

Maryland State Bar Association Alternative Dispute Resolution Section Newsletter

Join the ADR Section for its Spring "Pizza and Professionalism" Program on April 28, 2009 in Room 108 of the University of Maryland Law School – 6 p.m.:

"Caution! Where Mediation Can Cross Over Into the Practice of Law - The Ethical Implications for ADR Practitioners of All Stripes - A Blue Ribbon Panel Discussion"

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Message from the Chair

Dear Section Members:

I hope everyone is doing well, in weathering both the economic storms and our recent beginning of March "blizzard." The other day, as I was looking for a tasty, yet economical, cup of coffee to thaw my late winter chill, I was thinking of the wonderful opportunity we, as attorneys/ ADR Practitioners, have to find creative, efficient, and enduring solutions to conflict.

I see people all around me in the ADR Section who: respect others and the human condition; celebrate our strengths, weaknesses, and differences; and recognize one another's right to life, liberty, and the pursuit of happiness. This combination of the spirit of cooperation and self-determination, along with the education and legal tenets practiced by attorneys, galvanize us as Attorneys/ ADR Professionals. Analogizing to the coffee reference above, we may want to take the time to appreciate that we are a "special blend." This is because we possess the knowledge and analytical framework to address the legal rights and responsibilities of disputing parties, persuade others, and fiercely and zealously represent our clients; while, at the same time, we possess the compassion, perspective, desire, and interpersonal communication skills needed to view and address conflict in a way that benefits not just one party, or even both parties, but our society as a whole.

We should take note that each dispute resolution methodology—including, without limitation, mediation, arbitration, neutral case evaluation, settlement conference, neutral fact finding, collaborative law, and litigation-- has a place in helping people resolve conflict, and may be the appropriate one to use in crafting a resolution in one set of circumstances, but not in another.

As is the case in many things in the law, the world is not always black and white, rarely does a question have a "one answer fits all" solution, and the correct answer may often begin with the words "it depends." Similarly, consistent with Maryland Rule 2.1, we should all recognize, and advise our clients regarding, various ways in which they may seek to resolve a dispute. By working together, enriching our relationships and knowledge, and minding the details while also seeing the big picture, we may act as leaders in helping people find respectful, legal, peaceful, compassionate, albeit not always painless, solutions. I hope the work and activities of the ADR Section and its Section Council bring us closer to the ideals that help people effectively resolve their conflicts with others, in both traditional (litigation) and non-traditional (e.g. mediation) ways.

The ADR Section Council continues to focus on addressing substantive legal issues, while considering ADR opportunities and implications. The Council also seeks to communicate with, involve, and enhance its relationships with all ADR Section members. The "Pizza and Professionalism" event in November allowed ADR Section members to come together, network, and discuss issues related to the foreclosure crisis. Our panel of expert speakers provided important information and led a lively discussion on recent rules changes, and related legal, ADR, and practical issues. If you were not able to attend that event, I have good news-- the Section Council is planning "**Pizza and Professionalism II**, entitled- **Attorney/Mediator Quality and Ethics in practicing different Mediation Styles**" Our invited speakers are Roger Wolf, John Bickerman, Dan Dozier, and Louise Phipps-Senft. Please join us on **April 24, 2009, at 6:00 p.m., at the MSBA Headquarters**, for an evening of "pizza, pizzazz, and pontification" on this interesting

Message from the Chair continued...

topic. For purposes of planning the event, please contact either me (at Richard.Melnick@montgomerycountymd.gov) or Steve Shapiro (at SShapiro@presspotterlaw.com) by April 10, 2009, to let us know you wish to attend.



"This combination of the spirit of cooperation and self-determination, along with the education and legal tenets practiced by attorneys, galvanize us as Attorneys/ADR Professionals."

I also wanted to let you know that the ADR Section's "ADR Practitioners Dinner Dance Gala," in December was a huge success. Over 100 people attended the event, including Chief Judge Robert M. Bell, who presented the 2008 ADR Section's Award for outstanding service to the ADR profession in Maryland. The Dinner Dance Gala followed the Maryland Mediator's Convention, of which the ADR Section was a noted sponsor, and provided an opportunity for ADR practitioners from various important ADR organizations, including the ADR Section, the District Court ADR Program, MCDR, MACRO, CMM, and MD ACR ("the Maryland ADR Family"), to get together to share ideas, a nice meal, and their good company with one another. Special kudos go to David Simison for his tireless efforts and coordination of this wonderful event.

