



Mediate Ohio

SPRING

2020

VIRTUAL TRAININGS WILL BE HELD IN LIEU OF THE ANNUAL CONFERENCE THIS YEAR



After much deliberating, the Board has decided to err on the side of health and safety and stick with the wisdom of social distancing in the wake of the COVID-19 virus. First, we postponed the conference to the fall and then we decided no one can really predict how this pandemic will unfold. As a result, we are considering an online training in the fall,

monthly workshops (lunch and learn maybe?), and a series of on-line-meetup "cocktail hours. In fact the first of these will be on Thursday, April 16th on ZOOM at 5:00 p.m. The main discussion topic will be on-line mediating and we hope to get good member participation for sharing experiences and information.

In the meantime, we will negotiate with Tammy Lenski to postpone her training until some time in 2021. Many good ideas have been developed and we hope this will be a topic at our annual meeting on May 8, 2020.

Coincidentally, Charlotte Parsons has written an article for the newsletter that discusses on-line mediation, something which may very well become a common way to conduct a mediation. A lot of what she points out lends itself to on-line learning through ZOOM as many of us attended the Ohio Supreme Court Dispute Resolution Section's Mediator's Round Table that was held virtually in March. There was a good discussion about best practices, tips, functions, and drawbacks for on-line mediation. For many of us, this is a learning process with a steep learning curve, but most of us are all learning together, and many others are willing to share what they have learned and help guide us through.

So, we hope you will join us at a different venue this year for our conference – your office, bedroom, living room, or even your car! If it is a beautiful day, you can find a quiet space at a park and still attend the conference.



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**MEMBERSHIP
MEETING MAY 8,
2020 AT 12:30 P.M.**

Conference options are still up in the air with several dates and possibilities being weighed. However, the annual Membership Meeting scheduled for May 8 will still be held on-line with ZOOM at 12:30 p.m. We will announce the new President and Vice President, say goodbye to Nate, take a vote on by-law changes, and discuss goals and activities for the upcoming year, or other topics as submitted by members.

LEADERSHIP

ADVOCACY

PROFESSIONALISM

EDUCATION

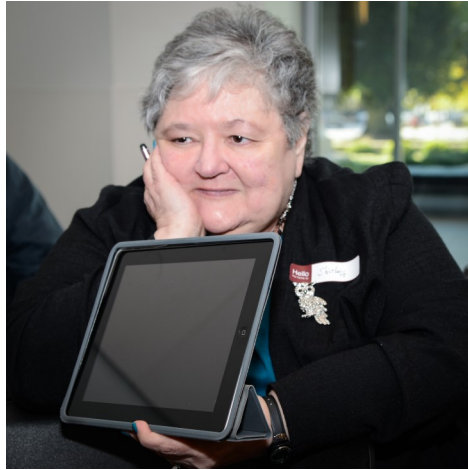


Hats Off for OMA Pioneer and Member Shirley Cochran!

Many of us who have entered the field of Alternative Dispute Resolution (ADR) over the last 15-20 years often do not have a grasp of the hard work and dedication many early adaptors like Shirley Cochran contributed to advance the field. We hear about the legacy of Chief Justice Moyer who was a strong advocate for Conflict Resolution, but often we do not hear about those who were on the front lines developing programs, advocating, networking, and working hard make Mediation a profession and to popularize it with the legal system and the public.

Shirley Cochran is one such early adaptor who began to get the bug in 1986. For eleven years, she had been a litigator for the Attorney General and was getting bored while also thinking there had to be a better way to settle disputes after seeing what litigation did to people. She came to believe that mediation was a better, more equitable way to settle disputes. Her training started with a 3 hour seminar to mediate for Settlement Week and then in 1988, a 20 hour program put on by then Governor Celeste's Commission on Peace and Conflict Management which eventually became the Ohio Commission on Dispute Resolution and Conflict Management. Two of her trainers were Scot Dewhirst and Terry Wheeler. She began volunteering in Franklin County Municipal Court's Small Claims program and then Settlement Week in Franklin County Common Pleas Court, Municipal Court and the Federal District Court in Columbus. In 1990 she became the Circuit Rider for the Supreme Court's Committee on Dispute Resolution through a grant from the Ohio Commission. She set up municipal

court mediation programs in four smaller and more rural courts, wrote a manual on how to set up the programs and then set up two more based upon the manual. She had plenty of assistance from Terry Wheeler, who was then with the Commission, Ei-



leen Pruett, Scot Dewhirst, Tom Addressa, Dave Doyle and many others helped her train over 100 mediators for these programs and then they taught the manual at the Ohio Judicial College with the end result being a total of 47 programs being started. She stated that the biggest challenge was the attitude of the local attorneys. One of the mediators told her he had overheard an attorney say, "When that bitch goes back to Columbus, we will close this program down", not realizing that it was the Judge who wanted the program. Needless to say, she was like Prometheus pushing a boulder uphill.

