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Ed Pappas, Chair

Mediators play an important role in helping parties resolve their disputes in a civil, respectful and peaceful manner, but not all parties have access to, or the ability to pay for, mediators to help them resolve their disputes. I believe that lawyers have a responsibility to provide services to those who cannot otherwise afford an attorney. In fact, rule 6.1 of the Michigan Rules of Professional conduct specifically provides that:

> A lawyer should render public interest legal services. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means, or to public service or charitable groups or organizations. A lawyer may also discharge this responsibility by services in activities for improving the law, the legal system, or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

In addition to representing people who cannot otherwise afford a lawyer, I believe that lawyers can discharge their pro bono public service responsibility by mediating disputes involving persons of limited means at no fee or a reduced fee. Whether or not Rule 6.1 contemplates mediation services, the personal satisfaction of helping persons of limited means resolve their disputes is worthy of your consideration. And for mediators who are looking for mediation experience, this is an excellent means of achieving that experience.

There are many ways to volunteer to mediate pro bono matters, but I would like to recommend two of them. First, volunteer at Michigan's Community Dispute Resolution Centers ("CDRCs"). CDRCs need your support! For more than 30 years, CDRCs have relied on volunteer mediators to make mediation accessible to Michigan residents in all 83 counties, regardless of income.

The model created by the Community Dispute Resolution Act requires volunteer mediators. The CDRCs have advocated for increased usage and types of disputes handled outside or in conjunction with the traditional legal system, including behavioral mental health, special education, agriculture, child protection, small claims, neighborhood disputes, probate, and domestic issues. CDRCs spend countless hours promoting mediation to courts, organizations, and the community to build awareness of mediation. As the number of mediations increases, so does the need for volunteer mediators and the business opportunities for private mediators.

Help your local CDRC help you to help the community. The goal of CDRCs is to provide a positive experience for the mediator and mediating parties. CDRCs do the leg work of matching volunteer mediators to cases, scheduling, gathering summaries, and sending required court reports. Volunteer mediators use their time and expertise to help the community and in turn gain valuable mediation experience. Volunteer mediators choose the type of cases they mediate and choose when and how often they mediate. If you do not volunteer yet, consider volunteering for your local CDRC.

My second recommendation is to volunteer to mediate for legal aid organizations whose lawyers represent persons of limited means throughout the State of Michigan. At this time, Michigan's Justice for All Commission and other stakeholders, including legal aid organizations, are exploring opportunities for pilot projects to help in uncontested debt collection matters. Volunteer mediators will be asked to assist in this effort to resolve debt collection disputes involving individuals living in poverty.

No matter how or where you volunteer, please consider volunteering your services as a mediator to help those in need. You will find your experience to be extremely rewarding.

Rethinking Party Safety in Online Mediation

By Dee Williams, Research Associate

The following is a summary of an article that Dee Williams prepared for Resolution Systems Institute.

The COVID-19 pandemic has led to online mediation becoming far more common in family cases than it was previously. This shift from in-person to video mediation has both benefits and potential pitfalls when it comes to participant safety, as discussed in a recent article by Erin R. Archerd.

In her Winter 2022 Stetson Law Review article, "Online Mediation and the Opportunity to Rethink Safety in Mediation," Archerd describes some of the security benefits and challenges of mediating online, recommends steps mediators can take to enhance party security in online mediation, and calls for a more expansive conception of safety for mediations in general.

Some observers argue that online mediation can be safer than mediating in person because of the physical distance between the parties. Archerd acknowledges this benefit, but also sees a downside. She notes that when mediating in person, a mediator can personally ensure that the room has safe exit routes for all parties in case of a confrontation and that the mediation is not observed or interrupted by an unauthorized party. Such assurances are more difficult online. Additionally, Archerd states that interacting via camera also entails the loss of some of the nonverbal cues that mediators might normally use to assess parties' senses of safety. To make up for this, she suggests that — once screening for impediments has been completed and the mediator and parties decide to go forward with mediation — mediators hold private pre-mediation sessions with each party. During such a meeting, the mediator can go over the security of the parties' mediation locations, make sure they will be in a safe and appropriately private environment during the mediation, and establish ways to communicate if the party is being watched or intimidated from off-screen. Mediators can do something similar on the day of mediation by holding a private session with each party prior to joint session to ask them to describe their space and ask whether they feel they can safely complete the mediation process.

Maintaining confidentiality in an online mediation also requires more work, since mediators are not able to monitor all aspects of the space in the same way. Archerd recommends that mediation agreements make it clear that unauthorized parties should not be present at the mediation. In addition, mediators should communicate with parties in advance about how to ensure privacy in their mediation locations. At the start of the mediation session, mediators should confirm with parties that they are not recording and that no unacknowledged parties are present. Another aspect of safety is the long-term well-being of participants: Mediators conducting mediations online need to be sure they are well connected to "wraparound services" such as domestic violence or special education resources.

A Litigator's Guide to Mediation Advocacy:

Reflections on Effectively Achieving Client Goals at the Mediation Table

By Sheldon J. Stark, Mediator and Arbitrator

Part II

This is the second part of a two-part article. Part I focused on the fundamental differences between the mediation process and other stages in the litigation process necessitating a different approach to advocacy in order to be most effective.

Search for Common Ground

No matter how deep their differences, no matter how entrenched in their positions, no matter how escalated their emotions, parties often share common ground, areas of agreement overlooked or drowned out by the dispute. Before the termination, for example, the former employee may have loved working for the company; and the company may well have valued the employee's service. The two businesses now litigating the quality of machine parts were always satisfied with price and delivery in the past. The CEOs of each enterprise, in charge of businesses founded by their grandfathers, have more in common than they might have thought. When the founding partners first came together to establish the enterprise now imploding, they enjoyed each other's company and respected one another's ability.

Identifying common ground is sometimes a revelation to the parties and often serves to build trust and establish momentum toward future agreements and resolution.

Prepare an Offer/Concession Strategy in Advance

The best negotiators are strategic. They develop an offer/concession approach with their clients long before they reach the mediation table, a strategy which anticipates each move and countermove likely to occur round after round until settlement is reached. Strategic advocates plan out the negotiation in their head, anticipating how each offer will be received, predicting the other side's response, and carefully working the negotiation through step-by-step until their settlement goal is achieved. Fortified with a plan, they are not buffeted by emotions in the moment and at the table by misbehavior or overly aggressive advocacy from their opponent. A well-conceived plan smooths out an otherwise emotional roller coaster ride. They have a plan and they implement their plan, ignoring distractions. Strategic negotiators generally get what they're after. Regrettably, strategic negotiators are rare. Too many advocates limit their planning to an opening number and a bottom line, relying on their gut instinct and experience for all the moves in between. Some advocates do not prepare even that much. Seat-of-the-pants negotiation may work in some cases, but it is not a strategy to maximize results over time.

An offer/concession strategy is a prediction. Predictions about the future are fraught with peril. Mistakes will be made. Should unanticipated risks be identified, for example, the value of the claim or defense is impacted accordingly, which, in turn, effects the overall settlement value of the dispute. Accordingly, strategic negotiators must also be flexible. Adjustments in the strategy may be necessary.

