State Bar of Texas ADR Section

Alternative Resolutions Newsletter

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CHAIR'S CORNER

by Deborah Heaton McElvaney, Chair, ADR Section

"RESOLUTIONS WE CAN KEEP"

It is hard to believe that as I write this Winter edition of the "Chair's Corner," it is just a few days before the holiday season ends. By the time you read this, we will have packed up all of our decorations and wrapping paper, eaten way too many fat grams and carbs, returned those gifts that probably seemed like a good idea to the givers when they bought them, and vowed never to put a grain of sugar in our bodies ***ever again***. More importantly, we will have embarked on yet another calendar year with its attendant expectations for better times.

Like many of you, this time of year makes me contemplate my world and what I need to do to make it better for me, for my family, for my clients, for my friends, for my community. I am in the process of making my annual resolutions to lose weight, actually walk on my treadmill and not around it, call and visit my parents more often, listen and support my daughter without giving uninvited advice, market my firm, attend all of the CLE luncheons for which I have paid, *etc*. I am painfully aware that at least a couple of these pledges can be deleted right now because they, like their predecessors, will go unattained.

Tempting as it is to regale you with plans for my new exercise program or my commitment to practice the piano more or my promise to write the first chapter of my best-seller, I will refrain. I will spend this time with you discussing the next six months of my term as your Chair, what is planned for our Section, and how you and I can put these plans in motion.

As hard as it is to realize that yet another holiday season has come and gone, equally hard to believe is the fact that we are at the halfway mark in this bar year. My first six months on this job were daunting, at times. That aside, I would not trade these months of service as your Chair for anything (well, most anything.) You constantly amaze me with your volunteerism, your commitment to the very purpose of this Section, your tenacity in tackling those philosophies that endanger our purpose, and your willingness to do whatever is necessary to ensure that Texas ADR continues to be the beacon of light and hope for many of our sister states.

Sometimes, more often than not, these endeavors are seemingly thankless, requiring you to spend time over and above that required for your work, your family, your hobbies, or your sleep. In looking back over these past six months, it is easy to see the imprint of your work. For example, with your help, and that of your Council, we have re-vamped our committee structure, improved our Newsletter and website, conducted mediation training, crafted legislation that will be considered by our state legislature, co-sponsored a CLE, and performed many other jobs too numerous to list.

Because we are on the downward side of this bar year, I am already working with Mike Schless, the Section's Chair-elect, to ease the transition and minimize confusion and redundancy. You must not infer that action to be one of abdication. To , the many recent changes made to our committee structure, as well as our redefined visionary goals to continue to impact the bar and to provide quality service, support, and diversity to the Section's membership, all necessitate this type of coordination between the current leadership and that of next year.

While these next six months require the Council and Section committees to stay on course in monitoring and improving our Newsletter and our website, we also hope to have our handbook published and to effect passage of legislation involving DR Centers. However, the most exciting event of this final six months is our hosting the ABA DR Section in its 10th Annual Conference to be held in San Antonio on March 20-22, 2003. By now you should have received the flyer for this program, "Insight for Inspired Practice," and you should note that our Section is taking a prominent role in this conference. Several Section members are key participants in

presentations; our Section has contributed funds for scholarships; our Section is hosting the Friday night gala; our Section is hosting "Breakfast with the Texas Bunch" on Saturday morning, which will provide the opportunity to network and garner some CLE credit. Already countless hours of time away from family, work, friends, hobbies, *etc.,* have been spent on just this one Spring event.

These past six months have come and gone in a flash. Before long Mike Schless will be the new Chair of the Section and will be writing the "Chair's Corner." Between now and then, however, I promise to fulfill my New Year's resolution to make my final months as your Chair productive. While I may not fulfill my resolutions to exercise more or eat less or listen more actively, I will not retreat from the work for the Section that is still ahead of me. Neither should you. Add one more resolution to your list and join me in making these last six months as meaningful for our Section members as possible.

ETHICAL PUZZLER

by Suzanne Mann Duvall

This column addresses hypothetical ethical problems that mediators may face. If you would like to propose an ethical puzzler for future issues, please send it to Suzanne M. Duvall, Texas Community Bank Building, 8235 Douglas Ave., #330 LB 61, Dallas, Texas 75225. Phone: 214.361.0802 FAX 214.368.7258]

As a relatively prolonged mediation session over a business dispute progresses, the parties are "negotiated down" to $75,000 apart. The case involves multiple claims by the plaintiff, each of which is met with a vigorous defense. However, one primary claim is the "crux" of the plaintiff's case. Competing summary judgment motions are pending before the court, the hearing thereon has been held, and the parties are mediating with the knowledge that the ruling by the court on the MSJ's could significantly affect their relative positions. Each is regularly calling the court throughout the mediation to see if the judge has yet ruled on the summary judgment.

The mediation gets to the point that, in order to avoid an impasse, the parties request the mediator to present a Mediator's Proposal for settlement that each party could either accept or reject. Before the Mediator's Proposal is prepared and presented, the lawyer for the plaintiff informs the mediator that he has just received word that the court granted a partial summary judgment "knocking out" the plaintiff's primary cause of action. He tells the mediator to inform the defendant that he accepts their last offer.

What, if any, are the ethical issues facing the mediator? What should the mediator do?

Robert Prather (Dallas): Above all, a mediator should do no harm. The question, in this case is how to do no harm. If the mediator is also an attorney, is there a duty to disclose as an officer of the Court? What is confidential?

In this case, the Plaintiff should not have told the mediator of the court's ruling since he runs the risk of creating this dilemma. The Plaintiff's offer should be conveyed by the mediator with the caveat that if the Defendant asks, the mediator will disclose the court's ruling; if the Defendant does not ask, the mediator will not disclose. If the Plaintiff objects, then the mediator should withdraw and declare an impasse.

The Defendant, like the Plaintiff has been "...regularly calling the court during the mediation" to see if the judge has ruled on the Motion for Summary Judgment. The fact that he is up-to-date on the Court's ruling is no different than if the Plaintiff did a better investigation — found a witness or document that helps the Plaintiff's case and that Defendant has not extorted the effort or been unable to locate. Motions for Summary Judgment are interlocutory and subject to appeal. As long as matters are not final, the parties will have a need to settle.

Michael J. Kopp (Waco): For me personally, this hypothetical presents at least two separate dilemmas to ponder.

My first dilemma is determining whether submitting a "mediator's proposal" to the parties is an appropriate action for a mediator to take. The concept of a "mediator's proposal" seems to me to be an oxymoron in that in virtually every definition that I am familiar with, the mediator is to serve as an **independent, neutral that neither dictates decisions nor renders evaluation or judgment.** Section 154.023 (b) Texas Civil Practices and Remedies Code states: *"A mediator may not impose his/her own judgment on the issues for that of the parties."*

The second dilemma essentially focuses on how, as mediator, I would deal with being asked to be party to concealing important information from the other party in the mediation. In this instance, both parties are concerned with how the court will rule on their respective Motions for Summary Judgment; the parties are mediating with the knowledge that the court's ruling could significantly impact the case; and in fact, both parties are keeping in contact with the court seeking information on the court's ruling.

While I feel certain, that should the mediator suddenly advise the Defendant that Plaintiff is now willing to accept Defendant's last offer that the Defendant would immediately be alerted to the likelihood that something must have transpired with the court, I would never-the-less be unwilling to be a party to conveying a response based on concealed material information. Additionally, there appears to be some indication in the case law (at least in the family law arena) that the concealment of facts by a party in mediation could potentially be grounds for overturning the mediated settlement agreement, (Boyd vs. Boyd. 67 SW3rd 98). That, it seems to me, would certainly be a possibility, in this instance, should the Defendant, agree to settlement only to learn minutes or hours later that Plaintiff knew about the court's ruling and kept that information concealed.

