

ASSOCIATION OF ATTORNEY- MEDIATOR
presents its



ADVANCED MEDIATOR TRAINING

New Tools For Your Mediation Toolbox

Friday, November 8, 2013

DoubleTree by Hilton Houston Hobby Airport

8181 Airport Blvd., Houston, Texas 77061

8:00-8:15 a.m. Conference Check-in, Registration and Continental Breakfast

8:15-8:30 a.m. Welcoming Remarks

Mike Patterson, AAM National President, Tyler, TX

Michael Leech, AAM National President-elect, Chicago, IL, Moderator

Brenda Rachuig, AAM Executive Director, Dallas, TX

8:30-9:15 a.m. The Exception To The Rule: What They Left Out In Basic Mediation Training
Elaine Block and Nancy Huston, Houston, TX

All of us who have been doing this for a while know that we don't always do things as taught in our 40 hour mediation training course (or even the advanced mediator course). Being creative and even unorthodox is not only reality in the practice of mediation but often necessary to the successful resolution of the dispute. For example, do you ever get the lawyers together after the joint session? When might it be appropriate to get the parties together after the joint session? Do you ever suggest that a party make a specific offer? What do you do if a Plaintiff's settlement demand is blatantly "unrealistic"? Elaine and Nancy will talk and lead a discussion about some of these real world (as opposed to training course) techniques used in mediation.

(.75 hours)

9:15-10:15 a.m. What You Don't Know About Medicare Liens and Set-Asides Could Kill The Deal

Trey Bergman, Houston, TX

Bryan Coleman, Houston, TX

Tom Woodrow, Chicago, IL

If bodily injury is part of a disputed claim and the plaintiff is or will be a Medicare beneficiary, federal law requires all parties to protect Medicare's interests in settling a claim involving that plaintiff. The potential consequences for ignoring Medicare's interests could be substantial. Parties may be oblivious to this issue or may impose challenging and rigid requirements in the settlement process. Beyond that, since CMS has not completed its rulemaking regarding these issues, the parties and the mediator lack guidance on best practices for finalizing the deal. And we all know how important finality is to a settlement. This panel will apprise you of the practical steps that can be taken to anticipate and navigate this complex problem to keep it from erupting at mid-mediation, or even worse at the end or afterwards, in a manner that could thwart an otherwise attainable settlement.

(1.00 hour)

10:15-10:30 a.m. Break

**10:30-11:30 a.m. Ten Things To Do In Every Mediation
Ron Wiesenthal, St. Louis, MO**

Hear and discuss specific steps to take in mediation that materially improve the chances of a positive outcome for the parties and manage the ethical risks present in every mediation. Ron has picked up some good habits in the thousands of mediations he has done—compare what you do to his practices—in setting up the mediation, setting expectations and blocking exits in joint session, conducting private caucuses, things to do that keep *you* on track, nailing down the details, and even what to do during the lunch hour.

(.50 general/.50 ethics hours)

**11:30-12:15 p.m. Mediating with Elderly Parties and Issues
Julia Benkoski, Austin, TX; Elizabeth Simon, Chicago, IL**

Elder law mediation deals with the areas of estate planning, probate and guardianship as well as ethical concerns related to competency, undue influence and confidentiality. Many of the challenges faced by mediators in resolving elder law disputes are found in other practice areas as well, where long-term conflicts and historic patterns of behavior have distanced parties, where emotions are intense, and where participants are elderly or have a disability. Join us for this interactive discussion as we share techniques and tips for resolving these types of highly charged conflicts.

(.75 hours)

**12:15-1:15 p.m. Lunch – Introduction to Texas Attorney-Mediator Coalition, “TAMC”
Mike Amis, Dallas, TX**

Tort reform legislation seeking to reduce the cost and improve the efficiency of litigation of smaller cases may, as took place in Texas, to unintended consequences detrimentally affecting mediation. In Texas, this led to efforts to remove the authority of judges to order mediation in smaller cases. These efforts are by no means limited to Texas, either—similar efforts are underway in a number of jurisdictions. A group of Texas attorney-mediators who are active in AAM have spearheaded the opposition to this proposal, led by AAM’s Mike Amis, creating TAMC. AAM is committed to support of TAMC and TAMC has now assumed responsibility for legislative lobbying in Texas. Hear Mike explain how we got to this point and what TAMC is doing to protect mediation from this threat and, positively, to promote its expansion.

