



Published By Oregon Mediation Association
An Oregon Non-Profit Corporation Of Members Committed to the Development, Support, and Advocacy of Mediation in the State of Oregon

VOLUME XIV ISSUE NO. 4 P.O. Box 40041 • Portland, Oregon 97240 • 503-872-9775 • www.omediate.org FALL 2009

2009 OMA CONFERENCE UPDATE: BEYOND HEROES AND VILLAINS

Amy Cleary, Conference Committee Chair

Hello fellow OMA members. We are getting very close to kicking off our 2009 Oregon Mediation Association Fall Conference in beautiful Eugene, Oregon. This conference is unique in that it is our first collaborative effort with a partner organization. The University Of Oregon School Of Law is opening its doors and co-hosting this event in the prestigious William W. Knight Law Center on November 6th and 7th. November is Mediation Month in Oregon, and this conference brings recognition to the work of mediators, trainers and professors from around the state and beyond.

The conference theme this year is “Beyond Heroes and Villains: The Power of Collaboration”. We as mediators model collaboration and consensus approaches to problem solving which help to create hope in seemingly hopeless situations. By gathering at this conference, we bring statewide attention to our work, and build stronger bonds between practitioners and organizations who partner to move the work of mediation and collaboration forward.

Join your colleagues on Friday morning in the Long House to participate in an opening ceremony followed by the keynote presentation by world renowned mediator Larry Susskind. Participate in the annual OMA business meeting on Saturday morning to receive an update on the progress of the organization and its many robust and active committees. Enjoy Saturday lunch with the opportunity to hear once again from Larry Susskind and participate in a Q & A session.

There will be fun as well as learning at this two-day event! OMA will be selling raffle tickets for a chance to win fabulous auction baskets donated by community mediation programs across Oregon. A silent auction

will provide tempting offerings during the relaxing Friday night reception following the first full conference day. The conference committee has been working hard to come up with ideas to help support all of you as you enjoy this event. Watch for special activities between breaks, and board members who will be open to direct feedback from you during the conference.

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Register today at <http://omediate.org/pg1013.cfm>!

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Member Services Report

OMA Member Services Convenes 2nd “OMA Listening” Call

OMA was pleased to have several Board Members on hand for our second “OMA Listening” call on October 5th. One of the focal points of this discussion was clarification on the purpose of the Proposed Mediator Guidelines, which the Standards and Practices Committee had shared with the membership prior to the call.

OMA Board President Mike Schnee reported that the document is available for member review and has also been sent to other organizations. He said that the Standards and Practices Committee will present information at the OMA Fall Conference, and then provide a recommendation on how to move forward to the OMA Board at their December meeting. The Board may approve the Guidelines at that meeting, or may choose to discuss them further during their winter Board Retreat.

Board Member Sue McFadden added that these Guidelines are part of a much broader conversation that has been on-going regarding whether or not mediators should be certified. She recalled that a few years ago, the Oregon Justice Department drafted some basic guidelines, but as of yet there is no “Oregon Mediator Certification” program.

This has proved to be a hot topic and the Standards and Practices Committee has done its part to keep the conversation, and the process, moving forward. (An OMA member on the call commented that it is worth knowing this process is moving forward to either adoption and/or practice within Oregon and noted looking forward to the conversation at the upcoming Conference.)

The time and date for the next OMA listening call will be announced via an upcoming OMA Flash. Thanks to all who participated in this lively discussion!

Coming Soon:

OMA Member Featurettes!

OMA Newsletter readers have a new column to look forward to: OMA Member Featurettes! Spurred by feedback from OMA members saying that they love to read about the experiences of their fellow OMA Members, the OMA Member Services plans to coordinate interviews with OMA members from around the state. We hope you will enjoy learning more about the experiences, successes and challenges that have brought your fellow members to where they are in their practices today.

OMA Member Services at the OMA Conference!