Those factors notwithstanding, a more important consideration for me is that of my own personal integrity and ethical convictions. I simply could not agree to carry Plaintiff's acceptance of Defendant's last offer based on these circumstances. However, neither would I take the initiative to communicate to the Defendant the information
regarding the court's ruling which I had learned in confidence, in caucus, from the Plaintiff. Rather I would present Plaintiff with three alternatives: **1.)** Plaintiff advising Defendant of the court's ruling and the parties continuing to work in good faith toward a mutually agreeable mediated settlement;

2.) the opportunity for counsel for Plaintiff to meet in caucus with counsel for Defendant, during which time counsel for Plaintiff would have the opportunity to communicate, or to withhold whatever information he might chose directly to counsel for Defendant or **3.)** if neither of those options were agreeable to the Plaintiff, I would adjourn the mediation.

Randall Grasso (Dallas): There are three separate issues to consider:

Must the mediator disclose the "confidential" information to the Defendant's lawyer who may not be aware of it independently?

Should the mediator delay so that the Defendant's lawyer can repeatedly call the court and find out about the ruling?

Should the mediator confer the Defendant's offer before communicating Plaintiff's acceptance based on "confidential information?"

I believe the mediator should question the Plaintiff's lawyer about accepting the offer and what might happen if the Defendant is aware of the ruling. Then the mediator should confirm that the Defendant's offer is still on the table and communicate Plaintiff's acceptance.

Josefina Rendón (Houston): Often, and whenever possible, the best approach to ethical problems is prevention. By trying to anticipate potential problems, the mediator may be able to address them before they happen. The moment there is a mention of the parties waiting for the court's decision on summary judgment motions, the mediator should usually offer to postpone the mediation until the decision is reached. If the parties choose to continue with mediation, the mediator should solicit an agreement from the parties as to what to do should the court reach a decision during the course of the mediation. I have had parties ask me to call the clerk of the court and explain that the parties are in mediation waiting for a decision. They have asked me to request the clerk to call my office as soon as the decision is available so that we can all know.

Another preventive measure is for the mediator to be familiar with, and periodically reread, both the ADR section's Ethical Guidelines for Mediators and the ABA's Model Standards of Conduct for Mediators.

If unable to anticipate the problem, a mediator may face: 1) the dilemma whether to continue with the mediation and possibly participate in an agreement based on information that is known only to one side, 2) the decision whether to convey the party's acceptance or to present a mediator's proposal.

If such imbalance of information is profound, the mediator may feel that he/she is an accomplice to trickery. If that is the case, a mediator has the option to withdraw and terminate the mediation if he/she feels that the imbalance makes the case "inappropriate for mediation" or if it "makes one or more of the parties unwilling or unable to participate meaningfully in the mediation process" (Ethical Guideline #13). On the other hand, if the mediator chooses to wait or terminate the mediation, he/she may be accused of lack of impartiality (as required by Ethical Guideline # 9) because such withdrawal would give the other party the opportunity to find out the information. For those mediators who present proposals, doing so in this and many other situations could also involve the risk of appearing to be partial. In any event, without the party's consent, the mediator is clearly barred from revealing confidential information to the other party, including the conduct and demeanor of the parties and their counsel during the process. (TEX. CIV. PRAC. & REM. CODE ANN. § 154.053 (b) & (c)).

In the above example, it looks like the imbalance of information is not so profound as to present a serious ethical dilemma. Both parties are aware of the pendency of the court's decision and will most likely act accordingly. Once a party asks the mediator to convey an offer of acceptance rather than a mediator's proposal, the mediator should do just that. Once the mediator tells the Defendant about Plaintiff's acceptance, it is up to them, the parties, to make sure they have all the necessary information before signing an agreement. Nevertheless, it is also generally advisable for a mediator to ask questions such as: "Anything else?" or, "Is this your Agreement?" before making it available for signing.

Comments:

This ethical puzzler raises more questions than answers. Whether or not it is appropriate for the mediator to submit a Mediator's Proposal we will leave for another day.

The larger question revolves around the mediator's duty to disclose and the seemingly contradictory duty to keep matters disclosed in mediation confidential. There are other open questions. Did the lawyer for the Defendant already have the information about the court's ruling when he made his "final offer" leaving the parties $75,000 apart? Was his offer based on this knowledge? What was the amount of the Plaintiff's original demand? Would it make a difference if it were $100,000,000.00 or $10,000,000.00 or $1,000,000.00?

Although the interlocutory summary judgment ruling "knocked out" the Plaintiff's primary cause of action, what are the values of the remaining causes of action, including Plaintiff's pending motions against Defendant?

All of the contributors to this Ethical Puzzler have presented valid and thought-provoking solutions to the hypothetical situations stated. How would you respond?

THE 2002 WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT: EXPANDING OPPORTUNITIES TO GROW YOUR PRACTICE IN ENVIRONMENTAL DISPUTE RESOLUTION

By: Ann L. MacNaughton [*]

INTRODUCTION.

More than thirty years ago, the U.S. Congress recognized the potential for conflicts to arise in humanity's simultaneous quest for both economic development and also protection of the ecological and social environment, and adopted a national policy of "sustainable development":

> *"The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans."*[1]

Challenges associated with the creation of "sustainable solutions" can generate environmental dispute resolution ("EDR") opportunities in many different contexts. For example, waste management practices may create disputes with regulatory authorities over response action in the case of a spill; with arrangers, transporters, property owners, and plant operators, who must decide whether how to share the cost of clean-up; with insurance companies, over coverage issues; with local communities, concerned about health and other social effects of activities affecting their "back yard": global "NGOs" (non-governmental organizations); personal injury and property damage claimants; and insurance companies.

During the past 30 years, protection of environmental resources has become a worldwide concern.[2] Over the same period, mediation and other forms of ADR have become commonplace in the United States and are becoming more familiar in international dispute resolution situations.[3] This article reports about the recent World Summit on Sustainable Development in Johannesburg, South Africa, and describes Summit results that create new opportunities for ADR practitioners to expand their practices.

2002 World Summit on Sustainable Development. Held under the auspices of the United Nations, the 2002 World Summit on Sustainable Development (WSSD) was hosted In Johannesburg by the South African government during the period 26 August to 4 September 2002. According to the United Nations Development Programme, over 50,000 people from over 190 governments, inter-governmental and non-governmental organizations (including the American Bar Association), the private sector, civil society, academia, and the scientific community attended it and more than 150 parallel events. See http://www.undp.org/wssd/.

The primary WSSD goal was to achieve agreement on a detailed plan for global economic development that will protect the environment while making progress against hunger and poverty. A comprehensive report of the Summit and its results is beyond the scope of this article. The

following paragraphs provide background, context, and a short summary, with emphasis on "Type 2" partnership agreements and other multi-stakeholder initiatives likely to be of particular interest to energy, environmental, and resource dispute resolution practitioners.

