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Interview with Jane Gordon

I had the pleasure of sitting down with the Oregon State Bar Alternative Dispute Resolution Section's 2012 Mediation Award recipient, Ms. Jane Gordon¹, to discuss her thoughts on what mediation has been, what it has become, and where it is going.

What is Mediation?

When I asked Ms. Gordon what mediation is, she explained it as "sort of like the word 'love', in that we each have our own specific idea of what it means." Different mediators have different goals, with some focusing on expeditiously resolving disputes, with others focusing on the process itself, or focusing on enhancing communication between the parties.

Ms. Gordon explained that there are so many elements to mediation, such as how involved the mediator is in the process, where legal advice comes in, and whether one uses mediation merely as a tool in the discovery process. All of these different factors can produce many different types of mediation.

For Ms. Gordon, though, the goal of mediation is really to help each party understand the other's perspective. Although the parties do not

need to agree with each other's perspective, she finds that just understanding what each person's role was in the creation of the problem and understanding the other person's point of view is very valuable. She sees mediation as a way of resolving disputes with creativity that traditional litigation could not offer.

How Mediation Developed in Eugene

Mediation has come a long way since the early 1980's. When Ms. Gordon graduated from law school at the University of Oregon in 1979, mediation was just in its beginning stages and used primarily as an alternative in resolving housing disputes. Such mediation outlets were called "community boards" in California. Several Eugene professionals, including Ms. Gordon, organized themselves and received training from some of the California community board organizers. Soon, the Eugene group, now known as The Center for Dialogue and Resolution, found themselves passing out flyers at police stations and even dressing as houses in parades and to increase participation in their programs. The Center is now a well-established part of the legal community in Eugene, mediating about 750 disputes each year, with an 80 percent success rate.²

Where Mediation is Heading

When I asked Ms. Gordon how she saw the mediation process growing, Ms. Gordon said she could never have guessed it would have developed the way it has and sounded enthusiastic about the future. She opined that mediation was once an alternative to the mainstream process of litigation, but has now become just as institutionalized as litigation. Ms. Gordon has been tracking several bills in the Oregon legislature, for example, that would require mediation as a means of resolving everything from mortgage disputes to medical litigation.

While Ms. Gordon is interested to see how mediation will continue to develop, she is also hopeful that those involved in mediation will continue to promote its basic tenets: voluntariness, self-determination, and confidentiality. Even with "mandatory mediation", for example, the voluntary element can and should still exist; the parties may be forced to attend mediation, but what they do from that point forward, especially with regard to their participation level, should still up to them.

Now that mediation has become part of the institution of resolving disputes rather than merely an alternative to litigation, Ms. Gordon is eager to find out what the grass roots alternative to mediation will be.

¹ Jane Gordon is past chair of the Oregon State Bar's ADR Executive Committee, and is currently the president of the Northwest Institute for Conflict Resolution. She teaches the Small Claims Mediation Clinic and the Probate Mediation Clinic in the law school and Perspectives in Conflict Resolution in the master's degree program.

² Center for Dialogue and Resolution website: <http://www.communitymediationservices.com/pg6.cfm>

Mediating Mandatory Arbitration Cases – Can You DO That?

By Sam Imperati, JD

Institute for Conflict Management, Inc.

ADR is an acronym often used for “Alternative Dispute Resolution.” In Oregon, it stands for “Appropriate Dispute Resolution,” suggesting that care should be taken to select the process most appropriate for the matter in dispute. Sometimes, that means litigation and sometimes that means direct negotiation. In matters involving \$50,000 or less, it means arbitration under ORS 36.400 to 36.425. ORS 36.400(3) and ORS 36.405(1).

It could also mean a court pretrial settlement conference. See, UTCR 13.300

So, what about mediation, the cousin of arbitration and settlement conference? Can you mediate cases subject to “mandatory arbitration?” ORS 36.405(3) states:

If a court has established a mediation program that is available for a civil action that would otherwise be subject to arbitration under ORS 36.400 to 36.425, the court shall not assign the proceeding to arbitration if the proceeding is assigned to mediation pursuant to the agreement of the parties. Notwithstanding any other provision of ORS 36.400 to 36.425, a party who completes a mediation program offered by a court shall not be required to participate in arbitration under ORS 36.400 to 36.425.

