



## May 2020 News

# TAPM Dues Are Now Due

### Dues are \$100.00

Have you renewed your TAPM DUES? Your dues expire on the one year anniversary date of your last payment. We hope you will continue to support TAPM and renew today. Go to:

<https://tapm.wildapricot.org/about-tapm>.

TAPM appreciates you being a member and you, as a member, receive benefits in return !

### President's Message

By Marnie Huff

While beginning my term as TAPM's President, I revisited our mission to "promote professional mediation as the primary approach to conflict resolution in Tennessee." Our vision is to be the "best in class" in the development of professional mediation.

What goals can we adopt to further our mission and what action steps can we take to accomplish those goals? How can you, as a TAPM member, help meet our goals and enhance your mediation practice?

**Goals and action steps.** The TAPM Board discussed goals for the year on May 7 after TAPM's annual business meeting. Our overall goal is to serve our members. We will enhance member benefits. And we will expand membership participation in programs and committee activities. To reach our goals we plan to:

- produce online, cutting-edge **education** programs for CME/CLE credit,
- establish a new **online member Q&A forum**, similar to peer group lunches we've had in the past, but improved through Zoom technology, as another opportunity for members to get to know one another as professional colleagues and to refer business to one another,



- deliver **tech-savvy communications** through our e-news, website, social media, and by joining with the Tennessee ADR Commission in sharing information about Rule 31 obligations,
- provide TAPM's best-in-the-state **advanced mediation training** seminar on March 12, 2021 (save the date!),
- increase TAPM's **statewide membership** and welcome new members in our activities, and
- add some structure and planning to the organization through **committees** and a **policy and procedures manual**.

If I may add to the above, let's provide **community service** through pro bono and low-cost mediations, especially at Tennessee's non-profit community mediation centers. Let's all resolve to participate in a service opportunity this year.

**Leadership team.** I am pleased to serve alongside Vice-President Cindy Ettingoff, Secretary Beth Tarter, Treasurer Karen Phillips, and Immediate Past-President John Duval. John Duval deserves a special thanks for serving as TAPM's President for the past two years. Thank you, John! The Board also includes mediators from across the state: Jackie Kittrell, Kelsy Miller, Kim Best, Regina Newson, Sara Figal, and Vicki Krusel. Please share your suggestions for educational programs and other TAPM activities with any one of us. We're in the [TAPM Directory](#).

I am honored to serve as President of the Tennessee Association for Professional Mediators and look forward to leading our organization to further our mission - promoting professional mediation as the primary approach to conflict resolution in Tennessee. Warm regards to all my mediation friends and colleagues!

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## Immediate Past-President's Message

By John Duval

Over the last two years as President of TAPM I have often been asked the value of being part of the Tennessee Association of Professional Mediators...I could say the mediation skills learned through various seminars, the professional connections and referrals made for my business, the available CME/CLE credits required are easily accessible, greater awareness of how mediation is being used and implemented statewide but without question it is the development of personal relationships through this organization that have been and will continue to be most meaningful. It has been a privilege and honor to serve in this capacity. As my tenure ends so does that of Mary Ellen Bowen of Mid-South Mediation Services. Mary Ellen has served her term on the Board with deep insight and wisdom from decades of experience in conflict resolution. Mary Ellen is a pioneer and champion for mediation in Tennessee. Thank you for your service, Mary Ellen.



In this issue you will notice a new look to the newsletter and in the coming days to our website as well. We have updated our logo and promotional materials to better reflect TAPM. We have renewed hope for the days ahead and TAPM is on the leading edge as we move into new territory for mediators. Your membership and participation are vital during this time and as we are here for one another.

