

family

WINTER 2009

MEDIATION

news

THE QUARTERLY NEWSLETTER OF THE FAMILY SECTION

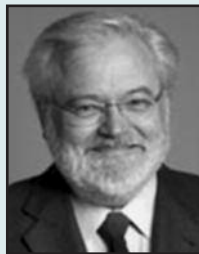
A Publication of the Association for Conflict Resolution, a Professional Organization Dedicated to Enhancing the Practice and Public Understanding of Conflict Resolution

Feature Article

Certification of Mediators Needed Now More than Ever

By Stephen K. Erickson

Certification of mediators is no longer an issue that should be debated. Certification is essential to the continued development of the mediation field and it must be accomplished in the near future for two important reasons: 1) Increasingly, adjudicative models of dispute resolution are being called “mediation” when, in fact, they are actually coercive and/or evaluative settlement conferencing techniques masquerading as mediation, and this confuses the public; and 2) ACR members who have toiled for years to provide the public with quality dispute resolution processes have difficulty marketing their products when the public is unable to distinguish between a qualified mediator and an unqualified person



Stephen K. Erickson, J.D., currently co-chairs ACR’s Taskforce on Mediator Certification and was a co-founder and second president of the Academy of Family Mediators. He is well-known as a mediation trainer and speaker and has published numerous articles and books on the subject of mediation. In 1996, he and his partner, Marilyn McKnight, were awarded the Distinguished Mediator Award by the Academy for their outstanding contributions to the field of mediation. Steve finished his three-year term as board member of ACR in 2005 when he co-chaired the original Certification Taskforce with Marilyn McKnight.

who decides to enter into the field with little or no training in mediation.

The difficult task, of course, is trying to figure out what measuring rod can be used to assess competency. I have struggled with this question on and off for the past 32 years, and most people with whom I have

talked about this issue find it easier to define what they consider to be bad mediation rather than what is good mediation. In reality, perhaps that is a starting point, because, if we can define inappropriate mediation, we are well on the way toward solving the problem.

Continued on page 4

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Editorial Policy

The views expressed in this newsletter are those of the various authors for the purpose of encouraging discussion. Unless expressly noted, they do not reflect the formal policy, nor necessarily the views, of the Association for Conflict Resolution or its editorial staff.

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Table of Contents

Feature Article:

Certification of Mediators Needed Now More than Ever 1

- Stephen K. Erickson

Editor's Notes 3

- Don Saposnek

From the Family Chair 6

- Russell Gerrard

Managing vs. Resolving Conflict 7

- Ron Heilmann

The Creative Solution: "In Capacity" 9

- Chip Rose

Ethical Dilemmas: What Would You Do? 11

- Clarence Cramer

Who is Going to Tell the Teacher? Divorce Education for Today's Educator 12

- Laura D. Lehman

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Dear Readers:

Rabbi Shmuley Boteach recently stated that Palestinians and Israelis can never resolve their disputes, since each group is rooted in its respective tribal consciousness, a phenomenon that keeps one loyal to one's cause and makes each party unable to see the point of view of the "others." Each party believes that its own survival requires staying with its beliefs, at whatever cost—even the lives of its children. He also pointed out that international peace cannot come about until each group loves its children more than it hates its enemies.

What is it about this principle of protecting our tribe and our beliefs that generates such irrational thinking that we will choose to self-destruct before finding a compromise? Anybody reading this publication can attest to the ubiquitous presence of this phenomenon within our high conflict divorce cases, with "tribal warfare" publically and repeatedly declared to family, friends and "helping" professionals, and to beauticians, barbers, and bartenders, alike. The parallel to Boteach's assertion is our experience of ex-spouses "hating their spouses more than they love their children." We know that some of this is accounted for by cognitive dissonance and self-justification, so powerfully described by Carol Tavris and Elliot Aronson, in their recent book, *Mistakes Were Made (But Not by Me): Why We Justify Foolish Beliefs, Bad Decisions, and Hurtful Acts*, and some of this is accounted for by the characterization of at least one of the enemy combatants having a diagnosable



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personality disorder, described by Bill Eddy in his book *High Conflict People in Legal Disputes*.

A number of colleagues and I were recently discussing how this dynamic gets played out in certain common types of divorce and post-divorce cases; specifically, when a parent calls and wants you to see his or her young child in therapy that reportedly is having serious problems (at school and/or at home) that are clearly related to the ongoing conflicts between the parents in their divorce. But, you then learn that the other parent refuses to participate, saying "My child doesn't have any problems, it's only she/he (the other spouse) who has the problem, and I don't want my child to have therapy because it will only stigmatize him, and, besides, *he* is not the problem." This position confronts the therapist-divorce professional with a dilemma; do you see the child anyway and risk unbalancing the parental system and putting the child further in the middle of the parental conflict (since the child will likely be grilled by the refusing parent after each session and will likely lose trust in the therapist), risk a lawsuit/challenge to your license (as that parent's displaced anger response targets you), and risk feeling powerless to help the child?

