

# Update

March 2010

## The Color Purple

By Erin Kenway

Jack and Jill live on a hill in beautiful Bellevue. Next door live Sally and Sam. In their community, a covenant states that homeowners can only paint their houses in “neutral, earth tones,” and must seek approval by the Homeowners Association (HOA) for any exterior color changes. Jack and Jill paint their house purple. They do not ask the HOA for permission, in fact they don’t even recall that there are restrictions. Sally and Sam are not happy about this purple eyesore next door and complain to the HOA.



leader for this neighbor dispute, often resulting in a lawsuit filed against the “bad” homeowner to enforce the covenant.

### **The Paper Tiger**

Many people in these situations assume that a court can “fix” problems; a misnomer for “enforce” a covenant. Most lawsuits filed to enforce a covenant seek equitable relief – the complaining party asks the court to order the other party to do, or cease doing, something (known as issuing an “injunction”). Injunctions are expensive to obtain and only provide a

### **What is a covenant?**

A covenant is a contract between landowners that is “attached to the land.” This contract is a mutual promise between the landowners not to exercise certain property rights. Covenants are recorded with the county records department. Covenants “run with the land,” meaning that a buyer of land steps into the pre-existing contract and is bound by its terms. Most people don’t read the covenants disclosed by the title company prior to completing the purchase of a home. And even if the buyers read the covenants, they often see them as a list of what their neighbors can’t do. But a covenant is a two-way street, and all the neighbors who have one must abide by its terms. Some homeowners assume that if they live in a community of “just neighbors” (meaning - no HOA) that they can use their land anyway they want. In fact, most homes have some covenants (they can be found in the deed to the home) and homeowners need to be aware of them.

temporary solution. They usually expire within 14 days, but can last as long as a year. But in reality, a court order only raises the stakes. Our rule-breaking neighbors, Jack and Jill, can still *choose* not to comply with the court order requiring them to repaint their house. Sure, they face fines from the court for non-compliance, but it is still their choice. So, frustrations mount, tempers flare.

### **Litigating principles**

While a lawsuit can help disputing neighbors clarify the meaning of a covenant, it does so at a steep price. Often people approach lawsuits with the mentality that “I’m right and the judge will see that!” It is human nature to defend our castle. We are hard-wired to stand up to bullies. So when Sally and Sam complained about the purple house, Jack and Jill’s natural reaction is to defend their actions against this “bully.” So, neighbors in these disputes tend to dig in their heels and stay fixed on their position, continuing with litigation for “the principle of the thing.” Here, Jack and Jill believe that purple is a “neutral, earth tone” – after all, purple is a naturally occurring color as evidenced by their favorite flowers. Sally and Sam believe “neutral, earth tones” to be calm, warm tones of greens, blues and browns. They are highly offended by the “garish” purple tone chosen by their tacky neighbors. Principles can be expensive -- a lawsuit over covenants can cost up to \$100,000. When a Board brings the lawsuit on behalf of the members, the members are forced to pay for these principles.

### **Enforcing the promise**

Neighbor-to-neighbor disputes involving HOAs are more complicated than the average neighborhood dispute over a tall tree or a fence boundary. Complications develop as homeowners get entangled in triangulated disputes involving the “bad” neighbor, “good” neighbor, and the Association. The Association’s Board of Directors has a fiduciary duty to enforce covenants, by imposing a fine or bringing a lawsuit, on behalf of the membership. Because the Board feels legally obligated to enforce, these disputes quickly escalate emotionally and financially. The Board inadvertently becomes the ring-

### Shifting interests

Parties fixated on short-term interests are trapped in the emotional aspects of the non-compliance. Pride and principle become overarching interests. But “the principle of the thing” often ends up being a luxury the community can’t afford. Lawsuits over covenants may continue until one side can’t afford to be anything but rational and compromising. The alternative is not only expensive, but also risky. Here, a judge may find either way – purple is “an earth tone”... or maybe “not an earth tone”! In the courtroom, the parties play Russian roulette with the judge’s subjective interpretation.

