# The ADR Quarterly

Alternative Dispute Resolution Section of the State Bar of Michigan

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## The Chair's Corner

*by Joseph C. Basta*

The new year promises to be a very exciting one for the ADR Section, Our members will have many opportunities to make a difference in the conflict resolution field.

We start the new year with our Spring Summit. On March 15, 2016, at Western Michigan University Cooley Law School's Auburn Hills Campus, the Section will present the very popular ADR trainer, author, and practitioner, Nina Meierding, for an eight hour advanced mediation training. Nina first appeared several years ago at the then Advanced Negotiation and Dispute Resolution Institute (ANDRI) and received rave reviews from all participants. We look forward to an even more exciting program in 2016. A training program on mediation advocacy for litigators is in the works. We have assembled an ADR mentoring program. The Section will continue to sponsor Lunch and Learn webinars. Our presentations in 2015 on Never Marrieds, the new federal court mediation rule, favorite ADR techniques, and mediating elder law disputes were very well-received. Also popular were the Section's regional, luncheon meetings of conflict resolution professionals — in Northville, Grand Rapids, and Traverse City — for discussions about topics of interest to our practices. A gathering in the Lansing area will be held soon.

Training and education are not all we do. We continue to have a Task Force of volunteers researching and developing a program for mandatory or automatic mediation and perhaps other forms of ADR. This may require extensive lobbying efforts or attempts to modify Court Rules. We also collaborated with the Family Law Section on a court rule which will allow Joint Petitions

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for Divorce without having to have a Plaintiff or Defendant identified as such. We supported the passage of the Uniform Collaborative Law Act and a court rule which will allow judgments of divorce to include post-judgment binding arbitration provisions for unresolved personal property issues.

We continue to explore new ways to assist our members and to build relationships within our community. We are improving the Section web site so our members will have ready access to the latest in information and programs. With the State Bar's help, we are are investigating better use of social media, particularly to reach and recruit younger members of the bar. And we hope to bolster use of SBM Connect to engage our members in regular, online dialogue over the latest developments in conflict resolution.

These activities all start with our Action Teams and Task Forces. You do not have to be a member of the Council to participate. I urge all of you to take a look at our Action Teams and get involved. These include:

(a) Effective Practices and Procedures, Marc Stanley, Chair (mstanley@uwjackson.org), whose goals are to improve ADR practices and procedures and review pending or proposed legislation or court rules that impact ADR and make recommendations to the Council.

(b) Outreach, and Membership, Erin Hopper, Chair (ehopper@whiteschneider.com), whose goal is to increase the awareness of ADR, its forms, uses, and benefits and to increase the number of members and affiliates in the Section.

(c) Government Task Force, Bern Dempsey, Chair (bdempsey@mediation-wayne.org), whose purpose is to educate governmental agencies about the benefits of ADR and urge its use.

(d) Judicial Access, Hon. William Caprathe, Chair (bcaprathe@netscape.net), who advances ADR goals as they pertain to courts throughout the State.

(e) Diversity, Earlene Baggett-Hayes, Chair (erbhayes@sbcglobal.net), who has the goal of promoting and supporting diversity in the field of ADR and increasing the cultural competence of ADR providers.

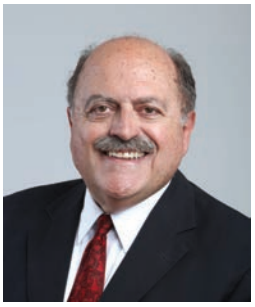
(f) Publications, Lee Hornberger, Chair (leehornberger@leehornberger.com), who solicits, reviews, and publishes articles for our quarterly newsletter, is responsible for postings to the Section's e-mail list serve and web site, and otherwise keeps our members up to date on Section's activities.

(g) Section to Section, Peter Kupelian, Chair (pkupelian@clarkhill.com), who strives to increase collaboration with other sections of the state, local, and specialty bar associations in the understanding and use of ADR by sponsoring joint programs and activities.

(h) Skills, Sheldon Stark, Chair (shel@starmediator.com), who is responsible for planning skills enhancement programs in ADR throughout the year such as our Annual Meeting and Training Conference scheduled for next fall, our Spring Summit scheduled for March 15, 2016, and the Lunch and Learn Webinar Series.

(a) Mandatory Mediation Task Force, William Weber, Chair (williamlouisweber@msn.com), who is responsible for exploring, developing and recommending possible legislative or court rule changes to provide for the mandatory use of ADR in various types and sizes of disputes.

If you have an interest and want to work on any of these Action Teams or the Task Force, feel free to e-mail me at jcbasta@yahoo.com and I will see to it that the appropriate chair gets the information and will contact you. I urge you to get involved. It will be a very rewarding experience.



# "Everything said in mediation is confidential." Really? Maybe.
# Limits of mediation confidentiality in Michigan.

*by Robert E. L. Wright*

Whether you are an attorney, a business person or a divorcing spouse, if you have ever been in a mediation you have likely heard a mediator promise you confidentiality for anything you say. As mediation becomes a mainstay for litigants seeking an alternative way to resolve their disputes, this promise of confidentiality will increasingly be tested in our courts. Unfortunately, given the current state of the law in Michigan's state and federal courts, the promise - depending upon the circumstances - may prove illusory.

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It is not that courts do not appreciate or value the need for confidentiality in mediation. As one court explained, "Public policy favors the settlement of lawsuits, a policy embodied in Rule 408 of the Federal Rules of Evidence…. The integrity of the mediation process depends on the confidentiality of discussions and offers made therein." *Goodyear Tire & Rubber Co v Chiles Power Supply, Inc*, 332 F3d 976, 979 (6th Cir 2003).

Rather, legislatures have failed to provide the tools for courts to use to preserve and protect mediation confidentiality. To appreciate the issue, consider three scenarios.

1. A lawsuit is pending and the matter is referred to a mediator. Mediation ends without an agreement. Something was revealed which is potentially damaging to your side. Your opponent mentions the disclosure in a motion. Will the court exclude it?
2. Same scenario, but instead of revealing it in a motion, you receive discovery requests completely centered around the disclosure such that it will be impossible to not reveal it. Will the court uphold your objection?
3. Same scenario, but instead of using the disclosure, you and your opponent exchange even more confidential information by email, resulting in a settlement. You receive a subpoena from a third party seeking the information in an entirely different case. Will the other court quash the subpoena?

The answer to all three questions is the same: "It depends." Three important variables affecting the outcomes for these scenarios are:

- Whether there is a written agreement of confidentiality between the participants in the mediation.
- Whether the issue arises under state or federal law or is raised in a state or federal court. (For this article, it is presumed that a court case is connected to the mediation.)
- Whether there is a privilege to protect the information from further disclosure.

### *Scenario 1*

***Confidentiality agreement?*** In the first scenario, if there is an agreement between the parties to bar the use of anything said or done in mediation, the motion will likely be stricken. The court can do so purely on a contract basis, upholding the agreement of the parties to keep such matters confidential. However, if there is just an order referring the case to mediation but no written agreement to mediate or it lacks a confidentiality provision, the parties are left to the rules of the court in which the motion is filed. What will a Michigan court decide? Again the answer is "It depends."

