

THE APPELLATE DIVISION, FOURTH DEPARTMENT
in conjunction with the
8th JUDICIAL DISTRICT MARTIN P. VIOLANTE ADR PROGRAM
presents:

**ATTORNEYS FOR CHILDREN SEMINAR:
ATTORNEYS FOR CHILDREN IN MEDIATION**

Thursday, November 13, 2014

12:15 pm to 1:30 p.m.
Erie County Family Court
One Niagara Plaza, 5th Floor
Buffalo, New York

11:45 a.m. **Registration, Pizza Lunch Provided**

12:15 p.m. ***The Process of Mediation***

Bridget M. O'Connell, JD/ MSW
Mediation Manager, Center for Resolution and Justice at Child and
Family Services, 8th JD Martin P. Violante ADR Program

12:50 p.m. ***Considering Context***

Tiffany Szymanek, Esq.
Development Director
Family Justice Center of Erie County

1:05 p.m. ***Quiz/ Group Activity on Conflict Styles***

Bridget M. O'Connell, JD/ MSW
Mediation Manager, Center for Resolution and Justice at Child and
Family Services, 8th JD Martin P. Violante ADR Program

Tiffany Szymanek, Esq.
Development Director
Family Justice Center of Erie County

1:15 p.m. ***Conflict Styles***

Bridget M. O'Connell, JD/ MSW
Mediation Manager, Center for Resolution and Justice at Child and
Family Services, 8th JD Martin P. Violante ADR Program

1:30 p.m. **Conclusion**

The Appellate Division, Fourth Department has been certified by the New York State Continuing Legal Education Board as an Accredited Provider of continuing legal education in the State of New York from March 2, 2011 to March 1, 2014 (recertification pending). This program has been approved for a total of one-and-a-half (1.5) credit hours, which can be applied toward the skills requirement. This program is suitable for experienced and newly-admitted attorneys.

Bridget Maureen O'Connell, JD/MSW **Attorney At Law**

Bridget is an attorney, mediator, parenting coordinator and collaborative lawyer who currently works with the Center for Resolution & Justice at Child and Family Services. She is Mediation Manager for the Erie County Family Court Custody and Visitation Program under the 8th Judicial District, Martin P. Violante ADR Program.

She graduated cum laude from John Carroll University, Cleveland, Ohio and obtained both her Juris Doctor and Masters in Social Work from the State University of New York at Buffalo. Bridget returned to the University as an adjunct professor in 2005 and continues to teach a course on Law and the Family.

As a member of Lipsitz Green Scime Cambria LLP and a partner in their family law department, she worked exclusively on matrimonial and family court matters as a party attorney and as an attorney for children.

Bridget is a Past President of the Western New York Chapter of the Women's Bar Association of the State of New York (WBASNY WNY), and also as Secretary, Public Relations Director, Continuing Legal Education Chair, State Delegate and Local Director. WBASNY works to advance the status of women in society and in the legal profession and to promote the fair and equal administration of justice. Bridget currently serves as Co- Chair of their Mediation Committee at the state level.

She is a past Director of the Bar Association of Erie County (2009-2012), previously chaired their Matrimonial and Family Law Committee and currently serves on the Nominations Committee and as Chair of the Alternative Dispute Resolution Committee.

Bridget was a founding member and is a Past President of the Western New York Collaborative Law Professionals, Ltd., an organization which is dedicated to promoting the CL process wherein professionals and parties work in a series of confidential conferences outside of court to promote peaceful, informed resolutions to restructure families.

Bridget is an adjunct professor at SUNY Buffalo School of Law teaching JLS Law and the Family and Co-Teaching in the Civil Litigation Pro Se Practicum. Outside of the University Bridget has lectured on motion practice, family court practice, and child custody as well as aspects of divorce mediation and best practices in preparing clients for Alternative Dispute Resolution.

The Buffalo Law Journal has named Bridget to their Who's Who in Law and WNY Legal Elite and in 2013 she received the Athena Young Professionals Award.

Tiffany M. Szymanek

Development Director for the Family Justice Center

Tiffany Szymanek is the Development Director for the Family Justice Center of Erie County – a nonprofit agency serving domestic violence victims and their children. The Family Justice Center is a collaboration of 13 community agencies that work together to create a “one-stop” shop for victims by providing all the services they need to safely escape the abuse at one location.

As Development Director she is not only responsible for the implementation of the agency’s overall development strategy, but also maintains an aggressive public outreach and prevention campaign to inform the community about the services available at the Family Justice Center and to educate the public on what can be done to break the cycle of violence.

Szymanek is a graduate of University at Buffalo Law School and has practiced privately in the areas of Criminal Defense, Family and Matrimonial law for several years. Prior to joining the Family Justice Center, she was the Assistant Director of Genesee Justice – a department of the Genesee County Sheriff’s Office. As Assistant Director, Szymanek managed the County’s alternative to incarceration and victim services programs, including oversight of the Justice for Children Advocacy Center.

