The ADR Quarterly

Alternative Dispute Resolution Section of the State Bar of Michigan

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The Chair's Corner

by Toni Raheem

The ADR Section has been having a busy and exciting year. You may have heard that, earlier in the Bar year, legislation was circulating in the Michigan legislature to do away with a mandatory state bar. As a result, the Michigan Supreme Court set up a Task Force on the Mandatory State Bar. That Task Force issued a recommendation and report on June 3, 2014, that can be found on the bar website. We and other sections are analyzing this report and considering our reply. If you have any comments you wish to share, please feel free to email them to me at arrlaw@sbcglobal.net.

Our ADR Section has also been involved in numerous other activities such as commenting on the proposed changes to the Domestic Mediation Court Rule, MCR 3.216, on the proposed legislation for a Uniform Collaborative Law Act, and proposed amendments to the Eastern District of Michigan's local ADR court rule http://www.mied.uscourts.gov/rules/May2014/MAY2014NewRuleProposedAmendments.pdf.

We presented a Lunch and Learn Webinar on ADR in the new state business courts. Another webinar is planned for August 27 on methods for addressing bullying by school mediation expert Laura Athens (look for the listserv announcement soon). Also on the horizon are plans to train on basic Arbitration skills and on mediating LGBT issues.

Section representatives presented on ADR at the Michigan Judicial Institute in March, at the Young Lawyer's Institute in May and at the Labor and Employment Springboard event in June. A Council representative also attended the Bar leadership conference in Mackinac this year and brought back several ideas on how to address issues common to many of the bar sections.

While ICLE is taking a year off from presenting ANDRI in 2015, the Section is forging ahead with plans for an exciting all day program in March with a nationally renowned speaker. Meanwhile we are prepared for and excited about the Annual Meeting this year in Ann Arbor on October 17 and 18 with another powerful national speaker, Cheryl Cutrona.

Our section has also engaged in many activities to encourage and support diversity in the profession, to

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increase membership and to support the use of ADR in general. We are pursuing ways for ADR professionals to get pro bono legal service credit for their volunteer mediations, a survey to compare costs of various forms of dispute resolution and court rule changes to allow joint divorce filings so that when parties mediate their divorce amicably they do not have to present in court as adversaries. We have also set up a new Task Force to research what other states have done that might be replicated in Michigan to expand or require more use of ADR.

We continue to encourage your comments and involvement. See our Section website for action teams, team leaders and times each team holds their conference calls. You can always contact me for information and to get involved or just to share thoughts or ideas. Hope to hear from you soon!

Judicial Intervention in Arbitration Proceedings Pre-Award

by Gene J. Esshaki
Abbott, Nicholson, Quilter, Esshaki & Youngblood, P.C.

The Federal Arbitration Act was enacted in 1925 to counter widespread judicial hostility to private arbitration agreements. The Act, 9 USC 1 has been interpreted in its text and structure to ensure the enforcement of arbitration agreements according to their terms so as to facilitate streamlined proceedings. *AT&T Mobility LLC v Concepcion*, 131 S Ct 1740 (2011). Since the inception of the Act, courts have recognized that the underlying purpose of the legislation was to ensure that parties to a contract containing an arbitration clause would be entitled to the same rights to enforce that clause as exists in all other contracts between parties. Courts have consistently held that the FAA establishes a strong federal policy in favor of enforcing arbitration agreements.

Section 10 of the FAA establishes four extremely limited grounds upon which an arbitration award may be attacked. These include:

(1) Where the award was procured by corruption, fraud, or undue means;

(2) Where there was evident partiality or corruption in the arbitrators, or either of them;

(3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or

(4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made. 9 USC 10.

In reliance upon this language, courts have consistently held that in order to implement the strong federal policy in favor of enforcing arbitration agreements and because the scope of judicial review of arbitration awards was so limited, courts should not intervene in the arbitration process until the award has been issued. The United States Supreme Court has held that to maintain "arbitration's essential virtue of resolving disputes straightaway," courts may vacate an arbitration award "only in very unusual circumstances." *Oxford Health Plans LLC v Sutter*, 133 S Ct 2064 (2013). The Supreme Court indicated that "[i]f parties could take full-bore legal and evidentiary appeals, arbitration would become merely a prelude to more cumbersome and time consuming judicial review process." The court concluded that there are only two stages at which a court may intervene in an arbitration proceeding. Initially, a court may intervene to decide gateway matters such as arbitrability or whether the parties have a valid arbitration agreement at all or whether a certain type of issue falls within the confines of the agreement. Additionally, courts may intervene at the conclusion of the arbitration proceedings to confirm, vacate or modify the award but only upon the narrow provisions referenced in Section 10 of the Act.

A long line of cases have held that judicial intervention in the middle of an arbitration proceeding is strictly prohibited.

Recently, the Court of Appeals in Michigan deviated from policy that courts should only intervene in arbitration proceedings to determine arbitrability issues or at the conclusion of the award and authorized intervention in an action involving a challenge to the arbitrator selection process. In *Oakland-Macomb Interceptor Drain Drainage Distr v Ric-Man Construction, Inc, et al*, ___ Mich ___, ___ NW2d ___, 2014 WL 4066630 (Mich Ct App January 30, 2014), the Court of Appeals determined that judicial intervention was appropriate at the early stage of an arbitration proceeding in the arbitrator selection process where the administering agency, the American Arbitration Association, failed and refused to implement a very detailed and distinct arbitrator selection protocol.

In *Ric-Man*, a case involving a significant municipal construction project, the parties agreed on several criteria to be implemented in selecting the neutral chair of the arbitration panel. Those criteria were set forth in the arbitration agreement and specified four separate and distinct categories that a potential arbitrator must meet in order to be considered for the chair position. Additionally, the same criteria were to be applied to an alternate to be selected in the event the chair was unable or unwilling to proceed with the arbitration.

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If no person could be found that fit all four requirements then the person fitting the next three was deemed acceptable.

It was undisputed that the AAA did not select an arbitrator that fit all four criteria established in the arbitration agreement. Even more confounding, the AAA selected an alternate that, in fact, fit all four criteria. When the respondent objected to the selection of the panel chair, AAA overruled the objection. Respondent moved for consideration of this decision by the Oakland County Circuit Court which affirmed the position of the AAA.

On appeal to the Michigan Court of Appeals, the decision of the trial court was reversed. The Court indicated that given the specific criteria that had been bargained for between the parties in establishing the position of panel chair for this complex commercial dispute, to deny one party the benefit of the bargained for criteria in the panel chair would create such an injustice that a party must have the right to petition a court for relief before entry of the final award. The court reasoned that if the objecting party waited until the final award, it was highly unlikely a reviewing court would reverse the decision of the administrator and the aggrieved party would have no remedy and would be specifically denied its bargained for criteria in selecting an appropriate chair for the panel.

