The ADR Quarterly

Alternative Dispute Resolution Section of the State Bar of Michigan

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The Chair's Corner

by Toni Raheem

I am so excited about the new 2013-14 year for our ADR Section! Thanks to the valiant efforts and hard work of our past chair, Bob Wright, our budget is rebounding healthily from the expenses of lobbying for the Revised Uniform Arbitration Act (an historic accomplishment). The RUAA in now in effect. Section revenues are up from last year. More and more stories of ADR are brewing in the news. This year the officers, other Executive Committee members and Chairs of the twelve (12) ADR Section Action Teams and Task Forces participated in a very productive Retreat in early October to focus our activities for the coming year. As a result, we have many promising projects in the works in which you all are welcome to be a part. (By now you should have received a list of the Action Teams, their activities and their Chairs via the listserv. Just choose the activity you want to be a part of and email the Chair so she or he can add your name to meeting notices.)

I want to highlight just a few of the projects, changes and accomplishments we have underway for the new year. As you know, we have joined the 21st Century and gone to all electronic ADR Quarterlies—a move that will make it easier for members to keep track of and store the valuable articles in each Quarterly and save the Section funding for other worthy endeavors. Some members of the Council are working to ensure that ADR is an integral in the developing Business Courts. Other council members are organizing joint activities with other Sections such as Labor and Employment. Still other members of the council are continuing their efforts to get local and state governments to better recognize and utilize ADR in their problem solving efforts. The Section also continues to work with Dispute Resolution Education Resources to increase public awareness of ADR through the Michigan Mediates! Campaign. Advanced Negotiation and Dispute Resolution Institute is fast approaching on March 13, 2014. Additionally, plans are underway for our 2014 Annual Section Meeting.

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Please remember that the ADR Section is here to serve you. We want you to be involved all throughout the year. Join an action team. Check out our website www.michbar.org/adr/ . Submit an article to the ADR Quarterly by email to the Editor at leehornberger@leehornberger.com. Email any ideas or concerns you have to me at arrlaw@sbcglobal.net or any of the council members. We are always seeking better ways to make sure we meet your needs.

The Attorney as Problem Solver in Mediation

by Gary Marsh LMSW Mediator 734-663-1239

When beginning mediation with all parties and their attorneys in the same room, **I ask the parties to give their attorneys permission to be problem solvers and not advocates**.

Parties usually expect their attorneys to do battle. Lead the charge. Protect, defend and pursue their interests. That is how they see advocacy, which is essentially argument or persuasion.

When using the court system as a problem solving strategy, persuasion is necessary. Someone else is deciding for the parties. Attorneys are trying to convince the court to do what is best for their client.

In mediation the parties decide. In the mediation environment, argument or persuasion does not work and is often counter productive.

The attorney as problem solver.

Mediators and attorneys have similar goals. We want our clients to settle their case in a way that best meets their needs. We want them to reach agreement from an informed place, with confidence they are making good decisions, and as much as possible, without pressure. Attorneys present in mediation can enhance the possibility of achieving these goals.

Help with communication. Attorneys can **help** by **identifying agreement**. Often parties, out of pessimism born of frustration, assume agreement is impossible and will argue even though they agree.

Parties often are distressed by or happy with a proposal that was made in the past. Attorneys can help by **confirming a proposal** was made and, if it was, whether it **is still on the table**. This will reduce confusion and help keep parties in the here and now planning the future, which is exactly where they need to be.

Attorneys can help by **clarifying needs and interests and** by **developing options for dealing with them**. Attorney's understanding of the issues in divorce make the identification of needs and interests easier. Their experience addressing issues make them a valuable resource for identifying strategies for meeting needs.

Help identify needs and strategies to address them. Attorneys can listen for and identify the needs and interests expressed in a rationale or proposal. If a proposal is unacceptable, they can then help identify alternatives that address the concern and meet their clients needs and interests.

Attorneys provide valuable information. Attorneys **providing information about the law and courts** will help get the parties to an informed place. Information by itself is neutral. When attorneys remove the effort to persuade, the information will be easier for the parties to hear.

Our clients look to us to help them figure out how they should feel, think, and whether they are doing OK. The messages we give them through the words we use or our emotions can contribute to their calm and optimism. If you see the pilot of your plane and she/he looks worried, you are going to worry. If the client looks at their attorney and they see calm in the face of craziness, they will be helped to remain calm themselves.

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Dealing with emotions. Misunderstanding and lack of clarity contribute to parties fear and anxiety. By clarifying needs and interests, developing options for dealing with them, educating about the law and how the courts deal with the issues the reasons for fear and anxiety will be definable. Because of the resulting increased understanding, usually, fear and anxiety are reduced.

Attorneys working together as problem solvers in mediation is a powerful strategy. It will increase the likelihood of settlement. It models effective problem solving. When the parties are divorcing parents with minor children, they need to figure out how to make decisions together in the future. The attorney's part in helping reach settlement will be obvious, because of the active role they played. It will increase client satisfaction with attorney services. It will increase the likelihood the client will pay their bill. It will increase the likelihood of future referrals from satisfied former clients.

