



ASSOCIATION OF ATTORNEY-MEDIATORS

Newsletter

February 2006

“...to support and promote professional and qualified attorney-mediators who are committed to the proposition that the existing dispute resolution system can fulfill its intended purpose through the use of mediation.”

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ASSOCIATION OF ATTORNEY-MEDIATORS

P. O. Box 741955 • DALLAS, TEXAS 75374-1955 • PHONE: 800-280-1368 • 972-669-8101 • FAX: 972-669-8180
Website: www.attorney-mediators.org • Email: aam@airmail.net

Dear Colleagues:

FROM THE HEART

Before we became mediators we practiced law, and I confidently presume we enjoyed success most of the time. No doubt you have savored a particularly fine effort on your part by sharing it with others — a law partner, your staff, your spouse, your neighbors — telling, and retelling it. Perhaps it was your riveting cross-examination of the opposing party’s expert witness. Or perhaps your persuasive logic and research in an appellate brief found its way into the written opinion of the court. Maybe you saved your client a small fortune by deftly negotiating a settlement of a damage claim? Or maybe you treated a less accomplished or inexperienced attorney decently when he or she made a mistake.

Isn’t it part of our human nature to want to garner a bit of recognition — and approval — for a job well done! Self-reporting those high points in our performance usually brings positive feedback and perhaps a few “atta-boys;” (or “atta-girls,” as the case may be). It’s a momentary rush from having the ol’ ego stroked a bit. That’s the boost we sometimes needed to keep plugging away.

Now we mediate. Like me, you know that every case has at least one issue, or personality, or turning point that requires brilliance on the part of the mediator to keep the process going, prevent impasse, and bridge the gulf that separates the parties. Yet at the end of the day, a mediator is constrained from disclosing that job so well done by the various aspects of confidentiality that cover mediations. I hold firm to the tenet that confidentiality is at the very core of what makes mediation “work.” This means that I can “report” only that the parties settled all or part of their case or that they did not settle. There is no rehashing the “moves” with the attorneys involved; no recounting with fellow mediators the silliness, or sharpness, or sadness, or even savagery demonstrated by one person or another during a mediation; and certainly no focusing of the spotlight on self!

I know I’m not alone when I confess that I initially had some trouble with this imposed humility! The thing that is amazing is how quickly we get over it, when we begin to experience a much greater satisfaction in just being involved in the mediation

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process and seeing the participants identify and explore their options, realistically evaluate their cases, and, possibly successfully work through their barriers to resolve their cases.

PAST AND FUTURE

It has been a tremendous honor to serve as your president during the past year. The depth of resources and talent in the AAM membership is incredible, and being president has given me a wonderful opportunity to get to know many of you. Throughout the past year, we have continued to focus on enhancing AAM's national reputation and increasing the membership while maintaining the qualifications for membership that represent the highest standards.

AAM's Fall 2005 Seminar in San Antonio was outstanding. The excellent program put together by president-elect Skip Hulett provided the extraordinary training we have come to expect. Drawing on Skip's sports theme for that seminar, I think it is appropriate to say that everyone learned some new plays and went home winners.

Skip's continued hard work in planning the Spring 2006 seminar will be evident when you come to Little Rock March 31–April 1 for the terrific program he has put together. AAM's advanced mediator training seminars continue to be, in my opinion, the best in our field — training by fabulous presenters and great camaraderie.

We hold our Annual Meeting during the Spring Seminar. We will elect two new board members to replace outgoing members Sherrie Abney and John Dowdy. I sincerely thank them, as well as our other board members, Skip Hulett, Trey Bergman, David Kisner, Jim Knowles, Bob Hornberger, and Maynard Green, for their work, availability, and dedication!

Whether you are a charter member or have just joined AAM, you must know what an asset Brenda Rachuig is to this organization. Thank you, Brenda, for all you do for AAM and for being such a joy to work with!

I and the rest of the AAM board look forward to seeing you in Little Rock.

Sincerely,
Gayle Cipriano, *President*

AAM Welcomes New Members

We are pleased to announce the following new AAM members:

Hope Camp — San Antonio, Texas
Patricia Heil — Austin, Texas
Douglas Ketterman — San Antonio, Texas
Kirte Kinser — Dallas, Texas
W. Thomas McDonald — Bryan, Texas
Kim Munsinger — San Antonio, Texas
Enrique Pena — El Paso, Texas
John Stroud — Texarkana, Arkansas
Jay Vogelson — Dallas, Texas

We are also pleased to welcome **Kay Elliott** of Fort Worth, Texas, **Eric Galton** of Austin, Texas and **Herbert Rowland** of Novato, California, who have renewed their memberships after a period of absence.

We welcome you to the Association of Attorney-Mediators and look forward to your active participation within this organization! Please let an officer of a local chapter or the national board of AAM know what AAM can do for you and how you would like to become involved in AAM's activities.