Shortly after this decision of the Court of Appeals, the United States Circuit Court for the Sixth Circuit issued its decision in *Savers Property and Cas Ins Co v National Union Fire Ins Co of Pittsburg, PA*, Case No. 13-2288/2289 (April 9, 2014). In a nutshell, in *Savers*, two critical decisions were made by one party-appointed arbitrator and the chair without the participation of the other party-appointed arbitrator. The absence of this arbitrator was attributed simply to unavailability. The aggrieved party moved to challenge the interim awards that had been entered on a two-zero basis before issuance of a final award. The aggrieved party moved to enjoin the arbitration and set aside the interim awards which relief was granted by the Federal District Court.

On appeal, the panel concluded that the long-standing policy favoring enforcement of arbitration provisions set forth in the Federal Arbitration Act, as well as the limited review of awards provided in Section 10 of the statute, permitted a court to intervene in an arbitration proceeding only at the initial stages involving questions of arbitrability and enforceability of the contract or after an award is entered. Court of Appeals reversed the decision of the trial court and sent the matter back to the arbitration panel.

The decision in *Oakland-Macomb Interceptor Drain Drainage Dist* cannot be reconciled with *Savers Property and Casualty Ins Co*. The long-standing policy of non-intervention by courts in arbitration proceedings pre-award is beyond dispute. While the Michigan Court of Appeals may have carved out an exception based upon the exceptional fact-pattern in *Oakland-Macomb*, it is unlikely this decision will get any traction in any subsequent pre-award intervention cases.

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

Are Fast Track Jury Trials Another Potential ADR Option?

by Richard L. Hurford

During a recent ADR Summit hosted by the Supreme Court Administrator's Office of Dispute Resolution, various forms of ADR were explored and discussed by the attendees. Included was the potential use of Fast Track/ Expedited Jury Trials. There existed significant interest in the use of this technique and, in fact, a task force has been formed to evaluate whether an Administrative Rule should be adopted by the Michigan Supreme Court to explore the potential of this ADR process during a pilot project in designated counties.

A number of courts outside the State of Michigan have explored the efficacy of utilizing binding "Fast Track Jury Trials" as a form of alternative dispute resolution when the amount in controversy is not sufficiently large to justify the cost and expense of a full, traditional trial and the parties desire a binding decision from a jury rather than an arbitrator. *Short, Summary & Expedited, The Evolution of Civil Jury Trials*, National Center for State Courts, www.ncsc.org. Perhaps the best known example of this particular practice is that provided in the Charleston, South Carolina County Courts. Steven Croley, *Summary Jury Trials in Charleston County, South Carolina*, 41 Loyola of Los Angeles Law Rev 1585 (Summer 2008). This process involves the voluntary agreement of both parties to be bound by the decision of the Fast Track Jury that is presided over by a mutually agreeable Hearing Officer. On the day scheduled for the trial, the parties empanel a jury drawn from the court's standard jury pool. Typically the jury will consist of no more than 6 individuals and each side is limited to two peremptory challenges. The voir dire is limited and usually conducted by the Hearing Officer.

Although the parties have significant latitude in agreeing on the procedures that will govern the process and the presentation of evidence, the usual agreements on the process involve among other items:

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- The trial will be completed in one day;
- No party will call more than an agreed number of live witnesses;
- The admissibility of designated depositions and affidavits;
- The parties will have the right to issue subpoenas;
- That certain records (such as medical records and test results) will be admitted without the usual requirements of authentication and other limiting rules of evidence;
- Those instructions that will be provided to the jury prior to the deliberations; and
- To waive making a motion for a directed verdict, motion to set aside the verdict (except for fraud or other very limited bases), or the filing of motions for additur or remittitur.

The role of the Hearing Officer is to ensure the procedures are followed as agreed to by the parties, make any necessary evidentiary rulings, and instruct the jury.

Although the Fast Track Jury Trial can be a stand-alone ADR technique, it may also be incorporated into multi-staged ADR agreements very similar to the Med-Arb hybrid processes. Although the Med-Arb process has become increasing popular as a very effective ADR technique, see, e.g., Martin Weisman, *Med-Arb: A Time and Cost Effective Combination for Dispute Resolution*, 3 Dispute Resolution Magazine Vol 9 (Spring 2013), there are some parties who are not comfortable when the mediator assumes the role of the arbitrator should the mediation fail to achieve a resolution. See Brian A. Pappas, Med-Arb: *The Best of Both Worlds May Be Too Good to Be True,* 3 Dispute Resolution Magazine Vol. 9 (Spring 2013); Barry C. Bartel, *Med-Arb as a Distinct Method of Dispute Resolution: History, Analysis and Potential*, 27 Willamette L Rev 661 (1991). Also, there are some parties who prefer to have their case decided by a jury rather than an arbitrator. To address these concerns, and yet achieve many of the benefits and cost savings associated with the Med-Arb process, the parties might select a mediator who will act as the Hearing Officer should the mediation not resolve the entire case. Following the mediation, the mediator will become the Hearing Officer to preside over the fast track jury trial (unless the parties desire a different Hearing Officer other than the agreed upon mediator) and the jury decides those issues that were not resolved at the mediation. Similarly, if the parties desire a hi-low arrangement, then, just like in the Med-Arb Hi-Low hybrid, the parties will be bound by that agreement. Should the jury's verdict be higher than the agreed upon "hi," the defendant is only liable to the extent of the agreed upon hi. If the verdict is below the agreed upon "low" or a no cause of action, the defendant is bound to pay the plaintiff the agreed upon low. If the jury's verdict falls between the agreed upon hi- low, then that verdict will be binding on the parties. The jury is typically not advised of any hi-low agreement.

Although there is no known Circuit or District Courts in Michigan that routinely employ a fast track jury trial programs, it would appear to be an available ADR mechanism even in the absence of an empowering Administrative Order. If the parties stipulate to the use of this procedure, then a Court should have the authority to order the process as specified in MCR 2.401 (A) (2) particularly if the Court's ADR plan provides the process. Of course, the use of this technique should be explored and fully discussed with the Court to ensure the process will be supported by the judge assigned to the case.

This process can be very effective for parties involved in lower exposure disputes where the cost of a traditional jury trial is not justified. As documented in the Vanishing Jury Trial, American College of Trial Attorneys, *The "Vanishing Trial", the College, the Profession*, 22 (2004), it really makes no business sense to spend a week or more in a traditional jury trial, expending upwards of $200,000 in attorney fees and costs, when the realistic exposure or recovery is less than $100,000. In addition to avoiding some of the concerns associated with the Med-Arb process, it also provides the option to parties who prefer to have a jury trial rather than arbitration as the ultimate dispute resolution step.