Or, do you refuse to take the case by asserting that you really cannot help the child unless *both* parents participate in co-parent counseling to learn ways to keep the child out of the middle? The essence of the dilemma is: The parents do not agree that there is a problem with their child, or, if they do agree, they do not agree on the approach for solving it (individual vs. family), and at least one parent refuses to cooperate in the treatment for solving it. What is a divorce professional to do? As our columnist Clarence Cramer asks, "What would you do?"

While you ponder that dilemma, take a look at the contents of this interesting issue of *Family Mediation News*. Up front, we have our own Steve Erickson and his update on the certification efforts on behalf of family mediators. Because there is much to discuss on this issue, we will be publishing more on this matter in future issues of *FMN*. Ron Heilmann then picks up on a commentary that I offered in my last editorial column in which I challenged us to consider whether we really *resolve* conflicts or just help disputants *manage* their conflicts; his insights are provocative. Chip Rose explores the

Continued on page 5

Certification of Mediators Needed Now More than Ever

Continued from page 1

I believe the key to solving the problem of certification is to look at our standards of practice and focus on the core principles that define our field as different from other similar professions. The central part of our standards has always been the principle of self-determination. I attended the Association of Family and Conciliation Courts' (AFCC) Denver Conference in 1982 that actually attempted to create standards of practice for mediators and the one principle that *all* groups represented could agree on was that mediation is non-coercive and is respectful of participants' self-determination. Before its merger with two other organizations to form ACR, the Academy of Family Mediators (AFM) took three sentences to define self-determination. The original AFM standards said: **"The primary responsibility for the resolution of a dispute rests with the participants. The mediator's obligation is to assist the disputants in reaching an informed and voluntary settlement. At no time shall a mediator coerce a participant into agreement or make a substantive decision for any participant."**

Today, the Model Standards of Practice for Family and Divorce Mediation, adopted by the ACR Family Section, is similar: "A family mediator shall recognize that mediation is based on the principle of self-determination by the participants. Self-determination is the fundamental principle of family mediation." However, in 2005, a group representing ACR, the American Bar Association and the American Arbitration Association promulgated the *Model Standards of*

I believe the key to solving the problem of certification is to look at our standards of practice and focus on the core principles that define our field as different from other similar professions. The central part of our standards has always been the principle of self-determination.

Conduct for Mediators. A simple reading of these 2005 Model Standards reveals that the new paragraph on self-determination is watered down and confusing: "A mediator shall conduct a mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome... Although party self-determination for process design is a fundamental principle of mediation practice, a mediator may need to balance such party self-determination with a mediator's duty to conduct a quality process in accordance with these Standards."

When seen as a continuum, the 2005 Model Standards have changed the responsibility for ensuring client self-determination from a very strong duty on the shoulders of the mediator to one that is based upon

some balancing act whereby "A mediator cannot personally ensure that each party has made free and informed choices to reach particular decisions, but, where appropriate, a mediator should make the parties aware of the importance of consulting other professionals to help them make informed choices."

While journeying on this road to certification, is it any wonder that we have difficulty finding an agreed upon measuring rod to gauge competency when our core principle of self-determination gets turned into some balancing act that suggests we should just refer the clients to other professionals?

What is clearly needed at this time, in order to advance the cause of certification of mediators, is a return to the prior AFM standards of clear and strong statements about self-determination and the absence of coercion. Once we do this, it will be easier to develop mechanisms to gauge competency. We all know that when we cannot give legal advice, coerce, or tell a party what the court will do in his or her case at a trial, then we are operating in the realm of competent, skilled mediation practice. It is the practice of trying to assist the parties on their journeys toward peaceful settlements without coercion, and all of us who have been in this business a long time can design testing and evaluation instruments around that difficult task. Join with me in agreeing that good mediation that can be certified as competent is exceedingly difficult and requires a great deal of skill to move parties toward cooperative settlements (as all of us know) when we do not engage in coercive,

Continued on page 5

Certification of Mediators Needed Now More than Ever

Continued from page 4

directive, or strong-armed tactics.

