



“...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@attorney-mediators.org

Twenty Year Anniversary of the Texas ADR Statute

Achems Razor states that all things being equal, the simplest solution is probably the right one. The Texas ADR statute is a perfect example of this. It is brilliant in its simplicity and obviously the right solution when it was finally passed by the Texas legislature twenty years ago. **Justice Frank Evans** has earned the praise and thanks of mediators, lawyers, judges and litigants across the United States and in many foreign countries for his drafting and passing of this statute which has stood the test of time without modification. The Texas statute has also served as a template for many other states when drafting their own ADR statutes.

Steve Brutsche has similarly earned the praise and thanks of mediators, lawyers, judges and litigants across the United States and in many foreign countries for taking the Texas ADR statute and putting mediation to work. Steve Brutsche took the simple, yet brilliant statute drafted by Justice Evans and trained Texas lawyers and judges in the art and use of mediation. Steve Brutsche then established an institute through which lawyers could be trained as mediators and continue to spread the word and utilization of Justice Evans’ ADR statute. The formation of the Association of Attorney Mediators by Steve Brutsche almost twenty years ago was his gift to attorney-mediators everywhere to have a place where they could gather and share their views and experiences so the practice of mediation could grow.

Growth of AAM

Since its formation, AAM members have gone on to serve as Chairs of the American Bar Association Dispute Resolution Section, Chairs of the State Bar of Texas Dispute Resolution Section, Presidents of local bar associations, federal judges, state judges and law school faculty. In just the last five years alone AAM has held its Annual Meeting and advanced mediator trainings in such destination locations as Oklahoma City, St Louis, Little Rock, New Orleans, Santa Fe, and April 2008 in San Diego. Nationally acclaimed speakers have presented papers at all of these AAM conferences as well as spoken before the American Bar Association, numerous state bar conferences and in many foreign countries.

It is incumbent on all of us as members of the Association of Attorney Mediators to continue to foster the growth of mediation brought about by Justice Evans and Steve Brutsche. That is why AAM will continue its practice to invite area law students to all AAM conferences, whenever space permits. Through these actions and efforts by

PRESIDENT'S LETTER continued from page 1

its members, officers and board of directors, AAM has grown to over 300 members in 24 states, with our newest states being Massachusetts, Michigan and Mississippi.

Business This Year

A Strategic Planning meeting was held at the Annual Meeting in Santa Fe, with current and past board members, Brutsche Award winners, past presidents and many of the original AAM trainers in attendance. It was fascinating to hear the ideas and energy this group holds for AAM. Many thanks to outgoing board members Gayle Cipriano and David Kisner, who provided us with their invaluable insight and assistance over the last three years. We also welcome Robert Dietz and Joel Carson as incoming board members.

The new updated version of the AAM Grievance Procedure as adopted by the board at the Annual Meeting is posted on the AAM website. A special thank you to the committee, Maynard Green, Dean Kilgore, Allen Butler, for the countless hours spent working on this document until it was revised into its current form.

The board decided to continue the Annual Meeting in the spring at a destination location. AAM will also continue to keep the fall advanced mediator training in Texas, to be closer to the majority of its members for ease of travel, since this is a one day event. However, the board is considering moving the time of year for the fall CLE to late summer to avoid the saturation of the fall mediation CLE market. Your input on this decision is welcome.

The AAM voluntary Texas Lobby Fund continues to exist so that we may continue to have the legislative watchdog promised to all AAM members. A special thank you to all of you who have contributed to this "special" fund and allowed AAM to continue to lobby for mediation in Texas. AAM will continue to monitor legislation in other states and decide if it is necessary to expand this voluntary lobby fund to other states as well.

2008 Annual Meeting in San Diego

AAM will be traveling to San Diego, California April 4 and 5, 2008 for our Annual Meeting and Advanced Attorney-Mediator Training. As always, there will be well renowned local presenters as well as speakers from across the United States at this event. Once again, Brenda has selected a great hotel and meeting facility and planned many fun things to do, including a private yacht bay cruise luncheon on Saturday. Please visit the AAM website for more details as they become available.

Membership Suggestions

Please keep in mind that any comments or suggestions you would like to share can be sent to Brenda at the AAM National Office for inclusion in the board meetings. We need your input to continue to grow, improve and make this organization YOUR organization. Thank you for your dedication to serve others as a mediator and uphold the standards of the Association of Attorney Mediators.

I look forward to our time together in San Diego on April 4 and 5, 2008 when we can share ideas.

