Vol 14
No. 2
April, 2007

The ADR Newsletter

Alternative Dispute Resolution Section of the State Bar of Michigan

Reality Testing in Business Mediation: Beyond A Legal Risk Analysis Model

By: Christopher J. Webb[1]

Litigators for a major automotive supplier, AXELCO, and for an overseas supplier, INDIACO, have retained you as a mediator in a dispute that threatens the long-standing joint venture relationship the firms have enjoyed for many years.[2]

INDIACO is the exclusive supplier to AXELCO of one of AXELCO's core products protected by a pioneer patent soon to expire. AXELCO has been under increasing pressure from its customers to reduce its pricing or face the prospect of competitive bidding for future procurement once its patent is no longer in effect. Through an exchange of correspondence, AXELCO insisted that INDIACO unilaterally reduce its pricing by 25% effective retroactively through the preceding fiscal year. INDIACO for its part responded that such a price reduction would result in operating losses and potential breach of financial covenants with its principal lender. In retaliation AXELCO stopped payment on orders already shipped from INDIACO and AXELCO discontinued future shipments. Each side claimed material and willful breach of the underlying joint venture and supply agreements. At commercial impasse, the two firms elected to submit their dispute to mediation.

After two mediation sessions, you as the mediator have learned a great deal about the dispute. Each side believes that the other is acting in bad faith with rumors that AXELCO intends to seek bankruptcy protection and that INDIACO is manufacturing products for a competitor of AXELCO. Counsel for each firm has spent considerable time and effort in constructing and arguing over the proper decision-tree analysis relating to the dispute if litigation occurs. You asked each side to prepare and share its respective views regarding the probability of success in court and the cost and expenses relating to litigation. The legal strengths and weaknesses of the case from each firm's perspective were developed and shared in joint session with little progress as well. Each side maintains that it is legally on high ground and will win in court. So far, the parties only agree that there has been no agreement on the substantive issues at hand.

In an eleventh-hour effort to breathe life into the mediation, you as the mediator moved to a shuttle-type approach using private caucusing with each side. In response to your questions geared to finding common ground, AXELCO in caucus simply demanded that INDIACO agree to an immediate 20% price cut on all outstanding orders with installment payments spread over a 12 month period and to an unconditional commitment not to sell product to AXELCO's competitors for a period of 10 years. As justification, AXELCO persisted in its earlier position that INDIACO was in material breach of the underlying joint venture agreement requiring product to be priced competitively and not sold to others without the permission of AXELCO. If INDIACO did not agree to its present demands, AXELCO threatened to seek injunctive relief, compensatory and exemplary damages (including attorneys' fees as specified in the default provisions of the joint venture agreement) resulting from INDIACO's willful breach. AXELCO concluded by observing that it had the "home court advantage" based upon the choice of law and forum joint venture provisions as well.

INDIACO in caucus candidly explained that payments from AXELCO were delinquent because AXELCO was near bankruptcy, that minimum order volumes specified in the joint venture agreement had not been met, resulting in material breach, and that non-payment for shipped product was breach of the supply contracts. INDIACO advised that the sale of products to others would be legally permitted in light of AXELCO's breach. As an aside, INDIACO explained that others were seeking to become new venture partners if AXELCO was no longer in the picture exclusively. When you prompted for an offer of settlement, INDIACO demanded that AXELCO agree to an immediate lump-sum payment for all outstanding orders at the stated contract

Continued on Page 2

Continued from Page 1

Christopher J. Webb, a sole practitioner in Farmington Hills, is a full-time mediator and arbitrator, current Vice-Chair of the ADR Committee of the Oakland County Bar Association, member of the Council of the ADR Section of the State Bar of Michigan, Arbitrator & Mediator with the American Arbitration Association, Neutral with International Institute of Conflict Prevention and Resolution and Trustee of the Oakland Mediation Center. Mr. Webb is currently serving as a facilitator regarding public water issues facing Metropolitan Detroit.

price and to the conversion of the present exclusive supply joint venture agreement into a non-exclusive one allowing sale of product to others or permitting new partners to join. If its demands were not met, INDIACO advised that suit would be commenced immediately.

