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## Top Ten Ways to Improve Your Mediation Skills

*John Lande, JD, PhD*



Traditional mediation theories (such as facilitative, evaluative, and transformative mediation) are incomplete at best and misleading at worst, providing mystifying descriptions of what mediators actually do. They focus on only a few behaviors during mediation sessions. They don't recognize the many variations of mediators, parties, and

cases. Many mediators ignore these models because they are confusing or unhelpful. [Continue reading](#).

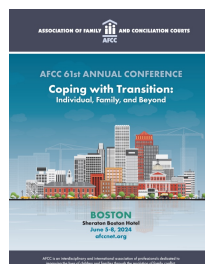
## AFCC 61st Annual Conference

**Coping with Transition: Individual, Family and Beyond**

Sheraton Boston Hotel, Boston, Massachusetts  
June 5-8, 2024

AFCC's **61st Annual Conference** begins in less than a month! Join AFCC in Boston as we explore coping with transitions!

The work of family law, mental health, and dispute resolution professionals is endlessly impacted by transition.



## AFCC 61st Annual Conference

Boston, MA  
June 5-8, 2024

### Conference Sponsors

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Whether it be from transitioning from an intact family to one that lives in two homes; children's transition between developmental stages; transitioning gender; or transitioning to new statutes, processes, and professional roles.

[Register Now!](#)

## Pre-Conference Institutes

Interested in a more in-depth learning experience? Join AFCC on June 5th, for one of our six pre-conference institutes. These full day institutes allow presenters to more comprehensively present on these topics and are eligible for up to six hours of continuing education credit.

See the [conference portal](#) for a complete list of conference sessions!

### 1) Protecting Yourself and Your Practice in the Cyber World

This institute focuses on providing mental health professionals with a framework for proactive protection of themselves and their businesses from cyber-harassment and licensure complaints.

#### Presenters:

- Reneau C. Kennedy, EdD
- Robert Kinscherff, PhD, JD

### 2) Advanced Challenges in Family Mediation

This institute will address four critical issues for practicing mediators: (1) use of technology and artificial intelligence; (2) cases involving intimate partner violence; (3) managing emotional dynamics in the mediation process; and (4) involving children in the process.

#### Presenters:

- Kelly Browe Olson, JD, LLM
- Robert E. Emery, PhD
- Susan E. Guthrie, JD
- Donald T. Saposnek, PhD

### 3) Should Children Participate in Family Law Processes? Consider the Brain

This program will examine current research on child and adolescent brain development and its impact on decision making, and the effects of substance use on adolescent brains, to improve participants' understanding of when and how a child can express their views for consideration in juvenile and family law matters.

#### Presenters:

- Hon. Amy Lyn Blake
- Robin M. Deutsch, PhD, ABPP
- Robert Kinscherff, PhD, JD
- Stephanie Tabashneck, PsyD, JD

### 4) Trans Children and Youth in the Family Court System

Participants in this institute will learn about the legal, social, spiritual-religious, medical, and psychological challenges faced by transgender children and youth, and their family members, and how more affirming and supportive experiences can be fostered.

#### Presenters:

- Allan E. Barsky, PhD, JD

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**MAGAL, Inc.**  
**ODR.com**

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**CoParenting: The Spilt**  
**Outreach Project**  
**Disclosure Ready**  
**Supervised Visitation Network, Inc.**  
**COPARA**  
**Family Court Review**

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## 16th Symposium on Child Custody

November 14-16, 2024  
Columbus, Ohio

- Lavanya Regunathan Fischer, LLM, LSE
- John McKendrick, KC
- Hon. Dianna J. Gould-Saltman (Ret.)
- Brandy Brown, DSW, LCSW

### 5) Child Sexual Abuse in Custody Cases

This institute will focus on the considerable challenges of addressing allegations of child sexual abuse in the context of child custody litigation. The program will explore cutting-edge research, law, policy, and practice from the bench to the bar, and for mental health practitioners involved in various forensic capacities.

**Presenters:**

- Seth L. Goldstein, JD
- Mindy F. Mitnick, MEd, MA
- Commissioner JoAnne Brown (Ret.)