In mediation, on the other hand, parties keep control over the outcome. Mediation allows parties to vent, reflect, better understand their options, and sometimes better understand the perspective of the other side. They have the opportunity to disengage from their emotionally locked-in positions, which in turn opens the door to creative solutions. Mediators help this process by shifting the disputing neighbor’s interest from the short-term to the long-term and paving the path to discover a reasonable solution.

### Building communities with shared interests

Reality testing is an important tool to help the parties shift their interests. Respected eastside attorney Terry Leahy shared a test he uses during a recent training. He called it the “Tom Hanks Test:” ask the complaining individual to replace the “bad neighbor’s name” with “Tom Hanks” in discussing the actions that the individual found so offensive. The hope is that by simply replacing the name, the complaining individual will reexamine their own response and see the reasonableness of the other party’s action. In this case, if Tom Hanks painted his house purple, would that be so unreasonable? By using this test, the parties may see that it isn’t the *color* purple as much as it is the *shade* of purple used. The parties could come to a mutual agreement that a softer lilac color would be more suitable toward the community’s overall aesthetic appeal. Role-playing is another great tool to use during mediations involving covenant disputes. Likely most effective during a caucus, role-playing allows the party to put themselves in the other person’s shoes and understand why or why not the proposed action is reasonable.

### Social capital

Personal relationships can motivate people to do the right thing, while words on a page are rarely as effective. Lawsuits are divisive -- harming relationships and leading to a Wild West mentality, the good versus the bad. Mediation goes the other way, by highlighting the importance of investing in personal relationships even in times of disagreement. Interest-based negotiations result in better outcomes because they focus on the social capital. In litigation over the color purple, Jack and Jill would be pitted against Sally and Sam, resulting in acrimony and bitterness. It sounds ridiculous, yet such disputes go on in every community. Eventually, the negative emotions about the community begin to corrode the overall feeling of home. In some cases, one or both neighbors end up moving to get away from the negative feelings about their home and community. Our job as mediators is to help the parties focus on building communities rather than burning bridges in a courtroom, so that both neighbors feel like coming home.

## VOLUNTEER NEWS

### ***New Conciliators:***

Mike Brown  
Peter Sugarman  
Michael Kenway

### ***Moved into Observation Phase:***

Celia Sekijima  
David Gorney  
Perlas Sapida

### ***Moved into Co-Mediation Phase:***

Catherine Zimmerman

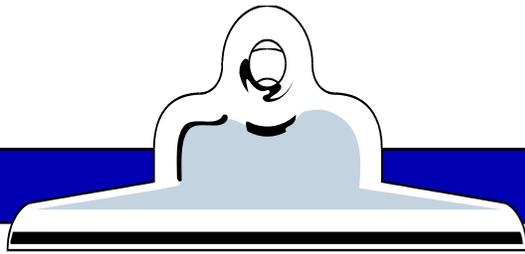
### **Happenings in the Mediation Program**

*Diversity Outreach Program* continues... Cheryl and I have been busy with this effort. We’ve been to churches, synagogues, mosques, community groups. We’ve made a special effort to recruit a diverse pool for the upcoming mediation training. The next in-service is a follow on exercise from Nina Meierding’s cross-cultural communication training.

*Youth and Conflict: Needs Assessment* launched... Jenny Winkler, one of our parent-teen volunteers, is helping with this needs assessment. So far she has interviewed staff at DRCs around the state, and has identified an intriguing variety of youth programs: parent-teen, peer mediation, Victim Offender, training... The next part of this project is a series of interviews with officials from Police, the School District, and youth programs to discover what needs they see for helping youth handle conflict. ... Stay tuned!

*Coordination with Code Compliance and Police* launched... Police, Code Compliance, and Mediation sometimes find themselves working on the same neighborhood situation -- typically an individual has made multiple complaints. Mediation staff believes that our three departments could have a coordinated response to these situations. So, we are beginning a conversation with Police and Code Compliance regarding what kind of additional training and process will help us serve these neighborhoods more effectively.





