

# Alternative Resolutions

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

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## CHAIR'S CORNER

by Michael S. Wilk, Chair, ADR Section

### “ADR SECTION READY FOR ANOTHER GREAT YEAR”

We finished last year with 1398 members (1158 lawyers and 240 non-lawyers), a substantial increase from the year before. We have a talented and hard-working Council with broad experience in ADR practice, and we are aware of the issues we need to address this year. We had 100% attendance by Council members at the first Council meeting held immediately after our annual meeting, luncheon, and CLE at the Bar Convention on June 24, 2005. We are excited about the coming year and are working on several projects that I will outline later in this article.

For those of you that do not know me, I will take the liberty of introducing myself. I was raised in Lubbock (no wisecracks, please). After graduating from University of Texas School of Law, I went to work in Houston for Hirsch & Westheimer. I celebrated my 39<sup>th</sup> anniversary with Hirsch & Westheimer on July 25, 2005. Since Hirsch & Westheimer was a four-lawyer firm when I started, I had the opportunity to do both transactional and trial work. I continued with that practice until the later part of 1990, when I discovered mediation and arbitration. Since then, I have been active with several ADR organizations and divide my practice about one-third mediation, one-third mediation, and one-third law practice. I have a wonderful wife, Carol, who has put up with me for 42 years, and four grown children, three grandchildren, and a big dog. Carol is an active non-lawyer mediator and mediates regularly.

Last year, under the leadership of Bill Lemons, the ADR Section accomplished its goals of: (i) reviewing and monitoring proposed legislation that might affect the mediation and arbitration practice that we enjoy in Texas; (ii) instituting arbitration roundtables for the purpose of getting feedback from lawyers and organizations that have been critical of arbitration practice and procedures; (iii) maintaining an excellent newsletter; and (iv) organizing and conducting valuable CLE.

At our annual meeting in Dallas, we presented the Evans Award to Rena Silverberg and Maxwell “Bud” Silverberg for their achievements in advancing ADR principles and practices. A full report on the presentation is in another article in this newsletter. This was the first time that the Evans Award was presented to two people. We are proud and thankful for the efforts of Mike Schless and his committee for making the decision to present the Evans Award to the Silverbergs, who well deserve this honor.

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# SILVERBERGS RECEIVE EVANS AWARD

By Michael J. Schless

For the first time in its twelve-year history, the Justice Frank G. Evans Award was presented jointly to two recipients. In a ceremony that surprised them both, Bud and Rena Silverberg were presented the award at the ADR Section's annual luncheon on June 24 in Dallas. Rena, having been told that Bud would receive the award, gathered their children and their families to attend the event. Bud, having been told that Rena was to receive a "special award," did likewise. However, nobody except the ADR Section Council members knew that both Bud and Rena were the joint recipients of the Evans Award until Bud read the last sentence of a tribute to his wife that had been prepared by the Council and given to Bud to read after he had accepted his award.

Maxel "Bud" Silverberg is a former member of the Council, a past President of the Association of Attorney-Mediators, and a member of the Supreme Court of Texas Advisory Committee on Court-Annexed Mediations. He also serves as an adjunct professor of dispute resolution at Southern Methodist University's Dedman School of Law. Bud, often times with Rena, has also trained hundreds of mediators in either the forty-hour general training, or the twenty-four-hour family mediation training required by the Texas ADR Act. A highly successful media-

ent of the American Arbitration Association Steve Brutsché Award for professional excellence in dispute



tor in Dallas, Bud has been recognized as one of the Best Lawyers in Dallas by D Magazine, and as a Texas Super Lawyer by Texas Monthly magazine. He is also a recipi-

resolution.

Rena Silverberg arrived at a mediation career on a completely different path. Educated as an MSW, Rena had been active in community affairs prior to her initial training in mediation. She is only the second recipient of the Evans Award who is not a lawyer. Rena has served both as the Executive Director and as the President of the Board of Directors of the Jewish Family Service Agency in Dallas. She has extensive experience in counseling and human relations. Like Bud, Rena has served on the ADR Section Council and on the Supreme Court Advisory Committee. She has also served on the Board of Directors of the Texas Association of Mediators. Rena has been responsible for the training of many Texas mediators, particularly in family disputes. Rena and Bud are among the most experienced co-mediators in the state.

Bud's award bears the inscription "No finer teacher and practitioner of ADR has contributed more to the evolution of dispute resolution in Texas, or has been more widely loved and respected, than Bud Silverberg. More significantly, Bud is the only mediator in the history of Texas lucky enough to call Rena his wife."

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## CHAIR'S CORNER

### ADR SECTION READY FOR ANOTHER GREAT YEAR

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This year we are focused on the following:

**Updating and improving our website.** Jay Cantrell, Claudia Dixon, Josefina Rendón, and Jeff Kilgore have undertaken the job of updating our website, [www.texasadr.org](http://www.texasadr.org), with current information and developing a plan to modernize and make our website more useful for our members.

**Preparing and presenting our Fall CLE: October 28, 2005.** Rob Kelly has already had several meetings to plan the Fall CLE with Judge Frank Evans, Professor Hanson Lawton, Adjunct Professor Al Amado, and Trey Bergman at South Texas College of Law (STCL). We had our Fall 2004 CLE with STCL and The Frank Evans Center for Conflict Resolution, and we will do so again this year. Although we are having the Fall CLE in Houston for two consecutive years, we plan to follow our past practice of having the Fall CLE in other Texas cities in the future. We wanted to repeat the program in Houston this year because we wanted to put to use some of what we learned from last year, when attendance was far less than expected. Last year, the program was conducted over two days at a cost of \$365.00. This year, our CLE will be presented on one day and will cost only \$175.00. The CLE this year has been planned to be more interactive so that we can learn from each other as well as from the speakers who will make presentations and facilitate discussions. One of the features of this year's program will be role plays (with STCL students acting some of the roles) contrasting the facilitative, evaluative, and transformative models of practice, followed by an interactive discussion. The goal of the session is for us to see different styles of mediation and add to our tool box of skills, no matter what type of mediation model we use.

**Continuing to learn the objections to arbitration, address them, and develop additional best practices for commercial ad hoc arbitration.** Over the last decade, many commercial entities have included arbitration provisions in their agreements. Many lawyers are just getting involved in arbitrating disputes and do not realize that by agreeing to arbitration, their clients are agreeing to limited discovery, relaxed rules of evidence, and the wide discretion that an arbitrator has to craft an award that meets that arbitrator's sense of what is just and equitable. We intend to help the process by determining what, in particular, lawyers find unfair and to address those comments. Further, if arbitration is not administered by the American Arbitration Association, the NASD, or some other institution or entity (i.e., it is *ad hoc*), there is uncertainty regarding the procedure for the arbitration. For example, what is the procedure

for communications with the arbitrator and for removing and replacing an arbitrator that one or all of the parties find objectionable? The members of the Council working on this effort are John Fleming, Bill Lemons, and John Boyce. These men were instrumental last year in preparing our *Best Practices Guidelines for Consumer Arbitration* pamphlet and in revising our *Dispute Resolution Texas Style* pamphlet. We now are ready to publicize the *Best Practices Guidelines for Consumer Arbitration* and send copies to members of the Texas legislature and judiciary.

