



# Mediate Ohio

WINTER

2017

## NEWS BLAST

*Your Winter Mediate Ohio Newsletter is a brief overview of what the Board has been working on and other information about OMA that we hope our members will find useful.*

**1.** Nominate your candidate for OMA's Better World Award. See article on page 4. Nominations need to be submitted by March 1, 2017.

**2.** Renew your membership now. Invoices were emailed the week of January 15, 2017 and surface mailings will be going out soon. The membership year is technically May 1 to the following April 30 with a little grace for early renewals.

**3.** Save the date for our annual meeting on May 19, 2017 (see sidebar). In addition to the election of a Treasurer and Secretary, the meeting will include a vote on the Mediator Credentialing Proposal and a possible vote on changes to the by-laws.

**4.** Nominations for Secretary and Treasurer. If you want to run for one of these positions or nominate someone, the deadline is March 1, 2017.

**5.** The next OMA Member Meeting on February 3, 2017 will be held at the Columbus Metropolitan Main Library at 96 Grant Avenue. Our featured speaker will be Cathy Geyer from the Ohio Supreme Court Dispute Resolution Section. Also, we are inviting experienced mediators to share and learn from each other in our first "Tricks of the Trade" roundtable. Bring one idea and come away with many. The topic this month will be *tools used in caucusing*.

**6.** Check out our Blog postings on our Website! Included in this site is our President's blog about marketing ADR. See what others like David Cohen are writing and add your response to his or Nathan's and/or add your own two cents. What's on your mind? Tip: blogging will get you credit when you apply to be a credentialed mediator in Ohio, based on the current requirements in the draft proposal.

**7.** The Mediator Credentialing Proposal Stakeholder Panel Discussion will be held after the regular membership meeting. Yet another draft is out for review to selected practitioners. We are going to have a final proposal for member approval at the annual meeting on May 19, 2017. Stay tuned!

## DATES TO REMEMBER

**February 3, 2017 at Noon**—OMA Member's Meeting, Auditorium, Columbus Public Library, 96 S. Grant Avenue, Columbus, Ohio.

**February 3, 2017, 1:30—3:30**—OMA Mediator Credentialing Proposal Stakeholder Panel Discussion, Columbus Public Library, 96 S. Grant Avenue, Columbus, Ohio.

**May 19, 2017, All day or 1/2 day**—OMA Annual Conference, Fawcett Center, Columbus, Ohio. Registration from 8:00—8:45 a.m. First speaker Dr. Tanya Menon from 8:45—noon. OMA business meeting noon to 1:30. Second speaker Jerry Weiss, 1:30—4:45 p.m.

**Present**—Members need to activate their profile information on the OMA Website. Conversion to the new site requires individual members to update/activate their public information. If you don't know your password, you will have to ask that it be sent to you.

Don't forget

## KNOW YOUR BOARD

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I'LL COMPROMISE.  
I'LL ADMIT I'M WRONG  
IF YOU'LL ADMIT I'M  
RIGHT.



LEADERSHIP

ADVOCACY

PROFESSIONALISM

EDUCATION

## Dispute Resolution Section of the Supreme Court Spreads Wings Under New Director

At the last Mediator's Roundtable of the Ohio Supreme Court Dispute Resolution Section, Cathy Geyer, Manager of the Dispute Resolution Section, presented updates on current ADR activities. A lot is happening,, and OMA members are encouraged to be in the know and to use the Commission's resources, programs, trainings, and various important activities. A brief capsule of Cathy's news bits is provided here. However, even better, attend the OMA's February 3, 2017 member meeting and learn more as Cathy will be our presenter.

**Mediation Programs** – The Dispute Resolution Section is constantly searching for ways to effectively use mediation in Ohio's courts. One involves responding to requests to clarify and amend Superintendence Rule 16 to address guidelines for juvenile domestic violence mediation in Ohio courts. The Dispute Resolution Section has been asked to consider mediation for first offenses and for mediating a plan for the family to move forward. The Dispute Resolution Section is working with the Domestic Violence Advisory Committee to make recommendations. Franklin County has a Juvenile Domestic Violence program that has been operating for several years. Mediators must have specialized training to be on this roster. Potential cases are screened at arraignment hearings and reasonable prospects are "diverted" to mediation in the hopes of redirecting these youth and restoring peace in

the family.

