

# ADR NEWS

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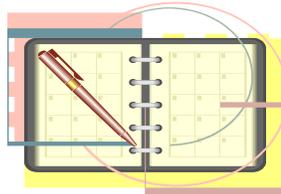
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## IMPORTANT NEWS

### 2012 Renewal Forms Due Soon!

The deadline for submission of your 2012 Renewal Form and \$100 fee is December 31, 2011. If you have not received your 2012 Renewal Form, please contact Claudia Lewis at 615-741-2687 or [Claudia.Lewis@tncourts.gov](mailto:Claudia.Lewis@tncourts.gov) immediately or go to <http://www.tncourts.gov/programs/mediation/resources-mediators> to download and print the 2012 Renewal Form.

If you need Continuing Mediation Education hours, please go to: <http://www.tncourts.gov/programs/mediation/resources-mediators/continuing-mediation-education> for a list of approved CME courses.



### Save the Date!

The Tenth Annual Advanced Mediation Techniques Workshop is scheduled for Friday, October 19, 2012, at Lipscomb University.

Please note that the Workshop will *always* satisfy the CME requirements for *BOTH* general civil and family listed mediators.

# MEDIATION AS A REFLECTIVE PRACTICE

by John M. Peters and David W. Schumann

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**Denise:** “You don’t really care about the kids, you just want to get back at me.”

**Jim:** “What makes you think I don’t care about the kids?”

**Denise:** “You’re late picking up the kids, you miss your visitations and I have to clean up the mess. Do you want me to continue?”

**Jim:** “You know my job is not always predictable and with the economy, I just can’t go out and get another job and assure you have child support.”

Does this dialogue sound familiar? Could this dialogue be altered to create a different understanding and dynamic in the mediation process? Let’s try again and insert a basic reflective practice tool.

**Denise:** “You don’t really care about the kids, you just want to get back at me.”

**Jim:** “What makes you think I don’t care about the kids?”

**Denise:** “You’re late picking up the kids, you miss your visitations and I have to clean up the mess. Do you want me to continue?”

**Mediator:** “Now Denise, please ask Jim why he asked that question.”

**Denise:** “Okay, why did you ask me what makes me think you don’t care about the kids?”

**Jim:** “I care deeply about our children. I hate it when I miss a visitation or I’m late. I feel so guilty, but I also feel trapped. I have to make money to support the children. That’s a responsibility I take very seriously. As you know, I never miss a support payment. I don’t know how to solve this.”

**Denise:** “This is the first time you’ve told me this. I didn’t realize what kind of conflict this created for you.”

For mediators, to engage in reflective practice (RP) means to consistently and regularly inquire into taken-for-granted ways of thinking and acting in order to improve one or more aspects of one’s professional activities. The RP process focuses on examining experiences that are grounded in the disputants’ own thoughts and actions. The outcome is increased understanding and skill that can lead to improved communications and performance on the part of both the practitioner and those being served. In the dialogue above, a simple use of the RP skill of “*Questioning*” employing an “asking back” technique changes the focus of the conversation and provides a new way of thinking on the part of the participants. By Denise “asking back,” Jim was able to express to Denise his true feelings about the conflict he was experiencing. Without the use of “asking back,” Denise and Jim might likely continue to focus on their own agendas and respond defensively. Questioning as with the other RP tools, raises the potential for a more genuine and rich dialogue between participants.

So let’s pick up where the dialogue left off.

**Denise:** “That’s the first time you’ve told me this. I didn’t realize what kind of conflict this created for you.”

**Jim:** “I wanted to protect you and the kids from having to experience my stress and uncertainty at work.”

**Denise:** “I didn’t know. Would it help if we changed the visitation times to better accommodate your work schedule?”

**Mediator:** “Can we agree Jim, that your job creates significant uncertainty regarding your schedule and this is causing you emotional conflict with regards to your responsibility to your children? And Denise, now realizing the depth of Jim’s conflict, would you be willing to explore options?”

Note what the mediator is doing here. She is reflecting the meaning or understanding that exists as a result of the dialogue and checking to see if she is accurate. This RP tool of *Focusing* provides the mediator with the opportunity to reflect to the participants what lies “in between” their individual messages and how their messages come together to create a mutual understanding.

