



AAM-a-gram

ASSOCIATION OF ATTORNEY-MEDIATORS

President's Message

August 2019

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

**2019–2020
AAM**

BOARD OF DIRECTORS

Paul Clote, Immediate Past
-President

John Trimble, President

Jimmy Lawson,
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Executive Director,
Allison Ellis

Executive Director Emeritus,
Brenda Rachuig

Message from John Trimble . . .

Hello all:

It is a distinct honor and pleasure to have the opportunity to write all of you in my new role as AAM President. However, I have to begin this letter with bittersweet news. As you know by now, our beloved Executive Director, Brenda Rachuig, has announced her retirement after 20 very splendid years. For long time members, Brenda has been the face of AAM. Every president who has come before me would say that Brenda carried them and made them look good (and this year has been no exception with me.) We will miss her terribly, but we all know that she has fun plans for her retirement, and that we can expect to see her back now and then (we hope.) We will be honoring her at our September 12-13 fly in meeting in Dallas, so we hope you can join us. AAM has been a very lucky organization to have Brenda, so come share your own best wishes with her.

True to form, Brenda gave us advance warning of her plans, so we had time to conduct a search for her successor. Our new Executive Director, Allison Ellis, comes to us with an extensive background in public relations, marketing, event planning, and social media. She has already started and has been able to overlap with Brenda and collaborate in the planning for the Dallas meeting. We are very, very happy to welcome Allison, and we have great confidence that you will like her and see uninterrupted service from AAM.

I am pleased to tell you that AAM is strong, membership is steady, and our plans for the year are exciting. We began the year in April with a fun meeting in Charleston, SC. I continue to be impressed with the quality of our speakers and the depth of practical information they bring us. President-Elect, Jimmy Lawson, is planning an equally interesting and worthwhile program for our Dallas meeting in September. I sure hope you will attend. It will be memorable.

**CHAPTER
PRESIDENTS**

Bexar County/San
Antonio Chapter
Don Philbin

Central Texas
Chapter
David Moore

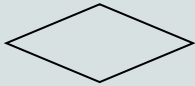
Houston Chapter
J.L. "Larry" Hinojosa

Illinois Chapter
Bob Berliner

North Texas Chapter
John Shipp

Oklahoma Chapter
Jake Jones

St. Louis Chapter
Frank Neuner



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President's Message—Continued

My plan for the year ahead is to do all that we can do to continue to grow the membership and name of AAM in a highly competitive environment. The Board has appointed a sub-committee that will explore our options and opportunities for greater social media presence. We also plan to drill down on the analytics of our sources of membership and see what we can do to create some gradual, but sustainable, membership growth. AAM is the best mediation association in America, and we want to share it with more people. Please invite your friends and colleagues to join us.

I am always interested in your ideas and feedback about what we are doing (or not doing.) Please don't hesitate to write or call me. [Jtrimble@lewiswagner.com](mailto:jtrimble@lewiswagner.com)/317-237-0500. Please, call me! And, if I call you for some help, I hope that I can count on you. Thanks again!

John

#WillYouBeThere?

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AAM Welcomes New Members

AAM has enjoyed adding to its roster the following new members since the printing of the last newsletter:

Melissa Back, Houston, TX

Phyllis Cheng, Valley Village, CA

Dennis Clifford, Houston, TX

Jessica Estorga, San Antonio, TX

Mark Lapidus, Houston, TX

Lori McConnell, San Antonio, TX

Todd McCurry, Wilmington, NC

Michael Starr, New York, NY

Rick Straub, Paducah, KY

We welcome you to this organization and hope you will contact a board member, your chapter president, or the AAM national office if you need anything or want to become involved.



Welcome

The word "Welcome" is written in a large, elegant, golden cursive font. Below the text is a decorative flourish consisting of a series of interconnected, swirling lines in the same golden color.



AAM Announces Brutsché Award Recipient 2019

The highest award presented by the Association of Attorney-Mediators is the Steve Brutsche' Award, in honor of the founder of the Association of Attorney-Mediators, Steve Brutsche'. The criteria for receiving the prestigious Steve Brutsche' Award requires the recipient to live up to the highest standards as exemplified by its namesake, Steve Brutsche'. This award is given from time to time, and not annually, **to a recipient who personifies the principles of service and commitment to the profession that are the foundation of the ADR movement. The 2019 Brutsché recipient is Cecilia Morgan, Dallas, TX.**

