sitting in a room with the two sisters together was too threatening for her). The first meeting between the youngest and the oldest sister was extremely tense and full of anger and accusations. I regretted that I did not stop the verbal outbursts on the part of the younger sister, and I was determined to have better control over future meetings. Indeed, the next meeting of the youngest sister with the middle sister was less tense, and the expressions of anger were more moderate, but the atmosphere remained highly emotional and stressful for both sisters. The youngest sister felt that neither of her sisters really wanted to repair their relationship with her but were willing to go through the motions only to please their parents.

Apparently, what had happened in the past was that the youngest sister felt demeaned and criticized by her sisters, especially by the oldest (9 years older) who seemed to be try-

ing to “educate” her all the time. As she was nearly 40 at the time, and mother of three children, she wanted to be treated as an equal by her sisters, and to be accepted and respected by them. She was quite sensitive to their verbal and non-verbal criticisms, and at one point she did not want to meet with them, in order to protect herself from being hurt by them. This, in turn, was interpreted by the older sisters as “she doesn't want to be with us,” and they stopped inviting her and her family to family celebrations or to the occasional family gatherings with their parents on a Friday evening or Saturday. Over time, the younger sister felt “not wanted” and increasingly hurt and “boycotted” by both sisters (no phone calls were made, and eventually, there was no contact at all). Although she had never had much of a relationship with her older sister, she and the middle sister had been close, both in childhood and adulthood, so she felt betrayed by the rejection and the way in which that sister had become close to the oldest sister and “against” her.

Between the various sessions, there were many emails to me from all the sisters expressing concerns, disappointments, criticisms and setting conditions. In the interim, prior to the last session, all had attended a wedding within the extended family and had experienced some positive and some negative behaviors that were brought up at the next 3-sister session. The spouse of the middle sister had totally ignored the younger sister and her family in a very unpleasant manner, reflecting his long-term animosity towards the younger sister and possibly her spouse. Nevertheless, the middle sister insisted that she was committed to the reconciliation and, if her husband wouldn't be part of it, he could choose to not attend their future family gatherings.

Eventually, we had a two-hour session with all three sisters during which the youngest sister nearly walked out in a huff, but eventually they all began making plans for a birthday celebration for their mother which would include all three sisters, their spouses and their children.

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By the end of that session, there seemed to have been some baby steps towards reconciliation, but within a week that was destroyed by another incident in which the two older sisters decided something about another celebration with their mother, without including the youngest sister in the plan before telling the mother. At that point, and after a futile attempt by me to explain to the parents what had gone wrong, the father announced that the mediation had failed and that he was not going to pay for it anymore. After I notified the three sisters by email about their father's decision, I didn't hear back from the older sisters and only received a thank-you note from the youngest sister, who felt that I had really tried to support her and move the process forward.

Summary Analysis

In both these cases, the issues were about interpersonal family relationships—strong emotions, misunderstandings and misinterpretations of the behavior of others. In both cases, parental figures were the moving force to have professional intervention, and in both cases, the parental figures had inadvertently and indirectly impacted on the cut-offs between siblings. There were no legal issues, no lawsuits, and no lawyers involved. My role was: 1) to develop a process in which direct communication would be encouraged as a means of increasing understanding between the various family members; and 2) to explore the option of reconciliation of estranged siblings. I functioned as a neutral professional and facilitator of the discussions, highlighting interests and encouraging each participant to take responsibility for his or her part in the estrangement, and to move forward towards forgiveness and reconciliation. The first case was more successful because the family was smaller (only two siblings, so neither had “family” apart from the estranged sibling), the cut-off was relatively recent (about a year), and the parent was determined to reunite the family. In the second case, the cut-off had gone on for 10 years, the two older sisters were content that they had one another and did not feel a great loss

by the absence of their younger sister, and the parents also tended to blame (or at least criticize) the youngest daughter and felt rather helpless in overcoming the hostilities and lack of trust. Had the sisters truly wanted to fix the situation, they would have continued the process, even if they had to pay for it, but the motivation of the two older sisters was weak. Sometimes, the work done with a mediator has an impact that has positive consequences after the mediation sessions end, as it did in the first case, as reported to me later by the mother. I can only hope that my interventions with the second family will also bear fruit in the future.*

In my mind, my role with the first family was as a family therapist, not as a mediator. In fact, I saw the mother and daughter in the context of the psychological service offered by the mother's health insurance, which kept the cost low and affordable for an elderly widow. A therapist is also a neutral professional and the therapy may be brief, focusing on specific areas of contention. The goal was to improve the relationship between mother and daughter and to resolve the tensions between the son and the daughter who had stopped speaking to one another. With the second family, I felt like a therapist towards the youngest sister whose emotional wound was very deep and obviously “bleeding” every time she talked about her family. However, with the older sisters and the parents, I was seen more as a mediator (or perhaps an arbitrator or “educator”), than as a therapist, whose role was to persuade the younger sister that everything was fine and that she should “shape up” and put the ten years of estrangement behind her.

Family therapy and mediation may have similar goals and similar interventions, particularly when the mediator has training and experience as a therapist as well as a medi-

ator. I am unsure whether a mediator with legal training would have taken these cases, or how he or she would have worked with these families. For the clients, I am not sure whether the role of the intervener was defined as a mediator or as a therapist, or how that would impact on their willingness to participate. It didn't appear to matter to the first family, but in the second family, my impression was that they wanted me to be a



“therapist” for the youngest sister, and a “mediator” for the rest of the family. In any case, my experience with the families reinforced my belief that any kind of family mediation requires the knowledge, experience and sensitivity of a professional with training in psychology/social work/counseling and family therapy.