Sincerely,

John Duval

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## Featured Mediator

Ted C. Raynor

*Ted Raynor's experience includes 16 years working at large, well-established law firms and 14 years working as an in-house for Hilton Hotels Corporation. His practice is focused on providing strategic legal advice, resolving (and avoiding) business disputes and consulting with franchise owners.*

*Ted's approach combines all of the legal and business experience he has gained along the way presented in a personalized and relatable manner. His mediation and ADR background also equip him to help solve a wide variety of business problems. He is good at achieving efficient, practical results.*



### **In finding your niche what area do you practice in? How did you get started in this?**

One key niche is business to business disputes. This area of expertise arises from working in Hilton Hotels Legal Department for nearly 14 years. I understand business priorities, concerns and motivations and use that to resolve complicated problems. Getting people "back to business" and avoiding the cost and delay of litigation gives me great satisfaction.

### **What is in your mediator tool kit? What is your favorite or most used tool?**

One of the most effective tools is ACTIVE LISTENING and responding with appropriate and thoughtful questions. Very frequently, the seeds of resolution sprout up from these conversations.

### **Once you have been selected as the mediator, what do you do to prepare the attorneys and their clients for the mediation?**

Once engaged, I tend to start working right away by discussing with counsel the problems, concerns and complications that prompted them to contact me. Written submissions are always studied but I also focus on pre-mediation discussions with each side so that the actual mediation session is as productive as possible.

### **If you were a superhero/mediator what would be your name and slogan?**

Chris Voss – "Never split the difference!"

### **What is your pet peeve in mediation?**

It is frustrating (and counter-productive) if people do not arrive with an open mind. Fixed positions at the beginning of the session rarely play out the way one may hope. It often takes flexibility and creativity to solve complex problems.

### **Are you married/do you have kids/pets etc?**

I have been married to Carla Raynor for 25 years. She is the Vice President of Consumer Experience and Brand Management at Blue Cross Blue Shield of Tennessee. We live in Chattanooga but have strong roots in Memphis. Because of our jobs we frequently work across the state. Our son, Chase Raynor, is a freshman at The McCallie School.

### **Why did you become a mediator?**

After years of practicing law, I have determined that I truly enjoy helping people solve problems.

### **What is your favorite mediation read and why?**

My favorite negotiation read is “Never Split the Difference” by Christopher Voss as well as the frequent articles he publishes through the Black Swan Group. He is an awesome teacher and his lessons really resonate with me.

### **What are you most afraid of in mediation?**

People walking away from a well-crafted deal – only to regret that decision later.

### **How do you debrief yourself after a mediation?**

I am friends with a lot of mediators. One of my best friends is a retired judge from Memphis. We all like to discuss key lessons from recent cases.

### **Personal or professional accomplishments you are particularly proud of:**

- Being a husband and father
- Being named a Vice President and Senior Counsel for Hilton Hotels Corp.
- Working at Burch, Porter & Johnson in Memphis after leaving Hilton and before moving to Chattanooga
- Earning an EFM degree from the University of the South School of Theology in 2012

### **Please complete these sentences:**

“I have a burning desire to **help businesses be successful.**”

“People [i.e. my teenage son] tell me I look and act like a **Dorky Dad.**”

“If I could have a 30 minute conversation with anyone (alive or otherwise, famous or not), I would want to speak with **Jesus after the Resurrection.**”

### **What do you see for the future of mediation?**

**Repeat after me:** Online Dispute Resolution. It has been used successfully for a while in other parts of the country but the current COVID-19 pandemic has accelerated its acceptance in Tennessee.

### **Knowing what you now know about life etc., would you choose the same career path? If not, what would you like to do?**

Yes, I would. I love being a lawyer. It is a great way to help people.

### **Is there anything else that you want to tell TAPM members about yourself?**

I am proud to work alongside you. Mediators and ADR professionals like Steve Shields, Jef Feibelman, Joe Duncan, Hayden Lait, Linda Seely, Jerry Potter, Allen Blair, Butch Childers and many others are my heroes. I love having access to the collective wisdom within TAPM and the ADR community across the state.

