



Feature Article:
**Facilitative
 Mediation -
 A Good Idea**
 by Catherine Jacobs

Page 1-3

**The Washtenaw
 County Pilot
 Mediation
 Program: Report
 on a One Year
 Pilot**
 by Sheila M. Johnson
 & Siri Gottlieb

Page 3-5

**Comments From
 The Chair**
 by Jon Kingsepp

**ADR
 Membership
 Form**

Page 6

**Annual Meeting
 Information**

**Upcoming
 Mediation
 Trainings**

Page 7

**Amended Bylaws
 of the ADR Section
 of the State Bar of
 Michigan**

Page 8-12

TheADRNewsletter

Alternative Dispute Resolution Section of the State Bar of Michigan

- Chairperson
JON KINGSEPP
 Bloomfield Hills
- Chairperson-elect
DEBORAH L. BEREZC
 St. Joseph
- Secretary
RICHARD HURFORD
 Taylor
- Treasurer
ASHER TILCHIN
 Farmington Hills
- Council
DAVID BAUMHART, III
 Detroit
- JOSEPH BOURBEAU**
 St. Clair Shores
- STEPHEN BRANDSDORFER**
 Grand Rapids
- RICHARD BRAUN**
 Detroit
- CHARLES CLIPPERT**
 Bloomfield Hills
- MARK J. CRAIG**
 Kalamazoo
- ANNE BACHLE FIFER**
 Grand Rapids
- SUSAN D. HARTMAN**
 Ann Arbor
- R. CRAIG HUPP**
 Detroit
- CATHERINE A. JACOBS**
 Lansing
- BARBARA JOHANNESSEN**
 Rochester Hills
- CHARLES B. JUDSON**
 Traverse City
- ALAN KANTER**
 Bloomfield Hills
- ALLYN D. KANTOR**
 Ann Arbor
- MARICA ROSS**
 Farmington Hills
- ROBERT TREMP**
 Traverse City
- JAMES VLASIC**
 Southfield
- Ex-Officio
HON. JAMES ALEXANDER
 Pontiac
- MARY BEDIKIAN**
 East Lansing
- HARVEY BERMAN**
 Ann Arbor
- MICHAEL COAKLEY**
 Detroit
- LAURENCE CONNOR**
 Ann Arbor
- AMY GLASS**
 Kalamazoo
- DALE IVERSON**
 Grand Rapids
- BENJAMIN KERNER**
 Detroit
- J. PATRICK MARTIN**
 Bloomfield Hills
- MARK McALPINE**
 Bloomfield Hills
- JOEL SCHAVRIEN**
 Southfield

Facilitative¹ Mediation - A Good Idea

— by Catherine Jacobs

As part of my duties as chairperson of the Ingham County Probate Section, I was asked by Ingham County Probate Judge George Economy in November, 2001, if I would put together a committee to adopt an alternative dispute resolution (“ADR”) plan for the Ingham County Probate Court. The members of the committee were incredibly faithful, meeting at 7:30 a.m. for several meetings. The ADR plan under MCR 2.411 was approved by the State Court Administrative Office and was signed by Judge Economy on January 2, 2002.

I am embarrassed to say that, prior to Judge Economy’s request, I had given little thought to the new mediation court rules, MCR 2.411 (general civil) and MCR 3.216 (domestic relations), or to the concept of facilitative mediation. During the committee meetings, I learned that other Ingham County lawyers had taken the required 40-hour training course to qualify as mediators in general civil litigation and they reported that the training was excellent. Kelly K. Reed, a fellow shareholder at Loomis, Ewert, Parsley, Davis & Gotting, P.C., and I immediately started looking for an approved course, and we soon were off to an ICLE program for 40 hours of training to be general civil mediators. We were so impressed with the method that we took a second 40-hour course from Zena Zumeta which qualifies us as mediators in domestic relations matters. Kelly and I became so committed to mediation that we subsequently completed the other requirements of MCR 2.411 and MCR 3.216, and are now approved mediators for general civil as well as domestic relations litigation in several circuits.

All but one of the 30 students in the general civil mediation class were lawyers. The first thing evident was that being a facilitative mediator and

being a lawyer are two separate and distinct callings. Our instructors told us we would have difficulty putting aside the lawyer inclination to impose the resolution we think is best. They were right. However, the skills we have acquired as lawyers to recognize all issues in a matter and to be able to argue either side, in my opinion, are tremendous assets for a facilitative mediator.

Before the end of the first day of the course, I realized that facilitative mediation is not the same as case evaluation in civil litigation cases or evaluative mediation in domestic cases. Facilitative mediation is a process by which a neutral party, the mediator, assists litigants to shape a settlement of issues between them. More importantly, I had become convinced of the benefits of facilitative mediation. By the time I had completed my second 40-hour course, on domestic relations mediation, I knew it was important that lawyers work to make facilitative mediation the standard for ADR.

Lawyers are fearful they will lose revenue or, worse, they will lose control of their client, by encouraging the client to participate in the facilitative mediation process. With regard to the argument that the lawyer will lose fees, it would be interesting to take a head count of the lawyers who have had to cut their fees as the case drags on and on and on. Sound familiar? Further, prior to a client settling his or her case at mediation, the client will need to be made aware of the strengths and weaknesses of the case. Whether their case goes to mediation early or after discovery is completed, clients will want to know about their case and the law in their case before they proceed to mediation. This can be done only after research and assessment by the lawyer. In response to the concern that the lawyer will lose control of the client, the lawyer continues

Continued from Page 1

to participate in the mediation process; however, the client also plays an active role in the mediation, something that does not occur or happens only on a limited basis under other forms of dispute resolution. The increased participation by the client will not cause the lawyer to lose control of his or her client. The client will be looking more to the attorney for guidance because of the client's expected participation.