### 6) Judicial Officer's Institute: Strategies for Domestic Violence and Alienation Allegations in Parenting Disputes in Family Court

This institute will provide a review of the current research as well as emerging assessment and intervention strategies. Part 1 will focus on critical questions and potential evidence to gather in exploring multiple hypotheses about the dynamics in the family to address what happened and what impact it is having on the parents and children. Part 2 will move from potential court findings to differentiated court remedies including counselling support for the parents and children.

**Registration for this institute is limited to judicial officers only.**

**Presenters:**

- Peter Jaffe, PhD
- Matthew J. Sullivan, PhD
- Barbara Jo Fidler, PhD
- Hon. Anne Hirsch (Ret)
- Katreena Scott, PhD

[See more details on this year's pre-conference institutes.](#)

### Plenary Session

Depolarizing by Example: AFCC Peace Talks on Parent-Child Contact Problems

This plenary focuses on an innovative peace talk strategy to break down polarization of issues related to parent-child contact problems (PCCP) by emphasizing collaborative dialogue. This transformative approach will be showcased among experts across the continuum of perspectives, who will examine the many factors to consider in assessing and intervening in PCCP.

**Presenters:**

- William Bernet, MD
- April Harris-Britt, PhD
- Peter Jaffe, PhD
- Hon. Denise McColley (Ret.)
- Stacey E. Platt, JD
- Michael A. Saini, PhD

### Opening Keynote

In the spirit of this year's conference theme, Coping with Transitions, attendees will be invited into the personal and profound story of a transgender woman, detailing her

## AFCC 62nd Annual Conference

May 28-31, 2025  
New Orleans, Louisiana

### AFCC Chapter Conferences

#### AFCC Minnesota Annual Conference

July 25, 2024  
Minneapolis, MN

#### AFCC Florida Annual Conference

September 11-13, 2024  
Save the Date

#### AFCC Wisconsin Fall Educational Event

September 19, 2024  
Delafield, WI

#### AFCC Maryland Annual Conference

October 23, 2024  
Save the date

#### AFCC Ontario Annual Conference

October 25, 2024  
Toronto, ON

#### AFCC Indiana Annual Conference

October 25, 2024  
Save the date

#### AFCC Texas

January 23-25, 2025  
Cancún, Mexico

#### AFCC Arizona Annual Conference

January 24-26, 2025  
Sedona, AZ

#### AFCC California Annual Conference

February 7-9, 2025  
Costa Mesa, CA

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journey of transition. Transgender activist, author, and speaker, **Tina Madison White** will share her inspiring personal and familial evolution and the barriers and successes along the way.

## Networking Opportunities

There will be several networking opportunities at the 61st Annual Conference. Some of those opportunities include: AFCC Banquet, Taste of Boston, and the AFCC Hospitality suite.

### AFCC Banquet

Bring your dancing shoes, Friday evening of the conference, as we celebrate the retirement of AFCC Executive Director, Peter Salem. Live music at this networking event will be provided by Soul Amazing.

### Taste of Boston

Join a group of 8-10 of your colleagues on Thursday evening of the conference at one of several local restaurants. Participants are responsible for all food, beverage, and transportation costs. Sign-up sheets will be available Thursday morning of the conference at the registration desk.

### AFCC Hospitality Suite

Join other conference attendees for drinks and refreshments at this informal networking event being held on Wednesday and Thursday from 9:00pm–12:00am.

[Register Now!](#)

## Webinar Corner

### The Hats We Wear as Court Experts: Roles, Conflicts, and Helpfulness

Jeffrey P. Wittmann, PhD

**June 18, 2024**

1:00pm – 2:00pm Eastern Time (US/Canada)

**Registration will close on June 17, 2024, at 9:00am Eastern Time US/Canada .**

Mental health Professionals have unique clinical experience and a rich library of research allowing them to offer helpful information to attorneys and courts in the role of “expert.” However, the functions and nuances of various expert roles, along with demands by various stakeholders can also create role-conflicts and ethical peril. This webinar will explore the terrain of work done as court-involved experts with a focus on risk management and maximal helpfulness.

**Jeffrey Wittman, PhD**, is a trial consultant whose practice concentrates on trial support for attorneys in custody and access matters and on forensic peer reviews. He serves as a consultant for major law firms nationally and has taught forensic psychology at the doctoral level. Dr. Wittmann is a recognized expert on the intersection of law and psychology. His most recent book is entitled: **"Evaluating Evaluations: An Attorney's Handbook for Analyzing Child Custody Reports" (MatLaw, 2013).**



#### Registration

Members: \$15

Non-Members: \$50

#### Certificate of Attendance

Members: \$15

Non-members: \$20

Register Now!

