

Dispute Resolution Journal

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

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Women in ADR



The Chair's Corner 2
by Erin Archerd

Eldercaring Coordination:
What is It? What is it Not? 3
by Larissa Z. Waltman

"How I Built An ADR-Exclusive
Practice and the Benefits
Therefrom" 6
by Jessica P. Heltsley

Details in ADR Diversity Equity
& Inclusion 9
by Hon. Wendy M. Baxter, Retired

How Does New Technology
Change the Dynamics
of ADR? 15
by Harshitha Ram

Michigan Arbitration and
Mediation Case Law Update ... 16
by Lee Hornberger

From the Field: Building Trust and
Confidence, Part 2: Attorneys .. 19
by Sheldon J. Stark

Arbitration As Usual?
COVID's Impact on Labor
Arbitrations and Modifications
Worth Retaining..... 21
by Betty Rankin Widgeon

Good Conversations -
Great Connections! 24
by Lucia Kanter St. Amour
and Harshitha Ram

Action Team Updates 26

The ADR Section
2022 Award Winners 27

Award Winner Speeches 28

Upcoming Mediation Trainings .. 31

ANNOUNCEMENT: The Diversity
and Inclusion Action Team Book
Group Meeting 32

Diversity Pledge 33

Thanks to Our
Annual Sponsors 34

Membership Application 35

Connect with Us/Mission 36

Vol. 32
No. 3 Fall
2022

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The Chair's Corner

By Erin R. Archerd



Erin Archerd

It is with a grateful and full heart that I pen my final Chair's Corner for the State Bar of Michigan ADR Section. The support I have received from the many wonderful members of this Section – especially my Immediate Past Chair Betty Widgeon and Incoming Chair Ed Pappas – has made this past year a pleasure and I look forward to continuing to work with the Section as your Past Chair.

We started our 2022-2023 Bar Year strong with our 2022 Annual Meeting and Conference. Although the sessions were virtual, a number of us were able to convene in person for the Section Awards Dinner at the Inn at St John's. It was a joy to see so many friends who I have not seen in person in nearly two years. Congratulations to this year's ADR Section Award winners: Gregory

Conyers, the Diversity and Inclusion Award; Belinda Dulin, the Nanci S. Klein Award; Lisa Timmons, the Hero of ADR Award; Lee Hornberger, the Distinguished Service Award; and Betty Widgeon, the George N. Bashara Award.

A huge thanks to all of the members of the Skills Action Team (SAT) who served on the ADR Annual Conference Subcommittee, especially our Chair, Nakisha Chaney. We received excellent feedback from attendees and are already planning our next Annual Meeting with a goal of even more skill-building offerings next year. Save the date for September 29 and 30, 2023.

While you are marking your calendars and thinking about building your skills, our 2023 Spring Summit will be held on March 21 and 28 and will feature Tracy Allen and Bernard Mayer and Jacqueline Font-Guzman. More details will be coming in the months ahead. Having presented with Professor Font-Guzmán in the past, I am looking forward to having Jackie join us next year.

I am also excited to kick off this issue of the Michigan Dispute Resolution Journal focused on women in dispute resolution. The disparities in the representation of women in the field, particularly in arbitration, have been long documented. That is one reason that I am so excited that Michigan State Supreme Court Justice Bridget McCormack will be helming the American Arbitration Association upon her retirement from the Court.

I remain confident that, despite the retirement of such a stalwart judicial proponent, ADR will continue to find support from state courts. Michigan has long been a leader in mediation in the courts, and I anticipate the use of mediation will continue to rise with the recent revisions to our case evaluation rules.

Arbitration also remains a growing area of our field, and one in which women have made considerable strides over the years. A 2022 report by the International Council for Commercial Arbitration, for example, shows the percentage of women appointed as international commercial arbitrators in 1990 as 1%. Yes, *one* percent. That percentage had risen to 26.1% by 2021.¹

This kind of growth has been fueled by ADR provider organizations, which have begun taking affirmative steps to recruit more women to their rosters and encourage their selection and appointment. It appears that the primary barrier to women is now *party* choices. While the number of women chosen by parties is rising, much of the gain in women appointment is being driven by appointments made directly by the providers.

(An interesting aside: the International Commercial Arbitration Court, a leading provider in Eastern Europe and Russia, reported markedly higher numbers of parties appointing female arbitrators in 2020, with women comprising 57.4% of all party-chosen appointments. They attribute this to “the active involvement of women in both social life and workforce in Ukraine, where women “tend to be equally represented in legal professions.”² The war in Ukraine is likely to impact those numbers.)

In the United States, the number of female arbitrators has similarly increased. Women now make up 29% of AAA's roster³ and

¹ https://cdn.arbitration-icca.org/s3fs-public/document/media_document/ICCA-Report-8u2-electronic3.pdf

² *Id.* at 37.

³ <https://www.adr.org/RosterDiversity>

more than 30% of JAMS panelists.⁴ This is nearing the roughly 38% of female lawyers in the United States.⁵ This is great progress, but we need to continue to focus on getting women chosen to serve as arbitrators.

ADR professionals have been doing a good job of creating pipelines into the profession, and now need make sure the women we have supported have continuing opportunities to gain experience and grow their practice.

There is still much to do. I look forward to joining with the members of the ADR Section to continue this important work. **

⁴ <https://www.jamsadr.com/blog/2022/big-dreams-and-open-doors-the-importance-of-womens-history-month>

⁵ <https://www.americanbar.org/news/abanews/aba-news-archives/2022/06/aba-lawyers-survey/>



Larissa Waltman

Eldercaring Coordination:

What is It? What is it Not?

By Larissa Z. Waltman

Eldercaring coordination is a new option in the state of Michigan for handling high conflict cases involving elders. In fact, Michigan is currently one of only six states (California, Florida, Idaho, Maryland, Michigan, Ohio) implementing the program. This past winter I was one of the first eldercaring coordinators (ECs) trained in Michigan by two of the Co-Chairs of the Elder Justice Initiative on Eldercaring Coordination (Eldercaring Coordination Initiative), Linda Fieldstone, M.Ed. and Sue Bronson, LCSW. The third Co-Chair of the Eldercaring Coordination Initiative is Judge Michelle Morley of the 5th Judicial Circuit serving Sumter County, Florida.

The Co-Chairs spearheaded the Eldercaring Coordination Initiative as a way of moving forward the work of two task forces involving twenty organizations throughout the United States and Canada hosted by The Association for Conflict Resolution (ACR) which created the broad framework for eldercaring coordination and another twenty organizations in Florida hosted by The Florida Chapter of the Association of Family and Conciliation Courts (FLAFCC) which showed how that broader framework could be tailored to meet the needs of the elders and courts within a specific state.

On a personal level, Ms. Fieldstone reflects “I had worked so many years in the court system (11th Judicial Circuit, Miami-Dade, FL), providing services to parents and children in high conflict legal proceedings, and was saddened by the discrepancy between services offered to younger families and older families. Families don’t age out of conflict. When we help older generations in the family, we have the opportunity to benefit all of the generations. It was time to ensure that families of all ages were treated uniformly. I felt an urgency to make that happen.”

Prior to discussing what eldercaring coordination is, it is helpful to know what it is not. Eldercaring coordination is not mediation. Mediation is a process whereby a neutral third party meets with the parties to the dispute and assists them by creating a space where each party can express their positions and hopefully those parties can reach an agreement as to how to move forward by the end of the meeting. Mediation is generally completed within a few hours and occasionally has multiple sessions depending on the number of issues and needs of the participants. Mediation is best where there is a low to moderate level of conflict or a limited number of issues. Families are encouraged to access all available avenues in resolving their disputes. If the dispute can be resolved through mediation, it is not a case that is appropriate for eldercaring coordination.

So, what is eldercaring coordination if it is not mediation? As summarized by Judge Morley, “Eldercaring coordination is a process that saves time, saves money and empowers aging people when their families inadvertently silence them by arguing and fighting among themselves over the decisions that need to be made for the care and safety of that aging loved one. It reduces the number and length of hearings in cases where the family is in conflict. There have been cases where eldercaring coordination has even saved the lives of aging persons whose care decisions were left in abeyance while loving family member turned to the courts for decisions that they are unable to make themselves because of the disharmony and hostility that dams the flow of information and makes agreement unreachable.”

The process itself will be discussed in more detail a little further in this article.

But first, consider the following scenario. An elder female in a guardianship and conservatorship but still resides at home with her spouse who is beginning to experience his own physical or mental limitations. One of their three adult children is single and lives ten miles away but is unwilling to assist. Another child lives two hours away, has three minor children and is the current guardian and conservator. The third child lives in another state and rarely visits but objects to how money is being spent and objects repeatedly to the guardian's suggestion of a retirement home for their mother. The elder's spouse is beginning to fight the whole idea of the court's involvement afraid of how the situation is likely to escalate over the next few years (or sooner) when he needs assistance as well. Motions are being filed every few months by one party or another requiring the court to micromanage the case causing the rift among the family members to deepen.

The above scenario is not unfathomable. The number of children and their distance may change but I would guess that every probate court has had a case at some point that sits in discord. Once a party, an attorney, the guardian ad litem, or the court identifies an escalation in the conflict between the parties or sees a perpetual undercurrent of conflict, it is time to consider eldercaring coordination.

As noted above, eldercaring coordination is not designed to be ordered in every case. Yes, the court must order the parties into eldercaring coordination. It is recommended the case be ordered into eldercaring coordination for a two-year term. The EC may end the process sooner or a party may request termination earlier. Once the order has been entered the referral will be sent to the Southeast Michigan Senior Resource Center (SRC) who will assign an EC. The pilot program currently involves Macomb, Oakland, Washtenaw and Wayne counties but is available based on EC availability in other counties or can be conducted via Zoom. Currently, two cases have been ordered into eldercaring coordination in Oakland County and one in Washtenaw. Any questions about the program can be directed to the EC Program Coordinator Darryl Jones at djones@miseniors.org or (888) 341-8593 x4.

Do ECs have to have special training? Yes. Every individual who signs up to take eldercaring coordination training must meet the following requirements:

1. Professionally, one of the following requirements applies:
 - a) Licensed as a mental health professional and holds at least a master's degree in the professional field of practice such as counseling, social work, or marriage and family therapy; or
 - b) Licensed or limited licensed as a psychologist; or
 - c) Licensed as a physician; or
 - d) Licensed as a nurse and holds at least a master's degree; or
 - e) Licensed attorney; or
 - f) Has five years of experience in a field that provides a gerontology background as one of the following: Aging Life Care Manager; Skilled Nursing Facility Administrator; Ombudsman; Nurse - RN/LPN; Guardian certified through the Center for Guardianship Certification; or
 - g) Has a graduate degree in a behavioral science; or
 - h) Has mediated at least 50 hours of Elder Mediation in at least 10 cases
2. Three years post licensure or post certification practice in any one of the professions listed above.
3. Completed the following training programs:
 - a) SCAO-approved domestic relations mediation training, OR SCAO-approved Civil Mediation training; and is licensed as a mental health professional and holds at least a master's degree in a professional field of practice such as counseling, social work, marriage and family therapy, or psychology;
 - b) SCAO-approved Elder Mediation training, which meets the objectives established by the Association for Conflict Resolution;
 - c) ElderCaring Coordination training which meets the objectives established by the Association for Conflict Resolution.

As described by Ms. Bronson, the training evolved from content oriented, to process oriented and has become application focused. "It is more focused on interrupting the family dynamic and how to bring information to the table so people take small actions to support the elder." While the process is not mediation, the ECs' mediation background "is necessary to allow them to sit well with

conflict” during the eldercaring coordination meetings.

As of October 2022, individuals trained as ECs are 83% female and 17% male . Their professional background statistics result in totals exceeding 100% as most ECs have at least two professions of origin which breakdown as follows:

Attorney	38%
Mediator	35%
Fiduciary or Guardian	12%
Mental Health	1.9%
Parenting Coordinator	6%
Court Staff	6%
Aging Life Care Manager or Gerontologist	5%
Magistrate or Retired Judge	3%
Minister	2%
Ombudsman	0.1%
Teacher	0.1%

Once the case has been referred to eldercaring coordination, what does the process look like? The EC will contact every party to introduce him or herself, provide an overview of what to expect, and hear their concerns and case background. The EC will send out their fee agreement and schedule an initial meeting. There will be multiple meetings. More frequent the first few months and then, hopefully, they will occur less and less frequently as the parties begin to work together. While attorneys and the guardian ad litem are present at the initial meeting(s), their attendance is generally not required afterward unless their client requests it or they wish to continue to participate. Each meeting is limited to one to two hours. The meeting can take place in person or by zoom depending on the EC and the parties’ needs and preferences.

