ALTERNATIVE RESOLUTIONS

STATE BAR OF TEXAS
ALTERNATIVE DISPUTE RESOLUTION SECTION

Vol. 22, No. 4
Summer 2013

CHAIR'S CORNER
By Ronald Hornberger, Chair, ADR Section

On June 20, 2013, the most amazing thing happened: the gavel of chair of your State Bar of Texas Alternate Dispute Resolution Section, passed into my hands. There is no group of more intelligent, more passionate and dedicated professionals. For me, the last several years of serving on the ADR Section Council, has been one of the most exhilarating experiences imaginable, almost surreal, as I have learned from and observed dedicated and driven men and women with a zealous desire to develop further the goal of nurturing the fields of arbitration and mediation along a pathway to full recognition among the many facets that combine and coalesce into what makes our legal profession a challenging and fulfilling pursuit.

To those many wonderful people, who through the year, have served this Section and molded it into the home of such admirable pursuits, who have defined its foundations and its principals, who have built this most marvelous of professions within our profession, and who have assured its success and its future, those of us who have wandered by and been captivated by its goals and its promise and by its ever growing contribution to civilized society, and by them have been drawn into its pursuits, offer our gratitude. To those of us, whether novice or seasoned professional, who have found our way here, whether by happenstance, as in my case, or by design or good fortune, may we honor our trainers and our masters by furthering their dreams of discovering and implementing alternative pathways to dispute resolution.

Fortunately, for me, our Section Council from its beginnings has been filled with honest, giving and caring members and leaders, and the current Council is filled with worthy role models who will work for the Section's success in the future. I know that they join me in inviting all members of our Section to become involved, to contribute and to enjoy the never ending pursuit of becoming better mediators and arbitrators.

Our committees include: Annual CLE Program, Annual Meeting, By-Laws, Communications, Evans Award, International Dispute Resolution, and the relatively new Purpose Committee, to name a few. Our new Council Officers are Ronald Hornberger, Chair, Don Philbin, Chair Elect, Judge Linda Thomas (Ret'd), Treasurer, and Eric Birch, Secretary, and, of course, Alvin Zimmerman, Immediate Past Chair.

If you have any interest in contributing, contact me or one of the Council members or officers.

If you love to write about mediation or arbitration topics, contact Stephen Huber at The University of Houston (shuber@central.uh.edu), as he always is searching for valuable content for our Section's Newsletter. One of our goals is to develop an archive of our Newsletters as a resource on the Section's website.

Don Philbin, Communications Committee Chair, and I urge all to pay a visit to our Section's website and to pass along your comments, constructive criticisms, and suggestions for its improvement. This website, as with any good one, is a work in progress and our goal is that it continue to be improved into a more robust repository of tools, information and content for the membership.

Inside This Issue:

A number of years ago this Section produced a reference: a "Handbook" of Arbitration and Mediation in Texas. To all who are fortunate enough to have a copy, it is a prized possession. I know whereof I speak, for I have, at least, seen one. Last year, our immediate past Chairman, Alvin Zimmerman, pressed an idea that had been fermenting – the development of a new, revised and updated volume. Judge Linda Thomas (Ret'd) mediator, arbitrator and teacher, among many other pursuits, agreed to lead the effort and, this year, thankfully, she is continuing that task. If you are interested and feel you can contribute, I urge you to contact her. This is purely selfish on my part, because I can't wait to see it published and to purchase my very own copy!

Our Section presents two exciting continuing legal education programs every year. The first will be on January 17, 2014 at the Hilton Park Cities Hotel in Dallas. The course director for this annual ADR CLE program is (by design and not by coincidence) Judge Thomas. As of the drafting of this article, this program is developing into what should be another invaluable experience. Our second CLE program each year is presented at the SBOT Annual Convention. The next convention will be in June 2014 in Austin. Director for that program will be Don Philbin who already has begun work to create another in a long string of outstanding annual meeting programs to be presented on June 26, 2014.

In closing, thanks to every member of this Section for making it fun, exciting, fulfilling, and valuable. The goal for all of us this year, should be: to get involved and to contribute; the opportunities for doing so within our Section are endless.

Ronald Hornberger is a shareholder in Plunkett & Gibson in San Antonio. His practice focuses on bankruptcy, business and commercial matters. Ronnie has been a member of the ADR Section Council since 2008 and served as Secretary prior to being elected as Chair. He frequently serves as a mediator or arbitrator.

SWAN SONG FOM THE PAST CHAIR

Alvin Zimmerman*

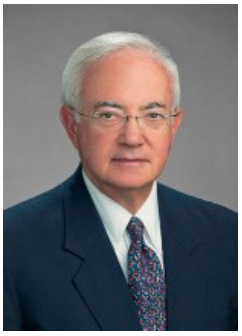
I want to express my appreciation to all prior ADR Council members for permitting me to advance to Chair of this wonderful part of the State Bar of Texas. To those Council members and officers who have served with me this year, thank you for your excellent service and spirited discussions we have had to further the mission of our Section. As I become past chair, I am confident in the new leadership our members have elected. We are a very strong section--over 1100 members with a treasury that will support our activities.

I am appreciative of the new initiatives that our Council has initiated for the coming year--a new Texas Law ADR Handbook. This will be the first revision of a previously very successful publication our Section created about ten years ago. The Council believed as it voted in favor of renewing this project that there had been so many changes in the advancement of ADR in the interim, that our membership and the Bar, and public in general, would benefit from this publication. We are fortunate that Justice Linda Thomas will chair this project and many members of the Council have volunteered to be a part of this important project.

I continue to be amazed and appreciative of the scholarly and wonderful work that Professor Stephen Huber and Wendy Huber perform in their role as co-editors of the ADR Newsletter. Much work goes into this effort quarterly, and I so appreciate, on behalf of the Council and the Bar, their selfless efforts and wish to express our collective whole-hearted appreciation to this dynamic duo.

In closing permit me to invite each of you to consider to volunteering to be a part of the ADR Council or any other Bar related activity, whether at the state or local level or your local dispute resolution center. My service through the years has been a self enriching experience for me and has permitted me to meet many dedicated professional who have a similar view of public service which I believe is so important for our profession to endure.

Also this letter would be very incomplete not to express my absolute blow-me-away thanks to a most incredible, energetic staff of the State Bar of Texas. We are very fortunate to have Tracy Nuckols and all of the staff that work so closely with her having this never-say-no attitude and accomplishing all of the matters we need to do timely, within budget and with a smile. So as my term has drawn to a close, I thank each of you who have made this journey so worth while and personally rewarding. A wise sage once said, the "the task is great, the days are short" so we must act when we can, volunteer as we may, and do the best job while we are about our work. May all of us continue to move from strength to strenght.



FROM THE EDITORS

Steve Huber & Wendy Huber

With this issue of Alternative Resolutions, your editors begin their 5th year in that capacity. Time flies when you are having fun. Walter Wright, our predecessor as the editor of Alternative Resolutions, offered us assistance during the transition that far exceeded the call of duty. Robyn Pietsch, our long time friend and colleague, was already the Executive Editor before we undertook these editorial responsibilities, and without her both the quality and timeliness of Alternative Resolutions would suffer greatly.

A complete collection of the back issues of Alternative Resolutions is being compiled by HeinOnline, pursuant to an agreement with the State Bar of Texas. Missing are the issues listed below – any assistance would be appreciated.

Notice:

Please advise the editors if you have any of the following issues of the ADR Newsletter to complete our permanent library:

Vol. 2 #1

Vol. 3 #1

Vol. 6 #1-2

Vol. 8 #1-3

Send responses and copies to :

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REPORT ON 2013 STATE BAR MEETING

On June 20, 2013, in Dallas, your Section conducted its Annual Meeting and presented its annual Continuing Legal Education program as part of the State Bar's Annual Convention. The CLE program was so delicious that it is tempting to short change the Meeting itself in this tome.

The annual meeting of the Section membership was conducted beginning at 10:00 a.m. on June 20th during the Thursday activities of the Convention. The Chair of the Section, Alvin Zimmerman, called the meeting to order and gave the Treasurer's report for Treasurer, Don Philbin, who had to honor a teaching commitment at Pepperdine. According to that report the Section remains on a strong financial footing as it goes into the new fiscal 2013-14 year.

The next order of business on the Agenda was the nominations of council members to fill expiring positions and of new Council officers. The results of those actions are as follows:

Officers for 2013-2014

Chair – Ronald Hornberger, San Antonio

Chair Elect – Don Philbin, San Antonio

Treasurer – Judge Linda Thomas (Ret'd). Dallas

Secretary – Erich Birch, Austin

Past Chair – Alvin Zimmerman, Houston

Council Members – Terms Expiring June 2014

Robert C. Prather, Sr., Dallas

Susan Soussan, Houston

John Specia, San Antonio

Brian White, Austin

Council Members – Terms Expiring June 2015

David Calvillo, McAllen

Melinda Jayson, Dallas

Linda McLain, Navasota

Gene Roberts, Huntsville

Council Members – Terms Expiring June 2016

Charles Joplin, Lubbock

Hunter McLean, Fort Worth

Michael O'Reilly, Corpus Christi

Lionel Schooler, Houston

Following these elections, Chairman Zimmerman made the announcement of the Section's Annual Frank Evans award, and presented the award to Mike Amis of Dallas. Mike is an icon among those who have served the causes of mediation and arbitration and who has served and represented this Section well. Mike is a deserving recipient and a model for us all.