**Mediation of Civil Protection Orders** – Almost every day in Franklin County Common Pleas Court alone, a magistrate hears over 40 petitions for Civil Stalking Protective Orders (CPOs). Many of these involve non-intimate partners and almost half of those involve non-traditional CPOs such as neighbor-to-neighbor disputes. In these cases, police may inform the parties about a CPO and it becomes a "mad dash to the courthouse" by both parties to file. The Supreme Court will contract with the Center for Court Innovations and Technical Assistance to develop a pilot



"It was so great to meet the neighbors and resolve our differences."

program to be implemented in April. One key component is data gathering to substantiate the efficacy of the program. A court ruling may not always solve the underlying issue of the ongoing conflict and animosity between parties. The hope is

that this program will be successful in helping Ohioans move forward and committing to a "cease fire" across the fence. And, while there are still many unresolved process questions, Cathy is optimistic that this could become a model for Ohio Courts.

**Lunch 'N Learn** – a wonderful resource for the courts is an education outreach program to the courts or local bar associations that allows people to earn CEU's and CLE's during their lunch by attending a one-hour presentation by Cathy or another staff member. Topics can range from information about innovative programs such as parenting coordination to training on a specific issue or skill.

Additionally, Cathy will help identify resources for implementing or modifying programs and to address the unique obstacles standing in the way of innovation.

**Directory of Court Mediation Services** – The current Ohio directory is being updated to include all dispute resolution processes offered by Ohio courts. Cathy's staff is undertaking this project in 2017 not just to get accurate information but to also target education and training to courts that currently do not have mediation programs or local rules for

implementing them.

**Website E-Learning Resources** – The Dispute Resolution Section in conjunction with the Commission on Dispute Resolution has developed two E-Learning modules to be used in its Fundamentals of Mediation Training. The first provides information about mediation styles, processes, and characteristics of a good mediator. The second module is a training about the Uniform Mediation Act. The Government Conflict Resolution Services (GCRS) program that has been in existence since 1991 has received a face-lift as well. The GCRS program information is now available on the Dispute Resolution Section's web page. Educational videos are being created to inform Ohioans, courts and attorneys about the various dispute resolution options that are available, including settlement conferences, mediation, neutral evaluation, and collaborative law.

This is just a brief overview of some of the multiple activities Cathy and her staff are undertaking. She values input from the ADR community and is also hoping for increased input from those in the field to help her address the specific needs of practitioners.

OMA salutes her involvement and appreciates the hard work she is investing in helping move the profession forward. Again, attend the February 3, 2017 meeting and learn more!



Cathy Geyer, Esq., Manager, Ohio Supreme Court Dispute Resolution Section

Cathy Geyer comes to the Ohio Supreme Court via a career in civil mediation with the insurance industry, having previously been employed by Nationwide Insurance and Motorists Mutual. Much of her work involved mediating insurance claims. She is a native of Central Ohio. Although a graduate of The Ohio State University's Moritz College of Law, she took Capital Law School's Dispute Resolution classes and there she really got the bug. She is constantly learning from practitioners and is always open to new ideas.

Cathy is committed to promoting mediation to the public and the courts and to providing resources to practitioners across the state. She hopes to see the field expand, to see more people take advantage of the Supreme Court's resources and to help implement programs throughout Ohio where currently there are none. Having just completed her first year with the Ohio Supreme Court, Cathy is encouraged by the cooperation she has received around the state and has high hopes for continuing to work with OMA in the challenge of making alternative dispute resolution a viable option in the public's mind when it comes to seeking resolution of conflicts.

## Commission on Dispute Resolution Truancy Prevention Through Mediation and Ohio House Bill 410

The Subcommittee last met on October 25, 2016 to discuss the various aspects of the program and possible resources to help augment its services and effectiveness. Two of our Board members are on the committee, Teresa Cusma and Ed Krauss. A main topic was the anticipated impact of the passing of House Bill 410 which, adopts nationally accepted best practices to support students and families and keep students engaged in school and on a path to success.

