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The ADR Newsletter

Alternative Dispute Resolution Section of the State Bar of Michigan

Mediation Confidentiality and Privilege in Michigan: A Case for Adopting the Uniform Mediation Act

— *by Trish Oleska Haas*

Despite the tangible benefits of mediation, there are still many unanswered questions regarding the process in Michigan, especially in the area of mediation confidentiality and associated privileges. Although the Community Dispute Resolution Act, the Friend of the Court Act, and the Michigan Court Rules address these issues, the approach is cursory and conflicting with regard to mediation confidentiality and privilege.

A guaranty of confidentiality and privilege from disclosure are fundamental components to a successful mediation. Confidentiality fosters communications between the participating parties, and maintains the neutrality of the mediator. Further, confidentiality provisions distinguish mediation from its counterpart, litigation. This is an important distinction because the participants to mediation must know that they are not being judged in the mediation.

[T]he Legislature has presented different viewpoints on the extent of confidentiality.

This article examines questions regarding mediation confidentiality and privilege left unanswered by Michigan legislation and the Court Rules. As a solution to the unanswered questions, this article examines the Uniform Mediation Act, and recommends that the Legislature adopt the Act in its entirety.

I. UNANSWERED QUESTIONS REGARDING MEDIATION CONFIDENTIALITY AND PRIVILEGE IN MICHIGAN

A. Different Viewpoints on Mediation Confidentiality

The Legislature has addressed the issue of mediation confidentiality in two distinct Acts: the Friend of the Court Act and the Community Dispute Resolution Act. However, even between these two provisions, the Legislature has presented different viewpoints on the extent of such confidentiality.

1. The Legislature's imprimatur on confidentiality

The confidentiality provision contained in the Friend of the Court Act is broad.[1] It provides that a communication made during mediation is confidential, and is preserved inviolate as privileged. The only time this confidentiality provision does not apply is if the parties reach an agreement that forms the basis of a consent order. However, the Act does not identify who holds this privilege.

The confidentiality provision as contained in the Community Dispute Resolution Act, however, is quite different.[2] To begin, the confidentiality provision does not confer any privilege. Rather, it refers to mediation communications as confidential,

Continued on Page 2

Continued from Page 1

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and instructs that such communications are not subject to disclosure in a judicial proceeding. Because a privilege is not specifically conferred, it is unclear whether this provision operates only as an evidentiary bar, or whether this provision operates to prevent the disclosure of mediation communications for discovery purposes as well.[3]

Further, unlike the Friend of the Court Act confidentiality provision, the Community Dispute Resolution Act waives confidentiality in certain circumstances. Confidentiality is waived if all parties to the mediation agree, or if a subsequent action is commenced for damages arising from the dispute resolution process. Also, confidentiality is apparently waived in proceedings commenced to enforce an agreement reached in mediation. MCL § 691.1556a provides that a mediation settlement that is reduced to writing "is enforceable in the same manner as any other written contract." By virtue of this section, it appears that ordinary contract defenses are also available. Thus, it would necessarily follow that confidentiality is waived if one raises a contract defense of undue influence, mistake, or duress.

Finally, the Community Dispute Resolution Act's confidentiality provisions do not apply to statements and other tangible evidence that were not specifically prepared for use in the dispute resolution process. This provision prevents mediation participants from engaging in mediation as a litigation strategy. Without such an exception, it is conceivable that a participant could reveal a confidence in mediation, solely for the purpose of preventing the use of such information at trial.

...there is also an inconsistency on [confidentiality] between the Supreme Court and the Legislature.

The inconsistencies with regard to mediation confidentiality do not end with an examination of the Legislature's expressed viewpoint, however. Aside from such inconsistencies, there is also an inconsistency on the subject between the Supreme Court and the Legislature.

2. Legislation compared to the Court Rules

The mediation court rules promulgated by the Supreme Court in 2000 closely mirror the Community Dispute Resolution Act at first glance because the Court Rules do not confer a privilege either.[4] Rather, the Court Rules refer to mediation communications as confidential, and instruct that the communications shall not be disclosed without the written consent of all parties. They also instruct that mediation statements may not be used in any other proceeding, including trial. Like the Community Dispute Resolution Act confidentiality provision, it is unclear whether these rules operate solely as an evidentiary bar, or a bar to discovery of such information as well.

The Court Rules do not waive confidentiality if enforcement proceedings arise. However, the Rules do waive confidentiality if a dispute arises over mediation fees. Such an exception is not included in either the Friend of the Court Act or the Community Dispute Resolution Act.

