Alternative Resolutions

Visit our Website at www.texasadr.org

The Newsletter of the State Bar of Texas
Alternative Dispute Resolution Section

May 2004 **Spring Issue** **Vol. 14, No. 3**

CHAIR'S CORNER

by Michael J. Schless, Chair, ADR Section

"THE WIZARD OF OOZE...AND OTHER STORIES"

Let's play a word association game. I say "ADR" and, quickly, you say the first thing that pops into your head. There is a reasonable chance that you said "mediation." Not surprising, since mediation seems to dominate the ADR landscape in Texas. And that is probably a good thing for many people in many ways. But it is not the only thing we can or should think about when we discuss the general topic of alternative dispute resolution. Our beloved ADR statute lists mini-trial, summary jury trial, and moderated settlement conference, just to name a few. But I want to focus for a moment on two other ADR processes that we as a section, and as providers and consumers of ADR services, have a responsibility to shepherd along the way.

The first is collaborative law. If you want to know what it is, don't look in the ADR statute because it is not there. For better or worse, the ADR Section is at least partly responsible for its not being there. When the proposed act was first introduced in the 77th legislature in 2001, it was originally intended to be placed in Chapter 154 of the Civil Practice & Remedies Code as part of the ADR statute. We did not favor placing it there, I believe, for two reasons. First and foremost, we feared and opposed any attempt to amend Chapter 154 in any way because the Uniform Mediation Act, if introduced in Texas, would go there and we did not want to establish any precedent for amending our ADR statute for fear that it would place a chink in the armor of our defense against the UMA. I think an unspoken second reason for opposing the placement of the collaborative law bill in Chapter 154 was, frankly, that many of us did not really know what collaborative law was and, like most folks, we feared the unknown. Not solely, but at least partly due to that opposition, the collaborative law statute was placed in the Texas Family Code.

As a creature of statute in our state, collaborative law presently applies only to divorces and to suits affecting the parent-child relationship. It is found in sections 6.603 (divorces) and 153.0072 (parent-child suits) of the Family Code. It is not even entirely clear whether the legislature considers collaborative law to be an ADR process. On the one hand, in Chapter 6, *Dissolution of Marriage*, it is one of three sections in Subchapter G, entitled Alternative Dispute Resolution. The other two sections are arbitration (section 6.601) and mediation (section 6.602). By contrast, however, in Chapter 153, *Conservatorship, Possession, and Access*, it is one of fourteen sections in Subchapter A entitled General Provisions, and it is separate from section 153.0071, which is entitled Alternative Dispute Resolution Procedures and which describes mediation and both binding and non-binding arbitration.

continued on page 2

In this Issue

CHAIR'S CORNER
WIZARD OF OOZE...AND OTHER STORIES
Continued from front page

Regardless of how it is treated in the legislature, I believe the time has come for us to embrace collaborative law as a valuable member of the ADR family. The ADR Section was proud to be a co-sponsor of the First Annual Collaborative Law Spring Retreat held in Austin on March 19-21. The Collaborative Law Institute of Texas did a masterful job of presenting this highly informative program to a packed audience of keenly interested family practitioners. ADR's own Judge Frank Evans was a keynote speaker and welcomed collaborative law into the ADR family of processes. Sarah Weddington, of *Roe v. Wade* fame, gave a fantastic speech which I will remember best for the story about Everett Dirksen's flagging resistance to a bill LBJ wanted the Senate to pass. It seemed that the President had threatened to kill a pet project of the Senator unless Dirksen helped pass this proposed legislation. She quoted the Wizard of Ooze as saying to the imposing President, "I am always true to my principles and I never vary from them. One of my principles is flexibility." What a great line to quote in your next mediation.

But for me, the highlight of the meeting was the presentation of the proposed "Protocols of Practice for Collaborative Family Lawyers." Approved in January of this year and targeted for formal adoption next year, the protocols describe the collaborative lawyer's relationship to the client, to the other (notice I did not say "opposing") lawyer, and to the allied professionals. They provide ethical guidelines to protect the integrity of the process, and they describe the collaborative process from beginning to end. The nine drafters of these protocols have done a magnificent job of setting the standard for the practice of collaborative family law.

Collaborative law practice groups have emerged in the Dallas-Ft. Worth Metroplex, the greater Houston area, and in Austin. The Collaborative Law Institute of Texas now has a newsletter and a website (www.collablawtexas.com). The Annual Conference of the Association of Family and Conciliation Courts held in May in San Antonio featured an extended workshop on collaborative law. Three of the five presenters at that workshop are Texas practitioners. This alternative to the traditional adversarial approach to the resolution of marital and family disputes is here to stay, and it is growing in Texas and in the nation. Collaborative law is no longer an unknown process to be feared. Rather, it is an effective alternative to the traditional adversarial approach to the resolution of family disputes. There will always be a need for that traditional approach in some cases. But divorcing parents should have the choice to extinguish rather than fan the flames of anger that often flare up during separation and divorce. The collaborative law process, and if necessary mediation, provides that alternative. The ADR community should welcome and promote the use of collaborative law in family law matters. And who knows. Maybe one day it can be applied to other types of legal disputes as well.

The second alternative dispute resolution process on which I choose to focus is arbitration. We all know that arbitration has been a part of our jurisprudence for ages. I am not referring to the non-binding or court-referred variety described in section154.027 of the ADR Statute. I am speaking about binding arbitration conducted pursuant to a pre-dispute contractual arbitration clause. More specifically, I am addressing arbitration provisions in consumer and employment contracts, and particularly contracts of adhesion. If you own a credit card, chances are that you have agreed to submit disputes that may arise from the use of that credit card to binding arbitration in a convenient central location such as Duluth or Minot. If you have signed an employment contract, it may contain a provision for the mandatory use of binding arbitration in which the recovery of attorney's fees is waived in advance. To be sure, not all contracts have such onerous provisions, but there are enough of them that do that it has raised doubts in the consumer, employment, and legal communities. This topic is not new. It has been much debated and discussed in previous editions of *Alternative Resolutions*, and in this column. But now the ADR Section is working to address this issue by convening a series of Arbitration Roundtables. The first such meeting was held on March 26 in Austin, and by the time you read this article, a second one will have been held as well. The Section invited representatives from Consumers Union, the Office of Consumer Credit Commissioner, the Texas Residential Construction Commission, the State Bar and ABA Litigation Sections, AAA, JAMS, the judiciary, and private attorneys. Future sessions will be even more inclusive as stakeholders are better identified.

Roundtable discussions covered a broad array of topics from the effects of a lack of standard evidentiary rules, to panel bias (real or perceived), to venue issues and preemption problems, to the desirability of voluntary rather than mandatory arbitration clauses, to due process concerns and the lack of an appellate process, to the need for education regarding arbitration advocacy. And the list goes on.

There seemed to be a consensus that there may be little that the Texas legislature can (or ought to) do to address some of these problems because of preemption and the Federal Arbitration Act. However, there are some things that we can and ought to do. One thing is to better educate the public generally, and the legal community in particular, about arbitration. Most attorneys approach arbitration as if it were a trial before a court but just in a private setting. A great deal can be done, and your ADR Section is wasting no time doing it. In October, we will host a conference along with The Center for Legal Responsibility at the South Texas College of Law. The focus of the two-day seminar will be effective advocacy in arbitration and mediation.

Another beneficial outcome of the Roundtable series could be the development of protocols for arbitration in Texas. Like the collaborative law protocols, these could address both procedural and substantive matters and ethi-

continued on page 11

"Let The Sunshine In"

Thanks, Thoughts And An Update From The Palmer Family

In the February 2004 issue of *Alternative Resolutions*, Mike Schless wrote an unexpected but wonderful Chair's Corner about our family, specifically my wife Susan. When Mike asked me whether he could write about my wife and her malady, I did not have any idea that his whole column would be devoted to us. Mike's Chair's Corner totally blew us away, and I dare say somewhat embarrassed us. Everyone has crisis. Everyone has problems. Many of us have bad things happen. We felt so unworthy to have Mike devote his Chair's Corner to us. But in the same breath, we felt so grateful for Mike's column. From it we have received so many gifts in the form of support, love, prayer, and money. We accept these gifts with immense gratitude and thanks. The ADR community is unique. I am so fortunate to be a part of it. We truly believe that Susan's recovery has been made possible through God's grace and your love and prayers.

The 5th Dimension sang in 1969, "Let the Sunshine In." The words essentially are, "Let the sunshine, Let the sunshine in, Let the sunshine in. . ." [1] On January 10, 2004, there was not much sunshine in the Palmer household. Susan woke up on that Saturday, complaining of a crick in her neck, and by 1:30 p.m. she was in the operating room undergoing emergency surgery. The surgeon explained to me that a disk in her neck had ruptured and compressed on her spinal cord. He told me that the MRI indicated damage to a spinal cord that would normally be seen in a major car accident. While I was signing every consent and waiver form imaginable, the surgeon told me that Susan could be a quadriplegic. When Susan went into surgery, she could not tell whether her left big toe was "up" or "down" and she could not discern sharp or dull sensations on her right leg.

Susan fared well through the surgery, and after the surgery, the doctor told me that he was hopeful that she would be able to use her arms again, but much less hopeful she would ever walk again. In fact, he told us there was less than a 50% chance she would ever walk again.

On January 14, 2004, we left the hospital to begin Susan's rehabilitation journey at the Baylor Institute for Rehabilitation in Dallas. Susan's left side was coming back, and she was getting some use of her right arm, but her right hand and right leg were "asleep".

Susan worked very hard in Dallas. There were some very sunny days of great progress and some dark days of setbacks, but Susan stayed determined. She is tough. Our minister, Jimmie Johnson, wrote these thoughts about Susan: "Yes, she is girlie, sweet, stylish, soft, pretty and feminine, but she is tough as a junkyard dog inside when she needs to be. Don't let her get away with anything. We want her all the way back." My rallying cry was the Latin phrase, "Dum Spiro Sparo," or "While I breathe, I hope." Mike Schless' rallying cry was "Illegitimi Non Carborundum," a pseudo-Latin phrase meaning "don't let the bastards grind you down."

Due in no small part from the ADR community, we received bundles of cards a day, and so many emails that we could not keep up. When I read the cards and emails to Susan, she would inevitably cry. These were not tears of sorrow, but tears of overwhelming joy. The joy of being loved, the joy of knowing that people Susan knew, I knew, and people we didn't know at all were praying and pulling for us. Susan told me repeatedly she could feel the prayers. And God answered these prayers.

Susan came home on February 20, 2004. One week earlier than projected. I am proud to say that she walked out of Baylor and into the house with the aid of a walker and a leg brace on her right calf. Susan goes to outpatient therapy on Mondays, Wednesdays, and Fridays for her right hand and right leg. She continues to improve. She is regaining strength and more dexterity with her right hand, and she walks at times without the walker. She recently started driving on a part-time basis. Through God's grace, and your love, she will continue to improve. Ernest Hemingway once wrote "The world breaks everyone and afterward many are stronger at the broken places." Susan is growing stronger. Our children, Blake, who is 8, and Meredith, who is 6, have weathered this hurricane, and we are a family under one roof again. We still have several challenges ahead, but we will always have the knowledge that we are never alone, and we have friends like you who care and love us.

This unexpected crisis has brought some dark, dark days, but has given us so much light; so much sunshine. You, our friends in the mediation community, are the best light a family could have. We are so thankful for you, and please know that without your support, we could not be where we are today.

ADR COUNCIL APPROVES NOMINEES FOR SECTION LEADERSHIP FOR 2004-2005

By Deborah Heaton McElvaney

The ADR Section's Annual Meeting will be held at the State Bar of Texas Convention on June 25, 2004, in San Antonio. The terms of the following Council members will end at that meeting:

The Honorable Romeo M. Flores
Corpus Christi (2001-2004)
Ann L. MacNaughton
Houston (2001-2004)
Rena Silverberg
Dallas (2001-2004)
Cecilia Morgan
Dallas (2003-2004)
Joe Nagy
Lubbock (2002-2004).

Likewise, I have completed my term as Chair-Elect, Chair, and Past-Chair, a term on the Council that actually began when I filled a slot vacated in 1998. Accordingly, six Council/Officer positions will be vacated and must be filled at our Annual Meeting.

At its April 3, 2004, meeting, the Council approved the recommendations of the Nominating Committee to fill these various positions. It is with pride that the ADR Council presents the following nominees for Officer and Council positions for 2004-05:

OFFICERS:

Chair Elect: Michael Wilk (Houston)
Treasurer: Cecilia Morgan (Dallas)
Secretary: Danielle Hargrove (San Antonio)

Michael Schless will become Immediate Past-Chair, and William Lemons will assume leadership as Chair.

COUNCIL – 3-YEAR TERM

Jeff Kilgore (Galveston)
Leo Salzman (Harlingen)
Rob Kelly (Kerrville)
Bob Wachsmuth (San Antonio)

COUNCIL – 1-YEAR TERM

Gene Valentini (Lubbock)

Pursuant to the Bylaws, nominees must be approved by the Section at the Annual Meeting. In selecting nominees, the Council was guided by Section 3, Article V of the bylaws, which states:

Representative Membership: The voting membership of the Section Council should reflect, as much as possible, the membership of the Section as a whole, taking into consideration all relevant factors, including, but not limited to, the geographical location of the membership as a whole and other facts relevant to maintaining a Section as a whole.