To make matters worse, each side privately has expressed frustration with your professional performance as the mediator due to lack of any concrete progress to date. Each now wants you to evaluate the positions taken by the other and provide your own recommendation to break the stalemate before it goes to litigation. You decide to close the mediation for the day and ask the parties to return for one last mediation session. Going back to your desk you take stock of the mediation, examining your summary notes based upon the remarks of the parties below:

AXELCO:

Probability of Injunctive Relief:	90%
Probability of Success on AXELCO's claim:	75%
Probability of Success on INDIACO's counterclaim:	10%
Cost of Litigation:	$500,000
Damages Judgment in favor of AXELCO:	$10,000,000

INDIACO:

Probability of No Injunctive Relief:	90%
Probability of Success on INDIACO's claim:	75%
Probability of Success on AXELCO's counterclaim:	10%
Cost of Litigation:	$500,000
Damages Judgment in favor of INDIACO:	$10,000,000

You then reflect on your role as mediator asking yourself some tough questions: "Where do I go from here?" "Did I simply polarize the parties by my questions in the last caucus?" "Is it time to move from my facilitative approach to an evaluative one?" "If so, what is the case worth?" "What risks might exist for me as the mediator in attempting to recommend any solution to the parties?" "Have I identified the business needs of the parties?" "What is my strategy for the next session?" "Should I withdraw as mediator?" "Is this a train wreck in the making and I'm the engineer?"

Progress in a facilitative mediation often turns on a mediator's ability to distinguish "red flags" from "red herrings" and avoiding the trap of working with "tactics" that are positional in nature as opposed to "assessments" that relate to the needs underlying the dispute. The power of facilitative mediation lies in a mediator's ability to plant seeds of doubt in areas of need and not to be fooled by artful attempts of the parties or their counsel to dismiss those doubts or mask those needs in the process.

Most business disputes contain a recurring set of factors or, if you will, needs that directly bear on the dispute. Overarching themes in any business dispute are an aversion to losing control over the outcome of the dispute by placing it in the hands of an unpredictable decision-maker and to losing control over the time frame for its resolution. These needs may be disguised as legal issues yet often are practical business (and sometimes personal) fears on the part of a party. All of the items below represent fertile areas for reality testing by a mediator:

1. Controllability of Legal Expenses & Costs
2. Predictability of Negative Collateral Effects Adversely Affecting the Business
3. Management of Risks relating to Traditional & Electronic Discovery
4. Controllability of Risk of Adverse Fact & Expert Witness Testimony
5. Enhancement of Business Models, Plans, Purposes & Goals
6. Maintenance of Morale of Organizational Personnel
7. Risk of Adverse Employment Action against Interested Personnel
8. Protection of Intellectual Property Interests (Short & Long Term)
9. Safeguarding Key Organizational Assets
10. Controllability of Timing & Duration
11. Minimization of Disruption to the Organization's Operations and Supply
12. Maintenance of Present and Future Product Offerings
13. Protection from Adverse Publicity
14. Management of commercial relationships with Customers
15. Maintenance of Shareholder relations
16. Compliance with Legal Reporting Requirements
17. Maintenance of Critical Financial Relationships
18. Ability to Utilize Creative Problem Solving Methods
19. Reduction in Risk of Decision Maker Error or Prejudice
20. Predictability and Control over the Outcome of Dispute

For a moment, put yourself in the position of our mediator and for the last mediation session consider the potential progress that might occur through the judicious use of reality testing questions or comments employing some or all of the above factors in the following caucus setting.[3]

For example, in caucus with AXELCO, you might consider some of the following questions (not necessarily in the following order):

