

# The Michigan Dispute Resolution Journal

A Publication of the Alternative Dispute Resolution Section of the State Bar of Michigan

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Erin Archerd, Editor



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# The Chair's Corner

by William D. Gilbride, Jr.



William D. Gilbride, Jr.

## Advancing the Importance of Diversity and Inclusion in ADR

This spring the Section has been involved in a number of important initiatives. Based in part on the information coming out of the 2018 Summit, and in part from the lessons learned in our diversity and inclusion training, the Section Council revisited our Section's Mission statement.

One lesson learned from the 2018 Summit is that a major criticism of our historical ADR activities is the cronyism phenomenon present in many courts. Court rosters are loaded with middle aged white men, and women and minorities have historically been underrepresented on those rosters.

An unintended consequence of that system, while well intentioned, is that large sections of our population are being sent to mediators, arbitrators, and case evaluators who are different from them.

### *Mission Statement Update*

Through our diversity and inclusion work, we've all come to better understand "implicit bias" and how it influences and impairs one's ability to effectively communicate and assist in the resolution of cases. While we have made strides in recent years, we on the ADR Section Council decided we needed to directly address this important work by reviewing our Mission Statement to assure that we advance the importance of diversity and inclusion in the ADR arena.

Largely through the efforts of Betty Widgeon and Susan Klooz on our Diversity and Inclusion Action Team, and with the full support of the Council, we added a new commitment to our Mission Statement (found in total at the end of this article): ***Promoting diversity and inclusion in the training, development, and selection of ADR providers and encouraging the elimination of mediator bias.*** With the changing landscape in civil litigation, and a growing awareness of the effectiveness of ADR techniques as a means for the resolution of conflict, the Council acted to assure that we embrace best practices in our section. We therefore unanimously adopted the new diversity and inclusion language as part of our important mission to encourage conflict resolution. Thanks Susan and Betty!

### *Mediating in Diverse and Minority Communities*

Under Mike Leib's capable leadership, our Skills Action Team has organized two important seminars this June on the subject of implicit bias. Professor Carol Izumi of UC Hastings College of the Law San Francisco will be the key note speaker at two, half-day events, one beginning at 8:30 am on June 12 at The University of Detroit Mercy School of Law in Detroit and the second at 8:30 am the next day, June 13, at the Eberhard Center in Grand Rapids.

Professor Izumi will speak on the subject of *Mediating in Diverse and Minority Communities: Insuring the Quality of the Mediation Process* and how implicit bias influences our thinking and can impair our ability to be effective as a mediator. Professor Izumi is an internationally known dispute resolution scholar, trainer and practitioner and a nationally known specialist in clinical legal education. Faculty for the seminar includes a number of well-known Michigan lawyers and mediators who will be addressing how we raise the quality of the mediation process for everyone who hires us, no matter what their background or culture. This event will surely be invaluable to mediators looking to elevate their effectiveness in helping people resolve conflict. Registration links are below and more information about all of the speakers can be found later in this issue.

[Register for Detroit](#)

[Register for Grand Rapids](#)

### *Teleseminars and Annual Meeting Save the Date: October 11-12*

Our Skills Action Team will also be hosting a September seminar on mediation techniques for labor and employment law practitioners. This event will feature some highly respected leaders from the Employment Law section and will be focused on techniques and strategies for mediating employment matters. Stay tuned for more details on this training which will be forthcoming soon.

Also, save the dates of October 11-12 for the Section's annual meeting which will be held again this year on a Friday-Saturday at the Inn at St Johns in Plymouth. We will again offer substantive programming and the opportunity to obtain the requisite 8 hours of training in order to maintain your eligibility to serve on the SCAO approved mediator rosters. Friday night there will be a cocktail hour and an awards dinner. We are expecting some important members from the bench and we will be honoring some outstanding mediators from around the state. This event is always a sell out so be on the lookout for registration information which will be forthcoming.

### *Case Evaluation Rules Being Reviewed*

A special thanks also goes out to Scott Brinkmeyer who was enlisted to serve on the SCAO Case Evaluation, Court Rules Review Committee. Our Section's voice is being heard on important issues pertaining to the future of case evaluation and how it fits into the changing landscape of civil litigation and ADR. Stay tuned for more information forthcoming this year on important updates to case evaluation.

### *Partnering with Community Dispute Resolution Centers*

Finally, we are involved in some important conversations with the Community Dispute Resolution Centers (CDRCs) located around the state. The CDRCs play a critical role in assuring access to justice in our state. We are looking at how we can better partner with the CDRCs and how they may be a source of work for our Section members.

Enjoy this edition of The Michigan Dispute Resolution Journal; we are fortunate to have Erin Archerd as our Editor in Chief!

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 mediator bias; and,
4. Advancing the use of alternative dispute resolution processes in our courts, government, businesses, and communities. ❄️

### **About the Author**

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**Doug Van Epps**

## **Tom Shea: An Appreciation**

*by Doug Van Epps*

Mention "the legend" in Northern Michigan and to some, the Arnold Palmer-designed "The Legend at Shanty Creek" golf course comes to mind. To others, Michigan's "official" children's book *The Legend of Sleeping Bear* might be your first thought. To mediators and peace advocates in Northern Michigan, however, "the legend" necessarily refers to the husband and wife team of Tom and Darylene Shea.

Following Tom's recent passing, I'm honored to share this brief glimpse of this most amazing couple.

The following is from a training manual the Sheas submitted to the SCAO:

Tom Shea, together with his wife, Darylene, was trained as a mediator at Swarthmore College, Philadelphia, in 1986. The Sheas began a partnership as a training team in conflict resolution and mediation. Together they designed and conducted a 40-hour graduate course in Leadership Skills for the Institute on Creative Conflict Management at Syracuse University. As a Certified Employee Assistance Program Specialist, Tom provided conflict resolution trainings in more than forty work sites throughout northern lower Michigan. In 1990, the Sheas, with other local leaders, founded the five-county Conflict Resolution Service based in Traverse City (now Community Reconciliation Services). They have also conducted fifteen State-approved 40-hour mediator trainings. Tom has provided hundreds of hours of pro bono mediation for CRS and continues to serve as a volunteer mediator for other Community Dispute Resolution Program (CDRP) centers throughout Michigan's northern lower and upper peninsulas. He co-facilitated the Michigan Supreme Court Dispute Resolution Task Force, and is a member of the Michigan Peace Team. On September 26, 2002, the Alternative Dispute Resolution Section of the State Bar of Michigan presented Tom and Darylene Shea with the Distinguished Service Award in recognition of their "Significant Contributions to the Field of Dispute Resolution."

At least six current Community Dispute Resolution Program (CDRP) centers can attribute some element of their founding to the efforts and inspiration of Tom and Darylene. In the early 1990s, the SCAO recruited them to "circuit ride" through Northern Michigan, from Grand Traverse to Gogebic Counties, to talk to community leaders about establishing dispute resolution centers. And very often, once the centers had taken root, Tom and Darylene would return to provide mediator training programs.

Prior to their relocation to Washington State to be near relatives, the [Traverse City Record Eagle ran a story](#) outlining Tom's early work as a Jesuit priest and his and Darylene's later activist work to promote peace.

Tom was an extremely engaging trainer, a constant source of joy and humor, and a great friend to the hundreds of new mediators he and Darylene trained. In the above cited Traverse City Record article, Darylene observed, "Tom doesn't do peace. It's what he is."

That's how I'll always remember Tom, as a great man of peace compelled to share peace. Tom Shea may have passed, but "the legend" lives on. \*\*

### About the Author

*Doug Van Epps is the Director of the Michigan Office of Dispute Resolution, based in the State Court Administrative Office. The first and only director of that office, he has shaped the position in the 28 years he has held it, moving from creating a system of volunteer mediation centers around the state to being a force for dispute resolution within state government and throughout the Michigan court system.*



Darylene and Tom Shea at Peace Day 2008.



Jesse L. Young

## Dust Off Those Arbitration Rules: Epic Systems Cements a New Reality for Class and Collective Actions in Employment Litigation

by Jesse L. Young

The majority of federal circuit courts have long held that an employee's right to participate in a class or collective action may be waived through an arbitration agreement. Employees relentlessly challenged those decisions over the years and, in 2016, the Seventh and Ninth Circuits bucked the trend, creating a circuit split and breathing new life into the issue. On May 21, 2018, the U.S. Supreme Court finally weighed in and held that class and collective action waivers in mandatory employment arbitration agreements are indeed enforceable under the Federal Arbitration Act (FAA). *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612 (2018).

Newly minted Justice Gorsuch wrote the opinion for the slim majority (5-4) and Justice Ginsburg authored a strongly worded dissent. While the Justices jostled and wrestled with numerous legal issues in *Epic Systems*, the primary issue was whether class and collective action waivers in arbitration agreements violate the National Labor Relations Act (NLRA) and are thus unenforceable under the FAA's savings clause.

In *Epic Systems*, the employee entered into an arbitration agreement with a class action waiver, but nevertheless forged ahead in court with a collective action under the Fair Labor Standards Act (FLSA). He argued that wage-hour class action litigation was "protected concerted activity" under the NLRA and that the class waiver in his arbitration agreement was illegal, and thus unenforceable, because it violated the NLRA's prohibition on employer interference with concerted activity. Justice Gorsuch and the majority disagreed, concluding it was inappropriate to read the FAA and NLRA as conflicting statutes. The Court reasoned that the FAA's mandate to enforce arbitration agreements cannot be construed to conflict with the NLRA's protection of concerted activity (and noted the NLRA does not expressly state a right to bring class or collective action).

The impact of the Supreme Court's decision is that employers may lawfully force employees, as a condition of employment, into mandatory arbitration agreements which preclude them from participating in class proceedings, whether in court or in arbitration. Employees who are subject to such valid arbitration agreements may now only litigate claims against their employers in individual arbitrations, one by one, in piecemeal fashion.

The Supreme Court did not analyze the validity of collective action waivers through arbitration agreements as between the FAA and the FLSA; however, in *Gaffers v. Kelly Services, Inc.*, 900 F.3d 293 (6th Cir. 2018), the Sixth Circuit relied on *Epic Systems* and specifically held that individual arbitration agreements do not conflict with the FLSA's collective-action guarantees. Accordingly, the Supreme Court's decision in *Epic Systems*, along with the Sixth Circuit's decision in *Gaffers*, appears to resolve facial challenges to class and collective action waivers in arbitration agreements.

Some wiggle room still exists for employees. At least one district court has already found that the holding in *Epic Systems* is limited to "genuinely bilateral" arbitration agreements. *Bayer v. Neiman Marcus Grp., Inc.*, 2018 U.S. Dist. LEXIS 90228, \*26 (N.D. Cal. May 30, 2018) (citing Justice Ginsburg's dissent). Another district court affirmed the general holding of *Epic Systems*, but also denied an employer's motion to compel individual arbitration of class members because the employer materially breached the agreements by failing to timely pay the required arbitration fees in connection with two employees' arbitration cases. *Gomez v. MLB Enters., Corp.*, 2018 U.S. Dist. LEXIS 96145, \*33-34 (S.D.N.Y. June 5, 2018). And of course, employees may still challenge arbitration agreements under generally available contract defenses such as fraud, duress, or unconscionability. For example, in *Ziglar v. Express Messenger Sys. Inc.*, 2019 U.S. Dist. LEXIS 34951 (D. Ariz. Mar. 4, 2019), the district court held that *Epic Systems* did not change its prior holding that the employer's arbitration agreement was substantively unconscionable and unenforceable because it: (a) prevented treble damages under state law; (b) prohibited employees from recovering attorneys' fees and costs; and (c) prevented employees from vindicating their rights because arbitration was too expensive. To be sure, the plaintiffs' bar and employee advocacy groups will seize upon these and other arguments to evade arbitration agreements containing class action waivers.

While class and collective action waivers can be a powerful tool for limiting significant potential employer liability, mandatory individual arbitration is not necessarily a silver bullet for avoiding complex and expensive litigation. Employers should make informed and thoughtful judgments about implementing, maintaining, or enforcing arbitration agreements with class action waivers. Arbitration can be cost-prohibitive, and one strategy plaintiffs' lawyers have already started implementing to deal with class and collective action waivers is the filing of dozens, hundreds, or even thousands of individual arbitrations at a time, sometimes all over the country, for which employers are often required to foot the bill for arbitrator fees, filing fees, attorneys' fees, and other litigation costs.

Unless Congress amends the FAA, or exempts specific claims from the FAA's coverage (e.g., FLSA collective actions), this is the new reality for class and collective actions in employment litigation. \*\*

### About the Author

*Jesse Young is a shareholder at Kreis Enderle, where he represents individuals and businesses involved in employment disputes, including handling FLSA and state-based wage and hour disputes. Jesse has been appointed to leadership positions in dozens of complex class action litigation matters across the country. In these positions, he has helped secure dozens of multi-million dollar recoveries in class actions involving thousands of plaintiffs.*

*Jesse's dynamic practice has taken him around the country to represent his clients. He has briefed and argued cases in Michigan state courts, the Michigan Court of Appeals, the U.S. Court of Appeals for the Sixth Circuit, and dozens of federal U.S. District Courts nationwide. He has also attended several arguments before the U.S. Supreme Court. He can be reached at (269) 321-2311 and [jyoung@kreisenderle.com](mailto:jyoung@kreisenderle.com).*



Lisa Taylor

## Michigan Supreme Court Streamlines Process for Parties Working Collaboratively in Family Law Cases

by Lisa Taylor

For many years, the Michigan Supreme Court has been encouraging alternate dispute resolution for domestic relations cases, beginning with adoption of the mediation court rules 15 years ago, MCR 3.216, and continuing with its support of the recent adoption of the Uniform Collaborative Law Act, MCL 691.1331 et. seq., effective December 8, 2014; the Consent Judgment Rule, MCR 3.210(2), effective January 1, 2015; and court rule amendments regarding limited scope representation, effective January 1, 2018.

