Vol 13
No.4
October, 2006

The ADR Newsletter

Alternative Dispute Resolution Section of the State Bar of Michigan

Does "Caucused Mediation" Raise New Ethical Obligations of Candor For Lawyers?

The ABA Weighs In, and One Mediator Considers the Implications for Mediators

by Dale Ann Iverson

INTRODUCTION

On April 21, 2006, the Standing Committee on Ethics and Professional Responsibility of the ABA issued its Formal Opinion 06-439, "Lawyer's Obligation of Truthfulness When Representing a Client in Negotiation: Application in Caucused Mediation." This opinion is based on the ABA Model Rules of Professional Conduct, as amended, August 2003 (referred to herein as "Model Rules"). In summary, the Opinion rejects the contention that a new ethical obligation should be created for lawyer advocates in mediation and affirms that, under ABA Model Rule 4.1:

The Opinion further concludes that the Model Rules do not require a higher standard of truthfulness in any particular negotiation context, including mediation.

> *…in the context of a negotiation, including a caucused mediation, a lawyer representing a client may not make a false statement of material fact to a third person. However, statements regarding a party's negotiating goals or its willingness to compromise, as well as statements that can fairly be characterized as negotiation "puffing," ordinarily are not considered "false statements of material fact" within the meaning of the Model Rules.*

In general, I have a burning curiosity about the ethical obligations of lawyers in negotiation and mediation. It may have something to do with the fact that my biggest ethical blunder as a new attorney was in a negotiation where I found myself in over my head, short on strategies, clueless on the ethics of negotiation, and eager to impress the supervising partner. Spending some time over the last few months teaching law students about ethics, I am impressed with how little time we have to talk about ethics in negotiation and ADR given the compelling demands of preparing students to take the multi-state exam on ethics, which is based on the ABA Model Rules. Most thought provoking for me is to consider whether the Model Rules should say more.

The Model Rules, Negotiation and ADR

Many of the Model Rules address the lawyer's duty of candor and contain proscriptions against dishonesty and misrepresentation. Not all of these, however, are applicable to ADR and negotiation. In fact, the comments to all of these rules clarify that most do NOT apply to ADR processes and negotiation. When all is said and done, if you are a lawyer representing a client in a negotiation, your duty of candor is described at Rule 4.1:

> *Rule 4.1 Truthfulness in Statements to Others.*
> *In the course of representing a client a lawyer shall not knowingly:*
> *(a) make a false statement of material fact or law to a third person.…*

The explicit prohibition for lawyers in negotiation, then, is to avoid false statements of material fact or implicit misrepresentation created by a failure to make truthful statements.

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Dale Ann Iverson is founder of JustMediation PLC and mediates and facilitates a range of private disputes and public policy matters. She is also currently Visiting Professor of Professional Responsibility at the Thomas M. Cooley Law School. Among her current commitments to service, she is a member of the Equal Access Initiative of the Committee on Justice Initiatives of the State Bar. She is the most recent recipient of the Distinguished Service Award from the ADR Section, State Bar of Michigan.

The Model Rules provide additional guidance about negotiation. Comment [2] to Rule 4.1 provides:

> *This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances.* ***Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact****. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. … (Emphasis added).*

The Restatement (Third) of the Law Governing Lawyers Section 98, comment C (2000) distinguishes truthful statements from misstatements of fact or law in this way:

> *Certain statements, such as some statements relating to price or value, are considered nonactionable hyperbole or a reflection of the state of mind of the speaker and not misstatements of fact or law. Whether a statement should be so characterized depends on whether the person to whom the statement is addressed would reasonably regard the statement as one of fact or based on the speaker's knowledge of facts reasonably implied by the statement, or instead regard it as merely an expression of the speaker's state of mind.*

False statements of material fact compelling discipline have included:

- Settling a personal injury case without disclosing that the client had died; or
- Stating to opposing counsel that client's insurance coverage was substantially lower than the documents in his file indicated.