At each meeting the EC will get a status update of the elder and any tasks that were to be performed following the prior meeting. The parties will identify needs of the elder as well as the other parties to the extent they affect the elder. The parties will identify things that they can each do to assist in addressing current or anticipated needs of the elder. The EC “gets everybody to begin to take action in any way they can,” explains Ms. Bronson. The actions may include driving the elder to the doctor, researching an issue, or making telephone calls. Over time “the individual actions mount up creating a collaborative team”. As the parties begin to work as a team, meetings with the EC become less and less frequent. The EC will provide resources as needed. The EC is available between meetings for issues or questions that may arise. The elder’s wishes, care, and safety are the focus at all times.

The meetings are confidential unless confidentiality is waived by all parties, however, the EC has a duty to report any suspected abuse, neglect or exploitation as required or permitted by applicable law. The court order will generally itemize additional exceptions such as limited disclosure to the extent necessary to notify the court if a legal issue has arisen and whether parties are adhering to the court’s order for eldercaring coordination.

Who pays for the EC’s services? The court’s order will direct how the EC is to be paid. Generally, fees are split between the parties. The EC may agree to a sliding income-based fee. Or, the court or county may request funding from outside sources. Ms. Fieldstone identified Stark County, Ohio as having paid for two Eldercaring Coordinators’ services for multiple cases through a grant based on the parties’ finances.

Ms. Fieldstone summarized the benefits of eldercaring coordination. “Eldercaring coordination ensures there is a continuum of dispute resolution processes, taking into account that families in higher conflict need a dispute resolution option that meets their unique needs and characteristics. Families who participate are better able to model more productive conflict resolution, providing a legacy of their loved one that can benefit all the generations.”

Further, Ms. Filedstone identified that “attorneys whose clients have participated in the process say they are better able to focus on legal issues when the emotionality of their clients is more stable. (The ECs are getting those 3 a.m. texts and calls instead of the attorney.) Guardians report that they are better able to make informed decisions that enhance the elder’s life when family members are more cooperative and collaborate. Guardians find out more intimate information about the elder that they might not have known (e.g., favorite food, music, loved to dance, hates glasses) that help them provide person-centered care decisions. 100% of judges who respond to studies post-implementation identify being very satisfied with the process as it streamlines the case making it more manageable and allowing them to focus on the legal issues.”

A five-minute video providing an overview of eldercaring coordination can be found at <https://www.eldercaringcoordination.com/>.

Judge Morley invites any judges who are interested in eldercaring coordination but would like to discuss the matter from a court's perspective to contact her at 352-569-6960.

Those who meet the requirements and are interested in being trained as an eldercaring coordinator, the SRC's next training is being conducting January 23, 2023 – January 25, 2023.

Additional Resources:

ACR Eldercaring Coordination Guidelines <https://www.eldercaringcoordination.com/guidelines>

Southeast Michigan Senior Regional Collaborative: <https://www.semisrc.org/eldercaring-coordination.html>

Michigan Department of Attorney General Elder Abuse Task Force: <https://www.michigan.gov/ag/initiatives/elder-abuse/elder-abuse-task-force>

Michigan Department of Attorney General Elder Abuse, Neglect, and Exploitation: <https://www.michigan.gov/ag/initiatives/elder-abuse>

Michigan Department of Health & Human Services Adult Protective Services: <https://www.michigan.gov/mdhhs/adult-child-serv/abuse-neglect/adult-ps>

U.S. Department of Justice State Elder Abuse Statutes by topic: <https://www.justice.gov/elderjustice/elder-justice-statutes-0> **

About the Author

Larissa Z. Waltman is an attorney, mediator and eldercaring coordinator in Gaylord, Michigan. Her private law practice includes Consumer Bankruptcy in the Eastern and Western Districts of Michigan, Residential Real Estate Transactions, Child Protection and Guardianship/Conservatorship matters. She also provides mediation services in the areas of General Civil, Domestic Relations, Adult Guardianship/Eldercare, Child Protection, and Behavioral Health Mediation and has completed her training as an eldercaring coordinator.

Ms. Waltman serves on the Board of Directors for Community Mediation Services, Crossroads Industries (Secretary 2021 - present), and the Rotary Club of Gaylord (Past President 2019-2020).



Jessica Heltsley

“How I Built An ADR-Exclusive Practice and the Benefits Therefrom”

By Jessica P. Heltsley

When I began practicing law in 2012, I did not expect to curate an ADR-exclusive firm within the first decade of my career. As an associate, I did not see a lot of my peers in ADR specific roles and it felt like you needed to litigate 20-30 years before you could be a seasoned and respected mediator or arbitrator. Over time, I started to shift my mindset and realized that my personality and skillset were ideal for ADR and I did not want to wait until mid-career to take advantage of this truth. I hope this article will encourage others to take advantage of the variety of ADR methods that exist for families today, regardless of how long they have been practicing, as it provides many benefits like flexibility, creativity, collaboration, and a rewarding career.

Law school introduces students to a multitude of specializations. In the beginning, I was having a difficult time figuring out my interests. Luckily, my first summer law clerk position was at a family law firm. Immediately, I was drawn to the therapeutic aspects of guiding families through major life transitions. I found purpose in providing empathy and education to individuals who were restructuring their lives and who often felt paralyzed by fear of the unknown. I had always felt like I was meant to be a therapist,

so family law seemed like a way to satisfy that desire. After law school graduation, my first four years were spent as a family law associate, where I was able to learn the intricacies of family law and interact with court staff, judges, colleagues, and clients from start to finish on cases.

During those four years I felt like a “different” attorney. Many of my colleagues expressed a passion and desire to be in the courtroom. I, on the other hand, with my therapeutic tendencies, was drawn to early stage or pre-filing mediation and I felt like my best problem-solving took place out of court. Court processes can be rigid, timebound, and default to a Judge making decisions about other people’s lives if they cannot settle. For many families, this has the potential to increase conflict and dissolve any trust that might have remained between the spouses. I was certain there had to be more proactive ways to achieve settlement (in addition to mediation) for families who found it useful. I was in search of options that provided freedom for families to make non-traditional decisions that best supported their unique circumstances. I was also starting to feel the need to have more freedom on my end as an attorney, to expand my education and diversify services that I could offer to families; it was time for the first shift in my career.

In January of 2016, I decided to take the first step towards having more control over my career by founding Pospiech Family Law & Mediation, PLLC. I wanted to keep exploring the feelings I was having about being “different” and I wanted to promote out-of-court processes. I was already a court approved mediator having taken the training as an associate and, shortly after opening my practice, I signed up for the Introductory Collaborative Practice Training. The moment I stepped foot into the training room, I was re-energized. Everything I had been feeling about the court process was confirmed and my desire to explore alternative problem-solving methods came to life. A client-centered process existed – it was the Collaborative Divorce Practice. The father of Collaborative Law, Stu Webb, developed this process in the late 1980’s and it is practiced worldwide, so I wondered why it was not being utilized as often as mediation in the counties where I practiced, or if it was, how could I get more involved.

In the Collaborative Law Process (MCR 3.222), an interdisciplinary team of trained professionals (lawyers, financial advisors, mental health professionals, child specialists, business valuers, etc.) help spouses reach a settlement without court intervention and without the threat of litigation looming over their heads. After the spouses and professionals sign a Collaborative Participation Agreement that outlines the rules and guidelines of the Process, a series of settlement meetings take place to assist the spouses in drafting a creative and detailed settlement agreement, providing families with quality resolutions that focus on long-term goals for the future. The team focuses on spouses’ goals and interests instead of positions (which often lead to the zero-sum nature of litigation). Most importantly, children are placed at the forefront. To me, it felt like early stage/pre-filing mediation on steroids; a pro-settlement process that puts the appropriate resources and professionals in place, *from the start of a case*, to reach resolution on the *family’s timeline*.

The Collaborative training was my “aha” moment. I immediately joined the Board of Directors for the statewide group, the Collaborative Practice Institute of Michigan (“CPIM”). Within a few years, I took on the role of President and I remain a board member today. I also re-created the local practice group, the Collaborative Professionals of Southeast Michigan, where collaboratively trained professionals (veterans and rookies) meet for education, socialization, and to brainstorm about cases and our collaborative community as a whole. From 2016 until present, I have been the informal leader of this local group. I enjoy being part of the glue that keeps our collaborative community together and welcoming newly trained professionals into the mix. From there, I continued to educate colleagues, the public, and potential clients about the Collaborative Divorce Practice. I completely revamped my legal website to highlight the Collaborative Divorce Practice and my newfound philosophy of how to guide families through divorce. The next big step was to remove litigation and continue to grow and build my services and offerings to fully support my new mentality.

Over time, I realized that I was only taking litigation cases out of some false obligation. My heart and soul were in ADR, specifically Collaborative, where I was working with a team. I ramped up my continuing legal education and went to the International Academy of Collaborative Professionals’ (“IACP”) annual Forum three years in a row. I met collaborative professionals from all over the United States, Canada, Europe, and South America. I heard testimonials from these professionals about how the Collaborative Process was working in their state or country and we learned different skills and techniques from one another. The curriculum was life-changing and inspiring. Many of these individuals retired their litigation practice and focused solely on Collaborative Divorce. I was in awe and determined to be one of those professionals. It helped me realize that I did not have to suppress my peaceful personality; that an ADR-exclusive practice was *not* something I had to wait for, rather, I could start growing and building it now.

In 2019, just three years after starting my own firm, I began turning down litigation cases and focused on honing an ADR-exclusive practice. Up until this point in my career, I had been deeply immersed in a paradigm shift – releasing assumptions of what it meant to be a “good lawyer” (i.e., enjoy litigation) and withdrawing from a made-up timeline for when I could become an ADR expert. I had to get out of my own way and start to embrace my personality traits that brought out the best advocate in me.

Once I accepted the paradigm shift for my career, I felt unstoppable. My confidence was building and I was attracting the type of clients and colleagues who I wanted to work with. A Collaborative colleague and friend of mine once told me, “You attract who you are.” My collaborative philosophy and spirit are not the right fit for every single person calling my office, and *that is OK*; I fully understand that there is a time and place for litigation and sometimes it is the safest or best option for a family. In those situations, I gladly refer the litigators in my network. But it was inspiring to see just how many families *did connect* with my philosophy. In fact, individuals comment all the time that they had no idea Collaborative Divorce existed and they are pleased to know that there is more than one way to handle their divorce. My clients connect most with putting their children first and taking the time to craft guidelines for a healthy co-parenting relationship; a respectful, safe space that encourages thoughtful conversations; working with specialized professionals carrying out tasks specific to their expertise; and generating unique options for their family, including timelines that make the most sense for them. I had finally embraced my style of practice and I put it out in the universe. The universe was responding in a positive way. So, I kept going.

Throughout my various networking, I heard the same thing on repeat – that I had a spark in my eye when I talked about Collaborative Divorce and that I had found my niche. One day, meeting with a Career Coach, he encouraged me to look into a life coach certification, as he felt it aligned with my legal career and my approach to helping individuals going through life transitions. This seemed like an opportunity to expand my services and grow my firm in a non-traditional way. I began researching coaching programs and at the end of 2018, I enrolled at the Institute of Professional Excellence in Coaching (iPEC) and I became a Certified Professional Coach in 2019. Shortly thereafter, I founded “The Post-Divorce Coach, LLC”, helping divorced individuals rediscover who they are and supporting them through the variety of transitions they experience in their post-divorce world. I did not want my support for divorced individuals to end with the legal process; but rather, to continue after the Judgment is entered when individuals are starting to embrace their new reality. In addition, while my legal career is limited to Michigan residents, coaching allows me to expand my clientele worldwide. Coaching allows me to branch out as an entrepreneur and to champion individuals in some of the toughest moments of their lives.

