



ASSOCIATION OF ATTORNEY-MEDIATORS

# Newsletter

February 2005

“...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

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Dear Colleagues:

On November 11, 2004, the Board of Directors of the Association of Attorney-Mediators resolved that AAM be the preeminent nation-wide organization of attorney-mediators. Our membership criteria and the credentials that each member brings to the table are evidence that the resolution formalized a fact already in existence. Since last April, it has been my honor to serve as AAM's President, a personal professional highlight.

A synopsis of some major developments since April, 2004:

***Amicus Curiae* Briefs.** Almost immediately after my term started, AAM, taking advantage of the scholarship of Professor Wayne Scott, filed an *amicus* brief in *Bank of America v. Avary*, which was before the Texas Supreme Court. Shortly afterward, the Board of Directors authorized the filing of an *amicus* brief in *Alford v. Bryant*, also before the Texas Supreme Court. Wayne was one of our presenters at our November, 2004 Advanced Mediation Seminar in Austin. As many of you know, the parties and attorneys in *Avary* deprived us of the pleasure of having the Supreme Court agree with our *amicus* position, the case having settled before the Court had a chance to write on it. Stay tuned in *Alford*, though. That case is still pending.

**New Standing Committee.** Not resting on our laurels, we have endeavored to keep this organization moving forward. Included in the past year was the establishment of a Standing Committee on Membership Qualifications, arising from a concern for AAM being recognized as a truly national organization with qualifications for membership that represent the highest standards. We look forward to the day when our national base is so extensive that there's vigorous debate on the Board of Directors over whether the annual meeting is held in Miami or San Francisco.

**Website and Geek.** Further, as of this writing, we are in the process of exploring expansion of the capability of the website to facilitate communications among members and make resources (forms, etc.) available to members online. We expect to

*continued on page 2*

*Letter from the President continued from page 1*

have some progress reported on this by the time we meet in New Orleans in April. Please understand that it's remarkable something like this should even be considered during my term as President, since nobody is more technologically challenged than I am. My idea of being high tech is having two different kinds of screwdrivers in my desk drawer. Thanks to Mike Amis, chairman of our Website Committee, for his hard work on this; although his technological incompetence is exceeded only by mine. He was working with somebody who could translate Geek to English.

**Fall, 2004 Seminar.** In November of 2004 in Austin we experienced one of the best Advanced Mediation seminars we've ever had. Gayle Cipriano, our President-Elect, organized a program that "rocked," in the vernacular of my X-generation daughters.

**Spring, 2005 Annual Meeting.** As good as the Fall 2004 program was, we learned how to improve on a good thing; and the program Gayle has put together for our Annual Meeting in New Orleans this April will be even better. As President, I offered to make Gayle Program Chair for Life, but she respectfully declined.

**Other Stuff.** Your Board of Directors has probably set an AAM record for the number of meetings in one year. We've had a full table. Other projects and matters under consideration are beyond the scope of this letter, and will be fleshed out in the near future.

During my salad days in East Texas (or, as they would say in Europe, "the east of Texas"), my Uncle Thad usually had a way of helping me keep things in perspective. His advice would customarily come at a time when, perhaps, he felt I was getting a little full of myself for one reason or another. Thad would remind me that it took no talent to be the equivalent of what he referred to as the particular portion of the anatomy of a horse. AAM's Board of Directors is the hardest working professional organization volunteer group I've ever seen. They have made my term as President a breeze. If Thad was still here he would tell me even that part of a horse could look good working with a group like that. So, I'll repeat the request I made in my Fall 2004 President's letter. When we get together in New Orleans this April, be sure to express appreciation for the service rendered by President-Elect Gayle Cipriano, Immediate Past President Jeff Abrams, Secretary Sherrie Abney, Treasurer Allen Butler, Henry Blum, Skip Hulett, Trey Bergman and David Kisner.

Further, give a special thanks to Brenda Rachuig, our Administrative Assistant, who specializes in making us all look good.

Finally, mark your calendars for April 8-9, 2005 to be in New Orleans. Remember the program Gayle arranged this past fall, and look forward to more of the same.

