



Department of Judicial Services
Division of Dispute Resolutions Services
Office of the Executive Secretary • Supreme Court of Virginia

A QUARTERLY UPDATE ON DISPUTE RESOLUTION

RESOLUTIONS



State-wide Conference on Restorative Justice Held in Williamsburg



Guest speaker Dr. Max Portrey, social psychologist speaks to conference attendees.

On October 17, 2006, the Restorative Justice Association of Virginia (RJAV) met for its third annual conference titled “Restorative Justice: Re-connecting Communities through Accountability” in Williamsburg, Virginia. Over 130 participants attended the event, with representation from northern Virginia, Tidewater, the Shenandoah Valley, the New River Valley, central Virginia and from states further afield: Maryland, Florida, and North Carolina.

The conference guest speaker was Max Portrey, Ph.D., a social psychologist practicing in

“Anger is energy meant to be acted out.”

Dr. Max Portrey, Ph.D., Social Psychologist

West Virginia whose interest lies in brain development, especially in early years. He presented an open plenary session titled “Brain Development and the

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Criminal Mind: It's all About Me!" in which he outlined areas of brain function that result in how humans think, feel, believe, and do. In linking this framework to restorative justice, Dr. Portrey suggested that offenders may be held accountable by being "anchored to the center of his or her own behavior." In a subsequent presentation on managing anger, Dr. Portrey described anger as "energy meant to be acted out." We feel anger when we perceive that something of value has been threatened. As such, he argued that anger can be a clue to deep-seated value systems and therefore shouldn't be ignored or underestimated. He later offered a workshop on self-care for professionals where he underscored the importance of balance, humor, and family.



Conference participants enjoy the presentation of guest speaker Dr. Max Portrey.

Last year marked RJAV's first presentation of the Howard Zehr Restorative Justice Award, named in honor of the Virginia-based "grandfather" of restorative justice. In 2005, Vickie Shoap and David Saunier, respectively President and Vice President of the RJAV board, presented the award to Howard Zehr, Ph.D. to recognize his contribution to furthering restorative justice principles and practice in the state of Virginia. This year, Dr. Zehr was on hand to deliver the award to Geetha Ravindra, Esq. who heads Dispute Resolution Services at the Supreme Court of

Virginia in Richmond. Ms. Ravindra was instrumental in providing critical funding for the first RJAV conference in 2004. More recently, she has advocated for restorative justice to be incorporated into state legislation and has invited RJAV members to have input into the Futures Commission, an effort to plot developments and needs in statewide criminal justice over the next 20 years. Ms. Ravindra was surprised by the award and expressed gratitude and thanks for the honor in a brief speech. A great variety of work-

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shops by accomplished professionals added richness to the day. There were introductory sessions on restorative justice theory and practice, role-plays of RJ conferencing, discussions of RJ in cases of sexual assault or domestic violence, and a presentation on RJ practice in the school settings. David Saunier, Coordinator of

*Offenders may be held accountable
by being “anchored to the center
of his or her own behavior.”*

Dr. Max Portrey, Ph.D., Social Psychologist

Central Virginia Restorative Justice, co-presented a workshop titled “Working with Crime Victims” with Susan Painter, Coordinator of the Albemarle County Victim Witness Program. In evaluations of the conference, many participants re-

quested that the board consider an expanded schedule so that participants could attend a greater number of workshops. Such feedback indicates enthusiasm for the topics, and the board will discuss the 2007 conference model at its board meeting in November.

Over the course of the last three years, the RJAV conference has attracted an increasingly broad array of allied professionals interested in RJ. Beginning with RJ practitioners, advocates, and mediators in 2004, conference participation now draws from court service units, community correction agencies, probation offices, victim witness representatives, religious groups, school professionals, and academicians across the state.

For more on RJAV and the 2006 conference, visit www.rjav.org.

*Submitted by Jennifer Larson Sawin, Program Associate for
Central Virginia Restorative Justice in Charlottesville.*

PRESS RELEASE

**WELCOME ABOARD
SALLY CAMPBELL!**



Attorney Sally Campbell, DRS ADR Specialist, greets the camera from her office. Sally was one of the first trained and certified attorneys in Richmond in the collaborative practice of law in 2005.