To round out my ADR-exclusive firm, fortunately, in 2018 Michigan adopted Limited Scope Representation (LSR) rules (also known as unbundling). LSR allows attorneys to provide a self-represented party with advice and coaching, overall strategy, and performance of specific tasks that do not require a court appearance (assisting with the preparation of pleadings) (MCR 2.117(D); MRPC 1.2(b)). Many clients just want peace of mind that they have the correct paperwork and guidance on how to move through the court system to finalize their uncontested divorce. This is a cost-effective way to provide that assistance, while still giving me control over my schedule and involvement.

Today, I am proud to say that I am 100% ADR/out-of-court offering the following services: mediation, the Collaborative Divorce Practice, Professional Coaching, and LSR/unbundled services. There are so many benefits to practicing this way. My stress level has *significantly decreased* by taking more control over my career and schedule. I am not burdened by court deadlines or late-stage efforts toward settlement. I have well-thought-out processes and working on a team helps to divide and conquer the tasks. As a working mother, I am fortunate that any time away from my son is managed by me and I am working with caring professionals and appreciative clients. As a solo practitioner, I feel less alone because we have a very close-knit, collaborative community. I really enjoy my clients and we build a special relationship while working together. With each family, there is an opportunity to take a deeper dive into restructuring, move them forward with an intentional game plan, and set them up for success post-judgment. Clients are more satisfied with the process and end result because they put in the hard work to create a resolution that provides long-term satisfaction for their family.

An ADR-exclusive practice is not only possible *at any stage of your career*, but it can be life changing for someone who is interested in pursuing it. The most important lesson I have learned throughout this journey of creating and expanding my firm is to not be afraid to embrace who you are and the skills you have to offer families. Start to identify your limiting beliefs (something that you accept about life, about yourself, about your world, or about the people in it, that limits you in some way) and ask yourself if there is an opportunity to reframe this belief. I use this exercise with my coaching clients all the time: “Old Rule/New Rule.” For example, my limiting belief (“Old Rule”) was that I could not be ADR-exclusive until after I litigated for 20-30 years. This was reframed into my “New Rule” that my personality, skillset, and passion are perfect for ADR services *now*, not in 20-30 years; ADR

services work best for my lifestyle as a busy, working mother; and I am the strongest advocate/educator to my clients when I am offering these services.

My firm is truly a dream come true. Looking back, I cannot believe I made the leap to redefine what it meant to be a lawyer and to stop putting myself in a box regarding career progression. I am absolutely positive that if I were still litigating cases, I would have retired my legal career and pursued something different. I was feeling too much burnout due to long hours, schedules dictated by third parties, and unexpected twists and turns in cases. ADR-exclusive services allow me to create a legal career that makes more sense to me and to the many families I work with because we are dictating the rhythm of the case and collaborating on solutions. I no longer fear what others will think about me and the fact that I do not litigate. I welcome the dialogue that often comes from telling people I am a collaboratively trained attorney, mediator, and coach. It is not uncommon to hear about burnout in the legal field, so it is an opportunity to share my experience and encourage others to rethink their career if they are unsatisfied or to take a chance on themselves if they have been contemplating starting their own business.

Please do not hesitate to reach out to me if you have questions or would like to share about your own experiences! ✨

About the Author

Jessica P. Heltsley, J.D., CPC is a collaboratively trained attorney, mediator, and certified professional coach. She is the past-President of the Collaborative Practice Institute of Michigan (“CPIM”) and current leader of the local practice group, Collaborative Professionals of Southeast Michigan. She is also a member of the International Academy of Collaborative Professionals (“IACP”). She has been named a Superlawyers “Rising Star” annually in the field of family law since 2017. Jessica is a member of the State Bar of Michigan’s Family Law Section and past Co-Chair of the Family Law Section of the Washtenaw County Bar Association.



Hon. Wendy Baxter

Details in ADR Diversity Equity & Inclusion

By Hon. Wendy M. Baxter, Retired

The State Bar of Michigan recently published its annual demographic report for 2022. It provides demographic information broken down by county and for State Bar of Michigan Sections, including statistics specific to Alternative Dispute Resolution. As of July 2022, the following was noted:

There are over 46,000 Michigan attorneys, most of whom are male (63.4%);

Of those attorneys who disclosed race information, 81.4% of Michigan lawyers are of European descent;

African Origin is the next largest group in Michigan attorneys at 5.8%; and

Michigan trailed the national average in all other racial and ethnic categories except Native American, which came in at 0.5% for the state and nation.

Of the 774 active attorneys in the ADR Section, the charts highlight Gender, Race or Ethnicity, age ranges and that the most growth in the ADR Section is in the category of “Female”:

Alternative Dispute Resolution, All Active Members by Michigan Residency, 2022

	Number	Percent
Michigan Resident	722	93.3%
Non-Resident	52	6.7%
Total	774	100.0%

Alternative Dispute Resolution, Active Michigan Residents by Gender, 2022

Gender excludes No Answer and Prefer Not to Answer.

	Number	Percent
Female	256	35.5%
Male	466	64.5%
Total	722	100.0%

Alternative Dispute Resolution, Active Michigan Residents by Race or Ethnicity, 2022

Race or Ethnicity excludes No Answer and Prefer Not to Answer.

	Number	Percent
African Origin	50	8.9%
Arab Origin	10	1.8%
Asian/Pacific Islander	5	0.9%
European	462	82.5%
Hispanic/Latino	6	1.1%
Multi-Racial	10	1.8%
Other Ethnic Origin	17	3.0%
Total	560	100.0%

Alternative Dispute Resolution, Active Michigan Residents by Gender (Most Recent 10 Join Years), 2022

Gender excludes No Answer and Prefer Not to Answer.

	Number	Percent
Female	58	58.6%
Male	41	41.4%
Total	99	100.0%

Alternative Dispute Resolution, Active Michigan Residents by Generation (Most Recent 10 Join Years), 2022

	Number	Percent
1944-1960 - Boomers	5	5.1%
1961-1980 - Gen X	29	29.3%
1981-1996 - Millennials	64	64.6%
1997 and Later - Gen Z	1	1.0%
Total	99	100.0%

Alternative Dispute Resolution, Active Michigan Residents by Race or Ethnicity (Most Recent 10 Join Years), 2022

Race or Ethnicity excludes No Answer and Prefer Not to Answer.

	Number	Percent
African Origin	11	17.5%
Arab Origin	4	6.3%
Asian/Pacific Islander	2	3.2%
European	37	58.7%
Hispanic/Latino	2	3.2%
Multi-Racial	2	3.2%
Other Ethnic Origin	5	7.9%
Total	63	100.0%

The truth in numbers show a dearth of diversity in ADR. Consider whether this is due to the pathways to specializing in an ADR practice.

PATHWAYS TO BECOMING AN ADRITRATOR or MEDIATOR

I followed a well beaten path into mediation: I served as a judge in the Civil Division of the Wayne County Circuit Court for 16 years. High-level, diverse, retired, federal, state trial and appellate judges, former litigators with ten years or more experience and partners in firms may find a path to the American Arbitration Association or JAMS.¹ Equity partnership in a major firm is also a pathway to ADR practice, however precious few diverse men or woman elevate to the ranks of judge or partner. Diversity demographics for lawyers who are partners show even worse results. According to the National Association for Law Placement (NALP), “only 18.7% of equity partners in law firms are women.” NALP data also indicates that racial minorities as a whole “account for only 6.1 percent of law firm equity partners.” The Federal Judicial Center published three charts depicting the racial composition of new Article III judges from 1940 to 2017. One chart demonstrates an insignificant increase in African American appointments from 2015 onward and a consistently white majority. A second chart shows that all thirteen of the new judges appointed in 2017 were white. The final chart shows that, in 2017, 146 judges in 2017 identified as African American, while 1070 judges identified as white.²

GATEKEEPERS

After traveling down the path, say for ten years of specialized practice in, e.g., labor and employment or civil rights litigation, experienced diverse partitioners expanding into ADR wander into a gated community where the road leads to knocking on the doors of the following gatekeepers:

Adjusters;
Insurance Companies;
Employers;
Businesses;
Hospitals; and
Party's Attorney Advocates or Law Firm Selection Committees.

The gatekeepers in this lane may leave a diverse unfamiliar practitioner out in the cold. Diversity is not top of mind when selecting a mediator and even less so when selecting an arbitrator. And that may or may not be implicit bias, unconscientious bias nor flat out bigotry. Instead, it may be attributable to the idea that selectors' clients are risk averse and want to win, causing them to choose familiar arbitrators and mediators. Arbitrators and mediators with a track record who are known commodities. Those gatekeepers who select ADR providers are disincentivized to risk their reputation or their client's right to their proverbial (alternative) day in (privatized) court for lofty aspirational diversity goals.³

So, rhetorically, why then are we sometimes chasing and other times dodging diversity in ADR? Importantly, actively pushing for diversity allows users to harness potentially untapped talent while also helping to avoid real or perceived conflicts because of repeat appointments of the same arbitrators by the same parties. A nondiverse opportunity pool raises questions about the integrity of the entire dispute resolution process.

Supreme Court Justice Clarence Thomas, former Chairman of the Equal Employment Opportunity Commission (EEOC,) recently said that he was clueless as to what diversity means:⁴ He said he doesn't "have a clue" what diversity means during oral arguments when the Supreme Court heard arguments over eliminating race in college admissions.⁵ Diversity means everyone has access and may participate in the meritocracy system free of bias. Diversity improves how arbitration/mediation is perceived across a broad spectrum of stakeholders and tribunal diversity adds legitimacy to the proceedings in the eyes of the end users. A diverse pool of potential alternative dispute resolution providers allows end users to access candidates who may bring an expansive perspective to the proceedings or be able to view the parties and the framework through a wider social lens.

Practically speaking, diversity means that diversity has monetary value because competent diverse ADR practitioners do land the plane, do bring home the bacon, do close deals, settle cases, negotiate effectively and- first, foremost and primarily- do improve the quality of our justice system by donning ADR with the appearance of legitimacy for parties on both sides of the aisle to pursue the same substantive rights and theories of statutory liability as is provided by the courts. "In the employment setting, no one would accept a hiring process that would result in repeatedly picking a single, racially stratified group: older white men. Yet everyone accepts that this is a likely consequence of the arbitrator selection process given the current lack of diversity[.]"⁶

Neutral service providers' efforts to diversify their rosters, provide networking opportunities, and encourage users to consider diversity when making selections seem admirable. However, these diversity efforts "do not seem sufficient to overcome the major obstacle facing any prospective [diverse non-white] arbitrator on a roster—being selected."

Two prominent labor and employment dispute resolution neutrals, Marvin E. Johnson and Homer C. La Rue, noted that, despite diversity efforts aimed at providing additional training to enhance opportunities for entry-level neutrals of color, sophisticated ADR users were still not selecting skilled minority neutrals. To enhance the access of experienced neutrals of color to ADR clients, Johnson and La Rue formed ACCESS ADR in 2003 with the support of JAMS and the ABA's Section of Dispute Resolution. In forming ACCESS ADR, Johnson and La Rue planned on building opportunities for experienced mediators of color to meet corporate ADR users, which would highlight the overall lack of diversity and foster unique engagements between these groups.

