

Vol 14  
No. 3  
July, 2007

ADR Spotlight on  
Mary A. Bedikian  
by Antoinette  
Raheem

Page 1-3

Construction  
Arbitration Services,  
Inc.  
by Susan E. Peters

Page 3-4

News & Views: On the  
Importance of a Signed  
Settlement Agreement  
by Robert E. Lee Wright

Page 5

In Memory of Stephen C.  
Brandsdorfer

ADR Section  
2007 Annual  
Meeting &  
Conference  
Details

Page 6

Upcoming Mediation  
Trainings

Comments from the Chair  
by Barbara Johannssen

Page 7-8

# The ADR Newsletter

Alternative Dispute Resolution Section of the State Bar of Michigan

## CHAIRPERSON:

Barbara Johannssen

## OTHER EXECUTIVE COMMITTEE:

**Tony Braun**  
Chair-Elect

**Chuck Judson**  
Treasurer

**Donna Craig**  
Secretary

**Anne Bachle Fifer**  
Member at Large

**Jim Vlasic**  
Member at Large

**Alan Kanter**  
Ex Officio

## COUNCIL:

**A. David Baumhart III**

**Tony Braun**

**Susan Butterwick**

**Donna Craig**

**Gene J. Esshaki**

**Anne Bachle Fifer**

**Richard Figura**

**Kevin S. Hendrick**

**R. Craig Hupp**

**Catherine A. Jacobs**

**Chuck Judson**

**Paula Manis**

**Jonathan L. Moody**

**Antoinette Raheem**

**Lawrence Root**

**Hon. Cynthia D. Stephens**

**James J. Vlasic**

**Christopher Webb**

**William Weber**

**Martin Weisman**

**Robert E. Lee Wright**

## ADR Spotlight on **Mary A. Bedikian**

*By Antoinette Raheem*

When I first became acquainted with Mary Bedikian it was at a Business to Business Mediation training in June 2006. She charged the room virtually overflowing with knowledge and energy. Everyone had anxiously awaited her arrival and I soon found out why. Truly the authority on everything mediative, Ms. Bedikian poured forth information from the moment she arrived, never slowing down. What I did not know then is that this fireball of a woman rarely ever slows down. Having seen her at several seminars and presentations over the past year and having had the opportunity to meet with her recently over lunch, I have come to surmise that Mary talks and moves and acts with such velocity because she simply has so much to share and so much she wants to accomplish.

Not that Mary Bedikian hasn't accomplished a great deal already. She is a graduate of Wayne State University, where she obtained both a Bachelors and a Masters Degree. After Wayne State, she went on to graduate from the Detroit College of Law, now Michigan State University College of Law. For most, however, Ms. Bedikian's name has been virtually synonymous with Arbitration in Michigan, due to her 28 years with the American Arbitration Association ("AAA"). From 1978 to 2003, Ms. Bedikian held the top position in AAA's regional office in Detroit.

Currently, Ms. Bedikian is Professor of Law and Director of the Alternative Dispute Resolution Program at Michigan State University School of Law, positions she has held since 2003. She is also Of Counsel to the National Center for Dispute Settlement, a private ADR firm which recruits and trains arbitrators, administers arbitrations and mediations, promulgates rules for arbitrations and does ADR system designs for companies.

Between getting her start and the current positions she holds, Ms. Bedikian has taught at Wayne State University and University of Detroit Mercy School of Law. She has authored several ADR practice books, numerous articles and contributed to many publications, including the AAA Handbook on Mediation. She has been the presenter, organizer and/or moderator for countless ADR conferences and trainings. Moreover, notably, Ms. Bedikian was the 1999 recipient of the State Bar of Michigan's Distinguished Service Award for her many contributions to the field of ADR.

In my recent interview of Mary Bedikian she shed light on many of her activities, influences and aspirations in answers that I have paraphrased below:

**Q:** You are a leader and an innovator in the ADR field. What led to your initial interest in ADR?

**A:** I came upon it by happenstance. I was studying for my Master's degree [in an unrelated field] when I read about dispute resolution and a company called the American Arbitration Association. So I called the American Arbitration Association ("AAA") in Detroit, and asked to speak to the person in charge of hiring. He had just fired someone for violating the company's blue jean ban. I was interviewed the next day. In my interview, he asked me two questions: "Have you ever administered a case?" and "What is your astrological sign?" I was offered the job of case administrator. By the way, the woman fired for wearing blue jeans took her case to the National Labor Relations Board, claiming that her activity, i.e., forwarding to arbitrators on AAA's panel a questionnaire about the propriety of the company's blue jean ban, constituted protected activity under the National Labor Relations Act. She lost.

**Q:** What roles, activities and positions did you undertake in your 28 years at AAA?

**A:** I started off in 1975 working with uninsured motorist cases--300 cases on average. Then I moved to election work, which was very meticulous. I handled one major, sensitive election involving the food industry which was supervised closely by my boss. Subsequently I received a promotion to Labor Tribunal Supervisor. I had just been accepted to law school, so I had to secure a deferral until the following fall. [She completed law school at night, working full-time during the day].

