

## Advanced mediation training explores non-traditional conflict resolution

By Cynthia Price  
Legal News

Participants at the Oct. 23 Advanced Mediation Training sponsored by the Grand Rapids Bar Association learned a lot from each other.

Anne Bachle Fifer brought an impressive background to the session's presentation duties. She is lead trainer for the Institute of Continuing Legal Education's award-winning mediation training program, and she designed the first training curriculum approved by the State Court Administrative Office (SCAO) after the State of Michigan passed its mediation court rule.

However, attendees also brought a wealth of mediation experience to the table, and Bachle Fifer encouraged them to share that knowledge with each other.

The topic for the morning of the eight-hour training, designed so that participants could qualify for certification in advanced mediator training, was "Effective Apologies in Mediation."

Sources quoted by Fifer or cited in the bibliography for the training had varying degrees of confidence in the effectiveness of apology, but the mediators present seemed to be in agreement that a sincere "I'm sorry" goes a long

way toward resolution.

Some of them identified the traditional legal advice not to say anything at all because it could be seen as an admission of guilt to be a real barrier to resolution. One person shared a story where a doctor, who keenly felt the pain of his long-time patient's loss of a child but was advised to say nothing and to stay away from the family, finally showed his deep regret during a mediation. This started a healing process for the family, who wanted closure as much as a monetary settlement.

In another instance, a woman ran a red light and killed the elderly father of a very close-knit family. She was so emotionally upset by the accident that she could not even sleep at night, but was cautioned not to let anyone else know. When the mediation process resulted in a real expression of her anguish and guilt, the family not only accepted her apology, but began a friendship with her, resulting in sharing their Thanksgiving dinner with the woman and her husband.

Research in the effectiveness of apology in mediation indicated that, while a partial

or insincere apology is "worse than saying nothing," there are instances in which apology is the major remedy sought. According to an article by Jonathan R. Cohen. Leonard J. Marcus of the Program for Health Care Negotiation and Conflict Resolution at Harvard found that patients in medical malpractice suits wanted three things: an explanation, an apology, and assurance the error would not happen again.

Mediators also refer to apologies as "impassé-busting," or as initiating that "magical moment" when the parties begin to address each other rather than talk through the mediator. In fact, some said that even a partial apology might have this beneficial effect, moving participants toward a real discussion of the issues and emotions.

Participants affirmed that apology has worked even in business-to-business civil cases, though less frequently.

What is the role of the mediator in the apology process? After an in-depth consideration of what makes for a good or a bad apology, Bachle Fifer focused attention on what the mediator should and should not do

with the parties.

Mediators can make judgment calls on whether to meet "in caucus," or separately, with either party. During these separate sessions, the mediator may coach a party — after he or she determines that the party sincerely wants to apologize — on how best to make that apology. The session included some role-playing on this coaching.

After lunch, Bachle Fifer led a session on "Impasse-Busting Techniques for Mediators" in civil cases.

Robert E. Lee Wright (see article below) supplied a list of "40 Techniques to Help Move Past Impasse." Some of the techniques include "The Mediator's Rorschach Test" and agreeing to brainstorm additional options without initially judging them. Though exhaustive, the document also refers mediators to additional sources.

The Grand Rapids Bar Association ADR Section will sponsor a roundtable on Alternative Dispute Resolution on Nov. 28, noon, at the Peninsular Club. All Grand Rapids Bar members are welcome.



LEGAL NEWS PHOTOS BY CYNTHIA PRICE

Anne Bachle Fifer, presenting at the Oct. 23 Advanced Mediation Training on "Effective Apologies in Mediation," sponsored by the Grand Rapids Bar.

## Centers offers a variety of resolution solutions

By Cynthia Price  
Legal News

Mediation comes in a variety of colors and flavors, and the Dispute Resolution Center of West Michigan (DRC) offers a wide sampling.

DRC conducts its mission of "promoting justice and self-determination through the peaceful resolution of disputes for individuals, families, and businesses" through a large number of programs. The organization has had many years to develop these programs, because it is one of the oldest of its kind in the state.

