

VERDICTS & SETTLEMENTS

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The Writing On the Wall

With pen, paper and poster-sized lists, Gretchen W. Taylor helps her clients see where there's room for agreement in tough mediations.

By Susan McRae
Daily Journal Staff Writer

LOS ANGELES — After a career as a social worker, a divorce lawyer and a family law court commissioner in both Riverside and Los Angeles counties, Gretchen W. Taylor has turned over a new chapter in her life as a full-time ADR neutral.

ADR Profile

Many lawyers who have dealt with her over the years in her various capacities say she's finally hit her stride.

"I think she has come into her own, even more so off the bench," family law attorney Stacy D. Phillips said. "She has enthusiasm, integrity, creative ideas, and now that she's off the bench and not handling 150 cases a day, she has the time to utilize those resources."

Taylor would agree. She said she's been able to take a bit from

each of her previous incarnations and put them to good use.

"I'm not a young person, but I am a young person," Taylor, 64, said, sitting in the conference room of the downtown office of Alternative Resolution Centers, which she joined in April 2009.

"I've kind of started this new phase of my career with a blend of what I've learned about adult learners and what I've learned from the 19-year-olds in my life and from all those in between," the divorced mother of five now-adult children said.

Big on her list is the advice she received teaching judges at the Administrative Office of the Court's judicial college. She said instructors there found that adult learners retain information better through PowerPoint presentations or other visual means rather than listening to a panel of talking heads.

Taylor has incorporated that concept into her mediations.



Susan McRae / Daily Journal

cept into her mediations.

Excusing herself, she returns with a poster-size tablet of Post-its. She explains that ARC always keeps a supply on hand for her. Ripping off a sheet, she slaps it on the wall and, with a hot pink felt marker, writes "Agenda" across the top. Below she lists bullet points, like child support, custody, attorney fees.

When parties come to mediation, Taylor explains, she usually puts them in separate rooms. After a

brief introduction, she starts listing their problems on a large Post-it. She then carries the tablet with the information into the other room and repeats the process, using different colored markers for each party.

"What happens is a lot of times people come in and they have this rushing noise in their ears like being in a barrel going over Niagara Falls, thinking, 'What's going to happen to me?'" Taylor said, clutching her head for emphasis.

"As soon as you just name the problem they start to calm down," she said. "They see there's only three points on the board and say, 'Oh, that's my problem.'"

It also helps the lawyers, Taylor said, because they often get caught up in what their clients say the problem is and haven't correctly analyzed the issues.

When she gets down to attorney fees, one side, for example, might say \$10,000. She'll write that down,

then walk the board back to the other side. They'll only go to \$7,500, and she'll write that on the board.

By having the information out in the open, where people can sit and contemplate it — as opposed to writing numbers on a legal pad, she said, grabbing a folder and clamping it to her chest — it makes them feel like they're part of the process. They can look at the figures and see they're not so far apart and make a

See Page 2 — SEEING

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"It's always good to have a spare crane."

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Online Dispute Resolution: Fact or Fiction

By Alexander S. Polsky

Does anyone trust that which they cannot touch, taste, hear, sense or smell? Can anyone really believe that meaningful negotiations may be conducted in an online world? Is there a benefit to online ADR? These are just some of the questions currently being pondered by mediators, and the user of their services worldwide.

To be sure, there are online services that offer blind negotiations. You enter three numbers and so does the other side and the computer pronounces a settlement if any two of the numbers are within a fixed percentage, say 20 percent of one another. This is not mediation; it is a kind of informed lottery where the clients give consent based on the belief that they or their representatives will peg the litigation settlement value. It works in low value cases where there are no real interest-based issues — just the question of money.

Then there are the varieties of services that “mediate” online disputes. That is, disputes that arise in an online transaction between parties who have never met. This is a form of “ODR” (online dispute resolution) and it is important because in these Internet buy-sell deals, the parties generally have and will never meet, and it would be impractical to think it could be any other way! Imagine mediating a \$250,000 e-Bay dispute in person. No, there must be a simple, inexpensive, method for the disputants to submit the issue to an arbitrator at a low cost and be bound by the result. And ODR fits the bill. This process also works well for small repetitive

disputes, such as homeowner versus homeowner’s association claims. The format provides easy adjudication with little face-to-face hostility.

