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Phone: 312-988-5522 | E-mail: service@americanbar.org
In assuming the role of Dispute Resolution Section Chair, I know that I am following many impressive leaders with significant accomplishments. The past, Chairs have nurtured and grown the Section, from its start as a special committee of the ABA to the robust organization it is today, respected worldwide.

I bring the experience of neutral, advocate, and client to my tenure as Chair. For the past 18 years I have served as a commercial arbitrator and mediator in both US and international cases. I began my legal career as a patent examiner at the US Patent and Trademark Office and then spent five years at the US Court of Appeals for the Federal Circuit as a staff attorney and then as a law clerk to Helen W. Nies, the court’s first female Chief Judge. I moved from private practice (where I focused on litigation) to the corporate world where, as a practical matter, I first became acquainted with dispute resolution while managing legal groups for two international companies. I quickly became a devotee. Indeed, my in-house experience was perhaps the single most important factor influencing me to establish a practice as a neutral.

My term begins with a fresh purpose emanating from the Section’s new long-range plan. In the simplest terms, the plan provides a framework and guidance to all levels of Section leadership for helping the Section thrive and grow and providing value to members. The plan lists five complementary areas in which the Section should excel: professional development, thought leadership, policy and practice, fellowship and outreach, and governance. I will be reporting on the Section’s work toward achieving these goals throughout my time as Chair, but they have already guided me in planning for the coming year. For example, increasing the Section’s reach both within and outside the United States will be a key focus. As one means of accomplishing international outreach, I have appointed as the Co-chairs of the International Committee Danny McFadden and Lucy Greenwood, two practitioners with significant experience in international mediation and arbitration. They will help strengthen existing connections and establish new ones in various regions of the world.

Likewise, in planning the 2019 Spring Conference themed “Shining the Light on Parties: Enhancing the Experience of ADR Users,” the Section is extending its outreach efforts to ensure that users of dispute resolution (for instance, outside and in-house counsel) participate as presenters and attendees at the conference. By focusing on the experience of users, we hope to give new understanding and perspectives to everyone at the conference, whether they are practitioners, parties, or other stakeholders in dispute resolution processes.

Also in line with the long-range plan, the Section has gotten off to a strong start this year in the areas of policymaking and thought leadership. The Section’s Women in Dispute Resolution Committee diligently developed Resolution 105 (and the accompanying report), urging providers of domestic and international dispute resolution to expand their rosters with diverse practitioners and encourage the selection of diverse neutrals. The resolution also urges users of domestic and international legal and neutral services to select and use diverse neutrals. The ABA House of Delegates recently unanimously adopted the resolution, and so now, working in and outside the ABA, the Section will begin implementing the policy embodied in Resolution 105.

Discussing plans for the year ahead would not be complete without mentioning the ABA’s new membership model. In addition to a simpler and more sensible pricing structure, the ABA is committed to providing members increased value. In this regard the Section will continue its long track record of providing high-quality in-person, on-demand, and electronic content to its members. We will also endeavor to create new and interesting content and deliver it in useful ways.

I look forward to working with all Section members and leaders to ensure that members receive no less than the value they deserve from our Section. And I thank Ben Davis, the Immediate Past Chair, for leaving the “house in order” and helping me assume the role of Chair. I hope to pay it forward.

Harrie Samaras is a full-time arbitrator and mediator. She is a frequent speaker on dispute resolution topics and the editor and an author of the book ADR Advocacy, Strategies, and Practices for Intellectual Property and Technology Cases (Second Edition), published by the ABA. She can be reached at hsamaras@comcast.net.
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Author: Brendon Ishikawa
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Dispute resolution practitioners, like many professionals, vary in their perspectives on matters of faith and in how important religion is to them on a personal level. For some, their spiritual lives are central, motivating perhaps not only their decision to enter this field but the way they practice. For others, matters of faith are important but private — something to be left outside the door, much like shoes at a Buddhist temple. Some, including those who consider themselves agnostics or atheists, may respect others’ beliefs but not consider organized religion an important part of their own existence.

And yet even in the most secular-seeming corners of our society, we often find that many of the conflicts that arise within particular communities involve the spiritual beliefs and religious practices of the participants — and at times, those of the neutral. Some conflicts are doctrinal or involve leadership roles within religious organizations; in other contexts, they are personal or family-oriented. But in both instances, the spiritual orientation of the participants often leads them to a religious tribunal or a process in which the neutral recognizes that religion is a crucial component of the dispute and also its resolution. The growing emergence of these trends compels our attention.

Any discussion of faith or worldview has the potential to sharpen disagreement. But the right answer — particularly for those in our field — must not be to turn away from differences. In this issue, therefore, we invite readers to consider two different questions.

The first, broader question asks what we might learn from or about the worldviews or teachings of different faith traditions on matters of conflict. Two articles in this issue, by Jeff Seul, a lawyer and educator who works with an international conflict resolution organization, and Sukhsimranjit Singh, a law professor and mediator who specializes in conflicts involving religious institutions, focus on the values and principles that underlie a spiritual framework and explore how those worldviews can at times be a source of conflict — but can also offer a pathway to resolving the dispute.

In organizing this issue, the editors also wondered what we might learn from or about the efforts of those in particular religious or faith communities whose members employ dispute resolution mechanisms that differ in some way from mainstream or secular approaches. Two articles, by Julie Macfarlane, a Canadian law professor who has studied Islamic divorce in North America, and G. Daniel Bowling, a mediator, public policy conflict resolution facilitator, and Buddhist, and a review by California lawyer and mediator Frederick Hertz of two recent academic books on religious tribunals all explore the structures, procedures, and possibilities that are embedded in various religion-based conflict resolution methods.

Perhaps because our individual relationships with religion are so personal, we realize that one magazine issue can offer, at most, a limited number of perspectives. We hope that you find these articles respectful, provocative, and helpful.

— The Dispute Resolution Magazine Editorial Board
Negotiating across Worldviews

When basic beliefs and deep values are in dispute, neutrals and parties should be curious, respectful explorers

By Jeff Seul

Most of us, much of the time, try to make decisions and act in principled ways. The values we uphold stem from many sources within our evolutionary and cultural heritages, including humanistic traditions, civic systems (such as law), and religious norms.

Religious norms, which often lie at the core of one’s identity, frequently are in tension with the religious or nonreligious values and expectations of others. These tensions may be most visible in disputes over abortion, school prayer, and LGBTQ rights, but they are also often central to everyday disagreements. Some people seek workplace accommodations for prayer and other ritual practices or time off to participate in religious ceremonies, requests that some employers resist or accommodate only grudgingly. A disagreement over the use of land or natural resources may be driven, in part, by differing religious
and secular perspectives on how we should relate to our environment. Two parents from distinct religious backgrounds may have basic disagreements about how to bring up their children.

Disputes driven by worldview differences can be particularly intense and challenging to resolve. When these disputes are litigated, the “resolution” we can expect is a judicial decision that disregards one party’s favored norms or attempts to balance competing norms in a way the litigants may not recognize as compatible with any of their respective worldviews.¹

Consensual approaches to dispute resolution, like negotiation and mediation, hold greater promise for achieving outcomes that are consistent with all the parties’ worldviews — at least in theory. Needless to say, this is more easily said than done. The key is to embrace and work within parties’ seemingly incompatible worldviews, helping them explore and understand each other’s normative frames and search for agreements that can fit into those frames.

Worldviews everywhere, hidden in plain sight

We are meaning-makers. We seek and make meaning, individually and collectively, about mundane matters and about the very nature of reality.²

Worldviews are the mental models we hold, more and less consciously, about how the natural and social worlds cohere, what makes them cohere, what is valued and what is not, and even what we can know and how we know it. Our individual and collective identities — our sense of self and who we identify with and are most inclined to trust — are entwined with and substantially defined by our worldviews.³

For many of us, our worldviews overlap considerably with others’. Different worldviews sometimes even have common, though often differently interpreted, elements. Christianity appropriates elements of Jewish tradition. Islam appropriates Jewish and Christian prophets. Religious nationalist movements, whether Zionists in Israel or Christian Evangelicals in the United States, mix religion with political perspectives held by some who do not share their religious orientation. Many religious people the world over embrace scientific understandings as part of their worldviews; some scientists are religious.

"The key is to embrace and work within parties’ seemingly incompatible worldviews, helping them explore and understand each other’s normative frames and search for agreements that can fit into those frames."

In the WEIRD (Western, educated, industrialized, rich, and democratic) world, many of us tend to think of religion as the primary, if not sole, source of worldviews. If we are atheists or not particularly religious, we may not see our perspectives and values (whether right-leaning, left-leaning, or centrist) as worldviews. We may consider a scientific materialist perspective to be an indisputably judgment-free orientation rather than a perspective that requires its own inferential leaps — at least if we believe that science puts all the big questions about the universe, and life within it, to rest, or that it undoubtedly will do so in time. In science, we seek a grand, synthetic theory of everything, built upon propositions that have been tested extensively and not disproven, yet fundamental gaps in our scientific understanding of the universe and our own experience remain, and some of them may be impossible to fill.⁴ Religious worldviews are not the only worldviews, and worldview conflicts often involve one or more parties who do not think of themselves as religious.

Though worldviews tend to develop through group-level interactions — we send signals to each other about our respective beliefs, with communal beliefs and bonds of trust developing in tandem in the process — a given person’s worldview will also be anchored partially in individual experience. Each of us filters what we experience in the present through a unique prism that has been shaped and tempered, in part, by our family histories, our personal temperaments, the imprints left by difficult experiences (e.g., coping with a disability or a traumatic event), our differing patterns of membership in multiple affinity groups, and other factors, many of which influence us unconsciously. Intense conflict sometimes arises between members of the same moral community,
Despite the broader worldview they largely share, in part because of such individual differences.

Our worldviews mostly operate in the background, before conscious perception, much as our eyes (which we are largely unaware of) operate in giving us sight, the sense through we perceive much of the world as we know it. Until we brush up against others’ worldviews, that is. When our worldviews collide, many of us, much of the time, reflexively defend the rightness of our perspectives. We regard them as self-evident or at least more securely justifiable — as they undoubtedly are, almost by definition, from within our own worldview.5

Worldviews evolve, though usually very slowly. Even so, a range of interpretive flexibility presently exists within most worldviews, including conservative religious worldviews — though, as an outsider, we may not see or be inclined to accept this. Our worldviews have fuzzy boundaries, and new situations require us to weigh and prioritize competing values within them. Members of moral communities are constantly negotiating over norms and how to apply them. This is why Jayne Docherty, a professor of leadership and public policy at Eastern Mennonite University and a leading scholar and practitioner in this area, prefers to speak of “worldviewing” (a verb, something that we are always doing), rather than “worldviews.”6

**Worldviews bind, orient, and guide**

Shared worldviews bind people together, orienting them personally and socially and guiding behavior. Religious worldviews can be a particularly strong force in the lives of individuals and communities, answering “the individual’s need for a sense of locatedness — socially, sometimes geographically, cosmetically, temporally, and metaphysically.”7

As Docherty explains, our worldviews generate “coherent structures of expectations”8 that communicate both permissions and constraints. These norms partially define who we consider ourselves to be, and the degree of our fidelity to them influences how we feel about ourselves and other members of our communities. Often the normative mandates of our worldviews are clear; at other times, our worldviews simply help us to orient and chart a path, functioning more like a map than turn-by-turn directions from Point A to Point B. In either case, most of us seek to act in ways that maintain our good standing as members of the communities we inhabit.