*After writing this article, I decided to send an email to the three sisters asking if they succeeded in celebrating their mother's birthday together and I found out that they actually did. First, the three sisters and mother went out to a restaurant together, and a few weeks later there was a larger family gathering in the parents' home, with sons-in-law and grandchildren, although some of them did not attend. However, not much happened after that, although now they are planning a celebration for their father's birthday. For me it is gratifying to learn that it wasn't a total failure—although the prospect of true reconciliation remains low.

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The Ethical Edge: “Child Abuse Reporting”

By Bill Eddy

Suppose that you have finished mediating a divorce for a couple with an equal shared parenting plan for their 8-year-old daughter and 6-year old son. You are about to start writing up their agreements when you receive an email from the husband saying that the wife has just taken up with a new boyfriend who has a teenage son who was investigated once for molesting a neighbor girl. The husband says that the wife is threatening to deny him any parenting time if he tries to interfere with this new relationship.

What should you do as an ethical mediator? I encourage you to respond to this question, just as APFM members have responded to other questions in this Column. It would be great to read what the different requirements are in your state or province.

Here’s one approach for analyzing this type of question. (This is my opinion and not legal advice. You should get professional legal advice if you are facing a questionable legal situation.)

1. Safety first: Is there something you can do?

Just as with our Domestic Violence discussions, mediators must take reasonable measures to protect our clients and their families in the mediation process. However, what form this takes, if any, depends on several factors described below. For practical purposes in the above scenario, the mediator does not know who the new boyfriend is, does not know the teenage son’s name or where they live. The question is, whether there is someone to notify to take protective action.

2. What do the laws in your state say?

Are you a “Mandated Reporter?”

In California, where I practice as a mediator, lawyer and therapist, the laws require therapists to make a child abuse report when one “reasonably suspects” that child abuse has occurred, because therapists are “mandated re-

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porters.” However, lawyers and mediators are not mandated reporters in California.

There is the question of whether therapists are mandated reporters when they are acting in the role of a mediator. However, in California, the law requires therapists to make a child abuse report only when serving in that “professional role.” So, if a mediator is providing mediation as one of his/her services as a therapist, then a report may be mandated. If he/she provides professional mediation services separate from any other profession, then the mediator may be obligated to keep child abuse concerns confidential under the law, since he/she is not protected as a mandated reporter. What this means is that you should get legal consultation local to your jurisdiction before breaching confidentiality as a mediator.

How much can you say? If you are a mandated reporter, the next question is what to say. In California, mandated reporters are required to notify child protective services (CPS) if there is an identifiable victim of a known perpetrator of suspected child abuse. In this case scenario above, the alleged abuse occurred between an unknown teenage boy and an unknown neighbor girl. It is unlikely that CPS will take this report, but you are safe in calling in the report if you are a mandated reporter, because mandated reporters have legal immunity.

I am curious what the laws say in other states. Please feel free to send us your comments.

3. What do the ethical rules in your area of practice say?

The APFM Standards of Practice (adopted February 2014) state:

[Mediators should] “...have training in the impact of family conflict on parents and children, including knowledge of child development, adult psychopathology, domestic abuse and child abuse and neglect;” (Standard II: Competence).

“Prior to commencing mediation, a mediator should inform the participants under what circumstances the mediator will need to breach confidentiality and report suspected abuse of children to the proper authorities.” (Standard VIII: Minor Children).

Other mediator ethical rules and standards are similarly (and intentionally) vague. What they are saying is that you should be up-to-date on your local laws. The ethical standards are to be knowledgeable about child abuse and reporting requirements, rather than adding specific requirements beyond the law.

4. In your role as a mediator, how can you best help your clients?

I would treat this as a high-conflict case, as these are characterized by allegations of extreme behavior by one party and the other party is asking the mediator to take sides in doing something about it. The best way to help potentially high-conflict clients is to not take sides and do everything as neutrally as possible. If a child abuse report has to be made, then make it very clear to the parties that you are simply following a law and/or ethical standard and that you are making no assumptions yourself. Allegations are not conclusions, and the teenage boy’s behavior may not have occurred at all. Don’t feel responsible for figuring out what has or hasn’t occurred – mediators are not investigators.

(Continued on Page 16)

The Changing Frontiers of Divorce Mediation

By Lawrence D. Gaughan

Divorce mediation is far from being a new idea. It started in the late 1970s and, with the establishment of the Academy of Family Mediators in Arlington, Virginia in 1981, spread rapidly. During much of the 1980s, it seemed as if there was more mediation training being done than actual mediation. Thousands of would-be mediators took training courses and then found that there were few cases to mediate. Still, as the number of trained mediators continued to grow, so did the popularity of mediation as a settlement mode. By the mid-1990s, more attorneys were beginning to mediate as an adjunct to their regular family law practices.

By the time the Academy of Family Mediators merged with SPIDR and CREnet into the Association for Conflict Resolution in 2001, many of the family mediation cases were being handled by divorce lawyers and retired judges. Few of those professionals had ever joined AFM. Predicting the possible outcome in court was a common practice in their cases. The approach to divorce cases was often centered on process and was not sufficiently mindful of the substance of divorce settlements. The merging of AFM into ACR exacerbated that problem, since process was the main common denominator within the new organization.

If we fast forward to the present, we see that divorce mediation is now in wide use nationwide and is practiced within a variety of models, and by mediators from a number of different professional backgrounds. However, as more and more family law practitioners become mediators as a sideline to their regular law practices, it is clear that the legal profession continues to hold on to a substantial percentage of all divorce settlements that utilize professionals, including their use of divorce mediation and collaborative practice, regardless of the many important contributions to the field by mediators of other professional backgrounds.

Despite the passage of more than 35 years, there never has been a fully unified professional field of divorce mediation. Lawyers with family law experience often do not use the same styles of

mediation as do mediators from other professional backgrounds. The experience and training of some mediators is mainly focused on process skills, while the primary focus of other mediators is on the substantive (and often more “legal”) knowledge areas. Some mediators view their role as being mostly facilitative, while others conduct a more evaluative process. Transformative mediators believe that a main goal of the mediation process is to help the parties transform their future relationship, rather than settle the current dispute.

