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In This Issue . . .

CAN TRANSFORMATIVE MEDIATION WORK IN COMMERCIAL LITIGATION?

A CONVERSATION WITH
JOSEPH P. FOLGER & ROBERT A. BARUCH BUSH

By Victoria Pynchon

The transformative mediation framework was first articulated by Robert A. Baruch Bush and Joseph P. Folger in The Promise of Mediation: Responding to Conflict through Empowerment and Recognition (Jossey-Bass, 1994). Because transformative mediation focuses primarily upon the personal relationship between the disputing parties, it seems well-placed in family, partnership and other disputes where the parties must continue to interact with one another. Whether or not this framework is useful in the resolution of arms-length commercial transactions was the subject of a recent conversation between Los Angeles commercial mediator, Victoria Pynchon, and the founders of the transformative movement.

> *"Litigators are becoming increasingly dissatisfied with evaluative mediation because it simply becomes another layer of the adversarial process."*

VP: "Transformative mediation" sounds a little "touchy-feely" for my corporate clients.

JF: You shouldn't let the word "transformative" get in your way. The U.S. Postal Service has adopted the transformative mediation in its nationwide employment dispute resolution program, REDRESS. So have many other governmental agencies and mediation programs.

VP: What do transformative mediators do?

JF: Let me first tell you what they don't do. They don't provide a neutral case evaluation. Nor do they become a third-party negotiator, pushing one party's agenda on the other. Nor does the transformative mediator carry messages back and forth between the parties, deliver the "bad news" that an attorney can't bring herself to convey to her client, or "bang heads together." Transformative mediators don't build cases or "depress client expectations." I'd guess these are the techniques with which you're most familiar.

VP: Yes, but I've seen these methods creatively resolve seemingly intractable disputes. I'll admit that the most creative solutions tend to come from the clients, not the attorneys or the mediators. Lawyers simply want a neutral case evaluation followed by a couple of hours of third party negotiation.

JF: And how does that work for you?

VP: Most of the cases I've litigated have settled within the range I've believed to be "reasonable." Sometimes I think one side is getting the better of the bargain. But I've yet to see anyone get taken to the cleaners. Can a

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TRANSFORMATIVE MEDIATION *Continued from page 1*

transformative mediator do better?

JF: We think so. But let me ask you one more question. Do the clients generally seem pleased with the result?

VP: You know the old saw - a truly good settlement is one that leaves everyone unhappy.

JF: That's why transformative mediation was developed - to create a process that neither litigation nor the adversarial mind-set can deliver. Transformative mediation creates outcomes that are genuinely satisfactory to the clients. Frankly, we believe clients often accept mediated settlements only because their attorneys have told them they can't do any better. We believe they can.

BB: We view conflict as a crisis in interaction. In the midst of that crisis, all parties, including their attorneys, experience confusion, fear, disorganization, vulnerability, uncertainty and indecisiveness. They also experience defensiveness and suspicion. This is not surprising for either the parties or their counsel. Everyone, the attorneys most especially, wage wars of nerves, as well as battles of wit and intelligence with and against one another every day. The results -- the decisions of trial and appellate judges, and certainly jury verdicts -- are extremely unpredictable. One's adversary is being paid to "trip you up," disclose as little information as possible and scheme to defeat your every attempt to move the case toward the victory you're seeking.

VP: I'm still not certain I know why it might be better to involve a "transformative" rather than an evaluative or facilitative mediator, though.

BB: We're getting there, but a few more basics first. We've agreed, I think, that the adversarial system, while perfectly well suited to try a case to a jury, is not particularly good at supporting party participation in developing mutually satisfying and creative mediated resolutions. To be successful a mediator has to encourage the type of cognitive and emotional states that are conducive to changing the quality of the communication and negotiation. Trial lawyers may well wish to play on people's fears as a way of manipulating their opinions. To be a true alternative to adversarial negotiation and litigation, however, mediation should free people to play by their own rules for the purpose of achieving their own ends - and to do so with clarity and confidence rather than fear and bluff.

VP: How does a transformative mediator begin to achieve that?

