

Mediator

NEWS & NOTES

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What I had Wished I Had Known:
Lessons From Mediation And Life

“In the transformative mediation process, parties can recapture their sense of competence and connection, reverse the negative conflict cycle, re-establish a constructive (or at least neutral) interaction and move forward on a positive footing, with the mediator’s help.”



Understanding the Transformative Approach to Working with Conflict



Scheduling Update

Thank you to all of you who participated in our survey about Mediator Scheduling. We will continue to schedule mediators through the email system with the cdrcscheduling@gmail.com.

We also added Saturday offerings for parties to mediate after hearing from several of you, that you would be available and would like to mediate on Saturdays.

UPDATES



TRANSFORMATIVE MEDIATION-A PARTICIPANT DRIVEN REFRESHER

NOVEMBER 16TH 9:00 AM-3:00 PM

Schuyler County Buildings and Grounds

910 S. Decatur St, Watkins Glen, NY 14891

Transformative Mediation – A Participant-Driven Refresher

We all know that as transformative mediators we're supposed to follow the parties. But what about a training that follows participants instead of leads with a set agenda?

Judy Saul is leading a training on Saturday, November 16 from 9 am to 3:00 pm that will be developed on that day with input from those who are present. What nagging questions about transformative practice are bothering you? Where do you get stuck in your practice? What else would you like to know?

The content will be participant-driven and so will the learning. Given the number of years we've been transformative practitioners, we'll learn from each other as we talk about what's worked and what hasn't.

Come to learn from others and to share the learning you've accumulated through your practice.

Please RSVP by October 21st by emailing Gina at williams@cdrc.org or calling 607-734-9087.

****ONLY 3 SPOTS LEFT! Please RSVP by October 21st .****

effective communication strategies



an education program by the alzheimer's association

Communication is more than just talking and listening – it's also about sending and receiving messages through attitude, tone of voice, facial expressions and body language. As people with Alzheimer's disease and other dementias progress in their journey and the ability to use words is lost, families need new ways to connect. Join us to explore how communication takes place when someone has Alzheimer's, learn to decode the verbal and behavioral messages delivered by someone with dementia, and identify strategies to help you connect and communicate at each stage of the disease.

This activity is supported, in part, by a grant from the New York State Department of Health.

*Advance registration is required at least 5 days before the program date. Unfortunately, programs with minimal registrations will be cancelled. If you do not register, you are still welcome to attend, but please call **800-272-3900** to confirm that the program is still scheduled.*

UNDERSTANDING ALZHEIMER'S AND DEMENTIA

An education program presented by the Alzheimer's Association®



ALZHEIMER'S IS NOT NORMAL AGING.

It's a disease of the brain that causes problems with memory, thinking and behavior.

Join us to learn about:

- » The impact of Alzheimer's.
- » The difference between Alzheimer's and dementia.
- » Alzheimer's disease stages and risk factors.
- » Current research and treatments available to address some symptoms.
- » Alzheimer's Association resources.

Visit [alz.org/CRF](https://www.alz.org/CRF) to explore additional education programs in your area.

alzheimer's  association®

- ★ **Elmira Office**-2nd floor conference room-Thursday, October 17th 10:00am-12:00 pm with Ken Dorner from Alzheimer's Association
- ★ **Ithaca Office**-New Mediation Room-Wednesday, October 23rd 1:00 -3:00 pm with Carianne Wilson from Alzheimer's Association



CELEBRATING ANNIVERSARIES

Can you believe that we do not have any mediators who have an anniversary in October?
I thought I would take this moment to highlight our Lemon Law Arbitrators.

David Stotz
Tompkins County

Cynthia Lion
Tompkins County

L.J. Freitag
Chemung County

Thank you to all our volunteers for choosing to make a difference in the lives of people experiencing conflict.



LEMON LAW ARBITRATION

Maybe you read the celebrating anniversaries, and wondered "What is Lemon Law Arbitration?". Arbitrators are trained by NYSDRA to arbitrate cases under New York State's New Car, Used Car and Wheelchair Lemon Laws. NYSDRA administers the Lemon Law Arbitration Program through a contract with the NYS Attorney General's Office to provide an independent, efficient and fair forum to settle disputes for consumers whose new or used motor vehicles turn out to be "lemons." Arbitration is different in mediation in that the decision is up to the arbitrator based on the evidence that is brought forward by the Dealer/Manufacturer or Customer.