A brief description of the qualifications of the Officer nominees follows:

Michael Wilk (Houston) (Nominated to be Chair-Elect): Michael began his ADR practice in 1991 and regularly serves as an arbitrator and mediator in commercial and business disputes. He is a frequent CLE speaker on topics such as arbitration, mediation, and future ADR trends. He has published numerous articles in such publications as the Association of Attorney-Mediators Newsletter and our Section's newsletter, *Alternative Resolutions.* He is an arbitrator on the Commercial Dispute Panel of the American Arbitration Association, and a mediator and arbitrator on the NASD Dispute Resolution Panel. He is currently serving his third year on the Council. Michael has served as a director and national president of the Association of Attorney-Mediators, Director of the Harris County Dispute Resolution Center, and Chairman of Peer Mediations in Schools Task Force for the Houston Bar Association. He is currently a member of the Association of Attorney-Mediators and the Association for Conflict Resolution and is a fellow of the Texas Bar Foundation and the Houston Bar Foundation. Michael began his career at Hirsch & Westheimer, P.C., in 1966 and is currently a shareholder and President of the firm. Although ADR is the primary focus of his practice, he still engages in business transactions and litigation involving a broad range of business and commercial matters.

Danielle Hargrove (San Antonio) (Nominated to be Secretary): Danielle is an attorney, mediator, and arbitrator in San Antonio, Texas. A graduate of the United States Air Force Academy and the University of Texas School of Law, Danielle has had an active ADR practice focusing primarily, but not exclusively, in the area of employment and labor law since 1996. She is included as an approved mediator and/or arbitrator on the roster of neutrals with the American Arbitration Association, National Mediation Board, the United States Postal Service Redress Program, National Association of Railroad Referees, and

continued on page 5

ADR COUNCIL APPROVES NOMINEES FOR SECTION LEADERSHIP FOR 2004-2005
continued from page 4

the National Association of Securities Dealers. Danielle has served on the Council for two years, currently serves as the Secretary of the Council, and is active with the San Antonio Bar Association ADR Section.

Cecilia H. Morgan (Dallas) (Nominated for Treasurer): Cecilia is an attorney, arbitrator, and mediator who has been in private legal practice in Dallas since 1977. She has mediated or facilitated more than 1,200 civil disputes, arbitrated 300 cases involving virtually every area of the law, and conducted neutral evaluations of over 500 cases in 15 states. She serves as a neutral in a wide range of areas, including business litigation, employment, litigation, government/municipal, libel/slander/defamation, personal injury and property damage, contested probate, real estate, and intellectual property matters. Cecilia just completed a one-year term on the Council.

A brief description of the qualifications of the Council nominees follows:

Jeff Kilgore (Galveston) (Nominated for a three-year term): Jeff is an attorney, arbitrator, and mediator. He graduated from the University of Houston, Bates School of Law in 1973. He has extensive litigation/trial experience. Jeff serves on multiple neutral panels, including the American Health Lawyers Association – Neutral Panel, NASD Board of Arbitrators, NASD Resolution Inc., Galveston County Court-Annexed Mediation List, University of Texas Medial Branch Hearing Officer, Chartered Institute of Arbitrators, and many others. As an ADR provider, Jeff has arbitrated and mediated cases involving securities, employment disputes, construction and insurance disputes, probate, DTPA, and many others too numerous to mention. Jeff is affiliated with numerous professional associations and participates as a trainer and lecturer in many venues.

Leo Salzman (Harlingen) (Nominated for a three-year term): Leo graduated from South Texas College of Law in 1973, where he was a member of the Law Journal Staff and the Order of Lytae. He then attended SMU's graduate law program. Board-certified in both personal injury and civil trial law, Leo has developed an extensive practice in the dispute resolution arena. Leo's mediation practice began in 1994 while he concomitantly handled an extensive civil litigation practice. His practice has taken him to at least seventeen different Texas counties. Since he began his dispute resolution practice, Leo has mediated in excess of 1,800 cases involving a plethora of matters.

Robert Kelly (Kerrville) (Nominated for a three-year term): Rob is an attorney, arbitrator, and mediator. Rob graduated from St. Mary's School of Law in 1974. He served as a Briefing Attorney for the Honorable Truman Roberts, Texas Court of Criminal Appeals. Currently, Rob is a partner with Kelly & Nevins, L.L.P., where he has a general civil and ADR practice. Rob has authored numerous articles, participates in many professional associations, and graciously gives much to the community through his varied and active community service commitments, such as serving on the Board of Trustees for the Kerrville Independent School District, The Board of Directors for the Ronald McDonald House of El Paso, the Board of Directors for Hospice of San Antonio, and many others.

Robert W. Wachsmuth (San Antonio) (Nominated for a three-year term): Bob is an attorney, mediator, and arbitrator. Bob currently serves as a shareholder for the firm of Glast, Phillips, & Murray, P.C. Bob graduated from the University of Texas School of Law in 1966. Between 1966-69, Bob served in the military with the Judge Advocate General Corps. Bob has an extensive arbitration/trial background involving complex business and construction disputes. He has negotiated contracts and prosecuted and defended construction and business claims around the world (in the Middle East, Europe, Canada, Mexico, the Far East, and South and Central America). Likewise, Bob has an extensive background in ADR. He has been on the AAA's Panel of Neutrals since 1974; he is also a member of the National Arbitration Forum and the Chartered Institute of Arbitrators. Bob speaks English, Spanish, and German, but maintains that he is fluent in English only.

Gene Valentini (Lubbock) (Nominated to Fill One-Year Term Vacated By Joe Nagy): Gene is a public member of the Section. He is Adjunct Professor at Texas Tech University School of Law, where he teaches Advanced ADR. Gene has authored many articles related to ADR and currently writes a monthly column, "South Plains Alternate Dispute Resolution" for the *Lubbock Law Notes.* Gene is an active member of the ABA DR Section, the SBOT ADR Section, and numerous other dispute resolution groups. He has made numerous presentations at various workshops sponsored by such entities as the ABA and the Academy of Family Mediators.

In the event the Council's choices are approved at the Annual Meeting, the Executive Committee will be compromised as follows:

EXECUTIVE COMMITTEE

Chair, William Lemons	San Antonio (term ends 2006)
Chair-Elect, Michael Wilk	Houston (term ends 2007)
Secretary, Danielle Hargrove	San Antonio (term ends 2005)
Treasurer, Cecilia H. Morgan	Dallas (term ends 2007)
Immediate Past-Chair, Michael Schless	Austin (term ends 2005)

NOTICE OF REFERENDUM TO REVISE BYLAWS

By James W. Knowles

NOTICE OF REFERENDUM TO REVISE BYLAWS

The ADR Section Council has voted unanimously to propose revised Bylaws for the State Bar of Texas Alternative Dispute Resolution Section, as presented below. The basic format of the existing Bylaws has been retained with a few substantive changes and some technical ones. Section 7 has been added to Article VI to allow action of the Council to be taken via telephone conference call or via electronic communication. This addition is an effort to keep up with current technology, as is the addition of a website provision (Section 10 of Article IV). Article VII has been added as an enabling provision to clarify the authority and activities of an Executive Director to serve at the pleasure of the Council. Voting on certain specific formal propositions as may be presented, from time to time, by members of the Section or Council has been clarified in Article VI, Section 6. The provisions of Article III, concerning officers of the Council, and some provisions in Article IV, concerning members of the Council, have been addressed to clarify the filling of vacancies and also successive terms. The ADR Section Council will seek the members' approval of the revised Bylaws at the meeting of the ADR Section in San Antonio at 11:30 a.m. on June 24, 2004, which will be held in conjunction with the annual meeting of the State Bar of Texas.

BYLAWS OF THE
STATE BAR OF TEXAS
ALTERNATIVE DISPUTE RESOLUTION SECTION

ARTICLE I.
NAME AND ADDRESS

Section 1. **Name.** The Section shall be known as the Alternative Dispute Resolution Section of the State Bar of Texas.

Section 2. **Purpose.** The purpose of this Section shall be to promote the use and quality of Alternative Dispute Resolution (ADR) in Texas.

ARTICLE II.
MEMBERSHIP AND DUES

Section 1. **Membership.** The membership of this Section will be open to any member in good standing of the State Bar of Texas and interested individuals who are not members of the State Bar of Texas, hereafter referred to as "public members", upon the payment of dues to the Section for the current bar year. There will be two classes of public membership, voting and advisory. On May 31st of each Bar year, the total number of ADR Section members who are members in good standing of the State Bar of Texas will be determined. Using this figure, the number of public members eligible to vote will be determined so that the final distribution will equal no less than 80% State Bar members and no more than 20% voting public members. Public members of the Section must determine among themselves who will be the voting members, taking into consideration representation from each geographic area. Upon failure of the Public members, as a group, to agree to the allocation of the vote among it's members, the Chair shall designate which such members may vote, and that designation shall be effective for the then fiscal year of the Section.

Section 2. **Annual Dues.** The annual dues that each member of this Section shall be required to pay shall be set from time to time by the Council of this Section with the approval of the Directors of the State Bar of Texas. The annual dues shall be due and payable in advance each year concurrently with the payment of the regular annual dues of the State Bar of Texas.

Section 3. **Termination of Membership.** Any member of this Section whose annual Section dues shall be more than six months delinquent shall thereupon cease to be a member of this Section.

ARTICLE III.
OFFICERS

Section 1. **Officers.** The officers of this Section shall be a Chair, Chair-Elect, Secretary, Treasurer, and Immediate Past Chair, each of whom shall be a voting member of the Section in good standing and a member in good standing of the State Bar of Texas.

Each officer shall hold office for a term beginning with the close of the annual meeting at which he or she is elected and ending at the close of the next succeeding annual meeting of the Section and until his or her successor has been elected.

Section 2. **Chair.** The Chair shall preside at all meetings of the Council and at the annual meeting of the Section. He or she shall formulate and present at each annual meeting of the State Bar of Texas a report of the Section for the then past year. He or she shall perform such other duties and acts as usually pertain to his or her office, and as directed by the Council.

continued on page 7

NOTICE OF REFERENDUM
TO REVISE BYLAWS
continued from page 6

Section 3. **Chair-Elect.** The Chair-Elect shall be an ex-officio member of all of the Committees appointed by the Chair of the Council. Upon the death, resignation, or during the disability of the Chair, or upon his or her absence or refusal to act, the Chair-Elect shall perform the duties of the Chair for the remainder of the Chair's term except in case of the Chair's absence or disability and then only during so much of the term as the absence or disability continues. The Chair-Elect will be the Chair for the year following the Chair-Elect's regular term of office. The Chair-Elect's position shall include a three (3) year term in order that he or she may serve as the Chair-Elect, Chair and Past Chair. If the Chair-Elect, immediately prior to election, is serving a term on the Council which will be unexpired at the time of his or her election, then a member may be elected for the unexpired term in accordance with these Bylaws.

Section 4. **Secretary.** The Secretary shall be the custodian of all books, papers, documents, and other property of the Section. He or she shall keep a true record of the proceedings of all meetings of the Section and of the Council, whether assembled or acting under submission. With the Chair, he or she shall prepare a summary or digest of the proceedings of the Section at its annual meeting for publication in the Texas Bar Journal, upon approval by the President of the State Bar of Texas. He or she, in conjunction with the Chair, as authorized by the Council, shall attend generally to the business of the Section.

Section 5. **Treasurer.** The Treasurer shall receive all dues payable by members of the Section and all other funds to which the Section is entitled and shall make payments for expenses incurred in the regular course of the Section's business, and for other items approved by the Chair or the Council. He or she shall keep accurate records and shall account for all sums received by him or her. He or she shall keep an accurate account of all dues collected and of any monies appropriated to the Section and expended for its use. The Treasurer must report to the State Bar accounting department on a monthly basis all bank statements, along with all cancelled checks, deposit slips and check registers.

Section 6. **Vacancy.** With the exception of the Chair, which is addressed in Section 3 above, the Council may select a person, from its membership, to fill a vacancy in any office for the unexpired portion of the officer's term.

ARTICLE IV.
THE COUNCIL

Section 1. **General Responsibility.** The Council shall have general supervision and control of the affairs of this Section subject to the provisions of the Charter and Bylaws of the State Bar of Texas and these Bylaws. It shall adopt procedures to authorize expenditures of money which shall be limited to such expenditures as are reasonably intended to further the purpose of this Section. The Council shall act on behalf, and conduct all business and affairs, of the Section, and is so authorized. The Council may act only as a corporate body, and an individual Council member has no power as such.

Section 2. **Membership.** The Council for the Section shall consist of the Chair, Chair-Elect, Secretary, Treasurer, Immediate Past Chair and up to thirteen general Council members (up to three of whom may be public members) to be elected by the Section as hereinafter provided. All members of this Section in good standing who have served as either Chair of the Section or the predecessor ADR Committee shall be ex-officio members of the Council. In addition, the President and President-Elect of the State Bar of Texas, the Board advisor to this Section from the Board of Directors of the State Bar of Texas, a representative of the Texas Young Lawyers Association, and a representative of the Dispute Resolution Center Director's Council shall be ex-officio members of the Council.

Section 3. **Ex-Officio Members.** Ex-officio members of the Council shall have the right to attend all Council meetings and participate in the discussions at Council meetings, but shall have no right to vote. Ex-officio members may serve on committees as committee members.