One South Carolina practitioner who is a frequent user of the process has said "Both sides win in this process – quicker, cheaper, and with certainty. The benefits extend to the litigants, the attorneys, the court and even the jurors…. From the litigant's perspective, the parties are given their day in court without the costs associated with a full trial. This method affords the parties a chance to tell their story to a jury that decides the case… Virtually all parties enter into a high/low agreement and, as an incentive to the plaintiff to agree to the high/low, the plaintiff may be able to secure a disbursement of the agreed low upon entering into the agreement."

Where appropriate the Fast Track Jury Trial is certainly an option to consider where the client's objectives will be achieved and the Circuit or District Court will support the procedure.

Richard L. Hurford is the President of Richard Hurford Dispute Resolution Services, P.C and has a wealth of experience in ADR as a seasoned and respected litigator, mediator and ADR neutral. He is an often sought as a presenter on ADR and frequent lecturer for ANDRI, ICLE, the Michigan Judicial Institute, SCAO and the National Judicial College. He has been annually designated as a "Best Lawyer™" in the areas of Litigation, Employment and Labor Law.

Throughout his career, Richard has personally participated in hundreds of mediations and other ADR processes as either an attorney or neutral. In addition to his services as a respected neutral mediator, he is also experienced in various ADR processes such as Med-Arb, Summary Jury Trials, Neutral Expert Evaluations, Mini Trials, Dispute Resolution Boards, and providing counsel as a Dispute Resolution Advisor. He is a professional with Professional Resolution Experts of Michigan (PREMi) and a member of AAJ, DRI, MDTC and ACR. Richard's web site can be accessed at hurfordresolution.com.

Michigan Arbitration and Mediation Case Law Update

by Lee Hornberger
Arbitration and Mediation Office of Lee Hornberger

I. INTRODUCTION

This article reviews significant Michigan cases issued since late 2012 concerning arbitration and mediation. For the sake of brevity, this article uses a short citation style rather than the official style for Court of Appeals unpublished decisions.

II. ARBITRATION

A. Michigan Supreme Court Decisions

1. Arbitrator, not MERC, to decide past practice issue.

Macomb Co v AFSCME Council 25, 494 Mich 65 (2013) (Young, Markman, Kelly, and Zahara [majority]; McCormack and Cavanagh [dissent]; Viviano [took no part]). The employer did not commit an unfair labor practice when it refused to bargain with the union over employer's decision to change the actuarial table used to calculate retirement benefits for employees. The unfair labor practice complaints concerned a subject covered by the CBA. The grievance process in the CBA was the appropriate avenue to challenge employer's actions. The arbitrator, not MERC, is best equipped to decide whether a past practice has matured into a new term or condition of employment.

2. Arbitrator can hear claims arising after referral to arbitration.

Wireless Toyz Franchise, LLC v Clear Choice Commc'n, Inc, ___ Mich ___, 825 NW2d 580 (2013) (Young, Cavanagh, Markman, Kelly, Zahra, and McCormack). The Supreme Court, in lieu of granting leave to appeal, reversed Court of Appeals judgment, for the reasons stated in Court of Appeals dissenting opinion, and reinstated Circuit Court order, denying defendants' motion to vacate arbitration award and confirming the award.

Judge Servitto's dissent in *Wireless Toyz Franchise, LLC*, 303619 (May 31, 2012) (Cavanagh and Fort Hood [majority] and Servitto [dissent]), indicated the stipulated order intended the arbitration would include claims beyond those that were pending because it allowed further discovery, gave the arbitrator the powers of a Circuit Court judge, and stated that the award would represent a "full and final resolution" of the matter. The order did not exclude new claims from arbitration. The parties' intent appears to have been that the arbitrator would determine all claims in the case. Claims that were not pending at the time the order was entered were not outside the scope of the arbitrator's powers.

3. Shareholder arbitration agreement covers discrimination claims.

Hall v Stark Reagan, PC, 493 Mich 903 (2012) (Young, Markman, MB Kelly and Zahra [majority]; Hathaway, Cavanagh and M Kelly [dissent]) The Supreme Court reversed that part of Court of Appeals judgment, *Hall*, 294 Mich App 88 (2012) (Gleicher and Stephens [majority] and Kelly [dissent]), which had held that the matter was not subject to arbitration. The Supreme Court reinstated Circuit Court order granting summary disposition in favor of defendants and ordering arbitration. The dispute in this case concerned the motives of defendant shareholders in invoking the separation provisions of the Shareholders' Agreement. According to the majority, this, including allegations of violations of the Civil Rights Act, MCL 37.2101 *et seq*, is a "dispute regarding interpretation or enforcement of . . . the parties' rights or obligations" under the Shareholders' Agreement, and was subject to binding arbitration pursuant to the Agreement.

The dissents basically stated that the Shareholders Agreement provided only for arbitration of violations of the Agreement, and not for allegations of discrimination under the Civil Rights Act.

4. CBA just cause provision gives arbitrator authority.

In ***36th Dist Ct v Mich Am Fed of State Co and Muni Employees***, ___ Mich ___ (2012), the Supreme Court, in lieu of granting leave to appeal, reversed that portion of Court of Appeals judgment that reversed arbitrator's award of reinstatement and back pay for the grievants. According to the Supreme Court, MCR 3.106 does not preclude such relief where the CBA has a just cause standard for termination. In ***36th Dist Ct***, 295 Mich App 502 (2012) (Murray, Talbott, and Servitt), the Court of Appeals had ruled that because the CBA did not abrogate the Chief Judge's statutory or constitutional authority to appoint court officers, the arbitrator exceeded his jurisdiction by requiring the Chief Judge to re-appoint the grievants to their former positions.

B. Michigan Court of Appeals Published Decisions

1. Pre-award lawsuit concerning arbitrator selection.

Oakland-Macomb Interceptor Drain Drainage Dist v Ric-Man Constr, Inc, 304 Mich App ___, 2014 WL 4066630

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(2014) (Saad and Sawyer [majority]; Jansen [dissent]), is an example of the viewpoint that "[n]o part of the arbitration process is more important than that of selecting the person who is to render the decision[,]" Elkouri & Elkouri, How Arbitration Works (7th ed), p 4-37, and "[c]hoosing an arbitrator may be the most important step the parties take in the arbitration process." Abrams, Inside Arbitration (2013), p 37. In *Oakland-Macomb Interceptor Drain Drainage Dist*, the American Arbitration Association (AAA) did not appoint a member of the arbitration panel who had the specialized qualifications required in the agreement to arbitrate. The agreement modified the AAA rules by mandating qualifications for the panel and outlining the manner in which AAA must appoint the panel. Plaintiff brought suit against defendant and AAA to enforce these requirements. The Circuit Court ruled in favor of defendant and AAA. The Court of Appeals in a two to one decision reversed.

The issue was whether plaintiff could bring a pre-award lawsuit concerning the arbitrator selection process. According to the majority decision, courts usually will not entertain suits to hear pre-award objections to arbitrator selection. But, when a suit is brought to enforce essential provisions of the agreement concerning the criteria for choosing arbitrators, courts will enforce such mandates.