In any event, with an offer/concession strategy, party expectations are better managed, and the negotiator retains tighter control of the process. Clients are less frustrated, less likely to become discouraged, and less likely to grow impatient. Parties who are frustrated, angry or impatient are more likely to make mistakes, offering too much, leaving money on the table, or giving up too soon. With an offer/concession strategy, even disappointing moves are anticipated in advance and planned for. By focusing on process, both parties remain in the negotiation. The danger of one party or the other withdrawing is diminished. Indeed, by developing an offer/concession strategy, counsel reduces the risk of error and reading or sending the wrong signal.

If the strategy fails to bring the parties within the settlement "landing zone", it could be a sign that one or both parties are not ready to settle; or someone's evaluation is in error. In either case, counsel can learn a great deal from failure. It could be that one side or the other has underestimated the risks and a fresh assessment is necessary. It could be the problem can be resolved by a little additional discovery – the parties disagree, for example, about how a witness will testify. If so, the mediation can be adjourned until the witness is deposed. Perhaps the parties weren't as ready for mediation as initially thought. The top or bottom line a party brings to the mediation table is the end product of a careful calculation as to risks, a weighing of strengths and weaknesses, an assessment of the judge, the legal foundation of claims and defenses, economic and non-economic loss, the potential jury pool, the state of the law, and more. If participants are paying attention to the information exchanged during the mediation process, their final evaluation *should* change to incorporate the fresh insights learned.

Have a rationale for each proposal or counterproposal

Effective negotiators combine their dollar proposals with a rationale or explanation, so the other side doesn't conclude the offer is totally arbitrary. In an employment case, for example, how much is allocated for lost wages to date minus interim earnings? Is there money allocated for future lost wages, emotional distress, and attorney fees? Have the numbers been reduced to present value? What interest rate was used? If a party is claiming lost profits, how are they measured and what assumptions are they based upon? Unexplained numbers typically irritate the recipient and lead to counterproposals that are generally unproductive, resulting in equal consternation on the other side and a poisoned negotiation atmosphere. Unexplained numbers are rarely productive. By contrast, a rationale generally leads to a robust and constructive discussion of the assumptions and bases rather than simply complaints about the numbers themselves.

Whatever the explanation for a proposal, any settlement number communicated will be the loudest message heard by the recipient. Accordingly, I present the rationale for the numbers before presenting the numbers themselves. Once the number is presented, parties may stop listening. Because I *want* the participants to understand where the number came from, how it was derived, and what the offeror was thinking, it only makes sense to save the numbers for last.

Make Use of the Mediator

Mediators *want* to assist the parties in making good judgments about settlement. Typically, they are the only participant in the process who will have been in both rooms with exposure to how litigants are participating. There are many issues about which a mediator might be helpful:

1. Can the mediator share the temperature, mood and thinking in the other room?
2. Will the mediator serve as a negotiation coach? Ask for suggestions in formulating the most effective proposals to communicate.
3. Use the mediator as a "sounding board". Run your questions, concerns and proposals by the mediator for input.
4. Ask if the mediator can share what seems to be causing the most consternation "next door" and how to move forward.
5. What is the mediator's reaction to the rationale employed to justify each proposal?
6. If the mediator has trial or subject matter expertise, seek input as to risk and the magnitude of risk.
7. As the negotiation process moves forward, request input as to where the negotiation might be leading.

Consider Remedies Not Available through the Litigation Process

In litigation, judicial remedies are confined to money damages and limited equitable relief from an often-reluctant judge. In mediation, as in any negotiation, by contrast, the only limit on proposed settlement terms is the creativity of the participants. By considering the underlying needs and interests of each party, i.e., recognizing what may be driving the dispute, participants may be able to expand the pie with proposals unavailable through litigation. For example, mediation may result in a business solution where the parties continue to work together. No judge could order that. In a dispute between a franchisee and a franchisor, modification of oppressive enterprise rules can result in a WIN/WIN success for both parties. In an employment case, a plaintiff claiming wrongful discharge may be offered conversion of an otherwise black mark on their resume ("termination for

cause") with a negotiated resignation or letter of recommendation in its place. Disputes made public in the media can be settled by drafting a joint press release that gives each side cover. Settlement agreements can include non-disparagement clauses, confidentiality, and cooperation in future litigation.

Learn From the Process

Many mediators describe the exchange of information during the mediation process as a "learning conversation." If the dispute does not resolve itself, participants have learned something new or better understand something known in a new light. As noted *supra* when parties are truly listening, the numbers they've brought to the table – their top and bottom lines - should change. In the relatively rare event that mediation does not result in resolution, the parties are better equipped to prosecute and defend their claims and perspectives going forward.

Prepare Clients for the Process

Parties are the ultimate decision-makers. As full participants at the mediation table, they should understand the mediation process inside and out. That requires a good deal of advance preparation and party education. How does the process work? How does this mediator do things? What is the mediator's role?[1] How should the party act? When should they speak up? Should they prepare opening remarks? What is expected of them? What can they expect from the other side? What can they say and what should they not say?

If parties are to make the most of the opportunity to learn, and to exercise good judgment unclouded by emotions and distractions, they must be ready. Some of the topics that should be covered include:

1. If a party is going to make opening remarks in a joint session, they should know well in advance so they can prepare their comments accordingly. Counsel should work with their clients well before the day of mediation to "preview" party presentations for content, format, and tone. Advocates should not be afraid to critique presentations honestly and constructively to be most effective.
2. Patience is a virtue. No two parties negotiate at the same pace or in the same way. Opening offers and counteroffers do not necessarily reflect where the mediation will end up.[2] Experienced negotiators on the other side may well take advantage should they get the impression that someone is losing their resolve.
3. One of my favorite quotes: "Expectations are resentments under construction." Parties unaccustomed to negotiating the resolution of law suits may not be comfortable with the pace of things. It may have taken months or years to create the dispute. It may take all day to remove impediments to resolution. Some participants need more time to make decisions than others. For parties, this may be their only case whose outcome could have profound impact on their lives. They need extra time to make up their minds. That may require many hours of patient waiting.
4. Clients expect their counsel to be zealous advocates. If counsel is observed acting as a joint problem solver who treats the other side respectfully, makes reasonable concessions, and seems to be trying to understand their perspective, parties may fear counsel has lost faith in their claims or defenses. Prudence dictates that parties be given an explanation for the change from zealous advocacy to mediation advocacy.
5. While the word "compromise" has taken on negative connotations in today's world, finding an off ramp from a dispute often requires that each side make sacrifices. In "Getting to Yes," Fisher and Ury taught us the value of interest-based bargaining and the possibility of WIN/WIN resolution. In the mediation of disputes over money damages, however, Winston Churchill's observation still remains apt: the best settlements are those from which both sides walk away equally unhappy. Prudent counsel will, therefore, include preparing clients to be flexible and open minded about resolution.

Conclusion

Savvy litigators and their clients understand that mediation is a unique opportunity to engage in an effective dispute resolution process: a process designed to save time and money, exchange critical information, reduce consternation, limit disruption, manage risk, and achieve mutually beneficial resolution. When parties proceed as joint problem solvers, properly prepared by advocates who appreciate the power of replacing zealous advocacy with mediation advocacy, their underlying needs and interests are met, and their goals and objectives achieved.