**Worldview conflicts can be intense and stubborn**

Many of us feel uncomfortable when others conduct themselves in ways that are inconsistent with our worldview. A few of us respond to this discomfort by trying to influence social and legal norms in ways that constrain others’ behavior — think pro-life activism in the United States or efforts to regulate how Muslim women dress in Europe — but most of us, much of the time, basically live and let live, arranging our lives so we mostly interact with and depend upon like-minded people.

But the discomfort is likely to be more intense, and we may feel especially compelled to speak out or take action when others’ worldviews affect us personally, as they might in a dispute between a divorcing couple about whether their children will have a religious upbringing or a dispute among business partners about whether to source goods from fair-trade suppliers at greater cost than from other sources. Now it is our immediate world that may not cohere as we believe it should; our own sense of self is at stake in a dispute that directly implicates our identity-defining values. Many of us tend to think of identity dynamics as primarily fueling wars of the armed or cultural variety, but identity-anchoring norms often are at play in everyday conflict, and those disputes sometimes can be nearly as intense and stubborn.

Because the core issues in a worldview conflict often have sacred value, parties cannot realistically hope to coerce each other into their own conceptual reality.9 Interpersonal communication practices such as active listening and demonstrating empathy for the other’s perspective and experience sometimes can be immensely helpful in a worldview conflict, but they will not mechanistically assure a smooth process when
negotiating across worldviews. An intense emotional response is natural when we perceive identity-anchoring values to be threatened, but we must do more than attend to emotions wisely and sensitively. Essential as that may be, emotions alone do not tell us enough about the normative contexts we inhabit and how to achieve resolution in keeping with them. Nor can we expect to appeal to reason from a position outside another’s worldview, because the other is acting rationally within his or her worldview. Finally, in many dispute contexts, a resolution can be achieved if one party is willing to pay enough money, because money can sufficiently address the other party’s underlying concerns. Indeed, in a traditional dispute we might see it as “progress” if one party offered to buy the other out, trading dollars for some other thing of value (property, a legal right, or some endowment or entitlement). In a worldview conflict, however, the latest social science research suggests that even making an offer like this can backfire, causing the conflict to intensify, rather than move toward resolution.

In a nutshell, the conceptual frame of standard-issue interest-based bargaining, and many of the prescriptions that flow from it, are insufficient for addressing worldview conflict. Some of the typical orientations, process features, and skills associated with interest-based bargaining may prove useful in efforts to negotiate across worldviews, but they must be adapted to a different context. Working with worldview conflict

One of the key prescriptions of standard interest-based bargaining is to identify “objective criteria” — for some, this ideally means a single legitimating standard that all parties can embrace to justify an agreement. In a worldview conflict, however, this may prove exceptionally difficult or impossible. Advice like this assumes parties share a more or less identical set of background norms, or at least that all the issues in the dispute, and the parties’ respective interests, lie in a domain in which their worldviews are substantially aligned.

But what if the parties’ worldviews do not align? Parties must develop a better understanding of their own and others’ worldviews and seek a resolution that is legitimate within each of those, even if each element of their agreement cannot be justified by pointing to a single rationale that all parties can embrace.

Stakeholders who hope to negotiate effectively across worldviews, and dispute resolution professionals who wish to help them do so, would be well-advised to undertake forms of individual and joint reflection, dialogue, and other work that can be exceptionally challenging. Among other things, they should consider the following four practices.

Map the worldviews

Some variant of the principle “love thy neighbor” exists within all religions, and there is evidence that reminders of these principles make people more tolerant of members of other groups. Yet appeals to similar, but abstract, conciliation-promoting values that exist within different normative traditions tend not to be much help in resolving worldview conflict. Ultimately, the parties will need more complete and granular images of the normative landscapes — images that, among other things, reveal the fences and other boundaries that place limits on how conciliation-promoting values may be applied, as well as the gates and those sections of barriers that have begun to collapse, without a communal will to rebuild them.

Each party, whether an individual or representatives of a group, should map the contours of his or her own worldview (and the features of it that are most directly implicated in the conflict), and they should prepare to articulate all of this to others. The parties need a birds-eye view of the terrain they occupy, the place from which their perspectives on the conflict, their perceived interests, and options for resolution spring.

Here’s a partial sketch of an employee’s worldview map as it might relate to a potential employment dispute:

“In a nutshell, the conceptual frame of standard-issue interest-based bargaining, and many of the prescriptions that flow from it, are insufficient for addressing worldview conflict.”
I’m proud of my service at this hospital for the past 18 years. I’ve been devoted to this place and the ideals I thought it stood for. But I’ve been questioning whether I can stay ever since the administration decided to permit physician-assisted suicide in line with California’s law authorizing it. I’m Catholic, and it’s prohibited by the church’s teaching on the subject, which I wholeheartedly agree with. I became a nurse to preserve life, not to participate in homicide. I mean, I couldn’t face my spouse or our kids, let alone God, if I were involved in that. My boss has assured me that I’ll never be required to do it, but I still toss and turn at night because I know it’s happening at my workplace.

Groups with differing worldviews often can identify some common values, but those values do not exist in a vacuum. In practice, they have to be balanced and prioritized against other values, all as understood within the specific historical and institutional context of one’s own community. In addition to mapping the features of one’s worldview, one must understand the importance of each feature in relation to other features.

If they want to be able to help parties effectively, advocates and mediators also must map their own worldviews. When the disputants know they share a worldview, it may be wise to use a mediator with the same worldview orientation. When they do not, however, a single mediator may struggle to relate to the worldviews of one or both parties. In a worldview conflict, using a team of co-mediators that mirrors the parties’ differing worldviews, or that at least includes one person who has a deep understanding of and appreciation for each party’s worldview, can be a good approach.

Give others a tour

Once each party is clear about how the features of its worldview are implicated in the conflict, the parties should take turns offering tours of how things look from inside their respective worldviews. “Speak to be understood,” Herbert C. Kelman, professor emeritus of social psychology at Harvard University and one of my mentors, is fond of saying to parties in conflict. This means trying as best one can to present one’s inside perspective in ways that help outsiders relate to it; for example, by anticipating what might seem surprising to others and making tentative analogies to features of others’ worldviews.

Be an attentive, curious, and respectful visitor

“Listen to understand,” is the second half of Kelman’s formula. Setting aside the question of whether it is wise even to try to debate with the other party during a conflict resolution process, a party is not likely to change others’ worldview by doing so. The goal should be to understand where others are coming from, where they can go and how they can get there, and where they are unlikely to be able to go, at least in the near-term. A party should ask genuinely curious questions designed to serve that goal. If one party can express appreciation for features of others’ worldviews (or at least demonstrate understanding of them as their inhabitants see them), all the better.

Stack the maps

Now imagine the worldview maps the parties have created and shared as drawn on clear plastic sheets. The next step is to place one map on top of the other (or others) to see where they line up and where they do not. Mediators and parties might spot common features that already exist within each worldview. Perhaps more helpfully, everyone involved might notice regions of hospitable terrain on which new, shared, or adjacent structures can be constructed or in which seeds can be planted and

‘Listen to understand,’ is the second half of Kelman’s formula.
expected to grow. Perhaps everyone at the table can see that something one party wants is permitted by the others’ worldview — within certain parameters. The careful neutral and parties will also look for regions in each map that do not meet but are close enough that bridges could be constructed. If each party could envision taking a small step in the other’s direction, could they meet on that bridge?

One practical way to “stack the maps” is to create a chart in which each issue in the dispute gets a row and each party’s worldview is assigned a column, with another column for options to the right. Summarize the parties’ respective worldviews as they relate to each issue, then try to brainstorm options that could address each issue in a way that is consistent with the worldview of each party.

My map analogy is limited in a number of ways, including the missing dimension of (historical and future) time. Can exploring ways in which landscapes have shifted over time help everyone envision new present-day options? Can time-bounding elements of an agreement help parties accept a change to the status quo, at least for some time, because they need not concede that they have altered the landscape indefinitively?

There is much more to say about working with worldview conflict than can be covered here, but these are some key ideas. Being curious and respectful explorers of the unfamiliar terrain of others’ worldviews is challenging work. Finding secure ground within multiple worldviews from which parties can reach each other is more challenging still. Nonetheless, with patience, genuine curiosity, and a measure of goodwill, often it can be done.

Endnotes
3 Within the disciplines of religious studies and theology, the term “worldview” has become associated with the Christian evangelical tradition, perhaps complicating my use of it from the perspective of those working primarily within those disciplines. The term has a longer and more varied history, however, and it has been embraced more broadly, both by those in other academic disciplines and in common usage. I use it precisely because it has this broader appeal and a common meaning that many people seem to grasp readily. For an intellectual history of the term and its usage across disciplines, see David K. Naugle, Worldview: The History of a Concept (2002).
4 Skeptics should read Marcus du Sautoy, The Great Unknown: Seven Journeys to the Frontiers of Science (2017). Marcus du Sautoy is the Charles Simonyi Professor for the Public Understanding of Science at Oxford University, and his book explores the boundaries of scientific knowledge.
6 Jayne Seminare Docherty, Learning Lessons from Waco: When the Parties Bring Their Gods to the Negotiating Table (2001).
8 Docherty, supra note 6, at 108.
10 Docherty, supra note 6, 112.
11 For example, Daniel Shapiro places great emphasis on transforming emotional dynamics yet also emphasizes the need for other types of work, like the structural transformation of divisive relationships. Daniel Shapiro, Negotiating the Nonnegotiable: How to Resolve Your Most Emotionally Charged Conflicts (2016).
12 Susan Hunter sees the essential tension in contentious public policy disputes not as one between emotion and reason, but as one between different meaning (reason) systems. Susan Hunter, The Roots of Environmental Conflict in the Tahoe Basin, in Intractable Conflicts and Their Transformation (Louis Kriesberg, Terrell A. Northrup, & Stuart J. Thorson, eds., 1989).
Best Practices for Mediating Religious Conflicts

Slow down, focus on the past, and probe to understand the core conflict

By Sukhsimranjit Singh

All across the globe, people are passionate about religion — both their own beliefs and those of others. Religion informs people’s core values, codifies their morals, and inspires their actions. We have seen this throughout history, but we can also see it today, in people’s day-to-day lives, in how they see themselves, what they care about, and how they treat others.

I know this to be true because for the past 11 years, I have mediated inter- and intra-faith conflicts involving religious institutions. Religious conflict requires me to think creatively, respectfully, and judiciously to work with disputes that revolve around people’s most sensitive beliefs.