### **What is your contact information? Name, address, phone number, email address and website**

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## **Emotions and Mediation**

**By Rule 31 Mediator and CDC® Certified Divorce Coach Dawn Forshay**

Many times, at the end of a session, one or both parties ask, "Do you do this all the time?" When my response is yes, their reply is usually "I don't know how, I could never!" These types of comments usually come at the end of a very emotional mediation, one that usually starts with both parties stating they are not giving an inch on their conditions and ending with smiles. There is nothing better for a mediator than when a party walks out of the mediation room with a smile on their face, telling you they feel good about how they resolved their conflict. But sometimes it is quite the emotional road to get to that point.



Let's be honest, no one enjoys conflict, well most people don't, so walking into a room knowing the purpose is to resolve a disagreement is stressful. Emotions in this type of situation are a given; after all, the conflict is usually about a topic that seriously impacts a person's life. People are trying to resolve important life events such as having a roof over their head or how much time they will get to spend with their child - impactful, serious matters that are crucial and life changing. Add to that the fact that many of these parties have or have had an emotional relationship, and you can almost guarantee the full range of emotions; anger, sadness, resentment, frustration and many more will rear their ugly heads.

The tricky part of any mediation is helping the parties express their emotions without letting them get out of control. The parties' past relationship is going to play a key role in some of the emotions that surface. It can be as complex as a married couple together for decades with children or a less complicated relationship of a landlord and tenant who have only known each other for a few months. Either way, some type of relationship has been formed and with all relationships come emotions.

I am a firm believer that it is important to allow each party to tell their story with all the emotions they need to express. It allows them to feel they are being heard by someone and it is critical for them to release those emotions so they can move toward a place where they are open to resolving the issues. It has happened numerous times that a party walks into the mediation room totally against giving an inch and walking out having met the other party half way on all issues. What happened between the start and the end? Parties were able to discuss their feelings with the mediator and with the other party and have their emotions heard and validated. Sometimes they misunderstood the other party or they needed to say something to them but did not have the opportunity. Releasing those pent-up emotions allows them to review the situation outside their feelings and be more rational about the issues and possible solutions.

While you're dealing with parties' emotions, you have to deal with your own. Mediators are supposed to be neutral but we are also human. Dealing with your own feelings during an emotional situation is just as important as helping the parties deal with their own emotions. No denying sitting in a room for 3 hours and listening to people argue can be very daunting, even for the most professional mediator. Being conscious of our own emotions, how and if we are showing them, and knowing when to take a break to put ourselves back in check if needed, is important for every mediator.

There is no way around emotion in mediation but how it is handled is definitely in every mediator's control.

### **Some tips on dealing with emotions during mediation:**

**Be conscious of how emotions impact the parties.** Does one person's sadness or anger impact how the other party reacts. Are they giving in to the other person's demands because they don't want to make the other person angry or sad?

**Are their emotions really being heard by the other party?** If it seems as though the other party is only hearing the words the other party is saying but not hearing the meaning behind them, ask some questions. Open questions could engage some

discussion on the topic and help the parties understand what the other is actually saying.

**Are emotions being shared in a kind and constructive way?** It is important for parties to be able to share their emotions with each other but it is even more important they be shared without malice toward the other person.

**Is there too much emotion going on?** Mediators sometimes need to intentionally slow the negotiations down so everyone involved can take time to reflect and reduce the “emotional flooding” that is sometimes present in mediation. This can be done a number of ways:

- Separate sessions with coaching the individual party.
- Homework breaks after asking questions.
- Mediator tools such as re-framing, summarizing, asking parties to repeat back what they heard the other person state.

**Be aware of your own reactions.** Don't be cold but don't be over emotional. For example, not saying anything when someone tells you a loved one recently passes away would be cold. Express your condolences for their loss, see if they need a minute and tactfully keep the mediation session moving.

**Are your emotions showing?** Are you asking questions in strict tone? Are you tapping your pen or scribbling on your note pad? Hours of holding back frustration and impatience during a tougher than usual mediation can be difficult if not impossible. Know when you are reaching your limits.

