Alternative Resolutions

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

February 2004 **Winter Issue** **Vol. 14, No. 3**

CHAIR'S CORNER

by Michael J. Schless, Chair, ADR Section

"Dum Spiro Sparo"

No, this title is not a reference to bird named after Richard Nixon's ignorant former vice president. *Dum spiro sparo* is a Latin phrase, the English translation of which is "While I breathe, I hope." It may well be the spiritual equivalent of another well-known Latin phrase, *Cogito ergo sum* ("I think, therefore I am"), which was conceived and first expressed by one of my favorites, the seventeenth-century French philosopher, René Descartes.

Dum spiro sparo is also a phrase you will see at the bottom of each page on a webpage called The Palmer Report (http://home.earthlink.net/~johnppalmer/palmerreport/). It is a site which I recommend you visit as soon as you finish reading this column. There you will find a very real and deeply moving story of human suffering, hope, and love. The heroine in that story is the 39-year-old mother of two adorable young children. Her name is Susan. Her son is a handsome and active lad named Blake, and her daughter is a little Princess whose name is Meredith. Susan's leading man is her husband, John Palmer. Our John Palmer. A former Chair of the ADR Section, a recipient of our Justice Frank Evans Award, and a former President of Texas Association of Mediators. The same John Palmer who is known and loved by everyone in the Texas mediation community. But enough about him. Back to our heroine and leading lady, Susan.

It seems that when the members of the Palmer family retired to bed in their Waco home on the night of January 9, everyone and everything in their life was peachy. But when Susan awoke the next morning, she was not feeling well. She sent John and Blake off to one of Blake's Saturday athletic events without her. Within a matter of minutes, however, she was on the phone to 911 and to John to return home. Soon she was in the hospital. By early afternoon, she was in surgery. It seems that Susan suffered a spontaneous disk rupture of unknown origin in her cervical spine. A spinal fusion was performed, but there was extensive neurological damage and Susan had lost much sensation and movement in her extremities. Four days later, Susan was transferred to the Baylor Institute for Rehabilitation in Dallas, where she will remain through February. This piece is being written three weeks post-trauma, and John describes Susan's path to recovery as traversing both peaks and valleys, but always with faith and hope. She and John and their kids have a tremendous supporting cast. Susan's parents. John's law firm, and in particular his law partner Ben Selman. McClennan County DRC Executive Director and ADR Section Council member, Michael Kopp. Their extended family, their friends, their church, their community, and so very many more.

Now it is your chance to join this large and growing supporting cast. The Palmers will have many needs in the days,

continued on page 3

In this Issue

Nominations For The 2004-2005 State Bar Of Texas ADR Council

By Deborah Heaton McElvaney

It is that time again. The Nominating Committee of the State Bar of Texas ADR Section is accepting nominations for approximately one-third of its Council. The Nominating Committee is required to obtain input and consultation from the Council in the preparation of a Nominating Report that will be submitted for approval to the Chair of the Section and to the Council at its April 3, 2004, meeting. The Nominating Report, as approved by the Council, will be submitted to the Section membership for election at the June Annual Meeting, in conformance with the notice requirements of Section 4 of Article V of the Section's By-Laws. At the Annual Meeting, which is currently set for June 25, 2004, in San Antonio, other nominations may also be made from the floor. Section 4 requires that written notice of the Council's nominees be given to members of the Section not less than thirty (30) days prior to the date set for the election. Such notice will be provided in the Spring 2004 Newsletter.

This is a request for nominees. The Council will be required to nominate six (6) Council Member positions. Article V, Section 3 of the By-Laws provides that the Council voting membership 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 factors relevant to maintaining a Section as a whole.

The following sets out the current Council membership and the geographical areas represented:

CHAIR	Michael J. Schless	Austin
CHAIR-ELECT	William H. Lemons III	San Antonio
SECRETARY	Danielle L. Hargrove	San Antonio
TREASURER	Michael S. Wilk	Houston

(term expires 2004)

IMMEDIATE PAST CHAIR

Deborah McElvaney Houston (term expires 2004)

COUNCIL MEMBERS (TERMS TO EXPIRE IN 2004)

The Hon. Romeo M. Flores	Corpus Christi
Ann L. MacNaughton	Houston
Rena Silverberg	Dallas
Cecilia H. Morgan	Dallas

COUNCIL MEMBERS (TERMS TO EXPIRE IN 2005)

John Charles Fleming	Austin
James W. Knowles	Tyler
Michael J. Kopp	Waco
Joe H. Nagy, Sr.	Lubbock
Josefina Rendón	Houston

COUNCIL MEMBERS (TERMS TO EXPIRE IN 2006)

Claudia Dixon	Dallas
Kathy Fragnoli	Dallas
Walter Wright	San Marcos

Deadlines:

March 1, 2004	Formation of Nominating Committee (90 days prior to Annual Meeting; all nominations are due by this date.)
April 3, 2004	Selection of nominees by the Council
May 26, 2004	Notice to Section of nominees (30 days prior to Annual Meeting)

Request For Nominees:

By **5:00 p.m., March 1, 2004**, please send recommendations for nominations, which should include contact information and resumes, to

Debbie McElvaney
Dillard, McElvaney & Kovach, L.L.P.
550 Westcott, Ste. 200
Houston, Texas 77007
(713) 877-1881
(713) 877-8833 FAX
dmcelvaney@dmkllp.com

CHAIR'S CORNER
Dum Spiro Sparo
continued from front page

weeks, and months to come. Your prayers and expressions of support play a very palpable role in adding to Susan's strength, determination, and indomitable spirit. Let them hear from you. There is a convenient link to John's e-mail address on The Palmer Report webpage. Use it to let them hear from you. They will read every word with joy.

An account has now been established to assist the Palmers with the myriad unanticipated expenses that inevitably accompany a sudden event of this magnitude. If you are so motivated, even the most modest contribution will be gratefully received. Send it as follows:

Account name:	John or Susan Palmer
Account number:	992450
Institution:	Educators Credit Union
Address:	P.O. Box 20728
	Waco, Texas 76702

It occurs to me that my references to leading lady, leading man, and supporting cast make this sound like a play or a movie of some sort. But this is no fiction. This is life. The slings and arrows of outrageous fortune that flesh is heir to. It is a time of great challenge and, during those days in the valleys at least, a time of doubt. It was Descartes again who said, "If you would be a real seeker after truth, it is necessary that at least once in your life you doubt, as far as possible, all things." This is Susan's time to doubt. But from that doubt arises, like the Phoenix bird, a miracle of beauty and strength. And so for Susan and John, to the Latin phrases *Dum spiro sparo* and *Cigito ergo sum* I would like to add one of my own:

Illegitimi non carborundum

2003-2004 CALENDAR OF EVENTS

Family Mediation Training ♦ Albuquerque, New Mexico ♦ February 20 –22 / March 5-7, 2004 ♦ The University of New Mexico School of Law ♦ Contact Gloria Ortiz at 505.277.0680 or Gortiz@law.unm.edu

Advanced Facilitation Training ♦February 20, 2004 ♦Center for Public Policy Dispute Resolution at The University of Texas School of Law ♦ $195

Basic 40-Hour Mediation ♦ Denton ♦March 3-7, 2004 ♦ Texas Woman's University ♦ Contact Debbie Natelson at 940.898.3408; Fax 940.898.3416 or DNatelson@mail.twu.edu

Negotiation ♦Denton April 22-25, 2004♦Contact Debbie Natelson at 940.898.3408; Fax 940.898.3416 or DNatelson@mail.twu.edu www.twu.edu/lifelong www.twu.edu/lifelong

40-Hour Basic Mediation Training ♦ Houston ♦ March 15-19, 2004 ♦ The University of Houston Law Center—A.A. White Dispute Resolution Center ♦Contact Robyn Pietsch at 713.743.2066 or rpietsch@central.uh.edu
April 15-17, 2004 ~ Resolution and Resilience in New York

Resolution and Resilience ♦ New York, NY ♦ April 15-17, 2004 ♦ **Sixth Annual Section of Dispute Resolution Conference Bar Association** ♦ Sheraton New York Hotel & Towers ♦ (212) 581-1000 ♦ (800) 325-3535 ♦ **http://www.abanet.org/dispute/conference/6th/home.html**

Arbitration Skills Training ♦San Francisco, CA ♦May 19-22, 2004 ♦ Golden Gate University School of Law American Bar Association Section of Dispute Resolution ♦ (202) 662-1680 ♦ dispute@abanet.org, or check www.abanet.org/dispute

ABA Annual Meeting/ DR Section Programs & Meetings ♦ Atlanta, Georgia ♦ August 6-8, 2004 ♦ American Bar Association Section of Dispute Resolution ♦ (202) 662-1680 ♦ dispute@abanet.org or check www.abanet.org/dispute

Suzanne Duvall's article on mediator credentialing in the Fall, 2003 issue of Alternative Resolutions incorrectly listed the web address for the Texas Mediator Credentialing Association (TMCA) as www.txmca.com. The correct address is www.txmca.org. We regret any inconvenience that may have been caused by this error.

A TIME FOR MEDIATION IN THE WORKPLACE*

*By Michael Z. Green***

Over the last decade, the number and types of employment claims have grown considerably. This growth started at a time when the Civil Rights Act of 1991 amended Title VII and granted employees the right to a jury trial and the right to recover compensatory and punitive damages in intentional employment discrimination lawsuits. Accordingly, when faced with the prospect of large jury verdicts, along with the costs and delays of employment litigation through the Equal Employment Opportunity Commission (EEOC) process and the courts, employers turned to arbitration to resolve their disputes. In my opinion, employers were wrong, and they should have turned to mediation.

