

## September 2019 NEWS

News from the Tennessee Association of Professional Mediators

### Are We Missing A Piece?

by Regina Newson & John Duval

*Diversity is having a seat at the table,*

*Inclusion is having a voice, and*

*Belonging is having that voice be heard.*

**(Quote Posted on Facebook)**

I have been privileged to attend three mediations regarding bullying and harassment in the workplace in the last month. This made me start to think about harassment and bullying.

#Hashtag Me Too shined a bright light on sexual harassment in the workplace. That light is forcing HR departments across the country to change how they handle sexual harassment in the workplace. It is also making changes in our state laws. All of this is good.

None to these cases involved sexual harassment. The first case involved an older Black female who liked things to be kept clean. She kept the work area clean. The other party white, young male was not as clean. She asked him to keep the area clean. He did not. She then went to the supervisor asking him to talk to the young person. Supervisor did. Young person continued to do as he pleased. She brought up in staff meetings. The management officials surged their shoulders but did not go back to the young person. This went on for over a year. One day she flicked water on him. He went to management and told them that she flicked water on him. They immediately called her in and put her on administrative leave. She would later be terminated for violence in the workplace. In defense she said that she felt bullied, humiliated and harassed by the young person. Management had failed her because they did nothing about his behavior. She had complained to all who should have listened. She had followed the line of command. They refused to hear her pleas.



The second case involved two women and a male. The women had religious differences – one older and the other younger. The younger female was in a less than tolerant sect of their religion. She was constantly belittling the older woman in the workplace, even though the older woman had seniority. The male involved would yell at the older woman. If she yelled back, he would go to management on her. Finally, the older woman complained to management about their behavior. She expressed that she was tired of being bullied in the workplace by co-workers. She had gone to management on several occasions, but management had not stepped up and stopped it. In all truthfulness management appeared not to know how to stop it. The environment had become toxic.

The third situation was a young black man who bullied management. He had a chip on his shoulder and would listen to no one. The only voice he heard was his own. No one wanted to say that his behavior was unacceptable. When anyone tried to talk to him, he would be defensive and get in their faces. Any form of discipline taken against him, he would fight, even when he was wrong and knew he was wrong. One of his female managers even expressed that she was afraid of him.

What I am seeing is that the women and minorities have been given a seat at the table (diversity) but they have no voice (inclusion) and their voices are not being heard (absence of belonging).

I went to John Duval, TAPM President and a therapist. I asked him some questions.

**John, how do we as mediators help those women and minorities at the table be included in the conversation?**

We must all be intentional to promote everyone at the table and value each persons

contribution. According to a recent LinkedIn survey of over 6,000 global professionals, most employees agreed that the following things make them feel like they belong:

- Being recognized for my accomplishments (59%)
- Having opportunities to express my opinions freely (51%)
- Feeling that my contributions in team meetings are valued (50%)

Let's make this true for all women and minorities alike to feel valued and heard. If a mediator is not allowing those to express their opinions freely with due respect to the honesty of the process then they are not acting as a true neutral.

**How do we help those who have been at the table a long time understand that we are not trying to take control of the table but want to share their space at the table?**

It will be through our actions and not our words alone. Trust is earned and easily broken so we must be display to those around us that we believe in the inclusion of all at the table and not just a spec few. We must be proactive in promoting inclusion for all women and minorities.

**How do we give them a voice in the conversation without alienating those who are being heard and remain a neutral?**

Oddly enough it probably begins with giving them a safe, confidential place to speak without fear of alienation. The mediator should be a trained listener and understand the language of the room. There should be not place for a bully if a mediator acts with the authority given to them.

## **John, how do we help all of them feel like they are being heard and have a place at the table?**

I have found the following insightful from Pat Wadors, writing for Harvard Business Review, recommends six simple ways to instill a culture of belonging:

- Introducing someone as a whole person, beyond their roles and responsibilities
- Asking people how they feel—and genuinely listening
- Soliciting input from all in meetings—and not speaking over them
- Delegating tasks in a way that demonstrates trust
- Paying attention during meetings and avoiding distractions
- Sharing stories and encouraging others to share their own

That last tactic can be particularly effective in helping people feel like they belong. Finally, deep down in our soul how would we want to be treated and how can we treat everyone with dignity, respect and honor. There will always be those who are self-centered and self-absorbed but don't let that one taint our worldview of mankind. We must all rise above and stand firm grounded in hope.

