

A moderate mediator

The role of mediation in the Dayton court system

By A.J. WAGNER

You might call it “*Judge Judy* justice.” It is scheduled to happen every Wednesday at Dayton Municipal Court when Magistrate Barbara Doseck or Magistrate Colette Moorman hear the cases of Small Claims Court. These are the cases where one person sues another for something less than \$3,000. Like *Judge Judy*, these cases involve suits on small loans, minor damage to a car or other property, failure to pay a share of rent or expenses on a joint purchase, return of a lawn mower and many other contentious matters.

At the court you will also find a volunteer or staff member of the Dayton Mediation Center, a project of the City of Dayton, to deal with conflict. The magistrate will frequently ask the small claims litigants to go with the mediator to another room where the mediator leads them in a confidential discussion. Nothing said in the mediation can be used in the courtroom or anywhere else without the permission of the parties.

The mediator is careful not to direct the parties’ discussion but to facilitate it with clarifying statements. These statements keep the discussion going – statements like, “So you’re saying that Mr. P returned the lawn mower after destroying the blades?” It can get lively and loud but the result, which is entirely directed by the parties themselves, is often acknowledgment of hurt, agreement to the damages, apologies and reconciliation. That won’t happen in the courtroom.

Although about half of the mediated cases will end up back in the courtroom, those cases resolved by mediation result in a written agreement, without a court hearing, without a credit-damaging judgment, without the need for collection action and, most importantly, with the parties resuming their pre-conflict relationship.

The cases returned to the courtroom usually end up with unsatisfactory outcomes for both parties. It may seem that one side wins and one side loses, but the winners seldom get everything they have sued for. Once they get the judgment, they must start a collection action to get the money the court has awarded. The collection action is complicated involving debtor exams, garnishments, liens and asset seizure, which is difficult to do without the help of a lawyer. If the losing party has no job and little property, the judgment is worthless. The “winner” often ends up more frustrated than the loser and the enmity between the parties grows.

The Dayton Mediation Cen-



Staff members of the Dayton Mediation Center hold a session between neighbors.

ter is not just available for small claims. The center is also available for neighborhood disputes and has been successful in calming tensions in some areas of the City of Dayton.

Police can refer parties to mediation when they get ongoing calls for endless arguments between neighbors. Dog barking, sidewalk skateboarding and loud parties have all been addressed by mediation as opposed to ongoing police visits, arrests and misdemeanor charges, which only escalate neighborhood tensions.

The Montgomery County Juvenile Court uses the Dayton Mediation Center to resolve parental visitation and support disputes. The Juvenile Court also uses mediation for “restorative justice.” Restorative justice uses mediation to bring the victim and the offender together for discussion of the crime. During these sessions, the juvenile perpetrator becomes aware of the effects and, often times, stupidity of his or her actions while the victim gets to see that the young man or woman is not the horrible monster he or she thought. The result is not only apologies and peace between the parties, but, sometimes the willingness of the victim to assist the young person with some of the issues she or he faces. The chance of further criminal activity by the juvenile can be significantly reduced.

The Dayton Mediation Center has been in existence for nearly 25 years. Its success is a tribute to the foresight of city leaders who know the difference between court-imposed justice which tends to end in bitterness from both sides and true reconciliation which brings peace to the community.

Mediation has become a model tool for courts to resolve contentious lawsuits and difficult divorces. The Montgomery County Common Pleas Court General Division and Domestic Relations Division

both use mediation to resolve lawsuits or issues within the lawsuits.

Dean Lisa Kloppenburg, former dean of the University of Dayton School of Law, is an advocate for expanding mediation to disputes between communities and businesses. Because mediation is almost always cheaper than litigation, it is becoming standard in legal training and a part of client counseling for all lawyers.

You will see next to this column an ad for the Dayton Mediation Center. The *Dayton City Paper* will run this ad as a service for the community on a bi-weekly basis.

A court system focused on winners and losers does not bring peace. Peace is the result of stable, caring relationships with those around us. Mediation gets to the heart of conflict to achieve peace.

Disclaimer: The content herein is for entertainment and information only. Do not use this as a legal consultation. Every situation has different nuances that can affect the outcome and laws change without notice. If you're in a situation that calls for legal advice, get a lawyer. You represent yourself at your own risk. The author, the Dayton City Paper and its affiliates shall have no liability stemming from your use of the information contained herein.



A.J. Wagner is an attorney with the law firm of Flanagan, Lieberman, Hoffman and Swaim at 15 W. Fourth Street in Dayton. A.J. and his firm would be glad to help you with all of your legal needs. You can reach A.J. at (937) 223-5200 or at AJWagner@DaytonCityPaper.com.