Clients benefit from the process because the client has had an opportunity to present his or her full case, including those issues which are not monetary issues but are important, and sometimes crucial, to the client and the settlement of the case. The trial procedure seldom gives this opportunity. Clients who do go to court discover that their "day in court" is less than a great experience. Clients really do not want to do their dirty laundry in court. To

the contrary, the thought of having to be in a courtroom and having to testify is repulsive to most of our clients. How many times have you had a client beg to be placed on the stand and cross-examined by opposing counsel? Facilitative mediation allows clients to have their opportunity to present all of the issues important to them, and to do so, not only to a neutral party, but to their opponents. Many times this is the first or only opportunity for the client to do this.

The courts benefit by the easing of the court docket as cases are settled through the mediation process. Under our current system and, in particular, evaluative mediation in domestic cases, the court frequently becomes tangled in litigation over the interpretation of the settlement agreement or the wording of the judgment. The hallmark of facilitative mediation is the fact that the parties actively participate in the process and formulate a settlement of disputes between them. The parties take ownership of the settlement they have crafted together, and the likelihood of disputes over the settlement is greatly reduced. Because the parties have participated and have crafted the agreement together, the parties are inclined to live up to each of their obligations.

In the course taught by Zena Zumeta for domestic relations mediators, one of the course participants was the Honorable Bill Callahan of the Wayne County Circuit Court, Family Division. Judge Callahan took the course because he personally wanted to know more about the process to which he would be directing litigants. We can only imagine the case load and the nature of the cases out of Wayne County — the court we all point to as an

example of where we do not want to be. Judge Callahan wrote to the instructor and the participants after taking the mediation course and expressed this opinion:

During the role-playing sessions, my feelings about the mediation process changed significantly, opening my mind to a new way of bringing people with adverse positions together. By encouraging a cooperative process, a facilitative mediator is more likely to achieve a more satisfactory outcome whereby the participants can feel as if they controlled the outcome as opposed to a third party forcing them into an agreement.

I expect that the facilitative mediation process will become increasingly more popular with both family law practitioners and judges. I also expect that there will be exponential growth in the use of this technique.

. . . The working lives of attorneys will be much less stressful as these methods expand in %popularity. [quoted with permission]

I am enthusiastic about the benefits of facilitative mediation and want to make the practitioners in Michigan aware of this process and to encourage them to use it. Facilitative mediation is a crucial element of the legal system. The infusion of a neutral party to draw the litigants to an agreed-upon settlement of the issues greatly increases the chance of a successful settlement. By a successful settlement, I mean one where the participants each follow through with the agreement they have made. In the areas in which I practice — probate, estate planning, elder law, and domestic —, facilitative mediation will be welcomed and successful.

Facilitative mediation is particularly suited to matters coming before the Probate Court. Issues which arise in the probating of a decedent's estate, administration of a trust, appointment of a guardian and appointment of a conservator, all stem from the personal relationships of individuals. As such, emotions are highly charged in each case. It is exactly this environment where the trained, skilled mediator can offer an incredible service to the legal system. Facilitative mediation can preserve the dignity of the ward in cases involving the appointment of a guardian and/or conservator. In facilitative mediation, the ward is expected to participate and have input into the final agreement regarding appointment of a fiduciary, who the fiduciary will be, and the parameters of the appointment.

In domestic relations mediation, the parents can be brought to the table to work together to reach an agreement on how their children are going to be parented. They can take the time necessary to hear

How many times have you had a client beg to be placed on the stand and cross-examined by opposing counsel?



Catherine A. Jacobs is a shareholder in the firm of Loomis, Ewert, Parsley, Davis & Gotting, P.C., where she maintains a practice in probate, estate planning, elder, adoption, domestic and transportation law, as well as being a court approved mediator in both civil actions and in domestic actions. She graduated from the University of Michigan. Catherine is active in various sections of the State Bar of Michigan. She is a member of the ADR Section Council, a past member of the Probate and Estate Planning Council and a past member of the Judicial and Professional Ethics Committee. She is one of the editors of Trust Administration in Michigan (Catherine A. Jacobs, Robin Ferriby and Elaine M. Cohen eds, ICLE 1999).

Continued from Page 2

what each other is saying in a neutral environment. I would like to see the parents' first face-to-face discussion of how the children are going to be parented happen in an environment where there is no decision-maker to impress. Even in the Friend of the Court conciliation conference, if the parties cannot reach a decision, the conciliator from the Friend of the Court makes a decision and issues an order which is binding until changed by the court. This is not conducive to allowing the parties to get to the heart of the matter - taking care of their children. I would like to see separating and divorcing parents go to facilitative mediation immediately to discuss the children issues and to set some ground rules for behavior during the divorce proceeding; then the parties may go through the discovery process and return for a final mediation of the financial issues.

An example of how mediation can work with children issues is where one parent feels that he or she is doing more than the other. In some counties, the noncustodial parent provides all of the transportation for parenting time. It is easy to see how this would seem unfair to that parent and the resentment from it would carry over into other areas. Mediation may give the custodial parent the opportunity to acknowledge the fact that the other

parent is doing all of the transportation and even to say how helpful it is to the custodial parent. This simple recognition can cause the resentful parent to feel it is unnecessary to "get even" in other areas, and to arrive at the home of the children in a better mood. As lawyers, we frequently see parents doing harm to each other and the children over the slightest things. In mediation the same slightest things can change the entire mood of the negotiations.

A lawyer's duty to his or her client is to assist the client with his or her legal issues. Part of the assistance may be giving the client an option to address legal issues in an environment that is less costly, stressful and disappointing than a trial can be. That process is facilitative mediation. **

¹ I use this adjective intentionally to distinguish this type of mediation from 2.403 case evaluation, and from the evaluative style of mediation where the mediator "leans" on parties to promote a settlement.

I would like to see the parents' first face-to-face discussion of how the children are going to be parented happen in an environment where there is no decision-maker to impress.

The Washtenaw County Pilot Mediation Program: Report on a One Year Pilot

— Sheila M. Johnson, J.D., LL.M. — Siri Gottlieb, J.D., M.S.W.

