

# COMMENTARY

## ADR SPOTLIGHT

**P R E M I**

PROFESSIONAL RESOLUTION EXPERTS OF MICHIGAN, LLC

### Facilitating positive change in the workplace

BY LAURA A. ATHENS

Facilitation can be an invaluable tool to promote a positive work environment and prevent escalation of employment disputes. In contrast to mediation, which focuses on disputes that have reached an impasse or resulted in filing of a formal complaint, facilitation may be used at the inception of an employment conflict. Facilitation is particularly effective in addressing workplace climate issues, such as incivility, bullying, harassment and disputes concerning promotion, salary and benefits.

#### Workplace Concerns

Incivility and bullying are prevalent in the workplace. According to a 2017 online survey of over 1,000 workers conducted by Workplace Bullying Institute, nineteen percent of Americans have suffered abusive conduct at work. The survey defined abusive conduct as repeated mistreatment or conduct that is threatening, intimidating, humiliating, verbally abusive or involves work sabotage. Twenty percent of bullying incidents involved an underlying discrimination component.

The Workplace Bullying Institute survey further indicated that twenty-nine percent of workers remained silent about the abusive conduct. Only 18% filed a formal complaint and 71% of employers who were informed of the abuse took steps that were not beneficial. The employers conducted "sham" investigations that did not include interviews of key individuals and accorded greater weight to the perpetrator's version of events. The adverse impact on targets was significant. Fifty-four percent of targets either quit, were terminated or transferred to a different job within the workplace. In contrast, a negative impact on the perpetrator's job only occurred 36% of the time.

Utilizing facilitation can engender significant and enduring climate changes in the work environment. It is aimed at improving the workplace by fostering candid communication and joint problem solving. The facilitator's job is to ensure that all key stakeholders have an opportunity to be heard, options are explored, and sustainable solutions are reached through a collaborative process.

#### Pre-facilitation Interviews and Work Environment Survey

Initially, the facilitator meets with the employer or supervisor who requested facilitation to get a sense of the nature and scope of employment issues. Through this initial interview, the facilitator learns about the history, traditions and practices of the workplace. Having a sense of the "back story" helps the facilitator work more effectively with the employer and employees when it comes time to facilitate a group discussion.



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the facilitation, the facilitator's role is to ensure that participants have an opportunity to be heard and the meeting progresses in a productive manner.

The facilitator also serves as a role model of respect by demonstrating attentive listening without judgment, empathy and good communication skills. The facilitator ensures that the focus of the meeting remains on the intended purpose and objectives for the meeting. The facilitator guides the group through consensus building with a calm and confident demeanor. If blaming or negative comments occur, the facilitator defuses and reframes them to focus on the positive and future solutions.

A good facilitator encourages transparency and helps the parties maintain or build trust. The facilitator does not try to take over the meeting or impose his or her own viewpoint. Instead, the facilitator points out commonalities, brings attention to areas of agreement and assists participants in understanding each other's perspectives without becoming defensive. The facilitator clarifies expectations, requests further explanation, addresses misunderstandings, redirects or slows down the conversation and supports the group in reaching productive decisions. Like mediation, facilitation focuses on the future, rather than the past, to move the participants forward and determine what needs to be done.

Because the group wants results, the ultimate goal of facilitation is a commitment to action. Although review of climate, culture and workplace concerns is important, it becomes a meaningless exercise if no action is taken. The facilitator has a responsibility to help the group develop a plan of action to operationalize consensus reached.

After the large group facilitation, the facilitator frequently prepares a summary of decisions reached and a description of the agreed upon course of action. If assistance is needed with implementation of the plan, the facilitator can serve as a valuable ongoing resource.

Facilitation can be transformative. It permits employers and employees to engage in authentic dialogue and reach collective decisions aligned with their core values. Employers should consider facilitation as a means of conflict resolution when faced with bullying, harassment or salary and promotion issues. The facilitator should be selected with care to ensure the facilitator has the expertise and experience to generate positive change. A good facilitator can save the employer time, energy and expense by efficiently and effectively resolving the dispute and restoring a productive and collaborative work environment.

