

The bi-monthly publication of the Ohio Mediation Association ...

Mediate Ohio

Summer 2014

A Word from the ^{New} President

by Edward M. Krauss

As your new president, I look forward to the next two years. We have a splendid board, and I am encouraged by the response to our request to fill vacant board positions.

The essence of the OMA is to promote dispute resolution across the state—and to enhance the profession of mediation. We believe your member benefits provide many of these essentials for you and for the profession.

In addition to our annual training event that provides over five hours of excellent skill enhancement, we offer meetings throughout the year with presentations from representatives of the Supreme Court of Ohio, a variety of municipal and county courts, social service agencies, marketing experts, law enforcement agencies and other entities. We also offer the opportunity to network with other mediators from several communities and learn about their approaches to mediation. In addition, and especially important, you have your own web page with the information that you design.

We work continuously to build awareness of OMA and the benefits of mediation in Ohio. We use marketing techniques such as announcements on NPR stations and appearances at various events such as the upcoming ACR conference. We join with you to increase the use of mediation in the community as an alternative to litigation.

Please let me know if you have any questions, ideas, interests, concerns. I look forward to hearing from you.



Congratulations to Ed Krauss on being elected President, Nate Witkin as Vice President, and to Maara Fink & Bob Blue for their appointments to our Executive Board—we look forward exciting years ahead!

Board Members

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OMA :: Promoting an understanding of the value of mediation.

■ *Defining & Solving the Dispute Equation*
by Nate Witkin

■ *If I Had a Hammer ...*
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Defining and Solving the Dispute Equation

by Nathan Witkin

If the concept of "dispute" could be narrowed down to one equation, it might provide broad insight and simple, useful directions to professionals who deal with disputes. After years of managing people in conflict with each other and people in conflict with the legal system, I would propose the following simple equation to describe any and every dispute:

[Expectations of ourselves/our side of a situation] - [Expectations of other(s)/society/the world]

If the left side of the minus sign is greater, there is no dispute. If the right side of the minus sign is greater (creating a negative value), then there is a dispute. I argue that this basic, all-encompassing formula fits.

A dispute is an active clash between two people, whereas "conflict" is a broader concept that includes tensions and disagreements between people who are not necessarily engaging each other directly. Two people can have clashing interests, but it is only when they expect things of each other that they are in a dispute. And if Person A

expects something from Person B in a situation that Person A is not involved in, then Person A is more of an intervener or third-party, rather than a disputant. If both people are involved in the situation, each will have expectations for them-selves ("I can handle that" or "I shouldn't be dealing with that") and expectations for the other ("You shouldn't have to do that" or "Why haven't you done this yet?").

There is a minus symbol between the left and right side because if we expect more from ourselves than the other, there is no dispute—we will either do the thing ourselves or not (but also not expect the other to do it

either). Then, when we expect something from someone else that we do not expect from ourselves, the other person will either meet this expectation (heading off the

A dispute is an active clash between two people, whereas "conflict" is a broader concept that includes tensions and disagreements between people who are not necessarily engaging each other directly.

dispute) or will not (because they do not expect themselves to have to comply). As a result, when people expect more from each other than they expect from themselves, they are in a dispute.

The reason that the formula is a comparison of expectations, rather than esteem or some other variable, is that without expectations there is no dispute. If there is only past action and resulting feelings, then there is no reason to continue interacting and no dispute (consider trying to mediate between two former friends who are each fully comfortable never talking to the other again). Commonly, however, past transgressions often come with

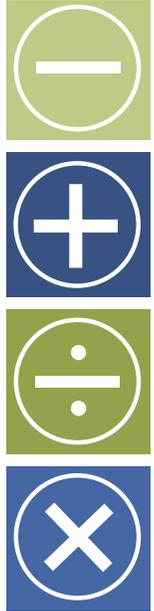
future expectations, such as an apology, reimbursement for losses, or an assurance that

similar transgressions will not occur again. Thus, unfulfilled expectations of each other are the reason that the parties continue to fight with each other despite the unpleasantness of the conflict.

This formula explains why certain people habitually find themselves in disputes--they expect little from themselves and much from others/the world (in the ADR Bible**, entitlement is the most grievous sin). It also explains why some people have managed to glide through life free from disputes --they expect much from themselves and little from anyone else (in the ADR Bible, selflessness and empathy are the ultimate virtues).

***Note: I'm not referring to an actual book here. There is no ADR Bible; unless you count the actual Bible.*

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So, what tips or procedures can be gleaned from this schema?