I have found a hybrid beneficial. Traditional ADR is mixed with online communication and actual negotiation processed through me and then filtered to the other side. I find it is beneficial to meet face to face for an initial joint and separate caucus that includes “rule setting” and a written agreement confirming that all online discussions are fully protected by the mediation privilege and are inadmissible for all purposes. Then the negotiations move online for problem solving, floating of ideas, and value negotiations. Once completed and an agreement is reached, drafting of settlement agreements can occur fully online, with disagreements submitted to me for assisted resolution (not drafting as that should not be the role of the mediator).

Since all communication is online and sent to the mediator, frustrations may be expressed without fear of reprisal and the mediator can assist the party in reevaluating the appropriateness of the sentiments.

Non real time negotiation has benefits. The parties have retained me to secure closure. In real time, the objective is to leave the mediation with a signed agreement. Sometimes, the world does not work that way. When this happens, the parties are left with suggestions, homework, neutral suggested numbers and terms, or simply failure.

By adding ODR, the disputing parties may connect to the issues at different times, ponder and then provide a thoughtful response to the mediator. The mediator may reflect and reframe, and then turn the concept into a proposal for settlement of all or part of the dispute. This delay provides an opportunity to review and reflect, and to consider win-win solutions. It also creates a cooling off period for all parties, and for the mediator. Calmer heads may



then prevail.

With ODR, the mediator may set ground rules for communicating interests and concerns. A mediator may ask the parties to address non-monetary issues and rate them in order of priority. A party may vent online to the mediator, through counsel generally, without the risk that this “venting” will be displayed and transmitted to the other side. In an open caucus, most mediators have experienced a party caught up in the moment, who suddenly blurts out an insult and changes the course of the mediation. In cyber mediation, the mediator is better able to assist in redirection and re framing of these thoughts. This tool is especially helpful when the parties are not represented. Since all communication is online and sent to the mediator, frustrations may be expressed without fear of reprisal and the mediator can assist the party in reevaluating the appropriateness of the sentiments.

In traditional ADR, I like to have joint and separate caucusing. Some mediators avoid one or the other. In ODR, both may occur and they may occur at the same time! The mediator can multi-task. Think about it. The mediator speaks with all parties; leaves one party with homework and caucuses with the other party. Then the mediator switches the caucuses.

And let us not forget that the mediator can and should archive all the communications — thus providing a record to clear up any miscommunication that occurs during the process.

In a recent class action involving a multinational insurer, the issues were sufficiently complex and costly that the Board, chief executive officer and chief financial officer

needed to be involved. Traditional mediation would not have worked. Therefore, ODR was combined with conference calls scheduled strategically over five days and a \$40 million settlement was produced — without a single face-to-face meeting!

In live mediation, the voice is combined with gestures to produce communication. A mediator is a watcher who looks for non-assertive conduct and inflections in an effort to sense and direct the movement of the parties. In ODR, there is the written text based communication only (that is until we add cameras and real time viewing). The advantage of text is the requirement that the writer examines his or her thoughts and then communicates them into meaningful written words. A risk is that a harsh sounding phrase is often more so when put to cyber paper. If coming from the mediator, this can be off putting at best, and process destructive a worse. Both sides need to write in measured tones.

ODR is at its infancy. Dispute resolution professionals are experimenting with ways to use it most efficiently. I would love to receive your input on your experiences — excerpts of which I will share in a follow up article. Simply e-mail me at apolsky@jamsadr.com.

Seeing the Writing on the Wall

Continued from page 1

counter offer. “I had a custody case,” Taylor recalled. “One person was in North Carolina. The other person was in California. So we had permutations of airplane flights, who paid for them, what was the schedule. It just went on and on. I had about 12 of these [Post-its], all about custody and visitation. And it was 7:30 at night, and they were just exhausted. So they signed them all, and said, ‘That’s the deal memo,’ and sent me home to type it up.”