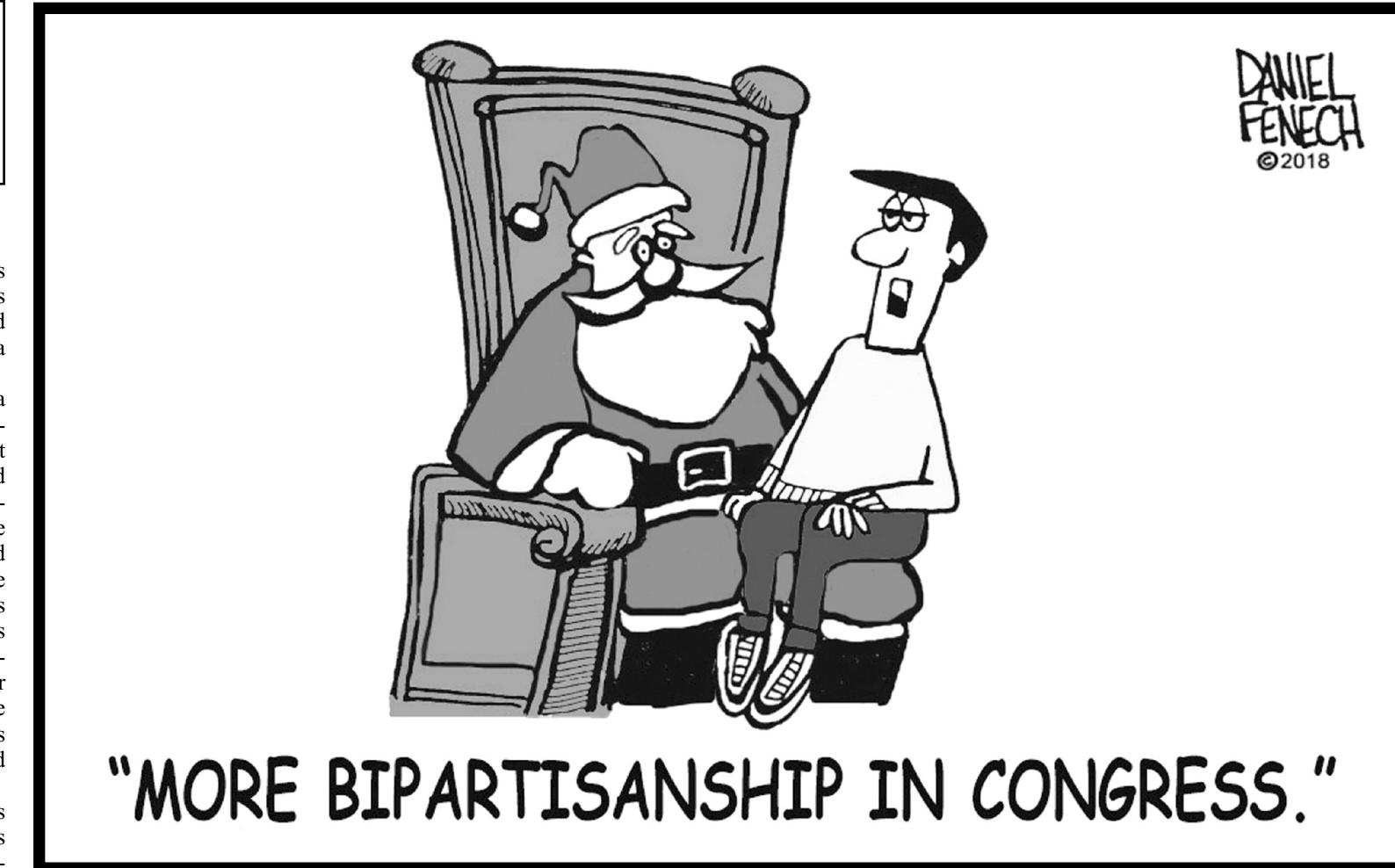
#### Facilitated Large Group Meeting

Creating a safe and energizing environment for the facilitation is essential. Similar to mediation, the setting and configuration of the meeting room for the facilitation are important considerations. Rooms with windows to the outside, natural lighting and pleasant wall hangings will be more comfortable. Arranging tables and chairs to ensure all participants can see and hear one another is more conducive to constructive conversation and active engagement.

Providing snacks and beverages can help ward off "hangry" behavior. Having props available, such as a flip chart, white board, markers, note cards and sticky dots will encourage creativity and interaction. An ice breaker exercise is an engaging way to begin the facilitation and primes the participants for active engagement.

At the inception of the group facilitation, the facilitator greets and acknowledges participants as they enter the room. When the meeting begins, the facilitator repeats the purpose and meeting objectives to ensure everyone is on same page. Ground rules or protocols for the meeting are reviewed and accepted. During

Laura A. Athens is an attorney, mediator and arbitrator in Farmington Hills. Athens provides alternative dispute resolution (ADR) services in a variety of matters. She mediates and facilitates special and general education, vocational rehabilitation, university faculty grievance, employment, guardianship and disability rights cases. Athens previously served as a Hearing Officer in special education and vocational rehabilitation due process hearings. As an adjunct professor at Wayne State University Law School, Athens taught education law, health law and bioethics. Athens also taught Legal Research and Writing at Washington University School of Law. She is an associate of Professional Resolution Experts of Michigan LLC (PREMI, <https://premidadr.com/>) and has served on the State Bar of Michigan Alternative Dispute Resolution Council and as a former chair of the Oakland County Bar Association ADR Committee. Athens has published numerous articles on education law, mediation and arbitration and frequently lectures and appears on cable TV programs regarding ADR and school-related topics.



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### "MORE BIPARTISANSHIP IN CONGRESS."