In 2012, a number of the most experienced divorce mediators in America came together to found APFM. The goal of our founders was to create a more unified and interactive profession of family mediation and to set realistic and effective standards for mediators practicing at a professional level. There is a National Commission for Certifying Agencies, which is the institution that authorizes programs to perform certifications (i.e., it certifies certifiers). APFM is actively working with NCCA to obtain the authority to certify qualified professionals to use the title of “Professional Family Mediator.”

This prospective development has understandably touched off some spirited discussions as to how to identify the knowledge and skills that are needed to practice divorce mediation at the professional level. APFM has established, as an independent corporate entity, a Professional Mediator Board of Standards to develop the standards and process for certification, and to administer the certification program once it is established. The influence that such a new certification will have on the practice of divorce mediation remains to be seen, but it is likely to have a major impact.

Much of the knowledge and many of the skills that divorce mediators use today were already in place in the early days of divorce mediation. By the time AFM was founded, almost all of the pioneer mediators had gone well beyond the original structured mediation model advocated

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by O.J. Coogler in his 1978 book, *Structured Mediation in Divorce Settlement*. The conflict resolution ideas of Roger Fisher and William Ury, the Thomas-Kilmann analysis of conflict styles, and David H. Olson’s circumplex model of negotiation in family systems were in common use then, as now, as was the post-divorce parenting research of Judith Wallerstein and Joan Kelly. Another approach came from lawyer-negotiated settlements, namely the creative use of substantive tradeoffs, such as between retirement assets and the marital home. By the early 1980s, the initial frontiers of divorce mediation were also influenced in books and articles by John Haynes, Steve Erickson, Marilyn McKnight, and many others.

Some of the best recent work at the frontiers of mediation is being done by Bill Eddy, the founder and president of the High Conflict Institute in San Diego, California. Bill is on APFM’s board of directors and is an expert in dealing with high-conflict situations in divorces. His books, articles, and training sessions focus on structural strategies for managing difficult mediation clients. He teaches us how to identify the achievable objectives in working with these people, and how to avoid ineffective interventions with them. To the extent that we can’t change how these difficult people interact, Bill gives us practical alternative ways to deal with them. Although his basic approach is no longer new, Bill continues to take it into new areas.

At the state level, there are multiple institutions and organizations that promote effective divorce mediation. In many states, these include the organized court system at all levels, as well as the state and local bar associations. Most states also have mediator associations. These institutions and organizations at times promote training that expands the knowledge and skills of divorce mediators, but there is still mostly a focus on things that have been known and used for years.

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THE CREATIVE SOLUTION

“The Perfect Mediation”

By Chip Rose

What sometimes seems like a lifetime ago, our intrepid Editor-in-Chief Don Saposnek and I conspired to make a series of humorous mediation tapes; one was called, “The Perfect Mediation.” Channeling Buster Keaton in our beyond-low-budget production, I acted in the role of mediator. The fact that there was not a word of dialogue for the mediator played no part in that casting decision whatsoever, I assured myself. The basic gag was the clients turning their position-taking to problem-solving one step ahead of the intended intervention of the mediator.

I was reminded of the conceptual effort that went into the creation and production of that video as I was recently doing a two-day mediation that was scheduled by the attorneys for the clients, which took place immediately prior to my family vacation. There exists measurable perfection—in baseball, it occurs when no player from the team on offense makes it to first base safely in nine innings of outs. And, there exists subjective perfection—in ballet, it is the aspiration of the dancer for attaining perfection with the recognition that it will never happen. The idea of a perfect mediation clearly falls into the latter, subjective category, since the experience of it by each individual client, each individual professional, and the mediator, may vary significantly. The editorial license that comes with being a columnist allows me to examine the idea of a perfect mediation from the perspective of the mediator.

One of the attorneys was well known to me, had participated in a number of mediation sessions with me, knew my approach to the process, and had even taken some abbreviated mediation training. She, however, having grown up professionally as an assistant district attorney, remained contentedly camped at the evaluative end of the intervention spectrum. The other attorney was from a neighboring jurisdiction whom I had never met before, and so I took the opportunity to get mutually acquainted in a pre-session phone call. Before becoming a family law attorney, her experience had been in an area of law that was not particularly adversarial, and she indicated that she very much believed in the benefits of a collaborative approach. With a court hearing set

for a week later, the mediation was taking place under the shadow of the courthouse. Aside from their relationship as lawyers for their respective divorcing clients, the two women had never worked with one another before. The issues pending adjudication at the scheduled hearing predominantly had to do with “custody”—which I put in quotes because of the way the issues were framed by the primary custodial parent’s perspective, with “co-parenting” not being an appropriate description of their relationship.

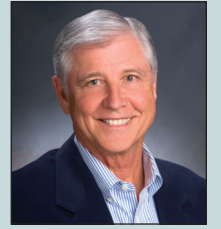
The first indication of a parallel nature to each attorney’s strategic plan for success was the agreement to use the shorter first day session to address all the financial areas that were seen as non-issues. The attorneys had not previously agreed to this approach, so their mutual decision to go down this path was the first evidence that they each did, in fact, strategize for success and that success depended on mutually agreeable outcomes for their clients. What mediator doesn’t experience an internal smile when the participating counsels reach out to collaborate at the first instance? “Good start,” I said to myself.