Finally, the Amendment to the By-Laws was presented and approved. Pursuant to these amendments, Section 1 is amended to provide that membership in the Section is open to any member in good standing of the State Bar of Texas. The amendment as passed reads as follows:

Article II, Section 1. Membership will be amended to read as follows:

1.1. General. The membership of this section

will be open to any member in good standing of the State Bar of Texas. To continue as a member of the section, the member must timely pay dues for the current bar year. To promote the section and enroll new members, the ADR Section Council may, on an annual basis, exempt particular classes of members of the State Bar of Texas (e.g., new inductees) from the obligation of paying dues.

1.2 Voting Rights. Pursuant to the policies of the Board of Directors of the State Bar of Texas, only section members who are members in good standing of the State Bar of Texas shall have the right to vote on section matters.

The Annual Meeting of the Section then was adjourned.

At the immediately following Council Meeting, Chairman Zimmerman passed the Gavel to Ronald Hornberger as incoming Chair of the Section. With the meetings concluded, the CLE program began after lunch.

Again this year, the ADR Section co-sponsored the CLE program with the Litigation Section. More than 160 people attended and there was, as last year, standing room only.

The first speaker was John DeGroote of Dallas, Texas whose presentation was Negotiating Case Value Decision Trees in Mediation and Settlement Negotiation. Mr. DeGoote has extensively written on this subject of effectively utilizing his decision- tree methodology in determining the best settlement strategy.

Our other two speakers were introduced by Talmage Boston (Dallas, Texas) who was a great facilitator of a stimulating conversation about Judging Lincoln as a Judge with our distinguished speakers: Frank J. Williams, and Guy C. Fraker. Justice Williams, is a former retired as the Chief Justice of the Supreme Court of Rhode Island. He is the founding chair of the Abraham Lincoln Bicentennial Foundation, and author of more than a dozen books about Lincoln.

Justice Williams reminded us that Lincoln was a great believer in the foundational virtues of our "American Society." With insight and a knowledge of Lincoln honed by years of study, we were reminded that Lincoln, while a skilled and admired trial lawyer, also was a masterful leader who developed early the talent for converting adversaries into allies. This talent served him well along his pathway to the Presidency.

We were then treated to a follow on lecture by Mr. Fraker, an attorney from Bloomington, Illinois who served as the consultant on PBS's award winning documentary "Lincoln, Prelude to the Presidency." He reminded us that Lincoln was an incredibly active trial lawyer, handling more than 5,000 cases in his career and that, in doing so, he travelled the 14 county Eighth Judicial Circuit in Illinois each Spring and Autumn.

Lincoln was a great trial lawyer and was well known during his career as a trial lawyer was also noted for his efforts to mediate cases. At the time Lincoln was believed to have tried more cases then any other attorney in Illinois.

Along the way Lincoln made many friendships that coalesced into a team that crafted and carried out a strategy that led Lincoln successfully to the Republican Party presidential nomination at the Chicago Convention in 1860. Indeed, securing the convention location for Chicago was the first grand step in the winning strategy. Truly, his time "riding the circuit" was an integral part of Lincoln's successful strategy

Indeed, securing the convention location for Chicago was the first grand step in the winning strategy. Truly, his time "riding the circuit" was an integral part of Lincoln's successful strategy

In short, the ADR Section's CLE program at the State Bar Annual Convention presented those of us in attendance with a "master class" on Abraham Lincoln as leader, lawyer and as a believer in alternate dispute resolution. Of the more than 5,000 cases handled by Lincoln, only about 1,000 are thought actually to have gone to trial. Think about it!

STATE BAR OF TEXAS ALTRNATIVE DISPUTE RESOLUTION SECTION ANNUAL CLE

STATE BAR OF TEXAS ALTRNATIVE DISPUTE RESOLUTION SECTION ANNUAL CLE

LEGISLATIVE UPDATE: ARBITRATION

John K. Boyce, III

This was the quietist session for arbitration bills in the last five.

Your Council, in conjunction with the Texas Arbitration Council, funds the cost of a lobbyist, Richard Evans, to track bills in the legislature affecting arbitration. The Texas Arbitration Council is composed of arbitration practitioners. The Council's experience indicated that we needed an organized, deliberate effort to deal with legislative issues.

In the past, we were blindsided as bills arose, and we simply scrambled or reacted without focus: hence the need for a lobbyist. As per State Bar guidelines, the ADR Section does NOT advocate for or against any particular piece of legislation. We serve as a resource to educate legislators and their staffs on arbitration through conferences, written pieces, and testimony.

We have observed a woeful lack of understanding on the subject and hope to bridge the gap. We accomplish our goal by building relationships and having a presence in Austin. Hopefully, when bills do come up affecting arbitration we will be contacted first for our input. In fact, we feel that our influence and integrity are enhanced if we don't advocate legislation.

The search feature of the Texas Legislature Online allowed to us to follow some 27 bills introduced in the Legislature wherein was found the broad terms "arbitration" or "dispute resolution". We are particularly interested for those bills which amend the Texas General Arbitration Act. There were none in this session. Of the ones filed, few made any general substantive impact on arbitration.

Some promoted its use in narrow contexts -- for example, H.B. 33 (arbitration in disputes between Department of Aging and Disability Services and assisted living facilities) and H.B. 585 (arbitration of appeals of appraisal review boards). Some related to arcane administrative proceedings before arbitration panels- for example, S.B. 355 (Title IV-D agency disputes) and H.B. 3196 (arbitration requirement for health facilities and Department of Health and Human Services.) It all these cases, there was no challenge to the arbitration process, itself; if anything they promoted its use.

Several interesting bills related to the use of "foreign" law which "violated the Constitution" in a court or arbitration proceeding - ex. H.B. 33 and 750; S.B. 285. Again there was no challenge to the arbitral process, itself. The author speculates that they are following the trend of anti-"Sharia" law legislation seen elsewhere in the country. None passed.

We followed more closely three bills of interest: H.B. 1407 (Smithee) would have required binding arbitration in property damage disputes between third parties and insurance companies, and HB 1408 (Smithee) contemplated arbitration in certain insurance disputes. On the other hand, H.B. 2956 (Smithee) would have prohibited arbitration between HMO's and enrollees. All related to amendments to the Texas Insurance Code, not the Texas General Arbitration Act. None ever got out of committee.

We used the breathing room of this session to reach out legislators and staff through informal meetings and accomplished our goal of being recognized and trusted as a first resource in matters affecting arbitration. This is no time to rest, however, and we must think ahead to the 2015 session.

In the next several months, we plan to publish and circulate a one page glossy information sheet on the advantages of arbitration and, as we did during the

session, meet with members of the house and senate committees with jurisdiction over arbitration. During the interim we can be even more effective than during the session because legislators and staff have more time to give serious attention to our issues without the exigencies of the legislative crunch.

We believe we have served you well and appreciate the confidence you have reposed in us. You can be assured that we are vigilant in insuring that arbitration remains an effective tool for dispute resolution in Texas.

Experienced in both arbitration and mediation, ***John*** has been conducting arbitrations for the last twenty years. He is Fellow of the College of Commercial Arbitrators. Among other panels, he serves on the panels of the American Arbitration Association (Large, Complex Case), as a Distinguished Neutral for the CPR Institute (Banking, Accounting and Financial Services specialized panel), and a panelist for the American Health Lawyers Association. He chairs the Texas Arbitration Council and is a past chair of the State Bar ADR Section. He is member of the Association of Attorney-Mediators. He is a graduate of the University of Texas School of Law.

TX Assn. of Community Schools
Bill Status Report
03-18-2013 - 17:46:16

A - Action in the date range R - Link to Related Information ( ) - Priority

TL Texas Arbitration Council

HB 33 Menendez, Jose(D)

Relating to alternative methods of dispute resolution in certain disputes between the Department of Aging and Disability Services and an assisted living facility licensed by the department.

General Remarks: Includes arbitration as a election for disputes. Send to TAC for comments on process

Bill History: 03-05-13 H Committee action pending House Human Services

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HB 288 Zedler, Bill(R)

Relating to the application of foreign and international laws and doctrines in this state and requiring a court of this state to uphold and apply certain laws.

General Remarks: Get background, but likely not moving

Bill History: 02-11-13 H Introduced and referred to committee on House Judiciary and Civil Jurisprudence

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HB 585 Villarreal, Mike(D)

Relating to procedural requirements under the Property Tax Code.

General Remarks: Monitor but no changes of concern

Bill History: 03-18-13 H Meeting set for 2:00 p.m.. E2.014 House Ways and Means

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HB 586 Workman, Paul(R)

Relating to the waiver of sovereign immunity for certain claims arising under written contracts with state agencies.

Companions: SB 296 Deuell, Bob (Identical)
2- 5-13 S Introduced and referred to committee on Senate State Affairs

General Remarks: No issues of concern

Bill History: 02-20-13 H Introduced and referred to committee on House Judiciary and Civil Jurisprudence

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HB 837 Eiland, Craig(D)

Relating to credit to certain ceding insurers for reinsurance ceded to certain certified assuming insurers.