### New law offers some breathing room for cyclists

BY MARIE E. MATYJASZEK

We often see signs and bumper stickers urging motorists to "Share the Road" and "Look Twice, Save a Life," both of which remind drivers to look out for motorcyclists on the highways of Michigan.

It's not often that the alerts turn to the safety of bicyclists who pedal along the roads. Sure, plenty of towns and cities have designated bike lanes, but the awareness and safety aspects are far less prominent when it comes to riding a Schwinn as opposed to a Harley.

That changed as of September 26, when the state enacted a law that requires motorists to maintain a minimum of 3 feet of distance between their vehicle and the bicycle that they are passing on the road. The law is a much-needed response to a series of bicycle-car accidents over the past few years, including a crash near Kalamazoo in June 2016 when nine bicyclists were struck by a car, killing five.

"Requiring motorists to maintain a safe distance while passing a bicyclist ensures safety for both the cyclist and motorist," said Rep. Holly Hughes, R-Montague, who sponsored the legislation. "The number of bicycle fatalities is on the rise and this legislation is an attempt to reverse that trend."

Specifically, the law reads:

The driver of a vehicle overtaking a bicycle proceeding in the same direction shall, when otherwise permitted by this section, pass at a distance of 3 feet to the right of that bicycle or, if it is impracticable to pass the bicycle at a distance of 3 feet to the right, at a safe distance to the right of that bicycle at a safe speed.

Beginning in 2019, driver's education training will include at least an hour of instruction on pedestrian, motorcycle and bicycle laws in the state of Michigan. Violations of the law are treated as civil infractions.

According to the National



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Conference of State Legislatures, the vast majority of states have similar 3-foot passing laws for bicycles, although North Carolina allows 2 feet, while Pennsylvania provides for 4 feet of space. South Dakota requires 3 feet if the speed limit is 35 mph or less, but it increases to 6 feet for roads that have speed limits over 35 mph. Some states require drivers to completely change lanes if the road has two lanes in the same direction.