**Spreading the ADR story within our non-lawyer community and out-of-state lawyers.** While ADR is well known and well used by Texas lawyers, there is still a segment of Texans and out-of-state lawyers who do not know the difference between mediation and arbitration and the advantages of each. That may be hard to understand because we have experienced prolific growth in these processes in Texas over the last 15 years. Our state is at the forefront of ADR, and there is still a lot of educating that needs to be accomplished. Kathy Fragnoli, Tom Newhouse, Susan Schultz, and Bob Wachsmuth have formed a committee to formulate a program to reach out to civic groups and bar associations to achieve this goal. The committee's work is in the formative stage, and their program may include the organization of a speakers' bureau and the presentation and possible video-taping of a series of programs and panels designed to explain and illustrate ADR.

I am sure that during the year we will have an occasion to study and act upon some unexpected events. Your website and newsletter should keep you abreast of recent cases, trends, and other events that ADR practitioners need to know.

Please let us know what the Council can do for you. We are here to serve the needs of our members. At the annual meeting, I asked if anyone had a question about the ADR Section or wanted to give us input or make a suggestion or request. **Silence.** I did not know if the silence was because we are doing a perfect job or because people in the audience were shy. Again I invite your comments and suggestions. **WE ARE ALWAYS LOOKING FOR VOLUNTEERS TO HELP WITH OUR ONGOING PROJECTS. IF YOU WOULD LIKE TO HELP ON THE COMMITTEES MENTIONED ABOVE, PLEASE CONTACT ONE OF THE COUNCIL MEMEBERS. OUR CONTACT INFORMATION IS LISTED IN THE ROSTER INCLUDED IN THIS NEWSLETTER.**

I am proud of being chair of the ADR Section and will do my best to continue in the tradition of excellence that my predecessors have established.

*As an artist I come to sing, but as a citizen, I will always speak for peace, and no one can silence me in this.*

*Paul Robeson*

# SUMMARY OF RESEARCH ON MEDIATION PROGRAM OF U. S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

*By Dr. E. Patrick McDermott\**

Over the past few years, my colleagues and I have performed research on the performance of the U.S. Equal Employment Opportunity Commission (EEOC) mediation program. We examined party satisfaction, the dynamics of settlement, factors that influence resolution, and other aspects of mediation. Our research has produced two studies for the EEOC<sup>1</sup>, two law journal articles<sup>2</sup>, and two book chapters.<sup>3</sup> Below is a summary of what we have learned from this research.

## **First Study**

Our first study<sup>4</sup> sought to determine the views of participants (employer and employee/past employee) in the EEOC mediation program. We measured party satisfaction and various procedural due process and distributive variables. The analysis of our data confirmed that the mediation participants gave the program high ratings on various factors. We reported the following findings:

- **Process knowledge.** The participants express strong satisfaction with the information they received about mediation from the EEOC prior to their attendance at the mediation sessions. They also felt very strongly that they understood the process after the mediators' introductions of the process.
- **Scheduling.** The vast majority of the participants agreed that their mediations were scheduled promptly.
- **Voice.** An overwhelming majority of the participants felt that they had a full opportunity to present their views during mediation.
- **Mediator conduct.** The participants were very satisfied with the role and conduct of the mediators. They felt strongly that the mediators understood their needs, helped to clarify their needs, and assisted them to develop options for resolving the charges. They felt even more strongly that the procedures the mediators used were fair. The questions regarding the neutrality of the mediators elicited some of the

strongest responses from the participants, who felt that the mediators were neutral not only at the beginning of the process, but remained neutral throughout the process.

- **Satisfaction with distributive elements.** Participants' satisfaction with the distributive elements of mediation was more tempered than their satisfaction with the procedural elements. This difference is indicative of the fact that mediation is a facilitated negotiation process in which parties do not usually obtain everything they want going into the negotiations.
- **Consistently high satisfaction.** Participant satisfaction with the EEOC mediation program remained high even when the participant responses differed, at times, based on the statutory basis of the charge (Title VII of the Civil Rights Act of 1964, Age Discrimination in Employment Act, and Americans with Disabilities Act), the basis of the charge filed (religion, gender, race, national origin, disability, and age), the issue at mediation (discharge, terms and conditions of employment, harassment, sexual harassment, promotion, wages, discipline, and reasonable accommodation), whether a party to mediation was represented, the size of the company, the type of mediator, the status of the mediation, and satisfaction with the result.
- **Willingness to participate again.** An overwhelming majority of the participants indicated that they would be willing to participate in the mediation program again if they were parties to another EEOC charge. Participants, regardless of their satisfaction with the outcome of mediation, overwhelmingly indicated their willingness to return to mediation.

## **Second Study**

Our second EEOC study focused on the conduct of the parties and mediators that contributed to the resolution of

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**SUMMARY OF RESEARCH ON MEDIATION  
PROGRAM OF U. S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION**

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the disputes. We asked mediators about what happened in their mediations to better understand the mediation process. We reported the following findings:

- Party conduct contributing to resolution. The most significant participant conduct that leads to the resolution of the charge is the parties' flexible and open attitude, which in turn translates into their willingness to collaborate and compromise. Good mediation skills, such as the willingness to reflectively listen, demonstrate empathy, and engage in open communication, are also important for resolution.
- Representative conduct contributing to resolution. The parties' legal and non-legal representatives also help to resolve disputes by providing the needed dose of reality and by being flexible, compromising, and supportive. Their preparation and their professional and calm demeanors also help in dispute resolution.
- Mediator strategies leading to resolution. Through the use of facilitative and evaluative techniques, the impact of their personal styles, and the use of other strategies and tactics, mediators facilitate conflict resolution. Their facilitative behaviors, such as facilitating catharsis, reframing issues, helping parties see different vantage points, clarifying ideas, and defusing negative emotions are important to resolution. Similarly, their encouragement of open, honest, and direct communication between the parties, their ability to keep the parties focused on the tasks at hand, and their promotion of "win-win" solutions also play a role in facilitating resolution. Mediators' use of evaluative behaviors—providing the needed reality checks, evaluating the strengths and weaknesses of the cases, and providing technical knowledge and expertise—is also instrumental in the resolution of the charges. Mediators' personal styles also make a difference. Their calm and professional demeanors, empathy, persistence, neutrality, optimism, and creativity contribute to the resolution of the charges. The effective use of caucuses is another mediator strategy that facilitates resolution.
- Turning points. The turning points of mediation are mainly related to the communication and discovery of information obtained at mediation, parties' attitudes, the specific aspects of the conveyed offer, mediator behavior, lawyer and non-legal representative behavior, and acknowledgement of feelings and culpability. The most significant turning points are related to communication and discovery and party attitudes. Communication and discovery-related issues, such as changes in party behavior as a result of information obtained at mediation, well-thought-out opening statements, and pre-mediation dialogues, serve as

important turning points during mediation. So do attitudinal variables, such as parties' openness and willingness to compromise, their trust in each other, and their flexibility. Reasonable initial exchanges of offers and the communication of final offers also serve as turning points. The "reality-checks" offered by the mediator and other representatives also are turning points, and so is their support and encouragement to settle. Parties' acknowledgements of each others' feelings and culpability also make positive differences.