The Opinion emphasizes that a lawyer must ensure that communication about settlement positions does not, even inadvertently, include false factual representations.

Statements that are not considered "fact" in the context of a negotiation include:

- Understatements as to concessions a party would be willing to make to settle a matter; or
- Exaggerated or minimized claims of the strengths or weaknesses of a party's factual or legal position.

While it is clear from Rule 4.1 that it applies to negotiations, we have to look elsewhere in the Model Rules to confirm which rule(s) describe the obligation of candor and truthfulness in mediation and other forms of ADR:

> *Lawyers who represent clients in alternative dispute-resolution processes are governed by the Rules of Professional Conduct. When the dispute-resolution process takes place before a tribunal, as in binding arbitration (see Rule 1.0(m)), the lawyer's duty of candor is governed by Rule 3.3. Otherwise, the lawyer's duty of candor toward both the third-party neutral and the other parties is governed by Rule 4.1. Rule 2.4 [Comment 5]*

The Opinion does point out that the negotiating lawyer could be subject to discipline under other Rules where, for example, statements and conduct in the mediation violate the duty to "make reasonable efforts to expedite litigation consistent with the interests of the client," Model Rule 3.2, or violate the prohibition against using "means that have no substantial purpose other than to embarrass, delay, or burden a third person…." Model Rule 4.4(a).

The Formal Opinion Applies Model Rules to "Caucused Mediation"

In applying the principles of the Model Rules, the Opinion first makes clear what it means by the term "caucused mediation." The Committee contemplates a mediation involving the use of caucus, perhaps exclusively, although the broader discussion of mediation in the Opinion implies that there may be portions of the "caucused mediation" which include all parties.

Second, after considering scholarship on both sides of the issue, the Committee opines that the ethical prohibitions against lawyer misrepresentation apply equally in all settings (with the exception of Rule 3.3 involving candor to tribunals). Parties protected by Rule 4.1 cannot waive those protections, either explicitly or implicitly. Apparently, there is a limit to the latitude of the parties to negotiate the "generally accepted conventions" of their particular negotiation.

The Opinion further concludes that the Model Rules do not require a higher standard of truthfulness in any particular negotiation context, including mediation. The parties are free, however, to agree to a greater degree of truthfulness if this would effectuate the clients' goals. The Committee points out that a failure to do so in this situation could be a violation of Rule 1.1 requiring competence, even if there was not a violation of Rule 4.1.

The Opinion emphasizes that a lawyer must ensure that communication about settlement positions does not, even inadvertently, include false factual representations. For example, while a lawyer would be permitted to state that his defense client "wished" to settle for less, knowing that the client would settle at a higher amount, the lawyer cannot state that the client had disapproved settlement at or above a specific amount when in fact they had not.

In a footnote, the Opinion also makes clear that it is limited to lawyers representing clients in the caucused mediation and does not attempt to address issues presented when a lawyer-mediator makes a

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false or misleading statement of fact. It confirms that a lawyer-mediator is not representing a client and thus not subject to Rule 4.1. The Committee writes that Rule 8.4(c), which prohibits lawyer misconduct involving dishonesty, fraud, deceit or misrepresentation, may apply to the mediator's conduct. It appears that the Committee would not interpret 8.4(c) to be more restrictive on the lawyer-mediator's statements than would application of Rule 4.1.

Should Negotiating Lawyers and Mediators Be Concerned About This Opinion?

