This issue of the E-Newsletter is devoted to the Section’s Collaborative Law Committee. The Uniform Collaborative Law Act was first adopted in 2009. The Act regulates the use of collaborative law as a form of ADR. The Act has been enacted in three states plus the District of Columbia. During 2012 the Act was introduced to legislators in four more states. If you want to keep apprised of the legislative activity in this area you can go to www.uniformlaws.org or continue to read this issue. The Section of Dispute Resolution has a very active Collaborative Law Committee and I invite you to join.

I am also using this e-newsletter to announce that this year we established a new task force entitled Women in Dispute Resolution (WIDR). Members should look at the WIDR webpage. WIDR is chaired by the Section’s Secretary, Ruth Glick. The goal of WIDR is to promote women in the dispute resolution by providing resources to women to develop their practices as well as increase opportunities for women to be selected as mediators and arbitrators or other dispute resolution resolvers, including advocates. The Task Force began the year by piloting a survey on attitudes and perceptions of neutrals and advocates about how often and in what context women are appointed as neutrals.

Earlier this year the Section’s Dispute Resolution Magazine spring issue was devoted to women in dispute resolution. Publications with the same theme were simultaneously issued by the American Arbitration Association, the International Institute of Dispute Prevention and Resolution (CPR), the NYSBA’s Dispute Resolution Magazine and the Chartered Institute of Arbitrators for North America. What an accomplishment to get the many different organizations to work in tandem. The women of WIDR are working on networking opportunities and a directory that will showcase women in the profession.

Right now the core group has been working on these and many other projects but we need to hear your voices. Members of the section can join in WIDR’s efforts by joining the list server on the WIDR web site. It’s only with everyone’s voice that we can continue to make a difference.

Deborah Masucci
Section Chair
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Overview of the Section of Dispute Resolution Collaborative Law Committee

The Collaborative Law Committee of the Section of Dispute Resolution is pleased to share the work of the Committee and the Collaborative movement more generally in this edition of the e-Newsletter. The Committee recently revisited and revised its Mission Statement, and created subcommittees in the following areas:

- Submit a Proposal for the 2013 Spring Conference in Chicago

The ABA Section of Dispute Resolution Spring Conference Planning Committee is now accepting proposals for the 2013 Spring Conference. The Deadline for Proposals is September 7, 2012. The Conference will take place on April 3-6, 2013 at the Fairmont Chicago Millennium Park. Proposals can be submitted for concurrent CLE programs, Symposium on ADR in the Courts sessions, Legal Educators Colloquium sessions, Poster Presentations, and International ADR Workshop sessions. To learn more, visit the Conference Proposals web site.

Committee Activities

The ABA Section of Dispute Resolution will sponsor our Third Annual Mediation Week October 14, 2012–October 20, 2012

Get Involved in Mediation Week!

Help make the Third Annual Mediation Week our most successful yet. Promote mediation in your area by developing a locally organized and managed ABA Mediation Week event.

- Receptions
- Educational Workshops/Trainings
- Panel Discussions
- ADR literature distribution
- Symposums
- Luncheons
- Media Campaigns
- Keynote Speakers
- Brown Bags
- Proclamations by Public Officials
- “Words Work” programs in elementary, middle and high schools

What Is Mediation Week?

The Dispute Resolution Section’s Mediation Week is an initiative to celebrate the many strides made in institutionalizing mediation as one of several appropriate dispute resolution processes, to educate lawyers, parties, public officials and the general public about mediation, and to continue to promote the use of mediation throughout the world.

In 2010 and 2011, programs conducted across the United States and the world highlighted the milestones reached in mediation; shared information about the application of mediation in different contexts; offered networking and fellowship among members of the bench, bar, students and mediation community; showcased leaders in the ADR field as speakers and taught elementary, middle and high school students mediation skills using the ABA Words Work program material.

There are opportunities to receive matching funds for your 2012 event from the Section of
important areas to implement the Committee’s Mission: education, with a focus particularly on expanding the teaching of Collaborative Law in law schools; expansion of Collaborative Practice, geographically and among diverse populations and income groups; legislation, with a present focus on providing support as needed for the enactment of the Uniform Collaborative Law Act/Rule; ethics; and development of liaisons between the Committee and other organizations. The Committee is active with regular meetings on the fourth Tuesday of each month. We welcome new members to the Committee and any one of the subcommittees. Please read the articles in this issue of Just Resolution enews and visit the Collaborative Law Committee web site to join the Committee or to learn more information about its work.