- Reasons for failure to settle. The parties' position/conduct is the main reason listed for failure to resolve charges. In many instances, mediators hold both parties equally responsible for non-resolution. The main behavioral attributes that interfere with the resolution of charges are the parties' unrealistic/unreasonable evaluations of the claims, their inflexible behavior, and their adversarial and emotional attitudes. Thus, the data support psychologists' observation that "positive illusions," such as unrealistic optimism regarding one's claim, exaggerated perceptions of control, and inflated positive views of oneself interfere with conflict resolution.
- Mediator rating of representatives' skills. Mediators evaluated the skills of the parties' legal and non-legal representatives. The mean rating for the skills of the charging parties' lawyers is 3.63 and respondents' lawyers is 3.85 (on a scale from 1 {minimum skills} to 5 {excellent skills}). Thus mediators seem to rate the lawyers of the respondents more highly than those of the charging parties. The non-legal representatives of the parties seem to fare worse. Mediators give a 3.05 rating to the non-legal representatives of the charging parties and 3.46 to those of the respondents.

### **Other Data Analysis**

We also used our EEOC data to probe deeper into mediator tactics—specifically the identification of mediators' styles and their influence on mediations. We learned:

- Use of counsel and monetary outcome. Our results indicate that if the amount of money obtained in settlement is important, the charging party in employment mediation is at a decided disadvantage without counsel. This disadvantage is even more pronounced in an evaluative mediation. The practical implications of these findings include: 1) participants, particularly charging parties in employment mediation, should be advised of the benefits of counsel and forewarned that they may obtain lower monetary settlements without representation; 2) attorneys should think twice about allowing clients to participate in mediation without their presence; and 3) mediation mod-

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**SUMMARY OF RESEARCH ON MEDIATION  
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els that limit the role of representation are inherently suspect.

- Participant satisfaction and mediator style. The facilitative mediation style clearly produces higher disputant satisfaction ratings on both procedural due process and distributive measures. Although charging parties in employment mediation often obtain significantly less money in settlement using facilitative mediation rather than evaluative mediation, charging parties are more likely to report that they obtained what they wanted.
- The best style for the charging party. Evaluative mediation offers the highest potential payout, but only where charging parties are represented by counsel. Absent legal representation, evaluative mediation appears to result in lower settlement amounts.
- There is such a thing as pure facilitative mediation. Our results indicate that some mediators stay within the facilitative framework. Thus a pure facilitative mediation is possible.
- A facilitative program is difficult to maintain. Because a program is called facilitative does not mean that the mediators are engaging in facilitative conduct, which is clear from our data. We saw many cases (24%) where only evaluative tactics were reported as the tactics used by mediators to resolve the cases. We saw many cases where both facilitative and evaluative techniques were used.

Finally, we also examined whether settlement rates were influenced by procedural and distributive variables. We identified the following procedural and distributive variables:

- Procedural and Distributive Variables' Influence on Settlement. We found that mediators' development of realistic solutions and parties' satisfaction with the fairness of mediation sessions, two distributive variables, are key factors identified by charging parties and respondents as assisting in the settlement of disputes. While satisfaction with the fairness of the mediation is important, we note that it should be expected in a settled case and arguably be a byproduct of settlement. Of more interest is the mediator development of realistic options. This result indicates that mediator skill does influence settlement and underscores that mediator skill can be a key factor in the resolution of disputes in mediation.
- The influence of attorneys on settlement rates. Charging parties represented by attorneys had a lower settlement rate. The comparatively lower settlement rate resulting from charging parties' use of

counsel indicates that such cases are valued higher and may not be amenable to resolution at the EEOC pre-investigation level. It may even signal that unrepresented charging parties compromise their claims for too little and that the presence of counsel prevents charging parties from "settling cheap."

**Conclusion:**

Research on the EEOC mediation process has shown that in a program that is well-received by participants, there are many complex undercurrents to the process. We have scratched the surface in identifying some of these many factors in employment mediation. We hope that these results provide some insight to both neutrals and advocates that may be of help in their daily practices. We encourage your reactions to our observations and ask that you share any observations that you may have.

**Dr. E. Patrick McDermott** ([epmcdermott@salisbury.edu](mailto:epmcdermott@salisbury.edu)) is an Assistant Professor at the Franklin P. Perdue School of Business, Salisbury, Md. In addition to research, he regularly participates in mediation as an advocate in federal and state courts. He holds a PhD in Human Resources Management from The George Washington University, an LL.M from New York University, a J.D. from Rutgers Newark School of Law, an M.S. in Collective Bargaining from The New York State School of Industrial and Labor Relations at Cornell University, and an B.S. in Industrial and Labor Relations from the ILR School at Cornell.

**ENDNOTES**

<sup>1</sup> E. Patrick McDermott et al., *The EEOC Mediation Program: Mediators' Perspective on the Parties, Processes, and Outcomes* (July 31, 2001), at <http://www.eeoc.gov/mediate/mcdfinal.html> (hereinafter Second EEOC Study); E. Patrick McDermott et al., *An Evaluation of the Equal Employment Opportunity Commission Mediation Program*, (September 20, 2000), at <http://www.eeoc.gov/mediate/report/index.html> (hereinafter First EEOC Study).

<sup>2</sup> E. Patrick McDermott & Danny Ervin, *The Influence of Procedural and Distributive Justice Variables On Settlement Rates In Employment Discrimination Litigation*, 1 J. DISPUTE RESOL. (2005); E. Patrick McDermott & Ruth Obar, *What's Going On in Mediation: An Empirical Analysis of the Influence of a Mediator's Style on Party Satisfaction and Monetary Benefit*, 9 HARV. NEGOT. L.J. 75 (2004), reprinted in part in *ADR IN THE WORKPLACE* 714-17 (Laura J. Cooper, et al., eds., 2d ed. 2005).

<sup>3</sup> E. Patrick McDermott et al., *Has the EEOC Hit A Home Run? An Evaluation of the EEOC Mediation Program from the Participants' Perspective*, in 11 *ADVANCES IN INDUSTRIAL AND LABOR RELATIONS* 1-40 (2002); Brian Polkinghorn & E. Patrick McDermott, *Applying the Comprehensive Model to Workplace Mediation Research*, in *THE BLACKWELL HANDBOOK OF MEDIATION: A GUIDE TO EFFECTIVE NEGOTIATION* (Margaret Hermann ed. 2005).

NEGOTIATION (Margaret Hermann ed. 2005).

<sup>4</sup> First EEOC Study, *supra* note 1.

<sup>5</sup> Second EEOC Study, *supra* note 1.

# COLLABORATIVE RESOLUTION OF CIVIL DISPUTES: NEW OPPORTUNITIES FOR MEDIATORS

*By Sherrie R. Abney\**

Some five years ago, collaborative law began to make its way into the Texas scene in family disputes. Since that time, the collaborative process has been accepted by many family attorneys as a superior method of handling cases. In 2001, the Texas legislature enacted sections 6.603 and 153.0072 of the Family Code, which outline the collaborative process as used in family matters.

Attorneys practicing in other areas of civil law have realized that the same principles that brought relief to family disputes are applicable to many civil situations. As a result, collaborative-law supporters across the state have worked to have civil collaborative law added to the Civil Practice and Remedies Code. This addition to the Civil Practice and Remedies Code would allow parties up to two years to participate in the collaborative process without court intervention. The same proposed legislation would provide for confidentiality in both family and civil collaborative cases.

Perhaps collaborative law will be found in the Civil Practice and Remedies Code in 2007. In January of this year, Representative Toby Goodman sponsored HB 205, which contained a proposed collaborative-law statute, which was to be effective in September 2005. The House bill was referred to the Civil Practices Committee, where the Texas Trial Lawyers Association ("TTLA") and the Texas Association of Defense Counsel ("TADC") opposed it. Representative Joe Nixon, chair of the Civil Practices Committee, did not allow the bill to come to a vote, so it died in committee. The proposed collaborative-law statute was then attached to HB 260 as an amendment by Senator Royce West and was unanimously passed in the Senate. When HB 260 went back to the House for final approval, it again died in Nixon's committee. It never reached a vote on the floor of the House. Joe Nixon, the TTLA, and TADC were the only opposition to the civil collaborative legislation.