2002 SUMMIT BACKGROUND AND CONTEXT

The 1972 U.N. Conference on the Human Environment ("Stockholm Conference") laid the foundation for international consensus that it is the responsibility of governments to protect and improve the environment for both present and future generations.[4] In 1983, the UN General Assembly established the World Commission on Environment and Development to establish a global agenda for recommended changes essential to achieve sustainable development by the year 2000.[5] Echoing the preamble of the National Environmental Policy Act of 1969 (NEPA), the World Commission on Environment and Development (Brundtland Commission) in 1987 defined "sustainable development" as development "that meets the needs of
the present generation without compromising the ability of future generations to meet their own needs."[6]

Agenda 21 is the global plan of action adopted by more than 178 Governments at the 1992 United Nations Conference on Environment and Development (UNCED), held in Rio de Janeiro, Brazil, on-line at http://www.un.org/esa/sustdev/agenda21.htm. A significant institutional outcome of UNCED was the establishment of the Commission on Sustainable Development (CSD) in December 1992, to ensure effective follow-up of UNCED. See http://www.johannesburgsummit.org/html/basic_info/csd.html. Ten years later, the 2002 World Summit on Sustainable Development was convened in Johannesburg, South Africa, to focus on "getting it done" through various implementation strategies.

THE OFFICIAL NEGOTIATIONS

Official Summit outcomes include two negotiated documents ("Type 1" agreements):
(1) The **Johannesburg Declaration on Sustainable Development**, on-line at:
http://www.johannesburgsummit.org/html/documents/summit_docs/1009wssd_pol_declaration.doc; and
(**2)** The **World Summit Plan of Implementation**, on-line at:
http://www.johannesburgsummit.org/html/documents/summit_docs/plan_final1009.doc
(advance unedited text). See generally, http://www.johannesburgsummit.org/index.html; http://www.iisd.ca/linkages/2002/wssd/.

Seven Partnership Plenaries. In May 2002, UN Secretary-General Kofi Annan proposed the "WEHAB Initiative" for the WSSD, five key areas for focus and the development of implementing partnering initiatives (see http://www.tomorrow-web.com/2002/may/020517.html):
• **W**ater—provide access to at least 1 billion people who lack clean drinking water and 2 billion people who lack proper sanitation.
• **E**nergy—provide access to more than 2 billion people who lack modern energy services; promote renewable energy; reduce over-consumption; and ratify the Kyoto Protocol to address climate change.
• **H**ealth—address the effects of toxic and hazardous materials; reduce air pollution; and lower the incidence of malaria and African guinea worm, linked with polluted water and poor sanitation.
• **A**gricultural productivity—work to reverse land degradation, which affects about two-thirds of the world's agricultural lands.
• **B**iodiversity and ecosystem management—reverse processes that have destroyed half of the world's tropical rainforest; threaten 70 percent of its coral reefs; and are decimating the world's fisheries.
Relevant UN agencies prepared WEHAB Framework Papers in August 2002 to provide focus and catalyze action (on-line at:
http://www.johannesburgsummit.org/html/documents/wehab_papers.html).

Seven plenaries on the WEHAB issues, cross-cutting issues, and regional implementation took place during the first week of the WSSD. Cross-cutting issues included finance and trade, technology transfer, consumption and production patterns, education, science, capacity building, and information. Partnership plenaries included presentations by experts and commentary by

panels of resource persons, followed by comments from delegates. See http://www.johannesburgsummit.org; http://www.iisd.ca/linkages/2002/wssd.

Plenary statements were delivered by non-State entities from 29-30 August, including approximately 43 UN agencies and intergovernmental bodies, 23 regional and other governmental bodies, and 31 non-governmental organizations. From 2-4 September, 82 Heads of State and Government and other senior government officials addressed the Plenary. Thirty Vice-Presidents and Deputy Prime Ministers and 74 ministers, royalty and other senior officials also spoke. Text and video coverage of speakers organized by day is available at http://www.un.org/events/wssd/statements.

Four Roundtables took place September 2-4 under the theme "Making It Happen." The U.N. Secretariat transmitted a discussion paper to guide deliberations among world leaders (available at http://www.johannesburgsummit.org/html/documents/summit_docs/3108_roundtables_discussion_paper.pdf), with five sets of questions regarding resource mobilization; institutional coherence, and the integration of goals of economic growth, social development, and environmental protection; regional and global cooperation on WEHAB issues; integrating science in decision-making and access to critical technologies; and the WSSD's role in strengthening global solidarity. A report on the Roundtables was adopted in the closing Plenary on 4 September. See 22 Earth *Negotiations Bulletin, A Reporting Service for Environment and Development Negotiations* (Sept. 6, 2002), on-line at www.iisd.ca/linkages/2002/wssd.

SIDE EVENTS

Side events took place in the margins of the official inter-governmental meetings, organized for the purpose of sharing experiences and increasing opportunities for dialogue among participants in the official meetings. An 8-page list of such meetings is available on-line (last updated August 25) at: http://www.johannesburgsummit.org/html/documents/summit_docs/2408_public_webtable.pdf; http://www.undp.org/wssd.

PUBLIC PARTICIPATION

In advance of the Summit, the UN Commission on Sustainable Development encouraged governments and civil society organizations to develop initiatives to address key sustainable development problems. For example, the U.S. Environmental Protection Agency pursued partnerships regarding clean air, safe drinking water, oceans protection, environmental governance, sound science, and children's health. See http://www.epa.gov/international/WSSD/type2.html.

The Summit thus generated not only Type 1 outcomes requiring global agreement (the Johannesburg Declaration and the World Summit Plan of Implementation), but also Type 2 partnerships, requiring only the commitment of the partners, and other initiatives to achieve sustainable development objectives: http://www.johannesburgsummit.org/html/sustainable_dev/partnership_initiatives.html (listing Type 2 initiatives); http://www.johannesburgsummit.org/html/documents/prep2final_papers/wssd_description_of_partnerships2.doc; http://www.johannesburgsummit.org/html/documents/summit_docs/2908_partnershipsummary.pdf (a 99-page "brief summary" of information available on hundreds of proposed Partnership Initiatives known as of 16 August 2002 to the Secretariat for the World Summit on Social Development).

Over 150 additional events–known as parallel events–took place in the Johannesburg area at about the time of the Summit, convened and managed by organizations or groups independent of the United Nations. Numerous initiatives were announced, and others are still being developed. This preliminary report focuses on only a few of them; information regarding many more of them may be found (and are continuing to emerge) on-line at: http://www.johannesburgsummit.org/html/basic_info/parallel_events.html.

ENVIRONMENTAL LAW INITIATIVES

While it is premature to attempt even a listing of all WSSD initiatives, much less to prioritize their significance to dispute resolution practitioners, nevertheless these five deserve mention:

(1) Global Judges Symposium (August 18-20)

Sponsored by the United Nations Environment Programme (UNEP) and hosted by South Africa's Chief Justice Arthur Chaskalson, the Global Judges Symposium engaged Chief Justices and other senior judges from more than 100 countries to develop the ***Johannesburg Principles on the Role of Law and Sustainable Development***. Presented to the Summit on August 29, the Johannesburg Principles call for (among other things):

Improving judicial, legislative, and other capacity to carry out the promotion, implementation, development, and enforcement of environmental law on a well-informed basis, equipped with the necessary skills, information, and material;

Improving the level of public participation in environmental decision-making; access to justice for the settlement of environmental disputes; defense and enforcement of environmental rights; and public access to relevant information;

Strengthening sub-regional, regional, and global collaboration and information exchange;

Strengthening environmental law education, including research and analysis;

Achieving sustained improvement in compliance, enforcement, and development of environmental law,

Strengthening the capacity of organizations and initiatives, including the media, that seek to enable the public to fully engage on a well-informed basis;

Creating an Ad Hoc Committee of Judges, to be headed by the Chief Justice of South Africa, and representing geographical regions, legal systems, and international courts and tribunals, to review and publicize the emerging environmental jurisprudence and provide information about it;

Supporting the Ad Hoc Committee through UNEP and its partner agencies, including civil society organizations; and

Achieving priority financing through governments of the developed countries and the donor community, including international financial institutions and foundations.