JF: By listening very carefully to what the parties are saying to each other and seizing every opportunity to help them move from states of powerlessness to clarity and strength and from self-absorption to recognition. Remember that conflict creates fear, vulnerability and powerlessness - emotions that create anxiety and impede problem solving. Anxiety is reduced, and often replaced with a sense of competence and self-esteem, when the parties are given the ability to structure for themselves the means of resolving their dispute. And because the means of resolution shapes the outcomes, the result is more likely to be satisfactory to both parties. As the parties begin to regain some degree of control over the conflict, their interaction shifts toward increased clarity, confidence, personal strength, organization and decisiveness. This is movement from powerlessness to strength and clarity.

"Clients often accept mediated settlements only because their attorneys have told them they can't do any better. We believe they can."

VP: How about the self-absorption to recognition part?

JF: Remember what we said about states of self-protection, defensiveness and suspicion?

We call that "self-absorption." Once again, it's a perfectly normal and appropriate stance in an adversarial setting. It's counter-productive, however, in mediation. The transformative mediator stays alert to shifts in the parties' discussion that show increasing attentiveness to the other, greater degrees of responsiveness to the other's position and a greater appreciation for the other's situation. This can only happen when the mediator allows the parties to express all of their concerns and the full range of their emotions without hindrance.

VP: So are you saying that transformative mediators want the parties to talk about the case without monitoring by their attorneys?

JF: It's up to the parties. Clients, like children, grow up and want to speak for themselves no matter what others tell them to do.

VP: How does putting the clients "in control" of the mediation change anything?

BB: Well, first of all, transformative mediators don't put anyone in control - most of all, not themselves. Unlike the evaluative or even the facilitative mediator, the transformative mediator creates an environment in which the parties or their lawyers are given the greatest amount of freedom possible to collectively direct the process of the mediation itself. The parties are in charge of establishing the ground rules, making the agenda, discussing the issues, and, determining what is "in bounds" and what, if anything, is out of bounds.

VP: If the parties (or even the lawyers) express their true thoughts and feelings without interference by the mediator, don't the sessions turn into free-for-alls, with heated accusations, even shouting?

BB: They could. But remember, the parties establish their own ground rules and "no shouting" might well be one of them. We do not, however, discourage strong disagreements. In fact, transformative mediators support the expression of the strongest negative feelings and opinions and never strive to suppress or deflect the discussion to "safer" ground. Surfacing and clarifying sharp differences actually helps parties clarify what they want to do by allowing all sides to come face to face with the real issues separating them. Standing at the edge of the cliff, most people decide they don't want to jump. Those who do have made the choice freely. But if you hold people back from the cliff, they will keep trying to get there.

VP: But it was parties' inability to solve their own dispute that brought them into litigation in the first place.

BB: Of course. But we believe that "alternative" dispute resolution means what it says. That there is another way to resolve disputes. Something radically different from the adversarial process where the client is effectively side-lined or slotted into the narrative recommended by the attorneys or jury

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consultants. That process is all about manipulation. Mediation should be about clarity and choice.

VP: What I've heard so far is somewhat vague. Can you put some meat on the bones of the process?

JF: Sure. One of the most important principles is focusing on the parties' negotiation at a micro-level. That means following the discussion among the parties closely enough to help the parties -- including the lawyers -- to genuinely communicate, not simply posture. Communication and decision-making processes involved in negotiation, even for expert negotiators, are riddled with pitfalls that undermine their quality. When unchecked, these pitfalls can block clear decision-making and create "settlements" that leave untapped value on the table and a bitter taste in everyone's mouth. Transformative mediators support the communication and decision-making processes on all sides and therefore help to avoid and overcome these pitfalls as the negotiations unfold. In essence, they make the negotiation process less "painful" and more productive, and they do so without insisting that the mediator decide the case.

VP: But my clients are mostly interested in victory. They don't want to "care" about the other side.

JF: We'd question that assumption. It is true that clients do not want to be "taken to the cleaners." But that doesn't mean they want the most adversarial process adopted to achieve their goals. You have to take into account the role that lawyers themselves sometimes play in creating client expectations about the path the negotiations can take.

BB: We know that clients value certain key aspects of the negotiation process as much as they value the outcome of settlement per se. Specifically, they value the voice and choice that the process affords them - the opportunity to say their piece fully and to control the decisions that are eventually made. This often matters significantly to them, especially if they are willing in the first place to try to settle out of court. These same "process dimensions" are what make mediation attractive. Mediation can deliver voice and choice but it often isn't doing so today.