Companions: SB 1622 Duncan, Robert (Identical)
3- 8-13 S Filed

General Remarks: No concerns

Bill History: 02-18-13 H Introduced and referred to committee on House Insurance

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HB 1031 Lewis, Tryon(R) Relating to the confidentiality of certain communications involving an ombudsman program established by an employer as an alternative dispute resolution service.

Companions: SB 399 Hancock, Kelly (Identical)
3-12-13 S Committee action pending Senate Business and Commerce

General Remarks: ADR through ombudsman, no issues of concern

Bill History: 03-14-13 H Reported from committee as substituted House Judiciary and Civil Jurisprudence

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HB 1239 Giddings, Helen(D) Relating to fees charged by certain entities administering alternative dispute resolution systems for counties.

Companions: SB 719 West, Royce (Identical)
2-25-13 S Introduced and referred to committee on Senate Jurisprudence

General Remarks: ADR centers, no issues of concern

Bill History: 02-25-13 H Introduced and referred to committee on House Judiciary and Civil Jurisprudence

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HB 1407 Smithee, John(R) Relating to third-party property damage claims under private passenger automobile insurance policies.

Bill History: 02-26-13 H Introduced and referred to committee on House Insurance

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HB 1408 Smithee, John(R) Relating to dispute resolution for certain claims arising under insurance policies issued by the Fair Access to Insurance Requirements (FAIR) Plan Association.

General Remarks: Have TAC review process in bill for potential suggestions

Bill History: 02-26-13 H Introduced and referred to committee on House Insurance

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HB 1512 Lewis, Tryon(R) Relating to referral of disputes for alternative dispute resolution, including victim-directed referrals.

Companions: SB 1237 Schwertner, Charles (Identical)
3-13-13 S Introduced and referred to committee on Senate Jurisprudence

Specific Remarks: No issues of concern

General Remarks: No issues of concern

Bill History: 02-25-13 H Introduced and referred to committee on House Judiciary and Civil Jurisprudence

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HB 1595 Miller, Doug(R) Relating to the regulation of and disclosures regarding consumer lawsuit lending transactions.

Companions: SB 927 Huffman, Joan (Identical)
3-12-13 S Introduced and referred to committee on Senate State Affairs

General Remarks: Consumer lending disputes, no issues of concern

Bill History: 03-18-13 H Meeting set for 2:00 p.m. or adj., E2.012 House Judiciary and Civil Jurisprudence

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HB 1661 Thompson, Senfronia(D)

Relating to child custody evaluations and adoption evaluations conducted and testimony provided in certain suits affecting the parent-child relationship.

Companions: SB 1245 West, Royce (Identical)
3-13-13 S Introduced and referred to committee on Senate Jurisprudence

General Remarks: Adoption disputes, no issues of concern

Bill History: 03-04-13 H Introduced and referred to committee on House Judiciary and Civil Jurisprudence

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HB 2057 Allen, Alma(D)

Relating to alternative dispute resolution methods regarding educational services for students with disabilities, including individualized education program facilitation.

Companions: SB 542 Watson, Kirk (Identical)
2-20-13 S Introduced and referred to committee on Senate Education

General Remarks: Education disputes, no issues. Remove from list

Bill History: 03-05-13 H Introduced and referred to committee on House Public Education

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HB 2192 Murphy, Jim(R)

Relating to binding arbitration of an appraisal review board order determining a protest of an unequal appraisal of the owner's property.

Companions: SB 1255 Patrick, Dan (Identical)
3-18-13 S Sent to subcommittee Senate Finance

General Remarks: Appraisal disputes, have TAC review

Bill History: 03-11-13 H Introduced and referred to committee on House Ways and Means

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HB 2925 Sheets, Kenneth(R)

Relating to alternative dispute resolution of certain insurance payment disputes with chiropractors.

General Remarks: Remove from list, not ADR related

Bill History: 03-07-13 H Filed

HB 2956 Smithee, John(R)

Relating to certain binding arbitration provisions in certain insurance and health benefit plan coverage documents.

Specific Remarks: TAC needs to review

Bill History: 03-07-13 H Filed

HB 3193 Otto, John(R)

Relating to certain appeals through binding arbitration of appraisal review board orders.

Companions: SB 1662 Eltife, Kevin (Identical)
3- 8-13 S Filed

Specific Remarks: No issues of concern

Bill History: 03-07-13 H Filed

HB 3196 Price, Four(R) Relating to licensing, certification, and arbitration requirements for certain health facilities and to the allocation of Medicaid beds in those facilities.

Specific Remarks: No change to current law.

Bill History: 03-07-13 H Filed

HB 3444 Otto, John(R) Relating to eligibility to serve as an arbitrator in a binding arbitration of an appeal of an appraisal review board order.

Specific Remarks: Have TAC review but should be okay. Conflict of interest issue.

Bill History: 03-08-13 H Filed

HB 3790 Perry, Charles(R) Relating to creation of the Judicial Branch Certification Commission and the consolidation of judicial profession regulation.

Companions: SB 966 West, Royce (Identical)
3-19-13 S Meeting set for 1:30 p.m. or adj., 2E.20, Senate Jurisprudence

Specific Remarks: Get background from Perry

Bill History: 03-08-13 H Filed

SB 296 Deuell, Bob(R) Relating to the waiver of sovereign immunity for certain claims arising under written contracts with state agencies.

Companions: HB 586 Workman, Paul (Identical)
2-20-13 H Introduced and referred to committee on House Judiciary and Civil Jurisprudence

Bill History: 02-05-13 S Introduced and referred to committee on Senate State Affairs

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SB 355 West, Royce(D) Relating to the powers and duties of the Title IV-D agency regarding the establishment, collection, and enforcement of child support and in connection with an application for a marriage license or protective order.

Specific Remarks: No issue of concern

Bill History: 03-14-13 H Received in the House - Not referred

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SB 542 Watson, Kirk(D) Relating to alternative dispute resolution methods regarding educational services for students with disabilities, including individualized education program facilitation.

Companions: HB 2057 Allen, Alma (Identical)
3- 5-13 H Introduced and referred to committee on House Public Education

Specific Remarks: Education disputes, no issues. Remove from list

Bill History: 02-20-13 S Introduced and referred to committee on Senate Education

SB 719	West, Royce(D)	Relating to fees charged by certain entities administering alternative dispute resolution systems for counties.

Companions: HB 1239 Giddings, Helen (Identical)
2-25-13 H Introduced and referred to committee on House Judiciary and Civil Jurisprudence

Specific Remarks: ADR centers, no issues of concern

Bill History: 02-25-13 S Introduced and referred to committee on Senate Jurisprudence

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SB 927	Huffman, Joan(R)	Relating to the regulation of and disclosures regarding consumer lawsuit lending transactions.

Companions: HB 1595 Miller, Doug (Identical)
3-18-13 H Meeting set for 2:00 p.m. or adj., E2.012, House Judiciary and Civil Jurisprudence

Specific Remarks: Consumer lending disputes, no issues of concern

Bill History: 03-12-13 S Introduced and referred to committee on Senate State Affairs

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SB 966	West, Royce(D)	Relating to creation of the Judicial Branch Certification Commission and the consolidation of judicial profession regulation.

Companions: HB 3790 Perry, Charles (Identical)
3- 8-13 H Filed

Specific Remarks: Get background

Bill History: 03-19-13 S Meeting set for 1:30 p.m. or adj., 2E.20 Senate Jurisprudence

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SB 1237	Schwertner, Charles(R)	Relating to referral of disputes for alternative dispute resolution, including victim-directed referrals.

Companions: HB 1512 Lewis, Tryon (Identical)
2-25-13 H Introduced and referred to committee on House Judiciary and Civil Jurisprudence

Specific Remarks: No issues of concern

Bill History: 03-13-13 S Introduced and referred to committee on Senate Jurisprudence

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SB 1245	West, Royce(D)	Relating to child custody evaluations and adoption evaluations conducted and testimony provided in certain suits affecting the parent-child relationship.

Companions: HB 1661 Thompson, Senfronia (Identical)
3- 4-13 H Introduced and referred to committee on House Judiciary and Civil Jurisprudence

Specific Remarks: Adoption disputes, no issues of concern

Bill History: 03-13-13 S Introduced and referred to committee on Senate Jurisprudence

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SB 1662	Eltife, Kevin(R)	Relating to certain appeals through binding arbitration of appraisal review board orders.

Companions: HB 3193 Otto, John (Identical)
3- 7-13 H Filed

Specific Remarks: No issues of concern.

Bill History: 03-08-13 S Filed

SB 1759 Uresti, Carlos(D) Relating to the procedures for the appointment of and the duties of attorneys ad litem in certain suits affecting the parent-child relationship.

Specific Remarks: No change to current law.

Bill History: 03-08-13 S Filed

- End of Report -

LEGISLATIVE UPDATE: MEDIATION

William H. Lemons*

The 2013 legislative session was a relatively active one for mediation bills, following a period of inactivity over the past several sessions. Of course, much of the activity of the ADR Section, the Association of Attorney-Mediators ("AAM") and the Texas Attorney-Mediators Coalition ("TAMC") was devoted to proposed TRCP 169, which pertains to mediation in the context of expedited civil actions. As per State Bar guidelines, the ADR Section does NOT advocate for or against any particular piece of legislation. We serve as a resource to educate legislators and their staffs on mediation through conferences, written pieces, and testimony.