Collaborative law cannot be court-ordered, and it costs the state nothing. It is a swift and economical alternative to litigation that could free court dockets and save the parties money. Since it can do no harm to the public, one wonders about the motivation of those who oppose the civil collaborative process.

Collaborative law has many advantages over other types of alternative dispute resolution. It is a highly structured, voluntary, process that relies on the honesty and

good faith of participants working together in joint meetings crafting solutions to achieve the greatest possible benefit to each party. Should the parties fail to settle and the collaborative process terminate, the collaborative lawyers must withdraw, and the parties must hire new litigation counsel who are not associated with the collaborative lawyers in order to go forward with the lawsuit. For all of the above reasons, all participants are motivated to seriously commit to settlement.

Face-to-face meetings of all participants eliminate most of the misunderstandings that occur with the "he said, she said" method of filtered communication found in traditional litigation, and this serves to further expedite resolution. In addition, discovery is speeded and simplified by the terms of the Participation Agreement. This contract requires complete, prompt, and full disclosure of all relevant information and tangible things that would have an impact on the final resolution of any issue in the dispute.

When an opinion is needed in the collaborative process, the parties are encouraged to jointly retain a neutral expert. The benefits of jointly retained experts are threefold: costs are cut in half; more experts are available since they will never be required to testify in court; and the expert is not put in the position of justifying the retaining party's position. Parties receive an objective and relatively inexpensive professional opinion.

What has this got to do with mediators? Just as in ordinary litigation, there will be times that the participants in the collaborative process will need assistance in resolving certain issues. The process is designed to employ all forms of dispute resolution, and mediation is one of the first alternatives the parties will visit. The good news is the parties will not be coming to the mediator due to court order; they will be coming because they sincerely desire to avoid their "day in court" and resolve their differences.

There is also other news. It has become apparent to collaborative lawyers that mediators who are not trained in the collaborative process are not efficient in resolving issues. In fact, some mediators have caused harm because they did not understand the collaborative process and were unfamiliar with the participation agreement and protocols. The nature of the process is such that trained mediators are necessary, and the simple solution to this problem is — get trained.

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# UNDERSTANDING PERSONALITY TYPES USING THE ENNEAGRAM

By Kathy Fragnoli\*

Imagine if, as a mediator, you could quickly “read” your clients and guess their next likely moves. Imagine if you could understand your clients in a way that makes them marvel at your insight or makes them feel instantly in tune with you.

Of course, as professionals in the “people business,” we all draw upon our intuition when dealing with others as we anticipate their needs and try to understand their behavior. However, most of us do not have a real system or method to do this.

There are many personality-profiling tools on the market, and all of them are helpful in our never-ending quest to understand what makes the other guy tick. However, many psychologists, sociologists, and progressive organizations (including Stanford University’s School of Business, the CIA, and the Pentagon) have recently begun using a tool that surpasses all others in its depth and accuracy in understanding the inner barriers, drives, motivations, and dispositions of different personality types. The ancient symbol of the Enneagram has become one of today’s most popular systems for understanding nine personality types. This symbol, with the nine types placed around it, has become a remarkable tool that can be used to understand oneself and others in amazing detail. The symbol with the nine types is shown to the right.

An in-depth study of the Enneagram reveals why the symbol is so helpful in undertaking a study of personality. For example, type-2 “helpers” can revert to combative type-8 behavior in times of stress or if their good efforts are not appreciated. Type-7 personalities, if in an unhealthy state, constantly move from topic to topic and cannot focus; when in a healthier state, they become more focused and analytical like type-5 personalities.

When personality types manipulate others, they reveal their darker sides. For example, type-8 personalities generally make big promises, bluff, or throw their weight around. Type-5 personalities, on the other hand, detach emotionally from others and may sequester themselves in their offices in an attempt to stay preoccupied.

No personality type is “good” or “bad,” and each appears to be hardwired from birth. However, if we understand our own hardwiring and that of others we deal with, we can more easily understand the sources of conflict be-

tween ourselves and other personality types. In addition, when we understand others better, we have the opportunity to approach them in ways that are more compatible with their styles. Using a system like the Enneagram can make us much better mediators, negotiators, spouses, and even parents.

*\*Kathy Fragnoli, a Dallas mediator, studied under Don Riso and Russ Hudson, the foremost experts on the Enneagram. She teaches half-day and full-day classes on the Enneagram for lawyers. People interested in knowing more about the Enneagram can contact Kathy at [kfragnoli@aol.com](mailto:kfragnoli@aol.com).*





# TELEVISION PROGRAM IN ARGENTINA PROMOTES ALTERNATIVE DISPUTE RESOLUTION

*By Walter A. Wright\**

*(Note from the Chair of the Newsletter Editorial Board: This article continues a series, begun earlier this year, whose purpose is to expose our readers to perspectives on Alternative Dispute Resolution from other parts of the world. If you are aware of ADR initiatives in other countries that may be of interest to our readers, please contact Walter A. Wright at [ww05@txstate.edu](mailto:ww05@txstate.edu).)*

During the past decade, Argentina has become a leader in the Alternative Dispute Resolution (ADR) movement in Latin America, particularly in the field of mediation. Earlier this year, Dra. María Cristina Camelino, an important leader in Argentina's ADR movement, visited Texas to discuss an innovative television program that she has developed to promote ADR in La Plata, Argentina.

Dra. Camelino's television program, entitled "Prevención, Administración, y Resolución de Conflictos" ("Prevention, Management, and Resolution of Conflicts"), appears in a seven-minute spot every Saturday afternoon as part of a larger program entitled "Tarde de Mujer" ("Woman's Afternoon"). The program, targeted to families (especially women) in La Plata, the capital city of the Province of Buenos Aires, airs on Channel 5. Each week, Dra. Camelino invites one or more ADR professionals to participate in her program and impart informa-



*Dra. Cristina Camelino visits Professor Walter Wright's mediation class at Texas State University-San Marcos*

tion about their ADR activities. Guests in her program have included:

- Lic. Gabriela Rodríguez Querejazu and Dr. Alejandro Neto, who discussed efforts to spread ADR concepts to children and the parents of children who play soccer and sometimes become involved in violent confrontations.
- Lic. Ana Prawda, who described her efforts to promote mediation in schools.
- Dr. Mario de Almeida and Dra. María Alba Aiello de Almeida, who expounded on their Building Peace Project.
- Dra. Nora Steidl, who trained teachers in an impoverished province, Catamarca, to become mediators.
- Lic. Juan Tausk, President of the Buenos Aires Delegation to the World Mediation Forum, who elaborated on that organization's activities.
- Dra. Marta Galais, a mediator from the Ministry of Economy of the Province of Buenos Aires, who informed viewers about their right to participate in a mediation program designed to resolve disputes between citizen consumers and the province.

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*Dra. Cristina Camelino visits the mediation class of Professors Laura and Bob Otey at St. Edward's University in Austin.*

# The Third Side

[www.thirdside.org](http://www.thirdside.org)

By Mary Thompson ★

This website is based on The Third Side: Why We Fight and How We Can Stop, by Bill Ury. Many of us know Ury as the co-author of Getting to Yes, a foundation text for the conflict resolution field. Ury is also the co-founder of the Harvard Negotiation Project and serves as director of the Global Negotiation Project.

