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The ADR Newsletter

Alternative Dispute Resolution Section of the State Bar of Michigan

Revised Arbitration Act Merits Legislative Action

— by Laurence D. Connor

The original Uniform Arbitration Act (UAA), which was approved by the National Conference of Commissioners on Uniform State Laws in 1955, has been one of the most popular and widely accepted of the Uniform Acts. It eventually formed the basis for the arbitration laws in 49 states. Michigan adopted its version of the UAA in 1961. (MCL 600.5001-5035.)

The UAA was enacted to ensure the enforceability under state law of pre-dispute arbitration agreements in the face of long-standing judicial hostility. However, it addresses only basic arbitration matters such as enforcement of arbitration agreements, appointment of arbitrators and review of awards. It leaves many of the procedural aspects of arbitration to courts, ADR providers and agreement of the parties. (In Michigan, a court rule supplements the Act and provides some limited procedural guidelines. MCR 3.602.) With the expansion of the use of arbitration in recent years and its growing role as a substitute for court litigation, many scholars and practitioners have expressed the need for an updated statute that would codify nearly a half century of case law, resolve ambiguities and splits of authority, and fill gaps not covered by the UAA.

In 2000, the National Conference of Commissioners enacted the Revised Uniform Arbitration Act (RUAA) after nearly five years of study, drafting, and debate. The RUAA is more detailed and comprehensive than the UAA, addresses controversial litigation-like procedural matters such as discovery and summary dispositions, and carefully skirts federal preemption issues by supporting broad party autonomy and avoiding provisions that would favor certain classes of users, such as employers, employees, merchants or consumers. (The complete Act with prefatory note and comments can be found at **http://www.law.upenn.edu/bll/ulc/uarba/arbitrat1213.htm.)**

"Under the RUAA, if the agreement does not specify it, matters of substantive arbitrability... are for the courts while matters of procedural arbitrability... are for the arbitrator."

The RUAA has been adopted in ten states: Alaska, Colorado, Hawaii, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Utah and Washington ; and it is up for consideration this year in nine other jurisdictions: Arizona, Connecticut, District of Columbia, Indiana, Iowa, Oklahoma, Vermont, and West Virginia. It has been endorsed by the American Arbitration Association, JAMS, National Academy of Arbitrators, and the ABA House of Delegates and numerous ABA sections, including the Section on Dispute Resolution. As of this date, no bill for its adoption has been introduced in the Michigan Legislature.

Space does not permit a detailed analysis of the RUAA, but the following are some of the

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Laurence D. Connor is a retired member of Dykema Gossett PLLC and former chair of the ADR Section. He teaches mediation and alternative dispute resolution at Michigan Law School.

provisions which demonstrate the expanded treatment by the new Act of arbitration issues that have often been the subject of controversy.

Arbitrability. The case law is confusing as to whether the arbitrator or a court determines if a matter may be arbitrated. Under the RUAA, if the agreement does not specify it, matters of substantive arbitrability (i.e., Is the controversy subject to an agreement to arbitrate?) are for the courts; while matters of procedural arbitrability (e.g., Has a condition precedent to arbitration been fulfilled?) are for the arbitrator. [Section 6(b) and (c)]. In addition, the Act adopts the so-called separability doctrine by providing that the arbitrator determines whether a contract containing an agreement to arbitrate is enforceable if a party alleges the underlying agreement is invalid because of fraud, mistake, unconscionability or other grounds. [Section 6 (c)].

"Section 12 requires arbitrators to disclose to the parties and other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator, including financial or personal interests and existing or past relationships..."

Provisional Remedies. Questions often arise whether an arbitrator may provide provisional relief to preserve the status quo pending the hearing or whether such matters must be presented to a court. RUAA, Section 8 authorizes the arbitrator to decide temporary relief if the request is made after the arbitrator's appointment. However, if the arbitrator has not yet been appointed, or if the matter is urgent and the "arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy," a court may act on the request for provisional remedies.

Consolidation. One of the hottest topics in arbitration today is whether separate but related claims may be combined into one proceeding. Under the Federal Arbitration Act, most courts have held that consolidation of separate arbitration proceedings is not permitted unless the agreement specifically allows it. Under the RUAA, Section 10 gives a court discretion to order consolidation of separate arbitration proceedings in the absence of agreement to consolidate if the claims arise from the same transaction, common issues create the possibility of conflicting decisions, and the prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of parties opposing consolidation. However, the court may not order consolidation if the arbitration agreement prohibits it.

