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I am delighted to begin my year as Chair of the Dispute Resolution Section with the mission of sustaining and enhancing the Section’s success in promoting excellence in the field of dispute resolution. To that end, I look forward to making our Section “Bigger, Better, and Stronger” by emphasizing and improving the professional programs we deliver, expanding our reach internationally, providing inclusivity and connection for our members, continuing our commitment to gender and diversity initiatives, and promoting civility in the law and beyond.

This issue of Dispute Resolution Magazine focuses on family. What could be more appropriate than this theme, which brings to mind Sister Sledge’s 1979 hit tune “We Are Family?” This refrain, which so many of us have danced to, reminds us of the connection we feel in our commitment to strive for excellence and resolve disputes intelligently and amicably. We are family in our relations to the greater ABA and its 20 other sections, many of which we collaborate with in education and other programming. We are family to the many international dispute resolvers who have found a home in our Section and travel great distances to attend our meetings. Above all, we are family to each other in our universal commitment to the importance of using appropriate methods of dispute resolution, whether we are practitioners, academics, court-connected staff, advocates, or students.

We have so much in common, yet we always learn from each other, and the coming months will offer new opportunities to do so. By the time you read this, we will have celebrated ABA Mediation Week, from October 13 through October 19, as part of a nationwide effort by state and local bar associations to set aside time to educate lawyers, litigators, members of the judiciary, public officials, and the general public about the value of mediation. Recognizing the importance of dispute resolution, advocates, and policy makers in a time of increasing cultural diversity and complexity, this year’s theme was “Making a World of Difference: Bridging Difference in Positions, Perspectives, and People Through Mediation.”

Our 11th Annual Advanced Mediation and Advocacy Skills Institute, another highlight of the Section’s educational programs, will be held in Nashville on November 21 and November 22. This two-day conference is packed with instruction from prominent mediators, opportunities for role-plays, and break-out sessions to train mediators in sophisticated techniques of dispute resolution. Of course Nashville, a city with music and harmony all its own, is an additional reason to attend.

Please reserve April 2 through April 5, 2014, for our spring conference in Miami. We expect an exciting lineup of programs, speakers, and events to highlight our 21st year as a Section, so stay tuned for more information as plans get finalized. Other dates to add to your calendar are June 5 and June 6, 2014, when we will offer our popular Advanced Arbitration Institute in Washington, DC.

Dispute Resolution Magazine keeps our family informed about everything going on in our profession. Whether you have decades of experience in family law or know little about family dispute resolution practices, this issue has articles that will challenge and inspire you. Susan M. Yates and Peter Salem have written an article that explores the historical development of family dispute resolution. Sharon Press and Andrew Schepard offer an informative look at how family dispute resolution and other areas of practice have influenced each other, and Julie Macfarlane provides an inside look at her study of self-represented parties and why all of us practicing law and dispute resolution must be aware of the growing number of self-represented litigants. Susan D. Hartman and Susan J. Butterwick, innovators in elder dispute resolution, give us insight into this valuable and under-utilized application of ADR. Kelly Browe Olson’s article about intimate partner violence reminds us of the crucial importance of screening cases to ensure that collaborative processes are appropriate for the parties and that all participants (including attorneys and mediators) are safe and secure in the process.

This issue also includes regular features: book reviews of three recent ADR publications, an international dispatch covering arbitration and mediation of investment disputes, and ADR Cases.

As I start my year as Chair, I encourage you to become more involved in the Section, whether by increasing your participation in our committees, our annual meeting, and other education programs, writing, or working on projects that enhance the mission of our Section. I look forward to a strong kinship with you all.

Ruth V. Glick is Chair of the American Bar Association Section of Dispute Resolution and a commercial and employment mediator and arbitrator in the San Francisco Bay area. She can be reached at rvg@ruthvglick.com.
Top 5 Reasons to Choose Missouri

REPUTATION
Missouri was the first U.S. law school to offer an LL.M. exclusively focused on dispute resolution. Missouri consistently ranks as one of the top law schools in dispute resolution.

FACULTY
Our scholars generate important work influencing dispute resolution theory and practice around the world. We have one of the largest collections of full-time law faculty who focus on dispute resolution, publishing leading articles and texts.

CURRICULUM
Our program blends theoretical analysis, practitioner skills, and systems design work.

COMMUNITY
Our classes are small, creating a close community among faculty and students, forming lifelong bonds for networking and future collaboration. Classes generally are limited to LL.M. students.

DIVERSITY
Our student body is diverse – by age, race, nationality, legal background – which enriches the level of discussion inside and outside the classroom.
Referring family disputes to mediation and other ADR processes – especially matters concerning children – may be the most intuitive use of ADR. Most of us would agree that parents, not judges, are generally best equipped to make decisions about their children. Moreover, the benefits of a process with the capacity to foster communication and model collaborative problem-solving seem evident when there is a future long-term parenting relationship. Thus it should come as no surprise that family courts have long been among the earliest court adopters of dispute resolution programs – most often mediation.

Family ADR may seem ubiquitous today, but its prevalence is the result of decades of innovation and evolving programs and processes designed to keep pace with the ever-changing capacity of the justice system while meeting the needs of separating and divorcing parents. These innovations have often paved the way for other applications in court ADR.\(^1\) (See the Press and Schepard article in this issue, page 9.) This article provides a brief overview of the programmatic roots of family ADR in the courts, how these programs have borne fruit, and what the ADR field ought to know from this story.

**Early Roots**

Many family court ADR programs took root in family conciliation or counseling service (FCS) agencies first established in California in 1939. FCS agencies throughout the United States are typically court-connected and have historically provided family-related services, such as short-term counseling and mediation. These agencies were often the first to introduce ADR to the legal profession and to the public, demonstrating the potential for ADR to resolve family disputes in a more efficient and less adversarial manner.

\(^1\) Press, Michael J., and Joy Schepard, “The Family Court Model.” Dispute Resolution Magazine, Fall 2013, pp. 9-10.
counseling to help couples reconcile, as well as child custody evaluations on behalf of the court for those who could not stay together. Over the years, family court ADR processes largely grew out of these counseling and evaluation services. There are myriad models of custody evaluation in both the public and private sector, ranging from a brief, focused process that assesses specific issues (e.g., family violence or chemical dependency) for the court to more comprehensive processes that may involve multiple interviews, observations of parent-child interaction, and psychological testing. Evaluations typically result in a written report to the court and are frequently used in settlement negotiations.

In 1969, California Gov. Ronald Reagan signed the first no-fault divorce statute. This coincided with other societal changes that led to a substantial increase in the divorce rate. Perhaps most important, the feminist movement took hold, and an increasing number of women joined the workforce – whether by choice or out of economic necessity – and men devoted more time to child-rearing. Family courts thus generally (but gradually, over many years) moved from a default of the tender years doctrine and maternal sole custody – typically resulting in children visiting their fathers on alternate weekends – toward a greater sharing of parenting time and responsibilities. To address changes in the needs of clientele in the early 1970s, FCS agencies adapted. According to Jay Folberg, an early family mediator and proponent of mediation, “That was when the meaning of ‘conciliation’ began to change from staying together to peacefully separating with an eye toward the best interests of the children.”3 The seeds of self-determination and confidentiality, generally considered central to mediation, were already planted in the counseling services provided by FCS agencies. Then, in 1973, the first court-connected family mediation program was piloted in the Los Angeles Conciliation Court.

In 1974, the first private mediation center was established in Atlanta by O.J. Coogler, a lawyer and counselor who, spurred by his own difficult divorce, established the Family Mediation Association in 1975. Coogler was harshly criticized by members of the legal community, and some bar associations declared mediation by non-lawyers as the unauthorized practice of law and attempted to discourage lawyers from serving as mediators through the threat of ethical sanctions.3 Nonetheless, interest in mediation grew rapidly in both the private and public sectors. While custody evaluation continued to play a role in the divorce process, it generally took a back seat to mediation.

**Branches and Offshoots**

In 1981, California established mediation of custody and visitation throughout the state by enacting the first state statute to mandate parents’ participation in mediation. This led to significant discussion about the appropriateness of requiring litigants to mediate. Nonetheless, mediation grew, in the form of both voluntary and mandatory programs, across the United States in the 1980s. The National Center for State Courts estimated that as of the early 1990s, programs existed in more than 200 courts in nearly 40 states.

As mediation developed in family courts (and elsewhere), the early rumblings of what has become a long-standing conversation about mediation styles began to emerge. California’s statute permitted a local option for what was known as “recommending mediation,” a process in which the mediator makes recommendations to the court if parties do not reach agreement. The pages of Conciliation Courts Review (now Family Court Review) were replete with articles about self-determination and evaluative and recommending mediation, examining fundamental assumptions about the role of the mediator and the mediation process. This tension – certainly not limited to California or family mediation – has long existed at the heart of many FCS programs. The continuing effort to reap the potential benefits of approaches that value both self-determination and expert guidance has contributed to the development of a rich array of innovative hybrid processes in family ADR today.

One early example of innovation in family court ADR can be found in integrating court-based mediation and custody evaluation. Court-based custody evaluations had traditionally been evaluative or investigative processes, but beginning in the 1980s, some FCS agencies changed their evaluation process. In Connecticut, for example, after information-gathering and assessment (but prior to a report and recommendations to the court) evaluators systematically shared forthcoming recommendations with parties and lawyers and then facilitated a settlement conference. In another program, Hennepin County (Minneapolis) Family Court Services, parties who did not reach mediated agreements were offered (after mediation ended) the opportunity for their mediator to conduct an evaluation. These hybrid processes, while clearly different from each other, both attempted to integrate the
facilitative and evaluative role of the neutral in an effort to reach resolution.

Critics of hybrid processes believe that they potentially undermine the primary foci of both processes. Mediators who might ultimately make a recommendation or conduct an evaluation may struggle to simultaneously help parties engage in interest-based negotiations while also evaluating the parties’ strengths and weaknesses and considering a recommendation. Further, parties in a mediation that has the potential to become an evaluation may share confidential information with a mediator that they may not want to share with an evaluator. Evaluators conducting evaluations with an eye toward settlement may struggle to leave behind their assessments when attempting to facilitate settlements based on their evaluations. Moreover, parties to post-evaluation settlement discussions facilitated by evaluators may feel compelled to acquiesce to the evaluator’s recommendation.

Nonetheless, a hybrid approach allows the parties and neutral to build on any progress or information developed in one process and avoid spending time and energy starting over with a new professional in the other process.

Perhaps more important, the hybrid processes can, at times, be more flexible in meeting the specific needs of the parties. Indeed, courts that are concerned with the cost of ADR and with serving the needs of families may find these hybrid approaches efficient and effective in particular cases.

Pruning and Fertilizing as Needs Change

In the 1990s, as courts continued to establish mediation programs, the evolution of services continued as FCS agencies confronted an increasing array of challenges. These included budget and staffing cuts, increasing caseloads, non-English speaking clientele, unrepresented litigants, and an increasing number of parents who had never been married to each other. Thus many courts developed programs for separating and divorcing parties even when no specific legal issue was before the court. To help guide self-represented litigants through the court and dispute resolution process, many courts established self-help centers as well as divorce education programs, the number of which quadrupled in the United States between 1994 and 1998 (See the Macfarlane article in this issue, page 14). These early-intervention education

Examples of Family ADR Innovations

These processes and others – including adaptations of mediation for domestic violence or child welfare disputes – are highly nuanced and many overlap substantially. Nonetheless, these adaptations and nuances may be informative as the broader ADR field faces similar issues.

Brief Focused Assessment (BFA): an abbreviated custody evaluation typically focusing on specific, targeted questions. The BFA may be used when a comprehensive evaluation (typically more costly and divisive) is not required. Many courts have implemented BFAs in a variety of formats. BFAs are also used in private-sector evaluations.

Child Inclusive Mediation: an empirically based process in which the child is interviewed by a child specialist who then participates in mediation with the parents, bringing the child’s voice into the room. Child Inclusive Mediation was first developed in Australia by Dr. Jennifer McIntosh and has been replicated with modifications in the United States.

Conflict Resolution Conference: a hybrid process where the neutral meets with the parties over multiple sessions, conducts limited independent information-gathering, and attempts to facilitate settlement in a directive fashion. The Connecticut Court Support Services Division offers conflict resolution conferences. This process evolved in part from Connecticut’s settlement-based evaluation process noted earlier in this article.

Early Neutral Evaluation: a process in which co-evaluators hear from the parties without corroborating the information or conducting further investigation. The evaluators then share with the parties what they would report based on the information given. Parties then conduct settlement discussions or continue to a full evaluation. Hennepin County FCS first developed Early Neutral Evaluation for family cases in addition to its mediation and evaluation processes noted in the article.