***State or federal court?*** In Michigan state courts, MCR 2.412 would likely bar the communication: "Mediation communications are confidential. They are not subject to discovery, are not admissible in a proceeding, and may not be disclosed to anyone other than mediation participants [with certain enumerated exceptions]." Okay, but what if the lawsuit is pending in one of Michigan's federal courts? Again, it depends on which federal court.

In February 2015, the US District Court for the Eastern District of Michigan ("EDMI") adopted new local rules concerning mediation. Local Rule 16 (d) provides: "Communications in ADR proceedings are confidential. They are not subject to discovery, are not admissible in a proceeding, and may not be disclosed to anyone other than the ADR participants unless the court permits disclosure." So again, it looks like the motion would be stricken in that court.

Detroit's bankruptcy court has its own rule on mediation confidentiality: "All proceedings and writings incident to the mediation shall be privileged and confidential, and shall not be reported or placed in evidence." (United States Bankruptcy Court, Eastern District of Michigan, Local Rule 7016(a)(5).) So once again, the disclosure would likely be protected. But how about the Western District?

***FRE 408***. In the United States District Court for the Western District of Michigan, Local Rule 16.2(d) states: "All ADR proceedings are considered to be compromise negotiations within the meaning of Fed R Evid 408." What protection does Federal Rule of Evidence 408 provide? The rule merely excludes from evidence offers to compromise a "disputed claim," including conduct or statements made during compromise negotiations about the disputed claim, to either prove or disprove the validity or amount of the "disputed claim" or to impeach "by a prior inconsistent statement or a contradiction," UNLESS the disclosure:

a. is offered in a criminal case involving a public office; or

b. is offered:

   i. to prove bias or prejudice of a witness;



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ii. counter an argument of undue delay; or

iii. to prove an attempt to obstruct a criminal investigation.

So, if the disclosure is not offered to prove or disprove the amount of a claim or impeach a prior statement it could be admitted. Consider an admitted failure to report income to the IRS. If it doesn't bear on the amount of a disputed claim or contradict prior statements, would it still be protected? Likely not. Moreover, consider all of the other opportunities for disclosure left open by the exceptions in the rule.

***Bankruptcy court.*** So what would happen in the Grand Rapids bankruptcy court? The answer depends on whether a new rule under consideration by that court is adopted. In January, the United States Bankruptcy Court for the Western District of Michigan appointed a seven-member committee to draft proposed alternative dispute resolution rules. The ADR Committee recently finished its work and the outcome is yet to be finalized (the proposed rules were published for comment in August 2015), but the Committee has finished its work and submitted a final draft of proposed rules to the court.

*Proposed* LBR 9019-12(b) provides that, with some explicit exceptions, all "mediation communications," broadly defined in the rule, will be treated as confidential and "the mediator and the mediation participants shall not disclose any mediation communication outside of the mediation, and no person may introduce in any other proceeding evidence pertaining to any aspect of the mediation process." Additionally, there are prohibitions against seeking information from a mediator by subpoena or other discovery devices, nor may a party offer anything a mediator says into evidence. *Proposed* LBR 9019-12(h). If adopted by the bankruptcy court and approved by the district court, the motion would likely be stricken under the proposed rules.

***Other protections.*** FRE 408, local court rules, and the parties' agreement to mediate are not the only safeguards for parties mediating in Michigan's federal courts. The Alternative Dispute Resolution Act of 1998 requires each U.S. district court to adopt local rules authorizing the use of alternative dispute resolution processes in civil actions, including adversary proceedings in bankruptcy courts, and requires each district to "encourage and promote the use of ADR." Pub. L. No 105-315, 112 2993 (1998). The need for confidentiality in mediation communications is widely recognized throughout U.S. courts and was specifically upheld by the Sixth Circuit Court of Appeals.

As noted earlier in the *Goodyear* case, "The integrity of the mediation process depends on the confidentiality of discussions and offers made therein." Indeed, other language in that case supports excluding our hypothetical disclosure: "In sum, any communications made in furtherance of settlement are privileged." *Id.* 332 F3d 983. However, issues remain as to whether a disclosure was made "in furtherance of settlement" and precisely what the court meant by "privileged." Who holds the privilege? Who may assert it? Is it unconditional or are there exceptions? These and other questions would need to be determined on a case-by-case basis.

***Diversity cases.*** A further complication comes into play in federal courts where jurisdiction is based on diversity. A full discussion of the multiplicity of permutations on choice of law is beyond the scope of this article. But briefly, if the rule of decision in a diversity case is based on the law of a state with a statutory mediation privilege, the non-forum state's privilege law may apply to the hypothetical disclosure, especially if it can be shown the parties expected the foreign state's privilege law would apply to their mediation communications. (For an excellent discussion of the choice of law issues, see *The Quest for Uniformity in Mediation Confidentiality: Foolish Consistency or Crucial Predictability?* by Ellen E Deason, 85 Marquette Law Review 79 (2001); and the seminal case on federal mediation confidentiality privilege, *Folb v. Motion Picture Industry Pension & Health Plans,* 16 F Supp2d 1164 (CD CA 1998).) Michigan has no statutory privilege for mediation communications. So unless another state's law applies, there is no state law privilege to protect the communications here.

***Uniform Mediation Act.*** However, if the rule of decision is supplied by a state which has adopted the Uniform Mediation Act, the outcome could be different. The Uniform Mediation Act (or UMA) provides that all mediation participants "may refuse to disclose, and may prevent any other person from disclosing," a mediation communication. UMA, Section 4(b). Only twelve states have enacted the Uniform Mediation Act although two more significant ones, Massachusetts and New York, currently have bills pending to do so in 2015. Although MCR 2.412, Michigan's court rule on mediation confidentiality, mirrors the confidentiality provisions of the UMA, we have no privilege such as that found in the UMA.

### *Scenario 2*

***Discovery based on confidential disclosures.*** So no motion is filed, but you have received discovery requests solely focused on your client's income tax returns for the period disclosed. Under both state and federal rules, the discovery will likely be allowed if the income tax information is otherwise discoverable.

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In Michigan state courts, MCR 2.412(E)(3) expressly states: "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." So, it is likely the discovery would be allowed in state court, assuming the information was "otherwise discoverable."

Similarly, in Michigan's federal district courts, there is no exclusion for discovery of the underlying information, only the *communications about* the information are protected. For instance, FRE 408 only bars the introduction into evidence of an offer to compromise; it does not even mention discovery. Even where there is broad protection of mediation communications, there is no prohibition on discovery of the *information* contained in a mediation communication, only discovery of the *communications concerning the information* (USDC EDMI Local Rule 16.3(d); USBC EDMI Local Rule 7016-2(a)(5).) In fact, in many courts there is an explicit statement allowing the introduction of evidence which could have been discovered absent mediation: "these rules do not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of a mediation conference." (USBC WDMI *Proposed* Local Rule 9019-13(f).)