The Washtenaw Chapter of the Michigan Council of Family and Divorce Mediators (MCFDM) recently completed a one-year pilot mediation program in the Family Division of the Washtenaw County Circuit Court. MCFDM is an interdisciplinary group of professionals who have been trained in family and divorce mediation. The state-wide organization has been in existence since 1982. The Washtenaw chapter was formed in the spring of 2002. The local chapter started out with the Motion Day Mediation Pilot Program as its first project.

The purpose of the Pilot Program was to educate attorneys, the court and the general public about the benefits of mediation in family disputes. The program was conceived of, designed, administered and staffed entirely by volunteer members of the local chapter of MCFDM.

The program began June 6, 2002, and was evaluated after a three-month trial period on August 29, 2002, in order to determine whether to continue through the year. It was clear that we had accomplished our purpose and were so satisfied with the results that we

committed to continue the program through June 29, 2003. It was also clear that some changes had to be made to enhance the effectiveness of the process. There were also many unanticipated benefits of the program. This is how it worked.

Before the program began, we had several meetings with Judge John Kirkendall, who was very enthusiastic and cooperative. The plan was presented to the other family division judges for their input. The steering committee worked out the details and worked closely with the Friend of the Court.

Two mediators, one an attorney and one a mental health professional, were available during Judge Kirkendall's motion call every Thursday morning at 8:30 a.m. to mediate selected motions on the docket. We also provided the opportunity for mediators who had taken a SCAO-approved course in family mediation to observe, co-mediate or conduct mediation while supervised, in order to fulfill the court rule requirements for a qualified mediator. Each mediator handled one case with an observer. Occasionally we had three mediators available.

Continued on Page 4

Continued from Page 3

On the Tuesday afternoon before motion day, volunteer mediators and observers reviewed the judge's motion docket and case files to identify issues likely to be appropriate for mediation. The review of files served as an opportunity to reject cases where there were allegations or evidence of violence or child abuse and neglect. In addition, the FULL-CRUM data base was used to weed out cases containing a personal protection order.

The criteria we used to choose cases were not definitively established before the program started, but we intended to focus on three types of cases:

1. *motions for temporary relief in newly filed cases,*
2. *parenting time issues, and*
3. *post-divorce motions where there had been a long period of no conflict.*

The cases we chose to mediate were flagged so that the Court would know which ones to order to mediation. Prior to motion day the court staff called the attorneys of record to advise them that their cases had been flagged and they should have their clients there to mediate the issues. On motion day the court clerk informed attorneys and parties in pro per, when they checked in, that the judge had ordered them to mediation. The clerk gave the attorneys a handout about the program. The mediators also gave handouts about the pilot program to attorneys and litigants in the courthouse hallway while waiting for a mediation assignment.

After a brief introduction by the mediators, the parties were asked to sign an agreement to mediate. The agreement was carefully crafted to educate the parties about mediation. It guaranteed the confidential and private nature of the mediation. It also advised the parties that the mediator would not report to or make

recommendations to the judge. If any party refused to sign the agreement the session was terminated and the file was returned to the court room. We believe that this policy maintained the voluntary nature of the mediation. Once the agreement was signed, a short session was held with each party separately, to screen for domestic violence that may have been undiscovered by us through the court records. Some mediators chose to do a brief domestic violence screening before the introduction.

During the mediation sessions the facilitative model was used. Mediators were admonished not to counsel the parties or give legal advice. The mediators were also reminded and encouraged to refrain from being directive or evaluative. Attorney mediators often reported that it was difficult to

maintain neutrality. Conversely, the mental health mediators were more tempted to counsel the parties. With experience these challenges were met with increasing proficiency.

In many cases the attorneys remained in the room during the mediation. Some attorneys were comfortable allowing the parties to mediate without them. They remained available for legal advice if necessary and attorneys were always consulted before a written agreement was signed by the parties. As attorneys became more familiar with mediation they became more comfortable allowing their clients to mediate by themselves. In some instances it was necessary to have both lawyers in the mediation room because one of the parties was uncomfortable or intimidated by the other party or the opposing attorney. This served to correct any perceived imbalance of power. There were also occasions where, because of animosity between the parties, we mediated with the attorneys alone.

Parties and their attorneys were given evaluation forms to complete at the conclusion of each mediation session. Evaluation forms were completed regardless of the result of the mediation. They were also given a list of participating mediators. The attorneys and parties then returned to the courtroom, either to put their agreement on the record or to inform the court's clerk when an order would be entered. If the matter at issue was not settled, the parties returned to the court room to argue the original motion and, by agreement with the court, were called in the order in which they had checked in. In this way they were not penalized for participating in mediation.

At the end of the morning the mediators and observers prepared "process notes." A process note is a brief report on the issue involved and the technique used to resolve the issue. It may also include interesting learning experiences. At all times the notes maintained the confidentiality of the parties. No names or detailed facts were given. All reports were read and edited before they were sent to members by email. By sharing the process notes we were able to learn from each other and improve our techniques. It was especially helpful to have experienced mediators to share ideas with and to discover our shortcomings.

A review of our paperwork and evaluations at the end of the program in August provided evidence of our accomplishments. Judge Kirkendall ordered every case we had flagged to mediation. By doing this he allowed us the freedom to administer the program without interference. As we became more comfortable with the program we tended to take the first cases that were ready to start, as opposed to choosing the ones we expected would be easiest to mediate.

After a brief introduction by the mediators, the parties were asked to sign an agreement to mediate. The agreement was carefully crafted to educate the parties about mediation.

Continued from Page 4

Judge Kirkendall had this to say about mediation when asked his perspective of the program:

“Mediation works”

From the judge’s perspective as well as from the divorcing family’s perspective, motion day can be daunting. Numbers of persons are primed to tell “their side of the story.” Imagine arriving in court and receiving the opportunity not only to tell the whole thing but to be listened to as well. Additionally, to be given the chance to develop the solution is a hallmark of mediation.