By asserting that mediation should be the preferred tool for resolving employment disputes, I have joined the growing ranks of those who favor alternatives to the court system. However, I limit my support to the very narrow situation of getting employers and employees to agree to use mediation to resolve their disputes. Despite enthusiastic employer efforts to force employees to use arbitration as a condition of employment, I do not extend my support to arbitration because of the coercive nature in which parties reach those agreements and the win-lose results that occur.

As a former practitioner who primarily represented employers, I definitely believe that mediation can help employers and employees quickly and rather inexpensively work out their differences in a positive way. Also, mediation creates added value by offering all parties the opportunity to explore educated options for satisfaction in resolving the dispute that are not possible through the courts.

When I refer to mediation, I am talking about having an outside neutral party work with the employer and the employee to help reach a resolution that both sides value. A mediator, unlike an arbitrator, is not a decisionmaker, and he or she does not impose his or her will on the employer or the employee. Instead, the mediator explores various options with both sides of the dispute and works with them to develop their own solution.

However, mediation can also involve some disadvantages. For example, if one side has overwhelming bargaining power, the mediator may be used as a tool to perpetuate bad dealings by the stronger party. Also, there may be cultural differences that play a distorted role in the process, especially for a mediator not able to bridge that cultural gap. If an employee's culture suggests that he should give deference to the mediator and consider the mediator as a decisionmaker, the process becomes flawed. Additionally, there are those who believe that open court litigation provides a very worthy goal in offering public vindication by peers through a jury verdict and establishing precedent for others who may be similarly wronged in the future.

Notwithstanding these concerns, mediation does offer very real advantages. Instead of dealing with the uncertainties and expenses of the court system, mediation allows both sides to end their disputes on their own terms. Also, mediation of employment disputes permits resolutions that include apologies, transfers, good references, training of replacements and other options not a part of the process of winning or losing in the court system. More than anything, both sides of the dispute can have it resolved with some satisfactory terms instead of facing a win-lose proposition.

I. The Initial Rush to Arbitration of Employment Claims in the 1990s as a Precursor to Mediation

Arbitration - using a private and neutral outsider called an arbitrator to decide the dispute-- increased as a tool for resolving employee disputes in the 1990s. The increasing use followed from the Supreme Court's 1991 decision in Gilmer v. Interstate/Johnson Lane Corp.[1], which opened the door to allowing employers to require that employees agree to arbitrate employment disputes as a condition of being hired. These adhesion contracts that many refer to as mandatory arbitration agreements were clearly endorsed as being enforceable by the Supreme Court in the 2001 decision of Circuit City v. Adams[2].

Although these arbitration agreements may be enforceable, plaintiff's lawyers keep finding successful arguments to get around these agreements and get their cases into courts, including assertions that the contracts are unconscionable. The EEOC has taken the position that these arbitration agreements should not be enforced. In addition, the 2002 Supreme Court decision of EEOC v. Waffle House, Inc.[3] establishes that even if individual employees have signed arbitration agreements, the EEOC may still pursue claims in court for injunctive relief and monetary awards for those same individual employees under the discrimination laws.

continued on page 5

A TIME FOR MEDIATION IN THE WORKPLACE
continued from page 4

In an article written a few years ago, I explained how increasing legal challenges, growing employee-relations concerns, and the significant success of employers in the court system have demonstrated that arbitration does not necessarily represent a great idea for employers in resolving employment discrimination claims.[4] In my most recent article, I have focused on the employee morale problem created by the use of these arbitration agreements and how increased union organizing may result from lowered morale if employers continue to use these agreements to arbitrate.[5] Regardless of the legal challenges, some employers and their attorneys are starting to take the practical advice of realizing that it might be better for employee relations if they do not try to force the use of these arbitration agreements.[6]

This leaves mediation as the most practical tool for resolving employment claims. Accordingly, some employers and employees are now turning to mediation. Also, the EEOC has actively embraced mediation while adopting policies that question the use of arbitration.[7]

II. Learning From the EEOC - Don't Litigate, Don't Arbitrate: Give Mediation a Chance

Although employers tried to force arbitration to resolve employment disputes in the 1990s, the EEOC realized it had ignored a major opportunity by not looking at mediation as a mechanism to resolve disputes. The EEOC started a pilot mediation program in four field offices in 1991.[8] By fiscal year 1999 and after receiving "$13 million specifically allocated for the expansion of a nationwide mediation program," the EEOC offices began using internal mediators employed directly by the EEOC, external mediators hired on a contract basis, and pro bono or volunteer mediators to conduct mediation.[9]

Subsequently, the EEOC resolved thousands of charges through its mediation program and brought millions of dollars to victims of discrimination.[10] Because of these results and the opportunity to have many more EEOC charge disputes resolved fairly and quickly, I have asserted in a prior article that mediation at the EEOC should be mandatory and required in many instances.[11]

EEOC data also indicate an overwhelming satisfaction rate of at least 90% by both employers and employees when using mediation for EEOC disputes even if there was no agreement reached.[12] Unfortunately, the EEOC also reports that only 30% of eligible employers agreed to resolve their disputes through mediation as opposed to 83% of eligible employees who agreed to participate in 2002.[13]

The EEOC and various supporters are trying to discover why there is not better employer participation. According to a recent EEOC study, some reasons why employers decline mediation include the strong merits of their case, the likelihood the EEOC will not pursue the case, and the perception that the program requires monetary settlement.[14] Concerns about trust when the EEOC uses its own employees to mediate and a lack of education about the entire mediation program appear to support the employer perceptions and fears that the EEOC identified in its study.[15]

As a response, the EEOC has focused on educating participants about mediation, and Chair Cari Dominguez has acknowledged that although the "EEOC will continue to use internal staff mediators, . . . some employers have expressed reluctance to rely on them, finding a higher comfort level in turning over their disputes to mediators who are not on the commission payroll."[16] Although not every charge of discrimination filed with the EEOC is eligible for resolution through mediation, employers' fears about EEOC employee mediators can be ameliorated through more funding for the use of private mediators, especially those adept at spotting bargaining power issues, including women or people of color with employment expertise.

III. Conclusion

With the growth of employment disputes over the last decade and the desire for alternatives to the court system, mediation provides a positive option for employees and employers. The few articles describing the mediation of employment discrimination claims clearly endorse its use. Even counsel who may feel that they have such a strong case can still benefit from using mediation as they may be able to obtain everything that they might gain through the courts, and more, without the expense, time and hassle. With the high level of satisfaction amongst participants even when there is no agreement reached, trying mediation certainly does not hurt. If employers and employees do end up using mediation more as a tool to resolve their disputes, they might realize its benefits beyond just preventing a claim from going to trial. The satisfaction from mediation can transform their relationship and provide an overall more productive workplace.

ENDNOTES

1 500 U.S. 20 (1991).
2. 532 U.S. 105 (2001).
3. 534 U.S. 279 (2002).
4. Michael Z. Green, "Debunking the Myth of Employer Advantage From Using Mandatory Arbitration For Discrimination Claims," 31 Rutgers L. Rev. 399 (2000).
5. Michael Z. Green, "Opposing Excessive Use of Employer Bargaining Power in Mandatory Arbitration Agreements Through Collective Employee Actions," 10 Tex. Wesleyan L. Rev. 77(2003).
6. Simon J. Nadel, "Mandatory Arbitration Not for All Employers; Cost, Fairness Still Subject of Debate," 70 U.S.L.W. (BNA) No. 46, at 2755 (June 2, 2002).
7. *Compare* "Facts About Mediation," http://www.eeoc.gov/mediate/facts.html (visited Dec. 4, 2003) (describing the EEOC mediation program and what advantages the EEOC expects in resolving disputes through mediation) *with* "EEOC Notice No. 915.002," (July 10, 1997) http://www.eeoc.gov/docs/mandarb.txt (visited Dec. 4, 2003) (describing EEOC policy statement criticizing the use of mandatory arbitration as contrary to the fundamental purposes of employment discrimination laws).
8. "History of EEOC Mediation Program," (visited Dec. 4, 2003) http://www.eeoc.gov/mediate/history.html.

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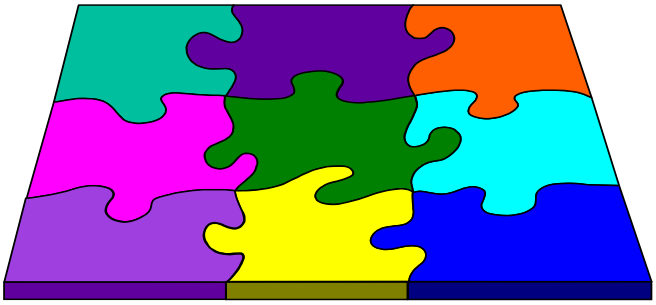


ETHICAL PUZZLER

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.

Ever since you completed your 40-hour basic mediation training course, you have been working diligently to establish your mediation practice. You are confident in your abilities — you have been told that you truly have a gift for mediation — but you haven't been able to get a toehold into making your "gift" profitable.

Last week, you were "invited" to apply to be on a national panel of mediators and arbitrators. Membership on the panel would allow your profile to be marketed to 1000 corporations, law firms, and government agencies nationwide. The fee for participation while not exorbitant, is considerable (over $500.00 per year). You feel that this may be just what you need to 'jump start" your career. However, you are concerned about one paragraph in the agreement, which you are required to sign. Specifically:

> "The mediator shall communicate with the company and inform the company about the status of her cases. The company shall have the right to sit in on any mediation session and may require a report from the mediator regarding any case or any aspect of any case."

Assuming that the quoted paragraph is a mandatory requirement of the contractual agreement, are there any ethical reasons why you should not pursue your relationship with this national organization?

James Gudenrath (Austin) Assuming the "company" refers to the "national organization," several practical and ethical issues might come into play.