Disclosure. Many challenges to arbitration awards are based on the evident partiality of the arbitrator because of failure to disclose relationships or an interest in the dispute. Section 12 requires arbitrators to disclose to the parties and other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator, including financial or personal interests and existing or past relationships with parties, counsel, witnesses or other arbitrators. Failure to disclose may result in vacation of the award.

Immunity. Section 14 ensures that arbitrators and arbitration organizations are immune from civil liability to the same extent as a judge, even if the arbitrator fails to make disclosures required by Section 12. With limited exceptions, an arbitrator may not be subpoenaed or required to testify about the arbitration.

Dispositive Motions and Prehearing Conference. Arbitrators have been reluctant to grant relief without a full evidentiary hearing because a ground for vacating an award is the arbitrator's refusal to consider all the evidence material to a controversy. Section 15 of the RUAA makes clear that, with respect to conducting the arbitration process, arbitrators have many of the same powers as judges, including the ability to decide requests for summary disposition if all parties agree, or if the requesting party gives adequate notice and the opposing parties have a reasonable opportunity to respond. [Section 15(b)]. The arbitrator may also hold prehearing conferences. [Section 15(a)].

Discovery and Subpoenas. One of the distinct advantages of arbitration over litigation is the cost savings realized by limits on discovery. On the other hand, parties often feel deprived of a fair hearing by their inability to obtain information from the other side. In an attempt to balance these competing interests, the National Commissioners gave arbitrators discretion under the RUAA to order pre-hearing discovery, but with the caution that it be done only when "appropriate in the circumstance, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective." [Section 17(c).]

The arbitrator may also issue a subpoena for the attendance of a witness and for production of records at a discovery proceeding or at hearing [Section 17(d)]; issue protective orders to prevent the disclosure of confidential information [Section 17(e)]; and issue subpoenas for enforcement by a court in another state that has adopted the Act [Section 17(g)].

Non-waivability. While the RUAA gives great freedom to the parties to formulate the terms of their arbitration agreement, the Act also provides

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that some rights may not be contracted away. Before a dispute arises, parties may not give up their right to certain procedural guarantees, such as the arbitrator's power to grant provisional remedies, issue subpoenas or order depositions; the court's jurisdiction to enforce an agreement to arbitrate; the right to notice of the arbitration; the arbitrator's duty of disclosure and the right to be represented by counsel. [Section 4(b)]. Parties may never waive fundamental rights under the statute, such as the right to compel or stay arbitration, the right to confirm, vacate or modify an award, and the arbitrator's right to immunity. [Section 4(c)]. If a provision is not specified as non-waivable, (e.g. discovery under Section 17) it may be changed by agreement of the parties.

On balance, the RUAA represents a significant advance in legislation governing the conduct of arbitrations under state law. While no statute can fully anticipate and resolve the myriad issues that will arise as arbitration continues to grow and becomes more widespread, the RUAA deals rationally and effectively with major procedural questions that permeate arbitration practice. It deserves serious consideration by the Michigan legislature to replace the long-serving but outdated existing arbitration act.

"One of the distinct advantages of arbitration over litigation is the cost savings realized by limits on discovery."

Upcoming Mediation Trainings

The following 40-hour mediation trainings have been approved by SCAO to fulfill the requirements of the mediation court rules, MCR 2.411 (general civil) or MCR 3.216 (domestic relations). Participants must attend all of the dates listed for each training session. For more information, visit the SCAO web-site at **www.courts.michigan.gov/scao/dispute/odr.htm.**

General Civil

Training sponsored by The Resolution Center:

Mt. Clemens: **October 5, 7-8, 12, 14-15**

Contact: Craig Pappas at 586-469-4714

Training sponsored by Institute for Continuing Legal Education:

Plymouth: **October 27-29, November 4-5**

Register online at www.icle.org/mediation, or call 1-877-229-4350.

