



**SUPREME COURT OF
VIRGINIA**

RESOLUTIONS

OFFICE OF THE EXECUTIVE SECRETARY

*Department of Judicial Services
Division of Dispute Resolution*

100 North 9th Street
Richmond, Virginia 23219

Department of Professional and Occupational Regulation and Alternative Dispute Resolution

The Department of Professional and Occupational Regulation (DPOR) is a Commerce and Trade secretariat agency that regulates more than thirty occupations and professions through nineteen boards. It licenses or certifies over 300,000 individuals and businesses ranging from engineers and architects to cosmetologists and wrestlers. The agency receives an average of 5,000 complaints each year. Often, consumers file complaints with DPOR, hoping that a respective board will force a licensee to resolve a pending issue or conflict. However, a regulatory board cannot require any individual or business to refund money, correct deficiencies, or provide other personal remedies. As a result, collaborative problem solving, facilitated communication, negotiation, mediation, and conciliation are all practices that have become a part of DPOR's culture to assist parties in resolving disputes.



Alternative Dispute Resolution Program

Since 2001, DPOR has offered consumers and licensees the opportunity to attempt to resolve disputes through alternative dispute resolution processes, such as conciliation or mediation. These services are provided at no cost to parties through the agency's Alternative Dispute Resolution (ADR) Section, and the parties' participation in the program is strictly voluntary.

Discussions during mediation, memoranda, letters, and other information related to a specific mediation in the program's or mediator's case files are all confidential. For example, the only information that is reported to a board, section, or other administrative body about the outcome of a mediation is that it was declined, unsuccessful, or successful. Further, ADR staff members do not attend Board subcommittee meetings to avoid inquiries about the specifics of cases in mediation. However, if parties are successful in reaching an agreement and they have not agreed to confidentiality, the terms and conditions of settlement may be reported.

Currently, the majority of DPOR's mediations are conducted by employees in the ADR Section who are certified mediators or educated in conflict resolution and mediation techniques. In addition, DPOR maintains a small roster of volunteer shared neutrals, which consists of state employees and individuals from private mediation companies. While DPOR does not require the volunteers to be certified through the Virginia Supreme Court, it is preferred. If a volunteer mediator is not certified, he or she must have completed the 20-hour basic mediation training approved by the Supreme Court and must complete DPOR's orientation session. The mediators' style for DPOR mediations is facilitative and all mediations are based on the principle of self determination.

Mediation is offered to parties involved in *all* complaints filed with DPOR's Virginia Fair Housing Office. In addition, it is an option in some regulatory complaints filed with DPOR, such as contractors, land surveyors, and common interest communities. In all these cases, parties receive a letter and literature defining and explaining mediation and clarifying their rights and responsibilities during the process. Subsequently, the ADR Coordinator

contacts all parties to further educate them about mediation, to informally assess the appropriateness of mediation for the dispute, and to answer any questions.

Three modes of communication are offered parties during the DPOR's ADR process – shuttle diplomacy, teleconference, and face-to-face meeting. During shuttle diplomacy, the parties seldom interact directly. Offers and counter-offers are conveyed to the parties separately by the mediator through a combination of telephone calls, emails, or written correspondence. Teleconferences are both time and cost effective when parties are separated by considerable geographical distances. Parties are always offered and encouraged to participate in face-to-face mediations, if possible.

In fiscal year 2009, the ADR Section received 178 cases for mediation – 69 contractor cases, 108 fair housing cases, and one land surveyor case. Parties agreed to participate in mediation in 91 of the cases (49 contractors/land surveyor cases and 42 fair housing cases). Ninety percent of the fair housing cases and 57% of the contractor cases settled.

Mediations in contractor disputes may involve allegations of failure to honor warranties, construction defects, failure to follow terms of a contract, abandonment, etc. Fair Housing mediations involve disputes relating to unlawful housing discrimination based on a person's race, color, religion, national origin, gender, familial status, disability, or elderliness. In both areas, advanced mediation skills are necessary for mediators to effectively assist parties through the various stages of mediation. In addition, mediators may also benefit from having some technical knowledge about construction and knowledge of fair housing laws and regulations. Recently, the majority of the fair housing mediations have involved persons with disabilities. Those complaints have involved complex matters, such as design and construction issues and, on one occasion, even required the use of high level sign language interpreters.

If parties resolve a fair housing dispute through conciliation, the Virginia Fair Housing Law requires them to enter into a written agreement called a conciliation agreement. The conciliation agreement closes the fair housing complaint. If the terms of the agreement are breached, the Real Estate or Fair Housing Board may refer the matter to the Office of the Attorney General for enforcement through the courts. On the other hand, in regulatory cases, if parties choose to enter into a mediated agreement, the complaint is closed pending compliance. However, if the agreement is breached, DPOR may reopen the original complaint against the licensee for investigation, but it has no authority to enforce the terms in the mediated agreement. The parties may choose to pursue enforcement through the courts.

Use of ADR Processes in Other Areas

Over the years, DPOR has continued to be innovative in its use of alternative dispute resolution processes. It has not only provided opportunities for parties to resolve disputes through mediation, but it has also facilitated meetings for stakeholders to draft legislative language and recommendations for regulations for new regulatory programs, such as photogrammetrists and onsite sewage systems.

Additionally, on July 1, 2008, new legislation related to common interest communities was enacted and a Common Interest Community (CIC) Board was appointed. The CIC Board regulates the sale of new condominiums and time-shares, licensed property managers, and property owners and condominium unit owners associations. With the establishment of the CIC Board, the General Assembly also established the Office of the Common Interest Community Ombudsman. The ombudsman, who is a licensed attorney, joined DPOR in September 2008. The ombudsman's primary responsibilities are to receive notices of final adverse decisions and provide conflict resolution when possible or appropriate. The statute creating the office specifically provides for referrals to alternative dispute resolution, and the ombudsman is responsible for suggesting it when appropriate. Several cases have been referred for mediation, but at this time no common interest community conflict has been resolved through mediation as both parties have not agreed to participate.

State government will continue to champion the use of ADR processes through agencies such as DPOR. It is an area where agency heads, non-lawyer and lawyer mediators, and courts recognize the benefits of having disputants collaborate to resolve their disputes. It's a win-win for everyone.

