



ADR NEWS

A publication of the Tennessee Alternative Dispute Resolution Commission

VOLUME 8, ISSUE 4

SUMMER 2008

Contacts

Tennessee Alternative Dispute Resolution Commission

- Hayden D. Lait, Esq.
Chairperson, Memphis
- Allen S. Blair, Esq.
Memphis
- Hon. Ben H. Cantrell
Nashville
- Gayden Drew IV, Esq.
Jackson
- J. Wallace Harvill, Esq.
Centerville
- Tommy Lee Hulse
Kingsport
- C. Suzanne Landers, Esq.
Memphis
- Glenna M. Ramer, Esq.
Chattanooga
- D. Bruce Shine, Esq.
Kingsport
- Edward P. Silva, Esq.
Franklin
- Howard H. Vogel, Esq.
Knoxville

Supreme Court Liaison

- Justice William C. Koch, Jr.

Programs Manager

- Anne-Louise Wirthlin, Esq.

Programs Assistant

- Margaret D. Lamons

Send questions and comments to:

Tennessee ADR Commission

Administrative Office of the Courts
Nashville City Center, Suite 600
511 Union Street
Nashville, TN 37219

Phone: 615-741-2687

Fax: 615-741-6285

Email: Anne.Louise.Wirthlin@tncourts.gov

Web: www.tncourts.gov

The Who of Mediation—Part 2: Wisely Choosing A Mediator

by Professor Paula M. Young¹

Originally published in *St. Louis Lawyer*, April 2005; Reprinted in *The Insurance Receiver*, Summer 2005, at 11; and at <http://mediate.com/articles/young16.cfm>.

Most states do not license or certify mediators. They do not require a minimum level of training, continuing education, background checks, or character and fitness reviews. In most states, a person who has lost his or her professional license in one area can nonetheless (and easily) open shop as a mediator. Most states do not have standards of ethics that apply to all mediators² and no grievance procedure allowing a client who believes something has gone terribly wrong in the mediation to report the wrongdoing.³ Most states do not have the authority to sanction or otherwise prevent the activities of rogue mediators.

A few states have standards of ethics and some entry barriers to the profession consisting primarily of minimum training requirements. In Missouri, a person can become a "Rule 17 qualified" mediator with less time spent in training than he or she spent watching TV the same week. But even these ethics rules and modest training requirements typically only apply to mediators who seek to be listed on mediator rosters in court-connected mediation programs.

In other words, just about anyone can hang up a shingle advertising his or her ability to conduct private mediations. For lawyers and clients and other mediation parties, this information should tell you that the "buyer [must] beware." You need to take the time to choose your mediator wisely and with care. Mediators vary greatly in skill, training, experience, and temperament. Parties choosing a mediator must approach the task on a case-by-case basis, considering the facts, emotions, relationships, and law of the dispute as they may affect the attributes you need in a mediator.

See "The Who of Mediation—Part II . . ." (Continued on pages 2–7)

The Who of Mediation—Part II: Wisely Choosing A Mediator

by Paula M. Young (Continued from page 1)

A good mediator can enhance the likelihood the parties will reach agreement. A bad mediator will impede the settlement process and may undermine the parties' relationship, as well as their confidence in the mediation process as a means for resolving future disputes. Bad mediators will cost the parties additional time and money.

Recently, I read all (yes, all) the advisory ethics opinions and grievance filings involving mediators issued by the ethics panels in Florida. It brought home to me that a lot of sloppy mediation occurs that affects the core values of mediation: impartiality of the mediator, confidentiality of mediation communications, and party self-determination.

Party Satisfaction with Mediation

An empirical study of party satisfaction with the mediation process and mediators shows that 65 to 82 percent of parties to family mediations viewed their mediators as warm, sympathetic, and sensitive to feelings. They were also helpful in standing up for a party's rights in disagreements with spouses, staying focused on the important issues, and ensuring the parties had clear and sufficient information for decision-making. But 18 to 35 percent of parties did not share these feelings after the mediation.⁴

Another set of studies revealed that a majority of parties participating in court-connected civil mediations felt the mediation process was fair and gave them sufficient opportunity to present their cases. A majority of parties felt they had control over the process or had input in determining the outcome. Most parties thought the mediator was neutral, did not pressure them to settle, understood their views and issues, and treated them with respect. A majority of parties felt the mediated agreement was fair. Most attorney-advocates shared the same feelings. But some minority of parties and attorneys did not have these feelings about the experience.⁵

Yet another study showed that 61 percent of disputants in fifty-four waste management mediations were satisfied with the mediation process and the outcome. But 39 percent of mediation-disputants were not.⁶ In short, the studies suggest that perhaps a third of mediating parties are unhappy with the process or the mediator!