In order to assist in the process of mediation certification, we need to amend the standards of practice for mediators as follows:

- 1) Reaffirm the old AFM language about self-determination.
- 2) State even more clearly that there are three parts to participant self-determination:
 - a) Non-coercion in terms of process,
 - b) Freedom from influencing information gathering, and
 - c) Self-determination in making decisions.
- 3) Define good mediation by stating first what is *not* mediation. Conflict resolution processes based upon coercion and disrespect for client self-determination are not mediation and therefore not certifiable. These processes are essentially adjudicative and include:
 - a) **Evaluative processes:** These take on various forms. It might be early neutral evaluations sold to the public as mediation or it might be a retired judge or untrained attorney evaluating whose case might prevail in court and thereby obtaining a coerced settlement. These processes also include mediators who mediate custody outcomes by evaluating who is a better or worse parent rather than mediating parenting plans.
 - b) **Directive processes:** These

types of conflict resolution procedures take on many forms, but they all involve crossing the boundary between non-coercive and coercive. For example, the parties are seldom in the same room, the mediator is seldom from a behavioral science background and the parties emerge not owning the settlement.

- c) **Other adjudicative processes:** These would include some of the hybrid forms of conflict resolution such as mediation-arbitration, and I would include collaborative law by simply observing that it is actually the way all lawyers should always act towards each other; so what is new?

We can also strengthen our standards by firming up boundaries. Standard VI of the Model Standards includes an observation that the role of a mediator differs substantially from other professional roles by stating, "Mixing the role of a mediator and the role of another profession is problematic..." Rather than saying this raises a problem, I would prohibit such mixing and add the following: "A mediator shall not label a coercive, evaluative or other adjudicatory or adversarial dispute resolution process as a mediation process for marketing reasons or for any other reason."

If we could all agree on the above principles, then we would create a much better foundation for the task of creating mediator certification.

FMN

Editor's Notes

Continued from page 3

rarely dealt with aspects of if, and how, we take into consideration client "capacity" within our work. We also have Clarence asking, "What would you do" about another dilemma involving the intriguing question of when, within the course of a mediation session, does confidentiality end?

And last, in what is increasingly becoming a regular feature of *FMN* and may soon become a regular column, is the presentation of the fresh perspectives of students looking at our field (We invite *your* students to submit articles). In this issue, we feature the work of another of my talented students, Laura Lehman, presenting a new area of divorce work: educating school teachers about divorce. Her clear and poignant article is destined to open up new and emerging paths for the work of divorce professionals.

I leave you with this apt quote to which we and our clients should continue to aspire:

"When a friend makes a mistake, the friend remains a friend, and the mistake remains a mistake."

— Former Israeli Prime Minister Shimon Peres

Enjoy,

Don Saposnek
Editor

Family Mediation News

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“Wintertime Renewal”

By Russell Gerrard

I love winter! This is my favorite season of the year. The snow brings anticipation of the holidays (now past and gone), opportunities to play in the snow with my children, snowboard with my pals, and snuggle with my wife. One other benefit that I gain from the cold weather is the opportunity to put off home improvement projects and take more time to reflect on my life.

I find that there is so much for which to be grateful, even when experiencing the difficult periods of life. There are always friends and family to buoy me up when I'm feeling down. I have the assurance that the sun will ultimately shine again, regardless of how cold the weather may feel during these months. This is a powerful metaphor for optimism – the sun will always shine on us during difficult periods of life.

I encourage us to take more time to regularly reflect upon our lives and try to count our blessings. In the interest of this, I enjoyed the opportunity to attend the Rocky Mountain Retreat in February, since I had heard so many amazing experiences from those who have attended in the past, and I intend now to more effectively bring spirituality into my own practice.

My message this quarter to my fellow members of ACR's Family Section is to look for the sunlight in your own lives. When you find it, share it with your peers and clients.



Russell Gerrard founded Gerrard Mediation in 2003. He received a bachelor's degree in Communication and Political Science from the University of Utah, and studied in the master's program on Conflict Analysis and Resolution at Antioch College, and in the master's program of Nova Southeastern University. He spent two years (1995-1997) in Cote d'Ivoire (Ivory Coast) as a Christian missionary. In 2006, along with Shirley Pappin, he co-founded CRT Technologies (CRT), which develops, markets, and supports web-based applications for conflict management professionals.

I am sure that we can all benefit from a little more sunshine. One of life's lessons that I learned years ago is that an ever-sure remedy to the blues is to serve someone else. You have the opportunity to do that by placing yourself on one of our committees and serving the rest of the Family Section membership. That single act will help you to

renew yourself and to make an important contribution to your organization, all in the same action—a clear win-win situation. And, as always, if you think of ways that the Family Section Advisory Council can help you, please let us know; we are here to serve you.

