



# ADR

## NEWS

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### **It's Not Too Late to Renew Your Listing!**

The **2010 Renewal Forms** were distributed in November via email. If you have not received your 2010 Renewal Form, please contact Anne-Louise Wirthlin at 615-741-2687 or [Anne.Louise.Wirthlin@tncourts.gov](mailto:Anne.Louise.Wirthlin@tncourts.gov) immediately. The deadline for submission of your 2010 Renewal Form was December 31, 2009.

If you missed the December deadline, you may still submit your 2010 Renewal Form. Please contact Anne-Louise Wirthlin immediately for information on how to renew your listing.

If you wish to go on inactive status, you must notify the ADR Commission in writing of your intentions.

## Supreme Court Adopts Amendments to Rule 31

The Tennessee Supreme Court recently adopted amendments to Supreme Court Rule 31. The amendments provide the Commission with the authority to issue written advisory opinions, change the grievance procedure, and clarify that a trial court can only order parties to a case evaluation of the parties consent.

Section 9(d) provides the Commission with the authority to issue written advisory opinions to mediators, trainers, and other mediation organizations upon receipt of a request. The Commission may also issue written opinions without a written request on issues it deems necessary. In addition to providing the requesting party with a copy of the opinion, the Commission will publish the opinions in the *ADRNews*. All requests for an opinion must be in writing.

The grievance procedure contained in Rule 31, Section 11 has been substantially changed. The Commission now has the authority to mediate a dispute between the complainant and the mediator. In addition to receive a copy of the complaint, Commission will also provide the mediator with a summary of the portions of Rule 31 that apply to the complaint. The Commission has taken steps to protect the confidentiality of the underlying mediation while still enforcing the ethical requirements of Rule 31. A flow chart will be posted on the ADR web page explaining the new procedure following the ADRC meeting on January 26, 2010.

Section 3(b) was altered to provide that a trial court may only order parties to a case evaluation with the parties consent. You may obtain the amended version of Rule 31 by going to [www.tncourts.gov](http://www.tncourts.gov). Please contact Anne-Louise Wirthlin if you have any questions.

# Nashville Conflict Resolution Center

## Uses Film to Prompt Discussion About Forgiveness

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*by Tamara Ambar Losel,  
Executive Director of the Nashville Conflict Resolution Center*

Last Spring, the Nashville Conflict Resolution Center (NCRC) gathered volunteers together at the Institute for Conflict Management at Lipscomb University to view the 2007 award winning documentary film, *The Power of Forgiveness*. More than 60 people came to see the awe-inspiring film, and to engage in discussion on this very important topic. NCRC invited special guest, Susan McBride, to talk about the role forgiveness plays in her work with prisoners and victims' families.

What is the nature of a forgiving person, and what limitations do we each place on forgiveness? These are some of the questions that *The Power of Forgiveness* prompted viewers to consider. Through a series of vignettes featuring Nobel Laureate Elie Wiesel, Buddhist teacher Thich Nhat Hanh, authors Thomas Moore and others, the film offered a multiplicity of perspectives on forgiveness, ranging from the scientific to the religious and spiritual.

One common concern about forgiveness is that it condones actions of abuse and violence, and that the person offering forgiveness opens him/herself to continued abuse. Jeanette Enright, an educator teaching forgiveness to Catholic and Protestant children in public schools in Northern Ireland, responds to this concern in the film: "Through the lessons [with the children], we try very hard to help the children to become tough-minded but tender-hearted. So that through learning to forgive, they learn to identify when something is wrong, and they will call it wrong, but then they are able to have the internal transformation of letting go of the anger."

Letting go of anger and allowing forgiveness can be very challenging, especially when we believe that the other person's actions were absolutely wrong. Reverend James Forbes eloquently juxtaposes anger and forgiveness in the film: "At some point, there has to be the movement beyond the fixation that by my holding this [act of violence, abuse, slavery, genocide...] in my mind in some way, I am going to improve the situation or reverse the situation or show adequate atonement for the situation. These offenses can never be adequately atoned... it is not possible to achieve by vigilance in anger what the soul is longing for. What the soul wishes is peace."

But Holocaust survivor and Nobel-prize winning author, Elie Wiesel, challenges Forbes' view by stating that "Some persons do not deserve forgiveness...To be forgiven, the culprit must confess his crime and ask for forgiveness." Wiesel encouraged the German President Johannes Rau in 2000 to apologize to the Jewish people in Israel and ask for forgiveness for the Holocaust. The film shows footage of President Rau's apology speech to the Israeli Parliament, while the narrator reports that several Israeli legislators did not attend the event in protest.

