



Heartland Mediators Association

Newsletter for Midwest Mediators

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8826 Santa Fe Drive, Ste 208
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Fall Training Great for Networking

by Ronnie Beach, President

We are pleased to be hosted by such a great organization as KIPCOR, on the campus of Bethel College in North Newton.

The agenda for the day includes skill building and insight from outstanding presenters.

Beyond the educational component of the training, our hope is that you will take this opportunity to network with your fellow mediators. The cost is modest and you will have a great lunch and an enjoyable afternoon!

Your Board of Directors met in June and in August. Evan Ash, past President of HMA shared with the Board the past vision of the association.

This plan is referred to as the "Blueprint." The Board will continue to review this document and its pertinent application.

Finally, be sure to keep us posted on what you're up to!

Let us know about any out-of-state conferences you attend, presentations that you make, additions to your family; or any other good news we can share with the membership.

If you are too modest to share good news about yourself, tell us good news about a colleague!

*Your President,
Ronnie Beach*

Fall Training Encourages Questions

HMA's Fall 2007 CME Training will be on Friday, October 19, at the KIPCOR Community Mediation Center on the campus of Bethel College.

KIPCOR is located in the Kaufman House at 2515 College Avenue in North Newton. The cost for three hours of CME credit will be \$30 for HMA members and \$40 for nonmembers. Lunch is included at 12:15 p.m. followed by the educational training beginning at 1 p.m.

Training will include two panels, one on the development of mediation cases in the courtroom and the second on interaction of mediation with respective professions and how mediation can be of assistance in bringing agreement.

The first set of speakers includes **The Honorable James G. Beasley, District Court Judge, Wichita** and **Richard Macias, Small Claims Court Judge**. Both have observed the benefit of mediation in their court rooms. They will discuss the development of the mediation process as it pertains to cases heard in their court rooms in the past, the present use of mediation; and where they see mediation evolving in the future.

The second panel includes: **The Honorable Joe Dickinson, Kim Kadel, LSCSW; and Trip Shawver, JD**. They will talk about the interaction of mediation with their respective professions -- there is frequently support, but what about when everyone seems to be going different directions.

An interactive audience seeking to participate in the discussions with both panels is encouraged to attend.

A registration form can be found on the back page.

(866) 381-4458 • www.heartlandmediators.org • mediation@grapevine.net

The “Grey Areas” in Mediation Ethics

Mediators draw on a variety of sources for personal and professional guidance.

The standards that seem clear in the abstract often become more complex in the application.

This article will but point out the complexity within the rule to simplify and distill some of the key principles on which a consensus exists in our profession while noting unanswered questions in their application.

CONFIDENTIALITY. Both in joint and private sessions people have a right to expect that communications to us and among themselves will be and remain private. However, since information flow can reduce the differences between views of the problem and its resolution, it is the mediator’s obligation to secure the parties’ consent to disclose key facts to one another to move forward.

The Kansas Ethical Standards require us to comply with the parties’ “reasonable expectations.” The right to prevent disclosure of the events and communications of mediation may be invoked by any of the parties, their counsel or the mediator. As a legal “privilege” this is the highest protection of privacy and confidentiality in our legal system, similar to the doctor-patient, lawyer-client, and priest-penitent evidentiary rules.

What happens if the court that is supervising the litigation, or ordered the parties to us, orders a report? Does that become the “reasonable expectation”? How can we provide “information” without making judgments and thus losing neutrality?

IMPARTIALITY. Mediators must be invested in the case but not the

outcome. If seen by either party as taking sides, the mediator’s guidance, assistance and information will not be trusted and a key portion of the mediator’s role unfulfilled.

Everyone wants the mediator on their side. Can anyone be “impartial?” Isn’t that likely to be viewed as aloof or disengaged? Do the parties need yet another “distant” professional? One approach to this problem is not to be “non-partial” but to be “omni-partial,” in other words to be on everyone’s side.

Our behavior, verbal and non-verbal, must communicate an even-handed approach which, if compromised can defeat the purpose of a fair resolution. If we as mediators cannot maintain this impartial or omni-partial approach it is our obligation to advise the parties and to withdraw. If the parties consent to our continued service even when we are not neutral do we agree to continue?

CONFLICTS OF INTEREST. The mediator should never assist the parties in the resolution of a matter in which he or she has an interest. This extends to professional, personal and financial interest as well. However, under certain circumstances with the parties’ consent, the mediator can proceed if he or she can truly be certain that neither the process nor the mediator’s behavior taints the outcome.

Any potential conflicts must be disclosed early and clearly to give the parties an opportunity to react appropriately. What happens if the mediator later learns of a conflict but the parties waive it to keep the process going? Should the mediator continue even if certain of his/her neutrality?

VOLUNTARINESS. As conflict resolution is more aligned with the court system, its central tenet of free will and voluntary participation becomes endangered. When the parties are court-ordered the mediator must be certain this right is honored to the fullest extent possible under the circumstances.

Questions and problems abound in the conflict between voluntary participation and compliance with an order from the court. Is the appearance of a party sufficient? Is some degree of participation necessary to satisfy the court order?

