


ADReport

**Alternative Dispute
Resolution Section**

Joyce A. Mitchell, *Chair*
Thomas J. Dolina, *Editor*

Maryland State Bar Association, Inc.

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Message from the Chair

Greetings and thank you for the opportunity to serve as your 2005-2006 Chair. I am honored to have Marc Baer, a collaborative lawyer, of Baltimore, MD as my Co-Chair and Tom Dolina, an employment lawyer, as the Secretary of the Section. Please visit our web page on the MSBA website for the names of the other distinguished members of the Section. The 2005 Membership Committee sought and recruited a cross section of ADR practitioners who are arbitrators, mediators, settlement conference negotiators, multi-party public dispute facilitators, collaborative law practitioners, trainers and teachers. They represent a diverse section of the State and bring many years of experience to the Council. Perhaps you have noticed, the past Chairs of the Section have been invited to stay involved in the Section and to give us the continued benefit of their wisdom, understanding and expertise.

The Section Council members and I began our year with a Retreat on Saturday, September 24, 2005 to allow time to discuss ways to improve our service to the Section, look at ideas and concepts for greater interaction with the Section members and to establish programs for the ensuing years. Lou Gieszl, Deputy Director of the Maryland Mediation and Conflict Resolution Office (MACRO), served as our facilitator. Under his leadership and direction, we developed a Mission Statement, established Committees, Committee Chairs, designated members of the Committees, calendared the activities and set the meeting schedule for the remainder of the year. Karen Cook, MSBA Board Liaison, joined us for the morning session of the

Retreat. We decided to invite speakers and resource persons to the Section meetings to assist the Council in its work. In this regard, Richard Montgomery, MSBA Legislative Staff liaison, was invited to address our October 2005 meeting to give us guidance on how to be pro-active and productive during the 2005-2006 Maryland Legislative Session. If you are aware of any legislative measures which might be introduced that affect ADR in Maryland, please contact Patricia Miller, Past Section Council Chair, our Legislative Liaison

Consistent with the guidance and directives of J. Michael Conroy, President of the MSBA to improve the involvement of Section members in our activities and to provide leadership and upward mobility of women and minorities, the Committee Chairs agreed to actively seek participation from Members in the work of the Committees. Several Section members had already contacted us and volunteered their services on Committees. Please look for their names as you see the Committee reports and activities which will be forthcoming in the Newsletters. We also invited and welcomed a member of the 2005 Leadership Academy, Dawn Barnett Diggs to our October 2005 meeting.

In previous years, the Section has partnered with other Bar Sections to co-sponsor programs at the Annual Meeting. Again this year, we will reach out to Subject Matter Sections for our Annual Program. Jonathan Rosenthal, immediate Past-Chair, has agreed to serve as the 2006 Annual Program Chair. Please contact

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The MSBA's Leadership Academy

Interested in becoming a leader in the Maryland State Bar Association?

Interested in becoming a leader in your Local or Specialty Bar Associations?

The MSBA's Leadership Academy is a 12 month venture into developing leadership enhancing experiences and learn more about the internal workings of the MSBA. Each term Fellows are selected from a pool of applicants. This term has 15 Fellows participating in the program.

During their term, each Fellow will spend time attending MSBA events, developing and implementing a public service project, as well as attending a special program on public speaking, media relations, interviewing skills, conducting effective meetings, budgeting, and many other related areas. Fellows establish a relationship with past Bar Presidents and current bar leaders to learn more about the MSBA and to enhance leadership skills.

Team building is a significant part of the Academy, wherein the Fellows develop relationships that will last long after the Academy. The things the Fellows learn will benefit the MSBA, the local or specialty bar associations and the public as a whole.

Each Fellow is assigned to a Mentor who has had prior experience with the Academy. The Mentor provides "one on one" direction and insight for the Fellow. The Mentors meet with their Fellow at least monthly during the term. Having a Mentor gives each Fellow a chance to ask questions in a relaxed setting and offers the Fellow a positive role model.

Most costs for the Fellows to participate in the Leadership Academy and the related events are paid by the MSBA. Membership in the MSBA is not a prerequisite to be a Fellow but it is encouraged.

All Fellows will be expected to participate actively with at least one MSBA committee during the course of their participation as well as upon graduation.

The Leadership Academy does not create the leader but certainly bolsters the skills necessary to be one.

