

The UCCR News

Volume 13

Summer 2004

Diane Hamilton bids farewell to the UCCR News!

Adios: A Quick Goodbye Note

For the last four years, I have helped to produce the quarterly newsletter for UCCR by piecing together a bit of ADR news, the occasional announcement, some legal tidbits, and a random poem. I thought that the fledgling UCCR needed a regular communication to remind the readership of its organization's progress. I also hoped it would serve to promote the symposium, and help members keep abreast of policy matters in the ADR field.

This will be the last newsletter that I will be a part of. I was recently hired by the Integral Institute, a learning center in Denver, Colorado, founded by the writer and philosopher, Ken Wilber. The Integral Institute sponsors intensive learning seminars in ecology, psychology, leadership and consciousness studies. My role will be to teach meditation practice and facilitate Big Mind at these seminars. I intend to keep my mediation practice alive in Salt Lake City, but will be devoting much more of my time to the work at Integral Institute.

I would like to thank the UCCR board, Barb O'Brien, and the rest of you for all of the time that you have put into this organization. I have learned all about the challenges of making things from scratch, and it appears that it is the relationships that bind and give form to anything that endures.

With much gratitude, Diane

Culturally Competent Mediation-A Starting Place, by Velvet Rodriguez-Poston and Kathy Elton

In this article we are hoping to provide a starting place for mediators as they prepare to bring parties of different cultural backgrounds (from each other or from the mediator) together in a mediation or problem solving arena. We will also provide examples in each area that relate to the Hispanic/Latino Culture.

Sometimes when we are interacting with people of different cultures, we experience a feeling of loss or confusion. People in cross-cultural

situations can become disoriented, and make the common mistake of spending time and energy trying to survive the encounter rather than trying to understand and appreciate

the differences we are encountering.¹ When involved in a cross-cultural situation that involves conflict, this sense of trying to survive can escalate

Continued on page 4

In This Issue

Farewell Diane Hamilton	Page 1
Culturally Competent Mediation-A Starting Place	Page 1, 4, 5, 6
Chapters and Sections	Page 2, 7
UCCR Forms a New Family Mediation Section	Page 2
UCCR Brown Bag Lunch Meeting	Page 3
2004 UCCR Board Election	Page 3
Workplace Mediation Section	Page 7

Chapters and Sections!

A Chapter is formed based on a regional/geographical association and a Section is organized around a professional interest or a practice area.

UCCR currently has one Chapter, the Southern Utah Chapter, located in the southern part of the state. Formerly Adele Pincock was the Board representative for this Chapter, recently John Klodnicki became the Board representative. He can be reached at johnklod@aol.com. A second Chapter, the Utah County Chapter, is in the process of forming at this time. Tamara Fackrell is the Board representative for this Chapter. She can be reached at fackrellt@lawgate.byu.edu. There are no additional dues to belong to a Chapter

UCCR recently formed the Family Mediation Section (see article below). Brian Florence is the Board representative for this Section and can be reached at attyflo@aol.com. Another Section is in the works for Workplace Mediation (See article on page 7). Jill Merritt is the Board representative for that Section and can be reached at jmerrittalliance@mediate.com.

Continued on page 7

UCCR Forms a New Family Mediation Section, by Brian Florence

A group of folks who are interested in or are primarily focused on family mediation decided to explore what interest there might be in creating a formal organization of family mediators. A couple of initial meetings were held to discuss ideas and options. As a result of those meetings and with the approval of the UCCR Board, a formal Section of UCCR has been created known as the Family Mediation Section. This is somewhat analogous to sections of the Utah Bar or sections of the Association of Conflict Resolution (ACR).

The organizational meeting for this Section was held June 8, 2004. At that meeting this Mission Statement was adopted: ***The Family Mediation Section of UCCR seeks to strengthen professionalism and integrity in the practice of family conflict resolution.***

A statement of purposes will be developed later but which might include these concepts:

- Promoting an understanding and developing a greater public awareness of family conflict resolution processes
- Organizing and assisting training efforts for all aspects of family dispute resolution
- Creating networking structures; providing a collegial environment for those who are members of this Section

The dues for the Section will be \$20.00 per year. Members of the Section must also be members of UCCR.

UCCR will provide the administrative and financial responsibilities of this new Section.

An initial Executive Committee was elected. Brian Florence is the Chair. Sue Petty and Ramona

Mann are the other two members. Standing committees were also created as follows:

- Education Committee: Chair—Tim Daniels; Co-Chair Sue Petty
- Media Committee: Chair—Ramona Mann
- Legislative Committee: Chair—Robyn Halverson; Co-Chair Brian Florence
- Membership Committee: Chair—Vacant

More news will follow as the Section starts to feel it's way and develop it purposes.