Cecilia has been associated with JAMS since March, 1994, and has mediated, arbitrated and/or facilitated over 3,000 cases in over 30 states involving matters in all areas of the law. Named one of Texas' Best Alternative Dispute Resolution Lawyers (*Best Lawyers in America*) in 2008-2018, one of Texas' Best Lawyers in Arbitration and Mediation (*Best Lawyers in America*) in 2019, a Texas Super Lawyer in 2012-2018, D Magazine's Best Lawyers in Dallas, 2013-2018, she is a Life Fellow for the Texas Bar Foundation and a Life Patron Fellow for the Dallas Bar Association Foundation. She was the State Bar of Texas' 2010 recipient of the Justice Frank Evans Award for Outstanding Contribution to Texas ADR. She served as an officer and director at both national and local levels of the Association of Attorney-Mediators, is a former national chair for the Legislation Committee of the American Bar Association Section of Dispute Resolution, is a former Chair of the State Bar of Texas ADR Section Council and is a TMCA Credentialed Distinguished Mediator. She served as Chair of the Dallas Bar Association's Labor & Employment Law Section in 2011, is a Fellow of the College of Labor and Employment Lawyers and was an Adjunct Professor for Texas Tech University School of Law from 2013 until 2017.



President's Awards 2019

The AAM President enjoys acknowledging AAM members who stood out during his or her presidential term.

The 2019 President's Award recognized John Dowdy's and Jeff Kilgore's perennial contributions to AAM's CLE programs. These experienced mediators use humor and storytelling to convey their wisdom, enhancing other AAM members' skills. John and Jeff always have been willing to step up and pitch in – even at the last minute. They exemplify the very best of AAM.

Paul Clote also presented a President's Award to Bob Berliner of Chicago, IL. Bob was instrumental in the drafting and filing of an Amicus Brief in a matter in Illinois on behalf of AAM. See Bob's article in the newsletter for more information on the brief. Thank you, Bob, for keeping watch on behalf of the mediation community.



Jeff Kilgore and John Dowdy



Bob Berliner

The Association and its Illinois chapter recently filed amicus curiae memoranda in a case pending in federal court in the Northern District of Illinois, Kormi v. Choate, et. al., number 16-C-9415, which presented what the Association viewed as important questions of the applicability of the mediation privilege under Illinois law.

Ms. Kormi, the plaintiff, through counsel, filed an action against her former employer alleging violations of various federal statutes pertaining to her employment. The case went to mediation with a JAMS mediator; the mediation was unsuccessful. The counsel who represented her in the mediation then withdrew. She retained new counsel, the defendants in the pending action, to represent her, and the employment case was settled. In the action in which the amicus was filed, she alleges that the defendants breached their fiduciary duty to her and committed malpractice by coercing her into accepting a settlement that was inadequate monetarily and by omitting provisions in the settlement documents that reasonably competent counsel would have included. Jurisdiction is based on diversity of citizenship.

Counsel for the defendants sought to discover and then made clear they would seek to introduce as evidence at trial various matters that occurred during the failed mediation, including such matters as offers that were made to settle the underlying employment case and indications of the acceptability of such offers. Evidently, they believe that the amount Ms. Kormi accepted in settlement during their representation of her was greater than what she indicated would be acceptable during the mediation.

The Association felt that the defendants' position represented a serious threat to the mediation privilege provided by the Illinois statute and similar statutes across the country. AAM members know how crucial the confidentiality of mediation communications is to bringing mediations to successful conclusions and know that any doubt in the minds of mediation participants regarding that confidentiality could be devastating to that success.

Federal jurisdiction in this case rested on diversity of citizenship, and thus under Erie Railroad Company v. Tompkins, 304 U.S. 64 (1938) and Federal Rule of Evidence 501, Illinois state law controlled the applicability of the mediation privilege in this case. The amicus memorandum raised essentially two arguments. First, the evidence that the defendants sought to introduce constituted "mediation communications" under the Illinois version of the Uniform Mediation Act (710 ILCS 35/2) and, under section 4 of that Act (710 ILCS 35/4), those communications were privileged and thus not admissible in evidence if Ms. Kormi objected (which of course she did). Second, the JAMS mediation agreement provided that all statements made during the course of the mediation were confidential and inadmissible for any purpose, and under section 8 of the Illinois Act (710 ILCS 35/8), mediation communications are confidential to the extent agreed by the parties. Since the parties had agreed that the statements were confidential and inadmissible, the court was required by the statute to treat them as such. The memorandum also emphasized the wise public policy underlying the mediation privilege and the contribution the privilege makes to mediation success.

As of this writing, the court has not ruled on this issue.