- "What do I need to know to better understand this dispute?"
- "Can you tell me more about your present financial condition?"
- "Does the joint venture agreement speak to minimum buying volumes for product?"
- "What do you anticipate your customers' responses to be if litigation occurs and if you win or lose?"
- "How do you think the other side will respond to your latest proposal of a 20% price cut in light of non-payment to date for product already shipped?"
- "How will you enforce any judgment in your favor outside the country?"
- "Let's talk about what collateral issues might arise from discovery of email correspondence within your firm or with INDIACO?"
- "How will protracted litigation affect your business or the morale of your employees?"
- "How do you intend to handle the commencement of any material litigation with your lenders, outside accountant, bonding companies and insurers?"
- "If this matter is not resolved today, how will you find substitute product?"
- "How will an adverse outcome in court affect your firm in the marketplace?"

Continued on Page 3

Continued from Page 2

- "What if your decision to sue today results in a loss of the case before the court?"
- "What happens if this case is not resolved for a number of years including any appeal by the losing side?"
- "Will the filing of litigation enhance or diminish your chances of protecting your intellectual property interests?"
- "How will litigation help solve the issue of the pending expiration of your patent?"
- "What financial and other reporting requirements will you face if litigation occurs?"
- "What contingent business planning do you have in place if you are unable to prevail on the injunctive relief you seek?"
- "Will litigation lower your product costs with your customer?"
- "What do you think is most important for the other side and how can we deal with their concerns?"
- "How can we solve this dispute like any other business problem?"

In caucus with INDIACO, questions might include (again I leave you with the task of finding your own order of questioning):

- "What do I need to know about your business to better help you in this mediation?"
- "Tell me more about your joint venture's long-term business goals and how you intend to achieve these goals?"
- "How do you feel the commencement of litigation will affect your firm's business reputation or dealings with others either in India, the United States or elsewhere?"
- "If you were AXELCO, how would you view your proposal to convert the present exclusive relationship into a non-exclusive one?"
- "What is your view regarding any sale of product to competitors of AXELCO?"
- "How can we problem solve together in order to sell more product profitably?"
- "In the event this matter goes to litigation, what immediate impact will it have on your present levels of employment or your servicing of other customers?"
- "What happens if litigation extends over a period of years?"
- "Can you give me more information about the potential breach of your lending covenants and how these concerns are resolved if litigation occurs?"
- "Is there a business person at AXELCO that you think could assist us in resolving this dispute?"
- "What would you like to see changed or done to resolve this dispute that the other side might be willing to consider?"
- "Will litigation enhance or hurt your chances of finding other joint venture partners one day in the future?"
- "How do you think we can solve this business problem?"

Depending upon the responses of the parties made in caucus, you as the mediator could then make an informed and relatively low-risk decision about returning or not to joint session with the parties to explore potential business solutions to resolve the dispute. My educated guess is that the parties will no longer think negatively of your work as their mediator. Ironically, you may have accomplished a great deal more than would have occurred if you had adopted an evaluative approach as the parties had requested. Yet this option was still available if required.[4]

Sometimes, a complex business dispute cannot be resolved using a facilitative mediation model. Once in awhile, "last-person-standing" arbitration without formal court rules of evidence or "bet-your-company" litigation seeking the application of nasty electronic discovery or "Hey, Mediator, tell us what the case is worth" mediation will be clear favorites. This being said, however, most business disputants desire to keep control over their firm's fortunes. Constructive use of this underlying empowerment need through reality testing of the real-world business factors should increase the odds of a successful resolution of the dispute. Along the way, we as mediators will be able to take comfort in the fact that we have made the best possible use of our facilitative mediation tools regardless of the actual outcome of the mediation.

1/ The author wishes to thank Barbara A. Johannessen, current Chair of the ADR Section of the Michigan State Bar, and Richard L. Braun II, its Chair-Elect, for their invaluable advice in the preparation of this article.

2/ This case hypothetical has been presented in depth at Wayne State University Law School and Cooley Law School with the encouragement of Michael G. Nowakowski, Commissioner, Federal Mediation and Conciliation Service and past Chair of the ADR Committee of the Oakland County Bar Association.