In 1978 the Regional Director of AAA's Detroit Office resigned to run for Senate. I was invited by the then President and CEO, Robert Coulson, to serve as Regional Director. In 1987, as AAA's work in Michigan expanded, my title changed to Vice President of Detroit's Regional Office. In 1989 I was asked by U of D School of Law to develop an ADR program there. [Which she did while continuing to work full time at AAA.]

**Q:** I understand you were involved in the formation of the State Bar of Michigan's ADR Section. Tell me about how the ADR section of the SBM came about and your role in it.

**A:** It was in the mid-80's, after I had finished law school, passed the bar and chosen to stay at AAA. Larry Conner, Harvey Berman, Mark McAlpine, Zena Zumeta and I decided that, since

Continued from Page 1



Mary A. Bedikian

the movement to embrace ADR had resulted in more and more ADR, our SBM ADR *committee* needed to be turned into a full fledged *Section*. We were yearning to be more significant and have a real voice within the SBM. So I worked on collecting the necessary signatures and presenting the idea to the State Bar. They approved it, and we proceeded to develop By-Laws and a Board.

In 1994 I was chair of the SBM's ADR Section. During my tenure, our Section worked on court annexed ADR and education of lawyers, neutrals and users about ADR. One of the strides we made in this area was to convince the powers that be that "Michigan mediation" was not true mediation. This happened with the August 2000 Court Rule amendment [on mediation]. We were able to effectuate this change because we raised awareness in the ADR world that nomenclature is important to the development of ADR. Once people became aware that there are a lot of true mediations being done around the country, they were encouraged to look at other possibilities [to resolve their conflicts]. The Court Rules helped in raising this awareness.

**Q:** *What influenced you to make the move in the fall of 2003 to MSU's school of Law? Are there many programs like it in the U.S.?*

**A:** The changing organizational structure at AAA and my assessment that my skill set could be better used elsewhere led to the move. I am "thrilled!" with my decision.

There are over 180 law schools with ADR courses. I am now a part of that. I do full fledged ADR which includes 1) teaching, 2) writing and 3) education and consulting. Nothing prepared me for teaching law students. They are very alert and very challenging.

I love to think and write about ADR. Because of my 20+ years in the professional world, the law school brought me in on a contract track. I want to maximize my contract track position by writing symposia articles and essays that will generate visionary thinking in the field.

**Q:** *What have been some of your greatest accomplishments?*

**A:** One of my greatest accomplishments at AAA was to demonstrate the effectiveness of arbitration—to give arbitration a good name and thereby expand its domain. When I started, roughly 2,000 cases per year were arbitrated, with the majority of cases involving uninsured motorist claims. At its peak, we managed over 3,000 cases involving a mix of labor, securities, employment, construction, commercial, medical malpractice, and international issues.

Other accomplishments have included being called to testify when legislative bodies have considered incorporating an ADR procedure (thus influencing the expansion of ADR), assisting with Amicus filings in the U.S. Supreme Court and participating in major task forces around the country to raise awareness of ADR. Also, after developing an ADR program at U of D Law School in 1989, I was offered the opportunity to duplicate my efforts at Wayne State two years later. I ended up alternating between the two schools each semester.

**Q:** *What are the components of the ADR program you direct at MSU Law School?*

**A:** MSU's ADR program emphasizes teaching students, educating lawyers and judges and other professionals who use ADR, and providing mediation services to the public and private sector. Our ADR program has been one of the first to offer theoretical and practical instruction to lawyers and judges such as when Scott Brown from the Harvard Negotiation Program was brought in to teach negotiation skills. We also offered a series of programs

including "Mediation under the Court Rule", "International ADR", and "Employment ADR." Additionally, we have conducted several cutting-edge labor and employment programs, with target audiences that reach beyond attorneys.

**Q:** *What kinds of ADR competitions and courses have MSU law students participated in?*

**A:** The law school competes every year in a mock Arbitration that takes place in Vienna (Vis International). I assist in coaching the competitors. My students are also involved in three other ADR competitions: Negotiation, Mediation Advocacy and Commercial Arbitration, which is co-sponsored with the ABA by the National Arbitration Forum. In the last three years, we have won two Mediation Advocacy competitions, and advanced to nationals in Commercial Arbitration. I created and am the only teacher for five ADR courses, including Arbitration, Negotiation, Mediation, ADR in the Workplace and ADR Survey.

**Q:** *You have taught at U of D Mercy, Wayne State and now MSU. How do you view students' receptiveness to ADR?*

**A:** Most students see learning about ADR as an integral part of their legal education. Enrollment in MSU's ADR courses has increased dramatically from my first few years there. Also, even though students are asked to do ADR that is required but not graded, they undertake it with enthusiasm. They seem to truly value the opportunity to hone their skill, talk about what worked and did not work, and share in the substantive knowledge I am able to give them.