*Contributed by Carol A. Mitchell, Director of the Alternative Dispute Resolution
Program at the Department of Professional & Occupational Regulation*

Conflict Coaching: One-on-One ADR

- ◆ *Janet was promoted to a management position four months ago. In the past month, three staff members complained to her boss, saying Janet's micromanagement was stifling them and that she argues with them when they ask for more autonomy. The boss conveyed this to Janet who reacted strongly, pointing out that staffs' habits require her to "manage them tightly." Janet is concerned that her response to her boss may be career-limiting and she wonders what to do about this situation and her style of management.*
- ◆ *George and Luis are co-workers who do not get along well. Things have been worsening between them in the past few weeks and George realizes the huge impact the tension is having on him. He dreads going to work and is not sure what to do about this situation. He would like to consider his options and possibly get some coaching about how to best proceed.*
- ◆ *Carlos and Magda recently decided to separate and are hardly speaking. Their respective counsels have suggested they consider mediation. Carlos has heard about conflict coaching and is thinking that he needs some help about how to manage his strong reactions to Magda. He expects she will begin by blaming him for the marriage breakdown and he knows she won't take responsibility for her part. He would like to have some help on how to regulate his emotions and prepare to communicate in a less hostile way than he has been, of late.*

Mediators reading the above scenarios will likely consider how mediation may benefit the parties. Coaches are likely to consider the advantages of coaching. The forum used, mediation or coaching, depends on several factors, including the preferences and objectives of the person seeking assistance. For instance, Janet may want help on how to structure a conversation with her boss to rectify matters. She may also want some coaching on how to improve her management style to avoid similar problems in the future. George may want to explore options on how to handle his relationship with Luis. These options may include mediation, facilitative dialogue led by his boss, preparing to have a conversation on his own with Luis and so on. Being able to consider his options and then gain assistance if required to move ahead, would be possible goals for him.

Growth of Coaching

Since the early 1990s, there has been an exponential growth in the field of coaching and its range of categories, including executive, organizational, life, and business coaching. There also has been an increase in coaching specialties, ranging from career coaching to weight loss coaching to parent coaching, and so on. In the ADR field, conflict coaching is fast emerging as a specialized technique, and this article provides a perspective on some of its applications.

A Definition of Conflict Coaching

Conflict coaching is a one-on-one process for helping individuals improve their conflict understanding and skills, to manage conflict and disputes more effectively. This definition, and variations of it, are used to describe a technique with the fundamental objective of coaching people to better engage in their interpersonal conflicts in both their personal and professional lives.

Assisting individuals with their interpersonal conflicts is not a new concept. Indeed, one of the many roles of organizational ombudsmen is to assist staff members on a one-on-one basis. In various ways others, such as union representatives, counselors from employee assistance programs, managers, supervisors, and HR professionals, routinely assist individuals with conflict situations in the workplace. Similarly, therapists, psychologists and other human services professionals assist people with conflict in their personal and professional lives. Many professionals and practitioners in these various groups use the word "coaching" although their practices may not necessarily fit within the definition of coaching, according to one of the coaching field's main organizations, the International Coach Federation.

The following is part of a general definition of coaching, as stated by the International Coach Federation (www.coachfederation.org):

Coaching is partnering with clients in a thought-provoking and creative process that inspires them to maximize their personal and professional potential. Coaching is an ongoing relationship which focuses on clients taking action toward the realization of their visions, goals or desires. Coaching uses a process of inquiry and personal discovery to build the client's level of awareness and responsibility and provides the client with structure, support and feedback.

Unlike sports coaching, conflict coaching, as many other types of coaching, does not entail advising people what to do to improve their actions and reach their goals. Rather, one of the cornerstones of the field of coaching is self-determination; and one of the main skills of trained coaches is the use of powerful questions that increase insights and awareness that help people to help themselves.

Applications of Conflict Coaching

Currently, conflict coaching as a distinct technique appears to be growing mostly in workplaces as an additional option for employees and tool for mediators, whether or not there is an Integrated (Informal) Conflict Management System. This technique may be used instead of, or in tandem with, mediation and other ADR processes. In addition to helping individuals improve their conflict management skills in any context, some other applications of conflict coaching include:

- as a pre-mediation or pre-other ADR process to help individuals anticipate and prepare for any challenges and to effectively participate in the process;
- to prepare clients to actively and effectively participate in collaborative law meetings;
- as a post-mediation or post-other ADR process to help individuals with the aftermath of any unresolved matters and ways to manage ongoing interactions;
- to help managers, supervisors and others focus on aspects of their conflict conduct requiring improvement;
- to help people enhance their negotiation skills;
- as an integral part of conflict management training, to provide individualized ongoing assistance with participants' specific challenges; and
- to facilitate self-reflective practice of conflict management professionals and others who work in any capacity with people in conflict.

Summary

As an additional tool for ADR professionals, conflict coaching represents a multi-faceted process that is adaptable to the specific conflict management goals of the individuals who seek coaching. Although there are a number of similarities between some aspects of conflict coaching and mediation (and other ADR processes), there are a number of significant differences, besides the one-on-one nature of coaching. For instance, the types of goals an individual may bring to a coach are not necessarily about resolving issues. Objectives often include the desire to gain strategies for changing non-productive behaviors, or to manage situations without assistance of another person. While similarities also exist in some of the skills and steps used by both coaches and mediators, there are also differences that warrant appropriate training.

Creative ADR practitioners will undoubtedly develop more applications of the conflict coaching process. These may be used in any context in which people want individualized assistance to be able to engage in their interpersonal conflicts more effectively. Standards of practice will inevitably develop within our field in the foreseeable future, and conflict coaching will increasingly establish its place in the ADR continuum.

Submitted by Cinnie Noble, C.M. LL.B., LL.M. (ADR), a lawyer-mediator and ICF certified coach who created the CINERGY® model of conflict coaching. She chairs the ACR Workplace Section's Conflict Coaching Committee and is chair of the ICF's Special Interest Group of Conflict Coaching. web: www.cinergycoaching.com, phone: (416) 686-4247, toll free: 1-866-335-6466

Please note that Ms. Noble will be presenting a Conflict Coaching workshop in Arlington, VA in May 2010. Contact her at cinnie@cinergycoaching.com for details.

Agreement Writing for Court

A mediation's success can be measured in different ways, depending on the theory you follow regarding conflict resolution. Mediation can be considered successful if the parties agree to disagree, or if they look at the problem, understand the issues and interests involved, and have decided based on a complete picture of the conflict that they need another person to make a decision for them. To most people in court cases settlement defines success. A written agreement resolves the issues that brought the clients to mediation and potentially removes the case from a court's docket. One judge told us "a successful mediation is the entry of a court order." Court mediators need to consider this definition of success, even if it does not correspond with their personal philosophy.

If a court-referred mediation ends in agreement, it is important for the parties to have a well-written settlement that expresses their intent. It is hard to succinctly organize and express complex ideas. It is even harder when the ideas are not yours, and even more difficult when those ideas need to be expressed clearly for something important like a court document. It can be intimidating to construct an agreement that is binding like a contract, may affect someone else's legal rights, and is going to become part of a court order. There are also challenges in remaining true to the parties while making sure the agreement is written well. We are required to be scriveners of our parties' words, but what does that mean?