Sheldon J. Stark

About the Author

Sheldon J. Stark *offers mediation, arbitration case evaluation and neutral third party investigative services. He is a Distinguished Fellow of the National Academy of Distinguished Neutrals, a Distinguished Fellow with the International Academy of Mediators and an Employment Law Panelist for the American Arbitration Association. He is also a member of the Professional Resolution Experts of Michigan (PREMi). He is past Chair of the council of the Alternative Dispute Resolution Section of the State Bar and formerly chaired the Skills Action Team. Mr. Stark was a distinguished visiting professor at the University of Detroit Mercy School of Law from August 2010 through May 2012, when he stepped down to focus on his ADR practice. Previously, he was employed by ICLE. During that time, the courses department earned six of the Association for Continuing Legal Education's Best Awards for Programs. He remains one of three trainers in ICLE's award-winning 40-hour, hands-on civil mediation training. Before joining ICLE, Mr. Stark was a partner in the law firm of Stark and Gordon from 1977 to 1999, specializing in employment discrimination, wrongful discharge, civil rights, business litigation, and personal injury work. He is a former chairperson of numerous organizations, including the Labor and Employment Law Section of the State Bar of Michigan, the Employment Law and Intentional Tort Subcommittee of the Michigan Supreme Court Model Civil Jury Instruction Committee, the Fund for Equal Justice, and the Employment Law Section of the Association of Trial Lawyers of America, now the American Association for Justice. He is also a former co-chairperson of the Lawyers Committee of the American Civil Liberties Union of Michigan. In addition, Mr. Stark is chairperson of Attorney Discipline Panel #1 in Livingston County and a former hearing referee with the Michigan Department of Civil Rights. He was a faculty member of the Trial Advocacy Skills Workshop at Harvard Law School from 1988 to 2010 and was listed in* "The Best Lawyers in America" *from 1987 until he left the practice of law in 2000. Mr. Stark received the ACLU's Bernard Gottfried Bill of Rights Day Award in 1999, the Distinguished Service Award from the Labor and Employment Law Section of the State Bar of Michigan in 2009, and the Michael Franck Award from the Representative Assembly of the State Bar of Michigan in 2010. In 2015, he received the George Bashara, Jr. Award for Exemplary Service from the ADR Section of the State Bar. He has been listed in* "dbusiness Magazine" *as a Top Lawyer in ADR for 2012, 2013, 2015, 2016, 2017, 2018, 2019 and 2020.*

Endnotes

1 See, for example, https://www.starkmediator.com/articles-links/i-know-what-your-job-is-reframing-the-role-of-mediator/

2 See my paper on what every client should know about the negotiation process. https://www.starkmediator.com/practice-tips/2021/05/03/negotiation-101-what-parties-should-know-about-negotiations-at-the-mediation-table/

The Stories Michigan Personal Injury Lawyers Tell

The role of tangible and intangible interests in resolving personal injury disputes.

By Maria Cudowska

This article builds upon a qualitative empirical study relative to compassionate counselling practices in personal injury disputes in Michigan, with an emphasis on tangible and intangible interests of personal injury clients. The article intends to draw attention to observations made by Michigan Lawyers on account of communication in personal injury disputes.[1]

Maya Angelou once famously said that people will forget what you said and did, but they will never forget how you made them feel. Taking a life of its own and possibly being Angelou's best quote ever, I took the opportunity to reflect on Angelou's timeless wisdom through the perspective of personal injury ("PI") lawyers in Michigan. A personal injury lawyer's perspective is important for two reasons: (1) dealing with repetitive claims may or may not challenge a lawyer's emotional responses and significantly impact the client's perception of the case, and (2) PI cases are mostly settled in the presence of a third-party neutral. Mediators are thus incentivized and assist lawyers in settling PI disputes out of court; such disputes are often the bread and butter of many mediators' practices in Michigan.

Moreover, under the court rules, parties are given numerous opportunities to settle. As of January 1, 2022, courts removed all sanctions associated with rejection of case evaluation award, which has now resulted in many lawyers seeking mediation in lieu of case evaluation, thereby further incentivizing settling out of court.

In my study, given the need for a mediator's assistance in PI cases, I assumed that communication breakdowns must be navigated and managed by the lawyers first. Between gathering medical bills and heated discussions with opposing counsel, PI lawyers are also constantly communicating with their clients and making sure they are up to speed and are being taken care of. Thus, personal injury lawyers have an acute interest in utilizing soft skills in practice, not only for their client's sake, but also for their own mental well-being. One lawyer in the study identified anger as the primary emotion present on the plaintiff side:

> *"…Rarely will emotion come into play on the defense side. You may get somebody how was represented by a lawyer who is being paid by the insurance company that vehemently denies that they are at fault for the accident, and they will be angry about it, so the emotion on the defense side is going to be anger. How could this person ran the red light? How dare they sue me and that type of thing. On the plaintiff side, emotion is all over the place, for the simple reason that you'll get an injured person."*
>
> [Interview, A22].

I talked to 22 lawyers who operated across the state and asked them if they distinguished tangible and intangible interests of their clients and if that made a difference on how they handled their cases. However, what I really wanted to know was whether lawyers demonstrated an advanced level of soft skills such as emotional management and whether there was any evidence of such skills having a positive influence on the relationship with the client. To clarify, tangible interests are more oriented towards monetary considerations and intangible interests are those associated with pain and suffering. Non-monetary considerations reflect on a client's a deeper need such as the need of an apology or other forms of compassionate communication, be it from their own lawyer or opposing counsel.

From the conversations I had it seemed that in most personal injury cases the client's overriding non-monetary interests are wishes to receive recognition or an affirmation that they have been wronged. It seems that pursuing client's intangible goals and interests demonstrates a compassionate practice. Some lawyers in the study believed that perspective taking can have little or no effect on the settlement, while others saw great benefits to active listening and honest communication, which helps manage

expectations and delivers better results for clients.

My reflection began in 2021 when nationalists were storming the United States Capitol in Washington and the pandemic was still in full swing. During the pandemic, lawyers across the state were witnessing changes in personal injury practice and began experiencing shifts in their professional relationships, which impacted settlement negotiations of personal injury disputes. With courts in Michigan operating fully remote, there seemed to be more incentives to some litigants to withhold settlement efforts. Some lawyers were waiting out for their cases to go to trial to get a more favorable outcome, preferably in front of a jury.

However, streamlining those cases was imperative to prevent deadlock and complete paralysis of the judicial system. Mediation and out of court settlement processes helped lawyers and clients reach better and long-lasting agreements in personal injury cases. Therefore, my main goal in this note is to share insights and stories of Michigan lawyers and acknowledge their service to their clients and legal community.

Story #1: "Lawyer's don't share their stories with each other."

Establishing a good channel of communication with your counterparts is essential to a successful resolution of a personal injury dispute. However, I came to learn that some lawyers believe that there is not enough open and honest communication between opposing counsel, and the presence of a "middle man" helps to streamline communication:

> *(…) There was a time when lawyers would call each other, right, and you would talk the other lawyer you would have a relationship with them …I think we're don't talk to each other anymore; they* [the parties] *have to have a middle person and one of the great things that lawyers do has always been to speak to each other for their clients so I think they've lost that a little bit. But facilitation helps because it puts a person in the middle (…),"* [Interview A10].