Domestic Relations

Training sponsored by Mediation Training and Consultation Institute:

Ann Arbor: **August 1-5**

Ann Arbor: **November 30, December 1-2, 7- 8**

Register online at www.learn2mediate.com, or call 1-800-535-1155

Domestic Violence Screening

Training sponsored by Oakland County Bar Association

Bloomfield Hills: **October 7**

Contact: Shirley Robertson, (800) 827-4390, www.mediation-om.org

Advanced Mediation Training

Training sponsored by Dispute Resolution Center of Central Michigan

Lansing: **June 21, 8:30-12:30**
"Becoming the Mediator I Want to Be"

Trainer: Anne Bachle Fifer

Contact: Karen Beauregard, 517-485-2274, drccm.beauregard@tds.net

10 Highly Unsuccessful Habits of Mediation Advocates

— by Scott Brinkmeyer

About the Author:

Scott S. Brinkmeyer is a member of the Grand Rapids law firm of Mika, Meyers, Beckett & Jones, PLC. Since 1975 Scott has specialized in civil litigation and alternative dispute resolution in state and federal courts throughout Michigan. He is a certified facilitative mediator in the U.S. District Court for the Western District of Michigan, an approved mediator for the 17th and 2nd Circuit Courts, and a member of the National Panel of Neutral Commercial Arbitrators of the American Arbitration Association. He is also the immediate past president of the State Bar of Michigan.

Many of the skills necessary for winning trial advocacy are ineffective in, if not impediments to, successful mediation. As both mediator and mediation advocate, I have observed a number of common mistakes made by good litigators that frequently stand in the way of achieving an acceptable settlement through mediation. These observations are certainly not new, and in fact many have been the subject of articles and presentations by other mediators and trainers for some time. The fact that they are often repeated is good reason for again drawing attention to them. Having committed a number of these mistakes myself, I feel I at least have the benefit of experience in passing them along.

HABIT #1: NOT TAKING OFF THE COWBOY HAT

After many years of litigating and trying cases, we litigators can often be our own worst enemies in trying to achieve settlement. Perhaps the biggest problem for litigators in mediation is failing to take off their litigator cowboy hat and to tone down "Rambo" rhetoric. Many of us seem to have a virtually irresistible tendency to want to argue our case at every turn. Of course there is a proper place in the mediation process for advocating the client's position, primarily in the opening statement, but efforts should be focused on developing options for achieving the best resolution possible in the minds of all of the involved litigants. Without that, there is little likelihood of resolution. We need to remember that mediation is a time for conciliation and creativity, and efforts should be extended to work jointly toward a mutually acceptable solution for the dispute.

HABIT #2: LACK OF PREPARATION

Another bad habit of many advocates is failing to prepare for mediation as thoroughly as we prepare for trial. Litigators are well-advised to know the opponent's case at least as well as you know your own. From the very beginning of a new case, we try to develop the opponent's claims or defenses against our client, identify every issue, fact and argument they can conceivably make, and then prepare a strategy for the client. Why not do the same in mediation? A key objective of preparation is trying to recognize the perceptions and motivations of the other side. Failing to do so can lead to the next mistake.

HABIT #3: FAILING TO IDENTIFY THE ADVERSARY'S NEEDS

Needs are essentially what a party must have for resolution. Identifying the needs of the other side is critical to a successful mediation. Needs are to be distinguished from positions, which essentially constitute arguments in support of the client's case, and interests, which are what the client says she might want to have happen or is trying to achieve or avoid.

In order to identify the other party's needs, first make a list of the perceptions and motivations of both sides. Before mediation even begins, compare the list for similarities and distinctions. Once mediation begins, the parties will state their positions in their opening statements. Having analyzed the parties' competing perceptions and motivations, you can then work through the process to identify the true needs of the other side, thereby increasing the likelihood for settlement.

HABIT #4: FAILING TO ADEQUATELY PREPARE THE CLIENT

Except in those cases in which you are dealing with experienced in-house counsel, insurance representatives or corporate officers, the client often has very little, if any, experience with either litigation or mediation. Don't stop at merely describing the overall mediation process to the client. Explain the differences between her own interests, positions and needs, and identify in advance a variety of options for possible settlement. The strengths and weaknesses of the case should be thoroughly explained so that the client fully appreciates the risks in the event settlement cannot be achieved. One effective way to do this is to develop questions which the mediator might ask during the process and work with the client to develop her answers, which can include the client's feelings about the other party, expectations from trial, weaknesses in the case, probability of success, range of damages, and the like.

HABIT #5: FAILING TO INVOLVE THE CLIENT FROM THE BEGINNING

Another common habit of litigators is doing all the talking. This is especially prevalent in opening

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statements, where the client's comments can be particularly effective in getting the parties on the same track. Since the object of mediation is a mutually acceptable resolution, the opening statement can be the time to show the client in her best light. Unless the client is particularly inarticulate or simply unwilling to speak, you should strongly consider allowing her to do the opening statement, or at least shoulder responsibility for a large part of it. This is a particularly good time to demonstrate empathy, credibility, respect, regret, and sometimes even apologies. Apologies can often be the beginning to mutual understanding and a successful settlement. At a minimum, the client should be encouraged to express empathy for the predicament of the other party. This is especially important for a defendant in a personal injury case or where loss of employment, income or property has been significant.