Advantages:

1. *Families do not have to air everything in open court.*
2. *An aura of trust and cooperation can be started not only between the parties but with the court as well.*
3. *Orders agreed to by parties are more likely to be observed without further enforcement requests made of the court.*
4. *Once parties have learned to deal with difficulties in the manner mediation provides, it is highly likely that future difficulties can be resolved short of returning to court.*
5. *Methods for ongoing communications are learned: critically important when there are young children.”*

The average time for each case was two and one-half hours. Because we made a conscious effort to direct only the process, and to allow the parties to come to their own solution through facilitative methods, the mediations probably took longer than they would have if we had been evaluative and had taken control of the substance as well as the process.

There were 38 motion day sessions during this program. Not all parties or attorneys complied with their agreement to fill out the evaluation forms. From the 75 parties who did give us feedback, we were able to gather some interesting information. Ninety-three per cent (93%) of parties thought the mediation gave them the opportunity to express their point of view and also thought the mediation was fair. More than half of the parties stated they would be likely to use mediation in the future and that they were satisfied with the result. The results were evenly divided on the question of whether the mediation reduced hostility between the parties. Only nine thought that it increased the hostility between them. The parties were also evenly divided on the question of whether the mediation increased their understanding of the other’s point of view.

The feedback from the evaluations was encouraging but, because this was not a scientifically designed study, we cannot extrapolate from these findings.

We are very encouraged by the fact that we accomplished our goals. Litigants, the court and

attorneys are much more familiar with mediation than they were before. The attorneys, especially, showed palpable change in their attitudes toward the program over the course of the year.

It remains to be seen whether or not they will use mediation voluntarily. Some of us suspect that when attorneys were called a day or two before motion day and told they were going to be ordered to mediation, they settled the motion issue. We consider that reaction to be a positive one. Each of us who participated enjoyed the personal feedback we received as well as the effect of the process on the attitudes of the participants, both parties and lawyers.

A positive by-product of the Pilot Program is that several observers fulfilled the Washtenaw County Family Court’s requirements to be on the list of approved mediators.

Another positive response to our program is that the Washtenaw County Office of the Friend of the Court reported to our group that there was a marked decrease in the amount of work in their office on Thursday mornings during the year that we conducted the pilot program. The case evaluator most affected by this change has suggested that she and another case evaluator take over mediating cases on Thursday mornings when our program ends.

The Dispute Resolution Center of Washtenaw County has also expressed an interest in contributing to a continuing program of motion day mediation.

We are most encouraged by the fact that the Family Division judges have recently approved a pilot mediation program proposed by Judge Nancy Francis. Judge Francis’ pilot will invoke court-annexed mediation at the very beginning of every domestic case (except in certain instances). It is Judge Francis’ hope that families will have an opportunity to start the reorganization of their family by communicating with each other through mediation before they become polarized through litigation. This pilot program is set to start on June 9, 2003. Family law practitioners should be on notice that when they file a complaint for divorce in Washtenaw County and the case is assigned to Judge Francis, they will receive an order to mediate with the summons.

At this time we do not know if the program will continue. We are in the process of assessing whether we have the requisite amount of volunteer commitment from our mediators, and what form a continuing program should take. The Washtenaw County Chapter of MCFDM welcomes any suggestions or comments readers may have and is eager to answer any questions other ADR professionals may have. ❁❁

Litigants, the court and attorneys are much more familiar with mediation than they were before.

Comments From the Chair

— by *Jon Kingsepp*



*Jon Kingsepp,
ADR Section
Chairperson*

This is my last article as outgoing Chairperson for the Section. I express my sincere thanks and gratitude for the opportunity of working with a dedicated and ambitious Council. The Executive Committee came through when I called upon them and all in all it was a very enjoyable year.

Next season starts with a new focus and potentially a new executive committee structure. The change is ambitious, well thought out and designed to make the leadership component of the Section more effective and timely in implementing the strategic plan for the organization. Incoming Chair, Deborah Berez, with her leadership qualities and organized talent is a great person to be involved in leading us with this new structure.

The Annual Meeting program will be exciting. Please set aside the afternoon of **September 11, 2003** to attend our program in Lansing, Michigan, during the Annual Meeting. This may be the last program that we have that is in conjunction with the Annual Meetings since the structure of the Michigan State Bar Annual Meeting has changed dramatically. In addition to the program, we will at that time discuss our Section Member Survey results with a view in mind of implementing those results into the strategic plan.

I thank all of you for contributing to a very wonderful and successful year. In my view, it was a team effort. **

Are You Moving?

Are you moving? Has your firm opened a department devoted to providing ADR services? Are you opening a new office with a concentration in ADR? If so, your colleagues ought to know!

The ADR Section Newsletter will publish such notices periodically. They may be sent to co-editors Anne Bachle Fifer at abfifer@i2k.com or Ben Kerner at benkerner@aol.com. **

Join the Michigan State Bar

Alternative Dispute Resolution Section

Enjoy the advantages of membership:

1. Receive the ADR Newsletter and keep abreast of new developments in ADR.
2. Attend ADR Section seminars at a reduced cost.
3. Receive notice of change in laws affecting ADR.
4. Learn about mediation training programs being offered in the state.
5. Receive the optional Membership Certificate, suitable for display, at an additional cost of \$8.

Copy and mail this form to: Alternative Dispute Section
State Bar of Michigan
Michael Franck Building
306 Townsend
Lansing, MI 48933-2083

Name: _____ P# _____

Firm or Organization: _____

Bus. Address: _____

City and Zip _____

My check is enclosed payable to the State Bar of Michigan in the amount of

\$20 \$28 if membership certificate is requested

ADR Section Annual Meeting: September 11, 2003

On **Thursday, September 11, 2003**, the ADR Section of the State Bar of Michigan will hold its annual meeting. The program portion of the Annual Meeting, which will be held from 3:00 p.m. to 5:00 p.m., will be devoted to an exploration of the successes, failures, and limitations of ADR from five different perspectives: the judiciary, the government, business, the defense bar, and the plaintiff's bar.