Religion is generally considered to be part of cultural decision-making. As a specialist in cross-cultural dispute resolution, I hope that the insights below, gained from my experience mediating religious conflicts, are useful in helping you navigate similar disputes.

Past versus future orientation

When I started mediating, like most practitioners, I learned about the practice and importance of persuading parties to understand their past — and then urging them to use this understanding to move on and look toward their future. In church conflicts, however, I have learned to take a different approach: I spend much more time than usual on the parties’ historic orientations.

In church conflicts, the central dispute often revolves around the clash of a shared worldview (for a robust discussion of the concept of worldviews, see the article in this issue by Jeff Seul). In religion, people learn to form patterns of behavior. With such patterns come expectations of what is right and what is wrong, which tends to raise differences above commonalities. Language is always important in discussing and resolving disputes, and this is even more true when religious beliefs are involved. When personal values are up for discussion, what someone says can take on great meaning and help bring people together — or drive them further apart. The more contact the parties have, the more focused they can become on their differences.

I recently mediated a dispute between two congregations in a large religious community. When they agreed to work with me, each group declared that its “religious orientation” was right and the other

Language is always important in discussing and resolving disputes, and this is even more true when religious beliefs are involved.
congregation’s was wrong. All attempts at conversation and resolution had failed.

I started the mediation in a joint session with more than a dozen representatives from each side. After the two-hour joint session, I learned what so many mediators discover in working with many people who disagree on any topic: in this multi-party environment, the participants all expected to be heard, but none was willing to listen.

I spent days in caucus with the representatives from each congregation, listening to their stories, which (as so often happens) were intertwined with facts and emotional innuendo. During these caucus sessions, I began to understand the interests at play: each group was rejecting the other’s religious worldview, and each was feeling deep disrespect and distrust due to the other’s past comments and actions. What made this case especially complicated was the fact that several group members from both sides had suffered harm. In order for this mediation to succeed, I needed to convince everyone involved, not just the majority of the representatives, to listen to the other side.

In another dispute, I might have asked the parties to review their stories in an opening session and then immediately tried to help them move on in a private caucus. But in this case, as in so many involving religion, I knew that before I could help, I needed to understand more about the parties and their faiths. To get to the core distrust, during each caucus I asked specifically about events that each side framed as the turning point in their relationship. One group talked at length about a specific day, six years in the past, and then the members of the other group, separately, described their own version of the same incident. While they focused on facts, I perceived crucial differences in value systems. They didn’t understand that the center of their conflict was how differently each group interpreted the larger community’s religious code of conduct. One group believed in strict adherence of the faith code, while the other inclined toward a more moderate application. Taking time and extending the information-gathering phase of mediation allowed me to get a clear view of what each group cared about and valued, and after providing feedback to both sides, it also allowed each side to understand more deeply the other’s motivating core beliefs and values.

In other words, in working on cases involving religion and faith, even when I wish to fast-forward the mediation conversation to the future, I find that respecting history, specifically the pasts of parties’ specific religious institutions and communities, has deepened my own understanding of the conflict, helped me create more trust and connection with parties, and been critical to motivating everyone to find a shared solution.

Religious identity

For many people of faith, religion goes beyond a simple belief process or practice and extends to personal identity. “I am a Christian (or a Muslim or a Jew or a Sikh or a Buddhist or an atheist),” we say, by way of explaining ourselves to others. Because cultural identities are intertwined with our worldviews, divorcing our cultural identity from decision-making is not an easy process. Cultures, like religion, provide insights into how members of a particular group will behave — guidelines as to how a person should act in the world, what makes for a good life, how to interact with others, and which aspects of situations require more attention and processing capacity.

With this in mind, faith-based conflict resolution makes sense for many religious adherents, but for some, it might not be a comfortable choice because it represents something that goes against the essence of following the religious tenets of peace and peace-making. In other words, just accepting the fact that a conflict exists may mean acceptance of the fact that the congregation has failed in maintaining order and in assisting others to maintain order. This internal inconsistency might challenge the basic cultural identity of the group and as a result, make the conflict more difficult to solve.
In a second case I worked on recently, the people on one side of the dispute were arguing among themselves because the dispute went against their fundamental tenets. “We should not pursue litigation in this matter since fighting in court, especially over our religious matter, can and will bring tension within our community and will defame our community,” people on this side of the case told me. “Our congregation and our faith believe in resolving all conflict amicably and keeping the brotherhood alive. Yet a few of our members claim that we are losing by not litigating.”

To me, in caucus, they essentially said, “How can this be?”

I knew that before these participants could begin to address the dispute with the other side, they would have to reach some sort of agreement among themselves. Hoping to get to the heart of such a basic disconnect, I tried to separate their religious identity from the conflict resolution process and reminded them that mediating or litigating was a choice they needed to discuss thoroughly before proceeding. This kind of basic tension, I assured them, comes up in all kinds of disputes, including purely commercial cases.

In this case and others like it, I have learned that addressing the value-based, religious positions that parties adopt during their conversations is key to helping them confront the core dispute that brought them to the table. When it comes to religion, I believe that the essence of mediation practice is helping people understand and possibly shift their positions, and I find that this often involves challenging parties’ strict views from multiple standpoints. When I approach people with respect and understanding, I find that these challenges can help parties move toward resolution.

**Working with the “true” facts and the use of caucus**

At the core of every conflict is a story — in most cases, multiple stories. In any mediation, listening to the other person’s (or other party’s) story requires both a mental shift and a change of attitude. But at the center of any religion is a statement on truth, so a successful mediation involving religious principles or institutions requires a dramatic shift in people’s version of truth as well as a storyline that allows everyone to move toward a more amicable path. However, when the conflict itself involves religious values or religious practices, the issues may be a constant reminder of faithfulness toward the personal truth.

In one of my cases, the parties came to me with different stories about the use of wood in the main door at a church. As in the earlier case, each side had its own story — and its own reply to the other’s. In the joint session, accusations quickly became personal. I knew I needed much more information before I could be helpful, so I suggested private caucuses, which proved a wise decision because those private meetings provided a huge amount of important information. The caucuses slowed my process for several days, but the delay was worth it.

In all kinds of cases, parties may be hesitant to share private information with a mediator, but often this very kind of information allows parties to save face and provide honor. This is especially true in religious conflicts, where, as noted before, the core conflict involves both personal and group identity. With effective use of caucus, religious parties can enjoy the safe space they need to share their personal stories surrounding faith and conflict. As Professor Lela P. Love of Cardozo School of Law and I have written, “Ignoring religious precepts may involve peril: peril to our soul and, perhaps, to our pocketbook.”

**Addressing emotion and generosity**

In my research, I have been particularly interested in the concept of generosity — where it comes from, how it manifests itself, and what it means. While studying the concept, I learned that every major religion, in its own way, promotes spirituality-based
A compassion-based mediation process provides the parties clear process wins, a kind of Golden Rule benefit, over the traditional process of litigation.

I also found deep connections across such faiths: for example, the practice of generosity.\(^5\) As Karen Armstrong, a former nun who has written widely about religion and society, explains, “All faiths insist that compassion is the test of true spirituality,” which then brings us all into relation with the “transcendence” we call God, Brahman, Nirvana, Dao, or another name. Each faith, she notes, has its own version of the Golden Rule: “Always treat others as you would wish to be treated yourself.”\(^6\)

A compassion-based mediation process provides the parties clear process wins, a kind of Golden Rule benefit, over the traditional process of litigation. One other big advantage is that the parties may enjoy being part of the mediation. Being involved with both faith-based interventions and secular interventions, Jacob Bercovitch and Ayse Kadayifci-Orellana, scholars and authors who specialize in international relations and conflict resolution,\(^7\) set out the following advantages of mediation for faith-based disputants:

- a) Explicit emphasis on spirituality and/or religious identity; b) use of religious texts; c) use of religious values and vocabulary; d) utilization of religious or spiritual rituals during the process and; e) involvement of faith-based actors as third parties.”

One of the key benefits to belonging to a faith-based community is being able to understand the values and religious texts of that community. Utilizing that shared text as a source of guidance and direction throughout the mediation garners legitimacy between parties and promotes buy-in from both sides.

**Flexibility, respect, and presence**

Religions are complex, and within each religion, people have different levels of adherence, and these individual differences make practices and beliefs even more subjective. With such wide diversity of values and belief systems, one thing is for sure — no two mediations will be identical. You are bound to find differences, and they may be large or small.

Religious mediation has taught me humility — to approach each and every mediation situation with caution and respect. It has also taught me not to judge a party’s belief system or a group’s value system.

While I hope my observations will help your practice, I know that the timeless principles of respect and presence will help you most in understanding and resolving religious conflicts.

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**Endnotes**

2. Several faiths emphasize the tenets of generosity, especially when it is connected to the principles of negotiation and mediation. For a discussion on how such principles are seen in several faiths, see Lela P. Love & Sukhsimranjit Singh, *Following the Golden Rule and Finding Gold: Generosity and Success in Negotiation*, in EDUCATING NEGOTIATORS FOR A CONNECTED WORLD: Volume 4 in the Rethinking Teaching Series (2012).
5. Id.

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Family Dispute Processes among North American Muslims

Sorting reality from fake news

By Julie Macfarlane

Many Muslims in North America continue to use an “Islamic imagination” in approaching life’s transitions. Like those in other cultural communities all around the world, they continue to practise traditional rituals to help members of their community navigate the critical passages of birth, marriage, divorce, and death.

In Canada, where I live, reports of this in the early 2000s caused near-hysteria among some observers, leading to headlines such as “Life under shari’a in Canada?” and “Legal Jihad?” and even “Religious Law Undermines Loyalty to Canada.”¹ This led to the Liberal government in Ontario withdrawing all forms of religious arbitration from the Ontario Arbitration Act.² There have been similar instances of public alarm in the United States, prompting an organized movement promoting state referenda on “banning” the use of “shari’a law” in state courts since 2010.³

Because much of my work as a researcher, teacher, and practitioner focuses on dispute resolution, I decided to learn how these processes actually worked “on the ground,” to understand the motivations of both the users and the facilitators of processes for marital counseling and divorce, and to chart the wide range of variations in procedure and practice. Put simply, I wanted to get behind the headlines.

From 2005 to 2008, with a grant from the Social Science and Humanities Research Council of Canada, I conducted interviews in the United States and Canada with almost 200 imams, religious scholars, social workers, and divorced men and women from Muslim communities. The result is a picture of private dispute resolution — or “private ordering” — that occurs frequently, informally, with little consistency.
and wide variations in procedure and practice, and with minimal data collection or formal monitoring either inside or outside Muslim communities. My research data — written up in my 2012 book Islamic Divorce in North America: A Shari’a Path in a Secular Society⁴ — reveals a picture of the continuing practice of traditional processes animated by both religion and culture that lie at the heart of notions of Muslim identity and Islamic family values in 21st century North America.

Few of my starting assumptions about this research project proved to be correct. As a non-Muslim, with no starting knowledge of Islamic family law and no previous experience studying religious dispute resolution, I had a lot to learn during my four years of immersion in this project. Let me share some of the most important of these lessons here.

