



PROFESSIONALS COMMITTED TO COOPERATIVE CONFLICT RESOLUTION

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**Our Mission**

The Maine Association of Mediators is a nonprofit organization of diverse professional interests seeking to broaden public understanding and acceptance of alternative forms of dispute resolution. The Association strives to enhance professional skills and qualifications of mediators, arbitrators, and other neutrals through training, educational development and promotion of standards of professional conduct.

**Submission deadline**

for November issue:  
 October 15, 2012  
 FMI: MAMBulletin@aol.com

**The President's Message**

By Peter J. Malia, Jr.

Appropriate to the season, there are many educational opportunities coming this fall. On **Friday, September 21**, the Maine Office of Court Alternative Dispute Resolution (CADRES) will offer a session on the effective use of caucus in mediation. The session will also explore ways to assist parties when mediation reaches the bargaining stage. Instructors **Ericka Gray** of DisputEd, located in Arlington, Massachusetts, and **Melinda Gehris** of Hess Gehris Solutions, located in Bow, New Hampshire will be familiar to those of us who attended the Spring Conference. This program will be held at the Pineland Farms Conference Center in New Gloucester from 9:00 a.m. to 3:30 p.m. Mileage will be reimbursed for CADRES members. For more information, contact **Diane Kenty** at [diane.kenty@courts.maine.gov](mailto:diane.kenty@courts.maine.gov).

The Volunteers of America Northern New England (VOANNE), will hold a 40 hour certificate training program in mediation beginning **October 4**. The multi-day program is from 8:30 a.m. to 4:30 p.m. each day at the Westrum House, 22 Union Park in Topsham. For more information, see the **What's Ahead, MAM? calendar** elsewhere in the BULLETIN or contact **Nancy Markowitz** at [mediate@voanne.org](mailto:mediate@voanne.org).

I am pleased to announce that our Annual Meeting will take place **November 1** at 1:30 p.m. at **Mediation and Facilitation Resources, 11 King Street, Augusta**. We begin with a presentation by guest speaker **Craig McEwen** followed by a short business meeting and conclude with a social hour. Recently retired from Bowdoin College, Craig has been an active member of Maine's mediation community for years and has also played a prominent role in the field of mediation nationwide. Craig has offered over 40 reports and articles on mediation in various settings (from community mediation to small claims to divorce to civil cases to Equal Employment Opportunity Commission work), and has coauthored several books including **"Divorce Lawyers at Work"** with **Lynn Mather** and **Richard Maiman** for Maine and

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New Hampshire family law attorneys, and *“Mediation: Law, Policy, Practice,”* now in its third edition, with Sarah Cole, Nancy Rogers, James Coben and Peter Thompson. Craig currently is completing a new book with Rogers, Bob Bordone and Frank Sander called *“Designing Systems and Processes for Managing Disputes.”* Craig will draw from that work in a talk tentatively entitled: *“Beyond the Case – Designing Dispute Management Systems from eBay to Chicago CeaseFire.”* He plans to challenge us with some system design problems to solve. I hope many of us make a day of it by also attending a CADRES program that morning on *“Managing the Stress of Conflict and Avoiding Mediator Burnout,”* presented by Terry Fralich.

I also hope you enjoyed this beautiful Maine summer as much as I did. I look forward to sharing stories at one of our fall events and at Annual Meeting on **November 1** in Augusta. As usual, please feel free to contact me with any questions, comments or ideas.

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## Book Review: *Mediating Dangerously*— Kenneth Cloke (2001)

by Susan Claire

*EDITOR NOTE: At deadline, a dismayed book reviewer informed us that the book’s publisher had just pulled it off the shelves in late July. Yes, that book—the one by a disgraced ex-New Yorker magazine columnist who was exposed for falsifying quotes. So, the trait of honesty and its place in mediation seems a good theme to explore instead. The following excerpt is from an online book review entitled “Honesty and Empathy” by former Roosevelt University graduate student Susan Claire. For a full review, see [http://ombudsfac.unm.edu/Article\\_Summaries/Honesty\\_and\\_Empathy.pdf](http://ombudsfac.unm.edu/Article_Summaries/Honesty_and_Empathy.pdf)*

Imagine yourself, a trained mediator, taking a weekend stroll through your neighborhood park. Among other pieces of playground equipment, you spot a see-saw, different from any you have ever seen. On one end of the balanced see-saw rests a bundle tagged “Honesty,” and the other end is holding up a bundle tagged “Empathy.” At the pivot point, you notice the word “Mediator.” The message is clear, but where are the technical instructions? Walking home, you consider how you might achieve the balance demonstrated on the see-saw, so the parties to the mediation can get their emotional needs met, the truth can be revealed, and the conflict can move toward resolution.