Obtain insights into what is working, what isn't, and how ADR might be tailored to meet the changing and future needs of these very important consumers of ADR services. This is a discussion you will not want to miss. Following the program, a reception will be held. Please save the date on your calendar.

Upcoming Mediation Trainings

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

For Macomb County Resolution Center contact Craig Pappas at 586-469-4714:

Mt. Clemens: Wednesdays-October 1st and 8th from 6:00 - 10:00 P.M.
Fridays-October 3rd and 10th from 9:00 A.M. - 6:00 P.M.
Saturdays-October 4th and 11th from 9:00 A.M. - 6:00 P.M.

General Civil

Training sponsored by Institute for Continuing Legal Education:

Ann Arbor: September 15-17, October 10-11

Troy: November 20-22, December 5-6

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

Training sponsored by Dispute Resolution Center of Central Michigan:

Lansing: September 3-5, 25-26

Register by e-mail at drcm.register@tds.net, or call 517-485-2274

Genesee Dispute Resolution Center - contact Dayna Harper at 810-249-2519:

Flint: Wednesdays-August 6th and 13th

from 6:00 - 10:00 P.M.

Fridays-August 8th and 15th

from 9:00 A.M. - 6:00 P.M.

Saturdays-August 9th and 16th

from 9:00 A.M. - 6:00 P.M.

Domestic Relations

Training sponsored by Mediation Training and Consultation Institute:

Ann Arbor: August 4-8

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

Advanced Mediation Training

Douglas Noll, "Understanding and Managing Difficult Conflicts," August 14 or 15, all day. Cost: \$275. Location: Heathers Club, Bloomfield Hills.

To register: contact Oakland Mediation Center, www.mediation-omc.org, or call 248-338-4280.

Anne Bachle Fifer, "Advanced Mediator Questions, Quandaries, & Conundrums," August 15, 9 am - 1 pm. Cost: \$95 advance or \$115 at the door. Location: State Bar Building, Lansing.

*To register: contact Lansing Dispute Resolution Center, by e-mail at drcm.register@tds.net, or call 517-485-2274. ****

ADR Selection Council Recommends Amending By-Laws

After considerable discussion, the Council of the ADR Section suggests that it's time to update the structure of the Council and its Executive Committee. Following the development of a Strategic Plan last year, the Council has become involved with a number of new efforts. Several Task Forces have been formed designed to address emerging issues influencing the practice and use of ADR. The Council recommends that amendments be adopted to expand the Executive Council to 5-7 members. Additional

recommendations include changing references to the Annual Meeting of the State Bar of Michigan to refer instead to the Section's Annual Meeting. Further, changes are proposed for the advancement of officers to the position of chair, thereby reducing the number of years an individual must serve as an officer before being elected chairperson. Finally, a provision allowing for notice of meetings via fax and e-mail has been included as well as a provision allowing for attendance at meetings via teleconferencing.

Please note that a more substantive overhaul of the by-laws is contemplated in the upcoming year. For example, it is no longer necessary to provide details regarding the formation of the Section. The amendments currently being proposed are meant to address the above listed issues only.

The changes will be discussed and voted on at the Section's Annual Meeting on September 11, 2003. Please review and plan to attend so your thoughts and ideas may be considered. ❄❄

Amended Bylaws of the Alternative Dispute Resolution Section of the State Bar of Michigan

This Amendment is made pursuant to Article VIII "Amendments", Sections 1 and 2. Upon the petition of the undersigned Section members followed by the consideration and recommendation of the Council followed by 2/3 vote approval of the Section members in attendance at the September 11, 2003 Annual Section Meeting these amended Bylaws become effective on the _____ day of _____, 2003.

resolution and providing its input and recommendations regarding such matters, (d) design and implementation of ADR modules for use in the private and public sectors, (e) promoting the use of alternate dispute resolution procedures by members of the State Bar and the public, and (f) conducting such other activities as are consistent with the goals and purposes of the Section and the State Bar of Michigan.

without payment of dues to the Section, if such written request is made during the first year of said person's membership in the State Bar of Michigan.

SECTION 3. LAW FACULTY. Full-time members of the faculties of law schools and other institutions of higher learning who are not active members of the State Bar of Michigan may become non-voting associate members of the Section upon payment of dues in the amount required of voting members.

SECTION 4. LAW STUDENTS. Law Student members of the State Bar of Michigan may become non-voting members of the Section upon payment of annual dues of \$5.00 each.

ARTICLE I NAME AND PURPOSE

SECTION 1. NAME. This section shall be known as the Alternative Dispute Resolution Section of the State Bar of Michigan.

SECTION 2. PURPOSE. This Section shall concern itself with (a) the study, application and use of alternate dispute resolution procedures including, but not limited to, arbitration, court annexed dispute resolution mechanisms, mediation, conciliation, unique settlement techniques and other methods of resolving disputes outside the courts, (b) educating members of the State Bar of Michigan and the public regarding alternate methods of dispute resolution through a variety of approaches such as sponsoring meetings, institutes and conferences and by preparation and dissemination of pamphlets and brochures with respect thereto, and by publishing legal writings in the field, (c) analysis, consideration and initiation of proposed legislation, court rules or other rules regarding alternate methods of dispute

ARTICLE II MEMBERSHIP

SECTION 1. DUES. Each member of the Section shall pay to the State Bar of Michigan annual dues of Twenty Dollars (\$20.00). Any member of the State Bar of Michigan upon request to the Executive Director and upon payment of dues for the current fiscal year (October 1 - September 30), shall be enrolled as a member of the Section. Thereafter, the annual Section dues shall be paid in advance each year beginning on the 1st day of October next succeeding such enrollment. Members so enrolled and whose dues are so paid shall constitute the voting membership of the Section. Any member of the Section whose annual dues shall be more than six (6) months past due shall automatically cease to be a member of the Section.