VP: Why do you believe "process dimensions" matter to clients?

BB: Imagine being asked to sit through a very punishing deposition of a former associate who you know is suffering from a fatal disease. Your lawyer wants to shake him badly enough so that he makes a mistake in giving testimony. Your presence is supposed to help the lawyer do that. That kind of "process dimension" matters a lot to people. Adversarial legal experience like this - whether in court or in legal negotiations - is deeply distasteful, even painful, to so many parties. And we would add, to many lawyers themselves. The "recovering lawyer" syndrome is no joke in our culture.

VP: So how can transformative mediators achieve better, quicker and more satisfying settlements than evaluative or facilitative mediators?

JF: Let's take each of your adjectives one at a time. Transformative mediators help to achieve a better settlement by refraining from advice-giving and pressure. This avoids boiler-plate settlement terms that are predictable and uncreative.

We find that litigators are becoming increasingly dissatisfied with evaluative mediation because the mediator simply becomes another layer of the adversarial process. We were training in New Zealand recently and a lawyer/mediator who had dealt with huge commercial disputes there for ten years said that the use of mediation was falling off dramatically. It was now widely believed among lawyers, she said, that "all mediators do is split the difference." This type of negotiation is strategic and manipulative just like the adversarial process. We think mediation can do much better.

VP: You also said transformative mediation is "quicker?"

JF: Yes, it can be. Evaluative mediators get in the way of where the clients and lawyers want to go in their negotiations. They not only direct outcomes, they heavily influence the process to "get things to go" where they want them to go. This shuts discussions down. And, when you stop people from saying or going where they want to go, they will keep trying to get there in different ways. So the attempted mediator control can simply prolong the negotiation process.

VP: Can a transformative mediator help the parties resolve the dispute earlier in the litigation process - even before what might seem like necessary discovery has been done, and it might seem foolhardy to accept a mediated resolution?

BB: Certainly. Most evaluative mediators are brought into the process quite late, after the parties' positions are deeply entrenched. At that point, suspicion and distrust is the rule, and animosity is running high not only between the parties, but among the litigators as well.

We find that a case develops quite differently when a transformative mediator is brought in very early. At this stage, the parties don't have firm opinions or expectations of the mediator's role and the parties' narratives have not become entrenched and edited by argument-building It just takes less time to move toward a settlement built from the bottom-up, when the adversarial train is not already running at 120 miles per hour.

VP: And satisfaction?

JF: Satisfaction is key to the transformative mediation experience. It is more satisfying to clients if they are participants in the process. Not to belabor the point - but voice and choice are what clients are missing and they are precisely what transformative mediation provides. The clients are allowed to put on the table whatever they want to - to talk about what matters to them - and to make decisions without interference from attorneys or mediators who try to control them.

This is often a sticking point for counsel, many of whom appear to have "client control" on the top of their lists of conditions necessary for a successful litigation. It would not be uncommon to find a transformative mediator holding a caucus with a lawyer and his/her client to help them get clear about what they both want to put on the negotiating table when they step back into the mediation room. But when client participation is shut down completely, the experience is not satisfying to a client who has come to the mediation as a way of extricating himself from the highly controlled --

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Should Attorney Mediators be Regulated by the California State Bar?

By Mary B. Culbert

The Commission for Revision of the California Rules of Professional Conduct of the State Bar of California (The Commission) has been working to rewrite and update the California Rules of Professional Conduct (The Rules) since 2001. The current version of The Rules was first effective in 1989 and modified in 1992. Since that time, attorneys are playing an increasingly significant role as third-party neutrals. Also, in 2002, the ABA adopted new model Rule of Professional Conduct 2.4 (Lawyer Serving as Third Party Neutral). Therefore, The Commission has tentatively approved an amendment to existing Rule 1-710 that applies to temporary judges, referees and court-appointed arbitrators and has drafted a proposed new Rule 1-720 that applies to other third-party neutrals.

The proposed amendment to Rule 1-710, which provides that temporary judges, referees and court-appointed arbitrators must comply with Canon 6D of the Code of Judicial Ethics, simply clarifies that Rule 1-710 only applies to court-appointed attorney neutrals when acting in a judicial or quasi-judicial capacity. To see the text of the proposed amended Rule go to http://calbar.ca.gov/calbar/pdfs/ ethics/CRRPC/RRC_1-710.pdf. New Rule 1-720 applies to attorney neutrals when conducting mediations, settlement conferences or arbitrations pursuant to an arbitration agreement.