Despite the noble aims of ACCESS ADR, Johnson and La Rue eventually found a severe disconnect between the ADR users and their representatives, many of whom were lawyers and referred to as gatekeepers. Risk aversion prevented these representatives from using highly skilled mediators of color, even when these mediators had been identified and relationships had been formed through ACCESS ADR. While a desire to continue to pursue “well-known” mediators resulted in some of the failures to select the mediators of color, there was also some evidence that racial and ethnic bias played a role in the selection process. Johnson and La Rue noted that the corporate ADR users resided in a metaphorical gated community to which only the representatives had access; those users never encountered the mediators of color because the users’ representatives stopped the mediators at the gated entrance. Representatives refused to employ minority mediators despite corporate ADR users’ statements about the need for diversity.⁷

TRANSPARENCY

Sunshine sanitizes and helps to clear the shadows from arbitrator /mediator selection that suppress diversity. For example, take the case of the star power Beyonce’s husband, Jay-Z’s brought to a real and valid ADR concern. The following is excerpted from Fordhams Law Review Article by Micheal Z. Green and presented at the Symposium on Diversity:

In 2018, rap artist and entertainment mogul Shawn C. Carter, aka Jay-Z, placed a celebrity spotlight on the problem with the lack of black arbitrators. In the intellectual property lawsuit between Jay-Z’s clothing company, Rocawear, and Iconix Brand Group, Inc., Jay-Z was granted a TRO of Iconix’s request for arbitration pursuant to the procedures of the American Arbitration Association (AAA). Jay-Z argued that, because he could not identify a single black arbitrator among the list of two hundred arbitrators made available to him, he could not resolve his dispute fairly in arbitration. Jay-Z asked AAA to provide a list of arbitrators of color. AAA responded by providing Jay-Z a list of six arbitrators; only three of whom were black, and of these, one was a partner at the firm representing his opponent! AAA offered a final list of twelve arbitrators that included the remaining two black arbitrators

Jay-Z alleged that AAA had engaged in racial discrimination against litigants by failing to provide diverse and representative arbitrators and violated the New York deceptive trade practices law by advertising on its website that it had a commitment to providing arbitrators of diverse backgrounds.¹⁵ According to Jay-Z’s this advertising “misl[ed] prospective litigants into believing that . . . [AAA’s roster contained] a critical mass of diverse arbitrators,” while offering “only three African-American arbitrators to preside over his arbitration.”¹⁶

“[A]rbitration procedures, and specifically its roster of neutrals[,] . . . deprive black litigants of the equal protection of the laws, equal access to public accommodations, and mislead consumers into believing that they will receive a fair and impartial adjudication.”¹⁷

With little improvement in arbitrator diversity despite longstanding criticism, the topic received a major visibility boost after Jay-Z raised the issue.⁴

After the court order, AAA: (1) listed “eighteen individuals on . . . AAA’s national Large Complex Case Roster [who] have self-identified as African-American”; (2) expressed “a willingness” to pursue other means of improving diverse representation in the arbitrator selection process (3) agreed to work with Jay-Z to improve the slate of diverse arbitrators on that panel by considering candidates proposed by Jay-Z; and (4) developed other means to improve the diversity of the panel.¹⁸ AAA also provided a comprehensive profile of information (including a list of all of its arbitrators who had self-identified by race), demonstrating AAA’s efforts to diversify not only the panel in question in the Jay-Z matter but all panels and disputes for which AAA provides arbitrators.¹⁹

Jay-Z’s attempt to highlight arbitrator diversity was particularly exciting because it raised profound constitutional legal arguments of equal protection of the laws, equal access to public accommodations for everyday people to have their day in court—and in the court of public opinion. Arguably, a lack of ADR diversity poses the greatest concern when individual minority layperson end users face well-heeled and powerful corporate opponents, such as employers, insurance carriers, hospitals and large corporations.^{22 8}

Our section’s Task Force on Diversity in ADR joined the efforts to advance diversity in 2009, much like the Task Forces on Gender in 1987, the one on Race in 1989 the combined Race, Ethnicity & Gender in 1996; and however, no recommendation emerged in the 2011 report since it could not agree on a path forward. The likely answer to making progress may be transparency via data collection and publication. Let’s meet the goal of making diversity the norm of ADR practice. ❁❁

About the Author

Judge Wendy M. Baxter currently practices as a mediator and arbitrator. She founded her solo practice, Win Win Facilitation PLLC, in 2013. She served as a visiting judge on the Michigan Court of Appeals and presided in the Civil Division of the Wayne County Circuit Court from 1997 to 2013. Previously, she served as a judge on the 36th District Court from 1982 to 1986 and received a gubernatorial appointment to Detroit Records Court in 1986 where she served on the Executive Committee. She has served on the Board of Directors of the Wayne County Mediation Tribunal. She is a past President of the Association of Black Judges Association of Michigan and served in the State Bar Representative Assembly. In 2013 she was named in *dBusiness Magazine* one of the five best judges on the Wayne County Circuit Court bench according to a survey of 18,000 attorneys. That same year she was a recipient of the Michigan Chronicle Women of Excellence Award and was the first person nominated by Wayne County Circuit Court to preside in the (then) newly created Business Court.

Endnotes

- ¹ *Qualification Criteria and Responsibilities for Members of the AAA Panel of Employment Arbitrators*, AM. ARB. ASS'N 1, https://www.adr.org/sites/default/files/document_repository/Employment%20Arbitrators%20Qualification%20Criteria.pdf [<https://perma.cc/B9QG-LVHM>] (last visited Apr. 12, 2020) [hereinafter *AAA Employment Arbitrator Qualification Criteria*] (requiring that panelists be attorneys with at least ten years of experience in employment law); see also *Employment & Labor: JAMS Employment Mediation, Arbitration and ADR Services*, JAMS, <https://www.jamsadr.com/employment> [<https://perma.cc/LB2R-CXMP>] (last visited Apr. 12, 2020) (describing how the arbitrators are “retired federal, state trial, and appellate judges and former litigators”). The AAA Labor Panel does not require that the panelists be attorneys but rather only that they have ten years’ experience in labor relations and a “judicial temperament.” *Qualification Criteria for Admittance to the AAA*
- ² Michael Z. Green, *Arbitrarily Selecting Black Arbitrators*, 88 *Fordham L. Rev.* 2255 (2020). Available at: <https://ir.lawnet.fordham.edu/flr/vol88/iss6/6>
- ³ 43. See Jessica Silver-Greenberg & Michael Corkery, *In Arbitration, a “Privatization of the Justice System,”* N.Y. TIMES (Nov. 1, 2015), <https://www.nytimes.com/2015/11/02/business/dealbook/in-arbitration-a-privatization-of-the-justice-system.html> (describing several cases in which employees proceeded to arbitration after being denied the chance to bring their claims in court, noting concerns about arbitrators with repeat business handling cases involving the same employer after they had returned favorable rulings for that employer in the past, and mentioning an arbitrator who ruled against an employer in an age discrimination suit and was never used again).
- ⁴ SCOTUS BLOG INDEPENDENT NEWS *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* Oral Arguments October 31, 2022.
- 5 *Id.*
- ⁶ Michael Z. Green, *Arbitrarily Selecting Black Arbitrators*, 88 *Fordham L. Rev.* 2255 (2020), *Supra* at 2284.
- ⁷ See Marvin E. Johnson & Homer C. La Rue, *The Gated Community: Risk Aversion, Race, and the Lack of Diversity in Mediation in the Top Ranks*, DISP. RESOL. MAG., Spring 2009, at 17, 18. As these authors note, “minority neutrals with experience and skills have often been ignored by those wanting to enhance the diversity of the field and have been overlooked by sophisticated ADR users.” *Id.* at 17. However, as long as ADR users’ risk-averse representatives continue to employ already “well-known” neutrals and engage in “racial and ethnic bias,” access to experienced neutrals of color will be stifled. *Id.* at 20.
- ⁸ See also Silver-Greenberg & Gebeloff, *supra* note 39 (discussing then EEOC Chair Jenny Yang’s comments, which noted that resolution of “while also reviewing how major court cases brought by black employees against Nike in 2003 and Walgreens in 2005 led to key changes in those companies’ policies).
- ⁹ <https://connect.michbar.org/adr>; Michigan Dispute Resolution Journal, Spring, 2022



Harshitha Ram

How Does New Technology Change the Dynamics of ADR?

By Harshitha Ram

Generally, parties use three distinct and separate processes as part of the ADR umbrella which are negotiation, mediation, and arbitration. The world dispute forums are now undergoing a profound change in dispute resolution, which apparently, they call powerful and inexpensive computer technology. In the 90s calling computers and technology-based machines ‘information superhighways’ was trending as a term coined by vice president Al Gore who described the use of computer networks for economic, social, governmental, and other activities. This is now a fine subject for all of us to contemplate as we live in an era where none of us would function without a smartphone let alone a cellphone.

Today, phones have become pocket computers serving the purpose of our business and day-to-day needs, be it a quick google, GPS, or maybe a calendared event or a birthday notification. No longer do we memorize any phone numbers as it’s all handy and just a click away from the touchpad and we don’t have to dial that telephone machine anymore; and with no surprises, the device software is upgraded in short intervals. This permanently changed our lifestyle forever. For better or worse!

It’s technology all over and makes no sense to think that these machines and software would only make life simpler. They do in some instances but they have an equal footing in creating hitches. When the use of information superhighway via the internet, various online services, email, the world wide web, and other means of computer-based technology became commonplace it was preordained to have disputes arising from them and in turn, use the technology to resolve the disputes.

Not to wonder how these devices began to create a new platform for the resolution of disputes, thus to be more specific is not the beginning; not the interim; not the end; but forever. Yes, you read it right, the ODR is here to stay. In recent times, we hear that ADR is not an alternative mechanism but a preferred mechanism whereas, ODR may not be the desired platform but has created an impact with parties such that it is interminable. At this point, with refining technologies and emerging software one can only expect a sophisticated or rather enhanced dispute resolution platform but not a way to inhibit this option.

We must accept the fact that we as a society have embraced technology which has principally paved the way for the ODR platforms to take center stage. Although ODR emerged in the 90s there were a bunch of ADR professionals who initially resisted the transformation to ODR, it is evident that presently, there are emerging ADR practitioners and even online dispute specialists that show curiosity in developing an effective ADR/ODR practice. Let’s accept the fact that ODR is the future. We have to acknowledge that ODR has been widely recognized in a very short span than ADR itself. ODR is a relatively new term in the dispute-resolution arena but has created the bearing to last incessantly. ODR does provide proficient access to justice speedier and at low costs, and eventually, with several advancements in technology, there could be an advanced version of ODR too.

The advantage on one hand is that the online resolution is not restricted by physical location and enables parties to resolve disputes without barriers and at a fraction of the costs. This is an impressive benefit for the users and brings great convenience to people with small claims. On the other hand, there could often be exhaustion and perplexity that parties experience during the online resolution process. At times this could be the reason for the lack of effective communication online as people don’t get the process straightforward. Some ODR/ADR practitioners propose that the perspectives of body language and eye contact be improved whereas others say it’s a perfect closed-screen tight camera to gauge the parties. While both comments are valid it becomes strange when parties think it is their right to ‘go off video’ mode. Covering their face is not an option to an in-person hearing.

While this is so, ODR may not be the right fit for all types of disputes. In some cases, online communication may even lead to power imbalances and propagate differences. However, there could be a great correlation and may enable parties to deal with utter emotional situations, unlike an in-person hearing. It is also widely understood that, as ODR may not be for all cases and the best person to make this recommendation and assessment would be the chosen neutral.

Moving forward all of our mediation and arbitration courses should come with an ODR toolkit and a mini-training for

newcomers, people in business, and even senior practitioners that are only used to in-person sessions. Today's world revolves around technology, and it certainly offers big opportunities but even bigger challenges including what type of cases lend themselves to online dispute resolution; what criteria might be established to help both neutrals and potential users of ODR? Identifying cases that are not suitable for online resolution, and If an online ADR process does not result in a resolution, might there be access to an in-person ADR process? Without a doubt, ADR practitioners can provide efficient services online, again that depends on the matter at hand, specific case-to-case evaluation to identify its options via online resolutions, the comfort level of parties involved, the nature of the discovery, the contentment of the session, and finally the assessment of how elaborate the process could get. ✨

About the Author

Harsbitha is an International Disputes Attorney, Arbitrator, and Mediator focusing on commercial, consumer, information technology, construction, labor, and employment matters. She serves on several arbitration panels including the American Arbitration Association, and the National Mediation Board. She is an adjunct professor at Michigan State University and a panelist at the PREMi, an invitation-only group of Michigan's top ADR professionals. Besides being the Chair of the Michigan Dispute Resolution Journal Initiative, she hosts the 'fireside chat' of the journal. She is a Fellow of the Chartered Institute of Arbitrators CI Arb, and the youngest appointed Arbitrator at the ICC International Court of Arbitration, France. She lived and practiced in three countries including, India, the UK, and the USA. Ram currently leads a global program on the accreditation of ADR professionals.

Legal News Updates



Lee Hornberger

Michigan Arbitration and Mediation Case Law Update

By Lee Hornberger, Arbitrator and Mediator

I. INTRODUCTION

This update reviews appellate decisions issued since July 1, 2022 concerning arbitration and mediation. Update uses short citation style for COA unpublished decisions.