The Member Services Committee will be hosting a display table at the OMA Conference where you can ask questions, find out more about the OMA Committees and Interest Groups, or just take a moment to let us know how OMA can help you meet the challenges you’re facing in your world! Feel free to stop by and offer us your suggestions for the organization.

Upcoming OMA Board Meetings:



Monday, December 14, 2009

11:00 a.m. to 4:00 p.m.

Monday, January 25, 2010

10:00 a.m. to Noon (New Board Member Orientation)

Noon to 4:00 p.m. (Board Meeting)

OMA Newsletter

P.O. Box 40041

Portland, OR 97240

Editor : Robin Gumpert

Published quarterly by the Oregon Mediation Association (OMA)

Send newsletter and calendar items to the above address or email editor Robin Gumpert rgumpert@cnnw.net

Next Newsletter Deadline: January 15, 2009

Director's Corner

Judy Brodkey

For the past several months, much of OMA's energy and attention has been focused on preparing for "Beyond Heroes & Villains: The Power of Collaboration", our 23rd Annual Fall Conference. It's not too late to register! Please visit <http://omediante.org/pg1010.cfm> for a conference brochure, information and registration materials.

I've been pondering the "beyond heroes and villains" aspect of our conference theme. From an early age, many of us are indoctrinated to view the world in terms of dichotomies – black and white, good and evil, hope and despair, strangers and friends. As we get a clearer sense of the world, we learn that these false dichotomies are seldom useful in helping us solve the real issues of our lives.

There are numerous tools we can use to move beyond antagonism toward collaboration, and forgiveness is one of those tools. Some people may consider forgiveness as soft, touchy-feely, mushy. In reality, forgiveness is tough work and it's also the work of true healing. One of my favorite quotations is "Life is an Adventure in Forgiveness" (Jampolsky) and I have found that to be true. Life offers us no shortage of opportunities for forgiveness.

I live in an apartment complex and was dismayed this year when I discovered my new next door neighbors were smoking. Their second hand smoke was seeping into the hallways and my living space. The stench infuriated me. I repeatedly asked my

neighbors to stop allowing this to happen and the situation would improve for a few days but invariably the smoke would return. As this conflict wore on, I found myself getting angrier and more closed as I knocked on their door, left them notes, and tried to work through my landlord without success. I considered asking my neighbors to go to mediation and did some exploration with the American Lung Association concerning that.

Then in the spring, I noticed a long stretch of time when there was no smell of smoke before it returned again. During that time, my heart softened a bit. I realized my neighbors were addicted to tobacco and that it must not be easy to have such a hard habit to break. I began to feel more compassion. I left some freshly picked berries outside their door. I began to shift to hoping they would either find the strength to stop smoking permanently or move away. I could tell they were good people, even though I was annoyed. And I realized there are behaviors I have that annoy other people, whether I'm aware of them or not.

I realized that every time I raged about the second hand smoke, I only hurt myself. It had absolutely no impact on my neighbors' behavior. Fred Luskin, author of *Forgive for Good*, believes that when we do not forgive it's like giving our so-called villains rent-free space in our brains.

I wasn't unhappy to come home one day in September and see that my neighbors had moved out and the air smelled fresh and clear again. How-

ever, by the time they left I had forgiven them.

In the process of facilitating a mediation that lasts only one session or a few sessions, it's unrealistic to think that either party will arrive at true forgiveness. However, it is definitely possible to plant the possibility of forgiveness during even the briefest of mediations.

In his powerful book *Mediating Dangerously*, Kenneth Cloke, writes that mediators can help parties in a dispute see each other as people not unlike themselves and find someplace within themselves where they may have done something similar.

"Parties can learn to see themselves through each other's eyes and discover there is a clear path to release from the prison of shame and blame, pain and punishment – that is the path to forgiveness."

This is not an easy task and, as Cloke admits, requires more than just effective conflict resolution techniques, although that is a good starting place. It may require some extra measure of deep listening, courage and love... and what he refers to as "magic."