An Agreement-Writing Checklist for Mediation

By Anne Bachle Fifer

Writing the agreement that ends the mediation can be stressful. After hours of mediating, everyone is tired. Parties are ready to leave, lawyers are afraid they'll forget important details, and the mediator still needs to mediate the issues that arise during agreement-drafting. An outline or checklist of the standard components of a mediation agreement can reduce this stress.

Professor Vincent Wellman, J.D., a mediator who teaches Contracts at Wayne State University Law School, developed a "mediation agreement template" to guide the agreement-drafting process. Prof. Wellman and I presented a workshop on this at the 2010 ANDRI ("Agreements, Agreements, Agreements: Negotiating and Drafting Effective Settlement Agreements"). Directors of CDRP Centers expressed interest in the template, but needed it modified for the community mediation setting. As I worked with mediators at the Dispute Resolution Center of West Michigan (DRCWM) to do that, we discovered that a checklist—listing the items that needed to be included in an agreement—would be more helpful than a template, that contained the language and needed only to have the blanks filled in.

At CDRP Centers, parties are often unrepresented, so mediators asked for sample language for each item. Thus, the Agreement-Writing Checklist below lists the ten components of a standard civil mediation agreement, with suggested language for each component. The DRCWM also provides mediators with a simple ten-item list, without sample language, as a quick reference tool. That list is presented at the end of this article as the "Agreement-Writing Essential Checklist."

We share these with you in hopes they'll be useful in your practice, and we welcome your comments.

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Agreement-Writing Checklist

1. **Parties' names:** List the parties' names at the top, as a caption, or in the first sentence.

Example [caption]: In the matter of the mediation between _____ and _____

Example [caption]: ____(Plaintiff)_____, represented by _____

and

_____(Defendant)_____, represented by _____

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Example [intro sentence]: "The parties, _____ and _____, …"

1.a. **Case Number:** Identify court case number, if applicable; identify DRC case number.

2. **Date and place of mediation**

Example: "We met for this mediation at (the DRC)/(other place) on (date) "

3. **Reference to parties' Agreement to Mediate**

Example: "We are here and are participating in this mediation (pursuant to a court order and) in accordance with an Agreement to Mediate, dated _____."

4.a. **Aspirational Terms:** If the parties have reached any general agreements about how they wish to behave in the future, these should be stated up front.

Example: "We plan to resume doing business together once this Agreement is fulfilled."

Example: "We want to be good neighbors from now on."

4.b. **Monetary Terms:**

☐ Who pays whom

☐ Amount

Example: _____ agrees to pay _____ a total of $___.

☐ Final? (if so, indicate type of dispute, eg, "contract," "neighbor", "partnership")

Example: "_____ agrees to accept $ _____ in full settlement of this _____ dispute."

☐ Type of payment (eg, cash, check, money order)(If cash, will there be a receipt?)

Example: "…by check made payable to ____"

☐ Delivery form; place (eg, in person, by mail)

Example: "____ will mail this to Attorney ___'s office (list address)"

☐ Date due

Example: "… so that _____ receives it no later than (date) "

☐ Form of payment (lump sum or installments; if installments, specify dates/amounts)

Example: "… which _____ will bring the 1st of each month to _____"

☐ What if payment is not timely?

Example: "If _____ is unable to make a payment, _____will contact _____"

☐ Paid in full today?

Example: "___ paid _____ a check in the amount of $____ today as payment in full for all the claims

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_____ had against _____ in this matter."

4.c. **Other terms:**

If one party is supposed to do, act or perform in some way:

Example: " _____ agrees to do _____. This will be completed by (date) ."

If a party has apologized and the parties want this acknowledged in their agreement:

Example: "_____ has apologized to _____ and _____ has accepted the apology."

5. **Formal settlement document?**

☐ Who prepares it

Example: "_____ will prepare a final settlement and release of all claims."

☐ Date by which it is to be completed

Example: "_____ will sign this final settlement and release by (date) ."

☐ What happens to it

Example: "_____ will send the final settlement and release documents to _____ for their signature by (date) . _____ will send a signed copy back to ____."

Dismissal of lawsuit

Example: "_____ will file the dismissal with the _____ court by (date) ."

6. **Future Dispute resolution?**

Example: "We agree to mediate through this Center any ambiguity or dispute that might arise during or as a result of the implementation of this Mediation Agreement, before going to court."

7. **Confidentiality?**

- refer to parties' Agreement to Mediate: does this cover it, or does something more need to be said in this document?

- extent—who needs to know? Eg, spouse, business partner, accountant. Consider defining the extent of confidentiality.

Example: "We agree that we will not discuss any aspect of this mediation with anyone who does not have a need to know. We may discuss it with the following: _____"

- Mediation Agreement itself?