As a practical matter, with confidentiality being such a logical cornerstone of mediation, any mediator agreeing to that paragraph would surely reduce their chances of getting agreements, and thus compromise the long-term viability of the mediator's practice. That being said, Dispute Resolution Centers do collect some information about their cases' outcomes and client satisfaction; they also keep those case files confidential. Judges seem to be willing to respect, and clients seem to be willing to rely on that confidentiality, but DRC's are a special case.

From an ethical standpoint, as long as there is complete disclosure about the lack of confidentiality before scheduling the mediation, it would not seem to me that lack of confidentiality would be unethical on its face. I do however doubt the mediator could be a member in good standing of any national, state or local mediator organizations. The same is potentially true under the new mediator credentialing in Texas. All of that might work against "jump starting" a credible mediation practice.

If these mediations are to be conducted under the auspices of the "national organization" and the mediations are set up by the "national organization," then handed off to the mediator that might be operating more like a DRC with paid mediators, of which there are some. I think the mediator would have to verify that the clients had full knowledge of the lack of confidentiality before conducting any mediation sessions. This begins to look more like the UMA version of confidentiality though, and that seems to expose the mediator to more malpractice liability. Again, that isn't good for the goal of turning the mediator's "gift" into gold.

"Having the right to sit in on the mediation session, or require a report on the case, is a problem."

Finally, the first sentence of the paragraph seems less problematic to me than the second. Disclosing to the "national organization" the status and/or disposition of a case, with the parties' knowledge and consent, seems okay to me. Having the right to sit in on the mediation session, or require a report on the case, is a problem. If they are looking for some quality assurance about the mediator, then that could be better handled with voluntary client evaluations at the conclusion of the case.

I would not personally agree to that paragraph because to me, if it isn't confidential, it isn't really mediation— it is something that looks something like mediation. I understand there are a variety of views on what constitutes "mediation," but I don't know anyone who doesn't think confidentiality is one of the basics.

Joe H. Nagy, Sr. (Lubbock) Taking the paragraph as a whole, I would say it should not be agreed to. In my opinion, it breaches the confidentiality of the mediation and causes the mediator to relinquish control of the mediation.

As to the first complete sentence only, if status means when, where and if the mediation is scheduled and

continued on page 7

Ethical Puzzler
continued from page 18

whether or not the case settled or did not settle, I have no problem with this sentence. In most mediations, the judge and clerk of the court where the case is pending are notified of the results. This makes it a matter of public record.

As to allowing the company to sit in, this should not be done. However, if we assume the parties and their attorneys had agreed to this, it would probably be alright. The company would be subject to the same confidentiality rules, and it would probably be prudent to have the parties and their attorneys give their permission in writing.

As to a report from the mediator regarding any case or any aspect of any case, I would say no, unless it is limited to the information concerning setting, results, etc. What may or may not have happened during the mediation should not be communicated.

I would think if there is any agreement between the attorneys and parties involved allowing the company to conduct any and all of the activities set out in this paragraph, that presents another question. However, that is not what we are concerned with here.

Once again, as to the paragraph as a whole, I feel it should not be signed.

Guy N. Martin (Conroe): Regarding the ethical question I have two concerns. The first sentence in the agreement involving the "status" of any particular case is ambiguous. I would want to know exactly what the company meant by "communicate" and "inform." The second sentence is the bigger problem. A report on "any aspect of the case" is a huge confidentiality problem. No way would I share anything but the broadest overview without being concerned about breaching confidentiality with a non-interested party (company). I also have a problem with an agent from a company observing a mediation. I do not let anyone sit in on a mediation unless they are an interested party with a right to attend or everyone agrees to a disinterested party sitting in. However, I have a big problem with a company having a contractual "right" to sit in on one of my mediations. It would not happen. These issues would have to be addressed and resolved before I would have any involvement with said company.

Danielle Hargrove (San Antonio) There are definitely ethical considerations here. Upon first glance, I see potential problems with communicating with the company about the status of "any of her cases," including ones not arranged by the national organization. I am assuming such a requirement would be for the purpose of checking the efficiency of the mediator. However, their need to evaluate me does not outweigh parties' expectation of confidentiality.

As a mediator/neutral, I have the obligation to keep matters confidential. Therefore, I would assume that I would report only what I lawfully could without breaching the agreement. Therefore, a status report that the matter has or has not been resolved or that the parties have "discovery matters" yet to resolve prior to the mediation would probably be the limit of my comfort level with any required reporting without approval from the parties. That would apply to sitting in on any mediation. I would not have a problem with informing the company of any mediation in which the parties did not object to their sitting in on the mediation.

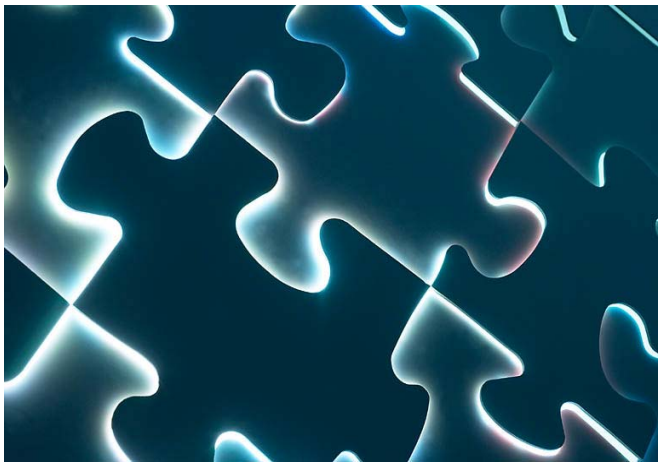
As for requiring a report "regarding any case or any aspect of the case," again, any such reporting would have to be with the consent of the parties, without which, I could not provide a report.

I would seriously weigh the pros and cons of my affiliation with this company. If their only role is to market me, then general information about the quality and quantity of my work is appropriate. Of course, whether or not they could enforce the agreement would weigh heavily in my consideration. I would definitely check with members on the panel to see how they handle the requirements before I said no. I might still say yes, knowing that we may have to mediate the lack of enforceability and/or my "breach" later. The parties' interest will prevail.

Comments:

This puzzler, like all situations addressed in this column, is based on actual facts. The dilemma addressed by these circumstances points out that our enthusiasm to launch (or increase) our careers as mediation professionals must always be constrained by the applicable ethical rules and/or guidelines of the profession as well as any statutory obligations.

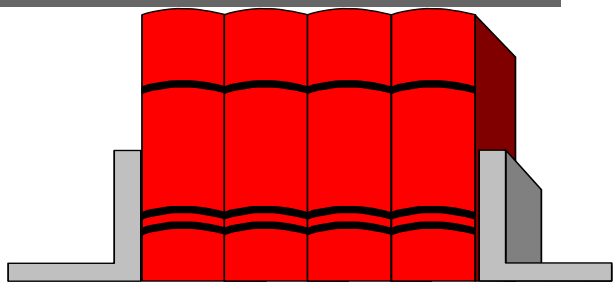
Although, as our contributors have pointed out, there are very few things, (such as the case did or did not settle) that can be disclosed outside of the mediation, virtually everything that occurs in mediation is confidential. Our enthusiasm to succeed, therefore, must be tempered by our commitment to the profession, as well as to the parties, and to the courts.



BOOK REVIEW

Collaborative Law: Achieving Effective Resolution in Divorce Without Litigation

American Bar Association, 2001; Pauline H Tesler; $119.95



Reviewed by Margo Ahern Fox

Pauline H. Tesler, a noted authority in the emerging field of collaborative law, explains in this unique handbook how the collaborative law process is transforming the way lawyers and their clients view divorce and its resolution. She describes that through this process, fees and costs are minimized, negotiations are characterized by persistent creativity, and clients, on the whole, are far more satisfied. She notes that collaborative law is a close cousin to other areas of alternative dispute resolution in that it "combines the positive problem-solving focus of mediation with the built-in lawyer advocacy and counsel of traditional settlement-oriented representation."

Tesler poses the question "Why collaborative law and why now?" She provides the background for the answer to this question by stating the statistic that currently one out of every two marriages in the United States ends in divorce. Divorce, therefore, is predictable and even more so is the impact on the clients and the children. Although the majority of family law cases do eventually settle, when they do, it is frequently on the courthouse steps. In the litigation process, children are often forgotten or at worst drawn into the center of the battle zone. According to her research, divorce is second only to the death of a loved one in the resulting traumatic impact on the survivors; and, moreover, courts predictably are not the best places for resolving the issues that arise when families break down and then attempt to restructure. Tesler notes that the power of collaborative law, on the other hand, helps bring clients through the divorce passage with integrity and satisfaction and helps divorcing spouses to cooperate and co-parent after divorce.

This handbook offers a step-by-step orientation on how collaborative law works. Importantly, Texas practice has emerged with its own identity and style of practice and may differ somewhat from some of the author's California style of collaborative law. See Tex. Fam. Code §§ 6.603, 153.0072. (Notably, Texas was the first state to adopt a statute specifically authorizing collaborative law representation.) The concept Tesler describes, however, is very similar to the Texas statutes: in collaborative law, the parties and their counsel agree in writing to use their best efforts and make a good faith attempt to resolve their dissolution of marriage. The parties and their counsel enter into a full and candid exchange of information as necessary to make a proper evaluation of the case. All experts utilized in the collaborative law process are jointly agreed to by the parties. If either party chooses to litigate, the lawyers must withdraw and the clients must find other counsel to continue with litigation.