FMN

Call for Submissions to Family Mediation News!

You are invited to submit content (and accompanying graphics) to the newsletter in the form of unpublished articles, general interest columns, news updates, Section news, calendar information and letters to the editor.

Submission Procedures

Please submit unpublished articles that provide pertinent and engaging information, research results, practitioner tips, and/or examples of programmatic success in the area of family mediation. The editor will review submissions on a rolling basis and will recommend for publication those entries that provide fresh ideas and perspectives. The author will be asked to provide a photo to accompany the article, preferably via e-mail. Authors will also be asked to sign a Permission to Publish agreement.

News updates, Section information, calendar information, and letters to the editor are also welcome. All submissions should be emailed with complete contact information (name, address, phone, fax, e-mail, professional affiliations) to Don Saposnek at dsaposnek@mediate.com.

Managing vs. Resolving Conflict

By Ron Heilmann

In the Fall 2008 issue of *Family Mediation News*, Editor Don Saposnek challenged us to begin a discussion about whether conflict is something those in our field actually *resolve*, or just *manage*. This is not a simple distinction to make, but I think it is important. Although I have never taken the time to write about the subject, I would like to take up his challenge, since I have been thinking about the topic for years. I usually find that, in my writing, my thinking tends to get clearer, and I hope this will be the case now.

After reading Don's "Editor's Note" this morning, I kept having the following memory resurface for me all day, so it must have something to do with the topic. I am not sure which conference I attended where this incident occurred, but I think it was my first Academy of Family Mediators conference, the one just after the infamous conference in Minneapolis in the mid-1980s when we experienced a real tornado just outside the conference center. I approached Joan Kelly with a question, because it seemed that she was one of the gurus at the time and perhaps she could shed some light on my thinking. I asked her, "What is the difference between mediation and therapy?" Unfortunately, she scoffed at my question, saying off-handedly, "Oh, we answered that years ago," as she disappeared into the crowd (My apologies to Joan for bringing this



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up because I'm sure there was no ill will intended, although I must say it put me off).

As a seasoned therapist and mediator, I am not ashamed to admit that I still am not sure of the difference. For that matter, I am not sure that I understand the difference between "counseling," "therapy," "conjoint therapy," "couples counseling," etc. We use these words almost interchangeably, but I am sure there must be differences in meaning among these interventions. However, we rarely take the time to sort out the meanings, especially in mediation circles, since "therapy" is not our focus. While my thoughts about how we might differentiate these therapeutic terms will be briefly discussed later, I will mostly attempt to specifically delineate what we mean when we say we are *managing* or *resolving* conflict, since these terms seem more directly

related to the work of mediators (although, managing and resolving conflict is also the focus of mental health practitioners).

In my view, managing conflict means accepting that honest differences exist between people and that we intend to do something to remove the conflict as an impediment to the relationship. When couples *manage* conflict, the differences stand in place, but the parties find a way to not have these differences prevent them from moving forward with a behavioral plan of action; they bypass the conflict or relegate it to a benign place, so that their joint efforts are no longer disturbed. On the other hand, when couples *resolve* conflict, it implies that the conflict actually dissolves or changes character into something else, never to return in the same form.

Continued on page 8

Managing vs. Resolving Conflict

Continued from page 7

In my own life, my wife and I *manage* our differences/conflicts, and, on a few occasions, we actually *resolve* our differences. When managing our differences, we are well aware that we still have these problems, and that probably they will resurface at some time, in one way or another. We will have to continue to manage the impact our differences will have on our relationship. When we resolve our issues, however, those issues do not come back, or the differences cease to be “a problem.”

What happens differently when we *resolve* something from when we *manage* it? I think that resolving something has more to do with a therapeutic outcome, that is, what we mean when we use the word “therapy.” When I use the word “therapy,” I use it in the following sense: I tell my therapy clients that “therapy” happens all the time. Sometimes it happens in the session, sometimes it happens at 4 a.m. during a sleepless night, and sometimes it happens while taking a walk. “Therapy” happens throughout our lifetime, and when it occurs, a person feels like his or her life has changed qualitatively and permanently; some kind of transformation has taken place. “Counseling” does not approach this kind of change and is closer to *managing* conflict. In “marriage *counseling*,” for example, couples learn to identify value conflicts, conflicting value priorities, or differences in understanding what it means to “love” someone. “Conjoint *therapy*,” on the other hand, attempts to dissolve emotional knots created by the respective emotional histories of the principals. This is usually done with

[Resolving conflict] implies that the conflict actually dissolves or changes character into something else, never to return in the same form.

the couple together, often using their interactions to get at the “knots” and the subsequent misinterpretations they make of each other’s words and actions.