Impasse-Directed Mediation: a process that combines aspects of counseling, negotiation coaching, and mediation for high-conflict parents. Janet Johnston and Linda Campbell pioneered this resource-intensive and ground-breaking approach in the 1980s in the book Impasses of Divorce (Free Press, 1988). It was one of the early, if not the first, hybrid processes designed specifically for high-conflict, highly litigious families and was adapted for use in the most challenging cases in both court-connected agencies and the private sector.

Parenting Coordination: a process that combines education, mediation, and limited decision-making by a parenting coordinator. It is offered primarily in the private sector but also in some courts, including Florida’s 11th Judicial Circuit. Parenting Coordination is typically used in post-decree matters, but it has also been implemented in a wide variety of formats.
programs vary but typically include information about children’s needs and/or skill-based curricula to provide parents with information, tools, and techniques for co- or parallel-parenting and for mitigating inter-parental conflict. A small number of evidence-based educational programs have demonstrated the capacity to prevent negative consequences of separation and divorce on children such as substance abuse, poor grades, and mental disorders.4

The 1990s also saw an increasing number of cases involving issues such as high conflict, domestic violence (See the Olson article in this issue, page 25), and chemical dependency, which created challenges for agencies where mediation was the default, and sometimes the only available, process. While space does not permit a full discussion of the impact of these issues on family dispute resolution, many programs continue to move away from “mediation as usual” to help manage these challenging cases. It is not clear whether these challenges were new to FCS agencies in the 1990s or social science research and political advocacy created a greater awareness.5 What is clear, however, is that families coming to court presented an increasingly diverse set of needs when it came to a dispute resolution process.

Family ADR Innovation: Bearing Fruit

As FCS agencies and private practitioners worked toward addressing these challenges, a variety of new processes emerged under the family ADR umbrella, many of which sought to find just the right blend of facilitative and directive or evaluative components. Some developed in the courts and were adapted by private practitioners; some emerged from social science research; and some were developed in private practices and adapted in courts. While an exhaustive list of family ADR processes is not possible, the box on the previous page contains some examples and brief descriptions.

Funding Drought

At a time when families appear to need more and more, governments are providing courts with less and less to do their work. For example, in recent years Los Angeles County Family Court Services reduced its staff by one-third and eliminated services, including comprehensive custody evaluation and a group intervention for high-conflict parents. Similar cuts are taking place in many courts across the country. While the innovations described on the facing page helped improve services for families, there is a limit to how much courts can innovate their way out of budget trouble. Even when spurred by adversity, at some point courts and FCS agencies will not be able to provide sufficient services if the budget ax continues to fall. Although many agencies are not under this level of stress, too many family court services are.

Adaptations to Climate Change

By the beginning of this century, innovation in court ADR was flourishing. Nearly half the US states allowed mandatory mediation in parenting time disputes, based on local court rules or the discretion of judges, while 13 states had family mediation laws. This institutionalization created an expectation and in many cases a reliance on the availability of mediation (but not necessarily other family ADR) among parties, the bar, and the bench in many jurisdictions. However, at the same time expectations grew, the capacity of many courts to provide services diminished due to many of the challenges noted above. Early on, court-connected mediation was premised on adequate program resources and parties with access to legal representation and other appropriate support services. Cases involving domestic violence, high-conflict,
chemical dependency, or child welfare issues were the exception rather than the rule. Today, many programs have re-evaluated service delivery options to adapt to the influx of challenging cases combined with, at best, stagnant (or diminishing) resources.

Courts also have expanded the use of screening and differentiated case management (or triage) in family court settings. Screening in court-connected mediation is not new, having been developed extensively over the last two decades in large part in response to concerns expressed by advocates for victims of domestic violence about mediation in such cases. More recently, however, FCS agencies have begun exploring triaging services, sometimes beginning with a screening process that attempts to match the parties to the family dispute resolution process that is most appropriate at the outset, rather than referring all parties to mediation and then failing a mediated agreement, to subsequent processes (e.g., hearings, custody evaluation, or settlement conferences).

The use of triage in family cases has generated debate. Proponents argue that triage benefits families and is an effective and efficient use of court resources. Critics contend that no one can predict who will succeed in mediation and that triage is a hurdle rather than a help and potentially undermines mediation programs and resources.

Measuring the Yield

As new processes are developed and implemented, they must be assessed, especially with such limited resources. Are children faring better because of the processes? Do parents feel they have been treated fairly? Are resources of the courts and the families being used efficiently? We do not have the answers, and society, courts, and parents will be operating in ignorance if these questions are not addressed through comprehensive evaluation. In an era of limited funds for direct provision of services, conducting reliable evaluations of court ADR programs is more of a challenge – but more important than ever.

Future Seeds of Change

Looking forward, family court ADR will continue to need to evolve to meet the challenges of social and economic change. We can anticipate that same-sex marriage, globalization, evolving technology, and an increasingly mobile society will provide new challenges and spark further innovations.

Family court services agencies have shown themselves to be uniquely able to adapt, in large part by keeping a close eye on the needs of the parents and children who use the system. As we all work to meet the needs of those who turn to the courts to address their conflicts, other areas of the judicial system should continue to look to family court ADR for inspiration.

Endnotes


6 Peter Salem, The Emergence of Triage in Family Court Services: The Beginning of the End for Mandatory Mediation? 47 FAM. CT. REV. 371 (2009); Hugh McIsaac, A Response to Peter Salem’s Article The Emergence of Triage in Family Court Services: Beginning of the End for Mandatory Mediation. 48 FAM. CT. REV. 190 (2010).

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We have been asked to do the impossible: in a short piece, highlight how family ADR has influenced general civil ADR and vice versa. A comprehensive discussion of this question would require us to range broadly over the history of both ADR and civil procedure through many years. Given the limitations of this article, we thus disclaim any overarching theme or theory of cross-fertilization. What follows instead are a few observations on this subject by two academic practitioners and public policy advocates who have participated in the development of family and civil ADR practices over the past several decades. We will focus our comments on substantive areas of civil law that exhibit many of the characteristics of family law, making implementation of ADR appropriate; and examples of past and present cross-fertilization of processes between civil and family ADR.

**Civil Cases Have Family Law Elements**

The first problem in discussing the cross-fertilization between family and civil ADR is defining terms. What is a family case, and what is a civil case?

We do not attempt a comprehensive definition of either. We simply note that in most court systems, family cases are civil, as opposed to criminal, cases. Divorce, parenting, abuse and neglect, many aspects of domestic violence, and child support are classified as “civil,” even though they arise out of family dynamics and relationships. We nonetheless think of them as different from traditional civil cases because the family relationships they arise from are often emotionally complex and volatile. Furthermore, family members will likely have continuing relationships with each other even after they leave the courthouse.

The traditional paradigm for a civil case, in contrast, is that it arises from a one-time transaction in which the parties intend to have no future relationship, and the only issue at stake is how much money will change hands. The prototypical civil case in this paradigm is one in which an injured driver seeks compensation from the other driver’s insurer and the parties will have no further relationship once the case is over.

These polarized paradigms are oversimplified. Some areas of law, although categorized as civil cases, have more in common with traditional “family” law cases than typical civil cases. Indeed, they might be called “quasi-family” cases and often involve family members – such as cases in the areas of elder law, guardianship, and probate. The interpersonal dynamics in these cases also often involve high emotions among people who had a previous relationship and are likely to have a relationship in the future. The resolutions in these cases demand emotional sensitivity, creativity, and careful thought as to how to manage future modifications, much as more “traditional” family cases do.

In addition, a range of civil cases, such as business and employment disputes and medical malpractice, have dynamics similar to those in “family” cases. The dissolution of a small business or a partnership, for example, is often like the dissolution of a marriage. There are hurt feelings, guilt, and the need to figure out how to split up assets and debts. Future relationships are often inevitable. Even “traditional” business disputes often involve some type of relationship that the parties may have an interest in preserving, or at least ending, on terms that allow both sides to “save face,” so while the monetary issues are important, the relationship issues also need to be addressed. In employment disputes, plaintiffs often are more interested in keeping their jobs and reconciling with their employer than receiving money and severing
the relationship. Even in medical malpractice cases, some research suggests that many plaintiffs want an apology and an understanding of what happened as much as (or maybe even more than) monetary compensation.

Feelings can matter more than money.

Cross Fertilization – Mediation

Origins

Thus, many types of cases call for ADR, with its emphasis on consensual decision-making. As noted in the article by Yates and Salem that starts on page 4 of this issue, family cases were among the first in which judges experimented with their inherent authority to manage their caseloads by using alternative processes, especially mediation.

In the early days, most mediators were publicly funded court staff. In California (and eventually other states), the cases initially came in through the “conciliation program,” in which the court personnel would attempt to help the parties reconcile. Recognizing that reconciliation was not possible or optimal for all parties, staff members began to experiment with a process that had a new goal: assisting the parties in dissolving their marriage.

As a result of this connection to conciliation programs, cases got to mediation much earlier in the process, often before the parties were clear about whether they would be reconciling or dissolving their marriage. The mediations were generally conducted over a period of time, to give the parties an opportunity to try out various “custody” and “visitation” plans (the terminology of the time) and become comfortable with the changes that would come with the dissolution of their marriage. The mediators came from a variety of backgrounds, including social work, mental health, psychology, and, to a more limited extent, law.

Family ADR practitioners thus gained experience dealing with all the issues that these cases embody – strong emotions, feelings of blame and guilt, need for creativity, cultural issues, and power imbalances. The recent attention being paid to neuroscience and psychological issues reflects an understanding of what family practitioners have always known: Resolving conflict involves more than interest-based bargaining.

Parents generally responded well to mediation in family disputes. Research demonstrated that they generally preferred it to litigation. Mediation offered parents a voice and some measure of dignity, and it saved time and money. Courts found their family dockets reduced by parent participation in mediation.

Given the positive impact of family mediation on court calendars, many judges, court administrators, and legislators were willing to experiment with it in other kinds of cases. In the late 1980s, Texas and Florida became the first states to adopt comprehensive statutes that allowed the trial judge to order a wide range of civil cases to mediation. Over the next decade, state and federal courts throughout the country followed suit, and today it is hard to imagine the civil justice system without a strong mediation component.

Family Mediation Adapts Civil Mediation Practices

In the same way that family practices have influenced civil practices, civil practices have had an effect in the family area. As the civil practice of mediation grew, courts experimented with new paradigms. Instead of being handled by court-annexed mediation services, today civil cases generally are mediated by private mediators paid for by the parties with limited (or no) administrative support from the courts. Civil cases are often referred to mediation late in the process – often on the eve of trial. With late referrals, inevitably, there is little or no time for multiple sessions. In fact, the norm for civil cases is half-day or full-day mediations. Finally, the mediators in civil cases often are attorneys, and attorney representatives tend to play a prominent role in the mediation.

While one can debate the pros and cons of these characteristics of civil case mediation, in recent years, family mediation has incorporated many of them, though often involuntarily. After a trajectory of growth of court-annexed family mediation programs in the 1970s and 1980s, over the last several years we have seen the diminution of court staff and court programs nationwide.

Once private-sector services for mediation became available, making the case for public-sector funding for family mediation was a difficult task. As family mediation spread to the private sector, an increasing number of attorneys started serving as mediators in family cases and brought with them many of their civil practices, including scheduling mediations late in the process for a single, long session.

One of us (Sharon) used to be responsible for the mediator grievance process in Florida that allows parties to submit ethical complaints about mediators. In a significant percentage of the grievances, the grievant described feeling that she or he could no longer exercise self-determination or make a rational decision because of physical and mental exhaustion after being in mediation for four to 10 hours.

Referral to mediation late in the process also removed the possibility of multiple sessions, requiring parties to make life-altering decisions without adequate information or time to fully consider their options.
decisions about their families without any opportunity to experiment with options.

Finally, the shortened mediation process generally includes attorneys appearing with their clients as representatives. Depending on the attorney’s philosophy, this could be a welcome addition, freeing the mediator from worrying about a party not understanding his or her legal rights and responsibilities. Or the attorney’s participation can be an obstacle, such as when the attorney demands caucus-only mediation or does not allow a client to participate meaningfully in the process.