Sincerely,

John V. Dowdy, Jr.  
President

## CHAPTER NEWS

### **SAN ANTONIO/BEXAR COUNTY CHAPTER NEWS**

Due to the plethora of other CLE and meeting opportunities in the San Antonio area, the Bexar/San Antonio chapter does not have 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. For information, please contact William Lemons, Chapter President, at 210-224-5079.

### **CENTRAL TEXAS NEWS**

The Central Texas Chapter holds a monthly meeting at which a member makes a presentation or leads a focused discussion on a topic relevant to mediation and/or arbitration. Attending members benefit enormously not only from the information and excellent presentations but also by having the regular opportunity to converse with other experienced mediators about interesting issues and innovative solutions to problems that have arisen in their mediation practice. The mediation practice in Central Texas is very competitive; our chapter's aim is to equip our members with knowledge and resources that will continue to give them the competitive edge. For information on the Central Texas Chapter, please contact Steve Nelson, Chapter President, at 512-732-0099.

### **HOUSTON CHAPTER NEWS**

The Houston Chapter of AAM continues its affiliation with the Houston Bar Association ADR Section in holding monthly CLE breakfast meetings the 2nd Tuesday of each month. The meetings are hosted by the Frank Evans Center for Conflict Resolution at the South Texas College of Law. Complimentary continental breakfast is served at the meeting from 7:30-8:30 am with one hour of CLE credit, for the cost of \$15.00. The January speaker was George Scott Christian, Lobbyist, of Austin. The February speaker will be former State Bar President, Lynn Liberto, speaking on mediation of cases on appeal. On May 6, 2005, the Houston Chapter will host, in conjunction with the Houston Bar Association ADR Section and the Frank Evans Center for

Conflict Resolution, a full day 6.5 hour CLE seminar focusing primarily on ethics at the South Texas College of Law. For information, please contact Louis Selig, Chapter President, at 713-807-1707.

### **NORTH TEXAS CHAPTER**

The North Texas Chapter continues to hold quarterly meetings with an active program which are coordinated closely with the Dallas Bar ADR Section. Notices will be forthcoming prior to the upcoming meetings. For information on the North Texas Chapter, please contact Allen Rudy, Chapter President, at 214-696-1242.

### **OKLAHOMA CHAPTER NEWS**

Several of our members took an active role in the Oklahoma State Bar ADR Section seminar in November. Our topic was aimed at trial lawyers, "How to Get the Best Results from Your Mediation." The seminar was a great success. A new Chapter President has been elected. For information, please contact Joel Carson, Chapter President, at 405-946-8022.

### **ST. LOUIS CHAPTER NEWS**

The St. Louis Chapter meets monthly to discuss current issues and 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: Mediating with public agencies; Employment mediations; Multi-party mediations; and Mindfulness mediation. For information on the St. Louis Chapter, please contact Richard Sher, Chapter President, at 314-721-4434.

### **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, Newsletter Committee Chair, for putting it all together. Thank you all for a great job!

## AAM Welcomes New Members

We are pleased to announce the following new AAM members:

**Joe Heffington**, Kerrville, Texas  
**Susan Jensen**, Arlington, Texas  
**John Olson**, Houston, Texas  
**Ron Sheffield**, Little Rock, Arkansas  
**Kenneth Valka**, Temple, Texas

We are also pleased to welcome Nancy Thomas, of Dallas, who has renewed membership 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.

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## AAM's Fall 2004 Advanced Attorney-Mediator Training — *Focus on Ethics* — A Great Success!

AAM's fall advanced attorney-mediator training seminar, held on November 12, 2004, in Austin, Texas, was outstanding! One hundred twenty-two AAM members and non-members were awed by a full day of informative, practical, and even inspiring speakers whose presentations focused on ethical issues. The serious subject matter was conveyed very effectively — sometimes in very humorous and even surprising ways. A number of excellent papers accompanied the speakers' remarks. This particular seminar was so popular there was a waiting list of attendees and the Omni Hotel scrambled to make unusual luncheon and meeting room adjustments to accommodate an overflow crowd. Attendees went away with many new ideas, improved mediator skills, loads of ethics hours on their CLE rosters, and fun memories. Special thanks to Gayle Cipriano for planning this momentous training event!