Linda K. Wray
Collaborative Law Committee Co-Chair

What is the Collaborative Law Committee?
By Robert L. Baum
The Collaborative Law Committee is one of the Section of Dispute Resolution's newest committees. Members of the Committee are playing a major role in the development of the collaborative dispute resolution process for use in all areas of law. Read More.

Why Would Anyone Use Civil Collaborative Law?
By Sherrie R. Abney
There is an abundance of misinformation circulating in the legal community regarding Collaborative Law. Few people have heard of it, and many of those who have heard “something” about it believe it is only for family disputes. Others have heard that it is always too expensive because you have to hire several professionals in addition to your lawyer, or that people wanting to save money can use only one lawyer to get their collaborative divorce. These rumors are far from accurate, but they are easily corrected. Read More.

Research Regarding Collaborative Practice
By Linda Wray
Some of the basic questions asked by most family law clients interested in the Collaborative process are: How long will my case take? How much will it cost? How many meetings will I need to attend? How likely is it that my case will settle in the Collaborative process? The International Association of Collaborative Professionals has gathered the largest sample of quantitative data to date, primarily from jurisdictions in the United States and Canada, revealing answers to these and other questions. Read More.

What Clients Say About Their Experience in the Collaborative Process
By Linda Wray
In 2007, the IACP launched the first large scale research survey to learn directly

June ABA Ethical Dilemma: Crime and Mediation -- “One Small Problem...”
By Mel Rubin
The dilemma presented in “One Small Problem” from the June Newsletter involved a family mediation where the husband was facing murder charges while the divorce mediation was proceeding. Needless to say, many of the issues raised in this context could equally apply in non-family mediations. Read More.

Publication of the Month
Stories Mediators Tell is a collection of inspirational stories shared by experts in the field who want others to experience the art of mediation. Their stories share advice on how to handle certain situations. The stories were not collected to glorify or to vilify mediation, but to make it accessible to readers generally to share what mediation is about and how certain situations were handled. The authors are motivated by the belief that mediation is not well understood—even its practitioners are often limited to their own experience, particularly given confidentiality strictures. $49.95 - Regular, $49.95 - Members, $34.95 - Section Members.

Section Calendar of Events
2012 ABA Annual Meeting
August 2-4, 2012
Chicago, IL

Advanced Mediation and Advocacy Institute
November 15-16, 2012
Boston, MA

2013 ABA Midyear Meeting
Dallas, Texas
February 6 – 12, 2013
Section meeting dates TBD

2013 Dispute Resolution Section Spring Conference
April 3-6, 2013

To be part of the celebration and/or plan an event in your state or internationally, go to: http://ambar.org/2012mediationweek
Harry Tindall, a Uniform Law Commissioner and member of the Uniform Collaborative Law Drafting Commission, provides an update on the status of the UCLA and its adoption by states. Read More.

By Lawrence R. Maxwell, Jr.

This article addresses the future of the collaborative law process in Texas, explains the reasons and benefits of codifying the process, describes the work of the Uniform Law Commission in drafting a Uniform Collaborative Law Act, and provides a section-by-section analysis of the Texas Uniform Collaborative Law Act. Read More.

By Lawrence R. Maxwell, Jr. and Sherrie R. Abney

The Collaborative Law process enables individuals, families, businesses and organizations to maintain control over their relationships with others by empowering the parties to avoid litigation and resolve their disputes peaceably which ultimately results in the preservation of time, money and important relationships. If the process is truly beneficial, why don’t more people use it? This article addresses the barriers to the use of Collaborative Law and efforts to expand its use. Read More.

By Herbert Hill

Arbitrator’s Decision to Terminate Arbitration for Non-Payment of Fees Not an “Award” for Purposes of Confirmation

Plaintiff brought suit for securities fraud. The trial court granted Defendants’ motion to compel arbitration pursuant to an arbitration clause. Four of the Defendants failed to pay their share of the arbitrators’ fee. The arbitral panel terminated the arbitration. The fifth and only paying Defendant moved to confirm the arbitration “award” and dismiss Plaintiff’s suit, the trial court denied the motion

The California Court of Appeals first held that the trial court's order denying the petition to confirm was non-reviewable. The arbitrator dismissed Plaintiff’s claim with prejudice. Plaintiff petitioned the trial court to review the arbitration proceedings had taken place.