**Civil and Family ADR Cross-Fertilization – Beyond Mediation**

The cross-fertilization between family ADR and general civil ADR extends beyond mediation. In a time of decreasing resources for courts and court-based ADR programs, increasing costs for litigants, increasing cases involving intimate partner violence, and increasing numbers of self-represented litigants, courts have recognized that litigants need more options than facilitative mediation alone.1 (See Kelly Browe Olson’s article on Intimate Partner Violence, page 25, and Julie Macfarlane’s article on self-represented litigants, page 14). A few examples of developing areas of cross-fertilization follow:

**Court-Appointed Experts**

Family courts routinely appoint mental health professionals to serve as neutral evaluators in parenting disputes.2 These evaluators are responsible to the court and not to either party. Nonetheless, in many cases the parties pay the fee for the neutral evaluator. The views of the neutral evaluator give the court a better basis for fact-finding about the child’s best interests than the input of psychologists engaged by the parties alone. The evaluator’s report, however, is also a major influence on settlement. Parents think twice about the cost and expense of contesting an unfavorable court evaluation report, so such a report gives counsel a powerful tool to advocate for settlement.

While we have no comparative statistics, we suspect that child custody evaluators are the single biggest use of court-appointed witnesses in civil litigation in the United States. In the federal courts, there are instances of judges appointing court experts to great effect, to help them assess scientific evidence. Federal judges, for example, appointed panels of experts to help evaluate conflicting scientific testimony regarding causation of injuries by silicone breast implants.3 Federal Rule of Evidence 706 provides a broad authorization for a federal court to appoint its own expert on its own motion. In other civil cases in the state and federal courts, experts are used to resolve valuation disputes, intellectual property questions, and discovery disputes. However, we do not think that the practice of using court-appointed experts (rather than party-paid and selected experts) has become anywhere near as routine in most civil cases as it is in parenting disputes in family cases.

Given the increasing costs of general civil litigation, we expect the practice of appointing a single expert in civil cases to increase. One can imagine a day, for example, when it becomes routine for courts to appoint one expert to assess medical malpractice claims or complex damages claims in business cases rather than relying on dueling experts hired by the parties. While the work of neutral evaluators in parenting cases has its controversies, their increasing use has led to the development of ethical standards and protocols to guide their work. This experience can be of great use in defining the role of court-appointed experts in all civil cases.

**Early Neutral Evaluation**

The family law dispute resolution world has gradually recognized that some parents need more evaluative mechanisms to help them resolve their parenting disputes than those provided by traditional facilitative mediation. For example, family courts are experimenting with potentially promising dispute resolution programs such as Early Neutral Evaluation (ENE). In general terms, ENE is a nonbinding form of ADR designed to give parties a realistic view of their case, identify issues, speed up discovery, and encourage settlement.

As discussed in the Yates and Salem article in this issue, Hennepin County Family Court Services and the Minnesota Fourth Judicial District Family Court use the ENE process in child custody disputes. Parties are referred by the court to a male/female team of experienced neutral evaluators for early feedback on the probable outcome of a full evaluation and an opportunity to negotiate a settlement. The determination is then conveyed in the form of a recommendation to the parties. Following the recommendation, the ENE team meets with both sides to shape an agreement that is tailored to meet the needs of the parties and their families.
Approximately 70 percent of cases are reported to settle. Research indicates the program reduces the stress and expense of custody disputes for clients, expedites judicial case management, maximizes Family Court Services staff efficiency, and focuses subsequent evaluations on critical issues.\(^5\)

General civil cases also use ENE. A Northern District of California federal court program, for example, requires parties in certain cases to attend an ENE session.\(^6\) The protocol of the session itself is very structured. If no settlement is produced, the evaluators may help the parties develop an efficient approach to case management.

**Special Masters and Parent Coordinators**

In another area, ADR practices in general civil cases are migrating to family law. Rule 53(a) (1) (C) of the Federal Rules of Civil Procedure allows the court to appoint a master (a term often used with the word “special” before it) to “address pretrial and posttrial matters that cannot be effectively and timely addressed by an available ... judge or ... magistrate.” Numerous federal courts have appointed special masters to investigate complex facts, supervise time-consuming discovery disputes, implement remedies, or calculate damages that would take inordinate amounts of court time and resources.

The family law world has adapted the special master for its own needs in the concept of “parent coordinator.” Parent coordinators are generally used in high-conflict custody litigation. A parent coordinator provides education, mediation, and as a last resort, decision-making for high-conflict parents.\(^7\) While not identical to a special master, a parent coordinator performs a similar role in the sense that he or she manages ongoing complex interactions within the scope of a court order or appointment. Early empirical results are positive – parent coordinators reduce repetitive litigation by parents. In both civil and family cases, the appointment of a master or parent coordinator saves the court time and effort that can be used for other cases.

**Conclusion**

Past cross-fertilization between family and civil cases has been significant and has led to the development of mediation as the basic process of alternative dispute resolution. Civil ADR needs to continue to learn from family ADR, and vice versa. But practitioners need to be more sophisticated and thoughtful about the lessons they draw from other areas of practice. If we are careful about our learning, future cross-fertilization can lead to even more innovation and attentiveness to the needs of litigants. ♦

**Endnotes**


2. The terminology for mental health professionals serving as neutral evaluators varies by jurisdiction. Common terms include “child custody evaluator,” “neutral forensic evaluator,” and “neutral forensic investigator.”


5. Id.


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Time to Shatter the Stereotype of Self-Represented Litigants

By Julie Macfarlane

“I have no choice – I am unrepresented, not self-represented. It’s not that I think I can do this better than a lawyer. I have no choice. I don’t have $350 an hour to pay a lawyer.”

“Do these people imagine that I am enjoying this? I am here because I have no other option.”

Dispute resolution professionals who work regularly with self-represented litigants (SRLs) in mediation or settlement programs have probably heard comments like these, which are taken from interviews I conducted with self-represented litigants for an empirical study of SRLs in family and civil courts in three Canadian provinces. In fact, more than 90% of SRLs interviewed in the study expressed similar sentiments.

This research makes it clear beyond doubt that the most significant reason for joining the ranks of the pro se litigants, who now constitute the majority in some family courts, is the high cost of legal services. More than half the 259 study respondents had previously retained counsel but had run out of funds – or in some cases, eligibility for public funding (13%).

This finding is also consistent with other studies in the United States, Canada, and the United Kingdom, showing that many struggle without an adviser or lawyer and may feel vulnerable to a more experienced opponent, yet are unable to afford expert assistance. Both dispute resolution practitioners and lawyers who regularly advise SRLs in pro bono services understand that many feel disengaged from – and even abandoned by – the legal system because they cannot afford an agent to help them navigate its shoals.

My recent study shows that most SRLs are extremely anxious, overwhelmed by the court process, and desperate to do as good a job as they can in the face of skepticism from many lawyers and judges. Most are SRLs because they see no other option, and not out of choice. As one study participant said, “I was scared out of my mind. But I had a hard choice – either learning to do this for myself or letting my daughter go forever. I didn’t
know that even if I learned how to do this, anyone would believe me. But I could not give up without trying.”

However, outside a small committed group of justice system professionals working to improve the SRL experience, a pervasive negative stereotype still drives much of our thinking about SRLs. SRLs are widely regarded – not only by many lawyers and judges but also in the wider public culture – as unreasonable, angry lawyer-wannabes, out of touch with their own limitations. Many think SRLs are gaming the system or milking it for sympathy and using to their advantage the courtroom chaos they sometimes create.¹

**The Study**

When I opened my study in December 2011 using a combination of traditional solicitations (such as flyers and posters in courthouses) and social media (a dedicated website and a Facebook page), I was overwhelmed by a deluge of people who I quickly discovered did not fit the unreasonable/crazy/angry stereotype. They were “ordinary folks,” struggling to do their very best in a system they found mostly unfathomable and frequently hostile. Sixty percent were litigants in family courts, where the numbers of SRLs now reach almost 80% in some urban centers (in smaller court centers, SRLs commonly outnumber represented parties).² These figures are mirrored, by the way, in US courts.

Many of the formerly represented SRLs had expended up to $20,000 on legal costs, and some had spent more than $75,000. Many of these respondents were disillusioned by the poor “value-for-money” that they felt their significant investment represented. Many had searched fruitlessly for a lawyer to assist them on a task-by-task basis (using what we would call a limited-scope retainer or LCR, also called unbundled services), typically going through the yellow pages and calling every local law office in an attempt to find a lawyer who would review court paperwork before submission, look over documents from the court or the other side, or even come to court for a day. Other professionals provide some services on a piecemeal basis, and these respondents could not understand lawyers’ reluctance to provide this type of affordable assistance. (Just 12 of 259 SRL respondents were successful in finding a lawyer willing to “unbundle” for them.)

There is a crisis of affordability in legal services. The conditions producing this crisis – declining public assistance for litigants, the now-common cost of legal services at upwards of $250 an hour, and the pervasiveness of traditional billing arrangements (a retainer and the billable hour) – are the same in the United States and Canada. If I had a dollar for every lawyer who has cited to me the old adage “he who represents himself has a fool for a client” since I began this study, I would be a wealthy person. The self-represented aren’t fools. But many told me that they feel overwhelmed and disempowered. Many SRLs spoke of their struggles with a justice process that, in the words of one, “is a system designed to make smart people feel stupid” (50% of respondents had a university degree). In particular, they singled out court forms and procedures that are complex and arcane; a dearth of information on proper courtroom behavior, procedural etiquette, and cultural “know how” when they appear before a judge (usually after many hours of anxious preparation); unreliable and sometimes inconsistent (or incomplete) information online, replete with legalese, that does not meet the promise of “access to justice”; and waiting in interminable lines at the court counter, only to be told by a beleaguered clerk that he or she cannot give “legal advice” (a default definition that seems to have expanded to include almost every kind of guidance to a SRL, short of handing out a form). Each of these complaints was remarkably consistent across courts (both family and civil) and jurisdictions (three provinces participated in the study).

The most common and significant complaint among SRLs is a lack of kindness and at worst, hostility of many lawyers, judges, and sometimes court staff, although the latter group generally scores significantly higher with SRLs for overall helpfulness and empathy. SRLs described numerous and consistent instances of being treated with incivility and even contempt by some judges and lawyers. These reports suggest that this attitude is frequently driven by the stereotype of the SRL as an angry lawyer-wannabe. SRLs certainly present many dilemmas for counsel representing the opposing party in ensuring that their own client is not disadvantaged – but it is possible — and important — for opposing counsel to conduct themselves professionally.³ The negative stereotype unhelpfully assumes that lawyers are the victims and SRLs are the aggressors.

This experience is most vividly captured by a subset of lawyer SRLs in my sample who said they could not afford themselves or a similarly qualified lawyer. For example, one study participant stated:

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If I had a dollar for every lawyer who has cited to me the old adage “he who represents himself has a fool for a client” since I began this study, I would be a wealthy person.
“I wouldn’t have believed it could happen. I have seen it with my own clients, but I didn’t think it would happen to me. The lawyers strategize to marginalize you because you are a SRL, … painting you as the angry stereotype SRL … (T)he judge allows herself to be corrupted by this SRL stereotype.”

While it is understandable that the patience of members of the bench and the bar is sometimes tested by hapless SRLs, the assumption that SRLs are deliberately creating difficulties is a classic insider-bias attribution error – assuming intentionality in the face of simple confusion. The SRLs in my study put in long hours at night, after working all day, to prepare for the next day’s court appearance, and they wanted desperately to succeed – but often found themselves overwhelmed. As one respondent put it, “It’s like going into a gun fight armed only with a knife.”

There is also a danger of conflation between the small number of mentally unstable people who come to the courts, sometimes declaring bizarre pseudo-legal arguments, and the majority of SRLs. Of course there are people with mental health problems in the family courts – these include not only litigants, but also some professionals. There are also many distressed and traumatized people in family courts, represented or not. But these realities suggest that we should be doing a better job of taking care of them, not demonizing them.

Dialogue

A recent Dialogue Event at the University of Windsor brought together 45 justice system actors – judges, lawyers, regulators, court services and legal aid board managers, and policymakers – with 15 SRLs to discuss my research findings. One of the goals of the event was to challenge the stereotype of SRLs held by many justice system players by including self-represented litigants in the dialogue – and the equally rigid image of judges and lawyers held by some SRLs (that none of them “care”). In this respect, the event was a resounding success. In the words of one SRL delegate:

“From the moment I stepped off the plane, … I encountered an experience which I now consider to be the exact opposite of my interactions with the legal system. The chaos was replaced with order, indignities with respect and cruelty with kindness.”

And from a justice system professional:

“The courage of the SRLs who presented and spoke at the dialogue was inspiring. It is now incumbent upon the participants to ensure that their voices are heard…. [This] was a great opportunity for those of us in the justice system to see how we look to outsiders.”

