



Dispute Resolution Center Newsletter

Autumn 2019

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Presumptive Mediation & the DRC by Tom Pullyblank, Director of Programming

I hope this newsletter finds you well in these beautiful autumn days. Autumn is a time of change, with temperatures falling, with leaves turning orange, yellow and all shades of red, and with the soothing winter darkness creeping in. Much of the beauty we see this time of year is a direct outgrowth of change!

This year, autumn is also a time of change in the statewide Community Dispute Resolution Network with the onset of Chief Judge Janet DiFiore’s presumptive mediation initiative. (You can find Judge DiFiore’s full report here: http://ww2.nycourts.gov/sites/default/files/document/files/2019-05/PR19_09_0.pdf . Hopefully you’ve already read Miranda Smith’s clear and concise summary of presumptive mediation in the summer 2019 newsletter. I won’t repeat here what she wrote. What I want to do is offer some thoughts on how presumptive mediation might shape our work in the future, both as paid on-staff mediators and as professionally trained mediation volunteers.

The essence of presumptive mediation is a shift from parties opting-in to mediation services to parties opting-out of mediation services. Family court clerks and judges are prescreening petitions they receive from parties and are referring them to us for further intake, screening and mediation. Family courts—and eventually supreme, surrogate and city courts—will presume that the parties will try mediation before taking their dispute into the courtroom and in front of a judge, hence presumptive. It is a significant change in what CDRC case managers do. Instead of “fishing” for potential mediations to “catch,” case managers will now be handed potential mediations directly from the court. To continue with the metaphor, the courts will now hold the “nets,” allowing inappropriate cases to slip through and “catching” the cases that are appropriate for mediation services.

Different counties are doing things differently. Chenango County, for example, we will have case-managers on site at the Chenango

County Family Court in Norwich all day on Tuesdays and Thursdays. The court clerks will schedule intakes and/or mediation sessions in two hour blocks of time, up to three a day. In Fulton County, the court clerks send petitions to a case manager, who then schedules intakes and/or mediation sessions on Tuesdays, when the case manager is on site at the Fulton County Family Court in Johnstown. So far, Otsego County and Herkimer County will proceed more or less as before, with cases referred for mediation being scheduled by case-managers either during business hours (Herkimer) or after hours (Otsego). Here’s where we’ll have an in-court presence throughout the week:

- Mondays: Herkimer, Montgomery, Schoharie
- Tuesdays: Chenango, Fulton
- Wednesdays: Otsego (most likely in our Oneonta office), Schoharie
- Thursdays: Chenango
- Fridays: Delaware

For all of us—staff and volunteers—the shift into presumptive mediation means an increase in opportunities for mediations. We are already seeing this reality start to play out in several counties, most notably Chenango. Our other counties will no doubt follow suit as the logistics of exactly how cases will be screened and referred are worked out. To make sure we meet the challenge, I will be reaching out to all of our professionally trained volunteer mediators to discern when and where you will be able to work. Also, I’ll be asking you to refer new potential volunteers as we anticipate hosting a basic mediation and custody/visitation-parenting plan sometime soon, perhaps in Spring 2020.

The presumptive mediation initiative is an exciting one because it recognizes the simple truth that bring people together around a table and offering them a structured space for conversation is an excellent way to resolve conflict. The recognition of that simple truth has been years in the making. It is built on the hard work that so many of you mediators have done. Thank you for your commitment to a job well done!



Farm Progress Show & Agricultural Mediation by Miranda Smith, Herkimer Case Manager

I was an attendee of the Farm Progress Show in Herkimer County, which was held September 13th and 14th. I was surrounded by our wonderful NYSAMP supporters, and met several friendly faces! I promoted our Agricultural Mediation program and distributed essential information about the DRC to the community. To my delight, I met several interested individuals. The DRC has a presence at the Farm Progress Show every year, which is one of the most heavily attended events in Herkimer County. We feel it is an important event where we can meet the public, but especially reach out to farmers and agribusiness owners. It is wonderful to see local organizations coming together with the focus on supporting local farmers.