For marriage and divorce, a system of “private ordering”

By far the most common way in which North American Muslims continue to practise “laws” or rituals are limited to marriage and divorce. I found that this commitment to tradition was present among both religious and secular Muslims and both native-born Americans and immigrants.

Family law is in fact all that is left of original Islamic legal systems in many countries colonized by the United Kingdom, France, and other Western powers that supplanted the native models of commercial and property law with their own common-law models.⁵ Likewise, in North America, there is rarely community adjudication on commercial disputes.⁶ When we read about shari’a for North American Muslims, what we are really reading about are marriage and divorce processes, and occasionally inheritance principles.

Recourse to processes of Islamic marriage (by contract, or nikkah⁷) and Islamic divorce (release from the vows made in the nikah contract) is an example of a system of private ordering, running parallel to (but outside of) the formal system of laws and courts. Systems of private ordering are common in every country, community, and organization. They may in fact have as great, or even greater, an impact on the lives of those who choose to use them as the state-sanctioned system, especially if they represent meaningful principles and processes not available in the state system. In common with other systems of private ordering, Islamic divorce depends on the commitment of those who use it — rather than the state — for its authority and legitimacy.⁸

The expression “shari’a courts” is misleading. The dispute processes that were the subject of my research could not be described as formal courts. Moreover, the procedures I collected data on could not be compared to what we know as arbitration.

The private ordering system that I uncovered in my fieldwork is largely confined to the work of individual imams, some of whom have limited knowledge of Islamic jurisprudence. Their “permission” for divorce is more closely related to their internal biases and assumptions regarding marriage and especially the role of women⁹ than it is to any principles of Islamic family law (which I studied in order to undertake the research).

The process usually involves a meeting with a woman who is seeking permission to divorce, and occasionally a follow-up meeting with both husband and wife. In a few places, the heat that an individual imam might experience from his community if he looks as if he is being “too permissive” about divorce is eased by a panel of two or three local imams who take collective responsibility for decisions. I found no examples of these decisions forming any type of precedent, nor of any calling for and testing of evidence.¹⁰

The flaws of private ordering

Like many private ordering processes, Islamic marriage and divorce are symbols of commitment to a community and a culture as much as to a faith.
The personal stories of North American Muslims that I have documented include experiences that
are both positive and negative, along with outcomes that are sometimes highly satisfactory to partici-
pants — and sometimes less so. These processes, flawed as they might be, have meaning for many
North American Muslims that goes well beyond a doctrinal religious belief. Like many private ordering
processes, Islamic marriage and divorce are symbols of commitment to a community and a culture as
much as to a faith. Like many traditional family processes, they are also something that many Muslims
born and raised in North America use mostly to please their parents — just as many of us do at
important life events.

Not a substitute for legal divorce

Islamic divorce is not a legal divorce in any part of
North America, and all the imams I interviewed know
this. Interestingly — and at odds with a widely held
public perception — the vast majority of them also
had no interest in changing this status quo, seeing the
processes they went through with community mem-
ers as satisfying their personal conscience rather
than requiring recognition in the legal system. Both
the imams and the men and women seeking Islamic
divorce are clear that this is not a substitute for
obtaining a legal divorce in the courts. Islamic divorce
is therefore in addition to, and not a replacement for,
a legal divorce. Instead it is seen as an important
element of ritual and commitment that relates back
to the original vows taken in the nikah or marriage
contract. In order to break these vows, there must be
a sanction that recognizes those vows (also not legally
binding) and releases the parties from them.

For the devout, the motivation is to meet one’s
religious commitments. One respondent explained
that for some Muslims, Islamic divorce allows them to
feel that:

“(T)hey closed all the gaps in their faith, they have
done everything that they could do, and they have
something from an imam or religious scholar that
says that they have done everything they could
have done and they are free and clear.”

For the secular, the motivation to seek a formal
community sanction for their divorce is different, but
no less important:

“To retain an Islamic identity, it is often neces-
sary to … accept the traditions, because of the
need to be part of that identity space … many
Muslims reject the religious commitment but
retain the cultural commitments.”

I also found that disputes over support, property,
and children were settled by the parties in courts of
law. Where there was an agreement between the
parties, sometimes negotiated with the assistance
of the imam, this was submitted as a consent order.
More often, however, the imam’s intervention was
limited to providing permission (or not).

The relationship between an Islamic divorce and
a legal divorce — since all my respondents obtained
both — was explained to me as follows:

“The common law allowed me to feel practically
and cognitively divorced — the Islamic process
allowed me to feel spiritually divorced.”

What might this mean for dispute resolution professionals?

Every imam, religious scholar, lawyer, community
leader, and social worker I interviewed in the Muslim
community believes that divorce is increasing rapidly
among North American Muslims. Almost unheard of
and certainly unspoken of two generations earlier,
divorce is now a relatively common phenomenon that
Muslim communities all over North America are con-
fronting. The imams receive little, if any, training to
prepare them for dealing with serious conflicts, espe-
cially where there is violence or abuse in the marriage.

Rising levels of divorce are spurring a vigorous
debate in the community over how North American
Muslims approach marriage, including individual
versus family choice of spouse and the continuing
practice of matching North American-born Muslims
with partners coming from a Muslim country.

Dispute resolution professionals, lawyers and
mediators alike, have much to gain from informing
themselves about continuing recourse to Islamic marriage and divorce processes and considering the role that they might play. Most mediators and lawyers understand the importance of satisfying their clients’ cultural and religious rituals for closure in divorce. By learning more about the basics of Islamic family law — for example, the importance of a wedding promise, or mahr, in establishing ongoing support in the event of divorce — non-Muslims can be much more helpful to Muslim clients for whom this is often a symbol of Islamic identity (and can easily be accommodated within a common-law support model). The negotiation of a marriage contract, which Islamic jurisprudence states clearly can include whatever clauses the couple desire and agree on, offers many opportunities for effective couples counseling and anticipation of a life together.16

The commitment within Islamic law to resolving marital conflict wherever this is fair and possible — while permitting divorce when a satisfactory resolution is not available — offers a robust framework for mediation. Many imams expressed to me their desire for better training in mediation and conciliation work. The traditional inclusion of a wider group of family members in resolving conflict is another aspect of Islamic dispute resolution that offers challenges but also interesting possibilities for mediators skilled in managing family dynamics.

By working with imams and other leaders within the Muslim community and building relationships with the mosques as well as secular Muslim organizations, dispute resolution professionals can create many opportunities for mutual benefit. These should replace the “fake news” that these customary rituals represent any effort by Islam to challenge and “take over” the American legal system with a fruitful collaboration and for her weekly blog for a non-lawyer audience. She is the author of The New Lawyer: How Settlement is Transforming the Practice of Law and Islamic Divorce in North America: A Shari’a Path in a Secular Society. She can be reached at Julie.macfarlane@uwindsor.ca.

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Endnotes
1 Headlines from the Toronto Star, Vancouver Sun, and the Western Standard.
2 Originally the act permitted religious arbitration. See Ontario Arbitration Act (1991) c. 17, s. 32 (1).
4 Julie Macfarlane, Islamic Divorce in North America (2012) [hereinafter Islamic Divorce].
6 One exception is the Ismaili community that operates a Conciliation and Arbitration Board in both the United States and Canada. See https://the.ismaili/cab-usa, http://cabcanada.org/.
7 Islamic Divorce 40-69.
9 This leads to a well-established practice of “imam shopping.” Islamic Divorce at pages 160-161.
10 Islamic Divorce 88 155-156.
12 Islamic Divorce 231-232, 244-246.
13 Islamic Divorce 185-208.
14 Historically, divorce has been limited in Muslim countries by both law and societal norms. However, divorce is becoming increasingly common as social expectations and financial protections for women are enhanced. One recent study estimates the divorce rate in Kuwait at over 25%; in Qatar at 38%; and in the UAE, at 46%. See Abdulaziz Alahmed, High Divorce Rates Alarm Gulf States (April 19, 2007), available at http://www1.albawaba.com/en/news/high-divorce-rates-alarm-gulf-states.
15 My study found this latter arrangement to be a frequent and significant cause of incompatibility and marital conflict. See Islamic Divorce 119-122.
16 Islamic Divorce 49-51, 68-69.
Bringing Awareness into the Room
Using the Buddha’s Roots of Conflict and Four Noble Truths to address our own — and then others’ — conflicts

By G. Daniel Bowling

The Buddha taught conflict resolution to monks, nuns, and lay practitioners for 45 years. Twenty-five hundred years later, his teachings remain relevant for conflict resolution practitioners. Unlike teachers in other religious traditions, he never suggested belief in his teachings, instead urging practice and reliance on experience to evaluate effectiveness. As a result of my decades of practice as a Buddhist, I consistently experience connections between my clarity and presence as a neutral, when mindful, and the challenges of conflict when I am not. My direct experience has instilled confidence that practicing the Buddha’s teachings has helped me develop the theories, skills, and personal qualities required to master conflict resolution.

Two young teachers with two different styles

Several years ago a senior Buddhist teacher asked me, as a member of the board and the Ethics and Reconciliation Council of a Vipassana retreat center, to mediate a dispute between two young teachers. Buddhist scholars regard Vipassana (or Insight) teachings as the oldest suttas (sermons) of Gautama Buddha, who taught in northern India approximately 3,000 years ago. The two young teachers were both dedicated practitioners, with significant silent retreat practice. They were both charismatic, highly regarded by younger, diverse practitioners.

Dawa was a second-generation Tibetan immigrant whose family included generations of lay Buddhist practitioners. She was
Looking back centuries: The Six Roots of Conflict

One Buddha sutta tells of the time when Cunda, one of the Buddha’s attendants, and Ananda, the Buddha’s cousin and personal attendant, told the Buddha about the death of Nataputta, a famous Jain teacher, and about the ensuing feuding among Nataputta’s disciples. Their description included images such as the disciples stabbing each other with “verbal daggers” and essentially used the language of conflict we all hear so often: “Your way is wrong. My way is right.”

When Ananda expressed concern about conflict arising among the Buddha’s students after his death, the Buddha described the Six Roots of Conflict:

1. Anger
2. Contempt
3. Greed
4. Deceit
5. Wrong view
6. Clinging to our views

In my mediation with Dawa and Renaldo, they were both angry, each believing the other was expressing contempt for his or her approach. Dawa believed Renaldo was greedy and that his eagerness to advance his career led to being deceitful about his motivations and to teaching wrong views. Renaldo also accused Dawa of being greedy, eager to expand opportunities for her traditional teachings, and of being deceitful about her motivation, which, he asserted, was not to support ancient teachings but to deny the psychological aspects of the Buddha’s original teachings (which, Renaldo believed, were consistent with modern psychology). Renaldo and Dawa both stuck to their stances, refusing to acknowledge the other’s perspective, making their dispute one with all six roots. And both were ignoring the Buddha’s warning that anger has a “poisoned root and honeyed tip.”