(2) Durban Statement (EnviroLaw 2002 Recommendations)

The August 22-25 Durban EnviroLaw Conference was convened by EnviroLaw Solutions, a unit of South Africa's largest law firm Edward, Nathan and Friedland, and supported by the US (State Department, EPA, DOJ, AID) and numerous other governments; the World Bank; the United Nations (UNEP, UNDP); many NGOs and international networks; and various international judicial and bar associations. It too produced a "Type 2" partnership initiative, which it presented to the Summit on August 29. The Durban Statement recommends:

Development and promotion of the use of indicators and an Environmental Law Enforcement Index, such as that recommended by the Government of the Netherlands and others, which can provide a component for further cooperation with partners to develop a future Sustainable Development Law Enforcement Index;

Undertaking a focused capacity-building initiative in effective domestic development, enforcement, and monitoring of environmental law, and further sustainable development law, to train legal professionals, negotiators, investigators, compliance officials, mediators, legislators, executives, civil society including community based groups and academia, and the media (which can develop an initial focus in the Southern African Development Community), which also should focus on domestic implementation and enforcement of international agreements in the field of sustainable development, especially in connection with domestic laws that are transnational in nature;

Undertaking projects to raise awareness of domestic, regional, and international environmental law and governance, and further advance international law in the field of sustainable development, with a particular focus on citizen access to justice; effective remedies and enforcement; citizen environmental, social, and economic rights; and sustainable

development policy-making in the domestic context of developing countries; and involving the broader public, law firms, and other private sector actors (labor organizations; civil society, especially NGOs and academia; regional and international networks; and the media); and

Undertaking a regional partnering initiative in southern Africa to encourage greater participation, implementation, and enforcement of domestic environmental law, including laws that implement international agreements, and to strengthen the progressive development and codification of environmental law and governance and other law in the field of sustainable development.

(3) International Sustainable Development Legal Partnership

Montreal's Centre for International Sustainable Development Law is leading this Type 2 initiative with three principal objectives:

(1) Founding a user-friendly web-based legal resource center, involving developed and developing country jurists, to assess, promote, and implement the integration of international social, economic and environmental law;

(2) Legal research and capacity building in international sustainable development law (ISDL) to assist governments, NGOs, judges and local communities effectively to address inter-linked environmental, economic and social challenges; and

(3) A series of policy and educational publications on ISDL, to be made widely accessible to scholars, decision-makers and civil society, particularly in developing countries.

(4) IUCN Environmental Law Programme Capacity Building Initiative

The goal of this project is for every country to have the capacity to take part in the international policy debate, to implement what is agreed through coordinated policies, laws and institutions, and to ensure effective compliance with environmental laws. Key mechanisms include academic education, practical training, expert forums, internationals experience, publications, technical assistance and information.

(5) ECOLEX –Global Partnership for Information on Environmental Law

A second IUCN-initiated Type 2 partnership focuses on increasing access to authoritative information on environmental law by establishing a single gateway on the Internet (ECOLEX) and publishing a range of products on specific topics. The effort will build on the legal information holdings of UNEP, FAO and IUCN. The first information to appear on ECOLEX will be treaties, national legislation, legal literature, and court decisions.

WATER DOME

Sponsored by the African Water Task Force, with the International Water Management Institute and numerous additional partners including the European Commission, six full days of water-related events engaged an estimated 12-15 thousand Summit participants (including more than 100 ministers and many heads of state and international agencies) across all stakeholder groups for focused interdisciplinary attention to six identified priorities:

(1) Regional integration and finance;

(2) Food security;

(3) The nature of water as a "public good" and also as a gift from nature, an inextricable element of our delicate ecosystems, and a heritage that must always be passed on to the next generation undamaged;

(4) Energy and climate, including the need for water management strategies that can deal with increasing climate variations and impending climate change;

(5) Health and poverty; and

the requirement for global approaches to questions of how to deal with trade in water and water service; the defining of acceptable conditions for private sector involvement in water delivery; corruption; and the question of whether or not water - like for example health, agriculture and telecommunications - requires a formal intergovernmental organization.

Significant outcomes included, among others, the new Incomaputo Regional Water Sharing Agreement between South Africa, Swaziland, and Mozambique, signed into effect on August 29 at the Water Dome, and the EU-Africa Water Initiative for technology sharing and financial

support, launched at the Water Dome on September 3, 2002. More information is at www.waterdome.net.[7]

FIVE U.S. GOVERNMENT PARTNERSHIP INITIATIVES

The U.S. Government announced these partnership initiatives on August 29:

(1) "Water for the Poor Initiative" expands access to clean water and sanitation services, improves watershed management, and increases the efficiency of water in industrial and agricultural activities, to help achieve the UN Millennium Declaration Goal of cutting in half by 2015 the proportion of people who lack safe drinking water. Under this initiative, the United States will invest $970 million over three years, which can leverage private resources to generate more than $1.6 billion for water-related activities globally.

(2) "Clean Energy Initiative" seeks to provide millions of people with new access to energy services, increase the efficiency of energy use, and significantly reduce readily preventable deaths and respira-

tory illnesses associated with motor vehicle and indoor air pollution. Under this initiative, the U.S. proposes investment of up to $43 million in 2003 to leverage about $400 million in investments from the United States and other governments, the private sector, and development organizations.

(3) "Initiative to Cut Hunger in Africa" to spur technology sharing for small-holders, strengthen agricultural policy development, fund higher education and regional technology collaboration, and expand resources for local infrastructure in transportation, marketing, and communications. The United States will invest $90 million in 2003, including $53 million to harness science and technology for African farmers and $37 million to unleash the power of markets for smallholder agriculture.

(4) "Congo Basin Forest Partnership" to promote economic development, alleviate poverty, improve governance, and conserve natural resources in six Central African countries -- Cameroon, Central African Republic, Democratic Republic of Congo, Equatorial Guinea, Gabon, and Republic of Congo. The United States intends to invest up to $53 million over the next 4 years to support sustainable forest management and a network of national parks and protected areas and to assist local communities, matched by contributions from international environmental organizations, host governments, G-8 nations, the European Union, and the private sector.

Health Initiative. The U.S. Government reaffirmed its commitment to help fight HIV/AIDS, tuberculosis, and malaria through financial and technical support for the Global Fund and the International Mother and Child HIV Prevention Initiative to help achieve the Millennium Development Goal of halting by 2015 the spread of HIV/AIDS and the scourge of malaria and other communicable diseases. Its bilateral programs and research will contribute to that effort. In addition, the Administration has requested $1.2 billion in 2003 to combat these diseases.

GLOBAL NGO FORUM

A Civil Society Global Forum, held from 19 August to 4 September at the Expo Centre (NASREC) located to the south of Johannesburg, was open to representatives of all of the Major Groups identified in Agenda 21: (1) women; (2) children and youth; (3) indigenous people; (4) non-governmental organizations ("NGOs"); (5) farmers; (6) local authorities; (7) workers and unions; (8) business and industry; and (9) the scientific and technological community. On-line links to these major groups, and many if not all of their Summit activities and results, are on-line at http://www.un.org/esa/sustdev/mlinks.htm.