Another study suggested that parties' satisfaction with mediation correlates with the control they have

over the process.⁷ Parties may therefore feel best about the process when they play an important role in choosing the mediator. Yet, some courts still designate mediators for particular cases without regard for the case-by-case nature of the selection process.

Factors to Consider in Choosing a Mediator

The Judicial Council of Alaska developed an easily accessed and well-informed guide for choosing a mediator.⁸ It describes (1) the qualifications a mediator needs; (2) what makes a mediator competent; (3) the five steps it recommends in choosing a mediator and (4) additional resources. The Mediation Council of Illinois also developed a set of ten interview questions parties can pose to prospective mediators.⁹ The questions ask about the mediator's training—both quantity and quality, whether he or she has had any hands on mentoring, supervision or internship training, whether the mediator continues to "sharpen the saw" by attending continuing education programs and mediation-related conferences, and whether she consults regularly with other, more experienced mediators.¹⁰ The questions then turn to the mediator's level of experience: How many mediations has the mediator done, overall and in the particular area of practice that relates to the dispute? What percentage of the mediator's professional life is devoted to mediation? It then turns to the mediator's style or approach, which I discussed in my last article.¹¹ Next, the interview considers the honesty, integrity and professionalism of the mediator by asking about any ethics complaints filed against him or her, whether the mediator belongs to mediation-related organizations like the Association for Conflict Resolution, the Association of Attorney-Mediators, or state mediator organizations, and whether the mediator provides *pro bono* mediation services as a community service. It asks for roster listings, which reflect some measure of confidence expressed by third-parties in the mediator. It also asks whether the mediator carries liability insurance for his or her mediation practice.

These two easily accessed tools provide a place to start your investigation. And good mediators will not hesitate to respond to any question about his or her professional background. But I recommend an even more thorough analysis.

Personal Qualities of a Good Mediator

Some time ago, I wrote an article called *Qualities of a Good Mediator and the Lessons New Mediators Learn*.¹² In that article, I surveyed the thoughts of a number of conflict resolution experts about the personal qualities of effective mediators. Woody Mosten looks for mediators who are good listeners, effective communicators, patient, tolerant, neutral, empathetic, persistent, trustworthy, flexible, creative, positive, and optimistic.¹³ Also, conflict should not scare them or put them off their game. I would add to this list intelligent, even-tempered, encouraging, confident, civil, considerate, open-minded, and persuasive. A mediator should also have an appropriate sense of humor. Professor John Cooley would add that the mediator should have good judgment, be well-organized, punctual, and respectful of lawyers and their clients.¹⁴

He or she should also be quiet when appropriate and intervene vigorously when appropriate. "A mediator who primarily allows open discussion will be helpful if parties and lawyers are sophisticated enough to conduct their own negotiation. On the other hand, where the parties are unsophisticated, emotional, or lack familiarity with the bargaining process, then a mediator who is more directive would be appropriate."¹⁵

Parties need to feel comfortable with the mediator. So in selecting a mediator you may also want to consider the mediator's cultural sensitivity. Should the mediator or co-mediators mirror the parties' race, gender, ethnicity or culture? Yes, "[w]hen the parties believe that the consideration of race, gender, or culture of the mediator would help resolve the dispute"¹⁶ or when these attributes are major factors in the dispute.¹⁷ For similar reasons, the parties may want to consider the mediator's age.¹⁸

Availability and Affordability

Often, the well-respected mediators are booked months in advance. Accordingly, the parties must determine if they can endure the wait. If not, a rising star with a more open calendar will be the better choice.

Parties often pursue mediation because it tends to be less costly than litigation. Parties can choose from no-cost or low-cost community mediation projects. Or, they may engage private mediators who will charge \$100 to \$300 per hour. Some mediators charge \$1,500 to \$3,000 per day, or charge according to the number of parties, the complexity of the case, or the money demand made in the complaint. They may charge cancellation fees. They may charge pre-mediation fees related to intake or background phone calls or the review of papers or briefs.