Meeting in San Antonio

The Advanced Attorney-Mediator Training "Get Your Game in High Gear in San Antonio" held on November 11, 2005 was a huge success. One hundred three attendees, representing six states, attended the event and enjoyed our time together on the River Walk. The seminar was themed around basketball as we were in the home of the World Champion Spurs. Even the emcee wore his referee shirt and whistle to keep us on track! We were enlightened and entertained by very talented AAM members and learned new "body language" skills from professional speaker and body language expert, Patti Wood.

Standoff At the Big Bend

*John Dowdy, Jr., Arlington, TX
For the Committee*

In 2005, a select Blue Ribbon Committee (“the Committee”) was assembled for the purpose of organizing a “mini-CLE” at Fort Davis, Texas. Due to the popular acclaim which followed the June, 2005 event, the Committee has been under intense pressure to organize another such event. The Committee has been engaged in secret meetings behind locked doors in a clandestine location with instructions to plan for a similar event to take place in June of 2006. After a combination of four days of sleep deprivation and subsistence on a diet of saltine crackers and water, the Committee emerged with plans for “Standoff At The Big Bend” to take place June 8, 9 and 10 at Big Bend National Park. Further details will be made available at AAM’s Annual Meeting in Little Rock, March 31 – April 1, 2006 and on AAM’s website at www.attorney-mediators.org.

Newsletter Thanks

We owe special thanks to the law firm of Hunton & Williams LLP for compiling and mailing the newsletter, to Allen Butler for supervising his firm’s newsletter work, and to John Feather of Houston, Newsletter Committee Chair, for putting it all together. Thank you all for a great job!

Advanced Certified Mediators

AAM congratulates the following members who have achieved or renewed their Advanced Certified Mediator status for the 2006 year (as of this newsletter printing):

William Bonham
Bryan Coleman
Nancy Huston
Reed Leverton
Alvin Zimmerman

In order to retain Advanced Certified Mediator status, holders of the certification must submit renewal applications annually and comply with the Rules Governing Certification.

The AAM Board of Directors Introduces the President and President-Elect for 2006

JIMMY “SKIP” HULETT — PRESIDENT 2006

Jimmy “Skip” Hulett is a former Texas District Judge and has practiced law in Texas since 1983. He graduated with high honors from Lamar University (B.S. 1980) and received his law degree from Texas Tech School of Law (J.D. 1983). Skip has extensive experience in litigation, negotiation, and mediation. He presently serves as General Counsel for Goodman Networks, Inc. and “Of Counsel” with the law firm of Ball & Weed, P.C.

Skip is an Advisory Board member for Christian Unity Ministries. He is a past recipient of the Outstanding Young Lawyer Award and is a Life Fellow of the Texas Bar Foundation. Skip has served as Director of Mediation and Arbitration Services for Transitional Ministries and Director for the Texas Tech School of Law Alumni Association. He has always been active in the legal profession and has been a frequent speaker for continuing legal education seminars, civic organizations, and churches. Skip resides in Boerne, Texas, a suburb of San Antonio.

TREY BERGMAN — PRESIDENT-ELECT 2006

Trey has practiced complex commercial litigation since 1980 in Houston, Texas at all levels of state and federal court and is Board Certified in Civil Trial law by the Texas Board of Legal Specialization and a Credentialed Distinguished Mediator by the TMCA. Trey took basic mediation training from Steve Brutsche’ in Dallas in 1990 and has mediated hundreds of cases since then, while maintaining an active trial practice. Trey served on the faculty of the Attorney Mediators Institute from 1993 to 1997 training thousands of attorneys and judges across the United States, in England and in Turkey. He has also served as a past national and local Board Member of AAM and President of the Houston Chapter of AAM. Trey is a charter member of and serves as Chairman of the Houston Bar Association’s ADR Section and is a past Chairman of the Houston Bar Association’s Litigation Section. He 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 the state and the nation. Trey now devotes his practice exclusively to mediation and arbitration as a principal in the Bergman ADR Group and has been an adjunct professor at South Texas College of Law since 2002 teaching classes in mediation and negotiation.

CHAPTER NEWS

BEXAR/SAN ANTONIO CHAPTER NEWS

The Bexar/San Antonio chapter does not currently hold regular monthly meetings. We exist as an informal group for interacting from time to time and to advertise in the San Antonio Bar Association Directory and in the San Antonio Lawyer. We have added several new members recently. A project we are working on is a new member directory for the public and courts to use. For information, please contact William Lemons, Chapter President, at (210) 224-5079.