I often find myself quipping, much like Joan Kelly did with me, that in “Transformative Mediation,” lawyers have discovered “therapy” (no put-down intended). If I understand “transformative mediation,” the term “transformative” denotes something of a different quality than other models of mediation that seem closer to simply *managing* conflict. While I do not necessarily consider myself a “transformative mediator,” I know that it is absolutely the case that “therapy” happens in some of my mediations. In other cases, it does not happen at all, but we still reach an agreement. When the transformation happens either in “therapy” or “mediation,” I find myself saying to the client, “Happy Birthday,” indicating that he or she has found a way to give being “Born Again” a new meaning. The new person does not have any of the old problems. Those problems died with the old person. The

newly born person will have other problems, but not the old ones. In this sense, differences are resolved by virtue of something new taking their place. In my experience, this occurs in “therapy” and sometimes in “mediation.” Sometimes we *manage* our differences, and sometimes they get *resolved*.

As mediators, should we be promoting the managing of differences or should we hope to resolve the conflicts? Honestly, I do not really know. I think a lot has to do with the particular clients and less to do with the goals of the professional, whether the person is a therapist or a mediator. Some clients just seem to be ready to move into a completely different life, while others wish to move more efficiently beyond, through or around a problem. It is common, for example, for a couple to have a problem with sex when one person wants more sex than the other. They “manage” the problem by finding a way to have a sexual relationship on mutually acceptable terms that may be less than ideal, but definitely satisfying. When the differences in sexual appetite no longer exist as a problem, then the conflict has been “resolved.”

One might assume from this example that I was talking from the perspective of a therapist doing “therapy.” However, this could also have been a family mediation session, or a marital mediation session in which a mediator is helping a couple negotiate their sexual life. For that matter, it could even be part of a divorce mediation session (but more likely to occur in “Transformative Mediation,” where practitioners allow their clients to

Continued on page 10

“In Capacity”

By Chip Rose, J.D

The fact that there are as many different perspectives on the practice of mediation as there are practitioners goes without saying. If you surveyed mediators to describe the single most important characteristic of the mediation process, the range of answers would narrow to a common few. As I have reflected on the characteristics and elements of the mediation process that jump out as being critical to the facilitation of client success, I tried to think of a “macro” category that might subsume the more “micro” considerations and organize them into an all-encompassing organizational frame of reference. I can think of no greater macro characteristic than “safety.” Any aspect of a successful process that does not contribute to the process being made safe for the clients is a potential Achilles’ heel of vulnerability.

The arc of safety shades many important process characteristics. One of those is the question of “capacity,” or the ability of a party to make what the legal system would call an informed and intelligent decision. There is a variety of different capacity issues. The most obvious is someone who does not have the ability to make an informed and consenting decision because of a lack of *mental* capacity. Careful lawyers often preface the taking of testimony in a deposition by asking the deponent if he or she is under the influence



Chip Rose, J.D., has a private mediation practice in Santa Cruz, CA, and is currently providing training throughout the United States and Canada on the emerging practice of collaborative family law.

of any drug or alcohol, before having the deponent answer the questions that follow. People with mental health issues that impair their ability to reason and manage their own affairs, including the making of crucial decisions, may have a conservator or guardian *ad litem* appointed to represent their interests, in response to their lack of capacity.

A second issue, that any experienced divorce mediator has had to address, is the issue of *informational* capacity. The classic, stereotypical gender example would be the housewife who has been home raising the children of the marriage and who finds herself in a divorce process with a husband who is an officer of his company and who negotiates complex business contracts, on a daily basis. Any effective process design must be able to address her needs for information, analysis, negotiation and decision-making. This is no less true for the husband, although his process needs may be as unique as his personality.

Even where mental and informational capacities are not

issues, there is the question of *psychological* capacity. To what extent is the decision to end the marriage relationship accompanied by psychological complications of one or both of the parties? Critical to the integrity of the process is the question of how any such assessment of impaired capacity is made. In the traditional adjudicatory system, capacity only rises to the level of process issue when it becomes a clinical issue. Short of that, the lawyer’s role of representation buffers the degrees of incapacity by overseeing the decisions made by the client. The standard by which those decisions are made is generally limited to measuring the outcome by the established laws of divorce in that jurisdiction. This is hardly a ringing endorsement of the outcome for the client, impaired or not. If the client’s impairment is clinical, the lawyer’s role will be deemed insufficient, and a guardian will be appointed to act on behalf of the incapacitated client.

