



### Mission Statement:

The mission of the Washington Mediation Association is to advance the use of mediation as an effective form of alternative dispute resolution; to foster high standards of mediator conduct, training, and certification; and to be the voice of mediators in Washington State.

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## Mediators are Human Too: Managing your Emotions as a Mediator

By Lars Watson

Learning to manage my emotions is one of the most important skills I gained as a mediator. I have sometimes, especially in my early years of mediating, feared that my own emotional reactions in the mediation setting would harm the process. My challenge was becoming more comfortable with expressions of anger.

In western thinking emotions are often seen as interfering or detracting from rational thought and good decision making. Recent research from neuroscience, however, suggests that emotions play a central role in enabling decision-making. Neuroscientists are now learning that the portion of the brain active during emotional experience (the mid brain) is the same part of the brain active when we get feedback on our decisions.

Our brains are active long before we can verbalize what is going on. Our emotions occur before our rational brain can organize or describe events. Similarly, we may arrive at a decision before we can articulate why we have made that decision.

Two things are vital here. One is that there are times when we should follow hunches and take a risk even if when we cannot fully explain our choice. It may seem dangerous, but the mediation process is robust enough that it will still work if you make some mistakes. The other is to get as much practice mediating as possible. The more exercise our brains have in making decisions about mediator interventions, the better this deep level of mental process will work.



While emotions are crucial to a mediator's decisions about how to intervene, they can also overwhelm us and impede our ability to function as mediators. We should be aware of our physiological and emotional responses so as to keep them at levels which do not interfere with our ability to mediate.

We must first recognize our own internal signals of emotional arousal. For me it is an increased heart rate, a flushed feeling in my face, and tightness in my chest. For others, it may include a feeling in their gut or light-headedness. I would encourage mediators to recognize when you are experiencing these signals. Prior to beginning mediation, a few things can be helpful.

First, remind yourself that these emotions are about you and not about the parties,

## Vision Statement:

The vision of the Washington Mediation Association is for people to value and utilize collaborative, respectful, and nonadversarial means of dispute resolution, and for these means to be accessible to all. Practitioners will uphold the highest levels of impartiality, integrity, professionalism, and expertise.

## Mediation Links

[Resolution Washington, Dispute Resolution Centers](#)

[Mediate.Com, news and mediation services](#)

[Association for Conflict Resolution](#)

[Federal Mediation & Conciliation Service](#)

[Mediation Training Institute International](#)

even though the parties may trigger them. Second, try meditating before your mediation session to remain calm and to have compassion for others. Short of meditation, use the ritual of setting up the room to allow for a brief quiet time to calm yourself. Third, talk with your co-mediator (if you have one) about any challenges, including any fears of strong emotions, either of you fear may impact your ability to facilitate a neutral process.

During the mediation ask questions that engage logical, rational thought.

- Sequencing – Think about restating in a chronological order
- Listing – Think agenda building
- Ordering – Think counting something
- Perception of stimuli – Think of reframing to offer a new view
- Sorting – Think of putting things in categories
- Problem solving – Think about asking questions that generate alternative, brainstorming
- Caucus - Take the time to calm down

These are particularly useful when you, as a mediator, experience strong emotions that could lead to mediator bias, while asking them may help maintain a neutral process and help the parties with their emotional levels.

Finally, if the strong emotions are such that you cannot continue, stop the mediation. Explain to the parties that something has come up that interferes with your ability to act as the mediator, and that the session needs to be rescheduled. This will be extremely rare.

Lars Watson is a mediator for the Bellevue Community Mediation Services and former WMA Board member.

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## IRS Alternative Dispute Resolution Programs

Alistair M. Nevius

Adapted from *Journal of Accountancy* 207, no. 4 (Apr 2009), 73.



The IRS recently made permanent and expanded its fast-track mediation program to certain exempt and government entities and announced the establishment of a two-year test of mediation and arbitration procedures for offers in compromise and trust fund recovery cases under the jurisdiction of the Office of Appeals.

Announcement 2008-11 establishes a two-year test of the arbitration and mediation procedures. During the test period, the appeals officers will offer mediation and arbitration for taxpayers whose appeals are considered in Atlanta, Chicago, Cincinnati, Houston, Indianapolis, San Francisco or Louisville, KY.

There are some limitations. Neither mediation nor arbitration is available for cases in which the taxpayer has the ability to pay in full or where the taxpayer has declined to amend or increase the offer without stating any specific disagreement with the valuations and methodologies used to determine reasonable collection potential. Mediation also is not available for cases in which the taxpayer has already attempted to resolve the matter through fast track mediation.