Story #2: "Lawyer's share stories about how their own bias could have had an impact on their case."

Lawyers shared the their views on bias and its role in settling disputes, which shed some light on the struggles and moral dilemmas PI lawyers' face:

> *(…) but I do suspect sometimes that, and maybe my own inherent systemic bias factors into this. That sometimes if it's an old white lady crying versus a young black man crying, I might have a different reception to the claim (…). I am ashamed to say it, but I wonder sometimes whether I am being objective or if I have some sort of social systemic bias that is impacting my objectivity. I think more people from socioeconomically depressed areas are more likely to engage in insurance fraud because there's a necessity and economic necessity. The history of our country has resulted in more people of color have ended up in more socioeconomically depressed situations. So, then you start to wonder, am I being objective?"* [Interview A9].

Story # 3: "Lawyers' share stories about how clients cannot handle guilt."

What stood out to me was a testimony from a former defense counsel who talked about the nuances present in establishing a successful relationship with clients, and the true meaning of being a counsellor:

> *(…) there are different kinds of relationships, both of them involve trust-building, both of them involve getting to know the clients. But I think one so the one where the insurance company hires me, at least initially, the clients don't have the same stake in the outcome of the litigation because if let's say your insurance company to say it's a wrongful death case. They killed someone in a car accident, and they have a $1 million insurance policy. The insurance company essentially decides whether or not the case get settled. So, from that standpoint, the client a lot of them aren't invested. They go well, you know, whatever the insurance company wants to do, I don't care. So, there was a lot of that, but then there were some who wanted the kind of non-monetary relief about they were sued for causing somebody's death. That was very traumatic to them from a standpoint, I didn't do anything wrong. Why should why should my insurance company pay them a million dollars to settle this case? So, there were those kinds of clients who you really had the handhold because the process of did something wrong, but somebody else gets to decide how it comes out was just very foreign to them. It was an anathema. They didn't know how to deal with that. So, it's a lot of, you know, I mean, if you hearken back to what were called when we graduate from law school, you call it an attorney and a counselor. And really a lot of it if you're any good at [what] counts is the counselling aspect of it. You know, you can tell them*

about the mechanics of a jury trial. You can tell them about the mechanics of litigation, but there's a whole lot more to it than that." [Interview, A5].

Conclusion

Maya Angelou's profound and timeless wisdom rings true to both personal injury lawyers and clients. Personal injury clients wish their harms to be recognized and affirmed and often the best way to achieve such goals is using a third-party neutral.

Though lawyers may, for the sake of their case, move past grievances and set feelings for the opposing counsel aside, clients rarely, if ever, move on and forget how their lawyers made them feel. The stories suggest that the presence of feelings and emotions in legal disputes can make lawyers uncomfortable. As a result, clients may feel misunderstood, unheard and urge their lawyers to resolve the dispute through trial rather than an out-of-court process. There is a need to perform more research in the realm of lawyer client communication as the data can demonstrate where the blind spots are and can help determine new pathways of professional development for PI lawyers, specifically pathways that involve compassionate communication. Just like everything in life, the thing with feelings and clients is that it all about balance. Achieving balance is possible when compassionate communication is present.

Maria Cudowska

About the Author

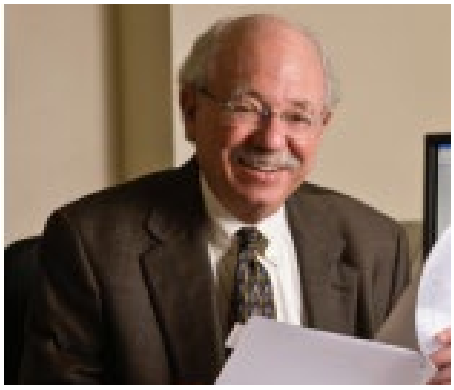
Dr Maria Cudowska, LL.M *is a Polish lawyer and a Fellow at the Institute of Security Policy and Law at Syracuse University College of Law. She is a civil facilitative mediator in the State of Michigan and holds an LL.M degree in the American Legal System from Michigan State University. She also serves on the board of Southeastern Dispute Resolution Services, a Community Dispute Resolution Center based in Jackson Michigan. Dr Cudowska can be reached at mcudowsk@syr.edu*

Endnote

1 The author acknowledges the generous support and sponsorship of the Polish - American Kościuszko Foundation (https://www.thekf.org/kf/) of the project: "Mediation in Action. Personal Injury as a pathway to teaching compassion and ADR in the academia" researched at Michigan State College of Law in January through May 2021 under the supervision of Prof. Mary Bedikian, Prof. Daniel D. Barnhizer and Prof. E. Hartfield to whom I am most grateful for. I am also especially thankful for the kind assistance of the former Chair of the ADR Section of the State Bar, Mrs. Betty Widgeon for her support and time. The semi structured interview protocol was supervised by Prof. John Lande with additional guidance and mentorship from Prof. Donna Shestovsky and Roselle Wissler. I would like to thank and acknowledge the kind assistance of Mr. Marc Stanley, the Director of the Southeastern Dispute Resolution Services in his assistance in the research process, which helped me to understand DR customs and traditions in Michigan better. Also, many thanks to Michigan State Students, Melonie Lumpkin and Stephanie Kane. The contribution is one of a three part series of papers on the subject of compassionate practices in personal injury work, see: "A Compassionate State of Mind: How Michigan Personal Injury Lawyers Think about Non-Monetary Goals and Interests available at: https://journals.umcs.pl/sil/article/view/13042/pdf and forthcoming: "The Language of Compassion. A few lessons from Michigan lawyers on how to communicate compassionately with personal injury clients", International Journal for the Semiotics of Law – Revue international de Sémiotique Juridique.

An Interview with our friend, Sheldon J. Stark, Esquire

By Michael S. Leib and Robert Wright



Shel Stark recently retired—for the fourth time. Not many of us have four professional careers. Yet Shel did, each marked by passion, excellence, and sharing. We recently had the opportunity to speak with Shel about his life and careers. Here is a short (necessarily so given space requirements) look at Shel's fascinating professional journey.

Born in Detroit, his early life journey included stops in Chicago, Flint, and Port Huron. He graduated from Port Huron High School in 1962, the University of Michigan in 1966, and the University of Detroit School of Law in 1973. While in law school, Shel worked full-time during the day for the Goodman Eden Millender and Bedrosian firm- then walked to the Jefferson Avenue law school at night. Being a passionate, astute, and socially active person, he discovered the law could be an instrument for social change and engineering. The Goodman Eden firm was largely a products liability firm but also was deeply involved in social justice cases representing labor, civil rights, and anti-Vietnam War activists. The firm defended the Black Panthers in Detroit; and sued Richard Nixon and Henry Kissinger for illegally spying on anti-war movement people.

In 1973, after the passage of No-Fault Automobile Insurance "reforms", Shel went to Kelman, Loria, Downing, Schneider, & Simpson where he developed an employment law practice. Though offered a partnership there, he left to start his own firm in 1977, eventually partnering with Deborah Gordon to form Stark and Gordon, the premier plaintiff's employment law firm.

As Deborah Gordon, a highly successful and well-known plaintiff's employment lawyer, reminds us, Shel was on the ground floor of employment law development in Michigan. He fought and won many cases which remain good law today. Moreover, Shel was an excellent trial lawyer. He had a gift for talking with clients and defense counsel, many of whom became his good friends. He was (and is) a raconteur and a well-known master of puns.