Agricultural Mediation is a specialized alternative dispute resolution process. A variety of topics can be covered such as USDA cases, farm succession, neighbor concerns, loans, delinquent accounts, as well as small and large claims. The Mediators who are involved with these forms of mediation are well experienced in the field of agriculture and were certified through a specialized training program. Those that typically attend these mediations are the farmers, customers, lenders, agricultural business, and veterinarians. Farmers have an important role within the community and it takes a team effort for a farm to run successfully. At times disputes can arise- it takes a team effort to resolve those disputes. Mediation can be a beneficial addition to that team.

Landlord-Tenant Verbal Agreements by April Rando, Director of Planning and Outreach

When I sit in court, I pay close attention to the landlord-tenant cases that are heard before the judge. Most of the cases are complaints initiated by landlords seeking a warrant of eviction for non-payment of rent. The cases seem to be pretty cut and dry— the tenant hasn't paid the rent and the landlord wants his money. However, many of these cases often involve verbal agreements that the landlord makes with the tenant. These agreements typically go like this: The landlord agrees to reduce the amount of rent in exchange for a certain amount of labor that the tenant provides to the landlord. This may sound like a fair exchange, however, the terms are usually never clear. What is the value of the tenant's labor? Is it based on a dollar amount per hour, or for the completion of a specific task? Is this a long-term or short-term agreement? Sometimes landlords make these kinds of offers with good intentions thinking they are helping the tenant out. But what ends up happening is that the tenant still ends up owing back rent, and the landlord denies ever making any kind of agreement. It can be an exploitative practice, and the tenant almost always loses in court if something goes wrong. People are free to make these "labor-for-rent" arrangements, but it is important for both the landlord and the tenant to understand each other's expectations before entering into this kind of agreement. Mediation can be one way of bringing a landlord and tenant together to clarify the terms of any verbal agreement and create a written agreement that both parties can refer to. Mediation can help improve communication, build trust, and possibly prevent the kinds of misunderstandings that lead to eviction proceedings in court.

Ready, Set, Connect! OFA Annual Conference by Dodilee Murray, Case Manager, Herkimer & Montgomery

I was given the opportunity to be part of the Ready, Set, Connect event sponsored by Schoharie County Office for the Aging & NY Connects on September 20th. The event was held at the Olde Tater Barn in Central Bridge. There was approximately 10 vendors and seven speakers throughout the day. The focus of the event was to provide information on healthy aging, planning ahead, safety, elder abuse, and long term care. Every speaker, regardless of the topic, impressed upon the importance of communication. Whether it's long-term care, pre-planning a funeral, advanced directives, or estate planning, it all came down to one important detail: communicate your wishes to someone! Which made me think how important this "end of life" topic really is. When it comes to end of life discussions most people don't want to talk or even think about losing a loved one.

So, what can mediation offer seniors and their family members? The goals for elder mediation is to strengthen future relationships with family members while facing distressing realities of life. Everyone has their own personal beliefs on death, dying, and bereavement. However, without this discussion or pre-planning relationships can be strained beyond repair. Mediation offers a structured environment where it is safe to talk about such sensitive issues. Mediators bring together the senior, adult children, and other necessary loved ones to discuss the seniors' legal, medical, and financial wishes. Everyone is allowed to voice their opinions and concerns while also having the opportunity to listen to other family members' views. While all family members may not agree, listening and understanding is encouraged by the mediator. It is important to create a safe, calm environment in order for all parties to feel comfortable to speak and come to a solution where all are satisfied.



SAVE THE DATE!

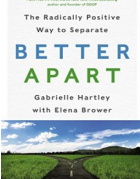
Saturday, November 16, 2019: “Working with Attorneys & Self-Determination”- Trainer: Jodi Miller, Dutchess Human Rights/ EEO Officer. Time: 8:45 AM– 4:30 PM; Location: Quality Inn, 5206 NY 23, Oneonta, NY 13820. Cost: \$12 (Free for Catholic Charities DRC mediators) Registration due by Wednesday, November 13, 2019. To register, please contact Tom Pullyblank, Director of Programming, at (607) 432-0061, or by e-mail: tpullyblank@charitiescccd.org.