YouTube of 2021-2022 update presentation: <https://www.youtube.com/watch?v=kZpATRmGCcQ>

YouTube of 2020-2021 update presentation: <https://www.youtube.com/watch?v=9Q7deVIExDI>

YouTube of 2019-2020 update presentation: <https://www.youtube.com/watch?v=I0TkP8zs-A8>

II. ARBITRATION

A. Michigan Supreme Court Decisions

Supreme Court orders oral argument re vacatur of labor arbitration award.

In *Mich AFSCME Council 21 v Wayne Co*, 356320 and 356322 (April 21, 2022), **app lv pdg**, on September 28, 2022, Supreme Court ordered oral argument to address: (1) whether standard in *Detroit Auto Inter-Ins Exch v Gavin*, 416 Mich 407 (1982), applies to labor arbitration cases and (2) whether Circuit Court erred in vacating awards.

In *Mich AFSCME Council 21*, COA in split decision affirmed Circuit Court vacatur of labor arbitration award. Employee applied for retirement while awaiting outcome of disciplinary action. Retirement application required him to agree to a "separation waiver." The "waiver" stated he was terminating employment and not seeking reemployment. Employer terminated his employment the following day. Employee allowed retirement application to proceed. He also filed grievance pursuant to CBA, seeking reinstatement. Retirement System approved retirement. Employee transferred his retirement account funds to an IRA.

Arbitrator reinstated employee. Circuit Court and COA vacated reinstatement award. **Vigorous oral argument before COA.**

Judge Jansen dissent stated arbitrator did not exceed authority. Applicability of defenses to arbitration is for arbitrator to decide. Only issues before arbitrator were (1) whether employee terminated for just cause, and (2), if not, whether remedy is limited to back pay. Employer's argument that award was illegal or violated public policy because of possible tax code violations irrelevant.

B. Michigan COA Published Decisions

COA reverses Circuit Court asking question of arbitrator in prior case.

Mahir D Elder, MD, PC v Deborah Gordon, PLC, ___ Mich App ___, 359225 (September 22, 2022). Plaintiff sued former employer for wrongful termination and received arbitration award. Award stated plaintiff should receive compensation as calculated by Chart B. Award then listed lower monetary amount from Chart A. Plaintiff's attorney confirmed award. Prior case then dismissed. When plaintiff sued his attorney for legal malpractice, Circuit Court decided to send question to arbitrator to determine whether arbitrator meant to award plaintiff amount stated in award. Plaintiff appealed. COA reversed. "... [P]lease confirm whether you intended to award ... \$5,516,907 ... or some other amount." MCL 691.1694(4) prohibits compelling arbitrators from giving evidence regarding any statements, conduct, or rulings that it may have made during arbitration.

C. Michigan COA Unpublished Decisions

COA affirms dismissal of action to vacate award.

Wolf Creek Production, Inc v Gruber, 358559 (September 29, 2022). COA affirmed Circuit Court *sua sponte* dismissal of complaint to vacate award because plaintiff failed to file timely motion to vacate. MCR 3.602.

Distinction between money judgment and judgment lien.

Asmar Constr Co v AFR Enters, Inc, 357147 (September 15, 2022). In 2011, Circuit Court entered judgment confirming arbitration award. Award, which was incorporated in judgment, reduced to \$550,000 plaintiffs' construction lien on property. Award authorized plaintiffs to obtain from defendant personal guaranty in amount of lien as it relates to sale of property. Almost decade later, Circuit Court granted plaintiffs' *ex parte* motion to renew judgment. Defendants moved to set aside lien renewal. Circuit Court granted motion, characterizing 2011 "judgment" as a lien. COA concluded 2011 "judgment" was more a lien than "noncontractual money obligation." COA affirmed. Issue was whether Circuit Court's "Judgment Confirming Arbitrator's Award" should be treated as judgment renewable within ten years pursuant to MCL 600.5809(3) or as judgment lien that must be renewed within five years under MCL 600.2801 and MCL 600.2809.

COA affirms Circuit Court confirming award.

Wikol v Select Commercial Assets, LLC, 355393 (September 15, 2022). Plaintiff appealed Circuit Court denying his motion to vacate or modify arbitrator's decision to dismiss plaintiff's arbitration claims against defendants on basis of collateral estoppel and *res judicata*. COA affirmed.

COA affirms Circuit Court confirming award.

D & R Maintenance Mgt, Inc v 955 S Monroe LLC, 357867, 357870 (July 28, 2022). Porter litigants moved Circuit Court to vacate award asserting (1) arbitrator improperly shifted burden of proof, (2) arbitrator refused to consider material evidence, (3) arbitration hearing was conducted in manner that prejudiced Porters, and (4) award based upon miscalculations. Circuit Court denied motion, determining motion did not identify error of law by arbitrator and arbitrator did not improperly shift burden of proof. Circuit Court not persuaded by allegedly contradictory statements made by arbitrator during the hearing because "those aren't rulings." COA affirmed.

COA reverses Circuit Court ordering arbitration.

Allen v Smith, 358047 (July 28, 2022). COA held question of fact remained as to whether defendant had right to invoke arbitration and Circuit Court erred when it ordered arbitration. Because there was factual dispute on validity of arbitration agreement, COA remanded to Circuit Court to hold evidentiary hearing. Questions arose as to whether defendant is proper party to Agreement, and whether defendant can enforce arbitration clause. MCL 691.1686. Circuit Court did not find defendant was

party to Operating Agreement, which was essential to determining issue of arbitrability.

COA in reconsideration split decision reverses consent JOD enforcing award.

Hans v Hans, 355468, 356936 (July 7, 2022). Circuit Court entered JOD, consistent with arbitrator's award. JOD approved by parties. Defendant filed motion for clarification of JOD concerning distribution of proceeds from sale of property, primarily because of competing attorney liens. Circuit Court issued post-judgment order explaining how sale proceeds to be distributed. Plaintiff appealed. COA reversed in **reconsideration flip split decision**. According to COA, aside from unsecured marital debt, JOD called for proceeds to be divided equally between plaintiff and defendant. Fact that defendant was ordered to pay \$50,000 toward plaintiff's attorney fees did not entitle him to more than 50% of net proceeds. Circuit Court erred by ordering "75/25" debt split as to payment of parties' atty fees. On remand, Court shall enter orders consistent with COA opinion.

Judge Murray dissent said JOD property settlement provisions, unlike alimony or child support provisions, are final and, as general rule, cannot be modified. Need for flexibility was paramount. Circuit Court exercised that flexibility.

III. MEDIATION

A. Michigan Supreme Court Decisions

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

B. Michigan COA Published Decisions

COA affirms Circuit Court that no settlement agreement.

Citizens Ins Co of Am v Livingston Co Rd Comm'n, ___ Mich App ___, 356294 (September 15, 2022). COA held local government can be bound by settlement agreement entered into by its attorney if (1) government ratifies agreement or (2) attorney had prior special authority to settle claim. If ongoing discovery related to whether Commission's attorney had authority from Commission to settle case on its behalf, then, notwithstanding there was no public meeting ratifying agreement, Commission would be bound by settlement agreement. COA affirmed Circuit Court ruling defendant waived attorney client privilege when defendant argued its attorney did not have authority to settle.

COA reverses Circuit Court that there was a settlement agreement.

Dabash v Gayar, ___ Mich App ___, 358727 (September 15, 2022). Defendants filed motion to enforce purported settlement agreement. Circuit Court granted motion. COA reversed. When case involves agreement to settle litigation, it must comply with MCR 2.507(G). Because no version of agreements bears Dabish's signature, neither document enforceable against Dabish.

C. Michigan COA Unpublished Decisions

There were no COA unpublished decisions concerning mediation during review period. ❄️

About the Author

Lee Hornberger is a former Chair of SBM Alternative Dispute Resolution Section, Editor Emeritus of The Michigan Dispute Resolution Journal, former member of SBM Representative Assembly, former President of Grand Traverse-Leelanau-Antrim Bar Association, and former Chair of Traverse City Human Rights Commission. He is member of Professional Resolution Experts of Michigan and Diplomate Member of The National Academy of Distinguished Neutrals. He is Fellow of American Bar Foundation and Fellow of Michigan State Bar Foundation. He has received Distinguished Service Award in recognition of significant contributions to field of dispute resolution and George Bashara Award from ADR Section in recognition of exemplary service. He is Best Lawyers of America for arbitration and mediation. He is Michigan Super Lawyers for alternative dispute resolution. He received First Tier ranking Northern Michigan for Mediation Best Law Firms 2022 and 2023; Second Tier ranking Northern Michigan for Arbitration Best Law Firms 2022 and 2023; Second Tier ranking Northern Michigan for Mediation Best Law Firms 2020; and First Tier ranking Northern Michigan for Arbitration Best Law Firms 2019.

From the Field



Sheldon J. Stark

Building Trust and Confidence Part 2: Attorneys

By Sheldon J. Stark, Mediator and Arbitrator

Introduction

In this article experienced mediators share the techniques they employ to build trust with advocates.

Jennifer M. Grieco

Jennifer's mediation services supplement her representation of clients in litigation. From a big picture perspective, lawyers retain her because they already know and trust her from having litigated with or against her. Others are familiar with her reputation or have encountered her in the many bar association activities in which she engages. She teaches new lawyers that "[w]e spend every single day since law school building our reputation." The reputation Jennifer has established as an advocate who can be trusted and as someone who gives back generously to the profession is a key element in gaining attorney trust for her ADR service.

Where she does not know a lawyer, Jennifer makes a concerted effort to get to know them better both in joint conversations and on a private, ex parte basis. She wants to learn about lawyers as individuals, their practice, their clients, what they think about. She looks for common ground in experiences with judges, who they might know in common, what they think about matters facing the profession to develop that personal relationship and comfort level.

When it comes to the dispute itself, she listens without judgment to how the lawyers view their case. She is empathetic to their client and demonstrates that she understands their positions from her years of experience on both the plaintiff and defense side of disputes. If there is a problem with a claim or an argument, she holds back sharing her concerns until a good working relationship has first developed. She tries to address legal problems with their position outside the presence of the clients as an initial matter to give counsel the opportunity to address her concerns privately first. When clients are present, she compliments the lawyers and lets the clients know she respects their representative and the work they do.

She readily asks the lawyers what they want and need from her. "What does your client need? Would it help to discuss where the judge is coming from, for example? How is your relationship to your client? What can I do to help with that? How can we best work together to help you achieve your objectives?" Jennifer makes herself available to counsel at any time in the run up to the day of mediation and after mediation, if necessary. Having private, confidential discussions with counsel helps to solidify trust in her good offices as a mediator. At the mediation table, Jennifer upholds the ground rules made at the outset to keep matters discussed confidential unless and until she is given permission to share the information with the other side.

Susan A. Davis

Susan Davis, who provides mediation services at several Community Dispute Resolution Centers around the state, focuses on domestic relations, probate and special education matters where often at least one if not both parties are represented by counsel. Working out of a CDRC as she does, she is not always personally selected for any given dispute. As a result, Susan regularly mediates with lawyers she does not know and who do not know her. Her practice is to begin a mediation by meeting with the lawyers alone. While there is some disagreement among volunteer mediators about meeting the lawyers alone first, Susan believes getting counsel's perspective in advance is the best way to get herself ready to kick off the process.

She asks the lawyers for their sense of the case and what they see as impediments to resolution. With younger lawyers, Susan also serves as an educator to assist them in representing their clients in the best way possible. She solicits counsel's recommendations for ways she can best do that. She explains her process – generally co-mediation – to manage their expectations as to what they can expect from her and from her process. If requested, she will meet separately with each lawyer. Susan believes meeting the lawyers

privately is especially useful in the kinds of matters she mediates because parties are so often deeply unhappy with one another. In probate matters where there may be multiple participants, meeting with counsel can assist co-mediators in better understanding group dynamics and individual or family history.

During the mediation Susan reminds parties their lawyers might act differently than the zealous advocates they are otherwise accustomed to observing. Parties should not perceive the change in counsel's approach to be the result of fear of losing or loss of faith in achieving party goals and objectives. Attorneys, she tells them, "strive to resolve issues" at the mediation table, requiring a more conciliatory approach.