If during the collaborative law process, a case reaches an impasse on any issue, Tesler states that collaborative lawyers and clients may agree to bring in a mediator, creating a "five-way"meeting wherein the mediator assists with the resolution of the issue. Mediation can be a strong force in collaborative law cases that are deadlocked and at risk of terminating the collaborative law agreement. Mediators can benefit from understanding the collaborative law process so that, in the event they are requested to assist with the resolution of an issue, they have the knowledge and understanding of the particulars of the process and they understand that the risks and costs of failure are high.

Tesler notes that collaborative law is not for everyone; that is, there are cases and lawyers that are not appropriate for the process. She describes a paradigm shift and considerable personal evaluation that most family law litigators must undertake before practicing in this area. This handbook further describes how a lawyer can begin developing the attitudes, skills, and behaviors that enhance the collaborative law practice. Often, lawyers must also educate their clients on the process and the paradigm shift from a stormy divorce to reaching an agreeable resolution. Notably, those lawyers who venture into collaborative law often experience a rekindled joy in the practice of law and they come to recognize that they are members of a helping and healing profession.

The suggestions offered by this handbook describe how the process can easily be incorporated into a family law practice, from the first communication with a client to the final stages of the divorce process. Collaborative Law also covers the ethical considerations for collaborative lawyers, the differences between mediation and collaborative law, how lawyers can develop and market their collaborative law practice, how to identify and plan for the a collaborative case that is in trouble, and a listing of resources and references for lawyers and clients.

Collaborative Law includes documents, checklists, bibliographies, and other materials that Texas collaborative law lawyers will undoubtedly find useful. This handbook

` ***Continued on page 13***

ARBITRATION ROUNDTABLES PLANNED

By Michael S. Wilk

A recent survey conducted by the litigation section of the American Bar Association confirmed what many ADR providers anecdotally knew--that trial lawyers were using arbitration more and more and that they had mixed feelings about the effectiveness of arbitration as compared with litigation. The conclusion of the survey is that despite the finding that 78% believe that arbitration takes less time than litigation, and 57% feel that arbitration is more cost-effective than litigation, few lawyers regularly recommend arbitration to their clients. Interestingly, many arbitrators have experienced some difficulties in conducting hearings with experienced trial lawyers who have sound advocacy skills but little or no experience in preparing for arbitration and in presenting their cases in arbitration.

The ADR Section of the State Bar of Texas believes that these views evidence a need that should be explored and addressed. Both ADR providers and practitioners could benefit from a mutual dialogue. Accordingly, the ADR Section is planning a series of roundtables in different locations in Texas to give lawyers and ADR providers an opportunity to discuss their respective perceptions of arbitration practice, to consider ways to educate each other on the issues, and to improve the process. The roundtables will be limited to fifteen or twenty people who are regularly and actively involved in arbitration. The first roundtable will be scheduled for late March or early April 2004 in Austin. If you are interested in participating, contact:

John C. Fleming at (512) 463-9971 or jfleming@tsld.state.tx.us;

William H. Lemons III at (210) 224-5079 or whlemons@satexlaw.com; or

Michael S. Wilk at (713) 220-9124 or mwilk@hirschwest.com.

A TIME FOR MEDIATION IN THE WORKPLACE (Endnotes)
continued from page 5

9. *Id.*
10. *Id.* Besides the EEOC's mediation program, many federal courts also use mediation to resolve employment discrimination claims. *See* Johnathan D. Rosenbloom," "Exploring Methods to Improve Management and Fairness in Pro Se Cases: A Study of the Pro Se Docket in Southern District of New York," 30 Fordham Urb. L. J. 305 (2002) (describing mediation program in federal court used to resolve employment discrimination claims).
11. Michael Z. Green, "Proposing A New Paradigm For EEOC Enforcement After Thirty Five Years: Outsourcing Charge Processing By Mandatory Mediation," 105 Dickinson L. Rev. 305 (2001).
12. *See* An Evaluation of the EEOC Mediation Program, at http://www.eeoc.gov/mediate/report/chapter6.html#VI.B. (visited Dec. 4, 2003)(describing "overwhelming percentage (over 90% with few exceptions) of both" employees and employer "were willing to participate in the program in the future").
13. Nancy Montwieler, "Dominguez Reports Drop in Charge Inventory, Expanded Mediation Emphasis in Fiscal 2002," Daily Lab. Rep. (BNA) No. 204, at A-6 (Oct. 22, 2002).
14 An Investigation of the Reasons for the Lack of Employer Participation in the EEOC Mediation Program, http://www.eeoc.gov/mediate/study3/index.html (visited Dec. 4, 2003).
15. *See* Fawn H. Johnson, "Small Business Reps Address Commission, Cite Confusing Laws, Biased Investigators," Daily Lab. Rep. (BNA) No. 237 (Dec. 10, 1998) (explaining that some small employers don=t understand how the EEOC mediation process works and need to be educated and also how many employers fear the EEOC's use of internal EEOC employees as mediators because of concerns about neutrality and confidentiality).
16. *See* Nancy Montwieler, "Commission Will Expand Outreach Efforts, Resume Use of Outside Mediators in 2002," Daily Lab. Rep. (BNA) No. 5, at B-1 (Jan. 8, 2002).
17. *See, e.g.,* Charles Craver, "The Use of Non-Judicial Procedures to Resolve Employment Discrimination Claims," 11 Kan. J. L. & Pub. Pol'y 141, 145-48 (2001) (discussing value of using mediation for EEOC charges and employment discrimination claims brought in court).

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*****Michael Z. Green**, B.S. Electrical Engineering, University of Southern California; J.D., cum laude, & M.S. Industrial and Labor Relations, Loyola Univ. Chicago; M.B.A., California Lutheran; LL. M., University of Wisconsin Law School; is an Associate Professor of Law and full-time faculty member at Texas Wesleyan University School of Law in Fort Worth, Texas, where he teaches Employment Discrimination, Employment Law, Dispute Resolution, and Labor Law courses. Michael previously represented clients in labor and employment disputes at the NLRB, the EEOC, the U.S. Department of Labor, various state agencies, and in federal and state court, while practicing law in the Chicago, Illinois and Louisville, Kentucky areas, and is also certified by the Alliance for Education in Dispute Resolution as an employment mediator and an employment arbitrator. He has published many articles regarding labor and employment dispute resolution and spoken at many programs, most recently at the American Bar Association's Annual Meeting in August 2003 and the Tarrant County Association of Mediators Monthly Meeting in September 2003.*

MEDIATION PARTICIPANT AS SATISFIED CUSTOMER

By Kip Glasscock

Judges are now requiring attorneys and their clients to mediate their cases under the premise that mediation is a more efficient resolution process in terms of money, time, and energy. Mediation is growing geometrically, so why should we, as mediators, be concerned with the satisfaction of mediation participants?[1] Is it because we are in competition with other mediators as well as litigation, arbitration, and other ADR processes? Individual mediators need to be able to meet their mediation customers' needs ethically while enhancing their businesses. This article examines what people want—whether it's the attorney or the attorney's client—and what mediators can do, via a facilitative or evaluative methodology, to achieve that result.

RESEARCH METHODOLOGY

The object of my research project was to find out what kinds of skills civil-litigation mediators need in order to satisfy their mediation customers. I initially interviewed and surveyed approximately fifty experienced Texas mediators, including civil-litigation mediators who are primarily evaluative in their approach and volunteer mediators who are primarily facilitative in their approach. I wanted **their** list of what skills were important. From this information and my own experience, I developed surveys, then refined the surveys. I surveyed—anonymously—approximately three hundred parties, lawyers, and other mediators to determine which skills **they** believed were important (e.g., process skills, people skills, persuasive skills, communication skills), and I asked them to prioritize the importance of these skills. I asked them which skills maximize the mediation experience and improve the results. I also looked at what was written in other fields (e.g., sales, sales training, law, education, mediation, psychology, communication, teaching, and business customer satisfaction).

WHYS OF CUSTOMER SATISFACTION

It is important for mediation to be satisfactory. Mediators compete with litigation, arbitration, and other ADR disciplines for cases to resolve. In an interesting approach to learning and using persuasive skills with integrity, Michael Gerber, in *The Power Point*, contends that "to succeed, every business in a Free Market System must learn how to satisfy, better than its competitors, the essential needs, unconscious expectations, and *perceived preferences* of the four most important groups of people in its universe: the people who work for it, the people who buy from it, the people who sell to it and the people who lend to it; its employees, customers, suppliers, and lenders[2]." In this article, I will focus on civil-litigation mediators' customers: the insurance representatives, attorneys, and attorneys' clients.

Authors in business areas concentrate increasingly on customer satisfaction.[3] Business turned its attention to customer satisfaction with moderate success starting in the 1980s and 1990s, when Japanese businesses began to make inroads into the automobile, appliance, television, stereo, and computer markets. Businesses in the United States tried to emulate the Japanese success by adopting a customer-satisfaction, total-quality-management mandate.[4] "The [satisfaction of the] customer not the product or service of the company is the focus of business."[5] No matter how good your product or service is, a business needs satisfied customers in order to thrive. These concepts provided my rough template and my inspiration.

As mediators, we must remember that customer satisfaction is a major business objective in America and world-wide. In this competitive world, not only must the customers' requirements be met, their expectations and wants must be addressed.[6] "[T]he [mediation] marketplace offers a wide variety of choices, so when customers are pleased with their choice, they are more likely to stand by that choice—perhaps for life. Why search for something else if you are satisfied?"[7] Satisfied customers spawn repeat customers and tell others the benefits of your business. The mediator's satisfied customer is the mediation participant. "Why do customers choose one product or service over another? The reason is simple: They **believe** that they'll get better value than they could expect from the alternative."[8]

Stanley Brown did some interesting survey work that flirts with the philosophy of many mediation scholars, but in a business-world context. "[His] survey results revealed some fundamental differences between companies that have achieved improved customer satisfaction and those that have been less than successful in this area. One of the most significant findings was that 'successful organizations' . . . were more likely to have started . . . with customer-focused processes . . . . Another important finding was that companies made a significant investment to actively pursue this customer input and advice . . . . These companies recognized that customers wanted to be part of the process."[9]

continued on page 11

Mediation Participant as Satisfied Customer
continued from page 10

As mediators, we must ask ourselves, are we proceeding with "participant focus" as our a-priori mandate? Have you seen this much emphasis on customer satisfaction in mediation? Focus is not an incidental byproduct. To do their job satisfactorily, mediators should focus on the participants, their participation, and their problems.