As a beneficiary of, and witness to Shel's passion, excellence, and sharing, Deb Gordon says: "He showed me how to be a trial lawyer. Every case, no matter the ultimate value was very thoroughly worked up; every brief was extremely well done. His trial prep was extraordinary. He was great in the courtroom and knew how to get the attention of everyone in it. He relished the battles."

Shel was not content to just be an outstanding plaintiff's employment lawyer. While building his sterling reputation as a trial attorney, he was advancing Michigan's employment law practice generally. For example, Shel was instrumental in drafting model civil jury instructions for employment cases which are still in use today. A popular speaker and planner for ICLE, the Institute for Continuing Legal Education, he also planned Michigan Association of Justice seminars-a skill he would broaden in later years. His simultaneous development of his career and sharing of his extensive gifts with the Bar is a life-pattern.

In 1999, he decided to leave private practice to join the staff of ICLE, becoming its Education Director. In 2005, he was named "Specialty Programs Director." In that role, his group earned numerous international CLE awards, planning hundreds of educational seminars and events and created or managed long-running ICLE events including Business Boot Camp, Litigation Bootcamp, the Family Law Institute, the Advanced Negotiation & Dispute Resolution Institute, The Mediators Forum, Deposition Skills, and ICLE's acclaimed Trial Advocacy Skills Workshop held annually in Ann Arbor.

When the Michigan Court Rules were amended to adopt mediation, Attorney Richard Soble suggested to Shel that ICLE take the lead in educating the Bar. Shel didn't hesitate and the prestigious and award-winning 40-hour Mediator Training Program was born in 2001.

Shel left ICLE in 2010, after 11 years. Still not ready to fully retire, he became a Distinguished Visiting Professor for two years at University of Detroit Law School, his alma mater, where he taught the Mediation Clinic, Pre-Trial Litigation, and Advanced Pre-Trial Litigation.

Shel has served as a mediator and arbitrator since 1985,and participated in the professional development of mediators by sharing his skills in ICLE's 40-Hour Mediator Training Program along with Anne Bachle Fifer and Tracy Allen. After leaving ICLE, he became active on the State Bar of Michigan Alternative Dispute Resolution Section Council and helped to develop the Skills Action Team. He has served as the Chairperson of the Section and as Chair of the Skills Action Team, developing programs to help Michigan arbitrators and mediators develop their skills as advocates and professional mediators and arbitrators. That description hardly does justice to his significant contribution to the Section. The authors have had a front row seat witnessing Shel's continuing importance to the Section and sharing of skills and practice tips to Michigan's ADR professionals.

We have watched his many live presentations; Section leadership; and we have read his many written articles. ADR advocates and practitioners would do well to visit Shel's website and download the articles, links, and forms he selflessly offers to all of us at no charge beyond recognition of their source. See, www.starkmediator.com. The availability of significant information to educate the lawyers and parties who engaged his services to get the most out of the mediation process is part of Shel's DNA, sharing and teaching. While there, take a look at his resume, including Memberships and Publications. Then look at the Honors and Awards. Listed among others is his receipt of the Michael Franck Award- "…given annually to an attorney who has made an outstanding contribution to the improvement of the profession." That is an understatement.

When reflecting on his many accomplishments, Shel says he has lived a fulfilled life, beginning with his relationship with Rita, his wife of over 54 years. Like Shel, she was and is a social activist and a true life partner with the brilliance to match Shel's—"and then some!" adds Shel. Rita was a past president of Oakland County National Organization for Women and spent a decade volunteering at the Washtenaw County Jail in a program assisting inmates in identifying and reading great children's literature to their kids.

Shel and Rita have two children and four grandchildren with whom they enjoy spending significant time. Shel says he is relishing a second chance to sharpen his parenting skills with his children and grandchildren and is retiring from mediating and arbitrating in part to spend more time with them. At 78, he also wanted to retire from his near 40-year ADR practice before losing a step.

His careers are marked by giving back. He tells of well-known lawyers who sent him cases early in his career. He is grateful and believes it is his duty to continue to give back. No one who knows Shel's careers and involvement with the Bar including various committees and sections, can doubt he has more than satisfied any duty to give back.

Gratitude continues to be front and center with Shel. He believes gratitude is the secret to a satisfying life. To that end, he keeps a gratitude diary and makes entries every day.

Shel's contributions to the ADR world are enormous. He has published many articles, presented many times, and shared his immense knowledge of mediation and human nature with so many. The authors asked Shel why, given his many publications and insight, he hadn't written a book on mediation practice for mediators and advocates? His answer? Rather than dismiss the idea, he said "I'll think about it". We hope he will do so as a gift to mediators and advocates and it would be required reading. He's now started looking to sign up for a creative writing course.

Those who know Shel, know that he has a wicked sense of humor, and is a master of puns. He is a student of the use of humor, having experienced and observed its use in many years on the board of the Michigan ACLU and as modeled by Benjamin Franklin and Abraham Lincoln. Shel advocates the use of humor in mediation, at appropriate times, to lighten tension and illustrate important points. He has collected numerous quotes, clips, and cartoons he can produce at the drop of a hat.

Although allegedly retiring from an active ADR practice, most of us are certain he will continue to participate in the ADR Section, particularly the Skills Action Team. Like the E.F. Hutton advertisement of recent past, when Shel speaks, everyone listens. But Shel, with his sharp wit, would respond, "When I listen, people talk."

When asked what mediation advocates could do better, Shel has much to say. After all, he is the master teacher. And he knows of what he speaks. Perhaps, his best-practice bullet points are concisely summarized: investing adequate time in preparation, recognizing and weighing the magnitude of risk, developing an offer/concession strategy, understanding the role of the advocate in mediation, assessing needs and interests that drive party positions, appreciating the exchange of information as a "learning opportunity", using joint meetings tactically, understanding the flow of mediation and the mediation process by taking the long view, respecting adversaries, listening, and making full use of the mediator. There is plenty of detail on these subjects in Shel's writings.

No doubt Shel and Rita will be fast walking into the future. After all, they love long hikes. Very long hikes. Such as 96 miles on West Highland Way in Scotland, 200 miles on the Wainwright Coast-to-Coast Trail in England through the Lake District,

and 186 miles in Wales along the Pembrokeshire Coastal Path. Next up: Ireland and the Dingle Way; followed by hiking in Switzerland after a mediator conference in Zurich. One thing is for sure, Rita and Shel will not be sitting still.

Hail Shel and thanks for being such a mensch to those of us fortunate enough to call you our friend.