The bill passed and the main changes are:

Creates a new process for youth who are missing school - this requires principals to use intervention resources before any charges are filed against the youth in question;

Eliminates habitual truancy as an automatic delinquency offense;

Prohibits students from being suspended or expelled for missing school;

Establishes data collection on truant youth; and

Aligns truancy definitions with instructional hours.

The subcommittee is developing a pilot program that will build on current mediation, intervention, and diversion programs to include a reference/resource tool kit, establishing best practices and collaborating with school and community resources as well as data tracking. It is the Subcom-

mittee's hope that that this bill will increase the use of mediation as an effective intervention across the state.



## Social (Media) Proof: Marketing Mediation in Modern America

### Crisis in Conflict Resolution

When mediation was first introduced as an alternative to litigation, its proponents seemed to believe that widespread use of mediation would occur if the public knew about it (one survey in the early 1990s supported this assumption[1]). This view makes sense in light of the flaws of litigation and the ability of mediation to remedy these flaws. Litigation involves risk, expense, and incentives for each side to exaggerate and minimize in a way that hinders the truth-telling potential of courtroom procedure. Because attorneys understand this, they tend to negotiate with opposing counsel and sell settlements to clients who were not directly involved in reaching this resolution. With the psychological benefit of getting to yes shifted to attorneys, it's no wonder that clients resent lawyers and are often dissatisfied with legal negotiations.[2]

However, despite the rational benefits of mediation and increased public awareness of the process, the demand for mediation has not materialized in the way its early adapters had predicted.[3] There are a number of cultural, psychological, and decision-science ele-

ments working against the widespread use of mediation

First, American culture presents obstacles to mediation. Our collective psyche focuses on individualism over collectivism and the benefits of competition. As a projection of our approach to conflict, our justice system focuses on discerning an objective truth rather than accepting multiple, varied truths in a search for the greater good. And, finally, our culture tends to discredit negotiation, frowning on car salesmen in a way that cultures employing a bartering economy would not.

Next, important psychological elements work against the use of mediation. Though mediation presents a rational choice for disputants, people in crisis are not thinking rationally. Also, people can be conflict-avoidant, preferring outcomes handed down from authorities or accepting their lot through cognitive dissonance. Lastly, people discount ideas coming from adversaries, including offers, counteroffers, and even the suggestion of attending mediation (NOTE: research by Dr.

Tanya Menon—one of our speakers for the 2017 OMA Conference—indicates that, while people discount ideas from adversaries, they value ideas from competitors)

Finally, the dynamics of how people with conflicting positions reach decisions also deters the frequent practice of mediation. Often, one disputant is satisfied with the status quo and will not approach the negotiation table voluntarily. Also, openness in a cooperative process exposes the participant to being taken advantage of by competitive adversaries (consider the competition-cooperation dynamics of the Prisoner's Dilemma). Furthermore, if parties could mutually identify the problem and agree to approach mediation, they likely would be able to communicate effectively enough to negotiate without the assistance of a mediator.

The force of the above obstacles prevents the public from turning to mediation, even when they know that it's an option. It is not enough to teach the public that mediation exists and offer it alongside

### Professional Development Opportunities

For a list of [trainings](http://www.supremecourt.ohio.gov/JCS/disputeResolution/training) sponsored by the [Supreme Court Dispute Resolution Section](http://www.supremecourt.ohio.gov/JCS/disputeResolution/training) and for their list of approved outside trainings, go to: <http://www.supremecourt.ohio.gov/JCS/disputeResolution/training>

Also, [Columbus Community Mediation Center Services of Central Ohio](http://www.communitymediation.com) is offering several upcoming trainings at <http://www.communitymediation.com>

litigation. So, how do we overcome these obstacles? I suggest that we look to marketing with effective use of information technology.

### Marketing Mediation in Modern America

These days, people get most of their information online. People trust online reviews, satisfy their curiosity through search engines, and believe rumors they read on Facebook. Culture is an integrated pattern of knowledge, beliefs, and customs; and our culture is recorded, modified, and transmitted through the Internet. As a result, behaviors, culture, and decisions are best influenced through online presence. *(Marketing Mediation continued on page 4)*



OMA is a professional organization of mediators and Alternative Dispute Resolution practitioners throughout Ohio, dedicated to giving a collective voice to the diverse business and professional needs of its individuals members. Founded in 1989, OMA provides leadership, professional development, networking opportunities, business advertising, a mediator registry, information, and opportunities for individuals to help publicize the benefits of mediation to the public.