These inconsistencies operate as a significant barrier to the successful use of mediation in Michigan courts. Mediators, parties, and judges alike may not know which set of rules regarding confidentiality and privilege will govern the terms of the mediation. Such inconsistencies command the attention of the Michigan Legislature. If confidentiality provisions are to have the effect intended, the protections must be predictable.[5]

B. Scope

Even if the Court Rules and the Legislative Acts provided comprehensive guidance on the subject of mediation confidentiality and privilege, such coverage would still be incomplete. Although at present most mediation sessions are conducted within the context of potential or pending litigation, this is not always the case. And, it may be less likely as mediation becomes more widely accepted as an effective method to resolve disputes.

There may be a time in the near future where it is common for disputants to contact a mediator before contacting an attorney. Or, rather than immediately commence a lawsuit, an attorney may refer a client to a private mediator to resolve a dispute. However, in such cases, there is no legislation in place in Michigan that provides guidance on the issue of confidentiality and privilege. And, the mediation Court Rules do not apply because the Rules apply only to mediations that are court-referred.[6]

Such scenarios warrant the attention of the Legislature. Confidentiality and privilege provisions need to be unified not only as between the Legislature and the Supreme Court, but also in regard to non-court mediations. An individual who contacts a private mediator before commencing court action should be subject to the same protections as an individual who is referred to mediation by the court.

It is within this framework that the Uniform Mediation Act was examined. After examining the Act, it is the opinion of this author that the Act should be adopted by the Michigan Legislature.

Continued on Page 3

Continued from Page 2

II. THE UNIFORM MEDIATION ACT

The Uniform Mediation Act was promulgated in 2001.[7] The Act was designed to unify and simplify a complex area of law.[8] It was a historic collaborative effort; the Drafting Committee represented various contexts that utilize mediation, and embraced viewpoints from mediators, the court, and individuals alike.[9]

The Drafting Committee recognized that uniformity was necessary because, like Michigan, many states have various statutes and court rules that provide different guidance on the subject of mediation confidentiality. Therefore, one of the central purposes of The Uniform Mediation Act was "to provide a privilege that assures confidentiality in legal proceedings."[10] The Act has been noted to be an improvement "on almost every existing state statute in terms of its comprehensive coverage of confidentiality issues that are likely to arise."[11] Thus, if mediation confidentiality is to be revisited by the Michigan Legislature, the Act appears to be the most comprehensive and up to date guidance available on the subject. Not only would adopting the Act unify the definition and scope of confidentiality and privilege in all mediation contexts, the Act would apply to mediations that are not court referred as well.

A. Confidentiality and Privilege

Currently, there is conflicting guidance in Michigan on the scope of mediation confidentiality. Only the Friend of the Court Act specifically confers a privilege, but it does not identify who holds the privilege. Further, there is no uniformity among the statutes and court rules regarding mediation confidentiality and waiver of such confidentiality. In contrast, the Uniform Mediation Act does provide a sound model for a uniform provision regarding mediation confidentiality and privilege.

1. Scope of Privilege

The Uniform Mediation Act generally provides that a mediation communication is privileged and not subject to discovery or admissible in evidence. The Act further identifies who holds such privilege, announcing that the mediator, a mediation party, or a non-party participant may invoke the privilege. By virtue of holding the privilege, the mediator, a mediation party, or a non-party participant may refuse to disclose a mediation communication made by himself. However, a mediation party is afforded even greater protection under the Act; a mediation party may also prevent any other individual from disclosing a mediation communication.

Despite the breadth of these provisions, there is an important exception to the general rule. The privilege does not apply to "[e]vidence or other information that is otherwise admissible or subject to discovery . . . ."[12] Thus, the Act chose to recognize that mediation proceedings should not be used as a means to prevent disclosure of otherwise relevant information from discovery or from use at trial.

Mediators, parties, and judges alike may not know which set of rules regarding confidentiality and privilege will govern the terms of the mediation.

