



Association of Attorney-Mediators

AAM-a-gram

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Association of Attorney-Mediators

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“...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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We are well on our way!

In the June, 2012 newsletter, I suggested that we should focus on just three very attainable goals, and that we do them well:

a) *Continue to encourage growth and diversity.* We began this process by starting to have speakers and Board members who are a little younger than before and who are more diverse both demographically and geographically. On February 4, 2013, the AAM Board had a facilitated strategic planning session in Dallas, Texas. Assisted by Elizabeth Derrico, Associate Director of the ABA Division for Bar Services, we reviewed the results of the member survey, and then focused on the idea of AAM being more of a national organization with increased diversity both in membership and geographic reach. A strategic plan will be finalized, stressing achievable tasks and accountability. This Board will remain finely attuned to thoughts of planned growth, diversity and opportunities to expand the use of mediation.

b) *Continue to be relevant.* We renew our commitment to this goal by listening to our membership and planning future educational opportunities largely based on evaluations of past programs and suggestions for the future. Just look at what Mike Patterson, our President-elect, has put together for the Annual Meeting and CLE in Kansas City on April 26-27! <http://www.attorney-mediators.org/trainingagenda> and <http://www.attorney-mediators.org/Register>. We must continue the marketing segments and assist others in building their practices. We must continually look for opportunities to serve our constituents with new and improved dispute resolution alternatives. Recently, we were contacted by a senior judge from the North Dakota state court system asking if AAM could train/provide mediators to assist in that state’s overloaded court dockets provoked largely by a boom in its oil and gas production, marketing and transportation. We have responded (Texas mediators know a good deal about oil and gas booms) and are moving forward with these efforts.

c) *Continue to be good stewards.* We are so fortunate to have the gift of effective dispute resolution. Recently, the Texas Supreme Court, largely due to the influence of its special interest contributors, proposed a procedure rule for “expedited actions” that was truly harmful to the trial process, but also would have had a chilling effect on court-annexed mediation. AAM leadership filed strong opposition, and has redoubled its efforts to be ever diligent in monitoring proposed legislation that might, however well-intended, be harmful to the dispute resolution community. We can never be complacent or take for granted the gift that we have.

AAM’S opposition, concurrent with the Texas Attorney-Mediators Coalition, apparently had some effect on Justice Nathan Hecht. As quoted from the *Texas Lawyer* on February 25, 2013:

Texas Supreme Court Justice Nathan Hecht says the court read the comments as they came in. "You get a better product when you hear what more people think. . . . I think Scripture says wisdom comes through many counselors. You look at it, you look at it, then you hear another view, and it's useful," says Hecht, the high court's liaison to the Supreme Court Advisory Committee, which drafts and reviews changes to the Texas Rules of Civil Procedure.

The Texas Attorney-Mediators Coalition submitted a proposal that influenced the change to the ADR provision, Hecht says. "We were just very pleased we were able to be heard. The Supreme Court listened," says Mike Amis, co-chairman of the group. But Amis notes he's concerned that the rule sets a cap on ADR fees.

Hecht says the court added the cap on fees to curb costs, and it agreed with other arguments. "The mediators, many of them pointed out: Sometimes parties who are reluctant to dance need to be brought together and have a serious and unemotional conversation about the litigation. We thought that was right," Hecht says, adding, "Often it saves expense and helps make civil litigation better for people."

And, so, we are well into the next leg of our voyage with renewed enthusiasm and respect for what we do and who we are. We are working together with many factions toward attaining the three goals. Yet the future is boundless and we are only limited by the level of effort and enthusiasm we devote to the task.

Bill Lemons

AAM National President

Kansas City – Here We Come!

We're going to Kansas City! The AAM Annual Meeting and Advanced Attorney-Mediator Training is so much more than "just a training". It is a fun time together with your colleagues, spouses, significant others and friends! We look forward to April 26 and 27, 2013 in the "City of Fountains" with so much to see and do.

The training day begins just after noon with Ross Stoddard sharing his "words of wisdom", in his own special way. We have an agenda full of ethics and mediation knowledge from some of the finest mediators in the country, with topics that will help everyone in their day to day mediations.

Friday evening we have a great event in the works, with a barbeque feast served at Jack Stack's private dining venue in Kansas City, with cocktails, jazz and transportation to and from the venue. No speaker, no banquet, just time to network and visit with other mediators from around the country. Those that want to see the nightlife of Kansas City will have the opportunity for a drop-off at some of the city's night spots and prearranged transportation back to the hotel at the end of the evening. Others will be transported back to the hotel for a relaxing evening at the luxurious Intercontinental Hotel.