So I encourage all of us to consider any areas in our lives where we might need to forgive others or be forgiven by others, and what we need to keep learning in order to help our mediation clients move from "superhero-villain" thinking towards real forgiveness and collaboration.

See you at the Conference!

President's Ponderings

Mike Schnee, OMA President

It's my last newsletter as OMA President and apparently none too soon since I seem to have an incredible case of writers block. But despite my temporary fear of the blank page – it seems as though I do have something to reflect on. I have been President for a year and half and have seen a lot of great things happen and enjoyed the legacy that OMA has created over the last 23 years.

I will offer you two quotes that have come to the forefront for me this week. First, a short quote attributed to Mahatma Gandhi, **“What you think – you become.”** I do believe this is true and here are some of my thoughts about OMA - what it has become over the years and what challenges may surface.

I think the following are just a few examples of what OMA is and some of its strengths:

- A strong advocate for all types of mediation in Oregon,
- A place to develop professional relationships and friends who believe in mediation and other forms of productive dispute resolution,
- A learning organization dedicated to serve its membership and those who use or want to learn about mediation,

OMA has very dedicated and professional staff - Judy and Megan are outstanding, and OMA's committee members (and the newsletter editor) have great energy and work incredibly hard for OMA, OMA members, and promoting high quality mediation in Oregon.

Here are a couple of challenges that **I think** the membership needs to address to keep OMA strong:

- More members, new and old, step up to join committees or take on projects, and
- Members from throughout the state find ways to connect and support each other and enhance OMA's presence in all parts of Oregon.

The second quote... I always am fascinated by the bumper stickers people choose to place on their vehicles. I have never been able to put one on my car because I have yet to find that quintessential saying that I want everyone to recognize me by. Of course it is clear from what we see on the road that you don't have to limit yourself to just one...

But here is one bumper sticker slogan that **I think** should be written on the wall in virtually every mediation setting... **“Don't believe everything you think.”**

There you have it... a little Gandhi and a little bumper sticker wisdom to guide us all.

Last Chance to Register for the 2009 OMA Fall Conference!

The 2009 OMA Conference is only two weeks away! Registrations have been pouring in, so please make sure to submit yours before it's too late! OMA needs to submit counts for food and program materials very soon, so please register today. Don't miss out on this year's fabulous conference in beautiful Eugene, OR.

The late fee has been waived so you can still take advantage of this year's lowest conference rates! Visit <http://omediante.org/pg1013.cfm> to register today!



Heroes & Villains
The Power of Collaboration

Ask OMAr

Dear OMA'r,

I had a very frustrating mediation session. The parties were both represented by lawyers. One of the lawyers just wasn't getting it. No matter how we tried to explore with him and his client the strengths and weaknesses of his case, and the outcome his client could face if the case went to trial, the lawyer only recognized the strengths, and would not acknowledge the weaknesses of his position. The other side made what I thought was a very reasonable settlement offer, and I got the sense that the client wanted to take it, but the lawyer talked his client out of it, and the case did not settle. The client now has sued his lawyer for malpractice, because the result at trial was in fact much worse than the settlement the other side offered in the mediation. The client wants me to be a witness, to testify about what happened in the mediation. What do I do?

Signed,

Reluctant to Testify



Dear Reluctant —

The first thing I need to say is that OMA'r can give ethical advice, but not legal advice. So you should consult your own lawyer about how to deal with any subpoena or other interface with the legal system. But what I can tell you is that all communications in the mediation are confidential and privileged, and, unless you and the other party consent to their disclosure, both OMA's Core Standards of Mediation Practice and Oregon law counsel against

your testifying about the mediation. Section IV of the Core Standards reflects that "Confidentiality is a fundamental attribute of mediation." Comment 4 to that Section posits, "The obligation for mediators to protect the confidentiality of mediation communications includes the obligation not to communicate information about how participants acted during the mediation process." So, your ethical obligation is to decline to disclose any information about what the participants said or how they acted in the mediation.