3/ The approach taken for the questions that follow was inspired by Dale Ann Iverson, founder and principal of the firm, Just Mediation PLC, and her presentation of "Creative Uses of Caucus" at the MSU College of Law & ADR Section of the Michigan State Bar's Business to Business Mediation Project.

4/ A special acknowledgment is extended to Mary A. Bedikian, Professor of Law and Director of the ADR Program, Michigan State University College of Law for her support in acting as a critical sounding board concerning my practice area of business mediation.

SAVE THE DATE – MARK YOUR CALENDAR

The ADR Section's Annual Meeting and Conference will be held
September 7-8, 2007,
at the Park Place Hotel in Traverse City, Michigan.

NEWS AND VIEWS

Expert Witnesses Struck for Violation of Mediation Confidentiality Provision

By: Kevin S. Hendrick

In a recent Opinion and Order dated November 29, 2006, Magistrate Judge Hugh W. Brenneman, Jr. of the United States District Court for the Western District of Michigan, granted a party's motion to strike expert witnesses, because the party proffering the witnesses had improperly supplied the experts with confidential mediation statements and exhibits.

In *Irwin Seating Company v. International Business Machines Corporation and J.D. Edwards World Solutions Company*, (USDC – WD MI, Docket #1:04-CV-568) the defendant International Business Machines Corporation ("IBM") moved to strike plaintiff's experts for violating the mediation confidentiality requirement. The matter had been sent to voluntary facilitative mediation by the Court. The Court entered an order outlining the procedures for mediation, providing: "all information disclosed during the mediation session, including the conduct and demeanor of the parties and their counsel during the proceedings, must remain confidential, and must not be disclosed to any other party nor to this court, without consent of the party disclosing the information." Further, the mediator directed that the parties were to furnish each other with their confidential mediation statements and accompanying documents, highlighting those portions of the exhibits which they felt were most important. There was no dispute among the parties that the mediation proceeding was intended to be confidential. Not only did the Court's order direct that the proceeding was confidential, but the mediator's letter also stated that the mediation process was confidential. In addition, the local court rules (WD Mich L Civ R 16.2(e)) provided that information disclosed during the ADR process was not to be revealed outside of mediation without consent of the party making the disclosure, and that all ADR proceedings were to be considered settlement negotiations within the meaning of Federal Rule of Evidence 408. There was also no dispute that, in fact, the mediation statements and accompanying documents had been disclosed to the experts. Prior to trial, the plaintiff produced two expert reports, both of which stated that the expert had reviewed the mediation material produced by the defendants.

Against this background, when the expert reports were provided, IBM moved to strike the experts for violation of the confidentiality order. The plaintiff objected, arguing that the experts denied that either of the mediation briefs of the defendants influenced their analysis in any way. Both experts stated they did not rely upon the information in the mediation briefs in developing their opinions, but rather, read the briefs solely as foundational information. The experts further stated that they did not even recall what the defendants' mediation positions were.

In passing upon these representations by the experts, however, the Court stated that the conduct of providing the mediation summaries to the experts was in direct derogation of the Court's order, the directions of the mediator, and the common understanding of the purpose for which the summaries were used. Further, the Court stated that by providing the experts with the summaries, even if the experts could have easily obtained the same documents elsewhere, the experts were provided with an indication of those portions of the documents which were considered by the defendants as important to their case. As such, there was no way to assess the impact the mediation briefs had upon the experts, or how the experts may have shaped their opinions in response to the claims made and the positions taken by the defendants in the mediation briefs.

After weighing the positions of the parties, and even recognizing that "striking an expert witness is a harsh remedy" the Court found that it was not an unfair remedy, where it was the plaintiff, who by its action of providing clearly-understood privileged material to its experts, placed them at risk.