Proposed new Rule 1-720 applies to attorney arbitrators, attorney mediators and attorneys who are acting "in such other capacity as will enable the member to assist the parties to resolve the matter." (See Paragraph (A) of Rule 1-720). Paragraph (B) of Rule 1-720 requires neutrals to adequately describe their neutral role to unrepresented parties so that unrepresented parties understand that the attorney mediator does not represent them. This provision is consistent with a concern by some that mediators must exercise greater caution when working with unrepresented parties.

Paragraph (C) of Proposed Rule 1-720 outlines which ethical standards of practice apply to mediations and settlement conferences conducted by attorney neutrals - from the Judicial Council Standards for Mediators in Court Connected Mediation Programs - even if the mediation or settlement conference is not court-connected. Those that apply are Rule "1620.4 [confidentiality], 1620.5 [impartiality, conflicts of interest, disclosure, and withdrawal], 1620.6(b) and (d) [truthful representation of background; assessment of skills; withdrawal], 1620.8 [marketing], and 1620.9 [compensation and gifts]…" And Paragraph (D) of Rule 1-720 outlines the ethical standards of practice that apply to neutral attorney arbitrators, from the Judicial Council Ethics Standards for Neutral Arbitrators in Contractual Arbitration. For the complete text of the Rule see http://calbar.ca.gov/calbar/pdfs/ethics/CRRPC/RRC_1-720.pdf.

The mediation community may have some concerns that Rule 1-720 (C) applies ethical mediation standards of practice to both mediations and settlement conferences. Many of us have endeavored to distinguish mediations from settlement conferences. Indeed our statute on confidentiality provides that "this chapter applies to a mediation as defined in Section 1115" and that the "…chapter does not apply to…(2) A settlement conference pursuant to Rule 222 of the California Rules of Court." (See California Evidence Code Section 1117) Rule 1-720 merits further review on the conflicts of law question.

If Rule 1-720 is adopted, then failure to comply with the ethical standards outlined in the Rule would permit the State Bar to discipline attorney neutrals. (See Discussion of Rule 1-720 [6] and [7]) There are many steps in the process before these Rules are adopted. Tentative approval by the Commission does not mean that they have been approved by the State Bar Board of Governors. They are still in the Commission stage and may be subject to further amendment there before they are placed on the Commission's agenda for a vote to transmit the proposed new rule to the Board of Governors Committee on Regulation, Admissions and Discipline, with a recommendation that the proposed rule be distributed for public comment. State Bar procedures ordinarily require a public comment distribution prior to adoption of a rule amendment. Even if and when the Board of Governors adopts the Rule, it would still require approval by the California Supreme Court in order to become binding on attorneys. (See California Business and Professions Code Sections 6076 and 6077)

Some may argue that the California State Bar has no jurisdiction to regulate mediators (even attorney mediators) since mediation is not the practice of law. This argument fails to recognize that there are already many Rules of Professional Conduct that apply to attorney mediators. In 1998, a working group (led by Stan Lamport, Esq.) of the Ethics Subcommittee of the State Bar Committee on ADR, discussed the application of the California Rules of Professional Conduct to mediators. We categorized The Rules into 3 separate categories.

The first category of The Rules applies to any activity in which a lawyer engages and is not tied to the performance of a legal service or legal representation of clients. These types of Rules apply to attorney mediators and include a variety of activities such as those described in Rule 1-120 (Assisting, Soliciting, or Inducing Violations), Rule 3-210 (Advising the Violation of Law) and Rule 5-220 (Suppression of Evidence) - to name only a few.

A second category of The Rules applies to the performance of a legal service and is not necessarily tied to any particular client representation. These Rules would apply to attorneys acting as mediators but only when they are performing a legal service in connection with a mediation, such as Rule 1-400 (Advertising and Solicitation), Rule 2-200 (Financial Arrangements Among Lawyers) and Rule 3-110 (Failing to Act Competently). There are many others. Some argue that attorney mediators should never perform legal services in connection with mediation and others say that evaluative attorney mediators are constantly providing a legal service.