***Practice tip for litigators***. If you disclose something to an opponent in mediation, even though it may not be used directly, it could open your client to discovery about the subject of the disclosure. But if the disclosure was made only to the mediator in a private caucus, would it ever be disclosed if the mediator did not reveal it to the other side? Likely not, but can you trust your mediator to not disclose it, even inadvertently. This depends on the mediator. Do they make statements like the one in the title to this article? How well have they been trained to keep private disclosures confidential? How familiar are they with the Michigan Standards of Conduct for Mediators? Do they include a reference to those Standards in their contract to serve as your mediator? Answering these questions may help you determine your mediator's level of discretion.

### *Scenario 3*

Now you can breathe a sigh of relief. The case is finally settled. Time to move on to other matters. Wait, what's this IRS subpoena seeking your email records?

Here we reach the limitations of the court rules on third-party access to mediation communications. Even though the rules promise confidentiality, unless they also confer a privilege which will be upheld by a higher court, the disclosures in your post-mediation emails may not be protected. Here's why.

- Because agreements to mediate and court rules in one court may not bind third parties in a different court.
- Because a court rule is not the same as a statutory privilege.
- Because there is a tension between the need to keep mediation communications confidential and the public's right to know which can trump confidentiality. (E.g., consider the judicial maxim, "the public is entitled to every man's evidence." *Branzburg v. Hayes*, 408 US 665, 667; 92 SCt 2646, 33 LEd2d 626 (1972).)

The only refuge left is the federal common law. Does a federal mediation privilege protect the disclosures sought here? With apologies, again, it depends.

In 1993, the US Supreme Court proposed nine specific privileges, recognized in most of the 50 states, be incorporated into the federal evidentiary rule on privileges, FRE 501. Congress declined the proposal. Choosing a different path, they discarded all but one of the proposed privileges, the attorney/client privilege, in favor of this general statement which is now FRE 501:

> The common law — as interpreted by United States courts in the light of reason and experience — governs a claim of privilege unless any of the following provides otherwise:
>
> - the United States Constitution;
> - a federal statute; or
> - rules prescribed by the Supreme Court.
>
> But in a civil case, state law governs privilege regarding a claim or defense for which state law supplies the rule of decision.

***No codified federal privileges.*** Unfortunately, there is no mediation privilege in the Constitution, any applicable federal statute or rules prescribed by the Supreme Court generally applicable to civil disputes in the district courts. So now our hapless mediation participant must determine whether there is a state statute protecting the disclosures. The answer? Possibly, if another state's laws

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provided the rule of decision and they have adopted a privilege statute, but sadly for our hero/ine, the answer is, not in Michigan – at least not yet. And since FRE 501 only looks to state statutes in civil cases, if the subpoena was issued in a criminal case against our client, here too the last resort is a federal common law privilege.

Which brings us back to the *Folb* case, mentioned earlier. There, a federal district judge sitting in the Central District of California boldly found there is a federal mediation communications privilege. Briefly, here are the facts.

In case #1, Ms. Vasquez, a female employee sued her employer, MPIPHP, alleging that Folb, her male supervisor, had sexually harassed her. Case #1 went to mediation. No settlement agreement was reached during the mediation session, but the matter was settled shortly thereafter via communications solely between the attorneys for the employer and Ms. Vasquez. Although those communications followed upon the negotiations begun in mediation, the mediator was no longer involved in them.

Enter Case #2. Mr. Folb is now suing MPIPHP for firing him over the alleged incidents with Ms. Vasquez at issue in Case #1. Next come Mr. Folb's request for production of documents to MPIPHP. Mr. Folb wants a copy of the employer's mediation brief in Case #1 and any correspondence related to settlement negotiations with Ms. Vasquez's attorneys. MPIPHP objects; Mr. Folb files a motion to compel. Enter Judge Paez.

After deciding a complex choice of law issue, Judge Paez finds a *federal* common law privilege protects mediation communications! Citing language in a US Supreme Court decision, *Jaffee v Redmond,* 518 US 1, 9 (1996), Judge Paez determined there is a "public good transcending the normally predominant principle of utilizing all rational means for ascertaining the truth." The public good is the prompt resolution of disputes through mediation. Over the next 10 pages, the court found that: (1) the mediation privilege was "rooted in the imperative need for confidence and trust;" [in the mediation process and neutrality of the mediator]; (2) would serve public ends [settling lawsuits]; (3) the evidentiary detriment is not too great [without the protection mediation participants wouldn't disclose the information anyway]; and (4) denial of the privilege would frustrate a parallel privilege adopted by the states [the court found court rules and statutory privileges protecting mediation communications in almost every state to be evidence of a parallel privilege]. *Folb,* 1171-1180. So our attorney is home free, right? Not quite.

First, this is only a district court opinion and it is from the "Left Coast." Moreover, the inquiry did not end there. Examining the meaning of the term "mediation communications," Judge Paez found the term only applied to communications made *during* a formal mediation session, not conversations in the parking lot afterwards or, in our hypothetical, post-mediation emails between attorneys beyond the mediator's involvement. As such, Folb was denied access to the mediation brief and any communications made during the formal mediation, but he was allowed, subject to *in camera* review by the court, to pursue "production of communications that took place between counsel privy to the mediation after the mediation was formally concluded." *Id.,* 16 F Supp2d 1180.

Thus, even with a federal mediation communication privilege, whether the IRS can compel the production of the disclosures in our hypothetical depends on whether the disclosures fall within a court's definition of "mediation communications." Most definitions of the term do not include post-mediation negotiations without the mediator's involvement. For example, see 2 UMA (2); MCR 2.412(B)(2); and USBC WDMI *Proposed* Local Rule 9019-12(a). For the same reason, the privilege would likely not extend to any offers made prior to mediation either.

So, until Michigan adopts a statute like the Uniform Mediation Act with a privilege protecting mediation communications, litigants going to a mediation and wishing to protect the confidentiality of their communications, should contractually agree with the mediator and all participants to more expansive confidentiality protections than those provided in the court rules. In addition, for disclosures which could conceivably result in discovery attempts by a third party, only disclose them to the mediator.

Please notice I am not advocating adoption of the UMA specifically. Many of my colleagues have well-reasoned issues with some of its provisions. But until Michigan adopts a privilege statute for mediation communications, I cannot promise mediation participants unconditional confidentiality beyond my promise that I won't reveal anything they tell me absent their permission or a court order.

Even with a statutory mediation privilege, be aware that some disclosures will likely not be protected. For example, to support her claim of self-defense, a woman accused of murdering her allegedly abusive husband wants access to any confessions of physical abuse her husband may have made to their mediator during a divorce mediation. In such a circumstance, a criminal court is likely to find the widow's need for the information to defend herself outweighs the public's need for confidentiality.

In spite of uncertainty in certain settings, mediation is still the most useful tool around for resolving a dispute short of arbitration or litigation. Confidentiality concerns can be alleviated with four potential safeguards:

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1. Always enter into a broad confidentiality agreement with all parties to the mediation;

2. Be careful who you choose as your mediator and what you tell them in mediation;

3. Clarify with the mediator whether the burden is on you to specifically identify what information can and cannot be shared with the other party that you disclose during private caucuses; and,

4. If you don't settle during the initial mediation conference and you need to reveal additional information to settle after the mediation conference, keep the mediation open and have the mediator carry the water to the opposition.