In Multnomah County Circuit Court, SLR 7.075, PARTICIPATION IN APPROPRIATE DISPUTE RESOLUTION, states:

(1) Every civil and family

law case shall be subject to subsection (2) of this rule except for civil cases which are subject to SLR 7.011 (Initial Civil Case Management Conference).

(2) All parties and their attorneys, if any, are required to participate in some form of appropriate dispute resolution, beyond negotiation directly or indirectly to reach a joint settlement, including, but not limited to, arbitration, mediation or judicial settlement conference. The parties must sign and file, within 270 days from the filing of the first complaint or petition in the action, a certificate (See Form 05-31, Page 101, Appendix of Forms) indicating that the parties have participated in such ADR mechanisms. If the action is fully disposed of in the circuit court within 270 days from the filing of the first complaint or petition in the action, no certificate need be filed under this rule.

(3) The requirements of this rule shall not require mediation or arbitration of a case otherwise exempt from arbitration or mediation requirements by statute, but the parties and attorneys, if any, of any case so exempted shall be required to participate in a judicial settlement conference.

(4) The court may impose sanctions pursuant to UTCR 1.090 against any party



NEWSLETTER

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who fails to comply with subsection (2) of this rule, or who (a) fails to attend a scheduled mediation session, arbitration hearing or judicial settlement conference; (b) fails to act in good faith during the mediation, arbitration or judicial settlement conference; (c) fails to submit on a timely basis paperwork required as a part of the mediation, arbitration or judicial settlement conference; or (d) fails to have a principal necessary to approve the resolution of the case present or readily available, by telephone or other means, at the time of the mediation, arbitration or judicial settlement conference, unless, in advance, the court grants the party or attorney leave from compliance with this subsection of the rule.

(5) Nothing in this rule restricts or removes the constitutional right of the parties to a trial.

Additionally, SLR 12.025 ALTERNATE MEDIATION PROCEDURE IN CIVIL AND DOMESTIC RELATIONS ACTIONS SUBJECT TO 36.400 TO 36.425, states:

(1) Mediation, as used in these rules, is a facilitated negotiation process in which a neutral third party assists the parties in attempting to reach a resolution of their controversy. The mediator has no authority to make a decision or impose a solution.

(2) On the parties' written stipulation, filed with the court at any time prior to the commencement of the arbitration hearing, the parties may elect to mediate (pursuant to ORS 36.185 to 36.238) rather than arbitrate any civil or domestic relations case subject to mandatory arbitration under 36.400 to 36.425. Such mediation shall be accomplished within the same time period required for court-annexed arbitration

under these rules. If the parties mediate in good faith, they shall be deemed to have met the requirements for 36.400 to 36.425 and SLR 7.075 whether or not the mediation results in resolution of all claims, and shall not thereafter be required to submit to arbitration. Nothing in this rule, however, precludes the parties from entering into arbitration in the event that mediation is unsuccessful in resolving the controversy. Any such request to arbitration after mediation shall be governed by Chapter 13 of these Supplemental Local Rules.

Bottom Line: Depending on the county, you can mediate "mandatory arbitration" matters to a settlement, or in the event of impasse, you can go then to trial. Either way, you decide the best dispute resolution process for your client's matter. Now, that's "appropriate."

Alternative Dispute Resolution Section Seeks Nominations for Awards

The ADR Executive Committee of the Oregon State Bar's Alternative Dispute Resolution Section is seeking nominations for three state-wide awards designed to recognize excellent achievements in alternative dispute resolution work in the state: the Sidney Lezak Award, the Interdisciplinary Cooperation Award, and the Carlton B. Snow Award for Excellence in Arbitration. The deadline for submitting nominations is **5:00 p.m. Friday, June 14, 2013**.

The **Sidney Lezak Award** was created by the ADR section to recognize excellence in the field of media-

tion and is awarded to a bar member with outstanding contributions to alternative dispute resolution in the Oregon legal community.