**Q:** *As former chair of the State Bar of Michigan's ADR Section, how do you see ADR being received among lawyers in Michigan?*

**A:** Among lawyers there is greater acceptance of ADR in recent years, especially to non-adjudicatory ADR such as mediation, which is on the rise. More employers are instituting a two step program for resolving workplace conflicts: first mediation and then arbitration. Lawyers are increasingly recognizing that ADR helps resolve conflicts earlier. Lawyers must use every reasonable means to zealously represent their clients-- including ADR.

**Q:** *Do you find that larger law firms seem to embrace ADR?*

**A:** Yes to some extent, but client driven law firms are concerned they won't make money using ADR. It is hard to leverage ADR work.

**Q:** *I see you have also trained many judges in ADR. How do Michigan judges receive ADR as a whole?*

**A:** With judges' caseloads being down, they are not readily directing cases into ADR. Also, there is a concern among judges about fairness within a pre-ordained pool of arbitrators. However, the prevailing jurisprudence is that if you can essentially obtain the same remedies as in court, your rights are protected in arbitration.

**Q:** *Where would you put Michigan in terms of ADR development in the U.S. and where would you like to see ADR in Michigan go?*

**A:** Michigan has historically been ahead of other states in arbitration, especially labor arbitration. However, there are 12 states which have adopted the Reformed Uniform Arbitration Act [and Michigan is not yet among them.] I have requested the SBM's ADR section to push the RUAA forward in Michigan, since we are currently operating under a 1963 statute.



Antoinette R. Raheem, is an attorney of 27 years, currently practicing through her firm, LAW AND MEDIATION OFFICES OF Antoinette R. Raheem, P.C. She is also a member of Professional Resolution Experts of Michigan and Dispute Resolution Association of Michigan, which provides private ADR services. She has been a Wayne County, Oakland County and Detroit case evaluator for over 13 years. She has also taught as an Adjunct Professor of Law at Wayne State University Law School. She is a Council Member of the ADR Section and serves with other SBM and local bar groups. Ms. Raheem is a graduate of Columbia University School Of Law and Princeton University.

Continued from Page 2

I would also like to see the development of an ADR Commission with funding from the State. This commission would be able to give ADR Ethics opinions, make sure legislation that is being considered reflects sound ADR practices, and draft amicus briefs.

In the academic arena, I would like to see every law school in Michigan with a formal ADR Program, and also schools other than law schools (such as the MAIR program at Wayne State University). Also, it is important for young lawyers to understand how to be civil, how to represent their clients in mediation and how to generally develop a balanced set of skills they will most likely use extensively before their first trial.

Practitioners who have been out of law school longer are more confused about ADR. Continuing Legal education could address this problem. A plan for developing ADR education for the bench and bar should be made.

Finally, mediation should be the process of first resort. It gives the parties control, it is quick, it is private and it allows the parties and their lawyers to be creative.

**Q:** What are some of your biggest aspirations for ADR in the future?

**A:** There are two things I would like to see. First, is that the State Board of Bar Examiners comes to recognize the importance of ADR and makes it a mandatory part of the State Bar Exam, to give ADR credibility. The second is that I have the opportunity to grow the MSU law school ADR program to offer more academic options, such as International ADR, Advanced ADR and Family Mediation.

**Q:** Why has ADR been such a love of yours?

**A:** It works! While there are times litigation is essential, often times the process of reconciliation and compromise is what it is all about. ❁❁

## Construction Arbitration Services, Inc.

*By Susan E. Peters, National Center for Dispute Settlement and Construction Arbitration Services, Inc.*

Construction Arbitration Services, Inc. (CAS) focuses on providing expedited arbitration services for three distinct types of disputes: Residential Real Property Disclosure Disputes (Michigan and Minnesota); Home Warranty Disputes for New Construction (nationally) and Home Inspection Disputes (nationally). CAS also provides expedited arbitration services when a Private Request for Arbitration is received from parties who originally may not have had an arbitration clause in their contracts or have a disclosure dispute in states other than Michigan or Minnesota. In this article I will focus on Residential Real Property Disclosure Disputes. I will provide an overview of the program, the case administration process flow, the arbitrator's role in the administration of a Demand for Arbitration and how individuals interested in serving as CAS arbitrators may become members of our panel.

### Residential Real Property Disclosure Disputes: An Overview

While any party to a residential real estate purchase may file for arbitration, disclosure disputes are usually initiated by the Buyer of a residential property against the Seller. A filing, or Demand for Arbitration, may also name any real estate licensee involved in the transaction. A valid Clause for Arbitration must be in force in order for a party to file a Demand for Arbitration.\*

The Clause for Arbitration is signed at or around the time of purchase of a property. The Clause for Arbitration is only valid if all parties, including real estate licensees (if required), have signed or initialed the clause. Some Clauses for Arbitration, particularly in Michigan, only require the signatures or initials of the Buyer and Seller, but imply that a licensee can be named in a Demand for Arbitration because the parties agree to comply with the CAS Arbitration Rules pertaining to these types of disputes which allow a filing party to name a licensee.

The scope of the focus of these disputes is lack of, or inadequate, disclosure of any known defect(s) or issue(s) (i.e. undisclosed pending property assessments) regarding the condition of a property on the part of a Seller and/or licensee. Claims of fraud, negligence, misrepresentation and breach of warranty are all arbitrable under the Clause for Arbitration, as are escrow deposit disputes when a pending purchase transaction is rescinded.