The drafters of the Act chose a privilege structure as opposed to a categorical exclusion or mediator incompetency rule because privilege is the primary means by which communications are protected at law.[13] Further, "[t]he privilege structure balances the needs of the justice system against party and mediator needs for confidentiality."[14]

2. Waiver of the Privilege

Section 5 of the Uniform Mediation Act addresses waiver of the mediation privilege.[15] A privilege can be waived in three distinct manners. First, the privilege can "be waived in a record or orally during a proceeding if it is expressly waived by all parties to the mediation and" it is also expressly waived by either the mediator or a nonparty participant.[16] Second, the privilege may be waived to the extent necessary to respond to another party's wrongful disclosure of a mediation communication at a proceeding. Finally, one that intentionally "uses a mediation to plan, attempt to commit, or commit a crime, or conceal an ongoing crime . . . is precluded from asserting a privilege . . . ."[17]

...one of the central purposes of The Uniform Mediation Act was "to provide a privilege that assures confidentiality in legal proceedings."

Notably, unlike other communication privileges, the mediation privilege cannot be waived by conduct alone. The drafters purposefully differentiated the mediation privilege from the attorney-client privilege, which can be waived by conduct.

3. Exceptions to Privilege

Section 6 of the Uniform Mediation Act lists the exceptions to the mediation privilege granted by Section 4.[18]

To begin, a mediation agreement signed by all parties is not protected by any privilege. Also, a mediation

Continued on Page 4

Continued from Page 3

communication that is available to the public by law is not privileged. If one makes a threat to inflict bodily injury or commit a violent crime, the privilege does not attach. Similarly, a communication that is intentionally used to plan, attempt, or conceal a crime or ongoing criminal activity is not privileged.

There are two exceptions that envision procedures for potential malpractice claims. If a claim of mediator misconduct is filed, communications that are used to prove or disprove such complaint are not privileged. Additionally, any communications offered to prove or disprove a professional misconduct claim against a mediation party, nonparty participant, or representative of a party related to conduct during the mediation are not privileged. However, in such circumstances, the mediator cannot be compelled to testify or otherwise provide evidence to support such a claim.

There is a stark contrast when the Uniform Mediation Act's instruction on privilege and confidentiality is compared to the current conflicting guidelines in place in Michigan.

If a mediation communication is offered to prove or disprove abuse or neglect, and a protective service agency is a party, there is no privilege unless the agency participates in the mediation. Finally, there is no privilege if a party can show, in camera, that there is a need for the evidence, and the need substantially outweighs the confidentiality interest. However, this exception applies only if the mediation communication is sought in "a court proceeding involving a felony [or misdemeanor]", or if the communication is sought to rescind, reform, or as a defense to a claim arising from the mediation agreement (contract).[19]

An important hallmark of the privilege exceptions is that they are to be narrowly construed. Thus, if by virtue of Section 6, a communication is not privileged, "only the portion of the communication necessary for application of the exception from nondisclosure may be admitted."[20] Further, if the evidence is admitted through an exception, such admission does not render the evidence admissible or discoverable for any other purpose.

4. Confidentiality

In addition to thoroughly addressing privilege, waiver and exceptions thereto, the Act also addresses the issue of confidentiality in Section 8. This section grants parties and the mediator some flexibility. It provides that "mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this State," unless subject to an open record or open meeting act.[21]

Because one of the underlying purposes of the Act is self-determination on issues of disclosure aside from disclosure in judicial proceedings, the drafters of the Act chose to permit the parties to determine the extent of outside disclosure.

The Act comprehensively addresses the issues of privilege, waiver and confidentiality. The drafters of the Act extensively researched the subject before deciding which provisions should be included. There is a stark contrast when the Uniform Mediation Act's instruction on privilege and confidentiality is compared to the current conflicting guidelines in place in Michigan. The Uniform Mediation Act's provisions on confidentiality and privilege offer Michigan a chance to demonstrate its commitment to mediation by providing definitive guidance on the subject while eliminating the inconsistencies.

III. CONCLUSION

Mediation is still a relatively new process of alternative dispute resolution in Michigan. The issue has been addressed by the Legislature only twice since 1983. However, statistics support that mediation is an effective means to resolve disputes. Because the Court Rules permit a judge to require parties at least to attempt mediation to resolve a dispute, it is likely that mediation will become increasingly popular in Michigan. This will make it ever more likely that the conflicting provisions among Michigan's current statutes and court rules on confidentiality will cause problems for users of mediation, and become an impediment to its growth in this state. In addition, there is currently no legislation in place that provides guidance on confidentiality and privilege for mediations conducted outside the realm of pending litigation.

If the Michigan Legislature chose to adopt the Uniform Mediation Act, all present inconsistencies and omissions would be appropriately addressed. "The Uniform Mediation Act presents a unique opportunity for states to modernize their mediation laws, and to bring them into alignment with expectations of participants in mediation, as well as the public's expectation with regard to the integrity of the mediation process."[22] The drafters integrated and analyzed over 2,500 mediation statutes in carefully crafting the language of the Act.[23] The wisdom of the Act should be carefully considered by Michigan's Legislature, as it is the most comprehensive guidance on the subject of mediation confidentiality and privilege.