Section 4. **Filling Vacancies in Office.** The Council, during the interim between annual meetings of the Section, by appointment, and to extend for the unexpired term, may fill vacancies in its own membership, in the office of Secretary or Treasurer, or in the position of Editor of the Newsletter. In the event of a vacancy of the offices of the Chair and Chair-Elect or in the event of a vacancy in the office of Chair-Elect, then any vacancies shall be filled at the earliest possible time upon recommendation of the Nominating Committee that selected the Chair-Elect or Chair. Any vacancy which is filled shall be subject to confirmation by vote of the Section at the next Section meeting.

Section 5. **Removal for Failure to Attend Meetings.** If any elected general member of the Council shall fail to attend three consecutive regular meetings of the Council, the office held by such member shall be automatically vacated, and, by appointment, the Council shall fill the vacancy for the unexpired term.

Section 6. **No Successive Re-election of General Members.** No person shall be eligible for election as a general member of the Council if he or she is then a general member of the Council and has been such a member continuously for a period of three years or more.

Section 7. **Permanent Committees.** There shall be permanent committees established from time to time by the Council, to study, make reports and recommendations, to conduct institutes and otherwise deal with problems and subjects related to alternative dispute resolution practices and procedures.

Section 8. **Special Committees.** The Council may authorize the Chair to appoint special committees from

continued on page 8

NOTICE OF REFERENDUM
TO REVISE BYLAWS
continued from page 7

Section members, to perform such duties and exercise such powers as the Council may direct, subject to the limitations of these Bylaws and the Charter and Bylaws of the State Bar of Texas.

Section 9. **Publications.** The Section shall cause to be published a newsletter of the Section. The Chair shall appoint an Editor and one or more assistant editors of the newsletter from the membership of the publications committee who shall serve at the pleasure of the Chair.

Section 10. **Website**. This Section shall establish and maintain an Internet Website for the benefit of the members, and as a resource for ADR information to the public. The Chair shall appoint a Website administrator from among the members of the Council, or, at the Chair's discretion, member of the Section. The individual so designated shall serve at the pleasure of the Chair, and shall continue to serve until replaced by a subsequent appointment. The Chair's appointment under this Section 10 shall be subject to approval, by vote, of the Council.

ARTICLE V.
NOMINATION AND ELECTION OF OFFICERS AND COUNCIL MEMBERS

Section 1. **Initial Nomination.** The Chair, Chair-Elect, Secretary, Treasurer and Council shall be nominated and elected, in the manner hereinafter provided, at the organizational meeting of this Section for such purpose and thereafter at each annual election meeting of this Section. The Chair for the preceding year shall be the Immediate Past Chair.

Section 2. **Nominations.** For the initial meeting of this Section, a committee composed of the Co-Chairs, Immediate-Past Chair, and the two preceding Chairs of the ADR Committee shall make and report nominations to the Section for the offices of Chair, Chair-Elect, Secretary, Treasurer and thirteen members of the Council.

In succeeding years, not less than ninety (90) days prior to the next annual meeting of the Section, the Chair shall appoint a nominating committee, composed of the Immediate-Past Chair, who will serve as Chair of the nominating committee, and four members of the Council, one of whom may be a public member and one of whom may be an ex-officio member. This nominating committee, with input from, and consultation with the Council, shall make and report its nominations to the Chair of the Section, and to the Council for its approval, for the offices of Chair-Elect, Secretary, Treasurer, and new members of the Council to succeed those whose terms will expire at the close of the then annual meeting at which officers and members of the Council will be elected. The report of the nominating committee, as approved by the Council, shall be submitted to the Chair in sufficient time to conform to the notice requirement of Section 4 of this Article V, and shall be presented to the annual meeting by the Chair of the nominating committee. Other nominations may be made from the floor.

Section 3. **Representative Membership.** The voting membership of the Section Council should reflect, as much as possible, the membership of the Section as a whole, taking into consideration all relevant factors, including, but not limited to, the geographical location of the membership and other factors relevant to maintaining the Section as a whole.

Section 4. **Notice.** Written notice of the nominees for election to the offices and council positions as nominated by the nominating committee, and any proposed resolutions, shall be given to members of the Section not less than thirty days prior to the date set for the election.

Section 5. **Number and Term of Council Members.** At the organizational meeting of this Section at which these Bylaws shall have been adopted by a majority vote of current members present, six members of the Council shall be nominated and elected to serve for one year, six members of the Council shall be nominated and elected to serve for a term of two years, and six members of the Council shall be nominated and elected to serve for a term of three years. (The word "year" as used herein means a term beginning at the close of the organizational meeting [and thereafter, the annual meeting] at which they shall have been elected and ending at the close of the first, second, and third succeeding annual meetings of this Section, respectively.) Thereafter, upon the expiration of these initial terms, sufficient members of the Section shall be elected to the Council at each annual Section meeting to fill such vacancies as then exist, as determined by the Council. Terms will be three years beginning at the close of the annual meeting at which they shall have been elected and ending at the close of the third succeeding annual meeting of the Section unless specifically elected to fill the unexpired term of another member. If elected to fill an unexpired term, the newly elected member's term shall expire on the date of the member whose term he/she is filling. The number of members of the Council may not exceed 18.

Section 6. **Elections.** All elections shall be made by majority vote of the voting members of the Section in attendance at the annual meeting and shall be by show of hands, or by voice vote, unless a written ballot is ordered by resolution duly adopted by the Section at the meeting at which the election is held.

ARTICLE VI.
MEETINGS

Section 1. **Annual Meeting of Section.** The annual meeting of this Section shall be held during the annual meeting of the State Bar of Texas, and at the same city or place, with such program and order of business as may be arranged.

Section 2. **Special Meetings of Section.** Special meetings of this Section may be called by the Chair upon approval of the Council, at such time and place and upon such notice as the Council may determine.

continued on page 9

NOTICE OF REFERENDUM
TO REVISE BYLAWS
continued from page 8

Section 3. **Voting at Section Meetings.** The voting members of the Section present at any meeting shall constitute a quorum for the transaction of business, except that in no event will a quorum be composed of fewer than twelve voting members. All binding action of the Section shall be by a majority vote of the members present.

Section 4. **Meetings of Council.** Special meetings of the Council may be called by the Chair at such place and time as he or she may designate. Regular meetings of the council shall be held in the fall, winter and spring at such place and time as the Chair may designate.

Section 5. **Voting at Council Meetings.** A majority of the members of the Council shall constitute a quorum for the transaction of business. Action by a majority vote of the Council present shall constitute the binding action of the Council except as provided in Section 6 of Article VI. Members of the Council when personally present at a meeting of the Council shall vote in person, but when absent may communicate their vote, in writing, upon any proposition to the Secretary and have it counted with the same effect as if cast personally at such meeting.

Section 6. **Council Voting on Formal Propositions.** Formal propositions may be submitted by any member of the Section to the Council for consideration. Such propositions must be in writing and must clearly articulate the rationale by which the desired action, on behalf of the Section, comports with the stated purpose of the Section. The Chair of the Section may, and upon the request of any member of the Council shall, submit or cause to be submitted, in writing, to each of the members of the Council, such proposition and the members of the Council shall vote upon same by communicating their vote thereon, in writing over their respective signatures, to the Secretary, who shall record upon his or her minutes each proposition so submitted, when, how, at whose request same was submitted, and the vote of each Council member thereon, and keep on file such written and signed votes. A majority vote shall constitute the binding action of the Council on such proposition.

Section 7. **Alternative Meetings of Council**

a. **Telephone.** The Council, or any of its committees, may hold a meeting by telephone conference call. Minutes shall be recorded of such meeting, and any action taken by vote shall reflect that it was done in a telephone meeting at which all participants could simultaneously hear each other. Any action taken shall be reported by the Chair at the next regular Council meeting.

b. **Electronic Mail ("e-mail")**. The Council, or any of its committees, may hold a meeting by e-mail communication. Minutes shall be recorded of such meeting, and any action taken by vote shall reflect that it was done via e-mail and record the participants. The minutes may consist of a hard copy print out of the e-mail transmissions on the subject of the meeting, and shall be reported by the Chair at the next regular Council meeting.

ARTICLE VII.
EXECUTIVE DIRECTOR

The Council may vote, from time to time, to employ an Executive Director to serve at the pleasure of the Council. When this position is filled, as reflected in the duly adopted minutes of the Council, the duties and authority of such office shall be to manage the general day to day affairs of the Section, as instructed by the Chair. Compensation of the Executive Director shall be set by vote of the Council. The duties expected to be performed by the Executive Director may include, but need not be limited to, newsletter, website, meeting plans including annual meeting, dialogue with the State Bar office and other established sections of the State Bar, and assistance in organizing continuing education programs and seminars.

ARTICLE VIII.
MISCELLANEOUS PROVISIONS

Section 1. **Fiscal Year.** The Fiscal Year shall be the same as that of the State Bar of Texas.

Section 2. **Payment of Bills.** All bills incurred by this Section, before payment by the Treasurer, shall be submitted to and approved by the Chair or, if the Council shall so direct, by both of them.

Section 3. **Limitation on Compensation.** No salary or compensation shall be paid to any officer, member of the Council, or member of a committee. Nevertheless, a person may be compensated for work done outside the meetings of the Council on any special study or project, provided he or she has been employed by vote of the Council.

Section 4. **Reimbursement for Expenses.** Voting members of the Council and other persons expressly requested to attend a Council meeting shall be reimbursed for actual out-of-pocket expenses incurred in attendance at any meeting of the Council. Members of any committee shall be reimbursed for actual out-of-pocket expenses incurred in attending any meeting of the committee, provided that the Chair of the Council has approved reimbursement before or after the meeting. Except for non-Council members expressly requested to attend a Council meeting, the amount of reimbursement shall not exceed the maximum amount of reimbursement from time to time established by the Directors of the State Bar of Texas for persons attending meetings of the Board of Directors of the State Bar of Texas or other official meetings.

Section 5. **Exerting Positions on Behalf of State Bar of Texas.** No action, policy determination, or recommendation of this Section or any committee thereof shall be deemed to be, or be referred to as, the action of the

continued on page 11

QUESTIONS & ANSWERS REGARDING COLLABORATIVE FAMILY LAW

By Amie Rodnick, President, Central Texas Collaborative Family Lawyers
www.centexcollaborativelaw.org

Q: What is Collaborative Law?

A: Collaborative law was a concept initially created by Stuart Webb, a family lawyer in Minnesota, who became disenchanted with the way family law litigation, and particularly, divorce and custody cases, were affecting the litigants and their children. He felt there had to be a different, less destructive, way to settle domestic relations disputes. At the heart of the collaborative law concept is the idea that the attorneys and their clients will focus on settling their differences and not on threats of litigation and strong arm tactics.

The parties and their attorneys not only agree to work toward settlement, but if the case cannot be settled, then the attorneys must withdraw, and the parties must hire litigation counsel.

Collaborative law began to gain popularity in the early 1990's and spread from Minnesota to other states, becoming popular in the San Francisco Bay area, many of the Canadian provinces, Ohio, Florida, Texas, and other regions of the United States and Canada.

Q: Does this concept mean we cannot go to court at all?

A: The parties can go to court only for the purpose of taking agreed orders to a judge or proving up a divorce. The parties cannot take contested issues to a judge. If the case has become that contentious, then the attorneys must withdraw.

Q: Is my attorney still my advocate? How do I know my attorney will zealously represent my interests under this kind of arrangement?

A: The attorneys are still ethically bound to zealously represent their clients. However, that representation, by agreement, cannot involve threats or game playing. Tricks and hidden agendas are not tolerated. However, there are some areas in which the attorneys agree not to use formal legal processes that would otherwise be available. For example, the parties agree to exchange information by agreement and not utilize formal discovery requests. The parties also jointly select and hire expert witnesses, such as appraisers, accountants, etc.

Q: Isn't this easier said than done? What if my spouse's attorney takes advantage of the system?

A: Collaborative law requires a high degree of trust between attorneys. An attorney is not obligated to take a collaborative law case against just anyone. Most lawyers who practice collaborative law form practice groups where they know and respect the other lawyers in the group. Many attorneys approached by a client interested in collaborative law will recommend other attorneys who also practice collaborative law. Most practice groups require their members to have had collaborative law training of some sort. Practice groups may be open (membership is open to anyone meeting certain requirements) or closed (by invitation and/or unanimous approval only). Collaborative law may also not be appropriate where there is extreme distrust and hostility among the clients. It requires a willingness to set aside personal animosities and work toward a goal.

Q: Is it cheaper to try a case as a collaborative law case?

A: While no one can ever guarantee how much a family law case will cost, since almost all family lawyers charge by the hour, it seems reasonable that eliminating much of the adversarial nature of family law litigation would keep down costs. The cost of preparing formal discovery and responding to it, hiring competing experts, preparing for trial, and actually trying a case can be significant portions of the total cost of a case.

Q: Does collaborative law do away with the need for mediation?

A: No, mediation is still available to the parties is they are at an impasse. However, collaborative law is considered to be a form of alternative dispute resolution which will, hopefully, eliminate the need to use a third party mediator. While mediation can be very effective, there is an additional cost associated with it. In traditional litigation, mediation can be very effective in promoting quick settlement, as opposing to back and forth negotiations right up to the courthouse steps.

Q: Doesn't having a trial setting keep a case from dragging out?

A: That can often be true. Again, that is why it is important to have a high level of trust between attorneys and their clients. The process is dependent on all parties acting in good faith. If a reluctant party to a divorce sees the

continued on page 12

NOTICE OF REFERENDUM
TO REVISE BYLAWS
continued from page 9

State Bar of Texas prior to submission of the same to, and approval by, the Board of Directors of the State Bar of Texas, the General Assembly of the State Bar of Texas in annual convention, or duly authorized referendum of the State Bar of Texas. Any resolution adopted or action taken by the Section may on request of this Section be reported by the Chair to the annual meeting of the State Bar of Texas for action thereon.

