



ASSOCIATION OF ATTORNEY-MEDIATORS

Newsletter

October 2001

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

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ASSOCIATION OF ATTORNEY-MEDIATORS

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

Dear Colleagues:

As I write this message, it is the day after the infamous terrorist attacks on the United States on September 11, 2001. Having stared at my empty computer screen most of the day, I realize that I will not complete this simple task unless I first express sympathy for the victims of the attacks, their families and friends. Our membership is large and diverse, so I know some of you must have experienced a very personal loss. On behalf of myself and our organization, please accept our deepest sympathies.

The year 2001 began on a much happier note for the Association of Attorney-Mediators. Our membership renewals are strong and our financial condition solid. At our annual meeting in Austin on May 4-5, 2001, we welcomed Oklahoma member Ray Tompkins to our board of directors. At the same time, we thanked Anthony Atwell, Cecilia Morgan, and Mike Neel for their years of service on our board as their terms expired.

The annual meeting, conducted under the able leadership of Immediate Past President Regina Giovannini, was a great success. The centerpiece of the event was the CLE program, which featured the Honorable Priscilla Owen, Wayne Fagan, Dan Naranjo, Susan Perin, George Scott Christian, Ross Stoddard, Paula James, Stevann Wilson, and Steve Nelson as speakers; they all received excellent evaluations. The meeting could not have been such a success without all of the groundwork laid by Austin members Gayle Cipriano and Tom O'Meara. We owe a special thanks to the Central Texas Chapter for hosting a cocktail reception for everyone at the end of the program on May 4.

If you were unable to attend the annual meeting in Austin, you won't want to miss the excellent CLE program that we are organizing for Dallas on November 9, 2001. President-elect Larry Maxwell and Dallas member Sherrie Abney, along with the members of the Program Committee, have prepared exactly the kind of program you have told us you want to see. The first part of the program will focus on practical issues like breaking impasses, whether and how to make a mediator's proposal, and how to make a favorable impression on trial attorneys during mediation. After a luncheon speech by trial attorney David Taylor on the confidentiality of attorney malpractice committed during mediation, we will spend the afternoon in small-group interactive sessions, a popular program format. Perhaps the reason the format has been so popular in the past is because the moderators have been some of AAM's superstars. Fortunately for us, Ross Stoddard, Courtenay Bass, and Mike Amis have agreed to give encore performances as moderators. They will be joined by another Dallas colleague, Ross Hostetter, and an outstanding mediator from Oklahoma, Steve Boaz. You will find full program details and the registration materials for this superb program elsewhere in this newsletter. Register soon and take advantage of the early-registration discount.

(Continued on next page)

(President's letter continued from page 1)

Your board of directors continues to work on the implementation of the recommendations of the Strategic Planning Committee. The board's progress is described elsewhere in this newsletter.

The Uniform Mediation Act (UMA) continues its slow but steady advance towards approval by the American Bar Association. Because the UMA could receive final approval next year, we may all be faced with proposed UMA legislation in our state legislatures in the not-too-distant future. See the article in this newsletter for a UMA update and Internet sites to find current information on this important proposal.

If you are planning to attend the meeting of the Association for Conflict Resolution's conference in Toronto on October 10-13, 2001, please send me an e-mail message at ww05@swt.edu. I will prepare a list of names and e-mail addresses of AAM members who plan to attend, and perhaps we can share a meal while we are there.

I look forward to seeing all of you in Dallas on November 9!

Sincerely,

Walter A. Wright

NEW MEMBERSHIP CATEGORY

At its May 2001 meeting, the board of directors considered the situations of members who, because of family commitments, career opportunities, or other circumstances, cannot satisfy the membership-renewal requirement that they conduct five mediations per year. After discussion, the directors voted unanimously to create a new category of membership: "Sustaining Member." Sustaining membership is open to AAM members who cannot satisfy the five-mediation renewal requirement. Sustaining members must satisfy all other requisites for continuing membership, including payment of dues. Because the board of directors has capped the number of Texas attorneys who may be members of AAM at 225, Texas members in the "sustaining" category will not be counted toward the 225 limit.