In *Mediating Dangerously* (2001), chapter three, author Kenneth Cloke presents underlying concepts and reasons for ensuring honesty and empathy in mediation, as well as the technical instructions for achieving these sometimes-elusive goals. Cloke offers a vibrant

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image as a metaphor for the purpose of mediation: a chain reaction, in which “the conflict is allowed to explode and implode without damaging the parties.” He describes the implosion as an increasing self-awareness and the explosion as that which allows for identification of the dysfunction that is at the core of the conflict. The chain reaction is ignited by “deeply honest, empathetic questions that defuse or disarm the parties’ defensive mechanisms, allowing truth and positive feelings to reach their target.”

In mediation, you are likely to hear one party say, justifying a harsh remark, “Well, I was just being honest.” Brutally honest, you think, as you watch the other party wince and become tense. The other party may speak in a manner that oozes empathy but, for its sentimentalism, lacks honesty and is therefore weak and misses its true target. Typically, empathy is in scarcer quantities among parties in mediation. It is up to the mediator to model empathy, not to excuse or overlook hurtful behaviors but to focus on the real issues and, at the same time, help each party to “grow into a part of themselves they have ignored or suppressed” . Because empathy is in short supply within most disputes, mediators have developed a library of techniques to foster it, mostly through active listening.

Honesty has not received the same attention. Too often, and at the expense of allowing the parties to grow and transform through the conflict experience, mediators seek to settle before the scope of the issue has been suitably addressed and explored. Cloke explains the necessity for honesty, given that each party to a conflict:

- Holds a different view of the conflict, that is, who’s to blame and why;
- Sees the world from the inside out, so empathy and honesty with the other is challenged, the ability to take responsibility is swept away, and the need for support increased;
- Wears a mask, to protect feelings of self-doubt or other deep emotions; and
- Moves (intentionally) to self-protect against uncomfortable truths.

These characteristics are counter-productive to identifying and exploring the truth. It is up to the mediator to enter the conflict arena to “model empathic listening, honest questioning, and equanimity in accepting painful answers”...

People wear masks or strike poses for three primary reasons:

- External: to gain attention, support, and sympathy
- Internal: to disguise the “ugly” truth, which is the opposite of the mask or pose
- Hidden: to lead a sympathetic listener to probe, so that the mask wearer can ultimately shed the mask or pose, that is, to be found out and accepted

The last item in the above list is the most complicated and requires skill and patience on the part of the mediator. The mask or pose represents a failure to recognize the truth of their

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actions and the negative effects of those actions on others. As long as the masks remain in place, honest communication is impeded, and the conflict will continue unresolved. It is up to the mediator to assist the parties as they relax the poses, shed the masks, and learn ways to communicate more honestly. As the parties to the conflict experience small increases in honesty and empathy in each other, they will feel motivated to continue reaching for higher levels of honesty and empathy, with the positive result of slowly letting go of the poses and masks...

In actuality, mediators also wear masks, and the mediation will fully succeed only if everyone in the mediation drops their masks and poses and lets their authentic selves emerge. The mediator is in the best position to set the tone and lead the way for honest and empathic communication.

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## Willingness to be Attentive

Economy of written word through poetry—  
intended only for certain faithful or fitful readers—  
one way to honor and acknowledge a professional  
willingness to be attentive  
by means of moving aubade,  
lively sestina or, let's face likelihood,  
simple free verse.

With swift search engine work,  
one perfect poem with charming story and theme of  
willingness to be attentive  
hailed us at many sites including

<http://www.theatlantic.com/past/docs/unbound/poetry/atlpoets/oliv9402.htm>

O, yet economy of written word through poetry  
surfaces in different form:  
not one but two gatekeepers of authority  
for the right to say we  
have the right to reprint poem—  
Poem so abundantly online often  
without proof of any rights whatsoever.