Our Annual Meeting will be Saturday morning where we will vote in new board members and then resume the training with some of the finest mediators in the country. Once again we are offering the bonus segment on marketing just after the adjournment of the regular conference. Bring your ideas to share as this is a roundtable discussion open to everyone!

You can register online at the AAM website at <http://www.attorney-mediators.org/Register>

If you've never been to an AAM Annual Meeting – try it! You don't know what fun you're missing!

We have obtained CLE credit in Texas, Louisiana, Missouri, Kansas, Tennessee, Colorado, Mississippi and are awaiting notification from Illinois, Indiana, Kentucky, Arkansas, and Oklahoma. You can check the status of the CLE credits online at <http://www.attorney-mediators.org/CLECredits> where updates are posted as they arrive.

Newsletter Thanks

We owe special thanks to **John Feather** of Houston, Newsletter Committee Chair, for always waiting in the wings to put the newsletter in order. Thank you for a great job, John!

Need a statement of your payments to AAM for business expenses for 2012??? Login to your profile. Each profile has an "Account Statement" readily available showing payments during the year.
www.attorney-mediators.org

Did I Register???

Already registered??? Don't know??? Go to the website at the registration page and enter your email address. If you are already registered, the system will tell you "You Are Already Registered".

<http://www.attorney-mediators.org/Register>

To Do List:

- ✓ **Register early for the AAM Advanced Mediator Training in Kansas City and make hotel reservations. Reservation deadline for the hotel's reduced rate is March 26, 2013.**
- ✓ **Take a look at your profile online. Make any updates to the information there.**
- ✓ **Add your resume under the "Qualifications" section of your profile so that others see more about you and your qualifications. Tip: Use the "copy and paste" method.**
- ✓ **Add AAM's website link to your lawfirm/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.**

Chapter News

Are you aware that each chapter now has its own webpage(s) – within the AAM National website? The Chapter Presidents are working on the text and design of their pages and we are implementing those changes as we go along. Each chapter page contains a link to the directory of those current chapter members. If you have suggestions, pass them along to the Chapter President or Brenda as we move forward in the design and functionality of these pages.

Keep a watch on your chapter page for information about upcoming chapter meetings!

Welcome AAM New Members

We are pleased to announce the following new AAM members:

<i>Harry Allen</i>	Biloxi,	MS
<i>Tamera Hall Bennett</i>	Lewisville,	TX
<i>Lisbeth Bulmash</i>	Dallas,	TX
<i>Keith Burn</i>	Las Cruces,	NM
<i>Michele Casey</i>	Chicago	IL
<i>Jane Cohen</i>	St. Louis,	MO
<i>Danielle Comeaux</i>	Houston,	TX
<i>Karen Crouch</i>	San Antonio,	TX
<i>Thomas Cushing</i>	Chicago,	IL
<i>Philip Gaines</i>	Jackson,	MS
<i>David Goodson</i>	Paragould,	AR
<i>William Gotfryd</i>	Barrington,	IL
<i>Perry Granof</i>	Glencoe	IL
<i>Gilbert Grossi</i>	LaGrange,	IL
<i>Richard Ihfe</i>	San Antonio,	TX
<i>Daniel Kustoff</i>	San Antonio	TX
<i>James Lawson</i>	Lakeland,	TN
<i>Genevieve McGarvey</i>	Galveston,	TX
<i>David Meyer</i>	Westmont,	IL
<i>Dion Ramos</i>	Houston,	TX
<i>Richard Rappaport</i>	Chicago,	IL
<i>Alan Rosen</i>	Chicago,	IL
<i>Mark Sims</i>	Austin,	TX
<i>Phylis Speedlin</i>	San Antonio,	TX
<i>Mary Ann Starks</i>	Houston,	TX
<i>Lee Taft</i>	Dallas,	TX
<i>Barbara Tishuk</i>	Homer Glen,	IL
<i>Amy Turner</i>	Fayetteville,	AR
<i>James Upton</i>	Corpus Christi,	TX
<i>Anne Veazey</i>	Ridgeland,	MS
<i>Maureen Yamashiro</i>	Glenview,	IL

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 a member of the national board of AAM know what AAM can do for you and how you would like to become involved in AAM's activities.

Welcome!

Security At Mediation: Revisiting the Issues and Planning for the Future

by Robert L. Dietz and James A. Edwards

The January 30, 2013, tragedy in Phoenix involving participants at a mediation provides an opportunity to revisit how mediators enhance safety at the mediations they conduct.