I suggest that dispute resolution professionals (1) ask the parties early in the process about their expectations of the other side, (2) help them to identify and reflect on the values that underlie those expectations, and then (3) focus on each of their expectations for themselves in the situation. The details and inner-workings of this approach would play out as follows:



1. *What is Each of You Expecting from the Other?**

After the disputants have vented their stories, the ADR professional should ask each disputant about his or her expectations of the other. This action would force them to be concrete in defining the dispute, offering details rather than expressions of general dissatisfaction. Defining the dispute shifts the parties from complaining about each other to formulating demands that can be compared, considered, and explored for potential overlap.

Disputants seem to find it easier to complain than to ask for something, and shifting from reciprocal complaints to reciprocal demands is a shift from a bickering match to a negotiation. This change in mindset is discernible and can be jarring—consider how many laundry lists of complaints are cut short with an exasperated, "What do you want from me?" (i.e., "What are you expecting from me?"). Also, a focus on the expectations of the other side may focus the parties on the future, elevating the discussion from past

misdeeds to available solutions. Finally, focusing on expectations of the other side will bring forward the larger, critical expectations that delineate the dispute (remember, the right side of the equation is larger in the mind of each disputant).



2. *"What is Important to You about Your Expectations from the Other?"*

Next, the dispute resolution professional can help the parties analyze the values behind each of their expectations of the other. While motivations are not always stated upfront, each disputant will have deeper personal values that underlie the expectations they have for the other side. If their expectations are worth engaging in unhealthy conflict, they will be profoundly important to the disputants. Describing and deliberating on these values fulfill a number of productive functions in handling the dispute:

First, this conversation allows the parties to express the emotional core of their positions—the values on which they hinge their demands of the other side often have a strong emotional component. This expression of the emotional core then shifts the discussion to a more rational level. When the emotional centers of the brain—the fight-or-flight mechanisms of the lower brain structures—are active, they short-circuit the higher levels, hindering problem-solving and decision-making. So, negotiating with emotions is akin to offering an amount of money to someone to not be afraid; whereas, speaking to

someone about their fears is akin to psychotherapy, allowing them to think through and rationalize the thought processes behind their fears.

Furthermore, when the parties express the emotional core behind their expectations, it brings each party to express the motivations behind their demands. While unassisted disputants tend to focus on stating complaints and demands instead of explaining them, this conversation reveals their internal thinking. This may lead to overlaps in values and goals between the parties (e.g., "It appears that both of you believe in the value of a close parent-child relationship"), from which the dispute resolution professional can build a mutual agenda for negotiation.

However, even when they do not overlap, discussing underlying values may better allow the parties to understand each other and discuss their differences. Because these values are internal to each disputant, they cannot be debated or contradicted—for better or worse, it is what the other side is thinking. If they argue over their respective interpretations, they will be using their differing perspectives to offer each other new ways of thinking, they will be debating

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If I Had a Hammer ... or What if I Picked Up Another Tool?

by Cathie Kuhl

"I suppose it is tempting, if the only tool you have is a hammer, to treat everything as if it were a nail."

—*Abraham Maslow*

At the OMA conference on May 16th, Dr. Arnold Schienvold showed us ways mediators might consider picking up new tools. With new tools, mediators could utilize other methods beyond the usual "hammer/ nail" paradigm.

The first tool he encouraged us to wield is "engagement," a different way of conceptualizing the work we do. Using ideas found in the writings of Bernie Mayer, Dr. Schienvold offered that a better way to approach conflict is to simply create ways to keep the disputants engaged. Focusing on resolution, transformation, settlement, etc., may not be as productive as actively seeking ways to keep the parties engaged in the dispute resolution process (whatever it may be), particularly when dealing with enduring conflict. Does this sound a bit "loosey-goosey" to you? So, you ask, what is the point of this "engagement"? If you are asking these questions, lay your hammer down. Try this approach and see what happens.

Another tool Dr. Schienvold encouraged us to wield is to embrace and work within the emotional plane of conflict. Realize that people, particularly difficult people, may be feeling (and thus behaving) the way they do because of their personality traits or, in some cases, their personality disorders. Recognize these traits and adjust your expectations and approaches to maximize productive interactions (defined, of course, as maintaining engagement) with these people. Does this sound too "touchy-feely" to you? Why, you ask, would I take the time to figure this out when this case is just about money? If you are asking these questions, lay your hammer down. Pick up this new tool and give it a try.

Dr. Schienvold gave us many new tools, showed us how to use them and explained why these tools are worth using. In your next mediation, consider using one of these new tools before picking up your trusty hammer.