It has also been my experience, especially in cases where emotions run high, the damages are severe, or where feelings are particularly resentful, that allowing the parties to "vent" their feelings at the outset can dramatically transform an otherwise tense and resistant atmosphere into one where the parties are now willing to move forward to try to resolve the dispute. This can be especially helpful where there has been little communication between the parties during and before the litigation process. Great care must be exercised by both lawyer and client, however, to avoid the next bad habit.

HABIT #6: BLAMING, THREATENING AND DEMANDING

In trying to achieve a "win" at the mediation, many litigators habitually give ultimatums, frequently posturing by making demands or by threatening worse outcomes should litigation continue. This approach can undermine trust, erode credibility, and inhibit settlement.

We must remember that we are trying to convince the other side to appreciate our client's needs and, in doing so, to develop common ground for compromise. Rather than increasing the communication gap between the parties, we should be working to reduce the obstacles precluding amicable resolution. Refraining from invective, threats, and demands is paramount to achieving that objective.

HABIT #7: FOCUSING ON THE WRONG PERSON

Quite frequently I've seen advocates repeatedly addressing their arguments and comments to the mediator. Remember that the mediator is a neutral and can make no decision favoring one side or the other. It is the adversary and her client that you are trying to persuade to your point of view. Consistently and sincerely focusing on them during the discussions will help to move you closer to resolution.

HABIT #8: NOT LISTENING

If the lawyer is absorbed in the zealous presentation of the client's position during the mediation, she cannot remain open-minded, listen to and appreciate what the other side is saying. Mediation advocates should be good listeners and that trait is essential to developing options for resolution. This becomes even more important as the mediation process progresses and you work through the perceptions, motivations, statements of positions and interests of each of the parties so as to enable you to identify what needs must be satisfied in order to settle the case.

HABIT #9: PULLING THE TRIGGER TOO EARLY

Mediation takes time, patience and perseverance, much the same as trying a case. Good mediation advocates understand that and refrain from pulling a quick trigger on mediation. Even in situations where the parties have been ordered to mediation unwillingly, good mediation advocates will use the time advantageously. Impatience is a bad habit in any setting and almost always fatal to the mediation process. There may be a time to walk out on the process, but that should be considered only as a last resort.

HABIT #10: FAILING TO WRAP IT UP

Mediation can be a long and laborious process, oftentimes extending into the evening hours. Having verbally agreed upon the terms of a settlement, the parties or counsel are often inclined to adjourn and reconvene at a later time in order to finalize the deal. This can be a serious mistake, as adjourning to "sleep on it" often finds the litigator again wearing her cowboy hat when she wakes up in the morning.

Consequently, it is a good idea to come to the mediation with pre-prepared forms for a settlement agreement. Most of us have developed forms for various kinds of settlements and these can be adapted to accommodate your settlement. Make sure to have available a laptop computer and necessary secretarial help in order to complete the agreement. Before adjourning, it is wise to get all of

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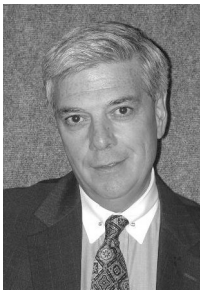
the parties to sign a written agreement, at the very least signing off on the material terms. The more thorough the better, as it's always tough to finalize those devilish details.

IN CLOSING

Assuming that the settlement data we so often hear about is accurate, the chances are greater than 95% or better that a given case will settle. I have found that most clients do not really want to endure the time, cost, and emotional turmoil of trial, preferring to reduce their risks and enhance their options by early resolution. Eliminating our unsuccessful habits in mediation enhances our ability to achieve an acceptable settlement for the client.



Formerly a litigator with Dykema Gossett, Dick Hurford is now chief counsel for the Masco Corporation, where he has integrated ADR into all aspects of the company's legal affairs.