AAM and TAMC, whose members are for the most part also members of the ADR Section, combined to present an organized, deliberate effort to deal with legislative issues. We followed twenty-eight bills that potentially affected ADR generally, and affected mediation particularly. Of these bills, eight passed and were submitted to the Governor for signature. All became law either by his action or inaction. We will describe these new bills below.

H.B. 33, introduced by Representative José Menéndez (D-San Antonio), is an act relating to alternative methods of dispute resolution in certain disputes between the Department of Aging and Disability Services and an assisted living facility licensed by the department. H.B. 33 was a refinement of what in the last session was introduced as H.B. 2041. This bill directs the Health and Human Services Commission to establish by rule an informal dispute resolution process (including both mediation and arbitration) to address disputes between a facility and the department as a result of a survey review conducted by the department.

H.B. 2080 (companion S.B. 647), introduced by Senator Rodriguez (D-El Paso), amends Chapter 1055 of the TEXAS ESTATES CODE to authorize the court to refer a contested guardianship proceeding to mediation on the court's own motion or pursuant to a written agreement of the parties. The bill also provides that if certain technical requirements are met, and mediated settlement agreement shall be binding on the parties and a party is entitled to judgment on it.

S.B. 1237, introduced by Senator Schwertner (R-Georgetown), amends Chapter 152 of the TEXAS CIVIL PRACTICES AND REMEDIES CODE to allow the judge, on motion of a party, the attorney representing the state or on the court's own motion, to refer a criminal case to a dispute resolution system that exists in that county. The entity that provides the dispute resolution service may collect a fee not to exceed $350.

H.B. 2978, signed by the governor on June 14, 2013, provides that the court may conduct a hearing to determine whether to order mediation upon an application for an expedited foreclosure proceeding having been filed. This bill addresses the process for ordering mediation, the impact of a party not attending mediation, and the fee for the mediation. Importantly, the bill also provides that the supreme court may not adopt rules in conflict with these procedures. H.B. 2978 started out as S.B. 1202, sponsored by Senator Royce West. AAM and TAMC actively supported this bill, which got sidetracked in the waning days of the session. Fortunately, Senator West was able to attach these favorable provisions on H.B. 2978, and it passed. For these reasons, TAMC honored Senator West as "Legislator of the Year" and district judge Hoffman of Dallas as "Trial Judge of the Year."

H.B. 1692, introduced by Representative Gutierrez (D-San Antonio), is an act regulating motor vehicle

dealers, manufacturers and distributors. Among other things, it provides a method for holding hearings of a contested matter before a hearing examiner who is an administrative law judge. The parties to a contested case under this chapter or Chapter 503, TRANSPORTATION CODE, other than a contested case in an action brought by the department for enforcement, must participate in mediation as provided by board rule before the parties may have a hearing in the case.

S.B. 200, introduced by Senators Nichols (R-Jacksonville) and Patrick (R-Houston), relating to the continuation and functions of the State Pension Review Board, amends Chapter 801 of the GOVERNMENT CODE to require that the Board develop and implement a policy encouraging the use of appropriate alternative dispute resolution procedures to assist in the resolution of internal and external disputes under the board's jurisdiction. These procedures must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies. The Board shall also provide training as needed to implement the procedures for alternative dispute resolution and collect data concerning the effectiveness of those procedures.

S.B. 211, introduced by Senator Nichols (R-Jacksonville), relates to the role of the Texas Facilities Commission as it provides facilities maintenance services as specified in the bill. Similar to S.B. 200, the commission is directed to develop and implement a policy to encourage the use of appropriate alternative dispute resolution procedures, to provide training as needed to implement those procedures and to and to collect data concerning the effectiveness of those procedures.

S.B. 542, introduced by Senator Watson (D-Austin), relates to alternative dispute resolution methods regarding educational services for students with disabilities, including individualized education program facilitation. It provides that that *individualized education program facilitation* may serve as an alternative dispute resolution method that may be used to avoid a potential dispute between a school district and a parent of a student with a disability.

If a school district chooses to offer individualized education program facilitation as an alternative dispute resolution method, the district may determine whether to use independent contractors, district employees, or other qualified individuals as facilitators, the information provided by the district under this section must include a description of any applicable procedures for requesting the facilitation and the facilitation must be provided at no cost to a parent. The use of any alternative dispute resolution method, including individualized education program facilitation, must be voluntary on the part of the participants, and the use or availability of any such method may not in any manner be used to deny or delay the right to pursue a special education complaint, mediation, or due process hearing in accordance with federal law.

While none of the bills are particularly earth-shaking, they are important steps to take and also indicate that the Texas Legislature recognizes the benefits of mediation in many different contexts. Through this process, in addition to developing relationships with various legislators, AAM and particularly TAMC have begun and renewed conversations with others such as the Texas Association of Business, Texas Retailers Association, Texas Trial Lawyers Association, the Texas Association of Defense Counsel and TEX-ABOTA. The only way to predict the future is to invent it.

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Exploring Civil Pre-Action Requirements: Resolving Disputes Outside Courts (2012)

Tania Sourdin*

PREFACE

It is now some time since pre-action requirements in civil proceedings were adopted across the board in England and Wales. Moreover, as this Report shows, pre-action requirements have been in place in several jurisdictions and in relation to various types of claims.

At the 2006 Annual Conference of the Australian Institute of Judicial Administration (AIJA) held in Adelaide, speakers included the then Master of the Rolls, the Rt Honourable Sir Anthony Clarke, and Mr Robert Musgrove, Chief Executive, Civil Justice Council, England and Wales. In response to a question about the English experience regarding pre-action requirements, those attending were advised that pre-action protocols in the United Kingdom had had a significant impact on the number of filings, but this had led to a spike in costs, particularly for insurers. Subsequently, Mr. Musgrove advised:

> There is very little on the costs of pre-action protocols. I refer to Paul Fenn's research … but there is little else. We didn't say very much in *More Civil Justice? The Impact of the Woolf Reforms on Pre-Action Behaviour* (2002) apart from there appeared to be front-loading (not quantified) although some of this was offset against savings in other areas and more research was needed!

Peysner didn't really have anything meaningful to say in his review of case management in or around 2005. The impact of pre-action protocols on costs received some treatment subsequently in the report of Lord Justice Jackson's *Review of Civil Litigation Costs*.

There was a strong view within the AIJA that a research proposal be developed in relation to pre-action requirements that provided a description of the possibilities available and the impact that they have had on civil litigation, particularly in relation to number of filings, number of settlements at mediation and otherwise, limiting discovery, encouraging agreement on issues and agreement on matters of expert evidence.

With the establishment by Monash University of the Australian Centre for Justice Innovation (ACJI), headed by Professor Tania Sourdin, and a resolution of the AIJA Council in October 2010 that the Institute work collaboratively with the Centre, Council saw an opportunity for this research to be carried out. Professor Sourdin prepared a proposal for research approved by the AIJA Council, which is found in this important Report.

The recommendations made in the Report will be significant for all courts andtribunals adopting pre-action requirements. To some extent, what is found in this Report is a work in progress, given that such procedures are very much in their infancy, for example, in the Federal Court of Australia. At some stage, further Research may be necessary. This will be reviewed by Council from time-to-time.

Justice Mark O'Regan

AIJA President

INTRODUCTION

Pre-action protocols, obligations and schemes exist n various forms across Australia and are intended to encourage the early resolution of disputes without the need to commence proceedings in a court or tribunal. The objective of the *Pre-Action Research Project*, which has culminated in this Reort, has been to consider and explore the use and effectiveness of these types of requirements in respect of civil disputes. This project has been supported and funded by the Australian Institute of Judicial Administration (AIJA) and has been undertaken by the Australian Centre for Justice Innovation (ACJI) at Monash University.

Pre-action or pre-filing requirements exist at different points in the justice system and are related to other parts of the system (institutions, courts and judges) in different ways. They can be loosely grouped into those that are part of a scheme ('formal arrangement' processes) or those where disputants are guided by a protocol, obligations or some other requirement ('self-help' arrangements).

The 'self-help' approaches require that litigants, and often their lawyers, take steps that are largely determined by them after considering the circumstances of the dispute and the needs of the disputants. These approaches may be supported by professional ethical rules, legal services directions, model litigant or government requirements or even incorporated into industry protocols.

'Self-help' requirements may also be imposed by legislation such as the 2011 *Civil Dispute Resolution Act* Cth (CDRA), which require litigants to lodge a 'genuine steps' statement when commencing proceedings in certain types of civil proceedings in the Federal Court of Australia and the Federal Magistrates' Court of Australia. However, in some self-help arrangements, the nature and extent of steps taken by disputants may not be considered by courts and tribunals if litigation commences.

At the other end of the spectrum, pre-action requirements may be part of a formal arrangement or 'scheme', whereby conduct or good faith requirements may be in place and where Alternative Dispute Resolution (ADR) processes are attended on a mandatory or nearly mandatory basis. The ADR processes may be subsidised or free, and the scheme may have an educational and advisory component.

Lawyers may or may not attend process events (some schemes assume that self-represented disputants will be involved), and those responsible for the scheme may be required to report on processes and outcomes (see, for example, the Australian Securities and Investment Commission (ASIC) linked industry schemes).

The scheme may be set up through legislation and can be linked to government, industry or other organisations. It may also focus on a particular type of dispute or one area of disputation (for example, in family, banking, superannuation or retail lease dispute resolution).