The ADR Section Council is also seeking to conduct outreach to businesses to help expand Business ADR in Maryland. We would love to involve interested ADR Section members in this endeavor, which we believe will be exciting and involve new and technological methods of communication. We envision that this outreach effort has the potential to make major inroads and lead to untapped synergy between attorneys, ADR professionals, businesses, and the legal system. Make no mistake that this is an ambitious project, and will meet its share of challenges, but with the human and financial resource efforts of the ADR Section, MACRO, and other Maryland ADR Family members, we can make Maryland a beacon of light in the stormy sea of business conflict resolution. Please contact either me, Steve Shapiro, Craig Distelhorst, or Andrea Terry to express your interest in being part of this Business ADR Outreach (perhaps I should coin the acronym "BADRO" ☺) effort.

The Section Council also has created a Collaborative Law Subcommittee to

focus on this growing area of practice. Please contact Suzy Eckstein (at SE123456@aol.com), this subcommittee's chair, if you are interested in the practice of Collaborative Law and wish to get involved.

Furthermore, the ADR Section plans to conduct its **annual business meeting** at the June 2009 MSBA Annual Meeting, on **Friday, June 12, 2009, at 7:30 a.m.**, followed by an entertaining and educational **presentation from 8:00 a.m. to 10:30 a.m.** (date and time subject to change, pending final arrangements by MSBA). The ADR Section is collaborating with other MSBA Sections in sponsoring this presentation, which is sure to enhance your knowledge of various areas of substantive law and "award winning" ADR processes and methods to help resolve conflict in a manner that best serves our clients. Breakfast will be served, and we welcome you to please join us.

I wish you all a happy and successful Spring, and look forward to seeing you soon. All the best,

-Rich

ADR Section Council 2008 - 2009

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MSBA Annual Meeting Program - The ADR Section Sponsors The First Annual ADR Hot Tips Award!

In the same tradition as the Grammys or Oscars, join us on the red carpet and be one of the privileged to view in person the First Annual ADR HOT TIPS AWARDS! Be part of the excitement as the best ADR method and hot tips of the year are chosen. This program will provide you with a basic introduction to the guiding principles of ADR methods, including, mediation, arbitration and the collaborative process. For those more familiar with these processes, you will learn more sophisticated hot tips such as: how to draft effective ADR provisions (including mediation, arbitration, and collaborative process provisions); how we as attorneys "should" comply with the recent change to Comment 5 of Rule 2.1 of the Maryland Rules of Professional Conduct; innovative uses of ADR, including the use of mediation and the collaborative process in crafting prenuptial agreements; how to use financial neutrals to make the outcome of your ADR process more sustainable; ethical considerations in mediation and the collaborative process; the best court ADR processes; innovations in

evaluating court mediators; how to prepare and represent your client in mediation; and how to use ADR in animal law matters.

Many thanks to program co-chairs Suzy Eckstein, Esq. and Master Theresa A. Furnari for putting this program together and recruiting an all star cast.

Please join us on Friday, June 12th at 8:00 a.m for this exciting event during the 2009 MSBA Annual Meeting.



MSBA Annual Meeting: Join us in Ocean City on Friday, June 12th at 8:00 a.m. for our red carpet extravaganza: "The First Annual Hot Tips in ADR Awards"

First "Pizza and Professionalism" Foreclosure Program a Success

Almost thirty ADR practitioners gathered for the ADR Section's first "Pizza and Professionalism" series presentation in November at MSBA Headquarters. The debut program addressed the potential role of mediation in the foreclosure process. This topic was chosen because of the new initiatives being taken by various State agencies to try and abate the rising number of foreclosures facing many Maryland homeowners, and because the Court of Appeals was considering a new rule that would make mediation an option in contested foreclosures.

Assistant City Solicitor Vicki Shultz and Susanne Sangree, who directs the Consumer Protection Office for the Department of Labor Licensing and Regulation, described the extent of the problem, and the Home Ownership Preservation Program undertaken by the State to help homeowners. Private practitioner Ken McFadyen provided his perspective on representing the lender in mortgage foreclosure proceedings.