A Satisfied Customer

What do researchers say makes a satisfied customer? Business "research focuses on two key issues:

1. Understanding the expectations and requirements of the customer.

2. Determining how well a company and its major competitors are succeeding in satisfying these expectations and requirements.

[and we] must [d]etermine the critical performance attributes that result in customer satisfaction[10]" My focus is on the first of these two issues.

For mediators, the above can be interpreted as (1) determine necessary mediator skills and (2) what mediators and their employees' attitudes and actions contribute to the participants' satisfactory mediation experience. These skills must be used daily to improve business.

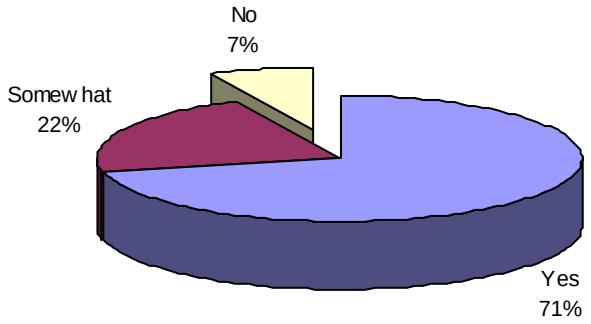
My concern then is which skills and attributes are important to participants. As Alan Dutka notes, "[t]he only way to guarantee the selection of attributes that customers consider critical is to get the customers' opinions . . . . The research must reveal not only the degree of customer satisfaction but also the underlying causes of satisfaction and dissatisfaction."[11]

The Business of Mediation—A Satisfied Participant as a Satisfied Customer

Business in the United States is the greatest in the world. It adjusts as necessary. Successful mediators not only help parties resolve or transform conflict, they operate a business. For mediators to succeed, they need to look at and emulate non-legal sources in their practices. A primary focus of business is customer satisfaction[12].

I applied the above and in my initial surveys asked this "customer first" question to find out what it takes to satisfy them. Over 90% of the respondents thought mediators should push for settlement (*Figure 1*), although the degree of the push desired varied.

My survey results indicate that settlement is the participants' primary purpose for mediating. Other researchers confirm this result.[13] Perhaps this is because our result-oriented court system force-feeds the mediation process. I found that other skills, beyond the general ability to reach settlement, repeatedly praised by participants (*Figure 2, on page 12*) are communications, obtaining participation, trust, confidence, and comfort in the mediator and environment.



Conclusion

The skills I have found to be important to satisfied participants are the skills employed by "people" people. It is interesting that the same things the most successful and respected personal-injury (PI) mediators thought important were those listed as necessary in the literature I researched on customer satisfaction in successful businesses. These skills are necessary to really understand others and their interests. In mediators' PI cases, real conflict usually does not exist.[14] Institutional distrust, dispute and negotiation in the shadow of the courts and the law **do** exist. The skills I have addressed should help the mediator herd them along in the same direction until **they** find the gate.

The participants are focused on their needs and desires. My studies show we need mastery of people, communication (e.g., listening, questioning, reframing), and persuasive skills to understand and help them reach resolution. If a mediator is interested in determining how the mediation is to be conducted and how the mediator will participate to satisfy them, ask the participants! In PI cases, the mediators' observations parallel those authors who concluded from their studies that "when people mediate, they want to arrive at a resolution and are disappointed when they do not." Lawyers/adjusters/parties in Texas frequently prefer, even demand, an enthusiastic, directive, evaluative mediator who shares their mediation objective of settlement. They may expect this to be accomplished by elucidating, begging, persuading, flattering and creatively suggesting steps and making proposals that will lead to settlement.

The people-perception, communication, and persuasive skills are keys for the successful mediator to have a satisfied participant versus a coerced, confused and/or unresolved "complainant." We, as mediators, must have the skills to feel who and what can be adjusted to help people feel satisfied while making their own decisions. These are important to the satisfied mediatee as satisfied customer.

Kip Glasscock *is an attorney, mediator, arbitrator, Master-in-Chancery, ADR consultant, and university teacher in Houston, Texas. He has mediated and arbi-*

continued on page 12

Participant as Satisfied Customer
continued from page 11

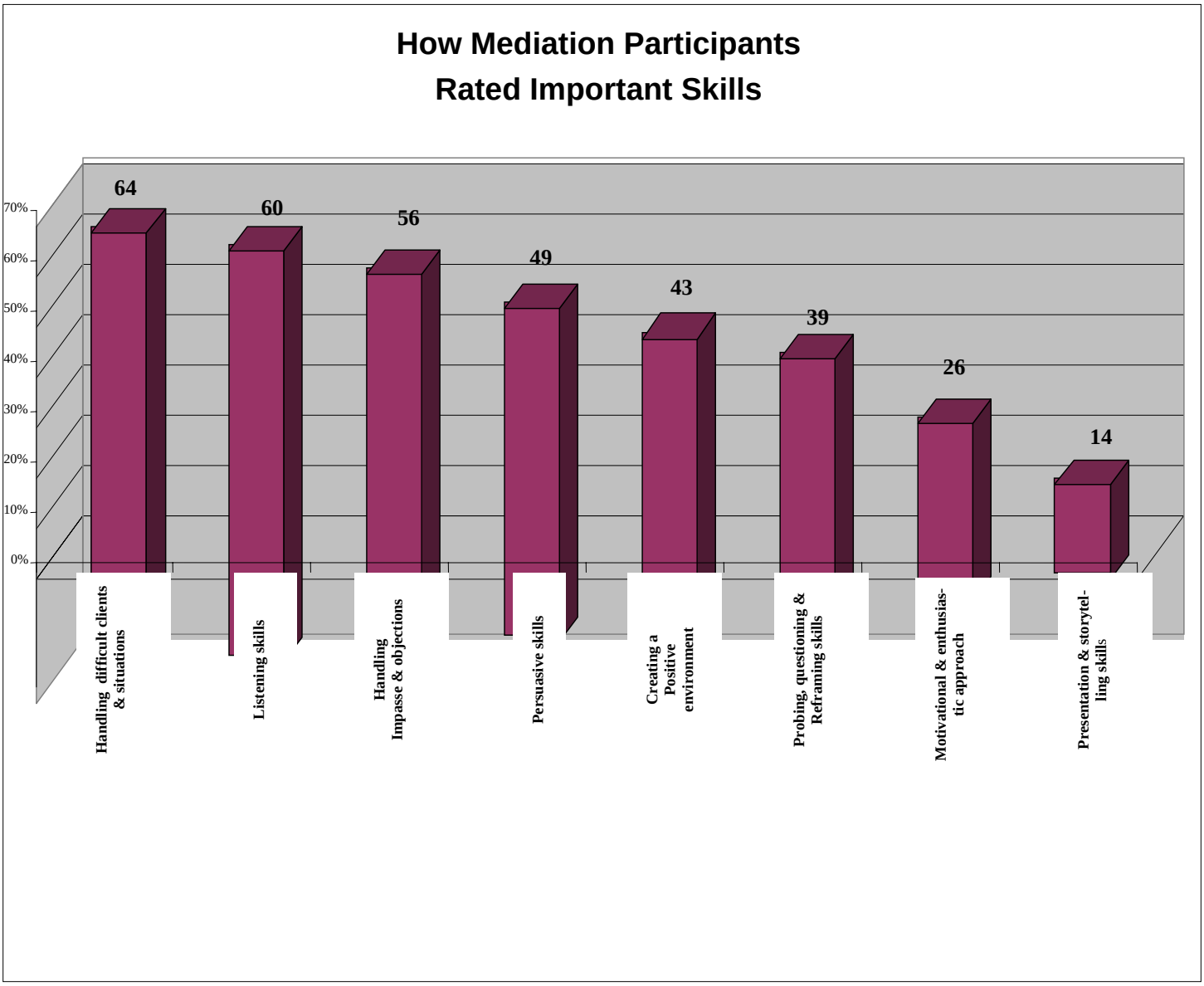
trated over 2,000 lawsuits and disputes, including complex, multi-party and class-action cases, and he has significant mediation experience in both business and personal injury cases.

Kip is also a former Director of Jefferson County Bar Association, and since 1998 has been a speaker on mediation techniques programs for Jefferson County Bar Association and other Bar and civic associations.

FOOTNOTES

[1]I define mediation "participants" as the people with whom mediators mediate, including attorneys, their clients or client representatives, and insurance company representatives.
[2]MICHAEL E. GERBER, THE POWER POINT 4 (1991).
[3]ARCHIE B. CARROLL & ANN K. BUCHHOLTZ, BUSINESS & SOCIETY: ETHICS AND STAKEHOLDER MANAGEMENT (4th ed. 2000).
[4]*Id.* at 272-95 (as evidenced by the annual National Malcolm Baldridge Quality Awards for outstanding companies, TQM and Six Sigma programs).
5Id. at 272.
[6]ALAN DUTKA, AMA HANDBOOK FOR CUSTOMER SATISFACTION 9 (1994).
[7]STANLEY A.BROWN, WHAT CUSTOMERS VALUE MOST: HOW TO ACHIEVE BUSINESS TRANSFORMATION BY FOCUSING ON PROCESSES THAT TOUCH YOUR CUSTOMERS 7 (1995).
[8]BRADLEY T. GALE WITH ROBERT CHAPMAN WOOD, MANAGING CUSTOMER VALUE: CREATING QUALITY AND SERVICE THAT CUSTOMERS CAN SEE 25 (1994) (emphasis 'believe' added).
[9]BROWN, supra note 7, at 4.
[10]DUTKA, supra note 6, at vii, 9.
[11]Id. at 38 (emphasis added).
[12] Id. at 10.
[13]Carol J. King, Burdening Access to Justice: The Cost of Divorce Mediation on the Cheap, 73 ST. JOHN'S L. REV. 375 (1999), available at http://gateway.proquest.com/ (doc ID 44290857).
[14]Steven Keeva, What Clients Want, 87 A.B.A. J. 48 (June 2001), available at http://gateway.proquest.com/ (doc ID 73666559).
[15]Id. at 48.
[16]King, supra note 13, at 3.