## Practice Tips in Mediated Settlements

The following was brought to my attention by a Judge who has had several judgments presented to him stating "all costs of court." In preparing mediation settlement agreements (and in drafting judgments) using language such as "party X will pay all costs of court" may include expenses that are not "taxable" court costs under the rules. "All costs of court" may include incidental litigation expenses, expert fees, expenses for copies of documents, travel expenses and other expenses that would not be included in "taxable costs of court" under the rules. It is important to distinguish between "all costs of court" and "all **taxable** costs of court."

—Larry Maxwell, Dallas, Texas

Note Commissioner of Internal Revenue vs. Banks, US Supreme Court, No. 03-892, decided January 24, 2005. Respondent Banks settled his federal employment discrimination suit against a California state agency and respondent Banaitis settled his Oregon state case against his former employer, but neither included fees paid to their attorneys under contingent-fee agreements as gross income on their federal income tax returns. In each case petitioner Commissioner of Internal Revenue issued a notice of deficiency, which the Tax Court upheld. In Banks' case, the Sixth Circuit reversed in part, finding that the amount Banks paid to his attorney was not includable as gross income. In Banaitis' case, the Ninth Circuit found that because Oregon law grants attorneys a superior lien in the contingent-fee portion of any recovery, that part of Banaitis' settlement was not includable as gross income. *Held*: When a litigant's recovery constitutes income, the litigant's income includes the portion of the recovery paid to the attorney as a contingent fee.

—Ross Stoddard, Irving, Texas

*Please send in your practice tips to share with other members to [aam@airmail.net](mailto:aam@airmail.net).*

## Collaborative Resolution of Civil Disputes: *New Opportunities for Mediators*

By Sherrie R. Abney, Dallas, Texas

Some five years ago, Collaborative Law began to make its way into the Texas scene in family disputes. Since that time, the collaborative process has been accepted by many family attorneys as a superior method of handling cases. In 2001, the Texas legislature enacted §§6.603 and 153.0072 of the Family Code which outline the collaborative process. Attorneys practicing in other areas of civil law have realized that the same principles which brought relief to family disputes are applicable to many civil situations. As a result, HB205 is expected to be enacted during the current legislative session and will be effective September 1, 2005. This addition to the Civil Practice and Remedies Code will allow parties up to two years to participate in the collaborative process without court intervention.

Collaborative law is a highly structured, voluntary, dispute resolution process which relies on the honesty and good faith of participants working together in joint meetings crafting solutions to achieve the greatest possible benefit to each party. Should the parties fail to settle and the collaborative process terminate, the collaborative lawyers must withdraw, and the parties must hire new litigation counsel who are not associated with the collaborative lawyers in order to go forward with the lawsuit. For all of the above reasons, all participants are motivated to seriously commit to settlement.

Face to face meetings of all participants eliminate most of the misunderstandings that occur with the “he said, she said” method of filtered communication found in traditional litigation, and this serves to further expedite resolution. In addition, discovery is speeded and simplified by the terms of the Participation Agreement. This contract requires complete, prompt, and full disclosure of all relevant information and tangible things which would have an impact on the final resolution of any issue in the dispute.

When an opinion is needed in the collaborative process, the parties are encouraged to jointly retain a neutral expert. The benefits of jointly retained experts are three fold: costs are cut in half; more experts are available since they will never be required to testify in court; and the expert is not put in the position of justifying the retaining party's position.

What has this got to do with mediators and arbitrators? Just as in ordinary litigation, there will be times that the participants in the collaborative process will need assistance

in resolving certain issues. The process is designed to employ all forms of dispute resolution, and mediation is one of the first alternatives the parties will visit. The good news is the parties will not be coming to the mediator due to court order; they will be coming because they sincerely desire to avoid their “day in court” and resolve their differences. There is also other news. It has become apparent to collaborative lawyers that mediators who are not trained in the collaborative process are not efficient in resolving issues. In fact, some mediators have caused harm because they did not understand the collaborative process and were unfamiliar with the participation agreement and protocols. The nature of the process is such that trained mediators are necessary, and the simple solution to this problem is — get trained.