Sally Campbell joined Dispute Resolution Services as ADR Specialist on November 14. Before coming to the Supreme Court, she practiced law for thirteen years mainly in Hanover and Caroline Counties. Sally's general practice focused on family law, indigent and juvenile defense, and Guardian *ad litem* for children, incapacitated adults and unknown parties.

Before law, her first career was in information systems at Virginia Power. Sally has been a certified mediator since 2000 and has handled many court-referred JDR cases and private divorce cases. She was in the first group of Richmond area attorneys trained and certified in the "collaborative practice" of law in 2005. She has a BA in English from Davidson College and got her JD at the University of Richmond. She loves to hike, read, kayak and walk her dogs. We look forward to working with Sally on the DRS team.

RESOLUTIONS 2006

**VA Assn. of Community
Conflict Resolution**

Apple Valley Mediation Network

242 North Main Street, Suite 202
Woodstock, Virginia 22664
540-459-8799

Edward F. Wilkins, Executive Director

**Community Mediation Center-
Charlottesville**

P.O. Box 133
Charlottesville, VA 22902
434-977-2926

Cyndy Martin, Interim Director

**Community Mediation Center
of Danville and Pittsylvania County**

490 Piney Forest Road
Danville, VA 24540
434-797-3981

Bob Phillips, Executive Director

**Community Mediation Center
Harrisonburg**

165 S. Main Street, Suite A
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Timothy Ruebke, Executive Director

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586 Virginian Drive
Norfolk, VA 23505
757-480-2777

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The Dispute Resolution Center

701 East Franklin Street, Suite 712
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804-343-7355

Nancy Chenault-Mediation Coordinator

Northern Virginia Mediation Service

4260 Chain Bridge Road, Suite A-2
Fairfax, VA 22030
703-993-3656

David Michael, Executive Director

Peaceful Alternatives

Community Mediation Services

P.O. Box 1169
Amherst, VA 244521
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Carolyn Pritchard, Executive Director

Piedmont Dispute Resolution Center

P. O. Box 809
Warrenton, VA 20188
540-347-6650

Lawrie Parker, Executive Director

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406 Chatham Square Office Park, Suite 101
Fredericksburg, VA 22404
540-372-7740

Ron McLean, Executive Director

PRESS RELEASE

FAREWELL AND THANKS CHERYL GRAY BALL!



Program Coordinator Cheryl Gray Ball anticipates developing innovative ideas to enhance classroom instruction time for teachers and students studying the Judiciary system in Virginia.

We bid farewell to Cheryl Gray Ball who worked in DRS. Cheryl is now working as Program Coordinator for Journey Through Justice within the Department of Judicial Services.

Journey Through Justice is an innovative project designed to educate Virginia students and teachers on the judiciary. The goals of the project are twofold: (1) to increase understanding of the role and function of the judicial system (local, state, and federal) with emphasis on the Virginia judiciary; and (2) to enhance classroom instruction on the Virginia judiciary.

Chief Justice Leroy Rountree Hassell, Sr., Supreme Court of Virginia, established the Journey Through Justice Commission and charged the Commission with developing an interactive web site and supplemental educational mate-

rials on the judiciary that will literally and figuratively open the doors of the courtroom to students and teachers. The web site is under development and, when completed, will be accessed through a link on the Supreme Court of Virginia's web page. As a companion piece to the web site, the Commission will solicit the active involvement of judges, attorneys, court officers, and members of other organizations in the Commonwealth in educating students and teachers about the judiciary and the judicial system.

The expected outcomes of the Commission's work and the Journey Through Justice web site include (1) increased judicial literacy for students and teachers; (2) increased involvement of representatives of the judicial system in the classroom; and (3) increased public understanding of the role of the judiciary and the judicial system.

New Custody Pro Bono Mediation Project

The Family Legal Assistance Project (FLAP) of the Fairfax Bar Pro Bono Program has initiated a cutting-edge mediation project serving poverty and low-income *pro se* litigants with custody disputes in the Fairfax J&DR District Court or Circuit Court. The new program provides a highly attractive alternative to litigation.