The Court's Opinion and Order underscores the importance of confidentiality in mediation, and the importance some courts are placing on mediation. The Order sounds a strong warning of the need to safeguard the confidentiality of the mediation process. The Order also clearly sends a message that information disclosed during mediation must be protected, for the good of the process. Judge Brenneman, in a closing footnote, remarked: "The Court is aware this resolution may also have a salutary effect in preserving confidences of future mediation participants, and the candor necessary to successful facilitative mediations. A contrary result would certainly have a dramatically contrary impact."

How Michigan Mediators Can Make Their Practices Flourish by Following Their Own Advice: Be Open-Minded!

By Earlene Baggett-Hayes and Antoinette R. Raheem

Virtually any review of the current status of Alternate Dispute Resolution in the nation reveals how significantly Detroit Metropolitan area mediators lag in the proliferation of their craft. In short, we have failed miserably to apply our skill in any but the narrowest of arenas. In states and cities like New York, Boston, Florida, Ohio, California and Washington, D.C., to name a few, ADR is used in a number of settings beyond the traditional one of resolving litigation issues. In these more progressive jurisdictions, mediation is regularly used, for example, in resolving internet disputes, addressing truancy issues, in helping faith-based organizations resolve internal conflicts, and in a number of other public, quasi-public and private settings outside of those related to litigation.

A few national organizations have led the way in the trend toward expanding the use of ADR to non-traditional dispute settings. These organizations include the United States Postal Service, which uses transformative mediation to resolve worker to worker disputes and the National Association of Securities Dealers, which invites mediation of stock brokerage related disputes. While some Michigan mediators have availed themselves of these national forums to apply their skills in non-traditional settings, rarely do we see Michigan mediators taking the initiative to explore new arenas in which to apply their mediation skills creatively.

As mediators, we frequently tell the parties before us to be creative, keep an open mind, and look for new ways to forge a win/win situation. We mediators all know that by viewing problems traditionally, parties can get stuck in traditional ruts of acrimony, antagonism and undue expenditure of resources. Yet the same mediators who promulgate open-mindedness rarely apply that open mindset to marketing our own skills.

Many private mediators express concerns about the difficulty of keeping a steady stream of mediation work that pays. They describe mediation as a highly competitive field with only limited opportunities. Yet these mediators fail to see the infinite possibilities for finding non-traditional arenas in which to apply our mediation skills. Below are just a few suggestions of where new outlets for the practice of mediation may lie. Some may work better for certain mediators than for others. These ideas are intended to simply inspire mediators to think outside the box. Whatever the result, the hope is that this article will remind us as mediators to use our ability to find innovative options to make our own practices flourish.

Work Place Disputes: In the average workplace, disputes occur every day, yet only in rare instances do they result in litigation. These disputes, even without litigation, can be very costly to employers. Good employees leave, morale plummets, employees refuse to work together, and acrimony stifles creativity and productivity. Even if grievance procedures are available, the "resolutions" that come from them often add to antagonisms rather than reduce them.

Mediation can be used by employers to enhance the quality of their workplace by addressing disputes in the early stages. Mediators can address frictions between 2 or more co-workers, management/employee issues and tensions between an entire workforce based on company policies—all while teaching the interested parties how to work better together. Mediators can thus help themselves and the workforce by educating employers about how affordable peace and productivity can be.

Pre-litigation Business Disputes: Businesses oftentimes search far and wide before they are successful in establishing a repertoire of satisfactory vendors, service providers and others firms with whom they conduct business. Frequently, just when the businesses think that they have solidified these relationships, something tends to sour. Among other things, disputes over products may surface, conflicts regarding contract terms may arise; or issues relative to payment may occur.

Protracted lawsuits and appeal procedures merely exacerbate the negative relationships that begin to brew. Pre-litigation mediation is an effective tool for resolving these types of issues. Mediators are encouraged to consider delving into these windows of opportunity to provide businesses with the resolution power that ultimately allows them to spend their energies in their respective businesses.

As business disputes arise, litigation does not need to be an option because the parties have the opportunity to sit down and discuss the issues, maintaining complete control of the outcome-determinative course of action. By doing so, the need for litigation in many instances never arises. In addition to the obvious advantages related to saving time and money, the disputing parties have the opportunity to consider and discuss their mutual needs and interests, as well as strive toward the preservation of the business relationships, if desirable.