A related, but often more situational issue is that of *emotional*

Continued on page 10

The Creative Solution

Continued from page 9

capacity. How many times have you had a client profess to waive some legal right, exclaiming: “I just want this over with...” or words to that effect. Emotion numbs the rational capacity of people to imagine being no longer encumbered with the weight of betrayal, pain, loss, hurt, guilt, and anger. Psychological and emotional issues can flow from sources other than the other party and can be generated from what might be called *relational* incapacity. The inability to function effectively in the presence of the other party is regularly revealed in family mediation and may well result in one party choosing to work through lawyers in the traditional model.

In traditional litigation cases, it is too often true that anything but that which rises to the standard of objective incapacity is treated as an inconvenient by-product of relationship breakups. It is seen as something that comes with the territory of a family law practice and impacts getting to a settlement or judgment by making it much more difficult. In a client-centered

Any aspect of a successful process that does not contribute to the process being made safe for the clients is a potential Achilles' heel of vulnerability.

process, all aspects of the clients' circumstances become relevant and need appropriate process responses. Failure to identify and address these psychological and emotional circumstances risks an unrecognized failure of capacity. If capacity is not clearly established, durability is in doubt. Identifying who is qualified to make these assessments and what to do about them is grist for another column.

FMN

Managing vs. Resolving Conflict

Continued from page 8

pursue whatever they believe is relevant to their changing lives). The point is this: *Managing* or *resolving* conflict is independent of the professional role one is taking and is independent of the issue. If there is a difference between the two (and I think there is), it is similar to the distinction we might make between “therapy” and “counseling.” The difference between “conjoint *therapy*” and “marriage *counseling*” for therapists is very close, respectively, to “*resolving*” or “*managing*” conflict for mediators. Furthermore, whatever we actually do is determined more by the clients than by the practitioner!

I hope this clarifies the import of the question I was trying to get Joan Kelly to address. After all, is *managing* or *resolving* conflict in mediation essentially any different from *managing* or *resolving* conflict in counseling or therapy, respectively? I think not. In either case, conflict can be *managed* by making certain arrangements, or it can be *resolved* when there is nothing left to discuss.

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Ethical Dilemmas: What Would You Do?

By Clarence Cramer

New Winter 2009 Dilemma

What would you do in the following situation?

Janet is a mediator who works for a court alternative dispute resolution (ADR) program in a small county. The program has been established for more than ten years and the community and lawyers are familiar with the operations. As a mediator, Janet's usual style is to meet the parties in the hall, escort them to the mediation room and then start the mediation process by welcoming them. Janet was always under the assumption that confidentiality begins once the parties are in the room with the mediator. Furthermore, once an agreement is reached, Janet has the parties sign it, she leaves the room to make copies, and then she distributes the copies to the parties. Janet believes that once the parties are in receipt of the copies of the agreement the confidentiality ends.

During a recent successful mediation with two parents, Janet received a letter from the father's attorney after the mediation was completed. It read as follows:

"Janet, you mediated the Smith matter a week before last, and, after the mediation, the mother and I got into a fairly heated conversation about the placement and some other matters. Bob, the attorney for the mother, has taken the position that the mother's statements to me are confidential because they were made in the context of the mediation, and I told her I

disagreed, because you were already done and printing out the forms for our signature when the mother decided to "bring up other matters." My question to you is: When did the mediation end, and, because you were no longer participating in our conversation, are these statements considered to be confidential? Sorry to put you on the spot, but this is going to come up in a hearing on Tuesday, and I want to make sure I am clear on what exactly is protected and what is not. Just because the mother chose to make statements after the mediation was done does not mean those statements are confidential. That's my opinion."

What would you do?

Please e-mail your response to Clarence Cramer at: mediator2@cox.net or mail it to 561 W. Spur Avenue, Gilbert, AZ 85233. Please include your name and address. **FMN**



Clarence Cramer is Chair of the Family Section Ethics Committee and former director of Family Services of the Conciliation Court in Coolidge, Arizona. He can be reached at: mediator2@cox.net.



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Who is Going to Tell the Teacher?

Divorce Education for Today's Educator

By Laura D. Lehman

As research on divorce has increasingly focused on its effects, it has simultaneously divested itself from the application of these findings; that is, how to protect children from and mitigate the effects of divorce. While divorce has become increasingly normalized, and the harshest stigmas attached to it have started to diminish, we have failed to develop multi-faceted approaches for protecting children from its documented impact.