With parenting issues at the core of the case, and with each parent entrenched in the logic of his or her mutually exclusive positions, the case had all the hallmarks of an impasse that is destined to have a date with the judge. A case involving a primary parent mother who wants nothing more than for her elementary school child to be safe and protected, and a dad whose contact is reasonably described as visitation, but who wants to teach his son the lessons that life has taught him, can be very contentious and difficult to work with. What made this case different was the skilled and professional role that each of their lawyers played, and the respect each paid to the other by understanding the challenges the other faced in getting their respective clients to move off their positions.

The particular elements that aggregated into the foundation of an agreement were diverse: First and foremost were the two attorneys’ skill and willingness to collaborate; second

was the fact that there was an impending court hearing within a week and the reality check

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given the clients about the unpredictable nature of that outcome. Said differently, the clients wanted more to retain control over the concessions each had to make than they felt confident that their positions would survive judicial determination; third, through both joint and caucus sessions (caucusing primarily at the request of the mother), the clients felt safer than they knew they would in court, and the professionals took advantage of the opportunity to stretch the clients’ views of parenting, helping educate them about the evolving nature of their son’s development and parenting needs; fourth, the caucus format allowed for more intimate conversations, which made it safe for the mother to relax some of the more stringent conditions she insisted on imposing at the outset of the sessions; and finally, the use of a very tried-and-true mediation approach to agreement-making was employed. I have described that as making agreements that are big enough to solve a problem and small enough so as not to create new problems. In this case, the agreement set out a succession of stages. The first would be implemented in a way that was shorter than the dad wanted but longer than the mom wanted, with the understanding that their parenting arrangement would be revisited to assess how things went at the end of the first cycle.

At the end of the second day, the clients signed the Memorandum of Understanding, initialed the calendar upon which they had marked the visitation schedule, and confirmed the arrangements for which parent was providing meals on the days of transition. When the clients had departed to go pick up their son, the three professionals looked at one another and collectively wished that all our cases could be handled so creatively and professionally. It was as close to perfection as they get.

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Mojo Marketing and Management

Networking 101-4

The Dreaded Elevator Speech: The What and The Why - Part I

By Ada Hasloecher

What the heck is an “Elevator Speech” anyway, and why do you need to have one in the first place? To begin answering this question, let me begin by asking you this: Suppose you are introduced to someone for the first time and they ask you, “So Jill/Jack, what do you do?” Are you prepared to answer with a concise, easy-to-understand, informative and friendly explanation? Or are you.....

1. Furumpling around trying to explain in lay terms the difficult, challenging and yet rewarding work that we mediators do?
2. Blurting out anything that comes to mind at the moment?
3. Standing there sheepishly, pulling out your business cards and handing them out as if THAT will explain it?
4. Wishing that the person who introduced you had played John the Baptist and paved the way for you, so you could just waltz in with nary an explanation necessary?
5. Mumbling something so softly and incoherently that it leaves the listener baffled and embarrassed for you?
6. Any and/or all of the above?

Fear NOT! This is not as difficult a task as you may think. “Ve haf goot news und ve haf bad news.” The good news is that an elevator speech should take no more than 30-60 seconds to deliver. The bad news is that you have to make it SO compelling in the short amount of time you have that the inquirer wants to know more about you and hear more detail about what you do. In other words, it’s a conversation-starter.

The WHAT: So, let’s start with a description of an “elevator speech.” In looking for a good description, Wikipedia summarized it best; in part, it says:

“...An elevator pitch, elevator speech, or elevator statement is a short summary used to

quickly and simply define a person, profession, product, service, organization or event and its value proposition...The name “elevator pitch” reflects the idea that it should be possible to deliver the summary in the time span of an elevator ride, or approximately thirty seconds to two minutes... The term itself comes from a scenario of an accidental

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meeting with someone important in the elevator. If the conversation inside the elevator in those few seconds is interesting and value adding, the conversation will continue after the elevator ride, or end in an exchange of business cards or a scheduled meeting.”

The idea is to get your point across quickly, concisely and in such an interesting way, that it invites the listener to want to know more about you and the work you do and thereby illicit curiosity and a desire to continue the conversation. Repeat after me: “Interesting, memorable and succinct.” That’s pretty much it, plain and simple.

Don’t get stymied at the thought of having to put together “the spiel.” Remember, you don’t have to prepare a long, drawn out explanation of who you are, what you do and how you do it. Not only is this counterproductive to the elevator speech, but think about the last time you were introduced to someone and they went on and on and on and on, losing your interest after the first 30 seconds. As I said before, the good news is that your “speech” should be short and sweet, simple and straightforward. It is a little tricky to figure out how you are going to accomplish that, but more on that in Part 2, and, don’t worry, your coach is here!

The WHY: Because you want to engage people’s interest in you; and, it gives you the opportunity to illustrate the value of the

work you do and how, potentially, it will help them in the work that they do.

Whether it’s the elevator speech that eventually leads to the one-on-one, face-to-face over a cup of coffee at Starbucks, or a lunch date, we want to be prepared to explain our profession so that it increases our chances to

be THE resource in our arena.

The key is your value to the person that you’re meeting. Think about when you meet someone at a networking event. Whether you are aware of it or not, you are immediately thinking, “Are they a value to me?” “Can I be a value to them?” Although this may feel like a mercenary thought, it’s actually a practical and important one. If you meet someone in the lawn sprinkler business, for example, what are the chances that they need your services, or you need theirs?

This is not to say that there is an outside chance that this person may either need your services or knows someone who does, but it’s more likely that the referrals you’re seeking will come more from someone who is in line with the work you do, such as a therapist, social worker or financial advisor. Always be upbeat and polite, no matter who you are introduced to. Listen, engage and move on as diplomatically as you can, if you find that your businesses are not necessarily in sync.

Typically, when we are introduced to people (in a professional setting), the first thing we want to know about them is what they do. Many years ago, someone told me that, in England, asking that question is considered the height of rudeness.