About the Authors

Michael S. Leib

Michael S. Leib *is a mediator and arbitrator with Leib ADR LLC in Bloomfield Hills, Michigan and specializes in the mediation and arbitration of complex business disputes including bankruptcy disputes, real estate disputes, professional liability disputes, employment disputes, and participated on the Alternative Dispute Resolution Council of the State Bar of Michigan, as well as on the Debtor Creditor Committee of the Business Law Section. He is the chair of the State Bar of Michigan Professionalism and Civility Committee. Mr. Leib is on the Commercial Panel of the American Arbitration Association and member of PREMi, an organization of attorney dispute resolution experts who have numerous years of experience in both conflict resolution processes and subject matter knowledge in many industries and disciplines. He is listed in The Best Lawyers in America and is AV-rated by Martindale-Hubbell. He received his B.A. from Kalamazoo College, his M.M. from the University of Montana, and his J.D. from Wayne State University Law School.*

Bob Wright

Robert "Bob" Wright *is a Michigan ADR pioneer. A perennial Best Lawyer™ and Super Lawyer™, Bob has spent over 40 years serving as a neutral arbitrator, mediator, and representing clients in judicial, arbitration and mediation settings. In 2011, after a quarter century as a commercial litigator with a large Michigan law firm, he left to develop a boutique arbitration and mediation practice, The Peace Talks, PLC, and now serves exclusively as a third-party neutral arbitrator, mediator and mediation trainer.*

Michigan Arbitration and Mediation Case Law Update

By Lee Hornberger, Arbitrator and Mediator

Arbitration

Supreme Court Decisions

Supreme Court reverses COA concerning shortened limitations period.

McMillon v City of Kalamazoo, ___ Mich ___, MSC 162680 (January 11, 2023). Plaintiff applied for job with City of Kalamazoo in 2004. She completed application, but did not get job. In 2005, City contacted her about job as Public Safety Officer, and she was hired. She did not fill out another application. In 2019, Plaintiff sued City, alleging employment issues. City moved for summary disposition, relying on provision in 2004 application that had nine-month limitations period. Circuit Court granted motion. COA affirmed. Supreme Court ordered oral argument to address whether *Timko v Oakwood Custom Coating, Inc*, 244 Mich App 234 (2001), correctly held limitations clauses in employment applications are binding. After hearing oral argument, in lieu of granting leave, Supreme Court reversed that part of COA judgment affirming summary disposition based on shortened nine months limitations period in application and remanded case to Circuit Court. Supreme Court held genuine issue of material fact whether plaintiff had notice of use of 2004 application materials and whether she agreed to be bound by those materials. Justice Welch, concurring, would have ruled on whether *Timko* correctly held limitations clauses are part of binding employment contract.

COA Published Decisions

Circuit Court should stay case instead of dismissal when orders arbitration.

Legacy Custom Builders, Inc v Rogers, ___ Mich App ___, 359213 (Feb 9, 2023). COA held Circuit Court correctly enforced agreement to arbitrate, but should have stayed proceedings pending arbitration. MCL 691.1687; MCR 3.602(C).

COA Unpublished Decisions

COA reverses Circuit Court order not to arbitrate.

Payne-Charley v Team Wellness Ctr, Inc, 361380 (April 13, 2023). Defendant appealed Circuit Court decision employment agreement did not require parties to arbitrate. According to defendant, parties required to resolve dispute in arbitration under terms of employment agreement. COA agreed and reversed.

COA affirms Circuit Court on arbitration waiver issue.

Renu Right, Inc v Shango, 359976 (March 23, 2023). Shango argued he did not have knowledge of his right to arbitration and Circuit Court erred in concluding he waived his right to arbitration. COA disagreed and affirmed Circuit Court not ordering arbitration.

COA affirms confirmation of employment arbitration award.

Waller v Blue Cross Blue Shield of Michigan, 360392 (March 23, 2023). MCL 691.1683(1) states MUAA governs agreements to arbitrate made after July 1, 2013, and MCR 3.602(A) confines court rules to forms of arbitration that are not governed by MUAA.

COA affirms order to arbitrate.

Barada v Am Premium Lubricants, LLC, 359625 (March 23, 2023). Plaintiffs argued defendants waived right to arbitration because they were participating in the litigation. Circuit Court held arbitration clause plainly stated arbitration was exclusive remedy to disputes under contract and there was no carve out for injunctive relief. Plaintiffs appealed. COA affirmed.

COA partially affirms Circuit Court concerning ordering arbitration.

Vascular Management Services of Novi, LLC v EMG Partners, LLC, 360368 (March 9, 2023). Plaintiffs appealed order compelling parties to arbitrate. COA affirmed but remanded for further proceedings regarding arbitrability.

COA affirms Circuit Court confirming award.

Yaffa v Williams, 360732 (March 2, 2023). In disclosure statement, Yaffa represented septic tank and drain field in working order. Later inspection report indicated drainage system not adequately functioning. Inspector suggested further investigation needed. No further inspection occurred. After Williamses took possession, they discovered septic system not operational. Matter submitted to arbitration. Arbitrator found Yaffa fraudulently misrepresented septic system in working order. Arbitrator awarded exemplary damages and costs. Circuit Court confirmed award. COA affirmed.

COA affirms Circuit Court confirming award.

Clancy v Entertainment Managers, LLC, 357990 (February 2, 2023). AAA administered arbitration under Commercial Arbitration Rules expedited proceedings. According to COA, defendant did not explain how it was prejudiced by use of expedited procedures such that award would have been "substantially otherwise" had arbitration been conducted differently. COA affirmed Circuit Court confirmation of award.

COA affirms Circuit Court confirming arbitration award.

Domestic Uniform Rental v Bronson's, 359297 (Jan 19, 2023). Defendants appealed order confirming award. COA affirmed. According to Circuit Court and COA, arbitrator did not make errors of law by enforcing contract terms. COA agreed with appellant that award reflected error of law concerning attorney fee award, but Circuit Court did not err by confirming award because appellants cannot demonstrate substantially different award would have been rendered but for error.

COA holds court case stayed rather than dismissed when case sent to arbitration.

SP v Lakelands Golf and Country Club, 359710 (January 12, 2023). COA affirmed Circuit Court determination hostile work environment allegations subject to arbitration. COA affirmed Circuit Court decision to stay proceedings pending arbitration.

Mediation

Supreme Court Decisions

Supreme Court reverses COA concerning oral agreement.

Rieman v Rieman, ___ Mich ___, MSC 164081 (March 10, 2023). In lieu of granting leave to appeal, Supreme Court reversed that part of COA judgment which found plaintiff's claims barred by statute of frauds. Alleged oral agreement only addressed profits from sale proceeds from real estate transactions, as opposed to creating or transferring interest in real estate. Case remanded for consideration of whether question of fact exists as to whether parties had post-sale oral agreement. Justices Viviano and Zahra would have denied leave, agreeing with COA that statute of frauds barred plaintiff's claim.

COA Published Decisions

COA affirms Circuit Court modification of consent JOD

Brendal v Morris, ___ Mich App ___, 359226 (January 12, 2023). Courts permitted to modify child support orders when changed circumstances demand, even if child support award negotiated as part of consent JOD. Parties agreed to one-time lump-sum child support payment in consent JOD. Before payment made, recipient stopped exercising most of his parenting time. This change of circumstances warranted review of child support award. COA affirmed.

COA Unpublished Decisions

COA reverses Circuit Court not applying consent JOD.

Fox v Sims, 360165 (March 30, 2023). Plaintiff appealed Circuit Court divorce JOD. COA held Circuit Court abused discretion by failing to enter signed consent JOD as written, and instead altering its terms without a sufficient basis.

COA affirms Circuit Court enforcement of settlement agreement.

International Union Security Police & Fire Professionals of Am v Maritas, 359846 (March 16, 2023). Circuit Court determined that lack of plaintiff's signature on agreement was not dispositive because stipulated order was signed by defendant's attorney and order referenced parties had entered into settlement agreement.