Figure 2



ADR on the Web

Beyondintractability.org

By Mary Thompson

As stated on its overview page, Beyondintractability.org focuses on the most "difficult, destructive and long- lasting conflicts." The site specializes in content relating to inter-group and international conflict around the most divisive social, cultural, and political issues.

Intractable issues are characterized by
Irreconcilable moral differences (e.g., over abortion),
High stakes distributional issues (e.g., over land)
Identity issues (e.g., tribal conflicts)

Including content that is both theoretical and practical, the site contains over 300 articles, thousands of pages of text, print, and audio interviews with practitioners, over 2000 links, and over 2000 books referenced.

Despite its emphasis on "intractable disputes," the site addresses a broad range of conflict resolution topics. A quick scan on the "Browse/Search" page yields a variety of categories, including Understand Power, Limiting Escalation, Interpersonal Communication, and Intervention Processes.

This site is not primarily a mediation resource. In fact, most of the posted articles on mediation (and arbitration) seem too basic for the practitioner. The links, however, are extremely useful for ADR practitioners as well as for trainers, educators, students, and researchers. The links (many of which are from content on Mediate.com) provide access to articles on such useful topics as negotiation strategies, caucuses, cross cultural communication in mediation, and the role of apologies.

Despite some problems with the site (difficulty accessing posted articles, audio interviews listed by author, but not by topic) this site is a great resource for both basic and specialized conflict resolution information.

***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.

BOOK REVIEW
continued from page 8

provides the purpose behind each of the documents necessary for the collaborative law process as well as sample forms ready to be adapted to the collaborative law lawyer's own use. An accompanying diskette includes the book's many sample forms. These documents include a phone screen form, sample letters, a sample collaborative retainer agreement, principles and guidelines for the practice of collaborative law, withdrawal and termination notices, and a client evaluation form.

In addition, the manual includes a question-and-answer handbook that is designed to orient clients to the collaborative process. The Handbook for Clients is also included on the diskette and may be reproduced for client use.

I highly recommend Collaborative Law: Achieving Effective Resolution in Divorce without Litigation. Although it is pricey at $119.00, the handbook's 230+ pages and accompanying diskette are helpful resources for attorneys and clients who seek to enter into this next-generation family law dispute resolution mode and mediators who desire to assist with the resolution of issues when the collaborative law process reaches an impasse.

Margo Ahern Fox is an attorney, mediator, and collaborative law practitioner practicing in Austin, Texas.

SUBMISSION DATE FOR UPCOMING ISSUES OF *ALTERNATIVE RESOLUTIONS*

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The Lone Star Connection: Texas Presenters at 2004 ABA Conference in New York

By Josefina M. Rendón

The American Bar Association Section of Dispute Resolution will hold its Sixth Annual Conference from April 15 through April 17, 2004 in New York City. The conference, entitled "Resolution and Resilience in New York," will feature many State Bar of Texas ADR section members and other Texas ADR Professionals. The topics presented by these ADR professionals are as varied as they are interesting.

Good Faith , Forgiveness and Justice

Among our Texas presenters are nationally-known authors **Eric R. Galton** and Professor **Kimberlee K. Kovach**. The husband and wife team are frequent speakers both at the national and state level.

Last October, Kim Kovach made an excellent ethics presentation at our ADR section annual conference in Dallas. At the ABA conference in April, she will serve on a panel that will examine the much-debated and recently litigated idea of good-faith participation in mediation. Kim teaches ADR at the University of Texas School of Law in Austin, Texas, where she also directs a Mediation Clinic. She is a Past Chair of the State Bar of Texas ADR Section, as well as the ABA Section of Dispute Resolution. She was one of the first mediation trainers in the State of Texas, having conducted the 40-hour training in September 1980, and has been active in a variety of state and local dispute resolution organizations. Kovach is the author of a textbook for law school use, MEDIATION: PRINCIPLES AND PRACTICE, 3rd Edition to be published in 2004. She has also written several articles on ADR topics and published MEDIATION IN A NUTSHELL

At our last annual State Bar ADR conference in Dallas, Eric Galton presented an excellent demonstration of the different ways a mediator can address delicate and painful issues in mediation such as the death of a child in a wrongful death action. He showed how an empathic style often can be more effective in such situations than a strictly dollars-and-cents, settlement-oriented approach. At the ABA conference, Eric will be participating on a panel examining the role of apology and forgiveness in mediation. Eric has been a full-time mediator for 15 years and has mediated nearly 3,000 cases. He is the author of two books on mediation and also teaches as an adjunct professor at the University of Texas School of Law. Eric has also been quite active in peer mediation initiatives, most recently assisting the State Bar's Mediators Achieving Peace project.

Tina Patterson of Euless will be one of Eric's fellow panelists. Tina is mediator and arbitrator in the Dallas-Fort Worth area with mediation certificates from Southern Methodist University, Pepperdine, World Intellectual Property Organization, and the National Association of Securities Dealers. Her presentation at the ABA is based on the idea that mediators, as facilitators of promises, may orchestrate a "dance" of forgiving which empowers and heals individuals in conflict by enabling new relationships to emerge from disputes. Along with Eric and other panelists, she will present a rational working definition of forgiving, plus ways to introduce forgiving in mediation. This workshop will illustrate the usefulness of "forgiving" in mediation, present a definition of forgiveness in civil mediation transcending cultural and religious differences, and demonstrate the application of Enright's Model of Forgiving Another to civil mediation.

James J. Alfini, Dean of the South Texas College of Law and former chair of the ABA Dispute Resolution Section will be speaking about Justice in Mediation: Is There a Place for Justice in Mediation? It is usually thought that "justice" is not the mediator's job. Justice is for the courts and its formal procedures, a world that mediation avoids. Ethical standards for mediators do not mention justice or make the seeking of justice any part of the mediator's role. Is this common view overdrawn? Has it become time to consider how concerns about justice could play a role in mediation? The panelists at this session will discuss how mediation might incorporate justice - both procedural and substantive, both for the parties and for others not at the mediation table - without losing the essential characteristics that give mediation its worth.

Employment Law Mediations

Walter Wright and Hassan Tajalli, two professors from Texas State University-San Marcos, will present their research on the mediation program of the San Antonio District Office (SADO) of the U.S. Equal Employment Opportunity Commission (EEOC). In particular, they will speak about charging parties' and respondents' relative satisfaction with the mediation program. In addition, they will compare all participants' relative satisfaction with "internal" and "external" mediators in SADO's program. Other participants on their panel will speak about respon-

continued on page 15

The Lone Star Connection
continued from page 14

dents' reasons for refusing to participate in EEOC-sponsored mediations. Walter is a member of the ADR section council.

Online Parent/Youth Coaching

Judge John Coselli , former ADR section chair and current Judge of the 125th District Court in Houston will team up with former appellate **Justice Frank G. Evans** and former Family District **Judge Bruce Wettman**. They will speak about an "Online Parent/Youth Coaching Program." The primary objective of this Online Parent/Youth Coaching Program is to give courts, schools, and juvenile institutions an additional way to encourage responsible communication and conflict resolution methods among parents and their children. In essence, the program enables parents and their children to communicate effectively and to resolve conflicts in a collaborative manner online with the assistance of a trained conflict resolution coach. The Online Parent/Youth Coaching Program is available, free of charge, to all Family Law and Juvenile Courts, as well as to all schools and juvenile institutions.

Corporate Conflict Resolution Panels and Consulting

Wilbur Hicks is making his second appearance on the panel entitled, "What Large Corporations Look for in Mediators/Arbitrators." Last year in San Antonio, the audience challenged the panelists to seek more creative ways to include women and people of color in corporate ADR. Wilbur accepted the challenge. He is the Director of RESOLVE, the internal ADR program at Shell US. As such, he will report on ambitious efforts by Shell US, CPR and the American Arbitration Association to expand opportunities for mediators and arbitrators who are women and people of color. Before joining Shell US, Wilbur was the Ombudsman at Princeton University. He has served on the Board of The Ombudsman Association (TOA), has coordinated many of its training offerings, and is a frequent contributor to the newsletter. He received his mediator training with the American Association of College and University Attorneys. Wilbur holds degrees from Fisk, Harvard, Johns Hopkins, and the University of Maryland School of Law.

"Consulting for Publicly Traded Corporations in the Post-Enron Era: What You Need to Understand about the Current Debates" will be the topic discussed by **Reid Meyers** of San Antonio and his panel. Corporate boards, CEOs, and general counsels of large, publicly traded corporations are involved with decisions that would be improved by the participation of DR professionals, including development of corporate mission statements; strategies for dealing with serious disputes involving public agencies, governments, major customers, suppliers, workers in general, or key personnel; and disputes over accounting practices. This program will be for members who are interested in the cutting edge of the theoretical and policy debate among corporate law scholars, and also Section members who work with corporations (or who hope to work with them in the future).

