

The UCCR News

Volume 16

Winter 2006

Letter from the UCCR Chair

Hello Fellow UCCR Members:

I hope this message finds you enjoying a wonderful Winter season and a renewed sense of purpose in your dispute resolution work.

This has been a busy time for UCCR, just as the seasons change so too does the membership and leadership of the UCCR Board. I have recently assumed the role of Chair and will be serving you and the Board of Trustees until Fall 2006. Having been a part of UCCR since its beginning, I can certainly see the growth that we have achieved and hope to find new opportunities for development to come.

We are now at 150 members of UCCR. This membership represents multiple disciplines, professions, and types of dispute resolution work. We are continuing to bring equally dynamic and diverse training programs to this membership group, as well as our wider ADR community. We will continue hosting our monthly brown bag sessions and work is already underway on the 2006 UCCR Symposium. We have expanded our audience at this annual conference and again have exceeded our space! We will relocate to the Miller Entrepreneurial Center in Sandy for the 2006 event - mark your calendars now for May 9 & 10.

In addition to these traditions, I hope to implement some additional membership services and outreach events over the coming year. We are in the process of producing a UCCR brochure which will offer a description of our organization and its membership, as well as serve as a wider resource guide for our community. Also, the Dispute Resolution Section of the Utah Bar has recently welcomed students to its membership ranks; we look forward to co-sponsoring upcoming training and internship opportunities for these students. Finally, I hope to implement a best practices page to our website where practitioners and consumers can find additional information about the roles in dispute resolution and how best to interact more fully in our respective capacities as practitioners and participants/advocates.

I am always willing and pleased to hear from you as UCCR members, so please feel free to be in touch. And in the meantime, I will look forward to seeing all of you at an upcoming event!

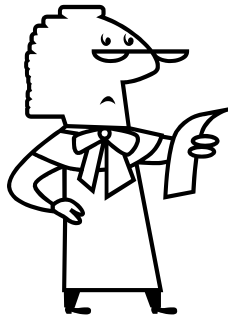
Michelle M. Roybal



*See page 2 for
Legislative
Updates!*

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Legislative Updates - UCCR Endorses *Process* Used in Legacy Highway Negotiation

The following endorsement was sent to the Utah House and Senate Leadership on behalf of UCCR.

The Utah Council on Conflict Resolution (UCCR) is a professional, membership organization for dispute resolution practitioners. We have 150 members who range in background from lawyers and judges to educators and doctors, from government employees to non-profit volunteers.

Last year, UCCR endorsed the sound step of our legislative leaders to jointly pass S.J.R. 3, which urged state and local governments, special districts, and their governmental partners to use alternative dispute resolution as a preferred option of preventing and resolving

conflicts, reducing litigation costs, and resolving disputes.

This year, it has come to our attention that the Legislature has encountered an additional opportunity to support the ADR process. We recognize the vitality and benefit that can come from the use of collaborative, dialogue-based processes in resolving even the most contentious disputes.

UCCR encourages the Legislature, this session, to again endorse alternative dispute resolution in Utah government by recognizing the settlement process engaged in the Legacy Parkway dispute. We appreciate your consideration of the important role that negotiated agreements continue to serve for Utahns.

Chapter and Section Updates

The **Workplace Mediation Section** continues to meet on the second Tuesday of the month at the Department of Workforce Services at 1345 South State Street. Meetings begin at 3:45 p.m. and are always completed by 5:00 p.m. The primary emphasis of our section is education and each month offers a very interesting and informative training session. In November, Tom Thompson of the Samaritan Counseling Centers of Utah spoke on family systems theory and its relation to organizational conflict dynamics. Future sessions will include discussions of successful community mediations, mediating in an organized labor environment, and an update on state mediation programs. Please join us.

The **Family Mediation Section** has also been meeting monthly, on the first Thursday of each month. Recently the Section members voted to move the meeting time to 5:30 pm in the hope that more members would be able to attend. The meeting place has also changed, to the Law Offices of Durham Jones and Pinegar at 111 Broadway (NE corner

of 300 S. and State Street), Suite 900.

The Family Mediation Section hosted two successful seminars this fall: Domestic Law for Non-Lawyer Mediators and Ethical Dilemmas in Domestic Mediation.