The web site describes “third-siders” as:

- Seeking to understand both sides of the conflict;
- Encouraging a process of cooperative negotiation; and
- Supporting a wise solution—one that fairly meets the essential needs of both sides and the community.

The “Third Side” approach is not exclusively about neutrality. The site claims that “You can have natural sympathies for one side or the other and still choose to take the Third Side.”

Although the site is still under construction, there are key sections worth noting:

**Roles** describes how to be involved in the prevention, resolution, or containment of conflict. The variety of roles is intriguing. The section describes not only the mediator role but also the witness, the healer, the teacher, the equalizer, and several others.

**Tools** contains some terrific downloadable curricula and training activities related to conflict management. It also

offers videos of Bill Ury discussing meditation and Third Side concepts.

**Idea Exchange** provides a fascinating list of stories and case studies, mostly addressing dialogue, forgiveness, and reconciliation in tribal, national, and international conflicts.

The Third Side illustrates two current trends in the dispute resolution field: 1) experienced mediators exploring the broader implications of dispute resolution for communities both local and global, and 2) exploration of the role of the non-neutral dispute resolver (see also Bernie Mayer’s book, Beyond Neutrality).

Many mediators eventually look beyond the conventions of their practice to new and creative ways to address the pressing problems of today’s world. This site is a valuable reference for mediators seeking less formal, but perhaps more meaningful, roles in fostering understanding and bridging differences in our post-9/11 world.

★*Mary Thompson, Corder/Thompson & Associates, is a mediator, facilitator, and trainer based 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](mailto:emmond@aol.com).*

## DID YOU MISS THE ADR SECTION’S 2004 FALL SEMINAR?

The ADR Section can make available to local bar organizations:

- \* Presentation of ADR Bar Section Fall CLE Program (2004)
- \* Seminar by video with commentary by ADR Council members and/or officers

This is an excellent opportunity for hours toward mediation credentialing.

**CONTACT:** Leo C. Salzman, P.O. Box 2587, 3206 Banyan Circle, Harlingen, Texas 78551  
Telephone: 956/ 421-2771—Facsimile: 956/ 421-2790  
Email: [lcs@leosalzman.com](mailto:lcs@leosalzman.com)

## **COLLABORATIVE RESOLUTION OF CIVIL DISPUTES: NEW OPPORTUNITIES FOR MEDIATORS**

*continued from page 7*

For those of you who are not full-time mediators, the collaborative process offers an opportunity for relief from the schizophrenic task of preparing for trial and attempting to settle at the same time. In the collaborative process, it is possible to concentrate fully on discovering solutions as all participants move from positional bargaining to exploring options based on the interests and goals of the parties. When all attorneys and parties are truly participating in the collaborative process, each client and attorney is able to function with less stress, more efficiency, and greater satisfaction than is possible in an adversarial setting. Part-time or full-time mediator, you owe it to yourself and your clients to learn about the collaborative process, so you can make an informed decision as to whether you want to enter the brave new world of dispute resolution or stick to the traditional world of litigation.

Should you feel the urge to venture into the unknown reaches of dispute resolution, The Collaborative Law Study Group of the Dallas Bar Association meets every third Tuesday at the Dallas Bar Association (1 hour CLE). The Houston Bar Association has recently created a Col-

laborative Law Section. For more information on their meeting schedule, go to [www.hba.org](http://www.hba.org). The Texas Collaborative Law Council, The Texas Center for Legal Ethics and Professionalism, and the Collaborative Law Study Group of the Dallas Bar Association will present the second local civil collaborative-law training on September 15 & 16, 2005. (A total of 12 hours of CLE, including 6 hours of ethics, is pending.) Additional information may be found at [www.collaborativelaw.us](http://www.collaborativelaw.us) or by contacting Larry Maxwell at (214) 265-9668 or [lm Maxwell@adr-attorney.com](mailto:lm Maxwell@adr-attorney.com) or Sherrie Abney at (972) 417-7198 or [sra169@comcast.net](mailto:sra169@comcast.net).

*\*Sherrie Abney is a frequent trainer and presenter in the civil collaborative-law process and one of the primary drafters of the Protocols of Practice and Participation Agreement used by the Texas Collaborative Law Council. Her primary focus for the past year has been aimed at establishing collaborative law in other areas of civil practice. She continues to be active in mediation and arbitration, as well as closing residential and commercial real estate transactions as a fee attorney for Stewart Title of North Texas.*

## **SILVERBERGS RECEIVE EVANS AWARD**

*continued from page 2*

Rena's award is inscribed "The very essence of grace and compassion, Rena is the better half of the best co-mediation team in Texas. Her contributions to the evolution of mediation training and practice, to her profession, and to her community, are exceeded only by her strength of character which sets the highest standard and example for us all."

The Justice Frank G. Evans Award is given annually to a recognized leader in the field of ADR in appreciation of the recipient's "exceptional and outstanding efforts in promoting or furthering the use or research of alternative

dispute resolution methods in Texas." The award is named for the man commonly referred to as the father of ADR in Texas, Frank Evans, former Chief Justice of the Houston First Court of Appeals. Judge Evans is currently on the faculty of the South Texas College of Law and directs the center there which bears his name. He was the first recipient of the award in 1994. Thereafter, the award has been given to Professor Kim Kovach, Bill Low, Judge Nancy Atlas, Professor Ed Sherman, Bruce Stratton, Suzanne Mann Duvall, John Palmer, Gary Condra, Judge John Coselli, and Professor Brian Shannon. The recipient is selected by the ADR Section Council from among the nominations submitted each year by the membership.

## **TELEVISION PROGRAM IN ARGENTINA PROMOTES ALTERNATIVE DISPUTE RESOLUTION**

*continued from page 9*

- Dra. Canova, a professor of family law, who promoted the use of mediation in family cases.

Dra. Mirta Oliver, an specialist in environmental pollution, who discussed negotiations of environmental disputes.

Dra. Camelino, an attorney-mediator, visited Central Texas in April 2005, where she spoke about her television program to this author's Alternative Dispute Resolution class at Texas State University in San Marcos and to the Mediation class of Professors Laura and Bob Otey at St. Edward's University in Austin. She also discussed

her program at a meeting of the Austin Association of Mediators. The audience at each venue received her information enthusiastically and remarked that her television program could serve as an inspiration for similar programs in the United States.

