Chair's Message

Section Chair Deborah Masucci has invited Section leaders to write guest columns. This month Marnie Huff, Membership Committee Chair and member of the Section Council, writes about Section member benefits and opportunities.

Section Benefits for You. Thanks for belonging to the Section of Dispute Resolution. Be sure to take advantage of your member benefits – click here to get discounts on books and CLE programs, join a committee that will take you to the next level, and more. Register for our outstanding annual spring conference in Washington DC, April 19-21, 2012, to connect with outstanding professionals and academics from around the world.

Member Get A Member. We will benefit again from the ABA’s Member Get a Member campaign, set to launch the week of January 23, 2012. The ABA will offer a free trial membership to people who are not current ABA members. This is a great way to recruit lawyers and professionals other than lawyers to join the Section of Dispute Resolution because a free section membership through the end of August is part of the package.

You can help:

- Identify a list of people to recruit by email. For example, get permission from your state or local bar association ADR Section or a minority bar association to email a free trial membership offer from the ABA.
- Supply the email list as an Excel spreadsheet to Section of Dispute Resolution staff who can send out an email message under your signature when Member Get a Member officially begins.
- Watch for the link to the ABA 2012 Member Get a Member web pages where you can do your own online recruiting.

12th Largest ABA Entity. As of January 1, 2012, the Section of Dispute Resolution is the 12th largest entity among ABA Section/Division/Forum entities with: 7,885 lawyer members, 1,552 associate members, and 8,571 student members. A whopping 23% of our members are new bar admittees, a sign of our future growth. We have plenty of experienced professionals and mentors among us: 34% are 60 and older (compare overall ABA - 27%). Many of us are in solo practice: 28% are solos (compare 19% in ABA as a whole). Although small in number, academics are a strong component of our Section. We have 5.2% law school faculty members (compared to 3% in the ABA).

ADR Careers CLE at Mid-Year. Join us for the ABA Mid-Year meeting in New Orleans! On Friday Feb. 3 at 2 pm, Membership Committee co-chair

Outstanding Scholarly Work Award

Professor Frank E.A. Sander has been selected as the recipient of the ABA Section of Dispute Resolution’s Award for Outstanding Scholarly Work. This award honors individuals whose scholarship has significantly contributed to the dispute resolution field.

Professor Sander, the Bussey Professor Emeritus of Harvard Law School, began his scholarship in dispute resolution with an essay for the 1976 Pound Conference that suggested a broader role for courts in helping people resolve disputes. It was an idea later dubbed the “multi-door courthouse.” That insight not only stimulated implementation of Professor Sander’s idea but also attracted other scholars to join in building a new scholarly field of dispute resolution. Professor Sander and co-authors followed a few years later with the first major law school dispute resolution textbook, outlining in that book what might be the issues addressed in this new field. Intent on encouraging broader and more creative use of mediation and related processes, Professor Sander contributed frequently over the last thirty years to the scholarship of “change.” In fact, scholars watch for his next thoughtful musings about the “tailwinds” and “headwinds” in terms of achieving more constructive use of dispute resolution and his more recent “mediation receptivity index.” A dedicated mentor, Professor Sander encouraged and guided many of the field’s most outstanding scholars. He continues contributing in his “retirement” as co-author of a new law school textbook on dispute system design and a new – sixth – edition of his pioneering textbook.

Law Student Corner

Registration for the 2011-2012 Representation in Mediation Competition Closes Soon!

The Section’s Representation in Mediation Competition provides law students the opportunity to role-play as...
Serena Lee, Phil Armstrong, Kim Taylor and I will be panelists on Careers in ADR. We’ll discuss how to enter the ADR field, what skills and training are needed to succeed, ways to build and parlay your conflict resolution skills, and where the jobs are in this growing field.

Suggestions Welcome. If you have ideas for benefiting, recruiting and retaining Section of Dispute Resolution members, feel free to contact me at marniehuff@bellsouth.net or 615-812-5557.

