

The ADR Newsletter

Alternative Dispute Resolution Section of the State Bar of Michigan

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Annual Meeting at Soaring Eagle a Winner

— by Catherine Jacobs

The annual meeting of the ADR Section of the State Bar of Michigan was held at the Soaring Eagle Resort in Mount Pleasant, Michigan, on September 9 and 10, 2004. For the first time, the annual meeting was held as an event separate from the State Bar's annual meeting, and from all indications, it was a success.

The meeting kicked off Thursday evening, September 9, with an open forum discussion of the progress in ADR in Michigan. Approximately 45 individuals attended the session, ranging from ADR service providers to recent law school graduates, court staff, and a practitioner celebrating his 55th year of law practice.

The open forum was facilitated by Mr. Harry Goodheart, the current president of the American College of Civil Trial Mediators (www.acctm.org). Harry's mediation experience is extensive, encompassing more than 2,600



ACCTM President Harry Goodheart facilitated a discussion on the state of ADR in Michigan.

experience promoting ADR in Florida and North and South Carolina.

The business meeting of the ADR Section was held on Friday morning, September 10. Two amendments to the Section by-laws were approved, one raising the Section membership dues, the other to accept into the Section affiliates who are not lawyers. The successful relationship between the Section and ICLE was noted by recognizing those members of the Section Council and representatives from the ICLE who have worked to make that happen. Appreciation was expressed for the service of Stephen C. Bransdorfer and Allyn D. Kantor, whose terms have expired on the Section Council. Section Council members re-elected were Dave Baumhart, "Tony" Braun, Donna Craig, and Susan Hartman.

Elected as new members to the Council are Zenell B. Brown, who is the Dispute Resolution Unit Supervisor for Wayne County's Friend

of the Court; Jonathan L. Moody, a Southfield attorney and mediator who was formerly a policeman; and Richard A. Soble, an attorney and mediator with Soble & Rowe in Ann Arbor.

Chair Deborah Berez presented the "George N. Bashara Chairperson's Award for Exemplary Service to the ADR Section and its Members" to Richard "Tony" Braun, and the "Distinguished Service Award in Recognition of Significant Contributions to the Field of Dispute Resolution" to Amy Glass

"For the first time, the annual meeting was held as an event separate from the State Bar's annual meeting."

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[see article below]. She then passed the gavel to Richard Hurford, who will chair the Section for 2004-2005. The rest of the Executive Committee for 2004-2005 consists of Chair-elect Alan Kanter, Asher Tilchin, Barbara Johannesen, and Deborah Berez.

The event closed with a rousing round of golf, which was won by brand new Section Chair Dick Hurford, providing an excellent start for the upcoming year. ❄️❄️



Deborah Berez ,
ADR Section
Chairperson,
2003-2004.

ADR Section Announces Annual Award Recipients

— by Deborah Berez

Each year the ADR Section issues two awards. The first is the ADR Section's Distinguished Service Award in Recognition of Significant Contributions to the Field of Dispute Resolution. This year the Section recognized someone who was at the forefront of the mediation movement in Michigan, Amy J. Glass, President of Michigan Mediation and Arbitration Services of Kalamazoo.

Amy Glass graduated cum laude from Hope College with a degree in psychology and from Valparaiso University Law School. She was a civil litigator and practiced employment law and ADR for 10 years as a shareholder with Deming Hughey Lewis Allen & Chapman, PC. But Amy realized early in her career that cases settle well or settle painfully—but they usually settle. Yet, once initiated, litigation often took on a life of its own and few (parties, lawyers, judges) seemed able to control the machinery of it. Research and data from the fields of psychology, social sciences and communication, although there for the tapping, seemed to be frequently ignored by earnest, well-meaning professionals in the legal world. But in the mid 80s there was no mechanism for delivering the obvious alternative: mediation.

Carol Gilligan's research, detailed in *Mapping the Moral Domain*, revealed that women lawyers typically respond to the culture and demands of legal practice either by altering their values or leaving the profession. But Gilligan identified a third group who changed the practice of law to bring it in line with their goals and values. Amy Glass determined to be in that third category. She began educating clients, opposing counsel, and colleagues—one person at a time. With corporate clients she emphasized personnel problem prevention and early intervention so that problems were avoided before separation became the only imaginable outcome. With opposing counsel she developed a reputation for pragmatic problem-solving. At each step in the litigation machinery, she evaluated the case for settlement prospects and educated the client about settlement options, timing, strategy, and ranges of settlement authority. In the course of negotiation, she searched for the integrative solution and

regularly asked counterparts what they needed to resolve the matter. Slowly, glacially, a sea change began to change for Amy's practice and in the state of Michigan. In 1995 Amy Glass became a full time neutral.