SECTION 2. NEW BAR MEMBERS. Newly admitted members of the State Bar of Michigan, upon written request, shall become members of the Section for the balance of the fiscal year in which application is made,

ARTICLE III NOMINATION AND ELECTION OF OFFICERS AND SECTION COUNCIL

SECTION 1. OFFICERS. The officers of this Section shall be the Chairperson, Chairperson-Elect, Secretary and Treasurer. The Chairperson and the Chairperson-Elect shall serve in their respective capacity for only one Committee Year (defined as beginning on the day of the Annual Meeting of the Section and ending at the next Annual Meeting). The Chairperson shall, with Executive Committee approval, select Executive Committee member(s) to perform the duty of Secretary and the duty of Treasurer during each Committee Year.

SECTION 2. SUCCESSION TO CHAIR BY CHAIRPERSON-ELECT. The Chairperson-Elect shall be elected at the same time that Council and Executive Committee members are elected. That person will succeed to the office of Chairperson for the ensuing Committee Year.

SECTION 3. EXECUTIVE COMMITTEE. An Executive Committee shall be elected each Committee Year, which shall consist of no fewer than five (5) or more than seven (7) Section members. The Chairperson and Chairperson-Elect shall comprise two (2) of the five (5) to seven (7) Executive Committee members and remaining members shall be elected from Section membership.

SECTION 4. COMPOSITION OF SECTION COUNCIL. There shall be a 24 - 26 member Section Council consisting of the following persons: Chairperson, Chairperson-Elect, and the other Executive Committee Members (all of whom shall be members of the Section); plus 18 members of the Section, depending upon the number of Executive Committee Members serving in the relevant Committee Year. Additionally, the last retiring Chairperson shall remain a voting member of the Council for one (1) year immediately following the expiration of his or her term as Chairperson and shall be counted for the purposes of determining a quorum. All other former Chairpersons shall be Ex-officio members of the Council. Except for the last retiring Chairperson, former chairpersons shall not be included in determining whether a quorum is present at any meeting, and they shall have no right to vote on matters brought before the Council.

SECTION 5. ELECTIONS. New Council members, the Chairperson-Elect; and the Executive Committee members shall be nominated and elected at each annual meeting of the Section, or if the election does not take place at the annual meeting of the Section, at the next meeting of the Section. It is intended, however, that all such elections shall coincide with the Annual Meeting of the Section, and the provision for elections at other times exists only in the event of some unforeseen event or emergency. The term of office of each person elected shall begin, and the predecessor officer's term shall terminate, at the close of the Section meeting at which they are elected.

SECTION 6. ORGANIZATIONAL MEETING OF MEMBERS. An organizational meeting shall be held on April

27, 1991, at 10:00 a.m., at the State Bar of Michigan Headquarters in Lansing, Michigan at which all persons who are enrolled in the Section on or before April 13, 1991, are eligible to attend and vote. The purpose of this meeting is to elect an interim Council and interim Officers who shall serve until the close of the 1991 Annual Meeting of the State Bar of Michigan. Bylaws shall also be adopted at the organizational meeting. The Board of Commissioners of the State Bar of Michigan has appointed Harvey Berman of Ann Arbor, Michigan as Acting Chairperson of the proposed Alternate Dispute Resolution Section to serve until the first annual meeting of the members of the Section.

SECTION 7. ORGANIZATIONAL MEETING OF COUNCIL. Immediately following the organizational meeting of the members of the Section, an organizational meeting of the interim Council shall be held for the purpose of conducting such other business as shall come before the Council.

SECTION 8. FIRST OFFICER TERMS AND VACANCIES. At the first annual meeting of the Section to be held at the 1991 Annual Meeting of the State Bar of Michigan, six (6) members of the Council shall be nominated and elected to serve for one (1) year, six (6) for two (2) years, and six (6) for three (3) years. "Year," as herein used, means a term beginning at the close of the Annual Meeting of the State Bar of Michigan at which they shall have first been elected and ending at the close of the first, second or third succeeding Annual Meetings of the State Bar of Michigan, respectively. The period between the election at the organizational meeting and the election at the 1991 Annual Meeting of the State Bar of Michigan shall not count for the purpose of calculating any time periods under these Bylaws, including terms of office. At each Annual Meeting thereafter, an election will be held to fill the vacancies arising as a result of the expiration of terms that year. Those elected shall serve for terms of three (3) years beginning at the close of the Annual Meeting of the State Bar of Michigan at which they have been elected or such other meeting at which they may have been elected. The initial position of Acting Chairperson for the period between the organizational meeting and the 1991 Annual Meeting of the State Bar of Michigan shall not be considered when calculating the term of office or membership on Council of said person and shall not prevent said person from being elected to any position or office in the future.

SECTION 9. BEGINNING AND END OF A TERM. Immediately following each Annual Meeting of the Section, each Officer shall assume the position to which he or she has been elected. The term of his or her position shall begin at the close of the Section meeting at which the election takes place, and such term shall end at the close of the Section meeting at which a successor is elected unless a successor is sooner appointed in accordance with these Bylaws.

SECTION 10. LIMITATION ON COUNCIL TERMS. Except as otherwise provided herein, no person shall be eligible for election to the Council if he or she has served without interruption for two (2) full consecutive terms (a total of six years), immediately preceding the term for which the election is held, provided, that if a person is elected as Chairperson-Elect in the last year of eligibility for service on the Council, his or her term as a member of the Council shall be automatically extended for two (2) years. Term limits shall not apply to Executive Committee members who are elected on an annual basis.

SECTION 11. NOMINATIONS. Prior to each annual meeting of the Section, the Chairperson shall appoint a nominating committee of three (3) members of the Section, to make and report nominations to the Section for members of the Council to succeed those whose terms will expire, and to fill vacancies then existing for unexpired terms and Executive Committee Members. Other nominations for the Council may be made from the floor.

SECTION 12. ELECTIONS. All Elections may be by written ballot or show of hands of those in attendance at a meeting unless otherwise ordered by resolution duly adopted by the Section at the Annual Meeting at which the election is held.

