

TAPM PRESIDENTS' MESSAGES



As outgoing President of TAPM, it has been a wonderful year of discovery for me. To understand how vibrant the mediation community is becoming across the state, to experience the passion of mediators for equal access to justice, to learn how mediation has become a vital tool in community as well as litigation disputes are all discoveries, I would be hard pressed to improve upon. Most critically I have discovered that instead of scarcity, mediation in our state faces a future of abundance which few of us would have predicted even a few years ago. However, I most pleased to turn the helm of TAPM over to Richard Murrell. As most of you know Richard helps oversee the largest mediation practice in the state: the Tennessee Workers' Compensation benefit review process in which all of

the benefits specialists are Rule 31 trained mediators. Our future is in great hands and the mediation community is vibrant, healthy and growing. Please give Richard your full support.

[Larry Bridgesmith](#)
[TAPM President 2010-2012](#)



As the incoming President of TAPM, I am both honored and humbled. Since its inception, TAPM has had the benefit of outstanding leadership and an enthusiastic membership. Each year has brought additional value to the members of the organization and, increasingly, a deeper value to the statewide community of consumers and providers of mediation services. I hope to be a part of continuing the history of progress as TAPM reaches out in 2011 to fulfill its mission. There is a rising awareness with the public in general of the field of dispute resolution though consensus building, through achieving greater levels of understanding and through strategies that reveal interests and that motivate durable agreements. That awareness betrays the deeper desire for a more satisfying and efficient method of managing the relationships,

business or personal, that have become interrupted. It is time to take advantage of this desire and this rising awareness to advance the field of mediation and the role of TAPM mediators in particular. Together, we can do this.

[Richard Murrell](#)
[TAPM President 2011-2012](#)

MARCH 2011

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MEET THE MEDIATOR**MARNIE HUFF**

Marnie Huff is a Tennessee Supreme Court Rule 31 Listed General Civil Mediator, a licensed attorney, and a subject matter expert in Workplace Conflict Management Training certified by MTI, Inc.

A graduate of Smith College (B.A. 1972) and Vanderbilt University School of Law (J.D. 1976), Marnie has more than 30 years of litigation experience in government service and private practice, including appellate litigation in state and federal courts, bankruptcy reorganizations, and complex state tax litigation.

She has taught ADR (negotiation, arbitration, and mediation) and Legal Writing and Research as an adjunct professor at Middle Tennessee State University.

More about Marnie is on her website www.MargaretHuffMediation.com

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

To break impasse: be aware of light and light responses to conflict; step back and assess; figure out an open ended question to ask, such as "Tell me about your _____" (fill in the blank with "business," "family" or whatever you think will encourage communication among the parties).

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

Sorry, nothing comes to mind. I would need to brainstorm with someone.

What is your pet peeve?

People who don't listen attentively (have to admit, sometimes that's me).

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

I'm married to Ted Carey who is a rabid sports fan. We had a close call earlier this year when we thought my Chicago Bears might meet his New England Patriots in the Super Bowl. More unlikely is Cubs v. Red Sox in the World Series, but we Cubs fans can always dream . . . My stepson Alex and his wife Christy live in Nashville. We have a demanding cat named Steinbeck. A sign in the kitchen says, "Dogs have owners; cats have staff."

What are your hobbies?

I enjoy reading books - recent favorites are *Room* and *Major Pettigrew's Last Stand*. I love walking at Radnor Lake and the Cheekwood sculpture trail. I wish I had more time for artsy-craftsy projects.

Why did you become a mediator?

I liked "kicking butt" about once a year as a litigator, but discovered that mediation is a better path for many litigants and most other folks in disputes.

What is your favorite mediation read?

Andy Little's *Making Money Talk*. clear, concise, convincing advice.

What is your phobia?

Violent movies. Trailers for violent movies are even worse.

What is your favorite vacation spot?

Memorable honeymoon in Ireland . need to go back and wander around with Ted again!

(HUFF Continued from page 2)

Personal or professional accomplishments you are particularly proud of:

Something my mediator friends may not know - I successfully defended the constitutionality of certain provisions of the Bankruptcy Code in the U.S. Court of Appeals for the 6th Circuit, while serving as an Assistant U.S. Attorney.

More recently, I've co-chaired the Ethics Committee of the American Bar Association Section of Dispute Resolution for the past few years. During my tenure, we launched the ABA National Clearinghouse of Mediator Ethics Opinions, a free online database described in my article "The 5th Step: ABA ADR Ethics Resources," published last June by Mediate.com at www.mediate.com/articles/huffM1.cfm .