Through regular meetings, conferences, newsletters, email blasts, committee activity, and reciprocity with other organizations, OMA is constantly working to increase the use of ADR in both the public and private sectors.

As an information clearing house, OMA provides information about employment and training opportunities as well as links to other ADR organizations and activities.

## Better World Award 2017

Each year the Ohio Mediation Association presents an award to a person or entity that has made the world a better place through their work, directly or indirectly, related to the mediation or dispute resolution field. The very first recipient was Betty Montgomery in 1998, followed by Chief Justice Thomas Moyer. If you work with someone who has impressed you by their commitment to ADR program development, such as Chief Justice Moyer, to teaching and training, mentoring, program implementation, and promoting greater awareness of mediation to the public, then, by all means, submit his or her name, and they will be considered. Also, if you want to see someone you know who has contributed to the greater good in Ohio through public service such as Betty Montgomery, submit his or her name. There is a nomination form on the website. Just go ahead and fill it in and submit it by March 1, 2017. It's a nice way of recognizing leaders in our field and giving credit where credit is due and demonstrating OMA's appreciation for activities that help move our profession forward. This award will be presented at the OMA Annual Conference held May 19, 2017.

*(Marketing Mediation continued from page 3)*

By "online presence" I am referring to your ability to be the subject of online testimonials and be at the top of online searches.

For example, let's say you're an attorney looking for mediation clients. In addition to the people who are approaching you through personal references and traditional marketing, you want to be seen by potential clients Google-searching "low-cost litigation" or "how to avoid court" along with your practice area and geographical location. If you write an online article about how litigation is cheaper when people avoid court by using mediation and then link that article to your OMA profile or Google business listing, you are more likely to be seen by these potential clients.

While it is not enough that disputants know that mediation is an option, it is possible to use the

Internet to convince them through targeting their decision-making process, social proof, and eventually changing our culture. First, though people are generally aware of mediation in a cool-headed state of mind, it is not where their mind goes when they are in crisis.

Consider what disputants would Google search when panicking about the subject matter you mediate, then write a blog about that and link your contact information or Google business profile. And even when you have one disputant sold on the idea, you will need to convince the other of your credentials. So, next, use social proof by encouraging satisfied customers to rate and review you online. This means Facebook likes, Google business listing ratings, or reviews on websites that list members of your subject matter profession (e.g., [www.Avvo.com](http://www.Avvo.com) for attorneys). Eventually, people will not only have knowledge of mediation but also experience with it. Innovation research indicates that new ideas

"tip" into widespread application when 15% of the population regularly applies them.[4]

The thought leaders who publicized the existence of mediation took the first important step toward a more collaborative society. However, it is now up to the practitioners to reach out to disputants to make mediation a process people turn to when facing crisis.

[1] ADR Awareness, 10 Alternatives to High Cost Litig. 148 (1992) ("A recent survey by the National Institute for Dispute Resolution of public attitudes toward ADR reveals that once people understand what dispute resolution processes are, they overwhelmingly choose ADR to settle a dispute, rather than going to trial.")

[2] Craig A. McEwen et. al., Bring in the Lawyers: Challenging the Dominant Approaches to Ensuring Fairness in Divorce Mediation, 79 Minn. L. Rev. 1317 (1995) ("In the episodic, lawyer-run negotiation,

clients who play a passive and consultative role may believe that their lawyers are doing little and resent the diminished participation in and control over their case. The direct engagement of parties and concentrated attention to negotiation that mediation provides can thus improve lawyer-client relationships as well as efficiency and communication.")

[3] Robert Benjamin, Guerilla Mediation: The Use of Warfare Strategies in the Management of Conflict (1999) (available at <http://www.mediate.com/articles/guerilla.cfm#>)

[4] Geoffrey A. Moore, Crossing the Chasm (2014).

~ Nathan Witkin, Esq., President, Ohio Mediation Association, Blog Posting, OMA Website.