The Dialogue Event, along with my recently released Research Report, make a number of practical recommendations addressed to court services, the judiciary, community agencies, and policymakers as well as the legal profession. Reflecting the study data, they point to a crisis of faith in the justice system that is in part the result of the crisis of affordability of legal services.

Recommendations

What can legal and dispute resolution professionals do to be prepared for the rising numbers of SRLs?

The first challenge is to see the exponential rise in family SRLs as the responsibility of all members of the profession, including those with viable practices and plenty of high-end clients. The public reputation and legitimacy of the legal profession are hurt if the profession represents (literally) only a tiny fraction of the population, primarily corporations.

Knowing that users of court services perceive the courts as distant, unaccountable, and chronically adversarial, the legal profession needs to be willing to listen to criticism and embrace the challenge of considering new ways to provide services to family clients (note that fully 86% of study respondents reported that they had sought and/or continued to seek legal advice after they started to represent themselves, but could not find pro bono or unbundled services).

Recalibrating their role in relation to the SRL phenomenon requires lawyers to share the territory. Some legal services can be affordably and competently delivered by a paralegal or other specialist (such as a conflict coach, mediator, or counselor). What skills and expertise are needed to competently carry out the tasks that make up family legal services? Is the particular expertise of a family lawyer critical to legal problem diagnosis? To courtroom advocacy? Probably yes. To form completion? Financial calculations? Client updates? Maybe, maybe no. Coaching on stress management and self-care? Probably no.

Whatever conclusions we draw from thinking through these ideas, (and they may be case-dependent), this is an opportunity to consider what ways a lawyer brings unique value to her client and to re-evaluate the terms of that
relationship. Relying exclusively on "knowing more" is no longer enough in the Internet age – the age of professional deference is over, and we have to show our value to clients in ways other than as the gatekeepers to information. Respondents in this study wanted their lawyers to help them understand and appraise their options, raise and manage settlement ideas, explain what the lawyers were doing (and why it cost so much), and allow clients the option of doing some of the work where this would save them money – rather than simply telling them what is "best" for them. Many clients and SRLs alike expect an alternative relationship with their lawyer to the "lawyer-in-charge"\(^7\) model.

Mediation and other settlement processes continue to hold promise for family litigants, but respondents reported a disappointingly low level of awareness of mediation, despite the fact that each of the participating provinces offered it. Simply offering mediation is not enough – some SRLs expressed reluctance to go into a mediation or settlement conference unrepresented when the other side had an experienced lawyer. Court personnel, members of the legal profession, and proponents of mediation need to think about how we prepare SRLs, as well as represented clients, to use mediation and other settlement processes effectively. Who should do this? Is this a role for lawyers or some other paralegal professional?

For lawyers willing to rise to this challenge, new models of client service and practice are emerging, including coaching, specializations in negotiation and mediation, and collaborations with other critical specialists including financial planners, child welfare specialists, mental health professionals, and paralegals. The SRL population is vast and growing, and many of these individuals would willingly pay for the services of a lawyer – they just cannot afford to do so using the present retainer/billable hours model. My study shows what some lawyers have suspected – there is an enormous, untapped market of clients who will pay for unbundled legal services.

Looking Beyond the Stereotype

As lawyers and dispute resolution professionals, we must look beyond the stereotype and understand who most SRLs are: well-intentioned, often overwhelmed people who want – and are willing to pay for – affordable expert help. We need to acknowledge how great their numbers are and why. Only then will we see this crisis for what it really is: an opportunity that we should welcome.

The justice system is paid for by the public, and its users are entitled to receive value through innovations that reflect their needs. We can and must rise to the challenge.

Endnotes


5 In Kent v. Waldock, the appeal judge commented that it was not appropriate for opposing counsel to call the self-represented plaintiff “a cowardly thug,” 2000 BCCA 357, para. 46 (Can.).


Julie Macfarlane is a Professor at the Faculty of Law at the University of Windsor and at the Kroc Institute for International Peace Studies at the University of Notre Dame. She is continuing her work on and with SRLs for the next 12 months. She can be reached at julie.macfarlane@uwindsor.ca. The work of the National Self-Represented Litigants project continues: see www.representing-yourself.com.
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Elder Mediation: Coming of Age

By Susan J. Butterwick and Susan D. Hartman

In a petition for guardianship and conservatorship over their mother, Mildred, two daughters allege that the durable power of attorney and patient advocate designation their mother signed a year ago is not legally valid because she signed them under undue influence or did not have the legal capacity and understanding to sign at the time. The mother's long-term companion, the donee of the powers, claims the petition should be dismissed, saying that the authority granted in the documents makes court supervision unnecessary, or argues in the alternative that he should be named as fiduciary. Everyone recognizes that Mildred now meets the definition of an incapacitated individual. The legal issue presented to the court is the validity of the documents: the capacity of Mildred a year ago and the circumstances of the signing. The real issue between the parties, however, is who will control Mildred's life and property. Each side is afraid that the other will restrict access to Mildred, act in ways contrary to Mildred's best interests, and use Mildred's property improperly. The parties' attorneys suggest mediation, to focus on Mildred's needs, explore the interests of the parties, and find ways to assure that Mildred's resources are used appropriately for her care.

Situations like this, along with other, more complex scenarios, are commonplace for court staff, attorneys, and other professional service and care providers. Underlying relationship issues or dynamics are often driving the legal action, and in recent years, courts and professionals have discovered that mediation can be a very practical, effective way to resolve disputes about caring for elderly family members.

The presence of a trained neutral “outsider” with no stake in the outcome is usually effective in diffusing anger and hostility and focusing the parties on collaborative problem-solving. The privacy and confidentiality of the mediation process appeals to many families. In addition, family members usually appreciate having the opportunity to make their own decisions, as opposed to giving over this power to a judge who knows little or nothing about the family dynamics, interests, and needs and must decide the case on the legal merits alone. The mediation process is particularly useful when the claims involve ongoing relationships between the parties, which is so often the case in family disputes.

Almost any case involving an older person presents issues that can be mediated, including:

- Health care decisions, including end-of-life planning
- Medicare/Medicaid and beneficiary questions
- Financial decisions and planning, including family-owned business matters
- Living arrangements, including long-term care
- Communication
- Responsibility for decision making
- Personal care, household care, and dwelling maintenance
- Safety, risk-taking, and autonomy
- Family relationships and dynamics (new or long-standing)
- Lifestyle choices of older adults (including divorce, companions, new marriages, and LGBT issues)
- Needs of caregivers and other family members
- Needs of grandparents caring for grandchildren
- Probate: guardianship, conservatorship, decedent estate, wills, and trust matters
- Consumer issues

During the 1980s and early 1990s, almost every state in the United States reformed its guardianship laws, largely because of lobbying by advocates for the elderly.
Genesis

Social workers and other advocates for the elderly developed several of the early elder mediation programs. Projects in the early 1990s included mediation of conflicts in nursing homes and elder housing facilities and were largely developed by professionals already active in elder advocacy or service roles, for example in the ABA Commission on Law and Aging.

Family caregiving mediation first arose in the context of adult guardianship. During the 1980s and early 1990s, almost every state in the United States reformed its guardianship laws, largely because of lobbying by advocates for the elderly. These reforms were designed to protect the rights of persons who were alleged to need a guardian, including new functional definitions of incapacity. The reforms shifted the burden of proof and level of evidence needed to demonstrate incapacity and addressed the rights of the person alleged to need a guardian to have an attorney, attend the hearing and cross-examine witnesses, and receive adequate notice.

Some advocates recognized that while these procedural protections and civil rights were important and necessary in a court proceeding, an adversarial process was not always the best way to address family conflicts involving care. The win-lose atmosphere of the court often escalated, rather than resolved, family conflicts, and often did not result in solutions that addressed the underlying problems. In addition, the court process, rather than empowering participants, often overwhelmed them with bureaucracy and legalisms.

In the early 1990s, the Center for Social Gerontology (TCSG) developed and studied adult guardianship mediation, first in a small local project in Ann Arbor, Michigan, and then around the country in several programs, using private-sector mediators, court-based programs, and community mediation programs. Early in its development, the model shifted from training elder advocates as mediators to training mediators in the additional information and skills required to mediate these cases effectively. Mediators needed training in relevant legal topics, as well as in ways to work effectively with incapacitated and vulnerable individuals, deal with confidentiality issues, mediate with multiple parties, address concerns about elder abuse, understand family dynamics, and deal with myriad other issues unique to elders and families in mediation. Everyone involved needed to understand the limits of mediation (for example, determination of legal incapacity cannot be mediated and must be decided by a court, although mediating parties can agree on who should be appointed as guardian if a person is determined to be incapacitated and in need of a guardian). Parties who used mediation to address conflicts arising in elder care settings were likely to reach agreement and be satisfied with the process and its outcome. However, the volume of cases actually mediated was small.

Mediators and aging-services providers soon recognized that mediation could be a valuable resource for cases in which families had not filed a court petition, and several mediation programs started to provide this service outside the adult guardianship setting. This presented new challenges: Often not all the parties would agree to participate. To minimize the association with courts or conflict, some mediators tried calling the process a “family meeting” or “shared decision-making.”

By the early 2000s, more mediators were adding “elder mediation” to their practices; articles about elder mediation showed up regularly on dispute resolution practitioner web sites and association periodicals and books. The 2004 ABA “ADR Handbook for Judges” included chapters on adult guardianship and probate cases. In 2009, the Association for Conflict Resolution (ACR) recognized a new Section on Elder Decision-Making & Conflict Resolution, which now has more than 230 members and has created standardized objectives for elder mediation training. At least 15 organizations or individuals now provide elder mediation training, and several law schools offer elder mediation courses or clinics.

Courts in the United States and abroad have increasingly recognized the value of ADR processes for elder care cases. A number of probate courts maintain rosters of private mediators who are available to mediate cases involving guardianship, conservatorship, or estate matters. Several community-based elder mediation programs and court-connected elder dispute resolution programs are ongoing or in the planning stages.

Ongoing Challenges

Nevertheless, these programs continue to encounter the same challenge as the early projects: getting parties to the table. Program directors and private mediators report difficulty getting cases and making their services known to stakeholders. Many elder mediation programs have not survived. Programs rise and fall with the introduction or departure of one stakeholder – for example, the retirement or reassignment of a judge who has enthusiastically championed a program.

An Ohio survey on elder mediation found the anticipated growth in the field has not occurred despite the increase in life spans, the aging of the baby boomers, and support from mediators who consider it a promising
area of practice. The survey authors identify the lack of awareness of elder mediation on the part of the public and potential referral sources as a significant barrier to growth and conclude that much work needs to be done to elevate recognition and achieve acceptance by stakeholders.¹

In Minnesota, a student study at the University of St. Thomas School of Law’s Elder Mediation Clinic highlighted a “catch-22” situation whereby many mediators didn’t want to invest in training for only a few cases, and courts, agencies, and consumers didn’t pursue elder mediation because they didn’t know of any trained elder mediators.

Innovative Initiatives

Despite these challenges, many elder mediation programs and private mediators around the country and the world have developed innovative initiatives.

Court-sponsored Programs

One way of getting parties to the table – and of increasing awareness of mediation’s value – is to use the motivation, for both parties and attorneys, that comes from court order or court persuasion. Many of these programs encourage parties to find creative solutions not otherwise available in a court setting.

• Since 2005, the Alaska Court System has mediated adult guardianship and conservatorship cases at every stage of the case.
• Since January 2013, the Probate Division of the Washington, DC, Superior Court, in partnership with the Multi-Door Dispute Resolution Division, has been piloting a one-year elder mediation initiative for the court’s Older Adult and People with Disabilities calendar.
• In Illinois, the Circuit Court of Cook County will soon include mediation in its new Elder Law and Miscellaneous Remedies Division.

Other Models and Processes

In an attempt to meet the needs of clients in ways that the clients find most helpful, mediators are offering other conflict resolution processes and creating innovative categories of cases.

• Restorative and tribal peace practices: A Michigan court is incorporating restorative peacemaking principles in guardianships, conservatorships, or decedent estates. Evidentiary hearings that emphasize open and direct dialogue with the judge; the articulation of guiding principles of respect, responsibility, and relationships; and the continuous reminder that the focus of the process is on the elder individual and his or her needs and desires all lead to increased satisfaction in the result.⁴ The Philadelphia Good Shepherd Elder Mediation Program uses Family Group Decision-Making, a restorative dialogue process, to resolve elder disputes.