In NYS, the New Car, Used Car and Wheelchair Lemon Laws provide a legal remedy for buyers or lessees of new and used cars that turn out to be lemons. If your car does not conform to the terms of the written warranty and the manufacturer or its authorized dealer is unable to repair the car after a reasonable number of attempts, you may be entitled to a full refund.

New/Leased Cars, Motor Homes and Motorcycles

A new vehicle that was purchased, leased or registered in New York State for personal use and which shows a serious problem or defect that is not corrected after four or more repair attempts, or is out of service due to repair for at least 30 days, within the first 18,000 miles or two years (whichever comes first), may be eligible for the Lemon Law Arbitration Program. If successful, the consumer will be entitled to either a full refund of the purchase price (less an allowance for mileage over 12,000 miles), or a comparable replacement vehicle. The consumer will also be awarded a return of the \$250.00 arbitration filing fee for an arbitrator's award in his or her favor.

Used Cars and Motorcycles

A vehicle purchased or leased from a New York State dealer (one who sold or offered to sell three or more cars within the previous twelve-month period) for personal use with more than 18,000 miles is also subject to Lemon Law coverage depending on the mileage at the time of purchase.

[NYSDRA Lemon Law](#)



****Susan Raines is not a Transformative Mediator, however, this article I found to be very interesting and some pieces of it applicable to any style of mediation. ****

by [Susan Raines](#)

October 2019



After more than 16,500 mediations inside and outside of the court system, dozens of organizational interventions, executive coaching, and overall collaborative problem solving, I have learned some hard lessons about what works and what doesn't. I hope that by sharing these lessons, you can become an expert mediator and collaborative problem solver both in both your work and personal life (Poitras & Raines, 2013).

1) Experience Matters:

One consistent finding across research studies of mediator skill is that experience matters more than the amount of mediation training or whether one is an attorney or non-attorney mediator (Raines, Davis, Johnson and Albert, 2019; Raines, Pokhrel and Poitras, 2013). Some U.S. states and countries require mediators to observe and/or co-mediate real cases as part of their training (e.g. Florida, California, Oregon, Italy, Australia) while others do not (Georgia, Maryland, Mexico)[\[1\]](#). Yet observing and co-mediating allows you to hone your skills, meet experienced mediators, alternative dispute resolution (ADR) program administrators, and attorneys. These connections will be critical to getting on rosters, assignment to cases, and advancing your professional development in various ways. Every time I observe an experienced mediator, I learn something new. There is no substitute for observing across a wide variety of case types, unless you believe you can build a practice by focusing on one specific area of specialty. This is most true for mediators who come to the practice of mediation after working as attorneys, insurance adjusters, family therapists or others who can bring a stream of case referrals with them. Build your experience!

2) Expect Imposter Syndrome:

Do you remember the first time you drove a car alone after getting your driver's license? Or the first time you gave a lecture as a teacher, stood up in court as an attorney, etc.? I wish I could go back in time and issue a refund to my first mediation clients. Not only was I terribly nervous, but my inexperience led me to declare impasse too early (see #3). This feeling may be somewhat unavoidable, but here is your recipe to prevent or overcome it: A) Observe, co-mediate, engage in informational interviews, job shadowing, etc. so you are as familiar and comfortable as possible in the environment you will be working in. This is true for all "firsts" not just mediation. B) Fake it 'till you make it'. I do not mean you should misrepresent yourself, your experience or your skills, but have confidence in the fact that you received proper training and preparation for this moment. By exuding confidence, you will help allay the fears of your clients and reassure them that you have this well in hand. Even if you do not feel this way on the inside....take a deep breath, walk through the steps of a good process, and trust that the process will be of use to the parties. Do not obsess about your settlement rate---- you cannot advertise it or verify it, yet new mediators tend to focus on achieving settlement even in cases where settlement is not a good idea. Some cases need a judge.

3) Show You Care:

If people believe you do not care about them, their case, their losses, and their experience of the conflict, then they won't be open to listening to what you have to say or following your directions as you shepherd them through the problem-solving process. I usually leave mediation feeling that both sides were "right", but something went wrong. Maybe the tenant lost his job and fell behind on the rent or there was a car accident (accidents happen), or even a medical error or negative outcome. Even when one party is clearly to blame, such as a third-time drunk driver causing property damage to parked cars....I can feel compassion for the

person who has dug a metaphorical hole so deep that she can barely see the light at the end of the tunnel. In those situations, it is my role to help them see that by taking small steps in the right direction, they can regain hope for a better, more stable future. Show them the light at the end of the tunnel and explain it will be hard work, but you believe they can do it! You have a role as cheerleader, docent, shepherd of the process, passer of the tissues---- that you care.