Good luck out there!

About the Author:

*Robert E. Lee ("Bob") Wright is a past chair of the State Bar of Michigan's ADR Section (2012-2013) and has been working in ADR since 1987. In 2011, he left one of Michigan's largest multi-city law firms to open his own practice devoted exclusively to ADR and the resolution of financial disputes for businesses and individuals. Often described as the "mediator's mediator," his peers just voted him* BEST LAWYERS' 2016 Mediation "Lawyer of the Year" *for his work from his office in Grand Rapids. In addition to his continued work on behalf of various committees of the SBM ADR Section, Bob is a member of Professional Resolution Experts of Michigan (PREMi), an invitation-only group of Michigan's top 20 mediators, the ABA DR Section and is incoming chair of the Grand Rapids Bar Association's ADR Section for a second time. He lives with his wife and serves as "chief of staff" for their three cats in Ada, Michigan.*

# Educate, Explore and Engage: Pointers to Prepare Your Clients for Facilitative Mediation

*By: Richard A. Glaser*
*Richard A. Glaser PLLC*

The Alternative Dispute Resolution (ADR) Section of the State Bar of Michigan held its annual meeting in early October, 2015 in Traverse City, Michigan. During session discussions, ADR practitioners swapped stories about successful outcomes and frequent frustrations. A common complaint was the lack of preparedness of the parties, leading to the perception that clients who were better educated about the process and what to expect made for more efficient mediations and higher success rates.

This article is offered as a reminder to counsel not only to prepare yourself for mediation, but to assure your client is ready to participate by implementing the following themes: Educate your client; Explore with your client, and Engage your client.

**A. EDUCATE YOUR CLIENT ABOUT THE PROCESS**

The client will be a more effective participant when she knows what to expect, what the objective is, and how to achieve it. Sometimes we find that attorneys don't fully explain to their clients the distinctions among litigation, arbitration, case evaluation and facilitative mediation, let alone the different techniques that mediators employ.

Explain the following features of facilitative mediation:

- It is not final and binding;
- The mediator has no power to punish;
- The mediator has solely one function – to help the parties settle;
- Plenary (common) sessions and private (caucus) sessions;
- The process is confidential;
- No information disclosed or statements made are admissible in court.

The reason for the last two points is to encourage candor. Positions may be taken, concessions made, values attached and even apologies offered in order to facilitate the negotiation without fear that they will later undermine the client's case.

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Nonetheless, the client can expect gamesmanship, frustration, maybe some anger (e.g., when the client hears the opponent's opening offer/demand), and more than a little disappointment along the way. The client should expect the opponent and his counsel to be having similar reactions in their caucus room. Educate the client that the success rate for mediation is high and the general feedback from parties is that the process was worthwhile, even if not immediately successful.

Be patient.

Educate the client about your mediator. Certainly, if you have not worked with this mediator before, educate yourself about her techniques. During the pre-session telephone conference, you can ask questions directly to the mediator in order to then properly educate your client. Advise the client to be prepared for the mediator to express confidence in and be a champion for his case, and then come back to poke holes and cast doubt about its value. The mediator is not being duplicitous, but is playing devil's advocate as she is doing in the other room. The client would come to realize that on his own, but will be more comfortable and engaged if prepared for the exercise through your role-playing in advance of mediation.

As part of the role-playing preparation, educate the client about how the opponent is assessing the case and placing values on its different issues. Prepare a game plan for reaching a realistic settlement value, and then prepare Plan B. Even before the client asks, and certainly before the mediator raises it, educate the client about the cost, distraction and risks of not settling through mediation and proceeding to trial.

Emphasize that the mediation is not about trial lawyer advocacy or vanquishing the opponent. Resolving a dispute is usually good for you and your client. As Abraham Lincoln said: "As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough." As counsel, your best service is to help the mediator help the clients to settle their case. The battle will resume if you cannot settle through mediation.

**B. EXPLORE THE CLIENT'S FEARS AND EXPECTATIONS**

Explore with the client the recesses and crevices of the case and her feelings about it and the other side. As counsel, you might sense such hostility and distrust that the plenary session should be truncated or the process would be better served by starting the day in separate sessions. But don't gravitate to that conclusion too quickly. Explore further. How can we work to restore enough trust to negotiate effectively? You might also learn that your client has unreasonable expectations about the prospect of salvaging a relationship with the opponent.

This exercise is not to prepare the client for some cathartic experience. It is partially to assure that you as lawyer do not learn an important obstacle or lever for the first time during the mediation; although it is not necessarily a bad thing if you do.

A favorite example with a happy ending was the case between a small family owned supplier of automotive components to OEMs (Co. "A"), and a multinational manufacturer of consumer goods (Co. "B"), who wanted to try out its product expertise in the automotive market. In the second year of the relationship, B terminated the contract; A cried foul and sued for breach. The divisive forces of litigation took hold, positions hardened, and the chances for constructive dialogue between the parties diminished.

Within the first hour of mediation during the plenary session, A's young, second generation CEO voiced his belief that B, who had come to the dance with A, must have met someone else there (a competitor of A) and went home with that more attractive partner. This was the first anyone in the room, including A's CFO and its counsel, had heard about these suspicions.

B sincerely apologized for any misunderstanding, and explained that its project team had realized that the automotive market was outside of B's core competency. Thus, B severed the relationship as best it could under the contract and without causing too much disruption to A's supply chain. A, who had interpreted this break-up as a cynical version of "Really, it's not you, it's me," requested a one-on-one meeting with B's executive, and the case settled before lunch.

This "happy ending" example contains several lessons for preparing the client for mediation. While the spontaneity of A's revelation may have spurred the candid discourse that led to settlement, without counsel's advance awareness and ability to prepare, we can imagine scenarios how it instead could have gone badly.

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The role of "apology" should never be underestimated, even in a business dispute. Explore with the client whether an apology from the opponent would be meaningful, or whether one from the client would be forthcoming if helpful to the process. Attention to the details of empathy – having you and your client step into other side's shoes – can pay important dividends.

As the mediator, I learned from this example the potential of the plenary session where the parties, rather than their counsel, are actively engaged. The example also illustrates the value of alternative settings for negotiation in addition to the plenary and caucus sessions. The client should be prepared to understand how separate discussions between the clients, with or without counsel, or with or without the mediator, can break through barriers and facilitate progress.

Other areas to explore are sensitive topics or "hot buttons" about which the mediator should be aware, including any cultural customs or protocols. Inadvertent offense by the mediator or the other side can impede progress.

And, of course, does the client have full discretionary authority or is there a necessary stamp of approval (i.e., from a governing board) in order to seal the deal? Understand the procedures and how long it takes so everyone is on the same page before starting the session.

Review in advance with the client the elements of a prospective settlement agreement, including the boilerplate that is often taken for granted. Some parties will have predispositions or regulatory requirements about confidentiality and disclosure of settlement terms that can throw a wrench in the works if not discussed until all other terms have been hammered out.

