

Maryland State Bar Association Alternative Dispute Resolution Section Newsletter

Join us for:

Pizza and Professionalism: A Roundtable Discussion on Mediation in Foreclosure.

**November 25, 2008
6:30 p.m. at MSBA Headquarters, 520 West Fayette St. Baltimore, MD**

And

The ADR Practitioner's Gala

**December 5, 2008 at the BWI Hilton Acqua Restaurant
5:45 p.m.**

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Message from the Chair

Dear ADR Section Members:

I hope that the summer season allowed all of us some time to reflect and re-charge our collective batteries, and that this Newsletter finds you well.

At the outset, I would like to recognize the other members of the Section Council- namely, Vice-Chair, Steven Shapiro; Immediate Past Chair, Tom Dolina; Secretary, Andrea Terry; Treasurer, David Simison; Hon. Joseph H. H. Kaplan; Hon. Alexander Wright; Master Theresa Furnari; Craig Distelhorst; Suzy Eckstein; Michael Anselmi; Wade Boswell; Anita Deger; Robert Ferguson, Jr., and, Patricia Weaver. As Section Chair, I am excited to work both with this excellent group of colleagues, as well as working with many of you Section members who wish to bring your energy and interest to achieving the mission and goals of our Section.

I look forward to Section members participating in, and working together to maximize: communication, education, programming, collaboration with other MSBA Sections and ADR groups, and other opportunities that enrich our individual and collective professional and personal growth. I encourage you to please contact me, or other Section Council members, to get involved.

The ADR Section Council kicked-off the 2008-09 Bar year with a Saturday planning retreat at the end of August. This led to an action-oriented September meeting, at which the Section Council identified and began to

implement initiatives to benefit the Section membership. Section Council meetings are generally held on the fourth Tuesday of the month, beginning at 6:00 p.m., at various geographic locations.

As many of you know, the MSBA has taken an active interest in its members participating in helping to solve what some refer to as the foreclosure crisis in Maryland. In this regard, I have sent several notices on the ADR Section listserv to notify people of the recent Rules Committee hearings addressing foreclosures. And, in an effort to educate ADR Section members on the current status of **Maryland Rules Changes Regarding Foreclosure**, and their impact on ADR practitioners, the Section Council has scheduled a **"Pizza & Professionalism"** session on that subject on **Tuesday, November 25, 2008, beginning at 6:30 p.m., at MSBA Headquarters**. Please join us for pizza, soft drinks, and a lively discussion with real property and foreclosure experts, and learn how the new rules may, or may not, affect you and your ADR practice.

Also on the immediate horizon, are two events occurring on **December 5, 2008**. First, the **Maryland Mediator's Convention** ("MMC"), which the ADR Section is co-sponsoring, will occur at the Maryland Maritime Institute. That event will be immediately followed by the **ADR Practitioner's Gala Dinner Dance**, at the nearby BWI Hilton Acqua Restaurant, also in Linthicum, MD, which is hosted by the ADR Section and co-sponsored by MD-ACR, CMM, MCDR, and MACRO.

Message from the Chair, continued



"I look forward to section members working together to maximize opportunities that enrich our individual and collective opportunities for growth"

This will be an unprecedented day and evening, "chock-full" of education, entertainment, and collaboration between ADR groups, and presentations by and to luminaries in the legal and ADR fields. The ADR Practitioner's Gala Dinner Dance, includes the presentation by the ADR Section of the prestigious Honorable Robert M. Bell Award to Ramona B. Buck, and we are grateful and thankful that the Honorable Robert M. Bell, himself, graciously plans to be in attendance.

Please register now, because you won't want to miss these back-to-back **MUST SEE (AND BE SEEN AT) EVENTS**.

Of course, no discussion of future events would be complete without covering the **Maryland Business ADR Conference**, which is again prominently on our radar. Craig Distelhorst and Andrea Terry are leading the early charge for this event that is scheduled for either the Fall of 2009 or Spring 2010. **Please come to the kick-off planning meeting for the Maryland Business ADR Conference, on Thursday, November 6, 2008, at 6:00 p.m., at MSBA Headquarters.** Craig, Andrea, and the entire ADR Section Council invite each of you to enrich your practice and be a leader in the commercial ADR field, by rolling up your sleeves and being a part of the planning and implementation of the Maryland Business ADR Conference.

Another area of interest to the Section Council is **legislation** that may further the interests of Section members. We meet with Richard Montgomery, Legislative Director of the MSBA, in October to discuss procedures for proposing, supporting, or opposing legislation.

We also are seeking to create understanding and (where possible) consistency, regarding the **Differentiated Case Management (DCM)** programs in the various circuit courts throughout the State.

Please contact either me or Tom Dolina to provide information regarding any legislative or DCM issues you may wish the Section Council to consider.