How does one get to the place of forgiveness? Thich Nhat Hanh states, "Forgiveness will not be possible until compassion is born in your heart." Others in the film concur that forgiveness helps unburden us from the deep pain within us: "...forgiveness allows us to let go of the pain in the memory. And if we let go of the pain in the memory, we can have the memory but it doesn't control us." When we

forgive another, it can also make space for that person to apologize to us, giving both parties the opportunity to share the benefits of forgiveness.

As a mediator, I believe that our primary task is to bring more peace to this world. Virtues like love, compassion, forgiveness and mercy – key ingredients in the recipe for peace – must be studied and put into practice in our own lives if we are to ask our mediation clients/participants to do the hard work of getting past anger in the mediation session (and beyond). After the film, guest speaker Susan McBride (formerly with the Office of Restorative Justice Ministries of the United Methodist Church) described her long-term relationships with prisoners, their families, and families of the victims. A proponent of restorative and transformative justice, Susan spent years learning about the damage that crime sows on communities, as well as the transformation that Victim-Offender Mediation brings. Susan's view of forgiveness is that it is a choice that every person makes on their own, and a process that may require continual practice. "We have all been a victim, and we've all been an offender," Susan affirmed. Ultimately, if we are to become forgiving people, we must learn to love ourselves first, and then extend that love to others.

NCRC has a copy available of *The Power of Forgiveness* for anyone who wants to rent it for a 1-week period. The film may also be ordered through Journey Films - <http://www.journeyfilms.com/> - or rented from Netflix or the public library. NCRC would like to thank all our volunteer & pro bono mediators who participate in our Victim Offender Mediation Program for Adults, now in its fourth year of operation. The Victim Offender Mediation program runs four days per week, Monday-Thursday. Rule 31-listed mediators who are interested in volunteering in this program may contact NCRC at 615-333-8400.

Watch for more film screenings in 2010, as NCRC plans to incorporate film into its community programming. Upcoming films may include: a second screening of "The Power of Forgiveness," "Encounter Point" - highlighting conflict resolution practices in Israel and Palestine - and "As We Forgive," a journey to forgiveness after the 1994 genocide in Rwanda. Join the NCRC email list to receive invitations to programs like these: <http://www.nashvilleconflict.org/>

*The Nashville Conflict Resolution Center is one of thirteen community mediation centers across Tennessee that also receive grant funding for the Victim Offender Reconciliation Program. Community Mediation Centers provide an excellent opportunity for new mediators to gain experience and for both new and more seasoned mediators to donate mediation services pro bono or for a reduced fee.*

*For more information on Community Mediation Centers and the Victim Offender Reconciliation Program, please contact Anne-Louise Wirthlin.*

# The Attorney, non-Attorney Mediator Dichotomy: Is There Room at the Mediation Table for Both Practitioners?

*by Joseph G. Jarret, Esq.*

## **The Conflict:**

It was non-attorney mediator Chris Currie who, in his compelling piece **1** "Should A Mediator Also Be An Attorney?" concluded, "While there may be certain advantages to having a legal background, there may also be some disadvantages which should be kept in mind when choosing a mediator for your case." It goes without saying that the attorney, non-attorney mediator dichotomy is by no means a novel concept that has recently emerged. Over the years, I have heard the laments of non-attorney mediators who complain bitterly that neither our judiciary nor attorney/mediators accord them the respect they are due. Further, that a legal background, due to the adversarial nature of the law, amounts to more than a hindrance than an asset for today's mediator. Conversely, I have heard more than one attorney/mediator assert that, those who are unschooled in the law have no business mediating cases involving complicated issues of law and fact. As is often the case where professionals become polarized into two warring factions, neither position is entirely correct.

## **The Role of the Mediator:**

Often, this great debate is not so much rooted in whether or not a mediator possesses a juris doctorate degree, but rather, ones perception of the mediator's role. In some states, mediation in civil court is mandatory and as such, judge ordered. In some instances, over the objection of the litigating parties. Although there exists myriad of judges who are concerned about the empowerment of the parties, their satisfaction with alternative dispute resolution, as well as the facilitation of agreements through transformative or evaluative mediation models, there are some judges who merely want a case

settled and off of their respective dockets. Such judges are more inclined to chose attorney mediators who have a reputation for "closing the deal" rather than engaging the parties in facilitative dialogue.

