THE MIXED BAG OF PROFESSIONALISM: THE INDIVIDUAL VERSUS THE CODE?

Physicist Jeff Schmidt in his book *Disciplined Minds: A Critical Look at Professionals and the Soul-Battering System that Shapes Their Lives* (2000) says that an intrinsic element of professionalism is an alignment between a shared purpose (connected to a “greater good”), a body of knowledge, actual behavior in terms of actions and decisions, and expectations held by societal stakeholders. Schmidt is not a mediator, nor is he a lawyer. All the same, it’s very likely that any creative, intuitive, idealistic mediator or attorney, judge or court staff sometimes recognizes the “soul-battering” that Schmidt gives voice to. For, there is an inherent tension between the latitude accorded the person who informally mediates as an incidental part of their main job; and those who are educated, trained, supervised and – if it is determined they have breached ethical standards – those who are disciplined. Thus the title “Disciplined Minds” caught my attention, as a long-time teacher of ethics in law, dispute resolution and in business.
The title also caused me to reflect upon those occasions when, as director of a court-connected mediation program, I had to seek ways to help mediators find their style, their voice and to draw upon their innate strengths – while at the same time assuring consistency, fairness and strict adherence to the adopted code for mediator conduct. It was then much the same search for balance that we speak about today: how to be an authentic human being and a professional at the same time.

Note that the phrase used is “how to be” – with an emphasis on the pragmatic, the tangible, even as we talk about the abstract, the intangible. My husband, who teaches the philosophy of religion, often reminds me that the very use of terms like “soul” can create an unintended gap in communication. Not everyone shares the same understanding of their interior lives. Indeed, many of us once believed we “had it all together,” with a coherent understanding of how the world worked and our role in it. That is, until we lived a bit more and a bit longer. Then we discovered the ground isn’t as solid as we had thought. There are sinkholes. We step into quicksand. And if an earthquake has not opened up to swallow us, the familiar terrain of our lives is so shattered, it’s hard to get our bearings.

The “how to” approach we’ll explore for reflection, resilience and keeping it real may use vocabulary that overlaps with some faith traditions; but, our session only requires belief in two things: (1) yourself, and (2) the greater good of public service.

THE GREATER GOOD OF PUBLIC SERVICE AS THE HALLMARK OF PROFESSIONALISM

Professionalism can be defined in various ways. Four elements relate strongly to professionalism in mediation:

(1) Serving the public.

(2) Certified by some public body.
(3) Adhering to standards of ethics and practice.

(4) Pursuant to the oversight of a dedicated organization and/or licensing.

In serving the public, the mediator places the public's interests above their own personal interests. The interests of the parties to the mediation might or might not also represent the public interest. In situations like this, codified ethics rules take center stage.

Certification acts as a shorthand for proven competence. Like the SSL certificate for computer web sites, mediator certification seeks to reassure the public that they need not fear. The certified mediator, like a secure web site, is indeed who they say they are; they have indeed satisfied certain requirements concerning moral fitness, education and training. See In re Bruce Morosco, Mediator Qualifications Board (Central Division), Case No. QCC 2010-048 (2018).

For ethics rules to be truly effective, ethics concepts need to be embodied in agreed upon practices. It is not sufficient to articulate the expectation that parties must be allowed to exercise their right of self-determination. What this looks like in action, how the mediator behaves in order to protect the parties’ right to choose, are articulated in the methods and practices endorsed by the certifying body. Legal challenges to the methods used and behaviors permitted in the mediation find expression in claims that the mediated settlement agreement is voidable due to coercion, duress or misrepresentation or fraud. See Gutierrez v. Gutierrez, Dist. Ct. App. Fl., 3rd Dist., Case No. 3D17-1923, Opinion filed June 6, 2018; Pierce v. Pierce, 125 So.3d (Dist. Ct. App. Fl., 1st Dist.) (2013); Crupi v. Crupi, 784 So.2d 611 (Dist. Ct. App. Fl., 5th Dist.) (2001); Vitakis-Valchine v. Valchine, 793 So.2d 1094 (Dist. Ct. App., Fl., 4th Dist.) (2001); Cooper v. Austin, 750 So.2d 711 (Dist. Ct. App. Fl., 5th Dist.)

When a professional’s conduct veers outside the ethics standards of their profession, the certifying body – whether governmental or non-governmental – provides a forum to assist the parties in bringing a grievance, to hold the professional accountable. The existence of such a process seeks to assure mediation participants that although mediation lacks the formalities of the courtroom, the mediator is not allowed to “go rogue.” There is an enforceable framework for all that occurs in the mediation session. Florida’s published decisions on grievances against mediators attest that accountability is real, not illusory. See *In re Clayton D. Simmons*, Mediator Qualifications Board (Southern Division), Case No. MQB-2015-003 (2016).

**PROFESSIONALISM THROUGH REFLECTION, RESILIENCE AND AUTHENTICITY**

There is more to professionalism that just the four elements discussed above. Particularly for the dispute resolution professional who is creative, intuitive, or idealistic – mediation is no mere algorithm. Human emotions matter, and the mediator places themselves in the middle to bring order to the parties’ chaos. We train mediators what to do and what not to do. However, rarely (if ever) do we talk about how to avoid being overwhelmed by the push and pull of forces swirling around us.

This is where self-care comes in. We mediators must cultivate our capacity to monitor how close we are to drowning. No one else can do it for us. The requirements of confidentiality typically constrain mediators from a detailed and full debriefing. What we omit from the standard debrief might be exactly what’s needed to touch the wound that requires attention. Further, in the effort to serve the public interest instead of the mediator’s
personal interest, the mediator may ignore or minimize the turmoil within themselves. Acting always in the best interests of others risks undermining the ability of the mediator to hear their own inner wisdom. This is the objective of mediator self-care as discussed in this session: to strengthen the internal support system needed to perform day-in and day-out with integrity, and to avoid burn-out. This is not everything, but it can be an important step along the way.

We shall dig into the key topics of this session to approach debriefing as an act of mindfulness; cultivating a deep sense of personal awareness – without editing ourselves. We'll use a literally hands-on meditation to illustrate one way to do this.

We shall explore “resilience” as “resourcefulness” - accessing the informal and formal resources available to the mediator. The change in words is a conscious reframing.

Sometimes the word “resilience” can be heard as implying that we should be strong enough to be violated, beaten, and still rise despite all odds. “Resourcefulness” recognizes that we are all vulnerable at some level or another, over some period of time or another. This is when burn-out sets in, unless we have identified external resources to help us manage the sinkholes, quicksand or earthquakes that might suddenly remake the terrain of our lives.

Finally, we shall look at what some consider the antidote to burn-out: namely, happiness. I posit that authentic happiness is found in a life with meaning, with purpose. This often does not resemble what television, the movies and social media present as “happiness.” Here, we shall define happiness in terms of authenticity: that state of being when what we think, feel, say and do are in alignment.

Hopefully, this session will inspire you to see opportunities and resources to build authentic happiness in the midst of other peoples’ chaos. Over the years, many individuals
have wanted to share their own experiences in a format that does not breach confidentiality.

One way to continue our dialog after the conference is to contact me at phyllis@phyllisbernard.com. I look forward to hearing from you.