On April 1, 2019, that trend continued, as the new Michigan Court Rules 3.222 and 3.223 became effective. These rules allow parties to file jointly, using non-adversarial language and streamlined processes when the parties participate in a collaborative process, whether using the Collaborative Law process per MCL 691.1331 et. seq.; pre-filing mediation; or any other pre-filing process that results in a consent judgment.

Many family law clients who have gone through mediation or a Collaborative Law process do not consider themselves to be rivals and are surprised to learn after all their diligent, hard work, that in order to complete their process, they must file as *Plaintiff versus Defendant*, serve a summons, and engage in other court proceedings designed for adversaries. Having worked for months to resolve issues amicably, they do not find it palatable or rational for the court system to then force them to become ostensible rivals at the end of that process.

Now, parties who work collaboratively to settle their divorce early will be able to continue to work collaboratively through the court process.

MCR 3.222 establishes the procedure for parties operating under the Uniform Collaborative Law Act. MCR 3.222(B) establishes a process for those who have a pending domestic relations case and then file a Collaborative Law participation agreement, and MCR 3.222(C) sets out the process when parties sign a collaborative law participation agreement prior to filing in court. Below, I summarize the general process outlined in each section of this rule.

**Stay of Proceedings for Pending Cases.** Pursuant to 3.222(B)(2), parties in a pending case must file notice of their participation agreement and a motion to stay proceedings on a SCAO form. The court may either stay the proceedings without hearing or hold a hearing on the motion. An initial order granting a stay is effective for 364 days, ensuring the court may still meet its docket-clearing deadlines per Administrative Order No. 2013-12, but allows the court, on party stipulation, to extend the stay. To ensure expeditious outcomes, the court may require a status report on the Collaborative Law process on a SCAO form, and to safeguard confidentiality of the Collaborative process, the form asks only whether the process is ongoing, concluded or terminated. When the Collaborative Law process concludes or terminates, the parties file notice on a SCAO form, which lifts the stay. If the parties do not file notice prior to expiration of the stay, the court provides notice of intent to dismiss and must provide parties an opportunity to be heard.

**Filing Procedures for Commencing a Case.** MCR 3.222(C)(1) establishes the process for commencing a case with a consent judgment and MCR 3.222(C)(2) establishes the process for commencing a case prior to finalizing a judgment.

The filing procedures are the same, except the consent judgment is part of the filing in subsection (C)(1), and under subsection (C)(2), the petition declares an intent to file a consent judgment. Under both subsections, the parties file a joint “petition,” which is titled “in the Matter of Party A and Party B.” The rule defines “Party A” as the equivalent of a plaintiff and “Party B” the equivalent of a defendant, resolving titling questions for post-judgment actions or intersection with other court rules. The joint petition serves as a complaint and answer and appearance of both attorneys, eliminates summons requirements, and starts the statutory waiting period. The SCAO petition form used for parties with a final judgment also serves as a request to enter the judgment. Both subsections instruct that unless requested by the parties, the court clerk will not schedule the matter for pretrial proceedings. Parties without a final judgment may request the court issue orders approving partial agreements, and if the Collaborative Law process has not terminated within 182 days of the filing date, the parties must file a status report on a SCAO form.

In an effort to prevent coercive use of this process, both subsections require parties to complete a SCAO domestic violence screening form.

**Final Judgment Entry.** MCR 3.222(D) describes final judgment entry, whether the Collaborative Law process began after case filing or before. Notably, this rule leaves it to the court’s discretion whether to conduct a hearing prior to entering the judgment. This rule retains the requirement for service of the judgment, per MCR 2.602.

**Dismissal.** As described in MCR 3.222(E) and (F), the court may dismiss an action for lack of progress or a party may dismiss the action. The court may dismiss on termination of a stay or if parties have not filed a proposed final judgment within 28 days after expiration of the statutory waiting period. Parties may dismiss pursuant to MCR 2.504 or by filing a Complaint pursuant to MCL 691.1335(4)(b)(i).

### *Court Procedure for Entry of Consent Judgments*

MCR 3.223 establishes summary proceedings to enter a consent judgment as an original action. The purpose of this rule is to recognize the needs of parties using other collaborative processes, such as pre-filing mediation. However, there is nothing in this rule that prohibits parties who sign a Collaborative Law participation agreement from using this process instead of the MCR 3.222 procedure.

The joint petition to commence this action, described in MCR 3.223(C)(1), mirrors the petition in MCR 3.222(C)(1): it is titled “in the Matter of Party A and Party B;” requests entry of a proposed consent judgment, which must be attached; is signed by both parties; and, requires completion of a SCAO domestic violence screening form.

Like MCR 3.222(C)(1), the joint petition serves as a complaint and answer and appearance of any attorney who signs the petition. Also, filing this petition eliminates the summons requirement, starts the statutory waiting period, and instructs that unless requested by the parties, the court clerk will not schedule the matter for pretrial proceedings. This rule also allows parties to file stipulations and motions for temporary orders.

The main differences between this rule and 3.222(C) reflect the possibility that some of these parties may not be represented by attorneys. Therefore, to help ensure informed consent of both parties, this rule requires Party “A” to file a notice of the filing on a SCAO form. See subsections (C)(3) and (C)(4). In addition, to further ensure informed, voluntary consent, this rule requires a hearing on the proposed consent judgment, which both parties must attend, and a party may object to this summary process, resulting in dismissal of the case. See subsections (C)(4)(g), (C)(5), and (D). If a party dismisses the case and the parties have a signed settlement agreement, although this summary process will be dismissed, a party may still, of course, argue the validity of the settlement agreement but will need to proceed using the standard litigation process.

### *Waiving the Six-Month Waiting Period*

Recognizing that prior to filing these joint petitions, parties have likely worked for many months crafting consent judgments that meet both parties’ needs, both MCR 3.222(C) and 3.223(C) emphasize that nothing in the rules “precludes the court from waiving the six-month statutory waiting period in accordance with MCL 552.9f.” MCL 552.9f begins the waiting period from the time of filing the complaint and allows the court to take earlier testimony “in cases of unusual hardship or such compelling necessity as shall appeal to the conscience of the court.”

The purpose of the 6-month waiting period is to allow a “cooling off” period and to ensure couples with children carefully consider all aspects of their situation, providing time to work through all issues. In these collaborative cases, a settlement agreement reached after months of work serves as the complaint. Therefore, if both parties choose to waive the waiting period, the length of time spent by the parties working together for a peaceful resolution could, and should, appeal to a court as a compelling necessity allowing for earlier judgment entry.

### *Conclusion*

Many of us recall the days when domestic relations cases were handled by the civil courts and no family division existed, when a non-custodial parent “visited” with his or her child instead of having “parenting time” and when “joint legal custody” did not exist. By addition of these new rules, Michigan joins a significant number of states that have already enacted similar changes, supporting use of collaborative processes and continuing to recognize that families are still families – even when going through divorce or other family disagreements requiring court action.

Much has changed in the way clients want to use our courts and refer to their issues. These new rules simply continue the family-friendly changes that began decades ago. I hope that attorneys and judges will take the time to understand these rules and the forms created by SCAO to implement them, so that we may meet the needs of clients who want to move forward as part of healthy, reconfigured families.

*Versions of this article also appeared in the March issue of the Michigan Family Law Journal and the Detroit Legal News. ❄❄*

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### **About the Author**

*Lisa Taylor was appointed by the Supreme Court Administrative Office to serve on the Collaborative Law Court Rules Committee that drafted MCR 3.222 and 3.223. She has been an attorney for over 25 years, earning both her Bachelor of Arts in Economics and her Juris Doctor from the University of Michigan. She trained as a civil mediator in 1999 and then as a domestic relations mediator in 2007. Lisa became a full-time mediator in 2008, dedicating her practice to empowering families to civilly settle their differences. She is a member of Professional Resolution Experts of Michigan (PREMi) and of the State Bar of Michigan’s Family Law Section, and she currently serves as Secretary of the State Bar’s Alternative Dispute Resolution Section Council. Lisa received the Alternative Dispute Resolution Section’s George N. Bashara, Jr. Award for exemplary service in 2016 and its “Hero of ADR” Award in 2017. She can be reached at Taylor-Made Solutions, PLLC, (248) 909-0631 and [lisataylor@apeacefuldivorce.com](mailto:lisataylor@apeacefuldivorce.com).*



Randy Velzen

## Doing Domestic Relations Mediation Right

by Randy Velzen and Nick Little

In February 2018, White House speech writer David Sorensen resigned amid allegations of domestic violence involving his wife. His resignation came two days after another administration official, staff secretary Rob Porter, departed after his two ex-wives said that he physically abused them. The point? Domestic violence is not present only among “the usual suspects.” Domestic relations mediators cannot go by instinct as to whether there is domestic violence (DV).



Nick Little

One of Michigan’s statutes regarding domestic relations mediation, MCL 600.1035, says, in part:

(2) In a domestic relations mediation, the mediator shall make reasonable inquiry as to whether either party has a history of a coercive or violent relationship with the other party. **A reasonable inquiry includes the use of the domestic violence screening protocol for mediation provided by the state court administrative office as directed by the supreme court** (Emphasis added).

For years part of the training protocols for domestic relations mediation was an 8-hour section regarding domestic violence. It was explained during that training that all domestic relations mediators were required to screen for domestic violence. Very few mediators conducted the type of domestic violence screening which was required by the protocols. Now, the screening is required by statute.

Why are the mediators not following the protocols and now the statute? As a member of the Kent County ADR oversight committee and the ADR committee the State Bar’s Family Law Section I can say that we have heard all, or nearly all, of the excuses.

1. **“I rely on the attorneys.”** Really? If we are honest, we know that very few attorneys conduct the extensive review looking for DV issues required by law.
2. **“I rely on the 3 question SCAO form.”** This is the very simple form which asks about the existence of court involvement regarding DV (*e.g.*, PPOs). Not only does this simple form fail to fulfill the requirements of the statute, but, more importantly, it is so vague it does not even come close to discovering DV issues.
3. **“The attorneys do not want me to take the time.”** First of all, too bad. If all the mediators follow the law the attorneys will become accustomed to it. Second, the screening does not have to take an hour, unless there are DV issues that need to be addressed.
4. **“Clients do not want to spend the money.”** It has often been said that clients control the outcome of mediation, but the mediators control the process. There are other parts of mediation that clients don’t like but we do require nevertheless. For example, mediators do not allow clients to willfully withhold information regarding assets because they do not want to disclose it. There are certain aspects of the process that we, as professionals, need to control. DV screening is one of those aspects.

The statute says the screening instruments need to be similar to the SCAO screening instruments. There are basically two SCAO instruments. The “short form” is approximately eight pages of questions to assist the mediator in determining whether there are DV issues. The “long form” is approximately 60 pages of instruction. The long form essentially instructs mediators regarding their options if there are DV issues. Detecting DV issues does not mean, necessarily, there can be no mediation. It does mean that DV issues must be considered in deciding how to proceed with the mediation. (Actually, a similar analysis is required for other ADR options in domestic relations cases too. There is similar language found in the statute establishing collaborative divorce or domestic relations arbitration.)

I always dislike going to seminars and hearing the presenter threaten the “M” word if their suggestions are not followed. (The “M” word is malpractice.) However, I predict there will be an appeal of a mediated case where one of the parties will claim he or she received an unfair result because of DV issues and they will allege that the mediator did not complete the required screening. I think this risk weighs equally on mediators and attorneys in domestic relations cases.

The Kent County ADR oversight committee has changed its forms to require mediators to disclose whether or not they performed DV screening. It is required by law; and more importantly, it is necessary to protect the parties. If people can get jobs at the White House despite having DV allegations we simply cannot rely on other people or “gut instinct” to determine whether or not DV issues exist.

*For your information:*

The long form is available at:

<http://courts.mi.gov/Administration/SCAO/Resources/Documents/standards/odr/Domestic%20Violence%20Screening%20Protocol%20for%20Mediators.pdf>

The short form cite is available at:

[http://courts.mi.gov/Administration/SCAO/Resources/Documents/standards/odr/Domestic%20Violence%20Screening%20Protocol%20\(abbreviated\).pdf](http://courts.mi.gov/Administration/SCAO/Resources/Documents/standards/odr/Domestic%20Violence%20Screening%20Protocol%20(abbreviated).pdf)

A good discussion of DV can be found at: <http://www.thehotline.org/is-this-abuse/abuse-defined/>

Thank you so much, in advance, for “going the extra mile” in making sure domestic relations mediation in Michigan is being done right.

*A version of this article originally appeared in the Grand Rapids Bar Association’s February 2019 Newsletter. \*\**

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### About the Author

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Erin Archard

## Professor Dwight Golann Tackles Evaluation and Disappointment in Mediation

*by Erin R. Archard*

Dwight Golann, international mediation trainer and Professor of Law at Boston’s Suffolk University, led participants through a number of exercises to explore the use of evaluative techniques and how to deal with parties’ sense of loss in mediation at the Section’s annual ADR Summit on March 19, 2019.