One respected commentator, Professor Kimberlee Kovach, has criticized the Opinion on two grounds. First, she contends that the Opinion expressly permits deceit directed at the mediator and other parties in a process that is intended to be a genuinely constructive and collaborative process. Second, she offers that the Opinion puts lawyer-mediators in conflict with their duty to "promote honesty and candor between and among all participants" as set forth in Standard VI, 4 of the Model Standards of Conduct for Mediators. In her comments, published with the Opinion in the electronic newsletter of the ABA's ADR Section, Kovach concludes:

> *With this opinion, mediation loses value as allowing such conduct is a clear impairment to the process. Instead of promoting and allowing mediation to be a true alternative, this has placed the process back within the legal paradigm of adversarial, win-lose conduct. Such an approach is antithetical to the growth and evolution of a genuine alternative approach to dispute resolution and problem solving.*

I am a little less certain than Ms. Kovach of this result. There is no question in my mind that participating in and mediating a dispute where honesty is more the rule than the exception can be nothing short of uplifting. I am also satisfied that there is good empirical research to suggest that deception in negotiation does not produce more advantageous results for anyone. However, before I advocate special ethical provisions for mediation, I have to wonder if it is more appropriate in mediation to invite participants to aspire to higher standards of honesty, and help them work in a way where they can more or less safely gauge how far they can go toward that ideal, together. Parties don't choose with whom they are in conflict. In the current climate of court-connected mediation, parties also do not always choose whether they will mediate. Under these circumstances, I'm reluctant to force more honesty than the Opinion requires.

But, as a mediator, I would like to remember Professor Kovach's comments every time I mediate and continue to explore what I can do to help lawyers negotiate together to move toward the highest standard of truthfulness that can be achieved in their particular mediation, with the particular lawyers and parties involved. How can I best do this?

I am reluctant to replace the attorneys' and parties' judgment with my own as to how they should best relate to one another (as long as their judgment includes acting within the minimum acceptable ethical boundaries of the Model Rules). With that reservation, I think the best thing I can do as their mediator is to do my work in ways that minimize if not eliminate my participation in the "acceptable" deception that some would argue is necessary to good negotiation. James J. White, "Machiavelli and the Bar: Ethical Limitations on Lying in Negotiation," 1980 Am. B. Found. Res. J. 921, 928 (1980) (cited in the Opinion for the proposition that misleading the other side is the essence of negotiation and is all "part of the game"). Some of the ways I can do this include:

"...[T]he best thing I can do as mediator is...minimize... my participation in 'acceptable' deception."

- Decline to use methods like prompting A to move by telling A that, "I think I can get B to" a number when, in fact, B has told me they will move to exactly that but not to reveal this yet.
- Help A and B find ways to signal their willingness to move that reduce deception but don't put them at too substantial or one-sided risk that their movement will not be reciprocated.
- With the permission of the parties and counsel, clarify proposals to increase the chance they are more accurately "read" by each side as either "statements of fact" or, as the Restatement said, "nonactionable hyperbole," minimizing reaction and focusing on moving forward.

The Committee writes that Rule 8.4(c) which prohibits lawyer misconduct involving dishonesty, fraud, deceit or misrepresentation, may apply to the mediator's conduct.

- Explicitly or implicitly negotiate agreed upon "conventions" for honesty in a specific negotiation (mindful that the Model Rules set the "floor"), making these as transparent as possible and working with each party to stay committed to even the most implicit ones. Or, minimally, I can make more transparent the conventions by which each party is operating based on what they have said and how they have acted in the course of a specific mediation. This may prompt the parties to intentionally set new, shared conventions in the course of the mediation.
- Always look for new opportunities to invite lawyers and parties to shape their own negotiation, together, rather than to use me in ways that could run them afoul of Rule 4.1 or me of Rule 8.4(c).

[B]efore I advocate special ethical provisions for mediation, I have to wonder if it is more appropriate in mediation to invite participants to aspire to higher standards of honesty, and help them work…toward that ideal, together.

- Continually evaluate whether I am satisfied that I

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should be part of a particular mediation, and decline to serve where I am reasonably certain an attorney or party will violate Rule 4.1, or withdraw if my efforts to prompt honesty consistent with the minimum required by Rule 4.1 are unsuccessful.