Although a dichotomy approach can be used to describe most of these types of arrangements, it is also clear that some requirements fall between the 'self-help' approach and the 'scheme' approach. For example, some court-designed protocols fall between the two types of arrangements, as they require would-be litigants to do certain things before commencing proceedings (often to mediate and set out material that can later be used in litigation within specific time frames) and will be more clearly supervised by the court if litigation is commenced.

The variations in terms of the nature of pre-action requirements can impact on how they are perceived within the justice system. Occasionally, schemes are viewed as potentially displacing or even replicating courts, whereas 'self-help' or similar types of requirements may generate less concern.

In order to explore the use and effectiveness of these types of requirements, the methodology used in this Project enabled a research focus on each of the three types of requirements. The following three civil focus areas were chosen as representative from a sampling perspective and were explored using quantitative and qualitative research methodologies:

- The Retail Lease Scheme in Victoria;
- The requirements that operate in respect of disputes that might otherwise commence in the Northern Territory Supreme Court (through Northern Territory Supreme Court Practice Direction 6 of 2009 (PD6)); and
- General perceptions about these types of requirements and more particularly about 'self-help' or 'lighter' requirements.

The issues in respect of pre-action requirements were explored in the context of Australian and overseas literature as well as input gathered from practitioners, judges, mediators, disputants and experts.

The approach taken involved exploring issue areas and then seeking to establish what made the pre-action requirements 'effective' (if they were in fact effective). Effectiveness was defined using criteria relating to whether or not the requirements supported timely and cost-effective dispute settlement and were 'fair' (from a procedural and outcome perspective). In addition, broader issues relating to the impact of these types of requirements on the justice system, the courts and more vulnerable disputants were explored in the context of the research findings.

The findings of this Project were that, in the first two specific case study focus areas (see above), the requirements appear to work well and are effective in that disputes were resolved and the resolution and processes are mostly regarded as procedurally fair and just. The research suggested that in respect of these focus areas, these types of requirements could lead to cost and time savings even where litigation was commenced.

The findings were limited by the nature of the arrangements and the small sample size in one of the research areas (the Northern Territory Focus Area). However, in considering the use of pre-action requirements outside these focus areas, there was a significant amount of material reviewed that supported similar types of findings in respect of other areas where schemes exist.

The material gathered in this Research Project in relation to pre-action requirements suggests that they can be effective in saving time. This is partly because they can be effective in many cases in prompting settlement without litigation being commenced. The research suggests that the actual length of time taken to resolve a dispute or comply with requirements will vary considerably according to the nature of the pre-action requirements that are in place, the nature of the dispute and the characteristics of the disputants. Other factors that will be relevant relate to representation and compliance factors (explored further below).

Despite actively seeking input from practitioners about situations where these types of requirements had increased the time taken to resolve a dispute or where they had unreasonably delayed court action (where settlement did not result from the pre-action requirements), little information was forthcoming and the positive material gathered in this Project from original or secondary research material greatly outweighed any negative material about the impact of pre-action requirements.

The limited instances where the requirements appeared to have worked 'less well' were linked to the poor behaviour of the other side, that is, the other side was 'belligerent', 'difficult' or used 'delaying tactics', or where urgent relief was required (although most indicated that this had not been an issue; in schemes, this could be accommo-

dated, and where arrangements were not connected to a scheme, it did not appear that courts restricted access or that the requirements constituted an unreasonable hurdle).

More broadly, the research showed that, for pre-action requirements to 'work' no matter where they are located, there needs to be compliance with requirements and that this can be promoted by education, information (including on court and tribunal websites), sanctions and incentives as well as the establishment and use of processes to support compliance (whether or not through a scheme, a court or both). The research also showed that there must be exceptions to any ADR referral or pre-action requirement and that not all disputes should be channelled into pre-action processes or an ADR process; it is important to recognize that some disputes will always need to be litigated.

An additional research finding related to the way in which pre-action requirements are created, designed and implemented. While this was not a clear finding, the research suggested that engaging judges, practitioners and even disputants in the design of the requirements may help to promote effectiveness and compliance. 'Top-down' leadership might be required to introduce requirements, but 'bottom-up' consultation, input and engagement can be critical in supporting the successful implementation of these types of measures.

On the basis of the various methods of evaluation of processes and outcomes employed in this Project, it was clear that the quality of the processes undertaken as well as the quality and understandings of the legal representatives (where present) and their approach and advice are fundamental to the effectiveness of pre-action requirements. The research suggested that, where pre-action schemes involve the use of a facilitated process, such as ADR and mediation, the quality of those involved in the ADR work is important.

A final relevant finding was that some disputants might require more support than others within the pre-action requirement environment. Close attention needs to be paid to rules relating to legal costs as well as support arrangements for disadvantaged disputants and those who are involved in factually and/or legally complex disputes.

The Recommendations made in the Report are reproduced in the following section.

RECOMMENDATIONS

Recommendations to Support Effectiveness (Chapter Three)

Factors that impact on the effectiveness of pre-action requirements may vary according to whether or not the requirements form part of an administrative or dedicated dispute resolution scheme.

Where the pre-action requirements form part of a scheme, ongoing monitoring, quality improvement, support infrastructure and time standards may be present and more visible. These arrangements can support pre-action requirements, particularly where disputants are more likely to be self-represented or require support in terms of other advisory services.
Where the requirements are not part of an administrative or dedicated dispute resolution scheme but are linked to court or tribunal services, the following factors appear to support effectiveness:

- Conduct or Behavioural Standards – Some conduct requirements may need to be articulated in respect of the requirements, and court and practitioner input and supervision of the requirements can support understanding and compliance.

- Case Precedent – The establishment of case precedent can assist to ensure that practitioners and disputants understand their obligations. Education and training as well as web-based material directed at the judiciary, lawyers and litigants may also support understanding of, and compliance with, the requirements.

- Information, Education and Court Process Adaptation – Linking arrangements that do not fall under a separate administrative scheme with a court or tribunal system requires that court processes and interventions be adapted. Establishing effective requirements requires courts to provide information about expectations and compliance requirements and necessitates that lawyers working within courts understand that the processes can also support and relate to litigation preparation requirements.

- Relating Arrangements to Case Management Requirements – Requirements may be more effective if they are fashioned so that they form part of, and can be related to, court-based and longer-term case management strategies. The integration of the requirements can be supported by the collaborative involvement of judges and lawyers in the design of more specific requirements and where protocols are developed.

Recommendations to Support Cost Savings (Chapter Four)

Factors that impact on the cost effectiveness of pre-action requirements include the following.

Where the pre-action requirements are part of an administrative or dedicated dispute resolution scheme, it may be possible to set legal cost frameworks, set up fee waiver mechanisms and provide for low-cost ADR services for some or all disputants. These arrangements can support pre-action requirements, particularly where disputants are more likely to be self-represented or require support in terms of other advisory services.

Where the pre-action requirements are not part of an administrative or dedicated dispute resolution scheme, but are linked to court or tribunal services,

- Courts and tribunals may need to consider how cost orders are made and how cost sanctions for non-compliance with requirements can be invoked. Cost orders may need to be made promptly and at an earlier time (that is, not when the proceedings are concluded) to encourage compliance.

- Some conduct or behavioural standards may need to be articulated in respect of the requirements (for example, 'good faith' or another standard), and court and practitioner input and supervision into defining appropriate standards can support compliance and reduce costs (see also Recommendations to Support Effectiveness (Chapter Three) above).

- The establishment of case precedent can assist to ensure that practitioners and disputants understand their obligations. Principles relating to proportionality may need to be explored and established (see also Recommendations to Support Effectiveness (Chapter Three) above). It is more likely that the articulation of this material will have an impact upon the effectiveness of the requirements if it is coupled with focused education strategies and accessible information about the requirements.

Recommendations to Support the Justice System (Chapters Five and Six)

When designing pre-action requirements, consideration must be given to how the arrangements can support dispute resolution as well as litigation. Ideally, requirements should also support disputants in their decision-making and dispute planning if the matter does not resolve in the pre-action stage, at a low cost.

It may be necessary, as part of some pre-action requirements, to indicate what time frames are appropriate, and complying with appropriate time standards (subject to exceptions) may form part of articulated conduct requirements.

Pre-action requirements are not likely to be effective unless there are compliance processes in place. There needs to be a clear and early compliance process as well as internal and external reporting on compliance.

Exception categories need to be clear and well articulated. Exception cases need to be carefully managed, noted and supervised if litigation commences. There should be reporting on exception applications. Exceptions to pre-action requirements need to be closely monitored with opportunities to refer matters back to court-linked ADR and need to be the subject of internal and external court reporting.

For pre-action requirements to work effectively, there needs to be a relationship between pre-action and post-filing processes. Education and training may assist to promote better understanding and support this arrangement. In addition, articulating what is 'reasonable' through a case study process and through court precedent will assist to enhance understanding.