The issue of whether a good faith participation rule should be created is for another column. Each of us must develop skills necessary to avoid the coercive effect of a court order while engaging and maintaining participation of unwilling parties.

SELF-DETERMINATION. The mediator empowers the participants not to conform to the standards of others but to identify and determine their own standards of fairness and whether a proposed resolution satisfies those standards.

We must help them uncover what they feel is best, not to impose our ideas or the ideas of others. Moreover we need to prevent one party from dominating or coercing the other, causing this loss of self-determination. Is that our job?

If both parties are represented, do we have a responsibility to equalize the imbalance created by their choice of counsel? Doesn’t that determination immediately cost us our neutrality?

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Member Profile: **Welcome to Scott Swanson**

About eight years ago, Scott Swanson was asked to “train” an internal work team to “quit fighting with each other and get the job done.”

“Realizing the absurdity of such a notion, I tried a different approach: facilitate a difficult conversation between them about why they were fighting and teach them how to stop,” Swanson said in a recent e-mail about his reasons for becoming a new member of Heartland Mediators Association.

This integrated skills training and mediation to help them manage their current and future conflict. The success from that opportunity is what

started him down the path of mediation.

“Since then, I have learned much and gained experience from many excellent mentors such as Art Thompson, Ken Grotewiel, Gary Flory and Mike Crow from Kansas Department of Transportation” where Swanson has worked since 1993.

As the Partnering Coordinator for Kansas Department of Transportation, he said he believes he is truly blessed to now do this work full time.

“I facilitate discussions and mediate disputes plus teach others how to do so within the agency and in the private sec-

tor,” he said. *“I hope to start doing small claims and church congregational dispute resolution soon. Thanks to the HMA for all the opportunities to learn and develop these skills further.”*

He is a graduate of Emporia State University with a B.S. in Business Administration and Marketing with a minor in Psychology. Swanson became a Kansas Certified Public Manager in 2004. He lives on a farm near Baldwin City with his wife, Linda. He has found mediation works with their teens.

Scott M. Swanson may be reached at his KDOT office:
(785) 291-3398 or by e-mail at swanson@ksdot.org

Mentor Mediator Training Before HMA Training - October 19th

The Kansas Advisory Council on Dispute Resolution is currently considering a recommendation from its Mentoring Subcommittee to require all co-mediations for new mediators be done with specially trained and approved Mentor Mediators.

This training was designed by the Kansas Institute for Peace and Conflict Resolution (KIPCOR), under a grant from the Advisory Council as a first step in a future approval process for mentor mediators.

If you currently offer co-mediation/mentoring services to new mediators, this training is a must! If you aren't sure whether you want to be a mentor mediator, this training will show you what it takes, and teach you valuable reflective practice techniques.

“I found the training to have been one of the better ways for me to review my mediation skills even though I don't expect to do much mentoring. I would encourage

any mediator to take such a course because it is an innovative way to learn new skills,” said Art Thompson.

The training provides participants with a mentoring philosophy, models, approaches, practice tools, and educational resources. Trainers include Gary Kretchmer, Micki Armstrong, Terrie McCants, Trip Shawver, and Kirsten Zerger.

The training will be from **8 am to noon on Friday, October 19, at KIPCOR's Kaufman House Training Facility**, 2515 College Avenue, Bethel College, North Newton, KS 67117 (30 miles north of Wichita: Off I-135 at Exit 34, south on K-15 to the overhead flashing light on 24th, east two blocks to College Avenue, and north to #2515 -second house on the west).

Cost is **\$75** (includes Manual and refreshments) or **\$60**, if registration form and fee are received by October 12. Credit is approved for 4 CMEs.

For more information contact: 316-284-5217; fax 316-284-5379; kipcor@bethelks.edu. A registration form may be found on the back page.

Ethics

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In the youth of our profession, we must begin to confront the growing impact of the court's hierarchical system with our consensus-based process.

Regrettably, the issues above have no easy or clear answers.

Each practitioner must address them and it is important we have a dialog about how that can be done. If this article provokes discussion, reflection or consideration, its purpose was served.

Pat Nichols is an attorney mediator and partner with Larry Rute in Associates in Dispute Resolution, LLC, in Lawrence, Kansas. He is on the HMA Board of Directors.

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Mentor Mediator Training Registration Form

Name _____
Organizational Affiliation / Title _____
Address _____
City/ State/ Postal Code _____
Work Phone _____ Home Phone _____
Cell Phone _____ Email _____

Send this form with your payment \$60/\$75 after 10/12 (payable to KIPCOR) to:
KIPCOR - Kaufman House at Bethel College
2515 College Avenue, P.O. Box 276, North Newton, KS 67117-0276

HMA October Training Reservation

Name _____
Firm _____
Address _____
City/State/Zip _____
Phone _____ Email _____
Registration Fee: \$30 members, \$40 nonmembers
___ Enclosed is my check
___ Please charge to the following credit card: No. _____
Expiration date _____ Cardholder name _____

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