AAM WELCOMES NEW MEMBERS

We are pleased to welcome the following new members who have joined AAM in the year 2001:

Cecil Bain, San Antonio
 Mark Biskamp, Dallas
 Mark Caperton, Austin
 William Carroll, Dallas
 Hon. Joe Clayton, Tyler
 John Feather, Houston
 Charles Guittard, Dallas

Leslie Hill, Austin
 Jimmy Hulett, San Antonio
 Samira Lineberger, San Antonio
 C. Michael Moore, Dallas
 Cynthia Morrison, Fort Worth
 Herbert Pounds, San Antonio
 Mike Sadler, Fort Worth

Fred Simpson, Houston
 Charles Smith, San Antonio
 Sundra Spears, San Marcos
 K. Scott Statham, Houston
 William Towns, San Antonio
 William White, Houston

We are also pleased to welcome Jack Raines, of Fort Worth, and Brenda Damuth, of Dallas, who have renewed their memberships after a period of absence.

If you are a new or returning member, 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.

MEMBERSHIP RENEWALS

Your membership renewal packages will be mailed to you in early December. Please complete them and return them as soon as possible. Early renewal is especially important for Texas members, as we now have a cap of 225 on Texas members. Before we admit new Texas members, we like to be sure that all Texas members who wish to renew have done so.

UNIFORM MEDIATION ACT UPDATE

The National Conference of Commissioners on Uniform State Laws (NCCUSL) approved the Uniform Mediation Act (UMA) at its annual meeting on August 16, 2001. The NCCUSL also recommended that the UMA be enacted in all the states. The Board of Governors of the American Bar Association (ABA) will consider approving the UMA at its mid-year meeting in February 2002. If the ABA approves the UMA, we can expect many of our legislatures to begin considering bills to adopt it.

The most controversial aspect of the act, at least from the perspective of the Association of Attorney-Mediators (AAM), has been the UMA's lack of any provision recognizing the confidentiality of mediation communications. Perhaps in response to objections raised by AAM, the Association for Conflict Resolution, the State Bar of Texas ADR Section, and other mediation organizations, Section 10 of the UMA now contains the following provision: "Unless subject to the [open meetings act/open records act], mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this State." In those states that have other laws or rules that protect confidentiality, there would be some degree of confidentiality attributable to mediation communications. Of course, mediations taking place in states that have no laws or rules protecting confidentiality would not receive any protection from the UMA. Under Section 3(3) of the UMA, a "mediation communication" would mean "a statement, whether oral, in a record, verbal, or nonverbal, that is made or occurs during a mediation or for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator."

Sections 5-7 of the UMA deal with privilege of mediation communications, waiver and preclusion of privilege, and exceptions to privilege. A brief review of these sections indicates that the exceptions to privilege are narrower and more clearly defined than they have been in prior drafts. However, there are still seven exceptions. Some of our members have raised concerns that such a large number of exceptions might undermine parties' confidence in the mediation process, especially if the exceptions are first raised and discussed at the outset of a mediation session. The UMA also provides there is no privilege if a "court, administrative agency, or arbitration panel finds, after a hearing in camera," that the party seeking otherwise privileged communications "has shown that the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and the mediation communication is sought or offered in: (1) a court proceeding involving a felony [or misdemeanor]; or (2) a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation . . ." Fortunately for mediators, the UMA also provides that mediators may not be compelled to provide evidence of mediation communications in the latter two situations.

The latest draft of the UMA has fifteen sections. This brief review of its highlights is inadequate for a thorough understanding of its potential ramifications. Because the UMA is moving towards approval by the ABA, and because the August 16, 2001 draft is the one likely to be presented to state legislatures, now is the time to familiarize yourself with its provisions, if you have not already done so. The August 16, 2001 draft of the UMA can be found on the NCCUSL's web site at www.nccusl.org/nccusl//Annual_Meeting_2001/MED01AM.pdf. To download this draft requires Acrobat Adobe Reader software, which can be acquired at no charge over the Internet. An alternative site to locate the August 16, 2001 draft and download it without special software is www.law.upenn.edu/bl/ulc/ulc_frame.htm.

CHAPTER NEWS

HOUSTON CHAPTER

The Houston AAM Chapter installed its 2001-2002 slate of officers in June. They are **Doug Sandage**, President, **Alice O'Neill**, Vice President, **Allan Davis**, Secretary, **Bill Bonham**, Director, and **George Wilhite**, Director. The chapter has re-instituted its "Mediator on Call" program in a new format, so as to help provide for the pro bono and reduced-fee mediation needs of the courts in Harris County, while not unduly burdening particular members. Its board is working on updating its website and exploring possibilities for marketing through the Association. Its breakfast CLE program has also re-started for the fall. Look for notices of our programs!