Recommendations to Support Ongoing Improvement and Effectiveness (Chapter Seven)

Pre-action requirements can support the objectives of the civil justice system provided they are supported by the culture, practices and obligations that exist within the system. The culture, practices and obligations framework is supported through education, information, sanctions, incentives, clear process and other requirements. The requirements are more likely to be effective if they are supported by schemes and those working within schemes (if within scheme environments) or courts and tribunals and those working within courts and tribunals (if court- and tribunal-linked). In all pre-action requirements, the following factors will assist to support effective, just and timely dispute resolution:

- Promoting high-quality processes that may operate as a result of the requirements;
- Ensuring that there is a clear range of available exemptions so that disputes can be dealt with by courts and tribunals when appropriate;
- Considering and where necessary arranging or referring disputants to advisory and support services; and
- Planning how legal advice, and if needed, representation can be supported, noting that 'just' outcomes can be achieved without legal representation in many categories of dispute. However, where disputants are disadvantaged or where the overarching statutory and legal framework is complex, legal or other support can be critical in ensuring that the requirements are 'just'

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Professor Sourdin is a member of National Alternative Dispute Resolution Advisory Council (for three terms), which advises the Commonwealth Attorney -General on ADR, and chairs the Research and Judicial Education Committees. She has led national research projects and produced important recommendations for reform. In 2007 Professor Sourdin completed work on the National Standards for Mediators project. She has experience in designing innovative and internet based courses, and has particular expertise in training and educating mediators, investigators, conciliators, tribunal members, judges, architects, lawyers and others concerning alternative dispute resolution processes.

EXCITING EXPEDITED INNOVATIONS: WHOSE NEEDS MATTER MORE?

Frank A. Elliott & Kay Elkins Elliott

On May 25, 2011, the legislature passed HB 274, which, among other things, amended Texas Government Code Section 22.004, to require that the Supreme Court of Texas adopt rules "to promote the prompt, efficient, and cost-effective resolution of civil actions." The rules were to apply to civil actions in district court, county courts at law, and statutory probate courts in which the amount in controversy, inclusive of all claims for damages of any kind, actual or exemplary, a penalty, attorney's fees, expenses, costs, interest, or any other type of any kind of damages, does not exceed $100,000. The stated purpose was the need for lowering discovery costs in these actions, and the procedure for ensuring that they will be expedited in the civil justice system. To be expressly excluded were actions under Chapter 74, Civil Practice and Remedies Code; the Family Code; the Property Code; or the Tax Code.

The Supreme Court appointed a Task Force to propose rule changes for these "expedited actions," which completed its work and sent a report to the Court, proposing new rules and rule amendments. The Court then referred study of the rules to the Supreme Court Advisory Committee, which reviewed the proposals of the Task Force. A proposal from the State Bar of Texas Court Rules Committee was also received. The Court reviewed all of the proposals and recommendations and concluded that the objectives of the Bill could not be achieved without rules that compel expedited procedures in smaller cases. On November 13, 2012, the Court proposed new rules and changes, and invited comments about the proposals. The final proposal and changes were promulgated on February 12, 2013. Several alterations merit notice.

The first proposal required the court to set the case for a trial date that is within 90 days from the end of the discovery period. The final rules allow two continuances, not to exceed a total of 60 days.

The first proposal restricted each side to five hours to compete jury selection, opening statements, presentation of evidence, examination and cross-examination of witnesses and closing arguments. The final rule raised the limit to eight hours, and provided that on motion and a showing of good cause; the court may extend the time limit to no more than twelve hours per side.

The first proposal forbade the court, by order or local rule, to require ADR unless the parties had agreed to engage in it or were required to do so by contract. The final rule provided that unless the parties have agreed not to engage in ADR, the court may refer the case to ADR once, and the procedure must not exceed a half-day in duration; not exceed a total cost of twice the amount of civil filing fees; and be completed no later than 60 days before the initial trial setting. The parties may agree to engage in ADR other than that provided above.

Discovery control plan, Level 1, was amended to provide for expedited actions. Level 1 now applies to any suit that is governed by the expedited actions process and, unless the parties agree that Level 2 should apply or the court orders Level 3, any suit for divorce not involving children in which a party pleads that the value of the marital estate is more than zero but not more than $50,000. The specific limitations for this level are:

(1) The discovery period begins when the suit is filed and continues until 180 days after the date the first request for discovery of any kind is served on a party;
(2) Each party may have no more than six hours in total to examine and cross-examine all witnesses in oral depositions. The parties may agree to expand the limit up to ten hours in total, but not more except by court order. The court may modify the deposition hours so that no party is given unfair advantage; (no change)
(3) Any party may serve on any other party no more than 15 written interrogatories; (change from 25)
(4) Any party may serve on any other party no more than 15 written requests for production; (new)
(5) Any party may serve on any other party no more than 15 requests for admission; (new)
(6) In addition to the content subject to disclosure under Rule 104.2, a party may request disclosure of all documents, electronic information, and tangible items that the disclosing party has in its possession and may use to support its claims or defenses. Such a request in a request for disclosure is not considered a request for production.

If the suit is removed from the expedited process, the discovery period reopens, and must be completed within the limitations provided for Level 2 or Level 3. On motion, the court should continue the trial date to permit completion of discovery. The provisions for additional discovery found in Rule 190.5 do not apply to the expedited process.

Rule 47 was amended so as to provide that the claim for relief shall contain:

(a) a short statement of the cause of action sufficient to give fair notice;
(b) a statement that the damages sought are within the jurisdictional limits of the court;
(c) except in suits under the Family Code, a statement that the part seeks:
  (1) only monetary relief of $100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees; or
  (2) monetary relief of $100,000 or less and non-monetary relief; or
  (3) monetary relief over $100,000 but not more than $200,000; or
  (4) monetary relief over $200,000 but not more than $1,000,000; or
  (5) monetary relief over $1,000,000; and
(d) a demand for judgment.

A party that fails to comply with (c) may not conduct discovery until the pleading is amended to comply. The requirements (c)(1) is governed by the expedited process, and the further specificity in (c)(2)-(5) is to provide information regarding the nature of cases filed and does not affect a party's substantive rights.

Looking back to the passage of the 1987 Texas ADR Act, and the problems in the civil justice system that it was supposed to help alleviate, we are struck by the unintended consequences some lawyers now perceive. In the late 1970's and early 1980's, legal scholars, judges and some litigators were concerned about the time, expense, uncertainty and social disruption that civil trials exacted on clients and courts. Research and surveys among these groups revealed high dissatisfaction with the trial system for specific reasons: the cost of prolonged discovery for clients; the delays in getting cases tried to a jury; the uncertainty of trial outcomes and the further costs of appeals; and the drain on public funds of creating new courts to try the many cases waiting on the docket – to name just a few. Some litigators nationwide even voiced concerns that unless our civil trial system was improved, citizens would come to mistrust and avoid the services of lawyers in their disputes.

Our Texas ADR statute was passed without much opposition during this time by legislators who viewed it as a solution to existing problems. Many other states passed similar legislation at that time. In a period of economic hardship for lawyers, not unlike our recent economic downturn, many attorneys sought mediation training soon after the Act became law. Judges wanted training in ordering mediation as a way of managing their dockets more efficiently and many also became mediators when their days on the bench ended.

In our ADR statute's second section the legislature set the tone. "It is the policy of this state to encourage the peaceable resolution of disputes, with special

consideration given to disputes involving the parent-child relationship, including the mediation of issues involving conservatorship, possession and support of children, and the early settlement of pending litigation through voluntary settlement procedures." I think we would all agree that if the dispute cannot be settled, we would prefer trial by jury rather than trial by battle.

The Texas ADR act has been remarkably effective in providing litigants and courts an earlier, institutionalized method of settlement: the court-ordered, timely use of a trained settlement expert, mediator or other neutral. It is unclear, however, whether the actual rate of settlement has increased since 1987. No known research exists in Texas to support such a claim.

For many reasons, settlement and disposition rates continue to result in only a small percentage of jury trials actually being conducted – approximately 4% of all cases filed. This is not solely due to ADR. It *is* true that in some counties, some cases cannot even be set for trial until mediation has been held. In many counties Dispute Resolution Centers, enacted into Texas law five years prior to the 1987 Texas ADR Act, in response to the same concerns cited above, provide low cost and easily accessible mediations to thousands, in both court annexed and community cases.

Private mediators throughout Texas provide additional, specialized and finely honed settlement services to many more citizens. Texas is blessed with some of the most skilled and artful mediators in the world. A few have even taken those skills to other countries to resolve international conflicts, work with the U.S. military in Afghanistan, and to provide conflict resolution and mediation training in Asia and Africa.

Despite these accomplishments, there is now a concern that unless we limit the use of mediation in certain cases, defined above, we will terribly damage the civil litigation system. See, *e.g.,* Bennett, *Obituary: The American Trial Lawyer, Born 1641—Died 20??,* Litigation, Spring, 2013, ABA; Coody, *Vanishing Trial Skills,* Pretrial Practice & Discovery E-Newsletter, Spring, 2013, ABA; Curriden, *Number of Civil Jury Trials Declines to New Lows in Texas,* The Texas Lawbook, 22 June 2013. It must be noted that in the first of these discussions the trial lawyers discussed were often from the criminal, not the civil, bar, but all authors were clearly afraid that with few actual trials, there would be almost no way for a young lawyer to get enough experience to be a good trial lawyer, like those greats from the past and present, including, among others, Abraham Lincoln.

How did we get from the Pound Conference in 1976 to this state of anxiety in 2013? Is it necessary to limit or exclude the use of mediators in certain cases for the civil litigation system to thrive? If that is true, what does that say about our system? Are we throwing out the Baby with the Bathwater?