Disputes in Faith-based organizations. Many churches, synagogues, mosques or other faith-based institutions are comprised of thousands of members with multimillion dollar budgets and portfolios. These institutions often have internal conflicts which need to be handled in a business-like manner, yet discreetly. Not only is the minimization of conflict necessary to maintain the "flock," it is critical to maintaining the key leadership these organizations rely on to shepherd them in areas such as administration, finance, maintenance, schools, publications, musical productions, etc. Mediation provides a peaceful, confidential and moral method of allowing these institutions to resolve disputes based on the principles which are important to them.

Disputes in Civic/Community Organizations. Like religious institutions, civic and community organizations often have internal conflicts that need a kid glove approach. These organizations are most effective when they present a unified front to their membership and to the outside world. As such, internal disputes can significantly diminish their efficacy. Groups like the YMCA, Boys Club, Rotary Club, NAACP, B'Nai Brith, etc. also often have budget constraints which make litigation unattractive. Mediation can benefit these organizations by creatively, privately and efficiently diminishing conflict, thus ensuring not only their survival, but the survival of the greater good they seek to serve.

Continued on Page 6

Continued from Page 5

Training. With the proliferation of alternative dispute resolution in various segments of our society, it is important that the process maintains its integrity as it continues to permeate new arenas. But just saying this doesn't make it so. Trained and experienced mediators stand at the forefront of the educational efforts that ascertain that the process only continues to strengthen and provide effective and meaningful conflict and dispute resolution.

Training provides unlimited opportunity for the practitioner, whether it be as a classroom teacher, a structured trainer, a seminar presenter, or a mentor. General civil mediation training and domestic relations training are arguably the most widely utilized methods for developing skills and disseminating information to date. However, there are a number of untapped, or barely-tapped, areas which offer expansive opportunity for the flourishing practitioner. Just to name a few, one training program that mirrors the energizer bunny is peer mediation. The possibilities for growth and development in this area keep growing and growing and growing, particularly since a new crop of eager and sponge-like students enter the halls of ivy every year.

Another potential area of training opportunity involves teaching the advocate attorney how best to represent the client during mediation sessions. Likewise, establishing training programs that teach mediators the "legal buzz words, practices and catch-phrases" that are incidental to particular areas of the law may provide didactic opportunities for the practitioner. Such training would further fortify the mediator's role as well as allow for a smoother application of the mediation process, regardless of the underlying subject matter. Moreover, it would mitigate the ongoing debate over the need for process skills versus subject matter expertise.

Mediation training opportunities reach into various segments of our society, whether it be secular, ecclesiastical, business, community organizations, sororities, fraternities, or soccer teams. Training not only provides the captive audience with the information disseminated, but also provides the trainer with the exposure that will further enhance the practitioner's marketability. With respect to training opportunities, only the sky is the limit.

Taking the world of mediation to the next level presents a challenge for practitioners as a whole, and the mediator as well. However, to flourish is to grow, and to grow is to prosper, therefore enhancing the process, as well as the profession. Fellow mediators, let's get busy.

Earlene R. Baggett-Hayes is founder of the Law and Mediation Center and an ADR service provider and trainer. Antoinette R. Raheem is president of the Law and Mediation Offices of Antoinette R. Raheem and an ADR service provider and practitioner.

COMMENTS FROM THE CHAIR

ADR Clerks have important jobs to do, too.

by Barbara A. Johannessen

I heard myself saying, "Perhaps that should be a basis upon which someone is removed from the Court roster." And then I wondered, would my name still be on a court roster if such a policy were imposed?

Mediators have an obligation to provide several things to the ADR Clerk. The first is the properly completed application to be placed on a roster. The second is proof of 8 hours of Advanced Mediator Training completed within every two year period. The third is a Mediation Status Report within 7 days of the mediation. And under some court ADR Plans, the fourth is notification of the date that has been set for mediation. According to ADR Clerks, many mediators are not submitting the Mediation Status Report timely or at all and, where necessary, are not submitting notification of the mediation date.