Alternative Dispute  
Resolution Resources

Conflict Resolution  
Information Resources

ADR Section -  
Washington State Bar  
Association

Conflict Quotes

Give me the money  
that has been spent in  
war and I will clothe  
every man, woman,  
and child in an attire of  
which kings and queens  
will be proud. I will  
build a schoolhouse in  
every valley over the  
whole earth. I will  
crown every hillside  
with a place of worship  
consecrated to peace.  
~Charles Sumner

War does not  
determine who is right  
- only who is left.  
~Bertrand Russell

## Discipline Goes on Trial at Colleges

SARA LIPKA.

Adapted from *The Chronicle of Higher Education* 55, no. 29 (March 27, 2009).

College and university conduct officers have been moving away from the legalistic disciplinary systems that colleges built in the latter half of the 20th century. Colleges are making hearings less like trials, and more frequently using mediation and similar techniques to settle disputes.

At the meeting here, called "Transforming Our Practice for the Future," the Association for Student Judicial Affairs changed its name to the Association for Student Conduct Administration, dropping the J-word many members had already stripped from their campus offices. And not only the legalistic terms are waning. A national survey presented this month shows that institutions are scaling back on some criminal due-process procedures they used to uphold, such as a person's right to have a public hearing and to confront opposing witnesses.

"We do not want to be mini-courts," says Gary G. Dickstein, president of the student-conduct association and assistant vice president for student affairs at Wright State University, in Dayton, Ohio. "Slowly but surely, we've been encouraging people to get as far away from any legal terminology as they can." Leave the protracted wrangling to courts, he says. Whether with hearings or mediation, stick to a process that students can readily navigate.

Campus-conduct procedure became courtlike when it stopped being paternalistic. In the bygone era of *in loco parentis*, colleges' discipline was discretionary, like parents'.

But in 1960, Alabama State College (now Alabama State University) identified six black students who had participated in civil-rights demonstrations and expelled them without a hearing. They sued, in *Dixon v. Alabama*. In a landmark decision, a federal appellate court ruled in the students' favor, saying that a public institution owed them the right to defend themselves. Similar cases in that tumultuous decade prompted colleges to establish due-process protections.

Disciplinary functions spun out of deans' offices and took on the authoritative label "judicial." Some campuses almost followed penal codes, says Donald D. Gehring, a professor emeritus of higher education at Bowling Green State University and founder of the student-conduct association. The disciplinary process became procedural for one main reason, Mr. Gehring says: "We were afraid we would do something wrong and get sued over it." The 1975 the Supreme Court case *Ohio, Goss v. Lopez*, set the standard that institutions' sanctions should involve "some kind of notice" and "some kind of hearing." But colleges' procedural obsession hindered liberal interpretations of that standard.

As colleges peel off layers of due process, however, in an effort to shed the staid judicial model, they may actually subject students to more institutional control. That poses a challenge in cases that generate strong public pressure, especially those involving athletes and allegations of sexual assault. Protesters' calls for action -- and fears of liability for inaction -- can prompt institutions to swiftly discipline accused students.

"Administrators have a strong inducement to basically punish first and ask questions later," says Mr. Pavela. Several student-affairs officers pointed to the allegations of

I dream of giving birth to a child who will ask, "Mother, what was war?" ~Eve Merriam

It'll be a great day when education gets all the money it wants and the Air Force has to hold a bake sale to buy bombers. ~Author unknown, quoted in *You Said a Mouthful* edited by Ronald D. Fuchs

The release of atom power has changed everything except our way of thinking... the solution to this problem lies in the heart of mankind. If only I had known, I should have become a watchmaker. ~Albert Einstein

The direct use of force is such a poor solution to any problem, it is generally employed only by small children and large nations. ~David Friedman

rape against lacrosse players at Duke University. (The institution reached a settlement with the students who were indicted, suspended, and later declared innocent in the case; a lawsuit filed by their teammates, whose season Duke canceled, is pending.)

As the word "judicial" goes away, a judicial temperament -- in other words, an open mind -- should not, Mr. Pavela says. These days he finds the need to emphasize a point he has always repeated: "Hear the case before you decide it." Which also means investigating - and mediating where appropriate.

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## No Disputing New Venture in Michigan

David Czurak.

Adapted from *Grand Rapids Business Journal* 26, no. 48 (Nov 24, 2008), 6.