Mediators should not hesitate to discuss fee issues. Most ethics codes, whether aspirational or mandatory, require the mediator to disclose all fees and costs in the mediation agreement, a retention letter, or the mediator's opening statement. Most ethics codes also preclude contingency fees and referral fees because of their potential affect on mediator impartiality.¹⁹ These codes may also instruct mediators to return any unused fees.

Certification or Roster Status

Most courts will not allow mediators to mediate cases pending in the courts without some assurance the mediators meet basic training requirements. Whether a mediator is certified, qualified, or rostered may offer some assurance that he or she has at least some minimal level of training. In Virginia, where I now live, entry level mediators (essentially small claims mediators) must have 20 hours of training, including two hours of ethics training.²⁰ They must also take a four-hour course on the Virginia judicial system. Persons wanting to do more complex court-connected civil mediations need an additional 20 hours of training. Family dispute mediators must have 32 hours of training in family systems, the social, emotional and psychological aspects of custody and visitation issues, an understanding of the grounds for divorce, parenting issues, support issues, property issues, debt and bankruptcy issues, tax issues, and the use of experts in mediation. They must also take an 8-hour course giving them some expertise in screening for and addressing domestic abuse. Virginia re-certifies mediators every two years after they show additional experience and training.

In contrast, Missouri Supreme Court Rule 17.04 requires only 16 hours of basic training for mediators. By comparison, I now have over 1400 hours of training.

When choosing a mediator, you should ask for the mediator's list of training programs. Most well-organized mediators keep an updated list of all the training programs they have attended. You should then attempt to assess the quality of the trainers. Training quality depends on the hands-on experiences offered the trainees and the quality of the feedback provided by the trainers. Abramson says: "Information on the quality of training programs can be difficult to acquire by the newcomer although the information is widely known to dispute resolution professionals. You should ask around."²¹ The Association for Conflict Resolution lists approved family mediation training programs by provider and state. To be listed, the program must provide fifteen training outcomes.²²

You may also want to evaluate the quality of the mediator's other professional training as a lawyer, therapist or accountant, for instance. Does he or she have any specialized degrees?

And finally, does the mediator, in turn, train other mediators? Is he or she well-recognized in the field for his or her training work?

Process Skills and Expertise

Mediation skills do not come naturally to any of us. Some people call mediation an art. Some people call it a craft. Mediators acquire their skills through hard work and hands-on experience. Good mediators spend their spare time reading books about interest-based negotiation, mediation and conflict resolution. We do *pro bono* work to gain additional experience early in our mediation careers when no one will hire us. So don't be afraid to ask how many mediations the mediator has done and the nature of the disputes she has mediated. You might even ask about her settlement rate.²³ But you should "avoid at any cost [a mediator] whose only goal is to achieve an agreement."²⁴ And "[b]e wary of a mediator who overstates the advantages of mediation."²⁵

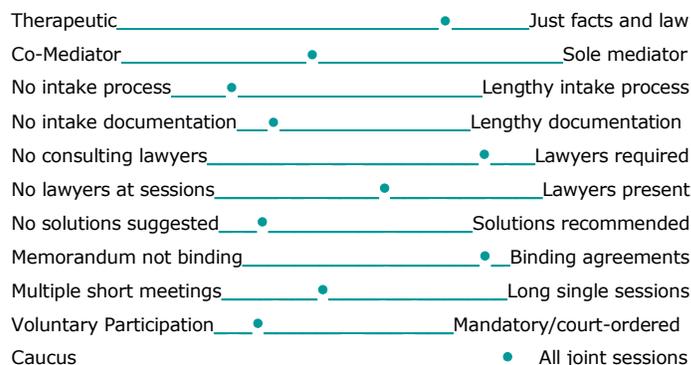
Mediators learn listening, paraphrasing, reframing and astute questioning skills. Our questions can be probing, but as non-threatening as possible. Mediators learn techniques to facilitate communication between the parties. We develop a firm understanding of the stages of mediation, but also demonstrate flexibility in handling the mediation agenda. Mediators can explain the process clearly and effectively to the parties.

Mediators gain sensitivity to the needs of parties for equality, respect, security, face and safety. We learn to spot and deal with high conflict personalities. We understand the psychological barriers to negotiation. And the really good mediators handle emotional expressions skillfully without cutting them off prematurely. We know if, when and how to engage in joint sessions and private caucus with parties. We know the rules of confidentiality. We also know and adhere to the aspirational or ethical guidelines that apply to our practices and we practice consistently with the most rigorous set of ethical rules.