For more information and an application, go the MSBA Website at http://www.msba.org/sec_comm/committees/leadership/index.htm

Business ADR: Resolving Conflict While Saving Relationships, Time, and Money

By Richard H. Melnick

The ADR Section's Business Committee ("Committee") strives to: seek ways to promote the use of ADR among the business community in Maryland; collaborate with other business-related MSBA sections to educate their members on effectively using ADR within their subject matter/practice areas; and encourage both law firms and businesses to utilize ADR and commit to the MPME pledge related to mediator excellence in Maryland. Lawyers and businesses should understand that ADR brings efficiency, money savings, risk reduction, destiny control, relationship preservation, financial, and social benefits that are consistent with, and may transcend, dispute resolution options available in a court proceeding.

The Committee Chair, Richard Melnick, is joined by ADR Section Council members Steve Shapiro, Bob McFarland, Tom Dolina, Craig Distlehorst, Richard Alper, Jonathan Rosenthal, and Joyce Mitchell. The biggest project on which the Committee is presently working is the Business Pre-Suit Mediation Program ("Program"). The Committee views the Program as encompassing at least two major components: (1) developing the working documents for the Program;

and (2) marketing the Program to lawyers and businesses, using the documents as a structural, tangible medium by which to communicate the goals and logistics of the Program. After a series of meetings last year, the Committee has developed a package of draft documents for a Business Pre-Suit Mediation Program.

The Committee plans to meet in November 2005, to further discuss, and attempt to move forward in its efforts to finalize, the draft Program documents.

The Committee hopes that the documents for the Program, once finalized, will form a tangible basis upon which to promote the Business Pre-Suit Mediation Program by, between, and among businesses and lawyers in Maryland.

The Committee hopes to create and build relationships with businesses, whose participation, goodwill, and positive word of mouth publicity will help the Program grow. Once the Program documents are finalized, the Committee looks forward to meeting with lawyers, law firms, chambers of commerce, businesses, and associations, to educate and describe Program benefits to members of those groups. The Committee plans to keep the Section apprised of its progress on the Program, in future editions of the Newsletter.



Happy



Holidays



From the Chair

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him to volunteer for the Committee or to offer ideas on subjects of interest to a cross section of members. Robert McFarland will Chair our Local ADR Bar Liaison Committee. Robert and his members will work with the local ADR Committees to co-sponsor programs, provide speakers, and assist with their Program Year. If you are an officer in a local or specialty bar and would like to have our assistance or support, please contact Robert.

If you missed the arbitration programs at the 2005 Annual meeting, stay tuned. Alan Carmel, an arbitrator, along with Jonathan Rosenthal brought the National Association of Security Dealers Dispute Resolution, Inc. and the New York Stock Exchange to Ocean City to provide training and to share opportunities to diversify your practice. We will seek other CLE opportunities for you to get arbitration training and to improve your arbitrator skills. We encourage you to volunteer to arbitrate fee disputes through your local bar or the MSBA. You might also market your arbitration skills to arbitrate the many disputes which are now in most consumer contract clauses and a large number of

business agreements. Also, look for frequent updates on arbitration cases which will be posted on the Listserv. If you have not signed up for the Listserv, please visit the webpage on the MSBA website at www.msba.org and join us for discussions on matters of interest to you and other members.

This message can not end without a tribute to one of the organizers of this Section and a past Chair, Roger Wolf. In case you have been asleep, Roger is also a law professor at the University Of Maryland School of Law and the mediation trainer, no doubt, of perhaps 80% of Maryland mediators. This summer I had the opportunity to work with a Multi-Party Public Facilitation Effort, sponsored by MACRO, and trained by national ADR leaders, Linda Singer and Michael Lewis. I was fortunate to be chosen by Ramona Buck, Public Policy Director at MACRO from the core group of trainees to work with Roger Wolfe, Bob Baum, Lou Gisezl, and several others on a community environmental issue in New Windsor, MD. The dispute involved a stone

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Pictured from left to right: Jonathan Rosenthal, Joyce Mitchell, Robert Kreuter, Marc Baer and Alan Carmel at the MSBA Annual Meeting in Ocean City, MD.