Based on news reports, an office furniture contract with less than \$20,000 remaining at issue was the source of the litigation that resulted in the scheduling of mediation at the mediator's law firm office. The plaintiff was pro se. A shootout erupted in the law firm's lobby when the plaintiff apparently decided to resolve matters violently, resulting in the death of the president and CEO of Fusion Contact Center and his attorney, and, later, the self-inflicted fatal gunshot wound of the alleged assailant. Another victim was shot in the hand after being caught in the line of fire.

The perception has been that "life or death" cases are most conducive to violence in a mediation setting. Family law, hotly disputed liability injury or death cases, workers' compensation, cases alleging fraud or dishonesty, and residential foreclosures have been identified as being most ripe for violence. A contract to refurbish and move cubicles and furniture in an office somehow doesn't fit the image.

Follow-up interviews indicated that the alleged assailant was litigious and had anger management issues. That doesn't much help narrow the pool of candidates for violence from the rest involved in mediations. It also doesn't take into consideration the possibility that participants could be mentally ill, on or off mood altering medications, or have a pre-existing psychiatric problem that would make them prone to violence, even though there had been no indications thus far in the litigation.

It would seem that everyone would be protected if the mediation was located at a place that required going through metal detectors and security. However, most courthouses do not have the facilities for a large number of mediations to be scheduled there. If you don't have access to metal detectors and security personnel, how do you take appropriate steps to enhance safety for all the parties in conducting and finishing a mediation?

The first step should be taken well in advance of the day of the mediation. When the mediation is first scheduled, inquire of the parties and pay particular attention to who will be attending the mediation. Is there a history of violence between the parties (most prevalent in, but not limited to, family law matters) or is a party prone to violence or irrational behavior? The attorneys may or may not be aware of this information, but the mediator is almost certainly not going to know this. This requires inquiry to the attorneys on the part of the mediator. The staff person scheduling the mediation is not the one to ask.

The initial engagement letter of the mediator should raise the issue of potential violence with the attorneys. Include language like:

"The comfort and safety of all participants is important. If there are any special needs to be addressed, please let us know. Likewise, if this is one of those cases where there is even the slightest concern about safety or potential issues of violence, let us know in advance and discuss this with your clients as well."

If the attorneys identify a particular party that could be a security risk, one option would be to have them participate by telephone or better yet, by some form of online video conference such as Skype or some other more sophisticated system. This may or may not be possible under the rules of the court that has jurisdiction over the mediation; however, it is certainly worth seeking a ruling from the presiding judge to depart from the normal routine. After all, the judge would love to see the case get resolved at mediation, rather than having to deal with this same potentially violent person whether in or out of court.

The second step is to think through the ingress and egress of the mediation participants to the location of the mediation. While separate parking locations may not be possible, the mediator can certainly control the location of the parties after they arrive in the mediator's office or the location of the mediation. The first party that arrives can be moved into a conference room that they will use for private sessions. This prevents the potential for confrontation in the lobby, particularly when there is the chance that a party could arrive before their attorney. Staggered exit times at the end of the mediation not only relate to parties running into each other in the bathroom or on the elevator, but in the downstairs lobby or in the parking lot. If one party is the perceived security risk, they should leave last.

The third step relates to the location of the parties while the mediation is being conducted. Having the parties in pre-determined break-out locations without the knowledge of the location of the other(s) only provides a minimal amount of security. In a small office, the process of elimination will narrow down the alternative locations of the other party rather quickly. The longer the mediation goes, the more chance that the parties will be outside of their private session locations for legitimate reasons (bathroom breaks, refilling coffee cups in the kitchen, making telephone calls or copies, etc.) and have the opportunity to learn the location of the other parties. In these days of far-from-sound-proof walls, voices will also carry and tip off the location of mediation participants (this should also be a concern for everyone involved as it relates to confidentiality!). In many mediators' offices, the conference rooms for breakouts have been placed close together so that the mediator won't have so far to travel.

The fourth step is to analyze your ability to physically separate the parties within your office. Just as most offices today do not have a secured inner office beyond the receptionist's location, the inability to cordon off space within offices, either through the use of doors with locks or doors which require being "buzzed in" leave all the participants in the same space. This creates security issues should there be a threat. Consider installing locks on office doors adjacent to conference rooms as this may provide some level of temporary security if something should happen. While "open" floor plans have been popular in cubicle-driven office layouts with enclosed offices only around the perimeter, they are a nightmare from a security standpoint as they provide total accessibility between the rooms being used by the mediation parties.