As these examples reflect, in essence, RP is a communication process that is foundational to mediation and mediator training.

We believe seven skill areas are critical to maximizing a mediator’s ability to think critically and effectively at every step of the mediation process, and thus improve their chances of helping clients reach a satisfactory settlement.

1. **Climate Building** --- Creating a mediation environment in which clients have a sense of safety and respect, supportive of a collaborative relationship among all participants.
2. **Questioning** --- Asking questions that help clients identify their assumptions, clarify their thoughts, and develop fair and balanced expectations of the mediation process.
3. **Listening** --- Skillful listening to clients’ mental models, wants, assumptions, and values.
4. **Focusing** --- Seeing and hearing what each client says and how they say it, moment to moment, individually and jointly.
5. **Thinking** --- Identifying and suspending one’s own frames, assumptions, values, and biases, in order to understand one’s own and the clients’ viewpoints and behaviors.
6. **Acting** --- Taking next steps based on critical reflection of one’s own and others’ thoughts, feelings, and actions.
7. **Facilitating** --- Enabling conditions that create and sustain dialogue by participants.

Mediators are reflective practitioners by the nature of the work they do. Like other professionals, mediators often think about their past actions in order to improve future actions. Mediators may examine especially successful mediation sessions in search for what worked well, and why, in an attempt to improve their abilities to communicate effectively with clients and perhaps to help disputing parties communicate more effectively with one another. This is an example of “reflection *on* action;” that is, reflections that occur after the fact that lead to anticipated improvements in future professional actions. However, a lesser-known form of reflective practice has to do with “reflection *in* action.”<sup>1</sup> The dialogue above provides an example. Reflecting in action is akin to thinking on one’s feet. Reflecting in action (in the moment) can be more complex and demanding than reflecting on what happened in the past. This is especially true for practices in which the professional must make dozens or perhaps hundreds of decisions in a short period of time, what mediators are often tasked to do within a single session.

The tools that mediators routinely use often resonate with the above RP skills. For instance, climate building includes the identification and clarification of rules at the beginning of a mediation session. The purposeful use of open questions that bring disputing parties’ thoughts, feelings, and values into the discussion is a widely practiced skill. It seems an almost foregone conclusion to say that listening carefully to what clients have to say is essential to successful mediation. Mediators are neutral participants in the mediation process and are thus encouraged to suspend their own thinking and avoid telling clients what to do. And some types of mediation equate the mediator’s role to facilitating dialogue between disputing parties. However, each of the seven tools is complex enough to require continuous training and practice, especially as these skills are used in an integrative fashion within a mediation dialogue.

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<sup>1</sup> Schon, D. (1987). *Educating the Reflective Practitioner: Toward a New Design for Teaching and Learning in the Professions*. San Francisco: Jossey-Bass.

Thus far, we have referred to what an individual mediator can do while interacting with disputing parties. However, team mediation is a common practice and it is here that mediators can engage in RP with the other member(s) of their team during or after a session. For example, team member A might ask team member B to say more about a question she asked one of the parties, based on member A's belief that one or both of the parties involved would benefit from knowing more about member B's thinking. This exercise would also model this type of questioning for the disputing parties. Team members might also find value in probing each other's thinking about actions they took during a recent session in a debriefing, seeking to learn from and with one another new ways in which they can improve their future team mediation practice.

Throughout this discussion we have also assumed that RP is often more effective when done with the help of one or more individuals. RP can also be seen as a process we like to call a solitary act that one cannot do alone, or what Isaacs calls "the art of thinking together."<sup>2</sup> For example, having another mediator serve as a critical friend who helps us plumb the depths of our thinking (and theirs) can open surprising and productive new ways of thinking about our practice not usually achievable when thinking alone. This form of professional engagement in RP can be a "best practice" in itself, one that may lead the mediator helping clients themselves engage in deeper and more engaged interactions leading to constructive settlements and longer-term benefits for clients.

An evaluation of our recent day-long training session in advanced mediation techniques at the ADRC Workshop revealed that mediators have a keen interest in improving their mediation language skills. RP provides a language that evokes rich and meaningful dialogue among disputants. In this article, we hope we have piqued your curiosity about using RP techniques to improve your mediation skills. If so and you would like more information, please don't hesitate to contact the University of Tennessee Institute for Reflective Practice (email [jpeters@utk.edu](mailto:jpeters@utk.edu) or [dschuman@utk.edu](mailto:dschuman@utk.edu)).

