

# TheADRQuarterly

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## Confidentiality in Mediation: A Reality Check for the Process

By: Christopher J. Webb, J.D.<sup>1</sup> and Brian A. Pappas, J. D.<sup>2</sup>

Today mediation finds itself at the center of many political and legal storms. We have only to pick up one of our local newspapers to appreciate the difficult issues presented by the subject of confidentiality in mediation or examine a recent decision by our Supreme Court.<sup>3</sup> Often a mediation's success is a direct result of the parties' faith in the confidentiality of the process. Unfortunately, the current Community Dispute Resolution Act provides little guidance on the often complex issue of confidentiality. The Uniform Mediation Act, and the debate surrounding its proposed adoption in Michigan, provides an excellent start to protecting confidentiality for both parties and neutrals. But as the following example demonstrates, the UMA debate must not be the end of the analysis. The UMA raises the important issue of the difficulty of balancing the parties' need for confidentiality with the court's need for information to prevent failures of justice. If, for whatever good reason, we set ourselves as mediators above the courts, we will be asking for trouble -- not only as individual mediators, but for the process of mediation itself.

Suppose you are privately retained as a mediator. In caucus, an attorney for one of the parties in the mediation turns to you and privately says: "*I have text messages from my corporate client that anticipates an extraordinary transfer of its assets offshore, effectively leaving only a shell corporation. I don't know if it would be a*

*fraudulent conveyance or not. I wanted you to know that if this were to occur, any judgment will be uncollectible. I don't intend to tell the other side because right now it is just speculation.*" The attorney also instructs you not to disclose the information.

As the mediator, what do you do? One response is to end the mediation and walk away. And let's say, however, you continue the mediation and ultimately an agreement is reached. Unfortunately, two months later, litigation arises between the parties and you are called to testify as a witness. The litigation relates to claims of material breach and fraud in the inducement of the settlement agreement reached during the mediation. Now what?<sup>5</sup> As the mediator can you refuse to testify? Either way, what is your exposure as a mediator or as an attorney? Time to hit the books!

Today, two potential reference points exist -- the Community Dispute Resolution Act 260 of 1988 (CDR Act) and MCR 2.411 et seq. The Community Dispute Resolution Act, Sections 7 and 7a read as follows:

### Sec. 7

(1) The work product and case files of a mediator or center and communications relating to the subject matter of the dispute made during the dispute resolution process by a party, mediator, or other person are confidential and not subject to

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<sup>2</sup> Mr. Pappas is an ADR Fellow with the Michigan State University College of Law and Master of Laws candidate in Conflict Resolution at the University of Missouri-Columbia Law School and primary author of the law review article entitled "SHOULD MICHIGAN ADOPT THE UNIFORM MEDIATION ACT? An Analysis of

Michigan's Community Dispute Resolution Act" that is expected to be published this fall.

<sup>3</sup> See *Detroit Free Press Inc. et al. v City of Detroit*, Michigan Supreme Court (SC 135841, February 27, 2008).

<sup>4</sup> National Conference of Commissioners on Uniform State Laws, Uniform Mediation Act (2001) [hereinafter "UMA"]. "UMA" is used solely in reference to the Uniform Mediation Act as proposed by the National Conference of Commissioners on Uniform State Laws. See Appendix A for the complete text of the UMA.

<sup>5</sup> Richard L. Braun II, current chair of the Michigan State Bar ADR Section, contributed to this hypothetical and raised additional issues relating to the confidential nature of a settlement agreement itself as well as other communications relevant to its negotiation not communicated to the mediator. These additional issues deserve treatment by the ADR community and are outside the scope of this article.

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Christopher J. Webb, J.D.

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Mr. Webb has served for past two years as a facilitator regarding public water issues facing Metropolitan Detroit.



Brian A. Pappas, J.D.