(1.00 hour – no credit in states not allowing lunch credit)

**1:15-2:45 p.m. Conundrums and Paradoxes: Mediation Ethics Problems and Solutions
Courtenay Bass, Dallas, TX; Suzanne Duvall, Dallas, TX**

As a mediator, how many times have you found yourself on the horns of an ethical dilemma which required immediate, appropriate action? Were you satisfied with your response or do you wish that the tape could be rolled back to allow you to have a “do over”? We all face ethical dilemmas. Sometimes there isn’t one right answer, but often there are multiple wrong ways to respond. Using a lively, interactive format we will explore a variety of these “ethical puzzlers” and seek to find the most appropriate ways to deal with them. We solicit and welcome your ethical questions in advance so that they may be addressed for the benefit of us all.

(1.50 ethics hours)

2:45-3:30 p.m. What Mediators Need To Know About Bankruptcy
Honorable Leif Clark, San Antonio, TX

The advent of the “great recession” has made the plea of poverty an increasingly common response to liability claims. Sometimes the parties have explored the impact bankruptcy will have on a dispute, and if they have, you will not keep up without a grasp of the legal and economic realities of the bankruptcy process. Often one or more of the lawyers handling a dispute confront the prospect of bankruptcy without a grasp of what will happen once a petition is filed, or even of what is required before a proceeding can be filed. Learn the basics of bankruptcy practice from a mediator who sat as a bankruptcy judge and has practiced in the field and get ideas on how to handle the “BK” problem in mediation.

(.75 hours)

3:30-3:45 p.m. Break (*with snack*)

3:45-4:30 p.m. Taming The Multi-Party Mediation Beast
Steve Nelson, Austin, TX

As the number of parties in a mediation increases, the difficulty of managing the process and making progress grows geometrically. If there are six parties, for instance, even ten minutes with each party will consume a full hour. Construction, product liability and natural resources cases usually present this kind of problem but they can arise in discrimination cases, commercial disputes, probate cases and a variety of other settings. Hear innovative strategies and tips on handling the multi-party mediation from someone who has managed cases involving dozens of parties and regularly mediates cases with five to ten parties.

(.75 hours)

4:30-5:00 p.m. Twice The Fun In Half The Time: Making The Half-Day Mediation Work
Mike Amis, Dallas, TX

Attorneys often come to mediators with an expectation that settlement can be achieved in a few hours—and that can be correct in some cases. How do you make sure this quicker process is effective to bring resolution? If you use this format regularly, compare the way you do it to how longtime AAM trainer and mediator Mike Amis does it, and share your insights. If you shy away from half-day engagements or have trouble getting the job done in less than a full day (or more), learn some tricks you can use to streamline the process and make it more efficient.

(.50 hours)

5:00-5:30 p.m. Spoiler Alert: Questions to Ask Before Mediation Day
Michael Leech, Chicago, IL

Conferences with the attorneys and even the parties before the day of the mediation can not only help you be prepared, they can give you timely information that helps you head off the surprise problems that can lead to impasse when they are not discovered until you are well into the process. But should you talk to the opposing sides together or separately? What questions can you ask before the mediation that will bring the hidden roadblocks to the surface. You will come away from this presentation with a set of questions that will have you fully prepared and that can reduce the frequency with which you find yourself improvising in the face of an unexpected bombshell during the mediation.

(.50 hours)

5:30 p.m. Adjourn – Thank you for attending!

**Association of Attorney-Mediators
Advanced Attorney-Mediator Training
Speakers and Panelists
November 8, 2013**

Mike Amis began his private law practice in Oakland, California in 1971, returning to Dallas where he continued a civil litigation practice representing clients in most, if not all, the types of matters pending in our civil courts. He has mediated over 1,800 cases and has helped spread the good news of Dallas-style mediation to attorneys and courts in several states around the country. Mike was a founding director of the Association of Attorney-Mediators, serving as President of that organization in 1991 and chair of its Seed Group Program which conducted trainings of experienced attorneys invited to be the first in their cities and states to bring the art of mediation to counsel and clients in their jurisdictions. He is a frequent speaker on mediation topics to local and state bar associations. He has been recognized multiple times as a "Texas Super Lawyer" and by Woodward and White as among the "Best Lawyers in America." Amis has conducted in-house trainings for Federal Reserve Bank, the FDIC, Chevron Corporation as well as the Texas College of Advanced Judicial Studies and a variety of law firms. In 1998, Mike received "The Brutsche Award" from the Association of Attorney-Mediators. Mike is the Co-Chair of Texas Attorney-Mediators Coalition, TAMC, for which he has been recognized by the Texas Association of Mediators and the State Bar of Texas. Mike was also the recipient of the Association of Attorney-Mediator's Presidents Award in 2013 for his legislative efforts with TAMC.