Arbitration

In the arbitration arena, **John P. Bowman** will speak about "The New York and Panama Convention Connection: The Treaty Framework for International Arbitration." This program will compare the salient features of these two important conventions, which are applicable to the arbitration of international commercial disputes in Latin America. The salient features include fields of application, definitions of an arbitration agreement, and grounds for refusing enforcement of an award. Key differences between the two conventions include application of the IACAC Arbitration Rules under Article 3 of the Panama Convention and the presence in the New York Convention of a duty to refer disputes to arbitration, grounds for refusing enforcement of an agreement to arbitrate, formal requirements for award enforcement, and a more-favorable-right provision. Bowman is a partner in the Houston office of Fulbright & Jaworski L.L.P., where he co-heads the firm's International Arbitration Team and is primarily engaged in an arbitration practice representing energy and petrochemical companies in domestic and international commercial disputes.

Also regarding arbitration, **John Allen Chalk** from Fort Worth will be part of a presentation entitled "Following Goldilocks through Grizzly Choices: Update on Drafting Effective, Enforceable Arbitration Clauses." The presentation will offer an update of recent case law challenges to arbitration clauses, and it will offer drafting tips to get enforceable results.

Mediator Credentialing

Houston mediator and Associate Municipal **Judge Josefina M. Rendón** will join efforts with **Leila Taaffe** of Atlanta, **Thomas A. Taylor** of Tallahassee, and **Peter R. Maida**, of Washington, D.C. to discuss mediator credentialing. The session is offered by **Judy Filner**, Chair of the ABA Section of Dispute Resolution Task Force on Mediator Credentialing. The Task Force believes that the numbers of individuals who call themselves mediators and the programs that provide mediation services are, respectively, in the tens of thousands and the thousands. Programs offered by courts, federal and state agencies, community mediation centers, etc., prepare mediators, refer cases, or provide mediators. None of these is regulated by a state license and a few are regulated by a certification limited to the program. Yet, mediators want credentials, as evidenced by the number of mediators who use substitute credentialing, i.e. showing on their resumes their specialized experience or roster membership. Credentialing is in the agenda of two major national mediator organizations and many statewide organizations and non-membership coalitions. The questions posed are: "If we build it, will they come?" Will federal and state agencies and court programs shift from their current mediator requirements to national or statewide credentialing? Will mediators submit to a credentialing process? Will mediator preparation programs submit themselves to

continued on page 16

The Lone Star Connection
continued from page 15

an accreditation system? What is the most effective way to build a national or statewide credentialing program?

Intellectual Property ADR

Jeff Jury from Austin will chair a panel discussion on Common Pitfalls and New Twists in Intellectual Property ADR. Some of the leading IP lawyers in the United States, and possibly from abroad, will be on the panel. The program will be a frank examination of what neutrals and advocates are doing right and wrong in the IP field, with suggestions for further development of this important area. Jeff maintains a blended advocacy and ADR neutral practice in Austin in non-family law civil matters. He also consults with businesses on strategic planning, negotiation, and settlement advice. He was recently named a Texas Super Lawyer, and devotes as much time as he can spare to a national organization that assists people with Asperger's Disorder and their families.

Structured Settlements

Trey Bergman is chairman of the "Enlightened use of Structured Settlements to Resolve Cases" panel discussion. This exciting and informative multi-media presentation is designed to show plaintiff and defense counsel, as well as mediators, methods by which to resolve personal injury disputes through the innovative and creative use of structured settlements. The panel consists of National Settlement Counsel for the Firestone delamination litigation, a national defense structured-settlement broker, a national plaintiff structured-settlement broker, and Trey Bergman as a national attorney-mediator. Trey Bergman is a full-time mediator and arbitrator, Board Certified in Civil Trial Law, an adjunct professor at South Texas College of law teaching mediation and negotiation, former Chairman of the Litigation Section of the Houston Bar Association, and past President of the Houston Chapter of the Association of Attorney-Mediators.

Diversity Issues

Danielle Hargrove from San Antonio is Chair of the Diversity Committee of the ABA Dispute Resolution Section. As such, she has helped coordinate the Second Annual Forum on Expanding Opportunities for Minorities and Women in Dispute Resolution. The Forum is a series of workshops intended to expand the participation and involvement of minorities and women in the dispute resolution profession. The goal of this forum is to identify specific ways to address the problem of underrepresentation and underutilization of minorities and women in our field and to feature practice development skills. After a morning of workshops concerning the selection of neutrals by governmental agencies and large corporations, she will preside over the Diversity Committee's meeting and several table top discussions.

Professor Michael Green, of Texas Wesleyan University School of Law, will address racial perspectives in employment and labor dispute resolution within his paper and presentation, "Agreements to Arbitrate Future Employment Disputes As A Condition of Employment: Are They Really Racially Restrictive Covenants?" This is part of a panel presentation on "Perspectives on Race and ADR from Law Professors of Color and Teachers of Dispute Resolution." This program will continue the ABA's efforts to expand opportunities for minorities and women in dispute resolution by providing the perspectives of three African American Professors of Law and Dispute Resolution Teachers and their views about the implications on racial justice from the continued growth of the dispute resolution movement.

Mediator Marketing

Dan A. Naranjo, an attorney-mediator-arbitrator in the San Antonio area, will join other mediators and marketing experts in a program entitled "How to Make Money Mediating." This martketing seminar will provide specific and proven marketing tools and techniques to help build or augment a successful practice. It will discuss tools and some creative and inexpensive ideas to promote a mediation practice. In addition, attendees will receive specific ADR business contacts and resources and links to appropriate media. Dan has been an activist for the ADR movement since 1989 and has conducted over 1,750 cases in the ADR areas of civil litigation, personal injury, contracts, banking, construction, employment, legal and medical malpractice, and securities. He is a former U.S. Magistrate of the Western District of Texas; past president of the San Antonio Bar Association; former member of the Board of Directors of the State Bar of Texas; and former member of the National Commission on ADR Qualifications. Dan is also chairman of the ABA's San Antonio Mid-Winter Meeting and a Co-Founder of the San Antonio Bar Foundation. He teaches mediation at St. Mary's School of Law, he received his B.A. and J.D. degrees from the University of Texas at Austin, and he is fluent in Spanish.

Family Mediation

Gay G. Cox will be part of a panel to discuss How to Safely Provide Children a Voice in Mediation. Mediation works best when all of the stakeholders are represented in the mediation. When parents divorce, mediators often define the sole stakeholders as the parents, excluding the children. This presentation will provide practical information to enable mediators and other practitioners to incorporate the child's voice in mediation in a safe, effective, and appropriate way. Gay's particular emphasis in the workshop will be "Giving Children a Voice: A Protocol for Participation of Children in Mediation and Collaborative Law." Gay graduated from Abilene Christian in 1973 with majors in Psychology and Social Work. She worked with Child Protective Services (CPS), graduated from SMU Law School in 1978, and was an assistant Dallas County District Attorney until she entered private practice in 1980. She has since limited her practice to family law mediation and non-adversarial family law, which since 2000 has taken the form of collaborative family law. She is Board Certified in Family Law, has conducted over 400 mediations, of which approximately 300 have involved children's issues, and has served as a lead trainer for

continued on page 17

State Bar of Texas ADR Section's Cross-Cultural Project

In January 2004, in cooperation with the Houston Bar Association ADR Section and the Association of Attorney Mediators, the Section launched a new phrase of its Cross-Cultural Project to create practical tools for achieving better understanding across cultural boundaries in Texas, reducing the risk of violence, and increasing our capacity to create value from the rich diversity of our communities.

Commenced as a response by Texas mediators to the events of September 11, 2001, the Project delivered cross-cultural awareness training to experienced Texas mediators last year. Now our focus has broadened to further developing the range of culturally-sensitive approaches to problem-solving and conflict resolution.

A stakeholder engagement and reporting project, our project objectives are:

To identify area communities experiencing cross-cultural conflict;

To identify key leaders in those identified communities;

To engage identified community leaders in discussion;

To learn from the impacted communities about the conflicts and disputes that impact them; how the are currently being addressed; and ideas for improvement.

To develop and implement new approaches that may improve our State's cross-cultural conflict management capacity.

Please let us know if you would like to help! In the next newsletter, we will explain more about "stakeholder engagement," an emerging growth area for mediators.

Ann L. MacNaughton
Chair, State Bar of Texas ADR Section
Cross-Cultural Project
a.macnaughton_brune@sbcglobal.net

The Lone Star Connection
continued from page 16

many of Dallas Dispute Mediation Services' Family Mediation Trainings.

Ethics

Austin mediator, facilitator and trainer **Mary Thompson** will be part of a panel discussion entitled "Delivering Quality Mediation: What's Ethics Got to Do With It?" Numerous authorities have called for improving the training and support systems that promote ethical behavior in ADR. Observers call for more practical steps (1) to improve mediators', provider organizations', and trainers' awareness of ethics concerns and (2) to inculcate improved skills to help them avoid ethical dilemmas or handle them effectively in real time. While some favor detailed, context-specific standards, others see greater benefit in enhancing educational and support devices that promote ethical behavior and help neutrals identify and effectuate effective, defensible responses in tough cases. This session will explore the relationship between ethics and quality mediation, focusing on steps to address the limitations of current thinking and practice, worthwhile ethics education "models" and training tools, tangible support mechanisms to aid mediators or other DR professionals with ethics dilemmas, and next steps in tying ethics into the way we teach, think, and act as dispute resolvers. Mary will speak on specific areas of ethical competency and the role of trainers in helping mediators develop these competencies. Her article, "Teaching Ethical Competence: Activities for Training Mediators," will appear in the upcoming issue of the ABA's *Dispute Resolution Magazine*.