Today we take for granted the services and availability of Community Dispute Resolution Programs (CDRPs). In 1988, there was no template called CDRP, so Amy's solution, in collaboration with others, was to make one. She worked closely with former Section Council member Carol VanAuken-Haight and other volunteers in Kalamazoo who learned the art of collaborative problem solving by doing it. As a result, the doors opened in 1989 for the Kalamazoo CDRP. This center, as well as several others, served as the basis for CDRP program policies statewide.

Since founding Michigan Mediation and Arbitration Services, Amy's mediation practice has been devoted primarily to civil litigation cases which come to her by private referral or state and federal court appointments. She also serves on numerous private and national neutral panels as well as special designation panels for mediating ADA complaints filed with the U.S. Dept. of Justice and discrimination claims referred by the Mich. Dept. of Civil Rights and the EEOC. Amy also serves as an arbitrator in employment, construction, and commercial disputes. In addition to serving as a neutral, she designs in-house and corporate dispute resolution programs and teaches basic and advanced mediation skills to judges, lawyers and other professionals.

Michigan benefitted from Amy Glass' willingness to serve in a number of important arenas. In 1998-99, she served on the Michigan Supreme Court's Dispute Resolution Task Force, chairing the subcommittee on Program Evaluation, which developed our ADR Court Rules, adopted in 2000. There was tremendous time and effort devoted to thoughtfully considering the interests of all affected groups when developing the ADR court rules. Amy's commitment to collaborative processes helped lead to the artfully crafted set of rules we have today. In



The Executive
Committee (Barbara
Johannesen, Deborah
Berez, Dick Hurford,
Alan Kanter, Asher
Tilchin) present the
Distinguished Service
award to Amy Glass.

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addition, she traveled throughout the state during the year-long comment period, educating lawyers and judges about the proposed rules. Once adopted, Amy then gave significant time and attention to numerous education and implementation projects throughout the state, including serving as lead ADR faculty for the Michigan Judicial Institute in 2000 and 2001.

In addition, during a particularly busy year, largely due to the developing ADR court rules, Amy served as chair of the ADR Section of the State Bar in 1999-2000. She oversaw production of a Michigan Bar Journal issue devoted to ADR and led the Section during a period of prodigious levels of activity.

Amy Glass was instrumental in developing the highly successful Voluntary Facilitative Mediation Program for the U.S. District Court for the Western District of Michigan. She has served as an instructor and mentor for the program since its inception in 1994.

In addition to training mediators and judges, Amy has taught ADR and law courses as an adjunct professor and guest lecturer at Western Michigan University and Hope College. She has published articles in The Michigan Bar Journal, The ADR Newsletter and Callaghan's Michigan Pleading and Practice. Amy has presented at the ABA's Dispute Resolution Section Annual conferences for the last five years and is invited to do so again in 2005. She has been instrumental in program planning for the Annual Advanced Negotiation and Dispute Resolution Institute (ANDRI) sponsored by the ADR Section and ICLE each year.

In 2002, Amy Glass was appointed a Fellow of the Michigan State Bar Foundation, in recognition of professional abilities and contributions to the community.

As ADR professionals, we encourage others to use collaborative problem solving processes. Yet Amy Glass has succeeded in employing such processes when she was a player in solving a problem, not just a neutral assisting other players. All throughout her work, whether developing one of the first CDRPs, creating an ADR program for a federal court, nurturing ADR court rule development and implementation, or leading the ADR Section, Amy Glass has walked our talk. She has much in common with another innovator, the late Elizabeth Kubler-Ross, who influenced Amy's work choices, "calling us to respect our deep need to speak the truth in our relationships with self, others and God—even when it is a difficult truth." Since her first "mediator" job as a unit clerk on the med-surg floor of her local hospital, Amy has consistently been an advocate for collaboration, cooperation and

understanding as the optimal means to recognize and address conflict. She's been to the field of dispute resolution what Kubler-Ross was to hospice—a person who not only "walks the walk" but clears a path so the rest of us can follow.

The ADR Section could find no worthier recipient for its 2004 Distinguished Service Award in Recognition of Significant Contributions to the Field of Dispute Resolution than Amy J. Glass.