Best regards,

Trey Bergman
AAM President 2007-2008

AAM Welcomes New Members

We are pleased to announce the following new AAM members since the publishing of the last AAM newsletter:

Elizabeth Badger, *Kansas City, Kansas*
Stefanie Beninato, *Santa Fe, New Mexico*
Charles Cannon, *Austin, Texas*
John Delaney, *Bryan, Texas*
Jerome Diekemper, *St. Louis, Missouri*
Alfred Ellis, *Dallas, Texas*
Kathy Fragnoli, *Dallas, Texas*
Bretton Gerard, *Addison, Texas*
Harold Gold, *Garland, Texas (Returning AAM Member)*
Frost Haenchen, *Houston, Texas*
Robert Hammond, *Hattiesburg, Mississippi*
Barbara Kazen, *Santa Fe, New Mexico*
Joe Loving, *Dallas, Texas*
Jim McLeroy, *Sulphur Springs, Texas*
Dustin Ordway, *Grand Rapids, Michigan*
Don Philbin, *San Antonio, Texas*
Philip Renfro, *San Antonio, Texas*
Nate Roberts, *Richardson, Texas*
Dudley Smith, *Overland Park, Kansas*
John Trimble, *Indianapolis, Indiana*

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.

Interested in Joining or Starting A Chapter?

All AAM members in good standing at the national level are eligible to join an AAM Chapter in their locale. Chapters offer outstanding opportunities for networking, continuing education and input into AAM's direction. AAM national frequently seeks new leadership from the leaders of AAM's local chapters.

AAM's by-laws provide that a new chapter of AAM may be authorized by the board of directors upon the request of ten (10) members in good standing. AAM Chapters receive a 10% rebate of member dues annually to support Chapter initiatives. If you are interested in building the influence of attorney-mediators in your locale, consider forming a local chapter. Find out more about joining or forming a chapter by contacting Brenda Rachuig at toll-free 1-800-280-1368 or aam@attorney-mediators.org.

San Diego in the Spring!

The Association of Attorney-Mediators announces its Annual Meeting and Advanced Attorney-Mediator Training to be held in San Diego, California, April 4 & 5, 2008. Join us for education and fun in San Diego this Spring . . .

Southwest Airlines is now accepting travel reservations for April, 2008. Make your reservations early to get the best prices!

American Airlines will give our group a 5% discount for travel to and from San Diego. Enter "**Promotion Code A9448AS**" when booking your travel arrangements.

For ease in travel planning, the Annual Meeting and Advanced Training will begin on **Friday, April 4, 2008** at 12:00 noon. The training will end on **Saturday, April 5, 2008**, following our private **San Diego Bay Luncheon Cruise**. We will be returning to dock at approximately 2:30 p.m.



Hotel Information: Embassy Suites Hotel – San Diego Bay – Downtown; 601 Pacific Highway, San Diego, CA 92101; 619-239-2400 or 800-362-2779

Room block for Association of Attorney-Mediators with single/double rate of \$189 (plus tax) per night. Each hotel guest receives a complimentary, full, cooked-to-order breakfast and two hours of evening beverages daily. In addition, complimentary shuttle transportation is provided from the San Diego International Airport upon arrival and departure. Overnight parking at the hotel is \$28 per night. Room block is limited and expires March 4, 2008.

Membership Renewals

Membership renewal applications will be mailed in mid-December. They are due on March 1, 2007. You will receive an email confirmation when your application has been processed, together with information about your insurance coverage for the 2008 calendar year. If you have questions, call the AAM national office at 1-800-280-1368 or email Brenda Rachuig at aam@attorney-mediators.org. Let's get them all in by March 1!

MEDIATOR MISSTEPS AND PRATFALLS

David Cohen, Austin, Texas 2007¹

ADR, and mediation in particular, have expanded dramatically over the past several years. Perhaps not surprisingly, claims against mediators have kept pace. In most cases, the claims are without merit. Nevertheless, and especially when one of the parties to the mediation may be dissatisfied with the result or the process, a claim resulting in litigation or a grievance may well follow.

Quasi-judicial immunity is frequently invoked but may be of little protection, even in those jurisdictions recognizing it.² In addition, even with such immunity, a mediator may not be able to avoid state disciplinary or grievance procedures when pursued by a disgruntled party. And, of course, even if he or she successfully escapes liability, a mediator may nevertheless incur significant defense bills.

The following Missteps and Pratfalls are illustrative:³ The reader is invited to pick out where particular missteps occurred.