Small Claims Mediation and Written Agreements In-service by Dodilee Murray, Case Manager, Montgomery & Herkimer

Matthew Beck, Esq. and DRC Community Mediator conducted a small claims agreement writing training on October 11, 2019. Matt is an attorney who specializes in construction disputes. Legally binding agreements should be simple enough to understand with terms that are specific and business focused.

Matt shared his open/closed door strategy for small claims settlement agreements. First, “hang a sign on the front door,” that is, when the parties consent to mediation, identify the parties involved, any property at issue in the dispute, and the general nature of dispute. Try to use language that is as neutral as possible to describe the dispute. As each party presents their version of the dispute, the mediator can guide the process in such a way to focus on the issues, and possibly “opens the door” for settlement. The next step is to determine which doors can be closed, that is, which issues have been settled, and which ones have not. Once those issues have been settled, the parties will need to work out how the dispute will be resolved. It is best to make these concrete settlements. For example, if parties agree on a monetary settlement, it is important to determine the total amount, how it will be paid, payment schedule, and a final payment date. Finally, decide if the door needs to be nailed shut, which means adding a release statement that would prevent any further action from one or more parties in regards to this dispute. Matt emphasized the importance of keeping the agreements simple to understand, but specific enough to be enforceable.



***Better Apart: The Radically Positive Way to Separate* (Author: Gabrielle Hartley with Elena Brower, 2019, New York NY: Harper Wave) Book Review by April Rando, Director of Planning & Outreach**

When people are in the process of separating or divorcing, emotions tend to run high with spouses blaming each for the breakdown of their relationship. Feelings of shame, guilt, sadness, and anger can block effective communication making the divorce process contentious and adversarial. What if, however, you could have a more elegant divorce that allows you to reframe your situation and see it as an opportunity for personal growth?

Better Apart is a manual to help people design an elegant divorce— one that is based on patience, respect, clarity, peace, and forgiveness. The author, Gabrielle Hartley, and yoga instructor, Elena Brower, guide readers through the process using yoga, mantras, journaling, and conflict coaching techniques, offering spiritual and legal wisdom along the way.

Hartley describes what she calls “the five essential steps of better apart.” The first step is practicing patience. Divorce can be a lengthy process. It takes time to sort through marital property, financial assets, and possibly discuss spousal maintenance. If the couple has children, a plan for shared parenting and child support must be created. Practicing “purposeful patience,” requires one to listen, learn and be open to exploring different options.

The second step is practicing respect for oneself and for others. Taking care of one’s physical and emotional health will be important during this stressful time. Hartley recommends that divorce should be seen as an opportunity for personal growth and envisioning a better future. Now is the time to plan the kind of future you want to have. She suggests committing oneself to new possibilities with your relationship to friends and family, your children, career, community, and romance. Creating a list of things that you wish to see in your future can help you stay focused on those goals.

The third step is clarity— being clear about your priorities, identifying what you need, and responding to the situation rather than reacting emotionally. Grief, however, can lead to clarity. It requires recognizing that the marriage has ended and accepting that your life will change. Clarity makes it possible to create a new reality.

The fourth step is practicing peace. Instead of reacting with anger, fear, or aggression, it is important to develop a state of emotional neutrality or calmness. Hartley states that one has the power to choose how to respond. Strong emotions can cloud one’s ability to think clearly. By developing inner peace, it can help you remain in control and make better decisions. Mindfulness, yoga and journaling can be helpful.

Finally, one must practice forgiveness. It involves letting go of the past, apologizing, and forgiving your ex-spouse and yourself for the choices that were made. Forgiveness and compassion are key towards moving forward.