Section 6. **Governmental Authority.** The Section through the process called "Governmental Authority," may seek the authority to present a position of the State Bar of Texas before a public, judicial, executive or legislative body. A position of the Section with respect to which the Governmental Authority process is desired shall be authorized by the Council only after written notice to all members of the Council of the proposed position to be adopted and the date at which the position will be considered by the Council. If a proposed position is adopted by the Council as provided above, thereafter all requirements and procedures set forth in the Policy Governing Legislative Action by the State Bar of Texas on July 3, 1984, as amended from time to time, with respect to application, notice, circulations, clearance, objections, disclaimer, presentation, filing and all other matters shall be strictly followed.

Section 7. **Indemnification.** Officers and general members of the Council and duly authorized permanent and general special committee members of the Section shall be indemnified by the Section for losses and expenses incurred as a result of a suit for any conduct in the course of their official duties not a result of intentional acts or gross negligence on the part of such person. The indemnification granted here shall extend to actions at law or in equity. Notwithstanding the provisions of this indemnification, this indemnification shall be qualified to the extent that professional liability insurance is maintained by each person and is effective in this instance, and at no time shall the amount of which any individual may seek indemnification exceed the amount of funds held on deposit by the Section.

Section 8. **Amendment.** These Bylaws may be amended at any meeting of the Section provided such proposed amendment shall first have been presented in writing to the Chair and approved by a majority of the members of the Section present and voting at a meeting at which such amendment is considered. No amendment so adopted shall become effective until same shall have also been approved by the Board of Directors of the State Bar of Texas. Notice that an amendment to these Bylaws is to be considered shall be contained in the notice to the members of the Section of the meeting at which such amendment is to be considered.

[Revised February 19, 1994 effective July 1, 1993]

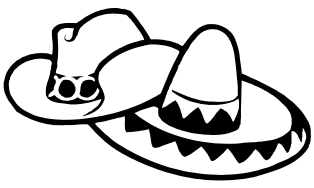
[Article III, Section 5, revised June 21, 1996, monthly reports to State Bar.]

CHAIR'S CORNER
WIZARD OF OOZE...AND OTHER STORIES
continued from page 2

cal standards for arbitration practitioners. This compendium of best practices could serve as a guideline for the drafting of pre-dispute ADR clauses. It could also serve as a helpful guide to Texas courts as they interpret and enforce arbitration clauses. My hat is off to John Fleming, Bill Lemons, Mike Wilk, and all of the other organizers and participants in the Roundtable discussions. You are making a tremendous contribution to the advancement of ADR in our state.

And that brings me to my last observation. I am just back from attending a meeting of the International Academy of Mediators in New Orleans. (Tough assignment, but someone had to do it.) Members in attendance came from twenty-three states, Canada, and Great Britain, and I had the opportunity to visit with many of them. The conference theme was an exploration of the core values of mediation. Those core values included: enabling legislation; education, training, and certification; accountability; and business policies and practices. Presentations included a survey and discussion of mediation statutes and court rules among the various states, training requirements, ethical rules, and business issues. You can call me a chauvinist or a braggadocios Texan if you must, but I firmly believe that mediation Texas-style is more advanced and more thoughtfully organized and practiced than anywhere else in the country. I am certain that our Chapter 154 is superior to anything I have seen from any other state. Our voluntary credentialing program seems to me to be superior to any mandatory program of which I am aware. Our ethical guidelines are at least the equal of any I know. As I thought about this rather vain and egocentric assertion, I thought about all of the folks we have to thank for our situation. All of the giants in ADR whose names are familiar to us all. But then it occurred to me that notwithstanding the foresight and perseverance of those great people, it is to you that we owe the greatest thanks for making ADR in Texas such a great public service. Thank you for making it so. And as this year for the section comes to a close and we look forward to the adventures ahead under the first-rate leadership of my dear friend, Bill Lemons, I know that ADR in Texas will continue to grow and mature as the method of first choice for the resolution of disputes.

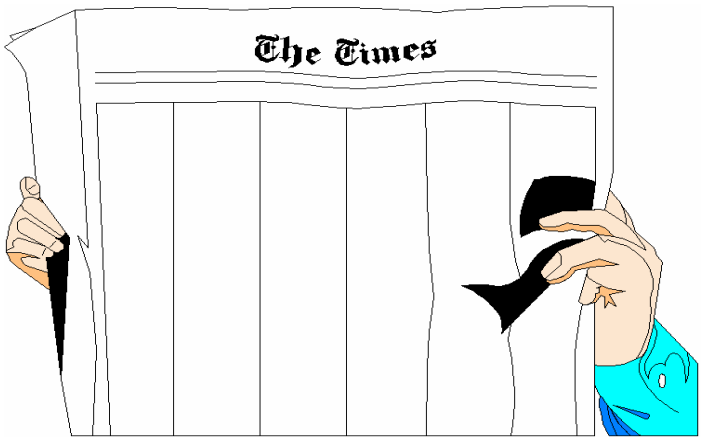
Adios amigos!



EXPRESSIONS OF NEWS

Gordon T. Arnold, of Arnold & Ferrera, L.L.P., has been elected to the position of President-Elect of the Houston Intellectual Property Law Association. He continues his practice in all areas of intellectual property law, including litigation, licensing, arbitration, mediation, and application preparation and prosecution.

Ann Ryan Robertson, of the Ballard Law Firm, 3700 Buffalo Speedway, Suite 250, Houston, Texas 77098, was an arbitrator at the Eleventh Annual Willem C. Vis International Commercial Arbitration Moot held in Vienna, Austria. In addition, she coached the team fielded by the University of Houston Law Center. Over 130 teams from around the world participated in this year's Moot. The goal of the Moot is to foster the study of arbitration for the resolution of international business disputes. Ms. Robertson also was a member of the faculty for the"Advanced Skills for Resolving International Cases" workshop held in conjunction with the American Bar Association Dispute Resolution Section's Sixth Annual Conference in New York City.



QUESTIONS & ANSWERS REGARDING COLLABORATIVE FAMILY LAW
continued from page 10

collaborative law process as a way to drag out the divorce, the parties will - both - eventually have to terminate the process and go to the trouble and expense of hiring new counsel.

Q: Are there other areas of the law besides family law that the collaborative process is being used?

A: Because family law uniquely impacts children and families, it is the primary area of the law where the collaborative process is being used.

Q: Aren't I giving up significant legal rights that I would otherwise have by using the collaborative process?

A: No. If the collaborative process does not work, the parties can always hire litigation counsel and pursue the traditional route.

Q: Is this process respected by the judges? What is to stop a judge or court administrator from thwarting the process by requiring a trial setting to prevent dismissal?

A: Texas was the first state to enact a statute in its Family Code specifically respecting the collaborative law process. If the parties announce when a case is filed that it is to be filed as a collaborative law case, it cannot be forced to trial for a two year period. After that, a court administrator can set it for dismissal. Likewise, if the process falls apart, a judge must give a party thirty days to secure new counsel except in the event of an emergency. Other states are now looking at similar legislation.

Q: My spouse has been abusive in the past and has recently threatened me. Is this type of process right for me?

A: No. If there has been family violence or threatening behavior by one spouse, it is probably not appropriate. Collaborative law requires a high degree of trust, civilized behavior, and a willingness of both parties to put the interests of the children ahead of their own needs.

Q: OK, I have decided I want to handle my divorce collaboratively. How do I get started?

A: The first step is to try and find a lawyer who is experienced at handling collaborative law cases. That may involve checking with your local bar association, the yellow pages, and an Internet search. Once you find an attorney who handles collaborative law cases, the next step is for your spouse to also retain an attorney who does collaborative law. The attorneys must also agree to work together. The next step after that is a series of four way meetings. At the first meeting the parties and their attorneys sign the collaborative law participation agreement and discuss procedures for moving forward. After that, the parties will agree on information to be exchanged, experts to be hired, and a timetable for the case.

Practical Tips for Mediation: Bracketing

By Jeffrey S. Abrams

Over the course of the last year or so, I have observed an interesting phenomenon in my mediation practice. On occasion—invariably at a stage of the mediation where impasse appears near—a party's attorney suggests the use of a tactic known as "bracketing." Bracketing is a proposal conditioned upon a particular response from the other side. For example, a plaintiff's attorney tells a defense attorney, "My client will reduce her demand from $750,000 to $500,000 if your client will increase its offer from $50,000 to $200,000."

Until recently, I had never been impressed with this tactic, and I had—at times—persuaded parties and their attorneys from using it. Not once could I recall that the recipient of a bracketing proposal had responded, "Sure, I'll come up to $200,000 if you go down to $500,000." In a sense, such a proposal is in the nature of an ultimatum, and lawyers rarely respond favorably to an ultimatum.

Over time, because bracketing was the attorneys' idea—and because they usually suggested it when impasse was near—I began to acquiesce**.** Rarely did the opposing side respond favorably to a bracketing proposal. However, I observed that something positive often happened that led to a successful resolution of the case. Either as their own idea or at my suggestion, the parties made bracketing counter-proposals. For example, a defense attorney told a plaintiff's attorney, "I can't offer $200,000, but if you go down to $400,000, I'll go up to $100,000." Again, the plaintiff rarely, if ever, accepted the counter-proposal. However, the plaintiff sometimes continued the bracketing for another round. For example, the plaintiff said, "I'll go down to $450,000 if you go up to $175,000." This counter-proposal then led to a defendant's response that, "I'll go up to $150,000 if you come below $300,000."

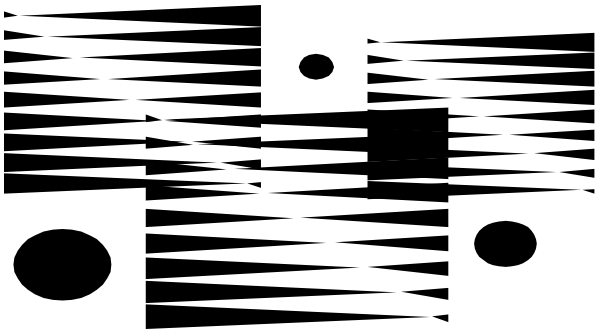
Usually, in my experience, the bracketing approach broke down. The plaintiff might have said, "We're getting nowhere. I'm done." The defendant might have said, "I've got more money to offer, but I'm not bidding against myself." We then appeared to be at an impasse. Nevertheless, the case had a much better chance of settling than if the bracketing exercise had not occurred. I recalled that prior to the bracketing, the plaintiff had demanded $750,000 and the defendant had offered $50,000. After the bracketing, I knew that the plaintiff was willing to go down to at least $450,000 (and likely more) and the defendant was willing to go up to $150,000 (and likely more). The difference of $300,000 (and likely less) sometimes gave me hope that a mediator's proposal (perhaps the subject of my next article) had some chance of success. Or, if a mediator's proposal proved unsuccessful, then post-mediator-proposal negotiations (perhaps the subject of my article after that) would lead to a settlement.

With the parties' settlement proposals at $750,000 and $50,000 I probably would not have made a mediator's proposal. I would have concluded that there was probably no number I could have proposed that would have been accepted. We would, therefore, have been at a true impasse, and I would have sent the parties home. I would have followed up later (perhaps the subject of my last article), but I would not have held much hope for success.

In summary, while my experience with bracketing has rarely led to settlement on its own, it has enabled me to assist the parties in settling a number of cases that otherwise might not have settled. Therefore, I believe the appropriate and timely use of bracketing can be a helpful tool for mediators in difficult cases.

Jeffry S. Abrams, *an attorney for 21 years, is a full-time attorney-mediator in Houston, Texas who has conducted over 2200 mediations in his over 14 years as a mediator. He previously served as Chair of the Houston Bar Association Alternative Dispute Resolution Section, on the Board of Directors of the Harris County Dispute Resolution Center, President of the Houston Chapter of the Association of Attorney-Mediators and is currently President of the Association of Attorney-Mediators national organization. Jeff has recently made presentations on mediation in Buenos Aires, Washington D.C., Hong Kong, Sydney, Lisbon, and Queensland, Australia.*

.



ADR on the Web

Mindfulness in the Law and ADR

By Mary Thompson

Video: A Harvard Negotiation Project Workshop by Leonard Riskin
http://www.pon.harvard.edu/news/2002/video_riskin_mindfulness.php3

One might hesitate to take on the topic of mindfulness in mediation in a bar association publication, but the influence of Leonard Riskin on the mediation field is worth noting. Riskin is the C.A. Leedy Professor at the University of Missouri/Columbia School of Law. Many of us first became acquainted with Riskin's work in 1996 when he published his mediation "Grid for the Perplexed" a landmark article that attempted to classify mediator styles. In more recent years he has been exploring the benefits of "mindfulness" to the practices of mediation and law.

Mindfulness applies the concepts of meditation to the mediator's ability to "be present in the moment without judgment." Riskin contends that contemplative practice helps the practitioner feel better and perform better. Although this video may seem a little "out there" for some of our Texas practitioners, it provides an interesting glimpse into a trend toward more thoughtful practice: deeper listening, less stress, more attention to the disputants and their needs at the moment. (Besides, just seeing all those Harvard folks in suits participating in a meditation exercise is just too good to miss.)