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Social Media Update

By Virginia L. Colin

One way to promote your practice is to follow these three steps: First, have a website with a blog; second, write new blog articles at least twice a month; and third, use one or more social media channels to let the world know when you post a new blog article.

If the links below do not work, copy and paste them into your browser. If you have questions about any of this, start a discussion about them in APFM's LinkedIn group. If you have trouble joining the LinkedIn group, contact me at: mediatorQ@gmail.com.

APFM's LinkedIn discussion group is at: <https://www.linkedin.com/groups/APFM-5062612/about>.

We encourage all APFM members to join this group and participate in discussions. Ask your questions, share your insights, and announce your new blog articles.

The purpose of using social media is to help people notice that you have expertise and that you offer services they could use. If you use Facebook, include a photo with your announcement. Posts with photos get much more attention than text-only messages on Facebook. If you use Twitter, hashtags help. For example, if your blog article is about marriage mediation, your tweet with a link to that article might include "#marriage #mediation."

A mediator can use Facebook to engage people and make them want to visit your website. You can do that without being annoyingly sales-y. A sample Facebook business page that illustrates this is at: www.facebook.com/familymediators.

Other social networks that you might prefer include Google+, Pinterest, and Instagram. You can't do all of them. Pick one or two that you like and post something new at least three times a week. Include quotes or links to other interesting articles. If all you do is advertise your own practice, you are not giving people reasons to visit your social media page and remember you when a friend needs a family mediator.

Virginia Colin, Ph.D. is a founding member of the Academy of Professional Family Mediators. She is a Certified Family Mediator (in Virginia) with decades of professional experience in attachment research and other psychological research, teaching, counseling, and mediation. She is the author of one book, *Human Attachment*, as well as a number of journal articles and government publications. She is dedicated to the belief that many, many people should be able to support themselves and their families by working as professional family mediators and is willing to work to make that dream come true.



It is easy to get overwhelmed by advice about using social media. The simple 3-step plan described in paragraph #1 (above) is enough. If you do not want to do this yourself, you can hire people you trust to do it for you. You can hire someone to help write your blog articles. You can hire that person or a different person to pretend to be you on social media. Trust is important, because people who see "your" posts on Twitter or Google+ or whatever social network you choose may assume that you wrote them.

Whichever network you choose, you have to stay with it for a few months and interact with others who use it to develop a following. Whether you are likely to benefit from paying for advertising on these networks is

beyond the scope of this article. It's complicated.

As an organization, APFM does not yet have a clear plan for how to use social media other than LinkedIn. Nevertheless you can find APFM on Facebook at:

<https://www.facebook.com/APFM.ProfessionalFamilyMediators>, and on Twitter at <https://twitter.com/TheAPFM> or [@TheAPFM](https://twitter.com/TheAPFM).

I hope to see you in discussions in: <https://www.linkedin.com/groups/APFM-5062612/about> soon!

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Power Imbalance Workshop in Seattle for APFM

Review By Bill Eddy

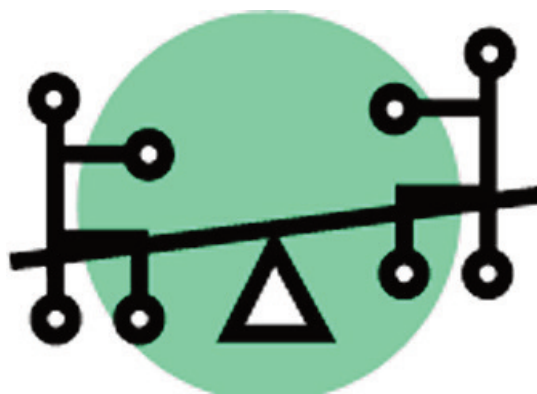
On July 19-20, 2014, I was one of three trainers who gave a workshop on Power Imbalance in Family Mediation as an advanced training for the APFM. Hilary Linton and Claudette Reimer both run mediation programs in the Toronto area, and they presented their methods for screening for power imbalance (especially for domestic violence) in individual intake interviews before meeting jointly with the parties. This stimulated a lot of discussion regarding: 1) whether such intake interviews are really necessary in all family mediation cases; 2) if the mediation proceeds, how to conduct it safely; and 3) how to conduct family mediations when dealing with high conflict personalities (the part I focused on).

The first issue was addressed by Hilary and Claudette, as they presented information about the percentage of family mediation cases in which there is a history of domestic violence. Hilary said that research shows that it is present in about 50% of separation and divorce mediation cases. I offered my belief that it is present in only about 20% of family mediation cases and that not all allegations of domestic violence are true. However, they convinced me at a similar training last year for APFM that there is a need to screen cases, regardless of the percentage, because of the severe consequences (including death) when there is violence preceding and following mediation, and they gave a few examples which have occurred in the past few years.

They then went on to explain how research now supports the fact that mediation is better and safer than court for such cases, and that they actually decline to mediate very few domestic violence cases; instead, they focus on how to make the clients safe in mediation. I explained how I have decided to screen cases within the context of Pre-Mediation Coaching, so that in teaching skills they will use during the mediation process,

I also am checking to see whether mediation is safe and appropriate, when there has been domestic violence.

Hilary and Claudette then addressed the second issue above, by explaining measures for making mediation safe, with cues for people to give if they start feeling unsafe, separate arrival and leaving times, and many other measures. One point they emphasized is that the individual intake interviews provide an opportunity to discuss what can make mediation safe for both parties. They pointed out that supporting abusers in medi-



ation, as well as victim/survivors, makes it more peaceful for both parties during and after the mediation. This approach contrasts with court, which tends to escalate defensiveness and conflict, with more risk of abuse after a hearing. They reported that most clients tell them that they prefer mediation and are relieved when it calms down their conflicts, since both parties are being treated with respect, as well as knowing that the mediators are taking protection issues seriously.