Brian A. Pappas, J.D., M.P.P., is a full-time mediator in Chicago, and as of July 1st the Associate Director of the ADR Program at Michigan State University's College of Law. Trained in both facilitative and transformative mediation techniques, Mr. Pappas has presented at multiple conferences, including the Spring Conference of the ABA's Section of Dispute Resolution and the Dispute Resolution Works in Progress Conference, on issues ranging from Online Dispute Resolution to ADR Law School Education. This month Mr. Pappas will complete his LL.M. in Dispute Resolution at the University of Missouri-Columbia.

disclosure in a judicial or administrative proceeding except for either of the following:

(a) Work product, case files, or communications for which all parties to the dispute resolution process agree in writing to waive confidentiality.

(b) Work product, case files, or communications which are used in a subsequent action between the mediator and a party to the dispute resolution process for damages arising out of the dispute resolution process.<sup>6</sup>

(2) Subsection (1) does not apply to statements, memoranda, materials, and other tangible evidence, otherwise subject to discovery, that were not prepared specifically for use in the dispute resolution process.

#### Sec. 7a.

A mediator of a community dispute resolution center shall not be held liable for civil damages for any act or omission in the scope of his or her employment or function as a mediator, unless he or she acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of the rights, safety, or property of another...<sup>7</sup>

#### And MCR 2.411 reads in part at Subrule (C) (5) as follows:

Confidentiality. Statements made during the mediation, including statements made in written submission, may not be used in any other proceedings, including trial. Any communications between the parties or counsel and the mediator relating to a mediation are confidential and shall not apply to

- (a) the report of the mediator under subrule (C) (3) [Completion of Mediation],
- (b) information reasonably required by court personnel to administer and evaluate the mediation program,
- (c) information necessary for the court to resolve disputes regarding the mediator's fee, or
- (d) information necessary for the court to consider issues raised under MCR 2.410 (D) (3) [Failure to Attend]

A careful read of the CDR Act and the court rule quoted above may leave you feeling a bit "cold" in terms of guidance.<sup>8</sup> Does the CDR Act apply to your private mediation? Even if it has only limited application, you are not a party to the litigation; does this change the ballgame? Can it be argued that if you agree to testify, you may now face a malpractice claim by one or both of the parties as a mediator, an attorney, or both?

Does MCR 2.411(C) (5) protect communications to a mediator that might otherwise not be protected within the attorney-client privilege? Does the analysis

change if the mediator is an attorney or has a mediation retention agreement that speaks directly to this point?" Or to put it another way, do you violate the court rule by testifying? If you are the only person with knowledge, can the court order you to testify? If so, what record do you want to make to protect yourself if ordered to do so under the threat of contempt? Some of these questions were considered at last year's ICLE Advanced Negotiations and Dispute Resolution Institute. The outcome was a broad consensus that you had better be prepared and ready to handle something like this if it comes your way. Confidentiality can be an expensive "free lunch!"

So where do we go from here? The State Bar ADR Section, the Michigan State University College of Law, and many other top organizations and individuals are currently considering the Uniform Mediation Act that has been adopted by 10 states.<sup>9</sup> Under the current UMA draft, confidentiality includes both the duty not to disclose confidential information and the freedom from involuntary testimony. The UMA provides comprehensive protections to preserve the "confidentiality" and, as many would say, the "integrity" of the mediation process. This freedom from involuntary testimony on the part of a mediator may, however, be a two-edged sword.

The UMA, under specific circumstances, creates an absolute privilege held by the mediator. This privilege empowers the mediator to refuse to testify even if the mediator is the only potential witness of the alleged wrongdoing including those relating to an action to rescind a contract arising out of mediation,<sup>10</sup> or to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation.<sup>11</sup>

This last observation bears repeating: ***Under the UMA, if there is fight between the parties about the settlement agreement or misconduct by someone other than the mediator, and you as the mediator are the only one that can testify about what happened, the court can't order you to testify.***

We raise this issue with the hope that it will be taken up as we move forward. We concerned that if, for whatever good reason, we set ourselves as mediators above the courts, we will be asking for trouble. There is today a need to revisit "confidentiality" as a part of the mediation process, and the UMA goes a long way in assisting in this effort. This said, the UMA is a starting point but not an ending point. Ultimately it is important that we craft confidentiality language that will provide practical

<sup>6</sup> MICH. COMP. LAWS ANN. § 691.1557 (West 1988) (amended 1993).