In accordance with CAS's Clause for Arbitration, all Demands for

Arbitration must be filed within twenty-four (24) months from the day of closing on a property. In a case where the return of an escrow deposit is at issue, and the parties all signed the clause prior to closing, they may initiate arbitration within the same time frame from the intended date of closing. Demands for Arbitration, in claims of fraud, may be considered after the 24 month period for filing has expired. In such cases, the assigned arbitrator will make a determination of whether the threshold requirements of fraud have been shown before determining the merits of the claim and rendering an Award/Decision in the matter.

### Case Administration Process

A Buyer purchases a home only to discover some defect or issue that, upon review of the Seller's Disclosure Statement (required by State statutes), does not appear to have been disclosed or not adequately disclosed. The Buyer reviews the Purchase Agreement and, in compliance with the Clause for Arbitration, files four copies of a Demand for Arbitration Form listing any and all parties, with their contact information, named in the dispute. The Buyer also supplies four copies of any documentary evidence, submitted at the time of filing a Demand, two copies of a completed Purchase Agreement (including any addendums) and two copies of the Clause for Arbitration. The correct filing fee, which is based on the amount of the claim, the number of parties named and the selection of a single arbitrator or a three-member panel hearing, must be included with the Buyer's Demand.

Upon receipt and determining that all information has been received and the Demand is eligible for the process, CAS notifies all parties to the Demand that a filing has been received. CAS provides all parties named by the Buyer with a copy of the Demand for Arbitration Form and any documentary evidence submitted so that any party to the dispute is made aware of his or her potential liability. All parties are informed that they may have legal representation.

All parties are also supplied with an Arbitrator Selection List, biographical information on each arbitrator offered for selection, and a 90-Day Calendar Scheduling Form. Each party may strike one arbitrator from the list if they choose to, and number the others in order of preference. Parties also indicate their availability for a hearing by striking the days when they are not available on the calendar form. Parties are required to return these forms to CAS offices within ten days of the date CAS mailed the information to the parties in order

\*Parties without a valid Clause for Arbitration may agree to arbitrate their dispute by signing and completing a Submission Agreement Form, affirming their choice of arbitration as a means of resolving the dispute. Other parties may be brought into an arbitration proceeding if all parties voluntarily sign and complete a Submission Agreement Form, although this is unusual. This type of filing may occur in boundary disputes where the Seller sold two adjoining parcels to two different Buyers.

Continued from Page 3

to expedite arbitrator assignment and scheduling of the hearing. Unless an extension for submission of the forms has been requested, CAS assigns the case to an acceptable arbitrator based on the parties' feedback.

The arbitrator, or panel of three, will receive a Case Assignment Packet which includes a copy of the Buyer's complete Demand for Arbitration submission (including the Purchase Agreement and Clause for Arbitration), any rebuttal statements from a named party, copies of each party's calendar, Signature Pages for the Award/Decision, Notices of Hearing, pre-stamped envelopes for mailing the Notices and the Award/Decision, along with an Assignment Letter and mailing information for all parties. The arbitrator will compare the parties' calendars against his/her schedule, set a date and time for the hearing and send out the Notices of Hearing to all parties and CAS, using the pre-stamped envelopes provided.

### The Arbitrator's Role

The hearing is held at the property in question so that all parties and the arbitrator have the opportunity to view the alleged defects, unless a compelling reason exists not to hold the hearing at the property, i.e. the property has been demolished or condemned. A party may object to holding the hearing at the property, in writing, for the arbitrator's consideration. As with all like requests, such as a Subpoena Request or an Adjournment/Reconvene Request, the arbitrator will make the determination as to whether the request should be granted. If the arbitrator grants the request for a Change of Venue, CAS notifies the requesting party, who will be given a 10-14 day time frame to secure a location that is acceptable to the arbitrator and all the parties, absorb any associated costs and notify CAS of all details. As with all other materials related to a case, CAS will share this information with the arbitrator and the parties.

On the day of the hearing, the parties arrive at the property; the arbitrator enters the property once he or she knows that all parties have arrived. The arbitrator opens the hearing, explains the format for the hearing and then allows each party to present documentary evidence and witness testimony, if any. The arbitrator and any party present may cross-examine any witness during the hearing.

Typical evidence submitted in these cases may include copies of the Seller's Disclosure Statement, the Home Inspection Report, copies of service records for the property from service providers, Expert Analysis (i.e. for mold remediation), work bid estimates and other written statements. While written statements from witnesses are considered, they are not given the same weight as live testimony; however, the arbitrator determines how much weight to give such statements depending on the other evidence submitted.

Once all evidence has been presented, if no party asks to submit a Post-Hearing Brief, the hearing is considered closed and the arbitrator will not accept any further submissions from any party to the dispute. The arbitrator may also keep the hearing open if he or she requests documents or information from any party and will consider the hearing closed upon receipt of the requested materials.