BUSINESS FORUM

Business Action for Sustainable Development (BASD) was a comprehensive network of business organizations, a joint initiative at the Summit of the International Chamber of

Commerce (ICC) http://www.iccwbo.org/sdcharter/corp_init/icc-unep/index.asp and the World Business Council on Sustainable Development http://www.wbcsd.ch/. See generally http://www.basd-action.net. Also see http://www.basd-action.net/resources/links.shtml (links to relevant resources; http://www.basd-action.net/initiatives/index.php (links to business partnership initiatives); http://www.basd-action.net/activities/business.shtml (links to "Lekgotla: Business Day" speeches, press releases, and articles; and http://www.basd-action.net/docs/releases/20020904_convers.shtml (with more links, and summarizing the business conclusion to the WSSD: in the words of Elvis Presley, "a little less conversation, a little more action").

The **Global Reporting Initiative ("GRI")** was established in late 1997 to develop globally applicable guidelines for reporting on the economic, environmental, and social performance by organizations. Convened by the Coalition for Environmentally Responsible Economies in partnership with the United Nations Environment Programme, it incorporates the active participation of corporations, NGOs, accountancy organizations, business associations, and other stakeholders from around the world. At WSSD, it introduced its 2002 *Sustainability Reporting Guideline* at the WSSD. See generally, http://www.globalreporting.org/AboutGRI/Overview.htm.

LOCAL GOVERNMENT SESSION

The International Council for Local Environmental Initiatives (ICLEI) coordinated local government input to the Johannesburg Summit. At "Local Action Moves the World" it presented the key messages from the Local Government Dialogue Paper, the official representation of the local government position, to the Summit and the world. See http://www.iclei.org/rioplusten/declaration_eng.html.

IMPLEMENTATION CONFERENCE

The Implementation Conference focused on development of "type 2" partnership initiatives to further the implementation of international agreements in four issue areas: energy, freshwater, food security, and health. Impacting policy-making was not the primary concern of the participants, who met to agree action to implement existing (and emerging) policy agreements. Its Initial Report (27 August 2002) is on-line at http://www.earthsummit2002.org/ic/.

EMERGING OPPORTUNITIES FOR EDR PRACTITIONERS.

What do community disputes, civil and criminal enforcement matters, tort claims, and complex commercial litigation have in common when they arise in EDR contexts? First, they are often underlain by common scientific and technical facts, with many stakeholders having different but overlapping interests. Second, the vast majority of EDR disputes typically involve many if not all of these seven characteristics: (1) subject matter that crosses geographic and professional borders; (2) optimum solutions outside the scope of judicial reach;

(3) scientific and/or economic uncertainty; (4) cross-cultural issues and/or important values conflicts; (5) multiparty dynamics; (6) involvement of significant stakeholders outside the scope of any judicial proceedings; and (7) extremely large economic stakes.[8]

Environmental decision-making must take into account a delicate but requisite long-term balance between human activity and nature's ability to renew. The use of mediation in environmental and natural resource cases is becoming a standard part of the litigation and dispute resolution process. Business and governmental organizations know that an early focus on issue identification and problem-solving can create substantial new value, as well as save costs by avoiding disputes and litigation. Early resolution of disputes and lawsuits also can create new solutions, even if the process sometimes may require the same investment of time and money as the litigation process can entail.

While collaborative problem-solving may not always be cheaper than the litigation or arbitration alternative (depending on how "cost" is measured), it almost certainly will be more effective in developing enduring solutions and protecting important relationships. New and emerging Type 2 partnerships create a new realm of opportunity for dispute resolution practitioners to add value in complex and emotionally volatile multi-stakeholder disputes.

FOOTNOTES

* ABA delegate to the 2002 World Summit on Sustainable Development in Johannesburg and designated representative of the ABA Section on Environment, Energy, and Resources at the Summit and the linked Durban EnviroLaw Conference, ADR Section Council Member Ann L. MacNaughton is Vice President and General Counsel of Sustainable Resolutions, Inc. and senior editor of a new ABA book first released at the World Summit: ENVIRONMENTAL DISPUTE RESOLUTION: AN ANTHOLOGY OF PRACTICAL SOLUTIONS. She can be reached at a.macnaughton_brune@sbcglobal.net.

[1] National Environmental Policy Act, 42 U.S.C. § 4231 (1969). Nearly 30 years after enactment of NEPA, Congress enacted an implementing act, the Environmental Policy and Conflict Resolution Act (Pub. Law No. 105-156), which created the U.S. Institute for Conflict Resolution "to assist the federal government in implementing section 101 of the National Environmental Policy Act of 1976." *See, generally,* LYNTON K. CALDWELL, THE NATIONAL ENVIRONMENTAL POLICY ACT: AN AGENDA FOR THE FUTURE (1998).

[2] See generally, CALDWELL, 3D ED. at 32-240 (the 1972 United Nations Conference on the Human Environment, in Stockholm, and the establishment later that year of the United Nations Environment Programme (UNEP); the 1982 Rio Earth Summit and Agenda 21. *Also see* World Business Council for Sustainable Development (WBCSD), on-line at http://www.wbcsd.ch (a coalition of 160 international companies united by a shared commitment to sustainable development, with members drawn from more than 30 countries and 20 major industrial sectors).

[3] For example, the new Model Joint Operating Agreement of the Association of International Petroleum Negotiators includes an optional mediation provision. See http://www.aipn.org/html/publications.asp. Also see, e.g., Ms. P.G. Lim, *Recent Developments in Mediation/Conciliation Among Common Law and Non-Common Law Jurisdictions in Asia*, presented at the Biennial IFCAI Conference (Geneva 1997), on-line at http://arbiter.wipo.int/events/conferences/1997/october/lim.html. As just one more example, the author is recently returned from the Kingdom of Nepal, one of the poorest and least developed countries in the world, where she was assisting local communities and also the court system to develop and implement mediation programs.

[4] See generally Lynton K. Caldwell, International Environmental Policy (3d ed. 1996) at 48-78.

[5] World Commission on Environment and Development (Brundtland Commission), OUR COMMON FUTURE (1987) at ix-xv.

[6] Dr. Lynton Caldwell, a principal architect of the U.S. National Environmental Policy Act of 1969, has defined "sustainable development" as "the meeting of today's true needs and opportunities without jeopardizing the integrity of the planetary life-support base—the environment—and diminishing its ability to provide for needs, opportunities, and quality of life in the future." Caldwell, supra note 1, at 243. To be sustainable, development must possess both economic and ecologic sustainability, a concept which is viewed quite differently by industrialists, economists, planners, and environmental and ecological scientists and has generated a large literature. *Id.* at 275 n. 71 (citing selected examples). See generally, Ann L. MacNaughton and Jay G. Martin, *Environmental Conflict Management and Dispute Resolution*, in Ann L. MacNaughton and Jay G. Martin, eds., ENVIRONMENTAL DISPUTE RESOLUTION: AN ANTHOLOGY OF PRACTICAL SOLUTIONS (ABA 2002), notes 1-15 and accompanying text.

[7] The EU also announced good governance, energy, and health initiatives. See http://europa.eu.int/comm/environment/wssd/eu_preparations_en.html.

[8] See generally, Ann L. MacNaughton and Jay G. Martin, *Environmental Conflict Management and Dispute Resolution,* Chapter 1 in Ann L. MacNaughton and Jay G. Martin, eds., ENVIRONMENTAL DISPUTE RESOLUTION: AN ANTHOLOGY OF PRACTICAL SOLUTIONS (ABA 2002).