### C. ENGAGE THE CLIENT TO ACTIVELY PARTICIPATE

While not literally so, facilitative mediation affords your client's most meaningful "day in court" to tell its story, unrestrained by the rules of evidence and risks of cross examination. Plus, as shown by the above example, the benefits can be immediate. Rehearse the client's story. Review the contexts in which it might be most effectively presented. Is this a situation where the client's message should be conveyed face-to-face (most likely), or is the parties' relationship so strained that it will be better communicated with the mediator's deft touch?

Remind the client that her target audience is not the mediator, but the other side, which presents another opportunity to exercise empathy. Simply to ask the client how the adversary is likely to react to the client's message probably will not yield a helpful response. Explore with more probing and specific questions.

- How did the dispute get started?
- Why did it accelerate or fester?
- Was it through neglect, or is there an antagonist?
- Who is viewed here as the victim, and why?
- What might have been done to avoid the divide and its deepening?
- What are the benefits and downsides of settling?
- Whose interests are served by continuing the fight, and why?
- What is needed in a settlement to satisfy the interests at stake?

These types of questions may not have much use or relevance to how the issues will be presented at trial, but they are central to the mediation process. By asking your client to answer these questions thoughtfully from both her and the opponent's perspective, empathy is actively cultivated and common ground should come to the surface. These will be the building blocks for a productive mediation.

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*Rich Glaser has practiced civil litigation in Detroit and Grand Rapids for 38 years, and has provided mediation, arbitration and other ADR services as a neutral since the 1990s. He was selected by the Western District of Michigan Federal Court to serve on its inaugural VFM roster in 1996, and has taught International Commercial Arbitration in an adjunct capacity. Rich is a member of the Board of Directors of Business Mediation Network, LLC where he directs BMN's* "Lincoln Initiative*;" a lawyer training program for mediation advocacy and customizing dispute resolution.*

# Awards Presented at ADR Section Annual Meeting

At the ADR Section Annual Meeting and Conference in October 2015 in Traverse City, the ADR Section presented its annual awards. Susan Butterwick received the Distinguished Service Award, the Mediation and Restorative Services of Muskegon and Southeastern Dispute Resolution Services of Jackson received the Nanci S. Klein Award, and Shel Stark received the George N. Bashara, Jr. Award. Ms. Butterwick provided the following insightful comments on receiving the Distinguished Service Award.

## What Talking Dogs and Tribal Wisdom Have in Common: That is the Question

*By Susan Butterwick*

I want to share with you my very favorite joke of all time. It's a very old joke, but I never tire of it.

A guy has a talking dog.
He brings it to a talent scout.
"This dog can speak English," he claimed to the unimpressed agent, who replied, "Come on, there are a million talking dog acts and I've never seen one that can really talk. But go ahead," the agent said wearily.
"Okay, Sport," the owner said to the dog, "what's on the top of a house?"
"Roof!" the dog replied.
"Oh, come on..." the talent agent responds, "All dogs go 'roof.'"
"No, wait," the proud dog owner says.
He then asks the dog "what does sandpaper feel like?"
"Rough!" the dog answers.
The talent agent gives a condescending blank stare. He is losing his patience.
"No, hang on," the dog owner says. "This one will amaze you."
He turns and asks the dog: "Who, in your opinion, was the greatest baseball player of all time?"
"Ruth!" answers the dog.
And the talent scout, having seen enough, boots them out of his office onto the street.

The owner and dog walked along the street in silence for a minute, dejected. The dog finally looked up, broke the silence, and tentatively asked his owner, "Do you think maybe you should have asked me some different questions?"

How many times have we left a mediation that didn't go so well, and wondered that exact same thing? Should I have asked some different questions? I wonder how they would have responded if I'd just asked X or Y? Could I have helped them see the other person's perspective or understand this or that better? I've thought about the importance of questions for years in mediating cases and their critical importance in whether and how the parties are able to reach a common understanding of the issues. Of course, along with questions goes the importance of listening attentively for the answers.

Then I found peacemaking (or restorative practices). I learned that ancient restorative practices used elders of the community to ask wise and important questions, and at the same time, create a safe space for those involved to struggle with the answers, and through that process, those involved came to better understand one another's perspective or "truth," from which they could then move forward to find common ground. As one who has struggled to find the perfect questions, I was hooked on this process. Here was a forum in which questions and patient listening for the answers matter a lot.

I have watched students in schools in the worst zip codes in Detroit become transformed within safe restorative circles to understand one another better and repair harmful acts, with the use of important and meaningful questions that allow everyone to understand why something happened and the impact of the act on others in the school community. Questions are critical in creating a space in which youth feel safe to think for themselves, ask more questions, be honest, make decisions, and be responsible and accountable for their actions. Here was a process that really is all about the questions - and respectful listening for the answers.

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At the same time that I was learning restorative practices with Detroit youth, Judge Timothy Connors in the 22nd Circuit Court in Washtenaw County, who has spent years working with and learning from tribal courts and tribal judges, was learning about peacemaking and began asking whether some of these tribal restorative values and practices could be applied successfully within our state court system.

Judge Connors was not the first to think about this approach to the court system.

Since at least the 1990s, leaders of the American justice system have expressed support for integrating tribal practices into the traditional court system. Among the advocates are former Attorney General Janet Reno, who once noted that crime victims would be better served by the Indian emphasis on healing, rather than conventional adversarial proceedings, which emphasize determination of guilt.

U.S. Supreme Court Justice Sandra Day O'Connor wrote in 1996: "The Indian tribal courts' development of further methods of dispute resolution will provide a model from which the federal and state courts can benefit as they seek to encompass alternatives to the Anglo-American adversarial model."

James Zion, Anglo-American former solicitor to the courts of the Navajo Nation, explains, "Anglo law is all about rules and principles, whereas in Indian justice the process is very important. Disputes are resolved not by rules but by the idea of relationships. The basic concepts of Indian justice are relationships, reciprocity, solidarity and process, as opposed to hierarchy.... Central to Navajo justice is the concept of .....'what I do has an impact on you and what you do has an impact on me.' The Anglo world has a lot to learn from this concept. In the Anglo world, the individual trumps relationships, and that's destructive. We need to look at Indian concepts of relationships. People are not simply individuals in society. Everyone owes special obligations to others."

And much more recently, Pope Francis asked experts to consider a fuller understanding of justice that moves beyond mere punishment to redemption, healing, and rehabilitation of the offender.

It's not news that the current justice system has its limitations. But does it always have to be this way? What can the justice system learn from ADR models and tribal courts and how can it change the way it interfaces with those who enter its doors? With this in mind, 2 years ago, I had the great honor to be part of a project, envisioned by Judge Connors in Washtenaw County, supported by our Supreme Court / State Court Administrative Office, the goal of which was to use values and principles of tribal peacemaking to remove some of the limitations and negatives from our current system and replace these limitations with more comprehensive solutions that are harmonious, balanced, and integrative for the individual, the family, and the community.