Style or Approach

As I mentioned above, in my last article I discussed the different mediator styles or approaches. I won't repeat that discussion here. However, Woody Mosten has yet another tool for considering a mediator's style or approach—the Mediator's Abacus.²⁶ Envision a 12-wire abacus. The "x's" represent beads on the

abacus wires indicating how a particular mediator might characterize himself or herself on the indicated approaches to mediation. Thus, a lawyer-mediator is more likely to focus on the facts and law of the dispute rather than on the therapeutic, psychological, or emotions aspects of the dispute. He may co-mediate about as often as he conducts solo mediations. She will have a brief intake process with little documentation. He may advise the parties to consult with lawyers as often as they like during the process, and he may ask them to have an attorney review any draft agreement before they sign it. And, so on.



Again, the style or approach of the mediator is an especially important factor to consider when choosing a mediator.

Legal and Substantive Experience

Some people believe that only attorney-mediators or retired judges serving as mediators should mediate litigation-related disputes. These comments begin to frame one of the debates about the qualities of the most effective mediators. Many parties assume that the mediator should have substantive expertise, with the ability to do very rigorous case evaluations or legal reality testing. They argue that these mediators possess intimate experience with juries, know the judges in which the dispute is pending, and have personal knowledge of the legal issues and recent verdicts that may affect a party's negotiating leverage. Judges and well-respected lawyers may also provide the high status or authority parties seek.

If you seek this sort of expertise, then you are looking for a mediator who possesses great credibility and reliable analytical and evaluation skills. You will probably want to ask the mediator what type of legal practice he or she has and how many years of experience the attorney has in that practice area. How much trial experience does the attorney-mediator have? How many mediations in the relevant subject-matter area has she done? When the judge was on the bench, what was the nature of the caseload he handled? Does

the judge have a disposition and personality that is appropriate for the mediation context? Can he successfully shift from an adjudicator's behavior to a mediator's behavior?

Similarly, if the dispute involves a highly specialized or technical nature—like construction, environment, securities, computer technology, child custody, tax, or insurance coverage—you may want to hire an engineer-mediator, biologist-mediator, broker-mediator, computer scientist-mediator, therapist-mediator, accountant-mediator, or claims manager-mediator. You would ask that prospective mediator similar questions about his or her subject-matter expertise.

One writer suggests that lawyers choose other lawyers and retired judges as mediators simply because it is their way of adapting an otherwise unfamiliar process to “look like something that is more familiar to them.”²⁷ Another commentator says: “Many advocates, especially lawyers, insist that subject-matter expertise is not only important but imperative in the mediation of their disputes. This does not, however, explain why retired judges, who normally possess no such expertise are used by lawyers more often than other [attorney-mediators].”²⁸ However, if legal expertise were enough to carry the day in mediation, then the Microsoft mediation—conducted by well-respected Judge Richard Posner, Chief Judge of the Seventh Circuit Court of Appeals—should have been a great success. Instead, that mediation is a textbook example of how the failure to master the process skills and apply a well-developed body of mediation and negotiation theory led to impasse on more than one occasion and the rejection of the deal by state attorney generals whom Posner had excluded from the process.²⁹

In jurisdictions, like Virginia, that prohibit a mediator from providing legal advice, allow the mediator to provide legal information only in highly constrained circumstances, and limit evaluations to three situations,³⁰ the legal experience of the mediator is potentially irrelevant, a trap for the ethically careless mediator, and a risk to party self-determination. The mediator, unlike an arbitrator, is not deciding the matter. And real risks come with this highly evaluative style. I will deal with that topic in a future article. Another writer says: “An aggressive [presumably lawyerly] questioning style and a tendency to focus on fault and historical fact often limits a lawyer's creative problem-solving ability and can aggravate positional behavior.”³¹

Most mediators, including myself, will tell you that having good people skills, process expertise, and other

qualities are far more important than knowledge of a particular area of law. Even the author quoted above concedes: “Mediation can also be successful even if a mediator is not well versed in the subject matter of a case. In fact, a mediator who does not have subject-matter expertise but who offers an open mind could be more effective....A mediator who lacks subject matter expertise [] might provide the parties with a read on how a jury member—who most likely will not have subject matter expertise—would react to each party's position.”³² Many experts in the field, including myself, believe that non-lawyers bring backgrounds, skills and professional experience that may help the parties see the dispute in a new light. Non-lawyers also may have better skills at handling the inter-personal relationship issues existing in the dispute and the emotions fueling the dispute.

