



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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A Question of Ethics

I was recently on a flight from Chicago to Seattle when I learned that my seat mate had recently been through divorce mediation here in Washington. He angrily described how the mediator had ignored how he and his ex-wife wanted to divide their property and instead told them how they would divide it. So much for self-determination and neutrality, and I am seeing more of it!

Twenty years ago few people knew what a mediator was or what it was mediators did. That has changed as more and more qualified and unqualified people hang out shingles as mediators and more and more people turn to mediators for help. There is a growing awareness of mediation and how it is supposed to work. While most mediators operate within well-delineated ethical boundaries, it seems that a few are succumbing to the temptation to run not just the process, but determine the outcome as well.

Why would a mediator short-circuit the process? Well, it's faster, for one thing. Too, a few have created relationships with attorneys where the mediators deliver what the attorneys want, and consequently keeps getting referrals from the attorneys. This is NOT the fault of the attorneys, who are representing their clients with due diligence as required by the canons of law. It is, however, the fault of the mediator, and I offer that it often is unethical.

The *Standards of Practice* for both WMA and the Association for Conflict Resolution deal directly with these questions.

- I. Self-Determination:** A Mediator Shall Recognize that Mediation is Based on the Principle of Self-Determination by the Parties.

Self-determination is the fundamental principle of mediation. It requires that the mediation process rely upon the ability of the parties to reach a **voluntary, uncoerced** agreement. Any party may withdraw from mediation at any time.

Comment: Telling the parties what they can or cannot agree to, except when in violation of law or local court rules, violates the principle of self-determination.

- III. Conflicts of Interest:** A Mediator Shall Disclose all Actual and Potential Conflicts of Interest Reasonably Known to the Mediator. After Disclosure, the Mediator Shall Decline to Mediate Unless all Parties Choose to Retain the Mediator. The Need to Protect Against Conflicts of Interest Also Governs Conduct that Occurs During and After the Mediation. A conflict of interest is a dealing or relationship that might create an impression of possible bias. The basic approach to questions of conflict of interest is consistent with the concept of self-

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determination. **The mediator has a responsibility to disclose all actual and potential conflicts that are reasonably known to the mediator and could reasonably be seen as raising a question about impartiality.** If all parties agree to mediate after being informed of conflicts, the mediator may proceed with the mediation. **If however, the conflict of interest casts serious doubt on the integrity of the process, the mediator shall decline to proceed...**

Comment: Pushing for a settlement that one or both attorneys want in order to continue getting referrals from them constitutes a conflict of interest.

Trying to make a living as a mediator is difficult but we must always be aware of the boundaries we must not cross.

That is my opinion. I welcome contrasting views.

Darrell Puls, WMA President

Mediator on Obama Transition Team

Nancy Peace returned home to Newburyport (VT) a few weeks ago after spending more than two weeks working in Washington, D.C., as part of the transition team for President-elect Barack Obama. It was, she said, an exciting time.

Peace, 63, worked alongside MIT Professor Thomas A. Kochan, doing an assessment of the Federal Mediation and Conciliation Service, a federal agency that oversees arbitration and mediation of labor disputes and contract negotiations.

"It went well," Peace said Monday. "I felt very honored to be asked."

Peace is an arbitrator, mediator and trainer and the past president of the Association for Conflict Resolution and its predecessor organization, the Society of Professionals in Dispute Resolution. She now serves on the board of the Labor and Employment Research Association and is a member of the National Academy of Arbitrators and an associate member of the Boston Bar Association.

She also worked as a mediator/arbitrator with the Massachusetts Board of Conciliation and Arbitration from 1983 to 1993. Earlier this year, Gov. Deval Patrick appointed her to the Massachusetts Division of Labor Relations Advisory Council.

Obama's transition team is responsible for assessing every department and agency within the federal government as a means to ease a smooth transition with Obama and his team when he takes office at the end of January.

Serving in the strictly volunteer position, Peace was responsible for setting up her own housing for the time in Washington. Luckily, a former member of the YWCA in Newburyport — the organization for which she is the president of the board of directors — had just moved there and offered to let her stay at her house.

"I basically worked a normal work day," Peace said, adding that her schedule was about 8:30 a.m. to 5 p.m. For someone who is self-employed, the time schedule and daily obligation of filing a report was a different experience.

At the end of their review, they compiled and submitted a more in-depth report. The report focused on an overview of the agency, staffing and resources, and what issues might arise for the new director Obama will likely appoint. The agency's director is a political appointment.

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Conflict Quotes

A country cannot simultaneously prevent and prepare for war.
- Albert Einstein

All warfare is based on deception.
- Sun Tzu
The Art of War

An eye for an eye only makes the whole world blind.
- Mahatma Gandhi

The new director will be given the report compiled by Peace and Kochan to help him or her in the new role.