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perspectives rather than attacking each other personally, and they should be better able to "agree to disagree" on what they cannot change and negotiate with their differing perspectives in mind.

Finally, stating the values behind their expectations of the other side will establish a high benchmark (the right side of the equation being larger than the left side) from which each disputant's expectations for themselves can be measured ...



3. "...And What Are Your Expectations from Yourself in this Situation?"

Disputants are often only able to discuss their own contributions to a

conflict after they have fully expressed their demands (their expectations from the other side) and the emotions and justifications behind these demands (the values underlying these expectations). So, after a lengthy discussion of expectations and values, shifting the disputants from a focus on the other to a focus on themselves should feel logical and organic. And, because the parties have expressed high expectations of each other and then argued that these demands are supported by their personal values, they will then be confronted with applying these standards to themselves. Human beings have a deep psychological tendency toward

consistency and should find it mentally grating to demand one standard from the other side and then apply a different standard to themselves.

I would predict that, placed in this situation, most parties will make a reciprocal demand/offer (i.e., "I'd be willing to do action in line with this value system if the other side did as well").

Thus, I would argue that the above formula is a useful schematic for defining disputes and that the proposed three questions will best solve the equation and resolve the dispute.

—by Nathan Witkin

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Job Opportunities

Click on the name of the position below to be taken to its website or brochure. Also, check out our Facebook page at www.facebook.com/OhioMediationAssociation for the latest job opportunities!

Supportive Housing Case Manager :: Commons at Livingston, Columbus. National Church Residences is looking for a part-time licensed social worker who is skilled in mediation and negotiation to act as a link and has two year of experience working with the homeless and/or low-income population to serve as a collaborative partner to the Supportive Services staff as positive role model. The case manager will partner with residents and assist with goals as noted in developed plans set by case management staff; work with residents and supportive services staff in a blended philosophy which promotes self-sufficiency, greater determination, and economic stability through community engagement activities; and work with residents to identify their skills and abilities to promote personal growth. A Bachelor's Degree in a related field is preferred.

Supportive Housing Clinical Team Leader :: Commons at Third, Columbus. National Church Residences is looking for a either a licensed independent social worker or licensed professional clinical counselor with three years of supervisory experience and skilled in mediation and negotiation to be part of a multidisciplinary team who oversees day to day case management services and coordinates the transition of disabled residents from a nursing home facility into permanent supportive housing in the community. The Team Leader will serve as a leader in interdisciplinary team-based care, and will act as a link with collaborative partners in accordance with established protocol and procedures.



Conference & Training Opportunities

Events listed chronologically; click on the name of the conference or training to be taken to its website or brochure.

Summer 2014

Intensive Mediation | June 16-20, 2014, 8:30 a.m.—5:00 p.m., Center for Dispute Resolution, Capital University Law School, 303 E. Broad St., Rm. 572, Columbus. *Program Description:* 34.5 CLE hours, \$895 (price reflects a \$195 price break if signing up for the entire week instead of the five individual trainings listed below). This in-depth 40-hour training is designed to provide individuals with the critical skills and knowledge necessary to begin mediating. Exercises, lectures, role-play sessions, and videos provide participants with the conceptual framework and key techniques to effectively conduct the seven-stage mediation process. Courses included in this program are:

- **Negotiation: *The Building Block of Dispute Resolution*** | June 16, 2014, 8:30 a.m.—5:00 p.m., CDR, CULS, Rm. 572
Program Description: 7 CLE hours, \$195. Lectures, videos, and exercises create an interactive experience for learning the characteristics of competitive positional, cooperative positional and interest-based negotiators.
- **Basic Mediation** | June 17-18, 2014, 8:30 a.m.—5:00 p.m., CDR, CULS, Rm. 572.
Program Description: 13.5 CLE hours, \$450. A two-day mediation training designed to teach the basic skills used by an effective mediator. This training is specifically designed to be interdisciplinary in nature and is developed to be useful for people with multiple backgrounds and experience levels and combines exercises, videos, short lectures, written materials, group discussions, and role plays using the seven-stage mediation process.
- **Becoming a More Effective Mediator: *Advanced Mediation Skills including Breaking Impasse, Caucusing and Pre-Mediation Assessment*** | June 19, 2014, 8:30 a.m.—5:00 p.m., CDR, CULS, Rm. 572. *Program Description:* 7 CLE hours, \$195. Attendees will gain the ability to: identify, frame, and prioritize the issues to be mediated; distinguish between presenting and underlying issues; understand obstacles to generating alternatives; use multiple methods of generating alternatives; assist the parties in selecting clear and practical solutions; and understand of the use of caucus.
- **Mediation Ethics, Professionalism, & Substance Abuse Education** | June 20, 2014, 8:30 a.m.—12:30 p.m., CDR, CULS, Rm. 572
Program Description: 3.75 CLE hours, \$150. This workshop explores the interaction of these various ethical guides within diverse mediation contexts and engages participants in thoughtful and insightful discussions.
- **Succeeding in the Business of Mediation** | June 20, 2014, 1:30 p.m.—5:00 p.m., CDR, CULS, Rm. 572
Program Description: 3.25 CLE hours, \$100. Designed to enhance a mediator's ability to prepare for and conduct a mediation process, this training will identify those factors that must be explored before the actual mediation commences and those that influence the potential for a successful outcome at the mediation.