1. Family Law Matters

Post-Mediation Murder:

In 2006, in California, a mediator was sued by the estate of a wife stabbed to death by her husband. The divorcing couple

had met a week earlier at the mediator's office, without attorneys, for an initial session which ended peaceably enough. A week later, after the second session, which concluded in the evening, the husband left the mediator's office first, the wife remaining for around 20 minutes to speak with the mediator. Meanwhile, the husband went to his car and returned to the building with a pair of scissors ... and murder.

Badgley notes that the suit is still in its early stages and facts are being developed "regarding issues whether the husband had a history of and/or propensity toward violence, and whether the mediator had reason to suspect anything." He adds that some of the legal issues — perhaps of first impression — concern "the mediator's legal duty, if any, to maintain a secure premises or take other safety precautions for her clients." He also notes, "Many professional liability policies do not afford indemnity for bodily injury or death."

Mediator Neutrality:

In 1999, in New York, a couple retained a mediator to facilitate their separation agreement. The mediator proposed an initial separation agreement based on information provided by the husband's attorney and during a meeting with both parties without counsel. The mediator did advise the wife to retain her own counsel and gave her a list of attorneys qualified to render competent advice. The wife did so, and her lawyer advised her on various issues addressed in the draft separation agreement, including custody, support and division of assets. The parties executed the separation agreement proposed by the mediator and several months later a divorce decree was entered based on the separation agreement.

Six months later, however, the wife sued all the lawyers, including her own, and the mediator, claiming fraud, breach of contract, and professional malpractice against the lawyers, and the mediator's failure to act neutrally by merely presenting the terms of the separation agreement as dictated by her ex-husband. Notwithstanding her receiving advice from her own lawyer, the wife claimed that the mediator's negligence caused her to mistakenly agree to joint custody and to relinquish exclusive possession of the marital residence. The case was

¹ The following, informal comments are based on a breakfast seminar the author presented recently to AAM colleagues in Austin.

² Texas provides for qualified immunity of impartial third parties. Tex. Civ. Prac. & Rem. Code, § 154.055. The immunity, however, applies only to court-appointed mediators or to volunteer (i.e., unpaid) mediators selected by the parties and then only when the mediator "does not act with wanton and wilful disregard of the rights, safety, or property of another [for acts done] within the course and scope of his or her duties or functions as an impartial third party."

³ The following case summaries are based on material kindly forwarded to the author by Betsy Thomas with Complete Equity Markets, representing professional liability carriers, and prepared by attorneys Joyce Clough, Charlene Foss, and Robert A. Badgley with Lord, Bissell and Brook LLP in Chicago, who represent Lloyd's of London and other London market companies in insurance coverage matters involving ADR professional malpractice claims.

eventually dismissed against the mediator, but only after significant defense costs were incurred.

Mediator Authority:

We are not told the jurisdiction where this occurred. In 1999, a mediator was performing divorce mediation services for a couple, during the course of which the mediator — without the wife's express permission — filed a Default Judgment. The wife later contended that the action resulted in the elimination of her medical coverage, and she incurred medical insurance expenses as well as legal expenses to set aside the judgment. The wife ultimately succeeded in requiring the husband to provide medical coverage, but she sought damages from the mediator for her medical and legal costs. The mediator settled for several thousand dollars; and legal fees in the same amount were incurred in defense of the claim.

Mediator Role Confusion

This classic 1981 Missouri case, *Lange v. Marshall*, 622 S.W.2d 237 (Mo.Ct.App. 1981), is still relevant because it discloses the pitfalls mediators face when they confuse their proper roles in dispute resolution. The attorney here, a personal friend, acted as a mediator for a couple seeking a divorce. The couple had each asked him to represent them in the divorce, and he offered to mediate their divorce settlement. While negotiating, the wife, depressed, entered the hospital. Finally, while she was still in the hospital, the couple, with the mediator, reached an agreement on dissolution, and the mediator drafted the separation agreement. The wife signed the agreement the day she was discharged from the hospital, and the mediator filed the papers with the court the next day and a hearing on dissolution was held within a week.

While the judge was considering the matter under advisement, the wife had second thoughts, retained her own counsel, as did the husband, and the mediator withdrew from the case. The divorce proceedings were removed from submission with the court.

Thereafter, the husband and wife engaged in significant discovery, and ten months later, the divorce proceedings were resolved with a settlement much more favorable to the wife than the original (mediator-prepared) agreement. The wife

sued the mediator, claiming that he had failed to inquire into the husband's financial condition, failed to negotiate on her behalf for a more favorable settlement, and failed to advise her of her rights. She sought damages for loss of maintenance payments, rent, taxes, and legal fees, and obtained a \$74,000 jury verdict.