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## More Upcoming Webinars!

### "Toxic," Traumatized, or Neurodivergent? Setting Appropriate Boundaries Without Writing Anyone Off

Dan Bernstein, MHS  
July 9, 2024

### Economic Wellbeing of Mothers in Shared Placement: A Cross-National Perspective

Mari Haapanen & Trisha Chanda  
August 14, 2024

### Co-Parent Coaching: Inspiring Transformation for Families

Amy Armstrong, MSW  
September 11, 2024

### Understanding Conflicted Family Systems through a Developmental Lens: How Do I Refuel?

Benjamin Garber, PhD  
October 9, 2024

### Ethical Decision-making in the Face of Competing Guidelines

Arnold Shienvold, PhD  
November 20, 2024

### Cutting to the Chase Competently: Brief Focused Custody Assessment

Ken Perlmutter, PhD & Christy Bradshaw Schmidt, MA, LPC  
December 12, 2024

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## AFCC 16th Symposium on Child Custody

### Shaping the Future: Screening and Assessing for Safety and Wellbeing of Parent-Child Relationships

November 14-16, 2024  
Columbus, Ohio  
Hilton Columbus Downtown

#### Save the Date!

Save the date for AFCC's 16th Symposium on Child Custody in Columbus, Ohio this fall. The brochure and workshop details will be published around July or August.

#### Sign Up to Exhibit at this Conference

The AFCC 16th Symposium is an excellent opportunity to introduce your products and services to the interdisciplinary community of professionals that attends AFCC conferences. Approximately 350-450 judges, custody evaluators, mediators, lawyers, and other family court professionals are expected to attend. See the [exhibitor prospectus](#) for more details and contact AFCC's **Abby Rebholz** at [arebholz@afccnet.org](mailto:arebholz@afccnet.org) or at 608-664-3750 to sign up or if you have any questions.

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## AFCC Member News

AFCC member **Kelly Browe Olson**, of Little Rock, AR, and executive director **Peter Salem**, are co-editors of a new book, *Family Dispute Resolution: Process and Practice*, published by Oxford University Press. The book is a 29-chapter, 600-page compendium, with more than 40



contributing authors, nearly all of whom are AFCC members. It addresses a wide range of family dispute resolution (FDR) topics, including parenting coordination, early neutral evaluation, parent education, and arbitration, along with techniques for managing intractable family conflict, cases with intimate partner violence, integrating issues of culture into FDR and much more. Also included are special sections on collaborative advocacy and FDR and the courts. Read AFCC member Hilary Linton's [book review](#). To order, or to review the table of contents, go to [Oxford University Press](#).

## Chapter News - AFCC New Jersey



The New Jersey Chapter of AFCC has awarded the Phillip N. Sobel Award to **Dr. Matt Hagovsky**. This award is given to an AFCC member who has been dedicated to the improvement of family law practice in New Jersey.

Matt Hagovsky is well known to mental health professionals, attorneys, judges, and litigants in New Jersey. He initially worked as a family and child therapist. But for the last 40 years or so, he has been exceptionally productive as a forensic psychologist. Matt was also one of the earliest members of the New Jersey chapter and has been integral to the growth and success of the chapter. Congratulations, Matt!

### AFCC eNEWS

The *AFCC eNEWS* is the monthly e-newsletter of the Association of Family and Conciliation Courts. The *eNEWS* provides up-to-date information for professionals including practice tips, international news, and the latest initiatives in family law and conflict resolution. The *AFCC eNEWS* is provided at no charge to you; anyone can [subscribe](#).

*AFCC members are free to share eNEWS content.*

#### EDITOR:

[Ann Ordway, JD, PhD](#)

#### ASSOCIATE EDITOR:

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Association of Family and Conciliation Courts (AFCC) | 6525 Grand Teton Plaza, Madison, WI  
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## **Top Ten Ways to Improve Your Mediation Skills**

*John Lande, JD, PhD*

May 2024  
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Traditional mediation theories (such as facilitative, evaluative, and transformative mediation) are incomplete at best and misleading at worst, providing mystifying descriptions of what mediators actually do. They focus on only a few behaviors during mediation sessions. They don't recognize the many variations of mediators, parties, and cases. Many mediators ignore these models because they are confusing or unhelpful.