For those of you who are not full time mediators, the collaborative process offers an opportunity for relief from the schizophrenic task of preparing for trial and attempting to settle at the same time. In the collaborative process, it is possible to fully concentrate on discovering solutions as all participants move from positional bargaining to exploring options based on the interests and goals of the parties. When all attorneys and parties are truly participating in the collaborative process, each client and attorney are able to function with less stress; more efficiency; and derive greater satisfaction than is possible in an adversarial setting. Part time or full time mediator, you owe it to yourself and your clients to learn about the collaborative process, so you can make an informed decision as to whether you want to enter the brave new world of dispute resolution or stick to the traditional world of litigation.

Should you feel the urge to venture into the unknown reaches of dispute resolution, The Collaborative Law Study Group of the Dallas Bar Association will present an overview of the collaborative process at noon on February 15, 2005, at the Dallas Bar Association. (1 hour CLE approved). In March, a basic training course sponsored by The Texas Collaborative Law Council, The Texas Center for Legal Ethics and Professionalism, and the Collaborative Law Study Group of the Dallas Bar Association will present the first local civil collaborative law training on March 11 and 18, 2005. (A total of 12 hours including 4 hrs. of ethics is pending.) Additional information may be found at [www.collaborativelaw.us](http://www.collaborativelaw.us) or by contacting Larry Maxwell at (214) 265-9668 or [lmaxwell@adr-attorney.com](mailto:lmaxwell@adr-attorney.com) or Sherrie Abney at (972) 417-7198 or [sra169@comcast.net](mailto:sra169@comcast.net).

## The Fees and Costs Impact in Mediated Settlements

By Fred A. Simpson and Randall L. Smith, Houston, Texas

The bearing of attorney's fees and costs can be a critical factor in the parties' motivation to settle many cases. As a result of legislation, that motivation may have become substantially more applicable to insurance cases in particular, which constitute a large volume of cases that are subjected to mediation.

A first reading of the new provisions for the Texas Civil Practice and Remedies Code leaves an impression that the 2003 Texas Legislature gave insurers an unintended bonus. However, a closer examination reveals a "mixed bag" of expenses and benefits.

New Chapter 42, as implemented by new Rule 167, penalizes parties who reject reasonable settlement offers. One commentator explains that the offer of settlement rule "provides for the shifting of costs upon an offeree who fails to accept an offer of judgment from their adversary when the ultimate judgment in the case is less favorable than that offered."

In the insurance context, the question is, who pays the price of attorney's fees and costs if settlement offers are rejected? Must insurance companies or the insureds pay the punitive "litigation costs" defined in the statute? Conversely, if insurers make settlement offers that plaintiffs reject, won't plaintiffs be saddled with a certain portion of defense costs that insurers have traditionally carried?

This article briefly reviews the new law and refers the reader to a more detailed treatment of the subject by the authors published in Texas Bar Journal, February, 2004, Volume 67, Number 2. See particularly the following out of state cases: *Argento v. Vill. Of Melrose Park*, 838 F.2d 1483 (7th Cir. 1988); *Mnt. Of Enumclaw v. Harvey*, 722 P.2d 216 (Idaho 1989); *Marek v. Chesney*, 105 S.Ct. 3012 (1985); *Bd of County Commissioners etc v. Guarantee Ins. Co.*, 90F.R.D. 405 (D. Colo. 1981); *Home Indem v. Avol*, 706 F.Supp 728 (D Cal. 1989) *aff'd* 912 F.2d 469 (9th Cir. 1990).

Generally, the new Remedies Code provisions speak to a judgment *to be rendered* that is "significantly less favorable" to the party who previously rejected a settlement offer. The term "significantly less favorable" is defined with a variation, or tolerance, of 20%.

There is a limit on the amount of recoverable litigation costs, however. That "cap" is generally equal to 50% of economic damages, 100% of noneconomic damages, and 100% of exemplary or additional damages. Of most import is the definition of "litigation costs." The new provision at Section 42.001 defines "litigation costs" to mean money actually spent and obligations actually incurred that are directly related to the case in which a settlement offer is made, including court costs; reasonable fees for not more than two testifying expert witnesses; and reasonable attorney's fees.