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TRANSFORMATIVE MEDIATION *Continued from page 3*

but inherently unpredictable and dangerous -- court setting. We know a CEO of a large food distribution company who recently participated in a mediation -- with his lawyer -- over a contractual dispute with a vendor. He told us that the way the mediator treated him in the session was so demeaning he would never encourage his lawyer to use mediation again. There were important issues that the CEO wanted to raise and important topics he wanted to discuss with the vendor but the mediator would not allow him to speak. What was worse, the mediator made him feel foolish for being concerned about the issues that were most important to the CEO. Remember, your clients are sophisticated business people with decades of experience and are very savvy in their own business. Many of them feel infantilized by both the litigation and the mediation process. They don't feel the need for the "over- protection" their attorneys provide. They believe they have important things they want to say - no matter where it leads.

VP: So what was the CEO's final verdict on mediation?

JF: He said "I would have been shut down as much in court. It certainly wasn't what I expected or wanted from this process." He was not only unhappy with the mediator, but with his attorneys as well. The "client control" issue is one we believe requires much more attention by the commercial litigation bar.

VP: And litigators? Is transformative mediation more satisfying to them as well?

BB: Based upon our experience, litigators who have experienced true transformative mediation are happier all around. It is a refreshing and welcome option. You well know how tired litigators are of the endlessly repetitive adversarial, case-building and case-busting process.

VP: Yes. I've heard lawyers say they litigated a single half-billion dollar case for ten or fifteen years, at a cost of tens of millions of dollars, only to have the trial judge decide a pre-trial motion on grounds none of the attorneys could possibly have predicted and the appellate court to thereafter rule on some tangential point that had nothing to do with the meat of the dispute. Still, my clients usually want some kind of assurance that they aren't "being taken to the cleaners." At least evaluative mediators provide some assurance on that score.

BB: Perhaps. Assuming everyone thinks the mediator is "on the mark." Which in our experience is not all that common with evaluative mediators. Evaluative mediation places an enormous burden on the mediator. They try to obtain a clear understanding and assessment of a case without any power to compel production of evidence, and in the face of many well-known negotiation tactics that obfuscate and manipulate information. Based on this, they must assess what will happen in court and then "sell" their evaluation to the lawyers -- and perhaps their clients.

Lawyers know all about unpredictability and unless they've lost all sense of proportion, have reasonably evaluated the chance of potential success or failure for their clients. Sure, it can never hurt to have an outside opinion, but that's using only one-tenth of one percent of the potential value of mediation.

VP: So you don't think evaluation adds all that much?

BB: In evaluative mediation, the lawyer is simply getting a free "mini-trial" to get a preview of how a disinterested observer might respond to the facts and law as presented. It remains the lawyers' rhetorical burden to convince the clients that this is where the case is likely to end up. In the end, a mediator's evaluation does not replace the lawyers' judgment - judgment about the strength of the mediator's assessment, judgment about whether it is worth going on to court when the mediator's call seems wrong, and judgment about whether continued negotiations at the post-mediation point are potentially workable. In many cases, mediator evaluation probably adds little to lawyers' predictive certainty, and therefore does little to lessen their burden of advising the client on whether or how to settle a case.

VP: And you believe a transformative mediator can do better?

BB: Certainly. Transformative mediation is much more likely to create greater certainty about the value of the settlement because it stems from the richer, more textured, information that is exchanged in the full and free mediated discussions. The lawyers can more clearly assess what that information means for their clients' interests and the likely outcome of their case if it does not settle. Lawyers have greater confidence that the variables they are using to predict outcome in court are based on accurate information; and they have greater assurance that the possible settlement scenarios that have emerged in mediation are, genuinely, the farthest the parties are willing to go. Comparisons of settlement options and likely court outcomes therefore have a more solid basis. In short, transformative mediation can often clarify the full picture needed to make settlement decisions in a way that an evaluative process frequently cannot.

VP: If you had to sell transformative mediation to corporate clients as a superior product over evaluative mediation, what would be your top five sales points?