I then focused on the third issue, which was how to adapt the mediation process for high conflict personalities. This includes those with a history of domestic violence, as well as those without such a history. My emphasis was on calming the parties down with lots of empathy, attention and respect for the concerns of both parties, then really engag-

ing them in problem-solving, by teaching them how to make proposals, how to ask questions of me and of the other party, and how to respond by simply saying “Yes,” “No,” or “I’ll think about it.”

This structured approach helps the parties feel less defensive, as the focus is on the future rather than their past behavior, conflicts and problems. It is a totally positive approach, focusing the discussions on future choices and possible consequences of those choices, and emphasizing that all of the decisions are up to the parties in mediation. This avoids power struggles with the parties over reaching an agreement that is directed too much by mediator. Experience shows that high conflict people will reject anyone else’s terms of agreement, unless they have meaningfully participated in developing the terms of the agreement themselves.

The training participants were from several states and all really experienced. We were very impressed with their willingness to practice doing screening interviews and working on areas that “pushed them past their comfort zones,” as Claudette liked to say. I learned a lot and really enjoyed working with everyone present!

For those interested in learning more about these screening and mediation methods, see the program for the APFM annual conference on October 16-19, 2014 at www.APFMnet.org.

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“Themes in Mediation by Michael Scott” Cont. from Pg. 1

In identifying the theme of each individual, the mediator is facilitating the couple to achieve the following:

1. To be able to listen in a way that the other knows s/he is being heard.
2. To be able to identify and express their own themes.
3. To be able to validate what their partner thinks even if it is not what that individual thinks or believes.
4. To be able to empathize with the themes of their partner.
5. To be able to negotiate a compromise with a solution addressing the theme of the other by modifying one’s position.

The task of the mediator is to help the couple reach an agreement that is acceptable to both parties and assist the couple in understanding how to resolve future conflicts. As mediators, it is critical to enact a process that facilitates, educates, and makes safe the experience of the couple such that each awakens to the value of being able to negotiate and resolve problems more effectively. In being aware of themes, both parties will then respond to each other more consciously. If each individual thinks in terms of themes rather than positions, s/he will bring awareness to the problem-solving by looking for ways to address the theme(s) of the other party, rather than arguing about who is right and who is wrong. As one becomes aware of themes, the individual comes to understand what drives behavior, which leads to compromise and resolution of the problem. With that as the primary understanding, negotiated settlements in mediation become more meaningful to all involved.

To be effective, a mediator must carefully observe the conflict. When one party presents the “event,” the mediator must remember that the issue being presented is that person’s subjective reality of the occurrence. Similarly, the response of the other party is that individual’s subjective reality of the same event.

By listening and observing the words and actions of the parties, the mediator begins to notice the repetitive theme(s) of each individual. The mediator can then comment in ways that help the parties discriminate the theme from the event. For example:

(Mediator addressing the person presenting the argument) “It appears to me that you do not trust Sara.”

(To Sara) “And, it seems to me that you see Joel as very controlling.”

Assuming each party confirms the statement, themes are now identified.

(The mediator continues) “In the many cases I have mediated, I have observed that people argue over events. The situation may be different each time, but it is just an event. Regardless of the event, there is a theme running beneath most arguments. In your case, I would guess that if you look at your relationship, Joel, you do not trust Sara, and Sara, you think Joel is controlling.”

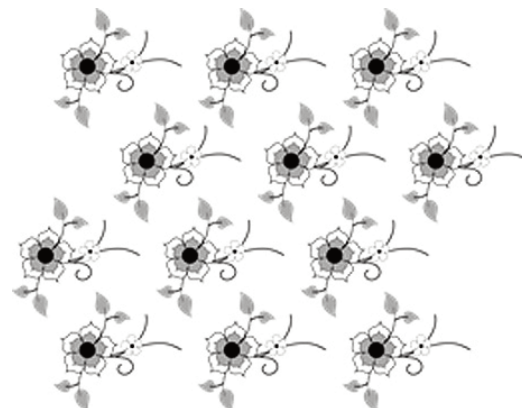
Generally, if accurate, you will get acknowledgement from each party.

(The mediator continues) “If that is correct, establishing blame will not solve the problem we are here to address. Let’s look for solutions, not who is right and who is wrong.”

The mediator explains to Sara and Joel that arguments are about events that involve stating “positions” of what a person wants. All positions are negotiable. Themes, on the other hand, are not negotiable and, at best, only slightly modifiable. They are the underlying motivation for why one wants what they want.

At this point the couple is reflecting. They often do not have effective tools to easily compromise. The mediator then moves in with the necessary guidelines that the couple will need to understand how to work with themes, stating:

“Joel, if you do not trust Sara, you need to tell her what she will need to do to earn your



trust. But, since she experiences you as controlling, you have to state it in a way that Sara does not experience it as controlling her.”

(Turning to Sara) “You say Joel is controlling, and he does not trust you. If you are looking for a solution, you would have to let him know what you are willing to do that is acceptable to you. It must, however, address his theme of mistrust, so that he will feel that you are trustworthy by doing what you agree to do.”

When both of their themes are addressed by Sara and Joel, a compromise will be achieved. And, when couples reach agreements by learning how to identify their themes, their agreement is more likely to endure. As such, they will have a greater potential for future successful negotiations with each other.

Frequently, a couple in mediation plays out the conflictual dynamic (themes) of their relationship during negotiation. The mediator can easily be inducted by focusing only on the event(s) being argued. This simply impedes resolution. Rather than join the couple trapped in their all-too-familiar dysfunctional interactions regarding an event, the mediator who directs the attention of the couple to the motivating theme will lead the clients toward effective negotiations with insights that will be useful to them for resolving future problems.

“New Board Member Interviews.” Cont. from Pg. 5

2) What do your current professional practice and activities look like?