According to the majority, the agreement to arbitrate made the specialized qualifications of the panel central to the entire agreement; and that, when such a provision to arbitrate is central to the agreement, the Federal Arbitration Act (FAA), 9 USC 1, *et seq*, provides that it should be enforced by the courts prior to the arbitration hearing. "If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed … ." 9 USC 5.

According to the majority, a party may petition a court before an award has been issued if (1) the arbitration agreement specifies detailed qualifications the arbitrator(s) must possess and (2) the arbitration administrator fails to appoint an arbitrator that meets these qualifications. Also a court may issue an order, pursuant to § 4 of the FAA, requiring that the arbitration proceedings conform to the terms of the arbitration agreement. In addition, the majority awarded plaintiff its Circuit Court and Court of Appeals costs and attorney fees.

Judge Jansen's dissent indicated that a party cannot obtain judicial review of the qualifications of arbitrators prior to an award. According to the dissent, there was no claim that the selection of the panel member involved fraud or any other fundamental infirmity that would invalidate the arbitration agreement, or any claim that the appointee had an inappropriate relationship with a party. Although the appointee might not have had the requirements for appointment set forth in the agreement, plaintiff was required to wait until after issuance of the award in order to raise the issue in a proceeding to vacate. 9 USC 10.

C. Michigan Court of Appeals Unpublished Decisions

1. Court of Appeals reverses Circuit Court order to disqualify arbitrator.

Thomas v City of Flint, 314212 (April 22, 2014) (Donofrio and Cavanagh [majority]; Jensen [concurring]. During the course of a pending arbitration, the neutral arbitrator inadvertently sent an e-mail to plaintiff's counsel that was intended for one of the arbitrator's own clients. Plaintiff's counsel then requested the neutral arbitrator to recuse herself and she declined. The Circuit Court granted plaintiff's motion to disqualify the neutral arbitrator. Plaintiff appealed. The Court of Appeals indicated an arbitrator should be disqualified if, based on objective and reasonable perceptions, the arbitrator has a serious risk of actual bias, the appearance of impropriety standard is applicable to arbitrators; and arbitrators are not judges and are not subject to the Code of Judicial Conduct. The unintentional e-mail did not give rise to an objective and reasonable perception that a serious risk of actual bias existed. MCR 2.003(C)(1)(b). The Court of Appeals reversed the Circuit Court's order granting plaintiff's motion to disqualify the neutral arbitrator.

Judge Jansen concurred in the result. In the concurrence's viewpoint, if plaintiff wished to challenge the neutrality or impartiality of the neutral arbitrator, he was required to wait until after an award was issued and file a motion to vacate. MCR 3.602(J)(2)(b).

2. Court of Appeals reverses Circuit Court vacatur of award.

Hillsdale County Medicare Care and Rehabilitation Center v SEIU, 310024 (April 22, 2014) (Meter, O'Connell, and Shapiro). Plaintiff discharged employee licensed practical nurse because she allegedly used inappropriate language concerning residents. The employer self-reported the situation to the Michigan Department of Community Health's Bureau of Health Systems (BHS). Without interviewing the employee, BHS concluded that "resident verbal abuse was substantiated to have occurred by" the employee. The SEIU took the matter to arbitration. The arbitrator found there was not just cause for the discharge and reinstated the employee with back pay. The arbitrator did not give deference to the BHS conclusion because BHS had not interviewed the employee.

The employer filed a complaint in Circuit Court seeking to have the award vacated on the grounds that reinstating the employee would violate Section 20173a(1) of the Public Health Code. MCL 333.20173a. In effect, the employer argued that the award was inconsistent with the BHS conclusion. Because of the BHS conclusion, the Circuit Court vacated the award.

On appeal, the Court of Appeals indicated that the Circuit Court should have considered the arguments that BHS had denied due process to the employee and had not complied with its own investigatory requirements. The Court of Appeals reversed the Circuit Court's order and remanded for an evidentiary hearing concerning whether there was a substantiated BHS finding that the employee engaged in abuse and, if so, whether that finding was made pursuant to an appropriate investigation.

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3. Court of Appeals reverses Circuit Court confirmation of award.

In ***Rogensues v Weldmation, Inc***, 310389 and 311211 (February 11, 2014) (MJ Kelly, Cavanagh, and Shapiro), defendant appealed Circuit Court judgment confirming an arbitration award. The Court of Appeals held that Circuit Court erred in confirming the award and that defendant did not enter into an arbitration agreement with plaintiff and was not bound by the employment agreement plaintiff had with defendant. Defendant was not required to file a motion to vacate the award under MCR 3.602(J) in order to affirmatively defend against confirmation of the award. Circuit Court erroneously failed to consider defendant's defense that no arbitration agreement existed between plaintiff and defendant before confirming the award. Defendant was not required to arbitrate any dispute plaintiff had with defendant. The arbitrator acted contrary to controlling law and exceeded her authority when she concluded that defendant was bound by plaintiff's employment agreement to arbitrate plaintiff's claim that he was entitled to a severance payment.

4. Court of Appeals affirms Circuit Court vacatur of awards.

In ***AFSCME, Council 25 v Charter Twp of Harrison***, 312541 (January 16, 2014) (Murphy, Donofrio and Fort Hood), the Court of Appeals affirmed Circuit Court's vacatur of arbitration award. The CBA provided, "[i]n the event that either party fails to answer or appeal within the time limits prescribed, the grievance will be considered decided in favor of the opposite party." The employer failed to answer the grievance within the required time limits, but the award did not decide the grievance in AFSCME's favor. According to Court of Appeals, this was erroneous. The Employer's failure to respond to the grievance within 10 days triggered the CBA's default provision. This required that the grievance be decided in AFSCME's favor. By refusing to apply clear and unambiguous CBA language, the award was beyond the scope of the authority granted the arbitrator under the CBA, and did not draw its essence from the CBA.

5. Arbitrator to resolve factual issues.

In ***Command Officers Ass'n of Sterling Heights v Sterling Heights***, 310977 (December 17, 2013) (Boonstra, Donofrio, and Beckering), the Court of Appeals vacated Circuit Court order vacating a labor arbitration award concerning reduction of work hours. The Court of Appeals indicated that while Circuit Court may disagree with the arbitrator's interpretation of the CBA, and of the interplay between CBA sections, the CBA vests in the arbitrator the authority to render that interpretation. Circuit Court's disagreement with arbitrator's interpretation was not grounds for vacating the award.

6. Cannot compel arbitration by nonsignatory.

Ric-Man Constr Inc v Neyer, Tiseo & Hindo Ltd, 309217 (March 26, 2013) (Stephens, Hoekstra, and Ronayne Krause). The Court of Appeals held that Circuit Court erred by concluding that defendant had the right to compel arbitration between it and plaintiff, based on plaintiff's arbitration agreement with a third entity. The Court of Appeals indicated that, although arbitration is favored by public policy as a means for resolving disputes, arbitration is voluntary, and a party cannot be required to submit to arbitration a dispute which it has not agreed to submit.