Other mediation programs she was involved with include the U.S. Postal Service REDESS program (EEO claims), the SMART program for mediating truancy cases in Columbus public schools and then its follow-up program,

contract mediator for the Franklin County Municipal Court Judge and Magistrate referral program, contract mediator with the KeyBridge Foundation which administered the mediation program for the U.S. Department of Justice's Americans with Disabilities

Act mediation program, and employed as the Mediator/Magistrate for the Clermont County Common Pleas Court in Batavia for over two years. The last new program and only contract she has remaining is as a mediator for the Franklin County Auditor Board of Revision mediating disputes by property owners

when the Auditor sets the value of the property and the owner believes it is too much and appeals to the Board of Revision. When the program started seven years ago they were backlogged 25,000 cases. Most of the mediations are handled by phone so the property owner does not have to travel to downtown Columbus. The ten mediators caught the program up in two years with a settlement rate of about 97%.

Her OMA work has included Treasurer and Newsletter (then called Newscaster) Editor for many years before becoming President in March 2004. She worked on helping to write and then contracted to teach the UMA. She also served on the Credentialing Committee and is still active in pushing this initiative forward. She has been a tenacious member of OMA, volunteering, holding office, attending meetings, and always attending conferences.

Some areas of concern she has about the future of mediation is that there aren't enough mediators who make money at

it to even afford OMA dues. Also, she is concerned about attorneys and retired judges who only take the bare minimum of training and then call themselves mediators when they hardly have a clue what mediation really is about. Mediator credentialing is another issue of concern for Shirley from the very beginning of her mediation career.

As far as the future of OMA and its priorities, she would like to see our bi-monthly meetings resumed. One interesting proposal she endorses is hiring a part-time administrator. She feels volunteers get burned out (as she can well attest) and that the organization can afford to hire someone to attend to the nuts and bolts of running a nonprofit. She would also like to see OMA recruit volunteers to go to the law schools and other organizations to talk up ADR to students and capture their interest before they age out of the law schools and enter the world of cut-throat litigation. By way of outreach, she would like to see OMA hold education seminars for attorneys around the state to explain what mediation is and how it can be beneficial for them to work with mediators to get a settlement.

Shirley was the recipient of OMA's Better World Award in 2019 which was, in the opinion of many members, long overdue. She has been a steadfast supporter and advocate for mediation, an attorney who "got religion" so to speak, and a dedicated trail blazer in the struggle to bring mediation to Main Street. If you've ever been to an OMA meeting when Shirley was there (and she's rarely missed any), you no doubt learned something listening to her speak. Opinionated, yes, but usually right and usually instructive. Her legacy will be felt by all of us as we renew our efforts in the coming months to engage members, set goals, and promote mediation to the courts and the public. It's a daunting task as she can well attest; but, in the spirit of the "true believer" that she is, we can learn from her example and carry on the campaign to facilitate quality resolution practices that will benefit the public and the courts. So, Hats Off, Shirley! Take a bow, Lady! We will surely see you at the next meeting.

Association for Conflict Resolution/Peace & Justice Studies Association

2020 Annual Conference

Conflict & Justice in an Era of Polarization

September 23 - 26, 2020

Omni Champions Gate, Orlando FL

REMOTE CONTROL MEDIATION *by Charlotte Parsons*

Before COVID-19, if you had ever mediated with disputants when at least one party participated remotely, by phone or video, you understand the conundrum of remote-control mediation. As experienced mediators we all strive to keep excellent control of the room—of the process. After all, that's a foundational tenet of what we do to help disputants engage in a quality conversation and hopefully reach resolution.

But how do we keep *control* when mediating remotely? As we all try to hone our remote mediation processes, here are two big tips that have helped me in mediation, parenting coordination, and GAL work these past few weeks, followed by some current guidelines and how-to resources.