I see these mediation strategies as efforts to "promote honesty and candor" as set forth in the Model Standards of Conduct for Mediators, and as the strategies I feel are most consistent with the goals of the mediation process in the context of court-connected mediation. My goal is to foster the clearest communication possible while also supporting the parties in minimizing the risks of disclosure consistent with the highest ethical standards. I have much to learn, though, and I would be eager to hear others' views on this topic.

Notes and Views

by Robert Tremp

It seems to me there is an opportunity to expand mediation, arbitration, etc., by offering to attend conferences put on by governmental organizations such as the Michigan Association of Counties, Michigan Township Association, the Municipal League, and the Michigan Municipal Risk Management Authority. I suggest a mock facilitative mediation using actual risk management people from local governmental entities. Attendees at these conferences enjoy this type of program.

I have had a fair amount of experience with local governmental entities, and all, or most of them have a risk manager. If it is explained to them that they can attend a session where a well-trained mediator can outline all of the issues which separate the parties, and all of the facts and law that the opposition will use against them in one session, I believe many of them would embrace mediation. Risk managers, through this process, can see for themselves what they are up against. They can evaluate for themselves whether or not they should settle. It gives them a perspective other than what their attorney may be telling them. They can and will evaluate their own case.

In the book review section in the May-July 2006 Dispute Resolution Journal, the book *Mediate, Don't Litigate: Strategies for Successful Mediation* by Peter Lovenheim and Lisa Guerin (Berkeley, 2004) is reviewed. The book provides interview questions for a potential mediator and lists them as follows:

(1) What kind of mediation training have you had?
(2) How long have you been mediating?
How many disputes do you typically mediate in a week, month, year?
(3) What types of disputes do you mediate? Do you have a specialty? Do you have experience in (the subject matter of your dispute)?
(4) Do you mediate full-time? If not, do you hold another position or do other work?
(5) Do you have any personal, family, or business contacts with either party?
(6) How do your mediations typically proceed?
(7) Describe your mediation style.

The last one, "Describe your mediation style," is something that I do in my opening statement. I explain that I will do my level best to get out all of the issues. I then try to have each side present facts and law to support their position. I find this approach lets the parties know what they are up against and gives them a good perspective enroute to evaluating their case.

The review also talks about the "caucus" stage of mediation. In caucus a party can use the mediator as a negotiator to "float a balloon" and to propose "what if" questions. Along this line, I recently had a mediation where counsel for both sides asked to caucus with me alone. They proposed a settlement and asked me if I would try and sell it to each respective client. I did and the case settled.

Another caveat mentioned in the review states, "Making a demand during the opening statement not only risks needlessly annoying the other party, but it also locks you into a settlement demand you may wish to change later."

I routinely try to keep the parties from making a demand in their opening statement. I try the incremental approach and use the "issue" method to get the parties to: (a) agree on the issues; (b) try to resolve the smaller issues; and (c) then bring the parties to the tough issue – usually how much money. I have found, when you make progress on small issues the parties start to have a belief in the process, and also acquire an "investment" in the process. By investment I mean, "Well, we have come this far, let's go all the way and settle."

I would recommend Lovenheim and Geurin's book for serious mediators.

Upcoming Mediation Trainings

General Civil

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

Plymouth: **October 5-7, 27-28**
Plymouth: **February 8-10, 23-24, 2007**
Training sponsored by Institute for Continuing Legal Education
Register online at www.icle.org, or call 1-877-229-4350.