Although insurers must pay the price for defending their insureds, policy provisions do not clearly define all of the expenses or costs are intended to be included in that defense obligation. That lack of clarity is best illustrated by looking at two sections in the typical liability policy sold in Texas: the insuring agreement, and the "supplementary payments" provision.

The words "duty to defend," which suggest the payment of expenses and costs, in contrast to the phrases "damages because of bodily injury" or "property damage" which compel insurers to indemnify their insureds for liability. The words "duty to defend" provides no indication as to how "litigation costs" fit into the equation of insurers' payment obligations.

The second important liability policy provision, "supplementary payments," provides benefits for insureds in two ways. The first of these is the broad description of "costs." The second benefit arises because there is no limit to the amount of the payments; they are all in addition to the policy's stated limits of liability.

The words "costs taxed against the insured" included in most policies come a little closer to describing the payment of "litigation costs." Although the usual definition of "taxable court costs" does not include attorney's fees, where a statute provides for the recovery of such fees, they become the equivalent of taxable costs, almost by definition. If recoverable, they also appear to be in the nature of "costs taxed against the insured."

Insurers generally maintain the exclusive right to settle lawsuits brought against their insureds, according to the terms of the related insurance contracts. But must insurers

pay “litigation costs” awarded to a plaintiffs because insurers rejected offers to settle? The answer will likely have an adverse affect on Texas insurers if courts answer the question by applying law from other jurisdictions. When courts in other jurisdictions must answer that question, the reported cases show that courts find ways to grant the insureds the benefit of the doubt. See: Our more detailed article and citations published in Texas Bar Journal in February 2004, Volume 67, Number 2.

Texas statutes vary in their language concerning the recovery of attorney’s fees. For example, Chapter 37 of the Remedies Code, “Declaratory Judgments,” provides that a court “may award costs and reasonable and necessary attorney’s fees,” and Chapter 81 of the Remedies Code entitled, “Sexual Exploitation By Mental Health Services Provider,” says nothing about recovery of “costs,” but does allow recovery of attorney’s fees. Language from these two Code chapters indicates that the Texas Legislature intended to distinguish “costs” from attorney’s fees, which would indicate that the supplementary payments provision of a liability policy may not include attorney’s fees. However, Chapter 42 states that “litigation costs” *includes* “costs” and attorney’s fees. According to the wording of the supplementary payments provision of liability insurance policies discussed above, when the provisions of Chapter 42 are construed in Texas, supplementary payments likely will be found to cover “litigation costs.”

The supplementary payment provisions promise to pay expenses of “any suit [the insurers] defend.” However, in certain jurisdictions that allow insureds to chose their own independent counsel when insurers offer to defend under reservations of rights, questions arise as to whether insurers actually defended those lawsuits for purposes of the supplementary payments provision, or merely funded those defenses? If the latter, insurers’ participation would fall

outside the supplementary payment provisions.

When Texas courts decide who should pay the “litigation costs” imposed by Chapter 42, the courts will be deciding issues of first impression. Insurers doing business in Texas should be aware that if Texas courts follow the prevailing law of other jurisdictions, Chapter 42 “litigation costs” will likely be payable under their liability policies, creating a category of material expense that may have a significantly negative impact on those insurers’ bottom lines.

Insurers should also consider whether Chapter 42 demands a change in their settlement strategies and, if so, the nature of proper new procedures for any such change. For example, well-settled Texas law does not require insurers to initiate settlement negotiations with plaintiffs. However, insurers may now wish to take aggressive advantage of Chapter 42. In so doing, liability insurers will disregard existing precedents, and begin making a greater number of offers to settle claims against their insureds, an obvious objective of Chapter 42.

On a final note, as part of their duty to fully explain the risks of litigation, plaintiffs’ lawyers should tell their clients about their mutual potential exposure to “litigation costs” if they reject defendants’ settlement offers. Additionally, the practice of making *Stowers* demands at or within policy limits now exposes a double-edged blade if those demands provoke counter offers from insurers that prove to be more reasonable. If juries find damages in amounts less than 80% of insurers’ counteroffers to *Stowers* demands, plaintiffs face a form of expense they never had to consider before. It will be interesting to see how future contingency fee agreements are structured to accommodate this new financial risk.