The program uses *pro bono* counsel and *pro bono* certified mediators. Instead of appearing on their own and trying to represent themselves in an unfamiliar and perhaps frightening courtroom setting, participants have a chance to fully and meaningfully voice their positions and concerns before a qualified neutral, with the assistance of counsel.

Potential clients are screened for financial eligibility by FLAP and then matched with volunteer lawyers and a me-

diator. The lawyers then prepare the clients for mediation and participate in the process. The *pro bono* mediator can request pre-mediation statements from both sides, confer with the attorneys in advance and handle these matters as they would other mediations. If the contested custody issues are resolved, the lawyers draft an Order to be entered by the Court.

It is anticipated that most of the clients will be involved in litigation in the Fairfax County Circuit Court, at least in the pilot stage. There was a preliminary orientation and training for participants conducted by retired Chief Circuit Court Judge Richard Jamborsky, Fairfax Juvenile and Domestic Relations Judge Gayl Carr, and Edward O'Connor, Esquire.

This program accomplishes many

goals: clients receive expert legal advice and a chance to have input into the determination of their family issues; family lawyers can participate in a meaningful way without the ongoing obligations of litigation; and retired Judges and other certified mediators can use their skills to assist the underserved, while helping to relieve the court's docket.

We are currently seeking certified J&DR District Court and Circuit Court-Family mediators willing to donate their time, energy and skills to this worthwhile project. If you are interested in participating or in finding out more about the program, contact Arlene Beckerman, Director of Pro Bono Activities, Fairfax Bar Pro Bono Program, at (703) 246-3779 or abeckerman@fairfax.org.

State-wide Training on Revised Mentor Guidelines Completed



Mentors listen attentively as Geetha Ravindra instructs them on current changes to the Mentorship Process.

The Dispute Resolution Services Office provided free instruction on the revised guidelines for the mentorship process in mid-October. Classes for Mentors were offered in Charlottesville, Roanoke, Fairfax, and Virginia Beach. Each class was four hours long, a change from the previous two-hour requirement, and included a review of the revised procedures and forms, tips on best practices, and scenarios highlighting situations that may be encountered in the mentorship process. Feedback from the training programs was very positive.

Three hundred and five mentors received the training and are now recertified to serve in that capacity as of January 1, 2007. The new guidelines and forms are mandatory as of January 1, 2007. Mentors who have not completed the four-hour training program will not be permitted to mentor individuals seeking certification after January 1, 2007. Approved trainers of the two-hour "Mentoring Others" course must

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Participants share thoughts and ideas in group sessions during the state-wide mentorship training.

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develop a new four-hour course similar in structure and content to the DRS training programs completed in October and seek recertification of their course.

As described in the December 2005 and August 2006 issues of *Resolutions*, the revised guidelines emphasize quality assurance and ensure that:

Prospective mediators receive meaningful learning opportunities during the mentorship process and gain valuable insights and experience;

Mentors better understand and fulfill their role as a guide and evaluator during the mentorship process;

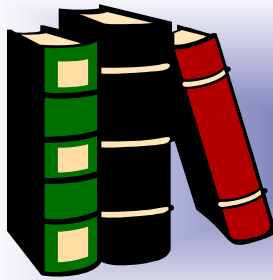
Information regarding the mentee's skills that will require additional work is shared between Mentors to provide continuity in the mentee's growth and competency with each successive mediation;

The Mentors' feedback and recommendation for certification is substantiated by supporting documentation.

The revised guidelines and all forms are available at http://www.courts.state.va.us/drs/certification_process/mentorship_guidelines.pdf.

Submitted by Jim Meditz, Virginia certified mediator/mentor, who was a member of the Mentor Committee that collaborated to develop the new Mentorship Guidelines.