*\* Walter A. Wright is an associate professor in the Legal Studies Program of the Department of Political Science at Texas State University in San Marcos, Texas. He teaches courses in law and alternative dispute resolution, and his primary research interest is mediation. He is a published author in the United States, several Latin American countries, and China. An attorney, mediator, and arbitrator, he received B.A. and J.D. degrees from the University of Houston and an LL.M. in International Legal Studies from New York University.*

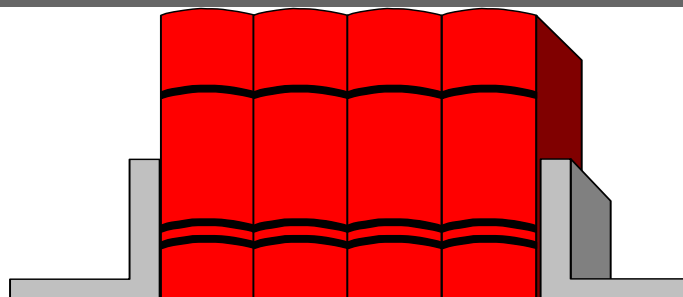
# BOOK REVIEW

## Ripples from Peace Lake

Eric Galton

Trafford Publishing, 2004

Reviewed by Walter A. Wright



I will begin by disclosing that I have admired Eric Galton, the author of Ripples from Peace Lake, for many years. He is one of the most experienced mediators in Texas, and he often generously shares his expertise with other mediators at seminars and conferences throughout the United States and around the world. He and his colleagues, Ben Cunningham and Greg Bourgeois, are the owners of Lakeside Mediation Center in Austin. As the name of their mediation center implies, it overlooks Lake Austin, which Galton has rechristened Peace Lake for purposes of his book. When out-of-town mediators visit me in Austin, I usually take them to see Lakeside Mediation Center. The hospitality of Galton, Cunningham, and Bourgeois never fails, and my out-of-town friends always remark that Lakeside Mediation Center is the most beautiful and relaxing suite of mediation offices they have ever seen. It is only fair to disclose that the professional and personal generosity of Galton and his colleagues predisposed me to like this book.

Fortunately, the book does not disappoint. Reflecting the thoughtful and generous nature of its author, Ripples from Peace Lake resonates with heartfelt messages from Galton to other mediators. Chapters such as "On Staying Well and Avoiding Burnout" and "On Making a Living"

reflect Galton's concern that mediators take care of themselves while attempting to build and sustain their mediation practices. Other chapters, such as "On Trust Building," "On Timing," and "On Patience," offer valuable advice to novice and experienced mediators who wish to enhance their mediation styles. A chapter like "On Words Mediators Hear" are pure fun. Occasional chapters, such as "On Private Caucus," may not be of paramount interest to those who do not share Galton's mediation style, but they still offer valuable insights into the professional life of a mature and reflective mediator.

My favorite chapters are "On Apology and Forgiveness" and "A Meeting of Strangers." Galton is at his best when, in these two chapters, he recounts stories of transformation and redemption that occur during mediation. These two chapters alone are worth the price of the book.

For many years, Eric Galton has generously given of himself to other mediators, especially Texas mediators. He continues to do so in this book, which I can recommend as an enjoyable and informative read. Interested readers may order the book online at [www.trafford.com](http://www.trafford.com).

### SUBMISSION DATE FOR UPCOMING ISSUES OF *ALTERNATIVE RESOLUTIONS*

#### Issue

Fall  
Winter  
Spring  
Summer

#### Submission Date

October 30, 2005  
January 15, 2006  
March 15, 2006  
June 30, 2006

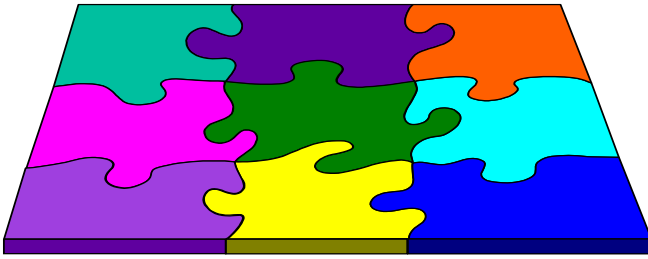
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## ETHICAL PUZZLER

by Suzanne Mann Duvall

*This column addresses hypothetical ethical problems that mediators may face. If you would like to propose an ethical puzzle 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.*

You recently mediated an intellectual property case involving a prominent United States company and an Asian company. The key issues involved rights over brand names and company names. The well-known U.S. company believed that the Asian company had adopted a brand name confusingly similar to its own.

Because both parties and their attorneys had flown in from all over the world, it was agreed that there would be no time limits on the length of the mediation. Ultimately, the mediation took about seventeen hours.

Midway through the mediation, the parties agreed to a provision involving the showing of products at international trade shows. They then moved on to more contentious issues.

When the final agreement was reached, you and the parties started drafting the paperwork. During the course of the drafting, the Defendant reminded you about the provision but stated that since the Plaintiff hadn't said anything and that since he didn't like it in the first place, he would rather just forget about it and neither include it in the final draft nor remind the Plaintiff of it, but instead sign the Agreement without the provision.

As the mediator, what should have been your response?

**Dr. Diana C. Dale (Houston):** At the moment the suggestion was made by the party, I would engage them in "reality testing," asking them what they thought the consequences of following their suggestion would be, including how they would imagine the other party would respond. I would couch the exchange in terms of what the parties' relationship had been and what they had hopes for regarding any ongoing business relationship. If they then reconsider their proposal for deception, I assess that the mediation process is back on track, also keeping in mind that they may have been testing my honor as a mediator. If not, and even if the proposal is withdrawn, I take a mental break for the following considerations.

My responsibility is to protect the integrity of the mediation process, including maintaining impartiality and encouraging full disclosure by the parties. I, therefore, must convey to the parties that I cannot collude with one side. I must also advise them of my duty to encourage transparency, and why, without their losing face. These expectations should have been provided to them in writing ahead of time and would be included in the agreement to mediate. This can be respectfully reflected back at this time, including the assurance that I will not reveal to the other party what has occurred, but they need to understand from the initial "ground rules" that I will not collude with the suggestion.

I am also expected to exercise good judgment regarding impairment of the parties if I have good reason to believe that this would significantly undermine the ends of the mediation. I wonder if the approaching 17 hours duration is a problem for clear, high-quality thinking required for this high-level, or any, mediation. Is the suggestion indicative of this, and also taking advantage of possible impairment of the other side? Am I impaired? The parties "deserve" taking a break, regardless of their desire to hurry, and it should be my judgment call to require a rest break. (For the above reasons, I would never have conducted a mediation for 17 hours regardless of the parties' desire and would have factored this into the expectations going into the mediation.)

The provision regarding showing of the products was already agreed to by both parties and ought to be in my notes to guide my keeping track of resolved points to be incorporated into the final document. (The case scenario does not indicate whether I am keeping track or whether I also am caught off guard, having forgotten the agreed-to point, unable to remember it because I am so tired). Assuming that I have indeed kept notes and am competent at this point, I remind the party that this provision was already a meeting of the minds and needs to be incorporated into the written document, unless both parties upon further consideration decide otherwise before finalizing. At the point of the suggestion, after reality testing I remind the parties of this fact.

If the mediation has gone close to 17 hours, I would get each party to summarize where they are, call a rest break, and then upon reconvening have each party do a final check on whether all points have been covered and how they would play out over time, bring them together if they are not already in joint session, and memorialize their agreement, maintaining honor between them.

**Christopher Nolland (Dallas):** Your confidentiality obligations as a mediator extend to keeping confidential from the other mediation participants any information, facts, or even legal theories that a party tells you in a confidential caucus or in other confidential communications (such as

*continued on page 14*

**Ethical Puzzler**

*continued from page 13*

pre-mediation statements, pre or post- mediation telephone conferences, or the like). The confidentiality obligation is not implicated with respect to a settlement term that was discussed and agreed to by the parties, or even one that was discussed as a mere possibility. A party has no right to demand that the mediator participate in drafting an agreement that does not comport with the discussions and understandings of the parties. While a party or their counsel surely can properly insist on your maintaining the confidentiality of their discussions with you (and the confidentiality of the entire mediation process with respect to outsiders or third parties, including the court), they cannot make a topic previously fully and openly discussed with both parties suddenly “off limits.”