The Four Noble Truths

In his first sermon, the Buddha distinguished Four Noble Truths, antidotes to these universal and very human Six Roots of Conflict — a classic, scientific analysis of our universal mental dysfunctions …
avoiding conflict is good. The Buddha never taught that dukkha is wrong or that we could or should resist it; he taught us to train our minds to know dukkha mindfully as it arises in each moment.7

Practicing mindfulness generates this knowing, including awareness of any internal doubts or resistance.8 We train our minds to note silently whenever we experience conflict: “The experience of conflict is like this,” enabling us to be present and mindfully know each moment’s experience.

I silently reminded myself of this practice as we began the mediation with Dawa and Renaldo. It was – and is – essential that I not separate myself, as a mediator, from the parties’ experience and always to begin by reminding myself how often I fall into this same trap. Otherwise, I risk being right about the participants’ being wrong and losing mindfulness of my personal experience. Helping them remember required my humanity, to know myself as a practitioner, not a mediator. I connected with their failure to know their contribution to their conflict by silently noting “Conflict feels like this. Blame and projection are arising.”

2) Know clinging as the source of conflict, as dukkha

The Buddha’s Second Noble Truth presents the underlying cause of all mental suffering. We experience dukkha because our untrained minds react to life’s constant changes, such as conflicts and miscommunications, by clinging to our likes and resisting our dislikes. He never taught that clinging to what we like is wrong, an important distinction from Western traditions that focus on right and wrong and “sin.” We experience life only through our senses, and our untrained minds cling to sense pleasures. If such experiences are wrong, then life is wrong. Rather, the Buddha taught that tanha, thirst – uncontrolled desire for our wants – is the source of dukkha, “… all the troubles and strife in the world, from little personal quarrels in families to great wars between nations and countries…”9

Desire, according to the Buddha, includes its opposite, aversion. Aversion to any sense experience is simply thirst for its opposite. We cling to futile efforts to avoid conflicts and have life the way we prefer, producing conflicts, violence, and wars plaguing humanity on every level – personal, family, community, nation, and world. We also cling to “becoming,” which the Buddha defined as our existence, status, or self-identity and to “non-becoming,” wanting something or someone to disappear, not to be experienced.

Because at the time I worked with Dawa and Renaldo I was mediating with experienced teachers, I began by inviting examination of their conflict through the Four Noble Truths. They quickly acknowledged how they wanted respect as teachers and were clinging to their views of appropriate teaching. Dawa acknowledged taking Renaldo’s approach as an attack on her family traditions. She acknowledged anger arising in her and a determination to “protect” her view of the Buddha’s teachings. Renaldo acknowledged his failure to respect Dawa’s views or the depth of her experience and traditions and his strong preference for modernizing the Buddha’s teachings. After some encouragement, he also acknowledged his unconscious chauvinism.

3) Know the cessation of conflict as dukkha

The Buddha’s Third Noble Truth distinguishes a solution to our ancient human dilemma, by recognizing our dysfunctional relationship with life: our attachment to suffering and the potential for the cessation of suffering. We avoid or resist conflict because we do not believe that we can deal with conflict skillfully or that it will ever end.

As mediators, we work with parties who lack faith in the possibility that their conflict, their suffering, will end. They are consumed with anger, fear, projection, and blame. The source of conflict, they assert, is not their clinging, attachment, or aversion, rather it is others’ behavior. They see themselves as victims, not

“… all the troubles and strife in the world, from little personal quarrels in families to great wars between nations and countries…”

We [can] train our minds to note silently whenever we experience conflict: ‘The experience of conflict is like this,’ enabling us to be present and mindfully know each moment’s experience.
We avoid or resist conflict because we do not believe that we can deal with conflict skillfully or that it will ever end.

actors. To assist others in resolving conflict, we have to embody this mindful knowing of the cessation of the dukkha of conflict, not just through an intellectual understanding. We must bring this personal awareness into our life – and then into our conflict rooms. Otherwise, we cannot assist parties to remember they are actors in their lives, not victims.

Without mindfulness, we miss the moments of peace and connection in conflict. We fail to recognize moments when conflict ceases and freedom arises. We remain blinded by attachment to conflict. Through consistent mindfulness practice, we experience cessation of conflict moment by moment, especially recognizing moments when our internal conflicts cease, even if external reality remains unchanged. We train our minds to awaken, silently repeating: “Conflict is like this,” and when peace and connection arise, “The cessation of conflict is like this.” With mindfulness practice, we gradually understand that the Buddha was not suggesting we accept abuse or harm but that we know that when we blame only others, without examining our own contributions, we remain dependent on others to change and disempower ourselves to name and find our way to freedom.

I invited Renaldo and Dawa to reflect on how they might resolve their differences. Renaldo acknowledged being trapped, blaming Dawa for holding rigid views of the Buddha’s teachings, struggling to know that conflict with her could possibly cease, and unskillfully attacking her traditional views.

Dawa acknowledged that her fears of Western psychology’s coopting ancient teachings caused rejection of Renaldo’s efforts to guide students to understand the parallels and differences within Buddhism and psychology, resulting in her rejection of his modernist approach.

As mediators, we must learn to train our minds to know the possibility of conflict ceasing in our own lives, in order to bring that awareness into a room. We cannot practice conflict resolution while failing to address conflict in our own lives. Whenever I mediate, I first focus on relating the parties’ conflict with my life, such as recognizing how important it can be to me (like Dawa) to be “right” and how easy it can be for me (like Renaldo) to attack someone who does not share my views. Only through knowing how conflict arises and ceases in my life can I support parties creating conditions for their conflict to cease. Only by remembering how to release my clinging to views and recognizing when the Six Roots of Conflict are not present in me, moment by moment, can I support that process in mediation.

4) Know the path leading to cessation of conflict, of dukkha
The Fourth Noble Truth outlines an Eightfold Path to cessation of conflict as dukkha, divided into three groups of mindfulness practices: **Wisdom**: wise view and intention; **Virtue**: wise speech, action, and livelihood; and **Concentration**: wise effort, mindfulness, and concentration.  

Wise view develops cognitive intelligence by training our minds to see distortions caused by seeing conflict as about “me,” when conflict actually arises from causes and conditions. Wise intention focuses on knowing our subtle intent before acting to help avoid conflict. Wise speech increases awareness of the impact of our words on our thoughts and actions toward ourselves and others. Wise action and livelihood increase our awareness of the impact of our words and actions on ourselves, others, and the Earth. Wise effort, mindfulness, and concentration help us become aware of the more subtle aspects of experience.

The Buddha did not offer these practices to teach us to become good but rather to develop mindfulness of our intentions, mental habits, and reactive thoughts and abandon unskillful actions while cultivating skillful approaches to life, especially resolving conflicts. Attaining mindfulness regarding the Six Roots of Conflict requires diligent practice, but results arise quickly and build slowly but consistently. Remember, the Four Noble Truths are not beliefs but a framework for training our minds.

Like a physician, the Buddha described our illness, diagnosed its underlying cause, clarified the cure, and recommended the medicine to achieve that cure. His analysis is directly applicable to resolving conflict. By understanding and addressing our own conflict through these Four Noble Truths, we, as mediators, can more skillfully and congruently bring that personal experience into our work.

As mediators, we must learn to train our minds to know the possibility of conflict ceasing in our own lives, in order to bring that awareness into a room. We cannot practice conflict resolution while failing to address conflict in our own lives.

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**Endnotes**

2. Vipassana teachings survived through oral tradition until they were recorded and preserved in what is now Sri Lanka. They were brought to Massachusetts in the late 1970s by Joseph Goldstein, Jack Kornfield, and Sharon Salzberg, cofounders of the Insight Meditation Center in Barre and then Spirit Rock Insight Meditation Center in Woodacre, California.
4. Id. Number 104.6.
5. Samyutta Nikaya: The Connected Discourses of the Buddha, Number 2.3 (Bhikkhu Bodhi trans., 2000).
7. Samyutta Nikaya, supra note 5, Number 56.11.
8. Majjhima Nikaya, supra note 3 Number 10.44.
11. Id.

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T he specter of delegating private family and business disputes to religious tribunals raises, in the minds of many of civil litigators and neutrals, unwelcome images of fundamentalist irrationality, church excommunications, issuance of Scarlet Letters, and other shibboleths of clerical tyranny. Most recently, for example, an overheated dispute in a New York City divorce focused on the custody terms of the Orthodox Jewish mother’s rights, resulting in a disturbing trial court upholding a burdensome agreement that had been facilitated by a religious court — only to be reversed on appeal (to the great relief of many observers) as an unconstitutional restriction of the mother’s rights of religious freedom.

Perhaps hoping to assuage some of these fears, in his book *Shari’a Tribunals, Rabbinical Courts, and Christian Panels: Religious Arbitration in America and the West*, Michael Broyde of Emory Law School presents an elegant and thoughtful explanation — and to many readers, a convincing defense — of this emerging and growing segment of private arbitration.

Broyde opens by charting in detail the three historical trends in our justice system that have led to this development: 1) a slow but certain expansion of judicial acceptance of private arbitration generally over the past 100 years; 2) increased marginalization of religious communities from mainstream society, causing many religious parties to create and prefer their own autonomous legal systems; and 3) improved procedural protections within certain religious arbitration systems, offering far greater due process guarantees for its participants than what existed in the more traditional versions of these practices.

Most likely it was an unexpected consequence, he explains, that the door to religious tribunals was thrown open when private arbitration became more acceptable as a legitimate alternative to civil courts, first in commercial contexts and then, in some jurisdictions, in family and estate matters. From a social-policy angle, Broyde sees no reason to disallow the use of religious tribunals by participants who affiliate with that faith. From the perspective of their personal autonomy and an individual’s right to choose a culturally appropriate forum for adjudicating a dispute, there seems to be nothing inherently objectionable in allowing the selection of a religious form
of arbitration. And even more significantly, Broyde argues that it is equally permissible to allow the parties’ religious principles to guide the decision-making principles. From a policy perspective, he contends, it’s no different from any other choice-of-law or choice-of-forum provision.

With that historical context as background, Broyde’s well-researched volume examines Muslim, Jewish, and Christian arbitration practices and forcefully defends the “freedom of choice” that allows the followers of these faiths to resolve their conflicts in their own religious arena, as long as all participants are followers of the same faith. What could be wrong, Broyde proffers, in establishing a conflict-resolution process that aligns with the spiritual values of the congregants and honors the unique leadership structures of their religious communities?

To Broyde, the key is ensuring procedural justice in the operation of these panels. To his credit, he acknowledges that serious problems can arise when the participation in the tribunals appears to be forced on the participants and if the procedural rules lack due-process protections. As an example of how these barriers can be overcome, he details the evolution of the Jewish beth din (literally, a house of judgment, a rabbinical court that decides questions on the basis of Talmudic law), which has instituted procedural standards that, in his view, ensure the requisite due-process protections. And indeed, as long as such protections are in place, civil courts have generally — though not always, as the recent New York custody case illustrates — upheld the results of such arbitrations. But notwithstanding these few aberrations, Broyde argues that the greatest benefits of fostering these religious justice systems are social and cultural. Allowing the use of such tribunals increases the social cohesiveness within each of these religious communities, honors the principles of autonomy that empowers the participants to design their own conflict-resolution systems, and bestows respect on the central importance of religious beliefs in the lives of the litigants.