During the course of the day-long training, held at Western Michigan University Cooley Law School’s Auburn Hills campus, Professor Golann reviewed various styles of mediation, moving beyond the Riskin Grid, and asking mediators to think critically about how and when they use evaluation in their mediations. He warned mediators to be wary of “judgmental overconfidence,” people’s tendency to be unrealistically confident of their ability to predict uncertain outcomes, and reminded mediators that evaluation is like surgery, “Less is more.”

He encouraged participants to adopt a highly targeted approach when giving parties evaluative feedback, starting with a single, key issue that is blocking progress and being clear about the kind of opinion that they are giving as the mediator. Rather than giving a personal view of a fair result or an “expert judgment” on the issue, mediators should focus on what will break a bargaining impasse and, if parties are ready, a discussion of how certain outcomes meet the parties’ expressed interests. At most, mediators can consider giving a *prediction* of what a trial might be like for the respective parties.

On the topic of loss, he reported findings from studies showing that repairing relationships reduces feelings of loss in mediations that settle. Tying the topic into mediators’ use of evaluation, he suggested that mediators prepare for loss reactions from parties and their attorneys. Mediators can borrow techniques from the medical profession by giving a gentle warning to parties of what is to come, and also presenting opinions in a way that does not suggest fault or incite self-blame from a party. This requires mediators to show empathy toward parties and to slow down the pace and pause to give parties time for adjusting to what the mediator has said. Mediators need to expect disappointment from the parties when giving evaluations and mediators must be non-defensive and give parties time to react.

For a mediator’s proposal, he recommended that mediators make the same offer to both sides based on an assessment of what might work in the given situation, rather than what the mediator thinks is “fair” or “the value of the case in court,” and hold the parties to making a firm yes/no answer on the mediator’s proposal in private. In other words, if both sides say yes, there is a deal, but if a party says no, that party never learns if the other side said yes or no to the proposal. Finally, mediators should give clear deadlines for responding to a mediator’s proposal.

Mediator proposals can be a good way of jumpstarting the process, Professor Golann said. Ultimately, a mediator should frame proposals as an effort to “estimate the point of mutual pain” rather than the case value or the fair result. This allows each side to process the perceived loss without offending either side and protects parties’ bargaining positions if the proposal does not work. ❄❄



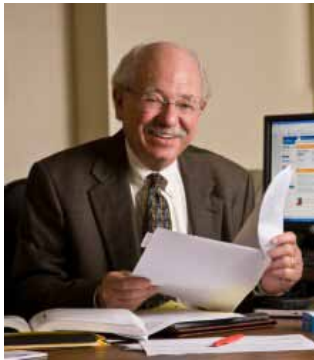
Presenter Dwight Golann (in blue) meets with volunteer discussion group leaders at the Annual Summit.

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### About the Author

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Sheldon J. Stark

## “I Know What Your Job Is!” – Reframing the Role of Mediator

by Sheldon J. Stark

### *Party Expectations as Barrier*

#### **Expectations are resentments under construction.**

Misguided, hostile, or uninformed participant expectations about mediation and the role of the mediator can be significant barriers to resolution. To assist participants in getting the most out of the process as well as a satisfactory experience, it is crucial that we acknowledge and address their expectations. An essential element of my practice is scheduling an introductory ex parte meeting with each party and their counsel the morning of mediation. In addition to “getting acquainted,” I routinely explore participants’ experience with mediation, their understanding of the process, and what they expect from me.

Most participants reply, “Your job is to help us find a way to resolve our differences and settle the case.” Not bad. Occasionally, however, a party will say, “I know what your job is! Your job is to convince me to [take/pay][ less/more] than my case is worth!” Uh oh! These parties distrust the mediator or the process and fail to appreciate mediation’s unique opportunity to learn. They filter anything said by the mediator or the other side through a prism of skepticism, disbelief, and hostility. I’ve heard it from plaintiffs and defendants alike. I’ve heard it early in the day; I’ve heard it late. I’ve heard it from “newbies,” and I’ve heard it from long time claims managers. Hostile expectations present significant obstacles to resolution and must be reframed if progress is to be made.

Resolution requires a level of trust. Many parties arrive at mediation distrusting one another and resist efforts to build or re-establish any. Trust in the mediator and the mediator’s process therefore become critical to success. Skepticism about our role at the mediation table is unhelpful and corrosive. Skeptics don’t listen. They don’t learn. They push back. They deflect. They resist our techniques. They hunker down, inflexible and unmoving. They undervalue our reality testing and risk assessment questions.

Unaddressed, a perception we are working against their best interests prevents conflict resolution. Unaddressed, suspicion of our motives, lack of trust in our process, a sense we care only about forcing resolution on unsatisfactory terms, undermines everything we seek to accomplish. For every party willing to disclose skepticism, I worry about the participants who keep similar perceptions to themselves.

Do the skeptics have it right? Is our job as mediators to guide parties to a resolution “somewhere in between” no matter what? Churchill famously said the best settlements are those from which both sides walk away equally unhappy. Is that what we’re after? It is certainly true that cases almost always settle somewhere between the opening offer and counter-offer. If this is our “job,” it is not irrational for parties to brush off our toughest questions, minimize our reality testing techniques, and scoff at our efforts to establish the potential costs and collateral consequences of non-agreement. Middle ground is often the end result of what we do.

I suggest, however, that the proper frame for understanding our role is very different. In this article I will suggest that we address party expectations directly, and offer as replacement a productive, trustworthy reframing for parties to consider.

#### *Redefining the Role of Mediator: Assistance in Exercising Good Judgment*

Let’s start with how we define our role as mediators. Do we share the same definition as parties and counsel? Are we satisfied that “helping the parties find a way to resolve their differences” is our role? Perhaps.

To me, helping parties find a way to resolve their differences is the net *result* of what we do, *not* the roles we play in the process. The truth is we do not play a *single* role. We play many. To me, the list of roles does *not* include persuading the plaintiff to take less than desired or the defendant to pay more than the claim is worth. Let me suggest an alternative framing of the role that I learned recently from Bill Marsh, Global Mediator of the Year in 2014-15, who presented at a 2018 conference of the International Academy of Mediators in Cleveland, Ohio.

“No,” I say to the skeptics, “That’s *not* how I see my job. I see my job as helping you make the best decision possible about resolution of your dispute. This is your case. Your life. Your business. Mediation is entirely voluntary. You decide. No one can exercise good judgment and make a good decision without all the information available.

My job is to bring you that information including, among other things, the story the other side intends to present, the perspective they bring to the table, the strengths and weaknesses of the claims and defenses, the magnitude of the risks presented, the legal landscape, and the costs, both economic and non-economic, if the dispute does not settle today. Whether you settle and on what terms is totally up to you. Once you have all the information, with input and advice from your lawyer, I’m confident you will make the best decision possible.”

*That’s* how I frame our role as mediators. *That* is the proper way to view our role in the process. *That* transforms the skeptic from resister to joint problem solver.

I recently mediated a suit between family members over a lakefront cottage which had been in the family many, many years. Both lawyers agreed partition was impracticable and that the court would order the property sold. Mediation presented an opportunity to retain the cottage in the family if one faction purchased the half interest of the other. There were hard feelings. No trust. Anger and resentment. “Is your goal to get one of us to buy at the lowest possible price?” one of the cousins asked, her face drawn with worry and consternation. “Not at all,” I replied. She wasn’t convinced. She was skeptical. Of course I would deny what she thought obvious. She did not believe me. When I gave my frame on the mediator’s role, however, I could almost see a light bulb turning on over her head. She visibly relaxed. She smiled. She engaged. An agreement was reached in the second round! Reframing the role of mediator as a neutral, objective third party motivated to help them exercise their best judgment is powerful.

#### *Mediator as Educator*

Education is an essential element of our job. First, we educate the parties and their counsel to achieve a better understanding of the process. Mediation is an opportunity to step back from the fray, climb up to the balcony, and look for a way to reach an amicable accord. If a party’s goal, mediation is an opportunity to repair relationships, establish effective channels of communication. It is not just another stop on the litigation express. As educators, we help parties see how they can reduce costs and seek maximum mutual benefit. Mediation is the one place where they can communicate directly with one another, take a step back and assess their best and worst alternatives to a negotiated agreement, determine if resolution might better meet their underlying needs and interests, and make judgments about whether the economic costs and potential collateral consequences are worth the risk.

Second, we educate about what lies ahead in discovery or trial if the dispute doesn’t settle. We assist each party in hearing and considering the other side’s story; not to accept it as truth. That’s rarely going to happen. Each party has its own view about what transpired and they’re likely to stick to it. We ask only that the alternative story be considered. We ask, “Is it plausible? What is the risk the court or fact finder will believe it?” When parties express confidence that the truth will emerge to expose the liars on the other side, Mediators ask the advocates, “How often does that happen?” Rarely, as it turns out.

Even if the conflict doesn’t resolve, if participants listen carefully, they will learn the other side’s perspective, better appreciate and assess their own strengths and weaknesses, and discover what it will take to reach agreement. Information has value. Experienced mediators help parties find that value through education.

#### *Mediator as Host*

Typically, we convene the mediation at an agreed upon venue. As my office is virtual, I usually mediate in the offices of one of the lawyers. If a “neutral” location is required, I have a relationship with a court reporting firm permitting me to use their conference rooms. Whatever the venue, a good host insures ample supplies of coffee and beverages, easily available rest rooms, and space for private and confidential meetings as needed. Arbitrator Don Sugarman taught me years ago that the role of host includes bringing bagels and cream cheese and fresh fruit in the morning. This facilitates working through lunch. Lunch breaks can derail progress toward resolution. If the parties prefer a lunch break, the mediator is a source of information about ordering in or nearby restaurants. After lunch, I break out cookies, chocolate, and a salty snack.

My grandmother taught me, “food is love.” It’s the grand oral equation! If the parties break bread together, the chances of a successful resolution increase.

### *Mediator as Interpreter and Translator*

In the film *Cool Hand Luke*, Strother Martin famously tells Paul Newman, whom he has just beaten to a pulp, “What we got here is failure to communicate.” Sometimes, a failure to communicate is the cause of conflict. In such cases, the mediator’s role is to make certain the parties have heard and understood each other. In some disputes, communication is hampered by zealous advocacy, competitive personalities, or provocative “fighting” words. The adversarial process itself can undermine the likelihood one side will listen to the other.

In these cases, the mediator’s role is to interpret messages, translate words, or neutralize the inflammatory rhetoric so that important issues will be considered and assessed in their proper light. Accusations of lying, for example, generally aggravate conflict. Reframing can lead to better understanding: “They have serious questions about credibility and here’s why...” The language of diplomacy, elevating the discussion a notch or two, reframing, and inviting participants “up to the balcony” to look down on the big picture are all tools in the mediator’s array of techniques.

### *Mediator as Information Exchanger*

Good settlements generally require the exercise of good judgment by the parties. Will Rogers taught us that good judgment comes from experience - and experience comes from bad judgment. What are the ingredients for exercising good judgment? One ingredient is information. Most people are not ready to resolve their dispute unless and until they have all the information available to consider and process. This may involve learning all the facts – as proposed by both sides, the legal framework and past precedent, the likely evidence – together with an assessment of the admissibility of that evidence, the quality of witnesses, the plausibility of the stories told by each, the inclinations and track record of the trial court, the certainty of the damages and losses, the experience and talent of the litigators, the nature and make-up of the jury pool, a realistic understanding of the risks, a hard eyed assessment of costs and attorney fees; and more! A reasoned top or bottom line assessment of settlement value results from a careful analysis of all these factors refined and uncovered during the mediation process.

The mediator’s job is to manage the transfer and exchange of as much information as possible. The exchange of information is particularly important should the parties be unready or unwilling to settle. There is great value in the mediation process if the parties come away knowing each other’s numbers, having a better understanding and appreciation of the risks, the facts, the costs and the other side’s perspective with which they will contend going forward.

Understanding and considering the other side’s perspective is often an undervalued aspect of the mediation process. In a commercial case I mediated, the defendants were escalated, challenging the good faith of the plaintiff. Defendant’s president groused, “They didn’t come here to settle!” Well, I pointed out, the CEO, the head of human resources, the general counsel, the chief financial officer, and the chief operating officer all flew in for the day. Plaintiff spent thousands of dollars on plane fare and hotel accommodations. I couldn’t even begin to calculate the lost opportunity costs of an all-day mediation demanding the attention of the plaintiff’s entire top management team. “They could have sent a human resource person. They could have sent their general counsel alone. The officers came. All of them. What does that tell you about whether they are here in bad faith?” Why would they do that, I asked, unless motivated to engage in the process? Recognition that the other side was taking the dispute seriously and treating it with respect was a game changer. The case settled.

### *Mediator as Guide to Needs and Interests*

Most parties and their advocates are trained in positional or distributive bargaining. They rarely think about, consider, or identify the underlying needs and interests driving the dispute. Accordingly, another mediator job is to assist the parties in identifying their own needs and interests and trying to read those influencing the stance of their adversaries. When needs and interests are identified and examined, the parties may be better able to formulate proposals that are attractive and positive.

For example, in a non-solicitation case, defendant former employee resigned to start his own business, inviting current clients to leave with him in violation of his employment contract. Plaintiff sued for injunctive relief and damages. The plaintiff’s CEO, whose business was highly successful and lucrative, did not actually care whether he recovered any money. Plaintiff cared about an office full of current employees observing whether defendant got away with disregarding the same non-solicitation agreement that CEO’s *current* employees had signed. Defendant, whose business venture had not succeeded, was interested in moving on with life and ending expensive legal representation. He was more than willing to acknowledge the validity of his contract to avoid further litigation. Without exploring underlying needs and interests, resolution might not have been possible.