From the Chair

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crusher plant planned for construction by LeHigh Cement Co. in the town. The plant faced opposition to its permit application from environmentalists, health conscious citizens and land use proponents. Roger Wolfe was selected by the mediators as the Facilitator for the multi-party meetings of the elected officials, community groups, concerned citizens, the stone-crusher company and two state agencies (Energy and Highway). In two night sessions, Roger facilitated the public meetings of approximately 20 parties and demonstrated first hand how to establish a bond with various factions of a dispute, while remaining neutral; how to hear, reframe and reflect interest statements; how to maintain a calm demeanor when all others are poised for battle and how to recognize areas of consent to allow the participants to find consensus. The other members of his team and I had a front row seat to watch a master mediator/facilitator at his craft. Roger, our hats are off to you, and our thanks for your continued efforts to improve the quality of life in Maryland and the capabilities of those of us who serve individuals in conflict. (See Carroll County Times: www.carrollcounty.com/articles/2005/08/26/news/local_news/news3-68.txt ; “Mediation



Lou Gieszl leads a seminar discussion at the September 2005 retreat

Produces Agreement on Quarry”)

In future messages, I will address hot items in ADR and seek to open dialogue within our Section on any major topics that affect our practice. We have some exciting activities planned for your professional growth and I encourage you to read the various Committee reports that follow.

Joyce Ann Mitchell

Coming Soon to a Law Practice Near You - Maybe Yours*

By Carol Craig, Esquire

Increasingly, we hear the term “Collaborative Law”, but many of us still have only a sketchy idea of what it is. Collaborative Law, which, according to an article in the *New York Times* on May 20, 2004, was “invented more than a decade ago by Stuart G. Webb, a burned-out Minneapolis matrimonial lawyer”, is used fairly extensively in California, New York, Texas and many other jurisdictions, as well as in Canada, yet only relatively few attorneys in Maryland are trained in this facet of family law. There are established groups in Montgomery County/D.C./Northern Virginia and Baltimore, which meet regularly to promote Collaborative Law and to further train their members.

What is Collaborative Law? In a nutshell, it is a vehicle for settling cases without litigation, another alternative dispute resolution arrow for your quiver. It is reportedly being adopted by corporate, real estate and trust lawyers as well. I think of it as enhanced mediation with the parties’ attorneys acting as the mediators. The rules and procedures are different from those of mediation, but the object is the same: to guide the parties into a settlement. In Collaborative Law, the attorneys act more as facilitators; but they are still advocates—without their litigation hats.

As to marital assets and support, the same basic tenets of domestic litigation apply: full disclosure. However, in

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Coming Soon

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litigation, while we are generally looking toward a 50:50 division of assets, in Collaborative Law the focus is on what is best for the family unit as a whole, even if the final settlement results in a lop-sided division. For example, where children are involved, rather than the customary use and possession period, the parties may agree to leave the family home in tact with the primary caretaker until the youngest child is 18 or even until that child completes college. While many of us may have negotiated a similar settlement in the course of a litigated case, such resolutions are more nearly the norm in Collaborative Law.

The Collaborative Law process begins with a signed agreement that neither party will initiate litigation during the course of the Collaborative Lawing. (If either does, the Collaborative Lawyers must withdraw, and each party must find new representation for the litigation.) In the next step, the parties establish overall goals for the dissolution of their marriage, such as keeping the family as in tact as possible, allowing the children to stay in the family home and to finish school with their friends, etc., and then they proceed to negotiate within the framework of those agreed-upon goals, always returning to an assessment of their negotiations in terms how the overall goals will be furthered. If an expert is needed, such as a CPA or real estate appraiser, the parties choose one to advise them.

For attorneys, the practice of Collaborative Law begins with attendance and participation in a two-day training. In the course, which is given only by recognized trainers (there are several in the U.S.), attorneys are taught to think “outside the (litigation) box” and rather to concentrate on achieving goal-based agreement with civility and dignity, thus reducing as nearly as possible the animosity which so often accompanies litigation. In Collaborative Law, there is no table-pounding or fist-waiving; if this occurs, the session is stopped until calm is re-established.

The advantages for parties are several. First, there is a significant reduction in the emotion and acrimony which

generally accompany litigation and tend to destroy the chances for any type of amicable future relationships; this is, of course, particularly significant when young children are involved and when co-parenting will be required. Second, Collaborative Law offers an opportunity to structure a win-win settlement. Third, the parties make their own agreements rather than being handed a decision by a judge. (Studies have shown that those who participate in structuring the terms of their settlements usually have a higher rate of adherence than in judicially-determined outcomes.) Fourth, the fees incurred are generally less than those associated with litigation.

Now that we have determined that your fee may be less than in a litigated case, why would you want to be a Collaborative Lawyer? As I indicated above, Collaborative Law was invented by a *burned out divorce lawyer*. As a rule, when we walk out of the Courthouse, our client has either won or lost. (And even the winners can be difficult! I won a major victory for a client in Court about five years ago. Her former husband was so angry about what he had to pay that he and his new wife schemed to undermine my client in every manner possible. After a few months of petty harassment, my client’s new fiancé showed up at my office complaining that I had done “too good a job” for her! I just put on the evidence; the judge made the decision.)