SAN ANTONIO CHAPTER

The San Antonio Chapter officers are **William H. Lemons, III**, President, and **Judith Reed Blakeway**, Vice President. Any member of the San Antonio Chapter who is interested in serving as its Treasurer for a term that will end on September 30, 2002, should contact William H. Lemons, III at (210) 472-0500 or whlemons@satexlaw.com.

ST. LOUIS CHAPTER

The Chapter conducted its annual Advance Mediation Training Program on Saturday, March 3, 2001. Led by **Mike Amis** (our chapter's "patron saint"), the all-day program was a terrific success.

The Chapter also held an evening meeting with a number of judges of the St. Louis County Circuit Court, whose ADR program is in its relatively early stages. The program was designed to provide more information to the judges about the mediation process and to discuss the judges' concerns in ordering mediation.

Finally, the Chapter continues to hold monthly meetings to discuss current issues and specific problems and questions the members have encountered.

OKLAHOMA CHAPTER

Many members were involved in presenting two recent Oklahoma Bar Association (OBA) CLE programs – an Advanced Mediation seminar and a seminar that provided Basic Mediator Training. **Ann Marshall**, ADR Clerk for the Western District Federal Court, will be presenting ADR and settlement programs as part of an upcoming CLE program involving practice in the federal courts.

Current President **Stephen Boaz** serves as the EEOC Contract Mediator for Oklahoma. Past President **Ray Tompkins** received the AAM President's Award and serves as Secretary on the National Board. Ray also recently was selected as an American College of Civil Trial Mediators Fellow.

Nancy Gourley is the current Chair of the OBA ADR Section. She also serves on the OBA Board of Governors. **Ray Tompkins** is the Chair-Elect of the OBA ADR Section.

The primary goal for the upcoming year will be to pass legislation that will allow any agency or other party seeking mediation services to be able to choose from private ADR providers as well the volunteer-based Early Settlement Program.

INTERESTED IN JOINING OR FORMING A CHAPTER?

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

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

CENTRAL TEXAS CHAPTER

The Central Texas Chapter has 44 members for 2001. That includes one (1) "half member" that the Chapter shares with the Bexar County Chapter. The officers for 2001 are: **G. Maynard Green**, President; **Greg Bourgeois**, President-Elect; **Amie Rodnick**, Secretary; **Judge Joe Hart**, Treasurer; **Mike Schless**, Membership Committee Chairman; **Gayle Cipriano**, Special Projects; and **Walter Wright**, Liaison to National. It's nice to have the National President as our liaison this year.

The annual meeting of the Association of Attorney Mediators was held in Austin this year. As usual, it was an excellent meeting. The Central Texas Chapter sponsored an informal social following adjournment of the Friday afternoon CLE. It was good to renew friendships with members from the other chapters.

The Chapter has scheduled a social/judicial reception for this fall. It is scheduled for October 19th. **Greg Bourgeois** and **Amie Rodnick**, with the help from the rest of us, are working on a tri-fold brochure to be mailed to the Central Texas Bar this fall. It will have all of the members' names, something about AAM and a referral to the Chapter web site. That will be done in lieu of printing a new directory for 2001.

The monthly breakfast meetings continue with a speaker at each and through **Gayle Cipriano's** hard work, the attendees are receiving 3/4 of an hour of CLE. The speakers cover new developments and trends, discuss tips for developing more business and providing a better product, as well as other subjects. The breakfast meetings are on the second (2nd) Friday of each month at La Madeleine, at 3418 N. Lamar in Austin. If any of you are in Austin on the 2nd Friday of a month, come eat breakfast with us. It will be well worth your time.

Our website is at www.attorney-mediators-tx.org.

NORTH TEXAS CHAPTER

The Chapter will elect new officers for 2002 at its October meeting. Members will meet for breakfast at 7:30 a.m. on October 18th, at the S&S Restaurant in Inwood Village. Those nominated are: President - **George S. McKearin**; Vice-president - **John L. Estes**; Treasurer - **Jerry N. Jordan**; Secretary - **Priscilla Kim Park**. The immediate past President is **Robert J. Matlock**. Plans are underway to have quarterly meetings with guest speakers throughout 2002.

The Chapter is working with the program committee in planning for AAM's November 9th CLE meeting in Dallas. **Sherrie Abney**, who will next year be the Chair of the Dallas Bar Association ADR Section, and **Larry Maxwell**, current Chair of the ADR Section and President-elect of AAM, and their committee, are planning an interesting and informative program for AAM's November meeting. All current officers of the Dallas Bar's ADR Section are AAM members, and from its inception in 1992, the Dallas Bar's ADR Section has grown and prospered with the leadership of AAM members.