ORS 36.220 and 36.222 also should protect you from having to make these disclosures. Under ORS 36.220(1) (a), unless the parties agree in writing that part or all of their mediation communications are not confidential, "Mediation communications are confidential and may not be disclosed to any other person." Under ORS 36.222(1) and (3), unless all parties and the mediator (as well as the mediation program, if there is one) agree to disclosure, mediation communications "are not admissible as evidence in any subsequent adjudicatory proceeding, and may not be disclosed by the parties or the mediator in any subsequent adjudicatory proceeding."

A situation just like yours was recently litigated in federal court here in Oregon, and the court ruled that the privilege applied. In *Jeffrey Fehr, et al., v. John Kennedy, et al.*, Civil Case No. 08-1102-KI, the Fehrs had been involved in litigation of three cases in Multnomah County arising out of a business association, in which they were accused of fraud and conspiracy. The three cases were mediated together. The mediation did not result in settlement. The cases were tried to a judge, who found the Fehrs liable for \$364,503 in damages, and \$51,359.25 in attorney fees. The Fehrs then sued their lawyer for malpractice. They alleged that their lawyer wrongly "failed to assess and advise them of the risk of going to trial" and that he "specifically discounted and contradicted the mediator's assessment of the likelihood of success of [the other party's] claims and the consequences of a loss at trial." As a result, they alleged that they rejected "an offer to settle the case which was much more favorable than the result achieved at trial."

Continued on page 9...

USING MEDIATION TO PREVENT CLIMATE CHANGE WARS

Elaine Hallmark

Climate instability is a tremendous potential cause of serious economic disruption, and therefore a potential cause of war. Consider this from the Report of the Secretary General on enhancing mediation and its support activities, [United Nations Security Council, Report # S/2009/189]:

The impacts of climate change are already contributing to intra-state and inter-state conflicts over water resources, species conservation, environmental immigration, and emergency management.

In a high level brief by the European Union Commission, climate change was described as posing security risks by acting as a "threat multiplier which exacerbates existing trends, tensions and instability." Climate induced conflicts are expected to increase in number, extent, and intensity as competition for scarce resources grows and the pace of change outstrips our ability to adapt our carbon based economies, agricultural production and potable water supplies.

In December 2009, delegates from around the world will meet in Copenhagen, Denmark for the 15th Conference of the Parties (COP 15) to the United Nations Framework Convention on Climate Change (UNFCCC). Copenhagen will provide a critical opportunity for the world's nations to reach a comprehensive agreement before the commitments set out in the Kyoto Protocol expire in 2012.

Mediators Beyond Borders (MBB) (www.mediatorsbeyondborders.org) is the only dispute

resolution organization presently approved to be an official observer at the Copenhagen meeting, and is urging all delegates to include a mediation provision in the climate change treaty. Currently, the Kyoto Protocol (www.unfccc.int/kyoto_protocol/items/2830.php) includes negotiation, conciliation, arbitration, and judicial options, but not mediation.

In an April 09 UN Security Council Report, the Secretary General outlined several of the benefits of mediation, among them:

- addressing the root causes of conflict;
- helping overcome obstacles that block progress through conventional means;
- taking economic, environmental and community interests and values into account;
- being sensitive to cultural differences and accommodating peace and justice concerns ; and
- creating sustainable agreements that facilitate implementation.

The report advocated for increasing the timely use of mediation and strengthening the capacity at all levels of government and civil society for constructive resolution of disputes. A UN Environment Program (UNEP) report also recommended that priority be given to "capacity - building for dispute resolution, environmental governance and land administration in states that are vulnerable to conflicts over natural resources and the environment." For these reasons, the following proposed mediation provision was drafted by Mediators Beyond Borders as an amendment to the agreement on climate change.