### *Mediator as Negotiation Coach*

When the mediation process is boiled down to its least common denominator, it is nothing more than an assisted negotiation. The mediator – neutral, unbiased and objective – is there to assist the parties in better understanding each other, removing obstacles to understanding, and communicating in constructive ways.

A major complaint expressed by litigators is the mediator who does little more than carry messages and offers back and forth between the parties without any input or comment. This is understandable. A simple messenger adds little value to the process. Experienced lawyers know how to pick up the phone and convey offers and counter offers themselves. They don't need a mediator billing hundreds of dollars per hour to do it for them at the mediation table.

One of the most valuable roles a mediator can serve is negotiation coach. Mediators are well equipped to assist the participants in formulating proposals, developing the rationale to explain them, and putting them forward in constructive fashion. Regrettably – perhaps because mediation has become so popular – many fine lawyers seem to have forgotten how to negotiate. Mediator assistance, therefore, can be crucial to arriving at one side's bottom line, the other side's top. First, the mediator is the only participant at the table who has been in all rooms repeatedly throughout the day. An experienced mediator takes the "temperature" of each room. An experienced mediator hears and understands what is important to the participants. An experienced mediator recognizes what will and will not be welcome. As a result, the mediator can offer insight into how to frame an offer most persuasively. Importantly, a negotiation coach doesn't dictate what the parties should settle for; only how best to reach their own goals and objectives.

Second, mediators are often skilled and experienced negotiators themselves. They recognize the importance of putting together a verbal message to justify each demand and counter-offer. They understand that dollar figures are such loud messages in and of themselves that wrapping a proposal in text provides a solid foundation for a more robust and businesslike exchange. Articulating the rationale for a proposal avoids an unproductive exchange about "my gut" versus "your gut."

Based on past experience and observation, mediators are in a position to provide suggestions about what may or may not work. If the goal is to solicit a counter-proposal, mediators can explore what is most likely to accomplish that. However, no one knows the case as well as the advocates. I recognize that I will never have their grasp of the case. Accordingly, I assure the lawyers that there is no down side to rejecting mediator negotiation suggestions. It does not hurt my feelings. They are free to do it without fear that I won't like it.

An important aspect of negotiation coaching is to ask questions. How will the other side react to that number? What do you think they are expecting to hear from you in this round? What message will they read into this number? As progress is more likely to result from a reasoned proposal than from a "gut" proposal, what is the rationale you want to provide? Is there a better number you can work with and still leave yourself room to move? Will this proposal keep the process in motion? What is the risk a party will leave the table? Is there a more constructive way to frame the proposal? How can we frame this to better meet their needs and interests?

Far too often attorneys want to open the negotiation with numbers that simply antagonize the other side, leading to retaliation, impasse or withdrawal from the process. Managing opening offers, therefore, is one of the most important challenges of negotiation coaching. "Why am I making a ridiculous offer?" they ask. "Because they need to understand that ...!" You can fill in the rest. Whatever the litigator wants the other side to understand, an unrealistic proposal only precipitates an equally unrealistic counter. Lawyers are competitive. They act reciprocally. Indeed, unrealistic numbers cause the receiver to conclude the offeror is neither serious nor operating from good faith. Regardless of the message intended, that's the message received.

### *Mediator as Risk Assessor and Agent of Reality*

We've all seen it: Advocates and parties fall in love with their claims and defenses. What happens when we're in love? We sweep all the warts and problems under the carpet. So, too, in the run up to mediation. Positions harden. They convince themselves their story is the only story. They undervalue the risks and shortcomings. They assure themselves their numbers are reasonable and the other side doesn't get it. A passionate belief in the righteousness of one's cause is a great asset at trial. It's not a recipe for success at the mediation table, where it undermines flexibility and corrodes the joint problem solver mindset.

**Dispositive Motions:** As a long-time trial lawyer, the value I bring to the process is an ability to identify risk and ask participants experience-based questions to insure that a realistic assessment of the risks is at work. When risks are reviewed openly and analytically, the parties are more likely to give them the respect they deserve. Will the case reach a jury, for example? Who is deciding the dispositive motion? What's the judge's track record in cases like this one? What is the risk of a successful dispositive motion here? Which claims, if any, are likely to survive? How will that impact the complexion of the trial? What impact will denial of summary judgment have on settlement offers?

**Motions in limine:** If there's a trial, what are the strongest pieces of evidence supporting the claims and defenses? Is there a risk motions in limine will exclude some or all? If excluded/admitted, what is the impact on valuation? What are the chances of a new trial if the evidentiary issues are part of an appeal? Does an evidentiary ruling give the other side a built-in insurance policy for reversal on appeal? What will the added cost likely be in time and resources if an appeal is taken?

**Witness assessment:** How do the parties come across? How will they stand up on cross examination? Are there missing witnesses or documents? How sympathetic is the claim? In an employment case, will the same considerations that influenced the decision maker influence the jury? Are the key witnesses believable? How will you handle this problem or that?

**BATNA/WATNA:** Fisher and Ury in their landmark book, "Getting to Yes," taught us about BATNA and WATNA. What is your best and worst alternative to a negotiated agreement? What does your worst day look like? What is the most likely alternative to a negotiated agreement (MLATNA)? How does your BATNA/WATNA/MLATNA compare to the offer on the table?

**Collateral consequences:** Have the parties considered collateral consequences? How likely is this case to result in the public exposure of private or embarrassing facts? Will the media be interested in this case? Will media attention have an impact on product sales or the market? Might a verdict impact claims of other potential parties similarly situated? Will the dispute result in important non-parties being dragged in: customers, bankers, clients, patients, distributors, vendors, etc.? What is the risk of negative consequences from dragging in outsiders with whom the parties do business?

**Case evaluation:** Has the case gone through case evaluation under MCR 2.403? What was the result? Why did the case not settle? Who was on the panel? What did they miss? How are case evaluators any different from members of the jury pool?

**Fees and costs:** How much has been spent on attorney fees and costs to date? How much more is likely to be spent to be ready for trial? What's the cost of trial? What is the risk the loser will be ordered to pay the attorney fees and costs of the other side as sanctions under MCR 2.403 or pursuant to a fee shifting statute? Is the principle worth the cost? Could the needs and interests of a party be met without trial? In an era where no more than 1% of the cases are being tried, what makes *this* dispute a candidate for a full-blown trial on the merits? Would the parties be better off managing their risk? How can they best do so? As Bill Sankbiel liked to say, "A good settlement is better than a good case. You can always lose a good case." Judge David Lawson adds, "A good settlement is an exchange of risk for certainty." A good mediator helps the parties weigh these considerations.

### *Mediator as Messenger*

An important role for the mediator is to be a messenger, carrying offers and counter-offers back and forth between rooms, encouraging movement, translating messages and rationales into language the other side will listen to, process and understand. Sometimes, even when the parties reject joint sessions they have a message or two they truly want the other side to hear. "You didn't handle this right." "This shouldn't happen to anyone else." "This was not personal. We followed our procedures." They may prefer that the mediator convey the message.

If the message is "I'm sorry," experienced mediators push back. A good apology is best delivered in person by the parties. Mediators should lay the ground work by preparing one party to deliver it, the other party to receive it.

If the parties are interested in relationship repair, exploring possible business solutions, or establishing new channels of communication for the future, the mediator can assist in working through whatever needs to be done for that to happen. In a dispute over a commercial lease, for example, part of the tenant's frustration was how its many complaints fell on deaf ears. The landlord experienced frustration when the tenant engaged in self-help repairs the cost of which were then deducted from the rent – which occurred whenever the landlord didn't seem sufficiently responsive. A new complaint process was developed through mediation that both sides have found addressed their respective concerns.

### *Mediator as Painter of the Courtroom Picture*

Another important aspect of the mediator role is exploring the expectations each party brings to the table about trial. Outside the profession, most people have no clue what a real trial looks like. In the last several years, I've discovered that neither do many litigators. In 2017, less than 1% of all cases in Michigan went to trial.

Lawyers are no longer getting first hand trial experience. For most *litigants*, what they know about trials comes from television and the movies. They have no sense of what a courtroom actually looks like, what's necessary to prepare, how evidence is introduced, the limited time they will have to make their case, the number of breaks they get, the impact a judge can have on the proceedings, restrictions on what they can say to the jury and what it's like to be cross-examined by a skilled advocate.

An important technique for the mediator, therefore, is to engage the litigators in painting the courtroom picture, delivering a realistic appreciation for what can be expected. Many litigants are surprised to learn that their day in court is not what they imagined. One small example: many parties believe they can simply take the stand, swear to tell the truth, turn to the jury, explain their case, and persuade jurors to rule in their favor. Not so fast. We proceed by questions and answers. There are no narratives. Questions cannot be leading; they must be open ended. The testimony must be admissible. There are rules about admission of documents. Witnesses are not permitted to go beyond the questions asked. Proving someone a liar is difficult and rare. Understanding how a claim or defense will unfold in the courtroom can have a prophylactic impact on a participant's desire to roll the dice.

### *Conclusion*

Mediators are accustomed to identifying and removing impediments to resolution. We dismantle road blocks preventing trust from developing between parties. We build relationships and gain participant trust for ourselves or our process. We dig down to interests and needs. We translate each party's message into words likely to be heard and understood in the other room. We identify and explore risk. We make suggestions about formulating proposals. We are agents of reality. We help parties assess value based upon risk. We aid in the search for common ground and brainstorm options for resolution. We assist in relationship repair when that is of value, and we open new channels of communication.

Every day in our practices we are faced with parties filled with suspicion of one another, a strong sense of victimhood, escalated emotions, misunderstandings, failures to communicate, unrealistic expectations, weak risk analysis, ignorance of the cost of non-agreement and more. When parties reach out to hire a mediator for help in resolving their dispute, an additional obstacle may be present: skepticism, misperception and distrust about our role in the process. We may be viewed as one more hurdle standing between them and a desired result.

We must reframe this erroneous "job description" and replace a negative perception with a positive one. By explaining we are there to provide information about risk and cost, and by gaining their confidence in our process and establishing the foundation for a WIN/WIN resolution, we assist them in deciding whether to settle and at what level. *That's our job!* ❄️

### **About the Author**

*Sheldon J. Stark offers mediation and arbitration services. He is a member 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 Chair Emeritus of the Alternative Dispute Resolution Section of the State Bar and former chair of 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. He has worked with ICLE and 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, the Michael Franck Award from the Representative Assembly of the State Bar of Michigan in 2010. In 2015, he received the George Bahara, Jr. Award For Exemplary Service from the ADR Section of the State Bar. He has also been listed in “dbusiness Magazine” as a Top Lawyer in ADR for 2012, 2013, 2015, 2016. He can be reached at [shel@starkmediator.com](mailto:shel@starkmediator.com).



Lee Hornberger

## Michigan Mediation Case Law Update

by Lee Hornberger

### I. Introduction

This update reviews significant Michigan cases issued since 2017 concerning mediation. For the sake of brevity, this update uses a short citation style rather than the official style for Court of Appeals unpublished decisions.

### II. Mediation

#### A. Michigan Supreme Court Decisions

There were apparently no Michigan Supreme Court decisions concerning mediation during this review period.

#### B. Michigan Court of Appeals Published Decisions

*Mediation fee is taxable cost*

***Patel v Patel***, 324 Mich App 631, 339878 (June 19, 2018). COA affirmed Circuit Court’s award of defendants’ **mediation expense as a taxable cost** under MCR 2.625(A)(1). “[M]ediator’s fee is deemed a cost of the action, and the court may make an appropriate order to enforce the payment of the fee.” MCR 2.411(D)(4).

*COA affirms enforcement of custody MSA*

***Rettig v Rettig***, 322 Mich App 750, 338614 (January 23, 2018). Parties signed MSA concerning custody. Over objection of one parent that Circuit Court should have hearing concerning CCA best interests factors and whether there was established custodial environment, Circuit Court entered judgment incorporating MSA. COA affirmed. COA said although Circuit Court is not necessarily required to accept parties’ stipulations or agreements verbatim, Circuit Court is permitted to accept them and presume at face value that parties meant what they signed. **Circuit Court remains obligated to come to independent conclusion that parties’ agreement is in child’s best interests, but Circuit Court is permitted to accept that agreement where dispute was resolved by parents. Circuit Court was not required to make finding of established custodial environment.**

The MSA stated, “This memorandum of understanding spells out the agreement that we have reached in mediation. This resolves all disputes between the parties and the parties agree to be bound by this agreement.”

#### C. Michigan Court of Appeals Unpublished Decisions

*Custody MSA upheld*

***Brown v Brown***, 343493 (November 27, 2018). COA said this case is indistinguishable from *Rettig*, 322 Mich App 750 (2018), in which COA rejected challenge to valid judgment of divorce that included custody and parenting-time provision from MSA.

*Non-MSA DR prop settlement approved*

**Nowak v Nowak**, 339541 (August 23, 2018). COA affirmed enforcement of non-MSA settlement agreement. Kidnapping, gun safe, alleged duress and coercion, unconscionable, credibility. Not MSA case. Circuit Court did FOF of situation.