Example: "We agree that everything said and written during the mediation process, other than this Mediation Agreement itself, will remain confidential unless disclosure was authorized by our Agreement to Mediate or is authorized by some provision of this Mediation Agreement."

8. **Anything else?**

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9. **Partial agreement:** If some issues have not been resolved, indicate that.

Example: "We have not resolved the issue concerning boat repair, and leave that to the court."

10. **Signatures of each party:** Read the Agreement aloud to the parties before they sign it.

Agreement-Writing Essential Checklist

- ☐ Date and place of mediation
- ☐ Reference to Agreement to Mediate?
- ☐ Terms
  - o Aspirational Terms
  - o Monetary Terms
  - o Other terms
- ☐ Formal settlement document
- ☐ Future Dispute resolution
- ☐ Confidentiality
- ☐ Anything else
- ☐ Partial Agreement
- ☐ Signatures of each party

Drunk Tank Pink: Influencing Behavior Below the Level of Awareness

Barry Goldman

There is evidence that a shade of pink about the color of bubble gum has a tranquilizing effect on human beings. Weightlifters who stare at a piece of cardboard painted this color can lift less weight. Football players exposed to the color are less aggressive. ("Football coaches at Colorado State and the University of Iowa painted their visitors' locker rooms pink, until local athletics conferences decreed that the home and visitors' locker rooms had to be identical.") And drunks who are held in cells painted this color are less violent. The color is called Baker-Miller pink or more colloquially, Drunk Tank Pink.

After learning about Drunk Tank Pink, two questions arise immediately in the mind of the sufficiently devious ADR practitioner: Are there other effects like this? and Can I use them in my practice? The answers are yes and yes. There are several unconscious cues that can affect judgment and decision making in the negotiation context. This presentation will explore a few of them.

Cognitive Fluency

The easier something is to understand, the easier it is to believe. A paragraph written in a complex font or in a color with poor contrast is less persuasive than the same paragraph written in a simple font or with clear contrast. Stocks with unpronounceable names perform more poorly than stocks with easily pronounceable names. The same tends to be true of lawyers. Those with simple, familiar, "fluent" names make partner sooner and with greater frequency than those with unfamiliar "disfluent" names.
This may go some way toward overcoming the lawyers' tendency to complicate and obscure simple ideas with legaldegook. There may be justifications for legalese, but persuasiveness is not one of them.

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Mimicry

People who are communicating with one another unconsciously mimic each other's posture and gestures. ("…when two people talk on the phone while walking, they tend to synchronize their footsteps.") Mimicry is one of the ways people show they are "in synch" with each other. And when people are in synch, their interactions go more smoothly. They trust each other more.
It also works the other way around. Synchronized gestures can be an effect, or they can be a cause.

Sunshine and Trees

Waitresses get more tips on sunny days. Candidates who are interviewed on sunny days are more likely to be hired than candidates interviewed on cloudy days. The stock market does better on sunny days too.

Hospital patients with windows facing a wall have worse outcomes than patients with windows facing trees.

Abundance

The message from Geoffrey Miller, author of *Spent* and *The Mating Mind*: Signal abundance. Create a negotiation environment where there is plenty to go around. Food, for instance.

The conscious mind is only one part of the decision making mechanism. Research increasingly supports the view that it is not the most important part. Signaling abundance to the unconscious mind increases generosity.

Embodied Cognition

The mind is influenced by input from the body. There is considerable controversy in the field about just how strong these effects are, but studies have shown effects based on: temperature, odor, weight, lighting, elevation, and the softness or hardness of the furniture.

Touch

We have seen this pattern before. When we like and trust someone, we are more likely to touch them. But the arrow of causation can be reversed. Touch can be used to signal caring and connection whether or not caring and connection are really present. The unconscious mind often can't tell the difference. Waiters who touch customers get bigger tips. Touching people increases the number who will sign a petition or fill out a survey. It increases the number of women who will supply their phone number. And it works even though very few of the people who responded this way knew they had been touched.

Stereotype Lift and Stereotype Threat

In the classic experiment Asian women were given a math test. First, one third of them were "primed" to think their ethnicity, one third were primed to think of their gender, and one third had a neutral prime. Result? The "Asians" did the best on the math test. The "women" did the worst. And the subjects with the neutral prime came in in the middle.

Conclusion

If you want people to be nice to you – in negotiation or anywhere else – be nice to them. Signal abundance, feed them, put them in a clean, well-lighted place, provide them with a pleasant view, especially one with trees, speak to them clearly, mimic their posture and gestures, touch them, and cue their membership in a group with positive associations.

However

However, there is a troubling problem with all of this. It is called the Licensing Effect. In some cases – and the boundaries are not clear – people who are cued to feel good about themselves behave *worse* than people who are not. There is evidence that people who ate a healthy, nutritious lunch give themselves permission to pig out on chicken-fried bacon for dinner.