"It was exciting to be around people who are so enthusiastic, hopeful and extremely well-organized," she said.

- Katy Farell, Staff Reporter, *Daily News*, December 26, 2008

Hope for Horses – in Mediation



There may be a peaceful resolution in sight for an ongoing dispute between the City of Edwardsville (CO) and one of its residents.

On Monday, Edwardsville officials and Sam Davidson sat down with a mediation team from the Wyandotte County K-State Extension Office to begin what both parties hoped would be a step in the right direction.

Davidson, who owns nine acres of land on which he keeps 38 horses, most of them part of his horse-rescue operation, is upset with the city about allegations his property is overcrowded with the horses and is causing adverse effects on his neighbor's properties. In an effort to save both he and the city money from attorney fees, Davidson sought out an alternative solution.

"(The mediation team) is something I found on the Internet while searching for another avenue to pursue something in a positive way for both sides," Davidson said. "It's an avenue for farmers to use when issues arise. We're dealing with people who understand farmer's issues as well as social issues and can be fair on both sides."

Following the first meeting, Davidson said he hoped the process would work for his situation. While he couldn't go into detail about what exactly was discussed or what resolutions were being considered because of mediation rules, he said he thought the meeting helped both sides get a better understanding of the issue.

"In any mediation, the key is understanding everyone's view point," Davidson said. "That was something that was actually discussed, and that there was a barrier there before that needed to be crossed, and I think something positive came out of that."

Edwardsville City Administrator Michael Webb agreed that he, too, thought the initial meeting was a positive experience for all. He said a second meeting had already been scheduled for the end of January.

"In my opinion, I think it was very valuable time spent," Webb said of the three-hour mediation meeting. "There wasn't a specific resolution at this point but both parties got a lot of understanding of where the other parties are coming from, which is helpful at this point."

Webb said he understood the whole operation that Davidson conducted on his property and could take that into consideration with dealing with what Webb referred to as "code enforcement-type issues."

"Overall, in my opinion, (the meeting) achieved its purpose, and that was the opportunity for the parties to sit and talk about the issues and about why we're taking a specific position on the issues," Webb said. "We were able to move past step one, which we weren't getting past before."

-Nicole Kelley, *The Chieftain*, December 18, 2008

As far as I'm concerned, war always means failure.
- Jacques Chirac

Darkness cannot drive out darkness; only light can do that.
Hate cannot drive out hate; only love can do that.
- Martin Luther King, Jr.

Every gun that is made, every warship launched, every rocket fired signifies, in the final sense, a theft from those who hunger and are not fed, those who are cold and not clothed.
- Dwight D. Eisenhower

Mankind must put an end to war before war puts an end to mankind.
- John F. Kennedy

Colorado Construction Dispute in Mediation

Timnath and Fort Collins officials will meet privately for the second time today to attempt to resolve issues over the disputed Riverwalk project at I-25 and Harmony Road. In a letter to the community, Riverwalk developer Jay Stoner and partner Rus Hackstaff of Turnkey Companies, urged the two sides to work toward an agreement "that is best for everyone involved."

"We can see why Riverwalk has created an unintended situation where Fort Collins and Timnath could go to war over this property," the letter said. "Yet, we can also see how the whole region would benefit if Fort Collins, Timnath and Riverwalk could find a way to a mutually beneficial agreement. We don't want this to become a war. ... We want some type of collaborative effort that benefits Northern Colorado."

Stoner said he hopes both sides will agree to take the higher ground and find a way to come to an agreement that allows everyone to win something.

Riverwalk is designed as a transit-oriented development with river canals, as well as residential, commercial and office space.

Timnath was set to go ahead with Stoner's annexation despite Fort Collins' vociferous objections until Fort Collins set up a competing annexation for a strip of land Timnath was going to use to reach the west side of I-25. Stoner's land, on the southwest corner of I-25 and Harmony Road has long been in the city's growth management area. But Timnath disregarded the GMA saying Fort Collins has had no problem usurping Timnath land on the east side of the interstate.

The spat has exacerbated bad blood between the two towns, dating back several years.

The two sides have been tight-lipped about the mediation, but Fort Collins Mayor Doug Hutchinson said given the fact there's a second session, it's a "positive thing that there's progress being made. I view this as an opportunity to improve our relationships and resolve some longstanding issues," Hutchinson said. "My goal is to do a successful mediation and have both sides walk about believing things have worked in a positive way for both sides."

-Pat Ferrier, *The Coloradoan.com*, December 15, 2008.

Let Common Sense Guide You in Negotiations

We seem to need rules for everything in life. Rules seem to go on and on. The rules for negotiating are simple.