Currently, I teach online bachelors, masters, and doctoral students in human services, mental health counseling, psychology, and U.S. history, and provide a myriad of services through my private practice and management consulting firm, The Anger Doctor.

The Anger Doctor offers mediation, psychotherapy, human capital, training, and research, among others. I provide individualized services and programs for education, business, industry, government, professional/learned associations, and community organizations.

3) How did you first learn about mediation?

Initially, I was introduced to mediation as a graduate student working on my doctoral degree in counseling psychology at Rutgers University. In 1993, while a professor at Purdue University in West Lafayette, IN, Tippecanoe County, I saw a tremendous need for mediators to address the backlog in the judicial system, and provide an alternative to litigation. It was during this time that I received Basic and Advanced training in mediation. Ten years later, in 2003, while working in Los Angeles, I had the wonderful opportu-

nity to be among a small cadre of individuals who served as Interns, and I received Employment Mediator Certification from the U.S. Equal Employment Opportunity Commission (EEOC), at the Los Angeles District Office (LADO).

The program at LADO was the only employment mediator certification training offered in the U.S. that was sponsored by the EEOC.

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

As an APFM Board Member, I would like to be involved in increasing membership, gaining national certification for professional family mediators, and developing an online, scholarly, refereed journal. These activities will bring more prominence to the organization and to the profession of family mediators.

5) Where do you see the field of Family Mediation going?

I believe that Family Mediation will see a significant increase in prominence, respect, and usage during the 21st century. As the world has become a global village and more complex, families are challenged in identifying viable and appropriate alternatives to address their issues, needs, and concerns related to

conflict and its resolution. Professional Family Mediators are on the forefront of this development, possessing the skills and background that will facilitate the acquisition of knowledge and information concerning how to communicate better on all levels, and in different environments. These activities by professional family mediators will make a significant contribution to individuals, families, the profession, and society.

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

When not mediating, I enjoy travel, collegiate/professional sports, especially football and basketball, all genres of music, and arts and crafts. With a proficiency in flute and violin, I also played violin in a community orchestra while in undergraduate school, and I look forward to resuming this activity sometime in the near future.

Vicki Coleman is President/CEO of The Anger Doctor, a private practice and comprehensive management consulting firm specializing in services and products for anger management, mediation, human capital, psychotherapy, training, and research.

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“Child Abuse Reporting by Bill Eddy” Cont. from Pg. 9

Whether you have determined that you should or should not make a child abuse report, you should offer to do what you do best as a mediator: schedule a mediation session and help them deal with their problem. Don’t try to figure it out yourself, but rather guide them in helping themselves figure out what to do. Educate them about whatever realities there are in these types of situations, including how a court might deal with it (an investigation might occur; maybe there would be supervised contact whenever the teenage boy is around; a serious change in the custodial arrangements; etc.) and methods of educating and protecting children by the parents. Encourage them to seek the assistance of lawyers, as there may be legal action that may—or

should—occur at some point.

After you have given them some education about the choices and consequences related to these types of situation, encourage them to make proposals for how to deal with the situation. Most child abuse reporting situations are fuzzy, and permanent “no contact” orders are unlikely to occur in the long term. Therefore, helping the parties learn how to deal with such gray areas jointly will help them in the long term.

5. How can you protect yourself while helping your clients?

These types of situations are very stressful for mediators and all other professionals.

It’s important not to panic and, instead, to get consultation.

Whatever you do, keep in mind that you are not responsible for their outcome, you are not responsible to investigate what is happening, and you are not responsible for changing anyone’s behavior. Just follow your professional and legal standards to do the best you can. Good emotional boundaries are necessary with cases like this, so that you don’t get sucked into the drama of a high-conflict couple.

What are your thoughts? Let us know. They can be brief or detailed. Please respond by September 15, 2014. Thank you.

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The consortia of retired judges, who do what they call “mediation” normally manage their own trainings and have little contact with other mediation organizations.

APFM, and some of the state and local mediator organizations, bring together mediators of different professional backgrounds and with different types of mediation practices. Some of the best programs are found in their annual conferences and advanced trainings. Also, ACR continues to play an important role in maintaining dialogue among practitioners in the multiple fields of mediation. And, the Association of Family and Conciliation Courts has always been a good source of useful ideas for mediators.

The interplay between mediation and collaborative practice has expanded the scope of both settlement modes. Although collaborative practice dates back from the mid-1980s, it has attracted major attention mainly in the last decade. Interestingly, every newly trained collaborative professional now must also have taken mediation training in order to be certified for CP, under standards set by the International Academy of Collaborative Professionals.

The frequent (often monthly) meetings of the various local CP groups are an excellent forum for interactions among professionals in areas of mutual interest. Although CP is by no means limited to divorce settlements, it is the focus of many of the practice groups.

An attorney who takes part in these sessions very quickly realizes that there are some important things known about divorce by other professionals that many divorce lawyers don’t necessarily know. These professional exchanges among divorce lawyers, mental health professionals, and financial experts are likely to influence the frontiers of divorce mediation for years to come.

The work of professionals at the frontiers of divorce mediation involves a continued examination and some redefinition of the professional roles of divorce mediators from all

professional backgrounds. For lawyers who mediate, it means taking a fresh look at the framework of the legal system. Much of American divorce law is not framed at the level of rules, but rather is found in the statutory lists of criteria and in the principles embodied in the case law. With the exception within the area of child support guidelines, there is often a great deal of flexibility and discretion in the framework of divorce law. Even in some of the most adversarial, out-of-court settlements there are elements that differ (at times substantially) from what might happen if the case were to be litigated.

Lawyers also need more focus on how to make divorce settlements adjust to future changes. Perhaps the most basic problem with conventional legal divorce settlements is that the law looks backwards rather than forwards. Court cases are mostly about what the parties have done or failed to do and the resulting consequences, rather than about planning future relationships and finances. Lawyers who mediate should be grateful to have the opportunity to do settlements that look to the future as well as to the past, using such means as sound financial planning and ways to promote better parental cooperation in the future.