7. Arbitration award can be *res judicata* in subsequent lawsuit.

Sloan v Madison Heights, 307580 (March 21, 2013) (Jansen, Fitzgerald and KF Kelly). The Court of Appeals affirmed Circuit Court's ruling that a prior arbitration award was *res judicata* on the issue of whether the City had the unilateral right to change retiree insurance carriers. The grievances were based on CBA language that was substantially similar to the language contained in plaintiffs' CBAs. A substantial identity of interests existed between those retirees represented by the former union and those retirees represented by the present union. Plaintiffs' interests were presented and protected in the arbitration.

8. Arbitrator cannot render "default" award without a hearing.

Hernandez v Gaucho, LLC, 307544 (February 19, 2013) (Jansen, Whitbeck, and Borrello). The parties arbitrated plaintiff's employment termination claim. The arbitrator ruled in favor of the employee. The award was based on the default of employer, who had failed to provide discovery during the arbitration proceeding. The arbitrator did not conduct an arbitration hearing, hear any testimony, or take any proofs. The employee moved to confirm the award and defendants moved to vacate the award. The Circuit Court was concerned by the fact that the arbitrator never took any evidence and there were ex parte communications between the arbitrator and the attorneys. The Circuit Court granted employer's motion to vacate and denied employee's motion to confirm. The Court of Appeals affirmed. According to the Court of Appeals, an arbitrator can hear testimony, take evidence, and issue an award in the absence of one of the parties if that party, although on notice, has defaulted or failed to appear. An arbitrator may not issue an award solely on the basis of the default of one of the parties, but must take sufficient evidence from the non-defaulting party to justify the award. § 15 of the Uniform Arbitration Act (UAA) provides, even when the arbitrator is entitled to proceed in the absence of a defaulting party, the arbitrator is required to "hear and decide the controversy on the evidence … ." MCL 691.1695(3). The UAA, MCL 691.1681 *et seq*, 2012 PA 371, took effect July 1, 2013.

Rule 31, AAA Commercial Arbitration Rules (October 1, 2013); Rule 29, AAA Employment Arbitration Rules (November 1, 2009); and Rule 26, AAA Labor Arbitration Rules (July 1, 2013), provide that:

> Unless the law provides to the contrary, the arbitration may proceed in the absence of any party

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> or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made [based] solely on the default of a party. The arbitrator shall require the other party to submit such evidence as may be required for the making of an award.

Rule 12603, FINRA Code of Arbitration for Customer Disputes (April 16, 2007), and Rule 13603, FINRA Code of Arbitration for Industry Disputes (April 16, 2007), provide that:

If a party fails to appear at a hearing after having been notified of the time, date and place of the hearing, the panel may determine that the hearing may go forward, and may render an award as though all parties had been present.

9. Successor to arbitration agreement must prove that it is successor.

Brown v Morgan Stanley Smith Barney, 307849 (February 19, 2013) (Cavanagh, Sawyer, and Saad). In this customer against brokerage firm case the issue was whether an agreement to arbitrate that customer had signed with a non-party prior brokerage firm inured to the benefit of the defendant brokerage firm. The Court of Appeals found no evidence which definitively explained the relationship, if any, between defendants and either Smith Barney Inc. or Smith Barney Shearson Inc. Thus, according to the Court of Appeals, defendant brokerage firm was not entitled to an order compelling arbitration. This case shows that if a party argues that an arbitration agreement with another entity inures to the party's benefit, it should have a clear paper trail showing the relationship between the party and the other entity.

10. Effect of union not taking case to CBA arbitration.

Kucmierz v Dep't of Corrections, 309247 (February 12, 2013) (Jansen, Whitbeck and Borrello). Employee brought a lawsuit against employer arguing the termination of employee was improper. The parties stipulated to dismiss the court case so that the entities could go to CBA arbitration between the union and the employer. The union eventually decided not to take the matter to arbitration and there was no arbitration. The employee then moved to set aside the dismissal of the court case. The Circuit Court set aside the dismissal. The Court of Appeals reversed. The employee alleged the parties had the mistaken belief that the union was going to arbitrate the case. The stipulation and order provided that the parties agreed to dismiss the proceeding with prejudice because it was the subject of an agreement to arbitrate. The stipulation did not provide that the matter would actually be arbitrated or that the dismissal was contingent on arbitration occurring. Nothing in the stipulation precluded the union and the employer from reaching a settlement agreement to avoid the arbitration process. The employee failed to show that a mutual mistake occurred and he was not entitled to relief from the dismissal order.

11. Party did not waive objection to arbitration by participating in arbitration.

Fuego Grill, LCC v Domestic Uniform Rental, 303763 (January 22, 2013) (Murray and Shapiro [majority]; and Markey [dissent]), lv den, ___ Mich ___ (2013). The issue in this case was whether Circuit Court erred in concluding that there was not an agreement to arbitrate between the parties. Plaintiff did not waive the issue of arbitrability through participation in the arbitration, as it argued during arbitration that no contract existed and, before the award was issued, it filed a complaint in Circuit Court seeking to preclude arbitration because no contract to arbitrate existed. The absence of a valid agreement to arbitrate is a defense to an action to confirm an award. It is for the court, not the arbitrator, to determine whether an agreement to arbitrate exists.

Judge Markey's dissent concluded that on the basis of Michigan's policy favoring arbitration and because plaintiff's claims were within the scope of the arbitration clause that plaintiff signed, that plaintiff may not relitigate its fact-based defenses in Circuit Court.

12. Three-year limitation precludes claim and arbitration.

Krueger v Auto Club Ins Ass'n, 306472 (January 8, 2013) (Roynane Krause, Servitto, and Shapiro). The arbitration agreement between the insurer and the insured required that an arbitration demand must be filed within three years from the date of the accident or the insurer will not pay damages. Insured did not file an arbitration demand within three years of the accident. Insured argued that the three years did not start until the insurer communicated that it was denying the claim. According to the Court of Appeals, the policy requires that any arbitration demand be filed within three years of the accident, and such language does not bar an insured from filing an arbitration demand in order to comply with the three year time limitation even if a disagreement has not yet arisen. Therefore the arbitration demand was untimely.

13. Court of Appeals reverses confirmation of award.

Elsebaei v Ahmed, 303623 and 304605 (December 27, 2012) (Meter, Fitzgerald and Wilder). The Court of Appeals reversed Circuit Court order confirming an arbitration award. The Circuit Court had earlier granted plaintiffs' partial summary disposition by finding that defendants owed plaintiffs a duty with regard to plaintiffs' negligence claim. The negligence case then proceeded to arbitration on the remaining issues. The arbitrator ruled in favor of the plaintiffs on these remaining issues. Defendants reserved their right to appeal the earlier "duty" ruling. The decision being reversed by the Court of Appeals was the "duty" ruling of the Circuit Court. There is no discussion concerning arbitration law or the deference to be given an arbitration award.