Riskin's work on mindfulness reflects the current influence of spirituality on the dispute resolution field. This trend would be apparent to anyone who heard John Paul Lederach's fascinating presentation at this year's Texas Association of Mediators conference. For additional print resources, see The Initiative on Mindfulness in Law and Dispute Resolution, http://www.law.missouri.edu/csdr/mindfulness_resource.htm#Books and Articles

***Mary Thompson**, Corder/Thompson & Associates, is a mediator, facilitator and trainer in Austin.*

If you are interested in writing a review of an ADR-related web site for Alternative Resolutions, contact Mary at emmond@aol.com.

Director of Campus Mediation Service and Training Coordinator for the Center for the Study of Dispute Resolution

The University of Missouri -- Columbia seeks an individual with unique skills in two areas. We are looking for a person with expertise and experience in the field of dispute resolution to serve in the dual roles of the **Director of the MU Campus Mediation Service** (CMS) and **also the Training Coordinator for the Law School's Center for the Study of Dispute Resolution** (CSDR).

The Campus Mediation Service is a program designed to assist employees to find resolution to workplace conflicts in face-to-face meetings and in larger group settings. The Director is responsible for coordinating the CMS's operations, which includes screening potential cases for mediation, training and supervising volunteer mediators (university employees), conducting mediations (with volunteer mediators), promoting the program in print and through personal appearances, updating the CMS website, and meeting with the CMS advisory committee.

The CSDR was established in 1984 by the MU School of Law with a mission to foster new approaches to lawyering by promoting the appropriate use of alternative dispute resolution (ADR) methods such as mediation, negotiation, and arbitration. The CSDR is recognized as one of the nation's leaders in dispute resolution. The Training Coordinator is responsible for developing, implementing, promoting, and conducting specialized ADR training and continuing legal education programs for lawyers, judges, and other interested groups.

Juris Doctorate is preferred *however equivalent combination of education and experience from which comparable knowledge and abilities can be acquired is acceptable.*

Experience with mediation, arbitration, ombudsman and/or other alternative dispute resolution methods is preferred.

Applicants should send a **cover letter, resume and list of three references to: Keesha Jones, Human Resources, 130 Heinkel Building, University of Missouri-Columbia, Columbia, MO 65211.**

Please reference vacancy number **J005771**. For full consideration, applications must be received no later than **May 1,2004**. For questions or additional information, please call **(573) 882-7976**. Salary is commensurate with education and experience. The University of Missouri System is an Affirmative Action/Equal Opportunity Employer.

MEDIATION: OPENING THE WINDOW

By Charles Ramser and Kristopher Tilker

Introduction

The adversarial system, still one of the best legal systems in place, is here to stay. Litigation will always be the primary source of conflict resolution. However, it rapidly is losing its starring role to mediation, which is making inroads into the traditional American jurisprudence system because of its success. A study completed in 1996 by Northwestern University indicated an overall settlement rate of 78% in mediation. This figure included both voluntary and mandatory mediations (Brett 1996, p.259, 267). The same study showed that 76% of mediations settled even when mediation was compelled by a court order or by a contract clause (Brett 1996, p.262). This new co-star, mediation, is taking center stage more often in resolving conflicts, and as the scope of its role is being developed, so are tools with which to implement it most fully. In this paper, we will look in depth at one of those tools that will help both attorneys and mediators use mediation more effectively. We will examine the dynamics of the mediation process using the Johari Window opened wide by the Communications Intimacy Matrix.

Opening the Window

How can mediators best use this process of negotiation through a disinterested third party to continue to fuel its ascending star? To answer that, mediators must understand one fundamental dynamic of the process: that mediation works because it builds, and is built upon, trust. Mediation effectiveness depends in large measure on the mediator's impartiality and capacity to win trust from the parties involved. Mediation is collaborative communication that both cultivates and then depends on a high degree of mutual trust among participants. That is, participants must come to believe that each has integrity, character, and capability. Without that, the option of persuasion upon which mediation is founded cannot operate. Trust is fragile, however. As Sonnenberg (1993, p. 22, 28) has noted, "It takes a long time to build, can be easily destroyed, and is hard to regain."

Mediation Dynamics

In mediation dynamics, perceptions are as important as true reality. If people perceive a situation as being closed, then that becomes their "reality," and the motivation to communicate with the opposing party will not be there. One of the common complaints of clients entering mediation is that they cannot communicate, which indicates to them a closed situation. Common frustration then builds from feeling misunderstood (Foster 2002). The ultimate result is a block of communications activity and even a loss of will to communicate with others who share a common stake in a resolution.

Surmounting the Block

How, then, to open or prevent this blockage and build trust ? In this paper, two approaches that have been known to the business world for many years -- the Johari Window and the Communication Intimacy Matrix -- are revisited and combined in a fresh way to be used as an effective tool to open communication in the mediation process.

The Johari Window

In 1955, Joseph Luft and Harry Ingham proposed the Johari Window as a graphic model of interpersonal awareness (Luft and Ingham 1955). Since then, scholars, executives, and consultants have used the model as a tool for developing high levels of trust and openness in different situations. Basically the model describes mechanisms for developing effective working relationships through self-disclosure and feedback. The model is depicted as a window with four panes that represent four areas of effectiveness in the relationship between two people or entities. That relationship can be looked at as two-dimensional: information known and unknown to one person, and information known and unknown to the other person. What each person knows about the other is "open," and what is not known is " hidden." Industries, universities, and counselors have shown that communications are richer, more authentic, and fuller when the open, or **public,** arena ("the window of exchange") is larger. In this public arena are mutual understanding and knowledge of information relevant to those sharing it. This shared knowledge can reduce the potential for conflict. The Johari Window looks like any four-pane window:

Party A

	Known	Unknown
Party B Known	**PUBLIC** **(Arena)**	**BLIND** **(Blind spot)**
Unknown	**PRIVATE** **(Façade)**	**UNKNOWN**

continued on page 16

MEDIATION: OPENING THE WINDOW
continued from page 15

The area known as the public arena is made up of perceptions known by the parties to the mediation. It is a small pane when communications are closed, blocked, or not forthcoming. This is the window that needs opening for effective mediation. The area known as the blindspot, or hidden arena, is comprised of attitudes and behavior not known to Party A but known to Party B. To illustrate, Party B may perceive Party A as arrogant, and Party A may not seek feedback about B's perceptions. The private arena, or "façade," is the attitude and behavior that is known to Party A but not to Party B. Party A may really feel Party B has a false premise underlying part of B's position. Party A may not disclose this, and Party B may not intuit it from verbal/non-verbal messages of A (Hersey and Blanchard 1977, p. 237). These communication blockages adversely hamper open communications in mediation because Party A does not know he is being perceived as arrogant, and Party B does not know that A believes B is operating on a false premise.

The unknown arena would also be large in early stages of mediation. There would be many possible observations, reflections, and concepts never arrived at because of lack of the will to communicate (Hersey and Blanchard 1977, p. 237).

These two processes that shape the configuration of the four arenas are feedback and disclosure. Feedback is the extent to which people are willing to share with others how they are perceived. It is the willingness to be open with the adversary and is also one's ability to read verbal and non-verbal communication from others. Feedback should be sought (Hersey and Blanchard 1977, p. 238).

Disclosure is the extent to which people are willing to share with others appropriate information about themselves (Hersey and Blanchard 1977, p. 239). In mediation, it is important for people to disclose their feelings and perceptions. These two processes should be in balance. If they fall out of balance (all disclosure and little feedback), the process is one-way, involving conceited domination. This person can be termed Blabbermouth because he talks a lot but does not listen well. In mediation settings, people tend to get annoyed with such a person and will eventually either actively or passively learn to shut him up (University of San Francisco Faculty 2001). If the balance is too far in the opposite direction (all feedback and no disclosure), there is an exploitive mode of communication, with a large "facade." This person has been termed the Pumper because he keeps large amounts of information inside while disclosing little. In mediation, this person will make parties tend to feel defensive and resentful (USF Faculty 2001). Finally, when there is little disclosure and also little feedback sought, a large unknown area exists. A person in this mode is labeled the Hermit. This person is difficult to read because he is unpredictable. In mediation, this would mean the parties tend to feel insecure and confused about expectations (USF Faculty 2001). Without effective communication, the process can break down, leaving the parties feeling offended, disliked, and distrustful of each other. Smoothing out the interpersonal communications would smooth the mediation process itself and make it more effective for all.

The Synthesis

What is proposed in this paper to keep communication at an optimum level is an ideal state in which a large public arena exists (plenty of feedback and disclosure, or an open window). This is the place for the Open-Receptive Person, a place in which agreement occurs (USF Faculty 2001). Generally the blind, private, and unknown arenas would be smaller. It would not be appropriate or possible for blind and private arenas to be non-existent. In mediation, people would almost never share everything with the adversary, and because all parties are by nature limited in their knowledge, the unknown arena would always exist.

To attain such a balanced arena requires a mechanism for obtaining feedback and a model for offering disclosure that would operate simultaneously. This paper submits that this process can be facilitated by study of the Johari Window linked with thorough understanding of Whetten and Cameron's Intimacy Matrix. This matrix is designed to address the barriers of defensiveness, which results in anger and aggression, and of disconfirmation, which results in withdrawal and distrust.

The Intimacy Matrix

Better communication can be built around the Whetten and Cameron (1987) model, as depicted by this matrix:

The matrix focuses on two dimensions: the focus of communication (subject) and type of communication (kind of message being sent). Whetten and Cameron contend that moving from left to right and from top to bottom on

FOCUS →					
TYPE		EXTERNAL	COMMON GROUP	PERSONAL	RELATIONSHIP
	CLICHES	*CLOSED*			
	FACTS				
	OPINIONS				
	FEELINGS				*OPEN*

continued on page 17

continued from page 16

the matrix leads to the bottom-right corner of openness, where the communicators have the most investment of themselves and of trust in the other. For the mediation process, this is the area of greatest trust and potential progress in resolving issues. When mediations are not progressing, mediators can use this matrix to analyze where communication is stalled, knowing what is necessary to move forward (Whetten and Cameron 1987, p. 109).

The subject dimension includes four types of focus:

- **External,** which is the least intimate and most appropriate for superficial relationships. It would include subjects such as the weather or world events.
- **Common group**, which involves the communicators searching for common ground in order to feel closer more immediately. An example would be discussing belonging to the same club or having an acquaintance in common.
- **Personal disclosure**, in which one party volunteers information about himself that the listener would not know otherwise. Someone in the personal disclosure area would, for example, tell about his likes or dislikes.
- **Relationship**, which involves the two parties referring to themselves as "us." An example of a statement made in this area of the matrix would be, "I want to tell you how I feel about us in regard to…."

The other dimension of the matrix is the type of communication. It includes four types of message delivery (Whetten and Cameron 1987, p. 110):

- Clichés, which require little investment of self and in which the conversation stays superficial.
- Facts, which require more personal investment.
- Opinion, in which attitudes are shared.
- Feelings, which are the strongest involvement of self because they are intimate and emotional and require trust (Whetten and Cameron 1987, pp. 109-110).

This matrix works with the Johari Window model to facilitate a larger public arena in that rather than just calling for simultaneous disclosure and feedback -- a big jump for those who have not been communicating effectively -- it suggests a more incremental, gradual process of moving from external to group to personal to relationship focuses in mediation communication. At the same time, it involves branching from clichés to facts to opinions to feelings as intimacy and trust are increased. The lower right portion of the matrix is the territory for mediation success. The upper left portion is the likely territory for stalled negotiations. Successful mediators should use their skills to progress toward the lower right of the Intimacy Matrix as mediation issues are tackled.

Summary

In summary, opening the Intimacy Matrix is suggested as a tool for enlarging the public pane of the Johari Window, and, in fact, for understanding successful mediation. A key advantage is that the Intimacy Matrix suggests a technique for enabling balanced, comfortable, incremental growth of the public pane of the Johari Window during stages of mediation, hence enabling its success.

These tools are presented as theoretical prescriptions to open up communication in the mediation process. Mediation is a more dynamic process than can be wholly reflected through two-dimensional grids such as the Johari Window and the Intimacy Matrix (Shapiro, Heil and Hager 1983, pp. 289-290; Jarvis 2001). However, the window and the matrix can help mediators understand the process of building trust and openness between parties to help facilitate the proc

References

Brett, Jeanne M., "The Effectiveness of Mediation: An Independent Analysis of Cases Handled by Four Major Service Providers," Negotiation Journal, (July 1996), pp. 259, 267.

Hersey, Paul and Blanchard, Kenneth, Management of Organizational Behavior, 3rd Ed., (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., pp. 236-244.

Jarvis, Chris, "Business Open Learning Archive: The Johari Window," 2001, www.sol.brunel.ac.uk/~jarvis/bola/communications/johari.html

Luft, Joseph and Ingham, Harry, "The Johari Window, A Graphic Model of Interpersonal Awareness," Proceedings of the Western Training Laboratory in Group Development, (Los Angeles: UCLA Extension Office, 1955.

Shapiro, David, Heil, John and Hager, Frank; "Validation of the Johari Window Test As A Measure of Self-Disclosure," The Journal of Social Psychology, (Vol. 120, 1983), pp. 289-290.

Sonnenberg, F.K., "Trust Me…Trust Me Not," Industry Week, (August 16, 1993), pp. 22, 28.

