



ADVANCED TRACK MEDIATOR TRAINING

**STRIVING FOR EXCELLENCE: EMOTIONAL INTELLIGENCE,
PERSONALITIES & THE VALUE-DRIVEN MEDIATOR**

Southern California Mediation Association

Annual Conference

November 3, 2018

Los Angeles

DESCRIPTION

Because all conflict resolution involves participants responsible for negotiations, problem solving and decision-making, all mediation is part people and part problem. Ignoring the people and only focusing on the problem assuredly inures to one's detriment. This interactive, advanced mediation track will explore how psychological dynamics impact negotiations at all phases of mediation process and how mediators can bring "high-value" dynamics to the process that are not part of most mediations today. Participants in this track will come away with an appreciation for the impact of emotions on decision making, greater confidence in their ability to engage high-conflict personalities constructively in the parties' negotiations, and techniques for bringing genuine value to the mediator's role and delivering a more satisfying mediation experience overall. Advocates, negotiators and mediators alike will also explore the "6 Universal Principles of Ethical Persuasion" and begin the process of thinking more adroitly about the role of ethics and persuasion in mediated settlement negotiations. Video vignettes and faculty demonstrations will illustrate key learning points and encourage lively input/engagement of workshop participants.

AGENDA

Morning

75 minutes ***The Modern Mediator: Interplay of Psychology and Mediation Strategy***

Presenters: *Harold Coleman, Jr., Esq., Mediator; Debra Dupree, MFT, Psy.D., Mediator; Matt Argue, Esq., Mediator*

This segment will explore and achieve learning outcomes to the following:

- What essential role do emotions play in mediated settlement negotiations?
- How do emotions impact rational decision making?
- Can emotional self-awareness permit better management of emotional content in mediated settlement negotiations?

The Modern Mediator: 6 Universal Principles of Ethical Persuasion (Cialdini)

- What is the very nature of persuasion/influence and why should I know this?
- What are the 6 universal factors of influence and the psychology behind them?
- How can mediators and advocates alike use ethical influence to impact party self-determination and process quality in a manner envisioned by the *Model Standards of Conduct for Mediators*?

Afternoon

75 minutes

The Modern Mediator: Managing High-Conflict Personalities at Mediation

Presenters: *Harold Coleman, Jr., Esq.*, Mediator; *Debra Dupree, MFT, Psy.D.*, Mediator; *Neil Carmichael, M.A.*, Mediator

In this segment we'll explore and achieve learning outcomes to the following:

- What are "high-conflict personalities" at mediation, their indicators and triggers?
- How can I identify personality disorders and practical interventions for dealing with them?
- How can insightful mediators navigate 'difficult conversations' at mediation with high-conflict individuals?

75 minutes

The Modern Mediator: Bringing Value to the Mediation Process

Presenters: *Neil Carmichael, M.A.*, Mediator; *Rebecca Callahan, LL.M., Esq.*, Mediator; *Harold Coleman, Jr., Esq.*, Mediator

This segment will feature the following practice skills to achieve learning outcomes designed to enhance one's value at mediation:

- ***Conducting High-Value Pre-Mediation Reconnaissance***
 - How might mediators set about gathering useful pre-mediation 'intel'?
 - How can I mine useful intelligence for strategy development and then circle back to parties/counsel with better strategic guidance?
 - How can I leverage technology and 'ODR' in determining whether to convene live v. telephonic mediation?
 - How does the consumer "Buying Cycle" parallel the mediated negotiation process?
- ***Orchestrating High-Value Initial Joint Sessions***
 - Why are joint discussions indispensable for many, if not most, mediations?
 - How should I "choreograph" a joint session for maximum effectiveness?
 - How might I "coach" and sensitive parties/counsel prior to mediation for cooperation and resolution rather than adversarial posturing and rancor?
 - What tools exist for developing a "Plan B," if joint discussions go awry?

- What options exist for situations where joint discussion is not appropriate?
- **Facilitating High-Value Party Negotiations**
 - Rule #1: *Emotions before issues*...why is this important?
 - Rule #2: *Questions only*...easier said than done, so how do I do this?
 - Rule #3: *Declarative statements by invitation only*...what foundation needs to be laid before I shift to an “evaluation?”
 - Rule #4: *Facilitating multiple joint sessions*...why might these be useful?
 - Rule #5: *Facilitating creativity*...what should I do when parties get ‘stuck in the mud?’
- **Navigating Deadlock in High-Value Mediations**
 - Playing a game...a new spin on “gamesmanship/games playing?”
 - How can I use the “Mediator’s Betting Line” to address deadlock?
 - Why should I limit “BATNA” only to the context of a specific proposal?
 - What strategic case assessments tools and Net Present Value (NPV) formulations might assist me in the evaluative mode?
 - How might I leverage the psychology underlying the “Gain-Loss Theory” of negotiation to influence parties toward closure effectively and ethically?
- **Emerging Areas and Practice Trends**
 - Is Early Neutral Evaluation (ENE) coming of age? What’s in this for me?
 - Why is “mixed-modes” mediation gaining in global popularity?
 - How do the roles of “Special Master” and “Facilitator” play out in large consumer/employment caseloads?
 - Is Restorative Justice really impacting community peace building?