14. Court of Appeals affirms confirmation of DRAA award.

Cullens v Cullens, 306519 (December 18, 2012) (Hoekstra, Borrello, and Boonstra). The parties had an unsuccessful mediation.

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The parties then submitted the case to arbitration pursuant to the Domestic Relations Arbitration Act (DRAA), MCL 600.5070, *et seq*, before the same attorney who had been the mediator. The arbitrator rendered an award. Defendant moved to vacate the award. The Circuit Court denied the motion to vacate. The Court of Appeals affirmed the Circuit Court. The Court of Appeals indicated that its review of an arbitration award is extremely limited and that "[a] court's review of an arbitration award 'is one of the narrowest standards of judicial review in all of American jurisprudence.'" *Way Bakery v Truck Drivers Local No 164*, 363 F3d 590, 593 (6th Cir, 2004), quoting *Tennessee Valley Auth v Tennessee Valley Trades & Labor Council*, 184 F3d 510, 514 (6th Cir, 1999).

15. CBA arbitration award did not violate public policy.

Wayne-Westland Community Schools v Wayne-Westland Ed Ass'n, 304486 and 305296 (December 6, 2012) (Jansen, Fort Hood and Shapiro). The Court of Appeals affirmed Circuit Court order confirming a labor arbitration award. The District contended that the award violated public policy established by Michigan law which required the District to hire certified teachers, prohibited the District from hiring noncertified teachers when a certified teacher is available, and placed responsibility for having teaching credentials on the teacher. According to the Court of Appeals, assuming this public policy was well defined and dominant, there were exceptions to this public policy. The Michigan Department of Education had exception rules, including allowing districts to apply for authorization. A district could hire a noncertified teacher when one of those exceptions applied. The award requiring the District pay the employee for the 2009-2010 school year and to determine his eligibility for employment did not violate public policy in light of the exceptions to the hiring of certified teachers and the arbitrator's factual findings.

The District further argued that the arbitrator exceeded her authority by relying on a CBA provision which the Association did not allege the District violated. The Association cited the provision in its post-hearing brief. According to the Court of Appeals, even if the Association had not alleged the provision was violated, the arbitrator was not prohibited from relying on the provision, even if the parties failed to cite the provision, since the provision was not expressly withheld from arbitration, and CBAs are to be read as a whole.

Furthermore, according to the Court of Appeals, the award drew its essence from the CBA.

16. State did not waive Eleventh Amendment immunity from ADA claim by participating in CBA arbitration.

Montgomery v Dep't of Corrections, 305574 (October 18, 2012) (O'Connell, Donofrio and Beckering). In this case, defendant state appealed Circuit Court's order denying its motion for summary disposition on the basis of sovereign immunity. Because the state did not waive its sovereign immunity defense to employee's claim under the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq*, by participating in the arbitration of employee's grievance pursuant to the CBA, the Court of Appeals reversed and remanded for further proceedings. The grievance had alleged that defendant violated the CBA by refusing to accommodate the employee's disability. The arbitrator granted the grievance, finding that the employer had violated the CBA.

In addition to the arbitration proceeding, the employee had brought a Persons with Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq*, and ADA lawsuit against his state employer. Because the employee had not timely requested an accommodation in writing, his state PWDCRA claim failed. The employee argued to the Circuit Court that the arbitrator's finding that the employer had violated the CBA was *res judicata* on the ADA allegations in his court case. The state argued to the Circuit Court that any ADA portion of the award was precluded by Eleventh Amendment, US Const, sovereign immunity. The Circuit Court's denial of summary disposition with respect to plaintiff's Title I ADA claim was the sole issue in this appeal.

The Court of Appeals held that Circuit Court erred by denying summary disposition for the state because the state did not unequivocally express intent to waive its sovereign immunity with respect to the Title I ADA claim by participating in the arbitration of plaintiff's grievance pursuant to the CBA. The limited purpose of the arbitration was to decide plaintiff's grievance, which alleged CBA violations. The employee's Title I ADA claim had nothing to do with the CBA, and the state's participation in CBA arbitration of the grievance was not an unequivocal expression of intent to waive sovereign immunity concerning the ADA claim.

17. Court of Appeals affirms Circuit Court orders favoring arbitration.

In the following cases the Court of Appeals affirmed orders ordering arbitration or declining to vacate awards. ***Kosiur v Kosiur***, 314841 (April 22, 2014) (Meter, O'Connell, and Shapiro) (DRAA); ***Emrick v Menard Builders, Inc***, 314038 (April 17, 2014) (Borrello, Whitbeck, and KF Kelly) (quiet title and breach of land contract); ***Pugh v Crowley***, 313471 (April 8, 2014) (Donofrio, Cavanagh, and Jansen) (attorney fees); ***Taylor v Great Lakes Casualty Ins Co***, 308213 (September 19, 2013) (Stephens, Wilder and Owens) (automobile insurance); ***Mager v Giarmarco, Mullins & Horton, PC***, 309235 (June 25, 2013) (Jansen, Cavanagh and Markey) (deferred compensation); ***Holland v French***, 309367 (June 18, 2013) (Gleicher and Murphy [majority], O'Connell [dissent]) (employment), lv dn ___ Mich ___ (2014); ***Yacisen v Woolery***, 308310 (May 30, 2013) (Krause, Gleicher and Boonstra) (auto restoration); ***Platt v Berris***, 297292 and 298872 (April 23, 2013) (Owens, Whitbeck and Fort Hood) (firm dispute); ***Derwoed v Wyandotte***, 308051 (April 16, 2013) (Jansen, Sawyer and Servitto) (CBA); ***California Charley's Corp v Allen Park***, 295575, 295579 (April 9, 2013) (Talbot, Jansen and Meter) (alleged interference with business); ***Herman J Anderson, PLLC v Christ Liberty Ministry***, 307931 (March 14, 2013) (Talbot, Donofrio and Servitto) (attorney fees); ***Haddad v KC Property Service, LLC***, 306548 (February 21, 2013) (Riordan, Hoekstra and O'Connell) ("may" v "shall"); ***Detroit v Detroit Police Officers Ass'n***, 306474 (February 12, 2013) (Jansen, Whitbeck and Borello) (right to interest); ***Suchyta v Suchyta***, 306551 (December 11, 2012) (Wilder, Meter and Gleicher) (DRAA); ***James D Campo, Inc v Trevis***, 305112 (December 4, 2012) (Wilder, Gleicher and Boonstra) (statute of limitations);

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Wendy Sabo & Associates, Inc v American Associates, Inc, 305575 (December 4, 2012) (Owens, Talbot and Wilder) (real estate commission); ***Rouleau v Orchard, Hiltz and McCliment, Inc***, 308151 (October 25, 2012) (Murphy, Sawyer and Hoekstra) (indemnity); ***Vandekerckhoue v Scarfore***, 301310 (October 11, 2012) (Gleicher, Owens and Boonstra) (attorney fee dispute); ***Bies-Rice v Rice***, 295631, 295634, 300271 (September 4, 2012) (Meter, Fitzgerald, and Wilder), lv den, ___ Mich ___ (2013) (DRAA).