On appeal, the court held that the wife had failed to establish that the mediator's actions caused her damages, and reversed. Clough and Foss note, "Although the mediator ultimately escaped liability, he incurred significant costs to defend the lawsuit through a jury trial and subsequent appeal."

2. Commercial Law Matters:

More Mediator Role Confusion:

We are not told which jurisdiction this 2002 matter occurred in. A mediator was appointed by the court in an action brought by an attorney to recover legal fees from a former client. While the mediation was pending, the attorney filed a motion with the court to strike his former client's pleadings based on alleged discovery abuse. The attorney asked the mediator, and the mediator agreed, to ask the judge whether the former client's pleadings would be stricken — thereby obviously affecting the dynamics of the pending mediation. The judge indicated to the mediator that he would not strike the pleadings, but requested that the mediator keep that information confidential. Despite the judge's request, the mediator — believing that the attorney would not agree to a reasonable settlement if he was laboring under the belief that the client's pleadings might be struck — informed the attorney of the judge's preliminary decision. Later that day, the attorney and the client reached a settlement.

The attorney, after some time, spoke with the judge about his civil action, and then confronted the mediator, claiming that the mediator had misrepresented what the judge had said about his motion. He threatened suit against the mediator for the difference between what he obtained in settlement and what he sought in the original suit, \$57,500. In his defense, the mediator obtained an affidavit from the judge, confirming that he intended not to strike the former client's pleadings. The mediator also argued that he was protected by immunity. The attorney abandoned his claim after the mediator threatened a counterclaim and the pursuit of sanctions.

Mediator Neutrality:

We are not told in which jurisdiction this 2005 case occurred. The court appointed a mediator in a lawsuit between two companies, asserting claims against each other. The plaintiff company's insurer also attended the mediation. The plaintiff company left the mediation, but the other, defendant company, and the plaintiff company's insurer remained and continued the mediation, reaching a settlement of part of the dispute. The plaintiff company sued the mediator, claiming that he improperly continued the mediation and conspired with the other parties to prejudice its rights. The trial court granted the mediator's summary judgment motion, holding that the court-appointed mediator enjoyed quasi-immunity. That ruling is on appeal. The mediator has incurred substantial defense costs.⁴

Confidentiality Breach

In this employment case, a power company and an employee lineman claiming to have endured verbal abuse engaged a mediator. Shortly before the mediation, the company requested that the lineman submit to a medical examination to be evaluated for his mental and physical fitness. The employee authorized the doctor to furnish his medical records and reports to the mediator only. The mediation was held, and the next day, the company informed the employee of its preliminary decision that he was not fit to return to his job as a lineman.

The company then requested the employee to submit to a psychological evaluation, which he did. Based on that report, the company permanently removed the employee from his lineman duties. The employee challenged the company's determination but was unsuccessful in his efforts to return to his former job.

⁴ Steve Nelson specifically commented at our breakfast seminar about this case. He noted that he frequently mediates multi-party construction disputes in which some, but not all, of the parties often want to slog on, seeking to resolve the matter as between them while those not agreeing ask to leave the mediation. He noted that he always begins such mediations with the caveat that, as the mediation develops throughout the day, the foregoing situation may arise and he asks if anyone objected to his continuing under those circumstances. If anyone so objected at the beginning of the mediation, Steve said that he would adjourn the mediation then and there. If no one objected at that time, however, then — if the foregoing situation arose — he would continue in an effort to resolve as much of the dispute as possible with the remaining parties — even if the departing parties' interests might be adversely affected thereby.

He then obtained a copy of the psychologist's report, which made reference to the confidential medical information derived from the examination held prior to the mediation. The employee contended that he had not authorized the release of this information to anyone other than the mediator and certainly not to the psychologist.

The employee sued the mediator, the employer, and others, alleging breach of confidentiality as to his medical records, invasion of privacy, professional negligence, and intentional infliction of emotional distress. He claimed that the mediator improperly disclosed medical information at the mediation to his employer and later to the psychologist. The employee demanded \$100,000 to settle with the mediator and threatened to amend his Complaint to allege that the mediator maliciously failed to recuse himself when he possessed information adverse to him which was not disclosed to him. The case settled for an undisclosed sum. Defense costs were substantial.