Being a scrivener does not mean writing, verbatim, the parties' words. We are not taking dictation, but are helping parties put together the clearest, most concise and efficacious agreement possible. The statute gives mediators broad authority in drafting agreements and does not really define what mediators can and cannot do when writing agreements. The [*Guidelines on Mediation and the Unauthorized Practice of Law*](#) (UPL) narrow down and help define a mediator's power when writing agreements. This is where the term "scrivener" is used and defined. Even though the UPL guidelines restrict mediators and do not allow them to write anything in the agreement that the parties have not agreed on, mediators still have a lot of freedom when it comes to helping parties write agreements. They can suggest language and organize the agreement to make it flow logically. Parties must approve and agree on all mediator suggestions.

Mediators start to have issues of UPL and ethical violations when they make changes or insert verbiage the parties do not approve or request, or when they insert boilerplate legal language or legalese the parties do not understand or approve. Boilerplate legal language has legal meaning to attorneys and judges and has specific uses. This language could favor one party or have legal ramifications of which the mediators and parties are unaware or that the mediator cannot advise the party about because he or she cannot give legal advice.

Our ethics say we do not have a stake in the outcome of agreements. However, we need to help the parties explore future ramifications of their agreement. The parties also need to consider the effect the agreement will have on absent third parties. The only time we can personally interfere with an agreement is if we believe the agreement will result in "manifest injustice." At that point, if the mediator has explored his or her concerns with the parties and the agreement is not changed, the mediator can withdraw from the mediation. Injustice means different things to different people. When deciding whether you believe an agreement would result in "manifest injustice," try to step outside of yourself as much as possible and be cognizant of how your personal values are affecting your perceptions.

An agreement from a court-referred mediation cannot be vacated solely based on the fact the court would not have granted the terms of the agreement. Agreements can be vacated for other reasons. These include: the agreement is a product of fraud or duress; it greatly exceeds the bounds of reason or moderation (unconscionable); parties do not provide substantial full disclosure of relevant property and financial information in child support, spousal support, or equitable distribution cases; and evident mediator partiality or misconduct. Mediator misconduct includes not informing parties of the four legals in writing.

We want parties to have a good agreement that expresses the spirit of their understanding, sounds like “them,” and addresses the needs of the court to be clear and enforceable. Mediated agreements are different from other agreements just as mediation is different from other dispute resolution processes. Learning to mediate is like learning to speak another language. Writing mediated agreements is no less difficult. You may find the tips below helpful when constructing agreements.

Appearance

Make sure your agreement is on clean paper and is neatly written or typed. Torn, wrinkled, dirty paper discredits you as a mediator and your parties. If the agreement is not legible, it can be difficult to enforce. No one should have to guess if that is an M, N, or W.

Write Well

Make sure your agreement is well organized and the flow is logical. Use good grammar and correct spelling. Common grammatical errors are run-on sentences, comma splices, improper word use (e.g., affect vs. effect, they’re, there, and their) and awkward word order (syntax). There is no shame in using simple sentences. Make sure every sentence has a subject and verb. If there is no subject or action, it is not a sentence. If you have two subjects and two verbs in your sentence, you most likely have a run-on.

Know your weaknesses and make accommodations for them. If you are not a good speller, bring a dictionary with you. It is perfectly acceptable to look up words, especially words that sound alike but have different meanings like “effect” and “affect.” If grammar is tricky for you, bring a writing handbook and refer to it when you have questions. If you are writing your agreement in court the day of the parties’ appearance, you probably do not have the luxury of writing multiple drafts, so the first draft you write has to be correct.

Identify the Parties Involved

Putting this in writing ensures everyone who has an interest is involved. It also gives the responsibility back to the parties and reiterates that *they* have agreed. In addition, it is practical to identify who is the petitioner and who is the respondent. After the initial identification, I like to use first names if the parties are comfortable with doing so or the arena will allow me to do so. I think this highlights the informal nature of mediation and makes the agreement more personal. Mr. Willis may not have as much personal buy-in as Ted.

It may go against our ingrained instincts as mediators, but if your court needs more formal language or structure in its agreements, please accommodate it. It is more important to provide the court with the service it requires and guarantee the continued availability of mediation for that jurisdiction than it is to use the parties’ first names. As long as you are not violating ethics or UPL guidelines, you may use suggested language the court gives you. An example of this would be the child support form used in places like Newport News and Virginia Beach or a request that the agreement refer to the parties as plaintiff and defendant.

Introduction

I like to give brief background information on the current dispute. I like to say why the parties are in mediation, the parties worked together to resolve their dispute, and the following agreement is a product of their collaboration. This is not necessary, but it does set up the agreement by expressing the issues the agreement is resolving and acknowledging the cooperative spirit of the parties.

Be Clear

When you are writing the terms of the agreement, be clear about who is doing what, where, when, how, and why, if applicable. Be specific about amounts, dates, times, and explanations. Remember you are essentially writing a contract. Use clear, comfortable wording for the parties, use their language when possible and avoid complex (for your parties), bureaucratic or legalistic language. If the agreement needs to have specific legal language, you can always give the parties an agreement to take to their attorneys, who can insert the proper legal language. If you use

subjective words like respect, friendly, soon, will take care of, reasonable, cooperative, fair, neighborly, frequent, communicate, quiet, etc., define what they mean to the parties. These words mean different things to different people and can provide opportunities for more conflict in the future. If something like respect is an issue, define what actions make a party feel disrespected. You can negotiate actions, but you cannot negotiate feelings.

Be Balanced

Try to make the agreement as balanced as possible and show that both parties are contributing to the resolution of the dispute. The way many mediators do this is to alternate actions or names at the beginning of the sentences. For example: “Frank agrees to pay Richard \$200 for fence repair. He will pay by personal check in person. Richard agrees to give Frank a receipt for his payments.”

Have Positive Actions

Focus on what the parties will do instead of what they will not do or what they will stop doing. For example, instead of saying, “Patrice will stop leaving her things on Michelle’s desk,” you could say, “Patrice agrees to put her things only on her desk.” Have their agreements be action based. If the problem is a feeling of being disrespected, hurt, ignored, etc., ask what actions make him or her feel that way and address those actions. Instead of saying something like, “Patrice agrees to stop hurting Michelle’s feelings,” say, “Patrice agrees to count to five before answering Michelle so she can think of the best way to say what she means.” Remember you can negotiate actions but you cannot negotiate feelings.

Future Conflicts

Discuss how parties will deal with any future conflicts. Will they return to court? What if the agreement falls apart?

Pending Court Proceedings

Discuss how the agreement affects the pending court proceedings. Does it resolve them? Are the parties asking for a continuance? Is it dismissed with prejudice? Without prejudice? Non-suited? Each court may have a different dispositional preference. You will need to talk to your court to figure out its preference.

Wrapping Up

Read the agreement aloud to the parties as written. This allows you to catch any weird punctuation and to hear the flow of your syntax in case you have any awkward sentence structure. The parties might also catch any mistakes. Make sure parties approve of every word that is in the agreement and have the opportunity to have legal counsel review the agreement. If they do not want to have the agreement reviewed by an attorney, make sure they understand the agreement is enforceable in the same manner as any written contract and may affect their legal rights.