CENTRAL TEXAS NEWS

The Central Texas Chapter holds a monthly meeting at La Madeleine Café, usually on the second Friday of the month, at which members “catch up” with one another, ponder the complexities of the mediation “process,” and receive CLE credit. Our chapter is representative of the AAM membership as a whole in its great depth of mediation talent and knowledge. The Central Texas Chapter’s website address is www.aamctx.org. For information on chapter events, please contact Steve Nelson, Chapter President, at (512) 732-0099.

HOUSTON CHAPTER NEWS

Again this year, the Houston Chapter of AAM is joining with the HBA-ADR Section in providing breakfast meetings and CLE on the second Tuesday of every month providing hot topics in mediation. We are in the planning stage with the Houston Bar ADR section and South Texas College of Law, for a full day seminar on mediation. The date should be in May for this seminar. For more information please contact Houston Chapter President, Alice O’Neill at (713) 523-5402.

NORTH TEXAS CHAPTER

At the final meeting for 2005 on October 31, the North Texas Chapter elected the following officers for 2006: William

B. Short, Jr., President; Dale Crowder, Vice President; Susan Jensen, Secretary; and Paul Salzberger, Treasurer. We are currently planning a CLE program for presentation at a quarterly breakfast meeting scheduled for 7:30 a.m. on February 23 in the Community Room of the Chase Bank Building in Preston Center. The speaker and topic will be announced soon. At our last breakfast meeting on Halloween, the members committed to contribute \$1000 for hurricane relief through either (i) a program to be implemented by the State Bar of Texas ADR Section for providing Texas-based mediation services for hurricane victims or (ii) the Red Cross. At that “spooky” meeting we also were enlightened with a very interesting panel presentation by the Honorable Oswin Chrisman, Cecilia Morgan, and Gay Cox on the topic of “Mediation and Arbitration in the Collaborative Process.” All of us look forward to an active and fulfilling year. If anyone desires more information about the activities of or participation in the North Texas Chapter, please feel free to contact Bill Short at (214) 523-5129 or at wshort@fordnassen.com.

OKLAHOMA CHAPTER NEWS

For information on the Oklahoma Chapter and upcoming events, please contact Joel Carson, Chapter President, at (405) 946-8022.

ST. LOUIS CHAPTER NEWS

The St. Louis Chapter continues to hold monthly meetings to discuss current mediation developments and issues and to consider specific problems and questions the members have encountered. In addition, at each meeting, one of the members leads a discussion on a specific mediation topic (that qualifies for MCLE credit). Recent topics have included: Ethical Issues in Mediation; Campus Mediation at the University of Missouri-Columbia; Building a Mediation Practice; and Barriers to Settlement. For information regarding the St. Louis Chapter, please contact Richard Sher at (314) 721-1516.

The New Rules On Lawyer Advertising And How They Affect Attorney-Mediators

By Fred A. Simpson¹

The Supreme Court amended rules on lawyer advertising, effective June 1, 2005. The new rules result from "Referendum 2004," voted on by Texas lawyers. The full text of the amended rules appears in the May 2005 Texas Bar Journal (at 398), including interpretive comments approved by the State Bar Board of Directors.

I prepared a comprehensive review of just the changes in the rules (including changes in the comments). My full review is on the Internet at www.jw.com under "Publications."² The following is much narrower than the full review, however. I edited the full text to limit the scope to "advertising" typically used by attorneys who are mediators. Perhaps the following will help us examine our magazine advertising, listings in such registers as AAM, handouts, etc., and particularly what is included in our websites.

Now that the rules generally refer to *all* lawyer communications, including "solicitation communications" rather than just "written communications," and the use of cyberspace words such as "digital," "electronic," "website," "Internet," and "chat rooms" now appear rather frequently, it is appropriate for lawyers to consider the content of those types of materials, particularly in view of the filing requirements under Rule 7.07.

Arguably, attorney-mediators are not advertising their practice of law when they offer mediation services to the public. However, most contemporary magazine inserts I have seen show badges of legal competence³ of a nature that may defeat any such argument. It is likely that most cyberspace materials used by attorney-mediators contain the same type of inducing language.

Rule 7.02 Communications Concerning a Lawyer's Services

(a)(2) The definition of a false or misleading communication is expanded by a new subparagraph prohibiting a lawyer's "sponsorship" as well as the lawyer's own making of false or misleading communications of lawyer qualifications or services.

(a)(7) An actor or model may not be used to portray a client.

Revisions to the general comments on Rule 7.02 are worth quoting:

This Rule governs all communications about a lawyer's services, including advertisements regulated by Rule 7.04 and solicitation communications regulated by Rules 7.03,

and 7.05. Whatever means are used to make known a lawyer's services, statements about them must be truthful and nondeceptive.