The arbitrator will leave the site of the hearing prior to any of the parties, to ensure that no ex parte communications or the appearance of such occurs. The arbitrator is required to provide CAS with an Award/Decision and the Signature Pages in the matter within thirty (30) days of the date of hearing or any final evidentiary submissions or briefs have been received.

All Awards/Decisions are to be based on the evidence received. In content, the Award/Decision shall include a presentation and summary of the evidence and testimony pertinent to the Demand, the rationale of the arbitrator and whether the Demand is upheld in part, in full or denied in its

entirety. The arbitrator, if rendering a monetary award, shall specify what the monies are being awarded for and shall specify the total amount due, including any portion of the filing fee that is assessed to a party (ies). The arbitrator shall also set a time frame for direct payment to the prevailing party. The language of the Award/Decision should be understandable to a lay person, as many participants in these disputes do not choose to have legal representation.

The case is now considered closed, except that within 20 days of the date the Award is mailed, a party may request Modification or Clarification. A Request for Modification may be made to correct any typographical or grammatical errors in the Award/Decision. No modification of the outcome of the hearing is permitted under CAS Binding Arbitration Rules. A Request for Clarification may be made if a party feels that a fuller explanation or rationale is needed. The arbitrator may respond to these requests at his or her discretion.

The payment due the arbitrator is dependent on the filing fee paid by the initiating party. The more complex or costly the remedy sought, the more a party pays as a filing fee. A portion of the filing fee is paid to the arbitrator (\$300-\$500 for the case). Mileage and other incidental expenses, such as postage, meals, and hotel are reimbursable. CAS makes every effort to offer only arbitrators for selection that are within a reasonable distance from the property in question. Arbitrators can indicate an area they will serve on their Roster Application.

One of CAS's objectives is to provide a high quality, expedient process for resolving these disputes. CAS recognizes that for most people their home is the largest financial investment they will ever make and when an issue arises, they are interested in resolving the issue as quickly as possible. Generally, these filings are processed and closed within a 60 to 120 day time frame. While the majority of these filings follow the process as described above, many factors influence the length of time it takes to process and close a Demand for Arbitration. Attorney involvement, Adjournment/Reconvene Requests, filing of a Counter-Claim or Cross-Claim, Subpoena Requests, Change of Venue Requests, parties' or arbitrator's availability, and submission of Post-Hearing Briefs can impact the timely administration of a Demand.

### CAS Arbitrator Panel Information

CAS maintains a professional panel of arbitrators by continuously recruiting and accepting Roster Applications from interested individuals. CAS also provides an opportunity for interested individuals to attend an intensive 40-hour training in order to qualify for a seat on the panel. Frequently, arbitrators interested in serving are required to observe three hearings and write sample Awards/Decisions that are reviewed by Ms. Deborah Lech, Dispute Resolution Operations Manager, prior to serving in a solo capacity, unless the arbitrator already possesses experience handling these types of disputes.

Many CAS arbitrators are real estate attorneys; some are experienced, retired home inspectors, licensees and other individuals experienced in construction practices and applicable codes. If you are interested in completing a Roster Application and receiving notice for the next CAS Arbitrator Training, please contact Deborah Lech at 866-727-8119, ext. 113 or at [dlech@cas-usa.org](mailto:dlech@cas-usa.org). ❄️❄️❄️

## NEWS AND VIEWS

# On the Importance of a Signed Settlement Agreement: Unsigned Agreement Declared Unenforceable

By Robert E. Lee Wright

In an unpublished, May 22, 2007 decision, the Michigan Court of Appeals decided *Seman v Graham, et al.* (Docket No. 265969). Without the benefit of oral argument, the Court upheld an order denying the defense request to enforce a mediated settlement agreement.

This medical malpractice case was filed in the St. Joseph Circuit Court. The parties agreed to attend a "facilitated mediation." When the Semans arrived for mediation, defense counsel said he would be moving for dismissal based on a defective certificate of merit signed in California which omitted the certification and notarization required by a 2005 unpublished decision of the Court of Appeals. In *Aspey v Memorial Hospital*, the Court held that a certificate of merit signed in another state that omitted the requisite certification and notarization was invalid and would not toll the statute of limitations.

Faced with the threat of *Aspey*, the Plaintiffs agreed to settle for \$15,000, but for some reason, no settlement agreement was signed at mediation. Instead, defense counsel sent a letter confirming the settlement agreement with a release and indemnification agreement and a \$15,000 check. Shortly thereafter, the Court of Appeals held that *Aspey* would only apply prospectively and allowed a conforming affidavit to be filed in any pending action where it was an issue. *Aspey v Memorial Hospital* (On Reconsideration), 266 Mich App 666, 682-683; 702 NW2d 870 (2005). Based on this ruling, Plaintiffs refused to sign Defendants' release, and Defendants moved to enforce the settlement agreement.

The trial court and Court of Appeals' ruling held that, to be enforceable, a settlement agreement must satisfy the requirements of the Michigan Court Rules. MCR 2.507(G) states that an agreement subsequently denied by one of the parties is not binding against them unless made in open court or in writing and signed by that party or their attorney.