University of San Francisco Faculty, OB 324 Handbook, (San Francisco: University of San Francisco, College of Professional Studies, 2002). www.cps.usfca.edu/324sh

Whetten, D. A. and Cameron, K.S., "Skill Learning: Resolving Interpersonal Problems Through Communication," The Performance Management Sourcebook, R.W. Beatty, L.S. Baird, Editors, (Amherst, Massachusetts: Human Resource Development Press, 1987), pp. 100-117.

Charles Ramser *is Professor of Management at Midwestern State University and qualified to serve as a mediator in accordance with the Texas Law. He has served for over 30 years as managerial consultant in manufacturing, health care, and service industries, and has written on mediation, personnel selection, communications, productivity, and the personnel executive.*

Kristopher Tilker *is professor of Business Law at Midwestern State University and qualified to serve as a mediator in accordance with Texas Law. He has practiced criminal and civil law for 24 years in Texas and has written on mediation, covenants not to compete, and accountant liability.*

THE ATTRIBUTES OF A SUCCESSFUL MEDIATOR

By Ross Hostetter

BREAKING THE CYCLE OF CONFLICT

A mediator's job is to break the escalating cycle of conflict. But how to break this cycle? How to resolve the difficult case? An effective mediator must gain and hold the parties' attention, inspire trust and confidence, effectively receive and give communications that alter perceptions and induce new realizations, and move the case toward resolution.

A mediator must accomplish all his tasks without coercion because he has no coercive power. The mediator serves no process, issues no orders, takes no depositions, judges no case. A mediator who attempts to use coercion makes people angry, is ineffective, and does not last long in the mediation business. Manipulative mediation tricks and techniques often backfire, leading to anger and distrust. The only power that a mediator has is the power that the parties voluntarily give him. Considering these constraints, how does the mediator succeed?

PERSONAL CHARACTER

The secret to resolving the difficult case is the mediator's personal character. A mediator's own conduct is the only thing in a mediation that he always can control. By seeking first to influence his own conduct, and by successfully influencing it, a mediator influences others. If a mediator lives up to his highest ideals, or genuinely tries, people listen. They are willing to learn from such a person. This attention is a gift that cannot be demanded or purchased. It cannot be acquired by a trick or technique, but without it a mediator cannot be successful. Self-mastery and self-discipline are the keys to effectiveness with people.

Personal character is created by establishing a set of principles and living by those principles, regardless of what is convenient at the time. This kind of living produces transformational leadership. It is leadership by example that others follow. In short, the key to a mediator's effectiveness is contextual—it comes before any given set of circumstances is presented.

THE TWELVE PRINCIPLES

Those of us who are lawyers talk a lot about ethics. For many lawyers, the code of ethics is like a speed limit, a traffic law, something they live within most of the time but may transgress on tempting occasions. They may drive right at the speed limit, perhaps a little beyond the limit, and whenever the limit is raised, they drive just that much faster. Speed limits are rules, not principles. Lawyers and mediators do not choose rules; rules do not define character.

In order to be effective with other people, in order to be a leader to whom others listen, mediators must create their own higher standards. I have brought together twelve principles that are my personal code of ethics as a mediator. They are taken from many different sources, and there is absolutely nothing new about them. I can give a warranty, a representation about these principles: they work. If a mediator applies them consistently, he will begin to do the "impossible"—he will settle difficult cases.

The twelve principles are:

1. Place the service of others above all other goals.
2. Always turn the other cheek.
3. Leave no stone unturned.
4. Seek first to understand, then to be understood.
5. Maintain neutrality.
6. Be prepared.
7. Fulfill all commitments.
8. Seek to empower, not to diminish.
9. Be honest in all dealings.
10. Be satisfied with private victory.
11. Be courageous in living by principles.
12. Above all, do no harm.

THE TWELVE PRINCIPLES EXPANDED

1. Place service of others above all other goals.

A mediator is dedicated to the service of others, not a system or result. The fact of service is more important than any outcome that he might obtain. The goal of a mediator's practice is successful relationships with the people he serves.

The golden rule of service as a mediator is to have, as a goal, mutual agreement instead of gaining an advantage. A mediator does not seek the advantage of being right or press the advantage of authority over the parties. The mediation is not a display of power over parties; rather, it is a display of a fully mature human being. The selfish needs and desires of a mediator's ego are subordinate to his desire to serve. A mediator does not argue with the parties to protect his viewpoints. The goal is communication, not pontification or the exercise of authority.

A mediator considers it a privilege to be placed in a position to influence others positively, regardless of the fee he earns. He sets fees that allow him to fulfill his commitments and continue to serve. He reduces fees if they make service inaccessible.

In any matter of conflict between the mediator and an

continued on page 19

THE ATTRIBUTES OF A SUCCESSFUL MEDIATOR
continued from page 18

other, the mediator seeks a way for the other to win, while maintaining fairness to himself, his own integrity, and the integrity of the mediation process.

In order to serve others, the mediator develops the attributes of kindness, respect, love, friendliness, helpfulness, humor, courtesy, and cheerfulness. He strives to be gentle with the people involved and tough on the problem presented. He maintains habits of thought that do not categorize or prejudge any of the people to be served; rather, he seeks to see them in their highest light.

2. Always turn the other cheek.

Between the stimulus presented in a mediation and the mediator's response, there is a gap. The mediator demonstrates mature conduct by choosing how to react to a situation. Much of his effectiveness as a mediator involves control of his response. By a conscious effort of will, he chooses to break the cycle of hostility and anger. This control is not a passive act but rather a conscious decision to be "proactive" rather than "reactive." He presents an opportunity for the higher nature of someone else to come forward, and he acts with faith that it will come forward. In the gap between the stimulus and his action, the mediator interjects faith and love. He demonstrates mature conduct. In the words of St. Francis:

> Where there is hatred, let me sow love;
> Where there is injury, pardon;
> Where there is doubt, faith;
> Where there is despair, hope;
> Where there is darkness, light; and
> Where there is sadness, joy.

"Turning the other cheek" is the principle that creates non-violent confrontation. The mediator makes another confront himself when he takes away all the other's justification for attacking. The mediator removes all pretense that the other has a right to defend himself. The other either attacks without justification or changes his conduct. In the end, conduct inevitably changes.

3. Leave no stone unturned.

A mediator continues to work on resolution of a case until all possibilities for resolution are exhausted. This principle calls forth faith, patience, and persistence. Included in this principle is the duty to give the process adequate time to work, to take adequate time to understand the viewpoints of others, and to give them adequate time to change. The mediator is the last person to give up. He is a source of hope and optimism to all parties involved in a dispute. His faith in the ultimate goodness and reasonableness of the people he is working with remains unshaken throughout the mediation day. The mediator proceeds with the knowledge that what people tell him is not necessarily what they truly want. They often believe that if they tell the mediator the truth, they will get less than what they want. The mediator proceeds with the knowledge that better nature can be distorted by anger, ignorance, and the belief that honesty will be viewed as weakness. It is the mediator's responsibility to work until the parties can express themselves without fear.

4. Seek first to understand, then to be understood.

This maxim is the principle of successful communication. Empathic listening is the mediator's primary tool. One of the most powerful human experiences is to be understood and acknowledged by another non-judgmental human being. The mediator's role is to understand despite his own biases, prejudices, likes, and dislikes. To understand in this way puts the mediator at risk, the risk that the mediator's own perception will be changed and that he might be proved wrong. The mediator accepts this risk.

A mediator is willing to acknowledge the value of other people and not judge their actions or the merits of their cases. The mediator seeks the part of himself that is like the person he is seeking to understand, and once he can see the other person without judging, he then seeks to be understood.

Once he obtains receptiveness, a mediator owes a duty to all parties to be a master of clear, simple, and powerful communication. A mediator does not water barren trees by communicating what will never be received. A mediator does not bear a message that will close off further discussion. A mediator waits patiently for results and does not expect admissions from the parties involved.

5. Maintain Neutrality.

A mediator does not serve by taking sides. A mediator proceeds with the knowledge that to agree is to argue.

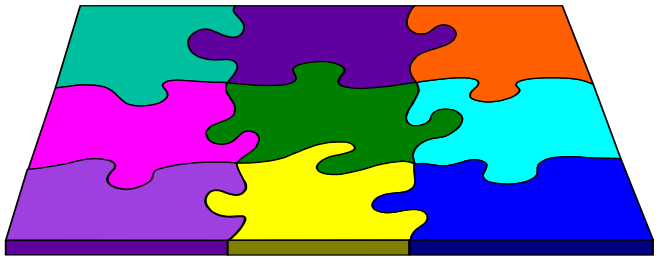
A mediator never interposes his own opinion of the proper outcome on the parties. To do so is to destroy the parties' opportunity to reach their own agreement.

As part of the mediator's duty of neutrality, he develops the habit of not arguing mentally. He listens to understand, not to refute or entrap. He proceeds with the knowledge that he is already highly biased and prejudiced, and takes steps to counter the effects of his presumptions.

6. Be prepared.

A mediator is mentally alert, emotionally open, and physically clear and rested. He is skilled in techniques of persuasion and uses this skill within the context of an overriding commitment to service. A mediator is versed in the subject matter of the case. A mediator always enters into mediation with a game plan for resolution of the case, yet is flexible and able to abandon that game plan at any time. He is skilled in the art of advocacy. He continues to grow and study the art of mediation without ceasing. As part of his preparation, the mediator seeks sufficient self-renewal to maintain a sense of joyfulness and the highest productive capacity. If a mediator cannot adequately prepare to undertake a mediation, he refuses to engage.

continued on page 21



ETHICAL PUZZLER

by Suzanne Mann Duvall

This column addresses hypothetical ethical problems that mediators may face. If you would like to propose an ethical puzzler for future issues, please send it to Suzanne M. Duvall, 4080 Stanford Avenue, Dallas, Texas 75225, and office #214-361-0802 and fax #214-368-7258.

Ethical Puzzler Question

After twenty-five years as a paralegal in a large law firm, Mary Jones decided to retire and become a mediator. She has good reason to believe that she will be in demand because of her sphere of influence in the legal profession and her knowledge of legal issues, especially those involving business and commercial law and real estate.

After getting information from several training courses, Ms. Jones selected the AAA Solutions course for her 40 hour basic mediation training, partly because it was the least expensive course, and partly because it allowed her to proceed at her own pace.

The "40 hour basic mediation" course consisted of a one-hour orientation program followed by observing two mediations and spending four days in a courtroom "to understand how the courts work and how the courts feel about mediation." Ms. Jones was somewhat surprised that mediation training was this easy (she was expecting more "how to" lectures and some time spent in role-playing), but she was assured that because of her legal background she had all the skills she needed and was given a certificate acknowledging her completion of the 40 hour training "pursuant to Section 154.003 of the Texas Civil Practice and Remedies Code." She is now ready to hang out her shingle and has just received three court-ordered cases; one in family law – a child support modification; one involving an auto accident with soft tissue injuries; and one involving a contract for the sale of real estate.

She has called upon you, as a leader in the mediation community, for some words of wisdom as to how to assure her success. What is your advice to her?

Mike Amis (Dallas): Mary has called me. In our discussion, she has provided all of the above information, and she has yet to hear from me.

As I have listened to her, my mind runs across the State Bar's Rules of Ethics, Chapter 154 itself, training standards under the Texas Mediation Trainer's Roundtable, and our 2003 edition of the ADR Handbook put out by the ADR Section and edited by Kay and Frank Elliott. The good news is that she wants to be a mediator, has life experience and skills which might serve her well, has "some good reason" to think she might be effective, she is uneasy about her training and her competence, and she has taken the initiative to call me and sincerely lay all of this out. The bad news is that she has had no training as a mediator, may be about to be compensated for being one, and has not indicated an awareness or knowledge of the ADR statute or any of the Rules of Ethics under which mediators operate. Depending on circumstances beyond her control, her mediation "career," through no real fault of her own, may be over before it has begun. But, a very interesting fact is that she has received three referrals. This is important to me as I begin talking to her.

How did she locate the training course? What were the other courses she rejected? How did she happen to get the referrals? Were they all from one judge? In our larger counties, the child support modification would come from our Family District Court. What has been her familiarity with litigation in the course of her paralegal experience? What are those good reasons she believes she will be in demand? I think these are all important questions and would guide how I would present the following to her.

"...but it is the ethical duty of the mediator to whom she has turned to for advice to explain that the training she obtained is not sufficient to qualify her for the tasks at hand..."

To assure success, she must be accepted by those with whom she mediates, as word of mouth is still the best form of advertising we have. Unfortunately, her suspicions are well founded; she has not yet been trained as a mediator. But, the great news is that somehow, someone besides herself thinks she might make a mediator. And, apparently, one or more judges have enough confidence to refer the cases to her. I would urge her to attend a bona fide training program conducted by a member of the Texas Mediation Trainers Roundtable, a group formed in the early 90's to establish the standards for the 40 hour basic course, I would give her the name of three or so local training programs and point her to the Roundtables's website, www.tmtr.org for its standards and a list of member training programs in the State. I would next point her to the ADR Handbook as an excellent and ready source for ethical codes, inform her that all codes call for full disclosure of experience and qualifications, letting her know I would not accept her if I were counsel in any of the cases. I would recommend that she contact her local dispute resolution center to see about their training, observation, and pro-bono opportunities. After she completes the training, with two or three pro-bono's under her belt, then, and only then, should she consider further mediations, either as a volunteer or a professional. I would tell her about the 24 hour course for parent-child disputes and

continued on page 22

THE ATTRIBUTES OF A SUCCESSFUL MEDIATOR
continued from page 19

7. Fulfill all commitments.

A mediator keeps the trust of others and never reveals a confidence. He fulfills his commitments to the mediation process by doing the best job of which he is capable in every instance, and by renewing his commitment to the fundamental principles of mediation. He keeps his promises to perform work.