The Uniform Mediation Act has been introduced in the Legislatures of several states.[24] and has already been adopted by Nebraska and Illinois.[25] Although mediation is still a relatively new concept in

Michigan, or perhaps because it is, the Legislature should recognize the benefits of the Act and adopt it in its entirety.

Endnotes:

1 See MCL § 552.513(2).

2 MCL § 691.1557.

3 See MCR 2.302 (permits discovery of any information that is not privileged).

4 See MCR 2.411(C)(5) (general civil) and 3.216(H)(8) (domestic relations). The provisions are identical.

5 Ellen E. Deason, The Quest for Uniformity in Mediation Confidentiality: Foolish Consistency or Crucial Predictability, 85 MARQ. L. REV. 79, 84. (2001).

6 See MCR 2.411(A)(1).

7 The full text of the Uniform Mediation Act [hereinafter UMA] is available at http://www.law.upenn.edu/bll/ulc/mediat/2003finaldraft.htm

8 UMA, Prefatory Note (2001).

9 UMA, Prefatory Note (2001).

10 UMA, Prefatory Note (2001).

11 DEASON, supra note 5 at 101.

12 UMA § 4(c) (2001).

13 UMA § 4, note 2(a) (2001).

14 UMA § 4, note 2 (a) (2001).

15 UMA § 5 (2001).

16 UMA § 5(a) (2001).

17 UMA § 5 (c) (2001).

18 UMA § 6 (2001).

19 UMA § 6(b) (2001).

20 UMA § 6(d) (2001).

21 UMA § 8 (2001).

22 Richard C. Reuben, The Sound of Dust Settling, a Response to Criticisms of the UMA. 2003 J. DISP. RESOL. 99, 133. (2003).

23 UMA, Prefatory Note (2001).

24 Uniform Law Commissioners, Nebraska Becomes First State to Enact New Uniform Mediation Act, May 15 2003. available at: www.nccusl.org.nccusl/DesktopModules/NewsDisplay.aspx?ItemID=53. (citing that the UMA has been introduced in the legislatures of Indiana, Maine, Massachusetts, New Hampshire, New York, and Vermont.) The Act was also introduced to the New Jersey and Ohio legislatures in 2004.

25 UNIFORM LAW COMMISSIONERS, supra note 24.

Ask the Neutral

— by Jon Kingsepp

Jon Kingsepp, a business and commercial litigator with Howard & Howard in Bloomfield Hills, is immediate past chair of the ADR Section.

Q: I am frequently involved in business and commercial litigation. When my cases are in mediation, I sometimes find that using an electronic portrayal, e.g., "Trial Director 4," is persuasive. Do others?

A: *Using electronic demonstrative evidence can be very persuasive in mediation, but there are limitations that may arise because of the facts. If you are going to use Power Point or Trial Director in a mediation, first inquire of the mediator if there is any problem in doing so. Advance notice should be done in a joint call with the mediator so opposing counsel has an awareness in advance of the technique to be used. The second consideration is that, while some portrayals can be effective, the effectiveness may be limited because of the facts. For instance, if there is a contract, and provisions have been violated, you may have facts sufficient for you to portray an undisputed violation of the agreement. Such a visual portrayal can have a significant effect on the opposing party. The caveat is to use such techniques sparingly. The goal is to portray undisputed evidence, not conflicting evidence.*

Save the date!

The fourth annual Advanced Negotiation and Dispute Resolution Institute (ANDRI) is scheduled for Tuesday, March 15, 2005, at St. John's Golf & Conference Center in Plymouth. Keynote speaker will be Mr. Bernard Mayer, a nationally-known mediator, mediation trainer, and author, whose ground-breaking new book, **Beyond Neutrality: Confronting the Crisis in Conflict Resolution**, was just released by Jossey-Bass Publishers last month.

Mr. Mayer, who is affiliated with CDR Associates based in Boulder, Colorado, also authored **The Dynamics of Conflict Resolution: A Practitioner's Guide**, also a Jossey-Bass publication. You can start preparing for ANDRI now by getting one or both of Bernie Mayer's books and learning more about his thoughtful insights into the field of ADR.