2012 Section Award Recipients Announced

The American Bar Association Section of Dispute Resolution has announced its 2012 award recipients. Linda Singer and Michael Lewis are the 2012 recipients of the D'Alemberte-Raven Award. Kenneth R. Feinberg and Harry Tindall will receive the Lawyer as Problem Solver Award. Professor Frank Sander will receive the Outstanding Scholarly Work Award. The 2012 Awards will be presented at the Section of Dispute Resolution’s Spring Conference in Washington, DC.

Linda Singer and Michael Lewis to receive the D’Alemberte-Raven Award

The American Bar Association Section of Dispute Resolution has announced Linda Singer and Michael Lewis, both JAMS panelists in Washington, D.C., as the 2012 recipients of the Section’s prestigious D’Alemberte-Raven Award. The award will be presented on Friday April 20, 2012 at the ABA Section of Dispute Resolution’s Spring Conference in Washington, DC.

The ABA’s D’Alemberte-Raven Award recognizes leaders in the dispute resolution community who have contributed significantly to the field by developing new or innovative programs, improvements in service and efficiency, research and writings in the area of dispute resolution or continuing education programs. The Award is named for Robert D. Raven of San Francisco and Talbot D’Alemberte of Tallahassee, former ABA presidents and pioneers within the ABA in the area of dispute resolution.

Linda Singer and Michael Lewis are pioneers of the dispute resolution profession. They have trained thousands of professionals, students, and volunteers worldwide, co-taught the Mediation Workshop at Harvard Law School’s Program on Negotiation for Lawyers for 25 years, as well as for the CPR Institute for Dispute Resolution. Singer and Lewis were instrumental in forming the Center for Dispute Settlement in 1971 in Washington, DC which has experimented with, developed, operated and evaluated various ways of settling disputes, primarily through mediation, in neighborhood justice centers, courts, and organizations such as schools, prisons and hospitals. They are both highly regarded and nationally known neutrals who have resolved many high profile disputes.

Lawyer as Problem Solver Awards

Lawyer as Problem Solver Awards will be presented to Kenneth R. Feinberg and Harry Tindall

The American Bar Association will present Lawyer as Problem Solver Awards to Kenneth R. Feinberg and Harry Tindall at the American Bar Association Section of Dispute Resolution Awards Luncheon in Washington, DC in April 2012.

The ABA Section of Dispute Resolution established the Lawyer as Problem Solver Awards ten years ago to recognize individuals and organizations that use their legal skills in creative, innovative and often non-traditional ways to solve problems for their clients and within their communities. Past recipients have included Stu Webb and Pauline Tessler, Forrest "Woody" Mosten, Basil Paterson, Bennett Picker, Andrew Scheperd, the Boston Law Collaborative, Mediate.com, the Innocence Project and the United States Air Force.

Kenneth R. Feinberg exemplifies the mission of the Lawyer as Problem Solver Award by continually demonstrating the way that lawyers can use creativity and systems design in handling society's major problems. In the last decade, Mr. Feinberg has been at the forefront of three efforts to fairly and efficiently advocate for the underdog: the Innocence Project, the United States Air Force, and where the jobs are in this growing field.

Representation in Mediation Competition – Opportunities for Law Students and Practitioners

Publication of the Month

Judges Under Fire: Human Rights, Independent Judges, and ...

This slim volume seeks to illustrate what can happen when the judiciary is stripped of its independence and prevented from following the rule of law. While it provides some lessons from foreign nations where the rule of law has been sublimated to opportunistic leaders, it also provides a chilling reminder that it can happen here.

$39.95 (Regular)
$34.95 (Section of Dispute Resolution)

Section Calendar of Events

2012 ABAMidyear Meeting
February 3-4, 2012
New Orleans, LA

3rd International Mediation Conference, February 2, 2012 Paris, France

As a co-sponsor of this program Section of Dispute Resolution members will receive a significantly reduced registration fee. The conference will feature speakers from Shell, Chartis, GE Oil & Gas, SGS, QDVDC and Tel?f'nica, ICC's 3rd International Mediation Conference set to take place at ICC on 2 February 2012 in Paris, France, will focus on providing businesses with practical tools and strategies for surmounting obstacles to effective mediations and lasting settlements.