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So be nice, but don't overdo it.

Recommended Reading

Adam Alter, *Drunk Tank Pink: And Other Unexpected Forces That Shape How We Think, Feel, and Behave,* Penguin Press 2013.
Dan Ariely, *The Honest Truth About Dishonesty,* Harper 2012
Geoffrey Miller, *The Mating Mind: How Sexual Choice Shaped the Evolution of Human Nature*, Anchor Books 2000.
Geoffrey Miller, *Spent: Sex, Evolution, and Consumer Behavior,* Viking 2009.
Leonard Mlodinow, *Subliminal: How You Unconscious Mind Rules Your Behavior,* Pantheon 2012.
Sendhil Mullainathan and Eldar Shafir, *Scarcity: Why Having Too Little Means So Much,* Times Books, 2013.

Is your Mediator a "Bungling Idiot"?

By Jeff Murphy

Now there is an interesting title to an article by a man who makes his living as a mediator. So why do I raise the question? It happens that a colleague of mine had been conducting an early stage divorce mediation with a couple who were both in Pro Per. Each side had provided full financial disclosure and the mediator had prepared an asset chart they were working from to divide the marital assets. (There were no children, so no child support, and a four year marriage, so spousal support was also off the table.)

Among the assets were two 401(k) accounts, one for each, and they were within $2,000 of each other. In the course of the mediation sessions, and in emails between them, they agreed that each would keep the respective retirement plans. So the negotiations then focused on dividing the other assets; a house, cars, etc., and it seemed a settlement was in hand.

At the next mediation session however, the husband revisited the retirement plans, and now said that since his wife had doubled her income during the marriage and had increased her contributions to her 401(k), then he should get a share of the difference . The wife said OK and proceeded to calculate the contributions and determined that she would owe him an additional $4,000. She had no argument with giving him this. Basically she wanted out.

Again, the mediator thought there was a "final" agreement. Wrong. A week later, the husband called and said he talked to two lawyers who had each advised him that he could get more from her retirement fund. So he dropped out of the mediation and hired a lawyer.

Now to the reason for my opening question: My colleague told me she had heard that at a later pre-trial conference with the new lawyers, the husband told the referee that the mediator hadn't informed him of how much more he was "entitled" to from her retirement plan and so the mediator was a bungling idiot.

So the question is: what is the obligation, if any, of an early stage mediator to give one of the parties' information that would give him an advantage over the other? "You know Mr. Brown, in our last mediation session, you were willing to accept X amount, but let me tell you that if you run the numbers my way, you can get a lot more than what your wife is offering." Any trained facilitative mediator knows that this would be an egregious violation of neutrality.

Unfortunately, it appears that many family law practitioners, not familiar with early stage facilitative mediation, might tell a prospective client, who is unhappy with a mediation, that of course the mediator should have informed the client of how to get the maximum from the other side. Most family law practitioners are more familiar with late stage, court ordered, mediation where the process is more about the mediator knocking the lawyers' heads together to reach a settlement than in meeting with the actual parties so that they can work together to reach a fair and equitable agreement. The clients are only minimally involved, if at all.

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As a mediator who spends most of my time on early stage rather than late stage mediation, I recognize it can be a challenge with Pro Per clients who have not sought any legal advice. It's preferable to have clients who have at least reviewed their case with a competent attorney familiar with the mediation process.

Many times clients come to mediation with the goal of settlement out of court but who also recognize they have issues that will require legal advice. You don't have to be a rocket scientist to see that I am going to give them a list of attorneys knowledgeable about and committed to the mediation process rather than those who want to turn the clients away from it and into litigation.

The attorneys I recommend cooperate in the process and teach their clients the importance of getting past hard positions to focus on their real needs and interests-the heart of facilitative mediation. The clients are prepared for mediation by learning to prioritize those needs so they can negotiate more effectively. They're given realistic estimations of probable outcomes to prevent them from making embarrassing, unproductive, and overreaching demands in the mediation. and the lawyers are prepared to be as flexible and involved as the clients want them to be. They don't simply take complete control over the case. They also know that they benefit in having more power over the outcome of the mediation since they will not be facing an adversarial opposing counsel or an arbitrary and capricious judge.

An attorney who turns a client away from a mediation based on the idea there might be more to get in court may not have thought about the possibility that the new client didn't mention that the spouse had made significant compromises on her side in the mediation to get the divorce over with and will, on advice of her new attorney, take those compromises off the table and take her own hard positions. Those new demands could easily outweigh the gains from the so-called maximized amount the "idiot mediator" didn't tell the client about.

The Future of Discovery in Arbitration

*By: Gene J. Esshaki, Esq.**
Abbott, Nicholson, Quilter, Esshaki & Youngblood, P.C.

The benefits derived from utilizing arbitration as a dispute resolution mechanism, especially in complex commercial disputes, include the following:

- **Expediency.** Historically, a dispute could be fully resolved through arbitration in significantly less time than it would take if tried to conclusion in a state or federal court.