Anyone wishing to join either a Chapter or a Section must also be a member of UCCR.

Please contact Barbara O'Brien at (801) 685-UCCR (8227) or info@uccr.net and she will help you to sign up. Or, visit the website at www.uccr.net and register online.

UCCR is pleased to announce our first Brown Bag Lunch meeting!

This month's topic 'To Be Announced'

Bring Your Lunch and Join Us!!!

October 27th, from 12:00 noon to 1:00p.m.
Law and Justice Center, 645 South 200 East

UCCR Members attend free, all others are \$5.00 at the door.

The format will be a 20-30 minute presentation followed by networking, mingling, visiting.

We hope to offer a Brown Bag once a month!

The Utah Council on Conflict Resolution

Board of Trustees

is pleased to announce that

John Klodnicki

&

Jill Merritt

have joined the Board

*upon nomination of their peers and
approval of the Board.*

We welcome their involvement with UCCR!

The UCCR Board is pleased to announce the outcome of the 2004 election process. Now, all of you active members are asking yourselves, "Election. What election? I didn't vote..." Well, rest easy. We can explain.

At the Symposium in May, you will recall that we opened nominations for the two at-large seats which came open this year. We held the nomination process open during May and June. The Board received two nominations for the two open seats, John Klodnicki and Jill Merritt.

Since the nominations exactly met the need, the Board opted to not hold an election and expend those resources. So at the July 19 Board meeting, the Board appointed the two nominees by unanimous vote.

Welcome John & Jill to our Board!

MEDIATOR STORIES!

If you would like to share your mediation experience with others, we want to hear from you and include your story. Help by sending in your narrative with changes made to protect confidentiality. We will edit for space and notify you when it will be printed. Please keep the article to 250 words or less and include your name, address, phone, email, fax and one sentence about your experience with conflict resolution.

Send your mediator story to The UCCR News, c/o Barbara O'Brien, info@uccr.net

emotions and therefore the conflict. Such experiences lead us to the following questions:

I. How can we as mediators, better assist parties of diverse cultural backgrounds in our mediation sessions? By becoming culturally competent.

Culturally competent mediators understand that culture can make a difference in the way parties interact with one another in the mediation process. Accordingly these competent mediators adjust and look for different intercultural dynamics to better guide the process in such a way that it will not harm the mediation, but rather add to the mediation.

In order to become a more culturally competent mediator we should start by questioning ourselves in terms of how we view people of other cultures, and how we react to them. When analyzing how we individually respond to people of different cultures we should keep in mind the following two suggestions. First, we must never assume that all of us, meaning all human beings, are basically the same. When we ignore intercultural dynamics we run the risk of writing agreements and conducting mediation sessions that make perfect sense to us, but make no sense to the parties involved in the mediation. Second, we must also avoid romanticizing culture and diversity and treat other cultures as exotic, sacred, and deserving of protection.² Our neutrality and professionalism can be compromised if we start favoring or sympathizing with a party because they speak a different language, or dress differently.

Becoming a culturally competent mediator and learning to recognize and analyze how different cultural dynamics will play into the success or failure of our mediation is like any other

mediator skill; it will take practice to acquire. We must be patient with ourselves in developing this skill and keep in mind that our fundamental communication skills, and our basic human similarities will still allow for a successful mediation process, so long as we conduct ourselves in a professional manner.

II. How can we as mediators, better prepare to serve as a mediator when the dispute involves intercultural issues? By educating ourselves about the specific culture involved in each mediation session.

Moore & Woodrom (1998) define culture as "the cumulative result of experience, values, religion, beliefs, attitudes, meanings, knowledge, social organizations, procedures, timing, roles, spatial relations, concepts of the universe and material objects and possessions acquired or created by groups of people, in the course of generations, through individual and group effort and interactions."³ Such a broad definition of culture makes us, or should make us, realize that it is very difficult to categorize even one entire country as a certain "culture." Each state, each city, each block, each neighborhood, and each family have their own individual cultures which will have a direct effect on how negotiations and mediation will be resolved. "Yet specific cultures do contain clusters of people with fairly common attitudinal and behavioral patterns."⁴

We can educate ourselves about the specific culture that will be involved in our mediation session by asking ourselves the following three questions:

- Is the culture individualistic or collective?
- What are the culture's patterns of behavior?
- How do external factors influence the culture's approach to conflict resolution?⁵

If we answer these three questions about our individual parties either before the mediation or during the process of mediation, we will be able to better amend our facilitating styles to our mediation clients. We will apply the aforementioned questions as they relate to the people of the Utah Hispanic culture (hereinafter "Hispanics") understanding of course that there are individuals within every culture that do not behave or conform to the classified cultural definition. The answers given apply only to first generation Hispanics, not second generation Hispanics who may find this type of approach patronizing. Because the answers to these questions are multi-faceted, we will focus on one element to each question that can make us better mediators.