THE RESOURCE CORNER



BOOK REVIEW

MEDIATOR COMMUNICATION COMPETENCIES - Problem Solving and Transformative Practices by William D. Kimsey, Bruce C. McKinney, Dorothy J. Della Noce, and Sallye S. Trobaugh. Fifth Edition, 156 pages. Published by Pearson Custom Publishing, 2005. 1-800-922-0579 (www.pearsoncustom.com)

Have you ever gone to a movie that was a joy to watch and you had the sense that everyone—the writer, director, producer, and actors—had a great time putting it all together?

That's the sense I had as I read *Mediator Communication Competencies – Problem Solving and Transformative Practices*. It was easy to imagine the four authors—William D. Kimsey, Bruce C. McKinney, Dorothy J. Della Noce, and Sallye S. Trobaugh—sitting around the table brainstorming and throwing their individual expertise into the mix. It was

easy to imagine one question leading to another as they discussed which topics to include and how to expand upon them to make them most relevant to mediators. With broad backgrounds in academia, business, conflict resolution, law, psychology, intercultural matters, psychology, and other fields, the authors' credentials are impressive. The book, however, does not contain their bios. I wish it did.

The end-product of their collaboration is a comprehensive, yet concise, 156-page book which is fine-tuned to meet the needs of prac-

ticing mediators, workshop participants, and mediators-in-training in a school or university setting. In addition, the authors have anticipated and met the needs of instructors by creating accompanying teaching tools.

Several features make this a user-friendly book: A *Table of Contents* completely outlines each of the thirteen chapters. An *Index* includes terms and phrases which make this an easy-to-use reference book. *Learning Objectives* introduce each chapter. *References* at

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the end of each chapter point the reader to source material on a specific subject. End of chapter *Summaries* highlight the main points of the chapter. All of these aids increase the book's value as a quick reference tool as well as a traditional text.

Another value-added feature of this book is that it is only one piece of an optional instructional package. An instructor's guide, syllabus, PowerPoint slides, and exam questions/answers are also available. [More can be read about this at the publisher's website.]

Though the book contains many useful graphics---tables, figures, lists---don't expect to find a definitive list of "mediator communication competencies." The closest you'll come to it is a comprehensive checklist of "Mediator Commu-

nication Techniques" that is sure to be helpful when trying to move a stalled discussion forward. As the authors put it, "Communication competence is the ability to choose a communication behavior that is both appropriate and effective for a given situation."

For instance, communication competencies that work in the facilitative or problem-solving approach (structured dialogue and negotiation) are usually not appropriate in the transformative approach (unstructured conversation and optional negotiation) because the goals of the two approaches are inherently different.

Thus, via a series of observations, we are led by the authors to realize that before we strive to achieve certain competencies, we need to be clear about our personal beliefs about hu-

man nature, conflict itself, and what we believe defines the successful resolution of conflict. "Therein lies the challenge," write the authors.

While the book focuses on a facilitative, problem-solving mediation model, the final chapter is an in-depth look at the transformative model. I found this chapter a powerful reminder that these two models are not mutually exclusive. That even when the expressed goal is a settlement agreement, moving the parties toward empowerment and recognition are always worthy goals—especially when the disputants are involved in an on-going relationship (such as parenting the same children). There are fourteen charts in this chapter and they are invaluable for their clear presentation of informa-

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tion ranging from the how-to's of empowerment to recognition, to reflection, to "Patterns of Skillful Transformative Practice," and much more.

One of the book's many strengths is the authors' in-depth attention to all of the mediator behaviors which define each step in the facilitative (problem-solving) approach to mediation. Their discussion goes well beyond describing a step #1, step #2 process. Rather, they have enriched each step in the process by presenting rules, techniques, and strategies that we are familiar with and casting them in a new light. They have juxtapositioned certain information to encourage us to look at it – first this way, then that way.

Despite choice anxiety over which chapters to *exclude*, I will try to convey the excitement of what these authors have done by giving brief examples from just five of the thirteen chapters which highlight new (or expanded) ways to think about what we may already know.

In the "Understanding Conflict" chapter, the authors dispel the myth that "Talk circumvents conflict." They write that research shows that parties in conflict don't feel confident about what the other party says. It's a breakdown in *understanding*, not communication. "If people are unable to reframe the conflict, no matter how much talking they do, there will be no resolution."