• Conflict coaching: This process helps individual family members work through their own perspectives on the conflict and develop tools to communicate productively with others.
• Conflict Management Training: Many private mediators offer conflict management training to professionals who serve elders and the developmentally disabled, attorneys, and financial consultants who work with elders and families. The Elder Mediation Program of the Mosaica Center for Consensual Conflict Resolution in Jerusalem has trained management, staff, family members, and residents of assisted living and nursing facilities in basic skills of conflict management with the goal of enabling prevention, early intervention, and successful management of conflicts that inevitably exist in these facilities.

• Eldercaring Coordination: Parenting coordination was developed for use in child custody and related cases, with the idea that all high-conflict families have their own unique characteristics that can make mediation challenging. ACR has developed a task force, comprised of representatives of more than 15 national organizations, and an advisory committee on “Eldercaring Coordination,” which will use parenting coordination as a model to construct a high-conflict resolution option for families in crises and/or involved in guardianship cases.
• Expanding Services: Private-practice elder mediators have added and marketed additional categories of

One way of getting parties to the table ... is to use the motivation, for both parties and attorneys, that comes from court order or court persuasion.

Susan J. Butterwick is a mediator and trainer who has practiced mediation since 1993 and taught mediation to mediators and university and law students since 2001. She has developed and directed several elder and youth conflict resolution programs for courts and nonprofit agencies. She can be reached at sbutterwick@gmail.com. Susan D. Hartman is a retired mediator and mediation trainer who has practiced and taught elder mediation since 1996. She is the author of the Adult Guardianship Mediation Manual, published by the Center for Social Gerontology. She can be reached at susanbh@umich.edu.
cases and practices to traditional elder mediation services, such as collaborative divorce for elder clients or elder mediation options for the LGBT community.

**Partnerships and Networking**

In many communities, partnerships have developed between mediators, attorneys, elder services providers, and others to use existing resources in new collaborative ways or create new networks of service. This can be a valuable tool for growth of support and knowledge of mediation in the larger community.

In Los Angeles, the Elder Care Mediation Project, part of the Center for Civic Mediation, has partnered with a pro bono legal entity of elder law attorneys and a nonprofit elder services provider that deals with financial abuse, to provide free elder mediation services. Longevity Connection, an elder services agency in Danvers, Massachusetts, includes mediation, in which private mediators coordinate with the agency as “business affiliates” to provide mediation services, in its menu of services for elders.

Some partnerships focus on providing elder mediation training to other professionals, who, they hope, will gain understanding of mediation’s role in conflicts and be more likely to encourage their clients to use mediation. For example, the Center for Dispute Resolution, part of the University of Missouri’s public affairs mission, has trained academics, teachers, gerontology students, attorneys, counselors, psychologists, and social workers in elder mediation, in order to initiate a program that supports elder mediation. A unique partnership of the Iowa Association of Mediators, selected Area Agencies on Aging around the state, and Iowa’s Department on Aging provided basic and elder mediation training for participants from all three organizations. The organizations are exploring how to integrate mediation into the many services of the aging network, aiming to combine the expertise of advanced mediators and aging specialists

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**Elder Dispute Resolution Resources**

- **Alaska Court Program**
  Anchorage, AK
  [www.ajc.state.ak.us/reports/adultguard.pdf](http://www.ajc.state.ak.us/reports/adultguard.pdf)

- **ABA Commission on Law and Aging**
  Washington, DC
  [www.americanbar.org/groups/law_aging.html](http://www.americanbar.org/groups/law_aging.html)

- **Bet Tzedek**
  Los Angeles, CA
  [www.bettzedek.org](http://www.bettzedek.org)

- **Center for Civic Mediation**
  [www.centerforcivicmediation.org](http://www.centerforcivicmediation.org)

- **Center for Dispute Resolution**
  Missouri State University
  Springfield, MO
  [www.missouristate.edu/cdr](http://www.missouristate.edu/cdr)

- **The Center for Social Gerontology (TCSG)**
  Ann Arbor, MI
  [www.tcsg.org](http://www.tcsg.org)

- **Circuit Court of Cook County Elder Law and Miscellaneous Remedies Division**
  Chicago, IL
  [http://www.cookcountycourt.org/FORATTORNEYS/LITIGANTS.aspx](http://www.cookcountycourt.org/FORATTORNEYS/LITIGANTS.aspx)

- **Elder Decisions**
  Norwood, MA
  [www.elderdecisions.com](http://www.elderdecisions.com)

- **The Elder Mediation Program of Mosaica Center for Consensual Conflict**
  Jerusalem, Israel
  [www.mosaica-gishur.org.il/](http://www.mosaica-gishur.org.il/)

- **Good Shepherd Elder Dispute Services Program**
  Philadelphia, PA
  [www.phillymediators.org/](http://www.phillymediators.org/)

- **LGBT Elder Care Initiative**
  Philadelphia, PA
  [www.lgbtei.org](http://www.lgbtei.org)

- **Multi-Door Division of the Superior Court of the District of Columbia**
  Washington, DC

- **Northern Virginia Mediation Service**
  Fairfax, VA
  [www.nvms.us/elder-mediation/](http://www.nvms.us/elder-mediation/)

- **Wise and Healthy Aging**
  Los Angeles, CA
  [www.wiseandhealthyaging.org](http://www.wiseandhealthyaging.org)
in a cross-learning partnership that can collaborate in providing mediation services.

**Conclusion**

Skilled, dedicated professionals can help parties find paths to agreement on some of the toughest and most emotional issues that families face. The increasing life span of our population suggests that in the years to come, caseloads for courts and community agencies that serve the older population will only increase. As professionals, including skilled mediators, continue to reach out to these groups and their constituents with innovative alternatives, the barriers of consumer acceptance and case referrals could disappear and elder mediation will move from infancy into adolescence. ◆

**Endnotes**


2 AM. BAR ASS’N SECTION OF DISPUTE RESOLUTION, ADR HANDBOOK FOR JUDGES 141 (Donna Stienstra & Susan Yates eds., 2004).


4 The Honorable Timothy Connors, Washtenaw County Trial Court, Ann Arbor, MI.

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**Sharing a Mediator’s Powers**

By Dwight Golann

Mediators have power. This book teaches lawyers how to advocate effectively for clients in mediation by utilizing the powers of mediators. Using examples from actual mediations, this book explains how advocates can harness these techniques to maximize effectiveness in bargaining. This essential book covers many important facets of mediating effectively - from learning how to build a foundation for success, influencing the bargaining, developing an advocacy plan, and key steps in between.

*Sharing a Mediator’s Powers* is divided into four parts:

- Part I describes a basic strategy used by many commercial mediators.

- Part II analyzes how lawyers can take advantage of a mediator’s special abilities.

- Part III explores the techniques most effective at particular stages of mediation.

- Part IV presents a plan to represent a client in the mediation of an actual case and an example of a confidential mediation brief.

Also included in this guide is a DVD that brings advocacy concepts alive with 24 excerpts showing how to apply key techniques in the context of a commercial case.

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Most mediators are aware that intimate partner violence affects parties' abilities to make informed, independent decisions. Many, however, do not know how to identify distinctive types of intimate partner violence and how it can impact a party’s ability to negotiate and mediate effectively.

Screening parties for intimate partner violence (IPV) before mediation is a necessity in any case where the parties have had a close personal relationship. Certain types of IPV are directly correlated with fear, control, and power imbalances and can lead to safety, process, and outcome problems in mediation. Effective screening allows mediators to identify cases in which safety and control issues preclude mediation or require the use of additional safeguards. It also provides an opportunity for parties to consider whether they will be able to negotiate effectively with each other.

This article discusses the importance of screening for IPV; suggests who should screen, when screening should happen, and how it should be done; and presents some new screening instruments.

The few existing studies on screening in mediation have found that many screeners do not talk to parties individually, ask appropriate questions, or spend enough time on the process. Even when IPV was identified as an issue in a pre-interview questionnaire, some screeners failed to ask any questions about the parties’ relationship.

All programs should require effective screening for IPV before mediation, and if the parties choose to mediate, screening for IPV should continue throughout the process.

The Impact of IPV in Mediation

IPV, also known as domestic abuse or domestic violence, is a continuum of behaviors in which one intimate partner uses physical violence, coercion, threats, intimidation, isolation, or emotional, sexual, or economic abuse to control the other.¹

Domestic violence also happens in multi-generational familial relationships and between adults and teens who have never been intimate. While some survivors of IPV are male, this article will use the female pronoun when referencing survivors of IPV because studies continue to show that the vast majority of survivors are female.²

Research has identified some important divergences in both IPV typologies and their impacts on parties’ ability to negotiate or participate in mediation. There are multiple typologies, but for this article I will focus on two extremes that sociologist Michael P. Johnson and others have identified: coercive controlling violence and situational couple violence.³ Coercive controlling violence (CCV) is a pattern of abuse that includes intimidation, coercion, and control, coupled with physical violence. Perpetrators of CCV establish ongoing patterns of power and control over their partners. This pattern often limits the survivor’s ability to negotiate, even when the perpetrator isn’t in the same room. Even skilled and experienced mediators should not attempt to mediate cases that involve CCV. Another typology is situational couple violence (SCV), which is related to anger, rather than fear or power, and is less likely to escalate and recur than coercive controlling violence.⁴ With appropriate safeguards, many experts believe that parties with a history of SCV are capable of mediating their disputes.⁵ The different levels of control, coercion, fear, and violence...
Some mediators believe that they can easily identify survivors and perpetrators of IPV, but studies have shown that most professionals are mistaken in this belief.6 Some mediators believe that they can easily identify survivors and perpetrators of IPV, but studies have shown that most professionals are mistaken in this belief.6

The media depictions of uneducated women of lower socioeconomic status with hidden bruises who are abused by powerful, menacing dominant men are not representative. IPV survivors and offenders are members of all classes, races, ethnicities, and religions. Each survivor has a distinct story, and each handles her experience differently.

The Importance of IPV Screening

State laws on IPV and mediation vary greatly. In some states, mediation is not allowed in any case in which an order of protection has been issued. In other states, mediation is mandated in family cases whether or not instances of abuse have been reported or documented. Court programs, screeners, and mediators are often uncertain about what IPV is and how to handle cases where it is an issue. Training and consistent use of screening protocols will help minimize the confusion about IPV and about which cases should be excluded from mediation or conducted only with specific safeguards.

Studies in one jurisdiction identified IPV in more than 50 percent of its domestic relations cases; another study in another location found IPV indicators in more than 90 percent of that jurisdiction’s domestic relations cases.7 Despite the frequency with which it appears, however, mediators habitually fail to recognize IPV. One study found that mediators missed IPV, as self-identified by the parties, in more than 25 percent of their IPV cases, even after additional training.8 In a California Family Court study of cases in a mandatory mediation program, IPV was reported by at least one parent in 76 percent of the 2,500 cases.9

In medical and therapeutic professional studies, researchers have found that IPV was frequently underreported or completely missed unless there was a direct screening assessment with patients.10

To ensure that mediation is not used as a tool to manipulate and re-victimize a former partner, screeners need to look closely at the aggressor’s and the survivor’s descriptions of their relationship. Empirical findings from a large study on custody mediation suggest that coercive controlling behavior must be measured in the screening process.12 While a restraining order should be a clear indicator that an in-depth screening process is required, the presence or absence of a restraining order is not enough information. Screeners need to examine all cases for fear and control issues, listen to the parties’ individual concerns and goals, and help all the parties make informed choices about their dispute resolution process.13

Allowing Parties to Make an Informed Choice

Screening provides an opportunity for parties to make an informed choice about the processes available to resolve their case and whether mediation is their best option. A screening process with specific questions about each party’s ability to negotiate with the other will help both parties think about decision-making in their relationship. A skillful screener who is mindful of how severely IPV, especially coercive controlling violence, can affect one party’s ability to participate fully will help a survivor decide whether she is ready, willing, and able to negotiate for herself.

Domestic violence specialists have long been concerned about the emphasis mediation puts on collaboration. For example, absent screening, if an IPV survivor is unwilling to discuss visitation or other arrangements directly with the other party, a mediator could perceive the survivor as unreasonable and unsupportive of the other parent’s relationship with the child. The survivor could give in to the other party’s demands out of fear. On the other hand, the mediator could perceive the abuser to be reasonable, understanding, and interested in a good parenting relationship – when what he is really wants is to control the other parent.