An alternative – Real Practice Systems (RPS) theory – provides a broad framework to help mediators, parties, and attorneys realistically understand variations in mediation processes and act accordingly. This article describes RPS theory, which can help you understand and optimize your mediation practice. It is adapted from [Helping You Do the Best Mediation You Can](#).

### **1. Recognize That You Have a Complex Practice System.**

Whether you know it or not, you have a complex mediation practice system if you mediate regularly. Mediation is not “just” what you do during mediation sessions when all the participants have convened.

You have unconscious routine procedures and conscious strategies for dealing with recurring challenges that you use before, during, and after mediation sessions.

Your system is based on your personal history, values, goals, motivations, knowledge, and skills as well as the parties and the cases in your mediations. You have developed categories of cases, parties, and behavior patterns that led you to develop your system. All of this has grown out of your experiences and has evolved over time.

Experienced mediators have sophisticated systems enabling them to develop deeply intuitive perceptions and skills to help parties work together to reach good agreements. Some mediators have simplistic systems in which they operate largely on “auto-pilot,”



treating cases pretty much alike rather than addressing the unique circumstances of each party and case.

## 2. Watch a 20-Minute Video to Understand Real Practice System Theory.

The following video is designed to help you understand and improve your mediation practice system. It is applicable in every type of case and at every stage of practice, from novice to mid-career to senior mediator.

It describes three hypothetical mediators' systems and the "careers" of their systems. Mediators have careers as they progress through engagement with different employers, clients, and cases. Mediators' **practice systems** have parallel careers. Mediators start with basic training, observations, and/or intuitive understandings. Over time, they develop more sophisticated insights about the process. Their cases may become more complex and specialized by type of case. They develop conscious and unconscious norms and routines.



## 3. Read an Eight-Page Article to See Illustrations of Practice Systems of Ten Experienced Mediators.

Read [\*Ten Real Mediation Systems\*](#), which summarizes accounts of ten experienced mediators who identify factors affecting their mediation practice systems. It includes links to the mediators' detailed accounts of their systems.

#### 4. Complete a Self-Assessment Questionnaire to Get an Overall Understanding of Your Practice System.

Complete [this 18-question self-assessment worksheet](#) to help you recognize basic elements of your practice system. It asks you to reflect on your background, motivations, mediation practice, common patterns in your cases, and your procedures.

#### 5. Read the Real Practice System Menu of Mediation Checklists.

The [Real Practice Systems Project Menu of Mediation Checklists](#) is a detailed menu of checklists for mediators, including mediators' actions before, during, and after mediation sessions. The checklists also include items about information to provide on websites, compliance with ethical requirements, and reflection and improvement of mediation techniques. They are intended to help you become more conscious and intentional in your work, leading you to develop routines and strategies for dealing with recurring problems.

In a short article, [Practitioners Tell Why Real Practice System Checklists Are So Useful](#), fourteen current and former practitioners describe how the checklists can help you carefully design your unique practice system. You can use the checklists throughout your career to improve your skills through systematic planning and reflection.

#### 6. Develop Your Own General Mediation Checklist.

You can use the RPS checklists to consciously develop your own general checklist based on the typical cases and parties in your practice and the procedures you find useful. Choose some items and modify others from the RPS checklists. The RPS checklists cannot be exhaustive, so add any other items relevant to your practice.

Gary Doernhoefer, the founder of ADR Notable, noted that there are two kinds of checklists. A **prescriptive checklist** helps people remember rote tasks like following cookbook recipes. You normally follow all the steps, though you may use your judgment about whether to add some ingredients or change the amounts. In mediation, you may generally use a standard routine for initiating mediation sessions but vary the procedure based on factors in particular cases.

An **inspirational checklist** prompts people to consider issues in particular situations and then make judgments or decisions. A mediation checklist might remind you of questions you might ask or strategies you might use. For example, mediators often struggle when the process feels stuck, and an inspirational checklist can remind you of things you might do to jumpstart the process.

Mediators' checklists necessarily vary based on many factors including the subject matter, complexity, typical legal issues, participation of attorneys, and amount of time

before mediation sessions, among others. As a result, some mediators' general checklists are longer and more complex than others.