ADR Clerks serve a critical function in the proper administration of the ADR Plan in each jurisdiction. They are the front line in ensuring that only qualified individuals are placed on the Court roster. They are responsible to ensure that the roster is used in a neutral, random fashion when parties cannot agree on the selection of a mediator. They provide mediators with notice of an appointment to mediate a specific case.

Suppose a policy said that failure to complete and submit Mediation Status Reports (MSR) timely was grounds for removal from a Court roster. Would your name remain on the roster? A blank MSR is available at the State Court Administrative Office website and can be completed, though not submitted, on-line. Take the time to complete and submit the MSR promptly after every mediation event, even when additional sessions of mediation are anticipated. Provide a copy of the submitted MSR to the parties so that they are reminded of deadlines by which documents, if any, must be submitted to the Court.

ADR Clerks and mediators are important partners in ensuring the wheels of civil justice keep moving toward final disposition. And as mediators, we don't want to create conflict with our partners.

ABA – Section of Dispute Resolution Representation in Mediation Competition.

In the world of mediation, March Madness refers to the regional mediation advocacy competitions being conducted throughout the United States. On March 23rd and 24th, MSU School of Law again hosted a regional competition. I felt honored to be invited to serve as a judge of a round of the competition.

Competitors have several weeks to prepare with the specific case. They submit a strategy memo to the judges before each round of competition that includes how they hope to distribute the responsibility between attorney and client for sharing information within the mediation, identification of their own interests, and suppositions regarding the interests of the other party. During the mediation they must listen carefully to determine whether they were correct in their determination of the other party's interests, to assess whether proposals made meet their own needs, and to make proposals in a manner that reflects the interests of both parties.

I was impressed by the competition performances I observed. The advocates utilized competitive moves to demonstrate their sources of power and leverage; however the moves were delivered in a provisional manner suggesting they still preferred collaboration. Perhaps most significantly, they remained focused on the strategies that would serve their client's real interests rather than the client's legal interests. These advocates were not afraid to allow their clients to speak because they had thoroughly prepared their clients for the process.

With this competition as an example, it is refreshing to witness how law schools are training the 21st century attorneys. I don't know of many other settings in which one can be a mentor and student at the same time. If the competition is again held in Michigan, I would recommend that Section members consider serving as volunteer judges and mediators in this worthy endeavor.

A Few Words of Thanks.

The Advanced Negotiation and Dispute Resolution Institute (ANDRI) for 2007 was a successful event. ANDRI would not run smoothly without the expert administration of the ICLE staff. ANDRI would not be a success without the thoughtful participation of many ADR Section Council members, Section members and Section affiliates in the extensive planning process. Thank you all.

ANDRI would not be a success without the commitment of four individuals to volunteer their day to keep the program train on track. Thank you to Barry Goldman (moderator – Negotiation), Mary Bedikian (moderator – Arbitration), Bob Wright (moderator – Mediation), and Hon. Bill Callahan (moderator – Judicial/Marketing).

Upcoming Mediation Trainings

General Civil

The following 40-hour mediation trainings have been approved by SCAO to fulfill the requirements of MCR 2.411(F)(2)(a):

Grand Rapids: **April 11-13, 19-20**
Training sponsored by Dispute Resolution Center of West Michigan
Contact: Jon Wilmot, 616-774-0121, www.drcwmich.org

Peshawbestown: **April 12-14, 20-21**
Training sponsored by Community Reconciliation Services
Contact: (231) 941-5835, or crservice@thirdlevel.org

Charlevoix: **May 10-12, 17-19**
Training sponsored by Northern Community Mediation
Contact: Jane Millar, 231-487-1771 or jane@northernmediation.org

Detroit: **May 7-10, 16-19**
Training sponsored by Wayne Mediation Center
Contact: Howard Lischeron, 313-561-3500, http://www.mediation-wayne.org

Bloomfield Hills: **June 12, 14, 16, 19, 21, 23**
Training sponsored by Oakland Mediation Center
Contact: Gina Buckley, 248-338-4280, www.mediation-omc.org

Plymouth: **June 14-16, 29-30**
October 11-13, 26-27
February 7-9, 22-23, 2008
Training sponsored by Institute for Continuing Legal Education
Register online at www.icle.org, or call 1-877-229-4350.

