

November 2019 News

News from the Tennessee Association of Professional Mediators

President Message

by John Duval

I like to share practical, helpful and current works with all of our TAPM members and today I highly recommend the just published book ***HOW TO LIVE FOREVER: A Guide to Writing the Final Chapter of Your Life Story*** by Kimberly Best. Kimberly, a TAPM Board Member writes that your life is a story, and it's yours to write, all the way through to the end. There are numerous decisions to be made regarding aging, illness, and end-of-life issues, but many people put off those decisions until it's too late. We may be purposeful in planning for our lives, but we often leave the last piece, the final chapter, undefined.



How to Live Forever seeks to lay a foundation for people to live well in the time they have, to leave their stories behind as their legacies, and to write their own best ending so that their final wishes can be honored. Kimberly encourages you to consider what you want the final chapter of your life to look and feel like, providing you with tools and prompts that can help you have difficult conversations regarding legal decisions, health care plans, relationships, and death and dying. If we recognize the finite nature of our days, we can live purposefully, plan ahead for the end of our life story, and die without regret, living fully to the end and finishing well.

The book is available through bestconflictsolutions.com or Amazon <https://www.amazon.com/How-Live-Forever-Writing-Chapter/dp/197367534X>

About the Author: Kimberly Best is a professional conflict mediator focusing on conflict coaching, family mediation, and elder care mediation. She holds a master's degree in conflict management from Lipscomb University. She spent her early career as a registered nurse in intensive care, trauma, and emergency medicine, where she gained valuable experience in the medical system. A mother and grandmother, she currently lives in Franklin where she runs her mediation practice and faithfully serves on the TAPM Board.

Reviews of **HOW TO LIVE FOREVER: A Guide to Writing the Final Chapter of Your Life Story by Kimberly Best:**

"This book is a treasure trove of information and wisdom. In a world that understands the athletic dictum of finishing strong, so many of us are hesitant to talk about our own finish line. I saw a patient last week who lamented that five years after her husband's death, she was still dealing with several complicated legal issues—all of which would have been moot with two simple signatures. With so many significant advances in medicine, it has never been more important to understand options and make thoughtful plans. I would recommend this resource to all my patients. Upbeat, inspirational, concise and comfortably readable—give yourself and your family the wonderful gift that this book is." Michael A. Dunn, MD.

"How to Live Forever" is a very informative and interesting read! Great content - regarding both living wisely and navigating end-of-life issues. The information provided in each chapter is very thorough, yet practical and easy to understand. I came away knowing what specific next steps were still needed as I prepare to write the final chapters in my own story. I highly recommend this book!" R. Brown.

John C. Duval

TAPM Board Member, President '18-'20

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Where has Southern Hospitality Gone?

Five Steps to Enhancing the Mediation Experience

By Attorney and Rule 31 Mediation Trainer Charlotte U. Fleming

I walked into a Mediator's office a few weeks back. No warm welcome. No attorney in sight. No coffee, water, or snacks available. After waiting way too long without anyone greeting us, my client and I were finally taken back to a conference room where every light bulb was out and the chairs were circa 1969. We both felt like we were sitting on the floor, and it immediately put a sour taste in both of our mouths before the Mediation had even started.

Last week, my client and I were seated for a Mediation in a glorified closet with two chairs and a card table amongst hundreds of files. It was claustrophobic and did not even meet the basic expectations of what a Mediation room should be.

In the last year, my Mediation clients and I *have been freezing, hungry, hot, uncomfortable, and have often found ourselves in situations with no wifi or printer access.* There are multiple Mediators that I have decided I would not schedule with again after the first impression they left. This is not acceptable!

I bet every practicing attorney who attends Mediations regularly has a story like this to tell. Where has our Southern Hospitality gone?



MEDIATORS! HEAR ME WHEN I SAY... WE CAN DO BETTER!