Courtenay Bass is a full-time mediator and a charter member of AAM. She has conducted approximately 4,000 mediations. Courtenay was the 2004 recipient of AAM's Brutsché Award. She has been on the faculty of many mediator training programs in the U.S. and in New Zealand and Buenos Aires, Argentina, including the ABA Institute on Jury Persuasion, the faculty of the Texas College for Advanced Judicial Studies (Mediation Program for Judiciary), and various Dallas Bar Association and National Institute of Trial Advocacy mediation and ADR training programs. Courtenay also taught mediation with both the American Academy of Attorney Mediators and the Attorney Mediators Institute. She has been honored multiple times as a Texas Lawyer Super Lawyer, as well as by D Magazine and Best Lawyers in America.

Julia G. Benkoski provides legal services in the areas of estate planning, probate, guardianships, fiduciary litigation and mediation as well as commercial arbitration. A licensed attorney since 1982, she is an Advanced Credentialed mediator, certified family law mediator and former civil trial attorney. From the basic barking dog dispute, will contest, guardianship conflict, to the multi-party business squabble, she brings focus and sensitive insights to the negotiation table. Julia was elected to membership in the Fellows of the Texas Bar Foundation and the Austin Bar Association Foundation. And as a sustaining member of the College of the State Bar of Texas in both her substantive law focus area and ADR, Julia makes every effort to maintain cutting edge knowledge within these practice areas. An AAM member and Austin Mediator Assoc. member, she is a very active member of the Austin Bar Association and has been elected as a Director for 2 terms; is the immediate Past-President of the Solo-Small Firm section of the Austin Bar; and, has been the chair of the Austin Bar Association's CLE programs for the past 7 consecutive years. Julia has spoken numerous times on behalf of mediation and negotiation best practices and skills in the areas of estate/probate conflicts, guardianship conflicts, and with issues involving emotionally charged parties and issues. In her free time, you can find her riding her two warm-blood horses, Madelon and Raphael. An 'over fences hunter' equestrian, she is usually at the barn at sunrise! www.jgblegal.com.

Trey Bergman, J.D. has practiced complex commercial litigation since 1980 at all levels of state and federal court, is Board Certified in Civil Trial law by the Texas Board of Legal Specialization, and is a Credentialed Distinguished Mediator by the TMCA. Trey has mediated and arbitrated more than \$6 Billion in disputes since 1990 and has trained thousands of attorneys and judges in mediation across the United States, in England, Mexico and Turkey. He is a past national president of the Association of Attorney-Mediators. Trey is a frequent speaker and author for the State Bar of Texas, American Bar Association and numerous national and local bar associations and organizations throughout Texas and the nation and is a former adjunct professor at South Texas College of Law and Pepperdine Law School teaching classes in mediation and negotiation. As President of the Bergman ADR Group in Houston, Texas, Trey now devotes his practice exclusively to serving as a mediator, arbitrator, and settlement counsel. Trey is a Fellow in the College of Commercial Arbitrators, a panelist with the American Arbitration Association Large Complex Case Panel, a panelist with Construction Dispute Resolution Services, is AV rated by Martindale-Hubbell, has been named “Texas Super Lawyer” by Texas Monthly Magazine every year since its inception in 2003 and has been voted #1 Best Individual Mediator/Arbitrator in Houston by U.S. News-Best Lawyers Survey for 2011 and 2012.

Elaine Block graduated first in her class from the University of Houston Law School in 1978. She practiced Civil trial law in Houston in both personal injury and commercial disputes. In 1991 she was one of the first groups to be trained as mediators at the Attorney’s Mediators Institute in Dallas and began actively mediating along with her law practice. Since 1996 she has been a full time attorney mediator and has mediated over 3,500 cases. Elaine is a member of the American Board of Trial Advocates and is co-chair of the Texas Attorney Mediators Coalition.

