

Dispute Resolution Center Newsletter

Spring 2019

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Using the Standards of Conduct to Help Transform Lions into Lambs by

Tom Pullyblank, Director of Programming

Like March, parties in conflict often enter mediation like lions. They scowl and snarl in frustration. They loom over the table, ready to pounce. Sometimes they roar with menace in an attempt to intimidate the other party and, perhaps, the mediators themselves. Also like March, conflicts that present this way threaten to last forever. We ask ourselves, how will these two ever learn to communicate clearly and listen with compassion? How will they ever come to an agreement? When mediations begin this way, we see very little chance that the parties in conflict will leave the room like lambs.



As mediators, what can we do to help parties transition from lions in conflict to lambs at peace? Active listening and reflecting are extremely useful tools in the mediator’s kit. What I want to focus on in this essay are the standards of conduct as set forth by the Office of Alternative Dispute Resolution. You might recall these standards from the initial packet of information you received when you first became a mediator. (You can find them at http://ww2.nycourts.gov/sites/default/files/document/files/2018-07/Standards_of_Conduct.pdf.) These standards of conduct are often taken for granted, but they too can be useful tools that we might use in a room full of conflict.

There are seven standards of conduct that fulfill the aims of educating and guiding mediators, promoting public confidence in mediation and informing the

mediating parties about the process. The standards are: 1) Self-Determination; 2) Impartiality; 3) Conflicts of Interest; 4) Competence; 5) Confidentiality; 6) Quality of Process; and 7) Advertising and Solicitation. It seems to me that standards, 1, 2, 5 and 6 are the most important ones to consider when dealing with conflict in the mediation room.

The standard of self-determination is foundational to the practice of mediation. No one can force a party to mediate. No one can force a party to discuss a particular topic or sign any agreement. Often, a party’s aggressive behavior is an attempt to shift the balance of power and undermine self-determination. Mediators can confirm and strengthen self-determination in two ways: by asking questions that serve as check-ins to the voluntary nature of the process and by assuring the parties that they can seek professional advice and assistance before signing any agreement.

When one party acts aggressively towards another, we might feel partial towards the party under attack. Our impartiality might also be challenged when the parties agree to arrangements that we might not agree with, even after we have thoroughly checked each party’s self-determination. “Bi-partiality” or “multi-partiality”--the ability to shift perspective and understand both parties-- can be a useful way to think about how we might best serve our clients. It’s important to remember that understanding another’s point of view does not mean agreeing with that point of view.

(Continued on page 2.)

(“Understanding Codes of Conduct” continued)

With practice, we can put ourselves in the shoes of someone else while maintaining the integrity of our own principles.

It sometimes happens that self-determination or impartiality conflicts with quality of process. For example, the parties might agree that primary physical custody of their teenage child should switch from party A to party B. Neither party seems aware of the possibility that a switch in primary physical residence might also entail a cancelling or reversal of child support payments. But you and your co-mediator know this to be true. Do you risk impartiality by bringing it up? Do you accept the self-determination of the parties in making this agreement? Is quality of process undermined if you do not offer this information? These are important questions for co-mediators to discuss. (For guidance on how to proceed, see “Opinion 2009-02” of the Mediator Ethics Advisory Committee at <http://ww2.nycourts.gov/ip/adr/meac.shtml>. The other Committee opinions are equally interesting.)

Finally, confidentiality is a significant consideration for mediators, to the point that it is often the standard we emphasize most in our opening statements. The universal exception to confidentiality is allegations of

child abuse made by either party. In that case, the mediator should stop the session and report the accusation to the case manager. A mediator’s confidentiality is protected under law—that is, a mediator cannot be forced to share any information about what happens in a mediation session. But what about the parties? Are they required to keep quiet about what was said during a mediation? My somewhat flippant but accurate answer to that question is: Just try to stop them! When it comes to what the parties decide to share after the mediation is over, I tend to affirm self-determination as the guiding principle. In order to process what just happened, the parties will say whatever they want to whomever it needs to be said. Mediators can always raise the topic, though, and ask the parties directly what they consider to be an appropriate level of confidentiality. (The Mediator Ethics Advisory Committee has a few interesting opinions on this topic as well. See especially “Opinion 2010-01.”)

By taking time to study and understand these standards of conduct, and by taking time to explain them to the parties, we increase our ability to help transform conflict into peace, to help lions become lambs.

Understanding Gaslighting in Mediation

by Miranda Smith, Case Manager, and April Rando, Director of Planning and Outreach

Gaslighting is a form of psychological manipulation in which someone manipulates another person into questioning their own reality. The term originates from the play, “Gas Light,” written in 1938 by Patrick Hamilton, and later was adapted for film in the 1940s. The story is about a husband who psychologically manipulates his wife into making her think she is going insane. The term is now used to describe a common tactic people utilize to gain power or control over another person.

These are some common examples of someone gaslighting:

- They fabricate the truth;
- They deny having said something even when proof is presented;
- They use what is dear to another as ammunition;
- Their actions do not match their words or they accuse others of those actions;
- They tell a person they are crazy;
- They accuse the person or others of lying; and
- They try to make the person not trust other people.