Introducing the 2019-2020 President and President-elect

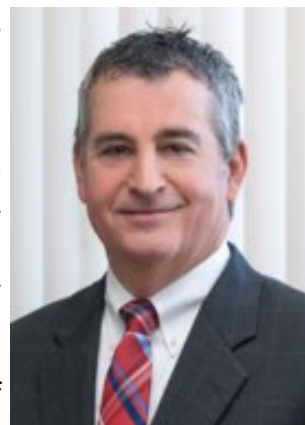
Incoming President

John C. Trimble is a partner in the Indianapolis law firm of Lewis Wagner, LLP. In a 37 year career John has been admitted in State and Federal Court in more than 30 jurisdictions where he has litigated complex and catastrophic tort, insurance coverage, and business litigation. He began his career as a mediator in 1988, and through the years has mediated cases of all sizes and complexities. John lectures and writes on mediation for law schools and bar association groups and as part of his practice serves as a negotiation consultant. In 2014 he was invited by the Federal Judicial Center to teach mediation and settlement technique at the U.S Magistrate Workshops. John is the incoming President of the Association of Attorney-Mediators.



Incoming President-elect

James D. “Jimmy” Lawson has owned his own practice, James D. Lawson, P.C., located in Lakeland (Shelby County), Tennessee since March, 2013. His law practice emphasizes construction law, construction litigation, insurance defense and issues of insurance coverage, along with alternative dispute resolution services. Prior to obtaining his license to practice law in Tennessee, he was an associate (1986-1993) and a partner (1993-2008) at Hilburn, Calhoun, Harper, Pruniski & Calhoun, Ltd., in North Little Rock, Arkansas. After moving to Memphis, he was associated with the Law Offices of William M. Jeter, PLLC, in Memphis, Tennessee (July, 2008-February, 2013). He left the Jeter Firm in 2013 to focus his practice on mediation. Over his thirty-three (33) year career as an attorney, Jimmy has handled a wide variety of civil cases, representing plaintiffs and defendants, in state and federal courts throughout Arkansas and Tennessee. He has been associated with Hamlin Dispute Resolution, LLC, based in Little Rock, Arkansas, since May, 2012, and regularly mediates civil cases of all varieties throughout Arkansas and western Tennessee. In October, 2016, he obtained his certification as a family law mediator in Arkansas and has been mediating in that field as well for the last two and one-half years. He is a frequent speaker on the topic of mediation for the Arkansas Bar Association, the Pulaski County (Arkansas) Bar Association, and the Arkansas Alternative Dispute Resolution Commission, and he has contributed his time to assist with mediation courses that are offered by the University of Arkansas School of Law (Fayetteville, AR) and the Bowen School of Law at UALR (Little Rock, AR). Jimmy resides in Lakeland, Tennessee with his wife, Vicki. He has been a member of AAM since 2012 and is currently a member of the AAM Board of Directors and takes his place as President-elect for 2019-2020.





**ADVANCED ATTORNEY-MEDIATOR TRAINING
FRIDAY, SEPTEMBER 13, 2019—SEE YOU IN DALLAS!**

This highly interactive *Advanced Attorney-Mediator Training* and CLE Seminar promises to be entertaining, educational and enlightening. Set in the DALLAS that made J.R. Ewing famous, the training will include some of the country's most experienced and talented mediators sharing timely and fresh ideas, as well as practical tips for your daily mediations. The speakers at this conference come from various parts of the country and they all have something in common - they mediate and are excellent at what they do! They will show you how to sharpen and apply your mediation techniques while enhancing your ethical awareness by addressing an array of issues with the attendees. Come to DALLAS ready to learn!

The venue will be the Aloft Hotel Dallas Love Field, the newest Love Field hotel property. We hope you will join us and add to your mediation textbook. It is a one day work and learn day, but hotel rooms have been secured at a great rate of \$145 per night, plus tax for anyone wanting to come ahead or stay over.

www.attorney-mediators.org/register



An Enduring Legacy

After more than two decades, the Association of Attorney Mediators continues to thrive with new members and renewing members. AAM has been successful because it enlightens, educates and entertains members and attendees at bi-annual CLE programs. The attitude is “share what you know; help other mediators benefit from your experiences.” That philosophy promotes camaraderie and collegiality, fosters the most satisfying personal and professional relationships. But AAM’s work has not been conducted in a vacuum. Excellent officers and directors – and a host of amazing speakers who volunteer their time - have contributed over the years. However, AAM’s Executive Director for the last 20 years, Brenda Rachuig, has served as the heart and soul of the organization.

Every AAM board member, every speaker at every AAM CLE program over the last 20 years knows and appreciates Brenda’s tireless work, her upbeat personality, her problem-solving abilities. Brenda has been a constant source of energy, strength and joy for AAM members. Her contributions cannot be overstated. In addition to critical planning and execution for the CLE programs, Brenda has fielded daily inquiries in phone calls and emails to AAM; ensured that AAM’s website was continually updated and performed properly; coordinated with other professional mediation organizations; kept AAM’s officers and directors fully informed, organized and on schedule; and taken every other action possible to further AAM’s objectives. Brenda has been very capably assisted at AAM’s CLE programs by Charlie, whose volunteer work contributed to smooth, calm and successful programs.