---

## **Featured Mediator**

### **J. Maxwell Williams**

Max Williams is a Rule 31 Listed General Civil and Family Mediator and a Florida Circuit Civil and County Mediator. He is a graduate of Vanderbilt University and the University of Florida College of Law. Max began his practice as a trial lawyer in Florida and later moved into corporate practice where he was Hillsborough County Attorney, Chief Group Counsel for W. R. Grace & Co., and General Counsel for the Memphis Light, Gas & Water Division. He is also a Certified Christian Conciliator for the Institute for Christian Conciliation.



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

After retiring from MLGW, I became an arbitrator for the Federal Mediation and Conciliation Service I had always been interested in labor law and had considered working for the National Labor Relations Board after law school. Many of my labor awards have been published in Bloomberg BNA and Westlaw. I also serve on the mediation and arbitration panels of the American Arbitration Association and the Financial Industry Regulatory Authority.

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

Mediators need to listen well and closely observe the parties' body language. They also need to be willing to continue the mediation as long as there is movement toward settlement. Subject matter expertise is also helpful. My mediation style is facilitative but I will be evaluative if requested by the parties in caucus. I will also use a mediator's proposal if requested by both parties as a final attempt to settle the case. My favorite tool is the use of an apology in appropriate situations. It has proven to be powerful in breaking an impasse.

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

I first conduct individual private calls with the attorneys to discuss the strengths and weaknesses of their cases. I will also talk individually with their clients if the attorneys feel it would be helpful and give me permission. Depending on the issues and amount of alleged damages I may also ask for pre-mediation memos.

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

The Impasse Breaker.

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

Attorneys who don't let their clients speak in joint sessions.

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

I have been married to my wife Carol, for 36 years. We enjoy traveling and "doting" on our newly-adopted 10 year old female Boston Terrier named "Bling."

**Why did you become a mediator?**

Although I had been a litigator, I felt that mediation gave parties and attorneys a better and more cost-effective way of resolving disputes.

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

*Getting to Yes* by Roger Fisher & William Ury. Many mediators consider it their "deskbook." Use of the "principled negotiation" principles of the authors helped me become a better mediator and problem-solver.

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

Losing the trust of a party by my comments or actions (often inadvertent) that are viewed as favoring the other side.

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

I ask myself what I did well to make the mediation settle. I also ask what I did wrong to prevent the mediation from settling. I try to use the good points in other cases and avoid the same mistakes again.

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

I was part of a group of Shelby County mediators who started a pro-bono mediation program in Division 4 of the General Sessions Court with the encouragement of Judge Deborah Henderson. Many litigants have settled their disputes without judicial intervention through this program and a number of mediators are fulfilling their Rule 31 pro-bono obligations by serving on our panel. I was also a founding member of the Coalition for Mediation Awareness in Tennessee (CMAT) which presents the annual Grayfred Gray Public Service Award during Mediation Week to a deserving mediator. I also chaired the ADR Sections of the Tennessee and Memphis Bar Associations.

**Please complete these sentences:**

I have a burning desire to see all of the lighthouses in the country.

People tell me I look and sound like the actor, Henry Fonda.

**"If I could have a 30 minute conversation with anyone (alive or otherwise, famous or not), I would want to speak with**

Theodore Kheel, the legendary labor mediator and arbitrator, whose accomplishments included the resolution of the heated and prolonged New York City transit workers and teachers strikes in the 1960's and 1970's." His case studies are models for effective neutrals in any area of the law.

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

Mediation's future is bright. It is being used in new and creative ways to help people resolve and bring closure to problems. Collaborative mediations are being used to settle complex divorce and estate matters. Restorative mediations between victims and offenders in the criminal justice system are bringing closure to both parties.

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

I would choose the law again because of the training it provides and the access to the "decision making process" of any community. Practicing law teaches advocacy, writing, and communication skills which are invaluable in any career path.

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

I have been blessed with good health and a sound mind and plan to be an active mediator and arbitrator as long as I am physically and mentally able.

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

J. Maxwell Williams

7515 Corporate Centre Drive

Germantown, TN 38138

901.737.6480

---

The **17th Annual Advanced Mediation Techniques Workshop** will be held on **October 11, 2019** at Lipscomb University. Please take a moment to review your e-mail settings and ensure the [ADRRegistration@tncourts.gov](mailto:ADRRegistration@tncourts.gov) is a trusted account so you receive important updates.

---

## From the Editor's Desk

by Regina B. Newson

TAPM welcomes John Jefferson, Programs Manager. He advises the ADR Commission and manages the Rule 31 Program. We look forward to working with him.



