



Association of Attorney-Mediators

AAM-a-gram

December 2011

“...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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Honoring the Past, Celebrating the Present and Looking to the Future

As President of AA-M, one of my duties is to write the President's remarks for the newsletter. In my preparation for doing so, I, like many of my predecessors, read past issues and past Presidential remarks to enlighten me with the words of wisdom that have been shared by our past leaders. It seems that most, if not all, Presidential comments have included the following:

- (1) Expressions of appreciation for the opportunity and high honor of serving as the President of AA-M coupled with the fervent hope that he/she is worthy of the task;
- (2) Sincere thanks to all our AA-M members, along with the officers and members of the Board of Directors, the speakers and other contributors to the Annual Meeting and Fall Seminar, and especially to Brenda Rachuig (without whom none of this would be possible) – all of whom combine to make the President's job so rewarding;
- (3) Validation of AA-M as THE premier organization for attorney-mediators nationwide along with all of the reasons why that is so (see number (2) above);
- (4) A nod to the AA-M founders starting with Steve Brutsche' who, in 1990 (more about that later) had the foresight to imagine the innovative new organization that came to be known as AA-M; and
- (5) A look forward to AA-M's continued growth and service to its members, both nationally and through the enthusiasm of its local chapters.

I acknowledge, echo, “ditto” and give a joyful “thumbs up” to all of those remarks and observations of my predecessors. I could do no better and won't even make an attempt to do so. I do, however, have a couple of remarks and observations of my own to share with you.

First, I'd like to clarify the misconception about the date of AA-M's founding. Yes, the idea, the twinkle-in-the-eye that eventually gave birth to AA-M was conceived by Steve Brutsche' and others in 1990. But, the Articles of Incorporation were not filed until March 14, 1991. So we were not officially “born” until then.

(continued on Page 2)

This means that we missed celebrating a milestone – our big 2-0 birthday in New Orleans last March. It was a cause for celebration that I let slip by un-noticed and unacknowledged. I suggest that we make up for that at our Annual Meeting this spring in Chicago. We can then celebrate our twenty-first birthday, our coming of age, and like all twenty-one year olds, look forward to the future with that “there’s no stopping us now” optimism that always accompanies that great event.

Next, as we celebrate where we’ve been on our twenty-first birthday, I want us to take a hard look on where we’re going. No organization can continue to be dynamic without seeking to embrace change. If we are to remain relevant to our members and to those we serve as AA-M mediators, I believe that we must acknowledge the need to be more inclusive, and to be open to new, innovative ways to practice our profession. I believe that we must actively recruit and seek out all of those potential AA-M members who, while they embody the high professional standards that AA-M has always demanded, might be different from the “profile” of our members today or, indeed, from the “profile” I have seen since I became a member in November, 1991.

Our replacements – those AA-M members who will be celebrating AA-M’s Golden Anniversary – need to be courted by us now so that in the years to come there will be a more diverse roster of AA-M mediators to serve a diverse society still in need of conflict resolution (some things never change). In other words, we need to continue to be relevant. Relevancy will demand that we actively recruit and listen to our replacements – replacements who will be younger attorney-mediators, replacements who will, for certain, have to include more women (at present, women make up more than one-third of the Bar and well more than half of all law school enrollment – not so in AA-M) and replacements who will reflect the racial and ethnic diversity of our society.

My challenge to all of us then as we come of age, is that, starting today, each of us gives some thought to finding those bright, innovative enthusiastic diverse attorney-mediators who will stand up at AA-M’s Golden Anniversary having lived up to the high standards that have always been AA-M’s hallmark, while bringing to our organization some principled innovations of their own.

As for those of us who will be celebrating our coming of age in Chicago, I doubt that many of us will be around to celebrate AA-M’s fiftieth. However, if we meet our challenge to remain relevant, we can be assured that we will have left a noble heritage upon which our replacements can build.