Moreover, should a legal question arise, although an attorney herself, Susan solicits answers from the lawyers. This typically allows lawyers to shine which, in turn, builds their trust and confidence in the mediator.

When a case is resolved, everyone at the table is involved in drafting an agreement. Susan encourages lawyers to communicate directly with one another in its implementation.

Sheldon J. Stark

In cases I mediate, like Jennifer, I often know one or both lawyers. I'm selected because trust already exists. Whether I know the lawyers or not, however, here's my approach:

First, I've built a content rich website with materials written to educate advocates and their clients to make the most of the mediation process. There is a page of testimonials where lawyers share their appreciation for past mediation services rendered. Potential users might find the name of someone they know and make a call. "What kind of mediator is Stark? Should I use him? What did you like about his process?" There is nothing like an endorsement from respected friends or colleagues.

During the pre-mediation conference call, I pledge neutrality; providing full and candid disclosure of anything that might impact neutrality, including whether one of the advocates knows me through ICLE's 40-hour, hands-on mediation training. By disclosing every important detail, I demonstrate my transparency and integrity. My conference call agenda is comprehensive, including provision for individualized process design, demonstrating deep understanding of and extensive experience with the process.

Trust building techniques at the mediation table:

- Promising and delivering confidentiality for any matter an advocate doesn't want disclosed to the other side.
- Always clarifying what can and can't be disclosed before leaving a caucus room; and providing an opportunity to add to the list of confidential material.
- Adding value by exchanging critical information, data and perspective.
- Starting the process in a facilitative mode and keeping an open mind until the parties have had an opportunity to express themselves.
- Praising the lawyers for their good judgment and their hard work in getting me ready.
- Keeping opinions or evaluative perceptions to myself until permitted.
- Asking tough risk questions symmetrically so as not to disadvantage either side.
- Remaining calm despite party escalation or provocation.
- Never coming between a lawyer and client; or embarrassing a lawyer in front of a client.
- Refusing to give up in the face of impasse.
- Demonstrating my commitment to a fair process focused on party self-determination.

If a case does not settle at the mediation table, I follow up and continue looking for a resolution.

Conclusion

Building trust with lawyers takes time, patience, and integrity. Once cemented it is a crucial element in reaching resolution. ❄️

About the Author

Sheldon J. Stark offers mediation, arbitration case evaluation and neutral third party investigative services. He is a Distinguished Fellow 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 past Chair of the council of the Alternative Dispute Resolution Section of the State Bar and formerly chaired 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, when he stepped down to focus on his ADR practice. Previously, he was employed by ICLE. During that time, the courses department earned six of the Association for Continuing Legal Education's Best Awards for Programs. He 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, and the Michael Franck Award from the Representative Assembly of the State Bar of Michigan in 2010. In 2015, he received the George Bashara, Jr. Award for Exemplary Service from the ADR Section of the State Bar. He has been listed in "dbusiness Magazine" as a Top Lawyer in ADR for 2012, 2013, 2015, 2016, 2017, 2018, 2019 and 2020.

Arbitration



Betty Widgeon

Arbitration As Usual? COVID's Impact on Labor Arbitrations and Modifications Worth Retaining

By Betty Rankin Widgeon, Arbitrator

Labor Arbitrations Before COVID

Most Arbitrators will agree that the COVID-19 pandemic and its effects have impacted the arbitration process in multiple ways. This article will focus on the ways in which it has affected labor arbitration hearings and highlight innovations and modifications that have been incorporated during the past 30 months—and suggest which ones will be retained. COVID-19 has required Arbitrators to “think outside the box” in order to continue practicing our craft. For some of us, its impact was deep enough to cause us to remain “outside the box” and even shut down our boxes. As in so many other fields where many hours of face-to-face interaction were the norm, both the Arbitrators and party Representatives have had to rethink how to continue remotely, including pre-hearing preparations, the hearing itself, and the post-hearing wrap-up.

Before COVID

1. Postponements

Before, hiccups or bumps in the road tended to revolve around whether an arbitration hearing was going to be postponed— usually because of witness unavailability, sometimes due to sickness or death. Arbitrators could predict that 20% to 25% of cases scheduled would settle either within a week or two of the hearing or on the proverbial courtroom steps.

2. Prehearing

Often, the Arbitrator would know little to nothing about the case until the start of the hearing; the parties worked through any required pre-hearing steps with no disclosure to the Arbitrator prior to the hearing as to what the issues were, whether the case had to do with termination or with a contract interpretation issue. Case management conferences were virtually non-existent in labor arbitrations. Once the parties received the Arbitrator's available dates, the case was quickly scheduled. In rare instances, the Arbitrator would need to schedule a phone conference to iron out conflicts.

Enter COVID

1. Postponements Abound

During the early stages of COVID, the automatic response by Arbitrators and parties was to “kick the can down the road.” By mid-2020, however, many Arbitrators were learning how to conduct hearings via videoconferencing. Some Arbitrators and many parties continued adjourning and postponing cases. But, for those who decided to work outside the box, virtual hearings became a viable alternative to postponing cases indefinitely.

2. Case Management Conferences Elevated

Those Arbitrators who learned how to host and manage virtual hearings recognized that aside from the very practical demonstration of how well virtual meetings (and hearings) could work, the prehearing conferences provided numerous other advantages. The Arbitrator has a chance to learn about how counsel/advocates interact, a summary of the issues, and whether there are unusual issues that might hijack the hearing undisclosed before the hearing date. The representatives learn a little about the Arbitrator's style and disposition.

3. Arbitrators Adapt to Virtual Hearings

An overwhelming majority of my Arbitrator colleagues opted to learn the ins and outs of virtual hearings so we could continue to handle hearings without unnecessary postponements. Some organizations and agencies had the foresight and resources to immediately provide training on various virtual platforms. Leading the way were the two premiere professional arbitration organizations, the National Academy of Arbitrators (NAA)¹ and the National Academy of Distinguished Neutrals (NADN).² The NAA and the Federal Mediation and Conciliation Service (FMCS)³ joined forces early on to provide a series of train-the-trainer workshops for Arbitrators who, in exchange for extensive training on the best practices for handling virtual arbitrations, agreed to train other Arbitrators in all aspects of hosting and managing virtual arbitration hearings. The “train-the-trainer” sessions were step-by-step “walk-throughs” and mock hearings focused on handling all segments of the ZOOM virtual hearing, including settings, pre-hearing conversations, hosting and managing video hearings, handling witnesses, handling exhibits and other documents, how to prepare for video hearings, what to do when something goes wrong, and lessons learned from video conferencing.

Additionally, the FMCS widely promoted the use of video hearings during the first year of the pandemic and continues to do so on its website.⁴ I was one of the NAA MI co-chairs at the time and was impressed by how methodical and detailed the trainings were. Once we were well versed in how to competently hold arbitrations virtually, we were prompted to share our knowledge with other NAA and non-NAA Arbitrators nationwide. The trainings were dispersed regionally and were free to any Arbitrator who wanted to benefit from them. Fellow NAA Arbitrators and SBM ADR Section members John Obee and Charlie Ammeson and former ADR Chair Lee Hornberger also joined in the training sessions. The process was thoughtful and precise, and it worked for those who chose to participate.

The American Arbitration Association (AAA)⁵ was also helpful in assisting Arbitrators on the panels by providing AAA technical assistants to assist with hosting virtual hearings, initially at little or no cost to the parties. Later, AAA began to charge for the services of the technical assistants, whom they sometimes referred to as “ZOOM Czars.” AAA currently advertises these individuals as “virtual hearing specialists...devoted to your virtual hearing, attending to all of the details that make a virtual hearing successful.

¹ <https://naarb.org/>

² <https://www.nadn.org/>

³ <https://www.fmcs.gov/>

⁴ <https://www.fmcs.gov/fmcs-promotes-use-of-video-arbitration/>

⁵ <https://www.adr.org/virtual-hearing-managed-services>

They are accustomed to both the Zoom platform as well as the ADR process.”

COVID Protocols (for In-person and Virtual Hearing)

A number of Arbitrators adopted in-person hearing safety protocols for the benefit of the parties and themselves. These ranged from the general requirement that arbitration rooms allowed for at least 6 feet between individuals, with masks and disinfectant available for those who wanted them, to more elaborate requirements of temperature checks before entering the hearing room, ventilation requirements, and even a separate bathroom made available solely for the Arbitrator. Some in-person protocols required a version of the following:

- Each advocate will confirm the vaccination status of any participant that they will require to attend the in-person hearing with written confirmation provided to the Arbitrator one day prior to the beginning of the hearing.
- Those who are unvaccinated or whose status is unknown may not participate in the in-person hearing unless they are a key witness. They Will be allowed in the hearing room only for the duration of their testimony. Some Arbitrators adopted similarly detailed protocols for virtual hearings.⁶

Retained Modifications

Case management conferences are here to stay. Arbitrators have reported that party representatives have tended to be more prepared when the Arbitrator schedules one or more case management conferences during the pendency of the case, and the Arbitrators feel that being more knowledgeable about the case when entering the hearing room increases their focus on the details during the hearing. I have found that in instances where the representatives have not appeared before me previously, they appreciate the chance to meet me beforehand and gather a sense of how I run my arbitration hearings.

Virtual hearings are here to stay—either a purely virtual variety or the hybrid model. The advantages touted most by Arbitrators sold on virtual hearings have merit: in most instances, they are more efficient and less costly. However, representatives note that there is a different “vibe” in the virtual hearing room. A certain rhythm is lost; their presentation may feel less dynamic both to the advocates and their clients. Most arbitrators I have spoken with would gladly give up that spontaneity for the sake of efficiency. This is especially true for those Arbitrators on whom the effect of the representatives’ dynamism is minimal or detracts from the essence of the neutrals’ focus.

Some Arbitrators have observed a “generational divide” whereby younger representatives are generally more favorable to virtual hearings. This may result from the fact that they do not have a long history of having practiced one way for so long that they see no incentives for moving in an unfamiliar and possibly challenging direction. ❄️

About the Author

Betty Rankin Widgeon is the immediate past Chair of the State Bar of Michigan Alternative Dispute Resolution Section. In 2017, she was appointed to the Michigan Supreme Court Panel of Special Masters to preside over alleged judicial misconduct hearings. She is a former Chief Judge of the 14A District Court, Washtenaw County, MI. She is a member of the National Academy of Arbitrators and the National Academy of Distinguished Neutrals.

She holds her B.A. and MAEd Degree in Education from Wake Forest University and her J.D. from the University of Michigan. While in law school, she co-authored *The Relevance of "Irrelevant" Testimony: Why Lawyers Use Social Science Experts in School Desegregation Cases*, *Law and Society Review*, 1981-82. She arbitrates labor, employment, commercial, and consumer cases and mediates for private firms and corporations.

She is trained in videoconferencing and conducts hearings, mediations, fact-findings, and facilitations via virtual platforms. One of her focuses is assisting newer professionals in building their ADR practices.

⁶ https://henningmediation.com/public/documents/Henning_Virtual_Arbitration_Protocols.pdf

ADR Fireside Chat - Good Conversations - Great Connections!



Lucia Kanter St. Amour



Harshitha Ram

Good Conversations - Great Connections!

By Lucia Kanter St. Amour and Harshitha Ram

If there's no fire or flames then why is it called a Fireside chat? We want people to feel like our guest is talking to each of our readers. How President Franklin Delano Roosevelt, held a series of radio addresses beginning during the Great Depression. His press secretary said the informal talks were meant to make people feel like FDR was talking to families next to his fireplace.

Lucia recently sat down with us so we could pick her brain on where ADR has been, where it is now, and where it (and she) is headed:

• **Where do you find inspiration and creativity?**

All around me! I find it hiking the trails with my Chocolate Labrador - the brain as a computer is a faulty metaphor. It's a living organism that has evolved for centuries, and mostly outdoors. I find it in art, which is one of the reasons my book is filled with original art. I find it in generation Z - they are climate activists, makers, and challengers of the status quo. I find it in women in Iran and India breaking out of the repressive regimes and caste systems that have left them out of discourse, decisions, and design.