In effect, I worry that children's hurt, confusion, and sense of loss have become normalized as well. This is not to assert that divorce unfailingly and irreparably damages children, because many children do, in fact, successfully develop into happy and productive adults (Ahrons, 2004; Hetherington & Kelly, 2002; Kelly & Emery, 2003). Rather, it is more of a caution that we, as a society, cannot forget that divorce is a major disruption in a child's life; one that requires special attention, acknowledgement, nurturance, and support, even if the process of divorce has become commonplace. We need to remember that during this "crazy time" of chaos and instability (Trafford, 1984) parents are not the only possible resources for children.

There exists in a child's universe an array of caring, competent adults; individuals trained in child development, who willingly surround themselves with children



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and are genuinely invested in the outcomes of their lives — they are called "teachers." These exquisitely human resources have the potential to help buffer children from the risk factors of divorce (Amato, 2000). Unfortunately, the majority of teachers are just as confused, overwhelmed, and under-informed about divorce as the children they are teaching. Eager though they may be to help, most are ill-prepared to help their students manage the chaos of divorce, and few possess the time to quell their concerns by engaging in a literature safari.

In these instances, the mediator has the power to become an educator about, as well as an advocate for the children. All it takes is ten simple steps:

1) **Make a case for teacher involvement and education:**

- Explain that divorce is correlated with children's behavior problems, multiple family risk factors, and

negative mental health outcomes for children (Dwyer et al., 2005; Sanders et al., 1999).

- Elaborate by using the finding that teachers are among the first professionals with whom parents are likely to make contact when they have a concern with their child's behavior or development (Sanders et al., 1999). It is logical to suggest that they be informed of the divorce context, in order to provide the most appropriate educational recommendations (Dwyer et al., 2005).

- Conclude with the assertion that parents should keep teachers apprised of important life events, such as divorce. Teachers should have access to practical and digestible divorce education.

2) **Give a brief synopsis of divorce procedures to the child's teachers:**

Continued on page 13

Divorce Education for Today's Educator

Continued from page 12

- Relay information about the basic process. Teachers rarely need to know specifics about a given set of parents, but knowing a bit about what, in general, parents (and subsequently their children) experience may help them to better understand and accommodate a child's behavioral changes.

3) Clarify legal obligations of educators:

- Let educators know about the professionals that may contact them (court evaluator, therapist, lawyer, etc.) and the kinds of questions they may ask. Identify the people with whom teachers are obligated to talk and the kinds of information they are allowed to share legally.

- Explain basic parental rights. Identify who can sign a permission slip and who has access to student academic records.

- Make sure teachers understand that it is not their duty to accommodate parental hostilities. Their first obligation is to look after the welfare and education of the child. Unless it is otherwise documented, teachers are not required to give separate conferences. However, if it is feasible to do, conferencing with both parents together reduces the "spin" that each might take away when conferencing separately with the teacher. If each parent desires a copy of homework and handouts, each needs to claim responsibility for the implementation of this request and make it as convenient for the teacher as possible.

4) State general research findings:

- Explain that studies have shown children of divorce to be at greater risk for social, behavioral, internal, and academic problems (Ahrns,

2004; Ayoub et al., 1999; Hetherington & Kelly, 2002; Saposnek, 1998).

- State the fact that more than 40 percent of today's children will experience divorce, meaning that 100 percent of today's teachers will be dealing with a child of divorce.

5) Explain the effects of divorce:

- Assert that the only conclusion reached concerning the long-term impact of divorce on children is that there is no single outcome. While it is true that some children are irreparably damaged by divorce, even in ways unimagined, it is just as accurate to note that many children survive divorce, and some actually thrive.

- Clarify that each child's reactions and resiliency to divorce are products of the interaction between the child's risk and protective factors. No single factor is directly responsible for a given outcome.

- Note the concepts of "equifinality" and "multifinality," two basic tenets of developmental psychopathology (Sroufe, 1997). Children acting in nearly identical manners (such as the inability to sit still or concentrate for any given length of time) may be reacting to incredibly diverse life experiences (equifinality). Conversely, children experiencing the "same" life event (such as divorce) may develop completely contradictory coping mechanisms (e.g., hyperactivity in one child and lethargy in another) (multifinality). These concepts can easily be related to a teaching metaphor. Just as every child possesses a unique learning style, so, too, does each develop his or her

own divorce-coping style.

- Summarize the universal impact of divorce on children with the statement: **Not every troubled person comes from divorce and not every person who experiences divorce becomes troubled.**

6) Describe potentially worrisome behaviors:

- Explain that although they may manifest differently in each child, there are some behaviors which can indicate to the teacher that the child is having a difficult time adjusting to the situation. These may include hyperactivity, difficulty focusing, anxiety, frequent stomachaches, regressive behaviors, a decline in schoolwork and peer relationships, and a generally impaired capacity to be present in the classroom. It is not the presence of a specific behavior that is worrisome, but rather a shift in the child's behaviors, in either direction from his or her baseline (Ahrns, 2004; Ayoub et al., 1999; Hetherington & Elmore, 2003; Hetherington & Kelly, 2002; Saposnek, 1998; Wallerstein et al., 2000).