(a)(1) . . . A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

(a)(2) and (3) [These subparagraphs] recognize that statements may create "unjustified expectations." For example, an advertisement that truthfully reports that a lawyer obtained a jury verdict of a certain amount on behalf of a client would nonetheless be misleading if it were to turn out that the verdict was overturned on appeal or later compromised for a substantially reduced amount, and the advertisement did not disclose such facts as well. Even an advertisement that fully and accurately reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case.

(a)(4) [This subparagraph] recognizes that comparisons of lawyer's services may also be misleading unless those comparisons "can be substantiated by reference to verifiable objective data." Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated.

The inclusion of a disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead a prospective client, but it will not necessarily do so. Unless any such qualifications and disclaimers are both sufficient and displayed with equal prominence to the information to which they pertain, that information can still readily mislead prospective clients into believing that similar results can be obtained for them without reference to their specific factual and legal circumstances. Consequently, in order not to be false, misleading, or deceptive, other

of these Rules require that appropriate disclaimers or qualifying language must be presented in the same manner as the communication and with equal prominence. See Rules 7.04(q) and 7.05(a)(2).

On the other hand, a simple statement of a lawyer's own qualifications devoid of comparisons to other lawyers does not pose the same risk of being misleading so does not violate subparagraph (a)(4). Similarly, a lawyer making a referral to another lawyer may express a good faith subjective opinion regarding that other lawyer.

(a)(5) [This subparagraph] prohibits a lawyer from stating or implying that the lawyer has an ability to influence a tribunal, legislative body, or other public official through improper conduct or upon irrelevant grounds. Such conduct brings the profession into disrepute, even though the improper or irrelevant activities referred to are never carried out, and so are prohibited without regard to the lawyer's actual intent to engage in such activities.

Actor Portrayal of Clients [added comment]

(a)(7) [This subparagraph] further protects prospective clients from false, misleading, or deceptive advertisements and solicitations by prohibiting the use of actors to portray clients of a lawyer or law firm. Other rules prohibit the use of actors to portray lawyers in advertising or soliciting lawyer's firm. See Rules 7.04(g), 7.05(a). The truthfulness of such portrayals is extremely difficult to monitor, and almost inevitably they involve actors whose apparent physical and mental attributes differ in a number of material respects from those of the actual clients portrayed.

Rule 7.03 Prohibited Solicitations & Payments

(f) As used in paragraph (a), "regulated telephone or other electronic contact" means any electronic communication initiated by a lawyer or by any person acting on behalf of a lawyer or law firm that will result in the person contacted communicating in a live, interactive manner with any other person by telephone or other electronic means. For purposes of this Rule a website for a lawyer or law firm is not considered a communication initiated by or on behalf of that lawyer or law firm.

The general comments to Rule 7.03 have been modified:

In many situations, in-person, telephone, or other prohibited electronic solicitations by lawyers involve well-known opportunities for abuse of prospective clients. Traditionally, the principal concerns presented by such contacts are that they can overbear the prospective client's will, lead to hasty and ill-advised decisions concerning choice of counsel, and be very difficult to police. The

approach taken by this Rule may be found in paragraph (f), which prohibits such communications if they are initiated by or on behalf of a lawyer or law firm and will result in the person contacted communicating with any person by telephone or other electronic means. Thus, forms of electronic communications are prohibited that pose comparable dangers to face-to-face solicitations, such as soliciting business in "chat rooms" or transmitting an unsolicited, interactive communication to a prospective client that, when accessed, puts the recipient in direct contact with another person. Those that do not present such opportunities for abuse, such as pre-recorded telephone messages requiring a separate return call to speak to or retain an attorney or websites that must be accessed by an interested person and that provide relevant and truthful information concerning a lawyer or law firm, are permitted.

Nonetheless, paragraphs (a) and (f) unconditionally prohibit those activities only when profit for the lawyer is a significant motive and the solicitation concerns matters arising out of a particular occurrence, event, or series of occurrences or events. The reason this outright ban is so limited is that there are circumstances where the dangers of such contacts can be reduced by less restrictive means. As long as the conditions of sub-paragraph (a)(1) through (a)(3) are not violated by a given contact, a lawyer may engage in in-person, telephone, or other electronic solicitations when the solicitation is unrelated to a specific occurrence, event, or series of occurrences or events. Similarly, subject to the same restrictions, in-person, telephone, or other electronic solicitations are permitted where the prospective client either has a family or past or present attorney-client relationship with the lawyer or where the potential client had previously contacted the lawyer about possible employment in the matter.

Rule 7.04 Advertisements in the Public Media

This rule is modified in sub-paragraph (b)(3) to delete the need for a lawyer to state "Not Certified by the Texas Board of Legal Specialization," or "No designation has been made by the Texas Board of Legal Specialization for a Certificate of Special Competence in this area," but substitutes the following:

[A lawyer who advertises in the public media] shall, in the case of infomercial or comparable presentation, state that the presentation is an advertisement: (i) both verbally and in writing at its outset, after any commercial interruption, and at its conclusion, and (ii) in writing during any portion

of the presentation that explains how to contact a lawyer or law firm.