Entitled "Make Mediation Happen! Getting your commercial dispute to successful mediation" will focus on such practical topics as: Which dispute should be submitted to mediation and who should decide. How should in-house counsel and corporate management prepare for the mediation session. How to avoid counter-party delay tactics. How to choose the right mediator for a specific case. Should the mediation be ad hoc or pursuant to institutional rules. How to protect company interests with regard to information disclosure and prejudice issues. What to know about enforcement of mediation agreements.

Please find the conference brochure attached. For full program details and registration information click here.

Section Midyear Council Meeting
February 4, 2012
New Orleans, LA

Teleconference:
February 14, 2012
12:00 pm – 1:15 pm ET
Register Now

To Register or for a list of regional sites click here.
administer claims arising from national disasters caused by a terrorist attack, a major financial collapse, and an environmental catastrophe. As the special master of the federal September 11th Victim Compensation Fund of 2001, Feinberg contacted those qualified to file a claim, evaluated applications, determined appropriate compensation, and distributed the awards. His 2005 book, What Is Life Worth: The Unprecedented Effort to Compensate the Victims of 9/11, chronicled this experience. Mr. Feinberg served as the Special Master for TARP Executive Compensation, and currently serves as the government-appointed administrator of the BP Deepwater Horizon Disaster Victim Compensation Fund. Mr. Feinberg has also been involved in the design of dispute resolution systems involving highly complex product liability claims, such as the Dalkon Shield IUD and Agent Orange. In these roles as well as many others, Mr. Feinberg has modeled for lawyers important problem-solving strategies and skills that will shape the dispute resolution field for decades to come.

Harry Tindall has been a role model for lawyers who wish to transition from litigators to peacemakers. An attorney practicing family law in Texas for over 45 years, even before the addition of court-mandated ADR to family law matters, Mr. Tindall has focused much of his practice on negotiation and dispute resolution. He led the movement to enact the first Collaborative Law statute in the United States, which was passed by the Texas Legislature. He went on to lead the effort for approval of the Uniform Collaborative Law Act in his capacity as a commissioner on the Uniform Law Commission. He brings a wealth of lawyering experience to his efforts to solve problems endemic to family law by pressing for legislation that promote the use of mediation and arbitration in family cases, testifying in Congress for reform of child support laws, and assisting in drafting uniform laws on interstate child custody issues. He has served as Chair of the Family Law Section of the State Bar of Texas, President of the Texas Academy of Family Law Specialists and Vice-Chair of the U.S. Commission on Interstate Child Support. He is the author of the leading treatise on Family Law in Texas (now in its 21st annual edition) and serves on the Board of the International Academy of Collaborative Professionals.

Ethics Corner

Congratulations to the 2011 Cyberweek Ethical Dilemma Contest Winner, Vanessa Hill!

The 2011 Cyberweek Ethical Dilemma contest asked readers to share their thoughts regarding an online mediation. Readers were asked to submit an online analysis of the mediator’s performance, in 750 words or less. Each submission was read by two members of the Ethics Committee, scored, and the winning submission received $100.00. Vanessa Hill’s winning essay is published below.

Ethical Dilemma

Fannie Bloomer is an eighty three year old widow living in a condominium at Leisure World outside of Chattanooga, Tennessee. Her husband, Charlie, died three years ago. Charlie had handled all the finances and made most of the major decisions. Since his death, though, Fannie has found a community of friends and groups to be involved in at Leisure World and her two adult children, Mildred and Calvin, speak with her at least once a week. Calvin lives in Virginia and Mildred in Texas with their families. Calvin has been pretty good about visiting from Virginia every four to six weeks…. For the full Cyberweek hypothetical, click here.

Winning Response by Vanessa Hill

The first task of a mediator is to discuss and inform the parties about the process of mediation and help them decide if it is a process they would like to engage in. Here, the ODR system is somewhat flawed. ODR seemed to Ms. Fannie to be her only option because the Doll Company only gave her this option. Although there may have been others, she was not aware of them.

That being the case, and although the mediator did attempt to briefly explain
Brian's handling of the mediation violated several ethical standards. He did not bother to inquire any further or clarify what her interests or issues really are and in fact goes against what she is saying she wants. Furthermore, the spirit of mediation requires that each party be on equal ground with each other.