Broyde’s treatise seemed persuasive on the surface, but it left me with a nagging sense that the systems he endorses are not always so deserving of our approval. And indeed, according to the editors of Gender and Justice in Family Law Disputes, my caution was justified. “Not so quick,” exclaim the authors of a dozen essays in a compelling volume edited by Samia Bano, a lecturer in law at the University of London.

My concerns about Broyde’s advocacy were bolstered, as I learned from the perspective of these writers how women are treated in the Shari’a Council Tribunals, especially in the United Kingdom. These essays point out that allowing religious courts to adjudicate marital disputes can cause serious problems, procedurally and substantively. Many of the underlying shari’a family law rules are organized in a way that consistently harms women, both in the property-division standards and the tolerance of polygamy. The social pressures confronting the female participants throughout their lives belie any notion of true “autonomy” in the wife’s agreement to participate in these tribunals, and the private realm of religious courts often reinforces the power dynamics inherent in many of these families. Several of the authors question the ability of women in these religious communities to exercise agency in any meaningful sense, given their broad lack of capacity to function as independent individuals within their religious community. Absent autonomy and agency in the decision to participate, some argue, the results can never be seen as fair or just.

Perhaps the most disturbing feature of many of these forums is the imposition of religious values in the standard mediation procedures and practices, where decision-making is supposed to be autonomous and the pressures of external values is viewed as an unwelcome bias. If a woman is desperately seeking to end a marriage that she experiences as oppressive, and the only way “out” is to sign an agreement structured according to the confines of a religious mediation process that is biased against her, it’s not surprising that these social pressures will create a climate of duress. As the female appellant in the New York custody dispute has said, she didn’t “see” the religious conditions imposed by the agreement she signed; the conditions were buried in the details of the agreement. How can such an agreement ever be deemed to be valid, from a civil law or constitutional perspective?

It’s not just a matter of shari’a law. The second part of Bano’s volume features essays on a variety of
Dispute Resolution Bookshelf

religious arbitration systems in the United States as well as women’s courts in India and religious tribunals in Finland and Australia, all of which illustrate the same substantive and procedural challenges that haunt the shari’a forums. And from another perspective altogether, an insightful essay on same-sex couples in Catholic Italy by Maria Moscati of Sussex University explains how the overarching dominance of Catholic theology creates its own set of problems for same-sex couples. The broad condemnation of same-sex relationships creates internal psychological tensions that constrain the autonomy of the individuals, leading to a lack of self-respect or even guilt within the mind of the religious partner, resulting in a reluctance to enforce one’s legal rights. In practical terms, the religious social context directly impacts the manner in which the extended family and the Diocesan family counseling services operate in the resolution of dissolution conflicts between same-sex couples. Fairness and justice are not the most likely outcomes.

A serious consideration of these contrasting positions on religious tribunals leaves readers in a quandary. And, to those of us practicing outside these religious realms, neither extreme position in this social and legal policy debate seems to have it completely correct. Just as we always try to do in our own mediations, one can recognize the positive social benefits espoused by Broyde, yet be mindful of the biases that seem inherent in the religious tribunal systems. It is not easy to land on a fixed position on the legitimacy of these alternative conflict resolution venues.

Perhaps the wisest approach is to allow for the option of private religious arbitration but at the same time embrace the requirements for strict procedural standards that Broyde endorses. As further protection, one might also impose a more robust set of conditions for determining autonomy in the underlying choice of the religious forum, as well as minimum standards of gender and sexuality fairness in the substantive rules to be applied. As a result, the roster of acceptable religious tribunals might be dramatically narrowed — but not altogether disallowed.

As in every such conflict, it seems, one should be able to find a compromise that honors the legitimate concerns of all parties.

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Imagine the following scenario: You have been selected to serve as an arbitrator in a business matter involving Artemis Partners and Apollo Corporation. You review the appointment papers and check with your law firm colleagues for potential conflicts, notifying them by email that you have been asked to serve in the case and including the names of the parties, counsel, and identified witnesses. You also run a search of your emails and contacts for the names of the parties, counsel, and identified witnesses.

No potential conflict surfaces, so you complete your notice-of-appointment form with nothing to disclose, and the case moves forward. After you issue the award, however, the losing party’s counsel sends you a letter requesting information regarding payments your law firm received from the parent company of the prevailing party. After you ask your billing company to send you that information, you learn that the prevailing party’s parent company is a long-term client of the firm, with billings of more than $250,000 over the last five years.

What did your partners do to check conflicts when you sent around that email? Did you receive affirmative responses from each of them that conflicts had cleared? Hmmm . . . maybe you received an out-of-office message from one partner and did not follow up? Did you send a second email to your partners to check again for conflicts midway through the case, after you learned that a parent company was involved? Was sending the email around to your partners the best way to check for firm conflicts in the first place? Most important, did you fulfill your ethical obligations to check for potential conflicts — and is your award now in jeopardy of being vacated?

The Code of Ethics for Arbitrators in Commercial Disputes, effective March 1, 2004, (the Code) provides in Canon II(B) that: “[p]ersons who are requested to accept appointment as arbitrators should make a reasonable effort to inform themselves of any interests or relationships described in [the Code].” Some circuit courts have also found this concept to exist within the Federal Arbitration Act Section 10(a)(2), the standard of evident partiality. However, court decisions make clear that whatever the Code means by “making a reasonable effort” to inform oneself under the Code, that is a greater burden than what is required pursuant to FAA 10(a)(2).

So there are two separate levels of inquiry: whether a court might vacate an award pursuant to FAA 10(a), and whether an arbitrator fulfilled his or her ethical obligation pursuant to the Code.

In the seminal 1968 US Supreme Court case Commonwealth Coatings Corp. v. Continental Casualty Co, Justice Byron White’s concurrence states that there is “no reason automatically to disqualify the best informed and most capable potential arbitrators” if an arbitrator is “unaware of the facts but the relationship is trivial.” However, embedded in this concurrence is the notion that an award may be vacated if the arbitrator was not aware of the conflict but the relationship is more than trivial. Since the Supreme Court issued its decision in Commonwealth Coatings Corp., circuit courts have been split as to how an arbitrator’s failure to investigate impacts evident partiality.

The Ninth Circuit case of Schmitz v. Zelveti interpreted Commonwealth Coatings as holding that evident partiality can exist even when the arbitrator did not have actual knowledge of the conflict. The issue in Schmitz was that the arbitrator had run a conflict check for the parties in the arbitration and had
reviewed documents reflecting that one of the parties was owned by a parent company. The arbitrator did not run a conflict check of the parent company. A post-award investigation by the losing party revealed that the arbitrator’s law firm represented the prevailing party’s parent company in at least 19 cases during a 35-year period. The district court confirmed the award, holding that arbitrators are bound to disclose only potential conflicts they are actually aware of. The Ninth Circuit reversed, finding that while “lack of knowledge may prohibit actual bias, it does not always prohibit a reasonable impression of partiality.” And that “a reasonable impression of partiality can form when an actual conflict of interest exists and the lawyer has constructive knowledge of it.” Citing the rules of NASD, the National Association of Securities Dealers (now FINRA, the Financial Industry Regulatory Authority) that were applicable to the case and are similar to Canon II of the Code, the court found that the arbitrator “had a duty to investigate the conflict at issue.” Further, the court stated that “representation of a parent corporation is likely to affect impartiality or may create an appearance of partiality in the lawyer’s representation of or dealing with a subsidiary.” The arbitrator’s “failure to inform the parties to the arbitration resulted in a reasonable impression of partiality under Commonwealth Coatings.”

The Second Circuit has also decided that actual knowledge is not required to vacate an award based on evident partiality. In Applied Industrial Materials Corp. v. Ovalar Makine Ticaret Ve Sanayi, A.S., the court found that the chair acted with evident partiality when he failed to investigate further into a business relationship between his company and one of the parties to the arbitration. The chair of the arbitration panel disclosed that he was aware of a potential business relationship, but after the award on liability was issued, the counsel for the non-prevailing party discovered that a previously existing relationship between the chair’s company and one of the parties to the arbitration also generated approximately $275,000 in revenue. The court “emphasize[d] that [it was] not creating a free-standing duty to investigate. The mere failure to investigate is not, by itself, sufficient to vacate an arbitration award. But, when an arbitrator knows of a potential conflict, a failure to either investigate or disclose an intention not to

investigate is indicative of evident partiality.” In this case, the chair failed to investigate the known relationship and failed to disclose to the parties that he was not making that investigation. Thus the Second Circuit articulated a less stringent standard than the Ninth Circuit, namely, that an arbitrator must first be aware of a potential conflict and then fail to investigate for an award to be vacated based on evident partiality.

And then there is the Eleventh Circuit. In Gianelli Money Purchase Plan and Trust v. ADM Investor Services, Inc., the court found that an arbitrator must have actual knowledge of a conflict to display evident partiality. Before the arbitrator in Gianelli joined his law firm, that law firm had frequently represented one of the party’s corporate representatives. Citing earlier precedent in the Eleventh Circuit, the court “rejected the proposition that the arbitrator had a duty to investigate the past contacts to avoid evident partiality.” These cases highlight that a court may not vacate an award because of evident partiality based on a failure to investigate potential conflicts. However, the Code goes further than FAA 10(a)(2) by placing an affirmative burden on arbitrators to make reasonable efforts to ensure that they are aware of any possible conflicts. Therefore, just because a court may not vacate an award based on evident partiality does not mean the ethical standard of making a reasonable effort to inform oneself pursuant to the Code has been met.

Canon II of the Code details what the arbitrator needs to investigate:

An arbitrator should disclose any interest or relationship likely to affect impartiality or which might create an appearance of partiality.

A. Persons who are requested to serve as arbitrators should, before accepting, disclose:

(1) Any known direct or indirect financial or personal interest in the outcome of the arbitration;

(2) Any known existing or past financial, business, professional or personal relationships which might reasonably affect impartiality or lack of independence in the eyes of any of the
parties. For example, prospective arbitrators should disclose any such relationships which they personally have with any party or its lawyer, with any co-arbitrator, or with any individual whom they have been told will be a witness. They should also disclose any such relationships involving their families or household members or their current employers, partners, or professional or business associates that can be ascertained by reasonable efforts;

(3) The nature and extent of any prior knowledge they may have of the dispute; and

(4) Any other matters, relationships, or interests which they are obligated to disclose by the agreement of the parties, the rules or practices of an institution, or applicable law regulating arbitrator disclosure.

B. Persons who are requested to accept appointment as arbitrators should make a reasonable effort to inform themselves of any interests or relationships described in paragraph A. (italics added).