Here are five steps to enhancing the Mediation experience for the lawyers and clients that hire you as their Mediator:

1. The Mediation experience starts as soon as someone calls you or your assistant for your available Mediation Dates.

Before you even open your Mediation practice, you need to have a clear fee structure that's reasonable for the community that you practice in, a minimum hourly attendance requirement, and a simple onboarding process that everyone can understand. For example, I charge \$300 an hour with a two-hour minimum in a town outside of Nashville.

Decide the dates and times you are available for Mediations every month. At my firm, I start Mediations at 9:00 AM or 1:30 PM. When someone calls my office, they are given 3-4 Mediation dates and times. The date will not be held until an Attorney confirms that time and sends me an email to confirm with the Docket Number and Parties' Names.

2. Upon booking a Mediation, immediately send out two original and signed Mediation Confirmation Letters to both attorneys (or parties if they are pro se).

These letters should include the date, time, methods of payment accepted, and simple directions to your office from the nearest main highway or landmark. Not everyone uses smart phone GPS apps, so make sure you are catering to all ages. Refrain from any discussions relating to the issues of the case with either party prior to arrival in order to maintain neutrality. I find it helpful to be clear in my Confirmation letter that no one else is permitted to attend the Mediation on the day of. No new spouses, family members, neighbors, or children. I don't like third parties being present during this process, especially when space is already often limited.

3. Pretend you are walking into your own office as a Mediation client; Look around and CHECK. YOUR. AMENITIES.

Is your copier working and full of paper? Is your wifi code readily available to your attendees if you have internet access? Do you have fresh coffee or water available? Snacks? Many good Mediators even bring in lunch if it's an all-day Mediation. What is the temperature in your office? Are your furnishings comfortable and do you have enough chairs for all parties to sit? How's the lighting? Make sure you aren't wearing strong perfume or cologne on Mediation days in order to be respectful to allergies or preferences of clients that will spend most of their day with you.

These things truly do make a difference in the Mediation experience. Even if you have limited space or budget, you can improve in one or two of these areas to be considerate to those who hire you as Mediator.

4. Establish neutrality in EVERY aspect of your Mediation experience.

Offer the same amenities to both parties. I have noticed over the years that even the way you greet attorneys and clients as they enter your office can be perceived as bias. Refrain from saying things like, "Hey Joe! How's your mom?" to one lawyer with a hug if you greet the other party with, "Hello Mr. Jones. It's nice to meet you" and a firm handshake. I don't care if you were on the golf course with one of the attorneys last weekend; Stay professional in order to not give off the impression of unprofessionalism or bias towards one party over another.

I also suggest you try to keep the amount of time in each of the Mediation rooms during Caucus generally equal. This is not always possible but TRUST ME! Clients are watching the clock and leaving one party too long could lead to them feeling neglected.

5. The Mediation experience is not over until the last person leaves and the Report of Mediator has been filed with the Court.

The experience continues throughout the day. Continue to check back with both parties to confirm they know where the bathroom facilities are or where they might be able to safely and privately step outside for a phone call, smoke break, or just to get some fresh air. Mediation can be extremely stressful for clients on both sides. I always try to be sympathetic and hospitable, even during difficult negotiation moments.

The Report of Mediator should be done quickly. I always try to have them drafted and filed within 24-48 business hours so the parties can obtain a trial date if necessary. Keep their information and a copy of the Report in your records for a while in case someone calls back with a question later.

As all of you know, there are many good listed Mediators across your state and possibly even in your local community. Attorneys often have multiple choices when they book their Mediations. Not only is it important to book a Mediation the first time, but it's also important to make sure those attorneys KEEP booking you. Retention rates matter, especially in smaller communities where the Bar is only so big.

By implementing these strategies and the Southern Hospitality Factor, I believe you will gain more bookings, get more referrals, and retain stronger attorney relationships over the long run. The litigants will have a better experience, and you will be even more proud of the work you are doing. It's the little things that can ultimately improve the clients' experience and add to your bottom line.

Reputation matters as a Mediator. Why not have a reputation for taking great care of the people that walk in your door? Southern Hospitality is powerful, so go ahead and brew that perfect pot of coffee and start with a smile. The rest will follow!