JF: First, it supports the process of negotiation by removing barriers to settlement that restrict information and cloud decision-making. Second, it avoids mediator-imposed, cookie-cutter settlements and instead supports the emergence of settlements built and valued by the parties themselves. Third, it allows for a humanizing rather than demonizing negotiation process so it makes dispute resolution less stressful and personally repugnant for both clients and lawyers. Fourth, it contributes to greater client satisfaction with their lawyers and increases lawyers' professional satisfaction with the nature and quality of their work. And fifth, it avoids potential mediator abuses, especially the exercise of excessive pressure, as well as ethical pitfalls such as dual representation and unauthorized practice of law.

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New! SCMA FAMILY MEDIATION COMMITTEE

You are invited to participate in the new SCMA Family Mediation Committee. The Committee will bring together family mediators, attorneys, therapists and other professionals involved in family mediation. The Committee is planning programs, discussion groups and an annual conference. This is an opportunity to meet other mediation professionals, share your experience and establish programs that are professionally and personally rewarding. For more information, contact Wendy Forrester at wbforrestr@aol.com or (818) 225-7039

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PRESIDENT'S MESSAGE:
New Resources and Programs For You

by Jeff Kichaven

Welcome to another great year for the Southern California Mediation Association! We appreciate and thank you for your membership, and we want you to know that we are committed to working harder than ever to earn your continued confidence and support.

We have many new resources and programs for you this year. These initiatives are all designed to respond to feedback we have received from you and to meet your professional needs as mediators, no matter what your level of experience. Here is some of what's happening:

Skills Development for Intermediate Mediators: SCMA does not provide basic mediation training. Many excellent providers do that very well. We have many members, though, who have completed basic training and have a few dozen cases under their belts, but are not yet advanced practitioners. If you are in that category, we have a new program for you. The Professional Development Committee, headed by Len Levy in collaboration with Julie Goren, will present a series of classes throughout the year to take you to the next level. Each class will focus on a different stage of the mediation process and offer practical tips and techniques that will take you from intermediate to expert.

The Professional Development Committee will also present new, exciting structures for mentoring and networking. Please check the website and our Weekly E-Blast for details.

Advanced Programs for Advanced Practitioners: Many other SCMA members are advanced practitioners, fortunate enough to call mediation their Day Job and sufficiently well-received in the marketplace to earn substantial incomes from doing this work we all love. These are our Platinum Members, and we are committed to developing advanced programs especially and exclusively for them. In the next few weeks, we will unveil a program of unparalleled training and networking opportunities for our Platinum Members. I have promised not to let the cat out of the bag too soon, so when the program is in place, the website and E-Blast will have all the details. If you are an advanced practitioner and not yet a Platinum Member, please consider upgrading right away. The investment will be well worth it, I promise.

Employment and Workplace Section: Jan Schau and Nikki Tolt are hard at work to make SCMA's Employment and Workplace Section better than ever. The Employment Mediation Conference is set for May 14 and another all-star roster of speakers is taking shape. In addition, the Section will hold other educational and networking events throughout the year. Jan and Nikki's emails are available on the website. Please contact them to share your ideas, learn what's already on the agenda and get involved.

Family Mediation Section: This is a brand-new initiative in SCMA, Chaired by Wendy Forrester. Family law is changing fast, with same-sex relationships, reproductive technology and other developments making Family Mediators work harder than ever to keep up. SCMA is here to provide the resources you need. We have planned an ambitious program of events for Family Mediators; please contact Wendy and check your emails and the website.

Chapters: Up until now, SCMA has operated principally in West Los Angeles and the San Fernando Valley. To deserve to be called the SOUTHERN CALIFORNIA Mediation Association, we need to expand our geographic scope. So we have. Chapters are up and running in Orange County, the Inland Empire and the Ventura/Santa Barbara region. Get in on the ground floor! Contact President-Elect Max Factor III for details.

Public Policy: As in the past, we will protect the interests of our members in matters of public policy. On the front burner, we have convened a task force of mediators, academics, litigators and others to take a hard look at the mediation confidentiality statute and make sure that it operates to enhance, not undermine, confidence in the integrity of the mediation process. Actual experience with the current statute shows that there is room for improvement. We will report to you on progress as it occurs and we welcome your input.

Communication with you, our members: I have mentioned the website, www.scmediation.org, many times. Under the stewardship of Laurel Kaufer, it has become a powerful tool. Please visit it often to learn what's happening, to register for events and to share your views with us. And, of course, as President, I always welcome your input. Many of our greatest accomplishments started with suggestions from our members. We want that to continue. I am always available to you at jk@jeffkichaven.com.