At its 1986 inception, the DRC was called the Grand Rapids/Kent County Reconciliation Center. Its history begins even before that with a consortium of Calvin and Grand Rapids Community Colleges, born of a grassroots citizen initiative to address resolving conflict throughout the community, using a center in Atlanta as a model.

In 1988, the state passed

the Community Dispute Resolution Act, and mandated that centers such as Kent County's be funded through a portion of civil court filing fees. This funding scenario still applies, though most of the current 20 dispute resolution non-profits in the state must also rely on other sources of funding.

Jonathan Wilmot, who has been DRC's executive director for two years, says

that another big shift took place with the 2001 passage of the court rules which allowed judges to order any general civil case to mediation. That rule mandated that each court have an Alternative Dispute Resolution (ADR) plan on file with the State Court Administrative Office (SCAO), and that entails listing potential individual

CENTER continues page 2



Jon Wilmot, Executive Director, stands outside the Dispute Resolution Center's Front Street office.

## Lawyers, courts turn to alternative methods

By Cynthia Price  
Legal News

Some lawyers are moving to mediation as part or all of their practice; others are engaging with their clients in mediation because they believe it is beneficial to all.

Whatever the cause, mediation is growing in popularity as an alternative to settling disputes in court.

Bob Wright, part of Miller Canfield Paddock and Stone's Grand Rapids firm, feels strongly that mediation is the best solution in a lot of instances. His practice currently focuses on mediation, though he is a traditionally-trained lawyer.

Wright says about mediation, "I've been thoroughly blessed to have found my

He is involved with promoting and improving mediation at the local, state and national levels. He is the incoming president of the Grand Rapids Bar Alternative Dispute Resolution (ADR) section; serves on the State Bar of Michigan ADR section; and for the Spring 2007

Conference of the American Bar Association Section of Dispute Resolution in Washington, DC, discussed "Effectively Dealing with the Needs of Consumers and Lawyers in Mediation." He has also won the Trail Blazers Award from the Dispute Resolution Center of West Michigan.

Wright says that most lawyers recognize that they stand to benefit from participation in mediation dispute resolution in a number of ways. First, mediation's track record of successful resolution means that participating lawyers are better able to assist their clients — compromise being a better outcome than outright loss. Second, because mediation has such a

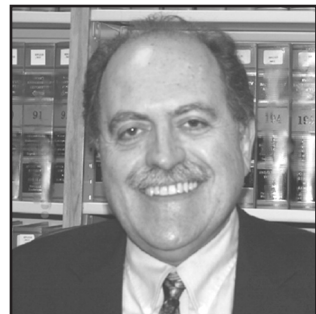


PHOTO COURTESY OF BOB WRIGHT

Robert E. Lee Wright

high satisfaction rate, happy clients will tend to spread positive word of mouth about lawyers who participate. Third, mediation's quicker turnaround time allows lawyers to better prepare for cases which do go to trial. These are just the top of the

ADR continues page 2



# Collaborative practice focuses on mediation in family law

By Frank Wier  
Legal News

Although at least some legal practitioners in Tom Darnton's position would be looking toward retirement, Darnton has begun a new — and ambitious — legal effort.

A family practitioner for years, he graduated from the University of Michigan Law School in 1972. Darnton co-founded the Windwood Center for Collaborative Practice, Mediation and Psychotherapy in Ann Arbor earlier this year with his wife, Cheryl Barget, Ph.D., a psychologist and mediator.

Although Darnton is thoroughly experienced in conventional family law practice, he realized, along with many others locally and nationally, that conventional trial law does not lend itself well to unraveling complex family problems.

"Recently, at a program honoring former Judge John Kirkendall, I said that in our community, we have a committed critical mass of family law practitioners who understand the benefits of non-adversarial processes.

"This has allowed us locally to really move ahead and to be at the forefront of a national movement toward using collaborative practice and mediation to better serve our family law and estate clients," Darnton said.