- **Efficiency.** Professionally trained arbitrators are much more efficient in handling a complex commercial dispute from start to finish and have more time available to resolve individual disputes than state or federal court judges.

- **Cost Savings.** Even though filing fees may be required by an administering organization and the arbitrator is paid market rates for his services, the limitations imposed upon discovery in the arbitration process and the expedited time to completion frequently translates into significant cost savings.

- **Subject Matter Expertise.** The parties could draft their documents to establish a process or could voluntarily agree upon arbitrators that have subject matter expertise particular to a specific case. Trial judges cannot be experts in every case that comes before them; however, an industry-specific arbitrator can be selected for every arbitration that is filed. This subject matter knowledge is often extremely valuable to the parties.

- **Finality.** An arbitration award is generally final and binding upon the parties, subject to certain limited exceptions, and an appeal process through state or federal courts that can sometimes consume 4 years or more does not exist.

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- **Lack of Jury.** Considered a pillar of the American Judicial System, a jury is often not effective in complex commercial disputes because jurors do not possess the specialized knowledge or expertise required to reach a reasonable resolution. Parties are often willing to exchange the right to a jury trial for an industry-specialized arbitrator knowing that they will receive a well analyzed award.

Commentators have recently decried that arbitration with its now "unrestricted" discovery process is becoming much more akin to full scale state and federal litigation. They assert that permitting litigants to conduct multiple depositions, issue interrogatories, document requests and requests to admit, is converting the arbitration process into broad based litigation, at the expense of the cost savings that was originally built into the process. Why should a party engage in arbitration, surrender his right to a jury trial and waive any appeal rights if the cost of the arbitration will be equal to or even greater than full scale civil litigation?

Having practiced in the field of arbitration for almost 40 years, it is this author's personal observation that the arbitration process is simply expanding to address the ever increasing complexity of cases that are being filed. Thirty years ago, arbitration generally involved disputes between residential buyers and sellers, small purchase order disputes and limited commercial issues, where the amount in controversy did not justify full scale discovery and pre-trial preparation.

Today, however, commercial cases that are submitted for resolution through arbitration often involve multi-million dollar demands. No litigator would be comfortable submitting a $10 or $20 million dispute to arbitration, knowing in advance that discovery would be limited to a simple document exchange. Litigators on both sides need to have a full understanding of their opponent's case, as well as the testimony they will face at the hearings in order to prepare their case appropriately.

Nevertheless, administering organizations are taking steps to curtail the use of discovery in arbitration as a way of limiting costs to the parties. By way of example, the International Center for Dispute Resolution, the international arm of the American Arbitration Association ("AAA"), does not authorize the use of depositions in its proceedings. Further, the AAA recently published new rules on commercial arbitration that severely limit the discovery processes available to litigants. See: www.adr.org/commercial for a complete set of the new rules.

In general, the new rules, effective October 1, 2013, do not authorize an arbitrator to order interrogatories, requests to admit or depositions. New Rule 22 authorizes an arbitrator to order and oversee a document exchange between the parties. Under the prior AAA rules, in complex cases involving more than $500,000, parties could conduct any discovery that was mutually agreed upon and the arbitrator was specifically authorized, upon good cause shown, to order depositions and interrogatories. See: 2009 AAA Commercial Rules, L-4. Both of these provisions have been deleted from the 2013 version of the Rules.

Under the new rules, in those large complex cases in excess of $1,000,000, parties are simply required to exchange copies of all exhibits they intend to submit at the hearing at least 10 days in advance (L-3(c)) and the panel presumably has the power to order the document exchanges as permitted under Commercial Rule R-22. Finally, under complex case Rule L-3(f), "In exceptional cases, at the discretion of the arbitrator, upon good cause shown and consistent with the expedited nature of arbitration, the arbitrator may order depositions to obtain the testimony of a person who possesses information determined by the arbitrator to be relevant and material to the outcome of the case. The arbitrator may allocate the cost of taking such a deposition".

New Rule L-3(f) will impose a heavy burden upon litigators seeking to take the pre-hearing testimony of their opponents' witnesses in arbitration. "In exceptional circumstances" sets an extremely high standard for obtaining a deposition, let alone multiple depositions. The net result will be that any funds saved in not engaging in pre-hearing depositions will likely be expended in the hearings where litigants will have to examine witnesses in front of the panel as if in deposition in order to gather all of the testimony that may be critical to their respective cases.

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In stark contrast to the new rules of the AAA, Michigan's recently enacted Revised Uniform Arbitration Act ("RUAA") MCL 691.1681 et seq., ("The RUAA"), specifically Section 17(2)), authorizes an arbitrator to permit depositions of any witnesses to be taken for use as evidence at the hearings. The RUAA, Section 17(1), further grants the arbitrator the authority to issue subpoenas for the production of documents or the taking of testimony for use at the hearings.