Deborah L. Berecz, ADR Section Chairperson

Comments From the Chair

— by Deborah L. Berecz

Of Orange Fur Couches and Other Deal Breakers

We've all seen them: objects which are insignificant from our perspective as observers of the conflict, but are, for the conflicted, of such profound importance that they swell to status of deal breaker. Everything else may have tentatively settled into place in an employment dispute—job, recompense, purging the record, etc.—but unless the employee returns the supervisors's prized paperweight, the deal is off. Husband and wife may have divided a million dollar home, the cottage on the lake, pensions and 401(k)s, but both want the very first item of furniture they bought together: an orange fur couch. The school bus driver who hit a child but was cleared of wrongdoing, demands a personal letter from the principal to each parent detailing the outcome. My own worst deal breaker was a deviled egg server. For Raytheon Rawls, guest speaker at the Advanced Negotiation and Dispute Resolution Institute (ANDRI) last March, it was an orange fur couch.

Viewed through a narrow lens, one might conclude that the conflict was about an orange fur couch or a paperweight, but as students of conflict theory, most of us are able to see the broader dynamic. The paperweight may represent the supervisor's resistance to reinstating the employee. Thus, if the paperweight is located and returned, the real problem remains and we haven't, as mediators, assisted our clients in developing a durable settlement. Putting an end to a specific problem is not the same as resolving core conflicts. We can chalk it up as a "case settled" but the long-term implication may be that the client didn't perceive it to be so, and there will be a stream of endless conflicts until genuine resolution is achieved.

Raye Rawls suggested that the orange fur couch was really a metaphor for the end of this divorcing couple's relationship. Once the couch was disposed of (I have a good suggestion for where), then the end of the marriage was a reality. Assistance with processing the significance of this piece of property would ultimately be a greater service to these clients than simply solving the problem of an orange fur couch.

If you missed the opportunity to sharpen your understanding of conflict theory and hone your skills as an ADR provider at ANDRI, let me tell you a little about Raytheon Rawls. She is an attorney with a Masters Degree in Human Resources and serves as Vice President of Resolution Resources Corp., an ADR company. Those are her stats. But she has been in the trenches for thousands of hours and it shows. She had a rubber-meets-the-road savvy with a scholar's knowledge of conflict theory. The combination resulted in strong conference presentations.

So what to do with orange fur couches and paperweights? Assisting the parties in achieving empathy may prove a useful tool. Too often empathy implies something warm and fuzzy. We think of a confidant who listens and sympathizes with our woes. But empathy has a more basic meaning, captured in the old Indian saying that to really understand someone, you have to "walk a mile in his moccasins." Translated from Indian to ADR-speak: parties in conflict should attempt to see the problem as the other perceives it-from a deeply subjective viewpoint. But how does a mediator encourage a party in conflict to pull off wing-tips or pumps and slip on moccasins?

Raye Rawls encouraged us to teach our clients to look for shared values. Parties in conflict may surprise themselves if they list those beliefs or values which they share with the other side: to have a comfortable work environment, to have spousal support set at a rate which allows both spouses to eat and have shelter, to operate a school district where parents have confidence in the bus drivers. Taking time to think about shared values stops the negative tapes playing in the mind (he's just interested in saving the school district money, she just wants to bleed me dry, they don't care anything about the office we have to work in).

Eliciting shared values or belief systems takes time. Contrasting ADR work with most other jobs, Rawls stated, "Mediation is work that, the slower you do it, the better you do it." But without time devoted to developing empathy, the shutters close, the mind checks out and the tapes keep rolling. One party talks but the other side only hears "I'm going to bleed you dry," "I don't care about your cubicle," etc.

Additional steps to developing empathy might include:

1. **Elicit stories.** Without rushing, ask, "Twenty years ago, how did you make decisions?" or "When you hired this person, what did you perceive as his/her strengths?" Everyone has a story and they are usually itching to tell it. Give them the audience they seek. The teller will appreciate being heard and the listener may achieve an understanding which differs from presumptions. Both contribute to the development of empathy.

2. **Slow down.** Model effective listening and temper emotions with appropriate reflection throughout the session. Assure both that listening doesn't mean concurrence.

3. **Encourage parties to avoid snap judgments** about one another's motives or goals, and remind them that, even if they are correct, people can change their minds.

4. **Ask each party to articulate the other's concerns.** This is putting on the moccasins in a palpable way but, like all mediation tools, should not be used formulaically-sometimes it makes sense, at other times not.