Ann Arbor: **September 28-30, October 5-7**
Training sponsored by Dispute Resolution Center|Contact: Kaye Lang, 734-222-3745, or drc@mimediation.org

Detroit: **October 5-6, 12-13, 19-20, 27**
Training sponsored by Wayne Mediation Center
Contact: Howard Lischeron, 313-561-3500, http://www.mediation-wayne.org

Domestic Relations Mediation Training

The following 40-hour mediation trainings have been approved by SCAO to fulfill the requirements of MCR 3.216(G)(1)(b):

Bloomfield Hills: **May 9-11, 21-22**
Training sponsored by Oakland Mediation Center
Contact: Gina Buckley, 248-338-4280, www.mediation-omc.org

Ann Arbor: **August 20-24**
November 28-30 and December 5-6
Training sponsored by Mediation Training & Consultation Institute
Register online at www.learn2mediate.com or call 1-734-663-1155

Advanced Mediation Training

Mediators on court rosters are required to obtain 8 hours of advanced mediation training every two years. MCR 2.411(F)(4); MCR 3.216(G)(3).

Kalamazoo: **May 4, 8:30 am – 5:30 pm**
"Breaking the Logjam: Apology and Other Impasse Busters,"
Anne Bachle Fifer & Bob Wright
Training sponsored by Dispute Resolution Services
Contact: Barry Burnside, 269-552-3434, bburnside@gryphon.org

Plymouth: **June 5, 8:30 am – 5:30 pm**
Third Annual Mediators' Forum
Training sponsored by Institute for Continuing Legal Education
Register online at www.icle.org, or call 1-877-229-4350.

Ann Arbor: **October 19**
Advanced Training for Domestic Relations Mediators
Training sponsored by Dispute Resolution Center
Contact: Kaye Lang, 734-222-3745, or drc@mimediation.org

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

PRESORTED STANDARD
U.S. POSTAGE PAID
KALAMAZOO, MI
PERMIT #1

The ADR Newsletter 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. This newsletter seeks to explore various viewpoints in the developing field of dispute resolution.

For comments, contributions or letters, please contact:

Benjamin Kerner at (313) 965-1920, fax: (313) 965-1921

http://www.michbar.org/adr/newsletter.cfm

In Memory of A Peacemaker

The ADR community is saddened by the death of an important proponent of ADR, Jonathan L. Moody, May 1, 1966 — February 13, 2007.

Jonathan was a graduate of Wayne State University Law School and had a private practice in southeast Michigan. His professional career did not start with law school, however. His professional career started many years earlier in service to his country in the Marine Corps and in service to his community as a police officer in the narcotics and SWAT divisions of the Greenville, N. C. police department. Neither did his professional aspirations end with law school. Before his death Jonathan had begun the education necessary to serve as a minister for the Unity church.

Jonathan could be perceived as imposing; however, leading with his thousand-watt smile and his infectious laugh, he had a way of making people feel included and empowered. Jonathan joined the ADR Section Council in September 2004 where he immediately joined the Access Action Team to help design a program to create collaborations to make mediation services available to low income and indigent individuals. Jonathan was trained in mediation and collaborative law. He included interest-based and collaborative processes in his legal practice.

Jonathan will be missed by the ADR Section Council and in the ADR community. Anyone wishing to make a contribution in Jonathan's name should donate to the Assistance in Health Care, Inc., 2408 East 81st Street, Suite 100, P. O. Box 700392, Tulsa, Oklahoma, 74170-0392.