Like all of my predecessor’s, I will close my musings by reiterating that it is truly an honor and a privilege to serve you and AA-M. I hope I am worthy of the task.

Suzanne

It's Membership Renewal Time

Chicago Here We Come!

Traditionally we have had our Annual Meeting in February or March. Fortunately, our Bylaws allow us to have our Annual Meeting as late as May 10. Therefore, we were able to schedule a trip to Chicago for our Annual Meeting and Advanced Attorney-Mediator Training. **May 4 & 5, 2012** will be our time in the Windy City. We will be staying at a grand historic hotel, the Millennium Knickerbocker Hotel at 163 East Walton Place at North Michigan Avenue, which is within walking distance to restaurants, sightseeing, shopping and so much more! In addition, for those that are baseball fans, the Cubs will be in town. **Bill Lemons** will be putting into place a great program for our time together. We will have a reception on Friday early evening, May 4, for one hour following the conference with spouses and guests invited to join us in the penthouse level meeting venue. We will, once again, offer an “after” seminar on Saturday, just after adjournment, for those wishing to attend without CLE credits – the topic will be marketing or psychological information, which topics are not easily accredited by various state bars.

Keep your fingers crossed for an early thaw and make those reservations to join us in Chicago! Registration will be available online as well as through the AAM National Office. Information will be available soon. [Click here to book online for the Millennium Knickerbocker Hotel](#)

Longing for the Good Old Days at Renewal Time?

So many members. . . so many opinions. The new, functional AAM website is up and working. Over one hundred members have renewed online as of the printing of this newsletter!

Some of you will only tackle a portion of this – desiring to send in the paper form by U S Mail. Others don't want any part of this new website or logging in or updating. Guess what? **We are open to all of these avenues for renewing your membership.**

The website gives the capability to pay your dues online by credit card or to indicate you will be mailing a check. Our goal is to make the online renewal process as easy as possible. The feedback received indicates setting up the password is the hardest part. Brenda is available to help you with this process. She will set up a password for you to make login easier and will walk through the renewal process with you. She will also process your paper renewal forms as in the past. Send an email [to aam@attorney-mediators.org](mailto:aam@attorney-mediators.org) or call the AAM office at 972-669-8101 for assistance with the Membership Renewal process for 2012.

?????????? Need Help With the New AAM Website? Brenda is available to help!

San Antonio AAM Member Launches Mobile App to Map Out Negotiations

San Antonio AAM Member, **Don Philbin**, has been working for three years to give your legal pad a run for its money! He has created Picture It Settled, an invaluable tool for your daily negotiations. See the full article here:

<http://www.bizjournals.com/sanantonio/blog/2011/12/san-antonio-lawyer-launches-mobile-app.html?ed=2011-12-01&s=article du&ana=e du pub>

Several AAM members have uploaded this app and are enjoying its use. Mediators can plug in information on dollar moves and time intervals between offers, and the app creates an infographic of possible outcome scenarios — all based on data collected from past cases. To find out more about Picture It Settled visit www.pictureitsettled.com.

Way to go, Don!

AAM's Growth Continues – Welcome New AAM Members!

We are pleased to announce the following new AAM members (as of this publishing):

Ardery, Samuel; *Bloomington, IN*

Arroyo, Robert; *Chicago, IL*

Black, Richard; *Morris, IL*

Casey, James; *Evansville, IN*

Chatz, James; *Chicago, IL*

Henson, Tom; *Tyler, TX*

Marks, Howard; *Chicago, IL*

Martin, Kevin; *Chicago, IL*

McClendon, Montgomery; *Lubbock, TX*

Miller, Valarie; *Bulverde, TX*

Ordower, Peter; *Chicago, IL*

Pipal, Faustin; *Chicago, IL*

Rowley, Marty; *Amarillo, TX*

Siegel, Marc; *Chicago, IL*

Wallace, Robert; *Chesterfield, MO*

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.