In addition to the above, the Section Council is looking to nurture its involvement in the family law arena, while also encouraging various types of ADR processes (including mediation, arbitration, and collaborative law) and philosophies (e.g. in mediation--facilitative, transformative, evaluative), in resolving disputes in a wide-range of substantive areas. You may contact me directly if you have ideas on any of these issues, and please contact Suzy Eckstein if you are particularly interested in exploring issues related to collaborative law.

You may have noticed that his Newsletter and other communications are posted on the ADR Section website or listserv. We are attempting to increase our web presence. **We are seeking one or more ADR Section members to volunteer to help us with our website and listserv capabilities and content. Please contact me if you are interested in assisting on this important endeavor.**

Furthermore, it is never too early to begin thinking about the Annual Meeting in Ocean City, which is scheduled for June 2009. If you have ideas regarding topics or speakers, please contact Suzy Eckstein or Master Theresa Furnari, for consideration by the Annual Meeting Committee that they co-chair. As you can tell from this message, the ADR Section Council has a very ambitious agenda this year. Please join us in generating opportunities, and in making positive things happen, that promote our ADR Section, the ADR industry, and your practice.

All the best,

Richard H. Melnick

Ramona Buck Is Selected for the 2008 Robert M. Bell Excellence in Alternative Dispute Resolution Award

The Maryland State Bar Association Alternative Dispute Resolution (ADR) section is pleased to announce the selection of Ramona Buck as the recipient of the second annual Chief Judge Robert M. Bell Award for Outstanding Contribution to ADR in Maryland. Ms. Buck is the Public Policy Director for the Maryland Mediation and Conflict Resolution Office (MACRO), and has been a mediator and mediation trainer for more than twenty-five years.

This award was created two years ago by the ADR Section to honor the vision and accomplishments of Chief Judge Robert M. Bell, in promoting ADR in the Maryland judiciary, schools, government and communities. Recipients are nominated by their peers in the ADR community and chosen by committee review. The award will be given to Ms. Buck at the first "ADR Practitioner's Gala" to be held following the Maryland Mediator's Convention on December 5th, 2008 at 5:45 p.m., at the BWI Marriot Acqua Restaurant.

Ms. Buck has had a broad and diverse career in conflict resolution. Prior to joining MACRO in 2001, Ms. Buck was the Director of Mediation Services and ADR Referrals for the Circuit Court for Prince George's County. She joined the judiciary after serving as the Executive Director of the Northern Virginia Mediation Service for three years. Ms. Buck began her mediation career in 1982 with the Conflict Management Group and Creative Responses and Alternatives to Violence program, where she designed and led training seminars on communication, facilitation and conflict management for employee groups, community organizations and others. For thirteen years, Ms. Buck was a teacher and school administrator in Montomerv Countv

Since the mid-1990's Ms. Buck has been active in the Maryland Council for Dispute Resolution (MCDR), serving as its president, vice president, and co-editor of the MCDR newsletter, as well as co-chair of its certification committee. She is certified as a mediator by the Supreme Court of Virginia, and is a volunteer mediator for the Maryland Commission on Human Relations, The Conflict Resolution Center of Montgomery County, the Mediation and Conflict Resolution Center at Howard Community College, the District Court of Maryland, and the D.C. Superior Court Family Program. She is a member of the Maryland Program for Mediator Excellence.

YOU WON'T WANT TO MISS THE ADR PRACTITIONERS' GALA and DINNER DANCE

hilton bwi ~ aqua restaurant
Immediately following the Maryland Mediators
Convention on December 5, 2008

hosted by the MSBA ADR Section
co-sponsored by ACR-MD, CMM, MACRO,
and MCDR

**Honoring Ramona B. Buck
By Presenting her with the MSBA ADR
Section's**

Robert M. Bell Award

5:45 Reception ~ Cash Bar - 6:30 Ticketed
Dinner

***** REGISTRATION TEAR HERE *****

Name: _____

Address: _____

Solo \$45.00 Couple \$85.00 Make Check out to: MSBA Or Pay by Visa / Mastercard

Acct # _____ Exp Date: _____ Auth Code _____

Signature: _____

Billing Address: _____

Mail to: Theresa Michael, ADR MSBA 520 W. Fayette St. Baltimore, MD 21201

ABA Efforts at Quality Assurance in Mediation

By Steve Shapiro, Esq.

In January, 2006 the American Bar Association Section of Dispute Resolution formed a task force to address issues of quality in mediation. The task force followed efforts by the Section of Dispute Resolution and other organizations to evaluate the feasibility of a national mediation credential. After determining that a national credentialing program was not feasible for the current mediation marketplace, the Section of Dispute Resolution formed the “Task Force on Improving Mediation Quality” to investigate factors that define high quality mediation practice. Rachel Wohl, Executive Director for the Maryland Conflict Resolution Office was one of the Co-Chairs of this project.

The Alternative Dispute Resolution Section highlighted this project in its Fall 2007 Business ADR Conference with a Plenary Panel consisting of industry experts and practitioners. This article aims to provide another level of depth and perspective to the discussion that took place last October.