5. **Help parties understand the psychological barriers** in negotiation (Reactive Devaluation, Loss Aversion, Advocacy Distortion, The Endowment Effect).[1]

Encouraging empathy is delicate work. It takes time and it takes skills which improve with practice. However, if adequate effort is expended early in the mediation process to being empathic as a mediator, and in encouraging parties to be as well, empathy may be the process that allows for resolving the underlying conflicts that show themselves as the tip-of-the-iceberg orange fur couches and paperweights.

1 Arrow, K.J. (1995). *Barriers to Conflict Resolution*, New York; W.W. Norton and Company.

Upcoming Mediation Trainings

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

General Civil

Training sponsored by Community Dispute Resolution Center of Genesee County

Flint: **August 4, 6-7, 11, 13-14**

Contact: Dayna Harper, 810-249-2619 - Daynalharper@aol.com

Training sponsored by The Resolution Center of Macomb County

Mt. Clemens: **September 15, 17-18, 22, 24-25**

Contact: Craig Pappas at 586-469-4714 - theresolutioncenter@mediate.com

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Training sponsored by The Dispute Resolution Center of Washtenaw County

Ann Arbor: **October 15-17, 22-24**

Contact: Kaye Lang at 734-222-3788

Training sponsored by Institute for Continuing Legal Education

Plymouth: **November 18-20, Dec. 3-4**

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

Advanced Mediator Training, General Civil

August 9 - "Understanding and Managing Difficult Conflicts." Speaker: Douglas Noll

August 10 - "Awakening Our Awareness in Conflict, Negotiation and Mediation." Speaker: Douglas Noll

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

August 20 - "Ten Things Mediators Hate to Hear" Speaker: Anne Bachle Fifer

Contact: Karen Beauregard at 517-485-2274.

Domestic Relations

Trainings sponsored by Mediation Training and Consultation Institute:

Ann Arbor: **July 25 - 29**

Ann Arbor: **December 1-3, 6-7**

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

Training sponsored by the Oakland Mediation Center

Bloomfield Hills: September 12-14, 19-20

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

ADR Section Website and ListServ

Did you know that the ADR Section operates a website and a ListServ for the benefit of its members? The website can be found at **www.michbar.org/adrs/home.html**. Section members can subscribe to the ListServ from the "Join the ListServ" hyperlink on the website.

The ListServ is a "push only" type of ListServ that does not allow participants to transmit their comments to each other. As a ListServ member you will receive electronic copies of this newsletter, seminar notices and other Section publications approved by the Section's Executive Committee.

The Section's website features links to numerous dispute resolution resources as well as archival copies of the ADR Section newsletters and information concerning the Section's Council.

The Section has established a website/ListServ task force charged with the responsibility of continuing improvement of the website/ListServ content provided to section members. Task force members include Jim Vlasic, Charlie Clippert, Marcia Ross, Thomas Donnellan and Anthony Randall. If you have any interest in serving on this task force, please feel free to contact kkortes@s4online.com to become part of this group.

The ADR Newsletter

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

For comments, contributions or letters, please contact:

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

ADR Section Annual Meeting Offers Info, Fun

Historically the ADR Section has held its Annual Meeting in conjunction with the State Bar of Michigan's. But ADR has grown so dramatically over the last few years in Michigan and attendance at the Annual Meeting has grown as well. So, the Section's Annual Meeting is growing up and moving out of the parents' home!

On September 9 and 10, 2004, join us at the Soaring Eagle Resort in Mt. Pleasant for a retreat meant not only to inform but also to provide opportunities for conversation, camaraderie and even some fun! Harry Goodheart III, President of the American College of Civil Mediations, will be joining us to facilitate an Open Forum Discussion on Thursday, September 9 from 5:30 - 7:30. This promises to be an excellent opportunity to dialogue with leaders of various sections of the Bar and judges and justices active in the ADR field.

On Friday, September 10, following the Business Meeting, Mr. Goodheart will give a presentation on:

HOW TO KICK-START THE USE OF ADR

- Proven techniques for ADR Professionals and the Courts to generate interest in and increase the use of mediation in Michigan
- A look at what's going on in other jurisdictions where mediation is new
- How ADR Professionals and Advocates can be prepared for a geometric increase in ADR usage; and why the Courts are going to love it when it happens.

Don't forget about the Friday afternoon Golf Scramble at the beautiful Pohl Cat Golf Course! If golfing isn't your thing, the Soaring Eagle offers many other activities and events. So bring the family and join the growing community of ADR providers and users for a fall break from the routine. See the green information and registration forms included in this Newsletter for further details.