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### **About the Authors:**

**John M. Peters, Ed.D.,** is Professor of Educational Psychology and Counseling at the University of Tennessee. He is a Faculty Scholar and Director of the Tennessee Teaching and Learning Center Institute for Reflective Practice.

**David W. Schumann, Ph.D.,** is an applied social psychologist and holds the William J. Taylor Distinguished Professorship at the University of Tennessee. He is presently serving as the Inaugural Director of the University of Tennessee Teaching and Learning Center.

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<sup>2</sup> Isaacs, W. (1999). *Dialogue: The Art of Thinking Together*. New York: Doubleday.

# ~ Roll Call ~

**Congratulations to the following Newly Listed Rule 31 Mediators!! These mediators were approved for listing at the ADRC Quarterly Meeting on November 3, 2011.**

Mr. Russell W. Adkins-General Civil  
Ms. Leslie A. Ahlgrim-General Civil  
Mrs. Ashley K. Annestedt-Family  
Ms. Dana D. Ballinger-Family  
Mrs. Pepper C. Bowser-Family  
Mr. Ronald B. Buchanan-General Civil  
Ms. Michelle L. Caggiano-General Civil  
Ms. Bette (Alice) Christofersen-General Civil  
Mr. Daniel J. Clark-General Civil  
Ms. Deborah E. Denson-Family  
Dr. Emily E. Dunlap-General Civil/Family  
Mr. John E. Evans-General Civil  
Senator Michael A. Faulk-General Civil  
Ms. Rachel S. Fisher-Family  
Ms. Christina M. Frierson-Family  
Ms. Anna E. Freeman-Family  
Mr. Alexander W. Gothard-General Civil  
Ms. Linda N. Harris-Family  
Dr. Greg A. Harwood-General Civil/Family  
Ms. Elizabeth Shelton Hayes-Family  
Ms. Kamie L. Hefner-Family  
Ms. Phyllis D.K. Hildreth-Family  
Mr. Jamal L. Hipps-General Civil  
Mr. Van L. Hohe-General Civil  
Ms. Maureen T. Holland-Family  
Dr. Sandra B. Hunter-Family  
Mr. Jonathan R. Johnson-General Civil

Ms. Tonya G. Jones-General Civil  
Mrs. Amy F. Maberry-Family  
Ms. Danita Q. Marsh-General Civil  
Mr. Ricky L. McVey, II-General Civil  
Ms. Rebecca H. Miller-Family  
Ms. Susan L. Moresi-Family  
Mr. Amit D. Patel-General Civil  
Ms. Janet R. Payne-Family  
Mr. Paul A. Phillips-Family  
Mr. Paul B. Plant-General Civil  
Mr. William E. Porter-Family  
Ms. Meyoshia Powell-Family  
Ms. Rebecca L. Safavi-Family  
Mr. Don E. Schulze-General Civil  
Mrs. Julie A. Sears-Family  
Mr. J.D. Carter Steele-Family  
Dr. Gail M. Stephens-General Civil/Family  
Dr. H. Edward Stone-General Civil  
Mr. James T. Street-Family  
Mr. Kevin J. Swinton-General Civil  
Mrs. Donna M. Townsend-General Civil/Family  
Mr. Gregg C. Whittaker-General Civil  
Mr. Jeffrey N. Woodard-General Civil  
Mr. Rocky H. Young-Family

## Important ADRC Dates

**January 24, 2012** ..... ADR Commission Meeting, Administrative Office of the Courts, Nashville  
**March 6, 2012**..... Rule 31 Mediator Applications Deadline for ADRC review on April 24, 2012  
**April 24, 2012**..... ADR Commission Meeting, Administrative Office of the Courts, Nashville  
**June 5, 2012**..... Rule 31 Mediator Applications Deadline for ADRC review on July 24, 2012  
**July 24, 2012**..... ADR Commission Meeting, Administrative Office of the Courts, Nashville

*We Would Like to Hear From You!*

If you are interested in submitting an article for publication in the *ADR News*, please contact Claudia Lewis at [Claudia.Lewis@tncourts.gov](mailto:Claudia.Lewis@tncourts.gov).