Authored by Mandy Stallings, ADR Analyst with DRS

A book I found very helpful while writing this article was, The Mediator's Handbook by Jennifer E. Beer and Eileen Stief.

Partnership Introduces UVA Law Students to Mediation

Over the three beautiful days of September 10-12, 2009, the Mediation Center of Charlottesville (MCC), in partnership with the University of Virginia's School of Law, presented the 20-hour Basic Mediation Skills course . . . at the school.

Working in tandem with Richard Balnave and Kimberly Emery, who created the school's pilot Family Alternative Dispute Resolution Clinic, trainers Cyndy Martin and Ronald Olsen taught the foundational course in mediation to a group of 17 participants, which included the new clinic's eight law students, plus three graduate students in psychology.

In order to present students with opportunities to mediate quickly, MCC also facilitated an observation course for them on October 17. Thereafter, students began their work with MCC's mentor mediators on cases referred by the Juvenile & Domestic Relations courts of Charlottesville, Albemarle and Greene. Most have already co-mediated in one case, and several have worked on two cases.

The law students have also attended MCC's parent education seminar, *Co-Parenting: Making It Work*, which was featured on "Good Morning America" in October. There, they began to understand the challenges facing prospective clients, and occasionally offered their perspectives as now-adult children of divorced parents, perspectives which participants found enormously useful. In the spring, under the guidance of Balnave and Emery, the students will begin mediation work with prospective domestic law clients referred by Central Virginia Legal Aid Society, meeting in session with them at the Law School.

We're thrilled to be partnering with the Law School. Because these students now have mediation training means they will be more effective in advising future clients, helping them choose the right path with regard to conflicts, and providing them with knowledgeable, improved representation.

*Submitted by Patrice Kyger, Executive Director
of the Mediation Center of Charlottesville.*

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~ A DRS Update ~

**HAPPY HOLIDAYS
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Ethics Committee Review of Mediator Comments

The Ethics Committee asked DRS to thank the mediation community for its thoughtful review of the proposed revisions to the governing documents. The Committee was impressed, in the words of one member, to have so many “certified mediators/trainers with the desire, knowledge and analytical skills to review our work so thoroughly.” The Committee appreciates the mediator feedback and will carefully review all comments received.

At a meeting in December, the Committee conducted a thorough review of comments related to the Standards of Ethics and Professional Responsibility for Certified Mediators. This effort resulted in a final version that has been posted to the mediation page of the Supreme Court web site for mediator review. If you have any final comments, they should be emailed to mrinehults@courts.state.va.us by January 30, 2010.

The Ethics Committee will continue to meet to review comments to the other governing documents. If time allows, final versions of the other documents will be posted for mediator comment. All revised documents will be presented to the Judicial Council for adoption at their next meeting in April 2010.

Thought Provoking Piece

Tim Heeden, presenter of two trainings at the Fall 2009 VMN Conference, interviews Ron Kelly in the following article on Mediate.com:

[“Challenging Conventions In Challenging Conditions: Thirty-Minute Mediations At Burning Man”](#)

Description: For the past eight years, Ron Kelly has offered mediation services at the annual Burning Man festival. The process he designed appears to bring significant help to disputing couples in half an hour, and useful conflict coaching to individuals in fifteen minutes. It is tightly formatted—and uses a kitchen timer. This interview covers the origins of his process and explores how the creativity and generosity of the festival are available to all mediators.

Click on the title of the article above to be linked to the page. Please note: If the article does not display properly, click on the “refresh” icon on your toolbar menu at the top of the page.

Virginia Mediators in the Spotlight

Bob Glover will be leaving soon for Afghanistan, working with the Agency for International Development. He will be living and working at the Provincial Reconstruction Team in Ghazni with about seventy military and three other civilians. Their focus is to help the local Afghan government leaders and local private community organizations work together more effectively to build and run schools, health clinics, roads, agriculture and other small businesses. Bob’s primary role will be one of facilitator and coach to help local leaders to make their own decisions and better manage their funds and donations from the international community, such that that more jobs are created and their region becomes safer and more stable.

Rachel Virk was interviewed in early November by News Channel 8 in Richmond. The piece was a discussion of alternative dispute resolution in divorce. The interview can be viewed from Rachel’s web page at: <http://virk-law.com/media.html>.

Megan Johnston Is Announced Executive Director of Northern Virginia Mediation Service

Bruce Engelbert, President of the Board of Directors of Northern Virginia Mediation Service (NVMS) in Fairfax, is very pleased to announce that the Board unanimously approved a contract appointing Megan G. Johnston the new Executive Director of NVMS on September 16, 2009. She has been with the organization since May 2007, initially coordinating the court, commercial and community mediation programs before transitioning to serve as Interim Executive Director in January 2009.

Megan has demonstrated the leadership skills and management abilities to handle the responsibilities attendant with the position. The Board and the local community look forward to her continued contributions, energy, enthusiasm, optimism and initiative. Megan holds a Bachelor of Arts degree in International Affairs from George Washington University and a Master of Arts degree in Peace and Conflict Studies from University of Ulster in Northern Ireland. She is a Virginia Supreme Court certified General District Court Mediator.

Megan looks forward to continuing her work with mediators and coordinators in Virginia and the Washington, DC area to further serve the community with quality dispute resolution education and services. When time allows, she enjoys hiking, traveling and playing celtic music on her harp and fiddle or listening to music performed by someone else.



Northern Virginia Mediation Service is celebrating its 20th year in 2010. The 501(c)(3) non-profit organization provides mediation in the General District Courts of northern Virginia, family cases involving separation, custody, property and intact family disputes, community issues, commercial and workplace disputes. NVMS also facilitates meetings and workplace teams and serves the community with restorative practice conferences and circles. The organization also offers professional, skills-based training certified by the Dispute Resolution Services Division of the Supreme Court of Virginia for the achievement of court-referred mediator certification and subject area certificates under NVMS. Some of these classes are additionally certified for attorneys to receive MCLE credits.

*Submitted by Lauren Donovan, NVMS Office Manager and Court Coordinator.
For more information about Northern Virginia Mediation Service, visit their
website at www.nvms.us or call the office at (703) 993-3656.*

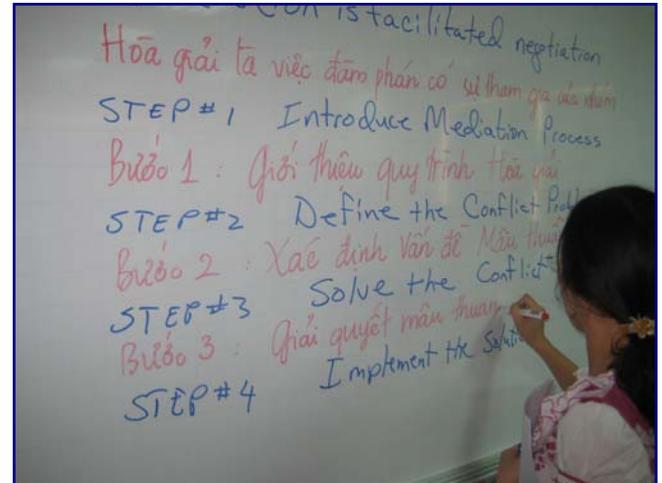
Vietnam, “A Delightfully Difficult Place” for Mediation

This past July and November, I taught negotiation and conflict resolution skills to business managers sponsored by the Hochiminh City Development Learning Center (HDLC), a Vietnamese government “think-tank” and training program, and two MBA courses in negotiation and leadership at the National University of Vietnam, Hanoi School of Business.

