



ADR NEWS

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Mediators Enjoy Attending ADRC's 6th Annual Workshop *In Person & Live Online*

The Tennessee Alternative Dispute Resolution Commission sponsored its Sixth Annual Advanced Mediation Training Workshop on October 10, 2008, at Vanderbilt Law School. This year's workshop was titled "Assessing Our Internal GPS When Navigating the Transitions Through Cultural Diversity, Conflict, and Change in Our Personal Lives and When We Serve as Mediators" and focused on the affects culture, diversity, conflict, and change have on the decisions mediators make while conducting mediations and in their own personal lives.

Marvin E. Johnson, J.D., was the main speaker at the workshop. Mr. Johnson is a nationally recognized mediator, arbitrator, and trainer with over 30 years of dispute resolution experience. He is the Founder and Executive Director of the Center for Alternative Dispute Resolution. Meghan Clarke, an associate of the ARIA Group, also presented. Members of the Coalition for Mediation Awareness in Tennessee presented a Lunch and Learn panel discussion focusing on community mediation. There was also a panel of Rule 31 listed mediators which addressed issues and questions raised by the audience.

This year, for the first time, the workshop was streamed live over the Internet allowing mediators who were unable to attend at Vanderbilt to participate in and benefit from the training. Online attendees were able to send comments and questions to the presenters via email. Based on the positive response from online attendees, the Commission hopes to use online viewing technology for future workshops.

Mediate, Don't Litigate

by Clay Phillips, M.B.A.*

From "The Neutral Zone – Why go to court if you don't have to?," a column of the regional newspaper Middle Tennessee Now.

The intention of this and future editions of "The Neutral Zone" is to create awareness in our communities about the many benefits of mediating disputes versus the traditional, protracted litigation process. First, the mediation process itself merits some description and explanation. The Tennessee Supreme Court defines mediation as "an informal process in which a neutral person conducts discussions among the disputing parties designed to enable them to reach a mutually acceptable agreement among themselves on all or any part of the issues in dispute."

Of the six (6) practices of alternative dispute resolution recognized by Tennessee Law (Judicial Settlement Conference, Non-Binding Arbitration, Case Evaluation, Mini Trial, Summary Jury Trial, and Mediation) Mediation is the only form that does not require the neutral party to be a licensed attorney. This ensures that the parties make all the decisions regarding any agreement they reach – not their attorneys or other advocates.

Most disputes, regardless of their nature can be successfully mediated. Some examples of most common disputes that are mediated every day are:

Domestic / Family Disputes

Divorce
Post-Divorce
Property Settlement
Custody / Visitation

General Civil Disputes

Probate (Estate, Conservatorship)
Contract Breach
Landlord-Tenant
Personal Injury
Product Liability

Mediation is an age-old social event that has been at the core of every healthy community. After the Dark Ages, mediation fell to the wayside as a result of social chaos and the need for formal law, order and law enforcement. Thankfully, Tennessee Law recognizes the many benefits of mediation versus litigation, and returning the problem solving process to the hands of the disputing parties.

Benefits of Mediation

- In Mediation, the parties make all the decisions, not a Judge or their Attorneys
- Mediation can and does settle cases promptly, rather than enduring months and years for a case to be resolved in court – which saves the parties a tremendous amount of money
- Mediation is planned around the parties' schedules, not the Court's Docket. This greatly reduces time and additional cost
- Mediation promotes better relationships through cooperative problem solving and improved communication
- Mediation is private and confidential. The Mediator, the parties, and their Attorneys must maintain confidentiality of information disclosed during mediation
- Mediation is voluntary. Even if the law requires, or a Judge orders the parties to mediation, they may terminate mediation and take the matter to trial in the event it becomes obvious that the matter cannot be settled

Mediation isn't too good to be true... it's very true, it's the law and it works.

**Clay Phillips is a Rule 31 listed family and general civil mediator located in Nashville and practices only family mediation. In addition to his mediation practice, Clay conducts and teaches several ADRC approved mediation training courses and trains approximately 100 mediators each year. He also provides CLE and CME training to attorneys, mediators and paralegals. Clay received both his Bachelor's and Master of Business Administration degrees from Liberty University and is an Honorably Discharged Veteran of the United States Navy and Operation Desert Storm. He is a Life Member and State Inspector of Disabled American Veterans, Department of Tennessee. Clay Phillips can be contacted at his office at 615-530-7249 or via his website at DontLitigate.com.*

Mediation and the Special Needs Child: Bridging the Conflict Gap Between Parents & Teachers

by Joseph G. Jarret, Esq.*



Although parents and schools are encouraged to work together to resolve differences, there are times when the assistance of an impartial mediator can serve to assist parents and schools who are experiencing conflict, reach a suitable agreement about the special education program of the student. Indeed, because mediators are trained to facilitate open communication, as well as create safe environments for interaction while remaining unbiased and impartial, they are in a unique situation to settle, short of litigation, some of the more emotionally charged conflicts in society, that of the unique educational needs of the special needs child.