Another thing Taylor does to get parties in the mood is bake cookies, just one plate, chocolate chip and some other flavor, like peanut butter or macadamia nut.

“A lot of people will say they’re on diet and don’t eat cookies,” she said. “Later in the day, they’ll take one. It’s symbolic because it’s one container of cookies, and it has to be shared. Even though people don’t get that, the fact is that the cookies are going back and forth between the rooms. I carry them around with the Post-its.”

Reaching an agreement, she said, is a two-part problem. The intellectual part, like deciding on fees, is easy. It’s the emotional side that’s hard.

“It’s paying it because this person has done the following bad things to them, and you’ll get the litany of all the bad things and how unfair it is. And, of course, you want fairness. But in personal relationships, there’s no such thing as fair.

“There’s the law, and there’s your life. And how fair is it for your doctor-husband to take up with a 22-year-old nurse and leave you high and dry now that your children are grown and off to college? So you really have to step very quickly as a judge-mediator, so that people are doing what they need to do on the business end of their divorce and buying emotionally that it is OK to let this go.”

Taylor said she recognizes that letting go is a scary proposition because one is moving into the unknown. A lot of people hold onto their divorces because it’s familiar territory. They’ve got this conflict going. Their lawyers are calling every day.

“You’d be surprised how people just love, to some degree, their divorce, because what happens when it all closes down and it’s silent and your phone stops ringing is your life,” Taylor said. “And they’re like, ‘Oh, no. What am I going to do?’”

Lawyers who have used Taylor’s services, both as a mediator and a family law commissioner, say she’s able to blend empathy with



Gretchen W. Taylor

Alternative Resolution Centers
Los Angeles

Age: 64

Areas of Specialty: Family law matters, including paternity and domestic partnerships, family law legal malpractice and fee disputes

Rate: \$400 an hour

relaxed.”

Taylor attributes part of her ability in dealing with family matters to her unique upbringing, which allowed her to experience many diverse situations.

Born in Los Angeles, she spent most of her formative years growing up in Spain and attending English boarding school. Her father speculated in oil. He moved the family to Barcelona, she said, because he was attracted to the city’s beauty. But there was little money to be made in oil there, so the family often went from wealth to scarcity.

After returning to Los Angeles, Taylor earned a degree in Spanish literature in 1966 from Loyola Marymount College and became a social worker, handling family cases in dependency court. In 1975, while continuing to work full time, she enrolled in an evening program at Southwestern Law School. After graduating in 1979, she spent the next 18 years primarily practicing family law.

On returning from a trip to Machu Picchu, Peru in 1996, in celebration of her 50th birthday, she decided to shut down her practice and figure out how she wanted to spend the rest of her life. She saw an ad for a family law commissioner at the Riverside courthouse in Indio. She applied and stayed there until 2003, when she became a family law commissioner in downtown Los Angeles County Superior Court.

Besides working as a neutral for ARC, Taylor, who maintains a residence in Los Angeles and Palm Springs, is opening an independent mediation service in the desert community with a local lawyer there. She already has her first case, a same-sex couple who are breaking up their domestic partnership after 22 years.

“My first community mediation out there is doing well,” she said. “The first thing I mediated, starting with sticky notes, was what one partner is going to take with them from the shared residence in order to move.”

Here are some of the lawyers who have used Taylor’s mediation services: Larry A. Ginsberg, Harris-Ginsberg, Los Angeles; Stacy D. Phillips, Grace Jamra, Phillips, Lechner, Lauzon & Jamra, Los Angeles; Robert Brandt, Feinberg, Mindel, Brandt & Klein, Los Angeles; Mary Catherine M. Bohen, Los Angeles; Susan E. Wiesner, Los Angeles; Avery Cooper, Cooper-Gordon, Santa Monica; Donald P. Schweitzer, Pasadena