The comments add to “**Examples of Prohibited Advertising**”:

The use of disclosures, disclaimers and qualifying information is necessary to inform the public about various aspects of a lawyer or firm’s practice in public media advertising and solicitation communications. In order to ensure that disclaimers required by these rules are conspicuously displayed, paragraph (q) requires that such statements be presented in the same manner as the communication and with prominence equal to that of the matter to which it refers. For example, in a television advertisement that necessitates the use of a disclaimer, if a statement or claim is made verbally, the disclaimer should also be included verbally in the commercial. When a statement or claim appears in print, the accompanying disclaimer must also appear in print with equal prominence and legibility.

Rule 7.05 Prohibited Written, Electronic, or Digital Solicitations

- (b) Except as provided in paragraph (f) of this Rule, a written, electronic, or digital solicitation communication to prospective clients for the purpose of obtaining professional employment:
- (1) shall, in the case of a non-electronically transmitted written communication be plainly marked “ADVERTISEMENT” on its first page, and on the face of the envelope or other packaging used to transmit the communication. . . .
 - (2) shall, in the case of an electronic mail message, be plainly marked “ADVERTISEMENT” in the subject portion of the electronic mail and at the beginning of the message’s text;
- (c) Except as provided in paragraph (f) of this Rule, an audio, audio-visual, digital media, recorded telephone message, or other electronic communication sent to prospective clients for the purpose of obtaining professional employment:
- (1) shall in the case of any such communication delivered to the recipient by non-electronic means, plainly and conspicuously state in writing on the outside of the envelope or other packaging used to transmit the communication that it is an “ADVERTISEMENT”;
 - (2) shall not reveal on any such envelope or other packaging the nature of the legal problem of the prospective client or non-client;

- (3) shall disclose, either in the communication itself or in accompanying transmittal message how the lawyer obtained the information prompting such audio, audio-visual, digital media, recorded telephone message, or other electronic communication to solicit professional employment, if such contact was prompted by a specific occurrence involving the recipient of the communication or a family member of such person(s);
- (4) shall, in the case of a recorded audio presentation or a recorded telephone message, plainly state that it is an advertisement prior to any other words being spoken and again at the presentation’s or message’s conclusion; and
- (5) shall, in the case of an audio-visual or digital media presentation, plainly state that the presentation is an advertisement: (i) both verbally and in writing at the outset of the presentation and again at its conclusion; and (ii) in writing during any portion of the presentation that explains how to contact a lawyer or law firm.

This new comment is added to explain the scope of Rule 7.05:

This Rule also regulates audio, audio-visual, or other forms of electronic communications used to solicit business. It includes such formats as recorded telephone messages, movies, audio or audio-visual recordings or tapes, digital media, the Internet, and other comparable forms of electronic communications. It requires that such communications comply with all of the substantive requirements applicable to written solicitations that are compatible with the different forms of media involved, as well as with all requirements related to approval of the communications and retention of records, concerning them. See paragraphs (c), (d), and (e).

Rule 7.07 Filing Requirements for Public Advertisements or Written, Recorded, Electronic, or Other Digital Solicitations

- (c) Except as provided in paragraph (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas no later than its first posting on the Internet or other comparable network of computers information concerning the lawyer’s or lawyer’s firm’s website. As used in this Rule, a “website” means a single or multiple page file, posted on a computer server, which describes a lawyer or law firm’s practice or qualifications, to which public access is provided through publication of a uniform resource locator (URL). The filing shall include:
1. The intended initial access page of the website. ►

2. a completed lawyer advertising and solicitation communication application form; and
3. a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be set for the sole purpose of defraying the expense of enforcing the rules related to such websites.

(e) The filing requirements of paragraphs (a), (b), and (c) do not extend to any of the following materials, provided those materials comply with Rule 7.02(a) through (c) and, where applicable, Rule 7.04(a) through (c). [an advertisement in the public media that contains only part or all of the following information:] (ii) the particular areas of law in which the lawyer or firm specializes or possesses special competence; (iii) the particular areas of law in which the lawyer or firm practices or concentrates or to which it limits its practice; (xi) other publicly available information concerning legal issues, not prepared or paid for by the firm or any of its lawyers, such as news articles, legal articles, editorial opinions, or other legal developments or events, such as proposed or enacted rules, regulations or legislation; (xii) in the case of a website, links to other websites.

[No filing is required] in the case of communications sent, delivered, or transmitted to, rather than accessed by, intended recipients, a newsletter, whether written, digital, or electronic, provided that it is sent, delivered or transmitted only to: (i) existing or former clients; (2) other lawyers or professionals; or (iii) members of [certain] nonprofit organization[s] . . .