The Task Force working on this project recognized that the mediation field is broad and complex. The Task Force narrowed its focus to mediation quality in private practice civil cases (including commercial, tort, employment, construction, and other kinds of disputes that are typically litigated in civil cases, but not domestic, family law, or community disputes) where the parties are usually represented by counsel in mediation. The Task Force decided to take this approach in the belief that this focus would inform it about quality issues in a narrow, reasonably well-developed area of mediation practice, provide recommendations for improving mediation practice in that context, and perhaps suggest improvements for other areas of mediation practice that could be the focus of additional later efforts by the ABA or other groups.

The Task Force reviewed existing policy documents, reports, and research on mediation Quality. The Task Force determined that it could significantly contribute to a better understanding of mediation quality by embarking on an extensive effort to learn how users of mediation services felt about quality, while recognizing that user views are not necessarily conclusive. In order to gain an understanding of user views about mediation—at least in the context of private practice civil cases with represented parties (but not domestic, family law or community disputes)—the Task Force pursued several avenues of investigation.

Methodology

The Task Force organized a series of ten focus group discussions in nine cities across the United States and Canada: Atlanta, Chicago, Denver, Houston, Miami, New York, San Francisco, Toronto, and Washington D.C. (two meetings were held in Washington). For each set of focus groups the Task Force worked with local groups to develop an invitation list. The participants included outside counsel, in-house counsel, and non attorneys (such as insurance industry managers, risk managers, and human resource managers) whose responsibilities include working for parties in mediation. In later focus group sessions, the Task Force also included small groups of experienced civil mediators, who were asked a slightly different set of questions. In addition to the focus group discussions, the Task Force collected more than 100 responses to questionnaires from mediation users and mediators, and conducted telephone interviews with thirteen individuals who have been parties in mediation.

Findings and Observations

Focus group participants, questionnaire respondents, and parties who were interviewed consistently identified the same four issues as important to mediation quality:

___ *Preparation for mediation by the mediator, parties, and counsel*

Quality Assurance continued...

___ *Case-by-case customization of the mediation process*

___ *“Analytical” assistance from the mediator*

___ *“Persistence” by the mediator*

While the issues identified may not surprise many, the Task Force found that they are significant because mediation users consistently identified them as areas where steps could be taken to improve mediation quality. The report will discuss in depth these factors and provide observations, analysis, recommendations, and next steps. We emphasize here, as we do throughout this report, that our conclusions relate only to the arena of private practice civil cases where parties are represented by counsel. We offer no opinion whatsoever about the meaning, if any, of these conclusions for other kinds of mediation.

Report and Recommendations

The Task Force’s findings and observations lead to a number of recommendations, some of which will be carried out later by the Task Force and some by other groups, on ways in which mediation practice can be improved:

___ *Create comprehensive mediation user guides including a video for parties and their attorneys.*

___ *Consider whether to conduct research similar to the Task Force’s research focused on other mediation contexts, such as family mediation, and consider how, if at all, the observations and conclusions of the Task Force concerning preparation, customization, analytical techniques, and persistence might be relevant to those other practice contexts.*

___ *Develop recommendations for how mediation training programs can be responsive to user concerns related to preparation, customization, analytical assistance, and persistence.*

___ *Examine how to use mediator analytical techniques in civil cases in which parties are represented by counsel, consistent with high quality mediation.*

___ *Promote local group discussions with mediation users, similar to those held by the Task Force, conducted by state and local Bar Associations and others.*

___ *Develop brief practical application pamphlets for mediation users (lawyers and parties) and for mediators based upon the Task Force’s research efforts, experience, and expertise. The pamphlets will highlight what mediation users or mediators should consider with regard to preparation, customization, analytical assistance, and persistence in order to have high quality mediation.*

If you have any questions about these recommendations and how the State Bar Association and its ADR Section can best cooperate in implementing them you can contact SteveShapiro@ResolutionMatters.com

Calendar of ADR Events

- November 6th, 2008: Planning meeting for the 2009 Business ADR Conference, 6:00 p.m. at MSBA headquarters 520 West Fayette St. Baltimore
- November 25th, 2008 "Pizza and Professionalism: A Roundtable Discussion on Mediation in Foreclosure" 6:30 p.m. at MSBA headquarters 520 West Fayette St. Baltimore
- November 20-21: Maryland's 2nd Restorative Justice Conference "Opportunities for Impact" at Howard Community College in Columbia, MD. Go to www.mediate.com/MarylandACR for registration information
- February 9-10 and 12-13, 2009 : MICPEL 40-hour Domestic Mediation Training with Harry Fox and Cecilia Paiz. Go to infor@micpel.edu for more information.
- March 9-16, 2009 Alternative Resolutions and Joyce A. Mitchell and Associates offer a 40-hour Basic Mediation Training at National Labor College, Silver Spring, MD. Go to www.alternativeresolutions.net for registration information or call 301-588-5390.

ADR Section Council 2007 - 2008

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