Leif Clark practices mediation, arbitration, insolvency consultation, and litigation evaluation services. Judge Clark has experience with insolvency and financial restructuring across a wide spectrum of industries (including oil & gas, retail, real estate, manufacturing, shipping, health care, and cross-border enterprises) and from the perspective of both a practitioner, a judge, and an advisor to non-governmental organizations. He has experience as well with the resolution of commercial disputes and international insolvency matters. Consultation services to non-governmental organizations and private entities regarding insolvency law and practice in other countries. Judge Clark has been a Mediator and Arbitrator, Consultant (2012-present); U.S. Bankruptcy Judge (W.D.Tex.) (1987-2012); Partner, Cox & Smith (1980-1987). He was a U.S. Bankruptcy Judge for over 25 years, presiding over a wide variety of bankruptcy proceedings under all chapters, including chapter 11 cases involving oil & gas properties, refineries, offshore oil rights, patents, licensed technologies, radio stations, office supply retailers, apartments, hotels, retirement communities, shopping centers, raw land, ranch land, cattle operations, aircraft maintenance companies, aircraft manufacturers, steel mills, plastics fabricators, and maquiladora operations. He also has experience with insolvency administration for natural persons, as well as extensive experience in case management, reasoned decision making, and learning industry practices and business structures (1987-2012). He is the author of over 300 published decisions involving bankruptcy issues. Published author for *Collier*, *Norton*, and various law reviews. Judge Clark is an Adjunct Professor for the University of Texas School of Law (Basic Bankruptcy, Bankruptcy Advanced Problems) (various semesters in period 1996-2012); and a Professor, McGeorge School of Law International LL.M. Program, Salzburg, Austria (U.S. Constitutional Law) (1989-2004). While a judge, he acted as mediator over the last 15 years in a variety of disputes involving a wide variety of enterprises, including ranching, health care, franchise licensing, senior living centers, an offshore drilling company, an oil and gas exploration company, and numerous smaller disputes. A number of these disputes involved claims in excess of \$200 million. Most recently mediated a \$240 million dispute involving a Greek shipping company and a consortium of European banks.

Bryan Coleman has been a mediator and arbitrator in Houston, Texas for over twenty years, where he has mediated over 6,000 cases and arbitrated over 2,000 cases, the majority of which involve personal injuries. He has trained over 1,000 attorneys, insurance claims personnel, and other professionals, for national organizations, including AAM, AAA, AA White Dispute Resolution Center, JAMS and Resolute Systems; and he has been a frequent presenter at continuing education venues for professionals involved in alternative dispute resolution. He has served as a judge in various undergraduate and law school alternative dispute competitions at various levels, including law school national, national undergraduate, University of Houston and South Texas College of Law. He is a TMCA Credentialed Distinguished Mediator and an Advanced Certified Mediator for AAM.

Suzanne Mann Duvall is licensed in the state and federal courts of Texas, California and the United States Supreme Court. With more than 1200 hours of basic and advanced training in mediation, arbitration and negotiation, she has mediated more than 2500 cases to resolution. She is a faculty member, trainer and lecturer for numerous dispute resolution and educational organizations. Ms. Duvall is recipient of the first annual American Arbitration Association Brutsche' Award of Professional Excellence in Dispute Resolution and the first annual Tom Eisner Mediator of the Year Award for services to the courts and citizens of Tarrant County. She has received an Association of Attorney Mediators Pro Bono Service Award, the Louis Weber Outstanding Mediator of the Year Award, and the Susanne C. Adams Award and Frank G. Evans Award for Outstanding Leadership in the field of ADR. Ms. Duvall has been named "Super Lawyer" by Texas Monthly for 2003-2013 and in Texas Law & Politics magazine, as well as Texas Best Lawyers, 2009 - 2013. Suzanne was named in Best Lawyers in America, 20th edition. The Oak Cliff Lion's Club has also named her Humanitarian of the Year. Suzanne is the Past-President of AAM.

Nancy Huston is a full time mediator in Houston, Texas. She has conducted in excess of 5,000 mediations and has trained many mediators through the Association of Attorney-Mediators as well as the University of Houston Law School. Nancy received her training through the Association of Attorney-Mediators, Harvard Law School, the Attorney-Mediators Institute, Inc. and the International Academy of Mediators. She has earned the recognition of AAM Advanced Certified Mediator. She, also, was a founding member of the International Academy of Mediators, served on the ADR Panel for the United States Judicial District Courts for the Southern District of Texas, Houston Division and is a frequent speaker/lecturer on the topic of ADR. Nancy was President of the Association of Attorney-Mediators in 1994-1995 and was selected Outstanding Member of AAM in 1994. She earned her law degree in 1976 from the University of Texas at Austin.