Bloomfield Hills: **October 24, 26, 28, 31, November 2, 4**
Training sponsored by Oakland Mediation Center
Contact: Gina Buckley, 248-338-4280, www.mediation-omc.org

Ann Arbor: **November 3-5, 10-12**
Ann Arbor: **February 12-16, 19-20, 22, 2007**
Training sponsored by Dispute Resolution Center
Contact: Kaye Lang, 734- 222-3745, drc@mimediation.org

Lansing: **March 8-10, 29-30, 2007**
Training sponsored by Dispute Resolution Center of Central Michigan
Contact: Karen Beauregard, 517-485-2274, drccm.beauregard@tds.net

Grand Rapids: **April 2007**
Training sponsored by Dispute Resolution Center of West Michigan
Contact: Jon Wilmot, 616-774-0121, www.drcwmich.org

Domestic Relations Mediation Training

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

Ann Arbor: **December 6-8, 13-14**
Training sponsored by Mediation Training & Consultation Institute
Register online at www.learn2mediate.com or call 1-734-663-1155

Plymouth: **January 23-27, 2007**
Training sponsored by Institute for Continuing Legal Education
Register online at www.icle.org, or call 1-877-229-4350.

Advanced Mediation Training

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

Lansing: **October 13, 8:30 am – 12:30 pm**
"Breaking the Logjam: Apology and Other Impasse Busters," Anne Bachle Fifer & Bob Wright
Training sponsored by Dispute Resolution Center
Contact: Karen Beauregard, 517-485-2274, drccm.beauregard@tds.net

Ann Arbor: **October 15-17**
Adult Guardianship/Family Caregiver Mediation Training
Training sponsored by The Center for Social Gerontology and PeaceTalks Mediation Services
Contact: www.tcsg.org

Bloomfield Hills: **October 24**
"Ethical Issues in Mediation"
Training sponsored by Michigan Council for Family & Divorce Mediation
Contact: Shirley Robertson, (800) 827-4390 drc@mimediation.org

Petoskey: **November 3**
"Mediator Tools" and "The Reflective Practice," Anne Bachle Fifer
Training sponsored by Northern Community Mediation
Contact: Jane Millar, 231-487-1771

Ann Arbor: **January 19, 2007 "Parent-Teen Mediation"**
January 20, 2007 "Kinship Care Mediation"
Trainings sponsored by Dispute Resolution Center
Contact: Kaye Lang, 734- 222-3745, drc@mimediation.org

Bloomfield Hills: **January 26, 2007, 8:30 am – 5:30 pm**
"Advancing Your Mediation Skills," Zena Zumeta
Training sponsored by Oakland Mediation Center
Contact: Gina Buckley, 248-338-4280, www.mediation-omc.org

Community Mediation Training

Grand Rapids: **November 28-30, December 2, 5-7**
Training sponsored by Dispute Resolution Center of West Michigan
Contact: Jon Wilmot, 616-774-0121, www.drcwmich.org

Charlevoix: **January 18-20, 25-27**
Training sponsored by Northern Community Mediation
Contact: Jane Millar, 231-487-1771

Message from the Chair

by Barbara A. Johannessen

I often hear people who attend conferences say, "If I get just one piece of information or insight that I can incorporate into my practice, this conference will pay for itself." At ANDRI 2005 Bernie Mayer presented a plenary session on, "The Heart of Conflict – Understanding the Conflict in the Room." In his presentation he explained that conflicts contain three facets: substance, identity, and relationship. We are all very familiar with the substantive parts of a conflict and naturally spend much of our time in negotiation and mediation addressing the substantive issues for the parties. We spend less time typically on issues of identity and relationship that the conflict presents. The allocation of our time to substantive matters is justified in part because agreements we reach are behavioral in nature. That is, parties agree to do something or refrain from doing something; they do not agree to change their fundamental beliefs about another person or about themselves. Mr. Mayer's comments resonated with me at the time and in mediations since then I have tried to be conscious of all three elements that are contributing to the conflict and its resolution. A recent trip to a conference out of town highlighted these elements dramatically for me.

The Transformative Mediation Conference was recently held in St. Paul, Minnesota. Though the conference was only 2 days, the new Transportation Safety Administration rules regarding carry-on luggage required that I check my bag. I had booked my flight before the new rules went into effect and I had booked a non-direct flight. Naturally, my first thought when I was required to check my bag was "what if the airlines loses my bag?" My bag arrived with me in St. Paul; however, another traveler in the shuttle to the hotel had not been so fortunate. As I eavesdropped on her phone call with the airline, Mr. Mayer's comments engaged my mind.