3. Grievances***Strong Arm (or empty head) Techniques***

i. In 1992, the Florida Supreme Court adopted Rules for Certified and Court-Appointed Mediators. This mediator, in 2002, evidently didn't read them. In trying to persuade the plaintiffs to accept a settlement offer, he told them they were "too poor" to take their case to trial, and addressed them as "spoiled brats" and "poor slob" who would "never be recognized in court." He told them that the settlement offer was reasonable and when they stated that they did not wish to settle, he refused to end the mediation. The Review Committee found probable cause to establish violation of several Rules, including failure to remain impartial and to terminate the mediation when requested to do so. The mediator agreed to suspend his practice until he had completed 20 hours of training.

ii. In a 2001 case in Florida, a couple was grappling with what to do with several frozen embryos in the divorce. The court referred the couple to a mediator, who led them through a lengthy marital settlement in which the wife reluctantly agreed to destroy the embryos. She then sought to set aside the agreement on the grounds of coercion and duress by the mediator.

She alleged that the mediator told her that a court would not require her husband to pay child support if she were impregnated with the embryos after the divorce. She also alleged that the mediator predicted that the judge would not award her custody of the embryos but would order them destroyed. Later, the mediator allegedly became frustrated with the proceedings, walked into the wife's caucus room, threw papers on the table and announced, "that's it, I give up!" The mediator reportedly told her that if no agreement were reached, he would inform the judge that the mediation failed because of her. He also purportedly told her that the husband's pensions were worth only \$200/month, even though no investigation had been performed as to their value, and he predicted that she would spend at least \$70,000 in fees if she contested the distribution of this meager amount of money. Finally, the wife alleged that the mediator, during the eight-hour mediation, repeatedly informed her that he had a prior engagement with his family that was more important, and therefore, the parties would have to expedite the proceedings — all of which, the wife contended, resulted in her signing the agreement.

The trial court denied the wife's motion to set aside the agreement. The appellate court, however, reversed, holding that it would be unconscionable to enforce a settlement agreement reached through coercion or any other impermissible tactics utilized by a court-appointed mediator, and remanded for a determination as to the mediator's misconduct, which, the court opined, might have violated the Florida Rules [do you think???].

Conclusion

There are many opportunities for ADR professionals to make mistakes — the principal ones being: breach of confidentiality, confusion of the proper role of a mediator, strong-arm tactics and lack of respect, and just plain stupidity. Even if malpractice insurance coverage is available, which it may not be in certain circumstances, the mere act of being sued will inevitably result in loss of income (for the deductible alone), the loss of reputation, and the possible filing of a grievance for which malpractice insurance coverage may afford no protection.

AAM Texas Lobby Report

Thanks to your commitment and generosity, AAM members in Texas have a presence in the legislature. By law, the State Bar ADR Section and local bar sections cannot engage in lobbying activities. AAM is the only organization of ADR professionals with a presence in the legislature expressly intended to preserve and protect the integrity of the mediation process. We will work closely with our lobbyist during the session to identify any actions which may impact mediation. You are welcomed and encouraged to notify us of any matters of interest.

AAM is a national organization with members in twenty-four states. AAM membership dues cannot be used for local lobbying efforts. Lobbying efforts must be supported wholly by voluntary contributions. Your fellow Texas AAM members have made AAM's presence in the Texas Legislature possible. We owe them a debt of appreciation. **We extend a special thank you to the Central Texas Chapter of AAM for their generous donation to this fund.**

Contributors for the last legislative session are:

Abrams, Jeffrey (Houston)	Maxwell, Larry
Amis, Mike	McDonald, Tom
Bass, Courtenay	McMullan, Cheryl
Bergman, Trey	Mighell, Kenneth
Central TX AAM	Mitchell, Thomas
Coleman, Bryan	O'Toole, Austin
Curry, Michael	Patterson, Mike
Davis, Sid	Pfeuffer, Robert
Dowdy, John	Reynolds, Gary
Estes, John	Rodnick, Amie
Graham, Samuel	Salzberger, Paul
Greenwood, Jim	Seay, Michael
Hale, Earl	Selig, Louis
Hughes, John	Stoddard, Ross
Hulett, Skip	Towns, William
Huston, Nancy	Wilk, Michael
Hutchison, John	Wolovits, Mel
Jordan, Charles	Wooley, Jeff
Kilgore, Dean	Wright, Walter
Knowles, Jim	Zimmerman, Alvin

Donations to the AAM Texas Lobby Fund may be made by check or credit card. Contact AAM Executive Director, Brenda Rachuig at 800-280-1368 or by email at aam@attorney-mediators.org.