Locally, I spent the last couple of years spearheading a collaboration between the Girl Scouts and the Lawyers Association for Women on the Win-Win negotiation badge designed by Linda Babcock, author of *Ask For It*. It all came together in February 2011 at a great event with the Girl Scouts earning their badges.

Last but not least, I walked two half marathons in the past few years.

Where are you from and how did you end up in Nashville?

As hinted above, I'm from the Chicago area, born in Evanston, Illinois. After college and working for a year as a receptionist at a mega-law firm, I left my home town to go to Vanderbilt Law School.

Please complete these sentences:

%I have a burning desire to make mediation financially viable for many, not just a few, professional mediators.+

%People tell me I look like my mother, who is going strong and looks terrific.+

%If I could have a 30 minute conversation with anyone (alive or otherwise, famous or not), I would want to speak with anyone who wants to tell some good stories and laugh with me.+

What is your favorite TV show?

The evening news hour on Public TV. Don't get me started on the amusing but wildly inaccurate show *Fairly Legal*. If it's a vehicle for product placement, I suppose it's pushing use of cell phones while jay walking in San Francisco.

What is your favorite food/restaurant?

I'm a mediator, so I let you consider some restaurant options - breakfast, lunch or dinner:

- Garden Brunch Café on Jefferson Street . awesome pancakes, egg dishes, and fruit tea (currently only open Fridays and weekends);
- Picnic Café near the Publix past St. Thomas Hospital . after ordering your lunch, be sure to buy some dinner rolls to go;
- Firefly in the Green Hills area . cozy, fun atmosphere with Mardi Gras beads hanging from the ceiling and well-prepared meals.

What is your favorite flavor of ice cream?

Whatever Ted has in the freezer, with chocolate sauce and %healthy fruit and walnuts+on top.

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

Law and mediation have been good for me, learning from the joys and sorrows of this career path, so no change there. But, knowing what I know now, I would have done a better job negotiating salaries.

Summary of Grievances Filed with the ADRC

by

[Hayden Lait](#)

Below is a summary of the ethics complaints that have been filed against mediators with the ADR Commission. There have been 10 ethics complaints filed. They are summarized below.

3 involve what the mediator either reported or threatened to report to the courts. Rule 31 is very specific what the mediator may report and to go beyond those limitations maybe a violation the Rule.

The rule states as follows:

Section 5. Reports.

(a) The Order of Reference shall require the Rule 31 Neutral to file a final report pursuant to Rule 5.06, Tenn. R. Civ. P., with the court at the conclusion of the Rule 31 ADR Proceeding. The final report shall state only(emphasis added): (i) which parties appeared and participated in the Rule 31 ADR Proceeding; (ii) whether the case was completely or partially settled; and (iii) whether the Rule 31 Neutral requests that the costs of the Neutral's services be charged as court costs.

The others involve alleged statements made by the mediator to the parties. I say alleged, because, as we all know, what we say and mean and how it is perceived by the other is not always the same. Lessons learned from these is to be sensitive to our body language, tone of voice, and the perspective of the parties.

- **Complainant alleged that mediator violated Rule 31 confidentiality and reporting requirements by writing a letter to the judge disclosing certain facts about the mediation and the mediator's opinion regarding the mediation. Clear violation of Rule 31 section 5. Mediator's Rule 31 status was suspended for 60 days.**
- **Complainant alleged that mediator threatened that he would lose his children to family members if he did not cooperate and said that her opinion of him was a huge determining factor considered by the court.**
- **Complainant alleged that mediator wasted mediation time by giving complainant parenting advice and discussing other issues that were not relevant to the case. Complainant felt mediator was biased against complainant because of mediator's recent divorce and custody issues.**
- **Complainant alleged that mediator allowed GAL and legal secretary to sit in on mediation, relying on GAL's recommendations and input during the mediation. Mediator also urged complainant to seek counseling and recommended a personal friend who would give a discounted**

(SUMMARY OF GRIEVANCES Continued on page 5)

(SUMMARY OF GRIEVANCES Continued from page 4)

rate for the counseling. Mediator would not allow the two parties to communicate during the mediation.

- Complainant alleged the following violations of Rule 31: mediator gave legal advice to parties regarding division of property; mediator handwrote the agreement and included discrepancies in it; mediator handwrote the receipt; mediator's reports were not timely filed; mediator failed to sign the parenting plan; mediator refused service of process.
- Complainant alleged that mediator held them self out as an attorney but had never passed the bar and was therefore in violation of Rule 31.
- **Complainant alleged that mediator was impartial and unfair during mediation, making racial comments about the parties non-American heritage and its influence on his children.**
- Complainant alleges that mediator advised the other party to seek a restraining order against her and to tell her father of her actions so to embarrass her.
- Complainant alleges that the mediator was not neutral, was pushy, judgmental, not negotiable, etc.
- The complainant alleges the mediator was dishonest about the mediation and should not have disclosed facts about the mediation and the mediator's opinion regarding the attorney to the judge presiding over the case.