<sup>7</sup> MICH. COMP. LAWS ANN. § 691.1557a (West 1988) (amended 1993).

<sup>8</sup> See supra note 5. In its February 27, 2008 Order, the Michigan Supreme Court denied an application for leave to appeal by the Defendant-Appellant City of Detroit regarding the release of certain documents requested under the Freedom of Information Act (FOIA) by the Plaintiff-Appellee Detroit Free Press. After concluding that FOIA request of the Plaintiff Detroit Free Press was sufficiently specific and not exempt under FOIA, the Court upheld the trial court's decision permitting the release of the requested documents subject to one redaction and observed that a public body may not contract away its obligations under the FOIA. The concurrence of Justice Marilyn Kelly discussed the application of MCR 2.411 (C)(5) to the trial court's decision to disclose the deposition transcript sought under the FOIA

request. While Justice Kelly believed that certain parts of the deposition involved confidential communications under MCR 2.411 (C)(5), Justice Kelly for procedural reasons offered no opinion regarding the trial court's ruling that MCR 2.411 (C)(5) is subject to the crime-fraud exception discussed in *People v Piasche*, 207 Mich App 698, 705-706 (1994). Simply put, is a communication of future wrongdoing protected in mediation under the rule? We suggest that it should not be. Our mediation retention agreements should address the same as well.

<sup>9</sup> We wish to thank Mary A. Bedikian, Professor of Law in Residence & Director of Alternative Dispute Resolution Program for the Michigan State University College of Law, for her important work in the field of ADR and importantly her scholarly consideration of the UMA and extend our appreciation to Kevin S. Hendrick, member of the firm Clark Hill PLC, for his contribution to this article.

<sup>10</sup> See UMA § 6(b) (2) and (c).

<sup>11</sup> See UMA § 6(a) (6), (b) and (c).

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guidance and protection for mediators, and maintain a proper balance with the courts.

As for the above hypothetical situation, anticipating such a battle in your mediation retention agreement may be your best line of defense. How many of us, as mediators, have an agreement for private retention that the parties sign before we mediate? A sound mediation agreement is an absolute must. A retention agreement used by one of the authors does have a section on confidentiality that reads in part as follows:

The parties further agree as follows:

- a. No evidence of any communications or work papers made by the parties or the Mediator is admissible, subject to discovery or subject to disclosure in any arbitration, administrative forum, civil action or other proceeding by any party unless specifically agreed in writing by the parties and the Mediator.
- b. Neither the parties nor the Mediator shall have any obligation of confidentiality with respect to any communications relating to any criminal violation of the law or any intention of any party to commit a criminal act.

- c. Although the Mediator is an attorney licensed to practice law in the State of Michigan, the parties acknowledge and agree that there is no attorney-client relationship between the Mediator and any of the parties and that any communications made by any party to the Mediator are not protected by the attorney-client or work product privilege.
- d. The provisions set forth above are subject to the applicable SCAO Standards including without limitation the enumerated exceptions to its confidentiality provisions.<sup>12</sup>

Would a mediator be covered in our hypothetical situation by this signed agreement? If called to testify, can we either agree or refuse to do so without worry?

Currently, in Michigan, the answer to these questions is not altogether clear. But the hypothetical situation is exactly why our interest and participation in the UMA discussion is so important. Certainly confidentiality needs to be secured, but it also needs to take its appropriate place vis-à-vis the courts and the self-determination of the parties. Until that time, one can never underestimate the importance of a well-crafted mediation agreement. It just may keep you out of harm's way! ❄️

<sup>12</sup> Please visit Mr. Webb's website referenced in footnote 1 of this article for the entire text of the mediation retention agreement. Valuable information and other resources are available through the Office of Dispute Resolution of the Michigan State Court Administrative Office at <http://courts.michigan.gov/scao/dispute/odr.htm>.