As Hal Abramson says in his new book: “Just because someone is trained as an attorney or judge does not mean the person is qualified to serve as a problem-solving mediator. A former judge, for instance, can successfully advance settlements by bringing to bear her vast experience in evaluating and deciding cases. But, only a person formally trained in problem-solving mediation knows the nuanced structure of the mediation process and the refined techniques of mediators.”³³ But a short time later, Abramson concedes: “You are better off with a mediator who has some substantive understanding of the dispute. However, you should unambiguously instruct the mediator to not give any substantive opinions, unless both sides specifically request the mediator to do so.”³⁴ He believes a mediator with some substantive knowledge can perhaps “hit the ground running,” better understand what is really at stake, and can more credibly communicate with the parties and their lawyers. But Abramson cautions that a knowledgeable attorney-mediator may have extreme difficulty hiding his opinions and so may exhibit conduct in the mediation that undermines his neutrality or the parties' perception of his neutrality.

If I were looking for a mediator, I would find someone with substantial process knowledge and skill, who had solid training and extensive hands-on experience before I would hire a less experienced attorney-mediator or retired judge-mediator. In a perfect world, the mediator would have significant process and substantive expertise, and would know when to leave the substantive expertise out of the mediation. This discussion should again highlight how selection of the mediator must consider the specific facts and circumstances of a particular dispute.

Impartiality of Mediator

Greg Firestone, a Florida mediator, spoke about mediator impartiality at the October 2003 conference of the Association for Conflict Resolution.³⁵ He suggests you think about these issues along two dimensions that create four quadrants on a grid. See Appendix A to this article. On one side of the grid are the terms “parties” and “outcome.” On the other side of the grid are the terms “relationship” and “conduct.” The resulting four quadrants are: “relationship-parties,” “conduct-parties,” “relationship-outcome,” “conduct-outcome.” In searching for a mediator, you want someone who can maintain impartiality in these four quadrants. The leading cause of ethics grievances filed against mediators in Virginia and Maine relate to impartiality. It is the second most frequently cited basis for grievance complaints in Florida, Georgia, and Minnesota.

Relationship-Parties

The mediator’s impartiality towards the parties is often discussed in terms of conflict of interests. When choosing a mediator you need to learn if the mediator has any current or prior relationships with the parties or their counsel? Does she get most of her business from one company or firm? Can she remain impartial to the party who is not the repeat player in the referral system? Exclude anyone that has a relationship you feel may bias the mediator towards the party with whom he or she has had a prior relationship. Mediators should error on the side of over-disclosure of conflicts of interest or potential conflicts of interest. They should check for conflicts with the same care imposed on lawyers by legal ethics rules. Mediators must also avoid creating any conflicts of interest during the course of the mediation – for instance, by buying stock in the company owned by one of the parties. Finally, mediators should avoid creating an appearance of impropriety by representing parties as a member of their profession of origin (i.e., lawyer, therapist, or accountant) in the future in the same or similar matter. Most ethics codes either prevent future representation in the same or similar matter or they limit future representation until a reasonable period of time has lapsed since the mediation. It is fair game for you to ask a mediator how he handles the conflict of interest issues?

Conduct-Parties

Next, you need to consider whether the mediator can maintain, through his or her conduct, neutrality towards the parties. Will the mediator become

frustrated, disrespectful, or heavy-handed if he or she believes you or your client is uncooperative? Does he hold any racial or cultural biases? Can he work with people that express racial bias? Does she think in traditional ways that may impose gender biases or reinforce gender-role expectations in the mediation? Does anger make him uncomfortable in a way that he may cut off your client’s expression of it? Does crying make the mediator uncomfortable in a way that he may suppress the expression of sadness, fear, vulnerability, regret and other emotions expressed in this way or other ways? Can she work with borderlines, narcissists, sociopaths and other high conflict personalities without those parties pushing her buttons or manipulating her? Does her conduct favor repeat players or parties who may be paying a larger portion of the fee. The mediator should also be willing to withdraw from the mediation if the parties perceive she is no longer impartial towards each party.