*To settle or not to settle?*

**Smith v Hertz Schram, PC**, 337826 (July 26, 2018), **lv app pdg**. COA split decision. Legal malpractice action arising out of post judgment divorce proceeding. Matter went to mediation. Mediator, also served as the “discovery master.” Plaintiff did not go to the Family Court to challenge discovery roadblock. Plaintiff decided to settle.

Jansen dissent said attorney should have advised plaintiff to walk away from \$65,000 figure offered in mediation and to return to Family Court to pursue discovery matter further. Settlement should never have been serious consideration. With respect to language in settlement agreement that acknowledged that neither party had relied on any “representation, inducement, or condition not set forth in this agreement,” attorney should never have allowed it. The fact that attorney essentially released Leider from future liability for any material misrepresentations made in connection with settlement agreement was negligent. Attorney should have had plaintiff sign a release, indicating it was her intention to enter into settlement agreement despite her counsel’s advice to contrary.

*Post-MSA surveillance is okay.*

**Hernandez v State Automobile Mutual Ins Co**, 338242 (April 19, 2018). COA reversed Circuit Court’s granting of plaintiff’s motion to enforce MSA. MSA was signed by plaintiff; however, claims representative for defendant indicated he would need approval from his superiors and Michigan Catastrophic Claims Association (MCCA) before signing agreement. MSA stated “[t] **his settlement is contingent on the approval of MCCA.**” MCCA did not approve MSA. Circuit Court did not err in concluding there was meeting of minds on essential terms of MSA. MSA was properly subscribed as required by MCR 2.507(G). MCCA approval of MSA was condition precedent to performance of MSA. Defendant did not waive this condition by conducting surveillance on plaintiff and **submitting reports of surveillance to MCCA.**

*Probate MSA not approved.*

**Peterson v Kolinske**, 338327 (April 17, 2018). Probate MSA not approved. MSA indicated only that persons who signed it had agreed to its terms. It did not indicate Theresa agreed to its terms, agreed that the will was valid, or otherwise agreed to release claims against the estate or its personal representative. If contract’s language is clear and unambiguous, must construe it according to its plain sense and meaning, without reference to extrinsic evidence. Lessons: **Get everyone’s signature. Be careful when necessary people are absent.**

*A signature is a signature*

**Krake v Auto Club Ins Assoc**, 333541 (February 22, 2018), lv dn \_\_\_ Mich \_\_\_ (2018). “Facilitation Agreement.” Plaintiff was present at mediation. She initially denied she had signed MSA. She admitted she did “pen” her signature on MSA. She explained she had signed “fake initials,” and she had done so because her attorney told her MSA was not legally binding document. Plaintiff explained she did not believe MSA to be final resolution of case. She believed amount of settlement was too low. Circuit Court enforced MSA. COA affirmed. Lessons: **People are unpredictable. Prepare for the worst. The word “mediation” does not appear in this opinion.**

*Party dies after signed MSA but before judgment*

**Estate of James E Rader, Jr**, 335980 (February 13, 2018), lv dn \_\_\_ Mich \_\_\_ (2018). After signed MSA in domestic relations case, one of parties **died before entry of judgment**. Because settlement agreement was to be incorporated into judgment of divorce, agreement has no effect, since decedent died before judgment of divorce could be entered. Entry of judgment of divorce served as condition precedent to enforcement of settlement agreement. Because entry of judgment of divorce became impossible following decedent’s death, settlement agreement could not be incorporated or given effect as intended. Lesson: **Act quickly.**

### *Mediation confidentiality*

**Hanley v Seymour**, 334400 (October 26, 2017). Defendant ex-wife sent to an attorney suing her ex-husband's current wife financial information about current wife and defendant's ex-husband, who happened to be the attorney representing current wife. Plaintiff ex-husband sued defendant for contempt, claiming violation of protective order in their divorce that prohibited parties from disclosing financial information learned during discovery. Defendant argued an unclean hands defense, claiming plaintiff had learned about the contemptuous materials during mediation session and so could not use those materials in contempt proceedings. COA found communications received by attorney from defendant ex-wife were not part of mediation proceedings. Plaintiff ex-husband was made aware of communications at conclusion of mediation in which plaintiff participated with opposing attorney. Opposing attorney had received documents from defendant before mediation was conducted. There was no violation of MCR 2.412(C) regarding confidentiality of mediation communications.

### *MSA enforced*

**Jarob v Jarob**, 334216 (October 17, 2017). Defendant moved to set aside MSA, contending she signed MSA under duress because she had no food during nine-hour mediation and was pressured by her attorney and mediator to sign MSA. Circuit Court enforced MSA. Defendant argued MSA was obtained by fraud and Circuit Court abused its discretion by failing to set it aside and by failing to hold evidentiary hearing when defendant asserted plaintiff had procured MSA by fraud. COA, affirming Circuit Court, said finding of Circuit Court concerning validity of parties' consent to settlement agreement will not be overturned absent finding of abuse of discretion. *Vittiglio v Vittiglio*, 297 Mich App 391, 400; 824 NW2d 591 (2012), lv dn 493 Mich 936; 825 NW2d 584 (2013). According to COA, defendant's allegation that she did not eat during nine-hour mediation and was pressured to accept terms of MSA by her attorney and mediator did not demonstrate coercion necessary to sustain claim of duress. **Mediator provided parties with snacks.** There was no evidence defendant was refused request to get something to eat or was not allowed to bring in her own snacks or food during mediation. Mediation was conducted as shuttle mediation where parties were separated. Lessons: **Refreshments can be important. Separate sessions can sometimes be helpful.**

### *Mediation and domestic violence*

**Kenzie v Kenzie**, 335873 (August 8, 2017). Attorney fees granted, in part, because husband initiated altercation with wife following mediation at which he called police and accused wife of domestic violence; and he obstructed mediation process that would have allowed case to reach settlement posture.

### *Spousal support language not in MSA*

**Amante v Amante**, 331542 (June 20, 2017). Plaintiff argued both counsel and mediator forgot to include provision barring spousal support in settlement agreement. Plaintiff argued under plain language of judgment of divorce, dispute regarding provision barring spousal support should have been decided by arbitrator. Under terms of judgment, "any disputes regarding the judgment language" should be submitted to arbitrator. Circuit Court did not abuse its discretion in following settlement agreement and entering judgment and denying plaintiff's motion for relief from judgment.

### *Binding settlement agreement*

**Roth v Cronin**, 329018 (April 25, 2017), lv dn 501 Mich 910 (2017). This is not an MSA case. "[S]he **understood (1) the terms of the settlement, (2) she would be bound by the terms of the settlement if she accepted it, and (3) she had the absolute right to go to trial, where she could get a better or worse result.** She testified she understood the terms and would be bound by the settlement, and had the right to go to trial. Plaintiff further testified that it was her own choice and decision to settle pursuant to the terms that were placed on the record."

### *Circuit Court Judge not disqualified*

**Ashen v Assink**, 331811 (April 20, 2017), lv dn 501 Mich 952 (2018). Plaintiff argued Circuit Court judge should have been disqualified because, as mediator over case, he would have had personal knowledge of disputed evidence concerning proceeding. Mediation scheduled for June 11, 2015, was cancelled on June 2, 2015. Judge never actually mediated case. Plaintiff failed to show what personal knowledge, if any, judge had of disputed evidentiary facts concerning proceeding. MCR 2.003(C)(1)(c).

*Can Circuit Court appoint a Discovery Master?*

**Barry A Seifman, PC v Raymond Guzell, III**, 328643 (January 17, 2017), lv dn 500 Mich 1060 (2017). Defendant contended Circuit Court lacked authority to appoint independent attorney as Discovery Master and to require parties to pay Master's fees; and Circuit Court should have made determination regarding reasonableness of Master's fees. COA held once parties accepted case evaluation award, defendant lost ability to appeal earlier Discovery Master order. \*\*

### About the Author

*Lee Hornberger is Immediate Past Chair of the State Bar's ADR Section. He is in The Best Lawyers of America 2018 and 2019 for arbitration, and on the 2016, 2017, and 2018 Michigan Super Lawyers lists for ADR. He has a First Tier ranking in Northern Michigan for Arbitration by U.S. News – Best Lawyers® Best Law Firms in 2019.*

*He has received the George N. Bashara, Jr. Award from the State Bar's ADR Section in recognition of exemplary service. He is a member of The National Academy of Distinguished Neutrals and the Professional Resolution Experts of Michigan.*

*He is former Editor of The Michigan Dispute Resolution Journal, former Chair of the Grand Traverse-Leelanau-Antrim Bar Association's ADR Committee, former member of the State Bar's Representative Assembly, former President of the GTLA Bar Association, and former Chair of the Traverse City Human Rights Commission.*

*While serving with the U.S. Army in Vietnam, he was awarded the Bronze Star Medal and Army Commendation Medals. The unit he was in was awarded the Meritorious Unit Commendation and the Republic of Vietnam Gallantry Cross Unit Citation with Palm.*

*He holds his B.A. and J.D. cum laude from the University of Michigan and his LL.M. in Labor Law from Wayne State University.*



Anna E. Widgeon

## Mentoring as a way to Provide Support to and Through People of Color in ADR

*by Anna E. Widgeon and Betty R. Widgeon*

*This is the third article in a three-part series on the past, present, and future of minorities in the ADR field and in the ADR Section of the Michigan State Bar, specifically. This article focuses on mentoring as a valuable tool to help offset a historical lack of diversity in the field.*

When it comes to inclusion and diversity in the ADR profession, we have come a long way, but it is clear that we still have a long way to go. In conversations about how to move forward toward a richer, more diverse field of professionals in the future, one subject emerges repeatedly: mentoring.

To a busy ADR professional, the idea of mentoring, though a noble idea, might seem complicated and somewhat vague. However, in truth, there are a number of ways that a more experienced ADR practitioner could serve as a mentor to a less-experienced one. A mentoring relationship could utilize a particular form of mentoring or combine any number of elements. Once a potential mentoring relationship has been identified, there is no correct or incorrect way to begin, but here are a few suggestions: mention, encourage, network, train, organize, and repeat.

### *Mention*

This is something that can take little effort but have a big impact. After spending enough time with the mentee to become knowledgeable about her education, her relevant experiences, her accomplishments, and her career trajectory, the mentor can easily, confidently, and competently mention her to parties and advocates when pertinent topics of conversation come up. Research has shown that bias can result even from an individual seeing a name on a resume and unconsciously



Betty R. Widgeon

connecting negative stereotypes to the name. Mentioning a person's name to potential clients and others of influence in the field can help to counter that effect.

Additionally, the mentor can provide the mentee with names and some background information of parties, advocates, and neutrals with whom a mentee should become familiar. Making mention of key panels, contacts, training opportunities, and conferences for future reference is ideal.

*Example:* A newer practitioner requests a letter of recommendation from a more experienced professional. The experienced professional first reviews and evaluates the candidate's resume then schedules a phone call to ask a few follow-up questions in order to compose a recommendation that is both flattering and an honest appraisal of who we understand him to be. At an ADR reception several weeks later, the experienced professional mentions that she has recently written a recommendation for the newer professional, mentions him by name, and shares a bit about his experience or education.

### *Encourage*

An early helpful step a mentor can take is to help a mentee set expectations for what lies ahead in the field. The road to becoming a successful ADR professional is long, and it can be hard to navigate. A mentor can help by describing to the mentee what to expect and encouraging her not to lose momentum or hope when the going gets tough. Pointing out and celebrating small victories and advancements can help provide incentive for her to stay the course.

The kind of encouragements and acknowledgment that would usually be reserved for a letter or recommendation could also assist the mentee at other times. One recommendation would be to keep a running list of reassuring feedback and advice and to dispense it regularly. Particularly for women and people of color who don't always see much representation in the field, sincere encouraging phrases can be of inestimable worth. A woman or a minority mentor can be hugely encouraging to a mentee by talking about experiences, obstacles, and challenges she has faced how she confronted or managed them. If you are not a woman or a minority mentor, you can still encourage your mentee with a sympathetic ear and continued verbal support.

*Example:*

After submitting a recommendation letter for a work opportunity, the letter-writer reported back to the applicant colleague, "I told them in my letter that I knew you were a very competent and experienced arbitrator because I read your opinions all the time—and they are very good. In fact, I have quoted from some of them." Hearing that feedback served as a long-term boost to that applicant's confidence.

### *Network*

One well-known and incredibly effective aspect of mentoring is networking. Less experienced and less well-known ADR professionals are almost always looking to make new connections, and mentors are often in a position to help them make such connections. Making in-person connections can be an invaluable aid to less connected practitioners because it offers that mentee an opportunity to get her foot in the door—often for the first time. When done correctly, helping to sow seeds for future connections does not carry the concern of possibly impairing the mentor's reputation. These kinds of introductions are not full endorsements of a mentee's credentials. Once appropriate connections are made, the mentee is responsible for following-up and completing connected assignments the mentor assigns.

The "old boys' network" has successfully operated this way for decades and still operates this way; contracts are based on connections, connections are based on networking, and networking is based on introductions. However, all too frequently, unconnected professionals are passed over for opportunities to join panels, decide cases, and speak at conferences because they might appear to lack the necessary experience and credentials, when oft times, all they really lack are the necessary connections. A savvy, intentional mentor can help a mentee bridge this gap and make the connections that can lead to experiences which will lay the foundation for the appropriate ADR credentialing necessary for a practitioner to advance in her career.