\*\*\*\*\*

### **Important News: TAPM has a new number.**

**615-775-9686**

\*\*\*\*\*

### **TAPM DUES**

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.

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

\*\*\*\*\*

*This has been reprinted with permission of the Administrative Office of the Courts (ADR) from their ADR FALL 2017 Newsletter.*

### **IMPORTANT DAYS**

**October 10, 2019** - ADR Commission Meeting, AOC- Nashville.

**October 11, 2019** - ADR Annual Workshop, Lipscomb University - Nashville and online live stream.

For a list of approved Continuing Mediation Education courses, please go to:

<http://www.tncourts.gov/programs/mediation/resources-mediators/continuing-mediationaleducation>.

\*\*\*\*\*

### **IMPORTANT NEWS**

**Rule 31 has been amended effective November 1, 2018. The amended rule was published on November 1, 2018 here:**

[//tncourts.gov/rules/supreme-court/31](http://tncourts.gov/rules/supreme-court/31)

To file online mediation reports, go to <https://www.tncourts.gov/programs/mediation/resources-mediators>

\*\*\*\*\*

## 2019 RENEWALS

### Reactivation Reminder

As a condition of continued listing, each Rule 31 Mediator must file an annual renewal form stating that he/she is in good standing with any professional licensing agency or organization, if applicable, provide proof of attendance or completion of required mediation education, and must pay the annual registration fee set by the ADRC.

ADRC Policy states: "...If a renewal application and fee are not received by January 31 for the current renewal year, the Rule 31 listed mediator shall be placed on inactive status. The renewal fee for renewal applications received on or after February 1 for the current renewal year shall be \$200.00." (Adopted 7/29/14)

If you have already submitted your 2019 Renewal Form and Fee, you should have received an email notifying you that your renewal was approved or what additional information is requested. If you haven't submitted the form and fee your listing has lapsed.

**The deadline to reactivate is October 31, 2019 before the new Rule 31 amendment takes effect on November 1, 2019. Inactive mediators who do not reactivate their listing by October 31<sup>st</sup> will be required to re-apply for listing.**

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

If you were initially listed in an EVEN year, please be mindful that your Continuing Mediation Education hours completed during the 2017-2018 period were due by December 31, 2018 in order to renew for the 2019 calendar year.

If you are unsure of your initial listing year, please visit:

<http://www.tncourts.gov/programs/mediation/find-mediator> to search for your listing and view your initial listing year.

You may visit <http://www.tncourts.gov/programs/mediation/resources-mediators/continuing-meditation-education> to view courses that have been submitted by providers and approved for CME credit. Please be sure to look in the Credit Approval column to see what type of CME credit the course will qualify for.

#### ***Please refer to Rule 31, Section 18:***

**(a)** To remain listed by the ADRC, Rule 31 Mediators shall comply with the following continuing mediation education requirements:

**(1)** Courses approved for continuing education under this Rule include but are not limited to, courses approved by the Commission on Continuing Legal Education & Specialization, programs approved by professional licensing agencies, programs provided by not-for-profit community mediation centers and not-for-profit mediation associations.

**(2)** Rule 31 Mediators must complete six hours of continuing mediation education every two years.

**(A)** General Civil Mediators - The six hours shall consist of: (i) Three hours in mediation continuing education, of which at least one hour shall be related to ethics, and (ii) Three hours general continuing education.

**(B)** Family Mediators - The six hours shall consist of: (i) Three hours in mediation continuing education, of which at least one hour shall be related to ethics, and (ii) Three hours continuing education in family law.

**(C)** For dually listed Rule 31 Mediators who were initially listed in the same year, meeting the Rule 31 Family Mediator Listing continuing education requirements will also meet the Rule 31 General Civil Mediator listing requirements.

**(3)** Rule 31 Mediators who are attorneys are not exempt from the continuing mediation education requirements of Rule 31 Section 18(a) as a result of the age exemption for continuing legal education pursuant to Supreme Court Rule 21, Section 2.04(c).

On the renewal forms it is important to remember to provide proof of continuing education hours. ADR asks that providers provide a list of attendees to their classes; however, it is the responsibility of the mediator to provide this proof. It is suggested that all mediators request two (2) copies of hours of attendance - one for their records and one for the provider.

If you have forgotten your username and password needed to submit an online mediation report, please contact Stephanie Brake, Programs Assistant, at (615) 741-2687 or by email at

education [ADRRegistration@tncourts.gov](mailto:ADRRegistration@tncourts.gov). Stephanie is the new Programs Assistant who started at the AOC at the end of October 2018.

\*\*\*\*\*

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

Visit our website