The **Utah County Chapter** reports that Community Dispute Resolution Services (previously Community Mediation Services) in Provo has recently hired a new director, Donlu Thayer. Donlu replaces Tamara Fackrell who directed the services for more than two years.

Donlu will be seeking to continue to broaden the vision of CDRS with greater involvement in domestic and neighborhood mediation in the future. At present, CDRS offers services in domestic, parent-teen, truancy, victim-offender, landlord-tenant, "pre"-small-claims, employer-employee, and neighborhood dispute mediation and holds Saturday classes in Family Conflict Resolution, Life Skills, and Anger Management.

Also, the Utah County Chapter will have a luncheon in January,

tentatively scheduled January 18 (Wed.) at noon. Information about the speaker and location will be emailed to members.

John Pace is the current contact for the Utah County Chapter and can be reached at John_Pace@byu.edu.

Down South in our **Southern Utah Chapter**, John Klodnicki remains busy with HB4 Domestic mediations. If you are in the southern part of the state and would like to participate in or host an activity, contact John at johnklod@aol.com.

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.

The Peter W. Billings, Sr. Award is given annually on behalf of the Dispute Resolution Section of the Bar and the Billings Selection Committee, composed of previous recipients of the Award and the Billings Family. The Award is intended to honor the legacy of Peter Billings, who was a pioneer of the use dispute resolution and mediation in Utah. The Award has honored judges, lawyers, and non-lawyers alike for their contributions to the dispute resolution community in Utah and to the use of collaborative process in their work. At the Utah Bar Fall Forum on November 11, the 2005 Billings Award was presented to Palmer DePaulis.

Many of you may know Palmer as a former Mayor of Salt Lake City, a task in which his collaborative approach to problem solving served him well. Now, as a Tax Commissioner, Palmer has come to be an ambassador for the use of dispute resolution and mediation processes in the Executive Branch of Utah government.

He serves on the Governor's ADR Council, as well as on the Board of the Utah Council on Conflict Resolution. In both of these capacities he has been a strong advocate for the multiple pilot mediation programs in Utah government and for the use of mediation to better serve our public.



Palmer embodies the spirit and the goal of the Billings Award tradition and we are pleased to recognize his valuable contributions to our dispute resolution community.

Congratulations Palmer!



UCCR Brown Bag Lunch Meetings!

Brown Bags are held the last Wednesday of each month
12:00 noon to 1:00p.m.

Utah Law and Justice Center
645 South 200 East

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

There was no Brown Bag in December 2005, but they will resume in January.

If you or someone you know would like to present at a Brown Bag, please let us know. Also, if you have a topic you would like us to address and want us to find a speaker, let us know that too. You can email info@uccr.net or call 801-685-8227 (UCCR).



We are always looking for a good book review! If you've read something lately that you'd like to share, please contact UCCR at info@uccr.net or 801-685-8227.

Eight Essential Steps to Conflict Resolution by Dudley Weeks, PhD.

Book Review by Tamara Fackrell

What do the following true mediation scenarios have in common? A mother and child mediate together over family issues, curfew, and grades. A couple in crisis and decides to divorce. They mediate over what should happen with their four children. A business mediates with a long-time customer over a ruined wedding dress. Lifelong friends mediate a case that involves work done on a roof and payment with guns, which have very different appraisal values. You have the answer! Each of the cases deals with a continuing relationship. Relationship-based cases are very different from car accidents, commercial mediation with no continuing relationship, personal-injury mediation, most merchant and consumer mediation, and termination-of-employment mediations. When a continuing relationship is involved, mediators must use different tools to encourage continuing communication, understanding, and empowerment.

The *Eight Essential Steps to Conflict Resolution* by Dudley Weeks, PhD. is a great book for mediators who would like some additional skills for relationship-based mediations. Although the author talks about the eight steps more in a negotiation setting, they can easily be applied to mediation.

The eight steps discussed are as follows:

1. Creating an Effective Atmosphere.
2. Clarifying Perceptions
3. Focus on Individual and Shared Needs
4. Build Shared Positive Power
5. Look to the Future than Learn From the Past
6. Generate Options
7. Develop Doables: The Step Stones to Action
8. Make Mutual Benefit Agreements

Three techniques and strategies--imagining options, shared positive power, and future-focus--have helped me to become a better mediator for relationship-based mediations.