As the traveler explored her options for reconnecting with her lost bag, it was clear she was shocked by the limits of options proposed by the airline and by the airline's shifting of responsibilities from itself to her. Those on the shuttle heard her summarize what she understood was the airline's position as follows: "So, you know exactly where my bags are and you expect them to arrive at the airport by 10:00 PM. If I want my bags tonight, I will have to return to the airport terminal sometime after 10:00 PM to retrieve my bags paying the roundtrip shuttle cost of $25.00 and forcing me to miss an awards ceremony this evening in which I am an honoree. Otherwise, you feel it is reasonable to deliver my bags to me at my hotel by sometime late tomorrow afternoon."

I noted that her demeanor was calm and controlled. I wondered whether she chose to remain polite because of her relationship with the airline (they had her between a rock and hard place) or because of her sense of identity (she didn't want to appear to the other travelers on the shuttle as unreasonable or rude) or because she was a skilled mediator hoping to maximize the number and substance of possible options for resolution or because she was simply suffering from traveler's shock. I also wondered how I would behave in the same situation.

I don't know how her story ended but I did have the opportunity to experience a similar situation. My bag was lost on the flight home. I can tell you that at midnight when I discovered the problem my first thought was about identity: How did I want to be perceived by these airline employees who were probably as weary as I was and were definitely no more responsible for my bag's being lost than I. I decided to behave like water off a duck's back—frictionless-- though I suspect the delivery man was a little taken aback the next day when I gave him a big hug in exchange for my suitcase.

For me, examining or considering identity and relationship issues in conflict adds to the richness of the substantive dispute and enables me to more readily tap into feelings of empathy. Thanks Bernie Mayer for giving me a tool that has justified my attendance at ANDRI 2005 many times over.

LOOKING FOR Newsletter Contributors.

The ADR Newsletter is looking for contributions of interest to the members of the Alternative Dispute Resolution Section. Contributions may address legal developments, practice skills, professional issues, new books or resources. They can be written as objective reporting articles or as advocacy pieces. Please contact Newsletter editor Ben Kerner at (313) 965-1920 or benkerner@aol.com.

2006 Annual Meeting and Conference

by Barbara A. Johannessen and Dayna L. Harper

Several years ago, when the State Bar was encouraging Sections to do so, the ADR Section Council decided to hold its annual meeting separate from the SBM Annual Meeting and to include with the meeting substantive, skill-based programming. The ADR Section held its 2006 annual meeting and conference on September 8th-9th at St. John's Conference Center in Plymouth, Michigan. Nearly 70 individuals participated in the skills program and received an update on ADR from the perspective of 4 Judges from southeast Michigan.

The cocktail and networking hour was again generously sponsored by the American Arbitration Association. After dinner, members leaving the Council were recognized for their significant service. These included Zenell Brown, Charlie Clippert, Susan Hartman, Dick Hurford, Dick Soble, Hon. Lynda Tolen, Bob Tremp and Naomi Woloshin. Attendees also heard about the work of the recipients of the Nanci S. Klein Award and the Distinguished Service Award.

The Nanci S. Klein Award recognizes a person or program for contributions to community-based conflict resolution. This year's recipient was the Peer Mediation Partnership of Lansing, a community outreach program of Cooley Law School. Professor Nancy Wonch and

Trainer Anne Smiley annually train 15 law students to provide peer mediation training to students in the Lansing school district. The law students, serving as volunteers, instruct the young people about mediation techniques and constructive conflict resolution. Professor Wonch, Ms. Smiley and the students of Cooley Law School in collaboration with Lansing schools are developing the peacemakers of tomorrow. Congratulations to the Peer Mediation Partnership of Lansing and thank you for the work you do.