## **7. Customize Your General Mediation Checklist for Each Case.**

Review your general checklist before each mediation session to consider any modifications you might make based on what you know about the particular case you are about to mediate.

## **8. Read Articles in the Real Practice System Annotated Bibliography.**

You can get a deeper understanding of practice systems generally and your own practice system by reading practical publications. The [Real Practice Systems Project Annotated Bibliography](#) organizes publications about various topics including:

- ! Overview of Real Practice System theory
- ! Critiques of traditional dispute resolution theories
- ! Promotion of party decision-making
- ! Litigation interest and risk assessment
- ! Preparation for mediation sessions
- ! Technology systems

Most of the pieces are short blog posts and articles, though it also includes law review articles and books. There are links for the entries so you can access them in one or two clicks.

## **9. Participate in an Ongoing Educational Practice Group.**

Most mediators do not have observers who can give feedback about their mediation techniques. Some mediators participate in practice groups to get feedback and learn from each other.

These groups vary in size. I think that 5 to 8 people is about right, though groups might prefer a different size. I think that it's a good idea to have a fixed membership with a commitment to participate for an extended time such as at least 6 to 12 months. This should help people feel comfortable sharing sensitive experiences.

Groups should consider what similarities or differences they want in the members. Similarities provide a common knowledge base and differences can help provide valuable insights. For example, I participated in a group in which we all handled family cases in different professional roles. We included mediators, mental health professionals, and attorney-advocates (though some people served in multiple roles). Some groups may prefer to include only people serving in the same role (such as mediators).

Groups should consider whether to meet in person or by video. Meeting in person provides the opportunity for physical connection, not to mention refreshments. Meeting by video offers convenience and the opportunity to interact with people over long distances (but no shared food and drinks).

Groups also should consider the types of activities they do. For example, my group discussed cases and also did other things such as discussing readings, talking with guests, and having social get-togethers. Some groups might discuss issues in the self-assessment questionnaire or mediation checklists.

Some groups may focus primarily or exclusively on discussing cases. In particular, they may want to use “reflective practice” techniques. Laurel Tuvin Amaya described this approach in [this short article](#). She wrote that in reflective practice groups, “practitioners help each other find their own answers to their practice problems. When a member identifies challenging problems in his or her case, colleagues ask questions to elicit the member’s own evaluation of the situation rather than offering their ideas and suggestions. This helps practitioners dig deeper and see things that may have eluded them.” The [Reflective Practice Institute](#) provides valuable resources for people who want to use this approach. The [RPS menu of mediation checklists](#) includes a lot of questions to promote mediators’ self-assessments.

The reflective practice process is very helpful, in part by practicing good mediation skills of helping people develop their own insights. Groups may use it to start discussion of challenging cases. After some discussion, it can be helpful for members to share their experiences in similar situations and brainstorm strategies for dealing with difficult situations.

Court ADR programs, bar and mediation groups, and ADR panels can help mediators organize educational practice groups. The organizations can identify mediators who want to participate in such groups, help them connect with each other, and train them how to organize and run them. The RPS checklists identify considerations in forming and operating practice groups. In part, this is a function of a synergy of interests, personal chemistry, and serendipity.

## **10. Share Your Experiences.**

Sharing one’s experiences is a valuable way to learn. This might include giving talks, participating in trainings, teaching courses, or writing articles. These activities require reflection, which can produce new insights. Interactions with people at educational programs often stimulates thinking as well.

This [blog post](#) includes materials that instructors can use to help students prepare to mediate, advocate in mediation, and negotiate.



**John Lande, JD, PhD** is the Isidor Loeb Professor Emeritus at the University of Missouri School of Law and former director of its LLM Program in Dispute Resolution. He earned his J.D. from Hastings College of Law and Ph.D in sociology from the University of Wisconsin-Madison. He began practicing law and mediation in California in 1980 and directed a child protection mediation clinic in the 1990s.

The American Bar Association published his books, *Lawyering with Planned Early Negotiation: How You Can Get Good Results for Clients and Make Money* and *Litigation Interest and Risk Assessment: Help Your Clients Make Good Litigation Decisions* (with Michaela Keet and Heather Heavin).

He frequently writes for the [Indisputably blog](#). You can download articles on a wide range of dispute resolution topics from [his website](#). He has received many awards for his scholarship, most recently the American Bar Association Section of Dispute Resolution's award for outstanding scholarly work.