Also in the area of ethics, **Steven C. Salch** from Houston and **Maxine Aaronson** from Dallas will join other panelist in presenting "Whistle While You Work: The Neutral as Whistleblower?" It explores the ethical issues that arise when a party discloses a federal financial crime during a mediation. What should the mediator do? How do you reconcile ethical and confidentiality obligations with federal regulations and cirminal statues? How do you respond to that grand jury subpoena addressed to you as neutral? Just how "confidential" is the process? Are the rules different for mediators who are Government employees or lawyers? This panel of experienced neutrals, ethics experts and white-collar criminal defense counsel will discuss these and other knotty questions and provide practical advice on how to keep the negotiation going while keeping yourself out of hot water. Special attention will be given to the impact on the mediation community of the change in the ABA Model Rules and the recently issued SEC rules under Sarbanes-Oxley

Last but certainly not least, **Prof. John C. Fleming** and his fellow panelists will make a presentation on Accountability in Governmental Dispute Resolution. Public accountability is an important element of democratic governance. Yet it presents particular challenges to governmental dispute resolution because of the unique process requirements of mediation, ombudsry, and other dispute resolution processes. Such crucial process values as independence, confidentiality, and neutrality can conflict with reporting, effectiveness, and political obligations of government servants, duties that have only become heightened in the aftermath of corporate scandals, September 11, and lean economic times. This panel explores the implications of this tension for governmental dispute resolution program design and operation.

For additional information on the ABA Dispute Resolution Conference, call 202-662-1680, fax 202-662-1683 or send e-mail to mailto:dispute@abanet.org.

ADR *Handbook*

The ADR Handbook is here - You can't afford NOT to buy it! This is the most self-serving first sentence I ever wrote for an article in the ADR newsletter, BUT this is a big event. Since the last edition of the handbook was published in 1990, the ADR movement in Texas and nationwide has blossomed. The new handbook, published by Imprimatur Press and edited by two members of the ADR section (Kay and Frank Elliott) is big, beautiful, and user-friendly. There are 28 chapters ranging from "What is Mediation" to "Online Dispute Resolution." The purpose of the book is to serve as a guide for practitioners, a how-to-use guide for ADR consumers, and a reference book for judges and organizations. The depth and breadth of the contents say a lot about the importance of ADR in Texas and the expertise of Texas ADR specialists who authored the book. With a soft cover and priced to appeal to consumers, the book is a perfect addition to your library.

During this year, the Section will be looking ahead, not just a year or two, or even five, but 20 years or more into the future. But the further one looks into the future, the further one also has to look into the past to understand "the big picture." So there are two timelines, one looking back to 1980, and one looking forward to 2025. We will be identifying outside political, social, technological, and other "external" events. The first chapter of the handbook can serve as a roadmap for that exercise, with other chapters showing history and present uses of ADR, and still others laying the groundwork for the future.

The handbook includes a chapter discussing of Preventive Uses of ADR, then the ADR procedures described in the ADR Act, i.e., Mediation, Arbitration, Summary Jury Trial, Mini-Trial, and Moderated Settlement Conference. Other legislation, (i.e., Private Judging, plus combinations of these) are discussed at length in separate chapters. Various specialized applications of the procedures, some by substantive subject matter (i.e., construction, criminal, employment, environment, family, health care, international, and others, by forum, i.e., appellate, state government, federal courts, dispute resolution centers), plus a judicial perspective on court annexed ADR, are given extensive attention. New developments, such as collaborative law and cyberspace, are included. Finally, some other aspects of procedures are present — advocacy, confidentiality, ethics, and enforcement — followed by selected references and the text of legislation, standards, rules, and forms.

The neophyte, either a beginning neutral, a disputant, or an advocate representing a client for the first time in ADR, may find the nuts and bolts of all the procedures.

More experienced people, whether neutrals or advocates, may use the special chapters to inform themselves of a particular new challenge. Although the handbook is not primarily intended as a research source, this edition, and its later updates, furnishes abundant resources, both legal and non-legal, for research projects and in preparation for participation in ADR processes. Mediation advocates may benefit from the tips in the advocacy chapter, or from the subject-matter expertise in, e.g., the chapters on family, employment, environment, and construction. Mediators will find many ideas, tips, and perspectives throughout the book. Anyone interested in the procedures may use the extensive bibliography as a starting point for research, or may pick up a pointer or two from the forms that are included, both in the appendices and in certain chapters, e.g., confidentiality, where variations of a motion to quash a subpoena are included.

Every member of the Section should have a copy.

Kay Elliott, J.D., LL.M., M.A., *a Texas attorney and mediator, teaches Conflict Resolution to law and graduate students at Texas Wesleyan University School of Law and Texas Woman's University. She lived and worked in southern Africa for a decade before serving as an EEOC Administrative Hearing Officer and opening a mediation practice with offices in Dallas and Granbury. She designed the State Bar of Texas ADR Section training, Mediation Across Cultures, presented in Houston in July 2002.*

ADR *Handbook*

2003 edition

ADR Section, State Bar of Texas

and Imprimatur Press

Table of Contents

Chapters

Appendices

Table of Cases

Index

"I think this Third Edition of the State Bar Handbook demonstrates why Texas has been able to maintain a leadership role in the nation's conflict resolution movement. The scope and depth of the Handbook is a tribute to the experience of its contributing writers . . . The Handbook also reflects the continuing goal of the State Bar of Texas and its lawyer and non-lawyer members of the State Bar ADR Section to provide ongoing public awareness regarding ADR methods and processes."

Honorable Frank G. Evans

$49.95

Normal Price

($44.95 if ADR Section member.)

Approximately 600 pages, published July 2003.

800.811.6725

www.imprimaturpress.com

THAT OTHER CERTAIN THING

By Robert Jensen Matlock

Perpetuating that most time-honored of political traditions, the United States Congress has again messed around with the Internal Revenue Code. Although there are exceptions, exemptions, phase-out's, alternative minimums, and a multitude of other diabolical traps built into the Revenue Code, there are some basic provisions that we in the mediation community should have at hand for reference purposes. Thus, the following (without warranties of any nature) has been compiled for inclusion in your mediation notebook.

2004 INCOME TAX INFORMATION

Income Tax Rates - Married Persons –

	Tax Rate	
Less than $14,300	10%	
$14,300 - $58,100	$1,430	+ 15% over $14,300
$58,101 - $117,250	$8,000	+ 25% over $58,100
$117,251 - $178,650	$22,787.50	+ 28% over $117,250
$178,651 - $319,100	$39,979.50	+ 33% over $178,650
$319,101 -	$86,328	+ 35% over $319,100

Single Persons –

	Tax Rate	
Less than $7,150	10%	
$7,150 - $29,050	$715	+ 15% over $7,150
$29,051 - $70,350	$4,000	+ 25% over $29,050
$70,351 - $146,750	$14,325	+ 28% over $70,350
$146,751 - $319,100	$35,717	+ 33% over $146,750
$319,101 -	$92,592.50	+ 35% over $319,100

Head Of Household

	Tax Rate	
Less than $10,200	10%	
$10,200 - $39,900	$1,020	+ 15% over $10,200
$39,901 - $100,500	$5,325	+ 25% over $39,900
$100,501 - $162,700	$20,725	+ 28% over $100,500
$162,701 - $319,100	$38,141	+ 33% over $162,700
$319,101 -	$89,753	+ 35% over $319,100

Personal Exemptions $3,100

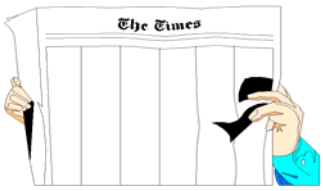
Cut by 2% for each $2,500 of adjusted gross income above:

$214,050 for married	gone at $336,550
142,700 for single	gone at $265,200
$178,350 for head of household	gone at $300,850

Standard Deductions

Married	$9,700
One over 65	$10,650
Both over 65	$11,600
Single	$4,850
Over 65	$6,050
Head of Household	$$7,150
Over 65	$8,350
Social Security Wage Base	$87,900
401(K) Maximum Payment	$13,000
If born prior to 1955	$16,000

EXPRESSIONS OF NEWS



HOUSTON, TX

Ann MacNaughton, a member of the ADR Section's Council and co-author of the book, "Environmental Dispute Resolution: An Anthology of Practical Solutions," first released by ABA in South Africa at the 2002 World Summit on Sustainable Development, moderated a panel on sustainable development and stakeholder engagement at the February 4-10 ABA Mid-Year Meeting in San Antonio. ADR practitioners interested in expanding their practice into multi-party conflict management and dispute resolution in economic development projects that engage environmental protection and/or social issues attended "Energy Development in the 21st Century--Is Sustainable Development an Environmental Concept or a Business Survival Concept?" This panel discussed how evolving sustainable development issues and related business challenges are impacting environmental, energy, and resource law practice. Emerging opportunities are significant for dispute resolution practitioners with expertise in identifying and convening stakeholders in multi-party disputes; managing multi-stakeholder dialogues (MSDs) with high-intensity emotional and values conflicts; and structuring process for effective multi-party conflict management and problem-solving.

AUSTIN, TX

Kimberlee Kovach, a professor at the University of Texas School of Law, participated in a program entitled "Pathways to Success for Women and Minorities in the Public Sector," at the ABA's Mid-Year Meeting in San Antonio. The program featured a panel of successful public-sector women lawyers who described their current positions and discussed the obstacles, encouragement, and serendipitous events that got them there. Professor Kovach's co-panelists were Anne Dewey-Balzhiser (former General Counsel of two federal agencies), Assistant U.S. Attorney Gwendolyn Hodge, and United States Magistrate Judge Pamela Mathy.

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
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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.

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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

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