The Federal Arbitration Act ("FAA"), 9 USC Section 1, makes no provisions whatsoever for the management of an arbitration, but simply authorizes parties to a contract to agree to arbitrate their disputes and for courts to enforce those agreements. Since the FAA applies to interstate commerce, given its broad definition, arguably any case can fall under the FAA. In such cases, the parties will have to determine which rules will apply to their arbitration proceedings and draft their contract clauses to implement their often competing goals.

Every lawyer who as a matter of course inserts an arbitration clause into their transactional documents must now consider the objectives of their litigator partner in drafting that clause and in dealing with issues of pre-hearing discovery. As indicated, no litigator in a multi-million dollar case wants to participate in a final and binding hearing without knowing the other side's case in chief. To that end, scriveners need to consider drafting arbitration clauses that specifically provide for pre-hearing discovery including interrogatories, document requests and depositions. Otherwise, the attorney litigating the case will be trying it in the dark. This does not necessarily insure an appropriate outcome or a satisfied client.

It remains to be seen whether the push to reduce pre-hearing discovery in arbitration will have the result of increasing the number of cases filed each year or the opposite effect in reducing case filings in order to avoid the prohibitions against pre-hearing discovery.

* Gene J. Esshaki is a Graduate of Wayne State University Law School. Since graduation, he has continuously practiced law in the Detroit Metropolitan Area, specializing in complex commercial litigation and alternative dispute resolution. He is a neutral Arbitrator on the complex case panels of the American Arbitration Association and the International Center for Dispute Resolution. He has an active practice in mediation and is appointed frequently by state and federal judges to mediate some of their most complex commercial cases. Gene is a member of the American Board of Trial Advocates and a frequent Lecturer for ICLE on ADR topics. He is a founding shareholder in Abbott, Nicholson, Quilter, Esshaki & Youngblood, P.C., located in Detroit, Michigan.

Turkey and Mediation in September, 2013

Information provided by Nina Dodge Abrams
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What does Turkey and mediation have in common? Both were part of the Mediators Beyond Borders Sixth Annual Congress held in Istanbul September 25 to September 28, 2013. Starting Wednesday evening with a dinner given by the local Rotary Chapter, there was a Reception Thursday, 5 plenaries and 20 workshops on Friday and Saturday, and scheduled sightseeing on Sunday. All was packed with people from 51 countries discussing the use of mediation, sharing peace building experiences, and exchanging skills and strategies to build "Peace-Able" communities working towards achieving world peace.

Turkey was chosen for the first international Congress because it is a leader in advancing mediation in the UN and in world diplomacy, a place where conflict often erupts, and which offered breathtaking natural beauties, unique historical sites and a modern vibrant economy. MBB went to Turkey as mediation's bridge to the future. The Congress was located in the Legacy Ottoman Hotel in the European old city area in Istanbul, the capital of 3 great empires, spanning two continents and calling to visitors for 2,000 years.

WHO is MBB? It is a network of mediators and allied professionals that collaborates with local peace-building partner organizations in nine countries (such as Liberia, Ecuador, Israel-Palestine, Columbia, Ruanda, and Nepal) to build conflict resolution capacity. The projects usually take 3 to 5 years. Ken Cloke, Lynn Cole and other visionary mediators founded Mediators Beyond Borders International (MBB) in 2006 to build a more peace "Able" world. Its primary strategies are:

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capacity building, develop local mediation projects, and promote organizational skills and advocacy projects to encourage mediation worldwide. MBB offers direct services, training and coaching in third-party facilitated CR processes designed to reach agreement, resolve conflicts, solve problems, build trust and heal relationships.

MBB also advocates for the use of mediation to resolve public policy disputes such as our climate change initiative. In 2011, MBB achieved "Official Observer Organization" for United Nations Framework Convention on Climate Change (UNFCCC). It has been active at each UN Climate Change meeting working for a mediation process in international as well as bi-national climate treaties.

Membership is available to all who are interested in supporting its mission or participating in one of its projects. For info about all MBB activities, visit www.mediatorsbeyondborders.org

The Sixth MBBI Congress was spectacular. The following people were keynote speakers: Ken Cloke (MBB Founder and Visionary), Lynn Cole (MBB President), Joe Marie Judie Roy (President candidate in Haiti), Najat Dau (Director, Voice of Libyan Women), Luis Vincente Giay (Past Rotary International President, Current Chair of Peace Forums and Future Visions Committee), and Dr. Alma Abdul-Hadi Jadallah (President and Managing Director, Kommon Denominator). There were workshops on Reconciliation and capacity building, Peace building in Northern Ireland, Cross Cultural negotiation and mediation, MBB Kenya Iniative, Global climate change, ADR studies of negotiation, mediation and gender, On-line mediation, mediation and peace, Women mediators leading global initiatives, Israel's experience with community mediation centers, and much more.