Put Your Ideas to Work!
Make a Difference!
Volunteers Needed for Several Exciting Projects!

The State Bar of Texas ADR Section Membership Services Committee is looking for volunteers to work on several projects during 2003. The first and most exciting project is to plan the Fall 2003 CLE meeting scheduled for September. Get in on the planning stages and have an impact on what the Section offers to its membership!

The second opportunity that needs interested members is to help evaluate the member needs, interests, concerns, CLE interests, etc. The Membership Services Committee has been asked to develop and maintain a system of evaluating member needs and incorporating them into strategic plans that can be implemented. Any of you who have experience in developing questionnaires would be able to use those skills to help us.

Please make your interest known to Virginia Bowers, chair of the Member Services Committee, by email at vjbowers@hotmail.com or by telephone at 972-233-3414. This is a great way to become more involved in the work of the Section and to be involved with helping the entire membership.

Practical Tips for Mediation: Hold-for-Payout Status

By Jeff Abrams

Commercial mediation can take so many forms. So often, however, as in other types of mediation, it comes down to dollars and cents. Invariably, in these cases, the defendant asserts what I call the "I Can't Pay" defense. Whether or not this is actually true and what type of proof a plaintiff will require to substantiate this defense has to be determined in each case. Nevertheless, many, if not most, of these cases settle in the end.

Often, these cases take the form of a payout over time. This occurs when a defendant is either unwilling or unable to pay, in a lump sum, an amount necessary to satisfy plaintiff. Plaintiffs will often accept payment over time if they can be given some assurance that the defendant will pay. This is not always easy because, from plaintiff's perspective, if the defendant didn't pay the first time, why should they be trusted to pay this time? Usually, there is no property that can be used as security for payment so an alternative method of assurance must be found.

One of the most common forms of assurance is for a defendant to give the plaintiff an agreed judgment for an amount larger than the settlement amount, which plaintiff agrees not to execute on so long as settlement payments are being timely made. Once all settlement payments have been made the plaintiff releases the judgment. If defendant defaults, the plaintiff may execute on the larger judgment, usually giving credit for any payments previously made under the settlement agreement. The threat of execution on a larger judgment acts as an incentive for the defendant to pay timely and is often the assurance a plaintiff needs to accept a payout.

From my past experience as a lawyer and mediator, the agreement would generally provide for plaintiff to file the judgment with the court but agree not to abstract (file formally in the deed records) or execute on it so long as payments were timely made. The filing of the judgment would terminate the case and get it off the court's docket. More and more, though, it seems defendants are unwilling to agree to the filing of the judgment with the court. Apparently, some records services and/or credit reporting agencies review court filings and these judgments can show up on defendant's records. I have even heard a story about a defendant who had a real estate closing held up because a Take Nothing judgment showed up on his records.

Many defendants claim that a filed judgment will either prevent them from doing other deals, getting other loans or just negatively affect their credit, which they are unwilling to do. They say they will allow the plaintiff's attorney to hold the judgment in trust upon said attorney's agreement not to file, abstract or execute on the judgment so long as there is no default in payments under the settlement. Once all payments have been made, the plaintiff's attorney returns the judgment to defendant's attorney and dismisses the case with prejudice. In this way, no judgment will ever show up against defendant.

The problem arises when the case is scheduled for trial prior to the due date of the last payment. It makes no sense to try the case because the parties have reached agreement. However, if there is no trial, the case may be dismissed for want of prosecution. Plaintiff would not be able to enforce the remainder of its settlement payments. Continuances are a possibility but some judges may be unwilling to grant a continuance if the case has been pending for some time and/or continuances have been previously granted. Many judges these days are conscious of the size of their dockets and age of their cases. In these circumstances, what can the parties do to avoid having to try a case where the parties have reached an agreement in principle?

Notwithstanding their concerns for docket size and age, I have found that the large majority of judges are willing to pass trials and retain cases on their docket if they are reported as settled subject to what I call hold-for-payout status. Perhaps its because the case has been reported settled or because the courts can report these cases differently but I can recall only one time when a judge wouldn't allow the case to be retained in a hold-for-payout status.

However, there are limits. In my experience, some judges have allowed a period of no more than six months and none that I know will allow hold-for-payout status for more than a year. If the payout period is longer than this the parties will have to come up with a different alternative. I had one case many years ago that didn't settle simply because no alternative could be found. I just came up with an idea that I think may get around this but I'll save that for another article.

I, as mediator, have found it best to call the court coordinator, or other court staff equivalent, to request the hold-for-payout status. Perhaps it's harder to say no to a mediator. Additionally, I have found that the parties appreciate when the mediator goes the extra mile. The coordinator will almost always know what the Court's position is and, if not, they will usually ask the judge. Simply calling has been sufficient most of the time to put the case on hold-for-payout status. Some judges want a letter from the mediator or the parties. Some want the parties to file a pleading with the court. Each judge will have his or her own way to handle it.

have found the hold-for-payout approach to be very useful in my mediation practice. It is a great way to allow the plaintiff to put enough money in his or her pocket in a manner that reasonably assures payment, while, at the same time, allowing defendant sufficient time to pay without negatively affecting its credit rating, all in a manner generally acceptable to the court. And, best of all, in my experience, the large majority of these payout scenarios have been successful. But for hold-for-payout status, many of these cases may have required an unnecessary, and unwanted, trial.

BOOK REVIEW

Commercial Arbitration at Its Best

American Bar Association and CPR Institute for Dispute Resolution

Reviewed by Paul Keeper

Commercial Arbitration at Its Best (American Bar Association and CPR Institute for Dispute Resolution, 2001; Thomas J. Stipanowich, editor, and Peter H. Kaskell, associate editor; 539 pp.; $115.00)

Arbitration provisions in American commercial contracts have become increasingly common. If challenged, these provisions are typically judicially enforced with swiftness and uniformity. By their rulings, state and federal courts across the country are effectively informing American business: if you choose to arbitrate, then be prepared to live with your choices.

Although the business community relies upon uniform practices to keep marginal costs low, many in that same community (and their counsel) are unprepared to participate knowledgeably in the arbitration process. *Commercial Arbitration at Its Best* is a well-written response to the need for bringing greater familiarity to the business community's leaders and their legal advisors.

The book is drafted in a primer style that relies upon questions and answers to 66 basic issues, including such topics as: is discovery available in arbitration?, when, if ever, may arbitrators sanction parties or counsel?, and can third parties be included in the arbitration? Organized into eight chapters, *Commercial Arbitration* is designed to serve as a desk manual to which counsel may turn to get an overview of how arbitration works. Because the book is written in plain English, the book will also be useful for the CEO or corporate risk manager who wants a quick review of the elements of arbitration.

The authors have attempted to raise the bar a bit higher than a simple how-to manual by incorporating a series of discussions about best arbitration practices. Indeed, the subtitle of the book is "Successful Strategies for Business Users," and includes the designation "A Report of the CPR Commission on the Future of Arbitration." The CPR Commission is constituted by the executive and legal representatives of more than 50 of America's largest commercial companies and law firms. Although a few of the representatives are drawn from the non-profit and scholastic communities, the book is frankly written as a guide to arbitration within the business community. Specifically left unaddressed in the book are issues on labor and employment and consumer arbitration.