SECTION 13. LAW STUDENT MEMBERS. Law Student members of the Section shall not be eligible for election to the Council. However, the Law Student Section shall be entitled to appoint a law student member of this Section as a liaison representative to sit as an observer at all meetings of the Section Council.

ARTICLE IV DUTIES OF OFFICERS/ EXECUTIVE COMMITTEE

SECTION 1. CHAIRPERSON.

The Chairperson shall preside at all meetings of the Section, Council, and Executive Committee. The Chairperson shall formulate and present at each Annual Meeting of the Section a report of the work of the Section for the past year. The Chairperson shall perform such other duties and acts as usually pertain to the office.

SECTION 2. CHAIRPERSON-ELECT.

The Chairperson-Elect shall succeed the Chairperson at the expiration of his or her term. Upon the death, resignation, or during the disability of the Chairperson, or upon his or her refusal to act, the Chairperson-Elect shall perform the duties of the Chairperson for the remainder of the Chairperson's term, except in the case of the Chairperson's disability — and then only during so much of the term as the disability continues. The Chairperson-Elect shall have such other duties as are customarily possessed by the Chairperson-Elect or a Vice President similarly situated. He or she shall preside at all meetings in the absence of the Chairperson.

SECTION 3. SECRETARY. The Secretary shall be the custodian of all books, records, papers, documents, and other property of the Section, other than those entrusted to the Treasurer under Section 4 of this Article. He or she shall keep a true record of the proceedings of all meetings of the Section and of the Council, whether assembled or acting under submission. With the Chairperson, he or she shall prepare the Section's Annual Report. The Secretary, in conjunction with the Chairperson, shall attend generally to the administrative business of the Section.

SECTION 4. TREASURER. The Treasurer shall keep a true record of all monies received and disbursed and shall report thereon to the Council whenever requested. Annually, he or she shall submit a financial report for presentation to the membership of the Section. Consistent with the Bylaws of the State Bar of Michigan, he or she shall be responsible for forwarding all monies of the Section which come into his or her hands to the bookkeeping department at the State Bar Headquarters in Lansing for deposit and credit to the account of the Section. The Treasurer shall be prepared to present a current financial report at each meeting of Section members or the Council, as required.

SECTION 5. EXECUTIVE COMMITTEE. Executive Committee members shall serve as a Chairperson of one or more committees (sometimes sub-committees). The Executive Committee

members shall meet by teleconference or in person (or in combination of the two methods) at least monthly during the months of September through June to consider new programs and activities and to report on the progress of the existing programs and projects of the Section Council and its committees. Minutes of these meetings shall be kept and reported at the Council meetings. The Council shall retain all of the authority vested in it in Article V, Section 1 of these Bylaws and by any other provision of these Bylaws. The Executive Committee members shall not preempt any of these duties or powers. A majority of the Executive Committee members shall constitute a quorum at any of its meetings. Recommendations for Council consideration and action shall be made by a majority of the Executive Committee members in attendance at such meetings.

ARTICLE V DUTIES AND POWERS OF THE COUNCIL

SECTION 1. DUTIES AND POWERS OF COUNCIL. The Council shall have general supervision and control of the affairs of the Section, subject to the Supreme Court Rules Concerning the State Bar of Michigan and the Bylaws of the Section and the Bylaws of the State Bar of Michigan. It shall specifically authorize all commitments or contracts which entail the payment of money, and shall authorize the expenditure of all monies appropriated for the use or benefit of the Section. It shall not, however, without prior approval of the State Bar Board of Commissioners, authorize commitments or contracts which shall entail the payments of more money during any fiscal year than the total of: (a) the amount received in Section dues for such fiscal year; and (b) any unexpended funds remaining in the Section treasury from prior years.

SECTION 2. COMMITTEES. The Chairperson, with the approval of Council, may appoint Committees including but not limited to the following: Bylaws, Education/Programs, Nominations, Membership, Publications and Legislative Committees. The Chairperson of the Section shall appoint the Chairperson and members of such Committees and may — or on direction from the Council shall — remove any Chairperson or member from such committees and fill any vacancies on such committees created from time to time.

SECTION 3. FILLING COUNCIL VACANCIES. The Council, during the interim between annual meetings of the Section, may fill vacancies in its own membership or in the Executive Committee (including the Chairperson or Chairperson elect). Members of the Council so selected shall serve until the closed of the next annual meeting of the Section, at which the vacancies shall be filled for the remainder of their respective terms by a special election conducted concurrently with the regular elections as provided in Article III herein.

SECTION 4. REGULAR MEETINGS.

Regular meetings of the Council shall be held at times and locations to be determined by the Chairperson, and to the extent possible, the schedule of regular meetings for each fiscal year shall be published in advance at each annual meeting of the Section. At least four regular meetings of the Council shall be held in each Committee Year.

SECTION 5. SPECIAL MEETINGS.

Special meetings of the Council may be called by the Chairperson or by a majority of the voting members of the Council at such times and places as either may determine.

SECTION 6. QUORUM. Nine (9) voting members of the Council present in person or by phone or by other simultaneous 2-way electronic media shall constitute a quorum at both regular and special meetings of the Council.

SECTION 7. MAJORITY VOTE. The Council shall act pursuant to a majority vote of those persons present at regular and special meetings of the Council. When absent, a member of the Committee may communicate his or her vote, in writing, upon any proposition, to the Secretary, and have it counted, with the same effect as if cast personally at such meeting, or may act pursuant to the provisions of Section 8 of this Article.

SECTION 8. VOTING BY CONSENT.

The Chairperson of the Section may, at any time, or upon the request of any three (3) voting members of the Council shall, submit or cause to be submitted in writing, to each of the members of the Council, any proposition upon which the Council may be authorized to act; and the members of the Council may vote upon such proposition or propositions so submitted by communicating their vote thereon in writing over their respective signatures to the Secretary, who shall record upon the minutes each proposition so submitted; when, how, at whose request it was

submitted; and the vote of each member of the Council thereon; and he or she shall retain on file such written and signed votes. Action supported by a majority of the entire Council with respect to a proposition submitted in that manner shall constitute binding action of the Council.