Grand Valley Metro Council is thinking of creating a mediation center that would resolve disputes between local governments instead of having to take legal action to settle a disagreement. But GVMC Executive Director Don Stypula said the regional planning agency would not be directly involved in the arbitration process or in solving a quarrel that would come to the center. An established outside mediator would be called in to hear an argument. "We would simply act as a conduit for funding and the service would be free of charge," he said.

Stypula said the center's mediation fees would likely run from \$100 to \$150 an hour - less than what it costs to hire a litigator on an hourly basis. Rather than using the council's membership dues to finance the center, Stypula said he will ask area foundations to provide the financial backing.

But Grand Rapids Township Supervisor Michael DeVries asked why a foundation would be inclined to support the effort.

Stypula said having a formal mediation process in place to settle disputes would add to the region's already noteworthy reputation for cooperation. He said the idea was welcomed in the initial and informal talks he has had with foundation heads, who, in turn, said conflict resolution was a message that would play well with developers and businesses thinking about coming to the region. "They gave me a 'thumbs up' and said they were interested" he said, while adding that the business and commercial real estate communities also supported the concept.

DeVries then asked why such a center was needed, as the county and five cities resolved their dispute over jail fees without anyone's intervention.

"If nothing ever at all arrives (at the center), that's testament to us," said Stypula.

Wyoming Mayor Carol Sheets said a mediation center would help to keep the press from sensationalizing a dispute and might even be able to keep the media out of a matter entirely. "For me, it's a no-brainer," she said. "So why not do it?"

Board members unanimously agreed to have Stypula take a deeper look into establishing the center.

"This is not binding in any way," said GVMC Chairman and Grandville Mayor Jim Buck of the council's vote. "We're just moving forward."

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## US Mayors Urge States to Require Mortgage Mediation

By Jon Hurdle

PHILADELPHIA, June 11 (Reuters) - Mayors from five U.S. cities called on Thursday for states to pass laws that would require mortgage lenders to negotiate with borrowers who are threatened with foreclosure.

The mayors of New York City, Los Angeles, Miami, St. Louis and Oakland, California, said mandatory mediation offers the best hope of stemming a national foreclosure crisis that led to an 18 percent surge in foreclosure filings in May compared with a year earlier. The mayors aim to follow up on a year-old program in Philadelphia that brings lenders and borrowers together under court supervision, and has allowed more than 70 percent of participating homeowners to remain in their homes.

"Many local governments are turning to the Philadelphia model," Bertha Lewis, chief executive of Acorn, a national community organization that has been active in trying to curb foreclosures, told reporters during a conference organized by the U.S. Conference of Mayors.

While Philadelphia has been able to implement its mortgage foreclosure protection plan unilaterally, other cities represented on the call would need a change in state law to implement such a program, said Elena Temple, a spokeswoman for the mayors' organization.

### 1,200 HOMES SAVED IN PHILADELPHIA

Philadelphia Mayor Michael Nutter said 3,380 homeowners in the city have participated in the program and 1,200 have saved their homes through renegotiated loans or agreements on payment arrears. Another 1,500 are in negotiation. The total number of Philadelphia foreclosure filings since the program began in early June 2008 was 5,200, of which some properties were vacant, some owners filed for bankruptcy, and others hired their own lawyers rather than participating in the city program, officials said. Cities also hope to emulate Philadelphia's outreach efforts in which officials go door-to-door informing homeowners faced with foreclosure that they may be able to save their homes through the program.

Nationally, 321,480 properties, or one in every 398 houses, were in some stage of foreclosure in May, the RealtyTrac organization reported on Thursday. That was 6 percent below April's level but the third-highest on record.

Miami Mayor Manny Diaz said foreclosures in Miami-Dade County doubled in both 2007 and 2008, and were more numerous in the first quarter of 2009 than in all of 2006. "If we don't stem the tide of this foreclosure crisis, it isn't going to get any better any time soon," he said.

New York City Mayor Michael Bloomberg said he was optimistic that the New York State Assembly would enact legislation to make mortgage mediation mandatory.

Bloomberg said at a news conference on Thursday that current state law allows homeowners with subprime mortgages to negotiate modified loans but that less than half of such borrowers in New York City take advantage of that opportunity. (Additional reporting by Michelle Nichols; Editing by Bill Trott)

"There are no atheists in foxholes" isn't an argument against atheism, it's an argument against foxholes. ~James Morrow

Sometimes I think it should be a rule of war that you have to see somebody up close and get to know him before you can shoot him. ~M\*A\*S\*H, Colonel Potter

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