Of potential interest to mediators is the fact that *Commercial Arbitration* begins with a chapter devoted almost exclusively to mediation. The first question in the first chapter is, "Why does a book devoted to arbitration begin with a chapter dealing with topics such as mediation and conflict management?" Appropriately, the authors treat arbitration as a last resort, and they counsel the reader that "principals should play a key role in dispute resolution and should approach a dispute as a problem to be solved, not a contest to be won." Only if these efforts are unsuccessful, advise the authors, should arbitration be used–and even then, "these [mediation and negotiation] procedures [should] remain available."

The book is enhanced by its inclusion of 21 appendices that provide model arbitration provisions, confidentiality agreements, uniform acts and enacted laws, and comparisons between the AAA and CPR arbitration rules. Although many of these are available on the Internet, their collection in a single desk manual makes for a useful resource.

The book's straightforward approach also qualifies it as an important document for the arbitrator. Stipanowich and Kaskell have edited a manual that consolidates the advice of

seasoned arbitrators and reviews the reasons for the use of many of the standard arbitration processes. For example, one of the Commission members states his or her position on the use of opening statements:

I like opening statements at the hearing, even if there have been preliminary submissions in writing. Opening statements with the client present are usually helpful to the arbitrator and focus and clarify the issues.

These are the words of an arbitrator who understands the power of mediation values in an arbitration setting. This is the type of advice sought by practitioners and clients who want to know what works best.

I recommend *Commercial Arbitration at Its Best.* Although it is pricey at $115.00, the manual's 500+ pages form a helpful written resource for the client who seeks to learn, for the attorney who seeks to counsel, and for the arbitrator who seeks to provide a qualitatively better service.

Paul Keeper *is an attorney and arbitrator/mediator who has been practicing in Austin for 22 years. Mr. Keeper serves on the ADR panels of the American Arbitration Ass'n and American Health Lawyers Ass'n. He is a former officer of the ADR Section and a contributor to this journal.*

EXPRESSIONS OF NEWS

Kenneth Feinberg to Address Section of Dispute Resolution Fifth Annual Spring Conference
San Antonio, Texas, March 20-22, 2003

Mark your calendar and plan to attend this premier dispute resolution event. Historically, the spring conferences have been tremendous successes, each attracting over 1,000 participants. The conference is a gathering place for dispute resolution leaders, providers, consumers, scholars, students, from small firms, universities, large law firms, corporations, accounting offices, psychologists' offices, and others that comprise the wonderful world of dispute resolution.

The Fifth Annual Section of Dispute Resolution Spring conference, "Insight for Inspired Practice" will occur in San Antonio, Texas, March 20-22, 2003 at the Henry B. Gonzalez Convention Center. The Hilton Palacio del Rio will be the host hotel and the phone number is (210) 222-1400. The Section will celebrate its 10th year anniversary with a Gala Celebration at the Southwest School of Art and Crafts. A special pre-conference forum on Expanding Opportunities for Minorities and Women and a Latin American Track are planned.

The Section of Dispute Resolution plans to feature the Fourteenth Annual Frank E. A. Sander Lecture with Kenneth Feinberg, special master of the September 11 Victims Compensation Fund. Also offered on this exciting program will be pre-conference skills training on the latest innovations in dispute resolution practice; the fourth Annual Legal Educators Colloquium; the second Court ADR Mini-Conference; a breakfast with the ADR Section of the State Bar of Texas; close to 120 CLE sessions organized into practice and interest specific tracks; and the presentation of the D'Alembert/Raven Award during the Friday luncheon.

Subject matter tracks this year will include: Arbitration, Community and Peer Mediation, Communication, Construction ADR, Corporate/Business ADR, Court-Connected ADR, Employment and Labor ADR, Ethics, Family, Government ADR, Environment & Public Policy, International, Latin America, Practice Development and Management, and Technology. This sessions give you an excellent opportunity to sharpen your skills while getting the Continuing Education credits you need.

The State Bar Of Texas ADR Section
Hosts Two Events

Please join the State Bar of Texas Alternative Dispute Resolution Section as it hosts two major events at the conference.

The ADR Section will host the celebration of the 10th anniversary of the ABA Section of Dispute Resolution. This gala will be held on Friday, March 21, 2003, from 7:00 p.m. - 9:00 p.m.at the Southwest School of Art and Craft. Tickets are limited. For ticket information, see the registration form on the next page.

Also, join the State Bar of Texas Alternative Dispute Resolution Section for a "Texas-Style" Breakfast on Saturday, March 22, 2003, from 8:00 a.m. - 9:00 a.m. Meet the original drafters of the 1987 Texas ADR Act. Learn how the leadership of the Texas ADR Section and other mediator organizations in Texas have avoided legislative and judicial regulation of mediators. Say "howdy" to the Texas ADR Council and representatives of ADR groups from across the state. Meet Col. Travis and Gen. Santa Anna and enjoy a special presentation of "Remember the Alamo: What if the State Bar of Texas ADR Section had been there?" Bring your business cards for door prizes and "give-aways, and earn CLE credit (.75 MCLE credit pending). Enjoy all of this for the low Texas price of just $5.00. Pay at the door. Please RSVP to Danielle Hargrove at 210-493-6217.

The 2003 Court ADR Mini-Conference
Ensuring and Sustaining Success

Learn the latest best practices in court ADR at the 2003 ABA Mini-Conference on Court ADR! The Mini-Conference will focus on ensuring and sustaining success in court-annexed dispute resolution programs. A number of important issues in court dispute resolution programs will be addressed, including funding challenges, promotion of court ADR, mediator competency and qualifications, effective partnerships between courts and community mediation, and evaluation design, implementation and analysis. The Mini-Conference will be an informative, thought-provoking, interactive
event for judges and court administrators, as well as lawyers, mediators, researchers and anyone interested in court dispute resolution programs.

A highlight of the Mini-conference will be an opening breakfast plenary featuring Texas Supreme Court Justice Priscilla Owen who will discuss the "The Court ADR Journey in Texas". The Mini-conference also will include six breakout sessions, a networking lunch, and informal discussion groups.

This Mini-conference will be held on Thursday, March 20 from 8:15 am - 2:30 pm at the Henry B. Gonzalez Convention Center in San Antonio, Texas. For more information about the Mini-conference and the Section of Dispute Resolution Annual Conference, which will start on the afternoon of March 20th, call (202) 662-1680 or see http://www.abanet.org/dispute.

For Additional Information Contact: Jannice Hodge-Bannerman
740 15th Street NW, Washington, DC 20005 Phone: 202-662-1687
Fax: 202-662-1683 Email: hodgej@staff.abanet.org
Web: http://www.abanet.org/disput Registration Form available on facing page.

ADR Section Committee Chairs 2002-2003

1.EXECUTIVE COMMITTEE

Chair Deborah McElvaney
Chair-Elect Michael Schless
Treasurer Bill Lemons
Secretary Patricia Palafox
Immediate Past Chair Wayne Fagan

2. LEGISLATION COMMITTEE

Co-Chairs Michael Wilk & John Fleming

3. LIAISON COMMITTEE

Co-Chairs Bill Lemons/Ann MacNaughton

4. PUBLICATIONS COMMITTEE

Chair Jim Knowles

5. MEMBER SERVICES COMMITTEE

Chair Virginia Bowers

6. ANNUAL MEETING COMMITTEE

Chair Michael Schless

7. NOMINATIONS COMMITTEE

Chair Wayne Fagan

SBOT ADR SECTION COMMITTEE CHAIRS
2002-2003

1. EXECUTIVE COMMITTEE

Chair
Deborah McElvaney
Chair-Elect Michael Schless
Treasurer Bill Lemons
Secretary Patricia Palafox
Immediate Past Chair Wayne Fagan

This Committee is chaired by the Section Chair. This Committee plans the Annual Retreat for the Council, makes executive decisions on certain matters that do not demand Council approval, and serves as a direct link to the Council and the Section.