*A longer version of this article appeared in the February 2004, Texas Bar Journal. It may be viewed in it’s entirety at [www.texasbar.com](http://www.texasbar.com).*

## **AAM to be Organizational Supporter for National Conference of Minority Professionals in ADR**

AAM will be a supporter of the “2nd National Conference of Minority Professionals in ADR: Eliminating Barriers for Minorities in the Field of ADR” to be held May 19–21, 2005 at Capital University Law School in Columbus, Ohio. For more information on the conference please visit [www.law.capital.edu/adr](http://www.law.capital.edu/adr) or you may call 614-236-6531.

## The AAM Board of Directors Introduces the President and President-Elect for 2005

### **GAYLE CIPRIANO — PRESIDENT 2005**

Gayle Cipriano graduated from the University of Oklahoma and received her law degree from Baylor Law School in 1976. She has represented plaintiffs and defendants in a broad range of civil litigation matters in state and federal courts. She began her legal career as an Assistant Attorney General for the State of Texas from 1976 until 1981. In 1983 she joined the Austin office of a respected Midland law firm, Stubbeman, McRae, Sealy, Laughlin & Browder, which later became Wright & Greenhill, P.C. From 1995 to 1997 Gayle was a partner with Phillips, Ettinger & Prikryl, L.L.P., Austin, Texas, a business and general litigation law firm.

Gayle has been mediating since 1994, when she took mediation training to be able to advocate more effectively for her clients during mediation. She also joined AAM in 1995 and has been active in the Central Texas Chapter where she has worked on the chapter directory and website committees, served as president, and now is Program Chairperson. In 2004 Gayle became President-elect of AAM and as part of her responsibilities, she planned the 2004 Fall Advanced Mediator Training Seminar held in Austin last November and the upcoming 2005 Annual Meeting and Spring Advanced Mediator Training Seminar in New Orleans in April.

Gayle was on the State Bar of Texas District 9A Grievance Committee from 1996 to 2002, chairing a panel for five years. She was also on the board of the Solo/Small Firm Section of the Austin Bar Association and served as chairperson. Since 2002 Gayle has been an adjunct professor at Texas State University in the Political Science Department, Legal Studies Department, teaching Family Law. She and her husband reside in Austin and are charter members of Covenant United Methodist Church, where she recently chaired the Building Committee during a three-year expansion construction project, and she currently serves as Lay Leader.

### **JIMMY “SKIP” HULETT — PRESIDENT-ELECT 2005**

Jimmy “Skip” Hulett is a former State 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 and serves as a Director for the Association of Attorney Mediators. 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.

### **Advanced Certified Mediators**

AAM congratulates the following members who have achieved or renewed their Advanced Certified Mediator status for the 2005 year (as of this newsletter printing):

**Bryan Coleman**  
**Nancy Huston**  
**Reed Leverton**  
**Susan Wright**  
**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.