As one Atlanta mediator noted, “Mediators are neutral, not neutered”. You will develop empathy for some parties or dislike for others. The key is to make sure the process is fair and that you keep your like/dislike to yourself so it does not negatively impact both the reality and appearance of neutrality. When parties try to convince me they are right, I say something like this, “Even if I believed everything you are telling me, it just doesn’t matter much because I lack the power to force the other side to change their position. Would you like to share this evidence (or perspective) with them to see if it impacts their view of the strength of their case?”

There is a corollary to showing you care--- maintain and communicate healthy boundaries to avoid enabling bad behavior and manipulative parties. For example, if a tenant and their kids are about to be evicted from public housing because they did not pay the \$40/month rent they owe, do not whip out your wallet and pay it for them. Do not make their problem your problem because doing so also takes away the ability they have to learn and grow from the experience. They can usually solve the problems they face or reach out to legitimate sources for assistance—not the mediator.

4) People are Often Irrational:

Spending \$100,000 on legal costs for a case valued at \$25,000 is irrational, yet not uncommon. Taking your ex to court so you can fight about who gets the kids on Halloween is irrational (e.g. the judge will have them alternate years or split the evening, so why go all the way to court to address this?). Expecting to become a millionaire because the public bus ran over your pinky toe is not rational, yet it is so common that we have a special term for it in mediation: ‘jackpot syndrome’. Getting stuck on an ‘unrealistic position’ is the most common cause of mediation impasse according to a study of more than 200 of the world’s most experienced mediators (Poitras & Raines, 2013). Sadly, irrationality is not the exclusive purview of the parties in mediation, but can spread to attorneys, insurance adjusters and sometimes even to the mediator! We are all vulnerable to this fault. Here are some tools to get parties (or yourself) unstuck from irrational positions:

A) Discounting: If they ask for \$100,000 and won’t move off, you ask them what are their chances of receiving that judgement in court. They offer, 70%. You ask, “How much will it cost in legal fees to get there?”. They estimate another \$15,000. So.... $100,000 \times .70 - 15,000 = \$55,000$. Would they accept an offer of \$55,000 today?

B) Interests under their positions: What is it they are really seeking? What need are they trying to meet? Do they want an apology? To save face? To get revenge? To teach the other side a lesson? To continue to get the attention of their ex? Once you know what need they are trying to meet, then you can find another way to meet it. For example, I had a case in which the mom’s position was that dad should never see the kids. She says he is a good dad and there was no abuse. So why this position? “Because he cheated on me and doesn’t deserve them!”. Once I knew her real goal was revenge, I was able to ask reality-checking questions so she could think through how the kids would feel if they no longer had a relationship with their dad. I asked if she might achieve her goal for revenge in the alimony section of the case, rather than the parenting section since my state allows judges (or juries, yikes) to award greater alimony based on the conduct of the parties during the marriage. She agreed. Get to the real interests to overcome what seems like irrationality. This is a negotiation strategy that carries weight far beyond the mediation table.

5) Bad Behavior Continues as Long as It is Working:

Novice mediators will say things like this, “Since the other side is being so stubborn and you are so reasonable, I need to you compromise a little more to get this resolved”. Poppycock! You just rewarded bad

behavior and punished good behavior. As a mediator, parent, co-worker, boss, and overall human being it is important to avoid rewarding negative behavior. Otherwise, you just ensured more of the same. If a bully demands your lunch money and you give it to him, do you think he won't come back tomorrow? If the toddler whines for a cookie and you give it to her, you just bought yourself a lot more whining. As a mediator, it is important to name the behaviors you are seeing and explain why they do not work in mediation. Sometimes people did not recognize what they were doing, but other times they knew exactly what they were doing. Sometimes you need to help them replace a negative behavior with a positive one because they just lack the skills needed to do so without instruction. For example, if a client keeps name calling, you can explain common ground rules and let them know that you will need to break into caucus sessions if the behavior continues (this is boundary setting). Caucus takes longer and they are paying their attorney (and hopefully you) by the hour. If they do it again, immediately break to caucus. In caucus, you can discuss strategies for self-control (deep breathing, pausing before speaking, time-outs, etc), but if these do not work, then the entire process may require caucus session. Other common bad behaviors in mediation and potential solutions:

* Interrupting each other: If anyone in the room is finding this offensive or problematic, but it keeps happening, turn anything into a "talking stick" and indicate that the only one speaking is the one holding the talking stick (e.g. pen or any common object). Joke about it, but do it. It helps.