Because of this recent change in the law, and the history of ADR in Texas, we posed some questions to a distinguished group of lawyers: some litigators, some mediators, some both. Litigators most concerned about the opportunity for new lawyers to get trial experience fell on one end of the response continuum - mediators fell on the other end. In the middle were lawyers who saw that despite the accomplishments of the ADR Act, some improvements in the system might be beneficial to consumers, judges, lawyers and mediators. We are presenting some of their responses, with attribution, (as the responders agreed) for the readers' reflection and, hopefully, comment. We ask that all responses, questions, or suggestions should be sent to us at k4mede8@swbell.net. We look forward to your comments and will respond!

Question: Will the new expedited case procedure likely increase the number of trials?

Yes, it will increase the number of trials of cases on the expedited docket because of the limited pretrial discovery procedures which inevitably result in more realistic evaluations and subsequent settlements. I also believe it will result in inordinate delays of trials of the larger cases. These "unexpedited cases" seem destined to wind up at the end of the dockets. **Hal Monk, Fort Worth litigator**.

I believe Rule 169 will have a negative impact on all parties to a lawsuit, especially those parties with a burden of proof. This rule will only allow parties a

narrow window in which to present their case. This rule puts a price tag on justice, placing a much greater value on cases involving sums of money in excess of $100,000.00. It is also an affront to our trial judges, limiting their ability to manage their docket, preventing them from taking into consideration the particulars of each case and the time reasonably needed to ensure a fair opportunity for the litigants to have their day in court. **Jerry Murad, Fort Worth litigator.**

It is still too early to assess the extent to which the expedited procedure will be used. By the terms of the Rule, the plaintiff's attorney is called upon to plead the amount in controversy. It may well be that plaintiff's counsel will, in the main, assert unliquidated damages over $100,000 and, in doing so, take the case outside the Rule and the expedited process. Of course, there are all the cases under $100,000 which do not allow flexibility in alleging damages. Roughly, these total about 40% of a court's docket. It is my opinion that the disposition rate of all cases filed prior to a trial conducted on the merits, expedited or not, will remain, as it has for many years, at about 95%. This 95% includes settlements, orders granting dispositive motions, and dismissals for want of prosecution. **Mike Amis, Dallas mediator and former litigator**.

Question: Will the new procedures affect efficiency in settlement of cases, either positively or negatively?

As of yet the courts appear to be ignoring it and the lawyers seem to be conducting business as usual. I foresee lawyers agreeing to go to mediators and agreeing on a mediator's fee in most cases except the smaller MISTI cases. In those cases, most go to mediation by Court Order, using two-hour, low fee mediators anyway. **Suzanne Duvall, Dallas mediator and former litigator**.

I doubt it. It is important that the parties in small cases have the ability to opt out of ADR. There is no need to go to mediation in a small car wreck case for instance. It typically is a waste of time and money. Use the half day and $500 for trying the case. **Brad Parker, Ft. Worth litigator and President of the Texas Trial Lawyers Association.**

In a civilized society, when parties cannot settle their differences they turn to the courts for resolution. This in turn helps to promote civility, tranquility, and stability. Rule 169 exacts a heavy price on the rights of some in our state who may be compelled to turn to the courts. **Jerry Murad, Fort Worth litigator.**

Question: How can attorneys best serve clients and improve mediation efficiency?

They can educate clients about the type of mediation called for by the case and make their selection of a mediator and the fees accordingly. Once they have selected the type of mediation and a mediator, they can prepare the case and the client for mediation and include in their preparation a brief course on understanding the principles of negotiation. **Suzanne Duvall, Dallas mediator and former litigator.**

In small cases between experienced counsel, the attorneys and clients may be better served by not going to mediation and just let a jury decide the case value. **Brad Parker, Ft. Worth litigator and President of Texas Trial Lawyers.**

Prepare, prepare, prepare for mediation; it is one of the very best opportunities to reasonably settle a client's case without undue delay and expense. Many attorneys do not seize this prime opportunity seriously and do not adequately prepare, which is a disservice to clients. They could also limit the time and expense of mediation. My experience based on hundreds of mediations has taught that if you advise people they have a day in mediation, it will take a day and an extra hour and a half. If you advise people they have an hour in mediation it will take 1-1.5 hours (but quite often little more than an hour). Naturally it depends somewhat on the particular dispute, but I have seen a lot of time wasted in mediation and I would guess others have too. Some mediators charge too much. It can be hard work for sure, but it is not shoveling wet concrete on a new roadway in the heat. Mediators should see their calling more as service to the community. It is an honor and a privilege to be trusted and serve fellow citizens in this manner. **Marty Leewright, Fort Worth mediator and former litigator.**

One result of the recent proposed changes in the law

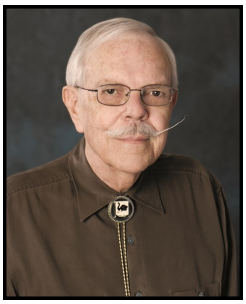
is the formation of the Texas Attorney-Mediators Coalition (TAMC), spear-headed by Mike Amis of AAM. Its mission is to promote and preserve court-annexed mediation in Texas. Mediators are invited to contact Mike Amis and Co-Chair Elaine Block for more information at amismediat@aol.com or eb@elaineblock.com Problems of undue delay and costs associated with the use of mediation are being addressed as this group moves forward with streamlining and removing inefficiencies from the settlement process.

Above all, we should not forget the advice given by one of our greatest trial lawyers, Abraham Lincoln, quoted by Chief Justice Warren Burger in a speech to the 62nd Annual Meeting of the American Law Institute in 1985:

Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser in fees, expenses, and waste of time. As a peace-maker the lawyer has a superior opportunity of being a good man . . . A good man!

Stay tuned for more exciting developments as the mediation world turns!

Kay Elkins Elliott maintains a private practice, Elliott Mediations, serves as ADR coordinator and adjunct professor at Texas Wesleyan University School of Law, and is a founding member of the Texas Mediation Trainers Roundtable. Ms. Elliott is a board member of the Texas Mediator Credentialing Association, the only organization in Texas that offers credentialing to mediators. She served on the State Bar of Texas ADR Council, is co-editor of the Texas ADR Handbook, 3rd edition and writes a mediation column in the Texas Association of Mediators Newsletter and the TCAM Newsletter.



Frank Elliott has taught and written about evidence, Texas civil procedure, and ADR for 56 years. He taught at the University of Texas, Texas Tech, and Texas Wesleyan law schools, and served as Dean at Texas Tech and Texas Wesleyan. In addition, he served as Parliamentarian of the Texas Senate, Research Director for the Texas Constitutional Revision Commission, and President of the Southwestern Legal Foundation. He served two tours of duty in the Army, one as a tank platoon leader in Korea, and one as a visiting professor at the Judge Advocate General's School. He is retired from the Army Reserve in the rank of Colonel.

ETHICAL PUZZLER

By Suzanne M. Duvall*

This column addresses hypothetical 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, or fax it to214-368-7528.

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Once every year or so, I depart from the usual format of this column and ask the participants to share with our readers a particularly "thorny" ethical problem that they have faced in their practice; either as an arbitrator, as a mediator or even as a participant in an ADR process, and to disclose how they resolved the problem.

Here are the responses that were submitted.

Erich Birch (Austin)

This mediation involves unremarkable circumstances – an accident resulting in property damage, and a party suing for damages. At 6 pm the parties are tired, in separate rooms, and have reached impasse with a still sizeable gap between demand and offer. The plaintiff and her attorney announce they have had enough and are leaving. Concerned that his opportunity to settle is evaporating, the defendant increases his offer in a last ditch effort to settle. The plaintiff responds in like fashion, and the figure is shuttled down to the defendant, who immediately accepts – settlement!

Well…or so it seems. "Not so fast," says the defense attorney, and the mediator listens as the attorney explains to his client a possible risk of settling. The client acknowledges the risk, but says it is one he is willing to take to get this resolved. The attorney informs his client that no, he cannot allow him to accept the offer. The startled client looks helplessly from attorney to mediator and back again – "but I want to take this offer, I understand the risk, and I want to be done with this!" The attorney states emphatically that he will not allow the client to settle on the proposed terms.

On cue, plaintiff's attorney and her client come walking down the hall, coat and briefcase in hand, and asks "do we have a deal?" The mediator explains that there is no deal just yet. At this point the defense attorney also enters the hallway, client in tow. Standing in the hallway a heated argument ensues between counsels for plaintiff and defendant.

Meantime, the defendant is beside himself; he follows his attorney, looks to the plaintiff, to the mediator, and back to his attorney (still arguing vehemently with opposing counsel). He then stops and returns to the mediator and privately pleads, "I want to accept this deal; do I have to listen to my attorney? Can't I settle even though my attorney says he won't allow it?"

Standing in the hallway the mediator is processing all that has happened in the last two minutes. He is disturbed that the actual party to the dispute may miss his opportunity to settle. The mediator is also an attorney and disturbed by the conversation he witnessed – the defense attorney informed his client of

the risk, the client instructed his attorney to settle, but the attorney refused and was now engaged in what appeared to be a non-substantive dogfight with opposing counsel.