The chairperson of the Section each year awards to a council member the George H. Bashara, Jr. Award in Recognition of Exemplary Service to the Section and its members. With the group of really wonderful, committed, energetic people I work with on the council, I could have given out several of these. But if you look at the annual report of the Section, you will notice that of the ten Action Teams listed, there are a couple that took more space to describe than others. In particular, the Section to Section Action Team, the Annual Meeting Action Team and the Access Action Team. Coincidentally, Tony Braun's name appears in all three of those projects. Now, if you know Tony, you are not surprised by the fact that it took more space to describe a project Tony is involved in.

Tony joined the Council in 2002. He took a few months to scope out the Council and the work we're involved in, and then he took the bull by the horns and we haven't been the same.

During Council meetings he interjected comments that clearly demonstrated that he had carefully thought about the subject and provided fresh insight along the way. For example, the Access Action Team had a lofty sounding goal, the kind of objective that can so easily go nowhere because it's so vast in its scope. That is unless Tony takes it on. He connected with David Gruber of DRAM to partner with him in developing a pilot program for developing a system to deliver ADR to low income individuals through local CDRPs.

And, the annual meeting which Tony spearheaded this year speaks for itself. Everyone reported having a great time. But it took a lot of time and effort to put the program together and Tony's efforts were obvious.

It was with a great deal of appreciation for all of his effort this past year that the Section awarded Tony Braun the Chairperson's Award for Exemplary Service. ❄️

“(The committee) had the kind of objective that can so easily go nowhere because it's so vast in scope--that is, unless Tony takes it on.”



The Chair's Award for exemplary service to the section was awarded to Tony Braun.



Outgoing Chair Deborah Berez passed the gavel to Chair-elect Dick Hurford.

New ADR Section Chair Dick Hurford Praises Outgoing Chair Deborah Berez

[Ed. note: The following are the remarks delivered by incoming Section Chair Dick Hurford at the ADR Section annual meeting as he received the gavel from outgoing Section Chair Deborah Berez.]

I have come not to say good-bye to Deb Berez, but to praise her. Deb, the outgoing Chair of the ADR Council of the State Bar of Michigan, has set an extremely high bar for those who will attempt to follow in her footsteps. With incredible organizational skills, a kind heart, and sense of purpose, Deb leaves a legacy for which we all owe a great debt of gratitude.

It will literally take more space than allotted to catalogue all of her significant accomplishments and initiatives. However, even a partial listing is daunting: the establishment of a Listserv for all ADR section members; a most successful ANDRI conference sponsored by the ADR Section and ICLE; a newly revamped Annual Meeting format; amending the Section's bylaws to provide greater efficiencies and access to ADR professionals; mentoring the efforts to extending the reach of ADR to the under represented; creating an initiative with the Community Dispute Resolution Centers; the compilation of a listing of ADR statutes and court rules; and, creating liaisons with ADR Departments of the Law Schools in Michigan. While the list could go on, this partial summary underscores the point.

Deb would no doubt be the first to say, "I did not do all of this on my own," and provide kudos to all the dedicated members of the ADR Council who were so instrumental in bringing her ideas and concepts to fruition. Notwithstanding, these impressive accomplishments would not have been realized without Deb's strong commitment and leadership. The ADR Council cannot thank you enough for all of you have done.

On a personal note, it is with significant trepidation that I dare to follow Deb as the Chair of the ADR Section this upcoming year. I will not be able to duplicate her efforts, organizational skills, and grace. My sole refuge will be the fact that I am blessed with a Council populated by thoughtful and dedicated professionals, including Ms. Berez, who has graciously agreed to serve as an ex-officio member of our Executive Committee during the upcoming year. Even with their able assistance, I fear that I am destined to be remembered, if at all, as that "fellow who followed Deb."

So, Deb, we will not say goodbye, we need your ongoing services and talents far too much at this point. Permit us to merely extend a very warm thank you for all you have accomplished, and all you will yet accomplish. You gave us a great year and laid a most impressive foundation for the efforts that will follow in 2005. ❄️

Non-Attorneys May Now Join ADR Section

At its annual business meeting held on September 10, 2004, the ADR Section approved two amendments to its by-laws. One amendment increases the annual dues for members to \$30 per year, bringing the ADR Section in line with other active Bar sections.

The other amendment permits non-attorneys to join the Section, as affiliates. The State Bar recently amended its own by-laws to make it easier for Bar sections to admit non-attorneys, but few other sections have done this yet. Outgoing Chair Deborah Berez, in support of the amendment, explained that there are mediators and arbitrators in other disciplines besides law, and "we want the benefit of their voice." She predicts that a closer affiliation with the ADR Section would benefit these practitioners as well, and noted that this would be consistent with the Michigan Court Rules on ADR,

which permit non-attorneys to receive court-referred cases for mediation. ADR Section Secretary Asher Tilchin, endorsing the proposed amendment, commented that the idea of exclusivity "is not what we are about."