Relationship-Outcome

Does the mediator brag about a high settlement rate? Should you be concerned that he views your case as the next notch on his belt? Will he work hard for his settlement rate even if it requires coercive interventions that disfavor one party? Has the mediator succumbed to perceived pressure from referring courts to maintain a high settlement rate? Does she accept referral fees from lawyers who regularly use her in mediation, therefore consciously or unconsciously creating a bias in favor of the referring attorneys and their clients? Does he have a vested interest in the outcome because his fee is based on a percentage of the agreed settlement? “Lawyers should decline to retain a mediator whose fee is based on a percentage of the ultimate settlement [where not precluded by the ethics code]. [I]t smacks of impropriety and at the very least, raises serious questions about the mediator’s ability to remain neutral.”³⁶ Does he unnecessarily prolong a mediation just to earn additional fees? Does she believe that all civil rights related mediations must result in an agreement consistent with Title VII law? Can he mediate with impartiality as to the outcome in an air pollution case if his son suffers from severe asthma? Can she mediate with impartiality an abortion clinic real estate boundary dispute if she opposes abortion?

Conduct-Outcome

Finally, this last quadrant of the grid focuses on party self-determination and a mediator’s conduct that undermines it. The mediator may lack skill in supporting party-self determination. She may also not care very

much about it or truly respect it as a core value of mediation. Thus, he or she may use coercion, intimidation or other heavy-handed tactics to get an agreement? She may rely too much on her legal skills by offering legal advice. He may add terms to the settlement agreement on which the parties have not agreed?

Conclusion

Choosing the mediator is the most important decision you will make on behalf of the client who plans to participate in mediation. Make the choice wisely and with care.

¹ Paula M. Young is an assistant professor at the Appalachian School of Law located in Virginia teaching negotiation, Certified Civil Mediation, arbitration, and dispute resolution system design. She received in 2003 a LL.M. in Dispute Resolution from the top ranked program in the U.S. She was a visiting faculty scholar at Pepperdine's Strauss Institute of Dispute Resolution the same year. The Missouri Bar recently published her description of insurance insolvency law in Supervision, Rehabilitation and Liquidation of Troubled Insurance Companies, Missouri Insurance Practice, Ch. 2, Fifth Edition (2004). During the 1990s, she served as General Counsel for the receiver of Transit Casualty Company, serving as an advocate in mediations with reinsurers. Missouri and Virginia have recognized her as a mediator qualified to handle court-referred cases. You can reach her at pyoung@asl.edu.

² Only Alabama, Arkansas, California, Florida, Georgia, Kansas, Massachusetts, Minnesota, New Jersey, North Carolina, Tennessee, and Virginia have mandatory codes of ethics for "rostered" or certified mediators or those mediators participating in court-connected programs. California and Iowa have standards that apply to mediators in court-connected child custody disputes or other family disputes.

³ Apparently, only Florida, Georgia, Maine, and Virginia have formal grievance systems.

⁴ Joan B. Kelly, *Family Mediation Research: Is There Empirical Support for the Field?*, 22 Conflict Resol. Q. 3, 17 (2004).

⁵ Roselle L. Wissler, *The Effectiveness of Court-Connected Dispute Resolution in Civil Cases*, 22 Conflict Resol. Q. 55, 65-66 (2004).

⁶ E. Franklin Dukes, *What we Know About Environmental Conflict Resolution: An Analysis Based on Research*, 22 Conflict Resol. Q. 191, 199 (2004).

⁷ Robert A. Baruch Bush, *What Do We Need a Mediator For? Mediations "Value-Added" for Negotiators*, 12 Ohio St. J. on Disp. Resol. 1 (1996).

⁸ <http://www.ajc.state.ak.us/Reports/mediatormain.htm>.

⁹ <http://www.mediationcouncilofillinois.org/choosing.html>.

¹⁰ Many people don't realize that the practice of mediation typically occurs in a private context with strict limits of confidentiality conducted by sole mediators who get little feedback unless they go out of the way to solicit it.

¹¹ Paula M. Young, *The Who of Mediation—Part I: A New Look at Mediator "Styles,"* 14 The Ins. Receiver 11 (Spring 2005).

¹² Paula M. Young, St. Louis Lawyer (newsletter of the Bar Association of Metropolitan St. Louis) 10A (August 7, 2002).

¹³ Forrest Mosten, *Mediation Career Guide—A Strategic Approach to Building a Successful Practice* 23 (2001).

¹⁴ John W. Cooley, *The Mediator's Handbook: Advanced Practice Guide for Civil Litigation* 28 (NITA 2000).

¹⁵ Kimberly K. Kovach, *Mediation: Principles and Practice* 136 (3d ed., Thompson-West 2000).