• **If you could change one thing about this industry, what would it be?**

More diversity and accessibility; more voices and perspectives, and pathways for professional development. Let's take arbitration: it's still dominated by retired judges, many of whom don't even have ADR training. It's also very hard to break into this field. People who want to transition to mediation or arbitration and invest in a 40-hour certification program then don't have a path for getting cases. I'd like to see more available pathways to real life experience, and to see ADR expand more internationally. There's a big push in India right now that I'm involved with.

• **Could you tell us more about the podcasts? What is the purpose of having both the publication and the podcast?**

My podcast is "Forces of Good: The Superpower of Everyday Negotiation." It's a banner for inclusivity! Negotiation is a topic that has been too elitist and exclusive to the White male business demographic. Also, people learn and absorb information in different ways. A variety of format options is important for inclusivity (as is translation of my book, eventually). When I launched my podcast, it garnered an immediate dedicated following for its inclusive storytelling and social-cultural-historical approach to negotiation as it relates to everyone every day.

• **How do you compare your publication to the others that are already in the market?**

*My book is [For the Forces of Good: The Superpower of Everyday Negotiation](#). I wouldn't have bothered to write it if I thought I was contributing to all the noise in the blogosphere. The discovery I made just this year is the paucity of women's voices on the topic of negotiation. I have personally met far too many women over the years who don't even know how to ask for something - indeed, don't think they are **allowed** to ask. The marketplace of negotiation literature, with just a couple exceptions, consists of the attorney, the MBA, the C-suite sales and marketing executive, the retired hostage negotiator - writing FOR that same audience in business and other high stakes situations. Very few are written for the everyday person: the nurse, the stay at home parent, the college student, the veterinary technician, the school teacher. Most are also strikingly male-voiced. No wonder people think of negotiation as (a) something to be avoided and (b) a specialized skill that they don't possess and, therefore, shouldn't try on their own. That's how it has been indoctrinated. What nonsense. Negotiation isn't just for business. It's everybody's business. Negotiation is also too often equated with conflict. Sure, conflict is one category of negotiation . . . but only one!*

• **How do you get started in this industry? Walk us through your career path.**

Out of college I took a job with a small firm of arbitrators and mediators. They invested in my development and took an interest in my life. I'm still close with them. Because of them, I summoned the courage to go to law school. The summer after my first year, I clerked for the Equal Employment Opportunity Commission in San Francisco. They wanted to launch a pilot mediation program. Turned out, due to my job before law school, I knew more about mediation than they did. So, I was a key contributor to designing the EEOC's mediation program. Out of law school, I practiced employment law at a private firm, then a public entity, and then was offered a teaching position (teaching negotiation; and mediation clinic) at UC Hastings college of the Law. I ended up teaching there, and at UC Berkeley Law, for 10 years. In the meantime, I had my first child who turned out to have a profound disability. I was managing a team of 14 interventionists for him at one point, with my second baby hoisted on my hip. I needed work that I could control and provided me autonomy. Ten years into practicing law, when my boys were 3 and 4 years old, I went to Harvard Law School for my mediation certification and hung out my own shingle. And here I am today after a thriving mediation practice complete with international work and lecturing, having founded a nonprofit organization, having been elected as VP UN Women USA, and with my book a best-seller. You just never know how life might unfold!

• **What would you say is your biggest challenge?**

In the past, it has been other people telling me, in one way or another, that I don't belong, and me actually believing them and internalizing that messaging. My biggest challenge may have been the silence of my inner voice to advocate for my belonging. Growing up in a small town in Illinois, I was taught to defer to authority and not to "talk back." When I scroll through scenes of my life, there are too many instances where I was being treated badly and I didn't think I could say anything - lest be I'd be punished. Basically, I was taught to be powerless, and I felt that way for too long. Even as an adult who has spoken up many times, I have been punished. It's one of the reasons I champion mediation: it's the most powerful place for disputing parties to be; once they're in court, they surrender their power to attorneys, to the rules of discovery and evidence, to a judge, maybe a jury - and spend years and lots of money to do so. It's also why I'm passionate for people to shore up their personal confidence that they are, in fact, competent and confident everyday negotiators. This doesn't mean "winning" all the time. Negotiation isn't a petulant demand or an attitude of entitlement. It's a skill and an art. With practice, you learn how to regenerate from rejection when things don't work out. There is no failure. There is only learning.

• **How do you expect the present ADR market to change in terms of information, knowledge, and training?**

ADR has exploded in the online dispute resolution space since Covid. It's been evolving since the 1980's, and I don't think a lot of folks realize that! But it didn't become really accepted and integrated into the mainstream until Covid. Now we're seeing all sorts of models popping up with accessible platforms for case management and dispute resolution that make it easier for mediators and disputing parties, and that leverage regenerative justice (including tech tools decreasing the carbon footprint). mediate.com, the International Chamber of Commerce and ICODR - all organizations I've been involved with - are at the forefront of these developments. If we can continue education efforts internationally in law schools and the courts, it will really have a positive impact. ❄️

About the Authors

*Our Guest: **Lucia Kanter St.Amour** has been practicing law since 1998 and has a deep background in mediation. Ten years of her practice included regular clinical teaching positions in mediation and in negotiation and settlement at both University of California law schools at Berkeley and San Francisco. She has lectured at many prominent law and business schools in the United States and Europe and served for a number of years as an annual competition judge and mediator for the International Chamber of Commerce in Paris. In 2022, she launched her podcast, *Forces of Good: The Superpower of Everyday Negotiation*, and was elected vice president of the board of directors for the flagship San Francisco chapter of UN Women USA. In September 2022 she released her book *For the Forces of Good: The Superpower of Everyday Negotiation*, which shot to #1 Best Seller within 10 days.*

*Our Host: **Harshitha Ram** is an International Disputes Attorney, Arbitrator, and Mediator. She is the Founder of Lex Apotheke, offering legal and dispute resolution services. She is a panelist at Professional Resolution Experts of Michigan (PREMi), an invitation-only group of Michigan's top ADR professionals. Ram is an Adjunct Professor at Michigan State University and serves as both Fellow and Panelist in numerous national and international arbitration panels including the commercial and consumer panels of the American Arbitration Association (AAA). She has extensive experience in international & domestic arbitration, mediation, pre-contentious negotiations, risk management, and avoidance and is currently leading a global program on the accreditation of ADR professionals.*

Action Team Update

Would you like more mediation opportunities? Consider volunteering at your local Community Dispute Resolution Center

Are you interested in giving back to the community and/or further honing your dispute resolution skills? Michigan's Community Dispute Resolution Centers need your help!

The Michigan Community Mediation Association (MCMA) was developed to promote mediation services within the state of Michigan, and to create programming and training supports for its Community Dispute Resolution Center (CDRC) members. The community mediation program in Michigan has been in existence since 1991 and offers all Michiganders access to highly skilled neutral volunteer third parties for a large variety of legal and social issues. Each of the current 17 centers is a standalone non-profit entity, relying on some funding from the State Court Administrator's Office (SCAO), local grants, and fee for service contracts.

Member Centers mediate many types of cases including:

- Neighborhood disputes
- Landlord tenant
- Contract
- Family Law
- Agricultural disputes
- Behavioral Health
- Special Education mediation and facilitation
- Probate, and much more.

If you are already a trained mediator, please consider contacting [your local CDRC](#) to volunteer. If someone you know is interested in volunteering local CDRCs can assist potential volunteers to gain general and specialty mediation skills at nominal rates. CDRCs also assist volunteers to complete the internships required to join local court rosters.

CDRCs work with the majority of state courts and help provide mediators for 20,000+ cases a year across the State. Volunteers have access to:

- SCAO approved Mediation training including, General Civil, Domestic, Guardianship/Elder Care, Child Abuse & Neglect, Behavioral Health, and Restorative Practices
- Ample time to practice and master mediation and negotiation skills
- Learn filing and case paperwork requirements for local courts
- Fulfillment of Pro Bono requirements through volunteer mediation
- Advanced Mediation skills workshops and update trainings
- Local Networking opportunities

Please consider reaching out to [MCMA](http://micommunitymediation.org) (micommunitymediation.org) or your local Center for more information. ❄️

The State Bar of Michigan Alternative Dispute Resolution Section Announces 2022 Award Winners

The Alternative Dispute Resolution Section of the State Bar of Michigan is proud to announce that the following individuals are the recipients of the ADR Section's major awards in 2022. The award recipients were honored at the ADR Annual Conference Awards Ceremony held on October 1.



GREGORY CONYERS

Is the recipient of the **Diversity and Inclusion Award**. Greg serves as the Director of Diversity of the State Bar of Michigan. In that role, he has been promoting diversity in the Bar and ADR for over a decade and championing DEI since before it was mainstreamed.



LEE HORNBERGER

Is the recipient of the **Distinguished Service Award**. A former Chair of the ADR Section, Lee has been instrumental in keeping neutrals up to date on relevant law through his yearly case reviews at the Annual Conference and is a regular contributor to Section webinars. In his time since serving as Chair, he has tirelessly promoted the inclusion of women and people of color in the ADR community.



BELINDA DULIN

Is the recipient of the **Nanci S. Klein Award**. Belinda is the Executive Director of the Dispute Resolution Center for Washtenaw and Livingston Counties. She is instrumental in efforts to increase the use of restorative justice practices and principles as part of local efforts to reform the criminal legal system. She also chairs the social justice committee of the Michigan Community Mediation Association.



BETTY R. WIDGEON

Is the recipient of the **George N. Bashara Jr. Award**. As the Immediate Past Chair of the ADR Section, Betty has continued her tremendous work on behalf of the dispute resolution community here in Michigan, while increasing her national recognition as a neutral par excellence.



LISA TIMMONS

Is the recipient of the **Hero of ADR Award**. Lisa is the Executive Director of the Mediation Tribunal Association. She moderated and helped create the "Diversifying the Practice of ADR" presentation at the ADR Section Annual Conference in 2021. She serves on the ADR Section Council and contributes her time to activities that promote the diversification of the legal community.

For more information about the Alternative Dispute Resolution Section of the State Bar of Michigan visit <https://connect.michbar.org/adr/home>.



ALTERNATIVE DISPUTE
RESOLUTION SECTION

Acceptance Speeches:



Greg Conyers

Thank you to the ADR Section for this recognition. I accept it on behalf of the leadership and my team at the State Bar. As you know no accomplishments come on the DEI space come without support from the top and a dedicated staff. I also want to recognize all the people like Erika Bryant and Dale Iverson who worked with us to bring the knowledge and input from ADR to the development of a joint report on diversity and inclusion in the practice in that area several years ago. Because of the dedication of volunteers like them, the people we gathered together at that time for input into the comprehensive report, and of course, people like all of you here, the seeds of positive change can take root and grow. Thank you and let's keep pushing forward.



Lee Hornberger

It is an honor and privilege for me to accept the ADR Section's Distinguished Service Award. I sincerely thank the ADR Section for this Award.

In addition, I especially want to thank my wife, Donna, and two daughters, Gretchen and Robin. Donna is a retired Head of the Literature Department at the Cincinnati and Hamilton County Public Library. Gretchen is the librarian of the Coconino County Law Library in Flagstaff, Arizona. Robin is a public school teacher in Clermont County, Ohio.

This Award is about all of you who have been my friends and colleagues over the years. These friends include former Section Chairs with whom I have served. These Chairs are Erin Archerd, Betty Widgeon, Scott Brinkmeyer, Bill Gilbride, Shel Stark, Joe Basta, Marty Weisman, Toni Raheem, and Bob Wright.

This Award is about Shawntane Williams, Co-Chair with me of the Section's Diversity and Inclusion Action Team, which we call DIAT. The Award is also about DIAT member Earlene Baggett-Hayes, our outstanding Section Administrator Mary Anne Parks, former long-term Section Secretary Lisa Taylor, and former Section Treasurer and regular good guy Sam McCargo.

In addition, the Award is about Doug van Epps, the former Director of the Office of Dispute Resolution of the Michigan Supreme Court. Doug helped implement the BADGER theory of mediation in Michigan. It is also about Barbara Johannessen, who helped create ADR Conferences; Graham Ward, who is a friend and exquisite editor; and Dale Iverson for all she has done for the Section.

I thank this year's ADR Conference Committee Chair Nakisha Chaney as well as Skills Action Team Co-Chairs Ed Pappas and Zena Zumeta for all the work that they have done.