In my difficult divorce mediations, I often find clients stuck in the past and the present. In a case I recently mediated, the wife wanted a plan which allowed the husband very limited visitation. As I tried to understand her interest, I discovered she needed to build trust in the relationship with her husband as a co-parent. I then asked her to do an "image option." Weeks explains, "Imagining an improved life is one of the most mature and needed skills we can develop. It is of great assistance in generating options." I asked the wife to image her working cooperatively with her co-parent when the relationship was better. We developed a hypothetical long-term plan and were able to have her rise above her negative emotion. Our hypothetical plan eventually became their long-term plan. After making so much progress and getting past the emotion, we were then able to create a short-term plan which met everyone's needs.

Weeks' book also talks about see-saw power. I see this kind of power system often in the parent-teen mediations I perform. See-saw power is power that is in a sense fixed in amount. When one person moves up the see-saw it directly and negatively affects the power of the other party. Often in parent-teen I hear the parties complain, "All of my other children were great students. I do not know what is wrong with Tim." Identifying the truant child as directly and negatively affected by other siblings is see-saw power in operation. We remedy see-saw power by acknowledging shared positive power. In parent-teen mediation, we do this effectively by asking the parent and the child what they like about each other. We then focus on the

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HB 4 Update

By Natalie Threlkeld

We just passed the sixth month anniversary of the implementation date of House Bill 4. It was enacted into the Utah Code Annotated § 30-3-39 and went into effect on May 2, 2005. Since that date, the qualified court-rostered divorce mediators have completed over 300 divorce mediations with a success rate of 80%! This means that 300 divorces did not have to go through the court process and the parties took a more active role in deciding the details of what their divorce would entail.

Briefings were conducted for judges, court clerks, attorneys, and mediators in ten locations throughout the state. The briefings explained the requirements and implementation plans for HB4. A divorce mediation website was designed that allows the public to access the names and biographical information of the mediators who will provide mediation services in their specific county. The website has Frequently Asked Questions and their answers posted in very basic language. The website also contains a section designed for divorce mediators and has resources available to them no matter where they mediate in the

state. A state-wide toll-free telephone Help Line was created to allow the general public access to answers to their questions anytime.

A new form was designed that allows the public to apply for consideration to have up to 4 hours of divorce mediation paid for in part or in full. The qualifications are based upon the Federal Poverty Guidelines and are approved by the Domestic Mediation Program Coordinator for the Administrative Office of the Courts. Another form was created to allow parties to apply to be excused from the mandatory mediation process for "good cause." The most common reason that cases have been excused has been severe domestic violence. Both types of applications are available on the website @ utcourts.gov/mediation/divmed/.

Before HB4 was passed, there were 22 domestic mediators on the court roster. There are now 95 with new ones being added each week. Historically there have been almost 4,000 contested divorces in the State of Utah each year. Only 48% of them

are represented by counsel. Changes have been made recently to the Online-Court Assistance Program (OCAP) that will allow the public to not only file for divorce online but also prepare the final divorce documents following their mediation.

Resources:

Divorce Mediation Website

utcourts.gov/mediation/divmed/

Divorce Mediation Help Line

1-800-620-6318

Low Income Application

<http://www.utcourts.gov/mediation/divmed/forms/INCOMESURVEY.pdf>

Application to be Excused from Mediation

<http://www.utcourts.gov/mediation/divmed/forms/APPLICATIONTOEXCUSE5.pdf>

Domestic Mediation Program Coordinator

Natalie Threlkeld

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Book Review - Continued from p.4

positive in the relationship and build a foundation by relational building blocks which are working well. In the mediation I performed this week, the parent and daughter agreed that they both listened respectfully to one another. This was the foundation for our mediation agreement.

Future-focusing is another great technique that I have implemented from this book. In relationship-based mediations, often one party wants acknowledgment and an apology. Through this book I was able to find the *magic question*, "If you can go back in time what would you do differently?" This usually helps the party to acknowledge things they can do better and feels like an apology to the other party without the mediator telling a party to apolo-

gize. Further, the book explains having people learning from the past. When a divorcing couple is entrenched in the past about a conflict where the police were called I ask, "What can you do differently next time a similar conflict arises?" The parties then meta-communicate about future encounters.

