



Dispute Resolution Center Newsletter

Autumn 2018

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Mediation in Civil Court by April Rando, Director of Planning and Outreach

On most Thursday mornings, I can be found in one of the city courts in my service area waiting for court referred cases. I look through the court docket to see what kinds of cases have been scheduled and see a long list of both criminal cases- mostly Vehicle Traffic Law violations, and civil cases. In the civil calendar, there are commercial and small claims cases, but the vast majority are landlord-tenant eviction proceedings. I wonder how the judge will be able to get through all of these cases, and at that moment, the court officer announces, “There’s a mediator available if you would like to see if you can work out your civil case before seeing the judge.” If both parties are there, sometimes they are willing to give it a try, but if one of the parties is not there, we have to wait. The defendant has one hour to show up before the judge can order a default judgment. If the complainant does not show up, the judge will dismiss the case. The court room fills up with angry, frustrated, and worried people wanting to have their say in court all hoping that the judge will rule in their favor. On this one day alone, the judge had over 70 cases- criminal and civil combined!

In a press release issued on April 20, 2018 by the New York State Unified Court System, Chief Judge Janet DiFiore and Chief Administrative Judge Lawrence K. Marks announced a new ADR initiative to encourage the court system to use Alternative Dispute Resolution as a way to “help eliminate the backlog in cases and enhance the quality of justice.” (1) The use of ADR services in the court system to resolve civil disputes is still underutilized. Why is there reluctance to use ADR, especially mediation, in civil disputes? What if mediation were mandated for these types of civil cases as the first step before it is heard before the judge?

In July 2014, a mandatory mediation pilot project was initiated in the Commercial

Division of New York County’s Supreme Court. The purpose of the Mediation Pilot was to improve efficiency and cost-effectiveness of commercial dispute resolution, and to promote ADR services. (2)The Mediation Pilot ended in 2016, and commercial disputes are now referred to the Commercial Division of the Alternative Dispute Resolution Program. Although mediation is mandatory for specific commercial disputes, the parties still can “opt out” under certain conditions, such as “unreasonable hardship or burden by participation.” (3)

The Advisory Committee will be studying the use of ADR in the civil courts. According to Chief Judge DiFiore, “Though not a substitute for the court process, alternative dispute resolution, if used appropriately, can serve as a supplement to an effective, efficient civil justice system.” (4) If the judges show that they see value in ADR, the public will become more open to using mediation. More must be done to promote ADR services to the public and the civil court through education and outreach.

1. New York State Unified Court System, “New ADR Initiative Aims to Reduce Case Delays and Enhance Access to Justice,” April 20, 2018. Retrieved from http://www2.nycourts.gov/sites/default/files/document/files/2018-05/PR18_10.pdf

2. Rodriguez, Melissa A., “Start Spreading the News”... The Big Apple Gets a Taste of Mandatory Mediation (Arbitration Law Review: Yearbook on Arbitration and Mediation, Vol. 7, 2015) Retrieved from <https://elibrary.law.psu.edu/cgi/viewcontent.cgi?referer=https://www.google.com&httpsredir=1&article=1037&context=arbitrationlawreview>

3. New York State Supreme Court, “Supplemental Administrative Order,” September 27, 2017. Retrieved from <https://www.nycourts.gov/courts/ComDiv/NY/PDFs/AO-Pilot92717.pdf>

4. New York State Unified Court System, “New ADR Initiative Aims to Reduce Case Delays and Enhance Access to Justice,” April 20, 2018.



On Being a Third-sider by Tom Pullyblank, Director of Programming

In his book *The Third Side: Why We Fight and How We Can Stop* (Penguin, 2000), William Ury asserts that people use violence or the threat of violence to solve our problems because we see no other way. Ury, one of the world's great mediators, has encountered conflict wherever it appears, in marriages and families, in schools and communities, in business and between nations. In explaining our tendency to fight, Ury writes that "however costly, an adversarial contest serves as the ultimate arbiter. Coercion and force have the advantage of being a language understood by everyone. One side loses and the conflict is settled, at least for the time being. Perhaps the single biggest reason people fight, then, is the lack of an alternative to coercion when conflict turns serious." (Ury, *The Third Side*, p. 2)

Most disputes seem to involve only two sides. Two children exchange shoves on a playground. A wife and husband yell insults at each other. An employee and her boss argue over salary, working conditions or vacation time. A batter charges the mound after being hit by a pitch. One candidate hurls accusations against another. A nation's military invades its neighbor's territory.

However, as the title of Ury's book suggests, there is a third side, not immediately involved in the conflict but intimately and inextricably connected to it. There are teachers and other children on the playground. There are children who witness their parents' violent outbursts and other family members who are deeply affected by it. There are co-workers. There are other players on both teams. There are running mates and voters, and

citizens to be governed. There are allies and innocent civilians.