"Collaborative practice is an approach to family law disputes that begins with the idea that everyone involved has the common goal of resolution of conflict that allows people to move on with their lives.

"For a settlement to work, it has to work for everyone. From the very beginning, the attitude is that we are all on the same team and we have a common goal. It is not an adversarial process, not a me versus you approach."

Darnton noted that the col-

laborative practice training both he and wife Cheryl received formed the philosophical underpinnings for Windwood and for their use of co-mediation. In addition, the collaborative practice training led the couple to the utilization of "specialists" who are a part of the team approach.

In addition to working as partners in the Windwood Center business development, Darnton and Barget also practice "co-mediation," in which they work together with their mediating clients. They report that this technique requires a high level of teamwork and literally brings the benefits of both disciplines, law and psychology, to the table.

"We really wanted to bring the wisdom of other disciplines into the process and Cheryl's training as a psychologist specializing in children's issues was perfect," Darnton said.

"Since she also has trained as a mediator, she is able to address various emotional issues that come up during mediation including emotional pain and particularly anger. And she is always aware of

the emotional needs of the children involved."

Darnton added that a financial specialist also is involved in helping unsnarl ever-present debt and mortgage issues.

"In the financial area, we try to find ways to add value to the situation. Often, our financial expert is very helpful here. Recently we had a case with a common problem: an inability to sell a jointly-owned house. Neither party had the ability to shoulder the costs of carrying the home and instead of fighting over who should have to pay, we looked for other options.

"This is how collaborative practice works. It's a good example. We get the parties to look at it as, 'we're in this together. We're both working hard, we're fully disclosing our financial situation. What can we figure out?'"

Darnton maintains that Washtenaw County, given its unique legal community, is spearheading a blend of mediation and collaborative practice that is far ahead of its time.

"Here, the parties are the principal negotiators but their

attorneys are present and participate actively. In traditional mediation, attorneys are kept in the background. We also use specialists in a much more direct way. That is one thing we've learned from collaborative practice."

Barget notes that Windwood clients vary greatly. "Our clients are in various stages of their legal difficulty. Some are not involved in an active case at all while others are in litigation. Some are referred by a therapist or lawyer.

"Clients automatically think of divorce as adversarial. Invariably, people are in a highly emotional state. They are hurt and angry," Barget continued. "We work to change their mindset and start working together particularly for the sake of the children."

Darnton and Barget hope eventually to offer mediation and collaborative practice training.

"We would like to get to the end of our professional careers and say we did something that left a mark on our community," Darnton concluded.



Tom Darnton, right, started a collaborative practice center with wife Cheryl Barget, left, a psychologist and mediator.

LEGAL NEWS PHOTOS BY FRANK WEIR

CENTER from page 1

mediators for mediation parties to choose from.

Prior to that time there were not a lot of private for-profit mediators in existence. Even now, he says, very few people on the west side of the state are able to make a living solely on mediation practice. He and a number of private mediators hope that this will change.

Wilmot said that there was a well-attended dialogue at the beginning of the year in Lansing where the for-profit mediators met with non-profit center staff. Wilmot laughs as he says, "The mediators had a need for mediation." There is apparently not a lot of conflict involved, but now is the time for discussion about how the two groups can move forward together.

All of the non-profit centers fall under the Community Dispute Resolution Program, which evaluates and keeps statistics. For example,

ADR from page 1

list of numerous advantages.

Kent County's 17th Circuit Court has a listing of eligible mediators, as mandated in the 2001 Court Rule on mediation. The web site listing can

according to its 2006 annual report, there were 34,413 individuals involved in mediated cases, with 7,463 resolutions either through formal mediation or informally through other modes of communication. The combined financial settlements equalled \$10,256,295, which was an increase of \$2 million over 2005 figures.

Of the cases disposed, 79 percent were referred from the courts.

The Community Dispute Resolution Program is administered by SCAO, which also oversees training.