Endnotes

¹ Fred A. Simpson is a partner in the Houston Litigation Section of Jackson Walker L.L.P.

² "What's New About The Rules On Lawyer Advertising?", published May 12, 2005.

³ "Board Certified in _____," or "Law Offices of _____," or simply "Attorney" or "J.D."

Nominees For Board Of Directors

You will be receiving your proxy 30 days prior to the annual meeting. Further nominations are welcome. Below are short biographical sketches of the nominees selected by your Nominating Committee:

COURTENAY BASS

Courtenay Bass is a full-time mediator and a charter member of AAM. She previously served on the Board of Directors and as the Secretary for AAM in the early 1990s. She has conducted almost 3000 mediations. Courtenay also has served as is an Adjunct Professor at the SMU School of Law in its Trial Advocacy Program. Courtenay was the 2004 recipient of AAM's Brutsché Award. She has been on the faculty of many trial advocacy and mediator training programs in the U.S. and elsewhere, such as 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 (NITA) mediation and ADR training programs. She also taught for many years with the American Academy of Attorney Mediators and the Attorney-Mediator Institute. Courtenay was the highest ranking graduate in her law school class at Baylor University in May, 1982 and graduated magna cum laude from Baylor in December, 1979. Courtenay is a lifelong resident of Dallas, Texas.

JOHN W. HUGHES

John W. Hughes is a sole practitioner. His practice is now limited to mediation and other forms of alternative dispute resolution (ADR) practices and methods. After completing mediator training in 1992 by Dispute Resolution Services of Tarrant County, Mr. Hughes and his staff have worked to mediate more than 2500 diverse cases. He is a problem solver and is known for his ability to find professional, creative and innovative solutions to conflicts. Having started and operated several companies in manufacturing, oil and gas exploration, and the marketing of industrial equipment and products, Mr. Hughes brings a unique perspective to the mediation process. His experience inside and outside of the courthouse allows him to deal effectively with business transactions, operations, and human resource conflicts from a legal and layman's point of view. In addition, Mr. Hughes is certified in Family Law Mediation by the Dispute Resolution Services of Tarrant County. John is a Certified Mediator by the Association of Attorney-Mediators. He was chosen by Fort Worth, Texas, the City's Magazine to be included in the Best Attorney Issues for 2001, 2002, 2003, 2004, and 2005 and was named a Texas Super Lawyer for 2003, 2004, and selected as a Top Attorney by the Fort Worth Business Press for several years. He was also selected by peers to be included in the 2006 edition of The Best Lawyers in America. John attended Texas Christian University and received his law degree from Baylor University School of Law in 1967.



Association of Attorney-Mediators

presents its

ANNUAL MEETING and ADVANCED ATTORNEY-MEDIATOR TRAINING

LEARNING FROM EXPERIENCE

Statehouse Convention Center — Ballroom A
Markham & Main — No. 1 Statehouse Plaza, Little Rock, Arkansas



FRIDAY, MARCH 31, 2006

12:00-12:30 Registration

Transportation from the Courtyard Hotel to the Statehouse Convention Center will be available by mini-bus provided by AAM.

12:30-12:45 Welcome & Opening Remarks

Gayle Cipriano, AAM National President
Robert Hornberger, AAM Board of Directors/Arkansas Member
Skip Hulett, AAM President-Elect

12:45-1:30 The Two-Minute Drill: 20 Tips in 40 Minutes on How Best to Conduct a Mediation

Ross Stoddard, Dallas, Texas

Some “Best Practices” for mediators are quite clear; others are a bit less apparent. In this fast-paced program, Ross will share his perspective on 20 different practical tips learned (most often, “the hard way!”) while conducting mediations full-time for the last 16+ years. The objective is to equip you with a set of ideas and approaches to use to become the most effective mediator that you can be.

1:30-2:15 Big Gun But No Bullets — A Mediator’s Use of Analogy to Illustrate and Inform

Louis Selig, Houston, Texas

First presented in New Orleans last year and back by popular demand, here are some “word pictures,” which are useful in helping litigants understand and accept complex, abstract or unfamiliar concepts, delivered in the contexts and with the purposes to which they apply.

2:15-3:00 How To Spot Deceptive Communication Through Observation

Reed Leverton, El Paso, Texas

When a mediator observes one of the participants exhibiting “unusual” non-verbal behavior — fidgeting, difficulty making direct eye contact, excessive blinking, etc, the mediator’s instincts alert to dishonesty. However, Reed will present current research which tells us that you have only about a 50-50 chance of being correct in your assumption. Reed will discuss five findings from Interpersonal Deception Theory that every negotiator or mediator should know to better gauge non-verbal behavior in the context of deception.