Her apprehension regarding the process; the fact that her unpracticed hand at computers; and [her] bad eyesight was partially what led to the dispute (Brian presumably would have been informed of this when he read the complaint) and are strong indicators that this may not be the best process for her and that she will be at a great disadvantage if the online mediation continues. Brian does nothing to address these issues. Also when it became apparent through Fannie’s own declarations that she was having trouble understanding and that she wished to have her son there to help her, Brian should have, by this point, understood that under VI(c) and VI(A)(7) that he should recommend another process.

After the Doll Company manager sent the web page documents, Brian gives her 15 minutes to reply. Perhaps, fifteen minutes was much longer than he believed was need for bad eyesight, but even after she replies that she had trouble getting them open, was confused, and asked to speak to Brian personally, Brian responds by declining to speak to her and immediately jumping into offering his own solution. This method of conducting the mediation does not [show] procedural fairness or party competency in accordance with Rule VI(A). Nor does it promote self determination.

He does not bother to inquire any further or clarify what her interests or issues really are and in fact goes against what she is saying she wants. This seems to go against a party’s right to self determination. In fact, by the end he seems to be on the side of ODC, pressuring Fannie to make the deal. This is reflected in Fannie’s reply that she “doesn’t have a choice.”

Again Brian’s behavior could be the result of lack of experience or it could have been due to two potential conflicts of interest; that of the contingency fee, and also the fact that he is employed by a company that was hired by ODC to resolve disputes, neither were disclosed to Fannie. In Conclusion, Brian’s handling of the mediation violated several ethical standards. He did not inform the parties, promote procedural fairness, he did not uphold the party’s right to self determination, or disclose conflicts of interest.

Fannie was unable to make an informed choice about the process and indeed made no choice at all since the ODC’s website provided this as her one option. In an effort to better understand her perspective he should have required more information (especially when it became even more obvious from her anxiety and confusion later in the dispute). If he had, he perhaps would have found out that she had a severe medical condition, was unacquainted with finances, and not very familiar with computers. Furthermore, the spirit of mediation requires that each party be on equal ground with each other.

The Section seeks creative, thoughtful, original three-minute videos that demonstrate the mediation process and benefits of mediation. The Contest deadline is February 1, 2012. The goal of the competition is to further public understanding of mediation and to promote the use of mediation as a way to resolve disputes. The Contest is open to everyone. Employees of the American Bar Association and their immediate family members are not eligible to participate.

Prizes
First Place - $1000 prize
Second Place - $500 prize

Students (K-12, Undergraduate, Graduate):
**Judging Criteria**

Submissions will be judged by a committee of ABA Section of Dispute Resolution members and ABA staff. The ABA shall have sole authority and discretion to select winning videos. The judges will evaluate entries using the following criteria:

* Effectiveness in achieving purpose and goal of the video
* Overall quality of presentation
* Overall appeal to diverse audience
* Overall production quality (including lighting, focus, sound, and graphics)
* Originality, Creativity and Adherence to Contest Rules

For more information or to submit an entry, click here.

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**Volunteer Practitioners**

Want to help law students learn how to be representatives in mediation? Want to enhance your resume? Get free CLE credit? Want to be of service? We need you!

The ABA Section of Dispute Resolution seeks experienced mediators and lawyers to serve as volunteer judges and mediators for the Representation in Mediation Competition. In this competition, law students role-play as attorneys and clients in a mediation setting. Lawyers and mediators are encouraged to volunteer for this competition in which the law students are judged on their skills as advocates in the mediation process. We need lawyers experienced with interest-based negotiation to judge the students in the competition. Mediators (lawyers and non-lawyers) are needed to serve as mock mediators within the competition role-play.

In many states, volunteers for law student competitions may be eligible for CLE credit.

Volunteers for the National Competition are also offered a registration discount for the Section of Dispute Resolution Spring Conference (National Competition Volunteers may register for the Spring Conference at the Faculty Registration Rate).

National Competition Volunteers may serve as judges or mediators for the First Round, scheduled for 8:00 AM – 12:00 Noon Wednesday April 18th, and the Second Round, scheduled for 1:00 – 5:00 PM on the 18th. We will have a training meeting for competition volunteers prior to start of the round.

For more information and to apply to serve as a competition volunteer, click [here](#).