There are no rules! Forget the rules, and concentrate on common sense. Think back to the stuff Mom and Dad taught you. This stuff is pretty basic, and sometimes we complicate life with a lot of nonsense. Keep it simple!

Why should we complicate a simple process of listening? Ask questions, hear the answer, and then respond. Simple stuff works, and the job gets done more quickly and with less mess. I know you want some rules, so I will give you guidance. But instead of rules, I want to give you the qualities of a good negotiator:

DISCIPLINE

Discipline is what Navy Seals and Tiger Woods are made of, the internal

War may sometimes be a necessary evil. But no matter how necessary, it is always an evil, never a good. We will not learn how to live together in peace by killing each other's children.
- Jimmy Carter

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Contact Us

Darrell Puls, Editor

focus that gives us the drive, desire and dedication we need to be at the top of our game. Discipline is what will give us the winning attitude. Without it, there is no motivation and no way to be at the top of your game.

Think of it as a diet: You need discipline to lose weight and even more discipline to keep it off. One problem for most people is that they only go a little way and lose some of the weight. Truly disciplined people lose all the weight and keep it off permanently.

ENDURANCE

Also called "stamina," endurance is the ability to keep going when others have quit. People have always called Henry Kissinger and even Donald Trump incredible negotiators. They are the Energizer bunnies of negotiating. They are in the fight for all 10 rounds and never, never get knocked out. They keep going and going and going.

RESPECT

Know two things about respect. First, for the other party to respect you, you must earn it. Second, for you to respect the other party, you must do your homework and find out as much as possible so that they in turn have your respect. If you go through life being genuine, nice, and - most important - honest, you will earn a good reputation, which promotes respect.

Tell people upfront what your intentions are. Trust me, they already know, but by being forthright and upfront, you earn more respect at the negotiating table. Honesty and your reputation are key, and you cannot fake them! Also remember that you both have the goal of winning something valuable. Unlike football or baseball, negotiation can produce two winners.

PATIENCE

You have heard that good things happen to those who wait. We are a pretty impatient bunch today, and a lot of us haven't developed the ability to tolerate adversity and to overcome frustration. That's what patience is, and to succeed at negotiating, there's no substitute for patience. You may need to overcome many obstacles to reach your goals.

If you persevere and add a sprinkle of patience, in most cases your outcome will be what you desired. Lots of publishers rejected my first book, "Can I Have 5 Minutes Of Your Time?" (After the 34th rejection, I lost count). But I was patient and never gave up, and that book is in its 14th printing.

EMPATHY

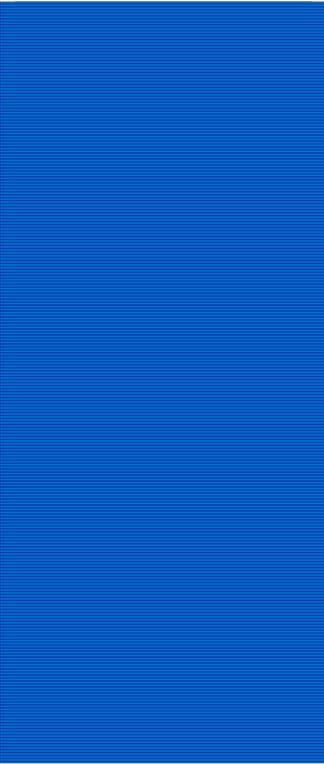
Do I still sound like Mom? Well, Mom is probably the greatest negotiator on the planet.

Think about it: She is constantly negotiating with her kid in the supermarket or in the toy store or even the playground. The kid wants everything, and Mom wants almost nothing the kid wants.

Empathy is the ability to view the other person's feelings and to put yourself in his position.

This is one of the most important traits to carry every day, throughout your life, no matter whom you meet. You will be a great observer of human nature, and people will appreciate the fact that you truly put their feelings or concerns before yours.

Having empathy for others and observing their behavior require practice. They take years to learn and probably will never be perfected. Strive to be genuine. People can easily spot a truly genuine person - and just as easily spot a phony.



HUMOR

I am so tired of being politically correct. We can't make fun of anybody anymore. I miss the comedian Don Rickles. He made fun of everybody. His secret was that he always made fun of himself first. If you can first laugh at yourself, then it's OK to take liberties with others because they know you're having fun and aren't being mean-spirited.

And by the way, we need more fun in the workplace. If I'm going to spend two-thirds of my life somewhere, then I am going to have fun. In the boring business world, let's take a few liberties. I'm not suggesting you tell jokes, put a whoopee cushion on chairs or conceal a buzzer in your palm. Just smile and see the comical in things.

The more fun you have, the more fun the people around you will have. When we lighten up a little, so do the people around us. You don't have to wait for the next person to do it first. A smile can light up a room!

- Hal Becker, *Portland Business Journal*, December 18, 2008