Since Vietnam introduced the *doi moi* (renovation) policy in the late 1980s, innovative dispute resolution has been introduced through different regulations like the *Ordinance on Commercial Arbitration* and other mechanisms provided through the Vietnam Chamber of Commerce and Industries.



Business Managers Preparing for Positional Bargaining Exercise in Bill's Negotiation Course at HCDL Center



Vietnamese Translation of Mediation Steps

I have been teaching courses in communication and conflict resolution to Vietnamese business managers since the late 90s when the United States and Vietnam started the process for normalizing relations. In 1999, I co-directed a two-week Vietnam Executive Study Tour through James Madison University and the Hanoi School of Business where thirty business managers from different economic regions of Vietnam received instruction on modern business and negotiation practices.

“Vietnam is a delightfully difficult place” is a frequent phrase I use to describe teaching in Vietnam. My students are tough-minded, innovative and know how to overcome hardships. Vietnam, however, still has some challenges in its infrastructure, yet improvements are seen everywhere with accelerated building projects, new road systems, power plants and increased commerce. I enjoy trekking around Saigon and Hanoi on motorbikes provided by National University and HDLC, and I am quick to show my Vietnamese driver's license and proudly tell others that I scored a 100 on the Hanoi driver's test.

Due to Confucian traditions and Party-State controlled courts, Vietnamese litigation typically has been somewhat unpopular because it serves a more punitive role rather than a forum for conversation. So, a lot of disputes are resolved outside the courts.

Business managers prefer settling business conflicts using informal, ad hoc approaches like negotiation and mediation. Mediation is mandatory, by Vietnamese law, in the resolution of many types of non-criminal offenses, marriage and family litigation, civil disputes and labor. Mediators, at the community level, carry out State

mediation initiatives, not unlike in Virginia. Working with staff at the Hochiminh City Development Center, which also provides conciliation and mediation assistance, I have been asked to serve as an advisor and as a co-neutral in disputes between state-owned companies as well as conflicts between state and foreign companies.

My courses on negotiation and mediation cover many of the topics required for mediator certification in the Commonwealth. I use textbooks with which we are all familiar, including Fisher and Ury's *Getting to Yes: Negotiating Agreement Without Giving In* and not surprisingly, my own textbook *Mediator Communication Competencies: Problem-Solving and Transformative Practices*. I return to Vietnam in March to teach a course on leadership.

Submitted by Dr. Bill Kimsey, Professor at James Madison University School of Communication Studies and Supreme Court certified mediator, mentor and trainer



MBA Students and Dr. Kimsey at Graduation



HSB Students After Completing HSB-BUS-007 Negotiation;
Waving Goodbye as Bill Departs for Noi Bai Airport



A Life That Inspires Andréa C. Palmisano



Most of us would be decidedly apprehensive about getting involved with inner-city teenage gang members, but Virginia mediator Andréa Palmisano is passionate about making a difference in the lives of kids whose life circumstances have set them on a slippery slope. She has seen firsthand that unmanaged youth conflict means increased risk of substance abuse, dropout levels, low self-esteem issues, and other destructive behaviors.

Andréa, who is affiliated with the Virginia Conflict Resolution Center in Norfolk (formerly known as the Community Mediation Center of Southeastern Virginia), has been a certified mediator since early 2002 and also serves as a mentor. When working through her mentorship to be certified initially as a mediator, Mentor Larry Harris wrote of Andréa, *"She's a natural and applies the skills and knowledge learned during training in an outstanding manner. Her personality, professionalism, communication skills, and application and understanding of the mediation process is exceptional!"*

Andréa served the Center as Youth Programs Director from 2003 to 2007, and her current position is Youth Consultant. In her words, *"Now I spend all my time in curriculum development and training the youth. I love it!"* Before joining the Center's staff, Andréa received their "Rookie of the Year" Volunteer Award. Her training repertoire includes Anger Management, Youth Violence Prevention and Conflict Resolution Through Peer Mediation, Gang Prevention, Cultural Diversity, and Workplace Conflicts. When reviewing course evaluations from participants in some of Andréa's classes, one consistently encounters such descriptors as *"amazing, talented, insightful, articulate, enthusiastic, excellent presenter, and real and down to earth."* One reviewer wrote, *"Andréa keeps everyone interested and makes attendees feel safe and comfortable enough to participate and contribute personal ideas."*

The Center had been working in the Virginia Beach J&DR Court, primarily with kids in the Child in Need of Supervision (CHINS) program. The next step was a gang intervention pilot program, developed in partnership between the Center and the Virginia Beach Court Services Unit. Youths who displayed gang-related activity were referred to the program by probation officers. The goals of the program were to help those already involved in gangs to separate themselves and to help prevent at-risk youth from falling victim to dangerous and destructive lifestyles. During the Virginia Beach gang intervention program meetings, the parents met in a separate room to learn ways to support their teens to successfully make positive changes in their lives. Topics covered included communication skills, anger management, brainstorming techniques and personal needs and interests. Andréa explained that the initial program was a twelve-week cycle, but they soon discovered this was insufficient time. They expanded to a six-month program, but after three cycles it was outsourced to another organization due to a lack of funding. Andréa and the Center are currently involved in other programs to engage and empower young people to become part of the peacemaking process in their community.

In a blog on the Center's website in the summer of 2007, Andréa wrote,

"I recently did a 12-week training with kids currently involved in gangs. As a mediator, one of my goals was to help them explore their interests in leaving the gang lifestyle. Our most powerful sessions involved conversations regarding the difference between fear and respect.

The kids were clear about their need for respect. Most of their actions were aimed at getting others to respect them and recognize them as individuals that matter in this world. However, as we explored their actions, they were slowly able to recognize their current belief that fear and respect mean the same thing. Their violent actions led people to clearly fear them, and therefore (they thought) respect them.

Once the kids were able to identify the clear differences between fear and respect, their interests were no longer able to be met through their violent acts. It was time to brainstorm new behaviors that would earn them the respect they desired!! It was time to change!!”