The ATI & CSR Dispatch (July-September 2019)

This report provides more detailed information to the A.T.I. Advisory Board regarding the number of hours community service ordered and completed, the number of successful and unsuccessful completions, and the reasons why. Included in this report are the referral sources, the defendant's charges and the worksites where the defendants were assigned. My hope is that this report will be useful to all who serve on the A.T.I. Advisory Board. Thank you for all your support in making this program successful in our county.

Ameen Aswad
A.T.I. Chair

Without community service we would not have a strong quality of life. It's important to the person who serves as well as the recipient. It's the way in which we ourselves grow and develop.

Dr. Dorothy Height. Educator & Social Activist (1912-2010)

The A.T.I. DISPATCH

Demographics

In the **1st. Quarter / 2019-2020** A.T.I. contract the program received:

- ◆ **18** Intakes from the court resulting in **878** hours of court ordered community service.
- ◆ **577.25** hours of community service were completed.
- ◆ **10** successful completions.
- ◆ **2** pending case from Oneonta City Court.

In the **YTD** A.T.I. contract the program received:

- ◆ **18** Intakes from the court resulting in **878** hours of court ordered community service.
- ◆ **577.25** hours of community service were completed.
- ◆ **10** successful completions.

Referral Sources

Oneonta City Court / Treatment Court / Otsego Probation/
Jackson County Court N/C

College Students

5 SUNY Oneonta / **1** Hartwick College

Worksites Assigned

SPCA / Salvation Army Store / Turning Point / Lord's Table
RSS/ Oneonta Bagel / Hospice Thrift Store/ Nader Towers
Boys and Girls Club / Catholic Charities / Habitat for Humanity

Charges

Criminal Sale Controlled Sub. 3rd. /Criminal Possession of Controlled Substance 3rd./ Trespass / DWI/ Aggravated DWI / Operating a Vehicle Impaired by Drugs/ Petit Larceny/ Alcohol Under 21/ Public Urination / Burglary 2nd/ Burglary 3rd./ Disorderly Conduct

The C.S.R. DISPATCH

Demographics

In the **First quarter of the 2019-2020** A.T.I. contract the program received:

- ◆ **19** intakes from the court resulting in **685** hours of court ordered community service.
- ◆ **636.25** hours of community service were completed.
- ◆ **11** successful completions.
- ◆ **2** was unsuccessful in completing their hours.
- ◆ **0** was Administratively Discharged
- ◆ **10** pending cases that were returned to the court awaiting a reply

2 pending cases from Cobleskill Town Court.
1 pending case with Schoharie Village Court.
2 pending case with Schoharie Town Court.
1 pending case with the Summit Town Court.
1 pending case with the Richmondville Town Court
1 Middleburgh Town Court
2 Sharon Town Court

Referral Sources

Middleburgh Town Court/ Scotia Village Court/ Cobleskill Town Court / Schoharie Town Court / Schoharie Drug Court / Schoharie County Court / Richmondville Town Court / Wright Town Court / Esperance Town Court/ Guilderland Town Court / Probation

College Students- None

Worksites Assigned

Catholic Charities Store / Schoharie County ARC/
Schoharie Animal Shelter / Village of Richmondville

Charges

VTL 511 Aggr. Unlic. Oper. 3rd/ VTL 306b Uninspected M. V. / 240.20 Disorderly Conduct / 155.25 Petit Larceny / 155.5 Larceny/ VTL 1220a Littering on Hwy./ VTL 1225.9 Avoiding intersection/ VTL 1192.3 DWI / VTL 1192.2 DWI/ 140.20 Burglary 3rd./ 140.5 Trespass / 120.10 Assault 1st./ 221.5 Unl. Poss. of Marijuana



WANTED: Community Mediators

Do you know someone who might be interested in becoming a professionally trained, community mediator or a volunteer translator? Please contact Tom Pullyblank, Director of Programming, (607) 432-0061, or by email at tpullyblank@charitiesccdo.org.



Visit the Catholic Charities of Delaware, Otsego & Schoharie Counties' website and "like us" on Facebook!



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