

# *Update*

Spring 2015

## **Joint Sessions in Mediation - “Prisoners’ Dilemma” or an Opportunity for Better Outcomes?**

By Sasha Philip

One of the panel presentations at last month’s ABA ADR Conference in Seattle led me to wonder whether attorneys perceive mediation negotiations, especially in joint sessions, as a type of “Prisoners’ Dilemma.”

You may recall the setup for this classic example of game theory. Two co-conspirators (A and B) are arrested and held in separate cells with no means of contacting the other. The prosecutors do not have sufficient evidence to convict the two on the principal charge, so they offer each prisoner a deal: Betray the other in exchange for a lesser sentence.

If A and B both remain silent, they will each serve 1 year in prison on a lesser charge.

If A and B betray each other, each of them will serve 2 years in prison

If A betrays B, but B remains silent, A will be set free while B will serve 3 years (and vice a versa)

As such, the best individual outcome (freedom) can only be achieved if one betrays the other, and only if the other does not do the same. Because this is true for both parties, the most likely outcome is that they will betray each other, resulting in a 2-year sentence for each. The best mutual outcome (a 1-year sentence) is achieved if the parties cooperate with each other and both remain silent.

It is no secret that most mediators are proponents of joint session work, while the majority of litigation

attorneys are not. When the initial framework within which attorneys and parties approach negotiations in mediation is mistrust, it may seem most effective to remain in separate rooms, be aggressive, posture and make few or no concessions. Conversely, it may seem naive to trust your negotiating partner by revealing underlying interests or make a gesture of good will in the hope of reciprocation. This turns mediation into a zero-sum game – one side can win only if the other side loses.

However, if the mediator uses joint sessions wisely, and properly prepares the parties, there is a high potential for a productive and beneficial exchange of information. The joint session can eliminate the specter of the nameless faceless “other” who can be blamed and vilified. Parties have the opportunity to speak to each other directly across the table, discovering interests that can often be addressed without giving up much or anything of substantive value. This lays a solid foundation for negotiations.

Indeed, mediation practitioners report that over-performance (*i.e.*, making more generous offers than are expected by the other side) is generally reciprocated. In this, mediation is very different from the “Prisoners’ Dilemma”, because there is an opportunity for direct communication. If the parties enter the mediation willing to listen to each other and – at least initially – give each other the benefit of the doubt, they may find that they can achieve more of their goals by working together than each of them could achieve individually.

# Foreclosure Mediation Program Enters Its Fourth Year

By Ivy Roberts

The Bellevue Neighborhood Mediation Program is entering its fourth year as a participant in the Foreclosure Fairness Program. The FFP provides assistance in the form of mediation to homeowners who find themselves behind in mortgage payments. The intent of the program is to avoid unnecessary foreclosures. The mediation process provides a platform for banks to evaluate whether it is in their best financial interest to offer a loan modification to homeowners or move forward in the foreclosure process.

The majority of homeowners who find themselves in default, have experienced an unforeseen hardship. Common hardships include unforeseen medical expenses, loss of job, and caring for an aging relative. Through this program, mediators have helped banks and homeowners negotiate loan modifications that allow them to stay in their homes. When a loan modification is not possible, the homeowner is often able to negotiate a non-retention option that includes selling the home, short sale, or a deed-in-lieu of foreclosure.

Recently two of our mediators helped facilitate a loan modification between the bank and an el-

derly woman who had experienced the unexpected loss of a spouse and found herself overwhelmed without her long term partner. The woman was able to stay in her home and had a plan to become current on her mortgage. Had she not been able to negotiate the loan, it may have been difficult for her to secure affordable housing.

Over the history of our foreclosure program, the Bellevue Mediation Program has closed 95 cases, and 49 of these have closed with agreement (52%).

Of our cases closed with agreement:

- ◆27 have resulted in modifications
- ◆8 have been reinstatements (often with a payment plan)
- ◆9 have resulted in sales (often not short sales)
- ◆5 have been “other” (e.g. foreclosure moving forward but homeowner agreed this was best non-retention option).