SECTION 9. NOTICE OF MEETINGS.

Written notice of meetings of the Council shall be provided at least seven (7) days in advance of any such meeting, by facsimile, email, first-class mail postage fully prepaid, or by any other method permitted by law. In the event the Bylaws of the State Bar of Michigan require a greater notice, such greater notice shall be provided. In the event of an emergency, notice of a meeting may be given by telephone or facsimile transmission upon twenty-four (24) hours prior notice. The presence of a person or his or her written proxy shall constitute waiver of notice of such meeting.

**ARTICLE VI
SECTION MEETINGS**

SECTION 1. ANNUAL MEETING. The annual meeting of the Section shall be held during the same time and place as the annual meeting of the State Bar of Michigan, or at such other place or time as may be arranged by the Council and shall include programs and such order of business as may be specified by the Council.

SECTION 2. SPECIAL MEETINGS.

Special meetings of the Section may be called by the Chairperson, or by a majority of the voting members of the Section, at such times and places as either may determine.

SECTION 3. QUORUM. Twenty (20) members of the Section physically present at any Section meeting shall constitute a quorum for the transaction of business.

SECTION 4. CONTROLLING VOTE.

Provided there is a quorum present, all actions of the Section, other than the amendment of the Bylaws, shall be taken pursuant to a majority vote of the members present at a meeting of the Section.

SECTION 5. NOTICE OF MEETINGS.

Written notice of meetings of the Section shall be provided at least seven (7) days in advance of any such meeting, by first-class mail, postage prepaid, or by any other method permitted by law. In the event the Bylaws of

the State Bar of Michigan require a greater notice, such greater notice shall be provided.

**ARTICLE VII
MISCELLANEOUS
PROVISIONS**

SECTION 1. FISCAL YEAR. The fiscal year which may be different than the "Committee Year" of the Section shall be the same as that of the State Bar of Michigan.

SECTION 2. DEBTS. All debts incurred by the Section, before being forwarded to the Treasurer or to the Executive Director of the State Bar of Michigan for payment, shall first be approved by the Chairperson or by the Treasurer, or both.

SECTION 3. COMPENSATION. No salary or compensation of any kind shall be paid to any Officer, Subcommittee member or Section member.

SECTION 4. APPROVAL. Any action by this Section must be approved by the Board of Commissioners or the Representative Assembly of the State Bar of Michigan before it becomes effective as an official act of the State Bar of Michigan. No public statement of a Section or Council position may be made unless in full compliance with the provisions of Article IX of the Bylaws of the State Bar of Michigan. Any resolution adopted or action taken by the Section may, on request of the Section, be reported by the Chairperson of the Section to the Board of Commissioners or Representative Assembly of the State Bar of Michigan for action.

SECTION 5. EFFECTIVE DATE. The provisions of these Bylaws shall, other than those governing the organizational meetings of the Section which become effective upon adoption by the Board of Commissioners, become effective immediately upon their adoption by the Section at the organizational meeting, and the approval thereof by the Board of Commissioners of the State Bar of Michigan.

SECTION 6. UNEXCUSED ABSENCES. In the event any member of Council shall have three (3) consecutive unexcused absences from attendance in person or by teleconference at regular meetings of the Council, such absences shall upon motion and approval of the Council be deemed to constitute a resignation from the Council, and the resulting vacancy shall be filled in

accordance with the procedures specified in these Bylaws.

**ARTICLE VIII
AMENDMENTS**

SECTION 1. AMENDMENTS. These Bylaws may be amended at any annual meeting of the Section by a two-thirds (2/3) vote of the members of the Section physically present and voting, provided there is a quorum, and provided further that any such proposed amendment shall first have been submitted to the Section's Council for its recommendation and provided further that no amendment so adopted shall become effective until approved by the Board of Commissioners of the State Bar of Michigan.

SECTION 2. PROCEDURES. Any proposed amendment of these Bylaws shall first be submitted in writing to the Section's Council in the form of a petition signed by at least ten (10) members of the Section and then considered by the Council at a regular or special meeting prior to the annual meeting of the members of the Section at which it is to be addressed. The Council's recommendations, together with a complete and accurate text of the proposed amendments, shall be published in the Michigan Bar Journal or Section newsletter or Section announcement at least thirty (30) days prior to the annual meeting of the Section at which the amendment is to be considered.

Michigan State Bar ADR Section Council Member/Petitioners:

_____/S/_____
Name: Jon H. Kingsepp

_____,2003

_____/S/_____
Name: Deborah L. Bercz

_____,2003

_____/S/_____
Name: Richard L. Hurford

_____,2003

_____/S/_____
Name: Asher N. Tilchin

_____,2003

_____/S/_____



The
ADR
Newsletter

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

The ADR Newsletter

August, 2003

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:

*Anne Bachle Fifer:
at (616) 365-9236,
fax: (616) 365-9346
or Benjamin Kerner
at (313) 965-1920,
fax: (313) 965-1921*



Name: Dale A. Iverson
_____,2003

_____/S/_____

Name: Allyn D. Kantor
_____,2003

_____/S/_____

Name: Richard L. Braun, II
_____,2003

_____/S/_____

Name: Charles F. Clippert
_____,2003

_____/S/_____

Name: Alan M. Kanter
_____,2003

_____/S/_____

Name: Susan D. Hartman
_____,2003

Note: The above signatures may be affixed in counterparts.

Certification of Approval

The undersigned Secretary of the State Bar of Michigan Alternative Dispute Resolution Section certifies that at the Annual Meeting of the Section held in Lansing on September 11, 2003, a quorum was present and these Amended Bylaws was approved by more than 2/3 of the members present.

Name: _____
_____,2003 ❄️❄️