Continued on page 8



Training Calendar

The Training Calendar can be found on OMA's website at www.omediate.org. Please see the website for a listing of mediation-related training and other events.

If you would like OMA to list your event, send an email to oma@omediate.org.

Are Your Conflict Behaviors Positive?

Barbara Blackstone

Have you ever wondered how effective you are when **you** get into a conflict? Yes, I know that you have many good communication and listening skills and are a good problem solver - all of which make you a great mediator. But somehow, when it comes to your own conflicts, all those great responses often go out the window. I know, it certainly happens to me!

Many of us are familiar with the Thomas-Kilmann scales and use them to help others understand how they normally respond in conflicts. This has been a great tool for a macro look at how we react. While the categories give us some great ways of talking generally about different approaches to conflict, there is little specific help on how to improve on our conflict behaviors.

For the past few years, I have been using the Conflict Dynamics Profile® to help students and clients (and myself) understand what behaviors they use when they are caught up in a conflict. This tool was developed by the Leadership Development Institute at Eckerd College in Florida and is used extensively by the world-renown Center for Creative Leadership®.

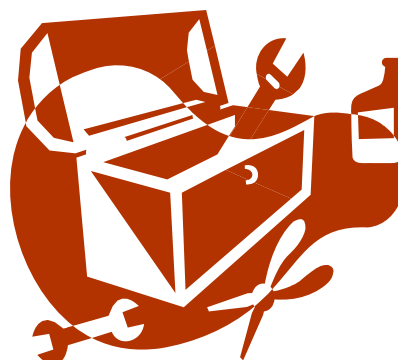
After answering a 99-question online tool, your responses are divided into fifteen categories which are then identified as constructive or destructive. Each of these fifteen is also designated as an active or passive behavior. The results are shown in graphic forms that show how your scores compare with the thousands of others who have used this tool. You can see which areas to celebrate and those that could use further work. While the tool was developed and tested in workplaces

throughout the world, you will find that the information is valuable in all aspects of your life.

Ideally, you want to maximize your constructive behaviors and minimize the destructive ones. The Development Guide that accompanies the results shows you how. The CDP also identifies nine behaviors by others that serve as “hot buttons” or triggers for you. In other words, times when you need to be especially aware so that negative emotions don’t overtake your resolve to respond positively.

Students and clients have overwhelmingly said that this tool showed them areas they especially needed to work on and that the Development Guide gave great information on steps that would enhance their future conflict responses. Improving our own conflict behaviors can make us even more empathetic and skilled mediators.

If you would like to learn more about this next generation of conflict management tools, please visit www.conflictdynamics.org/ or contact Barbara Blackstone at barbara@blackstonenegotiation.com or 503-525-4120.



... 'Using Mediation' continued from page 6

Proposed Annex on Conciliation:

"1. (A) Reaffirming the principles set forth in Chapter IV, Articles 33 - 38 of the UN Charter governing the peaceful settlement of disputes, the parties agree that the parties to any dispute resulting from the interpretation or implementation of this treaty "shall first seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice."

(B) In the event that efforts to negotiate a solution are unsuccessful, parties are encouraged to use mediation to settle their disputes at all stages, including before, during and after conciliation, arbitration, and actions before the International Court of Justice.

(C) Mediation shall be conducted in accordance with procedures to be adopted by the Conference of the Parties as soon as practicable, in an annex on mediation."

OMA life member, Elaine Hallmark, an environmental mediator in her own right, and her husband, Bill Hallmark, will be traveling to the Copenhagen meeting in December and to the Barcelona pre-meeting in early November as representatives of Beyond War (www.beyondwar.org) on the MBB team. Information about their experiences will be available through the Beyond War website once they are underway. Current plans include:

-Meeting with delegates to encourage use of mediation at pre-Copenhagen meetings being held in Bangkok in October and Barcelona in November.

-Sending an MBB contingent presently including 80 mediators from 16 countries to Copenhagen in December with as many endorsements of the proposal as possible.