Reflecting back to the hypothetical posed at the beginning of this article, did the arbitrator satisfy her ethical obligations to make a reasonable effort to inform herself of any interests or relationships as provided in Canon II? The arbitrator failed to meet her ethical obligations for two reasons: (1) she failed to run a conflict check once she learned of the parent company; and (2) even if she did run a conflict check of the parent company, she should also have inquired directly with the law firm’s billing company, followed up with any partner who did not reply to her, and confirmed what actions her partners took to check for conflicts.

Section C of Canon II provides:

The obligation to disclose interests or relationships described in paragraph A is a continuing duty which requires a person who accepts appointment as an arbitrator to disclose, as soon as practicable, at any stage of the arbitration, any such interests or relationships which may arise, or which are recalled or discovered.

Section C is clear: the obligation to check for conflicts is a continuing duty throughout the arbitration process. In the hypothetical case, the arbitrator had an ethical duty to make a reasonable effort to investigate whether any conflict existed with the parent company — and failed to do so.

Canon II does not define what constitutes a “reasonable effort.” Therefore, it is up to the individual arbitrator to determine, under the circumstances of the case, what this involves. Reasonable efforts are certainly something more than no effort. An arbitrator, when conducting a conflict check, is obligated to ask, at a minimum, whether the investigation will uncover the interests and relationships identified in Canon II of the Code. If the answer to that question is no, the arbitrator must rethink how to conduct the conflict check.

Whether a court would vacate the award based on evident partiality would depend on the jurisdiction. Based on the case law above, this scenario closely mirrors the Ninth Circuit Schmitz case, and this award probably would be vacated by the Ninth Circuit. The award would probably not be vacated by the Second and Eleventh Circuits, given that the arbitrator did not appear to have any knowledge that the parent company was a firm client. Whatever a court would think about vacating the award, this is a good example of how best practice in investigating potential conflicts can save parties time and cost as well as protect the arbitrator from reputational damage. No one wants to see her name in lights (or on legal blogs or showing up Westlaw searches) for an easily avoidable sticky situation.

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Endnotes
1  393 U.S. 145 at 150 (1968).
2  20 F.3d 1043 (9th Cir. 1994).
3  Id. at 1048.
4  Id.
5  Id. at 1049.
6  Id.
7  Id.

While this article is focused on neutral non-party-appointed arbitrators, it should be noted that Canon X (B)(1) places the same obligations on party-appointed non-neutral arbitrators to make a reasonable effort to inform themselves of any interests or relationships and to disclose those interests or relationships. The only difference is that pursuant to Canon X (B)(2) party-appointed non-neutral “arbitrators are not obliged to withdraw [] if requested to do so only by the party who did not appoint them.”
9  492 F.3d 132, (2nd Cir. 2007).
10  Id. at 138.
11  146 F.3d 1309 (11th Cir. 1998).
12  Lifecare International, Inc. v. CD Medical, Inc., 68 F.3d 429 (11th Cir. 1995).
13  Id. at 1312.

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Case Law Update  By Ben Pincus and Elise Williard

Neither FAA nor NLRA Precludes Enforcement of Arbitration Clause

In Epic Sys. Corp. v. Lewis, 138 S. Ct. 1612 (2018), the United States Supreme Court determined that neither the Federal Arbitration Act’s savings clause nor the National Labor Relations Act precludes the enforcement of an arbitration clause, even when that arbitration clause excludes the possibility of class or collective actions for alleged violations of the Fair Labor Standards Act. The plaintiffs in the underlying cases had argued that the NLRA’s protections of “concerted activity” should be read to include collective and class actions. The Court, however, rejected the notion that the NLRA’s provisions conflict with the FAA’s protections, noting the statutory context in which the NLRA’s language appears. Instead, the Court held, the NLRA’s protections target organizing and other union activities, leaving employees free to bargain collectively for a dispute resolution process that do (or do not) include individualized arbitration. Writing for the majority, Justice Neil Gorsuch wrote, “The policy may be debatable but the law is clear: Congress has instructed that arbitration agreements like those before us must be enforced as written. While Congress is of course always free to amend this judgment, we see nothing suggesting it did so in the NLRA – much less that it manifested a clear intention to displace the Arbitration Act.”

Justice Ruth Bader Ginsburg’s dissent, in which three other justices joined, views the NLRA’s protections as extending beyond organization and collective bargaining to include “concerted activities for the purpose of mutual aid or protection,” including “joining hands in litigation [to] spread the costs of litigation and reduce the risk of employer retaliation.” The dissent, therefore, would treat an arbitration clause insisting on individualized actions as unfair labor practices, inconsistent with and preempted by the NLRA.

Fraudulent Inducement is Reason to Decline to Implement Agreement, Nebraska Supreme Court Holds

In Cullinane v. Beverly Enterprises-Neb. Inc, 300 Neb. 210 (2018), the Nebraska Supreme Court declined to enforce an arbitration agreement in a wrongful death claim against an assisted living facility. In 2015, Helen and Eugene Cullinane were admitted as residents in Golden Living Center-Valhaven (GLCV) in 2015. During the admission process, Eugene Cullinane signed a number of documents on his own behalf and on behalf of his wife. These included an “Alternative Dispute Resolution Agreement” (ADR Agreement). Helen Cullinane died in 2015, and her son, as the special administrator of her estate, subsequently filed a wrongful death action against GLCV. GLCV moved to compel arbitration, pointing to the ADR Agreement’s provisions. The son argued that the arbitration agreement had been fraudulently induced, having been presented as a precondition to admission to the facility. GLCV pointed to the specific language in the ADR Agreement: “This agreement is not a condition of admission to or continued residence in the facility,” as well as language under a section titled “Resident’s Understanding”: “The Resident understands that . . . his or her signing of this Agreement is not a condition of admission to or residence in the Facility . . . .” GLCV further argued that company policy was to assure that prospective residents knew the ADR Agreement to be optional.

The district court for Douglas County found the plaintiffs’ proffered evidence more persuasive and sided with the son, holding that the ADR Agreement was not binding on Helen Cullinane or her estate. On appeal, the Nebraska Supreme Court upheld the lower court’s conclusion, finding that evidence of fraudulent inducement precluded the enforcement of the arbitration agreement.

Ben Pincus and Elise Williard are law students at the University of Oregon School of Law and serve as law student editors for Dispute Resolution Magazine.
Court Does Not Compel Arbitration for Claims Not Explicitly Mentioned

In June 2015, Dollar General filed a criminal affidavit against one of its employees, Rebecca Keyes, and she was subsequently arrested for embezzlement. Keyes was found not guilty in the criminal case, and the charges were dismissed because Dollar General failed to appear. Keyes then brought a civil action against Dollar General for malicious prosecution, infliction of emotional distress, defamation, false imprisonment, fraud, deceit, and misrepresentation. Dollar General sought to compel arbitration, arguing that the arbitration agreement in Keyes’ employment contract should govern her claims. The trial court found that the claims Keyes brought related back to the agreement and granted the motion to compel arbitration. On appeal, the Mississippi Supreme Court rejected Keyes’ argument that Dollar General had, by filing a criminal complaint, waived its right to compel arbitration. It wrote specifically that “the law does not require choosing between reporting a crime and maintaining the right to arbitrate future disputes that may arise.” The court also considered whether Keyes’ claims were within the scope of the arbitration agreement. The court noted that the employment agreement’s arbitration clause specifically mentioned defamation and therefore ruled that aspect of Keyes’ claim to be arbitrable. The other claims, however, were not explicitly mentioned and no evidence was presented to show that Keyes would have presumed these other claims to be within the scope of the clause. The court therefore refused to compel arbitration as to any claim other than defamation.

Court Finds Arbitrator’s Failure to Disclose is Cause for Vacating Award

In Honeycutt v. J.P. Morgan Chase Back N.A., 2018 Cal. App. 679, the court vacated an arbitration award because the arbitrator had failed to disclose upcoming arbitrations with one of the parties, an omission that might have been grounds to disqualify the arbitrator under California’s Code of Civil Procedure. The arbitrator’s disclosure worksheet contained answers to a questionnaire about whether the arbitrator would “entertain offers of employment or new professional relationships in any capacity other than as a lawyer, expert witness, or consultant from a party or a lawyer for a party, including offers to serve as a dispute resolution neutral in another case.” The arbitrator answered “yes” to the question regarding entertainment of offers of employment, but the page on which this disclosure appeared was never sent to Honeycutt. Two years after the appointment of the arbitrator, Honeycutt discovered that the arbitrator had been appointed to serve on eight other arbitration cases involving Chase. Honeycutt then moved to disqualify the arbitrator, but the American Arbitration Association, which was administering the case, declined to disqualify the arbitrator. Following an award in favor of Chase, Honeycutt sought vacatur on the grounds that arbitrators have “a continuing [disclosure] duty, applying from service of the notice of the arbitrator’s proposed nomination or appointment until the conclusion of the arbitration proceeding,” according to the California Ethics Standards. The California Court of Appeal held that the arbitrator’s failure to disclose breached this continuing duty and it, therefore, vacated the arbitral award.

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Section News

New Bar Year
Brings New Leaders

On August 4, 2018, the Section of Dispute Resolution membership voted on officers and council members for the 2018-2019 bar year that began on September 1, 2018. Page 2 in this magazine lists all of the Section Council members, including officers, at-large members, and liaisons. You can find more information about the current Chair, Harrie Samaras, as well as a listing of Section committee members, task force members, and board chairs on the pages following this one.

Resolution 105 Passes
ABA House of Delegates

The Diversity in ADR Resolution 105, initiated by the Section of Dispute Resolution’s Women in Dispute Resolution Committee, was unanimously passed by the ABA House of Delegates at the ABA Annual Meeting in August. Resolution 105 urges providers of domestic and international dispute resolution to expand their rosters with minorities, women, persons with disabilities, and persons of differing sexual orientations and gender identities (“diverse neutrals”) and to encourage the selection of diverse neutrals. The resolution also urges all users of domestic and international legal and neutral services to select and use diverse neutrals.

First Ombuds Day
Set for October 11

This year will mark the inaugural Ombuds Day, a day dedicated to raising awareness about the role, function, and value that ombuds provide. On October 11, 2018, ombuds, institutional stakeholders and partners, and constituents from around the country were scheduled to come together to celebrate. Some key highlights include: proclamations signed by numerous state and local governments, professional associations, and universities declaring the second Thursday of October Ombuds Day; an active and engaging social media campaign; and multiple events hosted by ombuds programs. The Ombuds Day Task Force’s evening reception at the ABA’s headquarters in Washington, DC, was to include opening remarks from Charles Howard, the author of The Organizational Ombudsman: Origins, Roles, and Operations: A Legal Guide, as well as discussions with ombuds from the US Department of Energy, the Internal Revenue Service, the US Department of Agriculture, the US Department of Health and Human Services, and a number of academic and contract ombuds. Save the date for next year’s Ombuds Day, which will be October 10, 2019.