First, is the culture individualistic or collective? How much emphasis is put on the individual and how much emphasis is placed on the collective or group? In Utah the Hispanic culture is definitely a collective culture. Meaning, if there is a Hispanic party in your mediation, that party will view their problem and their problem's outcome not only as affecting themselves individually, but as affecting their entire immediate community, and/or their entire immediate and/or extended family. Community and family as it relates to the specified conflict are

Continued on page 5

Inner Disarmament: *Non-Violent Communication Skills*

Taught by Zen Master Robert Joshin Althouse

Friday and Saturday; December 3 and 4, 2004

8:30 a.m. to 5:00 p.m.

Kanzeon Zen Center
Salt Lake City, Utah

This training teaches specific communication skills of Nonviolent Communication as taught by Marshall Rosenberg. It integrates these three skills with the three peacemaking tenets of **Not Knowing**, **Bearing Witness** and **Loving Action**. Participants practice deep empathic listening and learn to let go of restrictive judgments that prevent them from connecting to the world in a meaningful way. All levels of experience are welcome.

Robert Joshin Althouse is a Zen Teacher in the White Plum Lineage tradition and a Buddhist priest. He founded the Zen Center of Hawaii in 1993 and served as Director of the Zen Peacemaker Order. He has studied Nonviolent Communication with Marshall Rosenberg. He is currently starting a new Zen Center in the Chicago area called the Zen Community of Oak Park.

Suggested Donation: \$270

\$180 for Kanzeon and UCCR Members

For More information and to register call Kanzeon Zen Center International Phone: 801.328.8414

10 a.m.– 4 p.m. (Mountain); www.zencenterutah.org; office@zencenterutah.org

defined by Hispanics as any close personal friend, any member of their immediate family, any member of their extended family, and any individuals from their particular religious denomination that may have been involved with or may have know about the problem. When a person from the Hispanic community is involved in a mediation it is important to immediately recognize that though there may be only two parties involved in the conflict, there are many other individuals that will feel the potential effect of the outcome of the mediation. Therefore, it is imperative to either bring those outside parties to the table (and make the mediation session more like a "circle"), or recognize that those parties will have bearing on the mediation process in an openly verbal manifestation. For example, one might say in a caucus, "Now

Raul, I notice that your family is not here with you, how important is their opinion on the outcome of this matter?" Depending on Raul's answer one might decide to involve Raul's family in the next mediation session, or make them a part of the mediation process by talking to them on the phone and explaining the outcome of the process provided that both parties were comfortable with that.

The second question we need to ask is: What are the culture's patterns of behavior? What issues are members of that specific culture seeing that may influence their behavior which you may or may not be aware of? The meaning and importance that members of a culture place on different social situations vary a great deal. In addition, culture also impacts the preferred forms and sources of power and influence, and

how and when they are used. When working with a member of the Hispanic culture mediators want to ensure that the process of mediation itself is well-defined. It is important to understand that most countries in Latin America run on an entirely different legal system. They are governed by "la ley civil" or the civil law. In the civil law, there are no jury trials; there is direct interaction with judges in every case. Therefore, attorneys, or notarios (as they are known in Latin America), and their clients meet individually with the judge to argue their case, the judge then sees how their case applies to the statute in order to make his or her individual ruling. So when a Hispanic person is coming into a mediation session he or she is very likely to think that you are the judge. It is not hard to imagine how nervous a person would be coming into a session with the judge! Even if you do call your

Continued on page 6

self a mediator, that person may still define you as a judge. It is crucial that you establish enough rapport at the beginning of your mediation session to establish of a comfort zone so the doors feel open enough for honest questions about your role in the process of mediation. A mediator might start a mediation session by asking where they are from, and establishing some level of person to person rapport without sacrificing neutrality. When everyone has had a chance for their nerves to calm down, and after the parties realize that the mediator is not a person of "authority" a mediator might clarify their role further and ask "now you know I am not a judge right?"