*Example:*

One female neutral of color mentioned to another, more established neutral with whom she had recently established a connection that she had been trying unsuccessfully to gain admission to the panel but did not know who was in charge

of reviewing resumes. The established neutral told her about an upcoming workshop that the panel was sponsoring and suggested that she should attend the workshop even though she had not been invited to attend. He promised that if she attended, he would make the necessary introductions, give a verbal reference about the impression she had made on him during their acquaintance, and that she should be ready to follow-up and take additional steps to impress the panel director following the workshop. She attended the workshop, he made the introductions, adding that he had been positively impressed by her background, determination, and follow-through. Because of his willingness to help her pull the door open a couple of feet, she was able to place herself on the director's radar screen. Within a couple of months, she had secured a place on the panel.

### *Train*

There are a variety of ways in which a mentor can train a mentee. One way is to invite the mentee to ride along to a hearing as an observer. This opportunity allows the mentee the chance to see firsthand the natural progression of a hearing and to observe details that she might not otherwise have thought about until she was in the position herself – small details like how to handle introductions and transitions or how best to interact with parties and advocates before and after sessions, and more complicated details such as how to respond to outbursts or objections.

Shadowing allows the mentee to learn in real time lessons that otherwise might be learned only by trial and error experience – when parties' rights and livelihood are on the line. And the beauty of this form of mentorship is that the mentor's major involvement is allowing the mentee to observe, take notes, and ask questions during breaks or afterward. Of course, shadowing is only an option when the parties have consented ahead of time and the mentee is bound by confidentiality.

In situations where shadowing is not a viable option, the mentor can teach in other ways. For example, she can pose hypotheticals involving disclosures, conflicts of interest, and other ethical considerations derived from situations she has experienced, walk through the issues, elicit suggestions from the mentee on approaches to take, and talk through how the mentor actually handled the situations. The mentor can also identify key ADR topics, such as the neutral's approach to diffusing rising emotions or handling unruly parties and arrange short, themed chat sessions with the mentee once or twice a month.

### *Example*

One less-experienced neutral approached four different established ADR professionals and asked for the opportunity to ride along and discuss cases with them or to just meet at their hearings and observe. Three of the four were able to accommodate her observing and she ended up learning about 3 different neutral styles and approaches in short order.

From one of those mentors the mentee was able to observe and later model the patience the mentor exercised in taking the parties through a two-day mediation where they dramatically whittled down their list of issues before eventually moving to arbitration. Those advocates have since selected the mentee on multiple occasions during which the mentee was able to put to use the kind of pre-hearing, mediation, and arbitration skills that her mentor had demonstrated.

### *Organize*

One practical way that mentors can assist and equip mentees is to help them see how a good organization scheme can lead to good first impressions and lasting positive impressions with their clients. This could mean sharing an effective way of keeping track of appointments by a color coded calendar, a personalized approach to using a paper calendar vs an online calendar, or a system of tracking reply-by or submit-by deadlines. This might mean sharing template letters to send out to parties or intake questionnaires that a neutral uses. It could also mean talking about the mentee's 5-, 10-, or 20-year plan and then discussing with him the steps he would need to take to get there. Functional organizational help to orient the mentee in the field could prove extremely useful, either early in a person's ADR career, at other points of growth or transition, or even at stagnation.

### *Example*

When one already-busy ADR professional found her arbitration caseload starting to pick up, reached out to another practitioner with a heavier arbitration caseload to learn tips and tricks for keeping track of the changing dates and deadlines and streamlining her organizational system. In this way, instead of spending time getting bogged down in calendars and reminders, she was able to focus her attention on the incoming cases.

*Repeat*

A mentoring relationship is not a lifelong commitment. The ultimate goal of mentoring is to help the mentee grow and improve the skills necessary to flourish independently. Ideally, when this point is reached, both mentor and mentee will be in a position to mentor other individuals but also to check in on each other from time and share new knowledge and experiences.

*A final word...*

In a competitive field, it might seem counter-intuitive – or even counterproductive – to share skills, knowledge, and access with newer practitioners who are, or will be, trying to secure the same kinds of contracts and appointments that you have or are hoping to secure. However, mentoring is not a purely altruistic pursuit; engaging in a mentoring relationship can provide the mentor with seldom-available camaraderie, fresh perspectives, critical feedback, and maybe even some technological assistance. The process can not only enhance a mentor's reputation within the profession, it can also help him become more well-rounded, and effective. Finally, mentoring allows mentors to have a hand in shaping the future. If we truly desire this field to become more culturally and ethnically diverse, providing access to individuals who have been historically excluded and underrepresented is the bridge that will take us there. \*\*

**About the Author**

*Anna Widgeon is an Associate Attorney and Mediator with Widgeon Dispute Resolution, PLC in Ann Arbor, MI. She previously served as the law clerk for Judge Richard LaFlamme in the Jackson County Circuit Court. Her interests include juvenile law and immigration law. In her spare time, she enjoys writing songs and novels and traveling the world. She is also proficient in Spanish and Portuguese.*

*Betty R. Widgeon is a retired Michigan district court judge. She is the founder and president of Widgeon Dispute Resolution, PLC, which specializes in arbitration, mediation, factfinding, and consulting, focusing specifically on labor, employment, and consumer cases. Judge Widgeon occasionally substitutes as a visiting judge in Michigan district and circuit courts. She also serves as a member of the Special Master Hearing Officers' Roster for the Michigan Supreme Court. She has over 25 years of experience resolving civil and criminal disputes. Her practice is now national in scope and covers a wide variety of issues and industries. Judge Widgeon is a member of the National Academy of Arbitrators and the National Academy of Distinguished Neutrals.*

## Upcoming Mediation Trainings

### General Civil Mediation Training

The following 40-hour mediation trainings have been approved by SCAO to fulfill the requirements of MCR 2.411(F)(2)(a). For more information, visit the SCAO Office of Dispute Resolution web-site, and click on "Mediation Training:"

<http://courts.mi.gov/Administration/SCAO/OfficesPrograms/ODR/Pages/Mediation-Training-Dates.aspx>

**Holland: June 6-8, 10-11, 2019**

*Training sponsored by Mediation Services*

Register: <https://mediationservices.works/48-hour-scao-general-civil-mediator-training/>

**Plymouth: September 26-28, October 18-19, 2019**

*Training sponsored by Institute for Continuing Legal Education*

Register: <http://www.icle.org/modules/store/seminars/>

**Bloomfield Hills: October 14, 16, 18, 21, 23, 25, and 26, 2019**

*Training sponsored by Oakland Mediation Center*

Register: <http://www.mediation-omc.org>

### 8-Hour Advanced Mediation Training

Mediators listed on court rosters must complete eight hours of advanced mediation training every two years. The trainings listed below have been pre-approved by SCAO to meet the content requirements of the court rules (MCR 2.411(F)(4), MCR 3.216(G)(3)) for advanced mediation training for both general civil and domestic relations mediators.

**Bloomfield Hills: August 13, 2019**

*Training sponsored by Oakland Mediation Center*

Register: <http://www.mediation-omc.org>

**Bloomfield Hills: September 19, 2019**

*Training sponsored by Oakland Mediation Center*

Register: <http://www.mediation-omc.org>

**Plymouth: October 11-12, 2019**

ADR Section Annual Meeting includes 8 hours of Advanced Mediation Training

*Training sponsored by ADR Section of State Bar of Michigan*

Registration available later in 2019

**Bloomfield Hills: November 8, 2019**

*Training sponsored by Oakland Mediation Center*

Register: <http://www.mediation-omc.org>

### Domestic Relations Mediation Training

SCAO requires 40-hours of mediation training for divorce and custody issues as well as an 8-hour Domestic Violence Screening Training for mediators. The trainings below include both the 40-hour domestic training and 8-hour screening training unless otherwise noted.

**Lansing: June 17-22, 2019**

*Training sponsored by Resolution Services Center of Central Michigan*

Register at: <http://www.rscdm.org>

**Bloomfield Hills: June 17-19 and 24-26, 2019**

*Training sponsored by Oakland Mediation Center*

Register: <http://www.mediation-omc.org>

**Grand Rapids: July 8-10, 22-23, and August 6, 2019**

*Training Sponsored by Dispute Resolution Center of West Michigan*

Register: [www.drcwm.org](http://www.drcwm.org)

**Sault Ste. Marie: July 22-24 & 30-31, August 1, 2019**

*Training Sponsored by Eastern UP CDRP*

Register: <http://www.eupmediate.org>

### How to Find Mediation Trainings Offered in Michigan

Mediation trainings are regularly offered by various organizations around Michigan. Mediators who wish to apply for court mediator rosters must complete a 40-hour training approved by the State Court Administrative Office. Courts maintain separate rosters for general civil and domestic relations mediators, and there are separate 40-hour trainings for each. In addition, domestic relations mediators must complete an 8-hour course on domestic violence screening. Mediators listed on court rosters must complete eight hours of advanced mediation training every two years. MCR 2.411(F)(4)/3.216 (G)(3).

Most mediation trainings offered in Michigan are listed on the SCAO Office of Dispute Resolution web-site:

<http://courts.mi.gov/Administration/SCAO/OfficesPrograms/ODR/Pages/Mediation-Training-Dates.aspx> \*\*

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## ALTERNATIVE DISPUTE RESOLUTION SECTION

# Mediating in Diverse and Minority Communities: Insuring the Quality of the Mediation Process

June 12, 2019, 8:30 a.m.-1:00 p.m.

Detroit Mercy Law, Room 226, 651 E. Jefferson Ave., Detroit

Join our nationally-renowned keynote presenter, Professor Carol L. Izumi, University of California, Hastings Law, San Francisco, and Michigan experts in raising the quality of the mediation process for everyone who hires us no matter what their background or culture.

*This seminar has been approved by SCAO for four hours of advanced mediation training.*



Carol L. Izumi

**Keynote Presenter Carol L. Izumi** joined the full-time faculty at UC Hastings College of the Law in 2010 as a clinical professor of law. Professor Izumi is an internationally known dispute resolution scholar, trainer, and practitioner with the Center for Negotiation and Dispute Resolution at UC Hastings. She directs the law school's Mediation Clinic and ADR Externship Program and serves as the faculty advisor to the Asian Pacific American Law Students Association (APALSA). She is also a nationally known specialist in clinical legal education. Professor Izumi holds the title professor of clinical law, emerita, at the George Washington University Law School (GW Law) where she was a full-time faculty member from 1986-2010 and director of the Consumer Mediation Clinic and Community Dispute Resolution Center Project. As the associate dean for clinical affairs she administered the law school's 10 clinical programs and secured a \$2.3 million gift to the legal clinics. In 1999, Professor Izumi co-founded the Community Dispute Resolution Center in Washington, D.C. to provide free mediation services in adult misdemeanors, juvenile delinquency cases, and police-civilian disputes.



Phyllis L. Crocker

**Moderator: Phyllis L. Crocker** is the dean of University of Detroit Mercy School of Law. She came to Detroit Mercy Law in 2014 from Cleveland—Marshall College of Law, Cleveland State University, where she was a professor for 20 years. Her area of expertise is the death penalty. Dean Crocker received her BA from Yale University and her JD from Northeastern University School of Law. She clerked for the Hon. Warren J. Ferguson on the U.S. Court of Appeals for the Ninth Circuit. Prior to becoming

a law professor she practiced for eight years, first as an associate in a Chicago law firm specializing in complex federal civil litigation and then as a staff attorney at a federally-funded community defender organization in Texas representing indigent people on death row in their post-conviction appeals.

**Shereef Akeel** has been recognized as a Top 100 Trial Lawyer by the American Trial Lawyers Association (ATLA), a Lawyer of the Year by the *Michigan Lawyers Weekly*, and a Super Lawyer for 13 consecutive years in areas of civil rights, in addition to being nationally recognized by *US News & World Report* as a Tier One Civil Rights Lawyer. Akeel has been involved in several high-profile age and race employment class action discrimination cases. Akeel has managed to obtain million-dollar verdicts and settlements for his clients both in federal and state courts. Akeel has also been involved in several noteworthy class action lawsuits challenging the no-fly list, and the interrogation procedures at the border and abroad. Akeel has also taken his work internationally in filing human rights class action lawsuits against corporate profiteers like Blackwater on behalf of all of Iraqi detainees, who were tortured in Abu Gharib, and elsewhere. Akeel has managed to obtain settlements and justice for many torture victims through litigation and mediation. Akeel obtained his bachelor's degree from the University of Michigan, graduated from Detroit College of Law in 1996 (which merged with Michigan State University). Akeel also has a CPA and a master's in business administration from Wayne State University.



Shereef Akeel



Earlene  
Baggett-Hayes



Richard Hurford



Michael S. Leib



Angie Martell

**Earlene Baggett-Hayes** is an attorney who has focused on dispute resolution for over 20 years. She serves as a mediator, arbitrator, fact finder and trainer. She serves as a neutral on numerous public and private panels across the nation, including the Federal Mediation and Conciliation Service, American Arbitration Association, National Mediation Board and the Financial Industry Regulatory Association. Earlene has developed and facilitated over 20 training programs related to the area of ADR. She is licensed to practice law in the states of Michigan and Illinois. Her practice also includes work in criminal, domestic relations, probate and property law. Earlene has been recognized nationally and locally for her work. She was recently inducted into the International Academy of Mediators (IAM). Earlene received the State Bar of Michigan Distinguished Service Award in Alternative Dispute Resolution in 2018. A native Chicagoan, Earlene is a graduate of Creighton University in Omaha, Nebraska, where she received a JD degree and a BA degree in political science. She also received a MA degree in public administration from Roosevelt University in Chicago. Earlene is the founder and owner of the Law and Mediation Center in Pontiac, Michigan.