The good news is that the plenary sessions and the workshops were videotaped. You will be able to watch the Congress Speakers, Workshops and Bonus Interviews at your leisure. Unfortunately a recording error damaged the video of one workshop - "Developing a Sustainable MBB Chapter". The video team is working with the presenter to record his presentation for later uploading. Direct any questions or requests for assistance to The Congress Video Team at: mbbcongress2013@gmail.com

In addition, MBB announced a new benefit for MBB members: a Global Action Network (GAN), which will expand MBB's reach and impact around the world. The GAN will be an international action-oriented network of mediators and other allied professionals, which anyone in the world can join. All MBB members will be able to participate in the GAN at no additional cost.

The GAN will be accessed from MBB's website, and will enable MBB members to collaborate and engage in activities or programs anywhere in the world. The GAN will allow MBB to reach its full potential. Using the GAN, the global MBB membership will be able to be directly involved in building local skills for peace and promoting mediation worldwide.

Examples of what will be possible on the GAN will include, but are not limited to:

Forming local, regional, national, international, or topical GAN groups to take action together anywhere in the world; existing MBB chapters will be able to operate freely on the GAN;

Actively collaborating with other initiatives to build local skills for peace and promote mediation; and,

Sharing ideas and experiences with a global network of mediators.

Contact MBB Program Director Gillian Saxby, at gsaxbymbb@gmail.com to get involved!

MBB welcomes members from all over. Just receiving the newsletter is worth the membership.

Action Teams and Chairs of the ADR Section 2013-14

- Effective Practices and Procedures Team ("EPP") – (Martin Weisman mweisman@wyrpc.com) EPP offers comments and recommendations concerning proposed legislation and court rules impacting ADR in Michigan. The Team was successful last year in procuring the passage of the Revised Uniform Arbitration Act by the Michigan legislature. Congratulations EPP!!!

- Judicial Action Team ("JAT") – (William Caprathe bcaprathe@netscape.net). JAT advances ADR goals as they pertain to courts throughout Michigan and promotes ADR awareness in the federal, state and local judiciary. In 2012, the team worked with the Bankruptcy Court for the Western District of Michigan to adopt a new local court rule promoting ADR in all bankruptcy cases.

- Membership Team – (Celeste S. McDermott celestemcdermott@hotmail.com). Membership's goal is to raise awareness in the ADR community of all that the ADR Section has accomplished and that the Section has to offer. This team also seeks to increase ways to meet the needs of ADR professionals and thereby increase the number of members and affiliates in the Section who will want to join in the very beneficial work of the Section.

- Outreach Team – (Nina Dodge Abrams ninadabrams@abramspc.com and Marc Stanley mstanley@uwjackson.org). The goal of Outreach is to increase awareness among the public in general, attorneys, businesses, schools, governmental entities and agencies, and any other potential end users of ADR, about what ADR is and its benefits. A significant undertaking of this team is coordinating activities with and supporting the Michigan Mediates! campaign, a program of the Dispute Resolution Education Resources, Inc. (DRER). This Michigan Mediates! public awareness initiative is designed to acquaint Michigan residents with the benefits of mediation through a website, public service announcements, community forums and other means. The Outreach Team also will be working with CDRCs to help promote ADR in educational settings and will be reaching out to special interest groups such as the LGBT community, low income individuals and the elderly communities to determine how ADR might best address some of their unique dispute resolution needs.

- Publications Team – (Lee Hornberger leehornberger@leehornberger.com). Publications solicits, reviews, and publishes articles for a quarterly newsletter for ADR Section members and affiliates and collects and edits articles for an ADR theme issue of the State Bar Journal. It is also responsible for postings to our e-mail listserv that keeps our members informed of Section activities and related ADR news.

- Section to Section Team ("STS") – (Don Gasiorek dgasiorek@gmgmlaw.com). STS strives to increase collaboration with other sections of the State Bar and local bar associations with a view toward enhancing the use of the ADR for members of this Section and those of other sections as well. In doing so, STS has in the past put on programs for or collaborated with other sections in presenting educational programs about ADR. Those collaborating sections have included the Young Lawyers, Litigation, and Family Law, to name a few.

- Skills Team – (Sheldon Stark shel@starkmediator.com). Skills is responsible for planning advanced skills programs in ADR through out the year. The primary programing includes our partnering with ICLE in presenting the Advanced Negotiation and Dispute Resolution Institute (ANDRI), skills programming at the annual meeting of the ADR Section and most recently, telephonic or webcast mini-trainings on various ADR topics.

- Diversity Task Force—(Earlene Baggett-Hayes erbhayes@sbcglobal.net). The Diversity Task Force was formed to promote and support diversity in the field of ADR, increase the cultural competence of ADR providers and enlarge opportunities for minorities in ADR. More specifically, the Task Force is looking into ways to implement some or all of the recommendations of the Task Force on Diversity in ADR that was convened by the State Bar.

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See that Task Force's report by going to http://www.michbar.org/adr/pdfs/TaskForce_Diversity.pdf.