III. MEDIATION

A. Michigan Supreme Court Decisions

1. Supreme Court denies leave to appeal in "pressure to settle" case.

In ***Vittiglio v Vittiglio,*** ___ Mich ___; 825 NW2d 584 (2013), the Supreme Court denied leave to appeal from *Vittiglio v Vittiglio,* 297 Mich App 391 (2012) (KF Kelly, Sawyer, and Ronayne Krause). In *Vittiglio* the Court of Appeals had affirmed Circuit Court's holding that the audio recorded settlement agreement at the mediation session was binding and that "a certain amount of pressure to settle is fundamentally inherent in the mediation process." The Court of Appeals also affirmed Circuit Court's holding that plaintiff was liable for sanctions because plaintiff's motions were filed for frivolous reasons and Circuit Court did not abuse its discretion in awarding costs and attorney fees.

B. Michigan Court of Appeals Published Decisions

There do not appear to have been any Michigan Court of Appeals published decisions concerning mediation during the review period.

C. Michigan Court of Appeals Unpublished Decision

1. Mediation in parental rights case.

In re Vanalstine, Minors, 312858 (April 11, 2013) (Fitzgerald, O'Connell and O'Brien). The Circuit Court ordered the parties to participate in mediation, which resulted in a mediation agreement concerning parental rights to minor children. The mother did not comply with the agreement and the Court terminated her parental rights. The Court of Appeals indicated that contrary to the mother's assertion, the Circuit Court did not terminate her parental rights solely for her failure to comply with the agreement. The Circuit Court's decision was based on the mother's conduct, which included but was not limited to her failure to comply, and which led to the Circuit Court's assessment of the statutory termination factors. The Court of Appeals found it unnecessary to resolve whether a defense of impossibility could render such an agreement void or voidable.

IV. CONCLUSION

Michigan appellate court decisions since late 2012 reviewed the following ADR issues.

1. What issues are for the arbitrator to decide? *Macomb Co*, *Wireless Toyz Franchise, LLC*, *Hall*, *36th Dist Ct*, and *Command Officers Ass'n of Sterling Heights*.
2. Can there be pre-award court challenge to arbitrator selection process? *Oakland-Macomb Interceptor Drain Drainage Dist* and *Thomas.*
3. Can a non-signatory entity be compelled to arbitrate? *Ric-Man Constr Inc.*
4. Can an arbitration award be res judicata? *Sloan.*
5. Does a default award require a hearing? *Hernandez*.
6. Does an alleged affiliate have to prove that it is affiliated with predecessor signatory to arbitration agreement? *Brown*.
7. What can be the result of union not taking case to arbitration? *Kucmierz.*
8. Whether participating in the arbitration is a waiver? *Fuego Grill, LLC* and *Montgomery.*
9. What happens when a limitation period is missed? *Krueger*.
10. Can an award be vacated? *Elsebaei, Cullens, Wayne-Westland Community Schools,* and *Hillsdale Co Medical Care and Rehabilitation Ctr.*
11. Are mediated settlement agreements enforced? *Vittiglio* and *In re Vanalstine, Minors.*

Lee Hornberger is an arbitrator and mediator in Traverse City, Michigan. He is a member of the State Bar of Michigan Alternative Dispute Resolution Section Council and Representative Assembly of the State Bar of Michigan, editor of The ADR Quarterly, Chair of the ADR Committee of the Grand Traverse-Leelanau-Antrim Bar Association, and a former President of the Grand Traverse-Leelanau-Antrim Bar Association. He is an arbitrator with the American Arbitration Association, Federal Mediation and Conciliation Service, Financial Industry Regulatory Authority, Michigan Employment Relations Commission, National Arbitration Forum, and National Futures Association. He can be reached at 231-941-0746 and leehornberger@leehornberger.com.

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 website, and select "Mediation Training" then "Upcoming Trainings": http://courts.mi.gov/Administration/SCAO/OfficesPrograms/ODR/Pages/Mediation-Training-Dates.aspx.

Kalamazoo: **September 8, 10, 12, 13, 15**
Training sponsored by Dispute Resolution Services of Gryphon Place
Register online at www.gryphon.org or call 269-552-3434

Lansing: **October 2, 8, 9, 29-30**
Training sponsored by Resolution Services Center
Contact Linda Glover, 517-485-2274

Plymouth: **October 9-11, 31-November 1**
Training sponsored by Institute for Continuing Legal Education
Register online at www.icle.org, or call 1-877-229-4350.

Bloomfield Hills: **November 7, 14, 21, December 5, 12**
Training sponsored by Oakland Mediation Center
Register online at www.mediation-omc.org or call 248-348-4280

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):

Bloomfield Hills: **September 11, 18, October 2, 9, 16, 23**
Training sponsored by Oakland Mediation Center
Register online at www.mediation-omc.org
or call 248-348-4280 ext. 21

Domestic Violence Screening Training

Bloomfield Hills: **October 2**
Training sponsored by Oakland Mediation Center
Register online at www.mediation-omc.org
or call 248-348-4280 ext. 21

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

Free* Listen & Learn At Lunchtime

Presented by the State Bar of Michigan ADR Section

Mediating Bullying and Harassment Disputes in the School Setting

When: August 27, 2014 - Noon to 1:30 p.m.
Presenter: Laura Athens
Interviewer: Zena Zumeta
Moderator: Bob Wright

The Alternative Dispute Resolution Section of the State Bar of Michigan is pleased to announce another presentation in its Listen & Learn at Lunchtime series: The next installment will be a 90-minute teleseminar on "Mediating Bullying and Harassment Disputes in the School Setting." Student harassment based on race, gender, disability and national origin is a pervasive problem in Michigan schools. Learn about the impact of bullying, relevant state and federal law and proactive and effective approaches to resolving peer-to-peer harassment.

This teleseminar will be offered on a call-in basis only, August 27, 2014, from noon to 1:30 p.m. Materials will be available to registered participants prior to the seminar.

Registration and call-in information will be provided in a subsequent e-mail announcement. Additional information and registration material can be found at: http://www.michbar.org/adr/events.cfm

* All current ADR Section Members may attend this teleseminar at no charge.

Non-members will be charged $40, but will be automatically admitted to the ADR Section and eligible for future teleseminars and webinars at no charge through September 30, 2014.