Students really enjoy working with the energetic Palmisano. After several trips to Granby High School to conduct peer mediation training, Andréa was impressed with the teens’ honesty in expressing their ideas and sharing their struggles when they didn’t understand something. She explains that kids can’t do well in school when they are in a dispute with a friend or worried about their reputation. Andréa wrote in an article for **Resolutions** several years ago, *“Peer mediation trainers become positive role models in the lives of kids who often don’t have a trusted adult to lean on. The ability to trust is essential for kids to develop in a healthy manner. Peer mediation teaches kids not to be simple observers in life, but actual contributors who can truly make a difference in the world!”*



Granby High School Peer Mediation Class with Andréa

Andréa started the peer mediation program at Granby High School in the latter part of 2005 when John Hatcher was Assistant Principal there. She is working to begin a similar program at Norview High, where Mr. Hatcher now serves as Assistant Principal, with the first student training taking place this month. Mr. Hatcher told DRS, *“Andréa exhibits an unmatched dedication to helping others deal with conflict in a constructive way. She has volunteered countless hours and given of herself tirelessly to train students, parents and community leaders in conflict resolution skills, equipping them to make better decisions in life. I have witnessed her training and certifying over 200 students as peer mediators to date. Andréa is truly an amazing person!”* He thinks students love Andréa because she *“is transparent. She shares her personal testimony and experience and the students can identify with her. They recognize that she is genuine and really cares about them as individuals. Kids cleave to that, and her bubbly and energetic personality attracts young people like a magnet.”*

When a young man named John was thirteen years old, he was charged with a felony and a misdemeanor for malicious wounding and intent to maim and disfigure. John was put on probation and sent to the Madison Career Center/Alternative School. His participation in an anger management program there led to mediation training, where he learned he had a natural ability and developed a strong interest in helping his peers resolve conflict. John credits Andréa Palmisano with inspiring him to stick with the training and get deeply involved.

John and Andréa became an effective team in teaching conflict resolution skills workshops to other teens. She said, *"You know when you meet someone and know right away they are special? That is John."* In addition to the workshops, John participated in the Youth for Peace Conference in May 2005 and was the co-recipient of the Youth Peacemaker Award. He also helped organize a mock trial and mediation at Madison for National Conflict Resolution Day.

Kim Humphrey, Executive Director for the Center in Norfolk told DRS, *"I can tell you that Andréa is an inspiration to all who work with her. She is so passionate about helping our youth and cares deeply about each of them. She is an inspiration to our staff as well. Her positive attitude and deep commitment is contagious."*

A Valentines Day baby, Andre de Filpo Crespo was born of Brazilian parents and raised there. Her father was part of a team that developed the first ATM device. When Andréa was a sophomore in high school, her family moved to Belgium with thirty other families from around the world for a one-year ATM training period. She was sixteen and a junior in high school when they moved to New Jersey so the ATM could be introduced in America.

Andréa earned a Bachelor of Arts Degree in Psychology and a Master of Arts Degree in Clinical Psychology at Fairleigh Dickinson University in Madison, New Jersey. Upon graduating, she worked for about five years in the outpatient clinic for the psychiatric pediatric department of a hospital. She worked with younger children, using play therapy to help them find healing from abuse. She also did parent workshops to equip them to understand and support their children in the healing process.

After her children were born, Andréa became a full-time mom until the youngest started school. Her husband suggested she consider taking mediation training and pursuing that career avenue. She loves mediation because it empowers people, giving them a sense of control over the conflicts that come into their lives.

In a telephone interview with Andréa, more pieces of the puzzle fell into place.

Tell us about your family.

I met my husband David in grad school. I was a teacher's assistant for a chemistry class in which he was a student, and I guess you could say he became the "teacher's pet." David has a Ph.D. in medical physiology and is a family doctor in Chesapeake. He loves soccer and is a terrific dad. He learned the Portuguese language and my culture, and I love him for that. We've been married for sixteen years now.

From 1998 to 2000, we lived in Saba, the smallest island of the Netherlands-Antilles, where David taught in a medical school. Our youngest son was born in Saba so that also makes it a special place in my heart. It is a five-square mile island, a volcano actually, with one road. We learned a whole new culture there and even experienced a category five hurricane. Living there taught me what I don't need in order to live. It was a simple but wonderful time in our lives.

Our son Tiago is fourteen years old and loves to play classical guitar. He is particularly fond of Bossa nova [Portuguese for "new trend"]. Mathias, age eleven, is a drummer. Both boys enjoy video games and they, along with their Dad, have earned black belts in Tai Quan Do. They're really great kids and I'm very proud of them.

How has being raised in another culture impacted your life in the US?

It provides me with a daily reminder that there is not just one way to do things. America offers so many wonderful advantages, but that's true of other countries, too. I love teaching on the subject of diversity because I believe we need to open our minds to a global view and not look upon people and life from a narrow perspective.

How did you become interested in working with disadvantaged youth?

Arriving as a foreigner in an American high school, I experienced first-hand how difficult it was not to “belong” because of cultural differences. I could understand how kids, who for many reasons didn’t feel good about themselves, were at risk to make wrong decisions that would negatively impact their lives. For many, it was because they had no loving support at home and were exposed to violence and neglect in their families. It was a natural inclination for me to want to help those kids somehow.

What is the accomplishment that has brought you the most personal satisfaction?

It’s very rewarding to have kids give me hugs and express their thanks for teaching them a better way to deal with conflict and disappointment. Often we don’t see short-term results from our efforts, but we have to continue to hope and trust that positive results might become evident in their lives down the road. There was one young man in particular I had worked with for some time and he had come so far. He later made some wrong choices, committed a crime and went to jail for a season. He eventually wrote letters to me from jail, telling me about the violence that surrounded him there. He started to connect the dots from the conflict resolution training he had experienced in high school and was determined to avoid conflict in jail. In his letters, he repeated back to me what the conflict resolution steps were.

Overall, I think the greatest satisfaction comes from having taught a lot of grown up people to see at-risk kids through different eyes. There are several dynamics that make at-risk children different from other kids – for example, being afraid to bond and trust. If I can inspire potential youth workers to dig more deeply to determine the root of the kids’ problems and bring greater understanding, there will be more adults to carry on the task of helping to bring stability and hope for a better future for at-risk youth.

John Hatcher mentioned that you have also done conflict resolution training in churches.

Yes, his own church wanted to train a group of mentors to build a stronger link between school students and the faith-based community. I was excited to have the opportunity to provide training there. I have also been fortunate to be able to teach parishioners in other churches about conflict resolution and mentoring.

Is it true you like to read and dance in your spare time?

I’m afraid I’m the ultimate murder mystery novel junkie! As for dancing, when I close my eyes, I’m a Broadway dancer. I started dancing lessons at the age of seven and am still at it. I’ve been on several dance teams and recently participated in a Hope House fundraiser, performing an African dance. For me, dance is a natural expression of my inner self.

What do you still dream of accomplishing?

I would love to try out for a play. My foreign accent inhibits my courage to give it a try. Oh, and I’d like to continue to travel and expose our children to other cultures. I really want to be a good parent. All in all, I am so blessed to feel very fulfilled.

Who are your heroes?