In future columns, I will highlight other aspects of our program for the year, of which there are many. Thanks to all of you, we will continue to grow and prosper. Many thanks once again.

- Jeff Kichaven

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Professional Development Committee 2005 Panel Sessions

A series of eight Professional Development Committee monthly meetings will be conducted in panel format, with the participation of 2 to 3 experienced mediators and/or non-mediator guest presenters. Len Levy and/or Julie Goren will serve as moderator. Each session will contain a "craft" aspect and a "business" aspect. The meetings will be held from 6:30 p.m. to 8:15 p.m at Pepperdine University, 16830 Ventura Blvd., 2nd Floor, in Encino. Dinner will be served for a nominal charge ($10).MCLE credits (1.5 hours per session) will be available at a cost of $20.00 per session or $140.00 for the eight-session series. Fifteen minutes will be set aside during each session for one person to share and ask for feedback about an uncomfortable situation encountered in a mediation in a "Share Your Concern" session. RSVP REQUIRED: Len Levy at lslevy@prodigy.net or Julie Goren at jgoren9048@aol.com. TOPICS: Convening (February 8), Mediation Housekeeping (March 8), Understanding the Issues to be Resolved (April 12), Coming Up with the Solutions (May 10), Managing the Negotiations (July 12), Managing Conflict (August 9), Impasse (September 13), Settlement (October 11).

Dispute Resolution Services, Inc. Los Angeles County Bar Association

30 Hour Basic Mediation Training
Choose from one of several trainings:

February 1,2,3,8,9,10,12,15,16 • Weeknights 6pm-9pm/Saturday 9am-4pm
Ken Edwards Center • 1527 4th Street, Santa Monica

March 14,15,16,17,18 • Each day 9am-4pm
LACBA/Lexis-Nexis Conference Center • 281 S. Figueroa Street, Los Angeles

April 5,6,7,12,13,14,16,19,20 • Weeknights 6pm-9pm/Saturday 9am-4pm
Plummer Park • 7377 Santa Monica Blvd, West Hollywood

May 10,11,12,17,18,19,21,24,25 • Weeknights 6pm-9pm/Saturday 9am-4pm
Pasadena Police Department • 207 N. Garfield Ave., Pasadena

June 20,21,22,23,24 • Each day 9am-4pm
Long Beach Police Training Academy • 7290 Carson Street, Long Beach

Advanced Family & Divorce Mediation Training
April 29 & 30
LACBA/Lexis Nexis-Conference Center • 281 S. Figueroa St., Los Angeles

For information and registration contact:
Gemma George • ggeorge@lacba.org • 213-896-6441

Mediation Mini-Conference in Riverside

March 26, 2005 • 8am -5pm
University of California at Riverside
UC Riverside Extension Center
1200 University Avenue • Riverside, CA 92507-4596

$45 before 2-15 ; $50.00 thereafter

Speakers:

School Based Mediation
James Williams III
Conciliation Specialist, U.S. Dept. of Justice

How Mediators Add Real Value
Jeff Kichaven, SCMA President
Max Factor III, SCMA Pres. Elect

Cultural Issues in Mediation
Dr. Rueyling Chuang
California State University San Bernardino

Contact :
Dana Lofton • 951-955-4903 • 800-511-1110

Community Action Partnership works actively with over 200 community and faith based organizations and serves over 150,000 eligible residents. Dispute Resolution Center works with CAP and has trained over 335 mediators during the past six years, who have provided more than 21,000 volunteer hours, meeting the needs of Riverside County's low income residents.

BOARD MEMBER *of the month*

Wendy Forrester

."Caring, connecting, compassion and commitment"

Board Member Wendy Forrester is heading SCMA's new Family Mediation Section.

Wendy Forrester is an attorney, mediator and educator. She maintains a private practice that focuses on family mediation in Calabasas. She graduated from Southwestern School of Law in 1985.

She began mediating in 1988 when she sought a more innovative approach to family issues. She sought training from mediation pioneers Ken Cloke and Forrest "Woody" Mosten. Both Ken and Woody have remained role models of compassionate, creative professionals who exhibit great generosity in sharing their experiences with their colleagues.