In addition to public outreach and education, Ms. Sangree's office pursued legislative and regulatory reform. Some of these new rules impose more court oversight of the foreclosure process. The panel discussed Maryland Rule 14-206,

Pizza & Professionalism...continued

which provides an opportunity for the Court to order mediation when a motion to stay a foreclosure is filed, based on a contention that the subject mortgage is flawed or fraudulent. The rule was monitored by ADR section council members as it moved through the rules committee, and it provided much lively discussion and debate amongst the panelists and attendees. It was adopted by the Court of Appeals in February. The fact that both the lender and debtor have to agree to the mediation, and the narrow circumstances when mediation might be an option lead most to agree that there are few opportunities for ADR practitioners to help in the foreclosure process.

The next "Pizza and Professionalism" program is scheduled for April 28th, at 6 p.m. at the University of Maryland Law School, room 108. This will be a panel discussion entitled "Caution: When Mediation Crosses into the Practice of Law – An Ethical Discussion for ADR Practitioners of All Stripes." The panel will include John Bickerman, Roger Wolf, Louise Phipps Senft, and Dan Dozier. Section Council Vice Chair, Steve Shapiro will moderate. This program will satisfy the ethics training requirement for MPME members. It is free for ADR section members and a \$5 entrance fee will be charged to non-members. Join us! RSVP to aterry@actesq@earthlink.net

Ramona Buck Receives the Chief Judge Robert M. Bell Award for Outstanding Contribution to Alternative Dispute Resolution in Maryland

Ramona Buck, the Public Policy Director of the Maryland Mediation and Conflict Resolution Office (MACRO), was presented with the Chief Judge Robert M. Bell Award for Outstanding Contribution to Alternative Dispute Resolution (ADR) in Maryland, at the first ADR Practitioner's Gala on December 5th, 2008, following the Maryland Mediator's Convention. The Gala was organized by the ADR Section and co-sponsored by several other Maryland ADR organizations, including the Maryland Council for Dispute Resolution, Community Mediation Maryland and the Association of Conflict Resolution. The award is given by the ADR section to honor the vision and accomplishments of Chief Judge Robert M. Bell for his work in promoting the use of ADR in the Maryland judiciary, schools, government and communities.

In nominating her, Jonathan Rosenthal wrote, "Ramona is probably the unsung hero of the MACRO staff. Ramona lent her immeasurable talents to the ADR Section last year for the Maryland Business ADR Conference. And when one thinks about the Maryland Mediator Conventions (all four of them), the person who is the driving force behind their success is Ramona Buck. In addition she has tirelessly worked with governmental agencies to develop new mediation programs and create work for mediators and facilitators. She has run court programs, and created innovative trainings to help all mediators statewide."

Ramona has had a terrifically diverse career beginning in education and moving into mediation, where, for 25 years, she's worked selflessly to create opportunities for mediators to improve their skills and business opportunities. Ramona routinely works to develop new mediation programs in Maryland government. For every government entity in which the program "sticks", new money making opportunities are created for Maryland's mediators. Specifically, Ramona has worked on developing programs with The Department of Natural Resources, The Department of the Environment, the State Police, the Baltimore City Council, and the Attorney General's Office, to name a few.

In addition to all of that, Ramona routinely volunteers as a mediator for the Maryland commission on Human Relations, the Conflict Resolution Center for Montgomery County, and the District Court ADR Program. Nominated and chosen by her peers, Ramona Buck is congratulated by the ADR Section and the ADR community for a job well done, and an honor well deserved.

Calendar of ADR Events

- May 20-22nd, MICPEL Collaborative Law Training – Columbia, MD – www.micpel.edu
- June 11th, MCDR Quarterly meeting 6 p.m. Judicial Training Center - Annapolis
- June 16th, 8:30 a.m. – 5:00 p.m. “Effective Use of Mediation, Arbitration, and other ADR Techniques in Resolving Commercial and Construction Disputes” - www.micpel.edu
- June 22nd – 26th 40 hour basic mediation training – Univeristy of MD Law School – www.micpel.edu
- June 27, 2009 MCDR Certification Day in Annapolis, contact David A. Simison, das@daslaw.com, or Ramona Buck, Ramona.Buck@courts.state.md.us
- July 6-10, 2009; and October 5-9, 2009, 40 hour basic mediation training - Silver Spring, Maryland, go to alternativeresolutions.net for more information

Section Council Applications

There are four openings on the ADR Section Council. To apply please email a letter of interest and resume to Steve Shapiro at sshapiro@presspotterlaw.com by May 15th, 2009.