15 minutes

Concluding Thoughts / Summary of Key Practice Points

Faculty will wrap-up by summarizing key ‘take aways’ and practice tips for advocates, mediators and principals alike in creating a healthier and more value-driven climate conducive to mediated problem solving.

//

//

//

//

//

//

//

//

2018 ADVANCED TRACK MEDIATOR TRAINING

FACULTY

Harold Coleman, Jr., Esq.

Harold Coleman, Jr. is Senior Vice President for Mediation at the American Arbitration Association... the global dispute resolution leader (AAA), and Mediator/Executive Director for AAA Mediation.org...an AAA technology innovation that trains and develops mediators, promotes their mediation practices, and connects mediators with a diverse community of mediation users and ADR thought leaders worldwide. Coleman also trains new AAA arbitrators and aspiring mediators in basic/advanced arbitration case management techniques and basic/advanced mediation skills. A former multi-disciplinary project manager and complex litigation attorney, Coleman has mediated and arbitrated multiplied hundreds of litigated and non-litigated disputes over a 30-year legal and ADR career. His formal education encompasses studies in civil engineering, business, real estate and law, leading to the academic degrees of Bachelor of Science and Juris Doctor. He is a former member of the AAA's international board of directors, a Fellow of the College of Commercial Arbitrators (CCA), and currently officer/director for the International Mediation Institute (IMI). He is co-chair of the American Bar Association's 2018 Advanced Mediation & Advocacy Skills Training Institute. He is a recipient of the State Bar of California's Distinguished Service to the Legal Profession citation and was nominated, vetted for, and profiled in the National Law Journal's Legal Times as an ADR Champion for 2017. Most recently, Coleman was conferred the American Bar Association Section of Dispute Resolution's 2018 Chair's Distinguished Service Award.

Coleman serves the global ADR community from the Association's Southern California and New York offices. He may be contacted via email, ColemanH@aaamediation.org, or direct dial 619.794.6001.

Neil Carmichael, M.A.

Neil Carmichael is Vice President for Education and Training at the American Arbitration Association. He currently manages implementation of the AAA's internal and external education and skills training programs, courses, conferences, and seminars. He oversees the development and production of mediation and arbitration curricula, content, and materials. Neil has been with the AAA since 1985. Prior to his current position, he served as the Association's vice president for U.S. and International Mediation Services, during which time he was part of the team that collaborated to create the International Mediation Institute in 2007. Neil is an experienced mediator, having mediated a variety of disputes. Representative issues handled as a mediator include: acceptable levels of remediation and allocation of \$7 million clean-up costs between seven parties related to an EPA CERCLA site that was previously a scrap metal yard; dissolution of a bio-technology partnership with assets of \$2.5 million; breach of contract between a contractor and subcontractor over the subcontractor's installation of stucco siding on a multi-family residential construction project; homeowner/contractor dispute over addition of sunroom to a residence; debt resolution dispute between a consumer and a debt consolidation company; dispute between an e-commerce company and a web design firm over the creation of a personalized shopping cart application; dispute between an international online retailer and a seller over the retailer's deactivation of the seller's account; dispute between an insurance company and an insurance agency involving commissions; reconciliation between the leadership of one church and ex-congregants who started another church; intra-church dispute over differing views of the congregation's mission and vision; distribution of marital property between divorcing couples; renegotiating terms of a Consent Order

involving child support and visitation. Neil also is co-developer and lead trainer for AAA/AAA Mediation.org's Essential Mediation Skills course. He has trained over 1,000 mediators for both the private mediation marketplace and various state and federal courts.

Neil is a graduate of the University of North Carolina at Charlotte (B.A. Political Science) and Reformed Theological Seminary (M.A.). He may be contacted at CarmichaelN@adr.org or direct dial at 704.347.6652.