3:00-3:15 Break

3:15-5:00 Ethical Impasse Breaking Techniques — Interactive Session

Trey Bergman, Houston
Mike Amis, Dallas
Courtenay Bass, Dallas
Robert Hornberger, Fort Smith

This lively and completely interactive panel discussion will be devoted entirely to impasse breaking techniques and how to use them ethically. These panel members have the combined experience of more than 8000 mediations and more than 125 years practicing law. Come prepared to learn, to ask questions, to challenge and to be challenged.

5:00 Adjourn to Social Hour

Transportation from the Statehouse Convention Center to BOSCOS Restaurant and the Courtyard Hotel will be available by mini-bus provided by AAM.

5:30-6:45 Social Hour — Hosted by ADR, Inc., Arkansas' Distinguished Mediation & Arbitration Service**BOSCOS Restaurant & Little Rock Brewing Company**

500 President Clinton Avenue, Suite 105, Little Rock (across the street from the Courtyard Hotel)

SATURDAY, APRIL 1, 2006**8:30-9:00 Arrival & Continental Breakfast**

Transportation from the Courtyard Hotel to the Statehouse Convention Center will be available by mini-bus provided by AAM.

9:00-9:30 Annual Meeting**9:30-11:00 Revisiting Intercultural Conflict Styles and Their Effects on the Mediation Process**

Walter Wright, San Marcos, Texas

As in New Orleans last year, you will begin this session by completing a testing instrument. This year, you will complete the Kraybill Conflict Style Inventory. You will learn about the cultural aspects of your and others' conflict styles and how cultural differences can affect communication and negotiation in the mediation process. You will improve your cultural fluency, learn how to be a cultural bridge during your mediations, and enhance your ability to ensure the ethical treatment of all mediation participants, regardless of their cultural backgrounds.

11:00-11:15 Break**11:15-12:00 A New Approach to Appellate Mediation: The Crystal Ball**

Talmage Boston, Dallas, Texas

William "Bud" Arnot, Houston, Texas

How can mediators enhance their settlement success rate when asked to mediate a pending appeal? Easy — just incorporate into the process the communication of a non-binding opinion, delivered to the parties at the outset of the mediation, coming from a highly respected former appellate judge. This opinion can serve as a crystal ball showing them their likely future if they fail to achieve settlement at mediation. With this, appellate parties are far more likely to compromise their trial court result.

12:00-1:15 Luncheon — "A Funny Thing Happened on the Way..."

Vic Fleming, Little Rock, Arkansas

That the truth is stranger (and more humorous) than fiction cannot be denied. Fleming — traffic judge, humor columnist, documentary theme song writer, law professor, parent, husband and coach — explains how he came by so many titles. Or tries to anyway.

1:15 Adjourn

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We have applied for MCLE credit in Arkansas, Kentucky, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee and Texas. To request MCLE credit in other states contact Brenda Rachuig ASAP at (800) 280-1368 or aam@airmail.net.

Association of Attorney-Mediators Speakers March 31 and April 1, 2006

Mike Amis is an experienced trial attorney who is now a full-time mediator and mediator trainer. He is a co-founder, original board member, and former president of AAM. He has trained over 1,000 mediators and has conducted over 1,000 mediations. He is Board Certified, Civil Trial Law, Texas Board of Legal Specialization.

William G. (Bud) Arnot served on the 11th Court of Appeals of Texas for nearly 20 years, the last 11 as Chief Justice. He is now a shareholder in the Litigation and Appellate Practices section of Winstead, Sechrest & Minick, P.C., Houston, Texas. He served on the Board of Directors of the Appellate Judges Institute, and the Southern Methodist University Dedman School of Law; was an Executive Board member, Appellate Judges Conference, Judicial Division, ABA; former Chair of the Texas Judicial Conduct Commission; is a former president, Council of Chief Judges for the Appellate Judges Conference of the ABA; and was an adjunct professor at the Texas Tech Law School.

Courtenay Bass is a full-time mediator and a charter member of AAM. She has conducted almost 3,000 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.

Trey Bergman, principal in the Bergman ADR Group, is Board Certified in Civil Trial Law by the Texas Board of Legal Specialization, and has represented both plaintiffs and defendants since 1980 in various areas of complex civil litigation at all levels of state and federal trial and appellate courts. Trey has conducted hundreds of mediations since 1990 and trained over 5,000 attorney-mediators across the United States, Turkey and England. In addition to his mediation and litigation work, Trey is currently an Adjunct Professor at South Texas College of Law teaching classes in Mediation and Negotiation since 2002. He is currently on AAM's board.