Go visual, when possible, and control the environments.

If you were not technically savvy before the pandemic, you probably are becoming so now.

By using freshly updated video platforms such as FaceTime, Zoom, What's App, or Skype, our work can be much more effective than telephone conferencing. Visual body language and facial expressions put the spin on our words that give

full meaning; in fact our physical presence conveys much more information than our words alone.

Don't underestimate your own appearance. When working from home, it's easier for clients to forgive the occasional dog barking in the background if the mediator is dressed in their normal professional attire with a professional background, or even a virtual background that evokes your style and an appro-

by the parties in advance of their mediation appointment in all the ways you normally would, or with adaptations, if necessary. Also add some directions for parties about the need for private space. For example, parents may need special accommodations for home-bound children; the mediation may need to occur when children are asleep.

When I began exclusive video mediation in March, I learned that a simple reminder for privacy was not enough. One father was sitting comfortably alone in an echoey living room when I began the screening intake conversation. But I was immediately uncomfortable with his environment since his teen children were not far away in their bedrooms rooms, could possibly hear his booming voice discuss his issues about their mother, or could walk in at anytime on their way to the kitchen. Before we were 10 words along, I asked him to relocate to his truck in the driveway. He pushed back a little since it was early and cold, but I was

able to convince him with kind-but-firm words coupled with please-and-thank-you facial expressions. (Those parents did reach a full agreement, and, very importantly, no children were harmed in the making of their agreement.)

Lean on mediation basics, and slow the flow.

With telephone mediation we are working blind, but we sharpen our listening and do our best. With video mediation, we can listen deeper and respond more accurately to the messages we receive from parties. Visual and verbal two-way communication helps us better understand underlying interests and other emotional nuances such as doubt, fear, aggression, regression, resignation, relief, satisfaction, etc. This is how we mediate in person, and while not perfect, video mediation can come close. Mediation basics such as reflective listening, open inquiry, and peeling back the layers in search of root interests are the daily tools of our trade. While working remotely, I find myself appreciating the power of those techniques, and deeply grateful to all the mentors who



priate mood such as a calm nature view, a familiar city scene, or even an office look. It's important to make sure there is enough light on your face so that you are not backlit and silhouetted, and audio quality should be maximized.

Educate, safety-screen, and get your Agreement to Mediate signed

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Book Review: It's All Your Fault! 12 Tips for Managing People Who Blame Others for Everything, Bill Eddy, LCSW, Esq., 2008. HCI Press. (by Linda Norris)

improve your mediation skills, I enthusiastically recommend Bill Eddy's book. It is practical and designed for others to more clearly understand the challenges of working with High Conflict People (HCP). Citing statistics that estimate from 15-17% of the population has a personality disorder or personality disorder-like behaviors he asserts it is just logical being in the dispute resolution field, many of us encounter a higher percentage of HCP's than in other professions.

I am usually averse to labeling behavior or classifying people as one type or another because to me it dehumanizes people and makes it easier to demonize or deify others rather than just accepting them as they are, warts and all. Which is why I was skeptical when I first began to read the book with its detailed descriptions of the four basic personality disorders. Then, I realized Eddy's approach is really eye-opening because he explains how HCPs are the way they are and, more importantly, why they are almost powerless to change themselves.

He speaks from a position of compassion even though this sub-population of people can be some of the most difficult we all will ever encounter. Eddy speaks from a lot of trial and error, first as a Social Worker, then as a Therapist, then as an Attorney and then as a Mediator. He tells it like it is, based on a wealth of experience and education.

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If you are always looking for tips, techniques, tools, and ideas to

with his readers what has worked for him and what he has learned so that we can, therefore, more effectively deal with and help them resolve disputes when at all possible.

He states that "I've been studying this high-conflict pattern for the past dozen years, and it's amazing. Though it's a growing problem, it's a predictable problem – and can be managed in most cases, if you understand it." And, he proceeds to help us understand it by presenting lots of real-world examples, tips for managing it, study questions, and easy-to-remember acronyms for techniques we can use. He further states that most HCP's who do have a personality disorder have one major common denominator – blaming others for their problems. Sound familiar?