For some IPV survivors, being able to mediate and have a voice in the outcome of their case is empowering. Some advocates who originally preferred litigation have become disillusioned by the court system and now suggest that with safeguards, mediation and other private processes may provide more safety or control for their clients.14 A research study showed that some women with a history of domestic violence preferred mediation and were happier with their results than similarly situated women who went through litigation.15 Indeed, some IPV survivors find mediation provides more opportunities to be heard and to make visitation plans that offer more detail and more safety than court-ordered plans. Each domestic relations case is unique; a one-size-fits-all solution will not work, especially in cases involving IPV.
Screening not only protects clients; it protects mediators and others. In a relationship where IPV is a factor, separation is frequently the time when violence is most likely to occur or escalate. Making financial or household arrangements to leave, seeking legal assistance, and particularly the act of leaving threaten a batterer’s sense of power and control. Everyone who comes in contact with a potential batterer needs to know this. Parties and screeners need to know about IPV to be able to decide whether and how to proceed with mediation or seek an alternative form of resolution.

The Screening Process

Who Should Screen

Court programs, mediation programs, individual attorneys, and mediators should all thoroughly screen their cases for IPV. Before mediation begins, screeners should determine whether the case is inappropriate for mediation, appropriate for mediation with specific safeguards, or appropriate for general mediation. Parties often fail to raise IPV concerns with attorneys, so although some attorneys do adequately screen their clients, mediators should not assume that lawyers have asked the right questions or prepared the parties for their roles in the mediation process.

When to Screen

Screening is not a one-time event. While trained court or program personnel should conduct a thorough screening of the parties before a case is assigned to mediation, this isn’t always feasible. Furthermore, IPV may develop or worsen at separation, so the mediator should conduct ongoing screening as the mediation process evolves. As parties become comfortable with their attorneys or mediator, they may also choose to reveal more about the IPV in their relationship and their concerns about negotiating with the other party.

What Types of Cases

Screening for IPV should not be limited to traditional domestic relations cases. It is equally important in cases involving never-married couples, same-sex couples who are married or in civil partnerships or unions, in adult guardianship cases, child protection, and other cases where multiple family members are involved or where there are intimate relationships between the parties. This includes small claims and civil cases between family members or long-term roommates. There are increasing numbers of pro se parties filing cases in domestic relations and multiple other areas of law. When parties appear pro se, it is more critical than ever to have effective screening processes in place.

Screening Tools and Techniques

Screening a case should involve a variety of tools and techniques, including written questionnaires, background checks, clinical observations, and in-person interviews. A separate in-person interview helps build rapport and lead to a thorough understanding of the issues facing a particular family. Screeners should reflect on what the parties say and don’t say, their facial expressions, tone, behavior while the other party is speaking, and willingness to express their needs. Screening questions should be detailed enough to elicit discussion about the many types of violence that can be present in a relationship. Uniform screening instruments help provide quality and consistency.

Five Things You Need to Know about Intimate Partner Violence and Mediation

1. Every mediation program should incorporate an ongoing standardized screening protocol.

2. Screening should be done with each party separately, preferably in person, before and throughout the mediation process.

3. There is no typical survivor. IPV survivors and offenders are members of all socioeconomic classes, races, ethnicities, and religions. Each survivor has a distinct experience.

4. Intimate Partner Violence can include psychological, emotional, and physical abuse. When deciding whether to proceed with mediation, screeners should look for patterns of fear, coercion, and control, not just orders of protection or physical harm.

5. Most parties, even those represented by lawyers, have not been asked about IPV issues in their relationship or been adequately prepared for their role in the mediation process.

A screening process with specific questions about each party’s ability to negotiate with the other will help both parties think about decision-making in their relationship.
To assess power and control dynamics, psychologist Joan Kelly and sociologist Michael P. Johnson suggest, screening instruments must have questions that “identify not only intensity of conflict, frequency, recency, severity, and perpetrator(s) of violence, but also patterns of control, emotional abuse and intimidation, context of violence, extent of injuries, criminal records, and assessment of fear.”

Screeners need to build trust and raise these issues in a manner that allows parties to respond thoughtfully and not feel judged or re-victimized.

Examples of general questions that may help a screener determine whether someone will be able to negotiate effectively include:

- How are decisions about money made?
- What activities do you engage in outside the home?
- Describe the relationship your children have with your partner.
- What is the worst thing your partner will say about you?

One study on IPV in mediation noted that wording matters and found that explicit questions led to answers that broader questions missed. Standardized interviews should include questions about safety, control, fear, and the parties’ perceived ability to negotiate with each other.

An important consideration in screening is what to do with the information. It should never be used to diagnose someone, label complex situations, minimize danger, or assess a party’s ability to parent. The information should be used only to determine whether mediation or another dispute resolution process is appropriate and if someone has or should have concerns about safety. If there are safety concerns, the screener should provide appropriate resources and safeguards for the parties, whether or not a mediation will take place.

Screening isn’t just important in domestic relations cases or in legal cases. Parties in many different types of situations who are frustrated by the administrative or court processes may act out in violent ways. When judges or administrators order parties to mediation or settlement conferences, it may be perceived as a threat or as justice delayed or denied. Employers should work with their human resource administrators to encourage screening parties for potential violence before referring them to resolution processes. There may be patterns of long-term abuse similar to IPV or the referral process itself may trigger acts of violence. In January 2013, a lawyer and his client were shot and killed by the plaintiff outside their court-ordered settlement conference. The plaintiff, who

Although some attorneys do adequately screen their clients, mediators should not assume that lawyers have asked the right questions or prepared the parties for their roles in the mediation process.
had a history of anger issues, left in the middle of the session and waited for his victims outside. Screening may not have been able to prevent this tragedy, but screening all parties for control, coercion, and violence will help raise awareness of anger and frustration and could help reduce the number of such incidents.

**Screening Instruments**

Screening instruments should be focused on risk assessment, be gender neutral in choice of language, and include questions for each partner about both partners’ violence. Studies have shown that questionnaires alone are not as effective as a combined written and verbal interview or conversation.

The Michigan Supreme Court has posted a series of helpful online tools to help court personnel and mediators identify and work with parties experiencing domestic violence. These include DV training for mediators and multiple examples of screening tools.

The list of resources on the previous page includes two thorough screening tools recently developed for family mediation: the Relationship Behavior Rating Scale–Revised (RBRS-r) and the Mediator’s Assessment of Safety Issues and Concerns (MASIC).

**Conclusion**

While screening is a daunting task, it is also an essential one. If coercive controlling violence is not a factor and the parties want to mediate, if they are capable of negotiating safely and effectively, mediation should proceed with safeguards and ongoing screening. If the parties or mediator have any doubt about coercion, safety, or effectiveness, mediation should not proceed and screeners must be prepared to prevent or stop mediation.

Mediators and attorneys should seek out IPV training, know the court rules in their jurisdictions, and use standardized screening instruments to ensure the mediation process is safe and effective. More research must be conducted on screening instruments and on the impact of different types of IPV on mediation outcomes. Courts, programs, and mediators need to be vigilant and protect their parties and themselves from dangerous coercion and potential tragedy. ♦

**Endnotes**

1 Joan Kelly & Michael P. Johnson, Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions, 46 FAM. CT. REV. 476 (2008).

2 The terms “victim” and “survivor” are both used to describe parties who are in or have been through an abusive relationship. “Survivor” is used more often when a party has recognized the abuse and has left the relationship. While the parties discussed here may still be in their relationship, “survivor” is used here throughout the article to describe someone who is or has been in a relationship where she was subject to IPV.

3 Kelly & Johnson, supra note 1, at 476.

4 Id.

5 Id.


8 Kelly & Johnson, supra note 1, at 476.


10 Id.

11 Beck et al., supra note 6, at 54.


14 Amy Holtzworth-Munroe et al., supra note 9, at 646.

15 Kelly & Johnson, supra note 1, at 476.


17 Kelly & Johnson, supra note 1, at 476.

18 Amy Holtzworth-Munroe et al., supra note 9, at 646.

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Kelly Browe Olson is the Director of the Clinical Programs at the William H. Bowen School of Law at the University of Arkansas. She has taught Family Law, Family Mediation and Mediation Seminars, Alternative Dispute Resolution, and Domestic Violence courses. She can be reached at kbolson@ualr.edu.
The Section of Dispute Resolution is pleased to welcome our 2013-2014 Officers and Council Members

Section Chair, Ruth V. Glick

The Section is pleased to welcome Ms. Glick as the 2013-2014 Section Chair. Ms. Glick has been a member of the ABA Section of Dispute Resolution since 2001. She has served on the Section Council and also served as the co-chair of the Section’s Spring Conference in San Francisco in 2010. She founded the Women in Dispute Resolution (WIDR) Committee within the Section and has worked with other ABA groups and national organizations to promote the role of women as dispute resolvers. Ms. Glick is a long time commercial and employment attorney, mediator, and arbitrator. She currently serves on the Large and Complex Case panel, the national commercial, and labor and employment arbitration and mediation panels of the American Arbitration Association and she is a Distinguished Fellow of the College of Commercial Arbitrators as well as a Fellow of the International Academy of Mediators.

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Outsourcing Justice: The Rise of Modern Arbitration Laws in America
By Imre Szalai
Reviewed by Benjamin G. Davis

This book pulls back the veil on the forces and actors that were crucial to the passage of the Federal Arbitration Act in 1925. At the center is Charles Leopold Bernheimer, a successful cotton goods merchant who is generally thought to be the father (or one of two fathers) of commercial arbitration. Starting in 1907 and continuing as head of the Arbitration Committee of the New York Chamber of Commerce as of 1910, Bernheimer worked indefatigably to promote arbitration as an efficient means of resolution of commercial disputes. He garnered support among the business community across the nation and the world (including a nascent International Chamber of Commerce Court of Arbitration), forged strong ties to key members of the legal community and the American Bar Association, lobbied state and federal governments aggressively, and carefully carved out “industrial disputes” to avoid antagonizing labor. Bernheimer and his colleagues orchestrated a reform of American arbitration law with ramifications we experience today.

Outsourcing Justice relates the public/private nature of arbitration’s rise with interesting historical nuggets, including the formation of an arbitration committee in 1768, soon after the creation of the New York Chamber of Commerce and the New York legislature’s establishment in the 1870s of a Court of Arbitration, which operated as a joint venture between the chamber and the state. During the First World War, the US government referred disputes with an international character to the New York chamber.

More broadly, Szalai firmly anchors Bernheimer’s efforts in the reform movement associated with Roscoe Pound’s 1906 speech to the American Bar Association, the progressive movement, the rise of the administrative state, and the reform of the federal court procedure culminating in the development of the federal rules of civil procedure.

For those of us who consider Scherk and later Mitsubishi as key American international commercial arbitration decisions that paved the way for statutory claims being arbitrable, Szalai takes us to an earlier era when American common law did not enforce arbitration clauses for contractual claims and thus undermined American business’ credibility in international commerce. Beyond state or national concerns, we learn that Bernheimer’s awareness of the interests of the international business and legal community played a central role in New York State passing its arbitration law in 1920 that made arbitration clauses valid, irrevocable, and enforceable. New York state’s adoption of the New York Arbitration Act, coupled with the efforts of similar forces in other states, spurred the development of other arbitration acts and ultimately the Federal Arbitration Act.

Szalai chronicles the business community’s central role in promoting arbitration in the early twentieth century. He situates arbitration as part of the development of self-regulation and as a form of expert-based regulation presaging the administrative state of federal administrative agencies with specialized expertise.

Szalai provides important background on the reasons for the skeletal nature of the Federal Arbitration Act (Bernheimer, he notes, envisioned it would be improved and amended). He ends with a critique of the existence of employment arbitration and a significant portion of consumer arbitration based on “take-it-or-leave-it” contracts. From this history it appears clear that the now-familiar arbitration of employment and consumer disputes was rejected by the drafters as beyond the scope of the Federal Arbitration Act.

Szalai’s book is a must-read. He provides an even-handed discussion of Bernheimer’s success in harnessing business forces to reshape American arbitration law and suggests those business forces have continuing influence on the subsequent federal decisional law.

Endnotes


Benjamin G. Davis is an Associate Professor of Law at the University of Toledo College of Law. He can be reached at ben.davis@utoledo.edu.
Designing Systems and Processes for Managing Disputes
By Nancy Rogers, Robert Bordone, Frank Sander, and Craig McEwen

Reviewed by Tricia S. Jones

As the authors of this excellent book note, it has been almost three decades since the basic concept of dispute system design was introduced by William Ury, Jeanne Brett, and Stephen Goldberg in their influential volume Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict. This new book breaks new ground and can be appreciated for its individual contributions, but it can also be rightly regarded as a third generation of thinking in dispute system design. Readers will differ on how well this book serves the various audiences for which it was written – lawyers, non-attorney practitioners, and scholar-practitioners of large system dispute design. Ultimately, the text centers on the primary audience of "lawyer as designer" and thus emphasizes how a lawyer’s expertise can be leveraged in design with respect to confidentiality and implementation. To my mind, all intended audiences will find value in the content and pedagogical presentation of the text.