The Distinguished Service Award recognizes an individual who has made significant contributions to the broad field of conflict resolution and ADR. This year's recipient was Dale A. Iverson. From her service on the SCAO ADR Task Force that drafted the mediation court rules to her service as Chair of the ADR Section, Dale exemplifies a commitment to utilize collaborative processes to resolve conflict and build consensus. As a trainer and educator, Dale rigorously promotes professional development for everyone in the field and works diligently to make the field of ADR diverse and inclusive. In short, whether as a neutral, a party representative or a party participant, Dale Iverson walks the talk. Her warmth, thoughtfulness, and self-effacing sense of humor were quite apparent as Dale treated annual conference attendees to a look inside her mind. Dale reminded attendees that the work of conflict resolvers is tough. She highly recommends regular and competent professional training for any conflict resolver who wants to stay at the top of his/her game. Congratulations to Dale Iverson and our thanks to Dale for setting a standard of excellence in the field.

To close the evening event, Bob Wright and Mary Bedikian unveiled a power point program entitled *"Mediation: What's In It For Lawyers"*. The power point and an accompanying role play were developed by the Judicial Access Action Team of the ADR Section and will be presented throughout the State at bench/bar meetings and other local judicial and bar organizations.

Alan Kanter ran a short, efficient business meeting at which 10 section members were elected to serve on the Section Council. New council members include Susan Butterwick, Richard Figura, Kevin Hendrick, Paula Manis, Antoinette Raheem, Lawrence Root, Hon. Cynthia Stephens, Christopher Webb, William Weber and Martin Weisman. Council members with renewing terms include Anne Bachle Fifer and Charles Judson. We thank Alan for his contributions to and leadership of the ADR Section Council.

Since I helped design the skills program and draft the talented faculty of Cliff Hendler, Tracy Allen and Barry Goldman, it would be a conflict of interest for me to rave about its quality and success. For a perspective on the skills program see comments by Section Affiliate Dayna L. Harper.

The Skills Training Session

By Dayna L. Harper
(Executive Director, Genesee County CDRC)

The reflection process after a training experience is the same for me whether I am the trainer or the trainee. I ask What Worked?, What Could Have Been Done Differently?, and What about possible Future Action?

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

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

For comments, contributions or letters, please contact:

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

What worked well at the 2006 Annual Conference can be answered in a word – Everything! The Science of Negotiation was a timely and ideal topic. The format of the program enabled participants to experience, one-on-one and in large groups, the principles of negotiation being taught – endowment effect, overconfidence effect, anchoring, competitive v. cooperative, and tit-for-tat to name a few. Our distinguished cast of trainers - Tracy Allen, Barry Goldman and Clifford Hendler were outstanding not only for their individual expertise but also for their ability to work seamlessly as a training team. Where Barry provided the theoretical framework with vivid and often hilarious examples, Tracy and Cliff helped us 'get practical' with insights of mediator techniques to implement in the face of these negotiation realities. Each trainer engaged the audience and deftly fielded audience inquiries. Cliff's closing of the program reminded us that even in the face of the complexities of human nature and negotiation theory, we must Keep It Simple — remembering the elementary school lesson of asking Who, What, When, Where, and Why.

I also appreciated the information the panel of judges shared. Court-ordered mediations are a significant part of our mediation business and it was important to hear how we might better serve our courts. In answer to the question What Could Be Done Differently?, I offer only two comments: More often and More time. This was my third SBM ADR Section Annual Meeting and Conference. As I looked around the room at not only the talented training staff, but also the caliber of the members and attendees, I was in awe. I have seen tremendous changes in the ADR industry in the past 6 six years and I believe this core group of people are the foundation for much of this growth. So, What Future Action? You can bet that I will attend the 2007 Annual Meeting and Conference.

Dale Iverson is presented the ADR Section's Distinguished Service Award by Chair Alan Kanter and Past Chair Amy Glass. *(More inside, p. 7)*