COA affirms enforcement of settlement agreement.

McNay v McNay, 361186 (March 2, 2023). Parties married for 24 years before they started divorce action that resulted in consent JOD. "The following issues will be submitted to arbitration in lieu of a Court trial: Content and language disputes regarding the Judgment of Divorce[;] . . . [and a]ny issues inadvertently left unsolved … at mediation." Arbitrator issued opinion regarding JOD. Defendant moved to modify JOD. Circuit Court denied motion. COA affirmed. Ambiguity surrounding how defendant was to pay plaintiff for interest in marital home was within arbitrator's authority.

COA affirms Probate Court enforcement of MSA.

Estate of Terry Broemer, 360571 (February 9, 2023). Appellant did not appear at hearing regarding her objection to a probate mediation MSA. V___ presented argument on behalf of appellant under purported power of attorney. Probate Court found V___ engaging in unauthorized practice of law. Probate Court found objection untimely. Probate Court denied appellant's objection. COA affirmed.

About the Author

Lee Hornberger

Lee Hornberger *is a former Chair of SBM ADR Section, Editor Emeritus of The Michigan Dispute Resolution Journal, former SBM Representative Assembly member, former President of Grand Traverse-Leelanau-Antrim Bar Association, and former Chair of Traverse City Human Rights Commission. He is member of Professional Resolution Experts of Michigan and Diplomate Member of The National Academy of Distinguished Neutrals. He has received Distinguished Service Award and George Bashara Award from ADR Section.*

From the Field

Adding Techniques to Your Mediator Toolbox Effective Closing Techniques

By Sheldon J. Stark, Mediator and Arbitrator

Introduction

We are often selected as mediators because we have the skills needed to assist parties in reaching satisfactory resolution. A common tool is the mediator proposal discussed in a previous From the Field. In this column, you will find five additional closing techniques effective in closing the deal.

"Would You Take If They Would Pay/Would You Pay If They Would Take?

One of my personal favorites, this technique is effective when negotiations continue but have slowed to small, painful increments resulting in hostility and consternation. Where to start depends on the unique dynamics of each mediation. In plaintiff's room, the question is hypothetical: is there a number north of the last defense proposal – a number suggested by the mediator – that would be acceptable. In the defendant's room, the question is whether a specified number south of the plaintiff's last demand would be agreeable if plaintiff would accept it. The number the mediator suggests might require negotiation. For example, if plaintiff asked for $275,000, and defendant countered with $180,000, the mediator might ask, "if I could get them to pay $210,000 would you take it? I have no authority for this but believe they could be persuaded if it would settle the case." The answer is often "yes;" but could be, "No. However, $225,000 would do." Once agreement is reached on the number to communicate – and only with a confidential agreement to accept in hand – the mediator approaches the defense asking if they would pay if plaintiff would accept. If no, is there an alternative number they would pay? I don't represent having money, only that I have a strong belief I can get it. The technique may take as many as two or three rounds. There is no downside or prejudice to the negotiators because the numbers they're hearing come from the mediator, not the other side. If the "hypothetical number" doesn't resolve the case, the parties are protected: In the example above, plaintiff has never gone below $275,000, defendant never above $180,000. By employing hypothetical numbers, the mediator eventually uncovers a number with which both sides can live.

The Lee Jacobson 3-Number Technique

This technique works best when parties refuse to budge but instinct suggests they are reluctant to reveal real numbers. Here's how it works: each side is asked to submit 3 numbers to the mediator simultaneously and on a strictly confidential basis. For plaintiff, the first number is south of their last communicated offer. If paid, the number would be an "acceptable" settlement though nothing to write home about. The second number must be south of the first, but, if paid, acceptable but "disappointing" as a settlement. The third number must be south of the first two and best characterized as a "heart burn" number. Yes, it would settle the case, but plaintiff would be unhappy, experiencing severe heart burn. The defense submits 3 numbers north of their last communicated offer using the same 3 criteria: a barely acceptable resolution, a disappointing resolution, and a heart burn resolution.

The mediator then reviews the 6 numbers on a confidential basis. The technique *only* works with the heart burn numbers. If their heart burn numbers are the same, the dispute settles at the heartburn number. If the numbers overlap – defendant offers more than plaintiff asks – the case settles for the midpoint. If the numbers are 10% apart or less, the case settles for the midpoint. 10% is calculated by adding the two heart burn numbers together and multiplying by 0.1. For example, if plaintiff's heart burn number is $100,000 and defendant's heart burn number is $90,000, the difference is $10,000. $100,000 + $90,000 = $190,000. 0.1 x $190,000 = $19,000. The difference is well within 10%. Accordingly, the case settles at the midpoint, $95,000. If the numbers are 20% or less apart, we continue working: 1) return to bargaining; 2) try negotiating brackets; 3) disclose the

confidential numbers and see if there is something between that would be acceptable; 4) offer a mediator proposal; etc. If the difference exceeds 20%, the mediation is over. Some mediators use 25% rather than 20. I've employed this technique more than 3 dozen times. Its magic has failed only twice!

The Andy Little "Value of Closure" Technique

During the introductory, *ex parte* get-acquainted meeting I hold with each party at the start of a mediation, I always ask for a list of party goals and objectives. "What do you hope to gain," I ask, "from the mediation process today?" Parties usually list "a fair number", "justice", "an apology", or some variation of each. If the party does not use the word, I ask if one of their goals is "closure." "Is there value to you," I ask, "in putting this dispute in the rear view mirror and moving on with your life in a more positive, constructive fashion?" Only rarely has a party said no.

Fast forward to the end of the mediation. If a gap exists between the last demand and counteroffer, I remind the party that when we started they said closure had value. I then say, "We are $15,000 part. I don't believe I can get them to pay another dollar. They tell me this is the end of their authority and I have no basis to believe otherwise. I know it isn't what you hoped. You've made that clear. But their last offer, if accepted, *does* provide closure and closure has value. No one else can tell you the value of closure. Not me. Not your lawyer. Not even your spouse or best friend. Only you know the value of closure *to you.* What is the value of closure? Is it $15,000? If it is, resolution at this number would bring you all the benefits of closure." Depending on the amount in question, this approach settles cases, particularly following discussion of how closure might improve the quality of their lives. "What would it be like if this lawsuit were over, and you could get on with your business/life?"

Paying Both Halves of the Mediator Fee

Mediation can be expensive. Fees can run into the thousands of dollars even where the parties have agreed to split the cost. In mediating employment cases, the employer will sometimes agree to pay both halves of the mediator fee, often just enough to close the gap between a deal and no deal. Payment of mediator fees frequently comes out of a litigation budget, not an operations budget, so decision-makers and settlement criteria may differ. Management representatives often expect to close the case this way. It comes as no surprise when asked. In commercial litigation, there is no such expectation. A request to pay both halves is not taken well.

Charitable Contributions

Sometimes the parties get close only to dig in, unwilling to pay/accept even one more dollar. Mediator Orit Asnin in Israel, finds parties may be persuaded to close a deal by making a contribution to a charitable entity.

Conclusion

Closing techniques come in handy at the end of a long, tough day of bargaining when everyone is tired and grumpy. The more techniques available, the greater the likelihood a path can be found to an acceptable resolution.