In this reviewer's opinion, this is a perfect example of the authors presenting old information in a new light; to impress upon us **why** taking steps to help the parties build trust (at least in the context of the conflict) and why reframing is so fundamental to successful conflict resolution. This chapter also expands our understanding of the types of conflict and the clues each type offers to resolve it.

The "Language in Mediation" chapter is a must-read in its totality. We are given the five functions of language and reminded that "the mediator's language is a critical component in the success or failure of the mediation session." This responsibility becomes especially challenging to us when we realize that most words have at least two denotative meanings and that the connotative meaning of a word can differ between individuals and often between cultures.

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Thus, a crucial job for the mediator is to help the parties turn abstract descriptions into concrete language and to check in constantly to ensure mutual understanding. In this context, rephrasing continues to take on a new importance; as does giving feedback and checking in along the way. The authors' review of eight common language problems and how to avoid them is especially cogent and useful.

The "Listening" chapter offers insightful information which distinguishes the physical task of hearing from the cognitive task of creating meaning out of what is heard. Most of us are probably familiar with a variety of listening styles and listening skills, but have you considered using the "down time" between the speaker's talking rate and your thinking speed to consider the tone of their voice, their non-verbal messages, and where they might be going with their statements? "The more accurate your predictions," write the authors, "the better the job of listening you are doing."

The "Nonverbal Communication" chapter is too jam-packed with significant information to begin to summarize the highlights, but these paraphrased principles of nonverbal communication give the mediator much to consider:

(1) we cannot **not** communicate; (2) when presented with a verbal and nonverbal message, we tend to believe the nonverbal; (3) feelings, emotions, and attitudes are more powerful when conveyed nonverbally; and (4) nonverbal communication occurs in clusters. (The authors give the example of someone who is angry perhaps pounding the table, gritting teeth, furrowing brow, sitting forward in seat, etc.)

The "Encouraging Creativity" chapter is a unique inclusion which is fun to read. The authors assure us that "we can encourage creativity through a variety of intentional strategies," and that "Mediators will significantly increase their mediation skills by encouraging and supporting creative problem solving behavior among disputants."

Our work is cut out for us when we read about the barriers to creativity and the concrete strategies we can use to encourage disputants to think in creative ways. It's interesting to note how we can set up an environment which allows crea-

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tive solutions to emerge. The importance of language emerges again when we realize that many of the strategies relate to inviting creativity by the words that we

“Let’s play around with this possibility,” “Let’s consider this situation from a variety of perspectives.”

The bottom line question is does the book deliver what it promises, which is to answer the question: “What *are* mediator communication competencies?” The unequivocal answer is “Yes! And more....” But, we don’t find a tidy list to check off as we deem ourselves competent (or not) in a specific ability. Rather, we have to think through who we are, what we think and feel about people and conflict, and how we wish to practice mediation based on those answers. Only then will we be able to determine which communication competencies will best help us help our cli-

*Contributed by Diane Wiltjer, a former Virginia mediator/mentor now living in Pinehurst, North Carolina. Ms. Wiltjer is a regular contributor of book reviews to **Resolutions**.*

Please note as well that author Dr. William D. Kimsey is a Virginia certified mediator who serves on the faculty at James Madison University School of Communication Studies. Author Dorothy Della Noce is a former Virginia certified mediator, an assistant professor at JMU School of Communication Studies, and Co-director of the Center for Constructive Advocacy and Dialogue.

ents reach their goals. It’s a mighty task. To quote the authors again, “Therein lies the challenge.” It’s a challenge they’ve given us the tools to meet.

THIRD ANNUAL PARENT EDUCATORS SYMPOSIUM HELD AT SUPREME COURT BUILDING

Funding through the Department of Social Services Access and Visitation grant made it possible for over forty parent educators from all parts of the Commonwealth to attend the third Parent Education Symposium held September 13, 2006. It was an opportunity for providers of mandated parenting seminars for those involved in contested child custody, support, and visitation cases to network and improve their facilitation skills. Many of those unable to attend requested the training materials be sent to them and requested to be placed on the list for the next training.