He defines an HCP as "someone who constantly gets into conflicts and often behaves badly. They blame others and avoid taking responsibility for their own problems or for changing their own behavior. HCPs aren't just difficult people – they're the MOST difficult people." Their one major shared trait is that they have their own Target of Blame (TOB) whom they "blame for problems that are almost always of their own making." And, the challenging aspect of working with them is that they "can't see the connections between their own behavior and their problems."

He describes the HCP personality pattern thusly: rigid and uncompromising, repeating failed strategies; unable to accept or heal from a loss; negative motions dominate their thinking; unable to reflect on their own behavior; difficulty empathizing with others; preoccupied with blaming others; and avoiding any responsibility for the problem OR the solution. It used to be that I never really gave it too much thought about trying to figure out a person based on a list I'd read in a book or traits I'd heard a speaker describe in a workshop. Maybe it just didn't sink in, but reading Eddy, I began to better understand the usefulness of what he was saying.

Recently, I had a parenting plan mediation at the request of the father who wanted to modify the parenting plan from their divorce. I interviewed each of them and learned this about him: he described himself as Dad of the Year, clearly held in ex as his Target of Blame (TOB) saw himself as a victim in his marriage and had no idea why she "abandoned" him (she moved out while he was on a business trip). In

mediation, he easily cried, raised his voice, dominated the discussion, constantly interrupted his ex, pushed boundaries, was verbally abusive, and belittling towards her, ran hot and cold, and justified his anger with his claims of being a victim.

From her, I learned how he pushed boundaries, how she walked on egg shells so as not to provoke him, how her self-esteem had taken root in the basement during her marriage, and about concerns she had about his parenting skills, how she often overlooked unacceptable behavior because he wouldn't (or couldn't) acknowledge or take responsibility for his behavior, and how he shared his adult problems with his small son in ways she felt were entirely inappropriate.

My fire alarm went off. I was reading this book at the time and felt I needed to better calibrate my actions to the situation so I scheduled a second session, consulted the book where Eddy describes a Borderline Personality Disorder and was relieved in a way that this man fit the description of a BP almost to the last sentence, except, of course, I fully well believed I could be entirely wrong and that some of his traits might also be caused by trauma, a real mental illness, brain damage, emotional dysfunction and a host of issues all mixed together or separately. But he seemed like a bona fide example of Eddy's analysis. I learned how he pushed boundaries, how she walked on egg shells so as not to provoke him, how her self-esteem had taken root in the basement during her marriage, and about concerns she had about his parenting skills. about some of her enabling behaviors she uses to try to placate him, giving in without setting limits or keeping her own boundaries intact, how her guilt at leaving him often caused her to overlook unacceptable behavior or to back down from talking to him about anything substantive having to do with their child since he interprets all feedback as criticism. Of course, I've never said to her, "I think you were married to a man with a personality disorder."

But I did consider that he could very well be what is called a PB and that there are some ways that have been found to more effectively deal with them than other ways. Eddy provides lots of explanations, examples, and insights that can help us better understand who

we are dealing with and why they are difficult to work with. He says that BPs exhibit traits that are anathema to getting a good resolution: wishful thinking; tunnel vision; exaggerated fears; projecting and splitting. They are driven by very basic fears: Borderlines have a constant fear of abandonment; Narcissists a fear of being inferior; Histrionics a fear of being ignored; and Antisocials a fear of being dominated. His concrete examples and accessible prose really give us insights into dealing with HCPs and very good tips for working with them.

For instance, he provides caution about some mediator behaviors that will ultimately fail, and warns that often a problem-solving approach will not work because, for them, the person is the problem, and they cannot take their focus away from their TOB so that they will resist or sabotage problem solving. Another example would be a historic type who more than anything fears being ignored. I recently had a client who was almost hysterical during the first mediation. It seemed she wanted to use most of the time to verbally berate her ex-boyfriend and when we moved into problem solving to do a parenting schedule that, at his request, cut down their interaction to almost none at all, it seemed she withdrew and then would not follow up with a third mediation. I concluded, well, we were making progress in problem solving but we didn't heal the hole she wanted him to fill, and if there was no love any more, at least there would be negative intimacy.

By way of tips in dealing with HCPs Eddy recommends what he calls E.A.R.: Empathy, Attention, and Respect (and setting limits). He goes into depth explaining how this unfolds in practice and cautions "Don't get angry back," "Don't blame them back" and "Don't challenge their point of view." He says don't get hooked into fixing and rescuing them either and only "empathize with the person, not the complaint."