Effective Practices and Procedures Action Team Notice

If anyone knows of any proposed Court Rule amendment, proposed legislation, or any administrative regulation or any other policy that might have alternative dispute resolution implications, please forward that information to the Chairperson of the ADR Section's Effective Practices and Procedures Action Team (EPP), Martin C. Weisman, at mweisman@wyrpc.com so the EPP Team can review the information and make recommendations to the ADR Section's Council on any action that should be taken on behalf of the ADR Section.

Martin C. Weisman, 248-258-2700, mweisman@wyrpc.com.

The ADR Quarterly

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

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*or Phillip A. Schaedler - **517-263-2832***

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

SBM State Bar of Michigan | ALTERNATIVE DISPUTE RESOLUTION SECTION

2014 Annual Meeting and Conference

Friday – Saturday, October 17-18, 2014
Kensington Court (formerly Crowne Plaza)
610 Hilton Blvd, Ann Arbor, MI 48108

Advanced Mediation Training: Once again the ADR Section of the State Bar of Michigan and the Family Mediation Council Michigan (FMC) are collaborating to offer outstanding, SCAO-approved programs designed to improve your knowledge base and enhance your skills as a mediator. Join your colleagues at a program of intensive, interactive professional development and casual networking.

Cheryl Cutrona - ADR-Section-Sponsored featured National Trainer: Cheryl has been the Executive Director of Good Shepherd Mediation of Philadelphia, PA since 1991. She is a mediator, facilitator, conflict coach, trainer, arbitrator, editor, attorney, and adjunct faculty at Temple University Beasley School of Law. She serves in leadership positions in local and state-wide dispute resolution organizations and has received several state-wide awards for her contributions to the field. She received her undergraduate and Masters degrees from two of Michigan's finest before heading to Pennsylvania for law school.

Friday, October 17, 2014

FMC-Michigan Conference
(separate registration fee)

8:30 – 9:00 a.m. Breakfast Buffet and Welcome

9:00 – 11:45 a.m. Advanced Mediation Training on Financial Issues in Family Mediations
- Financing a Home After the Divorce – Steven Nardin
- The Affordable Care Act and Family Mediation – RebeccaTooman
- Social Security Information for the Family Mediator – Ann Arbor SSA District Office Representative

ADR Section Meeting and Conference

Noon – 12:30 p.m. Registration

12:30 – 5:15 p.m. Advanced Mediation Training— Skill-building for Experienced Mediators
- Why Mediation Works
- Reframing
- Turning Complaints into Requests
- Opening Lines of Communication
- Maximizing the Use of the Caucus

5:15 – 6:00 p.m. Hotel Check-in

6:00 – 7:00 PM Networking and Cocktail Hour

7:00 – 8:45 PM Dinner and Awards & Recognition

Saturday, October 18, 2014 (ADR Section Meeting Continued)

8:00 – 8:30 a.m. Continental Breakfast

8:30 – 9:00 a.m. Annual Meeting
- Annual Reports
- Election of Officers and Council Members

9:00 – 12:30 p.m. Advanced Mediation Training
- Dealing with Difficult Personalities in Mediation
  - What Presses YOUR Buttons?
  - Maintaining Neutrality
  - Understanding Other's Difficult Behavior
  - Defensive v. Cooperative Communication
- The Ethics Game: What Would You Do?
  - Test your knowledge of the Michigan Mediator Standards of Conduct

12:30 p.m. Lunch (on your own)

Registration Fees: (Must be submitted by Oct. 3, 2014)
- Both Conferences: $175
- FMC Conference Fee: $40 for members; $50 non-member
- ADR Conference Fee: $150 regular; (law/graduate students $75, sitting Judges no-charge)
- Friday Award Ceremony & Dinner: $45 /ea (not included in Conference Fee)

Hotel Registration: Stnd $102/ngt, Exe $112/ngt plus taxes. Reduced rates based on availability and only until October 3rd. Contact Kensington Court directly using booking code "Alternative Dispute Resolution" at 800.344.7829 or 734.761.7800 or www.kcourtaa.com

SBM
State Bar of Michigan

ALTERNATIVE DISPUTE RESOLUTION SECTION

REGISTRATION

2014 Annual Meeting & Conference

October 17-18, 2014
Kensington Court
610 Hilton Blvd, Ann Arbor, MI 48108

Register online at http://e.michbar.org

P #:_____ (if applicable)

Name:_____

Dinner Guest Name: _____

Your Firm: _____

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:

_____

Authorized Signature: _____

Hotel Information

Hotel reservations cannot be made with this form.

Reduced rates based on availability and only until October 3rd, Stnd $102/ngt, Exe $112/ngt plus taxes. Contact Kensington Court directly using booking code "Alternative Dispute Resolution" at 800.344.7829 or 734.761.7800 or www.kcourtaa.com

Cancellation Policy: Registration and Payment must be received at the SBM on or before 3PM on Friday, October 3, 2014. Refunds will be provided only for Cancellations received in writing at the SBM by 3PM on Friday, October 3, 2014. That notice can be made by e-mail (tbellinger@mail.michbar.org), fax (517-372-5921 ATTN: Tina Bellinger), or by U.S. mail (306 Townsend St., Lansing, MI 48933 ATTN: Tina Bellinger.)

REGISTRATION DEADLINE: Friday, Oct. 3, 2014

Cost

Attending BOTH Conferences

❑ ADR Conference & FMC Conference..... $175 x___= _____

ADR Section Conference ONLY

❑ ADR Section Conference ONLY..... $150 x___= _____
❑ * Law/Graduate Students (ADR Conference ONLY) $75 x___= _____
❑ *Sitting Judges (ADR Conference ONLY)..... FREE

ADR conference registration fee for sitting judges is waived. You MUST register by mail or fax and MUST pay for your dinner if you are attending Friday night's award ceremony.

* Law/graduate students and judges must register by mail or fax ONLY.

Family Mediation Council (FMC) Conference ONLY

❑ Family Mediation Council Conference ONLY ..... $50 x___= _____
❑ FMC Member (FMC Conference ONLY) ..... $40 x___=_____

Friday Evening

❑ Awards ceremony, includes dinner ..... $45 x____=_____
- ❑ Chicken Piccata.....#_____
- ❑ Blackened Tuna Steak .....#_____
- ❑ Prime Rib .....#_____
- ❑ Vegetarian Moroccan Stew .....#_____

Please advise of food sensitivities/allergies: _____
_____

Grand total = $_____

Questions

For additional information regarding the conferences contact Joe Basta at jcbasta@yahoo.com or (313) 378-8625.

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:

State Bar of Michigan
Attn: Seminar Registration
306 Townsend Street, Lansing, MI 48933

Fax (ONLY if paying by debit/credit card) the completed form and credit card information to: Attn: Seminar Registration at (517) 372-5921