The trainers for the symposium were Eileen Rodden, Nancy Siford, and Ann Warshauer.

Those who attended par-

ticularly enjoyed sharing resources and discussing what was working in their programs as well as sharing concerns and exploring new techniques for presenting the parenting seminars. A proclamation signed by Governor Kaine was presented declaring September 13, 2006 as Parent Education Day in the Commonwealth.

Those attending expressed a desire to have a professional association for parent educators. An ad hoc subcommittee was formed and work began to create Parent Educators of Virginia. Eileen Rodden obtained a toll-free phone number and an attorney volunteered to assist in the development of articles of incorporation.



Trainers Ann Warshauer and Eileen Rodden take time to share valuable resources and techniques during the parent education seminar.

HEALTHY FAMILIES INITIATIVE

One of the barriers for stabilizing economically disadvantaged families is unresolved conflict. Poor conflict resolution skills can hinder a parent from holding a job or making peace with a co-parent. And sadly, conflict between two parents who live apart often keeps non-custodial parents from being actively involved in the lives of their children. In order to help these families find new, peaceful ways of dealing with conflict, the Community Mediation Center of Southeastern Virginia is offering the program, "Keeping It Together." We are currently partnering with four local organizations that provide shelter and support to families in need. The program will consist of a series of customized parenting and conflict resolution workshops focusing on conflict styles, listening skills, effective communication, dealing with anger, and the collaborative problem solving steps. Then each workshop participant will be paired with a "conflict coach," who will work to help them develop a work plan or provide access to mediation so both parents can be active in their children's lives.

PROGRAM BENEFITS

- ◆ Families will learn peaceful ways to deal with conflict.
- ◆ Families will become stabilized and healthy by developing action plans that will range from reducing the negative aspects of their conflicts to actually resolving and ending their conflict situations.
- ◆ Parents will become more capable of sustaining healthy family relationships.
- ◆ Non-custodial parents will develop sustainable relationships with their children through increased parenting time.
- ◆ Parents will learn effective communication skills that will benefit their personal, work-place and family relationships.

Conflict Coaching

Conflict Coaching is a process designed to work with single parties in developing plans to deal with a conflict situation most effectively. This voluntary process combines ADR and coaching principles. The Community Mediation Center has trained more than forty community members in the principles of conflict coaching. Through our Healthy Families Initiative, these conflict coaches have been able to "coach" more than twenty-five transitional home residents. One participant said, "It just felt good to have someone listen to me. I haven't been heard that way before. The session helped me think of different options I wouldn't have been able to come up with alone."

**Submitted by Kim Hopwood, the Training and Volunteer Programs Director at the
Community Mediation Center of Southeastern Virginia in Norfolk.**

Mediation ADA/FHA Issues –

Outside the Box in Mediation.

In February I attended a symposium on environmental conflict resolution and in October a program on restorative justice. It was refreshing to experience the process of mediation in other issues besides family, civil and contract disputes, and to witness and explore the combination of facilitative, transformative, evaluative and narrative styles in the mediation process. This article will focus on mediation as it relates to the Americans With Disabilities Act, (ADA) and Fair Housing (FHA). I will try to encourage all of you who have either avoided the subject, or have passed the opportunities to other mediators, to reconsider a very real issue in America today and reflect on the challenge of learning something new.

When I do ADA/FHA cases, I get a “starburst.” Changing lives, helping to create independence and opportunities to enjoy life give me a great big high. My experience in cases involving discrimination against people with disabilities as they relate to FHA and ADA is that everyone really wants to do the right thing, but because of the lack of understanding and knowledge, parties are either afraid or stymied over the removal of a barrier, be it attitudinal or architectural.

The FHA is a law that prevents discrimination in housing. The ADA is a civil rights law, preventing discrimination in private and public sectors, services, communication and transportation. Both allow people with different abilities to enjoy what this wonderful country offers to the best of their abilities. Architectural and attitudinal barriers exist. These laws show us how we can eliminate them.