Debra Dupree, Psy.D., MFT

Dr. Debra Dupree is a conflict coach, business/family mediator, and transformational trainer and keynote Speaker. She is the founder and president of Relationships at Work, Inc., a San Diego-based consulting firm specializing in mediation, training and leadership development with over 30 years of experience. She specializes in emotional intelligence, presentation and persuasion strategies, and performance/conflict management techniques to build influential leadership. Dr. Dupree has an extensive training and conflict management background, training professionals throughout the United States and Canada in workplace mediation, divorce mediation and coaching strategies. She has also trained and coached professionals in government and Fortune 500 companies to improve their conflict mitigation and workforce management skills. She was featured in Newsweek as one of San Diego's top psychotherapists, recognized by the Los Angeles Federal Executive Board for her mediator expertise, and distinguished as a leader in dispute resolution by the Southern California Mediation Association and the Association for Conflict Resolution. Dr. Dupree may be contacted at dr.dupree@relationships-at-work.com

Rebecca Callahan, LLM, Esq.

Rebecca Callahan has more than 25 years as an AV-rated litigation lawyer with experience in complex business disputes involving multiple parties. Mediator in over 500 mediations conducted since 1995. Has spent over 20 years working in the field of insolvency and restructuring, and has had extensive experience with the purchase and sale of assets out of bankruptcy and the settlement of disputes against a bankruptcy backdrop. Due to the nature of practice, has encountered a broad cross-section of businesses and industries, including automobile dealerships, commercial lending, commercial real estate, healthcare (hospital and physician providers), hotels, inheritance, insurance, intellectual property, law firms and partnerships, various types of manufacturing, real estate bonding and insurance, residential real estate, trust administration and workplace issues.

ADR education and training Experience includes: Faculty, AAA Managing the Arbitration Process for Efficiency & Economy Following the Preliminary Hearing, 2011; AAA Webinar, What's a Respondent Like You Doing in a Place Like This? Confronting Arbitrability and Jurisdiction Issues in Arbitration, 2011; Pepperdine School of Law/Straus Institute, Teaching ADR, 2011, Pepperdine School of Law/Straus Institute, Strategic Negotiating Skills, 2011; ABA Dispute Resolution Section, Good Judgments: Improving Assessment and Advocacy in Negotiation and Neuroscience and Mediation: Using the Brain to Transform Conflict, 2011; US District Court, ADR Program, Ethical Dilemmas in Mediation, 2011; Orange County Superior Court Temporary Judge Certification Training, Foreclosure/Loan Modification Training, 2011; AAA Healthcare Payor Provider Rules Training, 2011; AAA/ICDR Neutrals Conference, 2010; Pepperdine School of Law/Straus Institute, Mediating in the Red Zone, 2010; AAA Dealing With Delay Tactics in Arbitration (ACE004), 2010; Elder Mediation Group and Dana Curtis, Fundamentals of Elder Mediation, 2009; Panelist, State Bar Annual Meeting, What Every Litigator Should Know About Enforcing and Avoiding ADR Clauses, 2009; Pepperdine School of Law/Straus Institute, Mediating Employment, Personal Injury and

Professional Liability Cases, 2009; CEB, Intellectual Property for Business Lawyers, 2009; CEB, Succession Planning for the Family Business, 2009; U.S. District Court ADR Office/Straus Institute/Dana Curtis, Advanced Mediation, 2009; Southern California Mediation Association, and Legal-Ease for Mediators, 2009.

Education: University of Southern California (BA, Psychology, cum laude-1974); University of California at Berkeley (JD-1982); Pepperdine University, School of Law, Straus Institute (LLM in Alternative Dispute Resolution-2007)

Matthew W. Argue, Esq.

Matt Argue has amassed over 25 years of experience in complex construction litigation, mediation and arbitration. Since 2004, Mr. Argue has been a full-time neutral focusing on construction, insurance, real estate, and employment mediation and arbitration throughout Southern California. He has successfully mediated over 400 cases to settlement. He regularly lectures and writes on mediation and construction law issues. Most recently, he published several articles in the American Arbitration Association's Dispute Resolution Journal, including *Do's and Don'ts Representing Clients in Mediation* and *Emotional Intelligence for Lawyers*, and in the American Inns of Court's The Benchers Magazine entitled *Work and Life Balance after Two Types of Cancer*. Mr. Argue was Partner and head of the construction litigation team at Procopio, Cory, Hargreaves and Savitch LLP from 1989 to 2001. There, he represented both large developer defendants and plaintiffs in complex construction-defect cases. He received his Juris Doctorate from the University of Southern California Law Center in 1989 and graduated *cum laude* from San Diego State University in 1986. Mr. Argue is licensed in a number of jurisdictions, including California, Nevada, Washington, Colorado and Texas.

Mr. Argue serves the ADR community from offices in San Diego and may be reached at mattargue@onemediator.net or direct dial at 951.704.5556.