It may be hard to judge a distance of 3 feet when driving, but motorists should err on the side of caution and give bicyclists as much space as possible when passing. Considering that I have two children who love to ride their bicycles (streamers, bells and baskets included), I'm certainly delighted that the law is finally catching up to the need for the safety of all bicyclists on the road.

Marie E. Matyjaszek is an attorney referee at the Washtenaw County Friend of the Court; however, the views expressed in this column are her own. Her blog site is: <http://legalbling.blogspot.com>. She can be reached by e-mailing her at matyjasz@hotmail.com.

### MY TURN

BY TOM KIRVAN  
*Legal News*



### Artist's way of life reflected in a gift that keeps on giving

Her epitaph was her way of life:

"Here lies one doubly blessed. She was happy and she knew it."

I like that, just as I have always enjoyed each visit to her nature sanctuary on the Betsie River.

It is a 250-acre slice of northern Michigan nature, perhaps an odd site for one of the most successful printing operations in the state's history.

For years, it was a place where you could see the owner-artist at work, methodically and creatively plowing her trade. She was lovingly described as the "sassy grande dame of the Michigan art, nature and business" scenes and "as uniquely Michigan as the state's mitten shape or the Petoskey stone."

She must have liked such descriptions, perhaps almost as much as the thousands of visitors who continue to make the yearly trek to her nature shrine that is home to Presscraft Papers, better known as Gwen Frostic Prints.

The story of Gwen Frostic, of course, is a classic Horatio Alger tale, a rags-to-riches sort of spellbinder that delights those of all ages.

Frostic was a native of Michigan's Thumb area and grew up in Wyandotte, where she founded her printing operation, eventually moving it to the beautiful Crystal Lake area near Beulah in 1964. A childhood illness reportedly left her with a cerebral palsy-like condition that noticeably affected her speech and motor skills.

She, however, had a distinct disdain for being labeled as "handicapped," preferring instead to apply her business and creative genius to building a multi-million-dollar printing empire that continues to hum today.

From the display room of her printing operation, shoppers can enjoy the warmth of a huge fireplace and natural fountain that are nestled near a fleet of Heidelberg presses that stamp out napkins,

notepapers, placemats, books, and postcards in a rainbow of colors, using the original blocks created by Frostic.

She studied art at Eastern Michigan University and Western Michigan, later working in the tool and die operation at the Willow Run bomber plant during World War II. In 1978, then-Governor William Milliken declared May 23rd as "Gwen Frostic Day" in Michigan. Some eight years later, she was inducted into the Michigan Women's Hall of Fame, an honor she gracefully took to her passing on April 25, 2001, one day before what would have been her 95th birthday.

Her love of nature and wildlife are lasting legacies depicted in every image stamped by the massive Heidelberg presses.

"I work with nature because it treats me equally," Frostic once said.

Fittingly, she would become a first among equals at Western Michigan University, her alma mater. It was there that she left a bequest of \$13 million, reportedly the largest single gift in the school's history. The generosity was reflected in 2007 when WMU named its school of art after her.

The university, according to reports, has "channeled much of her gift to foster artistic pursuits, including the English Department's Gwen Frostic Reading Series, School of Art facilities, and student scholarships in art and creative writing." Funds also are designated for business scholarships and three Gwen Frostic Medallion Scholarships, which are awarded to incoming freshmen and are valued at \$40,000 over four years.

There, as WMU officials continue to marvel at the scope of Frostic's philanthropy, the late artist's words carry double the meaning:

They are happy and they know it.

### COMMENTARY PAGE

The Legal News presents a weekly Commentary Page.

Anyone interested in contributing on an occasional or weekly basis to future commentary pages should contact Tom Kirvan, editor-in-chief, at [tkirvan@legalnews.com](mailto:tkirvan@legalnews.com).

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