Parents

The most common definition for the special needs child is one who requires assistance for physical, mental, developmental, cognitive or emotional disabilities. It is not uncommon for parents of special needs children to question whether their child's school is providing the type or level of education, care and training commensurate with the child's special needs. Today's parents are often heard to ask, "With whom do I talk to about my child? How can I be sure my child's unique needs are being met?" It is when a parent's concerns go unresolved, or are not resolved to their satisfaction that litigation can ensue, hence creating fertile ground for mediation.

Teachers

It's important to remain cognizant of the fact that teaching special needs children presents teachers with unique and distinctive challenges. Not only do special needs children often demand more of a teacher's time and patience, they often require specialized instructional strategies in a structured environment that supports and enhances their learning potential. Most teachers are mindful that special needs or learning-disabled students are not students who are incapacitated or unable to learn; rather, they need differentiated instruction tailored to their distinctive learning abilities.

The Mediator

The mediator who agrees to serve as a neutral in such matters should consider, when requesting confidential mediation statements from the parties, to specifically ask the parents to list several solutions they feel may resolve the issues. Further, it would be helpful to be provided with a detailed description of the nature of the child's special needs. Likewise, the school should be asked to provide any information that will assist the mediator in appreciating the learning environment in which the child is placed. The mediator should presume that, in today's electronic age, many parents are extremely well informed as to the kind of attention and instructions their child needs to thrive in a classroom environment. As a result of the information readily available to parents, the interaction between parents and teachers and administrators is increasingly taking on the form of a dialogue between equals. The days of the teacher possessing all of the power and control, thus choosing the topics of discussion, and dominating the interaction while talking about students solely from their perspective, are waning according to professional educators. Many parents have gone from deferring to the authority of teachers to asking probing, clarifying questions, thereby becoming infinitely more involved in their child's education, not to mention school policies and procedures. That is not to say that there do not exist parents who may be reluctant to express their concerns because of cultural beliefs related to the authoritative position of the teacher. Regardless of which type of parent appears at the mediation, it goes without saying that the parties have arrived at a place where they have an equal voice, regardless of who is sitting at the negotiation table.

The Mediation Session

The mediator may want to consider reminding teachers and parents that they know the special needs child who is the subject of the mediation in different contexts, and that each may be unaware of what the child is like in the other context. It's quite conceivable that the child may respond to certain stimuli or stressors differently at home than while

See "Mediation and the Special Needs Child . . ." (Continued on page 4)

Mediation and the Special Needs Child . . .

by Joseph G. Jarret, Esq.* (Continued from page 3)

in school. Further, the parties should be encouraged to share their primary concerns and goals for the child. More often than not, the parties will quickly learn that they share a commonality of purpose, that of providing the child with the best education possible according to his or her needs, abilities, and disabilities. Often, parents may seek a change in school policy that cannot be resolved in a mediation session due to Tennessee's Open Government Law (i.e. the requirement that the matter be addressed during a duly noticed public meeting), or merely because the change is not in consonance with Tennessee Law. Clearly, it's not the place of the mediator to educate the parents on the law, however, the school's representative should be encouraged to explain why a certain request is contrary to policy, lest impasse be declared and the parent left with the mistaken impression that the school's representative acted in bad faith, and not because of legal or policy restraints.

Summary: Mediation sessions involving special needs children can be a challenging albeit rewarding experience for the mediator. It is essential that the mediator bear in mind that such cases often contain parties who seek a common goal, that of doing what's best for the child, albeit often have divergent views as to how to achieve that goal. This same maxim, if you will, holds true in cases involving parent-teacher conflicts that do not include children with special needs or learning disabilities. By gaining a clear understanding of the child's needs, the school's policies, and the parent-teacher relationship, the mediator can go a long way in resolving these emotionally charged cases for the benefit of a child.

**Joseph G. Jarret is the Chief Deputy Knox County Law Director, a Rule 31 listed general civil mediator and an attorney. He is a member of the Tennessee Valley Mediation Association, the Tennessee Association of Professional Mediators, the Tennessee Bar Association, and the ADR Section of the Knoxville Bar Association.*

Important Dates & Upcoming Events

December 23, 2008 Rule 31 Mediator Applications Deadline
for ADRC Review on 01/27/09

January 27, 2009 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.