## Appendix A

# UNIFORM MEDIATION ACT (“UMA”)<sup>13</sup>

## (National Conference of Commissioners on Uniform State Laws)

**SECTION 1. TITLE.** This [Act] may be cited as the Uniform Mediation Act.

**SECTION 2. DEFINITIONS.** In this [Act]:

- (1) “Mediation” means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.
- (2) “Mediation communication” means a statement, whether oral or in a record or verbal or nonverbal, that occurs during a mediation or is for purposes of considering, conducting, participating in, continuing, or reconvening a mediation or retaining a mediator.
- (3) “Mediator” means an individual who conducts mediation.
- (4) “Nonparty participant” means a person, other than a party or mediator that participates in mediation.
- (5) “Mediation party” means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.
- (6) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or other legal or commercial entity.
- (7) “Proceeding” means:
  - (A) a judicial, administrative, arbitral, or other adjudicative process, including related pre-hearing and post-hearing motions, conferences, and discovery; or
  - (B) a legislative hearing or similar process.
- (8) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (9) “Sign” means:
  - (A) to execute or adopt a tangible symbol with the present intent to

authenticate a record; or

(B) to attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate a record.

**SECTION 3. SCOPE.**

- (a) Except as otherwise provided in subsection (b) or (c), this [Act] applies to a mediation in which:
  - (1) The mediation parties are required to mediate by statute or court or administrative agency rule or referred to mediation by court, administrative agency, or arbitrator;
  - (2) The mediation parties and the mediator agree to mediate in a record that demonstrates an exception that mediation communications will be privileged against disclosure; or
  - (3) The mediation parties use as a mediator an individual who holds himself or herself out as a mediator, or the mediation is provided by a person that holds itself out as providing mediation.
- (b) The [Act] does not apply to a mediation:
  - (1) Relating to the establishment, negotiation, or termination of a collective bargaining relationship;
  - (2) Relating to a dispute that is pending under or is part of the processes established by a collective bargaining agreement, except that the [Act] applies to a mediation arising out of a dispute that has been filed with an administrative agency or court;
  - (3) Conducted by a judge who might be a ruling on the case; or
  - (4) Conducted under the auspices of:
    - (A) A primary or secondary school if all the parties are students or
    - (B) A correctional institution for youths if all the parties are residents of that institution.

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<sup>13</sup> National Conference of Commissioners on Uniform State Laws, Uniform Mediation Act (2003).

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(C) If the parties agree in advance in a signed record or a proceeding so reflects, that all or part of a mediation is not privileged, the privileges under Sections 4 through 6 do not apply to the mediation or parts agreed upon. However, Sections 4 through 6 apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

#### **SECTION 4. PRIVILEGE AGAINST DISCLOSURE; ADMISSIBILITY; DISCOVERY.**

(a) Except as otherwise provided in section 6, a mediation communication is privileged as provided in subsection (b) and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by Section 5.

(b) In a proceeding, the following privileges apply:

- (1) A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.
- (2) A mediator may refuse to disclose a mediation communication, and may prevent any other person from disclosing a mediation communication of the mediator.
- (3) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.

(c) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

#### **SECTION 5. WAIVER AND PRECLUSION OF PRIVILEGE.**

(a) A privilege under section 4 may be waived in a record or orally during a proceeding if it is expressly waived by all parties to the mediation and:

- (1) In the case of the privilege of a mediator, it is expressly waived by the mediator; and
- (2) In the case of privilege of a nonparty participant, it is expressly waived by the nonparty participant.

(b) A person that discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is precluded from asserting a privilege under section 4, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(c) A person that intentionally uses a mediation to plan, attempt to commit or commit a crime, or to conceal an ongoing criminal activity is precluded from asserting a privilege under section 4.