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Ongoing Mediation Consulting | Partners in Mediation, Inc., 3705 W. Darwin Avenue, Cincinnati. Groups are held two Saturday mornings a month from 9:00—11:00 a.m. Call 613.651.1010 or email mediators@fuse.net regarding session dates. *Program Description:* \$25. This program will use case studies, role-play, exercises and group discussions in order for participants to develop and improve mediation techniques. Advanced skills & new approaches will also be taught. Basic mediation training is a prerequisite.

Annual Summer Professional Skills Program in Dispute Resolution | June 19-21, 2014, Straus Institute for Dispute Resolution, Pepperdine University School of Law, 24255 Pacific Coast Highway, Malibu, CA. *Program Description:* \$1,295 or \$895 for employees of governmental & non-profit organizations. Courses include: "STAR"—A Systematic Approach to Mediation Strategies; Advanced Mediation: Skills & Techniques; Family Law Mediation—When Time is Not on Your Side; Mediating Complex Construction Disputes; Strategic Negotiation Skills; Using Practical Tools of Mindful Awareness to Improve the Work & Lives of Legal Professionals; Preventing Bad Settlement Decision & Impasse: Using Brain Science, Game Theory Animated Communication & Micro-Interventions; and Elder Care Mediation (Zena Zumeta).

Elder Mediation Training with Jeff Shepardson | June 24-26, 2014, 9:00 a.m.—5:00 p.m., Montgomery Conflict Mediation Center, 3075 Ridge Pike, Ste. B, Eagleville, PA. *Program Description:* \$500 for advanced registration; \$550 for same-day registration; additional fees apply for continuing education credits. This training will prepare participants to practice Transformative Mediation™ in a way that responds to the needs of those present and respects each person's decision-making capacity as they face critical times of transition. The interactive format will include lecture, discussion, and role plays. Through a grant from the PA Department of Aging, MCMC has developed *Wise Talk*, a model elder mediation program. Participants must have taken Basic Transformative Mediation training.

Conflict Resolution Training | June 26, 2014, 8:30 a.m.—5:00 p.m., Community Mediation Services of Central Ohio, 67 Jefferson Avenue, Columbus. *Program Description:* \$195 (includes lunch). Executive Director Shelley Whalen conducts this training, tackling topics that include tips for choosing the right conflict resolution approach for each dispute situation, how to peacefully and respectfully resolve conflict using a "needs" rather than a "rights" based approach, and how using five different conflict resolution approaches impact your future relationships with others.

ADR In Entertainment Disputes Webinar | July 1, 2014, 1:00 p.m.—2:30 p.m. Sponsored by the ABA Center for Professional Development, Section of Dispute Resolution, Forum on Entertainment and Sports Industries, and Young Lawyers Division. This essentials program provides a review of the various alternate dispute resolution (ADR) options available for disputes related to the entertainment industry, including mediation and arbitration. The speakers will discuss the positive and negative aspects of each of the options, as well as their enforceability, international reach, and cost. Whether you are an entertainment attorney who wants to incorporate these ADR options into your practice or you are a general practitioner who simply wants to learn more about these techniques, this primer will be of great interest to you.

12 Hour Basic Mediation Training | July 11-12, 2014, Partners in Mediation, Inc., 3705 W. Darwin Avenue, Cincinnati. *Program Description:* \$250, 11.25 CLE, 12 CEU, and 12 contact hours. Training during Day 1 [1:00 p.m.—5:45 p.m.] will examine mediation in the conflict resolution spectrum and will address the question, "What is mediation and why does it work?" Day 2 [8:30 a.m.—5:30 p.m.] includes communication and skill-building exercises, a discussion regarding conflict theory in mediation, and the topics of anger in mediation and ethics.