Keeping commitments is a commitment to being effective. A mediator is well organized, sets priorities, works well in advance of deadlines, and is focused. The mediator commits to maintaining a life of sufficient simplicity to fulfill all of his promises. Effectiveness is a lifelong process of mastering procrastination. A mediator pursues work vigorously with the knowledge that he is fulfilling his purpose. A mediator develops the habit of timeliness and reports properly to the courts. A mediator schedules mediations on the earliest possible date, and promptly responds to all forms of communication.

8. Seek to empower, not to diminish.

A mediator has a deep respect for the adversarial system. He seeks to empower judges to fulfill their roles as preeminent managers of disputes. A mediator empowers attorneys to rediscover their true purpose. He seeks to empower others drawn to the art of mediation by openly sharing all of his knowledge, even at the risk of increased competition. The mediator empowers participants in the mediation process to make their own decisions by encouraging, waiting patiently, and not making decisions for them.

9. Be honest in all dealings.

A mediator makes every effort to avoid mischaracterization of statements others make. When he makes a statement, he tells only the truth. If a mediator uses a technique to influence someone, he first explains the technique he proposes, asks permission of the affected person, then engages in the technique. He is honest in fact, and seeks certainty whenever there is a possibility that he may be misunderstood.

10. Be satisfied with private victory.

A mediator does not seek resolution for his own sake, but as an act of service to others. A mediator's reward is the knowledge that he is affecting other human beings positively. A mediator's life does not include tales of triumph told to colleagues, or even family. To do so is to breach the trust of others. A mediator is satisfied with helping someone to understanding and awareness, even if there is no change in an outward position. A mediator plants the seed and allows others to make the harvest.

11. Be courageous in living by principles.

A mediator is not afraid to live and express his principles, or to insist on conduct that he knows is right. He is courageous in maintaining the elements of a successful negotiation in the face of forces that threaten to break the negotiation apart. A mediator is fearless enough to be wrong, to apologize fully when he makes a mistake. He does not fear the effects of honesty. A mediator has the courage to be open to new ideas.

12. Above all, do no harm.

This principle requires a mediator, at times, to refuse to take offers or express positions that will harm the settlement process. A mediator is not required to make every communication that a party wants him to make, especially if the communication is designed to injure or intimidate another party. A mediator does not increase anger by laughter or increase pain by being callous. In a tempting moment, a mediator will leave unsaid what would do harm.

THE EFFECT OF THE TWELVE PRINCIPLES

The twelve principles, taken together, produce quality through principled words and deeds. Quality produces resolution, that simple statement made to a court or client at the end of a successful mediation. Someone asks the mediator, "What happened ?" The answer: "It settled."

SUBMISSION DATE FOR UPCOMING ISSUES OF *ALTERNATIVE RESOLUTIONS*

Issue	Submission Date	Publication Date
Summer	June 15, 2004	July 30, 2004
Fall	September 15, 2004	October 15, 2004
Winter	December 15, 2004	January 15, 2005
Spring	March 15, 2005	April 15, 2005

SEE PUBLICATION POLICIES ON PAGE 23 AND SEND ARTICLES TO:

ROBYN G. PIETSCH, A.A. White Dispute Resolution Center, University of Houston Law Center, 100 Law Center, Houston, Texas 77204-6060, Phone:713.743.2066 FAX:713.743.2097 rpietsch@central.uh.edu OR rpietsch55@aol.com

Ethical Puzzler
continued from page 20

give her some names, referring her back to the Roundtables's website for its standards. I would encourage her to focus on her real estate and commercial experience after she is trained.

With respect to the three referrals she has received, I would encourage her to visit personally the respective courts, talking with either the administrator or the judge, if possible. She should thank them for the referrals and request that her appointments be delayed until she completes her training. Alternatively, she could request that an experienced mediator be appointed and that she serves as her/his co-mediator. Hopefully, in this way, she will control the damage done so far, emerge as a trained mediator and get off on the right foot with the attorneys and courts she hopes to serve.

And get pointed towards her new profession, obtaining her credential as a member of the Texas Mediator Credentialing Association (TMCA), that path easily explained on its website, www.tmcs.org. Also, she should seek qualification to join the professional associations she is eligible for, the State Bar of Texas ADR Section, Texas Association of Mediators, and ACR. She should have professional liability insurance and begin regularly attending continuing education seminars and additional training.

I might ask her if I could contact the court administrator in the referring court(s) involved and indicate she was en route.

Benjamin J. Cunningham (Austin): A number of ethical problems arise from the "Mary Jones" mediator scenario, not the least of which is the lack of supervision and approval over the mediation training programs, and the necessity for establishing enforceable standards of quality for such training programs.

However, we must deal; with the dicey situation at hand, which is that Mary Jones has been assigned by the courts to conduct three mediations, none of which (at least from the description provided of her background, training and experience with respect to mediation) is she qualified to perform.[1] Its fortuitous, perhaps, that Mary came knocking for some advice to "assure her success."

First, I would discuss with Mary that "success" in the realm of mediation is a term of art that centers on the "success" of a mediator in protecting the mediation process. Of course, from her "training," she might not have much of a grasp on what *process* she is protecting. I might begin by giving her a copy of (and discussing) some ethical guidelines, including AAM's ethical guidelines, and talking with her about her duties and ethical obligations as a mediator (again, we run into the problem that these "duties" are not enforceable by any sanctioned state agency) to (a) put the interests of the parties ahead of the interests of the mediator; and (b) that a mediator should inform the parties of her experience and qualifications, and, ethically, a mediator should withdraw from a mediation if he/she feels unqualified to conduct the mediation.

Of course, Mary seems fairly self-assured (there may be hope for her yet!), and the idea of withdrawing from the mediations may be an anathema, but it is the ethical duty of the mediator to whom she has turned to for advice, to explain that the training she obtained is not sufficient to qualify her for the tasks at hand; that she does not have the experience required; and that the problem now belongs not only to Mary, but her new "mentor" as well, to do what is necessary to protect the process and also the parties that will be putting themselves in her hands for those court-ordered mediations. Poor parties! Poor Mary! Poor mediator-mentor!

The mentor should encourage Mary to meet her ethical obligations and inform the parties and court that she may not be qualified at this point to mediate the dispute. Of course, depending on Mary's personality or other factors, this might not be an attractive option to Mary. If I, as the mediator providing her advice, sensed or believed that Mary[1] planned to move ahead with the mediations, I think my ethical duty would be clear. I would offer Mary a "deal." If Mary would agree to seek permission from the parties and the court, I would agree to co-mediate on a *pro bono* basis the case with her (or help her obtain another experienced and trained co-mediator on a *pro bono* basis.)[2]

Also, I would explain to Mary that inasmuch as these mediations have been ordered, by the court, and because as an attorney I am an officer of the court, that if she refuses to notify the parties and the court regarding her lack of qualifications and training for the mediations over which she is to preside as mediator, and if she refuses to allow the participation (with permission of the parties) of a co-mediator with requisite duties in accordance with State Bar Rules, (Rule 3.03, for example – Candor toward the Tribunal)3, to disclose to the court the facts regarding my knowledge of Mary's apparent lack of qualifications to undertake the court ordered appointments as mediator.

Obviously, this "nightmare scenario" raises many issues, but paramount in the mind of the (attorney) mediator would be first try to provide Mary with some of the "education" she is lacking about the mediation process (and her role and duties to that process), and to prevent Mary from potentially "doing harm" not only to the mediation process and the parties involved, but -- in this scenario – also doing damage to the court/tribunal[3], which referred the cases to Mary for mediation (one wonders what oddities in that process transpired to allow this to happen).

I would also explore what needed to be done about the inferior training program, AAA Solutions, a topic that I would discuss with the Texas Mediators Training Roundtable, or other appropriate entity.

I might also call AAA Solutions and raise a little hell, just on general principles.

continued on page 23

Revised Code of Ethics for Arbitrators

By William H. Lemons, III, Chair Elect

A joint committee has revised the *Code of Ethics for Arbitrators in Commercial Disputes*. This joint committee consisted of a special committee of the American Arbitration Association ("AAA") and a task force of the American Bar Association. The revisions, which came into being in September 2003, became effective on March 1, 2004.

The revisions change, in some respects, the *Code of Ethics* that was originally prepared in 1977 by a similar joint committee. The old *Code of Ethics* has served the process well. The Code of Ethics was adopted by the Council of the ADR Section of the State Bar of Texas last year as the definitive work on arbitrator ethics and responsibility. It is anticipated that ADR Section will adopt the revised *Code of Ethics* as well.

The revised *Code of Ethics* includes two significant sets of changes. One set relates to the ever-increasing obligation(s) of full and complete disclosure by the potential or sitting arbitrator. We learn that *any known direct or indirect financial or personal interest in the outcome of the arbitration* must be disclosed (the new word here is *known*). Disclosure now also will include information pertaining not only to *household members*, but also to *professional associates.* The duty to disclose is ongoing, and continues well beyond the initial inquiry. How enforceable is this duty? Note well that *AAA arbitrators may be placed on Inactive Status whenever any of their awards are challenged in court based upon allegations that the arbitrator failed to properly disclose relationships with individuals, counsel, witnesses or parties to an arbitration.*

The other significant set of changes in the revised *Code of Ethics* pertains to the party-appointed ("non-neutral") neutral. The party-appointed neutral now is actually presumed to be *neutral* unless he or she declares otherwise. There is a duty to determine the intent of the parties as to *arbitrator neutrality*, and this duty includes reviewing all applicable rules, law, and the agreement itself. Significantly, all disclosure obligations now apply with equal force to the party-appointed neutral. Lastly, new *Canon X* makes certain limited exemptions to the neutrality canons for properly declared *non-neutrals.*

Other changes are important but less prominent. There is a new obligation that the arbitrator accept appointment only if he or she is fully satisfied he or she is *competent to serve*. If necessary to decide the case, it is not improper for the arbitrator to ask questions, call witnesses, and request documents or other evidence, *including expert testimony.* Lastly, Canon VII speaks in terms of integrity and fairness in making arrangements for arbitrator compensation, and basically picks up all the AAA billing guidelines.

I have an article that places the old Code next to the new Code if anyone wants to explore the changes in more detail. For a copy of the article, contact me at whlemons@satexlaw.com.

Ethical Puzzler
continued from page 22

Comments:

This puzzler, like all situations addressed in this column, is based on actual facts. Unlike most of the issues previously dealt with, however, it speaks to a most important, though frequently overlooked, ethical question of mediator incompetency based on inadequate training.

Although Chapter 154.003 of the Texas Civil Practice and Remedies Code in effect allows for waiver of the 40-hour training requirement in appropriate circumstances, such training has become the accepted norm for mediators in Texas. Indeed the standards for the 40-hour training as set by the Texas Mediator Trainers Roundtable have become the accepted standards both for trainers and training programs in Texas.

Ethical competency as a mediator begins with the proper training. Without the foundation upon which to build, it is difficult (if not impossible) to adhere to either the Ethical Guidelines of the ADR Section of the State Bar of Texas or the Ethical Rules for Mediators as required by the Texas Mediator Credentialing Association.

[1] For purpose of this exercise, I am not automatically assuming Mary's "knowledge" of legal issues. Especially those issues involving business and commercial law and real estate" are sufficient to tackle a complicated real estate matter. I also do not assume that her "knowledge of legal issues" would necessarily give her the required legal insight to grapple with the other types of cases she has been assigned for mediation.

[2] To fail to make this offer would be to turn a blind eye to an option that would respect the mediation process, and our duties as mediators to that process.

[3] Rule 3.03 (a) (3): [a lawyer shall not knowingly], fail to disclose to the tribunal] and unprivileged fact which the lawyer reasonably believes should be known by that entity for it to make an informed decision.

2004 CALENDAR OF EVENTS

Workplace Conflict Resolution: Worklife Institute, Houston; May 19-21 2004; 713-266-2456, dcdale@aol.com, Diana Dale or Elizabeth Burleigh; 24 hours

Arbitration Training Institute May 19 -22, 2004 San Francisco, CA Golden Gate University School of Law Hotel Griffon (415) 495-2100 Contact ABA Section of Dispute Resolution, dispute@abanet.org or 202-662-1680

ADR Institute, with introductory courses in mediation, arbitration and interviewing and counseling New York, NY Benjamin N. Cardozo School of Law's Dispute Resolution Program May 23-25, 2004, Cardozo Law School Visit http://www.cardozo.yu.edu/kukin/institute.html https://webmail.txstate.edu/redirect?http://www.cardozo.yu.edu/kukin/institute.html for additional information and enrollment forms or contact Dara Small at 212-790-0477 or Lela Love (love@yu.edu).

40-Hour Basic Mediation June 1-6, 2004 sponsored by the A.A. White Dispute Resolution Center, Houston, Texas; $985; **Registration**: www.law.uh.edu/blakely/aawhite Meets the Texas Mediation Trainers Roundtable Standards for 40-hour mediation courses: MCLE hours 40.00 with 4 hours of ethics.