Attorneys for Children in Mediation

PRESENTATION BY:

BRIDGET M. O'CONNELL, ESQ. JD/MSW

CHILD & FAMILY SERVICES CENTER FOR RESOLUTION AND JUSTICE

THE CONCEPT

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Mediation:

This is the process in which an impartial third party acts as a catalyst to help others constructively address and perhaps resolve a dispute, plan a transaction, or define the contours of a relationship.

A mediator facilitates negotiation, encourages problem solving and develops an agreement or resolution by consensus among the parties.

NYSBA Standards for Representing Children in C&V (2008) Standard C-6.

Negotiate Settlements. The attorney should participate in settlement negotiations to seek expeditious resolution of the case, keeping in mind the effect of continuances and delays on the child. The attorney should use suitable mediation resources and, where appropriate, ask the Court to authorize the use of conferencing or mediation to assist in reaching a resolution.

DECIDING WHETHER OR NOT THIS CASE SHOULD GO TO MEDIATION

Perhaps...

Strong emotional issues which the parties need to discuss in a confidential setting

The parties wish to have control over the outcome

The parties need a creative solution

The parties recognize the need to maintain a relationship

Cost is a concern/litigation is costly

The parties wish to increase future compliance

Perhaps not...

There is a history of abuse

A party is unable to function in a setting where the other party is present.

One party is planning to misuse the process

The problem is unmediatable

There is a benefit to the matter being handled in the light of day/publicity

8JD ADR Protocols

We must decline matters with an Open O Docket or an existing stay away order of protection between the parties.



The Process

- OPENING STATEMENT
- UNINTERRUPTED TIME
- THE EXCHANGE
- SETTING THE AGENDA
- BUILDING THE AGREEMENT
- WRITING THE AGREEMENT
- CLOSING STATEMENT

The Exchange

“Those uncomfortable emotions, challenges, and opposing perspectives are forming the foundation for a sustainable agreement. Sometimes important things take a while to come out. And mediators are better able to reframe the situation in a new more useful way if they don’t rush into listing the issues.”

- Beer & Stief

What is the mediator doing?

- Asking Necessary Questions
- Listening for interests and issues
- Watching for moments of understanding
- Summarizing interests and concerns
- Holding back from exploring solutions

Setting the Agenda and Building the Agreement

“Problems cannot be solved at the same level of awareness that created them.”

Albert Einstein

What is the mediator doing?

- Listing the issues
- Seeking Agreement on the Agenda
- Selecting matters to resolve
- Eliciting options
- Evaluating alternatives
- Testing and exploring consequences
- Capturing areas of agreement

How to Help



Bring & Share Information

- Copies of a Judgment, prior order or agreement
- Resources to be used (e.g. supervisors...)
- Information on the situation, including any cultural or religious factors
- Information on the parties involved, including their position, role and responsibilities
- Information on the completion of the process



Avoid Derailing

- Schedule at a time you can be available or advise of your position and whereabouts
- Language choices...if there is specific language you want to see in an agreement...write it down and bring it with you
- Don't interrupt the session –
 - ▶ *If you know you will be in and out, say it up front. If you must come and go, do so quietly and without comment. If you are late just sit down and wait for a 'break in the action' to offer any apologies or get an update.*
- When the other party has let down their guard to share something...it is not the time to pounce
- Remember people may need to just be heard, be patient
- Take a break if you sense you need one

Respect the Process

- Act in good faith.
- Be as respectful and professional as possible
 - Do not speak to attorneys or other legal representatives "off the record" or "off the face"
 - Do not speak to anyone who is not authorized to speak for the company. Think "authorized spokespersons" only.
 - Do not give them any information that is not intended to be made public or otherwise appropriate to be productive.



Get comfortable with Conflict

All polishing is done by friction

Mary Parker Follett



Directing/Controlling

Collaborating

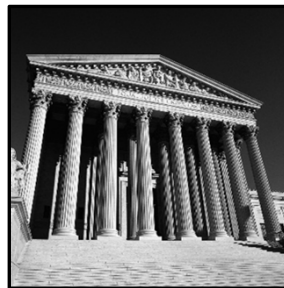


Compromising



Accommodating

Avoiding



Appealing to a
3rd Party

Anger

- Ask Why
- Ride it out
- Take a break

Anguish

- Try saying nothing let the other parties respond
- Sympathize generally
- Take a break

Bibliography and Borrowings

Beer, Jennifer E. and Eileen Steif, *The Mediator's Handbook*. New Society Publishers (1997)

Guidelines for Attorney for Children in the Fourth Department

Standards for Attorneys Representing Children, NYSBA 2008

Retrieved: <https://www.nysba.org/WorkArea/DownloadAsset.aspx?id=33592>

Northouse, Peter G., *Introduction to Leadership*, SAGE Publications, Inc; Second Edition edition (April 4, 2011) Retrieved: Sagepub.com

8JD Martin P. Violante ADR Program Protocols

CDRC Manual (NY Courts Office of ADR)