The adversarial system looks at problems through a very narrow lens:

- X vs. Y
- Guilty or not guilty, and so on

A single event occurs and the individual or relationship is then judged, defined and labeled solely by that event. We ask what rules were broken and then we rubber stamp a narrow legal remedy to "fix" the problem and the person or persons who caused the problem is labeled accordingly.

The label then replaces the person and divides the person from the community. A "guilty" or "responsible" individual is no longer a fellow student, colleague, neighbor, or other affiliation; they are now an offender, felon, juvenile delinquent, neglectful parent, abusive spouse, a dishonest CEO. The justice system sets the individual aside and the community then continues to divide and separate itself from the person.

Eventually an individual will accept the label that the justice system and community have placed on them and will continue to live accordingly, repeating the same poor decisions, which lead to future conflict.

This is precisely why we can expect the majority of youth who enter the justice system to re-enter the system. It is why disputing families leave the courtroom more polarized than when they entered. The system continues the cycle of narrowing the event, judging, and labeling, and the goal becomes a question of how many and how fast can the system process through the cycle before the next event occurs (or reoccurs).

Throughout this process, we've done little to nothing to solve the entire problem and all that underlies it. We've done nothing to restore the individual, the community, and the actual harm that was done. Neither the person who caused the problem, nor the people who were impacted get their needs met by decisions that seek to punish or designate "winners" and "losers," without repairing and restoring, which only allows the cycle to continue.

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As an aside, some tribal courts actually build a ceremonial fire and burn the court files of juvenile delinquents, for example when the case closes, to demonstrate that this is no longer the person who committed this act – it is a different person who has repaired the harm, been a part of the solution and the destruction of the file signifies that he or she should be seen as the person they now are, as they integrate back into the family or community. Now, we all know that burning files will never happen in our state court system. But we can provide some healing and hope within the system, especially when the problem has been resolved, by emphasizing who the person has become and their potential instead of continuing to describe them by the acts that were done and the label that described the act.

How can we do this in a system that is so constrained by rules and procedures? That is our challenge. For starters, like the wise dog in the old joke said, maybe we can ask some different questions. And maybe we can listen in a way that people feel heard. It's an old mediator technique. Can judges, referees, magistrates, use this too? Can we ask questions not to prove a point when we already know the answer, but to really learn what might be needed for this person in this situation? Can we expect the same of attorneys?

I've been told that parents whose cases are before me say they appreciate that I listen to them and that they never felt listened to in the courtroom before. Attorneys and case workers talk about them but they have rarely felt that anyone wants to hear what they think or have to say about their case and their children.

For me, this has underscored an important fact that we all know as mediators: it truly matters when people feel listened to and heard.

We all know this works. I have seen it work first hand in the schools with hardened teens and I've seen it happen with the families, neighbors, and business associates who have come in to court not speaking and then leave a peacemaking session planning their next get together or meeting. You have all seen similar results in mediation.

But can these values and principles really transfer to our court system? In Washtenaw County, we have trained peacemakers through the local community dispute resolution center to whom we refer our cases. We have trained some court staff from Friend of the Court in peacemaking. We trained juvenile probation and detention staff. We conduct meetings and resolve conflict with the juvenile staff in peacemaking circles within the court. Judge Connors sits in peacemaking circles with drug court youth when they are being discharged, in which everyone who has worked with the youth during their stay speaks to the youth about the potential they see in him or her and their hopes for this youth going forward. It's a matter of seeing things through a different lens in order to institute these procedures.

We can take cues from the Alaska Kake Circle Peacemaking Project, a tribal program, which has measured its 97.5% success rate in sentence fulfillment over four years against the Alaskan court system's 22% sentence fulfillment rate. Think about that. By allowing those involved in a conflict or harm that was done to increase their understanding of one another by the simple act of asking questions and listening to one another, and creating their own solution to the problem, those solutions are actually carried out at a rate that is 75.5% higher than when the state court imposes its own solution on the situation.

As author and restorative trainer, Kay Pranis says, "This is a huge paradigm shift from justice as getting even to justice as getting well. It is the humane thing to do." And it works.

Peacemakers, for us this is easy; there are so many questions that we can ask to bring out the best in people. We need to follow the tribal and ancient restorative practices that bring community into the equation, establish a safe environment, and ask the truly important questions and then listen deeply for the participants in the circle to find their own answers.

Mediators can do this too, if we create a safe space. We can certainly ask questions that go deeper than, "What will it take to settle this today?" Questions that seek to learn the true value of this conflict, not just in terms of dollars, but in terms of deeper values, such as "Why is this important to you?" "What is its meaning for you?" "How have both of you been affected by this situation?" The opportunity to better understand and heal may have a surprising impact on the settlement itself.

Jurists, that black robe should be a symbol of respect for the system, but not taken as a symbol of fear and coercion by those who come before the court. I struggle every day with how much I can do to be a peacemaker in the role of a referee. I do know this: I can show respect and ask those important questions and allow parties space to speak about what is truly important to them. Questions like "What are the strengths of this family and how can we build on these?" instead of focusing on evidence of failure and fault in the parties.

And arbitrators, if courts can do this, you can too.

Abraham Lincoln famously said: "As a peacemaker, the lawyer has a superior opportunity of being a good man."

And I believe that as a peacemaking forum, courts have a superior opportunity of being a good model for solving problems in a way that is respectful, responsible and that heals rather than harms relationships.

Thank you so very much. I will treasure this award. That it comes from those of you who know so very much about making peace is the most meaningful honor you could give to me.

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# Upcoming Mediation Trainings

## General Civil Mediation Training

The following 40-hour mediation trainings have been approved by SCAO to fulfill the requirements of MCR 2.411(F)(2)(a). For more information, visit the SCAO Office of Dispute Resolution web-site, http://courts.mi.gov/Administration/SCAO/OfficesPrograms/ODR/Pages/Mediation-Training-Dates.aspx

Bloomfield Hills: **January 15, 22, 29, February 5, 12, 2016**
**April 28, May 5, 12, 19, 26, 2016**
**June 2, 9, 16, 23, 30, 2016**
**July 25-29, 2016**
**November 3, 10, 17, December 1, 8, 2016**
*Trainings sponsored by Oakland Mediation Center*
Register online at www.mediation-omc.org or call 248-348-4280 ext. 216

Plymouth: **January 14-16, 29-30, 2016**
*Training sponsored by Institute for Continuing Legal Education*
Register online at www.icle.org, or call 1-877-229-4350.

Grand Rapids: **March 7-9, 21-23, 2016**
*Training sponsored by Dispute Resolution Center of West Michigan*
Register online at www.drcwm.org or call 616-774-0121

## Domestic Relations Mediation Training

The following 40-hour mediation trainings have been approved by SCAO to fulfill the requirements of MCR 3.216(G)(1)(b):

Ann Arbor: **February 4-6, 11-13, 2016**
*Training sponsored by Mediation Training and Consultation Institute*
Register online at https://learn2mediate.com/calendar/ or call (734) 663-1155

Bloomfield Hills: **February 23, March 1, 8, 15, 22, 29, 2016**
*Training sponsored by Oakland Mediation Center*
Register online at www.mediation-omc.org or call 248-348-4280 ext. 216

## Advanced Mediation Training

Mediators listed on court rosters must complete eight hours of advanced mediation training every two years. The trainings listed below have been pre-approved by SCAO to meet the content requirements of the court rules on mediation for both general civil and domestic relations mediators.