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TAPM ANNUAL 2011 MEETING



Erica Fox was the guest speaker for the TAPM Annual Meeting. She is based in Boston and Amsterdam. She worked with the Harvard Negotiation Project, before joining Mobius Leadership. She works primarily with large corporations, consulting with them on negotiation and conflict resolution, while she is finishing her book, **Beyond Yes, Seven Steps to Successful Negotiation**. Her presentation revolved around the mediator in terms of who he/she is. As I watched the people in the audience some were uncomfortable with having to think about who they are in relationship to their

clients. Others responded well to having a framework within which to work as a mediator to use all the parts of his/her personality, the warrior, the sage, the lover and the prophet, as we dream, feel, think and do.

The Beyond Yes Method is the process of learning to negotiate effectively with yourself in order to negotiate successfully with others. Each of us must begin this process by strengthening our core. The core is your center. The seven-step process is based on over a dozen years of teaching negotiation at Harvard Law School and training thousands of people around the world to transform conflicts. This professional training and personal journey explores the interplay between best practices of negotiation and insights of the great wisdom traditions, moving us from competence toward mastery. From working well with clients and colleagues to living well with our family and friends, this program gave us the insights and skills we need to turn stressful situations into success and satisfaction.

The seven steps are 1) Take a Pause 2) Invent Future Possibilities 3) Consider all Perspectives 4) Connect with People 5) Deliver a strong Performance 6) Lead with Presence 7) Pay it Forward Each of these seven steps could be a chapter by themselves. Ms. Fox focused on Step 1: Taking a pause, breaking the cycle of reactivity. We are constantly being stimulated and have an unconscious reaction. She wants each of us to stop, become aware of the stimulus, then begin the process of making choices/take action . but a conscious action. This is very hard, it demands that we access our surroundings, determine what our reactions are, and ask and answer if you will what our reactions are to our surroundings. In order to do this we have to listen to our internal voices and look to what other people are thinking and feeling but not saying. Our internal voices are never silent. These voices are constantly saying, %think,+%want,+%feel,+and %should do this or that.+ Instead of giving our usual reaction, we are now being asked how the out come would have been different if we had made a choice to listen and use another internal voice instead of the one we are comfortable with. In order to become a master negotiator, we need to keep our negotiation skills in balance, inflating and deflating each part of out personalities, as we approach each part of the negotiation. In order to practice these skills, we did a lot of interactive small group work, which helped introduce these skills to us and how to use them. In the end, we are striving to

achieve a wholeness, which brings us flow, presence, being in the zone, passionate job, a great result and a durable outcome.

We all look forward to seeing her book come out in print, so we can capitalize on these skills in our everyday mediation. We also wish her well in her upcoming nuptials in Amsterdam and Boston.



TAPM held its annual meeting in Nashville, TN at David Lipscomb University. Our new President is Richard Murrell (Nashville); President Elect is Steven Shields (Memphis); Secretary is Jay Barry (Lebanon), Treasurer is Clayton Osborn (Nashville), other members Doug Berry, Howard Vogel, Tiffany Cox Baker and John Blankenship.



Pictured Left to Right:

Larry Bridgesmith, Clayton Osborn, Richard Murrell, Doug Berry & Stephen Shields

GRAYFRED GRAY AWARD

The Coalition for Mediation Awareness in Tennessee (CMAT) presented the Grayfred Gray Public Service in Mediation Award to Shelby R. Grubbs and Robert Murrian on February 24, 2011, recognizing their innovative and lasting public service contributions through alternative dispute resolution in Tennessee.

The award is named after Emeritus Professor Grayfred Gray. During his 28 years as a member of the faculty at the University of Tennessee College of Law, Grayfred Gray practiced as a mediator and was the founder of the well-regarded UT mediation clinic and other programs in which law students mediated cases referred by Tennessee courts and federal, state and local agencies.



**Pictured Left to Right:
Marnie Huff, Robert Murrian, Shelby Grubbs and Marietta Shipley**



COMMUNITY MEDIATION SERVICES ANDERSON COUNTY

Community Mediation Services opened its doors in Anderson County in 1986 as the first mediation center in the state. 25 years later CMS has been instrumental in helping many other centers in the state get established. From the beginning VORP, Victim Offender Reconciliation Program, has been the main program joined by Teen and Parent Mediation in 1998 and a Visitation mediation program in 2004.