From May 1965 Texas State Bar Journal, page 393:

"POLITE ENUNCIATION - 'My son,' said the old lawyer, 'never speak unkindly of a price cutter - never knock them. Because God made them the same as he made crabs, fleas, lizards, ants, snakes, roaches, and other unpleasant things. In His inscrutable wisdom He made them. Why He made them, only He knows. Some day He may enlighten us . . . but up to now, I'll be damned if I can understand why He did it."



Thanks to Mike Amis for this contribution.

A Big Day in Big D

The Wyndham Dallas Love Field was a lovely venue for AAM's one day Advanced Attorney-Mediator Training. We heard from newer mediators and those more seasoned mediators with tips for our practices and our daily mediations. Clients of mediation gave us insight into their expectations of the mediator and mediations. **Francis "Hank" Raucci** and **Walter Wright** compared state requirements for mediation. **Mike Gregory** from the North Texas Chapter gave us insights into Effective Negotiation Strategies & Techniques and **Robert Harms Bliss** enlightened us on the Creative Use of Mediation in Real Property and Foreclosure Disputes. **Kay Elliott** and "assistants" put on a creative workshop with teams putting their decisions into a final workup for attendees.

We were honored to have **Robert "Bob" Black** talk with us at lunch. Bob is the President of the State Bar of Texas and the first mediator to take that role. Guest speaker, **"Buzz" Rochelle** gave us helpful information on Mediation in a Down Economy. Sid Stahl moderated a panel of "newer" mediators with the audience enjoying their feedback and insights on the mediation world today. Special thanks to this panel of upcoming "greats" **Laura Coe, Ami Desai, Gene Roberts, John Shipp and Len Wade.**

The day ended with mediation consumers trekking through Dallas Friday afternoon traffic to share their thoughts on their expectations – and keeping our ethical standards in check. Thank you to **Greg W. Curry, Dallas, TX** (active in the Texas Association of Defense Counsel), **Melissa Hinman, Dallas, TX** (Chubb & Son Insurance Adjuster), **Bob Robinson, Irving, TX** (General Counsel, BancTec, Inc.), **Yona Rozen, Dallas, TX** (noted Plaintiffs' lawyer) **Rodney Toben, Dallas, TX** (Vice President, American Arbitration Association).

Let's Not Forget

Article 9, Section 9.1, of the AAM Bylaws specifically requires that all local Chapter Members must be members of the national Association of Attorney-Mediators.

A Preparation Checklist to Promote Effective Mediations

By: Joseph H. Yastrow, Chicago, IL

1. Provide a concise, credible opening statement or pre-mediation submission that lays out your key facts and legal arguments. This will help the mediator “digest” your case. If your statement or submission is too lengthy or slanted, the mediator will be less likely to understand or believe your case.
2. Give the mediator some ammunition. Include in your submission an analysis of the major flaws in the opposing party’s case as well as what you believe the opposing party will say when confronted with those flaws. In so doing, you will arm the mediator with information that can help him/her create doubts in the other party’s mind. NOTE: If there is no pre-mediation submission or if the pre-mediation submission is being exchanged with the other side, you may want to hold back some of this information and present it privately to the mediator during the course of the mediation.
3. Consider providing the mediator with a one or two page time line that summarizes the key facts and procedural history that have transpired up to the point of the mediation. This, along with an effective pre-mediation submission, will ensure that a disproportionate amount of the mediation is not consumed with educating the mediator about the facts and procedural history of the dispute.
4. Provide and/or be prepared with a thorough analysis of damages and other potential relief in the case. The mediator will be in a much better position to work effectively with the parties if he/she has a firm grasp on the range of remedies at the outset. Always give careful thought to potential forms of non-monetary relief that may help resolve your dispute.
5. Work with the mediator in advance to structure a process that makes sense given the particulars of your case and the parties involved. Try to eliminate as many process issues as possible before the mediation begins.
6. Make sure that your bottom line settlement authority is firmly established and “locked in” before the mediation begins, and, unless it is impossible to do so, have the person with final settlement authority present at the mediation. The goal is to avoid negotiating the settlement on multiple levels during the mediation whether your client is an individual or a corporate or public entity.
7. In determining who should attend the mediation, less is more. Try to limit yourself to people with full knowledge of the facts, final settlement authority and who are not emotionally involved (other than the claimant) in the dispute. On the defense side, individuals with prior mediation/negotiation experience are more likely to promote resolution. Also, since many employment cases involve employment practices liability insurance (epli), defense counsel must carefully consider the role of the carrier representative where such coverage exists. In many jurisdictions the carrier is considered a “client” of defense counsel, and most epli policies give the carrier control over the defense and require its approval of any settlement. If the claimant is aware of the existence of the policy, the carrier representative should definitely attend. If not, arrangements should be made to ensure the carrier representative is accessible and “on board” with any agreement that is reached.
8. Take time to thoroughly prepare your client as to the mediation process, the merits of the case and what you expect from him/her during the mediation. Effective management of client expectations is critical to a successful mediation.