Designing Systems and Processes is a call to action and a guide to accomplishment. The authors want to encourage "design initiative" so that people, especially lawyers, will be emboldened to design better dispute systems and processes.

Rogers et al write for dispute professionals working in a very broad set of contexts, including schools, courts, and organizations. In a long-needed and absolutely critical move, the authors address the difficult underlying tensions or dilemmas that designers face – justice and reconciliation versus effectiveness and efficiency. Indeed, the inclusion of these tough questions testifies, more than any other feature of the book, that as a field, dispute design has matured. It is not enough to know that design can be done; it is important to justify why it is being done and with what results.

The book is replete with rich pedagogical resources. The authors present useful and entertainingly written stories of designs that have worked or failed, a good overview of research on design effectiveness, and a decent presentation of relevant conflict and dispute theory. The stories transform the volume into a rich history of our field as well as exemplars of best practices and cautionary tales. The authors include designer practice notes throughout chapters, and each chapter has questions and exercises and rich appendix resources.

The authors raise important questions that are only partially answered or left unattended, such as “What happens when multiple designers on the same dispute have different design initiatives?” or “What responsibility do designers owe to others who have different goals?” They briefly discuss “designing collaboratively” but don’t grapple as much as desired with real problems about who has the right to design and under what circumstances. They need to include more theory and research from an organizational or systems perspective, given the power they encourage designers to take. The discussions on taking the initiative are written too much from the perspective of the designer.

The questions that are not asked as often with as much emphasis (or even at all) include “Who should have the right to design?”; “What are the responsibilities of the designer to the larger system and society?”; and “What accountability structures and processes should be considered to protect the system?” And, finally, although this book deals with dispute systems design, it does not pay enough attention to questions about sustaining the dispute system once it has been designed and implemented.

This book inspires the reader to raise these questions – even if it falls slightly short in addressing them – and that inspiration is proof enough that the book should quickly be added to the canon of dispute system design literature.

Endnotes
The Spirit of Compromise: Why Governing Demands It and Campaigning Undermines It
By Amy Gutmann and Dennis Thompson

Reviewed by Jen Reynolds

Many law schools do not teach compromise. They teach rules. They teach advocacy. My own experiences as a law professor who also participates in broader pedagogical discussions around ADR suggest that classes in problem-solving, interest-based negotiation, and mediation often emphasize integration (expanding the pie) rather than distribution (dividing the pie). Professors assign idealized fact patterns that suggest win-win results are available when parties disagree.

But law school graduates soon discover in practice that even in the best of circumstances, a win-win situation is pretty rare. This is even more the case in complex disputes that involve not only conflicting interests but principles and personhood. So lawyers settle, clients make concessions, and the promise of integrative theory seems largely confined to simple disputes and role-plays.

Why don’t we teach law students that their jobs will mostly be about making compromises? Perhaps we are part of a larger sociopolitical trend against admitting that compromise is necessary and even desirable. In this book, Amy Gutmann and Dennis Thompson argue that the “compromising mindset” – in their view, a requirement of normal political life and healthy democratic government – has fallen into disfavor in the era of the permanent political campaign. Elected officials work under impossible pressures to maintain an uncompromising partisan profile for public consumption, while also trying to legislate effectively with people who have different, uncompromising partisan profiles. “[T]he internal tension in political compromise,” the authors write, is that “the democratic process requires politicians both to resist compromise and to embrace it.”

Gutmann and Thompson address this tension by reclaiming the “classic compromise” (each side sacrificing something of value in the interest of making a deal) as politically and morally defensible, given that the status quo is often undesirable from the standpoint of social justice. As an example, the authors offer the case of the Tax Reform Act of 1986. Both Democrats and Republicans achieved key objectives in the final package but had to make significant concessions to get there. Democrats closed loopholes for the wealthy but had to agree to lower rates for the highest earners. Republicans were pleased to secure these lower rates but had to permit a substantial decrease in tax deductions that otherwise would have benefited their wealthy constituents. Neither side was perfectly happy with the result, yet both sides ended up getting some of what they wanted, and much-needed legislation went forward.

Gutmann and Thompson recognize that the Tax Reform Act, like all compromise legislation, is internally inconsistent as a matter of policy. They do not, however, believe that this inconsistency is troubling. Rather, the authors interpret the conflicting policy positions inherent in legislative compromises as evidence that the polity is attempting to advance the overall political agenda despite having such divergent priorities.

Gutmann and Thompson do not dismiss integrative theory wholesale – they note that integrative approaches can be useful in coming to compromise – but they do not want their readers to imagine they can sidestep or forestall compromise with integrative or consensus solutions. Sometimes, as the Tax Reform Act example shows, progress is not possible without both sides conceding valuable interests. Further, the authors argue that seeking pie-expanding solutions in the legislative context often encourages lawmakers to load debt onto future generations.

For lawyers and neutrals, this really isn’t news. After all, many of us strive for justice with the full understanding that most cases settle. We know that compromise is essential to dispute resolution, just as we know that taking an uncompromising stand is sometimes necessary. Attorneys who read this book will be challenged to consider whether and how our professional work as compromise-makers can be better theorized and effectively taught to law students, politicians, and voters. Furthermore, the book challenges dispute resolution practitioners and teachers to rethink how we address (or fail to address) the topic of compromise with our clients and students. To the extent that we perpetuate win-win idealism, how well are we preparing them for the responsibilities and realities of a democratic community?

Jen Reynolds is an Assistant Professor of Law and the Faculty Director of the ADR Center at the University of Oregon School of Law. Her research and writing focus primarily on cultural and system-level implications of alternative dispute resolution and decision-making processes. She can be reached at jwr@uoregon.edu.
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The Choreography of Resolution
By Michelle LeBaron, Carrie MacLeod, and Andrew Floyer Acland

The Choreography of Resolution explores how conflict, movement and neuroscience are all intertwined and the effects each factor plays in resolution. The authors consider the role of movement in conflict dynamics, expose the limitations of omitting the body from understandings of conflict, explore ethical dimensions of embodied approaches, and propose key strategies for conflict intervention.

This comprehensive and revolutionary book is divided into five sections:

- Section 1 (Why Dance?) examines neuroscientific and other theoretical underpinnings
- Section 2 (How Dance?) links field experiences and choreography
- Section 3 (Teaching Dance) explores how movement and other experiential methodologies can be integrated into curriculum design and teaching and learning
- Section 4 (Dance and Resilience) features select international examples
- Section 5 (Organizations) offers examples of how movement-based work informs one’s thinking about practice

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If you are a US citizen or you run a US company and you make an investment abroad, you will most likely be protected by an international investment treaty between the United States and the host country of your investment that sets the rules relating to the establishment of your investment. Most important, perhaps, the treaty will also guarantee the protection of your investment and your property rights against political risks such as expropriation, nationalization, or restrictions on the free repatriation of capital and profits.

These treaties allow investors to have direct recourse to international arbitration against the host state. If you have been aggrieved by a measure or an act taken by the host state and you have encountered a damage or a loss, you can go to international arbitration, and you don’t need the diplomatic protection of the government of the United States or a state-state mechanism, as you would in international trade disputes, to settle the conflict.

This direct access to international arbitration constitutes a significant exception to international law. Normally, disputes arising in the territory of a state will be settled by the courts of that state, even if the dispute involves a foreign national. But over the last 50 years, investor-state arbitration has become the cornerstone of international investment dispute settlement mechanisms.

Over the last 50 years, investor-state arbitration has become the cornerstone of international investment dispute settlement mechanisms.
International Investment Disputes

The first treaties providing for arbitration to resolve investment disputes appeared in the 1960s, as part of a broader system to encourage international investment. This system of investment protection was designed to respond to investors’ strong distrust of the local courts of developing countries following the decolonization period, when former colonies nationalized and expropriated foreign investments in natural resources and land.

Since the emergence of the globalized world economy in the mid-1990s, the number of bilateral investment treaties (BITs) for the promotion and protection of investment and of free trade agreements (FTAs) has grown exponentially. More than 3,500 BITs and 350 FTAs have been concluded to date, with the vast majority setting international arbitration as the main option for foreign investors aggrieved by a measure or a decision by the host state of their investment.

Not surprisingly, with the massive increase of investment over the last decade in all countries and regions, a growing number of investor-state disputes have been submitted to international arbitration. The World Bank International Centre for Settlement of Investment Disputes (ICSID), the main institution supporting investor-state arbitration, has registered more than 300 investment-treaty cases in the last 15 years. More than 135 cases have been brought under the rules of UNCITRAL, the United Nations Commission on International Trade Law.

Discontent and Concerns

With the proliferation of investor-state arbitration cases, stakeholders began to look more closely into alternative approaches available under the treaties or proposed by relevant institutions. Investment arbitration has turned out to be a lengthy, costly, and unpredictable process. When a sovereign state is a party, the process can be especially long – and adversarial.

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same: the investor walks away or becomes persona non grata in the host country, ending the investor’s hope for profit and the country’s hope for sustained growth.

Investor-State Mediation

Commentators and representatives of parties have begun urging increased use of mediation before or during arbitration. However, investor-state mediation (ISM) remains rare because of several obstacles.

Treaty Language

The first barrier is the presence – or absence – of specific language in many treaties, contracts, and investment codes dealing with the timing and processes for dispute resolution. Most existing bilateral investment treaties typically include a provision encouraging the parties to reach an amicable settlement at the early stage of a dispute. The majority of treaties, however, are silent on the methods or processes that can be used to achieve such settlement. A small number refer specifically to mediation and conciliation as a means for investors to settle their disputes, but the time frame is generally very short, only three to six months, and automatically ends when the arbitration process begins.

A newer generation of treaties has identified mediation as a process available to both investors and states at any stage of the dispute, whether or not arbitration has commenced. For example, the recently released negotiating text of a free trade agreement between Canada and the European Union is the first comprehensive free trade and investment treaty to be negotiated by the EU after receiving a mandate to negotiate such rules. That text includes a specific ISM annex that allows for mediation to continue even through the arbitration process.

In the absence of specific treaty provisions, willing parties always have the option to embark upon the mediation process during the so-called cooling-off or amicable settlement period that generally exists between the submission of the request for arbitration and the commencement of the process. An explicit provision for mediation in the investment treaty, however, offers investors and host states a concrete option for the settlement of their dispute and alleviates government officials’ concerns that if they reach a settlement in mediation, they will be seen as “selling out” to foreign investors.

Experience

A second obstacle to the use of ISM is a lack of experience with mediation on the part of investors, state
representatives, and government officials. Several initiatives already address this: Investment promotion agencies are now offering mediation services⁵ to investors, and many agencies, such as the Korean trade promotion organization KOTRA and the Egyptian General Authority for Investment GAFI are offering ombuds services⁶ that include mediative functions. To prevent investor-state disputes from escalating into an arbitration, states also are introducing Dispute Prevention Policies (DPPs), which frequently feature ISM, in many regions.³ Finally, mediation is increasingly common in international commercial arbitration. Investor-state dispute settlement mechanisms have been designed to build upon the successful use of international commercial arbitration.

Rules
Another obstacle to greater use of mediation in the investor-state context has been the lack of specific rules to assist the parties. Hoping to address this, in October 2012 the International Bar Association (IBA) adopted a set of rules for investor-state mediation. The drafting process took more than two years and involved representatives from developing and industrialized states, multinational corporations, practitioners, arbitrators, and international arbitration institutions, with several rounds of comments and adoption by relevant IBA committees.⁶

**IBA Rules for Investor-State Mediation**

The IBA’s rules have a broad scope that applies to the mediation of investment disputes or conflicts involving a state or a state entity and an investor. Parties may consent to mediate in advance under an investment law, treaty, or specific contract with a mediation provision. Mediation can also be an option at any point by mutual agreement of the parties. These are default rules that parties can modify or amend by agreement, which gives everyone flexibility, the chance to tailor the mediation process to their own needs, along with the comfort that comes from knowing that if they can’t agree on the changes, they can always fall back on the IBA’s guidelines. Since the IBA rules on ISM have been adopted they have been used in an ICSID conciliation case at the request of the parties.

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**ABA Representation In Mediation Competition**

Registration is now open for the Representation in Mediation Competition. The competition measures how well law students model appropriate preparation for and representation of a client in mediation. This is the 15th competition, and this year’s regional competitions are scheduled for February and March of 2014.