7) Inform the teacher of the best methods for handling behavioral concerns about a child:

- Make sure it is understood that, as with any behavioral issues of a student, the teacher needs to alert the parents. Inform the teacher about who to contact and how to gently and carefully inquire about changes in the child's life.

- Make sure the teacher understands that, although divorce may contribute greatly to a child's current functioning, the teacher, the

Continued on page 14

Divorce Education for Today's Educator

Continued from page 13

student, or the parent should not allow the divorce to become a scapegoat for other identifiable contributors to the child's problems.

- Stress the importance of not assuming that a decline in school-work is because the child does not care.

8) Discuss with the teacher the unique needs of children experiencing divorce:

- Let teachers know that, because a stressful and chaotic home life is highly probable during divorce, children are likely to be craving consistency, predictability, and stability.

- Help them to understand the emotional deficits that children of divorce may be experiencing, such as a loss of control, of significance and of normality (Ahrns, 2004; Hetherington & Kelly, 2002; Kelly & Emery, 2003; Saposnek, 1998; Wallerstein et al., 2000).

9) Offer practical suggestions regarding how teachers can help:

- Include more general advice for methods of interaction and encouragement, as well as applicable ideas for classroom management and curriculum planning.

- Describe helpful teacher characteristics, such as reliability, stability, and the ability to be nurturing without being overly permissive.

- Instruct teachers to strive to make each classroom a safe learning environment. Advise them to: have firm rules and exercise appropriate discipline; model, teach, and practice appropriate problem-solving and conflict resolution; and, offer opportunities for children to gain responsibility and competence

and to feel valued through class jobs and the pairing of older students with younger "buddies" to mentor.

- Let teachers know that they can help the child feel included and normalized, by generating "family" lesson plans appropriate for each grade level.

- Suggest that they teach critical thinking, problem solving, social skills, goal setting, and organizational skills; these can supplement potential parenting deficits, ease transitions, and provide future life skills (Ahrns, 2004; Hetherington & Kelly, 2002; Sammons & Lewis, 2000; Wallerstein et al., 2000).

10) Caution teachers about the perils of adopting too much responsibility:

- Emphasize the necessity of staying neutral between the parents. When a teacher is primarily in contact with only one parent (and therefore privy to only one side of "the story"), it is all too easy to unknowingly enlist himself or herself as the newest Major General in the great "Tribal Warfare" (Johnston & Campbell, 1986), the tendency for friends and family to rally around and support their disputant's "side" of the conflict, thereby unwittingly escalating the conflict and reducing the possibility for resolution.

- Explain effective methods for setting boundaries. Make sure teachers know to whom they can refer should they feel harassed or overwhelmed.

- Make sure teachers realize that, although they may be powerful mediative and protective factors, they cannot be saviors to every child, and they should not hesitate

to state when their own superhuman limitations have been reached.

- Encourage teachers' endeavors to help their students. Encourage them to continue reaching out. Let them know that they are making a difference, even if it does not always feel that way.

Divorce is a stressful experience for everyone involved, and in the stresses of family restructuring, moving, financial difficulties and dramatic life changes, even the best of parents can fall a little short of optimal. Although children initially display poorer behavioral, emotional, social, and academic functioning in the first few years following divorce, their futures are not doomed. In the long run, the majority of children adjust reasonably well and develop into mature, successful adults (Ahrns, 2004; Hetherington & Kelly, 2002; Kelly & Emery, 2003), due, in large part, to the presence of stable, involved adults, such as teachers. In order to maximize their potential benefits, however, these human resources must be educated about the process of divorce, their legal obligations, and the multitudinous ways they can help children who are experiencing divorce.

It is integral to children's welfares that teachers be made aware of the challenging life-experience of divorce, in order to enhance the assistance they provide. Research has shown that teachers are more useful in assisting a child when they are aware of the events in a child's life outside of school (Dwyer et al., 2005); they can better match their skills with the needs of the child

Continued on page 15

Divorce Education for Today's Educator

Continued from page 14

and are also better equipped to recommend outside resources when they understand the child's larger context. However, **someone must teach the teachers.**

Remember that a teacher's dedication can extend only so far. However willing they are to provide assistance, they often run out of waking hours before they run out of working hours. Try to make the information you offer as concise and applicable as possible. **You must teach the teachers. They teach our children how to thrive.** **FMN**

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