9. Craft your strategy for the mediation around the available time. Make sure you have a clear idea of any time constraints and factor them into your approach. You should have some benchmarks in mind as to where you hope to be at various stages of the process.
10. Always bring a draft settlement agreement to the mediation unless you have a laptop with the agreement accessible on it. Ideally, you may want to have several different versions available to facilitate prompt documentation of any agreement that is reached. It is a big mistake to leave a successful mediation without thoroughly documenting the details of the settlement.
11. Keep the mediator informed and engaged through the final implementation of the settlement terms, and don't hesitate to call upon the mediator to assist the parties if problems arise.
12. Encourage and promote civility at every step of the process. Successful mediations depend upon effective communication, negotiation and problem solving. This is most likely to occur where an atmosphere of respect is maintained. Inevitably, the parties will confront significant areas of disagreement, but they need not do so in a confrontational manner. The ability to be forceful without being disrespectful (the "fist inside the velvet glove") is a valuable skill in this context. Moreover, there is a significant likelihood that you will encounter the mediator and opposing counsel again in the future, and your ability to deal effectively with them will be influenced by their previous encounters with you.

Take a Look – New Website Rich with Features

The new AAM website gives us many new features – not just the ability to renew your membership online. The membership renewal period began with a flurry on December 1. The good comments so far have outweighed the bad, and the number of renewals outnumber those at this time in previous years. Brenda says she "feels like she has an assistant", so this must be a good thing! Thank you to everyone that tried the new online membership renewal system!

The new "**Chapters**" tab allows each AAM Chapter to have its own home page. This home page will feature pertinent information such as officers, meetings and other information for their region. Announcements of upcoming events will be placed on the Chapter page as well. The Chapter Presidents are working to get this information in place.

Members may update their **profile information**. The "content" fields allow so much more information than the old website. The **Other Qualifications** section that allowed only five lines before can now hold five paragraphs or more. You are able to copy and paste your resume information into this section.

The Members Only area allows AAM to share information with you in real time – **information to keep you up to date**. Non-members are not able to access

this area. Current year insurance information will be posted in the Members Only area, as well as information for filing a claim – should that need arise. There are forms for suggested member use and any "breaking news" will be put in this area for members to stay informed.

We now have a **Members Only Forum** – have a question? Ask on the forum and other members can offer you their advice.

For those colleagues of yours that want to join, they can now apply and join online. All the forms are available there to make this process as easy as possible. **Join AAM** will take them directly to the information they need.

Did you miss the email about the Annual Meeting? Look on the home page under **Events and Training**. Registration information, agenda and the ability to pay with check or credit card online are all included in this new feature.

For those members in Texas, we have created online payments for the Legislative Fund – Texas – by credit card or check. Check this out at **Legislative Fund – Texas tab**. You will receive an automatic receipt for your records.