Texas Supreme Court Requires Finality Rule for Arbitration Award Confirmations to Be Reviewable

Bison Building Materials, Ltd. v. Aldridge, No. 06-1084, ___ S.W.3d ___ (Tex. April 20, 2012)
Plaintiff suffered a work-related injury and had signed an arbitration agreement for work-related claims. Plaintiff signing a waiver of further legal action in order to receive workers' compensation and filed a demand for arbitration to recover additional damages for his injury. Defendant moved to dismiss his claims on waiver grounds.

The arbitrator dismissed Plaintiff’s claim with prejudice. Plaintiff petitioned the trial court to
set aside the award. The court confirmed in part and vacated in part. The court confirmed that Plaintiff signed the post-injury waiver but vacated the finding that such waiver precluded arbitration due to “unresolved factual questions.” A divided appellate court held that the trial court’s order was not appealable both because it was not a final judgment and because neither the FAA nor the Texas Arbitration Act (TAA) permitted an interlocutory appeal in this case. The Texas Supreme Court affirmed, but on different grounds, and dismissed the appeal for lack of jurisdiction. The Court first agreed with the trial court’s order was not a final judgment as required under §51.014 of the Texas Civil Practice & Remedies Code. The Court then held that §171.098(a)(3) and (a)(5) of the TAA that permit interlocutory appeals for confirmation and vacatur of arbitral awards did not apply because of a requirement that the agreement must be signed by both parties’ attorneys and that it did not dispose of all claims and identified unresolved fact issues to be addressed.

Click here to read the full majority opinion.

Texas Supreme Court Has Mediator Resolve Factual Dispute over Ambiguous Term in a Divorce Mediated Settlement Agreement


Parties in a divorce proceeding reached a Mediated Settlement Agreement (MSA) pursuant to the Texas Family Code, §6.602(b). The parties’ MSA provided transfer to the wife of “all his beneficial interest and record title in and to” two business partnerships. Husband filed a draft divorce decree with the trial court, but one business partner had refused to sign the “interest” and “title” transfer forms attached to the MSA. The husband and wife disagreed about the nature of the business interests that the MSA transferred. The trial court judge signed the divorce decree the husband submitted.

The appellate court affirmed the divorce but reversed and remanded in part on the issue of the property division with regard to the transfer because there had been no meeting of the minds between the parties. The Texas Supreme Court affirmed the remand with instructions because although the MSA met the statutory requirements thus making it irrevocable and not reviewable by a court, it was also ambiguous with regard to the transfer of the business interests.

The Court remanded the case for further consideration by the mediator, rather than the trial court, because the parties had agreed in the MSA that the mediator would arbitrate any disputes regarding the interpretation of the agreement.

Click here to read the full majority opinion.

Recently Enacted Legislation Relating to ADR

Department of Defense and Full-Year Continuing Appropriations Act of 2011, Pub. L. No. 112-10 (2011) §8102(a) prohibits funding from this Act from going to any federal contract in excess of $1 million unless the contractor agrees (1) not to enter into a pre-employment arbitration agreement with its employees with regard to Title VII claims or tort claims arising from sexual assault or harassment, and (2) not to enforce such arbitration agreements already in existence. §8102(b) extends this prohibition to any of the contractor’s subcontractors that have a subcontract in excess of $1 million.

Click here to read the full text (referenced portion at 102 – 104).

Leahy-Smith American Invents Act (Patent Reform Act of 2011), Pub. L. No. 112-29 (2011) § 135(f) provides that parties to a derivation proceeding may use arbitration under the FAA to resolve their dispute provided that the arbitration is dispositive of the issues between the parties and that notice of the arbitration award is given to the Under Secretary of Commerce for Intellectual Property (Director of the United States Patent and Trademark Office).

Click here to read the full text (referenced portion at 7).

Herbert Hill is a rising third year law student at The George Washington University Law School and the Section of Dispute Resolution Summer Legal Intern.

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