The fifth step is to determine whether the mediation itself could cause the escalation of emotions to reach the boiling point. When the parties are together, whether in general session or due to the type of mediation or style of the mediator, the tone of the proceedings must be carefully monitored. Venting, in particular, has a tendency to ramp up the emotions of parties. While this may be necessary to the long term success of the mediation, it cannot be uncontrolled. Whenever possible, venting should only be done in private session, so that the target of the venting is not accessible to the party that is becoming more and more agitated the longer they vent. If you know of this potential in advance, you can discuss whether there should even be a general or joint session.

The attorneys in general session must also be mindful of the possible ramifications of inflammatory speech in their presentations. Calling somebody a good-for-nothing, lying, cheating, stealing, piece of trash may not be the best way to win friends and influence people; worse, it may provoke a violent response. Attorneys who come to mediation planning not to settle must be particularly careful in what they say and how they go about implementing their strategy since talk of "nuisance value" may set off plaintiffs that feel they have been injured, wronged, or both, and that their case is more worthy than being characterized as "a nuisance."

The sixth step is to have a plan if a party becomes a security risk to another party during the mediation. The endangered party should immediately leave (without advising the other party). They may be able to continue participation by cell phone. This may solve the problem in mediations where the parties once they reach settlement would never have to see each other again. Their signatures can be obtained by having them sign it at their attorney's office as soon as possible after the mediation is completed or by faxing or scanning/e-mailing it to their office. Suspending the mediation (certainly an option) may result in both parties heading for their cars at the same time, with the resulting risk.

An extremely pro-active approach to dealing with serious security concerns is the presence of corporate security or law enforcement officers at a mediation. This raises issues that go beyond securing the safety of the participants. Threats that are conveyed at mediations raise different professional ethical issues (depending on whether the mediator is an attorney, a psychologist, or some other professional) which are also impacted by your state requirements for the conduct of mediations (the major issues are typically the definition of a "threat" and whether there is a complete absence of bargaining ability, an impeding power imbalance, or both, when there are threats of violence). These issues would be best served by discussion in another article.

It should be noted that there is a Florida ethics opinion (MEAC 97-004) that indicates that a mediator should not mediate a case if an armed, uniformed deputy is necessary for the mediation to be conducted. (The Florida Supreme Court Dispute Resolution Center noted in its website summary of this ruling that 2004 and 2006 changes may impact this outcome.) The case involved a deputy that physically entered the room and sat down in the middle of the interaction between the mediator and the parties in the general session (apparently asked to be present by the judge on the case that was concerned about a prior threat of violence between the parties). The mediator asked the deputy to leave, he did, and the mediation was completed (although unsuccessfully).

There is a significant difference (at least in our minds!) between a case where corporate security is "in the area of the mediation" and has no access to confidential communications, and where a deputy is sitting in the general session because of concern that one of the parties is in a compromised safety situation that would not even allow the deputy to be outside the room. It is also probable that the non-corporate party did not know that there was security in the area of the mediation (does this even matter?). Similarly, how would a mediator conduct a mediation inside a jail if the presence of law enforcement officers, by itself, even without access to the confidential communications of the participants, was enough to require the mediator to terminate the mediation? It is fair to assume that there are many situations that would have uniformed, law enforcement officers in the vicinity of where a mediation was being conducted.

Having a plan does not stop with having security personnel present. Every mediator's office or place that a mediator uses (court reporter offices, city halls, rental offices, hotels, etc.) should have a plan on how things will be handled if a security issue presents itself. Some venues already have that type security plan in place. But for small offices that are typically not considered public meeting places, a plan may need to be implemented. Your office staff should be advised in advance to call 911 if they believe violence is occurring. It is far better for the mediator to send the police away with the parties never even knowing they were called, than to wish the police were there. Consider the use of code words spoken over the telecom system with different levels of urgency, on a scale from the "receptionist needs assistance" to "drop what you are doing and immediately move to a secured area or get out of the building." The party that is a perceived security risk is not going to be familiar with what is said over a telecom in that place of business. As a result, it may sound routine to announce that a package from a specific city should be picked up or that one being mailed to that specific city needs to go out in that day's mail. Or a fictional name may be used as if they are being paged for a telephone call. If the receptionist has a computer terminal or even a cell phone, e-mails or text messages may accomplish the same thing.

Every employee should know what they are to do and where they go in each situation, not just from their desk, but from wherever they may be in the office at the time of an emergency. They should know the locations of the offices with locks on the door, office exits, where corridors lead, and the fire escape stairwells. Just as in any preparations made for fires, a meeting point in a secure location outside the office suite should be identified so that law enforcement and first responders can determine who is missing and may still be in the office.