The **Interdisciplinary Cooperation Award** recognizes efforts of ADR professionals who are not members of the Oregon State Bar, but work with attorneys, judges, and court administrators in the alternative dispute resolution process, and who further the values and core principles of the Alternative Dispute Resolution Section of the Oregon State Bar.

The **Carlton B. Snow Award for Excellence in Arbitration** is con-

ferred to a member of the Oregon State Bar to recognize outstanding achievement in the field of arbitration.

Please submit nominations via e-mail or mail by **5:00 p.m., June 14, 2013**, to:

Bruce Lee Schafer, Director of Claims

Professional Liability Fund
c/o Marci Sasik

marcis@osbplf.org

PO Box 231600

Tigard, OR 97281-1600

Solving the Problem of Abrasive Leadership Workshop

Friday, June 7, 2013

8:00am - Networking and Check-in

8:30am - 4:00pm - Training

First United Methodist Church, 1838 SW Jefferson St., Portland

Eugene Training Thursday June 13, 2013

Application has been made for continuing education credits from NASW and the Oregon State Bar.

The Oregon Mediation Association is sponsoring a one-day workshop

Abrasive leaders rub people the wrong way. Commonly referred to as bully bosses, their destructive management styles erode motivation in coworkers and disrupt organizational functioning. In today's highly competitive business environment, companies cannot afford the costs of disruption caused by abrasive executives and professionals (such as attorneys and physicians). These costs include attrition of valued employees, hostile environment/harassment lawsuits, and retaliatory responses such as sabotage and workplace violence. Mediators are often called upon to mediate conflicts that are symptomatic of underlying abrasive management styles. Specialists in the field of coaching abrasive leaders, Laura Crawshaw, Ph.D. and Debra Healy, M.A. of The Boss Whispering Institute will discuss what drives leaders to engage in destructive interpersonal behavior at work, and what would be helpful to understand in order to reduce suffering in the workplace caused by abrasive leaders.

Who Should Attend

Mediators, attorneys, therapists, school personnel, counselors, managers, social workers, arbitrators, human resources staff, and other

professionals who work with people and help manage conflicts.

OVERVIEW: Findings from The Boss Whispering Institute's research

- Adequate vs. abrasive leaders: critical differentiations
- The most common characteristic behaviors of abrasive leaders
- The origins of abrasive leadership styles: myths and realities
- The dynamics of defensive aggression: Threat-Anxiety-Defense
- The effects of abrasive leadership on teams: reciprocal aggression
- Why their managers don't intervene
- What it takes to motivate an abrasive leader to modify their management style
- Critical elements in reducing defensiveness when coaching abrasive leaders
- Case study
- Weak leadership: Relying on mediation as a substitute for conduct management

Presenters:

Laura Crawshaw, Ph.D., BCC - Founder, Boss Whispering Institute, Psychotherapist, Executive Coach, Researcher and Author

Debra Healy, M.S. - Conflict Consultant specializing in workplace mediation and facilitation with an emphasis on abrasive employees.

www.bosswhispering.com

Here's what past participants are saying:

"The workshop exceeded my expectations ... it was thorough, relevant and deeply compelling."

"I have applied Laura's teachings

to my work with amazing results"

"Boss Whispering was one of those 'ah-ha' moments in my life."

"I recommend attending Laura's workshop to anyone working with people."

Training Time and Location:

Portland Training: Friday, June 7, 2013

8:00am - Networking and Check-in

8:30am - 4:00pm - Training

First United Methodist Church, 1838 SW Jefferson, Portland

Eugene Training: Thursday June 13, 2013

Location, times and fees TBA

Portland Registration Fees: Early Registration Discount Through June 1st!

OMA members: \$130 (lunch included) \$140 after Saturday, June 1st

Non-OMA members \$170 (lunch included) \$180 after Saturday, June 1st

Full-Time Students: \$80 (lunch included) \$90 after Saturday, June 1st. There is a limited number of discounted registrations for students so hurry up and register today!

To register or find more information please visit: www.omediate.org or contact the OMA office at oma@omediate.org or (503) 872-9775

Oregon Mediation Association

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