COMMENTS FROM THE CHAIR

Invitation to Join Your ADR Colleagues

— by Richard Hurford, Section Chair

When: Thursday, September 8 and Friday, September 9, 2005

Where: Soaring Eagle Resort in Mt. Pleasant

The ADR Section of the State Bar of Michigan would like to extend a warm invitation to all of our membership and friends to participate in its Annual Meeting. There is an impressive program, at a most delightful forum, which will provide a unique opportunity to learn, and to enjoy the professional camaraderie of fellow lawyers, ADR professionals, and judges interested in advancing ADR. The program for this gathering will be:

September 8, 2005:	
3:00 p.m to 4:00 p.m.	Registration
4:00 p.m. to 7:00 p.m.	Program by Bob Creo and the ADR Section
7:00 p.m. to 8:00 p.m.	A complimentary cocktail hour hosted by the American Arbitration Association
8:00 p.m.	Dinner and Award presentation
September 9, 2005:	
8:00 a.m. to 9:00 a.m.	Annual Business Meeting and Continental Breakfast
9:00 a.m. to noon	Program continuation by Bob Creo and the ADR Section
Noon	Adjournment for Golf tournament, tennis, and other activities of choice with family and friends

All of these offerings will be provided for the most reasonable registration fee of $75.00.

For those of you who have not visited Soaring Eagle previously, you should know it is a meticulously maintained facility and a most delightful forum with offerings for everyone in the family. Of course, there are games of chance for the daring, swimming, a playground for the children, a first-class golf course -- the Pohl Cat, that will challenge your handicap, excellent restaurants, and delightful shopping in the specialty stores in downtown Mt. Pleasant.

A few words about Bob Creo. Bob is a specialist in alternative dispute resolution. He has served as a mediator and arbitrator in over 2,500 cases since 1979. He has served on the panels of JAMS (lead neutral in the Pittsburgh office, 1995 - 1997), the CPR Institute for Dispute Resolution (Distinguished Neutrals Panel), the National Arbitration Forum, the American Arbitration Association, Settlement Systems, Inc., and other ADR providers.

In 1996 Bob was elected as a Fellow of the American Bar Foundation, whose membership is limited to one-half of one percent of lawyers admitted in any jurisdiction, and is also a Founding Member, and former president, of the International Academy of Mediators. He served as an Impartial Hearing Officer to the United States Senate Select Committee on Ethics Office of Fair Employment Practices and has served as an arbitrator for Major League Baseball salary disputes as well as for grievance disputes between the National Football League and the National Football League Players Association. He also serves as co-counsel to negotiate settlements on complex or multi-million dollar insurance, personal injury, or other commercial matters. While more details on the program will follow, you can be certain that Bob is a tremendously experienced ADR specialist who will provide many wonderful insights, techniques, and thoughts on all things ADR.

Also, you can catch up on the happenings in your ADR Section. The Effective Practices Action Team is publishing a compendium of "Effective Practices" from various jurisdictions throughout the country, and the Access Action Team has been hard at work on the development of a business-to-business mediation program that is slated to be launched throughout the state.

Please do join us for what promises to be a most informative and enjoyable Annual Meeting. If you call the Soaring Eagle now, you can secure a room at a reduced rate. We truly look forward to your participation and attendance at our Annual Meeting.

Thoughts and Musings About the Advanced Negotiation and Dispute Resolution Institute (ANDRI) 2005

— by Barbara A. Johannessen

Barbara A. Johannessen is the President of Mediation Specialists, Inc., providing conflict management services to a broad range of clients. She serves on the ADR Section's Executive Committee and on the task force that plans ANDRI.

I have a love-hate relationship with Baskin-Robbins and not for the reason you might expect. I never give a moment's thought to fat content or calories in their product; instead I struggle over too many options. I often feel the same way when reviewing a conference program to determine which sessions to attend. With a national conference, however, I know that most presentations which I am unable to attend -- because I haven't figured out how to be in two places at once - I can review on tape in the privacy of my car or via DVD on my computer.

I confess I never expected to face such significant choice dilemmas at a local conference. However, the ADR Section and the Institute for Continuing Legal Education put my arrogant notions to rest. The partnership that designed and delivered ANDRI 2005 is to be commended for an outstanding program, with varied, thought-provoking topics and presenters.