Although VORP referrals can come from any court CMS got its start working with the juvenile justice system and today this is still the primary referral court. VORP allows the victim to come face to face with the offender with the objective of reconciliation. The focus is on healing and closure. In Teen and Parent mediation the goal is to assist teens and their parents in finding a common ground to improve their communication around family issues. Visitation mediation primarily works with never married or post-divorce parents to establish or modify a parenting plan.

We currently have 28 community volunteer mediators. Each mediator receives 12 hours of basic training and 18 hours of program specific training for each program they wish to mediate in. CMS, like other nonprofits, has found the current economic climate to be a challenge. In recent years, funding from the Administrative Office of the Courts has decreased considerably, as has county funding. Currently CMS relies on grants, fundraising and individual contributions to be able to continue to offer our mediation services pro bono. Having dedicated volunteer mediators as the backbone of CMS, is something we do not take lightly and is the primary reason for our longevity in the community.

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ANNUAL MEETING PHOTOS





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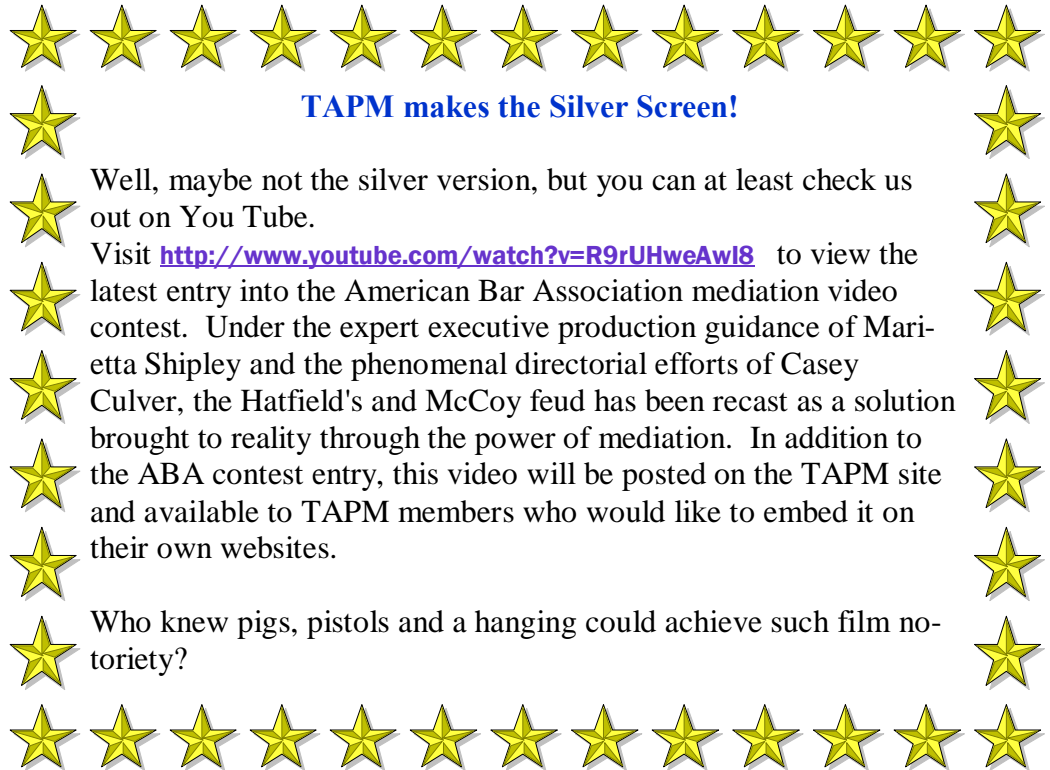
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THE SUPREME COURT REPEALED ITS RULE 37

The Supreme Court repealed its Rule 37 which required post appeal mediation in all workers' compensation cases. This does not mean mediation cannot take place, but only that it is not mandatory. In my experience, a small but significant percentage of cases benefitted by the post-appeal mediation. It would be part of the best practices for attorneys and their clients to evaluate the cases and utilize mediation each time there is a possibility that creative problem solving can eliminate costs and promote resolutions.

Here is the link to download the order:
<http://www.tsc.state.tn.us/OPINIONS/TSC/RULES/2011/Order Repealing SC Rule 37.pdf>

Suggestion for a Good Read:

Thinking Like Non-Lawyers: Why Empathy is a Core Lawyering Skill and Why Legal Education Should Change to Reflect Its Importance (October 16, 2010). By Ian Gallacher

Available at

http://papers.ssrn.com/sol13/papers.cfm?abstract_id=1693146