Also, Eddy cautions us about how to protect ourselves when dealing with them. They can make you feel inadequate, suck you in, manipulate you, trip you up, and waste your time. After all, these are people who tend to enjoy litigation, drama, and attention. "Our procedures of fairness and openness unintentionally encourage complaints and prolonged disputes. We thoroughly and objectively examine the "limited "facts," without recognizing

the significance of personality problems and how they can distort the "facts." This encourages those with personality disorders to seek validation and vindication for personal problems and upsets they can't handle inside

UPDATE

Scot Dewhirst continues to cope with multiple myeloma. Please keep him in your thoughts. You can wish him well and give him your words of encouragement at sdewhirst@adwillp.com.

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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 individual members. Founded in 1989, OMA provides leadership, training, professional development, networking opportunities, business advertising, a mediator registry, advocacy, and information for its members. Through regular meetings, conferences, newsletters, email blasts, committee activity, regular blogs, 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.

REMOTE CONTROL MEDIATION (Cont'd.)

help me fill my toolbox.

For me, virtual mediation effectiveness is most palpable when I intentionally s-l-o-w the moment. Sometimes I slow the conversation for my own sake, for better understanding, but most often, I slow it for the parties. Slowing the mediation moments brings calm and dignity to the parties and their issues, and it allows everyone a better chance to comprehend the issues more accurately.

One recent mediation involved proposals of complex schedules. In person, I use a big calendar for parties to study. Virtually, I had not yet experimented with screen-sharing or the whiteboard functions, (don't worry, they're easy). But in order to slow that particular moment when my parties might get frustrated, I did what I often do in person—I leaned back in my chair with my arms open on the armrests, took an obvious deep breath, and said, "Let's think a minute." Both parties mimicked me by

relaxing their postures, taking a breath and going silent. We didn't sit there long, but it seemed a very natural pause, and it refocused everyone in the "room". I doubt that would have been as easy on a telephone conference call.

Again, remote-control mediation is not the same as in-person mediation and it surely has its challenges. But in the past few weeks, I have seen parties begin their mediations nervous, and even a little desperate, only to finish mediations with verbal and visual expressions of relief and pride in their efforts. As professionals, we all know that great feeling of mediation done well. Now, even during the crisis of COVID-19, I am satisfied that we can still provide excellent, professional service, albeit, virtually.

I'd love to hear about your remote-control mediation trials, tribulations, tips, and triumphs.

Please send your tales to Charlotte@ListenMediation.com

Charlotte Parsons is a family, workplace, and business mediator located in Franklin and Licking Counties, Ohio, or virtually anywhere.

More information for mediating during COVID-19:

AFCC: Professional Resources for Shelter-in-Place

<https://www.afccnet.org/Professional-Resources-for-Shelter-In-Place>

ACR: Update Newsletter Archive

<http://www.multibriefs.com/briefs/acrnet/>

New York Times: Dos and Don't of Online Video Meetings

<https://www.nytimes.com/2020/03/25/technology/personaltech/online-video-meetings-etiquette-virus.html>

ABA Pandemic Task Force:

<https://www.americanbar.org>

Book Review Cont'd.

themselves through the courts and other agencies. They know people will listen and take them seriously."

Antisocials are another example.

They can be smooth talking, polite, attentive, disarming, charming, and charismatic. They will tell you whatever they think you want to hear if they think they can get something in return. For them, it is a con. They can make a partner feel crazy so that the contrast between the cool, calm, deceptive, charmer and the angry, bitter, pained, and confused ex who comes across as an acute mess is

quite dramatic so that many people tend to automatically gravitate to the "rational," polite, soft-spoken client rather than to the one who is all over the place and full of hurt.



with HCPs, but it helps to be more aware of difficulties and to have some tools for man-

Thus, the challenge for mediators is not necessarily to be able to label people's behavior as this or that, but to recognize maladaptive behaviors indicative of personality disorders and to tailor our responses to the situation. A lot of what we do in facilitative mediation lends itself to effectively conducting a mediation

aging them when we encounter them. And, we also need to accept we can't win 'em all, and these are the most difficult folks to work with because for them, conflict is a way of life, and many of them thrive on it.

Therefore, I hope you find Bill Eddy's writings as helpful as I do. He challenges us to really think through our client interactions and to protect ourselves in the process.