I recently visited Vancouver, Canada and made arrangements to stay at a large chain budget motel. My husband and I arrived by taxi. A young couple arrived at the same time. We all looked at each other as we approached the entry. There were seven steps leading into the front lobby. There were no ramps and my luggage was heavy. A bellhop helped me with them and I was grateful. But the other couple, traveling with a small bag, was not able to enter the lobby. The husband, a young strapping athlete from Sweden, used a wheelchair. The wife was ambulant

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but not strong enough, nor willing, to carry him up the stairs. The bellhop couldn't lift him up the steps. If he was able, and the guest was willing, the guest rooms were down another flight of steps in the inner courtyard.

The couple's reservations were made with the stipulation that all the facilities would accommodate a person using a wheelchair. Anyone on vacation, at work, or at home has the right to participate and enjoy all amenities, all community programs, and all living conditions to the best of their abilities. The law gives them the right to ask for an accommodation. I happened to be there and facilitated a discussion with management. The hotel made reservations at another inn that was able to accommodate them at the

same rate. The hotel returned their deposits and arranged for proper transportation to the new hotel. We met them several days later dining in the same restaurant and they were enjoying their holiday to the fullest.

*When I do ADA/FHA cases, I get a "starburst."
Changing lives, helping to create independence
and opportunities to enjoy life give me a great
big high.*

Without the laws that are in place now, this would probably not have a happy ending. I am sure this chain of motels and its reservation department will be more mindful of its obligations in the future and these travelers will be more aware of what they are responsible to do for themselves.

The ADA law applies to any public accommodation, such as a hotel, restaurant, or theatre. The person with a disability is entitled to trust that accommodation will be made so he or she is able to participate just like everyone else, but the person with a disability must request the accommodation at the time the reservation is made. Both parties share responsibility for the accommodation.

Mediation of ADA/FHA issues requires knowledge of the law, sensitivity to the

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needs of people with disabilities, and understanding the big picture of independence, including the real cost to society, while still maintaining neutrality. Many court accessibility cases could be settled more appropriately by using alternative dispute resolution. It is less expensive both emotionally and financially, it requires all parties to discuss the issues on a level playing field, and it gives the power of decision making to all the parties involved. Most people want to do the right thing, but need guidance to accomplish it. When issues are broken down into the reasons alterations and accommodations are necessary, and feasible solutions are identified, parties usually reach accessibility agreements because they are for the common good and make good economic sense. There is an opportunity for a win-win situation.

FORMS OF MEDIATION AND THE ROLE OF A MEDIATOR

In Facilitative Mediation the mediator assists the parties in reaching a mutually agreeable resolution by asking questions; validating answers; searching for interests underneath the positions taken by parties; and assisting the parties in finding and analyzing options for resolutions. The facilitative mediator does not make recommendations to the parties nor give his or her own advice or opinion. Joint sessions with all parties present and individual caucuses may be held. Attorneys are usually not present.

In Evaluative Mediation the mediator, similarly to a judge, points out the weaknesses of the case and predicts what a judge or jury would be likely to do. Evaluative mediators are concerned with the legal rights of the parties rather than needs and interests, and the evaluation is based on legal concepts of fairness. Usually holding separate meetings, with or without attorneys, they help evaluate legal positions and the costs versus the benefits of pursuing a legal resolution rather than settling in mediation. The evaluative mediator is commonly an attorney and very often chosen by the courts. Parties' attorneys structure the process and directly influence the outcome of mediation.

In Transformative Mediation the mediator follows the lead of the disputants to structure both the process of mediation and the outcome. It is based on the values of

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"empowerment" of each of the parties as much as possible, and "recognition" by each of the parties of the other parties' needs, interests, values and points of view. The goal is to transform the attitude of the parties, so that each is empowered to make the decisions necessary to achieve a win-win resolution.

In discrimination disputes involving the ADA and FHA mediators can use a combination of all three forms very successfully. Mediators should inform the disputants on how the mediation will be handled. Both parties must have information about their responsibilities under the law so they can determine how to resolve the issues on hand. It is helpful for the mediator to be acquainted with the laws that might cover the dispute. Sources of information for mediators include federal information offices handling ADA, FHA, and EEOC cases. The internet has volumes of information, case histories and guidelines. Mediators can encourage parties to use these and other resources to understand their rights and responsibilities and thereby better consider their interests and options in the case. (See the excellent EEOC webpage listed at the end of this article for detailed Q&A on conducting ADA mediations.)