Auburn Hills: **March 15, 2016** (8 hours)
ADR Summit: "Elevate Your Negotiation and Mediation Skills to the Next Level"
Trainer: Nina Meierding
*Training sponsored by ADR Section of the State Bar of Michigan*
Register online at http://connect.michbar.org/adr/events/eventdescription?CalendarEventKey=86b05374-46f8-40d8-8e1d-3a38c5867cc0&Home=/adr/events/recentcommunityeventsdashboard

Ann Arbor: **January 6, 2016** (1.5 hours)
"International Mediation"
*Training sponsored by Washtenaw Dispute Resolution Center*
Register online at http://thedisputeresolutioncenter.org/services/lunchn-learn/

Grand Rapids: **January 25, 2016** (2 hours)
"How to be a Good Co-Mediator"
*Training sponsored by Dispute Resolution Center of West Michigan*
Register online at www.drcwm.org or call 616-774-0121

Ann Arbor: **Feburary 3, 2016** (1.5 hours)
"New Technologies in Mediation"
Register online at http://thedisputeresolutioncenter.org/services/lunchn-learn/

Ann Arbor: **March 2, 2016** (1.5 hours)
"Mediating With Clients Who Have Special Needs"
Register online at http://thedisputeresolutioncenter.org/services/lunchn-learn/

Bloomfield Hills: **March 24, 2016** (8 hours)
"Writing Sustainable Mediation Agreements"
Trainer: Jane Millar
*Training sponsored by Oakland Mediation Center*
Register online at www.mediation-omc.org or call 248-348-4280 ext. 216

# 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

SBM State Bar of Michigan | ALTERNATIVE DISPUTE RESOLUTION SECTION

## MEMBERSHIP APPLICATION 2015-2016

The ADR Section of the State Bar of Michigan is open to lawyers and other individuals interested in participating. To comply with State Bar of Michigan requirements, lawyer applicants to the ADR Section are called Members and non-lawyer applicants to the ADR Section are called Affiliates. The Section's mission is:

> The Alternative Dispute Resolution Section provides members of the State Bar of Michigan and the general public with creative leadership in the dispute resolution field. The Section fosters diversity in the profession, develops and offers educational programs, promotes access to litigation alternatives regardless of income, monitors legislative and judicial activity and provides policy guidance, information and technical assistance on ethical issues, dispute resolution techniques and training design. The Section produces publications which promote wider use and excellence in the provision of alternative problem-solving techniques and dispute resolution services.
>
> Membership in the Section is open to all members of the State Bar of Michigan. Affiliate status is open to any individual with an interest in the field of dispute resolution.

The Section's annual dues of $40.00 entitle you to receive the Section's Newsletter, participate in programming, further the activities of the Section, receive Section listserv announcements, and participate in the Section's discussion listserv, and receive documents prepared by and for the ADR Section.

In implementing its vision, the ADR Section is comprised of various Action Teams. You are encouraged to participate in the activities of the Section by joining an Action Team. Information on Action Teams will be forwarded upon processing of this Application.

Note: Dues are due between October 1 and December 31.

| | |
|---|---|
| APPLICATION TYPE: _____ Member _____ Affiliate<br>NAME: _____<br>ADDRESS: _____<br>_____<br>CITY: _____STATE:_____ ZIP CODE:_____<br>PHONE: _____<br>E-MAIL: _____<br>State Bar No._____ (if applicable)<br>Have you been a Member of this Section before: _____<br>Are you currently receiving the ADR Quarterly? _____ | All orders must be accompanied by payment. Prices are subject to change without notice.<br><br>Please return payment to:<br><br>William D. Gilbride Jr.<br>Abbott Nicholson PC<br>300 River Place Dr Ste 3000<br>Detroit, MI 48207-5066 |

**Annual dues are $40.00, or $48.00 if Member or Affiliate certificate is requested. There is no proration for dues and membership must be renewed on October 1 of each year.**

Make checks payable to State Bar of Michigan: Enclosed is check # _____ for _____

Or charge my ☐ VISA ☐ MasterCard

Credit Card # _____ Amount: _____

Expiration Date: _____ Authorized Signature: _____

# ADR Section Member Blog Hyperlinks

The SBM ADR Section website contains a list of blogs concerning alternative dispute resolution topics that have been submitted by members of the Alternative Dispute Resolution Section of the State Bar of Michigan.

The list might not be complete. Neither the State Bar nor the ADR Section necessarily endorse or agree with everything that is in the blogs. The blogs do not contain legal advice from either the State Bar or the ADR Section.

If you are a member of the SBM ADR Section and have an ADR theme blog you would like added to this list, you may send it to ADR Quarterly Editor Lee Hornberger at leehornberger@leehornberger.com with the word BLOG and your name in the Subject of the e-mail.

The blog list link is: http://connect.michbar.org/adr/home/memberblogs.

# Michigan Supreme Court Amends MCR 2.403(O)(6)(b)

The Michigan Supreme Court has amended MCR 2.403(O)(6)(b), effective January 1, 2016, concerning Case Evaluation attorney fees. The Administrative Order with the amendment is at:
http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Adopted/2015-09_2015-09-23_formatted%20order.pdf

The amendment to MCR 2.403(O)(6)(B) allows a reasonable attorney fee to be included in a request for costs by attorneys who represent themselves or who are employed by a party to the case for services provided after case evaluation is rejected.

## Editor's Notes

*The ADR Quarterly* is looking for articles on ADR subjects for future issues. You are invited to send a Word copy of your proposed article to *The ADR Quarterly* Editor Lee Hornberger at leehornberger@leehornberger.com.

Articles that appear in *The ADR Quarterly* do not necessarily reflect the position of the State Bar of Michigan, the ADR Section, or any organization. Their publication does not constitute endorsement of opinions, viewpoints, or legal conclusion that may be expressed. Publication and editing are at the discretion of the editor.

Prior *ADR Quarterlies* are at **http://connect.michbar.org/adr/newsletter** .

### ADR THEME ISSUE OF MICHIGAN BAR JOURNAL

The June 2015 issue of the *Michigan Bar Journal* was dedicated to Alternative Dispute Resolution. Several ADR Section members had articles that were published in it. These articles were "First Offer," "Is Med/Arb the Process for You?," "Judicial Intervention in Arbitration Proceedings Pre-Award," "Tribal Court Peacemaking: A Model for the Michigan State Court System?," "Uniform Collaborative Law Act: Michigan Not Left Behind," and the "Theme Introduction."

**The issue is at: http://www.michbar.org/journal/home/VolumeId=180**

SBM Connect
State Bar of Michigan

## Connect With Us

The Alternative Dispute Resolution Section has launched a new website and interactive online community for its members—SBM Connect. This private community will enhance the way we communicate and build relationships through the Section. Log in to SBM Connect today and see what the buzz is all about!