CHAPTER NEWS

AAM currently has chapters in several locations. Some of these meet on a regular basis, offering members CLE credits. Several meet in conjunction with their local bar ADR section. Contact your local Chapter President for more information and to see how you can get involved.

CHAPTER PRESIDENTS — 2007

Bexar Co. (San Antonio) Chapter

William H. Lemons
William H. Lemons, P.C.
4040 Broadway, Suite 616
San Antonio, TX 78209

P: (210) 224-5079
X: (210) 224-5091
whlemons@satexlaw.com

Central Texas Chapter

David Moore
Lakeside Mediation
3825 Austin Lake Blvd. Suite 403
Austin, TX 78703

P: 512-477-9300
X: 512-477-9302
david@lakesidemediation.com

Houston Chapter

Alice O'Neill
Law Office of Alice O'Neill
1529 Heights Blvd.
Houston, TX 77008

P: (713) 523-5402
X: (713) 523-5295
aoneill@oneilladr.com

North Texas Chapter

Melvin Wolovits
9400 N. Central Expressway, Suite 419
Dallas, TX 75206

P: (214) 373-3777
X: (972) 407-8350
mel@mediatenegotiate.com

Oklahoma Chapter

Joel L. Carson
Attorney-Mediator
3555 NW 58th St., 5th Fl
Oklahoma City, OK 73112

P: (405) 946-8022
X: (405) 942-8362
jlc99@flash.net

St. Louis Chapter

Richard Sher
Devereux Murphy LLC
190 Carondelet Plaza, 11th Floor
St. Louis, MO 63105

P: (314) 721-1516
X: (314) 721-4434
rsher@devereuxmurphy.com

To Do List:

- ✓ Renewals for the 2008 Calendar Year are due in the National Office of AAM by March 1, 2008. Complete and mail yours today!
- ✓ Register early for the AAM Advanced Mediator Training and Annual Meeting scheduled for San Diego, California and make hotel reservations.
- ✓ Texas AAM members — lobby fund contributions are still being accepted. Send yours in today!
- ✓ Update the national office with any changes to your address, phone, fax or email. Add a photo to your website bio.
- ✓ 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@attorney-mediators.org.

Brutsche' Award Recipient

The Brutsche' Award is a very special and prestigious award "Given to the person(s) personifying the principles of service and commitment to the profession that are the foundation of the ADR movement." Congratulations to Ross Hostetter, the 2007 Brutsche' Award Recipient. Ross is currently of Boulder, Colorado, formerly of Dallas, Texas. Ross has trained over 1,000 mediators and has been recognized as a "Master Mediator" by Pepperdine University Law School. Special thanks to Ross for all he does for AAM and the mediation profession!

Advanced Certified Mediators

In order to retain Advanced Certified Mediator status, holders of the certification must submit renewal applications annually and comply with the Rules Governing Certification. Please email Brenda Rachuig at aam@attorney-mediators.org for an application and copy of the rules.

Newsletter Thanks

We owe special thanks to the law firm of Hunton & Williams LLP for compiling 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!

Santa Fe — Memories in the Making

One hundred twenty-five AAM members, and others, had a wonderful time in Santa Fe during AAM's Annual Meeting and Advanced Attorney-Mediator Training. The cocktail party was enjoyed by all with forty seven spouses/significant others joining the group. It was a great time to meet, mingle and share!

The weather held some surprises, running the gamut from thunderstorms with hail, to awakening on Saturday morning with a lovely covering of snow on the balconies, rooftops and mountains. A truly beautiful sight! By Saturday afternoon, the sunny and crisp air was perfect for strolling through the quaint downtown area and Canyon Road shops.

Our luncheon on Saturday was both educational and entertaining as the **Tewa Dancers from the North** set their storytelling to music, with traditional dance from the San Juan Pueblo. This particular group made the 2004 documentary film "**Dancing from the Heart**". A special thank you to the family of Andrew Garcia of Ohkay Owingeh/San Juan Pueblo, New Mexico, and his family dance group, the **Tewa Dancers from the North**. We were truly entertained by this vibrant young family and the smallest "baby" Tewa Dancer that warmed our hearts with his dancing spirit!

A special thank you to our presenters for the two day event including Dr. Robert Moats of Austin, Walter Wright of Austin, Robert Dietz of Orlando, Ross Hostetter of Boulder, John Rothman of Tulsa and Peter Merrill of Santa Fe, with his panel members; Scott Vivian, of Riverside, California and R. Lar Thomas of Peralta, New Mexico.