IMPORTANT NEWS FOR TEXAS MEMBERS

As this newsletter was being prepared, AAM's Texas membership reached the cap of 225 members. **No new membership applications from Texas attorney-mediators may be considered until next year.** Openings will occur only if current Texas members lose their membership by failing to timely renew, or by active members changing their membership status to "Sustaining." (See article on page 2.)

Current Texas AAM members: do not lose your place in AAM! Return your membership renewal application promptly in December.

STRATEGIC PLANNING REPORT

At its August 2001 meeting, the board of directors continued its consideration of the recommendations of the Strategic Planning Committee. The directors had the benefit of input received from AAM members at the annual meeting in May. After reviewing the comments received from members, the directors made the following decisions:

- To retain the cap of 225 on Texas members.
- To encourage, rather than require, the use of AAM's logo on members' stationery and other materials, and to establish parameters for members' use of the logo.
- To find ways to improve AAM's website and newsletter.
- To find ways to increase outreach to non-Texas members.
- To find ways to increase the diversity of AAM's membership.

Other decisions involved the general requirement that AAM's members become more active in AAM activities. In reaching these decisions, the directors attempted to balance the desire to increase the exclusive quality of AAM membership with the need to limit burdens on members' time and energy. With those goals in mind, the directors made the following decisions:

- To establish committees to advance AAM's goals. The president appointed Regina Giovannini, Mike Clann, and Ray Tompkins to develop a list of proposed committees and chairs.
- To encourage every member to join a committee upon achieving or renewing membership, and to actively serve on that committee.
- Members will be assigned to a committee if they do not choose one.
- The chairs of the committees may call upon the members to assist in furthering the committees' tasks and AAM's goals.

The committees will be in place by renewal time in December 2001. If you have an idea for a committee, or if you wish to serve as chair of a committee, please contact Regina Giovannini, Mike Clann, or Ray Tompkins. Their contact information is on AAM's website, www.attorney-mediators.org.

MEET ME IN DALLAS ON NOVEMBER 9th!!

Don't miss AAM's "only happens once a year" advanced attorney-mediator training next month in Dallas. By popular demand, AAM's advanced training will be presented in a combination lecture and interactive skills-building workshop format. In response to suggestions received at this year's Annual Meeting, this year's program (see next page) will engage participants in practical, hands-on mediation skills-building.

Opportunities abound for ADR-related continuing education, but only AAM offers programming exclusively about mediation, exclusively for the attorney-mediator, and exclusively drawing upon the talents and expertise of the nation's most experienced attorney-mediators. Past years' evaluations consistently rate AAM's trainings as unparalleled opportunities to learn from the best instructors, as well as fellow AAM member participants.

As with all AAM advanced trainings, seating is limited in order to insure small workshop groups for maximum attendee participation. Your registration form is enclosed with this newsletter. Deadline is November 2nd. Register early to secure your place!



ASSOCIATION OF ATTORNEY-MEDIATORS

presents its

ADVANCED ATTORNEY-MEDIATOR TRAINING

Friday, November 9, 2001

8:45 a.m. to 4:30 p.m.

CITYPLACE

2711 NORTH HASKELL AVE.

DALLAS, TEXAS

North Central Expressway (U.S. 75) at Haskell Avenue

REMINDERS ABOUT OBSERVATIONS:

It may not be necessary for your membership renewal. The following renewing members are NOT required to complete a mediation observation as a condition of membership renewal:

- ☞ members reporting 100+ total mediations conducted;
- ☞ members reporting less than 100 total mediations but who are reporting 25+ mediations conducted in the preceding calendar year.

Observation of one mediation continues to be a requirement for all other renewing members.

ADVANCED CERTIFIED MEDIATORS

AAM congratulates the following members who have achieved or renewed their Advanced Certified Mediator status in calendar year 2001:

Ron Roberts	Jack Raines
John A. Davis	Walter "Rip" Parker
Sam Graham	William Bonham
James Knowles	Alvin Zimmerman

In order to retain the Advanced Certified Mediator status, holders of the certification must submit renewal applications annually.

TO DO LIST:

- ✓ Mark my calendar for the CLE in Dallas on November 9.
- ✓ Be on the lookout for the Membership Renewal Application in early December, fill it out quickly, and return it to the National office.
- ✓ Invite an AAM colleague to observe a mediation for the membership renewal requirement.