#### **SECTION 6. EXCEPTIONS TO PRIVILEGE.**

(a) There is no privilege under Section 4 for a mediation communication that is:

- (1) In an agreement evidenced by a record signed by all parties to the agreement;
- (2) Available to the public under [insert statutory reference to open records act] or made during a session of a mediation which is open, or is required by law to be open, to the public;
- (3) A threat or statement of a plan to inflict bodily injury or commit a crime of violence;
- (4) Intentionally used to plan a crime, attempt to commit a crime, or to conceal an ongoing crime or ongoing criminal activity;
- (5) Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator;
- (6) Except as otherwise provided in subsection (c), sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or

representative of a party based on conduct occurring during a mediation; or

(7) Sought or offered to prove or disprove abuse, neglect, abandonment, or exploration in a proceeding in which a child or adult protective services agency is a party, unless the

[Alternative A: [State to insert, for example, child or adult protection] case is referred by a court to mediation and a public agency participates.]

[Alternative B: public agency participates in the [State to insert, for example, child or adult protection] mediation].

(b) There is no privilege under Section 4 if a court, administrative agency, or arbitrator finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and that the mediation communication is sought or offered in:

- (1) A court proceeding involving a felony [or misdemeanor]; or
- (2) Except as otherwise provided in a subsection (c), proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

(c) A mediator may not be compelled to provide evidence of a mediation communication referred to in subsection (a)(6) or (b)(2).

(d) If a mediation communication is not privileged under subsection (a) or (b), only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under subsection (a) or (b) does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

#### **SECTION 7. PROHIBITED MEDIATOR REPORTS.**

(a) Except as required in subsection (b), a mediator may not make a report, assessment, evaluation, recommendation, finding, or other communication regarding mediation to a court, administrative agency, or other authority that may make a ruling on the dispute that is the subject of the mediation.

(b) A mediator may disclose:

- (1) Whether the mediation occurred or has terminated, whether a settlement was reached, and attendance;
- (2) A mediation communication as permitted under Section 6; or
- (3) A mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.

(c) A communication made in violation of subsection (a) may not be considered by a court, administrative agency, or arbitrator.

**SECTION 8. CONFIDENTIALITY.** Unless subject to the [insert statutory references to open meetings act and open records act], mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this state.

#### **SECTION 9. MEDIATOR'S DISCLOSURE OF CONTENTS OF INTEREST; BACKGROUND.**

(a) Before accepting mediation, an individual who is requested to serve as a mediator shall:

- (1) Make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party or foreseeable participant in the mediation; and

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- (2) disclose any such known fact to the mediation parties as soon as is practical before accepting a mediation.
- (b) If a mediator learns any fact described in subsection (a)(1) after accepting a mediation, the mediator shall disclose it as soon as is practicable.
- (c) At the request of a mediation party, an individual who is requested to serve as a mediator shall disclose the mediator’s qualifications to mediate a dispute.
- (d) A person that violates subsection (a), [or] (b), [or] [(c)] is precluded by the violation from asserting a privilege under section 4.
- (e) Subsections (a), (b), [and] (c), [and] [(g)] do not apply to an individual acting as a judge.
- (f) This [Act] does not require that a mediator have a special qualification by background or profession.
- [(g) A mediator must be impartial, unless after disclosure of the facts required in subsections (a) and (b) to be disclosed, the parties agree otherwise.]

**SECTION 10. PARTICIPATION IN MEDIATION.** An attorney may represent, or other individual designated by a party may accompany the party to, and participate in a mediation. A waiver of representation or participation given before the mediation may be rescinded.

**SECTION 11. INTERNATIONAL COMMERCIAL MEDIATION.**

- (a) In this section, “Model Law” means the Model Law on International Commercial Conciliation adopted by the United Nations Commission on International Trade Law on 28 June 2002 and recommended by the United nations General Assembly in a resolution (A/REES/57/18) dated 19 November 2002, and “international commercial mediation” means an international commercial conciliation as defined in Article 1 of the Model Law.
- (b) Except as otherwise provided in subsections (c) and (d), if a mediation is an international commercial mediation, the mediation is governed by the Model Law.
- (c) Unless the parties agree in accordance with Section 3(c) of this [Act] that all or part of an international commercial mediation is not privileged, Sections 4, 5, and 6 and any applicable definitions in Section 2 of this [Act] also apply to the mediation and nothing in Article 10 of the Model Law derogates from Sections 4, 5, and 6.