## **Lawyer versus Non-Lawyer:**

Moving beyond judge-appointed mediators, and from the general to the specific, there exists credible evidence that some cases that lend themselves well to having an attorney/mediator at the helm of the negotiation table. This is especially true when mediating disputes that concern complex legal issues such as collective bargaining or patent law disputes that come with attorneys well-versed in the body of law at hand, representing both parties. Such sophisticated parties and their attorneys will expect a mediator to be glib about the law, insider technical jargon, and case precedent. This is regardless of the fact that, in Tennessee, a Rule 31 neutral may not impart legal advice to the parties. **2** She or he may, however, ". . . point out possible outcomes of the case and may indicate a personal view of the persuasiveness of a particular claim or defense." **3**

Generally speaking, attorneys who practiced in some of the more unique bodies of law prior to becoming mediators have an advantage of sorts over non-attorney mediators when faced with matters of the ilk described above. Further, there exists some areas of conflict that mandate the mediator possess a certain legal expertise. For example, Tennessee Code section 49-10-605 entitled "Special Education Mediations" reads in pertinent part that "The mediators who conduct special education mediations shall receive legal training in special education law."

On flip side of the above, if you will, Chris Currie alludes to a study in his writing that

concluded that while lawyer mediators tend to stress legal knowledge and skills, such as drawing out the facts of the case, non-attorney mediators with social worker backgrounds tend to emphasize conflict resolution theory, interviewing, and problem-solving. 4 Often, the latter of these two mediation styles is more productive in case resolution as well as the parties being of the mind that their mediation experience was both positive and productive.

**Summary:**

In a nutshell, because all parties are welcome at the mediation table, it stands to reason so should all mediators, regardless of

legal training. Mediators, regardless of whether they are attorneys, social workers, health care workers, counselors, etc., have an absolute duty not to accept a mediation engagement she or he does not feel competent to handle. Clearly, there are some parties or matters that are not suitable for mediation, period. Likewise, there are some mediators who are better suited, trained or experienced for one case or another. It is the ethical, courageous mediator who refuses a case, not merely due to the enumerated reasons set forth in our ethical rules, but because he or she is of the mind that the matter is one that would be best handled by someone else.

- 1 Currie, Chris, "Should A Mediator Also Be An Attorney?" Page 1. On the web at [www.mediate.com](http://www.mediate.com)
- 2 Rules of the Tennessee Supreme Court, [Section 10\(b\)\(3\) Obligations of Rule 31 Neutrals.](#)
- 3 *Id.*
- 4 Currie, Chris, "Should A Mediator Also Be An Attorney?" Page 2. On the web at [www.mediate.com](http://www.mediate.com)

*\*Joseph G. Jarret is a Federal and Rule 31 listed general civil mediator and an attorney serving Knox County as its Chief Deputy Law Director. He has lectured across the country on various mediation issues and is the 2009 President of the Tennessee Valley Mediation Association, and a member of the Tennessee Association of Professional Mediators, the Tennessee Bar Association, and the ADR Section of the Knoxville Bar Association. Mr. Jarret is also an award-winning writer who has published over 85 articles in various professional journals and a former active duty United States Army Combat Arms Officer and Air Force Special Agent with serviceoverseas. He holds the juris doctorate degree, the masters in public administration degree, a bachelors degree, and a post-graduate certificate in public management. Joe Jarret can be reached at [joe.jarret@knoxcounty.org](mailto:joe.jarret@knoxcounty.org) .*

## Important ADRC Dates

- March 10, 2010** .....Rule 31 Mediator Applications Deadline for ADRC review on April 27, 2010
- April 27, 2010** .....ADR Commission Meeting, Administrative Office of the Courts, Nashville
- June 9, 2010** .....Rule 31 Mediator Applications Deadline for ADRC Review on July 27, 2010
- July 27, 2010** .....ADR Commission Meeting Administrative Office of the Courts, Nashville

### *We Would Like to Hear From You!*

The Administrative Office of the Courts gladly accepts articles from ADR professionals for publication in the *ADR News*. For more information, please contact Anne-Louise Wirthlin at [Anne.Louise.Wirthlin@tncourts.gov](mailto:Anne.Louise.Wirthlin@tncourts.gov).