Third, how do external factors influence the culture's approach to conflict resolution? These external factors include: the natural environment; history, trends and adaptations that have occurred over time; and social structures (intellectual and physical) that people create to adapt or to survive in their environment. Throughout history, legal status has played an important role in Hispanics' migration to the United States. Not all parties in a mediation session will be legal aliens. Because of this, in every mediation session that takes place, there is always present, the issue of legal status. If, for example, in a divorce situation, the father has legal permanent residency, but the mother is illegal, there will be a power imbalance that will not necessarily be apparent to the mediator unless he or she is looking for it. This is an external cultural factor that will have a direct bearing on almost every mediation that involves a first generation Hispanic. This external cultural factor can have an immense influence on

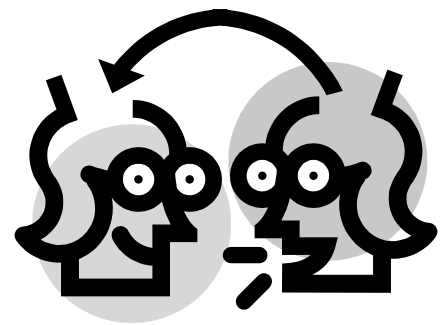
negotiations. If one party feels threatened by possible deportation, that party will not express his or herself adequately during the mediation session. This incredible power imbalance can ruin any and all sense of fairness, if the mediator does not adequately and tactfully address the fear of deportation; it leaves room for manipulation and lies from one party to the other party. For example, during a recent mediation session the father (legal in status) told the mother that I (the mediator) was really an immigration judge, there to determine whether she should be deported. She was also told that if she mentioned this to me, it would be immediate grounds for deportation and she would never see her children again. During the entire mediation session, she did not participate genuinely and fully, in fact, she gave into every single one of his requests. It wasn't until later during a caucus that I realized why she was acting so powerless. By addressing the issue of legal status at the beginning of the session you diminish the possibility of power imbalances and unjust agreements. A mediator might say something like "Just to clarify, mediation is a safe venue to discuss all of your problems. I am not here as a judge, or as a person from immigration, so legal status in the United States will have no significance during this session."

In this article we have attempted to raise the issue of culture and the effect it can have on the mediation process. The first key to providing a fair process is to know thyself. Take the time to reflect on your immediate reaction to those of other cultures and make sure you are able

to offer an unbiased process. As with so many skills in mediation, assisting parties of diverse cultural backgrounds takes practice, learn to pay attention for cultural differences and embrace them instead of ignoring or fighting them. Once you recognize there are cultural differences, you must educate yourself about the specific culture you are working with. Some basic questions to get you started were offered and examples shared from the Utah Hispanic culture. By using these questions as a beginning point, it is hoped you will move down the road of understanding and therefore offer a fair and unbiased mediation process to all. Finally, don't ever forget that these are just guidelines. Every person falls out of their "cultural norms" in some way. Don't ever expect to get it right 100% of the time, be patient and keep trying.

1-4. Moore, Christopher & Woodrow, Peter (1998) Track Two, vol. 7 No. 1 April 1998

5. Alder, Peter S. (1977) pp. 24-41 Culture Learning, East-West Center Press, Richard Brislin, Editor



Workplace Mediation, A Reality of Need, by Jill Merritt

There are a number of standard ways to address workplace conflict: training, employee assistance programs, litigation prevention, employer liability insurance, and perhaps more. But if these strategies were solving the problem, wouldn't the number of shootings, stress-related healthcare costs, and other expensive symptoms of workplace instability and danger be decreasing instead of increasing?

Mediators know what can work in prevention of conflict acceleration and/or its resolution. Simply stated:

A dedicated, professional, outside neutral intervenes by invitation to guide the parties in considering new skills, and to get unstuck and move forward. How to get from there to the new "here", refurbishing

the workplace with true progression, is the job of a specialized person.

Consider how Wal-Mart could have avoided a breathtakingly exorbitant class action suit by having and respecting workplace mediation as a problem solver for adversity recognition and timely, appropriate resolution. Wow! What a concept... and a cost-busting one at that!

At the last UCCR Board meeting, a proposal for a workplace section under the UCCR umbrella was approved. The proposal was created by an organizing committee, and was approved as submitted. The structure under UCCR will duplicate that of the new family mediation section.

Our first meeting will be held on October 12, 2004 at 4:00p.m. at the Matheson Courthouse Education room (enter through N31). Please join us.

Chapters and Sections

Sections require payment of \$20.00 dues in addition to the \$75.00 dues for UCCR. These dues assist in paying for educational events, website updates, etc., specifically related to the area of interest.

The way a Chapter or a Section gets formed is that someone has an interest and gets people together to organize. Subsequently, a proposal is submitted to the UCCR Board for consideration. Each Chapter and Section has Board representation. The Board has decided that any new Chapters and Sections will be consistent with those already formed. UCCR loosely bases its formation of Chapters and Sections on the Association for Conflict Resolution's (ACR) way of organizing. To see how ACR organizes Chapters and Sections visit www.acrnet.org.

You may have noticed that the article on Cultural Competency in this issue is substantially longer than our usual articles in the UCCR News. This is our effort to offer our members more substantive information. If you have any ideas or suggestions for future articles please contact Barbara O'Brien at info@uccr.net.

**An enemy is one whose story we have
not yet heard.**

By Gene Knudsen Hoffman

The Utah Council on Conflict Resolution

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