(d) If the parties to an international commercial mediation agree under Article 1, subsection (7), of the Model Law that the Model Law does not apply, this [Act] applies.

**SECTION 12. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.** This [Act] modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but this [Act] does not modify, limit, or supersede Section 101(c) of that Act or authorize electronic delivery of any of the notices described in Section 103(b) of the Act.

**SECTION 13. UNIFORMITY OF THE APPLICATION AND CONSTRUCTION.** In applying and constructing this [Act], consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

**SECTION 14. SEVERABILITY CLAUSE.** If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

**SECTION 15. EFFECTIVE DATE.** This [Act] takes effect.....

**SECTION 16. REPEALS.** The following acts and parts of acts are hereby repealed:

- (1)
- (2)
- (3)

**SECTION 17. APPLICATION TO EXISTING AGREEMENTS OR REFERRALS.**

- (a) This [Act] governs a mediation pursuant to a referral or an agreement to mediate made on or after [the effective date of this [Act]].
- (b) On or after [a delayed date], this [Act] governs an agreement to mediate whenever made. ❄❄

# Zena Zumeta Tribute

By Frank Weir

The Family Mediation Council of Michigan held a special "Lifetime Achievement in Mediation" tribute to nationally-known mediator and trainer Zena Zumeta on March 18.

The program was held at Burton Manor in Livonia. Robert E. Lee Wright, senior counsel at Miller Canfield's office in Grand Rapids, served as master of ceremonies.

Carole Church, chair of the FMC, said that Zumeta had been "an active participant in developing the court rules for mediation, standards for mediation training and the domestic violence training, which focus on a screening protocol.

"She has served on numerous committees and work groups addressing ongoing or special purpose issues. She believes that the tenor of divorce practice has changed due to the ongoing communication between lawyers, the courts, mental health, and financial professionals.

"This is being continued in the growth of collaborative practice as well as mediation," Church said.

Zumeta is a past president of the FMC.

In addition to a plaque from the Family Mediation Council, presented by FMC President Susan Paletz, an attorney and mediator with offices in Bingham Farms, Zumeta also received resolutions of tribute from the State of Michigan and from the Mediation Council of Illinois.

It is a measure of Zumeta's success and national influence that a hand-out at the dinner included "warm wishes" from "your friends in the Alaska court system's mediation programs."

Bernard Mayer, an internationally-recognized authority in the field of conflict resolution, delivered the keynote tribute to Zumeta. Mayer is a partner of CDR Associates, based in Boulder, CO. He is experienced as a program administrator, trainer, facilitator, and psychotherapist and has developed innovative conflict resolution systems for governmental agencies, their clients, and the public.

He has known Zumeta since the 1980s.

He began by mentioning Zumeta's impact at the national level as mediation and collaborative practice were just beginning and doctrinal differences had to be addressed.

"I saw Zena fight the good fight as the struggle went on. I was on a national board at the time and when I saw the conflicts she raised that needed to be raised, I thought that this is a good thing to be happening.

"Other conflict resolution leaders felt we didn't need that at that time. But it is our good fortune that she hung in there and carried on an important struggle. I thought those were exactly the kinds of conflicts we needed to have and I thank her for raising them. She made a very important contribution in that arena alone."

Mayer noted that Zena's training skills are very well known and highly regarded. "When our trainers participate at national events, I always make a point of asking them when they return whose presentations had the greatest impact. Almost always, Zena's is the first and foremost. She has an amazing range and impact; from domestic violence to spirituality, or dealing with power or with cultural issues. Hers is an amazingly broad range over the years.