**Richard Hurford** is the president of Richard Hurford Dispute Resolution Services, P.C. and a principal at Strongbridge Negotiation Strategists, P.C. He is the past chair of the ADR Section of the State Bar of Michigan and the Macomb and Oakland County ADR Committees, current co-chair of the ADR Section of the Federal Bar Association, and past president of the Southeast Chapter of ACR. He is the coauthor of the nationally recognized *A Taxonomy of ADR* (2015) and a contributor to the Supreme Court Administrative Office's publication the *Michigan Judges Guide to ADR Practice and Procedure* (2016). He is a professional with Professional Resolution Experts of Michigan (PREMi), a distinguished fellow in the International Academy of Mediators (by invitation only), a member of the National Association of Distinguished Neutrals (by invitation only) and a member of AAJ, DRI, MDTC and ACR.

**Michael S. Leib** is a mediator with Leib ADR LLC in West Bloomfield and devotes his time to the mediation of business disputes including bankruptcy disputes and participation on the Alternative Dispute Resolution Section Council of the State Bar of Michigan, as well as on the Debtor Creditor Committee of the Business Law Section of the State Bar of Michigan. He has been an active participant in trial skills education, having written several articles and been a faculty member of ICLE Trial Skills workshops, Federal Bar Association presentations, and ABI workshops. Mr. Leib retired as a business trial lawyer in 2014 after many years as a shareholder at Maddin, Hauser, Roth & Heller, PC. His practice was divided between litigation in the bankruptcy court and business litigation in the state and federal courts. Mr. Leib has been listed in *The Best Lawyers in America* and *SuperLawyers*, and is AV-rated by Martindale-Hubbell. He received his B.A. from Kalamazoo College and his M.M. from the University of Montana, and his J.D. from Wayne State University Law School.

**Angie Martell** is the founder and managing partner of Iglesia Martell Law Firm, PLLC in Ann Arbor, Michigan. She has practiced law for over 29 years. In her holistic law practice, she works in a variety of areas, including mediation, family, criminal, and business law, and also advocates for the LGBTQIA, Immigrant, and Deaf communities. In 2014, she was the recipient of The Washtenaw County Bar Association's Martin Luther King "I Have a Dream" Award for her work building trust between the community and the legal system, and for tireless devotion to securing fair and equal treatment for all individuals under the law. She also is a keeper in peacemaking circles. Angie has been trained in peacemaking by the Little River Band of Ottawa Indians and participates in peacemaking circles. Angie has worked extensively in the areas civil rights, family law, LGBT issues, employee rights, criminal defense, mediation, peacemaking, and arbitration. She has presented in numerous ADR panels throughout the United States and has been an ICLE Coach for the 40 hour General Mediation Training. Angie graduated with a Masters of Law from Harvard Law School and a Juris Doctor from the City University of New York Law School.



Paul F. Monicatti



Antoinette Raheem



Ric Roane



Betty R. Widgeon

Troy, Michigan-based mediator and arbitrator **Paul F. Monicatti** served recently as the court-appointed settlement master and mediator who conducted negotiations for resolving two Flint, Michigan water contamination related cases in federal court, the remediation of Flint's failed water delivery system, and also the selection of Flint's post-contamination future long-term water source. Additionally, he served over 20 years ago as the court-appointed settlement master for the multi-billion-dollar Dow Corning breast implant insurance coverage litigation involving 112 defendants in state court. As an independent, professional dispute resolution specialist for 36 years, he has conducted mediations and arbitrations resulting in the successful conclusion of more than 2,000 previously unsettled disputes. Courts as well as counsel or their clients have selected him as a mediator, arbitrator, facilitator, case evaluator, receiver, expert witness, umpire, and referee. Paul is also a partner at Strongbridge Negotiation Strategists which provides negotiation advice, consultation, and training to businesses and individuals. An adjunct professor of law at Western Michigan University Cooley Law School, he teaches advocacy skills in negotiation, mediation, and arbitration, and has been a guest lecturer in the law schools at University of Michigan, Michigan State University, Wayne State University, University of Detroit, and Case Western Reserve University in Cleveland, Ohio. He served on the National Advisory Board for ACCESS ADR which promoted diversity in dispute resolution and in 2017 he received the Center for Alternative Dispute Resolution's Recognition Award for his support of the Center and his dedicated service and commitment to the needs of its culturally diverse community.

**Antoinette Raheem** has 30 years of litigation experience, and for the past decade has focused her practice on alternative dispute resolution (ADR). After graduating from Princeton University in 1978 and Columbia University Law School in 1981 she clerked for U.S. District Court Judge Julian Abele Cook. Following the clerkship, Ms. Raheem went on to become a partner at the Detroit law firm of Honigman, Miller, Schwartz and Cohn. In 1993 Ms. Raheem opened her own practice, serving also as of counsel for the Detroit law firm of Sachs Waldman. Ms.

Raheem's firm represented both plaintiffs and defendants in general civil litigation, including employment, civil rights, contract, family law and general business litigation. In 2005, the Law Offices of Antoinette R. Raheem became the Law & Mediation Offices of Antoinette R. Raheem as Ms. Raheem's practice became more and more devoted to mediation and other forms of ADR. Now Ms. Raheem's practice focuses solely on mediation, arbitration, facilitation and ADR education.

With over 30 years of experience, **Ric Roane** is a highly sought after family law and domestic relations litigation practitioner. He consistently provides comprehensive representation for clients, designed to specifically address and resolve issues. Ric's approach is family centered; "My goal is to find resolution to the problems facing the family I am serving in a less contentious way." His intuitive ability to expeditiously diagnose the core issues and develop a strategic approach through negotiation, mediation, or arbitration positively correlates to client resolutions. Ric has held various leadership positions in the firm as well as in the community and several bar associations, is well respected and able to negotiate the best outcomes for clients. Ric is particularly adept at handling complex asset division, business and real estate valuation, and significant financial issues including support as well as challenging interstate and international custody and parenting-time matters.

**Betty R. Widgeon** is a retired Michigan district court judge. She is the founder and president of Widgeon Dispute Resolution, PLC, which specializes in arbitration, mediation, fact-finding, and consulting, focusing specifically on labor, employment, and consumer cases. Judge Widgeon occasionally substitutes as a visiting judge in Michigan district and circuit courts. She also serves as a member of the Special Master Hearing Officers' Roster for the Michigan Supreme Court. She has over 25 years of experience resolving civil and criminal disputes. Her practice is now national in scope and covers a wide variety of issues and industries. Judge Widgeon is a member of the National Academy of Arbitrators and the National Academy of Distinguished Neutrals.



## ALTERNATIVE DISPUTE RESOLUTION SECTION

# Mediating in Diverse and Minority Communities: Insuring the Quality of the Mediation Process

June 12, 2019, 8:30 a.m.-1:00 p.m.

Detroit Mercy Law, Room 226, 651 E. Jefferson Ave., Detroit

Join our nationally-renowned keynote presenter, Professor Carol L. Izumi, University of California, Hastings Law, San Francisco, and Michigan experts in raising the quality of the mediation process for everyone who hires us no matter what their background or culture.

### Cost

Registration deadline: June 7, 2019

- ☐ ADR Section Members & Guest .....\$75/each
- ☐ Law Students & Guest .....\$40/each  
Law students must register with their law school e-mail.
- ☐ All Other Registrants .....\$100/each

### Questions

For additional information regarding the seminar contact Michael Leib at (248) 563-2500 or michaelleib078@gmail.com

P #: \_\_\_\_\_

Name: \_\_\_\_\_

E-mail Address: \_\_\_\_\_  
Law students must register with their law school e-mail address.

Your Firm: \_\_\_\_\_

Your Law School (if student): \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: ( \_\_\_\_\_ ) \_\_\_\_\_

Guest Name: \_\_\_\_\_ Guest Email: \_\_\_\_\_

Enclosed is check # \_\_\_\_\_ for \$ \_\_\_\_\_

Please make check payable to: STATE BAR OF MICHIGAN To pay with credit/debit card visit <https://www.eiseverywhere.com/adr0619>

### Register One of Two Ways

Online: <https://www.eiseverywhere.com/adr0619>

Mail your check and completed registration form to:  
State Bar of Michigan  
Attn: Seminar Registration  
306 Townsend Street  
Lansing, MI 48933

**Cancellation Policy:** The registration fee for this event is forfeited if attendance is cancelled. Registrants who cancel will not receive seminar materials. As a courtesy, written notice of your intent not to attend is appreciated. That notice can be made by e-mail, or by U.S. mail. Cancellations can be made by e-mail ([tbellinger@michbar.org](mailto:tbellinger@michbar.org)), fax (517-372-5921 ATTN: Tina Bellinger), or by U.S. mail (306 Townsend St., Lansing, MI 48933 ATTN: Tina Bellinger.)

## Mediating in Diverse and Minority Communities: Insuring the Quality of the Mediation Process

June 13, 2019, 8:30 a.m.-1:00 p.m.

The Eberhard Center Room 215AH, 301 Fulton W, Grand Rapids

Join our nationally-renowned keynote presenter, Professor Carol L. Izumi, University of California, Hastings Law, San Francisco, and Michigan experts in raising the quality of the mediation process for everyone who hires us no matter what their background or culture.

*This seminar has been approved by SCAO for four hours of advanced mediation training.*



Carol L. Izumi

**Keynote Presenter Carol L. Izumi** joined the full-time faculty at UC Hastings College of the Law in 2010 as a clinical professor of law. Professor Izumi is an internationally known dispute resolution scholar, trainer, and practitioner with the Center for Negotiation and Dispute Resolution at UC Hastings. She directs the law school's Mediation Clinic and ADR Externship Program and serves as the faculty advisor to the Asian Pacific American Law Students Association (APALSA). She is also a nationally known specialist in clinical legal education. Professor Izumi holds the title professor of clinical law, emerita, at the George Washington University Law School (GW Law) where she was a full-time faculty member from 1986-2010 and director of the Consumer Mediation Clinic and Community Dispute Resolution Center Project. As the associate dean for clinical affairs she administered the law school's 10 clinical programs and secured a \$2.3 million gift to the legal clinics. In 1999, Professor Izumi co-founded the Community Dispute Resolution Center in Washington, D.C. to provide free mediation services in adult misdemeanors, juvenile delinquency cases, and police-civilian disputes.



Susan K. Klooz

**Moderator: Susan K. Klooz.** Susan is a mediator at Lakeshore Resolution in Holland and handles civil, business and community mediations, family mediations, workplace and civil rights mediations, and special education facilitations and mediations. She also develops innovative restorative justice programs in West Michigan. Susan obtained her BA from Grand Valley State University, her MA in educational leadership from Western Michigan University and her JD from Western Michigan University Cooley Law School. Currently, Susan serves on the State Bar's ADR Section Council, co-

chairs the section's Diversity and Inclusion Action Team and is a member of the section's Skills and Public Mediation Action teams. She also is a member of the State Bar's Family Law and LGBTQA sections and serves on the LGBTQA Section Council and chairs its Public Policy Committee. In addition, Susan is the president of the Board of Directors for Mediation Services of Ottawa and Allegan counties.

### Panelists:

**Shereef Akeel** has been recognized as a Top 100 Trial Lawyer by the American Trial Lawyers Association (ATLA), a Lawyer of the Year by the *Michigan Lawyers Weekly*, and a Super Lawyer for 13 consecutive years in areas of civil rights, in addition to being nationally recognized by *US News & World Report* as a Tier One Civil Rights Lawyer. Akeel has been involved in several high-profile age and race employment class action discrimination cases. Akeel has managed to obtain million-dollar verdicts and settlements for his clients both in federal and state courts. Akeel has also been involved in several noteworthy class action lawsuits challenging the no-fly list, and the interrogation procedures at the border and abroad. Akeel has also taken his work internationally in filing human rights class action lawsuits against corporate profiteers like Blackwater on behalf of all of Iraqi detainees, who were tortured in Abu Gharib, and elsewhere. Akeel has managed to obtain settlements and justice for many torture victims through litigation and mediation. Akeel obtained his bachelor's degree from the University of Michigan, graduated from Detroit College of Law in 1996 (which merged with Michigan State University). Akeel also has a CPA and a master's in business administration from Wayne State University.



Shereef Akeel



Stephen R. Drew



Pamela C. Enslen



Christine P. Gilman



William W. Jack, Jr.



Angie Martell

**Stephen R. Drew** is a founding partner of Drew, Cooper and Anding. He earned his undergraduate and law degree from the University of Michigan. For over 44 years Mr. Drew has practiced in the areas of civil rights, personal injury, sexual harassment, sexual abuse, police misconduct, and employment law, and has litigated complex cases in state and federal courts in Michigan and throughout the United States. Mr. Drew is a fellow in the American College of Trial Lawyers and the College of Labor and Employment Lawyers of the American Bar Association, where membership is selected based upon recognition of skill and professionalism. He has been named Super Lawyer in Michigan in the field of Personal Injury since 2007. He has also been awarded the Champion of Justice Award by the State Bar of Michigan and has been listed in the Bar Register of Preeminent Lawyers since 1997. Because of his skill and integrity, he is often sought by other lawyers to serve as a facilitator in lawsuits. Mr. Drew was selected by his peers as the 2017 Best Lawyers "Lawyer of the Year" for employment law, Grand Rapids—a designation he has received each year since 2011. Among his many memberships and associations, Mr. Drew has served as the president of the Grand Rapids Bar Association, Floyd Skinner Bar Association, and executive board member of the Michigan Trial Lawyers Association.