## Parent—Teen Update

By  
Cathy Goldman

The program continues to do well. We are helping the Bellevue School District facilitate a problem solving process for truant students and their families. Our mediators are listening and helping these families find options that will increase school attendance. Thanks to all who have volunteered to help out!



I am also actively recruiting both teens and adults for our June training. I will be visiting many high schools this month to recruit new teens for our training.

Our April in-service training will take place at Bellevue City Hall on April 14th from 6 to 8 pm. We will do "Mock Mediations" so we can keep up our skills. Come ready to take the role of mediator or play a parent or teen!

Hope to see you all after your Spring Break!

## **BNMP Training Opportunities For Mediators and Conciliators**

### *Neighborhood In-Service Training:*

**Follow up to the Nina Meierding Workshop, with a Negotiation Exercise**  
with Cheryl Cohen and Andrew Kidde  
(don't need to have attended Meierding Workshop)  
Tues. Mar. 23rd, from 6:30-8 PM in room 1E-112

### *Parent-Teen In-Service Trainings:*

**Mediation and Meditation: How They Relate**  
with Gwen Jones and Cathy Goldman  
Wed. Mar. 17th, from 6-8 PM in room 1E-120

**Mock Mediations** with Cathy Goldman  
Wed. Apr. 14th, from 6-8 PM in room 1E-112

### *Mediation Trainings:*

#### **Basic Mediation Training Spring 2010**

Wed. *April 14* 5:00 pm — 9:00 pm  
Fri. *April 16* 9:00 am — 5:00 pm  
Sat. *April 17* 9:00 am — 5:00 pm  
Wed. *April 21* 5:00 pm — 9:00 pm  
Fri. *April 23* 9:00 am — 5:00 pm  
Sat. *April 24* 9:00 am — 5:00 pm  
Cost: \$250

#### **Parent-Teen Mediation Training 2010**

Mon. *June 21st* through Fri. *June 25th*  
8:30 am — 5:00 pm each day

#### **17th Annual Northwest Dispute Resolution**

**Conference:** UW School of Law, Seattle, WA  
Fri. April 30th and Sat. May 1st  
[www.mediate.com/nwadr](http://www.mediate.com/nwadr)

#### **Moving Beyond Impasse:**

**How Dialogue works at the Mediation Table**  
With Bob Stains, Regina Lyons, and Ann McBroom  
Thurs. April 29th, noon — 5:00 pm  
Cost: \$95.00  
[www.publicconversations.org/workshops](http://www.publicconversations.org/workshops)

#### **Program Staff:**

Program Co-Manager:	Cheryl Cohen	-	452-5222
Program Co-Manager:	Andrew Kidde	-	452-5288
Program Assistant	Gwen Jones	-	452-2897
Parent-Teen Coordinator:	Cathy Goldman	-	452-4091

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

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*Volunteer Profile:*

**John Farver**



I was an air traffic controller for several years before becoming an attorney 22 years ago, and retired from the law 4 years ago to spend more time with my family. Since then our last child left home and I found that I did not feel very productive. My neighbor Henry Smilowicz told me about the Bellevue Neighborhood Mediation Program and recommended that I sign up for the training in April of 2009. After litigating and mediating legal disputes for over 20 years I figured that there was not much I didn't know about problem solving. I could not have been more wrong. I realized that I knew nothing about finding solutions to disputes between people who would continue their relationships for some time after their immediate dispute was over. The mediation training gave me a new sense of what was needed to really bring people together and deal with real issues rather than simply solving a problem. I was so re-energized that I started a new law practice representing consumer debtors in bankruptcy in order to continue helping people professionally as well as volunteering here. I only hope I can pick up the skills necessary to be an effective mediator like my friend Henry.

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**BELLEVUE  
NEIGHBORHOOD MEDIATION PROGRAM**

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