"And I actually have fairly good data that backs this up. I was asked to do a study on the translation of theory to practice in collaborative problem solving. Among those who practice collaborative practice, Zena's name was



**Front Row left to right, Betty Widgeon, Alisa Peskin-Shepherd, Charlene Snow, Zena Zumeta**  
**Second Row l to r: Carole Church, Marie Pulte, Margo Nichols, Bob Wright, Nina Abrams**  
**Back row l to r: Hon. Bill Callahan, Doug VanEpps, Susan Paletz, Toni Raheem**

repeatedly mentioned as a trainer who is able to bring theory alive for practitioners."

Mayer noted that the times when Zumeta is the most angry are when people in the field treat others unfairly who have less power than they. "When that happens, Zena is on a tear, on a roll. That's when I have seen her the most angry.

"And the happiest I've seen her? When she felt people were really working together on important issues and were having fun."

"So in summary, what is Zena's impact on the national scene? She upholds standards, her integrity, she walks our talk, she has fun and does good work, she's the best advocate for family practice that there is.

"I know what Zena Zumeta is. She's a first-rate professional, a gifted trainer and a force for integrity, she never shies from conflict but always is constructive, she's a gadfly and warm colleague and friend.

"She's a bridge between theory and practice," he concluded.

Ann Arbor attorney Sally Rutzky told the audience that "watching her is like watching a ballet. She makes it look easy. I asked her once what she was feeling as she worked with people She said she felt compassion for the suffering she was in the middle of.

"Compassion is what was carrying the load. Zena somehow is able to integrate the thinking and the heart and that is the ultimate in self actualization I think," she said.

Donald Duquette, head of the University of Michigan Law School's Child Advocacy Clinic said that Zumeta was instrumental in the school's mediation clinic. "It would not have started without her and I am so happy to participate in this celebration," he said.

In response to the evening, Zumeta said, "I am absolutely overwhelmed. It is just incredible to me to have all of you here and realize what an amazing profession and community we have.

"To see Sally Rutzky and Mary Whiteside and realize they helped create our interdisciplinary group which is still meeting now after some 20 years. I remember when we were beginning the first State bar dispute resolution center (I was working with Jim White) I think it was considered subversive, like we were doing away with the bar association or something. That was the beginning of the dispute resolution committee for the SBM and the beginning of the ADR committee, and then section.

"All of the friendships I have made in this field and the people in the field are incredible. It's a real community, not only good hearted but good in action. We are so supportive of each other and want people to make it.

"At heart that is what we are all about: changing the world for the better and we are unabashed about it.

"It is such a joy to get together with all of you and to hear all of the nice things you have had to say. It has been an amazing experience for me."

Susan Paletz and Marie Pulte served as tribute dinner co-chairs. The tribute dinner committee included Nina Abrams, Carole Church, Margo Nichols, Shirley Robertson, Alisa Peskin-Shepherd, Toni Raheem, and Charlene Snow. ❄️❄️

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## Upcoming Mediation Trainings

### General Civil

**Bloomfield Hills: May 6, 8, 10, 13, 15, 17**

*Training sponsored by Oakland Mediation Center*

Contact: Susan Stirling, 248-338-4280 x16, or [sstirling@mediation-omc.org](mailto:ssirling@mediation-omc.org).

**Detroit: May 5-8, 12-15, 17**

*Training sponsored by Wayne Mediation Center*

Contact: Howard Lischeron, 313-561-3500, <http://www.mediation-wayne.org>

**Plymouth: October 15-17, November 7-8**

**February 5-7, 20-21, 2009**

*Training sponsored by Institute for Continuing Legal Education*

Register online at [www.icle.org](http://www.icle.org), or call 1-877-229-4350.

### Domestic Relations Mediation Training

**Ann Arbor: August 4-8**

*Training sponsored by Mediation Training & Consultation Institute*

Register online at [www.learn2mediate.com](http://www.learn2mediate.com) or call 1-734-663-1155

### Advanced Mediation Training

Mediators on court rosters are required to obtain 8 hours of advanced mediation training every two years. MCR 2.411(F)(4); MCR 3.216(G)(3).