It is easier to say first what you may not do. You may not intentionally participate in inking and drafting a document that you know does not reflect the agreements, discussions and understanding of the parties. While the parties are ultimately responsible for their own agreements, it is simply inappropriate to allow this misstep to occur, and it is not a breach of any ethical obligation to prevent it. I would inform the party requesting that I not raise the forgotten provision that proceeding in such a manner was not acceptable and that since the inclusion of the provision was clearly not confidential (it had already been discussed and agreed to between the parties) that I was ethically obliged to raise the issue. They simply could not require the contrary. I would also remind that party that the failure to address the omitted provision would likely lead to future misunderstandings, ill will and probably litigation over a claimed mutual mistake in drafting the agreement or even more extreme claims.

Another alternative may be to withdraw from the mediation, although that seems like the chicken’s way out and leaves the same ethical dilemma if the parties go forward with an agreement without the forgotten provision.

The party asking that you remain silent about the omitted provision may well be angry with you; but they must realize that you have ethical and professional obligations to the process and to the other party and that they have no right to tell you what you may or may not do or raise with the other side, except as to matters which are confidential. Ask what they would have you do were the shoe on the other foot.

In short, I would raise the “forgotten” provision with the other party and make no secret of my intentions to the party requesting that I do otherwise.

**Trey Bergman (Houston):** As mediators we should always be mindful that, although we do not control the outcome of the mediation, we do control the process. However, part of the role of a mediator is that of a problem solver, and this is just another problem to be solved. As guardians of the process, we cannot allow it to be manipulated or tainted. Therefore, in this situation we have

an obligation to discuss the potential problems associated with “tricking” a party into signing a settlement agreement that does not contain, what they believe to be, all of the essential terms. Remember, this action may constitute fraud, and the mediator could be held to be an active conspirator in this act. It is also important to remember that the settlement agreement is nothing more than a contract. Since fraud is a defense to a contract, the other side will want to set it aside once the trick is discovered. Therefore, everyone’s work in the mediation could be wasted. There is also the potential that the mediator will be forced to testify, since recent case law suggests that the confidentiality provisions in the Texas ADR statute do not cover allegations of fraud.

As a mediator, your response should be to explain all the foregoing to the Defendant and ask that he change his mind. If the Defendant refuses, you can explain that you can’t allow the mediation to continue and you will have to suspend it if the Defendant insists on continuing his conduct. If that does not stop the conduct, then you should terminate the mediation without explanation to the Plaintiff why, due to confidentiality. You can then announce that both sides are very close to a settlement, and suggest that they meet to finalize the drafting of the agreement.

**Dale O’Neal (Fort Worth):** My response to Defendant: “Let’s see if they remember.”

My ultimate resolution: To privately remind Plaintiff in such a way that Plaintiff thinks that he (Plaintiff) remembered (i.e., “Did we resolve that issue on International Trade Shows?”)

I would broach this only in presence of Plaintiff attorney (not the Defendant) and coach him on the methodology of how he (not me) should address issue with Defendant.

The bottom line is that, I have a duty to be fair.

Being a mediator is a high calling. Mediation is even referenced in the Bible.

\*\*\*\*\*

**Comment:**

**Ethical Puzzlers can occur by both commission and by omission. This scenario clearly addresses both — the “commission” or potential breach of confidentiality and the potential “omission” of an integral part of the agreement between the parties. All of our puzzle solvers seemed to be right on target in their response, and they raised practical “how to’s” as to the resolution.**

# 2005—2006 CALENDAR OF EVENTS

**Basic 40-Hour Mediation Training** ★ Houston ★ August 11-13 continuing 18-30, 2005 – 2 Thursdays: 4:30 P.M. – 8:30 P.M., 2 Fridays and Saturdays: 9 A.M. – 6:00 P.M.; *Worklife Institute* ★ Trainers: Diana C. Dale and Elizabeth F. Burleigh  
For more information call 713-266-2456, Fax: 713-266-0845 or [www.worklifeinstitute.com](http://www.worklifeinstitute.com).

**Arbitrator Training for Binding Arbitration** ★ Houston ★ August 18-19, 2005 ★ *The Better Business Bureau of Metropolitan Houston, Inc.* ★ SBOT MCLE approved for 12 Participatory Hours. ★ For additional information, [www.bbbhou.org](http://www.bbbhou.org) or contact Kim Lawrence at 713.341.6121 or [klawrence@bbbhouston.org](mailto:klawrence@bbbhouston.org).

**40-Hour Basic Mediation Training** ★ Houston ★ August, 19-21 continuing August 26-28, 2005 ★ *University of Houston A.A. White Dispute Resolution Center* ★ For more information contact Robyn Pietsch 713-743-2066 or [www.law.uh.edu/blakely/aawwhite](http://www.law.uh.edu/blakely/aawwhite)

**Family Mediation** ★ Austin ★ August 25-28, 2005 ★ *Texas Woman's University* ★ For more information call 940.898.3466 or [www.twu.edu/lifelong](http://www.twu.edu/lifelong)

**Transformative Mediation Training** ★ Houston ★ September 15-17, 2005 ★ *Worklife Institute* ★ C. Dale and Elizabeth F. Burleigh ★ For more information call 713-266-2456, Fax: 713-266-0845 or [www.worklifeinstitute.com](http://www.worklifeinstitute.com).

**Arbitrator Training for Binding Arbitration** ★ Houston ★ September 16-17, 2005 ★ *The Better Business Bureau of Metropolitan Houston, Inc.* ★ SBOT MCLE approved for 12 Participatory Hours. ★ For additional information, [www.bbbhou.org](http://www.bbbhou.org) or contact Kim Lawrence at 713.341.6121 or [klawrence@bbbhouston.org](mailto:klawrence@bbbhouston.org).

**Arbitrator Training for Binding Arbitration** ★ Houston ★ September 30-October 1, 2005 ★ *The Better Business Bureau of Metropolitan Houston, Inc.* ★ SBOT MCLE approved for 12 Participatory Hours. ★ For additional information, [www.bbbhou.org](http://www.bbbhou.org) or contact Kim Lawrence at 713.341.6121 or [klawrence@bbbhouston.org](mailto:klawrence@bbbhouston.org).

**Basic 40-Hour Mediation Training** ★ Houston ★ October 13-15 continuing 20-22, 2005 – 2 Thursdays: 4:30 P.M. – 8:30 P.M., 2 Fridays and Saturdays: 9 A.M. – 6:00 P.M. ★ *Worklife Institute* ★ C. Dale and Elizabeth F. Burleigh ★ For more information call 713-266-2456, Fax: 713-266-0845 or [www.worklifeinstitute.com](http://www.worklifeinstitute.com).

**40-Hour Basic Mediation Training** ★ Houston ★ October, 21-23 continuing October 28-30, 2005 ★ *University of Houston A.A. White Dispute Resolution Center* ★ For more information contact Robyn Pietsch 713-743-2066 or [www.law.uh.edu/blakely/aawwhite](http://www.law.uh.edu/blakely/aawwhite)

**Conflict Resolution** ★ Austin ★ October 20-23, 2005 ★ *Texas Woman's University* ★ For more information call 940.898.3466 or [www.twu.edu/lifelong](http://www.twu.edu/lifelong)

**Family Mediation Training** ★ November 9-12, 2005 ★ *Worklife Institute* ★ C. Dale and Elizabeth F. Burleigh ★ For more information call 713-266-2456, Fax: 713-266-0845 or [www.worklifeinstitute.com](http://www.worklifeinstitute.com).