Section Holds Virtual Conference on Relational Practice

The ABA Section of Dispute Resolution’s Task Force on Relational Practice organized a virtual conference from September 4 through September 7, 2018. The topics and the format were innovative. Twenty-one programs were presented, some as prerecorded webinars and some as live events varying six to 60 minutes. All the programs explored the so-called “soft skills” used in relational practice. You can still register for the program, access the recordings of all 21 programs, and find more information about the conference on the Section of Dispute Resolution’s website, www.americanbar.org/dispute.

Representation in Mediation
Competition Registration Begins in Late October

Registration for the 20th annual Representation in Mediation Competition will open by the end of October 2018. Regional Competitions will take place at law schools across the country in late February and early March 2019, and the National Finals will be held on April 10 and April 11, 2019, in conjunction with the ABA Section of Dispute Resolution Spring Conference in Minneapolis. For more information about the competition, visit the awards and competitions section of the Section of Dispute Resolution website: www.americanbar.org/dispute.
Starting with this Fall Issue, Dispute Resolution Magazine Goes Digital

Starting with this Fall 2018 issue of Dispute Resolution Magazine, all members of the Section of Dispute Resolution will receive a digital, rather than print, version of the magazine, although all lawyer and associate members can still choose to receive a print version by mail if they specifically request this. To receive the next issue of Dispute Resolution Magazine, Winter 2019, in print, you must opt-in at MyABA.org before December 14, 2018. Visit MyABA.org or look for MyABA at the top of the ABA’s website at americanbar.org.

Dispute Resolution Magazine Board Announces Four New Members

The editorial board of the magazine welcomes four new members: Heather Scheiwe Kulp from Concord, NH; Sun Pillai from Pittsburgh, PA, Sharon Press from St. Paul, MN, and Lionel Schooler from Houston, TX. At the same time, we say farewell to James Coben and Donna Stienstra, two long-time, hard-working members of the editorial board who have been on the board since 2012 and are the co-editors of the bi-annual “Research Insights” feature. They will continue to edit this feature as past board members.

UPCOMING ABA Section of Dispute Resolution Events

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Type</th>
<th>Location</th>
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</thead>
<tbody>
<tr>
<td>October 25–26, 2018</td>
<td>16th Annual Advanced Mediation &amp; Advocacy Skills Institute</td>
<td>In-person</td>
<td>Chicago, IL</td>
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<tr>
<td>October 27, 2018</td>
<td>Section of Dispute Resolution Council Meeting</td>
<td>In-person</td>
<td>Chicago, IL</td>
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<tr>
<td>November 7, 2018</td>
<td>Dispelling the Top Eight Myths of Arbitration</td>
<td>CLE Webinar</td>
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<td>November 14, 2018</td>
<td>When Participants Say “No” to a Joint Session: Lessons from the Left Coast</td>
<td>CLE Webinar</td>
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<td>December 12, 2018</td>
<td>What Impresses, Disturbs, Confuses, and Confounds your clients in Mediation</td>
<td>CLE Webinar</td>
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<tr>
<td>January 26, 2019</td>
<td>Section of Dispute Resolution Council Meeting at the ABA Midyear Meeting</td>
<td>In-person</td>
<td>Las Vegas, NV</td>
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<tr>
<td>February 13, 2019</td>
<td>When Neutrality, Confidentiality and Ethics Collide: Guidance for Mediators</td>
<td>CLE Webinar</td>
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<tr>
<td>February 15, 2019</td>
<td>Negotiation Institute</td>
<td>In-person</td>
<td>San Diego, CA</td>
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<tr>
<td>March 13, 2019</td>
<td>Evaluative Mediation: Methods, Risks, Ethics, and Rewards</td>
<td>CLE Webinar</td>
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<tr>
<td>April 10, 2019</td>
<td>Section of Dispute Resolution Council Meeting</td>
<td>In-person</td>
<td>Minneapolis, MN</td>
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<tr>
<td>April 10–13, 2019</td>
<td>ABA Section of Dispute Resolution 2019 Spring Conference</td>
<td>In-person</td>
<td>Minneapolis, MN</td>
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<tr>
<td>April 24, 2019</td>
<td>Safety in Mediation</td>
<td>CLE Webinar</td>
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<tr>
<td>May 16–17, 2019</td>
<td>12th Annual Arbitration Training Institute</td>
<td>In-person</td>
<td>Philadelphia, PA</td>
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<tr>
<td>August 10, 2019</td>
<td>Section of Dispute Resolution Council Meeting</td>
<td>In-person</td>
<td>San Francisco, CA</td>
</tr>
<tr>
<td>April 22–25, 2020</td>
<td>ABA Section of Dispute Resolution 2020 Spring Conference</td>
<td>In-person</td>
<td>New Orleans, LA</td>
</tr>
</tbody>
</table>

For more information about upcoming events, visit americanbar.org/dispute
Section Chair: Harrie Samaras, West Chester, PA

Harrie Samaras is a full-time arbitrator and mediator in her own practice, focusing on commercial cases (US and international) in the areas of intellectual property and business and technology disputes. Harrie earned a B.S. and an M.S. degree in the life sciences from the University of Maryland, a J.D. degree from the University of Baltimore School of Law, and an LL.M. degree in Patent and Trade Regulation Law from the George Washington University Law School.

Before starting her own practice, she served as a patent examiner in the biomedical arts at the US Patent and Trademark Office, after which she served as a staff attorney and a law clerk to Chief Judge Helen W. Nies at the US Court of Appeals for the Federal Circuit. She worked in private practice representing clients at the trial and appellate levels in intellectual property cases, and worked in the corporate sector, serving as director of intellectual property litigation for a Fortune 500 telecommunications company and as Vice President intellectual property, legal, for a business unit of a multinational pharmaceutical company.

She is a Fellow of the College of Commercial Arbitrators, a Fellow of the Chartered Institute of Arbitrators, and a Distinguished Fellow of the International Academy of Mediators.

2018–2019 Officers

Chair-Elect
Joan Stearns Johnsen, Gainesville, FL

Vice-Chair
Myra C. Selby, Indianapolis, IN

Budget Officer
Chuck Howard, Hartford, CT

Section Delegates
James Alfini, Houston, TX
Pamela C. Enslen, Kalamazoo, MI

Immediate Past Chair
Benjamin Davis, Toledo, OH

Long-Range Planning Officer
Ava J. Abramowitz, Leesburg, VA

Membership Officer
Richard Lord, Maitland, FL

Educational Programming Officer
Brian Pappas, Boise, ID

At-Large Council Members

Charles W. Crumpton, Honolulu, HI
Kristen Blankley, Lincoln, NE
Richard Lord, Maitland, FL
Jillisa Brittan, Chicago, IL
Susan Grody Ruben, Cleveland, OH
Beth Trent, New York, NY
Robyn Weinstein, New York, NY
Dana Welch, Berkeley, CA
Gina Miller, Los Angeles, CA
Anna Rappaport, Washington, D.C.
Alan Wiener, Kalispell, MT

ABA Section of Dispute Resolution Liaisons to the Council

Liaisons from the Section’s Advisory Committee
Thomas Snook
Harout Jack Samra

Law Student Division Representative
Ila Addanki

Young Lawyers Division Representative
Sunu Pillai
### Section of Dispute Resolution Committees Task Forces, and Boards

**Practice Area "Open Committees" and Chairs**

<table>
<thead>
<tr>
<th>Practice Area</th>
<th>Co-Chairs</th>
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</table>
| **ADR Practice Management, Business and Skills Development** | Gina Miller  
Sukhsimranjit Singh |
| **Advocacy**                                       | Jim Warren  
Connie Yu |
| **Arbitration**                                    | Ed Lozowicki  
Harout Jack Samra |
| **Collaborative Law**                              | Jeff Fink  
Irwin Kuhn |
| **Court ADR**                                      | Robyn Weinstein  
Alan Wiener |
| **Diversity**                                      | Jennifer Ortiz  
Jaya Sharma |
| **Early Dispute Resolution**                       | Peter Silverman |
| **Employment**                                     | F. Peter Phillips  
Keith Greenberg |
| **Ethics**                                         | Erin Archerd  
Kristen Blankley |
| **Health Care**                                    | Haavi Morreim  
Arthur Peabody |
| **Intellectual Property**                          | Elizabeth Ann Morgan  
Merriann M. Panarella |
| **International**                                  | Lucy Greenwood  
Danny McFadden |
| **Law School and Education in Dispute Resolution** | Rishi Batra  
Rae Kyritsi  
Jennifer Reynolds |
| **Mediation**                                      | Joe Esposito  
Mark LeHocky |
| **Ombuds**                                         | Caroline Adams  
Elizabeth Hill |
| **Public Policy, Consensus Building, and Democracy**| Terry Amsler  
Jessica Lawrence |
| **Technology in ADR**                              | David Larson  
Amy Schmitz |
| **Women in Dispute Resolution**                    | Maureen Byers  
Patricia A. Nolan |
| **Young Lawyers/Young ADR Professionals**           | Bryan Branon  
Rekha Rangachari |
Section of Dispute Resolution Committees
Task Forces, and Boards

Standing Committees, Boards, and Task Forces*

Advisory Committee
Chair: Myra Selby

Committee on Committees
Chair: Miriam Nisbet

Committee on Mediator Ethical Guidance
Co-Chairs: Sam Jackson, Tracey Frisch

Distinguished Emeritus Committee
Co-Chairs: Kimberlee Kovach, Larry Mills

D’Alemberte-Raven Award
Chair: Myra Selby

Outstanding Scholarly Work Award
Co-Chairs: Andrea Schneider, Charles Craver

Lawyer as Problem Solver Award
Co-Chairs: Geetha Ravindra, Wayne Thorpe

James Boskey Competition
Chair: Peter Reilly

Mediation Representation Competition
Co-Chairs: Rishi Batra, Rae Kyritsi

Publications Board
Chair: Rebecca Price

Dispute Resolution Magazine Editorial Board
Co-Chairs: Andrea Kupfer Schneider
Michael Moffitt

Relational Practice Task Force
Co-Chairs: J. Kim Wright
Louise Phipps Senft

Research Task Force
Chair: Nancy Welsh

Standing Committee on Membership Engagement
Chair: Richard Lord
Vice-Chair: Anna Rappaport

Standing Committee on the Spring Conference
Co-Chairs: Jaya Sharma
Gina Miller
Alan Wiener

Standing Committee on Webinars and Distance Learning
Chair: Michael Russell

*Membership on boards, standing committees, task forces, and awards/competitions is by appointment.
* Please refer to the ABA Membership Directory for email addresses, phone numbers, and other contact information.
DEVELOP YOUR SKILLS & LEARN FROM EXPERTS

The conference agenda will include excellent programming on mediation, arbitration, negotiation, and specialty practice areas. Whether you are new to dispute resolution practice or have been practicing for decades, the ABA Section of Dispute Resolution Spring Conference has something for you.

Educational Programs on all topics related to dispute resolution

Multiple Networking Opportunities

Symposium on ADR in the Courts

Legal Educators Colloquium

70+ Concurrent Programs (includes CLE and non-CLE educational programs)
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