**Plymouth: June 3**

*Training sponsored by Institute for Continuing Legal Education*

Register online at [www.icle.org](http://www.icle.org), or call 1-877-229-4350.

## Wayne County Mediation Celebrates 20th Anniversary



*Judge Milton L. Mack, Jr. Presiding Judge of the Wayne County Probate Court addressing the 20th Anniversary gathering of the Wayne Mediation Center*

Wayne Mediation Center marked its 20th anniversary in 2007. Center Board members, staff and volunteers, along with members of the Wayne County judiciary, legal community, representatives of the political community and friends, celebrated the occasion at a dinner on November 8, 2007, at Andiamo Restaurant in Dearborn.

Wayne Mediation Center (WMC) was founded in

1987, to provide alternative dispute resolution services throughout Wayne County. WMC is a non-profit whose main focus is to help individuals reach confidential results through mediation. Since its inception, thousands of business, legal, education and personal matters have been successfully mediated.

Within the first six months of 2007, WMC opened almost 1,000 cases, serving 2,258 individuals and 334 businesses. WMC has been able to achieve its goals in large part due to the dedication, “incredible energy and commitment of our volunteers,” according to WMC Executive Director Howard Lischeron. “All of our mediations are done by volunteers.”



*Howard Lischeron, Wayne Mediation Center Executive Director presenting the Judicial Pioneer Award to Judge Mack, Jr.*

In addition to providing ADR services, WMC provides SCAO-approved training in general civil mediation and unparalleled opportunities for newly-trained mediators to work in an informal internship with highly experienced mediators. This allows the new mediator a chance to burnish newly learned skills in a wide



*Board member and Event Chair, Carol Hainline and Judge Laura Mack.*

variety of areas, such as general civil, contractual, probate, real estate. Although the dollar value of these cases may be lower than those faced in private practice, the issues are identical.

WMC also took the opportunity at its celebratory dinner to honor Wayne

County Probate Court Judge Milton L. Mack, Jr., by presenting him with the Judicial Pioneer Award. As stated by Mr. Lischeron, Judge Mack “was the first sitting judge in Wayne County who began using mediation services routinely in cases that appeared before him.”

WMC looks forward to continued growth and expansion in the coming years. According to Mr. Lischeron, WMC is in a new phase of growth. “We’ve begun several new programs, one of which I think is going to have a strong impact in the community, and that’s the mediation of truancy situations.” WMC plans to use a grant it has received from the Hudson-Weber Foundation for its Truancy and Permanency Planning Mediation programs.

WMC began a pilot program at the end of the last school year, and on average, student attendance improved by 62%. As stated by Mr. Lischeron, “Given the fact that in our current culture in our society and our economy, education is so crucial, and certainly kids are not going to get an education if they don’t go to school, and getting them to school is step number one.”



*Volunteer attorneys and mediators*

WMC looks forward to continued growth and expansion, and the opportunity to continue service to the Wayne County community in the coming years. ❄️

# The ADR Quarterly

State Bar of Michigan  
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The ADR Quarterly

April, 2008

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<http://www.michbar.org/adr/newsletter.cfm>



## COMMENTS FROM THE CHAIR

The ADR Section collaborated with ICLE in presenting yet another spectacular ANDRI (Advanced Negotiation and Dispute Resolution Institute) at the Inn at St. John's on March 13, 2008. Congratulations to everyone who was involved in planning and delivering this very fine program!

As discussed at ANDRI, the Council invites all interested section members to join in expanding the reach of ADR through the work and activities of one or more of our ten Action Teams:

### TEAM

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We expect to be posting the 2008 Action Plan for each Team on the State Bar website shortly. This will provide information on goals, action steps, timetables, regular conference calls dates, contact persons, etc. Just go to [www.michbar.org](http://www.michbar.org), click on Sections, enter ADR Section and check out the menu. Come on, go for it! We'd love to have you with us! ❄️❄️❄️

Tony Braun