Michael Leech is the co-founder and President of the Illinois Chapter of AAM, and one of the "Top 100 Illinois Super Lawyers[®]" for 2011, 2012 and 2013. He was listed by Lawdragon.com as one of the "Top 500 Litigators in America" in 2005. Mike is a distinguished fellow of the International Academy of Mediators and also a member of the American Law Institute. He has conducted over 275 mediations during the past 15 years. He is a fellow in the College of Labor & Employment Lawyers and the American Bar Foundation. His publications include the legal treatise Holloway & Leech, Employment Termination: Rights & Remedies (1985; 2d ed. 1995; Supp. 2002) and a lengthy chapter on "Partners & Minority Shareholders" for Illinois Institute for Continuing Legal Education. Mike currently serves as AAM's President-elect.

Steve Nelson practiced construction and surety law in Dallas, Texas for 19 years as the head of Winstead Sechrest & Minick's Construction Practice Group. He was the Chief Executive Officer of one of the largest commercial building contractors headquartered in Texas. He has been in the surety business as Executive Vice President & General Counsel of SureTec Insurance Company, and Chief Executive Officer of its sister company, SureTec Information Systems, Inc., since 2001. He has served as the Chair of the Construction Law Section of the Dallas Bar Association, the Construction Law Section of the Austin Bar Association, and the Construction Law Section of the State Bar of Texas. He is a Fellow of the American College of Construction Lawyers, a Fellow of the Center for Public Policy Dispute Resolution at the University of Texas, a Distinguished Fellow of the International Academy of Mediators, a Distinguished Credentialed Mediator by the Texas Mediator Credentialing Association, Past-Chairman of the Central Texas Chapter of the Association of Attorney-Mediators, and an Adjunct Professor at the University of Texas at Austin School of Civil Engineering, where he teaches a graduate course in construction industry dispute avoidance and resolution. Most of his mediation skills were developed by hunkering down with his son in a house with a wife and three daughters.

Liz Simon is a full-time mediator and arbitrator based in Chicago. . She was instrumental in helping to design the new elder law mediation rules for the Circuit Court of Cook County and she serves on the Mediation Committee for the Illinois Access to Justice Commission. Since 2006, Liz has focused her practice in the following three areas: labor and employment, commercial and family business disputes, and program design, and resolved hundreds of cases in both the private and governmental sectors. She was instrumental in creating and managing the Federal Aviation Administration's mediation program and has also designed dispute resolution programs for health care and graduate schools. Liz serves on a number of national rosters and organizations, including the American Arbitration Association, the National Mediation Board, and the National Academy of Distinguished Neutrals (NADN). She is also active on state and local rosters and organizations, and a frequent speaker on topics related to mediation and mediation advocacy. Liz trains mediators as part of a new statewide foreclosure mediation program, and she is a member of the adjunct faculty at Loyola University Chicago Law School, where she teaches Advanced Mediation Advocacy. Visit Liz's website at: www.adrsolutions3.com.

Ron Wiesenthal is a fulltime mediator and the owner of the St. Louis Mediation Center, LLC. He mediates disputes in the areas of employment, corporate law, real estate, commercial matters, probate and personal injury. Wiesenthal has been a mediator since 1991 and is licensed to practice law in Missouri and Texas. Ron is the Treasurer for the Association of Attorney-Mediators.

Thomas Woodrow focuses his practice on litigation matters, primarily complex product liability, toxic tort/asbestos, and commercial cases. He has handled and tried cases in several state and federal trial courts and has supervised and coordinated local counsel in numerous venues across the country. He also manages a toxic tort/asbestos docket of over 400 cases in Illinois. As an adjunct to his litigation practice, Mr. Woodrow has represented a major tire manufacturer as one of its primary settlement counsel for several years. The program that he helped design and implement for this client was awarded the CPR Center for Dispute Resolution's 2003 Outstanding Practical Achievement Award in the area of dispute resolution. He has attended hundreds of mediations and settlement conferences as settlement counsel, and has developed and implemented settlement strategies for complicated, multi-party cases. Mr. Woodrow has also written and spoken on the topics of product liability and settlement strategy. He has lectured and made presentations to a number of domestic and international organizations, including the ABA Dispute Resolution Section, the San Antonio ACCA Chapter, the CPR Center for Conflict Resolution, the International Academy of Mediators, the Danish-American Business Forum, and the Brazil-US Chamber of Commerce. Mr. Woodrow was selected in The Best Lawyers in America guide, Alternative Dispute Resolution; Mediation, 2005-2014. He was also noticed in the Chicago Law Bulletin as a Leading Lawyer for 2005-2007. He is a member of the American Bar Association and the Association of Attorney-Mediators.