My parents! No matter what, I have always known I am deeply loved. They live only five minutes from us, and that’s wonderful! They taught me that my job is to make other people feel good about themselves. Even when folks are feeling pretty down about something, there are ways to help them feel more positive.



Kim Humphrey describes Andréa as a very humble person. When informed that she had been chosen for this issue's "A Life That Inspires" column, Andréa was incredulous. Her words were, "Wow...this is kind of crazy!"



Quoted from *Pooh's Little Instruction Book* inspired by A. A. Milne:

"Just because an animal is large, it doesn't mean he doesn't want kindness; however big Tigger seems to be, remember that he wants as much kindness as Roo."



It is this *Resolutions* editor's opinion that Andréa Palmisano "gets" this profound truth. The average person may fearfully (or even with disdain) steer clear of the angry, teenage gang member, but Andréa has the gift to see beneath the anger and perceive instead a desperate crying out for kindness, understanding and significance.

We salute you, Andréa, for being one who lives a life that inspires!



Andréa's Parents
Miguel and Norma Crespo



David, Andréa, Tiago and Mathias Palmisano
This was taken during their New Year's Celebration. Brazilians wear white on New Year's Day to represent peace and hope for the future. The Palmisanos continue to keep this tradition.

The Resource Corner: New and Improved Mentoring Tips

Prospective certified mediators in Virginia must work with multiple mentors to complete observation and co-mediation requirements as they work toward mediator certification. *Appendix B* in the [*Mentorship Guidelines for the Certification of Court-Referred Mediators*](#) is an insightful set of tips, techniques and best practices for mentors. This document was developed several years ago by members of the Mentoring Committee. Recently, a revised version was developed by the original authors and shared with the Dispute Resolution Services office.

We'd like to take this opportunity to thank the authors for this great resource and for permission to include the text in this issue of *Resolutions*. We also wish to express our appreciation to our valued Mentors, who aid us in ensuring that potential mediators have an opportunity to develop critically important skills under their tutelage through hands-on experience. We encourage you to take a few minutes to review and reflect upon the wealth of information shared below.

MENTORING

Tips, Techniques, and Best Practices

This paper reflects the experiences shared by many mentor mediators and those who have been mentees. The points are displayed for before, during, and after a mediation session.

Before the mediation:

1. Discuss what the mentee wants to achieve in the upcoming mediation and any concerns and anxieties they have. Try to focus the mentee on specifics – skills, mediator philosophies, stages, etc.
2. Against the background of the mentee's experience to date, any developmental needs noted by prior Mentors, and the discussions under 1 above, plan with the mentee for your mutual expectations and your respective roles – e.g., how you two will share or otherwise handle the introduction to mediation, the extent to which you will share “air time” during the mediation, how to deal with breaks, and how to deal with particular skill development needs of the mentee. Revisit and reinforce basic learning points as needed (e.g., for the introduction, the trust-building overlay, different ways of approaching “ground rules”). Remind the mentee about the importance of body language and of the importance of listening for the “message behind the words.”
3. Discuss your personal styles or model of mediation with the mentee, and any particular practices you favor (or don't) concerning, e.g., “ground rules” and caucusing. This provides a touchstone for post-mediation debriefing on different approaches to issues that arose during the mediation, particularly where the mentee may have heard about different approaches from trainers or other mentors. Mentees often are trying to make sense of different perspectives from several sources.
4. Assure that the mentee understands that the parties' needs are paramount and take precedence over the mediation as an educational endeavor for the mentee -- and that if you as Mentor feel the need to step in, you will do so.
5. Discuss what you know about the upcoming case, and any particular emotional, process, power, or substantive matters that might arise and ways in which these matters might be approached.

6. If you are joined by an observer rather than a co-mediating mentee, clarify expectations about how the observer will be introduced to the parties, where the observer will sit, and the observer's non-participatory role. Give the observer assignments for later discussion: watching body language, questions about your actions and reactions during the mediation.

7. Share your practices around a suggested "toolbox" – copies of forms, "introduction-to-mediation" outline, tissues, calendar, notepaper and pens, etc.

During the mediation:

1. Follow your plan. Send a message of support (and responsibility) to the mentee by doing the things (and letting the mentee do the things) you discussed before the mediation.

2. Consider whether to identify your co-mediator as a mentee. There are two perspectives on this. On the one hand, identification can have the effect of diminishing your mentee's perceived role so substantially that it becomes virtually useless as a co-mediation learning experience. On the other hand, you may feel that the parties have the right to know about the competency and experience of the persons who are their mediators. This may be a case-by-case determination.

3. Be continuously alert, but give the mentee room to work and make some (harmless) errors. As stated above, your primary responsibility is to the parties, but you should be prepared to tolerate what may be some less-than-artful actions of the mentee. There are few errors from which one cannot recover. Of course, you should note opportunities for improvement for later debriefing.

4. Although you want to give the mentee room to learn from their own experiences, your modeling of adroit mediation practices is a very effective learning tool as well. For example, you can demonstrate useful phrases used to clarify, an example of your style of reframing, etc., and affirm these later in debriefing.

5. If you must step in, try to do so unobtrusively, if possible – e.g., if you believe you really need to redirect a line of discussion from something the mentee just asked, you might say "*just before we get to that, could we first clear up something that I still am a little unclear about . . .*" It is best that the parties not unnecessarily pick up "vibes" that something has gone wrong, as it can negatively affect their trust in the mediation -- and you want to avoid appearing to disrespect your co-mediator.

6. Once in a while, things may go so badly that you need to change direction substantially and immediately. Take a break (you do not necessarily have to disclose your real reason for the break to the parties). Then meet with your mentee, debrief specifically around why you took the action, and plan for recovery back at the table.

7. Ordinary breaks during the mediation may present "mini-debriefing" opportunities about prior activity; just keep in mind that a break may be too short to effectively deal with an issue or may over-emphasize a particular contemporary event. On the other hand, breaks can be used as opportunities to re-visit your mentoring plan and analyze options for proceeding after the break.

8. An important challenge for the Mentor is timely note-taking about items to discuss during debriefing – things that went particularly well, problems that arose and options for handling them, and things that might have been done differently. While you do not want to lose focus or divert attention by voluminous note-taking, it is important to develop your own way of making brief notes sufficient to later remind you and the mentee of the specifics of a learning event. It may be some time before you can return to an important event that occurred during only a few seconds in mediation. Sometimes, you may need to capture the exact words a mentee used to debrief effectively. Consider practicing the art of brief, marginal note-taking without looking down, and developing your own shorthand!