**Take a mediator break.** Parties aren't the only ones to need a break during a highly emotional mediation. If you find yourself getting concerned, frustrated or impatient; take a break and give yourself a minute or two to regroup.

*Dawn Forshay is CDC® Certified Divorce Coach specializing in helping individuals in controlling relationships find their voice again and preparing them for a new normal as their best self. She is a Rule 31 listed Family and General Civil mediator and is passionate about her work with the Community Mediation Center of Knoxville as a volunteer and also sits on their Board as Treasurer. She lives in Louisville, TN and enjoys spending time with her three young grandchildren.*

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## From the Editor's Desk

by Regina B. Newson, Editor

A big **THANK YOU** to AOC Director Tate and John Jefferson with ADR Commission for getting the word out about the FREE course on mediation offered by the National Judicial College on April 7, 2020. The webcast “Mediation in a Time of Social Distancing – A Mediator’s Response to Covid-19” was presented by Nancy Neal Yeend. It was excellent. As a mediator, I personally prefer face to face mediations in part due to my training. However, mediation is changing and we must change and make adjustments in order for the field of mediation to grow and survive. All of us must become more aware of technology and how best to use it in our practices. These are a few things I learned – the core remains the same – voluntary process, confidentiality, neutral’s role, parties’ roles, caucuses, guidelines and the resolution. Distance mediations require more work on the front end, pre-session. You will have to gather more information before the session...mediation statements from the parties or their representatives, send them your bio, make calls to introduce yourself, schedule time



(important if parties live in different time zones). You must develop an intake process and use it. All of the pre-session work will help you when you actually conduct the mediation by phone or video conference. You will need to review your processes and methodology for conducting a mediation.

Equipment is an issue for distance mediations. You will need to buy into a Cisco WebEx program, Zoom, or some other program. There are more resources and links on Zoom here: <https://mailchi.mp/b6c3086213c7/free-njc-mediation-webinar>. If you would like ideas on adding new technological tools to your mediation practice in this new environment, you may find these links helpful, "New" Getting Started with Zoom and Using it Securely" at <https://www.attorneyatwork.com/getting-started-with-zoom-and-using-it-securely/>.

If you are using phones, call your service provider and have them set up the conference call. It works better when the provider does it. Take a class on how to use the technology that you will be using (not the day of the mediation). Dress appropriately, even if you are in your home. Look at what the camera is seeing behind you, make it look as businesslike as you can.

Constantly summarize - listing the parties' issues and their solutions, reframe, give work assignments, ask about those assignments, and remind them of confidentiality.

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## **NEWS From AOC:**

### **The 2020 Renewal Season is Closed.**

- Mediators may use the AOC's Portal to add CME earned, add Mediator Reports, and update their public facing profile on "Find A Mediator" during the year
- <https://www.tncourts.gov/programs/mediation/resources-mediators>

### **The 2021 Listing Renewal season will be open on October 1, 2020 – December 31, 2020,**

To be listed as a Rule 31 Mediator, you must submit a renewal application and renewal fee annually.

A Rule 31 Mediator may complete ALL 6 (six) Biennial Continuing Mediation Education (CME) hours online. This 6-hour requirement is every 2 years.

If all requirements of a Rule 31 Mediator's annual renewal have not been completed by March 31 of the renewal year, then the Rule 31 Mediator's listing lapses. Rule 31, Section 15(b)

A mediator whose credentials have lapsed for failure to comply with CME requirements must re-apply to the ADRC for listing and must have taken all required training per section 14.

If you need more information about mediation please visit

<https://www.tncourts.gov/programs/mediation/resources-mediators>

The ADR Portal login and help team can be reached at **615-741-2687**, the Administrative Offices of the Courts. They will direct your call to the appropriate person for user account and login information and CME (Continuing Mediation Education) and Renewals.

*If you have an article that you want published in the TAPM Newsletter, please contact the Editor, Regina B. Newson at [reginanevson@bellsouth.net](mailto:reginanevson@bellsouth.net).*

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