Violence in mediations (or, for that matter, in other law office activities such as depositions) is not going to go away. Mediators must be prepared to recognize the behaviors and triggers for violence and prevent the parties from pushing the buttons to detonate it. Preventative action and planning before the mediation will improve your chances of not being caught in the middle of a tragic situation. And remember, some cases should not be mediated.

Robert L. Dietz is a shareholder at Zimmerman, Kiser & Sutcliffe, P.A. in Orlando, Florida. He is Board Certified by The Florida Bar in Workers' Compensation and is a Fellow of the College of Workers' Compensation Lawyers. He has served for the last three years as the President of the Professional Mediation Institute, an annual advanced mediation training seminar for evaluative mediators that will be held in Orlando on August 21, 2013. He is also a past director of the Association of Attorney-Mediators and has been a Florida Supreme Court Certified Circuit Civil Mediator since 1995. He has mediated more than 1,300 cases and is a frequent speaker and writer on mediation techniques and ethics.

James A. Edwards is also a shareholder at Zimmerman, Kiser & Sutcliffe, P.A. He is Board Certified by The Florida Bar in Civil Trial and is a member of the American Board of Trial Advocates. He has litigated product liability, toxic tort, railroad and commercial cases. He has been a Florida Supreme Court Certified Circuit Civil Mediator since 1996 and has handled a variety of state and federal mediations both at the trial and appellate level. Jim is the past chair of the Orange County Bar Association Professionalism Committee and served for six years on The Florida Bar's Standing Committee on Professionalism.

AAM Training Videos Now Online!

The AAM Training Videos are now available for rental online. There are two sets of videos: **The Business Mediation Video and The Personal Injury Video**. The videos are "housed" in a **private** YouTube channel for viewing on any electronic device.

The price is \$10 per set and you may register and pay online to view at www.attorney-mediators.org/mediationtrainingvideos. The viewing link will be sent to you by email.



An Awesome Day in Austin

The **AAM Advanced Attorney-Mediator Training** in Austin, on November 9, 2012 was a very successful and enlightening program. The big “donut” shaped Hilton near the Austin airport was a great location for this “fly-in, fly-out, easy travel” location. We heard from those far from Austin that the location was not exactly an “easy travel” location and we are working to ensure that future Fall CLE locations are more easily accessible for all. We will continue to hold this training on the second Friday of November, as it is a great way to get your CLE’s before the end of the year!

A group of fifteen early arrivals had a casual dinner together on Thursday evening. This has been deemed a great part of all AAM trainings as it gives everyone a chance to meet and renew AAM friendships before the full work day begins.

This program offered something for everyone, with outstanding speakers and panelists. A very special thank you to the speakers and panelists that gave their time to fill our minds and entertain us, too: **Gary McGowan, Amie Rodnick, Irv Levinson, Don Philbin, Ross Stoddard, Paul Colley, David Deaderick, Casey Dobson, Kim Kirn, Ron Wiesenthal, and Eric Galton.** We enjoyed a surprise, last minute panelist, **Kim Kovac**, who joined Eric in his presentation. Our special lunch speaker was **Dr. Robert Moats** of Austin. He entertained us with film clips from many well-known movies, showing stress reduction for mediators. We certainly reduced our stress as we laughed throughout the hour!

Once again, attendee evaluations showed that the number one reason to attend an AAM function is the fellowship time with other mediators from around the country and what we learn from each other. We hope to see you at a future event! If you have never attended, give it a try! *Oh, and give Mike Patterson a pat on the back for a job well done!*

Watch Your Email Inbox

Again this year, we will vote in new board members at the Annual Meeting in Kansas City, Missouri, on April 27, 2013. Be watching your email inbox for the proxy, which should be arriving in a short time. We will have three vacancies to fill. The Nominating Committee will be publishing the bios of their suggested candidates with the proxy.

Please fill out and return the proxy, whether you will or will not be present at the Annual Meeting.

A special thank you to those members offering to fill these vacancies!



Contact Us!

The AAM Board and Brenda are available to receive your comments, suggestions or questions. Email us at aam@attorney-mediators.org. Or call 1-800-280-1368/972-669-8101

AAM Board Attends Strategic Planning Meeting

The “volunteer” AAM Board took a day out of their busy mediation schedules to travel to Dallas to work with Elizabeth Derrico of the American Bar Association. Issues were discussed that were brought out in the recent Member Survey. A special thank you to board members **Bill Lemons, Suzanne Duvall, Mike Patterson, Dean Kilgore, Michael Leech, Gloria Portela, Elizabeth Woodruff, John Rothman and Raymond Hunter** for their time and efforts on AAM’s behalf. And, thank you for your participation in the survey!