Debriefing and evaluation after the mediation session:

1. Take a short break after the mediation session and before the debriefing to refresh and refocus. You and the mentee can use this opportunity to organize your thoughts. Mark the transition psychologically by changing something – take your coat off, arrange the seats differently, etc. Reintroduce the purpose of the debriefing, your respective roles, and assure you are in agreement about the time available. Often, the two of you may need a little time to decompress from the mediation – which may provide an opportunity to segue into specific elements of the debriefing. If the mentee appears at all apprehensive, acknowledge that evaluation is difficult for everyone and that it is a valuable experience for everyone, particularly in the mediation process, where as mediators we need to anticipate and welcome constructive feedback in one form or another throughout our professional lives.
2. A good principle about feedback, as in conflict resolution in general, is to focus on the behavior, not the person. You want to make it easy for the mentee to hear you and to heed your input, and it helps to reduce the mentee's personal defensiveness.
3. Generally, start with the mentee's own experiences and thoughts (and your encouraging observations), using open-ended questions and building toward your constructive feedback. Illustrations: *"Jim, how do you think the mediation session went?" "What in particular went well for you?" "I was impressed with how you responded to the question on confidentiality -- how did you feel the parties reacted?"* Frequently, encouragement makes it safe for a mentee to move spontaneously toward their challenges; if not, you might ask: *"Was there anything in particular that you felt uncomfortable with?"* Often, the answer will reflect something you may have noted for feedback purposes yourself, and you can use the mentee's own statements as an entry for your critique and developmental discussion.
4. Use elicitive praise, i.e., praise accompanied by a question or invitation to discussion: *"I really liked it when you asked _____ -- what made you think to ask that?" "The parties responded well when you reframed their discussion about the idea of a fresh start in a new job – how do you think that went?"* Always begin discussions with positive comments and observations. Avoid the "why" question, which can be unduly challenging – instead, try for "what" and "how" questions, and explain the context.
5. Generally, the Mentor should prioritize and carefully select learning points (or themes) for feedback – perhaps no more than three to five primary subjects of feedback per mediation session. A long and scattered list can dilute the importance of priority items and may not be remembered or learned as well by the mentee. Briefly outline your overall themes at the outset, so the mentee has a sense of context and limits.
6. During feedback, the mentor should identify the action or behavior in question as specifically as possible, linked to context. Make a factual observation about whatever the mentee or a party did. This helps avoid ambiguity and confusion about what happened, and reduces the opportunity for defensiveness on the part of the mentee, so you can proceed more directly to productive discussions. To do this well, you must be able to frame events accurately, which underlies the importance of good, detailed, note-taking.
7. Rather than (or before) questioning an action of the mentee, start by asking the mentee for clarification or perspective on the event. For example, assume a mentee interrupted the parties' exchange at one point, and you want to use this event to discuss when and how to intervene. You might try the following: *"Do you remember when Bob was talking about [x] when we were discussing [y]? You responded just then by asking [z]. I think it would be useful to discuss that interaction. What strategy did you have in mind at that moment?"* Or, if you had had to step in at some point to recover a mediation veering off because of a question or action of the mentee, you might say: *"You probably remember when I stepped in at [x point]. What is your perspective on what was happening there?"* Generally,

mentees learn better by being integral to a developmental discussion where they help lead themselves to new perspectives, rather than merely being subjected to “mini-lectures.”

8. Demonstrate something you might have done differently, and give reasons. *“This is how I might have handled that situation.” “I’ve seen other mediators do this . . .” “This is how I usually arrange the chairs [and why].”*

9. Do not evade your responsibility to tell a truth just because it is difficult. As in mediation generally, it usually is *how* you say something, not *whether*. Mentors have a responsibility to mentees, to the public, and to mediation generally, to assure that difficult topics are dealt with and that mentees who have trouble “getting it” are well-directed toward the best path – whether that means further training, an evaluation that recommends additional practice, or an evaluation that does not recommend certification. In these instances, it is particularly important to identify objective behaviors and context (discussed above). Sometimes, setting up the seriousness of the subject is the psychological key – e.g., *“Bob, I believe we need to debrief carefully around one interchange: the one where Katie said she didn’t know what to do about [x] and you stepped in to give her some very specific options. As I believe you know, the aspect of self-determination is key, both legally and as a matter of the core values of mediation as we practice it here. There are ways you can help a person develop or obtain ideas and perspectives on options – we’ll talk about that – without giving advice.”*

10. Use stories and humor. Adults learn well from *stories* – not lengthy, and not many, but a story or two about mediation events that happened to you or others that illustrate things that went wrong or right. These stories connect you with the mentee on a very human level and give you the opportunity to provide a memorable, even enjoyable lesson linked to a subject in the mentee’s just-completed experience. You can soften critiques with humor, particularly at your own expense as part of a story -- e.g., *“I remember a case where I got so interested in a party’s tale that I interrupted it, and I got just the kind of reaction you experienced today!”*

11. If a subject is important enough to critique, it is important enough to critique with some detail. It is insufficient to merely say, *“I want you to work on your reframing.”* In addition to using the specific contextualizing discussed above, give examples of alternative approaches, touch on underlying theory, ask the mentee to suggest how they might have done it differently, etc. – parsing the issue from several different angles, if you can. You might suggest further reading, revisiting a basic training manual, a list of phrases you and other mediators use to clarify, reframe, and transition, role-playing, etc.

12. Pose hypothetical alternatives, e.g., *“what might have happened if you had said _____,” “what are some things you might have done differently?”*

13. Use a reenactment or role-play – of things that occurred, might have occurred, or hypothetical alternatives to play out different scenarios. Role-reversal also may be used – *“if you were one of the parties when that question was asked, how might you have reacted?”*

14. Make “lemonade out of lemons” by stating negatives as their obverse positives – e.g., instead of *“you may be too passive”* say *“there are ways you can be more active.”*

15. Avoid absolutes such as “always” and “never.” With rare exceptions, there are few things in mediation that are not situational. Further, there probably are things you may do or avoid that other competent mediators engage quite differently. Thus, if you wish to state a stylistic choice you prefer, label it as such and try to relate it to a theoretical basis so the mentee can reflect on a range of possible choices.

16. If a mentee appears frustrated or defensive, take time to discuss those feelings, clarify the debriefing process, and adapt the evaluation process to the results of the discussion.
17. Invite the mentee to ask questions about *your* performance. He or she may be afraid to question something “the master” did, but if a question arises, it deserves an answer and may start a discussion or be a valuable learning point for the mentee. If you made a mistake, it can be useful to acknowledge it and make the point that mediation is so complex that no one can every do everything perfectly – and that if you mediate a thousand cases, you will learn something new on the thousandth-and-first.
18. End the debriefing on a positive note. While Mentors have a “gatekeeper” role, our basic stock-in-trade is guiding, coaching, and helping neophytes develop in a pursuit of excellence. Look for a closing opportunity to reinforce the mentee’s own sense of value, achievement, and opportunity for growth.
19. Touch on next steps. Finally, help the mentee be clear on their next steps in their development process (including procedural steps, e.g., toward certification if available) and where to go for more information.
20. Although you are the Mentor, a mentoring relationship is a mutual learning opportunity. Be willing to learn from your mentee. Sometimes experienced mediators get into habits (good or bad). Working with a new mediator can sometimes bring us “back to the basics.”