¹⁶ Fred D. Butler, *The Question of Race, Gender & Culture in Mediator Selection*, Disp. Resol. J. *36 (Jan. 2001), available on Westlaw at 55-JAN DRI 36.

¹⁷ Douglas H. Yarn, *Alternative Dispute Resolution: Practice and Procedure in Georgia*, ch. 6, § 6-15 (2d ed.), available on Westlaw at GAADRPRAC § 6-15.

¹⁸ Phyllis M. Hix, et al., *Mediation, Or is it? Everything you Thought You Knew, but Maybe Didn't*, 65 Def. Couns. J. 256, *260 (April 1998), available on Westlaw at 65 DEFJC 256.

¹⁹ Hon. Daniel E. Klein, Jr. et al., *Mediation: A Handbook for Maryland Lawyers* at 44, available on Westlaw at MEDI MD-CLE 39. See also discussion below.

²⁰ Office of the Executive Secretary, Supreme Court of Virginia, Form ADR-1003, available at <http://www.courts.state.va.us/drs/forms/home/html>.

²¹ Harold I. Abramson, *Mediation Representation: Advocating in a Problem-Solving Process* 130 (NITA 2004).

²² <http://www.acrnet.org/referrals/trainers.htm>.

²³ Although a more accurate measure of the mediator's skill may be the percentage of mediated cases that do not go on to trial. Many cases settle outside mediation, but before trial, because the parties made substantial progress during the mediation session.

²⁴ Ann M. Haralambie, *Alternatives to Litigation*, 12 Family Advocate 52, *53 (Summer 1990), available on Westlaw at 12-SUM FAMADVO 52.

²⁵ Robert D. Benjamin, *Considering Mediation: What Lawyers and Clients Should Know*, 18 GPSolo 28, *31 (2001), available on Westlaw at 18 No. 7 GPSOLO 28.

²⁶ Mosten, *supra* note 13, at 85.

²⁷ Butler, *supra* note 16, at *37.

²⁸ *Id.*

²⁹ See Ken Auletta, *World War 3.0: Microsoft and its Enemies* 309-316 & 339-368 (Random House 2001).

³⁰ Va. Sup. Ct. R. Pt. 6, Sec. II, 2.11 (2004).

³¹ Yarn, *supra* note 17, at §6-15.

³² Peter B. Hutt II, et al., *Techniques for Resolving False Claims Act Cases Through Mediation*, 37 Procurement Lawyer 1, 20 (2002), available on Westlaw at 37-SPG PROCLAW 1.

³³ Abramson, *supra* note 21, at 129-130.

³⁴ *Id.* at 131-32.

³⁵ Greg Firestone, *Impartiality and Neutrality: Are these Concepts Still Relevant to the Practice of Mediation*, Session 4.05, Association for Conflict Resolution, Oct. 15-18, 2003, available through Convention Recordings Int'l Inc. at www.conventionrecordings.com.

³⁶ Klein, *supra* note 19, at 44.

New Programs Manager at the AOC

Andrea Ayers has taken the exciting opportunity to start a law practice and has resigned her position as the programs manager for the Administrative Office of the Courts effective July 17, 2008. While Andrea will be sadly missed, the AOC is pleased to introduce you to Anne-Louise Wirthlin, the new programs manager. Anne-Louise graduated from U.T. Law School and has her LL.M. in Taxation from the University of Alabama. She is a Tennessee licensed attorney and was in private practice before joining the AOC. Anne-Louise will staff the Alternative Dispute Resolution Commission and is looking forward to having the chance to work with you. Those of you who will be attending the October 10, 2008, ADRC sponsored continuing education program at Vanderbilt Law School will have the opportunity to meet Anne-Louise in person.

Anne-Louise's contact information is as follows: Email: Anne.Louise.Wirthlin@tncourts.gov; Phone: 615-741-2687, Ext. 288; Fax: 615-741-6285.

Upcoming Events

October 10, 2008.....ADRC Sponsored Mediation Workshop
Vanderbilt University Law School, Nashville

October 28, 2008.....ADR Commission Meeting
Administrative Office of the Courts, Nashville

We Would Like to Hear From You!

The Administrative Office of the Courts gladly accepts articles from ADR professionals for publication in the *ADR News*. For more information, please contact Anne-Louise Wirthlin at Anne.Louise.Wirthlin@tncourts.gov.