**Pamela C. Enslen** is a mediator, arbitrator, counselor and litigator with extensive experience in business, employment, civil rights and commercial matters. She is a partner with Warner Norcross & Judd, where she chairs the firm's Higher Education Practice Group. Pamela provides dispute resolution services as an advocate and as a neutral mediator and arbitrator in litigation and pre-litigation matters. She is active in the American Bar Association, where she has served as chair the Section on Dispute Resolution, and has acted as the DR Section's delegate to the ABA House of Delegates since 2000. Just prior to serving a three-year term as a member of the ABA Board of Governors, in 2013 Pamela traveled to Guantanamo Bay, Cuba as the ABA's official observer of trial proceedings for the alleged organizers of the 9/11 terrorist attacks in New York City and Washington, DC. She was one of only eight NGO observers allowed to observe the proceedings. In 2013, she received the Nanci S. Klein Award from the State Bar of Michigan ADR Section. She is the 2019 recipient of the YWCA Lifetime Women of Achievement Award. In addition

to practicing law, Pamela has taught Dispute Resolution at Thomas M. Cooley Law School.

**Christine P. Gilman** is the executive director of the Dispute Resolution Center of West Michigan. Her legal career includes service with Legal Aid of Western Michigan and the Legal Assistance Center. She began mediating in 2007. She is trained in many mediation specialties; her favorites are family law and restorative practices. She is licensed by the IIRP (International Institute of Restorative Practices) to teach An Introduction to Restorative Practices, Using Circles Effectively, and Restorative Conferencing. She is a graduate of Colby College and Tulane Law School and a former chair of the ADR Section of the Grand Rapids Bar Association. She enjoys her rescued Chihuahuas and getting outside!

**William W. Jack, Jr.** is a shareholder with Smith Haughey Rice & Roegge concentrating on Alternative Dispute Resolution.

**Angie Martell** is the founder and managing partner of Iglesia Martell Law Firm, PLLC in Ann Arbor, Michigan. She has practiced law for over 29 years. In her holistic law practice, she works in a variety of areas, including mediation, family, criminal, and business law, and also advocates for the LGBTQIA, Immigrant, and Deaf communities. In 2014, she was the recipient of The Washtenaw County Bar Association's Martin Luther King "I Have a Dream" Award for her work building trust between the community and the legal system, and for tireless devotion to securing fair and equal treatment for all individuals under the law. She also is a keeper in peacemaking circles. Angie has been trained in peacemaking by the Little River Band of Ottawa Indians and participates in peacemaking circles. Angie has worked extensively in the areas civil rights, family law, LGBT issues, employee rights, criminal defense, mediation, peacemaking, and arbitration. She has presented in numerous ADR panels throughout the United States and has been an ICLE Coach for the 40 hour General Mediation Training. Angie graduated with a Masters of Law from Harvard Law School and a Juris Doctor from the City University of New York Law School.



Elizabeth Reyes-Rosario



Ric Roane



Betty R. Widgeon

**Elizabeth Reyes-Rosario** moved to Grand Rapids from the West Coast when she was 10 years old. Since then, she has considered Grand Rapids her home. Always having an entrepreneurial mentality, she started her small tax preparation business at the age of 18 and since then has worked predominately with the Hispanic community of western Michigan. Shortly after starting her business, she enrolled at Davenport University and graduated in 2005 with a dual bachelor's degree in international business and marketing. Never letting go of her dream of studying law, she enrolled at Thomas M. Cooley Law School and graduated in 2011 with a litigation and international law concentration. Elizabeth has been successful in settling several family cases before they go to trial. She has been able to help her clients receive the correct amount of child support without waiting three years for the income review to take place. In addition, she has been able to help individuals resolve their immigration and visa issues with minimal stress and complications. Elizabeth is fluent in Spanish and practices in the areas of family law and immigration law. She lives in Wyoming with her husband, as well as her 17-year-old and 1-year-old daughters. When she's not working on cases, she loves to travel, volunteer, try different restaurants, and have cookouts with her friends and family. Elizabeth's motto is to always treat the client and each situation with honesty, integrity and above all, with utmost attention.

With over 30 years of experience, **Ric Roane** is a highly sought after family law and domestic relations litigation practitioner. He consistently provides comprehensive representation for clients, designed to specifically address and resolve issues. Ric's approach is family centered; "My goal is to find resolution to the problems facing the family I am serving in a less contentious way." His intuitive ability to expeditiously diagnose the core issues and develop a strategic approach through negotiation, mediation, or arbitration positively correlates to client resolutions. Ric has held various leadership positions in the firm as well as in the community and several bar associations, is well respected and able to negotiate the best outcomes for clients. Ric is particularly adept at handling complex asset division, business and real estate valuation, and significant financial issues including support as well as challenging interstate and international custody and parenting-time matters.

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## ALTERNATIVE DISPUTE RESOLUTION SECTION

# Mediating in Diverse and Minority Communities: Insuring the Quality of the Mediation Process

June 13, 2019, 8:30 a.m.-1 p.m.

The Eberhard Center Room 215AH, 301 Fulton W, Grand Rapids

Join our nationally-renowned keynote presenter, Professor Carol L. Izumi, University of California, Hastings Law, San Francisco, and Michigan experts in raising the quality of the mediation process for everyone who hires us no matter what their background or culture.

### Cost

Registration deadline: June 7, 2019

- ☐ ADR Section Members & Guest .....\$75/each
- ☐ Law Students & Guest .....\$40/each  
Law students must register with their law school e-mail.
- ☐ All Other Registrants .....\$100/each

### Questions

For additional information regarding the seminar contact Michael Leib at (248) 563-2500 or michaelleib078@gmail.com

P #: \_\_\_\_\_

Name: \_\_\_\_\_

E-mail Address: \_\_\_\_\_  
Law students must register with their law school e-mail address.

Your Firm: \_\_\_\_\_

Your Law School (if student): \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: ( \_\_\_\_\_ ) \_\_\_\_\_

Guest Name: \_\_\_\_\_ Guest email: \_\_\_\_\_

Enclosed is check # \_\_\_\_\_ for \$ \_\_\_\_\_

Please make check payable to: STATE BAR OF MICHIGAN To pay with credit/debit card visit <https://www.eiseverywhere.com/adr061319>

### Register One of Two Ways

Online: <https://www.eiseverywhere.com/adr061319>

Mail your check and completed registration form to:  
State Bar of Michigan  
Attn: Seminar Registration  
306 Townsend Street  
Lansing, MI 48933

**Cancellation Policy:** The registration fee for this event is forfeited if attendance is cancelled. Registrants who cancel will not receive seminar materials. As a courtesy, written notice of your intent not to attend is appreciated. That notice can be made by e-mail, or by U.S. mail. Cancellations can be made by e-mail ([tbelling@nichbar.org](mailto:tbelling@nichbar.org)), fax (517-372-5921 ATTN: Tina Bellinger), or by U.S. mail (306 Townsend St., Lansing, MI 48933 ATTN: Tina Bellinger.)



## MICHIGAN PLEDGE TO ACHIEVE DIVERSITY<sup>AND</sup>INCLUSION

**WE CAN,  
WE WILL,  
WE MUST**

*Diversity  
creates  
greater trust  
and confidence  
in the  
administration  
of justice  
and the  
rule of law,  
and enables  
us to better  
serve our  
clients  
and society.*

We believe that diversity and inclusion are core values of the legal profession, and that these values require a sustained commitment to strategies of inclusion.

Diversity is inclusive. It encompasses, among other things, race, ethnicity, gender, sexual orientation, gender identity and expression, religion, nationality, language, age, disability, marital and parental status, geographic origin, and socioeconomic background.

Diversity creates greater trust and confidence in the administration of justice and the rule of law, and enables us to better serve our clients and society. It makes us more effective and creative by bringing different perspectives, experiences, backgrounds, talents, and interests to the practice of law.

We believe that law schools, law firms, corporate counsel, solo and small firm lawyers, judges, government agencies, and bar associations must cooperatively work together to achieve diversity and inclusion, and that strategies designed to achieve diversity and inclusion will benefit from appropriate assessment and recognition.

Therefore, we pledge to continue working with others to achieve diversity and inclusion in the education, hiring, retention, and promotion of Michigan's attorneys and in the elevation of attorneys to leadership positions within our organizations, the judiciary, and the profession.



Sign the Michigan Pledge to Achieve Diversity and Inclusion in the Legal Profession. [michbar.org/diversity/pledge](http://michbar.org/diversity/pledge)

## Connect With Us

The Alternative Dispute Resolution Section has a website and interactive community for its members - SBM Connect. This private community enhances the way we communicate and build relationships through the Section. Log in to SBM Connect today and see what the buzz is all about!

The ADR Section SBM Connect hyperlink is:

<http://connect.michbar.org/adr/home>

- ACCESS to archived seminar materials and *The Michigan Dispute Resolution Journal*
- FIND upcoming Section events
- NETWORK via a comprehensive member directory
- SHARE knowledge and resources in the member-only library
- PARTICIPATE in focused discussion groups \*\*

## ADR Section Mission

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; and
- 3) Advancing the use of alternative dispute resolution processes in our courts, government, businesses, and communities. \*\*

## Join the ADR Section

The ADR Section of the State Bar of Michigan is open to lawyers and other individuals interested in participating.

The Section's annual dues of \$40 entitles you to receive the Section's *The Michigan Dispute Resolution Journal*, participate in programming, further the activities of the Section, receive Section ListServ and SBMConnect announcements, and participate in the Section's SBMConnect and the Section's Discussion ListServ. The Section's ListServ and SBMConnect provide notice of advanced training opportunities, special offers for Section members, news of proposed legislative and procedural changes affecting your ADR practice, and an opportunity to participate in lively discussions of timely topics.

In implementing its vision, the ADR Section is comprised of several Action Teams. You are encouraged to participate in the activities of the Section by joining an Action Team. The Action Teams include the Skills Action Team, responsible for advanced ADR training provided at the annual ADR Summit, annual ADR Meeting and Conference, and Lunch and Learn teleseminars; Effective Practices and Procedures Action Team, responsible for monitoring and initiating judicial and legislative changes affecting ADR in Michigan; Judicial Access Team, charged with assisting courts to provide ADR to litigants; and the Publications Action Team, providing this *Journal* and Listserv and SBMConnect announcements concerning meetings, conferences, trainings and other information related to ADR.

The membership application is at: <http://connect.michbar.org/adr/join>. \*\*



## ALTERNATIVE DISPUTE RESOLUTION SECTION

### **MEMBERSHIP APPLICATION 2018-2019**

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; and
3. 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.

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 listserv 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.

<p>APPLICATION TYPE: <input type="checkbox"/> Member <input type="checkbox"/> Affiliate</p> <p>NAME: _____</p> <p>FIRM: _____</p> <p>ADDRESS: _____</p> <p>_____</p> <p>CITY: _____ STATE: _____ ZIP CODE: _____</p> <p>PHONE: _____</p> <p>E-MAIL: _____</p> <p>State Bar No. _____ (if applicable)</p> <p>Have you been a Member of this Section before: _____</p> <p>Are you currently receiving the <i>Dispute Resolution Journal</i>? _____</p>	<p>All orders must be accompanied by payment. Prices are subject to change without notice.</p> <p>Please return payment to:</p> <p>Samuel E. McCargo Lewis &amp; Munday PC 535 Griswold Street, Suite 2300 Buhl Bldg Detroit, MI 48226-3683</p>
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**Annual dues are \$40.00. There is no proration for dues and membership must be renewed on October 1 of each year.**

Make checks payable to State Bar of Michigan: Enclosed is check # \_\_\_\_\_

Members using a Visa or MasterCard must join online at [e.michbar.org](http://e.michbar.org).

Non-members must submit payment by check.

Revised 5/2018

## Editor's Notes

*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* ADR Section Immediate Past Chair, Lee Hornberger at [leehornberger@leehornberger.com](mailto:leehornberger@leehornberger.com), William D. Gilbride, Jr. at [wdgilbride@abbotnicholson.com](mailto:wdgilbride@abbotnicholson.com) and Editor Erin Archerd at [archerer@udmercy.edu](mailto:archerer@udmercy.edu).

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>. \*\*

## 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 ADR Section Immediate Past Chair Lee Hornberger at [leehornberger@leehornberger.com](mailto:leehornberger@leehornberger.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>. \*\*

## ADR Section Social Media Links

Here are the links to the ADR Section's Facebook and Twitter pages.

You can now Like, Tweet, Comment, and Share the ADR Section!

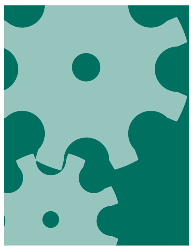
<https://www.facebook.com/sbmadrsection/>

[https://twitter.com/SBM\\_ADR](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.



## Dispute Resolution Journal

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

*The Michigan Dispute Resolution Journal 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. The Michigan Dispute Resolution Journal seeks to explore various viewpoints in the developing field of dispute resolution.*

*For comments, contributions or letters, please contact:*

William D. Gilbride, Jr. - [wdgilbride@abbotnicholson.com](mailto:wdgilbride@abbotnicholson.com) - 313-234-6412

Lee Hornberger - [leehornberger@leehornberger.com](mailto:leehornberger@leehornberger.com) - 231-941-0746

Erin Archerd - [archerer@udmercy.edu](mailto:archerer@udmercy.edu) - 313-596-9834

<http://connect.michbar.org/adr>