- Governmental Task Force ("GTF") – (Brian Pappas pappasb@law.msu.edu). The GTF was formed to provide short-term assistance to departments and agencies of the State of Michigan and local governmental units. GTF has presented trainings to the Attorney General's office and is working to provide mediation as a cost-effective alternative to litigation and to promote its use throughout the state. Last year we facilitated public meetings in Ann Arbor, and began working to facilitate economic development in Inkster..

How to Find Mediation Trainings Offered in Michigan

Mediation trainings are regularly offered by various organizations around Michigan. Mediators who wish to apply for court mediator rosters must complete a 40-hour training approved by the State Court Administrative Office. Courts maintain separate rosters for general civil and domestic relations mediators, and there are separate 40-hour trainings for each. In addition, domestic relations mediators must complete an 8-hour course on domestic violence screening. Mediators listed on court rosters must complete eight hours of advanced mediation training every two years. MCR 2.411(F)(4)/3.216 (G)(3).

Most mediation trainings offered in Michigan are listed on the SCAO Office of Dispute Resolution web-site:

http://courts.mi.gov/Administration/SCAO/OfficesPrograms/ODR/Pages/Mediation-Training-Dates.aspx

The ADR Quarterly

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For comments, contributions or letters, please contact:
*Lee Hornberger - **231-941-0746***
*John L. Tatum - **248-203-7030***
*Kevin Hendrick - **313-965-8315***
*Toni Raheem - **248-569-5695***
*or Phillip A. Schaedler - **517-263-2832***

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

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7:30am	Continental Breakfast, Vendor Showcase, and Registration		
8:30am	Welcome and Introductions Antoinette R. Raheem, Chair, Alternative Dispute Resolution Section of the State Bar of Michigan, Law & Mediation Offices of Antoinette R. Raheem PC, *Bloomfield Hills*		
8:45am	Understanding the Place of Positional Bargaining in Resolving Disputes J. Anderson Little, Mediation Inc., *Chapel Hill, NC*		
TRACKS	MEDIATION	ADVOCATES	ARBITRATION
10:00am	Using Reflective Techniques in Mediation Brian A. Pappas, Michigan State University College of Law, *East Lansing*	What Advocates Can Learn from the Business Courts—Goals and Techniques for Early ADR Hon. Christopher P. Yates, 17th Circuit Court Kent County, *Grand Rapids;* Diane L. Akers, Bodman PLC, *Detroit;* Richard L. Hurford, Dispute Resolution Services PC, *Troy*	The State of Arbitration Mary A. Bedikian, Michigan State University College of Law, *East Lansing*
11:00am	Networking Break		
11:15am	Flexible Mediation—Tools for Settling Cases Martin Reisig, Reisig Mediation Services, *Birmingham*	A Litigators Guide to "Making Money Talk" J. Anderson Little, Mediation Inc., *Chapel Hill, NC*	Calculating the Cost of the Arbitrator's Decision and the Implications of the New AAA Rules Janice Holdinski, American Arbitration Association, *Novi;* Martin C. Weisman, Weisman Young & Ruemenapp PC, *Bingham Farms*
12:15pm	Networking Lunch On Site		
1:25pm	The Value and Power of Asking Questions J. Anderson Little, Mediation Inc., *Chapel Hill, NC*	Taking a Team Approach to Mediation—Maximizing Results by Partnering Up Louann Van Der Wiele, Chrysler Group LLC, *Auburn Hills;* Michael M. Ellis, Michigan Municipal Risk Management Authority, *Livonia;* Sheldon J. Stark, Mediator and Arbitrator, *Ann Arbor;* Jon H. Kingsepp, Jon H. Kingsepp PLLC, *Rochester*	Streamlined Arbitration—Tips and Tricks to Increase Efficiency Sandra J. Franklin, TechnologyADR.com, *Traverse City;* Eugene Driker, Barris Sott Denn & Driker PLLC, *Detroit;* Earlene R. Baggett-Hayes, The Law & Mediation Center PLLC, *Pontiac*
2:30pm	Networking Break		
2:45pm	Tips and Trends for Mediating with Non-Traditional Families Margo C. Runkle, Runkle Law Offices PLC, *St. Joseph*	What Other ADR Tools Are in the Litigator's Toolbox? James J. Vlasic, Bodman PLC, *Troy;* Thomas W. Cranmer, Miller Canfield PLC, *Troy*	Expanding Your Arbitration Practice—New Subject Matter, New Clients Donna J. Craig, The Health Law Center PLC, *Bloomfield Hills;* Ronald P. Strote, May Simpson & Strote PC, *Bloomfield Hills*
4:00pm	Techniques for Making Money Talk J. Anderson Little, Mediation Inc., *Chapel Hill, NC*		
5:00pm	Networking Reception—Sponsored by the Alternative Dispute Resolution Section of the State Bar of Michigan		

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