Talmage Boston is a shareholder in Winstead, Sechrest & Minick, P.C.'s Litigation Section in Dallas, Texas. He is one of only 70 lawyers in Texas who are board certified in both Civil Trial Law and Civil Appellate Law by the Texas Board of Legal Specialization. Talmage served as the 2003-2004 Chairman of the Litigation Section for the State Bar of Texas and as the 2004-2005 Chairman of the Council of Chairs for the State Bar of Texas for which he received a State Bar of Texas Presidential Citation Award. He is a frequent and popular speaker on a variety of topics including electronic evidence, summary judgment practice, alternative dispute resolution, and consumer law.

Vic Fleming is in his tenth year as Little Rock's traffic judge. He also teaches law and literature at the William H. Bowen School of Law, writes a weekly humor column, and writes crossword puzzles. His

puzzles have appeared in such places as *The New York Times*, *Games Magazine*, and Random House Puzzle Books. Addressing various topics related to law, humor and writing, Judge Fleming has spoken to over 300 audiences in 15 states during the past 20 years. He is the author of two books, including *Real Lawyers Do Change Their Briefs*, and the editor of two. He is also the composer of a song that is featured (with him singing it!) in *Wordplay*, a feature-length documentary about crosswords that premiered at the Sundance Film Festival in January.

Robert Hornberger graduated from the University of Arkansas Law School and practices law in Fort Smith, Arkansas. He is currently a member of the Arkansas Alternative Dispute Resolution Commission; the Arkansas Bar Association, ADR Section; the ABA Section on Dispute Resolution; and the Arkansas Conflict Resolution Association. Robert is a Regulation Mediator with the National Association of Securities Dealers, an EEOC Contract Mediator and is trained in the United States Postal Service Redress Mediation Program. He has been an Adjunct Professor at the University of Arkansas. He is currently on AAM's board.

Reed Leverton is a former Texas District Court judge and is now a full-time mediator. He has a strong business background in commercial real estate development and securities. Reed is a Certified Advanced Mediator, Association of Attorney-Mediators; and a Certified Distinguished Mediator, Texas Mediator Credentialing Association. He is currently working on his LL.M. in Dispute Resolution from Pepperdine School of Law/Straus Institute for Dispute Resolution. Reed is also a part-time dispute resolution instructor at the University of Texas at El Paso

Louis Selig is a full-time attorney-mediator who, since his training in 1987, has conducted in excess of 2,500 mediations in Louisiana, Texas and many other states. He has also conducted basic and advanced mediator training, and has spoken at seminars both here and abroad. Before becoming a mediator, Louis litigated maritime and land-based injury and death cases.

Ross Stoddard is a full-time mediator and has conducted 3,000+ mediations in virtually all areas of law. He frequently presents programs for local, state and national mediation/ADR organizations. Ross is a charter director of AAM. He has served on the faculties of 35+ mediation/negotiation training programs throughout the U.S. and has trained 1,000+ attorneys and judges. He teaches negotiations courses in the Executive MBA Program at SMU.

Professor Walter Wright is an Associate Professor in the Legal Studies Program, Department of Political Science, Texas State University, and a past president of AAM. He has been mediating since 1986. Walter designed the ADR component of the Legal Studies Program at Texas State University; and has been an instructor at numerous mediation courses in the United States and Latin America. He has authored articles and book chapters on the subject of mediation. He is fluent in Spanish. Walter was the 2005 recipient of AAM's Brutsché Award.

AAM Website Members' Area Now in Operation

The "Members' Area" of the AAM Website has been up and running since last September. The "Members' Area" makes mediation forms available to members through the website. **To access the members' area, the user name will be the member's last name in lower case without non-alphabetic characters and the member's password will be the last four digits of the member's bar number plus aam. Example: 0045aam.** The website has also been moved to a new host, which should alleviate some of the technical errors experienced in the past.

Now is a good time to look at your biographical sketch on the AAM website. Has your information changed? Need an update? Do you want to add a photo or update your photo? Your photo can be sent in electronically, in hard copy or, if you have a photo on a different website, we can retrieve it from that site. Click on to www.attorney-mediators.org. To make changes to your website information, please email Brenda at aam@airmail.net or call 1-800-280-1368.

Add AAM's website link to your personal website! It increases priority and exposure for AAM and referrals for you!

To Do List:

- ✓ Register early for the AAM Advanced Mediator Training Seminar in Little Rock and make hotel reservations. Reservation deadline for the hotel's reduced rate is March 6, 2006.
- ✓ Update the national office with any changes to your address, phone, fax or email.
- ✓ Add AAM's website link to your law firm/mediation firm/personal website. It increases AAM's priority and exposure. www.attorney-mediators.org.
- ✓ TELL ONE COLLEAGUE OR FRIEND ABOUT AAM. Brochures are available for your circulation upon request to the National Office. (800) 280-1368 or aam@airmail.net.



ASSOCIATION OF ATTORNEY-MEDIATORS

P. O. Box 741955 • DALLAS, TEXAS 75374-1955