* Coming late: Late party pays the whole fee for the time they were late.

* Breaking agreements: All future agreements must contain provisions for automatic penalties for the breaking of the agreement. For example, "for every 1 minute late to pick up the kids, the late party pays \$2.00".

* Stuck in the past: Use this strategy when you repeatedly hear a party describe how badly they have been treated. If they are stuck on (re)telling the story of their victimhood (which may be true) and therefore unable to move to the problem-solving stage, have the other side summarize what the 'victim' has said (clarifying that their summary does not mean they share the other side's perspective). Once the victim knows they have been heard, then the mediator announces it is time move to the net phase--- brainstorming solutions.

* Insanity in mediation: The definition of insanity is doing the same thing repeatedly and expecting a different outcome. Do not say or do anything more than three times without getting the desired result. If I tell my teenager to throw his clothes in the hamper 100 times, then shame on me. I just taught him to ignore me and wasted my breath. If I say, "I will not wash any clothes that fall outside of the hamper" then I won't have to teach that lesson more than once. As a mediator, do not repeatedly warn parties to stop bad behavior. Two or three times is more than enough before changing your behaviors to invoke a different response. This is trial and error, but if your first strategy isn't working, it is time to change it. Encourage the parties to live by this rule too. It will transform co-parenting conflicts, I assure you.

* For group work slackers: require peer assessments as part of the grade. After the first assignment, regroup all the slackers into a group of their own.

6) Conflict Comes from Unmet Expectations:

With your family, partner, co-workers, and in mediation....conflict comes from unmet expectations. When conflict arises (as it always will), it is a chance to improve a relationship. Yes, improve it. If you deal with conflicts without defensiveness, with caring and a joint-problem solving approach, it conveys that the other person is important to you and builds relationships. Try this 3 step approach to uncovering hidden expectations and then negotiating shared expectations (agreements) designed to solve problems between two or more people.

A) Normalize and express optimism:

“It’s totally normal that 2+ people who work/live together will encounter conflict. I am sure that if we put our heads together we can work it out in a way that meets the needs of everyone”.

B) Each person shares their expectations and the ways in which their expectations did not work out, without interruption. A roommate conflict, for example, “I expected that we would divide the household bills equally, but you said you do not have your share of the rent and it is already the 2nd of the month”. Roommate #2: “ I expected that since you earn twice as much as I do, we would each pay the rent in proportion to our incomes. Plus, I do more of the cooking and chores because I am home more often”.

C) Negotiate shared expectations and revisit as needed. In the example above, they could trade some chores for rent, or they may agree to divide everything 50/50, or come up with a different solution. In the end, all that matters is that they reach agreements that work for them both and then abide by them.

This three-step problem solving process can be used to help diffuse the blame game inside and outside of mediation while assisting parties as they seek to preserve and enhance relationships while solving important problems in their daily lives.

Conclusions

Mediation holds many lessons for life in general. The more I work to help others resolve their conflicts, the better I get at preventing and addressing my own. I hope these lessons help you to become an Expert Mediator and collaborative problem solver both inside and outside the mediation room.

ENDNOTES

Poitras, J. and S. Raines. *Expert Mediators: Overcoming Mediation Challenges in Workplace, Family and Community Conflicts*. Jason Aronson (a division of Roman & Littlefield), New Jersey, 2013.

Raines, Susan S. Casey Davis, Joshua Johnson, and Alvin Albert. “Comparing the Performance of Attorney vs. Non-Attorney Mediators: Policy Implications for Court-Connected Mediation” *Justice System Journal*. Submitted August 28th, 2019

Raines, S.S., S.K. Pokhrel and J. Poitras, “Mediation as a Profession: Challenges that Professional Mediators Face”, 2013 Fall. Vol 31 no 1. *Conflict Resolution Quarterly*.