The purpose of their argument is to deny, project their

frustrations, confuse and wear the other person down. This type of behavior is often seen in abusive relationships, where there is a power imbalance.

If mediators observe that gaslighting is occurring during the mediation, always remember that you are in charge of the process. Gaslighting is most likely to occur during divorce and parenting plan mediations, but it can happen in almost any kind of dispute. Gaslighters will not accept being challenged, so if the mediation were to continue, the approach would need to be directive and focus on specific issues.

The Standards of Conduct can be helpful in deciding what to do in this situation. If a person’s ability to fully participate in the process has been compromised or if there is a power imbalance, the mediator should withdraw or terminate the mediation. (See Standard I. Self-Determination, Comment 4, and Standard VI. Quality of the Process, Comments 8 and 11.

http://ww2.nycourts.gov/sites/default/files/documents/files/2018-07/Standards_of_Conduct.pdf)

Gaslighting is very real. Mediators should approach continuing any mediation where this is occurring with caution.



The A.T.I. DISPATCH

January-March 2019

Advantages of This Report

The purpose of this report is to provide more detailed information to the A.T.I. Advisory Board regarding the number of hours ordered and completed per quarter. It will also report on the number of successful and unsuccessful completions and give the reasons why. Included in this report will be the referral sources, the defendant's charges and the worksites where the defendant has been 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

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

Demographics

In the **third quarter of the 2018-2019** A.T.I. contract the program received:

- ◆ 13 referrals from the court resulting in **526** hours of court ordered community service.
- ◆ **685.5** hours of community service were completed.
- ◆ 7 successful completions.
- ◆ 2 pending cases from Otsego County Court that are housed at OCCF until April.

In the **first 3 quarters of the 2018-2019** A.T.I. contract the program received:

- ◆ 32 referrals from the court resulting in **2,276** hours of court ordered community service.
- ◆ **1,842.75** hours of community service were completed.
- ◆ 26 successful completions.
- ◆ 5 were an unsuccessful completions from the Adult Treatment Court.
- ◆ 1 was an Administration Discharge from the Otsego Town Court
- ◆ 3 pending cases from the Oneonta City Court.
- ◆ 2 pending cases from the Otsego County Court.

Referral Sources

- ◆ 11 Oneonta City Court
- ◆ 2 Treatment Court

College Students

- ◆ 6 SUNY Oneonta
- ◆ 0 Hartwick

Worksites Assigned

- ◆ Salvation Army Store
- ◆ The Lord's Table
- ◆ Saturday's Bread
- ◆ Turning Point
- ◆ Habitat for Humanity

Charges

- 1 Criminal Sale Controlled Sub. 3rd
- 6 Public Fighting
- 3 Urination in Public
- 1 Disorderly Conduct
- 1 Conspiracy in the 4th.
- 1 Alcohol Under 21



Save the Date! Catholic Charities Dispute Resolution Center of Delaware, Otsego, & Schoharie Counties Training Opportunities:

- **“Divorce Mediation In-Service,”** Wed. May 8, 2019, 1:30-4:00 P.M., Catholic Charities, 176 Main St., Oneonta, NY. Trainer: Kelley Eckmair, Esq., a veteran divorce/ family court lawyer located in Oneonta

Parent Teen Mediation by Dodilee Murray, Case Manager

What is it?



In Parent / Teen mediation, mediators facilitate a conversation so that all family members involved in conflict can be heard. Mediators can help each party identify their needs and interests, and work towards a resolution they have created together. The goal is to improve communication and provide

parents and teens with the skills to address any conflict the family may have in the future.

What types of conflicts arise?

A family may request mediation or be referred to us for many reasons. Parents may be dealing with a teen’s risky behavior such as drug and alcohol use, sexual activity, skipping school, or running away. However, those are not the only family conflicts. The break down in the relationship could be over a disagreement about household rules, bullying, sibling issues, divorce, or adapting to raging hormones. I believe everyone who is a parent or has parented a teen knows how exhausting it can be. Trying to guide and teach teens can be like walking through a land mine, you never know how they are going to react.

What is the process?

Parent / Teen referrals may come from a school counselor, child services, or a family member. The family is screened to determine whether mediation would be appropriate. Before the mediation, the family members can prepare by writing about their conflict and what they hope to see come out of mediation. This way each family member can stay focused if a side discussion occurs. Depending on

the complexity of the issues raised during the mediation, the family may decide that they need to meet for a second session to fully work through the conflict and develop a plan moving forward. Mediation is an opportunity to improve communication, develop a greater understanding of each person’s needs, and possibly repair the family relationship.



Visit the Catholic Charities of Delaware, Otsego & Schoharie Counties’ website and “like us” on Facebook!

<http://www.charitiesccdos.org/index.html>



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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.



Attention Mediators!

Would you like to write an article for the newsletter? Is there something that you would like to see in the newsletter that would help your practice? Please contact April Rando, Director of Planning and Outreach, at arando@charitiesccdo.org