Gatekeeper One: we never allow reprint of Poet's work  
if the world reads your website.

Gatekeeper Two: While a standard fee to show  
you have the right to reprint Poet's work is \$X,  
given requirement by reader to search specifics,  
you may reprint for \$x.

Not simple, not free this verse—  
Almost an amount starting mediators receive for a  
willingness to be attentive  
for much longer than it takes to read Poet's lines.  
Poet's right to X or x sum is without question—  
Yet what other than irony when  
Poet asks Mediator to give dearly for  
balm of beautiful words!

We, like poets who often labor at  
peaceful and connecting sound,  
always pay some cost in a  
willingness to be attentive.

—PMC (all rights reserved)

## What's ahead, MAM?

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**SEPT 6, Thursday, in Fryeburg, ME**

Board of Governors monthly meeting Maine Association of Mediators

FMI: [administrator@mainemediators.org](mailto:administrator@mainemediators.org)

**SEPT 11 – 13 and 18 – 19, in South Portland, ME**

40-hour Transformation Mediation training OpportunityAlliance (formerly YouthAlternatives)

FMI: [Karen.groat@opportunityalliance.org](mailto:Karen.groat@opportunityalliance.org)

**SEPT 15, Friday**

Inaugural Katahdin Counsel submission deadline to recognize attorney pro bono work  
Maine Supreme Judicial Court system—

FMI: [http://www.courts.state.me.us/citizen\\_help/attorneys/katahdin/verification.html#reporting](http://www.courts.state.me.us/citizen_help/attorneys/katahdin/verification.html#reporting)

**SEPT 21, Thursday, in New Gloucester, ME**

Training: Effective Use of Caucus Maine Supreme Judicial Court (CADRES)

FMI: [diane.kenty@courts.maine.gov](mailto:diane.kenty@courts.maine.gov)

**OCT 4 – 6, 12 – 13, in Topsham, ME**

40-hour Mediation Training program Volunteers of America -NorthernNew England (VOANNE)

FMI: [elaine.bourne@voanne.org](mailto:elaine.bourne@voanne.org) or 207.373.1140, ext. 238

**OCT 11, Thursday, in Portland, ME**

Board of Governors monthly meeting Maine Association of Mediators

FMI: [administrator@mainemediators.org](mailto:administrator@mainemediators.org)

**OCT 23, Tuesday, in Topsham, ME**

Program: “Overcoming Roadblocks to Mediation,” Elizabeth Stokoe, Loughborough Univ, UK

FMI: [elaine.bourne@voanne.org](mailto:elaine.bourne@voanne.org) or 207.373.1140, ext. 238 at VOANNE

**NOV 1, Thursday, in Augusta, ME**

Program: “Beyond the Case,” Prof. Craig McEwen Annual Meeting of Maine Association of Mediators

FMI: [administrator@mainemediators.org](mailto:administrator@mainemediators.org)

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**NOV 8, Thursday, in Topsham, ME**

Training: Domestic Violence

FMI: [elaine.bourne@voanne.org](mailto:elaine.bourne@voanne.org) or 207.373.1140, ext. 238 at VOANNE**NOV 9, Friday, in Topsham, ME**

Training: Consumer Law

FMI: [elaine.bourne@voanne.org](mailto:elaine.bourne@voanne.org) or 207.373.1140, ext. 238 at VOANNE 2

*Save the Date!*  
*Calling all MAM members*  
*to the MAM Annual Meeting*

**DATE & TIME: Thursday, November 1 at 1:30 p.m.****PLACE: Mediation and Facilitation Resources –  
11 King Street, Augusta****MAM Board of Governors****Officers**

Peter Malia, President

Vacancy, Vice President

Janet Tockman, Secretary

Sheila Mayberry, Treasurer

**Board Members**

Diane Edgecomb

Matthew Caras

Christopher Causey

Paula Craighead

Maria Fox

Karen Groat

Todd Ketcham

Stacey Mondschein-Katz

Richard Romeo

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