MORE ABOUT CHARLOTTE U. FLEMING:

Judge Fleming has been a family law attorney for 32 years and is a listed Rule 31 Mediator in the state of Tennessee. She is a statewide Mediation Trainer and owns a successful law firm North of Nashville called The Fleming – Wilmoth Law Firm. She resides in Springfield, Tennessee, and is a local City Judge, author, dog mom, and a proud mother to two grown children.

ARE YOU A TN MEDIATOR? WANT MORE TIPS LIKE THESE? DO YOU NEED CME CREDITS FOR 2019?

Join Charlotte for a **6 credit CME course** in Gallatin, TN on **December 5, 2019**. Fill out the google form here <https://forms.gle/FyCgcT74ZKfQaXqWA> or call us for more information 615-384-7750. Ask for Tally and tell her you were referred by this newsletter!



Featured Mediator

Cheryl C. Panther, CPA/ PFS, ADFA/CDFA



Cheryl is a Certified Public Accountant, TN Rule 31 Listed Family Mediator, and President/Founder of Panther Financial Planning, LLC, a registered investment adviser (TN). She provides divorce financial consulting services and traditional financial planning as a CPA financial planner. Cheryl executes a variety of specialized divorce financial services for clients and attorneys, including support as a neutral financial and tax professional in collaborative divorce, divorce co-mediation, and consulting and testifying in traditional divorce cases. She has a strong belief that divorce is a major life event with legal, emotional, and financial considerations which all need attending. Cheryl is a frequent presenter of training programs for collaborative divorce, mediation, and financial and taxation topics and is a member of the Training Faculty for the International Academy of Collaborative Professionals. <http://pantherfinancialplanning.com/>

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

I provide co-mediation services in family law cases together with Julia McAninch, PsyD. Our mediation clients normally have legal representation, but the attorneys may or may not attend mediation sessions, depending upon the complexity of the case, the wishes of the clients, and our assessment of each client's ability to express themselves in a mediation process. If attorneys are not present, Julia and I make sure they are well-informed about the case and accessible to the clients as needed for appropriate legal information and support.

Julia and I began co-mediating as a natural offshoot of our work together as neutral professionals in the Collaborative Divorce process. We find our collaborative skills lend themselves well to the mediation model. And, our "collaborative style" mediation offers a similar experience to attend to the financial and emotional aspects of divorce, as well as the legal aspects, for families of more modest means.

I also co-mediate with attorney-mediators, particularly for cases in which the family finances are complex, have significant tax concerns, or need some creative, out-of-the-box financial ideas.

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

Education and illustration. Entrenched parties often hold more firmly to their position when told they cannot have something or that a particular decision is not a good idea. I find that asking them to do some research or to imagine how a particular outcome would work in practice, and giving them the appropriate financial and tax information that might inform such a decision, helps clients identify and comprehend financial reality without anyone telling them "no" and being the bad guy. I often educate clients about financial and tax considerations and help them illustrate possible outcomes during mediation so they can make well-informed financial decisions in which they understand the real-life consequences – even when they choose to make a financial decision for a non-financial reason.

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

Julia and I always have a process consultation meeting with the clients to talk about the logistics and client expectations. If the attorneys are not part of those meetings, we will have a brief call to be sure everyone is on

the same page. We establish how communication, information gathering, and legal needs will be addressed at the outset, so expectations are clear for all.

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

Pecuniary Pacificator Panther, Financial and Peace-making Bada\$\$

What is your pet peeve in mediation?

Excessive emphasis on what a particular judge might or might not award. The law and even the predilections of the judge assigned a particular case have their place in the settlement process. But, mediation, a process the parties enter voluntarily, provides the opportunity to make settlement decisions for themselves rather than be subject to what a particular judge might decide on a given day. Divorce is a legal process, and we need to acknowledge that in mediation, but also acknowledge that by choosing mediation the parties have decided they prefer to be in charge of their decision-making rather than a judge.

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

My husband is an attorney and civil mediator. We have two daughters happily adulting (i.e. no longer on our payroll). When our nest became empty, I told my husband we could either get a dog, or he could be the recipient of all my nurturing instincts. Our 15 lb. schnoodle is named Percy. He aspires to be a therapy dog when he is a bit older and no longer in therapy himself.