Basic Mediation Training | July 17-18, 2014, 8:30 a.m.—5:30 p.m. Franklin County Domestic Relations Court, 373 S. High St., 16th Floor, Columbus. *Program Description:* 14.0 CLE hours. This two-day training course offers variety of basic mediation training, including communication skill building exercises, conflict theory in mediation and role-playing. Training co-sponsored by the Supreme Court of Ohio Dispute Resolution Section & the Franklin County Domestic Relations Court.

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Late Summer 2014

Elder Decisions Elder/Adult Family Mediation Training | July 29—August 1, 2014, 9:00 a.m.—5:00 p.m., The Walker Center, 171 Grove Street, Newton, MA. *Program Description:* \$1,050 if registered by June 18, \$1,125 thereafter. This training, conducted by Arlene Kardasis & Crystal Thorpe, provides mediators strategies for facilitating adult family conversations regarding issues such as living arrangements, caregiving, financial planning inheritance/property distribution/estate disputes, driving, medical decisions, and family communication.

Divorce & Family Mediation Training | July 31, August 1, 2, 8 & 9, 2014, 8:00 a.m.—5:30 p.m., Partners in Mediation, Inc., 3705 W. Darwin Avenue, Cincinnati. Basic Mediation Training is a prerequisite. *Program Description:* \$850, 40 CLE and 39.25 CEU hours. This five-day training course offers training for divorce mediation, including parenting and property division. Situations often faced by mediators will be conducted through role-playing.

Divorce & Family Mediation Training | August 11-15, 2014, 8:00 a.m.—5:30 p.m., Center for Dispute Resolution, Capital University Law School, 303 E. Broad St., Rm. 572, Columbus. *Program Description:* \$925, 40 CLE Hours, including 1 hour of ethics and .5 hours of substance abuse education. This course combines a thorough understanding of the basic skills of mediation with the substantive knowledge of the relevant issues on divorce such as custody, visitation, support and property division. The student will receive education and training that will explore these areas as well as provide the necessary educational requirements to comply with the standard divorce/domestic mediation certification. Prerequisites or co-requisite: Completion of a basic 12 hour mediation course (or equivalent mediation experience). *Note:* Course meets Ohio Supreme Court requirements for a 40 hours of actual class time.

Divorce & Custody Mediation Training | August 18—22, 2014, Center for Conflict Resolution, 11 E. Adams St., Ste. 500, Chicago, IL. *Program Description:* Through a combination of role-play, lecture, simulation, discussion and videotapes, this workshop takes participants through the process of divorce mediation from the orientation session to completed memorandum of agreement. Approved by Illinois courts and the Association for Conflict Resolution/Family Section. Cost is \$1,500, with an \$80 discount for registration received by July 18. A charge of \$40 will be added for Illinois lawyers wishing to receive MCLE and Professionalism credits. 36 MCLE credits and 36 Professionalism credits approved. Social work credits are also available.

OMA :: Professionals helping people resolve disputes.

Domestic Abuse Issues: Training for Mediators & Other Professionals | August 20-21, 2014, 8:30 a.m.—5:30 p.m., Supreme Court of Ohio, 65 S. Front St., Rm. 101, Columbus. *Program Description:* 14 CLE hours. The purpose of this training is to teach participants how to screen for domestic abuse and to use appropriate procedures for determining when and how to mediate matters that may be before the court when parties may have experienced domestic abuse, such as parenting issues or other matters. Upon successful completion of this training, participants will be able to recognize the legal framework that applies to domestic abuse and mediation, the complex nature of domestic abuse, among other related issues. *Note: This training is not about how to mediate domestic abuse itself or how to use mediation as a diversion from prosecution of domestic violence. Training co-sponsored by the Supreme Court of Ohio Dispute Resolution Section & the Lucas County Juvenile Court.

Co-Resolution Training | August 22, 2014, 9:00 a.m.—5:00 p.m. Community Mediation Services of Central Ohio, 67 Jefferson Avenue, Columbus. *Program Description:* Price to be determined. Co-resolution is an emerging ADR process that allows two mediation-trained professionals to sit on either side of the table and coach disputants in negotiation skills as the coaches facilitate the discussion as a cooperative team. This process was first proposed in a Conflict Resolution Quarterly article (Witkin, 2008), will be making its third presentation-appearance at the ACR National Conference in Cincinnati this October, and has been piloted in Columbus, Ohio. Trainees must have completed a minimum of 12 hours of mediation training and have experience mediating cases. To register, please contact Nathan Witkin at 330.620.2956 or email coresolution.adr@gmail.com.

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