And there are mediators.

Our role as "third-siders" has never been more important than it is now. Whether a paid employee at Catholic Charities of Delaware, Otsego and Schoharie Counties, a volunteer mediator with the Dispute Resolution Center or a community member committed to making the world a better place, the work we do offers a much-needed alternative to coercion and violence. What's most important about committing ourselves to the third side is that we have the opportunity to offer an alternative to coercion and violence every day, in every life situation we find ourselves.

William Ury tells a story about a man who witnessed an altercation between a young driver and an older pedestrian. When the driver brought his car to a screeching halt just inches away from the pedestrian, the man on foot slammed his fist on the car's hood. The driver got out, and the two men began yelling at each other and slowly moving into each other's space. The "third-sider" slowly and calmly stepped between them, not saying a word, just motioning with his hands, palms down. The pedestrian took a step back. The driver returned to his car and drove away.

As "third-siders" we can, like the man in the story, create what one of our volunteer mediators calls a "culture of peace." It happens little by little, incident by incident. It doesn't guarantee that conflict will come to an end, but it does give us a constructive response to conflict, a response that will, drip by drip, someday turn the tide.



Alternatives to Incarceration Dispatch

April-June 2018

The purpose of this report is to provide information to the A.T.I. Advisory Board regarding the number of hours ordered and completed per quarter. Included in this report will be the referral sources, and the worksites where the defendant has been assigned. Thank you for all your support in making this program successful in our county.

Ameen Aswad
A.T.I. Chair

Demographics

In the **Fourth quarter of the 2017-2018** A.T.I. contract the program received:

- ◆ 15 referrals from the court resulting in **608 plus** hours of court ordered community service.
- ◆ 707.25 hours of community service were completed.
- ◆ 9 successful completions.

In the **four quarters of the 2017-2018** A.T.I. contract the program received:

- ◆ 77 referrals from the court resulting in **3,536** hours of court ordered community service.

- ◆ 3,157 hours of community service were completed.

- ◆ 58 successful completions.

Referral Sources

- ◆ 4 Oneonta City Court; 9 Treatment Court; 1 Otsego Probation; 1 Kingston Town Court

College Students

- ◆ 3 SUNY Oneonta

Worksites Assigned

- ◆ Oneonta Rotary Club; Salvation Army Store; Turning Point



Mediation at the Movies by Tom Pullyblank,
Director of Programming

With a sequel coming out later this year starring Emily Blunt as everyone's favorite nanny, I thought it might be fun to look back at the original *Mary Poppins* (1964).

The story is set in 1910 London. Throughout the industrialized world, the turn of the twentieth century was a time of great change in family life, when the family became something we recognize today, with its emphasis on shared experiences and togetherness. These changes, and the family conflicts they might generate, are reflected very clearly in the film.

Mr. Banks, for example, has ideas about family deeply rooted in the old ways:

*A British bank is run with precision
A British home requires nothing less!
Tradition, discipline, and rules must be the tools
Without them - disorder!
Catastrophe! Anarchy! -
In short, we have a ghastly mess!*

Advertising for a nanny for his children Jane and Michael--the "little beasts" who have run one despairing nanny after another out of the house--Mr. Banks sings,

*A British nanny must be a general!
The future empire lies within her hands
And so the person that we need to mold the breed
Is a nanny who can give commands!*

But Jane and Michael, in their advertisement, have different ideas:

*If you want this choice position
Have a cheery disposition
Rosy cheeks, no warts!
Play games, all sorts
You must be kind, you must be witty
Very sweet and fairly pretty
Take us on outings, give us treats
Sing songs, bring sweets
Never be cross or cruel
Never give us castor oil or gruel
Love us as a son and daughter
And never smell of barley water.*

And although Mrs. Banks doesn't explicitly contradict or directly challenge her husband, she does sing this earlier in the film:

*Though we adore men individually
We agree that as a group they're rather stupid!
Cast off the shackles of yesterday!
Shoulder to shoulder into the fray!
Our daughters' daughters will adore us
And they'll sing in grateful chorus
Well done, Sister Suffragette!"*

Children as clay to be molded by parent/potters. Children as autonomous people able to make their own decisions. Parental control. Childhood freedom. Duty. Fun. Have you ever encountered these different points of view between parents? Have you ever considered your own ideas about children and how those ideas might affect your work as a mediator?

There are other scenes in *Mary Poppins* that invite some reflection about what we do as mediators. In fact, Mary herself demonstrates some impressive mediator skills. She's brilliant at reframing--just a spoonful of sugar!--and she's an amazing listener. So please revisit this supercalifragilisticexpialidocious film and see what it can teach us about mediation!