-Co-hosting a seminar with Nordic Mediators on December 10 and 11 in Copenhagen to develop a strategy to encourage the mediation of climate change disputes. [For more information go to: <http://cop-15mediators.wordpress.com/>].

**ENDORSEMENT of MEDIATION
in CLIMATE CHANGE TREATY**

Mediators Beyond Borders needs your help to support the proposal by adding your and your organization's endorsement to our list. Please provide the following information in an e-mail and send to kenclokembb@gmail.com and elaine@beyondwar.org as soon as possible. Send one e-mail for each endorsement.

- TYPE OF ENDORSEMENT (personal / organizational):
- NAME:
- TITLE:
- ORGANIZATION:
- CITY:
- STATE:
- COUNTRY:



...*'Heroes and Villains' Conference Update continued from page 1*

Just to add a bit more flavor, be sure to find time to visit the Art Museum on the University of Oregon campus and view the amazing *Faster Than A Speeding Bullet: The Art of the Superhero* exhibit. This exhibit is described on the Art Museum website: "Mapping the path of the American superhero through a history of comics, this exhibition addresses the subject from many perspectives,...examin[ing] the larger processes of social change through narratives and visual expressions of age, gender, race, religion, culture, and nation-

alism." The fact that this exhibit mirrors our conference theme is a bit of happy synchronicity!

Please visit the OMA website at www.omediate.org to view the wide range of workshop offerings and registration information. Sign up for one or two days. **The late registration fee has been waived, so it's not too late to register at the lowest conference rates. We've also added a special rate for colleges and universities that register five or more fulltime students - call the OMA office for details.**

Don't miss this wonderful opportunity to meet and mingle with mediator colleagues, and to continue your ongoing journey of experience and learning. We will meet



...*Ask OMA'r continued from page 5*

The lawyer and his firm asked the court to dismiss the case, because, they argued, "the Fehrs cannot prove their malpractice claim without disclosing and admitting into evidence communications that occurred in the mediation." They further contended that the necessary disclosure is prohibited by Oregon statute because other parties at the mediation, including the mediator, refused to consent to the disclosures.

The court agreed. Specifically, the court held: (a) that the malpractice action was a "subsequent adjudicatory proceeding" to which the statutes applied; (b) that the statutory privilege did not violate the Oregon Constitution's free speech guarantee, Article I, section 8, because it regulates speech no more than other long-accepted evidentiary rules, such as the attorney-client privilege, and,

in any event, the statute falls within "the historic exception for settlement discussions"; and (c) that the draft settlement proposal was a mediation communication, without which the Fehrs could not prove malpractice, and which was inadmissible. The court granted the lawyers' motion for summary judgment and dismissed the lawsuit.

So, Reluctant, it appears that you have hit the trifecta. OMA's Core Standards of Practice dictate that you not testify about mediation communications; Oregon statute makes those communications privileged and inadmissible; and the courts appear ready to validate confidentiality and privilege by precluding you from testifying. But, if you are served with a subpoena, be sure to seek your own legal advice before proceeding.

Confidentially yours,
OMA'r





***Please Save the Date for
OMA's Holiday Party!***

December 10, 2009

5:00 p.m.

Red Star Tavern

SW 6th Avenue & SW Alder Street

Portland, OR 97204

Come celebrate another successful year with OMA at our 2009 holiday party. More details will be sent at a later date, but please be sure to mark your calendar now so you don't miss out on this fun event. We hope to see you there!