Was this a professional conduct violation, and did it raise a substantial question as to the lawyer's honesty, trust-worthiness or fitness as a lawyer? Perhaps there is more to the story — did the attorney-mediator even have enough information to make this call? But now, here is this party asking the mediator if he is required to listen to his attorney.

Clearly the mediator would be on shaky ground if he attempts to address the questions posed by this distraught client of the defense attorney. Mediators are cautioned under many ethical standards to avoid giving advice to parties, but the Ethical Guidelines for Mediators adopted by the Texas Supreme Court, a mandatory standard for Credentialed Mediators, most succinctly addresses the mediator's role in dealing with parties to a mediation.

In Paragraph 11 the Guidelines state: "**Professional Advice.** A mediator shall not give legal or other professional advice to the parties." The mediator therefore turns to the defendant party and tells him that the mediator is not in a position to answer his questions, and that he should instead talk to his lawyer. In this hypothetical there is nevertheless a happy ending, as two days later the parties settle, pursuant to the terms worked out during the mediation.

Melinda Jayson (Dallas)

You might want to query members what they would do as arbitrator or mediator in a dispute between Party A and Party B when Party A seeks to disqualify counsel of Party B. The basis for seeking disqualification is that entity X, a client of that opposing firm, was formerly affiliated with or owned an interest in Party A but Entity X is not involved in the dispute being arbitrated or mediated. What facts would they consider relevant to their decision and would their decision be different if they were mediating instead of arbitrating?

Lori LaConta (Houston)

In labor arbitration cases involving disciplinary action, the grievant is appealing discipline issued to him by management. Typically, discipline is issued to grievant for his alleged poor job performance or infraction of an organizational policy or rule. The burden of proof is on management to show that "just cause" existed for issuing the discipline, or management puts its case on first during the arbitration hearing.

An arbitrator must provide a fair and adequate hearing, which assures that both parties have an opportunity to present their evidence and arguments. A "thorny" situation is presented when management's attorney attempts to call the Grievant as a "hostile" or "adverse" witness first or early during its case. This is an uncommon request since management usually proves its case without the grievant's testimony, relying solely upon evidence from human resource records and the testimony of grievant's supervisor and other decision makers involved in the discipline and grievance processes prior to the arbitration.

In this scenario, Grievant's attorney would object to management's request noting that, "management should not build its case in the back of the grievant" nor "use evidence directly from the grievant's mouth." The rationale for this objection is similar to criminal cases wherein defendants can reserve their right to testify and guard against self-incrimination.

In this instance, an arbitrator can 1) sustain the objection and not allow management to call grievant as a hostile witness, 2) allow management to call grievant last, or 3) overrule the objection and allow management's attorney complete control over developing the evidence to prove the case. I generally opt for the second choice and sustain the objection. I allow management's attorney to call grievant as a hostile witness, but grievant must be called last, after management puts on all the other witnesses it intends to call during its case-in-chief.

It is the Grievant who has initiated the arbitration process by appealing his discipline and challenging management to prove its case based upon the *just*

cause standard. If the Grievant were made to testify during the beginning of management's case, then he would not have had an opportunity to hear the entire case that management has established to demonstrate that *just cause* existed to warrant the discipline.

While an arbitrator needs to ensure fairness in the hearing process, an arbitrator should not intrude on a party's presentation so as to prevent that party from putting forward its case fairly and adequately. This "thorny" situation illustrates the fine balance arbitrators must strike between allowing attorneys to have complete control and autonomy over the manner in which they put on their cases while ensuring that the hearing process is fair and adequate for all parties. Sustaining grievant's objection takes some control away from the management attorney's ability to determine the order in which witnesses are called, but calling the grievant as a first witness, or early in the hearing, would have been unfair to grievant, creating an obvious advantage for management and a disadvantage for grievant during the hearing process.

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COMMENT: In the wake of the new expedited-jury -trial rules and the prevalence of the perception of the "vanishing jury trial," it is particularly noteworthy that two of the three respondents raised ethical dilemmas having to do with arbitration. It appears that, like it or not, arbitration is becoming more and more widely accepted and utilized by litigants who seek to opt out of the litigation process. Because of the arbitrator's power to render an award without recourse, however, it is my experience that parties are including, as a necessary first step, the requirement to mediate their issues before submitting those issues to arbitration. This process fortifies the commonly held belief that trial (by jury or otherwise) is becoming the more "alternative" method of resolving disputes than either mediation or arbitration.

The rationale for this objection is similar to criminal cases wherein defendants can reserve their right to testify and guard against self-incrimination.

Suzanne M. Duvall *is an attorney-mediator in Dallas. With over 800 hours of basic and advanced training in mediation, arbitration, and negotiation, she has mediated over 1,500 cases to resolution. She is a faculty member, lecturer, and trainer for numerous dispute resolution and educational organizations. She has received an Association of Attorney-Mediators Pro Bono Service Award, Louis Weber Outstanding Mediator of the Year Award, and the Susanne C. Adams and Frank G. Evans Awards for outstanding leadership in the field of ADR. Currently, she is President and a Credentialed Distinguished Mediator of the Texas Mediator Credentialing Association. She is a former Chair of the ADR Section of the State Bar of Texas.*

CALENDAR OF EVENTS 2013

40-Hour Basic Mediation Training * Houston * July 25-27, continuing August 1-3 2013 * *Worklife Institute* * E-Mail: efburleigh@gmail.com * Phone: 713-266-2456 * **www.worklifeinstitute.com**

40-Hour Basic Mediation Training * Houston * August 1-4, 2013 * *Manousso Mediation & Alternative Dispute Resolution—Conflict Resolution Services and Training* * Phone 713.840.0828 * **http://www.manousso.us**

Basic Mediation Training * Austin * August 14-16, 20 & 21, 2013 * *Austin Dispute Resolution Center* * (512) 471-0033 * **www.austindrc.org**

Commercial Arbitration Training (Domestic & International) * Houston * August 21-24, 2013 * *University of Houston Law Center—A.A. White Dispute Resolution Center* * Contact Judy Clark at 713.743.2066 * **www.law.uh.edu/blakely/aawhite**

Mediation Dynamics - 40-Hour Mediation Training * Mansfield * August 23-25, continuing September 6-8, 2013 * *Mediation Dynamics* * E-Mail: email@MediationDynamics.com * Phone: 817-926-5555 * **www.mediationdynamics.com**

40-Hour Basic Mediation Training * Houston * September 13-15 continuing September 20-22, 2013 * *University of Houston Law Center—A.A. White Dispute Resolution Center* * Contact Judy Clark at 713.743.2066 * **www.law.uh.edu/blakely/aawhite**

Basic Mediation Training * Austin * October 30, 31 November 1, continuing November 5-6, 2013 * *Austin Dispute Resolution Center* * (512) 471-0033 * **www.austindrc.org**

40-Hour Basic Mediation Training * Dallas * October 21-24, 2013 * *Professional Services & Education* * E-Mail: nkferrell@sbcglobal.net * Phone: 214-526-4525 * **www.conflicthappens.com**

SUBMISSION DATES FOR UPCOMING ISSUES OF
ALTERNATIVE RESOLUTIONS

Issue	Submission Date	Publication Date
Fall	September 15, 2013	October 15, 2013
Winter	December 15, 2013	January 15, 2014
Spring	March 15, 2014	April 15, 2014
Summer	June 15, 2013	July 15, 2014

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

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MAIL APPLICATION TO:
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I am enclosing $25.00 for membership in the **Alternative Dispute Resolution Section** of the State Bar of Texas from June 2013 to June 2014. 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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Requirements for Articles

1. *Alternative Resolutions* is published quarterly. The deadlines for the submission of articles are March 15, June 15, September 15 , and December 15. Publication is one month later.
2. The article should address some aspect of negotiation, mediation, arbitration, another alternative dispute resolution procedure, conflict transformation, or conflict management. Promotional pieces are not appropriate for the newsletter.
3. The length of the article is flexible. Articles of 1,500-3,500 words are recommended, but shorter and longer articles are acceptable. Lengthy articles may be serialized upon an author's approval.
4. Names, dates, quotations, and citations should be double-checked for accuracy.
5. Citations may appear in the text of an article, as footnotes, or as end notes. Present editorial policy is to limit citations, and to place them in the text of articles. "Bluebook" form for citations is appropriate, but not essential. A short bibliography of leading sources may be appended to an article.
6. The preferred software format for articles is Microsoft Word, but WordPerfect is also acceptable.
7. Check your mailing information, and change as appropriate.
8. The author should provide a brief professional biography and a photo (in jpeg format).
9. The article may have been published previously, provided that the author has the right to submit the article to Alternative Resolutions for publication.

Selection of Article

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

2. If the editor decides not to publish an article, materials received will not be returned.

Preparation for Publishing

1. The editor reserves the right, without consulting the author, to edit articles for spelling, grammar, punctuation, proper citation, and format.

2 Any changes that affect the content, intent, or point of view of an article will be made only with the author's approval.

Future Publishing Right

Authors reserve all their rights with respect to their articles in the newsletter, except that the Alternative Dispute Resolution Section ("ADR Section") of the State Bar of Texas ("SBOT") reserves the right to publish the articles in the newsletter, on the ADR Section's website, and in any SBOT 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 address 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. The Roundtable may be contacted by contacting Cindy Bloodsworth at cebworth@co.jefferson.tx.us and Laura Otey at 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. 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 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."

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