The amendment was adopted unanimously. Non-attorneys may now join the ADR Section as non-voting affiliates, with the approval of the ADR Section Council, upon payment of annual dues. Affiliates will not be eligible for positions on the Council or Executive Committee but may assist in other Section activities. ❄️

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). Please note that participants must attend

all of the dates listed for each training session in order to complete the 40-hour training. For more information, visit the SCAO web-site at www.courts.michigan.gov/scao/dispute/odr.htm.

General Civil

Training sponsored by The Dispute Resolution Center of Washtenaw County:

Ann Arbor: October 15-17, 22-24

Contact: Kaye Lang at 734-222-3788 - drc@mimmediation.org.

Training sponsored by the Oakland Mediation Center:

Bloomfield Hills: November 30, December 2, 4, 7, 9, 11

Contact: Denise Rugg at 248-338-4280 - deniserugg@ameritech.net.

Training sponsored by Institute for Continuing Legal Education:

Plymouth: November 18-20, December 3-4

Plymouth: February 24-26, March 11-12, 2005

Troy: May 19-21, June 17-18, 2005

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: December 1-3, 6-7

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

Training sponsored by Institute for Continuing Legal Education:

Plymouth: January 25-29, 2005

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



Small Claims Plaintiffs Collect More Through Mediation

Do collection rates differ between mediated and adjudicated cases? A new study of plaintiff collection rates in small claims cases by the Michigan State University Department of Communication reports that 79% of plaintiffs using mediation collected full or partial payment on judgments derived through mediation. In non-mediation cases, 56% of the plaintiffs received full or partial payment. The study was based on a sample size of 600 plaintiffs in five district courts in Kent, Oakland and Isabella Counties, with mediation services provided by three Community Dispute Resolution Program centers in the spring of 2004. Parties voluntarily agreed to mediation, and agreements were reached in 82% of the cases mediated. The study found that the median amount of judgment was nearly identical whether the case was mediated (\$724) or adjudicated (\$698). However, 92% of plaintiffs in non-mediation cases obtained a judgment close to the amount sought,

whereas only 69% of plaintiffs in mediated cases obtained an agreement amount close to the amount sought in their complaint.

Still, plaintiffs received more payments, more quickly, when the judgment was mediated; 52% of plaintiffs in mediation cases received full payment, two-thirds within the first few weeks, whereas only 30% of non-mediation plaintiffs received full payment, and only one-third of that within weeks of the judgment. And, as indicated above, 44% of plaintiffs in non-mediated cases never received any payment, whereas only 21% of plaintiffs in mediated cases received no payment from the defendant.

The full report can be viewed at: <http://courts.michigan.gov/scao/resources/publications/reports/SmallClaimsEvalFinalReport.pdf> ❄️

NASD Seeking Michigan Arbitrators

The National Association of Securities Dealers (NASD) is recruiting Michigan arbitrators for NASD Dispute Resolution, the largest securities dispute resolution forum in the world. Cases involve employment disputes between investors, securities firms, and employees of securities firms, as well as a wide variety of investment disputes involving stocks,

bonds, options, mutual funds and other types of securities. Arbitrators are expected to take up to three days to neutrally arbitrate a case with up to three other arbitrators. There is a nominal payment of \$400 per day for the individual. For more information, contact Mr. Neil McCoy at neil.mccoy@nasd.com. ❄️

Catherine A. Jacobs, a mediator of both general civil and domestic relations cases, is a shareholder with Loomis, Ewert, Parsley, Davis & Gotting, PC, Lansing.

Ask the Neutral

— by Catherine Jacobs

The judges in my area believe in early-stage mediation. Lately, the attorneys, not being able to, or not wanting to, convince the judge to postpone mediation, plead with the mediator that the mediation is too early because there is much discovery to be completed. How does the mediator respond?

I am a strong believer of early-stage mediation. While there is the case which may be set too early, the fact that an attorney is claiming that there is "much" discovery to be completed is a strong indicator that early mediation can be especially useful. The mediator can explain that mediation can assist the parties in agreeing

on what matters will be provided through discovery. This will eliminate numerous hearings over discovery issues. Mediation can also assist the parties in delineating the issues and what is important to them. It will give the parties the opportunity to speak, which may keep the litigation from heating to an unreasonable point. The parties, through facilitated negotiation, can agree on how the case will be run. This is much less stressful and will keep the parties from digging in, which reduces the chances of settling. So, even when one or both attorneys think that early-stage mediation will be a waste of time, in fact it can be very productive. ❄️

Permanency Planning Mediation Effective, Report Concludes

Michigan's State Court Administrative Office (SCAO) launched a pilot project in 1999 to determine whether the use of mediation in contested child abuse and neglect cases would result in expedited permanency outcomes. The project, known as the Permanency Planning Mediation Program (PPMP), made Michigan one of the pioneers in this field. Eight Community Dispute Resolution Program (CDRP) centers around the state were selected to provide the mediation services for the PPMP. In July of this year, SCAO released the final report evaluating this pilot project.