# Association of Attorney-Mediators

## Annual Meeting and Advanced Attorney-Mediator Training



### Mediation Skills: Kicking Them Up a Notch in New Orleans

Friday–Saturday, April 8–9, 2005

*Embassy Suites Hotel*  
315 Julia Street, New Orleans, Louisiana

#### Friday, April 8

- 12:00 – 12:30 P.M.      **Registration**
- 12:30 – 12:45 P.M.      **Welcome and Announcements**  
*Trey Bergman*, Houston, Texas — Emcee  
*John V. Dowdy, Jr.*, President of AAM
- 12:45 – 1:30 P.M.      **A Funny Thing Happened on the Way to Settlement . . . The Role of Constituents in the Mediation Process**  
*Reed Leverton*, El Paso, Texas
- “Constituents” are those persons who are able to influence the outcome of mediation even though they are not physically present during the actual negotiations. Reed will discuss several types of constituents, ways in which they can (and many times do) exert a negative influence on one or more mediation participants, and possible interventions the mediator might consider, as well as the associated ethical concerns when dealing with constituent-generated impediments to the negotiation process.
- 1:30 – 2:00 P.M.      **Ad litem at Mediation — Who ARE Those Guys, and Why Are They Here?**  
*Jeff Kilgore*, Galveston, Texas
- The relationship of the ad litem for a usually absent client presents special concerns and requires understanding from the parties and the mediator. The ad litem has been appointed to look after the interests of a minor or otherwise incapacitated party. How does the mediator treat the ethical concerns of mediating when the party in interest is absent, and what special confidentiality and conflict of interest concerns might arise during the mediation? At some point everybody has ‘em! What do you do with ‘em?
- 2:00 – 2:45 P.M.      **Mediating Highly Public Cases Between a Discrete Community and a Governmental Agency**  
*Sam Graham*, Austin, Texas — Overview and Panel Moderator  
*Reed Leverton, Walter Wright* — Panel Members
- Mediation involving public cases, i.e., neighborhood land use conflicts, complaints of civil rights violations, etc. present special difficulties, complexities, and ethical concerns, from “designing” an appropriate mediation arrangement to follow-up mediation of conflicts flowing from the original settlement. Sam has done it all and will give mediators invaluable insight and tools for successfully handling these mediations.
- 2:45 – 3:00 P.M.      **Break**

*continued on next page*

*Agenda - continued*

- 3:00 – 5:00 P.M.      **Now What Do I Do? — Tools to Use to Pry Yourself Out of Ethical Dilemmas in Mediation**  
*Courtenay Bass, Ross Stoddard, Trey Bergman, Mike Amis*
- Our team of very experienced mediators will lead a lively interactive discussion of how mediators get into, and more importantly, how to get out of, ethical dilemmas.
- 5:30 – 7:00 P.M.      **“Come and Go” Social Time — Embassy Suites Atrium Area**

## Saturday, April 9

- 7:00 – 8:30 A.M.      **Full Breakfast — Embassy Suites Atrium Area**
- 8:30 – 9:00 A.M.      **Annual Meeting**  
 Presentation of the Brutsché Award  
 Presentation of the President’s Award
- 9:00 – 9:45 A.M.      **Advocacy at Mediation: Redundant Ritual or Useful Opportunity?**  
*John Rothman, Tulsa, Oklahoma*
- Are mediators “guilty” of making the case fit the “mediation process” rather than letting the mediation process fit the case? What are the ethical implications here? John will discuss building consensus rather than asserting control as a way to address this issue.
- 9:45 – 10:15 A.M.      **You Are There, 1803 — Using ADR in Major Business Transactions**  
*Jeff Jury, Austin, Texas*
- Jeff will use the Louisiana Purchase as a model to suggest a use for ADR professionals in business transactions.
- 10:15 – 10:30 P.M.      **Break**
- 10:30 – 12:00 P.M.      **Intercultural Conflict Styles and Their Effects on the Mediation Process**  
*Walter A. Wright, San Marcos, Texas*
- You will take the Intercultural Conflict Style Inventory and determine your own conflict style. 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.
- 12:00 – 1:00 P.M.      **Luncheon: Guest Speaker, Frank Neuner, President-elect of the Louisiana Bar Association**  
**“What Experienced Lawyers and Litigants Want and Don’t Want from Mediation and Mediators?”**
- Frank Neuner, a seasoned litigator, has participated in many mediations. He will give his litigator’s view of what experienced advocates want and need (AND what they don’t want) when the mediator enters the caucus room. His candid insights will help even the most experienced mediators improve their skills.
- 1:00 – 1:15 P.M.      **Break**
- 1:15 – 2:00 P.M.      **“You can hang the meat so high” — A Mediator’s Use of Analogy to Illustrate and Inform**  
*Louis Selig, Houston, Texas*
- Analogies are among the most useful means of helping litigants understand and accept complex, abstract or unfamiliar concepts. Here are one mediator’s favorites, delivered in the contexts and with the purposes for which they are useful. You will be able to share your favorites as well
- 2:00 P.M.      **Adjourn**

## Advanced Attorney-Mediator Training Speakers and Panelists April 8–9, 2005

**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.

**Courtenay Bass** is a full-time mediator and a charter member of AAM. She has conducted well over 2,000 mediations. Courtenay also is an Adjunct Professor, SMU School of Law Trial Advocacy Program. Courtenay was last year's recipient of AAM's Brutsché Award. She has been on the faculty of many 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.