Oregon Mediation Association

SAVE THE DATE
MARCH 18, 2010

Give Peace a Dance

Award Gala, Dinner &
Fundraiser Event



Celebrating our Luminous Peacemakers

MARCH 18, 2010
6:30pm
The Tiffany Center
Portland, Oregon

Save this date to be a part of a magical evening of *Fun, Frolic and Fabulous* company along with food, drinks and entertainment



503-872-9775
PO Box 40041
Portland, OR 97240

OMA Executive Committee		
Mike Schnee <i>President</i>	(541) 602-1452	Mike@michaelschneeconsulting.com
Lauren MacNeill <i>Vice President</i>	(503) 380-8528	laurenmac@co.clackamas.or.us
Amy Cleary <i>Treasurer</i>	(503) 655-8700	amyacle@co.clackamas.or.us
Sue McFadden <i>Secretary</i>	(503) 453-7517	suemcf@gmail.com
Tomás Garza <i>Past President</i>	(541) 230-4477	garzamediation@yahoo.com
OMA Board Members		
Lisa Amato	(503) 789-3262	lamato@spiritone.com
David Bertram	(503) 584-4754	David.L.Bertram@ojd.state.or.us
Jim Brooks	(503) 526-2791	jbrooks@ci.beaverton.or.us
Joan Howard	(541) 278-6290	jhoward@co.umatilla.or.us
Dena Marshall	(503) 740-7123	dena@marshallmediation.net
Rita Moore		ritamoore1@yahoo.com
Philip Moses	(541) 686-5060	pmoses@directionservice.org
OMA Staff		
Judy Brodkey <i>Executive Director</i>	(503) 872-9775	director@omEDIATE.org
Megan Brooker <i>Administrative Assistant</i>	(503) 872-9775	oma@omEDIATE.org

Thank You Lifetime Members

- | | | | |
|--------------------|-------------------------|-------------------------|------------------|
| Ann Bartsch | Anita Engiles | Anthony Larson | Amy Silverberg |
| Jeff Bauman | John C. Gartland | Hugh McIsaac | Donna Silverberg |
| Robert D. Benjamin | R. Elaine Hallmark | Jim Melamed | Laurel Singer |
| Barbara Blackstone | Karen Hannan | Julien Minard | Ingrid E. Slezak |
| Jim Brooks | Barbara Hart | Cynthia Moore | Donna Smalldon |
| Larry T. Coady | Sam Imperati | Barbara Ashley Phillips | Carol Weigler |
| Betsy Coddington | Jim Jacks | Marie Rust | |
| Donald Cole | Joshua Kadish | Linda Scher | |
| Lynne Cox | Molly Rodriguez Keating | Michael W. Schnee | |
| Jamie Damon | James L. Knoll | William H. Schultz | |
| J. Michael Dwyer | | | |



Welcome New Members!

Andre Allen
 Stan Austin
 Helen Beardsworth
 Steven Bettencourt
 Gail Black
 Shelley Brown
 Marshall Douglas
 Phillip Duechle
 Bob Friedman
 Greg Frye

Anya Hankin
 Bryn Hazell
 Theresa Jensen
 Cassy Kramer
 Eva Kripalani
 Alan Leiman
 Zorwyn Madrone
 Jack Mattison
 Anthony Noble
 Michael Omogrosso

Mark Roberts
 Rachel Rustad
 Katherine Stansbury
 Kathleen Stoneman
 Ruth Tooze



Contact OMA
 PO Box 40041
 Portland, OR 97240
 503-872-9775
oma@omediate.org
www.omediate.org

OMA Membership Information

To learn more about the benefits of OMA membership, to join OMA, or to renew your membership, please visit <http://omediate.org/pg89.cfm>. If you have any questions about your membership status or renewal date, please contact oma@omediate.org.

OMA's Office Information

OMA's office is now located in Suite 403 of the Wilcox Building, 506 SW 6th Avenue, in downtown Portland. Our phone number is (503) 872-9975. The office is located a couple of blocks from the Pioneer Place MAX stop. Small OMA meetings (6 to 8 people) can be held at the OMA office. In addition, we have the use of a conference room two blocks away at 621 SW Alder Street. If your OMA Committee or OMA Special Interest Group would like to reserve space for a meeting at our office, please contact Megan at oma@omediate.org