The evaluation examined 207 child protection cases mediated between 1999 and 2001, at seven different sites throughout Michigan. From 1999 through March 31, 2004, a total of 572 child protection cases have been mediated through the program. Both during the evaluation period (1999-2001) and the overall pilot program, over 80% of all cases mediated reached agreement.

The evaluation report affirmed the usefulness and cost-effectiveness of mediation in child protection cases. Some highlights:

- Mediated cases resulted in permanency (i.e., a permanent situation for the child, whether with the birth parents or elsewhere) an average of 12.5 months sooner than in non-mediated cases.
- Of over 100 cases sampled to determine how well parties complied with the mediated agreement, 73% showed full compliance with mediated terms; an additional 20% had partial compliance.
- Mediation satisfaction rates of over 80% were reported by parties in the mediation process. Parties in these mediations included parents, foster parents, other family members, attorneys, FIA caseworkers, family therapists, and other child welfare professionals.
- It appeared that there were cost savings as a result of mediated outcomes. However deriving concrete cost case savings was hampered by the lack of data identifying specific costs associated with the traditional litigation of child abuse and neglect cases.

Although the name "permanency planning"

might imply that mediation would occur only at the time of the permanency planning hearing, or that mediation addressed only permanent placement for the child(ren), in fact mediation occurred at all stages of a child protection case, and the PPMP mediated a variety of issues associated with these cases. While the most frequently-addressed issue was visitation, mediated agreements also addressed decisions about child placement, parental counseling, service plans, and petition and plea language.

Mediators in the PPMP were experienced volunteer CDRP mediators who completed specialized training for mediating child protection cases. Mediators always worked in pairs (co-mediation). The average length of mediation was found to be three hours.

While the formal pilot project has now concluded, permanency planning mediation services will continue to be offered through Community

Dispute Resolution Programs in the following counties: Charlevoix, Gogebic, Ingham, Kalamazoo, Marquette, Sanilac, and Washtenaw. A new service is being initiated in Wayne County. However, with the conclusion of the pilot project, financial support for mediation services is being shifted from federal to local sources. The State Court Administrative Office is encouraging all constituents involved in permanency planning mediation-courts, FIA offices, and CDRP centers-to assess how services can continue with local financial support, and will assist in identifying potential funding sources not only to continue this work through current PPMP centers, but to expand the service to additional jurisdictions.

The full report is available on the Michigan Supreme Court website:

<http://courts.michigan.gov/scao/resources/publications/reports/PPMPEvaluation2004.pdf> ❄❄

Michigan State University College of Law presents the

2004 Midwest Securities Law Institute

A One-Day Course for Practicing Attorneys, Arbitrators and Corporate Counsel

Friday, October 15, 2004 • Michigan State University, Law College Building

Bogue at Shaw Lane, East Lansing, Michigan

Registration 7:30 a.m. • Program 8:30 a.m. - 5:00 p.m.

Join with your colleagues in examining current issues in securities regulation.

Receive updates from the Securities and Exchange Commission,

the National Association of Securities Dealers,

and the State of Michigan Office of Financial and Insurance Services.

Hear from leading experts in securities law about securities arbitration today and tomorrow.

Registration fee is \$125 including lunch and breaks.

Students attend free of charge.

To register, call the MSU College of Law Events Office at 517/432-6975.

Additional information and hotel recommendations are available online

at www.law.msu.edu/securities.

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

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Marx

Friday, November 1, 2004

The Hank Marx Annual Lecture Series
in Dispute Resolution
at the Wayne State University Oakland Center,
12 Mile and Orchard Lake, Farmington Hills,
8:30 am - 11:30 am

Lecture by Phyllis Hanfling, Director of the Office of Dispute Resolution
in the Office of General Council for the US Department of Energy.

Panel Discussion by Dispute Resolution Practitioners from the
Metro Detroit Area immediately following the Lecture.

For more information, to be added to our mailing list, or to RSVP,
please contact us: 313.577.2178, ah5165@wayne.edu,
<http://www.culma.wayne.edu/marx.htm>