In addition to practicing in the area of family law, Wendy is experienced in employment and entertainment matters. Dedicated to public service, she served as the Associate Director and Mediation Coordinator at California Lawyers for the Arts where she oversaw their mediation service, Arts Arbitration and Mediation Services. She mediated hundreds of arts and entertainment related disputes and developed a peer mediation training program for at-risk high school students.

Wendy offers private mediation training, and has served as a trainer for California Lawyers for the Arts, UCLA ombuds services, and nonprofit organizations. She has presented lectures on mediation and negotiations techniques for universities and bar professional organizations, including Pepperdine University School of Law, Cal State University Northridge, UCLA, Cal Lutheran University, Beverly Hills Bar Association and to mental health professionals, court personnel and business organizations.

"My goal as a Board Member of SCMA is to expand public awareness of the potential of mediation and shape issues that have an impact this growing profession, such as confidentiality and professional ethics."

"I began mediating at a time when very few people had heard of mediation. Awareness has grown over the years". She observes that her practice has grown tremendously. "I find that my practice is primarily made up of clients who are referred by former clients. It sort of has been a rippling affect where one client has a positive experience with mediation and tells someone else. What is the key to generating loyalty and trust with clients? I respect each family who approaches this most painful time with a sense of dignity and caring that transcends the conflict and allows them to work together to heal their children and themselves. I honor the history and the values they bring to the table. I believe they sense my commitment and respect."

Although Wendy is a mediation trainer, she believes that becoming a successful mediator goes beyond understanding negotiations techniques. "A successful family mediator must be able to understand and connect with the parties."

Wendy is married to an attorney, Perry Forrester. Their two children, Dylan and Jessica, are students at UC San Diego. Together they enjoy hiking, watching baseball and taking family trips. Contact her at wbforrestr@aol.com

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CALENDAR

LA ROUNDTABLE FEBRUARY MEETING
Marketing Strategies for Mediators
Feb. 24, 2005
Speaker: Natalie Golden
Community Service Programs, Inc.
1821 E. Dyer Rd., Suite 200, Santa Ana, CA 92705
Build a successful ADR practice. Attendees will come away with a marketing plan that can be easily integrated into day-to-day business. This session is about much more than the theory of marketing a practice - we will offer specific tools and techniques to take your practice to the next level.
RSVP: (949) 975-0244 ext. 23.

SCMA's ANNUAL EMPLOYMENT MEDIATION CONFERENCE

"FEET TO THE FIRE"
Hot Points in Employment Mediation
Saturday, MAY 14, 2005
8:30 a.m. to 5:00 p.m.
Marina Del Rey Hotel
This year's events and topics include:
"Keeping Your Cool: The Power of Persuasion in Mediation,"
"Sex in the City: The New Faces of Sexual Discrimination,"
"Wage & Hour Issues: The Sav-On Case and its Aftermath,"
"Tax Implications in Settling Employment Disputes,"
"Meet the Masters and See How They Deal with Emotional Mediations,"
"Cocktail Hour: An Optional Time to Mingle with the Speakers, the Board and Fellow Mediators"

Whether or not evaluative attorney mediators are performing a legal service is a topic best left for another discussion.

A third category of The Rules that solely applies to attorneys representing clients, does not apply to attorney mediators. We have aptly argued that no traditional attorney client relationship arises between a mediator and the participants and have used this argument to substantiate the viewpoint that mediation is not the practice of law.

Regardless of the answer to the practice of law question, the State Bar has regulated and will continue to regulate behavior of attorneys, including attorney mediators. Currently, failure to comply with the Rules of Conduct For Mediators In Court-Connected Mediation Programs For Civil Cases could be grounds for expulsion from the court panel of mediators. If and when Rule 1-720 becomes binding, an attorney mediator's failure to comply with the ethical standards outlined in the Rule - in every mediation, even if not court-connected - will be grounds for California State Bar discipline.

Mary B. Culbert is Clinical Professor and Director of The Loyola Law School Center For Conflict Resolution. (The opinions expressed in this article reflect only those of the author and do not necessarily reflect the opinions of SCMA, The State Bar or Loyola Law School)

• BE SURE TO CHECK THE SCMA WEBSITE FOR IMPORTANT INFORMATION: www.scmediation.org. •

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