Even though the Semans did not deny that they had reached a settlement, the Court of Appeals refused to enforce it citing the "special requirements for enforceability under the court rule" and *Michigan Mutual Ins. Co. v Indiana Ins. Co.*, 247 Mich App 480, 484-485; 637 NW2d 232 (2001). In *Michigan Mutual*, the Court also refused to enforce a settlement agreement that did not satisfy the requirements of the court rule, even though it may have fulfilled the requirements for a binding contract.

For attorneys, this case teaches us that a settlement of a pending court case is never binding until it is reduced to writing and signed by the other party (or their attorney) and that a written settlement agreement should

be drafted, signed and the appropriate pleadings filed with the court to conclude the court case. Indeed, MCR 2.411(C)(4) requires that "the attorneys" do so:

(4) Settlement. If the case is settled through mediation, within 21 days the attorneys shall prepare and submit to the court the appropriate documents to conclude the case.

For mediators, *Seman* reinforces the lesson from the 40-hour basic mediation training: Put the agreement or an outline of an agreement in writing and get it signed before you let the parties leave the mediation. (Mediators have reportedly used napkins, scratch pads, crayons, whatever is at hand in order to get something down on paper to memorialize the agreement.) For mediators "acting pursuant to" a Michigan court's dispute resolution program, the Standards of Conduct for Mediators require them to provide a "quality process." While there is no specific requirement that they obtain a signed agreement when a case is settled, a quality process could be construed to include a written memorandum of understanding, signed by the parties before they leave.

Of course, the well-prepared mediator will have a template in place before the mediation begins, with the parties' names, case number, perhaps some relevant boilerplate terms such as payment of a blank amount of money, dismissal of the lawsuit with prejudice and each party to bear their own costs, signature blanks for the parties and their lawyers, etc. They may invite the parties and their attorneys to submit proposed language in advance and incorporate that into the draft.

Some mediators have described an elegant way to draft the agreement. They use their computers with a projector and draft the agreement on the screen with all parties present, working together. Changes are made in real time and in full view of all participants, allowing everyone to simultaneously focus their attention on the same provision while keeping their heads up, instead of looking down to pore over a paper draft of the agreement. I intend to try this in my next mediation.

Finally, in many divorce cases, mediators do not ask the parties to sign an agreement until they have had a chance to consult with others, especially where they mediate without an attorney present. In those cases, the mediator might prepare a written agreement for signature at the mediation (or have the parties acknowledge the terms of agreement on an audio or videotape as permitted by MCR 3.216(H)(7)), and include any "conditions subsequent" which would allow either party to rescind the agreement. ❄️

## In Memory

The ADR Section mourns the passing of Stephen C. Bransdorfer, who succumbed this March after a lengthy battle with cancer. Steve practiced law in Grand Rapids for over 40 years, most of that time with Miller Johnson Snell & Cummsiskey, where he chaired their litigation practice. He also served at two different times with the U.S. Department of Justice, including as its spokesman during the Little Rock civil rights crisis in 1958-1959, then spearheading special litigation projects on tort liability and civil justice reform in the early 1990's. During his career, Steve became increasingly involved in ADR, serving as an arbitrator, mediator, neutral evaluator and independent fact-finder. Steve served on the ADR Section Council 2001-2004. He was certified as a facilitative mediator by the United States District Court for the Western District of Michigan in 1985,

and served on the Local Rules Committee of that Court. Steve was on the American Arbitration Association's national panel from 1963 to 1989, and was later named to its commercial panel. He became an arbitrator for the National Association of Securities Dealers in 1998, and was an approved mediator on the Kent County Circuit Court roster. Steve contributed to the organized Bar and to the profession in many ways throughout his career, including serving as President of the State Bar of Michigan, 1974-1975. Among many accolades during his illustrious career, in 2005 Steve received the Roberts P. Hudson Award, the highest honor bestowed by the State Bar, having been nominated by his daughter-in-law, ADR Section member Elizabeth K. Bransdorfer. Steve set a fine example as one of the best of our profession, and we are all the richer for having known him. ❄️

# ADR Section 2007 Annual Meeting and Conference

Friday – Saturday, September 7-8, 2007 at

Traverse City Golf & Country Club  
1725 S. Union Street  
Traverse City, MI 49684  
231.947.9140 www.TCGCC.com

and Park Place Hotel  
360 East State Street  
Traverse City, MI 49684  
800.748.0133 or 231.946.5000

**Advanced Mediation Training:** whether you serve as an advocate or a neutral, this interactive program will provide information and practical skills that you can utilize immediately. In Friday's segment we will explore principles of effective representation in mediation and use these principles to develop mediator strategies which enhance the mediation experience for all participants. In Saturday's segment we will test our cultural competence and explore strategies that enhance cultural sensitivity.

Join your colleagues at an outstanding program of professional development and networking.

## Your Trainer:

**Floyd D. Weatherspoon:** Professor Weatherspoon serves as a neutral in complex labor and employment disputes, including complaints related to class actions, discrimination disputes, sexual harassment, disability, employment disputes, terminations, covenants, employment-at-will, and wages.