The ANDRI 2005 program expanded its focus to include the alternative adjudication process of Arbitration. Arbitration has been available as a form of dispute resolution for decades longer than mediation and it is still a primary form of dispute resolution in labor/management, employment, divorce, securities, construction, and other fields. Beginning with the premise that arbitration is not supposed to be a substitute for litigation but rather an adjudication process with its own distinct benefits, participants in the arbitration track, both advocates and arbitrators, learned ways to take arbitration back to its roots. How can we effectively draft arbitration agreements so that parties do not spend time and money battling over whether they must arbitrate? How can we keep the process fair yet cost effective for the parties? Are there techniques for managing the discovery process in arbitration that can create cost and time efficiencies for the parties? And, are there situations in which efforts to vacate an arbitration award are appropriate? Thoughtful consideration of these and other arbitration issues is required to ensure that arbitration remains a respected alternative process to litigation.

I am told that where there are judges there will be lawyers. By incorporating a Judicial Track at ANDRI 2005, ADR enthusiasts had an opportunity to be with the judges. It was fascinating to hear Judges from around the State reveal their expectations of voluntary and ordered ADR and to provide proof that not all great minds think alike. Mediation and other ADR processes have not proven themselves to every judge. Though judges are receiving encouragement from all sides to use ADR, it was clear to ANDRI attendees that judges consider many factors in deciding not only whether, but also when, to refer parties to ADR.

I suspect that many lawyers had the same law school experience as I. There was no negotiation course in the curriculum during my tenure in law school. By incorporating a Negotiation Track into the ANDRI program, advocates within any dispute resolution process had a chance to hone their skills. I had an opportunity to learn what I never learned in kindergarten or law school: how to promote my self-interest constructively so that the opposing party sees the benefit of meeting my needs; how to ensure that another party will recognize the difference between my competitive and cooperative strategies; and how to determine another parties' strategic negotiation signals. I am now better able to ascertain when I am being stroked by another party and when I am being insulted; and I have the tools to respond thoughtfully rather than by knee-jerk. In keeping with concepts of interest-based negotiation, the collaborative law movement was also introduced to ANDRI attendees. While collaborative law is currently making headway in the arena of divorce, it was clear to attendees that other fields of law and conflict could benefit from this dispute resolution model.

Section members Tracy Allen and Paula Manis.

Keynote speaker Bernie Mayer with Section member Zena Zumeta.

I subscribe to the "toolbox" theory of dispute engagement. If I am invited into the dispute of others, I want to bring with me a plethora of tools to assist in identifying, assessing, managing, and/or resolving the dispute. I picture a bright red, three-story, wheeled Craftsman toolbox. My toolbox was greatly expanded by Dr. Bernard Mayer's insights not only as a social scientist but also as an

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The ADR Newsletter

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The ADR Newsletter June, 2005

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www.michbar.org/adrs/home.html.

Musings on ANDRI 2005, continued from page 7

accomplished ADR provider. When so many of our mediated agreements include only procedural or behavioral steps of resolution, it is easy to loose sight of the emotional and cognitive facets of the dispute. Dr. Mayer (a/k/a Bernie) reminded me of our ability, as ADR providers and advocates, to effect not only substantive resolution but also emotional and cognitive change within parties.

Another new concept to appear at ANDRI was the case consultation. As the legal profession pursues mentoring programs for new lawyers, it is satisfying to know that ADR professionals can also engage in peer consultation. Consistent with the model of mediation endorsed by the State Court Administrative Office, ANDRI attendees discovered that case consultation is also a facilitative process designed to assist an ADR provider in reflecting not only upon tools (strategies) used and tools (strategies) discarded, but also on the conflict theories that might explain the effectiveness of one strategy over another. I hope that case consultations become a regular part of the ANDRI experience, whether in private, small, or large group formats.

With so many relevant topics, tracks and presenters, it was especially valuable for an attendee to be free to roam from one track to another. As a general attendee I took advantage of that freedom. The track moderators did not have that freedom which makes me particularly grateful for the service they performed at ANDRI. All attendees owe Tony Braun (negotiation), Judge Lynda Tolen (judicial), Carl VerBeek (arbitration), and Barbara Watry (mediation) a hearty thank-you for their contribution and sacrifice.

I have heard colleagues say that they get their money's worth at a seminar if they walk away with one valuable new skill, practice, or insight. Something they can implement right away. I suspect every ANDRI 2005 attendee got his or her money's worth. As I started my drive home from ANDRI my brain was swirling with at least a dozen valuable "walk-aways". Unfortunately as I pondered the value of programs I chose to attend, I began to wonder about the programs I could not attend. What had I missed and would I ever have a chance to see and hear the other fine programs given by respected colleagues? As you might expect, my euphoria about my ANDRI experience won soon was accompanied by despair about my ANDRI experience lost. Clearly there was only one remedy - I stopped for ice cream.