Mediators who are not lawyers need to remember that the basic goal of divorce mediation is, after all, to settle the case at hand so as to keep it out of the adversarial system. Treating the legal framework as not being relevant can be a serious mistake, especially in some of the more contested cases. It is also important to appreciate how the elements of the settlement are interrelated, because it is this very interrelationship that allows for creative tradeoffs. While effective process skills are a basic tool of all mediators, they are not magical. At times, an awareness of the possible legal tradeoffs may be the best process skill of all for a particular settlement. Finally, mediators (particularly those of a Transformative bent) should never forget that, often, the best way to transform the future relationship of the parties is for them to achieve a fair and

workable settlement.

The law itself is always at a frontier. As distinguished legal scholar, Roscoe Pound, pointed out, the future of law is defined by the constant adjustment of the boundaries between stability and change. For example, in state after state, the terms “custody” and “visitation” are being replaced by the term “parenting plan,” and the caption of a divorce case now starts out: “In re the marriage of ...” As we take a more holistic view of the substantive law and process of divorce settlements, there should be more room to consider suggestions for changes in family law that emanate from mediators and collaborative professionals.

In summary, the frontiers of divorce mediation at the present time appear to be in the following areas:

1. The continuing task of defining what it means to be a Professional Family Mediator.
2. The need for more interactions among mediators of different professional backgrounds and with other professionals who have divorce-related experience.
3. Finding better ways to understand the strengths and limitations of different professionals in acquiring the knowledge and skills needed for carrying out effective divorce mediation.
4. Taking a more holistic view of divorce mediation as it moves toward being a unified profession.
5. Awareness of the groundbreaking work of leading mediators, such as Bill Eddy and Don Saposnek, in extending the scope of mediator knowledge and skills.
6. Active participation in national, state, and local mediation and other ADR professional organizations.
7. Remaining aware that effective divorce mediation is a project of lifetime learning, and that ours is a wonderfully complex and fascinating profession that no other single profession even comes close to “owning.”

It’s like asking a woman how much she weighs, or how much she earns. I find that fascinating. Talk about worlds colliding! Here in the U.S., that question is usually the first thing that comes out of our mouths during, or right after the handshake, as in: “A pleasure to meet you John, and what do you do?”

The answer establishes oneself to the other. And, from there, the inquirer now has a frame of reference from which to continue the conversation, as in:

• My, that’s such an interesting line of work, how did you get into it?

OR

• My cousin Michael Smith works in that field here on Long Island. I wonder if you know him.

OR

• I would love to know more about that. When would be a good time to set up a lunch date?

You begin by acknowledging their line of work. Then, asking a question starts the tête-à-tête engagement.

In considering the why, think about where you will be networking. If the why is to expand your professional horizons, then keep this in mind—know your audience.

1. Is it a familiar and comfortable setting with people you pretty much know and who know you?

2. Have you been invited to an event by someone you know and trust who will introduce you around for starters, making it

a little easier for you?

3. Is this a general networking event, or one specific to a particular industry that is compatible with mediation, such as therapists, financial advisors, matrimonial attorneys, etc.?

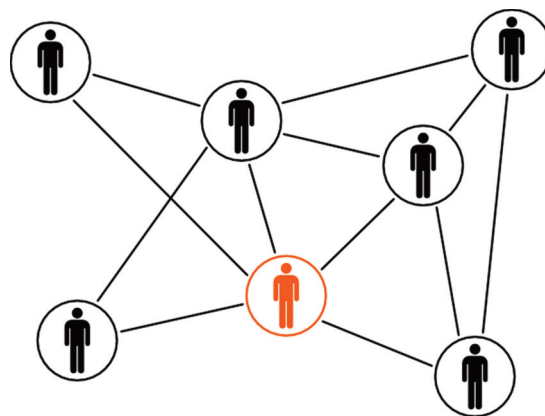
4. Are you walking in cold to an open event/opportunity (good for you!), possibly with a colleague or friend, but new to the group?

Knowing that pretty much every networking event offers a structured introduction process, you will feel so much better, more relaxed and at ease if you are prepared for it well in advance of the event. As I’ve discussed in previous articles, your one important moment to meet that key individual with whom you will embark on a rewarding, working relationship may actually come in the restroom even before the main event begins! So, remember to shut off your cellphone, put that lipstick on, straighten your tie, clear your throat, take a deep breath and most importantly.... smile. This is all part of

sible light. How you present yourself will distinguish you from others. It’s not only what you say but the way you say it and to whom you say it.

Remember the 1988 romantic comedy, *Working Girl*, played by Melanie Griffith as Tess McGill? Directed by Mike Nichols, it was a fun movie with a great cast (worth it just to see Joan Cusack as her best friend—big hair, blue eye shadow, shoulder pads and all). Spoiler alert for those of you who never saw the movie: At the end of the movie, Tess actually got to give her elevator spiel to the head of the corporation to whom she pitched a killer merger and acquisition deal in the elevator. In the time it took them to hit the umpteenth floor, she explained where she got her inspiration to put the winning deal together that trumped her mean boss (played by Sigourney Weaver) who tried to steal her idea and push her aside. In the end, Tess wins the day, Harrison Ford, and the corner office! Now THAT’S an elevator speech. While it’s rare that you will be giving your elevator speech in an actual elevator – hey, you never know.

In Part 2, we will explore the HOW. How to prepare the pitch: what to say, what not to say, how to say it, how not to say it—all the details you need to know to give that winning spiel. Coach MediAda is here!



the preparation – just as important as your elevator speech.

Always keep in mind that you are networking to meet new people, and you want to show yourself off in the best pos-



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