Why did you become a mediator?

To help families find a better way to approach conflict that does not fan the adversarial flames but instead views divorce as a crisis to be resolved rather than a fight to win. When the crisis is addressed with the right resources, the family can navigate the future from a more positive framework.

What is your favorite mediation read and why?

Recently, I have enjoyed learning about the Enneagram and how it influences the way people approach decision-making and how they show up in conflict. There are many good Enneagram resources. I do not have a favorite. I find it a useful tool to help me meet people where they are and help them process in the way they can best hear.

What are you most afraid of in mediation?

I cannot say I have fears about mediation. I guess that either makes me fearless or I just don't know any better.

How do you debrief yourself after a mediation?

One of the truly helpful aspects of co-mediation is having another professional hold that mirror for you. Julia and I have developed the trust to be very honest with one another and open to the feedback the other offers. We usually allow time after each mediation session to talk about what went well (so we can keep what worked in our toolbox for another time) and where we could have done something differently to better effect.

Personal or professional accomplishments you are particularly proud of:

Definitely proud that my husband and I successfully emancipated our daughters, and that they are responsible citizens of the world. I also feel pride in not only creating a successful solo practice from scratch, but also

doing so by making a priority to help people make thoughtful, well-considered decisions during a major crisis in their lives.

Please complete these sentences:

"I have a burning desire to preach the value of kindness as we move through the world. Kindness costs little but may be priceless to the recipient."

"People tell me I look like my youngest daughter. Or rather, she looks like (younger) me."

"If I could have a 30 minute conversation with anyone (alive or otherwise, famous or not), I would want to speak with.....way too many people to list. I love to listen to people share their stories."

What do you see for the future of mediation?

What I would like to see is more mediation done with all the participants in the same room rather than shuttle diplomacy. The Collaborative Process has a lot to offer the mediation world, both family and civil. My experience suggests such an approach is more efficient and more satisfying to the participants because there is generally less posturing.

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

Maybe. I think I might have decided to go to law school at some point. It was always something in the back of my mind. But I'd still want to be a CPA.

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

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From the Editor's Desk

by Regina B. Newson



On October 11, 2019 ADR put on its 17th Annual Advanced Mediation Technique Workshop. It was well attended. Online Dispute Resolution and its ethical dilemmas was a big issue for the conference. Online Dispute Resolution is the frontier for mediation. All of us to some degree are using the internet to interact with clients via emails, texts, or skyping. With the use of the internet comes questions of security. How secure is your internet? What happens when it is hacked? Who are you going to call for help?

Steve Shields reminded us to be vigilant and stay on our game. Don't make silly mistakes by leaving cases or notes that the mediator has prepared lying around so that a client may view when we are in caucus with another client. This type of behavior can cause the case not to settle.

The Community Mediation Centers did a great job of helping mediators learn techniques for navigating the dos and don'ts of self- represented parties. Remember giving legal advice is a "no..no." Mary Ann Zaha brought us the reality of what happens after the divorce where children are involved. How do we learn to co-parent and communicate? There is a lot of work for mediators who are willing to help people navigate their feelings. Always keep in mind in dealing with families, "what is in the best interest of the child?"

Elder Law is also one of the new frontiers for mediators. Dr. Greer had experienced the problems associated with families trying to make decisions about a love one. She emphasized the importance of creating a will, estate planning, and respect and dignity for the older adult. She encouraged everyone to read the book Being Mortal by Atul Gawande.

Jack Waddy, John Tarpley and Russell Adkins offered good insights into what they are looking for in a mediator for personal injury cases. Mediator needed to know the value of the case, be timely, move the mediation forward, be active and engaged, and a good listener. They also valued a good attitude of the mediator.

It should be noted that attendance at all sessions (totaling 6 hours) of this Workshop will satisfy all CME requirements for a two year period for both General Civil and Family Listed Rule 31 Mediators.



Important News: TAPM has a new number.

615-775-9686