**Mexico Conference: Fifth National Conference and First World Conference of Mediation** ★ *Universidad de Sonora, Hermosillo, Sonora, Mexico.* ★ Conference dates: November 23-26, 2005. ★ Pre-conference events: November 3-22, 2005. Post-conference events: November 28-30, 2005. ★ For further information, visit [www.congresodemediacion.org](http://www.congresodemediacion.org) or contact Walter A. Wright at [ww05@txstate.edu](mailto:ww05@txstate.edu).

**Workplace Conflict Resolution Training** ★ Houston ★ December 7-9, 2005 ★ *Worklife Institute* ★ For more information call 713-266-2456, Fax: 713-266-0845 or [www.worklifeinstitute.com](http://www.worklifeinstitute.com).

**Mediator Ethics** ★ Houston ★ December 17, 2005; 3 hours ★ *Worklife Institute* ★ C. Dale and Elizabeth F. Burleigh ★ For more information call 713-266-2456, Fax: 713-266-0845 or [www.worklifeinstitute.com](http://www.worklifeinstitute.com).

## 2006

**Basic 40-Hour Mediation Training** ★ Austin ★ January 25-29, 2006 ★ ★ *Texas Woman's University* ★ For more information call 940.898.3466 or [www.twu.edu/lifelong](http://www.twu.edu/lifelong)

**Negotiation Workshop** ★ Austin ★ March 23-26, 2006 ★ ★ *Texas Woman's University* ★ For more information call 940.898.3466 or [www.twu.edu/lifelong](http://www.twu.edu/lifelong)

**Basic 40-Hour Mediation Training** ★ Houston ★ February, 9-11 continuing 16-18, 2006 – 2 Thursdays: 4:30 P.M. – 8:30 P.M., 2 Fridays and Saturdays: 9 A.M. – 6:00 P.M.; *Worklife Institute* ★ Trainers: Diana C. Dale and Elizabeth F. Burleigh ★ For more information call 713-266-2456, Fax: 713-266-0845 or [www.worklifeinstitute.com](http://www.worklifeinstitute.com).

**Basic 40-Hour Mediation Training** ★ Houston ★ April 20-22 continuing 27-29, 2006 – 2 Thursdays: 4:30 P.M. – 8:30 P.M., 2 Fridays and Saturdays: 9 A.M. – 6:00 P.M.; *Worklife Institute* ★ Trainers: Diana C. Dale and Elizabeth F. Burleigh ★ For more information call 713-266-2456, Fax: 713-266-0845 or [www.worklifeinstitute.com](http://www.worklifeinstitute.com).

# *ADR Section Calendar*

**2006**

*As a member of the ADR Section, you are always cordially invited to attend any of the quarterly Council meetings. We ask that as many members as can try to attend the annual meeting each year that is held in conjunction with the State Bar Annual Meeting. Next year, it will be in Austin. Please note our calendar:*

## **Council Meetings**

**October 29, 2005**

9:00 a.m.—3:00 p.m. South Texas College of Law—Houston

**January 7, 2006**

10:00 a.m.—3:00 p.m. Texas Law Center—Austin

**April 8, 2006**

10:00 a.m.—3:00 p.m. Location to be Determined—Houston

**June 16, 2006**

2:30 p.m.—4:30 p.m. State Bar Annual Meeting—Austin

## **General ADR Section Meeting**

**June 16, 2006**

10:00 a.m.—2:00 p.m. State Bar Annual Meeting—Austin

# **MAKE PLANS TO ATTEND THE FALL 2005 CLE PROGRAM IN HOUSTON!**

The ADR Section of the State Bar of Texas and the Frank Evans Center for Conflict Resolution are sponsoring "The Cutting Edge in ADR," a one-day seminar at the South Texas College of Law in Houston, on October 28, 2005. It is the best ADR continuing education bargain of the year at \$175.00. This year's program will emphasize cutting-edge techniques, tools, and skills for ADR professionals. In addition to new case and legislative updates in the areas of mediation, arbitration, and collaborative law, there will be concurrent sessions on the ADR Section's new "Best Practices for Consumer Arbitration," "How Collaborative Law Actually Works," and "Advanced Mediation Techniques" for you to choose from. New this year are panel discussions on the "Impact of ADR on the Practice of Law" and "Best Values in the ADR Process." Additionally, there will be an interactive session with the audience on "Comparative Approaches to Mediation: Facilitative vs. Evaluative vs. Transformative Styles." At lunch, Judge Frank Evans will discuss "Cross-Cultural Conflict Resolution—Locally and Globally." The entire program is loaded with ethics, including the return of the popular "Ethical Puzzlers." The "Cutting Edge" seminar is a must-attend event this fall to hone your ADR skills and develop new tools for your ADR toolbox. Join us in Houston on October 28 for "Flashes of Brilliance (or Possibly Insanity) in ADR."



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# ENCOURAGE COLLEAGUES TO JOIN ADR SECTION

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

## BENEFITS OF MEMBERSHIP

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

the State.

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

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

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

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

## STATE BAR OF TEXAS ALTERNATIVE DISPUTE RESOLUTION SECTION MEMBERSHIP APPLICATION

### MAIL APPLICATION TO:

*Cecilia H. Morgan, State Bar of Texas ADR Section* TREASURER  
c/o JAMS  
8401 N. Central Expressway, Suite 610  
Dallas, TX 75225  
214-739-1979 - 214.744.5267 (JAMS)  
214.739.1981 FAX  
[cmorgan320@sbcglobal.net](mailto:cmorgan320@sbcglobal.net)

I am enclosing \$25.00 for membership in the **Alternative Dispute Resolution Section** of the State Bar of Texas from June 2005 to June 2006. The membership includes subscription to *Alternative Resolutions*, the Section's Newsletter. (If you are paying your section dues at the same time you pay your other fees as a member of the State Bar of Texas, you need **not** return this form.) Please make check payable to: ADR Section, State Bar of Texas.

Name \_\_\_\_\_ Public Member \_\_\_\_\_ Attorney \_\_\_\_\_

Address \_\_\_\_\_ Bar Card Number \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Business Telephone \_\_\_\_\_ Fax \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

2005-2006 Section Committee Choice \_\_\_\_\_

# ALTERNATIVE RESOLUTIONS

## Publication Policies

### Requirements for Articles

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

### Selection of Article

1. The newsletter editor reserves the right to accept or reject articles for publication.
2. In the event of a decision not to publish, materials received will not be returned.

### Preparation for Publishing

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

### Future Publishing Right

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

# ALTERNATIVE RESOLUTIONS

## Policy for Listing of Training Programs

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

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

a. That the provider of the training has or has not applied to the State Bar of Texas for MCLE credit approval for \_\_\_ hours of training, and that the application, if made, has been granted for \_\_\_ hours or denied by the State Bar, or is pending approval by the State Bar. The State Bar of Texas website address is [www.texasbar.com](http://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](http://www.TMTR.ORG). The Roundtable may be contacted by contacting Cindy Bloodsworth at [cebworth@co.jefferson.tx.us](mailto:cebworth@co.jefferson.tx.us) and Laura Otey at [lotey@austin.rr.com](mailto:lotey@austin.rr.com).

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](http://www.TXMCA.org). The Association may be contacted by contacting

any one of the TXMCA Roster of Representatives listed under the "Contact Us" link on the TXMCA website.

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 verify 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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