The Dispute Resolution Center of West Michigan has about 60 volunteer mediators, and about 40 mediators worked on at least one case over the past 12 months. DRC oversees the internship phase of the mediator training its volunteers undergo. (See below.) If volunteers' strengths are not in mediation, they are asked not to

continue. Wilmot says this is very infrequent, but it has happened.

"There are different styles of mediation," Wilmot says — primarily divided into a style that is more directive and one that is less. There are also a number of slightly modulated techniques that can help mediation along.

Among the more specialized programs DRC offers are working with parents and school districts on resolving special education conflicts, and an agriculture mediation program. The latter concerns itself with resolving problems between U.S. Department of Agriculture agencies and the farmers they regulate.

Nearest to Wilmot's heart is the victim-offender program. After receiving his undergraduate criminal justice and political justice degree, he became fascinated by restorative justice, which led to his passion for mediation in criminal cases.

be viewed at [www.accesskent.org](http://www.accesskent.org) by choosing the Courts and Law Enforcement pull-down menu and clicking 17th Circuit Court. However, parties can also choose their own mediators.

People from law, psychology, or other backgrounds can become mediators by going through a 40-hour training, followed by an internship period which requires at least two observations of media-

tions by experienced mediators, and at least one supervised mediation. Trainees with an advanced degree in anything other than law must take a civil law training class.

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### CIRCUIT COURT CLASSIFICATION ABBREVIATIONS

AA Other agencies	DS Other support	PR Receivers in supplemental proceedings
AE MESC actions	OU URESA enforcement	PS Supplementary proceedings
AH Habeas corpus	DV PPO's Against Domestic Violence	PZ Other miscellaneous proceedings
AL License restoration	DW Interstate income withholding	TC Transfer custody
AP Parole Board Appeals	DZ Other family matters	T1 Transfer URESA initiation
AR Criminal appeals	ND Property damage, auto negligence	TM Transfer divorces, minor children
AS Superintending control	NH Medical malpractice	T0 Transfer divorces, no children
AV Civil Appeals	NI Personal injury, auto negligence	TP Transfer paternity
AW Other writs	NM Other professional malpractice	TS Transfer other support
AX Extradition/detainer	NO Other personal injury	TU Transfer URESA enforcement
AZ Other extraordinary remedies	NP Product liability	TZ Transfer other family matters
CB Business claims	NS Dramshop act	UC Modification under UIFSA
CC Condemnation	NZ Other damage suits	UD Assist with discovery under UIFSA
CE Environment	PA Attachment	UE UIFSA establishment
CF Forfeiture	PC Proceedings to restore, establish, or correct records	UF Enforcement under UIFSA
CH Housing and real estate	PD Claim and delivery	UI UIFSA initiation
CK Contracts	PG Garnishment	UM Registration of orders for modification under UIFSA
CL Labor relations	PH PPO's against Stalking (no domestic relationship)	UN Registration of orders for enforcement under UIFSA
CP Consumer protection	PJ PPO's against minors	UD Income withholding under UIFSA
CR Corporate receivership	PP PPO's in Domestic Relationships	UW Registration of income withholding orders under UIFSA
CZ Other general civil		
DC Custody		
DH PPO's Against Stalking (domestic relationship)		
DM Divorce, minor children		
DO Divorce, no minor children		
DP Paternity		
DR Registration of foreign orders		

### FREQUENTLY USED ABBREVIATIONS

Ch	Chapter number of bankruptcy (Chapter 13, Chapter 7, etc.)
liab	Liabilities in bankruptcy cases
In pro per	People are representing themselves, no attorney
et al	Means "and others", used when there is too much information for all of it to be listed
aka	also known as
fka	formerly known as
dba	doing business as
fdba	formerly doing business as
M.U.A.	Michigan Unemployment Agency (Kia M.E.S.C.)
PPO	Personal Protection Order
tee	Trustee
First letter of bankruptcy cases — First letter of the last name of judge handling the case	
Second letter of bankruptcy cases — District where the case was filed	

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