Overall, these numbers are better than the statewide averages for the program, and demonstrate that the foreclosure program is making a difference for vulnerable homeowners.

## Creating Value from Cultural Differences in Mediation

By Jay Shukla

Successful mediation comes when differences can be reconciled into something new. Imagine mediating between an ethnic Japanese an ethnic Turk, with an ethnic Hispanic as co-mediator and an ethnic Indian observer. Fanciful scenario? Think again.

Never before has the North West experienced such a richness of cultural diversity as now. If over 80 languages are being spoken in Bellevue schools and close to 33% residents being foreign born, it is likely that you will face a culturally complex situation sooner or later.

How confident do you feel, to be able to reconcile cultural differences amongst antagonists and man-

age your own mediation team relationships?

Please come to my June 10th in-service, which builds on the knowledge offered through Conciliation or Basic Mediation trainings.

You will:

- Exchange your stories of work based cultural differences with fellow attendees.
- Expand your cultural vocabulary to interpret the world around you with.
- Practice communicating, evaluating, deciding, persuading in a mixed cultural context.
- Take away some resources to apply to your next real life experience.

## Parent—Teen Update

By Galit Arad-Trutner and Pam Orbach



The Parent Teen mediation program has much to celebrate. Our Teen mediators who are about to graduate have been indispensable. Thank you to Alexandra, Derek, Mark, Ahrif, Cannon, Marie, and Merrill, who have given hours of their time to supporting families in crisis, engagement workshops for the Bellevue school district to support truant youth getting the support they need to stay in school, and for supporting Galit and Pam with communication workshops and school engagement. You have contributed hugely to the success and expansion of the program. We wish you success as you graduate and move on to your next adventure. It has been an honor to work alongside you.

Our newer mediators have begun mediating their first cases. Well done to Edwin, Elaine, Zach and Daniel. Others in the program are observing and preparing to step up. Pam and Galit have been busy supporting parents at university evenings at various schools, running parenting and communication workshops for PTA's and for students in schools. Momentum is growing and there are requests for a sharing of skills and tools for compassionate communication. We are excited by all the possibilities to grow and contribute. We welcome and support families who would like to have a freer flow of communication, understanding and care. Please call for more information. 425-452-4091.

## BNMP Training Opportunities For Mediators and Conciliators

### Combined Parent-Teen & Neighborhood Program In-Services:

#### Creating Value from Cultural Differences

Wed., Jun. 10, 4:30-6p.m. in room 1E-112

*Our own Jay Shukla will be presenting us with some intriguing cross cultural dilemmas in mediation.*

*Refreshments served beginning at 4p.m.*

#### BNMP Volunteer Appreciation Picnic

*Thurs., July 9, 4-7p.m.*

*Kelsey Creek Picnic Shelter*

**Save the Date!**

**Bellevue Mediation Program**

**20th Anniversary Celebration!**

*April 20, 2016*

#### **Program Staff:**

Program Co-Manager:	Cheryl Cohen	-	452-5222
Program Co-Manager:	Andrew Kidde	-	452-5288
Program Assistant	Natalie Daniels	-	452-2897
Foreclosure Case Manager	Ivy Roberts	-	452-4118

City of Bellevue website: <http://www.bellevuewa.gov>  
(Look for the Mediation Program under "Neighborhood Information")

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## Congrats to the Basic Mediation Training Class of 2015!



From left to right: Yuriko So, Clell Mason, David Walker, Leslie Miller, Cecilia Martinez-Vasquez, Karie Stearns, Lisa Snyder-Stone, Sean Bratner, Ajit Sukesan, Angela De La Hoz, Beth Crowder, Marie Jensen, Kristina Thurstonson, Jocelyn Beyer-Harris, Christian Knight, Kathy Vargo, Jay Shukla, Christopher Lee.  
Not pictured: Kathi Anderson, Osha Morningstar

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### **BELLEVUE** **NEIGHBORHOOD MEDIATION PROGRAM**

City of Bellevue Department of Planning and Community Development  
P.O. Box 90012 Bellevue, WA 98009-9012