2. LEGISLATION COMMITTEE

Co-Chairs Michael Wilk & John Fleming

This Committee monitors, and keeps the Council informed of, proposed state legislation that impacts ADR; develops strategic plans with other Committees when taking a stand on certain proposed legislation; monitors the status of the UMA and UAA with suggestions as to what the Council should and could do regarding these Acts; and keeps the Council and Section current as to the status of activities in the areas of multi-disciplinary practice, multi-jurisdictional practice, and unauthorized practice of law.

3. LIAISON COMMITTEE

Co-Chairs Bill Lemons & Ann MacNaughton

This Committee keeps open the lines of communication to and from other State Bar of Texas entities, as well as external organizations, especially the ABA and other DR groups in the state,. This Committee will coordinate with the Publications Committee in keeping Section members apprised of various publications and newsletters of other DR groups. This Committee will advise as to national and international trends in ADR as it impacts various areas of the law, such as mass torts and class actions, employment law, family law, etc.

4. PUBLICATIONS COMMITTEE

Chair Jim Knowles

This Committee is in charge of the Newsletter and keeping it on schedule and of high quality. The Committee works directly with Robyn Pietsch, editor of the Newsletter, in writing, soliciting, and editing articles for the Newsletter. The Committee monitors the website and keeps it up-to-date, addresses problems that members may have with the website, develops policies and procedures for various areas related to the Newsletter and website, such as advertising, etc.; and coordinates the handbook revisions.

5. MEMBER SERVICES COMMITTEE

Chair Virginia Bowers

This Committee now incorporates some of the functions of the prior Quality of Practice and Education Committees. This Committee keeps in touch with the membership regarding the member needs, interests, concerns, CLE interests, etc. This Committee will develop and maintain a system of evaluating member needs and incorporating them into strategic plans that can be implemented. This Committee plans the Section's yearly CLE, which generally occurs in September.

6. ANNUAL MEETING COMMITTEE

Chair Michael Schless

This Committee is chaired by the incoming chair and it plans the Annual Meeting, which is in conjunction with the SBOT Annual Meeting in June of each year. This Committee determines who will receive various awards and commendations; coordinates the Evans Award by soliciting nominees, deciding on the recipient, ordering the Award; and presents the Award at the Annual Meeting. This Committee is charged with planning the CLE at the Annual Meeting in June.

7. NOMINATIONS COMMITTEE

Chair Wayne Fagan

This Committee is chaired by the past chair and handles the nominations for positions on the Executive Committee and the Council. This Committee solicits nominees, evaluates them, makes nominations in time for the spring publication of the Newsletter, and holds the election at the Annual Meeting.

2003 CALENDAR OF EVENTS

Ethical Issues in Caucus Model Mediation ◆ Austin ◆ May 6, 2003 ◆ 9:00 a.m. to 12:30 a.m. ◆ Corder/Thompson & Associates ◆(512) 458-4427 ◆ www.corderthompson.com

Ethical Negotiation and Mediation (Online Class) Register online at: http://www.texasbarcle.com/

40-Hour Basic Mediation ◆ Austin ◆January 6, -10, 2003 ◆ Center for Public Policy Dispute Resolution ◆The University of Texas School of Law ◆ 512-471-3507

Transformative Mediation Training ◆Dallas ◆ February 28, 2003 ◆ Dispute Mediation Service ◆ (214)754-0022

Transformative Mediation Training ◆ Dallas ◆ May 9, 10, 16, 17, 2003 ◆ Dispute Mediation Service 9 AM to 5 PM ◆ (214)754-0022 ◆ www.dms-adr.org

40-Hour Basic Mediation Training Houston ◆ February 10-14, 2003 ◆ A.A. White Dispute Resolution Center University of Houston Law Center Blakely Advocacy Institute ◆ (713) 743-2066 ◆ www.law.uh.edu/blakely/aawhite

Basic 40-Hour Mediation Training ◆ Houston January 27-31, 2003 ◆ Worklife Institute ◆ 713-266-2456 ◆Diana C. Dale or Elizabeth F. Burleigh

Family & Divorce Mediation Training (30 hours) ◆ Houston ◆ January 15-18, 2003 ◆ Worklife Institute ◆ 713-266-2456 ◆ Diana C. Dale or Elizabeth F. Burleigh

Basic 40-Hour Mediation Training (20 hours each week) ◆ Houston ◆ April 24-26 & May 1-3, 2003 ◆ Worklife Institute ◆ 713-266-2456 ◆ Diana C. Dale or Elizabeth F. Burleigh

Family & Divorce Mediation Training (30 hours) ◆ Houston ◆ March 12-15, 2003 ◆ Worklife Institute ◆ 713-266-2456 ◆ Diana C. Dale or Elizabeth F. Burleigh

The Wide World of Arbitration Training for Arbitrators & Contestants ◆Houston April 3, 2003 ◆Houston Community College Central ◆ Contact Sherry Wetsch ◆ 713-974-2115

ABA SECTION OF DISPUTE RESOLUTION

INSIGHT FOR INSPIRED PRACTICE

March 20-22, 2003

San Antonio, Texas

CONFERENCE SCHOLARSHIP APPLICATION

Eligibility: Scholarship awards are based upon need as defined by applicant's income or applicant's agency or employer's ability to support the applicant's attendance at the Conference. The Section strongly encourages legal services, public interest, community or government agency personnel, solo practitioners and minorities to apply.

Scholarship Procedure: Complete the application form below and submit to the Section of Dispute Resolution at 740 15th St. NW, Washington, DC 20005; Phone: (202) 662-1680; Fax: (202) 662-1683; e-mail: dispute@abanet.org. The Section of Dispute Resolution will review all applications and award scholarships on a first-come first-served basis to all eligible applicants. The scholarship covers the registration fees for the *Insight for Inspired Practice* Conference as well as one of two pre conference events, the *Forum on Expanding Opportunities for Minorities and Women in DR* or the *Court ADR Mini-Conference*. The scholarship does not cover travel costs.

Source of Scholarship Support: The Scholarships are made possible in part by the American Bar Association CLE Division Underserved Lawyers Fund, the ABA Section of Dispute Resolution and the State Bar of Texas Alternative Dispute Resolution Section.

Name of Applicant _____ Title/Position _____

Firm/Organization _____ Type of Practice (e.g., gov't, solo-practice, community) _____

Street Address _____

City _____ State _____ Zip Code _____

Telephone _____ Fax _____ E-mail Address _____

Please indicate your salary and/or state why your agency/employer is unable to support your conference attendance:

In order to assist the Section in assessing the diversity of this scholarship program, please indicate your gender, ethnicity or race, and/or whether you have any physical impairments or disabilities:

Please indicate whether you are a member of a state bar: YES NO

State Bar _____

Please check the events for which you would like to be considered for a scholarship:

Insight for Inspired Practice Conference _____
and/or only one of the following:

Court ADR Mini Conference _____
or

Forum on Expanding Opportunities for Minorities and Women in DR _____

For more information about conference scholarships please contact the ABA Section of Dispute Resolution at (202) 662-1680 or dispute@abanet.org.