The ADR Section SBM Connect hyperlink is:

http://connect.michbar.org/adr/home

- ACCESS to archived seminar materials and the ADR Quarterly
- FIND upcoming Section events
- NETWORK via a comprehensive member directory
- SHARE knowledge and resources in the member-only library
- PARTICIPATE in focused discussion groups

SBM Connect will eventually replace the current section website. Both websites will run concurrently to allow you time to discover the new tools and features available to members.

## ADR Section Mission

The mission of the Alternative Dispute Resolution Section is to encourage conflict resolution by:

1) Providing training and education for ADR professionals;

2) Giving professionals the tools to empower people in conflict to create optimal resolutions; and

3) Advancing the use of alternative dispute resolution processes in our courts, government, businesses, and communities.

## Join the ADR Section

The ADR Section of the State Bar of Michigan is open to lawyers and other individuals interested in participating.

The Section's annual dues of $40 entitles you to receive the Section's Newsletter, participate in programming, further the activities of the Section, receive Section listserv announcements, and participate in the Section's discussion listserv.

In implementing its vision, the ADR Section is comprised of various Action Teams. You are encouraged to participate in the activities of the Section by joining an Action Team.

The membership application is at:

https://higherlogicdownload.s3.amazonaws.com/MICHBAR/19aeea9e-4ffe-48f5-91af-5059bc9b29bb/UploadedImages/pdfs/sectionapp.pdf .

**SAVE THE DATE!!!**

# FRIDAY, SEPTEMBER 23 & SATURDAY, SEPTEMBER 24, 2016

## ANNUAL MEETING AND ADVANCED MEDIATION TRAINING

**8 hours of Advanced Mediation Training sponsored by State Bar of Michigan Alternative Dispute Resolution Section**

**WHO**: Anyone involved or interested in Alternative Dispute Resolution and negotiation, including: judges, mediators, arbitrators, attorneys, advocates, neutrals, trainers and participants.

**WHY**: To receive: **Eight Hours of Advanced Mediation Training** provided by Michigan's leading ADR experts and trainers.

- Various speakers will fill Friday afternoon and Saturday morning with the latest tips, techniques and topics of current interest to arbitrators and mediators.
- On Friday night, the ADR Section will honor the recipients of its Distinguished Service, Nanci S. Klein, and George N. Bashara, Jr. awards during the cocktail hour and annual awards dinner.
- Saturday afternoon, colleagues can enjoy ArtPrize 2016 which will be in full swing or any of a dozen other events going on in GR and near the lakeshore.

Join us to receive the **Best Advanced Mediation Training Value** in Michigan while connecting and networking with other ADR consumers and providers!

**WHERE**: DoubleTree by Hilton, 28th Street & Patterson – Grand Rapids (Just one mile west of Interstate 96)

**HOW:** Watch for registration and further information via the ADR Section's listserv and *ADR Quarterly* publication, or go to our Section website at www.michbar.org.

SBM State Bar of Michigan | Alternative Dispute Resolution Section

***Thanks to our sponsors for their generous support!***

# Cocktail Hour Sponsors

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The ADR Quarterly

State Bar of Michigan
306 Townsend St.
Lansing, MI 48933

*The ADR Quarterly is published by the ADR Section of the State Bar of Michigan. The views expressed by contributing authors do not necessarily reflect the views of the ADR Section Council. The ADR Quarterly seeks to explore various viewpoints in the developing field of dispute resolution.*

*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**
*Stephen A. Hilger* - **616-458-3600**
*or Phillip A. Schaedler* - ***517-263-2832***

**http://connect.michbar.org/adr/newsletter**

SAVE THE DATE

## THE ADR SUMMIT RETURNS!
# 2nd ANNUAL ADR SUMMIT
# March 15, 2016

On March 15, 2016, the ADR Section of the State Bar of Michigan is proud to present our Second Annual ADR Summit, an outstanding 8-hour advanced mediation training. Building on the success of our First Annual ADR Summit in March, 2015, we're bringing in one of the best national trainers in the field to replace the now-defunct Advanced Negotiation & Dispute Resolution Institute (ANDRI) once co-sponsored with ICLE. Mark your calendar today! You don't want to miss this one.

**WHAT:** 2nd Annual ADR Summit: Elevate Your Mediation & Negotiation Skills to the Next Level

**WHEN:** March 15, 2016 from 9 am to 5 pm

**WHERE:** Western Michigan University, Cooley Law School
2630 Featherstone Road
Auburn Hills, MI

**WHO:** Nina Meierding is returning to Michigan. Nina broke all attendance records when she presented at ANDRI several years ago. A successful litigator, trainer, mediator and professor, Nina Meierding does it all! For 22 years she was Director and Senior Mediator at the Mediation Center in Ventura, California. She has taught at Pepperdine University for 20 years, Southern Methodist University for 15 and Lipscomb University for 5. She served on the Board of Directors of ACR, and is a former president of the Academy of Family Mediators. In 2005 she received the prestigious John Haynes Distinguished Mediator Award from ACR. She is a power house presenter who offers a wide array of fresh insight and skill building to the agenda.

**WHY:** One of the leading negotiation teachers in the country, Nina will explore the predictability of competitive bargaining and how the mediator can impact the "dance" of negotiation. She will also provide advanced training on dealing with specific sources of resistance at the table such as avoidance of high uncertainty or situational distrust. And, she will help us build our skills in creating a new model for creativity in brainstorming sessions.

SBM State Bar of Michigan

ALTERNATIVE DISPUTE RESOLUTION SECTION

# 2nd Annual ADR Summit:

## Elevate Your Mediation and Negotiation Skills to the Next Level

## March 15, 2016, 9 a.m.-5 p.m.

### WMU-Cooley Law School, 2630 Featherstone Rd, Auburn Hills

P #:_____

Name:_____

Your Firm: _____

Your Law School (if student): _____

Address:_____

City:_____ State: ____ Zip: _____

Telephone: ( _____ ) _____

E-mail Address: _____

Enclosed is check # _____ for $ _____

Please make check payable to: State Bar of Michigan

Please bill my: ❑ Visa ❑ MasterCard for $_____

Debit/Credit Card #:_____

Expiration Date:_____

Please print name as it appears on debit/credit card:

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Authorized Signature: _____

**Please do not send credit card information by e-mail.**

## Details

**REGISTRATION DEADLINE: March 11, 2016**

One of the leading negotiation teachers in the country, *Nina Meierding* will explore the predictability of competitive bargaining and how the mediator can impact the "dance" of negotiation. She will also provide advanced training on dealing with specific sources of resistance at the table such as avoidance of high uncertainty or situational distrust. And she will help us build our skills in creating a new model for creativity in brainstorming sessions.

## Cost

- ❑ ADR Section Members .....$155
- ❑ Non-Section Members .....$195
- ❑ Law Students .....$100

Law school students must submit their form by mail/fax to receive this reduced rate.

## Questions

For additional information regarding the seminar contact Sheldon Stark at 734-417-0287 or shel@starkmediator.com.

## Register One of Three Ways

Online: **visit http://e.michbar.org to register online**

Mail your check, or debit/credit card information, and completed registration form to:

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