The ten regions are:
- Roger Williams University School of Law, March 1-2
- St. John’s University School of Law, February 22-23
- The University of Maryland, Francis King Carey School of Law, February 23-23
- The University of Richmond School of Law, March 1-2
- Lincoln Memorial University – Duncan School of Law, TBA
- Faulkner University School of Law, February 21-22
- John Marshall Law School, February 15-16
- University of Houston Law Center, February 28-March 1
- Southwestern Law School, February 22-23
- University of Idaho College of Law, TBA

The National Finals will be held in conjunction with the ABA Section of Dispute Resolution Spring Conference in Miami in early April, 2014. The ABA Section of Dispute Resolution seeks mediators and lawyers to volunteer for these competitions who have experience with interest-based negotiation to judge the students. We also need mediators (lawyers and non-lawyers) to serve as mock mediators. To volunteer, please contact Matthew Conger at Matthew.Conger@americanbar.org.

For more information about the competition, visit the Section home page at www.americanbar.org/dispute and click on Awards and Competitions.
Minimal Formalities

Article 2 of the rules provides for the commencement of the mediation process with a minimal requirement of formalism and timing constraints. Mediation may take place before arbitration or litigation, after arbitration has begun, or while a case is pending before the domestic courts of the state party.

Pre-Mediation Conference

To allow for process organization and an early assessment of the dispute and the interests of the parties, the rules provide for a mediation management conference, which is an opportunity for the parties to clarify important issues such as the authority or mandate for both parties to negotiate, the language, timetable, and format of the proceedings and communication between the parties and the mediator. Through this management conference, the parties and the mediator can adapt the process to their own needs.

Co-mediation

These disputes often involve parties who do not speak a common language, do not come from the same legal tradition, have cultural and background differences, and most important, are politicians or civil servants who represent the sovereign state. Being able to use co-mediators, which is permitted under the rules, can help bridge cultural and language gaps. The drafters felt that this feature could make it easier for state representatives to “buy into” the mediation process.

Party Control

The rules also make clear the role and involvement of the parties in the conduct of the mediation process and the decision. The parties control the process at all times. The mediator may make procedural decisions after consultation with the parties, but the parties retain control over the process at all times.

Institutional Support

The rules allow recourse to an arbitration and mediation institution to support and facilitate the meetings, logistics, and venue for the mediation. The drafters felt that the informal and ad-hoc character of a mediation could be an obstacle for state parties and that the availability of services by an institution could generate additional confidence in the process. Under the IBA rules, ISM can be administered by any arbitration institution.

Confidentiality and Transparency

The rules provide for privacy of the process and the communication of information to the mediator and set a default rule of confidentiality for all information prepared or exchanged during the mediation. This confidentiality and transparency is important, given the participation of a sovereign state and implications on public funds and governance. In the last decade, various stakeholders have criticized arbitration for its confidential character, and arbitration rules have been amended to accommodate requirements of transparency. Drafters of the IBA Mediation Rules addressed both issues specifically and opted not to leave them to the parties. Confidentiality, however, does not extend to the fact that a mediation is taking place or to the outcome of the mediation, unless the parties specifically agree to keep this information confidential.

Conclusion

These new Investor-State Mediation Rules dispel the idea that investor-state disputes cannot be mediated. The timing of the rules is auspicious, as they come along at the same time as a new generation of treaties that explicitly refer to mediation as a means of settling investment disputes, including as a parallel process to an ongoing arbitration. They also come at a time when the idea of using mediation for commercial and civil disputes is gaining momentum. Government officials and representatives of investors, having learned about mediation, are becoming increasingly interested in the process.

Several challenges remain, including a shortage of specialized mediators. Initiatives are under way, but it will take time for investment mediators to be as available and as experienced as investment arbitrators. Similarly, awareness and capacity-building efforts are needed to spread information and knowledge about mediation, mediation techniques, and processes. Government agencies, universities, and international organizations are working on developing and training ISM mediators. Concrete outputs such as user’s manuals and supporting guidelines are in the works. These combined and

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systematic efforts will no doubt facilitate the use of mediation to address disputes that should not go to arbitration, either because the amounts at stake do not warrant it or because the parties are interested in continuing to work together to achieve their common goals.

Endnotes


3 See also, e.g., Procuraduría General del Estado Ecuador, http://www.pge.gob.ec/es/centro-mediacion/centro-de-mediacion.html (last visited Oct. 8, 2013) (Mediation Centre at the Procuraduría General del Estado in Ecuador).


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**ADR Cases** By J.D. Hoyle

**Arbitrator Exceeded Powers by Serving as Mediator, Then as Arbitrator**

In Minkowitz v. Israeli, No. A-2335-11T2 (N.J. Ct. App. Sept. 25, 2013), the New Jersey Court of Appeals held that a neutral selected to serve as an arbitrator cannot assume a mediator’s role and then switch to the role of an arbitrator. The parties in this case, a divorce proceeding, had agreed to submit financial issues to binding arbitration and custody and parenting time issues to non-binding arbitration. The parties met with the arbitrator, but before arbitration proceedings started they decided to try to settle many of the issues in mediation. The court noted that a mediator is privy to confidential communications from the parties that are precluded from being considered in both arbitration and a courtroom. Arbitrators must “maintain broad public confidence in the integrity of . . . the process,” the court said, and the need for complete objectivity weighs heavily on the integrity of the process. Thus, because the arbitrator continued with the arbitration after serving as a mediator, he exceeded his powers and any awards made after the mediation must be vacated. To read more: [http://www.judiciary.state.nj.us/opinions/a2335-11.pdf](http://www.judiciary.state.nj.us/opinions/a2335-11.pdf).

**Foreign Sovereign Immunity Waived When Foreign State is a Party to Arbitration Treaty under Implied Waiver and Arbitration Award Exceptions to FSIA**

In Blue Ridge Investments, LLC v. Republic of Argentina, __ F.3d __, 2013 WL 4405316 (2d Cir. Aug. 19, 2013), the Second Circuit affirmed the District Court holding that Argentina waived sovereign immunity under the implied waiver and arbitral award exceptions to the Foreign Sovereign Immunity Act (FSIA). Both the implied waiver exception and the arbitral award exception apply because Argentina is a party to the International Centre for Settlement of Investment Disputes (ICSID) Convention, which contemplates enforcement actions in other member states. To read more: [http://www.gpo.gov/fdsys/pkg/USCOURTS-ca2-12-04139/pdf/USCOURTS-ca2-12-04139-0.pdf](http://www.gpo.gov/fdsys/pkg/USCOURTS-ca2-12-04139/pdf/USCOURTS-ca2-12-04139-0.pdf).

**Excessive Costs Not Sufficient Basis to Invalidate Class Arbitration Waiver**

In Sutherland v. Ernst Young, LLP, __ F.3d __, 2013 WL 4033844 (2d Cir. Aug. 9, 2013), the Second Circuit reversed and remanded a District Court’s dismissal of a motion to compel arbitration under the effective vindication doctrine in light of the Supreme Court decision in American Express Co. v. Italian Colors Restaurants. The Second Circuit noted that the recent Supreme Court decision held that “excessive cost” is not a sufficient basis for invalidating a class action waiver. Furthermore, because the Fair Labor Standards Act does not contain a contrary congressional command to prevent class action waivers from being enforced, the case must proceed to individual arbitration. To read more: [http://www.ca9.uscourts.gov/datastore/opinions/2013/07/26/11-17186.pdf](http://www.ca9.uscourts.gov/datastore/opinions/2013/07/26/11-17186.pdf).

**Arbitration Award Vacated Where Arbitrator Failed to Disclose Using Partner in Law Firm that was Party to Arbitration as Reference on Resume**

In Mt. Holyoke Homes, L.P. v. Jeffer Mangels Butler & Mitchell, LLP, __ Cal. Rptr. 3d __, 2013 WL 5321158 (Cal. Ct. App. Sept. 24, 2013), the California Court of Appeals vacated an arbitration award because the arbitrator failed to disclose that he had listed a named partner in the defendant firm as a reference on a résumé readily available on the Internet 10 years before the arbitration. Even though the arbitrator did not discuss the résumé inclusion with the named partner and had no other personal or professional relationship with the partner, the court concluded a reasonable person could doubt the arbitrator’s impartiality and the award must be vacated. To read more: [http://www.courts.ca.gov/opinions/documents/B243912.PDF](http://www.courts.ca.gov/opinions/documents/B243912.PDF).

**Ambiguity in Selection of Arbitrator Does Not Render Arbitration Agreement Invalid**

In HM DG, Inc. v. Amini, __ Cal. Rptr. 3d __, 2013 WL 5299260 (Cal. Ct. App. Sept. 20, 2013), the California Court of Appeals held that the presence of alternative options for appointing an arbitrator does not render an otherwise valid arbitration agreement unenforceable. If the agreement does not specify how an arbitrator is to be appointed, the parties can agree on a method of appointing an arbitrator or the court can appoint an arbitrator. To read more: [http://www.courts.ca.gov/opinions/documents/B242540.PDF](http://www.courts.ca.gov/opinions/documents/B242540.PDF).

**Questions of Arbitrability Can Be Decided by Arbitrator When Parties Clearly and Unmistakably Intend for Arbitrator to Decide**

In a matter of first impression before the court, the Ninth Circuit in Oracle America, Inc. v. Myriad Group A.G., 724 F.3d 1069 (9th Cir. 2013) reversed and remanded a partial denial of a motion to compel arbitration and held that the parties clearly and unmistakably provided that questions of arbitrability are to be decided by the arbitrator. Although the general rule is that questions of arbitrability are to be decided by the court, here the parties clearly and unmistakably intended for questions of arbitrability to be decided by the arbitrator by explicitly incorporating the United Nations Commission on International Trade Law (UNCITRAL) arbitration rules into their agreement. To read more: [http://cdn.ca9.uscourts.gov/datastore/opinions/2013/07/26/11-17186.pdf](http://cdn.ca9.uscourts.gov/datastore/opinions/2013/07/26/11-17186.pdf).

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J.D. Hoyle is a law clerk with the ABA Section of Dispute Resolution.
Useful Resources from the ABA Section of Dispute Resolution

PEDR Guide
The American Bar Association Section of Dispute Resolution appointed the Planned Early Dispute Resolution (PEDR) Task Force to promote planned early dispute resolution by lawyers and clients and to take advantage of the services of neutral dispute resolution professionals at the earliest appropriate time. This User Guide is designed to help parties and lawyers develop and use such a process tailored to the needs of each party. This guide is focused particularly on the needs of businesses, though some of the material can be adapted for lawyers representing other types of clients.

Resource Database
The ABA Section of Dispute Resolution has compiled the Section’s resource materials in an easily searchable database. Resources include member only content, such as issues of Dispute Resolution Magazine and Just Resolutions e-Newsletter, and free content such as ABA Resolutions relating to dispute resolution and Model Codes. The database contains a short abstract or description of each resource as well as a link to a PDF copy of the resource.

ADR Video Center
The ABA Section of Dispute Resolution and Suffolk University Law School Center for Representation in Dispute Resolution proudly offers the ADR Video Center as a tool for teaching dispute resolution techniques. The ADR Video Center offers live video examples of mediation, negotiation, arbitration and resources for teachers and other professionals. Visit the ADR Video Center at http://aba.blogs.law.suffolk.edu/.

Mediation & Arbitration Guides
The ABA Section of Dispute Resolution offers practice guides for arbitration and mediation on our resource webpage. The General Mediation Guide and Arbitration Guide provide a general overview of the dispute resolution processes and provides some general tips to help people prepare for mediation or arbitration. The Family Mediation Guide and Complex Mediation Guide provide specialized information and tips for preparing for family mediation and complex civil litigation with attorney representation.

Go to the Section of Dispute Resolution Resources Page for these and other resources:
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ABA Section of Dispute Resolution

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November 19, 2013

11th Annual Advanced Mediation & Advocacy Skills Institute
November 21-22, 2013 • Nashville, TN

Teleconference: Psychology for Lawyers
December 10, 2013

Teleconference: Managing the Arbitration
January 28, 2014

2014 ABA Midyear Meeting
February 5 – 11, 2014 • Chicago, IL

Teleconference: Lessons from Lincoln
February 11, 2014

Teleconference: Arbitration Ethics
March 11, 2014

16th Annual Dispute Resolution Spring Conference
April 2-5, 2014 • Miami, FL

8th Annual Arbitration Training Institute
June 6-7, 2014 • Washington, DC

Teleconference: Arbitration Law Update
June 2014

2014 ABA Annual Meeting
August 7 – 12, 2014 • Boston, MA

12th Annual Advanced Mediation & Advocacy Skills Institute
October 17-18, 2014 • San Antonio, TX

17th Annual Dispute Resolution Spring Conference
April 15-18, 2015 • Seattle, WA

For registration information please go to www.americanbar.org/dispute
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