This is my last regular column. It has been my pleasure providing these columns. Thanks for your support and interest; and thanks for your friendship and collegiality.


Sheldon J. Stark

About the Author

Sheldon J. Stark *offers mediation, arbitration case evaluation and neutral third party investigative services. He is a Distinguished Fellow of the National Academy of Distinguished Neutrals, a Distinguished Fellow with the International Academy of Mediators and an Employment Law Panelist for the American Arbitration Association. He is also a member of the Professional Resolution Experts of Michigan (PREMi). He is past Chair of the council of the Alternative Dispute Resolution Section of the State Bar and formerly chaired the Skills Action Team. Mr. Stark was a distinguished visiting professor at the University of Detroit Mercy School of Law from August 2010 through May 2012, when he stepped down to focus on his ADR practice. Previously, he was employed by ICLE. During that time, the courses department earned six of the Association for Continuing Legal Education's Best Awards for Programs. He remains one of three trainers in*

ICLE's award-winning 40-hour, hands-on civil mediation training. Before joining ICLE, Mr. Stark was a partner in the law firm of Stark and Gordon from 1977 to 1999, specializing in employment discrimination, wrongful discharge, civil rights, business litigation, and personal injury work. He is a former chairperson of numerous organizations, including the Labor and Employment Law Section of the State Bar of Michigan, the Employment Law and Intentional Tort Subcommittee of the Michigan Supreme Court Model Civil Jury Instruction Committee, the Fund for Equal Justice, and the Employment Law Section of the Association of Trial Lawyers of America, now the American Association for Justice. He is also a former co-chairperson of the Lawyers Committee of the American Civil Liberties Union of Michigan. In addition, Mr. Stark is chairperson of Attorney Discipline Panel #1 in Livingston County and a former hearing referee with the Michigan Department of Civil Rights. He was a faculty member of the Trial Advocacy Skills Workshop at Harvard Law School from 1988 to 2010 and was listed in "The Best Lawyers in America" *from 1987 until he left the practice of law in 2000. Mr. Stark received the ACLU's Bernard Gottfried Bill of Rights Day Award in 1999, the Distinguished Service Award from the Labor and Employment Law Section of the State Bar of Michigan in 2009, and the Michael Franck Award from the Representative Assembly of the State Bar of Michigan in 2010. In 2015, he received the George Bashara, Jr. Award for Exemplary Service from the ADR Section of the State Bar. He has been listed in* "dbusiness Magazine" *as a Top Lawyer in ADR for 2012, 2013, 2015, 2016, 2017, 2018, 2019 and 2020.*

Upcoming Training Dates

The following training programs have been approved by the State Court Administrative Office. The list is updated periodically as new training dates become available. Please contact the training center for further information.

Advanced Mediator Training

Eldercare/Adult Guardianship (16 Hours)
Dates: August 7-10, 2023
Location: Online
Hosted By: Oakland Mediation Center
Registration and Additional Information (Constantcontact.com)

Mediator Wisdom (8 Hours)
Dates: November 2-3, 2023
Location: Online
Hosted By: Oakland Mediation Center
Registration and Additional Information (Constantcontact.com)

40-Hour General Civil Mediator Training

Dates: July 10-12, 17-19, & 24-27, 2023
Location: Online
Hosted By: Oakland Mediation Center
Registration and Additional Information (Constantcontact.com)

Dates: November 6-8, 13-16, & 20-22, 2023
Location: Online
Hosted By: Oakland Mediation Center
Registration and Additional Information (Constantcontact.com)

48-Hour Domestic Relations Mediator Training

Dates: October 3-5, 10-12, 17-19, & 24-26, 2023
Location: Online
Hosted By: Oakland Mediation Center
Registration and Additional Information (Constantcontact.com)

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The ADR Section of the State Bar of Michigan is open to lawyers and other individuals interested in participating. To comply with State Bar of Michigan requirements, lawyer applicants to the ADR Section are called Members and non-lawyer applicants to the ADR Section are called Affiliates. The mission of the Alternative Dispute Resolution Section is to encourage conflict resolution by:

1. Providing training and education for ADR professionals;
2. Giving professionals the tools to empower people in conflict to create optimal resolutions;
3. Promoting diversity and inclusion in the training, development, and selection of ADR providers and encouraging the elimination of discrimination and bias; and,
4. Advancing the use of alternative dispute resolution processes in our courts, government, businesses, and communities.

Membership in the Section is open to all members of the State Bar of Michigan. Affiliate status is open to any individual with an interest in the field of dispute resolution. *(Section membership is free for sitting judges)*

The Section's annual dues of $40.00 entitle you to receive the Section's *Michigan Dispute Resolution Journal*, participate in programming, further the activities of the Section, receive Section announcements, participate in the Section's SBMConnect discussions, and receive documents prepared by and for the ADR Section.

In implementing its vision, the ADR Section is comprised of various Action Teams. You are encouraged to participate in the activities of the Section by joining an Action Team. Information on Action Teams will be forwarded upon processing of this Application.

Note: Dues are due between October 1 and November 30.

APPLICATION TYPE:_____Member_____Sitting Judge_____Affiliate *(Affiliate memberships are subject to Council approval.)*

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Revised 10/2022

Editor's Note Page

The Michigan Dispute Resolution Journal is looking for articles on ADR subjects for future issues. You are invited to send a Word copy of your proposed article to The Michigan Dispute Resolution Journal to Editor, Lisa Okasinski at Lisa@Okasinskilaw.com.

Articles that appear in The Michigan Dispute Resolution Journal do not necessarily reflect the position of the State Bar of Michigan, the ADR Section, or any organization. Their publication does not constitute endorsement of opinions, viewpoints, or legal conclusion that may be expressed.

Publication and editing are at the discretion of the editor. Prior Journals are at http://connect.michbar.org/adr/journal

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ADR Section Member Blog Hyperlinks

The SBM ADR Section website contains a list of blogs concerning alternative dispute resolution topics that have been submitted by members of the Alternative Dispute Resolution Section of the State Bar of Michigan.
The list might not be complete. Neither the State Bar nor the ADR Section necessarily endorse or agree with everything that is in the blogs. The blogs do not contain legal advice from either the State Bar or the ADR Section. If you are a member of the SBM ADR Section and have an ADR theme blog you would like added to this list, you may send it to Editor, Lisa Okasinski @ Lisa@Okasinskilaw.com with the word BLOG and your name in the Subject of the e-mail.

The blog list link is: http://connect.michbar.org/adr/memberblogs

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ADR Section Social Media Links

Here are the links to the ADR Section's Facebook, Instagram and Twitter pages. You can now Like, Tweet, Connect via LinkedIn, Comment, and Share the ADR Section!

- https://www.facebook.com/sbmadrsection
- https://www.instagram.com/sbmadrsection/
- https://twitter.com/SBM_ADR
- https://www.linkedin.com/groups/12083341

ADR Section Homepage

The ADR Section website Homepage is at http://connect.michbar.org/adr/home . The Homepage includes the Section Mission Statement, Who We Are, Why You Should Join the ADR Section, and Let Litigants Know that MEDIATION Really Works. The Homepage also provides access to the Section calendar, events, and ADR Section publications.