What is the ADA and FHA?

The ADA is comprised of five "titles" that prohibit discrimination against people with disabilities:

- Title I. Employment
- Title II. State and local government programs, facilities, and services
- Title III. Public accommodations
- Title IV. Transportation
- Title V. Telecommunications

Another title, Title VI is a catchall for other forms of discrimination.

The FHA prohibits discrimination in housing.

The Department of Justice usually oversees any complaints, except in employment. The EEOC handles discrimination and accommodations on job sites.

The Department of Justice established the ADA Mediation Program in 1994 and it now operates under a contract with a private mediation service. Many judges are

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now sending cases to mediation before they are heard in court. There are opportunities for mediators to get involved. Learning this new practice area not only opens the horizon for more work, but also enlightens the mediator on the real needs of people everywhere.

LANGUAGE AND BALANCE OF POWER IN ADA MEDIATION

In mediating ADA/FHA cases, the proper use of language is stressed. Language “manners” encourage respect for each party, avoiding anything that could be stigmatizing, humiliating or derisive. During a mediation process, I usually set the ground rules and discourage foul, demeaning and disrespectful language. Working with people with disabilities requires additional rules. The mediator must be aware of the proper identification of the disability, must use “people” first, must insist that all parties talk to each other instead of any assistants who might be present, and if someone with cognitive disabilities is part of the meeting, language that will help that person understand is critical. The proper use of language promotes trust, respect and dignity to all involved. If sign language interpretation is needed it must be available. It should go without saying that the mediation site must be accessible.

As in other mediations, ADA/FHA cases require a level playing field. Both parties must be able to understand the process. Both parties must have information about the law and understand both sides of the issue in order to come to a mutually satisfactory agreement. The law is the guiding force for resolutions.

ACCOMMODATIONS

Accommodations under all Titles of the ADA are required only if they will not cause an “undue hardship” or “undue burden” and if they are “readily achievable”. It is to everyone’s benefit to be aware of these “concessions” that are made in the ADA. This will encourage both parties to find solutions that are feasible, affordable and do-able. Many inexpensive solutions can be found in cases that have already been heard and settled. Researching such cases might enable the mediator to offer solutions that are inexpensive, acceptable, and do-able, leading the way to a satisfactory resolution.

In issues involving EEOC there must be an understanding by both parties of the

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benefits of accommodations, and real costs of accommodations. For example,

- Accommodations in the workplace eliminate the need to retrain a new employee. The loss of experience is more expensive than any accommodation that may have to be made.
- Barrier removal opens up the opportunity for a larger consumer base.
- Accommodations encourage independence.
- Barrier removal helps to create a larger work force. This increases the tax base for the city, state and country.

The employee has the responsibility to tell the employer what is needed to do the essential functions of the job. Restructuring the job, modifying the workspace, or the work schedule, may not cost anything and may resolve the employment issue. It is to both parties' advantage to resolve employment accommodations issues as inexpensively as possible, thus opening the door to creative thinking.

The mediator should be aware of tax incentives and credits that can offset the costs of barrier removal. These are found in the Internal Revenue Code Sections 190, Barrier Removal and Code Section 44, disabled Access Credit and may make it easier to reach resolutions where expensive costs may be an issue.

In summary, mediation is a way to resolve issues out of the court system. When working with ADA/FHA issues, all styles of mediation can work. It is important to know the laws involved in the dispute, work out of the box of the usual to brainstorm for "readily achievable" solutions, know what the government offers as incentives, and know the benefits of accommodations to society. "Starbursts" happen when resolutions you help achieve can add to the independence of a single life and a family. Everyone wins.

For more information on ADA mediation, see:

http://www.eeoc.gov/mediate/ada/ada_mediators.html

<http://www.mediate.com/articles/fosterK1.cfm>

<http://learn2mediate.com/resources/nafcm.php>

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