A member of the faculty of Capital University Law School in Columbus, Ohio, since 1989, Professor Weatherspoon teaches courses on ADR, labor arbitration, employment discrimination, employment law, civil rights, collective bargaining and managerial mediation. He also designs ADR programs and trainings for organizations. He serves as the Director of Minority ADR initiatives and as conference coordinator for the National Conference of Minority Professionals in ADR held at Capital University Law School.

He conducts national training programs on employment discrimination, affirmative action, labor arbitration, and mediation of employment discrimination complaints and has trained hundreds of individuals in a 40-hour mediation skills program.

## Registration Fees:

- Conference Fee: \$75.00 (law students \$37.50, sitting Judges no-charge)
- Friday Dinner: \$35.00 /ea (not included in Conference Fee)

Hotel Registration deadline for reduced rates August 6<sup>th</sup>. Contact Park Place Hotel directly at 231-946-5000

## Meeting and Activity Schedule:

### Friday, September 7, 2007

#### At Traverse City Golf & County Club

- 2:00 – 2:30 P.M. Registration
- 2:30 – 5:00 P.M. Advanced Mediation Training Segment I  
*Using "Principles for Effective Representation in Mediation" to Form Mediator Strategies and Interventions.*
- 5:00 – 6:15 P.M. Travel from TCGCC to Park Place (< 3 miles) and check-in
- 6:15 – 7:15 P.M. Networking and Cocktail Hour
- 7:15 – 8:15 P.M. Dinner at Top of the Park
- 8:15 – 9:45 P.M. Awards and Recognition
  - Award Presentations
    - George Bashara Award
    - Nanci S. Klein Award
    - Distinguished Service Award
  - Stories from the frontlines of Peacemaking – by our Distinguished Service Award Recipient

### Saturday, September 8, 2006

#### At Park Place Hotel

- 8:15 – 9:00 A.M. Annual Meeting
  - Annual Report and Financial Report of Section
  - Election of Officers and Section Council
- 9:00 – Noon Advanced Mediation Training Segment 2  
*Cultural Competence: What Mediators and Advocates in Mediation Need to Know*
- 12:00 – 1:30 P.M. Lunch (on your own at Park Place or in one of many Downtown Traverse City hotspots)
- 1:30 P.M. - afternoon
  - Golf at Pre-arranged courses (contact Chuck Judson at [cjudson@shrr.com](mailto:cjudson@shrr.com) for tee times and coordination of foursomes)
  - Other group outings and activities
- Saturday Evening: Loosely organized social events

On-line registration for SBM members only at <http://e.michbar.org>

Fax registration form (found at [www.michbar.org/adr/events.cfm](http://www.michbar.org/adr/events.cfm)) to 517.346.6365 or mail to SBM, Attn: Seminar Registration, 306 Townsend St., Lansing, MI 48933.

## Upcoming Mediation Trainings

### General Civil

The following 40-hour mediation trainings have been approved by SCAO to fulfill the requirements of MCR 2.411(F)(2)(a):