"Circle Conversations" by Miranda Smith,
Herkimer County Case Manager

The circle has been a universal symbol of equality and togetherness for centuries. Our ancestors used it for a variety of purposes and meetings throughout history. It is incredible what can occur by talking equally within a circle when confronting a potentially difficult topic. The idea of Circle conversations is that participants sit in a circle (so all can see each other and be in equal space) and take turns speaking. An object is used to identify who the speaker is at that moment, which is similar to the Talking Stick of Native American tradition. Circle conversations can be effective for a variety of settings and age groups. Circles share many of the principles in mediation-- confidentiality, equality, and involvement of all parties. All members of the Circle are important.

In July, many of our mediators (including myself) attended a Circle training led by Glen Parker and Alice Rudnick from the NYS Unified Court System-Office of Alternative Dispute Resolution. It was an eye-opening experience. Circle conversations enable us to express on many levels, share our experiences in an acceptable space, and come up with potential solutions. It creates an atmosphere of respect and bonding for the participants. A variety of topics were discussed at the training, and utilizing Circle conversations throughout the training was an excellent tool for learning. All were participating. The training had a theme of equality and respect that some trainings cannot match.

Circles are wonderful tool for group conversations and dispute resolution. It can be used in a variety of settings and for a variety of topics. The ideal example of tradition combined with present day situations.



Save the Date!

- **NYSdra Conference, October 23 & 24, 2018, Holiday Inn Saratoga, Saratoga Springs, NY.** For more information, please go to their website at: <https://www.nysdra.org/page/2018Registration>
- **“Parent-Teen Mediation Training,” Saturday, November 3, 2018, 8:30 AM-5:00 PM, Clark Sports Center, 124 County Rt 52 (Susquehanna Ave.), Cooperstown, NY; trainer: Duke Fischer.** Parent-Teen Mediation is way to help families resolve conflict in a healthy, non-threatening way. This training will help mediators identify the underlying issues that trigger conflicts between parents and teenagers and offer strategies to help families communicate better with each other. This training is free. Lunch will be provided. To register or for more information, please contact Tom Pullyblank, Director of Programming, at (607) 432-0061, or by email at tpullblank@charitiesccdo.org.
- **“Becoming Trauma Sensitive conflict Resolvers: What Mediators Need to Know About Trauma,” Saturday, April 20, 2019, 9:00 AM-5:00 PM, cost: \$15; trainers: Annie Monaco, LCSW, and Julie Loesch, Esq.** Resolution Center of Jefferson and Lewis Counties, 200 Washington St., Suite 207, Watertown, NY. To register, please contact Tammy Patterson, Mediation Program Coordinator, tpatterson@resolution-center.net, or call (315) 836-8502.



Each newsletter we feature articles about our staff and volunteer mediators.



Dodi Murray, Case Manager, Herkimer County: My name is Dodi Murray and I work in the DRC at Herkimer County Family Court doing parenting plan mediation. I have been working for the DRC since May 2018. So far, I really love it. I love helping people build bridges between broken relationships.

My children tell me that I have been a mediator my whole life. I raised four teens: twin girls, adopted my niece, and an adopted son all within two years of each other. Anytime there was conflict in our home we would have a sit down discussion about it. I would make them prepare for it by writing down a list of personal or household violations. Oh yea, we had household rules! Everyone would get their say, make up a resolution, and then we would follow up with a family meeting. I think that is probably what made me most excited when I saw the DRC job posted. I enjoy watching people come in willing to “give it a try” because it’s “better than court” and the next thing you know they’re building a bridge. Whether through a calm discussion or yelling and crying they come together and make an agreement. I just think it is awesome when parents can set aside their own feelings and focus on their children’s needs. Now, I don’t know what happens the day after they leave us, but I hope they continue to grow and build on those relationships.

In my free time I like to hang with my kids. However, three are working and in college which doesn’t leave a lot of time for me. My fourth and oldest has two children and a full time job so she is always in conflict. We all try to get

together once a week to catch up. For just me -I love to run, work out, hike, bike, and eat.



Jaine Fairbairn, Case Manager, Chenango, Delaware, & Otsego Counties: I started working for the DRC in June 2018. I am currently in training to become a mediator. My work so far has been almost exclusively screening

custody/visitation petitions, whether directly from court or returning clients or parents who have discovered us via other avenues. I do not like conflict, but I like to actively pursue solutions, so I hope my natural belief in the mission shows through when I talk about it with potential participants. I finally started assistant coaching my son’s soccer team, and I might be addicted! I love hiking with my four kids, chasing cows, making and selling maple syrup, going to soccer games of all skill levels, and trying to keep my flower gardens from turning feral.



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

<http://www.charitiesccdos.org/index.html>
<https://www.facebook.com/CatholicCharitiesDOS/>



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<https://www.instagram.com/charitiesdos/>

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