I am proud to have served as the editor of The Michigan Dispute Resolution Journal. Other editors have included Erin Archerd and Kevin Hendrick. Lisa Okasinski is the present editor.

I would like to welcome the new members to the ADR Section Council. They are all outstanding individuals. They are arbitrator Stan Dobry, arbitrator-mediator Matt Kobliska, former Circuit Court Judge Denise Langford Morris, arbitrator E. R. Scales, mediator Marie Walker, former Michigan Supreme Court Justice Kurtis Wilder, and arbitrator O'Neal Wright. To them belong the future of the ADR Section and, to a certain degree, the future of dispute resolution in Michigan. We pledge to them our full cooperation and support.

German soldiers have a song, "Ich hatt' einen Kameraden" ("I had a comrade"). It is in memory of friends who are no longer with us. We have ADR Section friends who are no longer with us. They have passed away. We remember with fondness Bill Caprathe, Bill Driker, Chuck Judson, and Bill Weber. These individuals served the Section well. They are missed.

In conclusion, thank you so much for this Award. It is much appreciated it. I will cherish it forever.



Belinda Dulin

Thank you to:

State Bar of Michigan and the ADR Section Members and Committee for this award. I also thank my colleague – Christine Gilman – for the nomination and holding our DRC's work in high regard. And congratulations to the other award recipients.

I'll start by acknowledging Nanci Klein, who was my professor and mediator trainer at Wayne State University's graduate program for dispute resolution. In 1997 and 98 I interned with Nanci at the Oakland Mediation Center and witnessed her reimagine how mediation could be stretched and respond to needs in a community. After the Columbine school shooting, I worked with Nanci in creating peer mediation training for school students. I think that was the moment I realized what I learned in college could be service work in the community. I believe I continue to be inspired by Nanci's innovative outlook in this work.

The DRC is very proud to partner with our county prosecutor, Eli Savit, and the chief assistant, Victoria Burton Harris, to offer restorative justice to divert those who cause harm against another person from the criminal legal system. This is a survivor-centered approach that allows the survivor to decide to use RJ if the defendant is also a candidate for this process. Our goal is to reduce the numbers of incarceration, recidivism and the disproportionate impact of the system on BIPOC in Washtenaw County. You can find the policy and information on the Washtenaw County Prosecutor's Office website.

I'll conclude by saying that the community dispute resolution centers are funded in part by the SCAO – on average at 40%. That means that every center director or program manager must develop resources to do the research, development and implementation of our innovation programs. And very often find funding for our typical services. This is a heavy lift for all of us. Please consider how you can support your local center – volunteer, donate, fund raise within your affinity groups, partner on the research & development of programs, and facilitate connections with funders and collaborators in your area. Our collective work has an impact in our communities across state of Michigan and we need your support.

Thank you all again for this award.



Betty Widgeon

Erin

Thank you for this honor. It has been a true pleasure to be the Immediate Past Chair of the Section and to assist whenever and wherever I could. Although I was not on the executive committee this year, I felt very connected throughout the year with what was going on in the Council and remained particularly involved with the Skills and Diversity and Inclusion Action Teams. I am off Council, as of about 9 or 10 hours ago, and will miss working with it the way I have over the past 5 years, but I fully plan to continue a close connection.

When I was first contacted about considering the position of Chair-Elect, I knew I wanted to get meaningful input from certain individuals. First, I discussed it with my husband, James, and our daughter, Anna. Then, I spoke with Earlene Baggett-Hayes, I spoke with Toni Raheem, I spoke with Bill Gilbride, and I spoke with Scott Brinkmeyer. Lastly, I spoke with Lee Hornberger because, as Erin has said, Lee is a person who makes it his business to get to know others and to show concern. Once I knew that they were serious in their encouragement, supported me, and really did want me to be Chair-Elect, I decided to “step up to the plate.” And they were supportive. I must add that very early on when I was first considering becoming more active with the Section, Shel Stark encouraged me to make that step.

And seriously, I did not feel that my contributions over the past year were special, stellar, or “stand-out,”—but I am pleased that Erin—our new Chair Emeritus—felt that they were meaningful. I am humbled and very appreciative. Again, thank you to Erin, the Council, and the Section for bestowing the honor upon me.

(Betty Rankin Widgeon)



Lisa Timmons

Thank you, Lee and the ADR Council, for presenting me with the ADR Hero Award.

Regretfully, I cannot be with you in person tonight. As Erin Archerd coined it, I drew the Covid short straw. So, I am at home on quarantine, but with you in spirit. Three of the Mediation Tribunal Association staff members are present, Cynthia Haynes, Cornelia Allen, and Georgea Cole.

In 1995 I was working as a disability rights advocate for a state mandated legal organization. If we could not resolve a dispute—special education, reasonable accommodations, appropriate support and services, for example at a lower level the issue would frequently end up in litigation. I always believed there should be some intermediate step or process. These cases often involved schools, group homes, families, and caregivers and I felt the process of litigation did more harm than good.

I saw a flyer in the office one day for a Masters program in Dispute Resolution at Wayne State University. It focused on mediation, conflict resolution, dispute system design, and negotiations. This was both new and fascinating to me. I signed up and in 1997 I was a part of the second graduating class in the MADR program at Wayne State.

Shortly after graduation, I was hired as the Executive Director of the Mediation Tribunal. MTA's Board of Directors at that time were Judges Cynthia Stephens, Michael Sapala, the late Julian Cook, and attorneys Brian Einhorn and the late Mark Weiss. The Board allowed me to expand the footprint MTA had in the dispute resolution community by participating on SCAO workgroups and committees to shape and define ADR in Michigan courts, but also to diversify the practice.

This past year I have gladly offered my time to groups that continue in that path. The Diversity and Inclusion Action Team of the ADR Section of the Michigan State Bar has provided opportunities for all of us as both practitioners and consumers of ADR services to grow, expand, question ourselves, and evolve. I am proud to be included in such an important group and honored that practitioners that I admired for many years have embraced me as one of their own.

Thank you again, and let's continue to do the great work of expanding our practice to be one of diversity, inclusion, equity, and fairness.

Lisa

Upcoming Mediation Trainings

The following training programs have been approved by the State Court Administrative Office. The list is updated periodically as new training dates become available. Please contact the training center for further information.

<https://www.courts.michigan.gov/administration/offices/office-of-dispute-resolution/mediator/mediation-training-dates/>

Advanced Mediator Training

16-Hour Eldercare and Adult Guardianship

ONLINE DATES: November 29 -

December 2, 2022

Hosted By: Oakland Mediation Center

Registration and additional information:

<https://events.r20.constantcontact.com/register/eventReg?oeidk=a07eja5lu9853042ed2&oseq=&c=&ch=>

40-Hour General Civil Mediator Training Program

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.

ONLINE DATES: January 18-20 & 22-23, 2023

Hosted By: Conflict Resolution Services

Registration and additional information: <https://crsmediationtc.org/product/general-civil-mediation-training/>

48-Hour Domestic Relations Mediator Training

48-Hour Domestic Relations Mediator Training

ONLINE DATES: April 26-28 & May 1-3, 2023

Hosted By: Conflict Resolution Services

Registration and additional information:

<https://crsmediationtc.org/product/domestic-relations-mediation-training/>

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 website:

<https://www.courts.michigan.gov/administration/offices/office-of-dispute-resolution/mediator/mediation-training-dates/> **

ANNOUNCEMENT:

The Diversity and Inclusion Action Team Book Group is Inviting All ADR Section Members to Join Us for our Next Book Group Meeting.

When: Tuesday, January 17, 2021

Where: In Your Own Home!!!!

Time: 7:00 pm to 8:30 pm EST

Media: Via Zoom



Maryanne Parks

Our next read is *A Disability History of the United States* by Dr. Kim E. Nielsen, Distinguished University Professor, University of Toledo and Chair of the Disability Studies Program since 2017. Professor Nielsen will join us for a special Zoom edition of the book club. You're not going to want to miss it. You can find the book here at Amazon which describes the narrative as "engrossing and profound": https://www.amazon.com/Disability-History-United-ReVisioning-American/dp/0807022047/ref=sr_1_1?

[crid=2JP3J2X1TJGBX&keywords=disability+history+of+the+united+states&qid=1667001237&qu=eyJxc2MiOiIxLjgxIiwicXNhIjojMS40OCIsInFzcCI6IjEuNDEifQ%3D%3D&s_prefix=disability+history+%2Caps%2C103&sr=8-1](https://www.amazon.com/Disability-History-United-ReVisioning-American/dp/0807022047/ref=sr_1_1?crid=2JP3J2X1TJGBX&keywords=disability+history+of+the+united+states&qid=1667001237&qu=eyJxc2MiOiIxLjgxIiwicXNhIjojMS40OCIsInFzcCI6IjEuNDEifQ%3D%3D&s_prefix=disability+history+%2Caps%2C103&sr=8-1)

The book is an outstanding read beginning with disability practices among the indigenous people of North America before the coming of Europeans and carries forward through the colonial period, the post-Revolutionary War, the Civil War and its aftermath, treatment of people with disabilities in the Progressive Era, the pre-Civil Rights era and up to today. Professor Nielsen is an award-winning author of 9 books, including *The Oxford Handbook of Disability History* for which she was awarded the 2018 Rosen Prize of the American Association for the History of Medicine and the 2019 Disability History Association Book Award.

Not currently a member of the Diversity and Inclusion Action Team (DIAT)? No worries. All members of the State Bar ADR Section are invited. I hope you will join us for what should prove to be an enlightening and powerful evening of fellowship, education, and talk. Please RSVP to Mary Anne Parks, parks.maryanne@gmail.com. **

From Shel Stark, Chair, DIAT Book Group



MICHIGAN PLEDGE TO ACHIEVE DIVERSITY^{AND} 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 at <https://www.michbar.org/diversity/pledge>



ALTERNATIVE DISPUTE
RESOLUTION SECTION

ADR Section's 2022
Annual Conference,
Awards Ceremony,
and Annual Meeting
September 30 - October 1, 2022

Thank you Platinum Level Sponsors!



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Thank you Bronze Level Sponsors!



Zena Zumeta
MEDIATION SERVICES



ALTERNATIVE DISPUTE RESOLUTION SECTION

MEMBERSHIP APPLICATION 2022-2023

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;
3. Promoting diversity and inclusion in the training, development, and selection of ADR providers and encouraging the elimination of discrimination and bias; and,
4. 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. (*Section membership is free for sitting judges*)

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 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.

APPLICATION TYPE: _____ Member _____ Sitting Judge _____ Affiliate (<i>Affiliate memberships are subject to Council approval.</i>)	
NAME: _____	<p>All orders must be accompanied by payment. Prices are subject to change without notice.</p> <p>Non-members must submit payment by check.</p> <p>Please make check payable to: STATE BAR OF MICHIGAN</p> <p>Enclosed is check # _____</p> <p>Mail your check and completed membership form to: Attn: Dues Dept., State Bar of Michigan Michael Franck Building 306 Townsend Street Lansing, MI 48933</p> <p>Members using a Visa or MasterCard must join online at e.michbar.org</p>
FIRM: _____	
ADDRESS: _____ _____	
CITY: _____ STATE: _____ ZIP CODE: _____	
PHONE: _____	
E-MAIL: _____	
State Bar No. _____ (if applicable)	
Have you been a Member of this Section before: _____	
Are you currently receiving the <i>Dispute Resolution Journal</i> ? _____	
<p>Annual dues are \$40.00, or \$48.00 if Member or Affiliate certificate is requested. There is no proration for dues and membership must be renewed on October 1 of each year.</p>	

Revised 10/2022

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;
3. Promoting diversity and inclusion in the training, development, and selection of ADR providers and encouraging the elimination of discrimination and bias; and,
4. 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>. **

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 Journal* to Editor, Lisa Okasinski at Lisa@Okasinskilaw.com.

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 Editor, Lisa Okasinski @ Lisa@Okasinskilaw.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, Instagram and Twitter pages.

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

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

https://twitter.com/SBM_ADR

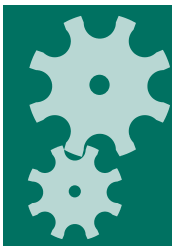
<https://www.instagram.com/sbmadrsection/>

<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:

Lisa Okasinski - lisa@okasinskilaw.com – 313-355-3667

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