So, again, why practice Collaborative Law? For starters, Chip Rose, a former California litigator in both the domestic and civil arenas who taught the course I took, embraces Collaborative Law a great stress-reducer for lawyers. He claims: “Your worst day in Collaborative Law is better than your best day in Court”! Additionally, Collaborative Law has all of the advantages of mediation plus attorney participation throughout the process—not just at the end as in many mediation settings, where, often enough, we end up undoing and re-working at least some of the mediation agreement. Finally, while Collaborative Law is not the answer in all cases, it will work well in many. It behooves us, therefore, to learn the skills and to be able to offer this alternative to our clients.

Maryland Mediation and Conflict Resolution office

900 Commerce Road, Annapolis, MD 21401

410/841-2260; Fax: 410/841-2261

You Are Invited to Attend One of Six Regional Forums on the Maryland Program for Mediator Excellence

Four years ago, the Maryland Judiciary's Mediation and Conflict Resolution Office (MACRO), under the leadership of the Honorable Robert M. Bell, Chief Judge of the Maryland Court of Appeals and with the assistance of representatives from every segment of the ADR community set out to collaboratively design a practical system to support high quality mediation practice in Maryland. After a great deal of thought, effort and many working meetings, the Maryland Program for Mediator Excellence was designed. The Maryland Program for Mediator Excellence (MPME), the first of its kind in the nation, is designed to provide mediators with an array of options to continue their professional development on the mediator excellence A tree. @ Branches on the tree include mentoring, training, case and ethics discussions, consumer education, regional networks, observation opportunities, evaluation, certification, and a grievance/ombuds program. A summary of the MPME along with Task Group reports will be provided shortly on MACRO's website: www.marylandmacro.org. Six regional meetings have been scheduled to update Maryland mediators with information about the MPME and to explain how individuals can get involved. This is a very important venture. No other state has developed a statewide consensus regarding mediator quality assistance measures. Maryland is the first in the nation to achieve such a plan which meets the needs both of the practitioner community and of the general public. The locations and dates of the regional forums are as follows (all from 6:00 p.m. to 8:30 p.m.): Central Maryland (Baltimore area) on Thursday, October 20, 2005 at The Maryland Department of Transportation, Harry Hughes Conference Center, Ground Floor, 7201 Corporate Center Drive, Hanover, MD 21076 Southern Maryland (California) on Wednesday, October 26, 2005, at the Higher Education Center, Room 155, 44219 Airport Road, California, MD 20619 Eastern Shore (Salisbury) on Wednesday, November 2, 2005, at Salisbury University, The Scarborough Student Leadership Center, Room 206, 1204 Camden Avenue, Salisbury, MD 21801 Northern Maryland (Cecil County) on Tuesday, November 15, 2005, at Cecil County Public Library, 301 Newark Avenue, Elkton, MD 21921 Western Maryland (Cumberland) on Tuesday, November 29, 2005, at Allegany College of Maryland, 12401 Willowbrook Road, SE, Cumberland, MD 21502 Central Maryland (Silver Spring) on Wednesday, December 14, 2005 at Long Branch Public Library, 8800 Garland Avenue, Silver Spring, MD 20901 Fax-back RSVP forms are available on MACRO's website at www.marylandmacro.org. For more information, contact Cheryl Jamison, MACRO's Quality Assistance Coordinator, at 410-841-2260.

INTERESTED IN ADR LEGISLATION

Richard Montgomery, the legislative director for the MSBA and the former Legislative Liaison for Governors Shaeffter and Glendening, appeared before the ADR Section on Monday, October 24. He encouraged the Section to try to cooperate with other Sections, such as the Litigation Section, in taking a position on any bill of mutual interest and requested the Section to inform him if there is any pending bill where the Section would request the endorsement of the Board of Governors.

In taking positions on pending bills related to ADR, Montgomery asked the Section to strive to suggest amendments where practical and to try to avoid unqualified opposition or support for a bill unless that is necessary.

Montgomery also called for Section Members to review whether they know any Maryland state legislators who are sympathetic to ADR and to let our Section's legislative chair, Trish Miller, know who they might be. The new Chair of the Council, Joyce Mitchell, asked Section Members if there was any ADR legislation they would like to see introduced in the Legislative Session which begins in January 2006. If so members should contact Joyce or Trish, whose contact information is available on the MSBA web site under this Section.