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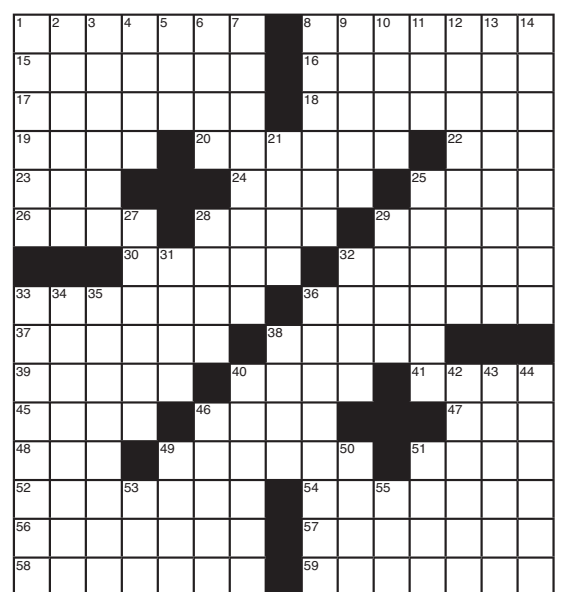
The New York Times Crossword

- Across**
- 1 Triumphant shout
 - 8 What some teens do on Saturday night
 - 15 Galina ____, old Russian ballerina whose Moscow apartment is now a museum
 - 16 While restrained, as a dog
 - 17 Very tough thing to lick
 - 18 Impetuous sort
 - 19 Thing with a bell guard
 - 20 Occupants of 33-Across
 - 22 Boston skyscraper nickname, with “the”
 - 23 Triumphant shout
 - 24 “The Gypsy ____” (“Anything Goes” song)
 - 25 Reveal, to Shakespeare
 - 26 Org. concerned with court proceedings?
 - 28 Dix follower
 - 29 Virgo’s brightest star
 - 30 Triumphant shout
 - 32 Triumphant shout
 - 33 Track adjuncts
 - 36 Of modern humans
 - 37 Triumphant shout
 - 38 Triumphant shout
 - 39 Some small clubs
 - 40 Sweeping
 - 41 Large number
 - 45 Biographers’ collections
 - 46 Faulkner’s “Requiem for ____”
 - 47 Triumphant shout
 - 48 Type on the left side?: Abbr.
 - 49 Extreme
- Down**
- 1 Capital near Excursion Inlet
 - 2 Hebrew leaders?
 - 3 Charged
 - 4 Human equivalent of a horse’s stifle
 - 5 Getters of letters: Abbr.
 - 6 Sheep’s genus
 - 7 Occasions to compare noses
 - 8 Part of the République tchèque
 - 9 Thermionic tube part
 - 10 Their outsiders are usually toasted
 - 11 Triumphant shout
 - 12 Blue shade
 - 13 “You betcha!”
 - 14 Unlikely places for stop signs
 - 21 ____ Angiolini (women’s shoe brand)
 - 25 Sail extenders
 - 27 St. Mary’s and others
 - 28 29-Down’s number, maybe

ANSWER TO PREVIOUS PUZZLE

MATS SWAYZE MIA
ALITTLELEARNING
COMPAREDAAGAINST
TEAM DOH SPITS
MOOTED CESAR
INF RUFFLES TUN
MODS MORAN SUMO
ONEG PLANT OREL
SEPT SINGA XENO
ASA BOOZEUP CTS
PREEN REMAPS
ALTAR CBS KAMA
PAUSEFORAMOMENT
STRETCHEARBEARER
EEE SCOTIA SALE

Edited by Will Shortz No. 0605



Puzzle by Samuel A. Donaldson

- 29 Apartment V.I.P.
- 31 Breeds
- 32 Feminine “this,” to Brutus
- 33 Did some planning
- 34 Lit
- 35 Sightseeing aids
- 36 Visits along the way
- 38 Like yarn
- 40 Maroon
- 42 “Lost” character Ana Lucia ____
- 43 Hold
- 44 Myers who wrote “Why Women Should Rule the World”
- 46 Clamorous
- 49 Medicare funder, briefly
- 50 Magna Graecia colony
- 51 Not procrastinating
- 53 Triumphant shout
- 55 It buried Herculeum

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