Helping parties prepare for future conflicts and communication is paramount in relationship-based mediations. Imagining options, shared positive power, and future-focusing have been techniques that have helped me to become a more effective mediator. The book *The Eight Essential Steps to Conflict Resolution* by Dudley Weeks has many other techniques as well! It is a must for the mediator's book shelf.

Follow-Up to the Domestic Violence and Mediation Summit

Made possible due to a Violence Against Women Act (VAWA) grant.

Best Practices for Domestic Mediators

Since April 2005 a group of domestic mediators, domestic violence experts and court staff have been hard at work developing a draft "Best Practices for Domestic Mediators". The focus of this document is to outline for domestic mediators the "Best Practices" they should strive for in their own private mediation work. The goal of these "Best Practices" is to make divorce

and domestic mediation a safe process for victims of domestic violence and their perpetrators.

At the last meeting this group decided to alter their initial criteria for mediators to be qualified with an expertise in domestic violence. These new criteria are:

- Qualify on the Utah State Court Roster
- Qualify as a Master Mediator on

the Court Roster, or Provide documentation of 150 hours conducting mediation sessions and 3 years of experience in the domestic violence field.

- Complete the 4 hour on-line course on domestic violence offered by the Utah Domestic Violence Council; www.udvc.org.
- Complete at least 6 hours of training on mediation in cases involving domestic violence. Training must be approved by the Court ADR Office.
- Be willing to provide clients and attorneys in domestic violence related cases a post-mediation survey with a self addressed, stamped envelope addressed to the Court ADR Director.
- Complete the 2.5 day Live Basic Domestic Violence Training offered by the Utah Domestic Violence Council (www.udvc.org).

These new criteria raise the level of training for qualification of this expertise and the committee felt this was appropriate given the complexities of domestic violence in relationships. Those mediators on the court roster who are qualified as having an expertise in domestic violence will be given to domestic violence victim providers throughout the state so they can refer their clients to a mediator who has extensive knowledge in this area.

The "Best Practices" document is in a final draft phase and here are some of the highlights: First, the best practices document requires domestic mediators to engage in an intake/screening process with both parties prior to the first joint mediation session. The group has modified an

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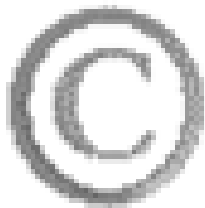
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intake/screening form from Utah Dispute Resolution and this form is available for private mediators to use. The group has come to the belief that good intake and screening of all domestic cases is the key to providing a safe process if domestic violence is/has been an issue in the relationship. You cannot modify the mediation process if you do not know that domestic violence is/has been present in the relationship of the parties. You have to conduct some sort of intake/screening to determine if domestic violence issues are present BEFORE bringing the parties together for the first time.

The second area which the group has recently come to a consensus is in regard to protective orders. The "Best Practices" document requires the modification of any pro-

TECTIVE order to allow for contact during mediation prior to the process starting. The group decided that even mediation conducted with the parties in separate rooms with no physical contact MUST have the protective order modified. This is so that the third party communication of the mediator between the parties will be allowed. To help with this issue long term, the ADR Office at the AOC is working to have the protective order forms modified so that mediation can be listed as an exception at the time the protective order is issued.

The final draft of the "Best Practices" for domestic mediation, including the intake/screening form, is available for your review and comment. You can contact Kathy Elton at kathye@email.utcourts.gov to obtain a copy.



We are always looking for interesting content for the newsletter. If you have any ideas or would like to write an article, please contact us at info@uccr.net.

Hold the Date!

May 9-10, 2006

for the

Utah Council on Conflict Resolution 2006 Symposium

"Advancing Our Practice: Paths from Conflict to Cooperation"

Featured Speakers include:

John Paul Lederach; Ken Cloke; Kenneth Fox; Leonard Marlow; Kate Kendall; and Laura Millikin Grey (tentatively)

To be held at the Salt Lake Community College, Gail Miller Entrepreneurial Center

Directions will be provided

*May your troubles in the
coming New Year be as short-
lived as your resolutions.*

The Utah Council on Conflict Resolution

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