Mt. Clemens: **August 8, 10-11, 15, 17-18**

*Training sponsored by The Resolution Center*

Contact: Call 586-469-4714, or resolutioncenter@sbcglobal.net

Ann Arbor: **September 28-30, October 5-7**

*Training sponsored by Dispute Resolution Center*

Contact: Kaye Lang, 734-222-3745, or drc@mimmediation.org

Bloomfield Hills: **October 2, 4, 6, 9, 11, 13**

*Training sponsored by Oakland Mediation Center*

Contact: Susan Stirling, 248-338-4280 x16, or sstirling@mediation-omc.org

Kalamazoo: **October 3-4, 6, 10, 13, 17-18, 20**

*Training sponsored by Dispute Resolution Services*

Contact: Barry Burnside, 269-552-3434, bburnside@gryphon.org

Lansing: **October 3-5, 18-19**

*Training sponsored by Dispute Resolution Center of Central Michigan*

Contact Karen Beauregard, 517-485-2274 or drcm.beauregard@tds.net

Detroit: **October 5-6, 12-13, 19-20, 27**

*Training sponsored by Wayne Mediation Center*

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

Plymouth: **October 11-13, 26-27**

**February 7-9, 22-23, 2008**

*Training sponsored by Institute for Continuing Legal Education*

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

### Domestic Relations Mediation Training

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

Ann Arbor: **August 20-24**

**November 28-30 and December 5-6**

*Training sponsored by Mediation Training & Consultation Institute*

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

Plymouth: **January 22-26, 2008**

*Training sponsored by Institute for Continuing Legal Education*

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

### Advanced Mediation Training

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

Ann Arbor: **October 19**

Advanced Training for Domestic Relations Mediators

*Training sponsored by Dispute Resolution Center*

Contact: Kaye Lang, 734-222-3745, or drc@mimmediation.org

Grand Rapids: **October 23**

Trainers: Anne Bachle Fifer and Peter Everts

*Training sponsored by Grand Rapids Bar Association*

Contact: Bob Wright, 616-776-6334, or WrightR@MillerCanfield.com

Bloomfield Hills: **November 2**

Trainer: Barb Hosler

*Training sponsored by Oakland Mediation Center*

Contact: Susan Stirling, 248-338-4280 x16, or sstirling@mediation-omc.org. ✱✱

#### COMMENTS FROM THE CHAIR

### A Report on The Dialogue of April 2007

by Barbara A. Johannessen

In April 2007 a Dialogue was convened by the ADR Section and the State Court Administrative Office to engage interested participants in the topic of "Enhancing the Complementary Relationship Between Fee-based Mediation and Volunteer-based Mediation Service Providers". Though you will read and hear more about the substantive outcome of the dialogue in future newsletters and programs of the ADR Section, I want the membership to understand not only why this dialogue was convened but also how the dialogue was structured or designed.

Since the ADR Court Rules (MCR 2.410, MCR 2.411 and MCR 3.216) were adopted or revised in 2001, many individuals have looked to the Courts as a source for mediation opportunities. Individuals who were hoping to redesign their professional practice to include ADR services and Community Dispute Resolution Program (CDRP) centers who were hoping to expand the number and types of cases they mediated were both hoping to become involved in providing services to the parties in litigation and the Courts. However decisions regarding whether paid mediators or unpaid mediators would be utilized in specific court mediation programs were not always clearly understood. As trained mediators we know that

lack of understanding may lead to misperceptions and that misperceptions may lead to a breakdown in otherwise healthy relationships. The dialogue was intended to reveal areas of misperception, provide clarifying information where available, and allow participants to consider options for enhancing the overall use of mediation, thereby improving the relationship between providers.

The co-conveners of the dialogue selected an experienced facilitator to manage the dialogue process. The nearly 60 participants were selected on a first-come, first-served basis from among the following stakeholder groups: paid mediators, volunteer mediators, mediators who serve as both paid and volunteer mediators, CDRP center staff and board members, court staff responsible for implementing ADR plans, and other agencies who utilize mediation services.

The dialogue process was designed in much the same format as a mediation. Participants started the day in small groups introducing themselves and discussing the concerns the dialogue topic raised. (Information sharing.) Each small group was asked to report back their





The  
**ADR**  
Newsletter

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

PRESORTED STANDARD  
U.S. POSTAGE PAID  
KALAMAZOO, MI  
PERMIT #1

The ADR Newsletter

July, 2007

*The ADR Newsletter 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. This newsletter seeks to explore various viewpoints in the developing field of dispute resolution.*

*For comments, contributions or letters, please contact:*

*Benjamin Kerner at  
(313) 965-1920,  
fax: (313) 965-1921*

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



Comments from the Chair, continued from page 7

most significant concerns. As each group reported its conversation, a list of approximately 15 concerns emerged. (Creating an Agenda.) Each participant was then asked to prioritize the concerns by selecting the two most important topics to that participant. This process surfaced 5 topics of universal interest and priority. (Narrowing the Agenda.) Participants then formed into new small groups around one of the five topic areas. Though each topic had at least one small group, some topics had more than one small group exploring the issue. Groups explored the chosen topic more fully, attempted to refine the way the problem was defined, and brainstormed ways to address the problem. (Open and Joint Negotiation). Each of the small groups provided a summary of its discussion. As a wrap-up to the too-short day, dialogue participants were asked to return to their initial small group to develop ideas regarding “next steps”.

For your information the 5 priority agenda items were:

- Building a model for win/win cooperation among the whole ADR community
- Education/Awareness/Marketing
- Training: consistency and continuing education
- Access to ADR: “Right-sizing” the process / the provider / the timing
- Funding Issues

As a co-convenor of this dialogue, I was impressed with the manner in which the participants chose to discuss sensitive topics and to reveal both self- and group-interests. None of the 5 agenda

items lend themselves to a quick and simple solution; however, a dialogue of education and exploration was begun. Over the 2007 summer, the ADR Section Council will evaluate how best to incorporate the work of the dialogue attendees into its on-going work and/or to develop partnerships/collaborations with other stakeholders interested in the 5 priority issues. If you would like to get involved, please contact me or any member of the ADR Section Council.

It is apparent that though the use of mediation, both voluntary and court-ordered, is on the rise in some jurisdictions within Michigan, there are still many cases that are not enjoying the potential benefits of mediation. Additionally, the pool of conflicts which have not been filed with a court remains largely untapped by most ADR service providers. Last I checked, conflict was neither an endangered species nor on the decline; therefore, though we want to examine systemic issues that may work to hinder a healthy, constructive relationship between the paid and volunteer mediation communities, ultimately those in the conflict resolution community may find that energy is better spent educating those in conflict about the broad range of resolution techniques.

I wish to thank Doug Van Epps and the State Court Administrative Office for its willingness to co-convene the Dialogue. Additionally, I extend my sincere appreciation to Anne Bachle Fifer for her exemplary service as facilitator of the dialogue. Her skills were demonstrated not only by her preparation for her role but also her execution of the role of Dialogue facilitator. ❄️