Mediation Skills for the Workplace Columbus, OH - June 14-18, 2004 Cost: $700.00 ($600.00 early bird discount until May 14, 2004) (The Institute will offer discounts for multiple registrations from the same organization)

40-Hour Basic Mediation June 21-25, 2004 Center for Public Policy Dispute Resolution The University of Texas School of Law Trainers: Kimberlee Kovach, Eric Galton MCLE hours submitted to State Bar For information, please call the Center at (512) 471-3507

Arbitration for Advocates Anchorage, AK - July 14-16, 2004 Cost: $750.00 ($650.00 early bird discount until June 14, 2004) (The Institute will offer discounts for multiple registrations from the same organization)

Negotiation Workshop July 28-30, 2004 Center for Public Policy Dispute Resolution The University of Texas School of Law Trainer: John Fleming MCLE hours submitted to State Bar For information, please call the Center at (512) 471-3507

Labor Management Negotiations Washington, DC - July 26-30, 2004 Cost: $700.00 ($600.00 early bird discount until June 12, 2004) (The Institute will offer discounts for multiple registrations from the same organization)

ABA Annual Meeting August 6-8, 2004 (Georgia World Congress Center) Atlanta, Georgia DR Section Programs & Meetings (Marriott Marquis) Contact ABA Section of Dispute Resolution, dispute@abanet.org or 202-662-1680

Beyond Basic Mediation & Ethical Issues for Mediators August 19-20, 2004 Center for Public Policy Dispute Resolution The University of Texas School of Law Trainer: Kimberlee Kovach MCLE hours submitted to State Bar For information, please call the Center at (512) 471-3507

40-Hour Basic Mediation Training; August 20-22 and 27-29, 2004; Two consecutive weekends—Fridays 4:00 p.m. to 9:00 p.m.; Saturdays—8:30 a.m. to 5:30 pm and Sundays—11:30 a.m. to 6:00 p.m. sponsored by the A.A. White Dispute Resolution Center, Houston, Texas; $985; **Registration**: www.law.uh.edu/blakely/aawhite; Meets the Texas Mediation Trainers Roundtable Standards for 40-hour mediation courses: MCLE hours 40.00 with 4 hours of ethics.

Arbitration for Advocates with Special Federal Track Clearwater, FL - September 29 – October 1, 2004 CLE Credits Available Please visit our website for information and registration http://www.fmcs.gov/fmcsinst/

40-Hour Basic Mediation Training; October 29-31 and November 5-7, 2004; Two consecutive weekends—Fridays 4:00 p.m. to 9:00 p.m.; Saturdays—8:30 a.m. to 5:30 pm and Sundays—11:30 a.m. to 6:00 p.m. sponsored by the A.A. White Dispute Resolution Center, Houston, Texas; $985; **Registration**: www.law.uh.edu/blakely/aawhite; Meets the Texas Mediation Trainers Roundtable Standards for 40-hour mediation courses: MCLE hours 40.00 with 4 hours of ethics.

Fourth Annual Indian Tribes, Natural Resource Conflicts and Dispute Resolution Conference Minneapolis, MN Contact ABA Section of Dispute Resolution, dispute@abanet.org or 202-662-1680

Third Annual National Institute on Advanced Mediation and Advocacy Skills Training Oct. 14 -15, 2004 Chicago, IL Contact ABA Section of Dispute Resolution, dispute@abanet.org or 202-662-1680

Family Business Symposium October 22, 2004 Boston, MA Contact ABA Section of Dispute Resolution, dispute@abanet.org or 202-662-1680

Activities for Group Problem Solving October 29, 2004 Center for Public Policy Dispute Resolution The University of Texas School of Law Trainers: Corder/Thompson & Associates MCLE hours submitted to State Bar For information, please call the Center at (512) 471-3507

2003-2004 Officers and Council Members

Michael J. Schless, **CHAIR**
1301 W. 25th Street, #550
Austin, Texas 78705
(512) 476-5507
(512) 476-4026 FAX
mjschless@cs.com

William H. Lemons III, **CHAIR-ELECT**
Travis Park Plaza, #210
711 Navarro St.
San Antonio, Texas 78205
(210) 224-5079
(210) 224-5091 FAX
whlemons@satexlaw.com

Danielle L. Hargrove, **SECRETARY**
16106 Deer Crest
San Antonio, Texas 78248-1728
(210) 210-6217
(210) 493-6217 FAX
dhargrove@satx.rr.com

Michael S. Wilk, **TREASURER**
Hirsch & Westheimer, P.C.
700 Louisiana, #2550
Houston, Texas 77002
(713) 223-5181
(713) 223-9319 FAX
mwilk@hirschwest.com

Deborah Heaton McElvaney,
IMMEDIATE PAST CHAIR
Dillard, McElvaney & Kovach, L.L.P.
550 Westcott St., #200
Houston, Texas 77007
(713) 877-1881
(713) 877-8833 FAX
dmcelvaney@dmkllp.com

Robyn G. Pietsch,
NEWSLETTER **EDITOR**
University Of Houston Law Center
AA White Dispute Resolution Center
Blakely Advocacy Institute
100 Law Center
Houston, Texas 77204-6060
(713) 743-2066
(713) 743-2097 FAX
rpietsch@central.uh.edu
rpietsch55@aol.com

COUNCIL MEMBERS (TERMS TO EXPIRE IN 2004)

The Hon. Romeo M. Flores
555 N. Carancahua, #1200
Corpus Christi, Texas 78478
(361) 881-9990
(361) 881-9998 FAX
rmflores@sbcglobal.net

Ann L. MacNaughton
Sustainable Resolutions, Inc.
1931 Vassar Street
Houston, Texas 77098
(713) 256-9114 CELL
(713) 529-4135 FAX
a.macnaughton_brune@sbcglobal.net

Cecilia H. Morgan
JAMS
8401 N. Central Expressway
Dallas, TX 75225
214-739-1979
214.744.5267 (JAMS)
214.739.1981 FAX
cmorgan320@sbcglobal.net

Rena Silverberg
4808 San Gabriel
Dallas, Texas 75229
(214) 369-2853
(214) 369-2288 FAX
budandrena@earthlink.net

COUNCIL MEMBERS (TERMS TO EXPIRE IN 2005)

John Charles Fleming
3825 Lake Austin Blvd., Suite 403
Austin, Texas 78703
(512) 477-9300
(512) 477-9302 FAX
john@gcbmediators.com

James W. Knowles
Wilson, Sheehy, Knowles, Robertson & Cornelius
315 E. 5th Street
Tyler, Texas 75701
P. O. Box 7339
Tyler, Texas 75711
(903) 593-2561
(903) 593-0686 FAX
jwk@wilsonlawfirm.com

Michael J. Kopp
P. O. Box 1488
Waco, Texas 76703-1488
(254) 752-0955
(254) 752-0966 FAX
drcwaco@earthlink.net

Joe H. Nagy, Sr.
1604 Avenue M.
Lubbock, Texas 79401
(806) 767-0782
(806) 763-3466 FAX
joedotnagy@aol.com

COUNCIL MEMBERS (TERMS TO EXPIRE IN 2006)

Claudia J. Dixon, M.A.
Dispute Mediation Service, Inc.
3400 Carlisle, Ste 240, LB9
Dallas, TX 75204
214.754.0022
214.754.0378 FAX
claudiadixon@sbcglobal.net

Kathy Fragnoli
The Resolution Group
4514 Cole Avenue,Suite 1450
Dallas, TX 75205
(800) 290-4483
(214) 522-9094 FAX
KFragnoli@aol.com

Josefina M. Rendón
Attorney, Mediator, Arbitrator
909 Kipling Street
Houston, TX 77006
713-644-0787
Fax: 713-521-9828
josrendon@aol.com

Walter A. Wright
Texas State University—San Marcos
601 University Drive
San Marcos, Texas 78666
Phone: (512) 245-2138
Fax: (512) 245-7815
ww05@txstate.edu

ENCOURAGE COLLEAGUES TO JOIN ADR SECTION

This is a personal challenge to all members of the ADR Section. Think of a colleague or associate who has shown interest in mediation or ADR and invite him or her to join the ADR Section of the State Bar of Texas. Photocopy the membership application below and mail or fax it to someone you believe will benefit from involvement in the ADR Section. He or she will appreciate your personal note and thoughtfulness.

BENEFITS OF MEMBERSHIP

✓ Section Newsletter *Alternative Resolutions* is published several times each year. Regular features include discussions of ethical dilemmas in ADR, mediation and arbitration law updates, ADR book reviews, and a calendar of upcoming ADR events and trainings around the State.

✓ Valuable information on the latest developments in ADR is provided to both ADR practitioners and those who represent clients in mediation and arbitration processes.

✓ Continuing Legal Education is provided at affordable basic, intermediate and advanced levels through announced conferences, interactive seminars.

✓ Truly interdisciplinary in nature, the ADR Section is the only Section of the State Bar of Texas with non-attorney members.

✓ Many benefits are provided for the low cost of only $25.00 per year!

STATE BAR OF TEXAS
ALTERNATIVE DISPUTE RESOLUTION SECTION
MEMBERSHIP APPLICATION

MAIL APPLICATION TO:
Michael S. Wilk
Hirsch & Westheimer, P.C.
700 Louisiana, #2550
Houston, Texas 77002
713.223.5181
FAX 713.223.9319
mwilk@hirschwest.com

I am enclosing $25.00 for membership in the Alternative Dispute Resolution Section of the State Bar of Texas from June 2004 to June 2005. The membership includes subscription to *Alternative Resolutions,* the Section's Newsletter. (If you are paying your section dues at the same time you pay your other fees as a member of the State Bar of Texas, you need **not** return this form.) Please make check payable to: ADR Section, State Bar of Texas.

Name_____ Public Member_____ Attorney_____

Address_____ Bar Card Number_____

City_____ State_____ Zip_____

Business Telephone_____ Fax_____

E-Mail Address:_____

2003-2004 Section Committee Choice_____

ALTERNATIVE RESOLUTIONS

Publication Policies

Requirements for Articles

1. Articles must be submitted for publication no later than 6 weeks prior to publication. The deadline for each issue will be published in the preceding issue.
2. The article must address some aspect of alternative dispute resolution, negotiation, mediation, or conflict management. Promotional pieces are not appropriate for the newsletter.
3. If possible, the writer should submit article via e-mail or on a diskette (MS Word (preferably), or WordPerfect), double spaced typed hard copy, and some biographical information.
4. The length of the article is flexible: 1500-3500 words are recommended. Lengthy articles may be serialized upon author's approval.
5. The article may have been published previously or submitted to other publications, provided the author has the right to submit the article to *Alternative Resolutions* for publication.
6. All quotations, titles, names and dates should be double checked for accuracy.

Selection of Article

1. The newsletter editor reserves the right to accept or reject articles for publication.

2. In the event of a decision not to publish, materials received will not be returned.

Preparation for Publishing

1. The editor reserves the right to edit articles for spelling, grammar, punctuation and format without consulting the author.
2. Any changes which affect the content, intent or point of view of an article, shall be made only with approval of the author.

Future Publishing Right

Authors reserve all their rights with respect to their article in the newsletter, except that the State Bar of Texas Alternative Dispute Resolution Section obtains the rights to publish the article in the newsletter and in any State Bar publication.

ALTERNATIVE RESOLUTIONS

Policy for Listing of Training Programs

It is the policy of the ADR Section to post on its website and in its Alternative Resolution Newsletter, website, e-mail or other addresses or links to any ADR training that meets the following criteria:

1. That any training provider for which a website addresses or link is provided, display a statement on its website in the place where the training is described, and which the training provider must keep updated and current, that includes the following:

a. That the provider of the training has or has not applied to the State Bar of Texas for MCLE credit approval for ____hours of training, and that the application, if made, has been granted for ____hours or denied by the State Bar, or is pending approval by the State Bar. The State Bar of Texas website address is www.texasbar.com, and the Texas Bar may be contacted at (800)204-2222.

b. That the training does or does not meet The Texas Mediation Trainers Roundtable training standards that are applicable to the training. The Texas Mediation Trainers Roundtable website is www.TMTR.ORG. This Website is under construction and will be accessible on a later date. The Roundtable may temporarily be contacted by contacting Dr. James W. Gibson phone number (936) 294-1717 and e-mail address "SLS_JWG@shsu.edu".

c. That the training does or does not meet the Texas Mediator Credentialing Association training requirements that are applicable to the training. The Texas Mediator Credentialing Association website is www.TXMCA.org. This Website is under construction and will be accessible on a later date. The Association may temporarily be contacted by contacting Dr. James W. Gibson at phone number (936) 294-1717 and e-mail address "SLS_JWG@shsu.edu".

2. That any training provider for which an e-mail or other link or address is provided at the ADR Section website, include in any response by the training provider to any inquiry to the provider's link or address concerning its ADR training a statement containing the information provided in paragraphs 1a, 1b, and 1c above.

The foregoing statement does not apply to any ADR training that has been approved by the State Bar of Texas for MCLE credit and listed at the State Bar's Website.

All e-mail or other addresses or links to ADR trainings are provided by the ADR training provider. The ADR Section has not reviewed and does not recommend or approve any of the linked trainings. The ADR Section does not certify or in any way represent that an ADR training for which a link is provided meets the standards or criteria represented by the ADR training provider. Those persons who use or rely of the standards, criteria, quality and qualifications represented by a training provider should confirm and verfy what is being represented. The ADR Section is only providing the links to ADR training in an effort to provide information to ADR Section members and the public."

ALTERNATIVE DISPUTE RESOLUTION SECTION

STATE BAR OF TEXAS
P.O. BOX 12487
CAPITOL STATION
AUSTIN, TEXAS 78711

PRSRT STD
U.S. Postage
PAID
Permit # 506
Temple, Texas