**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 3,500 attorney-mediators across the United States 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.

**Sam Graham** is a full-time mediator and is certified as an Advanced Mediator by AAM. He has considerable experience in mediations involving a discreet community faction and a government agency. He has also served as a facilitator for public forums. Sam authored "Mediating Probate and Estate Matters," for the State Bar of Texas Advanced Estate Planning & Probate Course, 1998. He is a former AAM Secretary and Director, and former President of the Central Texas Chapter of AAM; a Past Chairman of the Arbitration Committee, Travis County Bar Association; and a Fellow of the Texas Bar Foundation.

**Jeff Jury** has a broad litigation, mediation and arbitration practice. Jeff teaches dispute resolution and negotiation techniques to attorneys and law school students and is a prolific writer and speaker on dispute resolution topics throughout the United States.

**Jeff Kilgore**, like many mediators, started out as a litigator, and he has tried over 64 cases to a jury verdict. He has been mediating since 1991, and, to better serve his mediation and arbitration clients, Jeff completed a Graduate Certificate in Dispute Resolution at the University of Houston School of Business in 1998. Jeff has also been a trainer/facilitator at the AA White Dispute Resolution Center.

**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.

**Frank X. Neuner** is President-Elect of the Louisiana State Bar Association and has previously held other offices in the LSBA. He is the managing partner in Laborde & Neuner in Lafayette, Louisiana. His practice focuses on admiralty, insurance, commercial, and toxic tort litigation. He is a member of both the Louisiana and Texas Bars. Frank is a member of the Southeastern Admiralty Law Institute, Louisiana State and American Bar Associations, the Louisiana Association of Defense Counsel, the Defense Research Institute, the Maritime Law Association of the United States, and a Fellow of the Louisiana Bar Foundation. He currently serves as a Louisiana statewide elected Delegate of the American Bar Association. He has also been a member of the Louisiana Supreme Court's Committee on the Prevention of Lawyer Misconduct and serves on the Council of the Louisiana State Law Institute. In addition to his involvement in law-related activities and organizations, he is actively involved in community and civic organization. He has been recognized and honored with a number of awards, including the Louisiana State Bar Association's David A. Hamilton Lifetime Achievement Award for his demonstrated commitment to the promotion of legal services to the poor and his significant contributions which have enhanced pro bono efforts in the State of Louisiana.

**John Rothman** is the Legal Director of Oklahoma Mediation/ Arbitration Service, a national provider of private mediation and arbitration proceedings. He is a graduate of Harvard University (B.A. 1977) and Boston University School of Law (J.D. 1981). He has personally conducted over 3,000 mediation and arbitration proceedings and is also the author of *A Lawyer's Practical Guide to Mediation*.

**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.

## To Do List:

- ☑ Send in your AAM Membership Renewal for the 2005 calendar year.
- ☑ Register early for the AAM Annual Meeting and Advanced Mediator Training Seminar in New Orleans and make hotel reservations. Reservation deadline for the hotel's reduced rate is March 9, 2005.
- ☑ Update the national office with any changes to your address, phone, fax or email.
- ☑ Texas AAM Members — mail your Texas Lobby Fund contribution to AAM's national office at P.O. Box 741955, Dallas, Texas 75374-1955.
- ☑ Add AAM's website link to your law firm/mediation firm/personal website. It increases AAM's priority and exposure. [www.attorney-mediators.org](http://www.attorney-mediators.org).
- ☑ **TELL ONE COLLEAGUE OR FRIEND ABOUT AAM.** Brochures are available for your circulation upon request to the National Office.  
1-800-280-1368 or [aam@airmail.net](mailto:aam@airmail.net).

## Visit The AAM Website

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? 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. There are new features and articles of interest and documents that can be easily downloaded. The website committee is currently working on the addition of a "members only" section of the website. Click on to [www.attorney-mediators.org](http://www.attorney-mediators.org). To make changes to your website information, please email Brenda at [aam@airmail.net](mailto:aam@airmail.net) or call 1-800-280-1368.

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