Brenda officially retired as Executive Director as of August, 2019. Brenda and Charlie will be sorely missed. But Brenda leaves an enduring legacy, just as AAM has an enduring legacy for all its members over the decades. Please take a minute, either before AAM’s September 13 program or at the program itself, to let Brenda know how much you appreciate her work over the last 20 years.

It has been a privilege to know and work with Brenda and all AAM members. As we move forward in difficult and challenging times, remember that the skills, temperament and lessons we learn from mediating tough cases benefit us in all walks of life.

Paul D. Clote

Immediate Past President

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Charleston – What a Great Training!

The month of April was a beautiful time to visit Charleston! The Annual Meeting began with a great dinner and reception on the rooftop patio of a casual eatery, Carolina Ale House. It was a great location to greet our colleagues from various places! The restaurant provided a lovely view of Francis Marion Square and many of the steeples giving Charleston its nickname, the Holy City. The evening was cool and a little breezy, but all in all, no rain and blue skies for the duration of our time together.

The training began on track with so many wonderful speakers giving us new insights on our mediation skills. **Jill Tanz, Lisbeth Bulmash, Cecilia Morgan, Hank Jones, John Trimble, Courtenay Bass, Trey Bergman, Bob Berliner** shared so many tidbits of wisdom on our first day together. We enjoyed a reception with food and beverages provided by **sponsors Lewis Wagner LLP, Indianapolis, IN** and **Book Mediation, Austin, TX**. The food was delicious and the presentation was almost too pretty to eat!

Saturday morning we reconvened together for our Annual Meeting general session with announcements and awards. We voted in the new board members, **Jean Lawler** and returning member, **Bob Berliner**. We thanked the board for their service to the organization and we said farewell to **Debra Leo**, Immediate Past President as she completed her last board sitting. **Paul Clote**, President, passed the baton to **John Trimble**, President-elect and we welcomed John as the new President for the 2019-2020 year. John introduced **Jimmy Lawson** of Tennessee/Arkansas as the incoming President-elect. Jimmy will begin his tenure by preparing the next two conferences, the fall **CLE in Dallas on September 13, 2019** and the Annual Meeting 2020, **which will be April 3 and 4, 2020**.

The speakers again filled our day with knowledge so enjoyable that we really didn't want to leave. We were entertained and enlightened by **Brian Hewitt**, guest speaker from Indianapolis. Brian's evaluations were so remarkable we have asked him to return to the training of his choice! Thank you, Brian, for the enjoyable presentation! **Jeff Kilgore, John Dowdy, Linda Michler** and **Daniel Yamshon** finished the day with their special ways of engaging the audience.

Let's not forget our "Bonus Marketing Session", with a roundtable discussion led this year by **Debra Leo**. The group enjoyed tossing around the ideas as topics were cast by the facilitator and her "assistant", Kathleen Coble.

Seventy six members and non-members, together with many spouses, enjoyed all of the sights and sounds of Charleston and especially the food! It was a great time with comments that it was one of AAM's best! If you missed it, we hope you will make one in the near future!



A Bicycle Built for Two: *Opportunities for Mediators in the Collaborative Process*

By Lawrence R. Maxwell, Jr.

Disputing parties typically want to resolve their dispute quickly, control the outcome, avoid litigation and discovery battles, control costs and scheduling, maintain relationships, and avoid publicity.

Mediation and the collaborative dispute resolution process (commonly known as “Collaborative Law”) are processes that parties can use to meet these goals. Both processes focus on assisting parties in settling a dispute before it is submitted to a court, arbitrator, or other adjudicatory tribunal.

For years, mediation has been the ADR process of choice for resolving disputes arising in all areas of civil law. Collaborative Law is a relatively new kid on the block, having its roots in family law. The process is now being used for resolving disputes arising in many areas of civil law, and is particularly helpful when maintaining ongoing relationships is important.

The processes are similar in some respects. Settlement negotiations are confidential; and depending on the timing of the use of the process, disputes can be resolved quickly and economically. The processes differ in some respects. However, both processes can save time and money and people.

Mediation: A mediator is a third-party neutral engaged voluntarily by the parties, or appointed by court order, to facilitate communication and assist the parties in developing a mutually acceptable settlement. The parties may or may not be represented by counsel.

Negotiations can be adversarial and employ positional bargaining, or interest based and focus on the concerns of the parties. A mediator has no mechanism for requiring the production of relevant information. The parties may or may not engage in face to face meetings.

Mediation is usually a one-day event, that occurs just before trial, after expensive and time-consuming discovery is completed. The parties have spent lots of money and time and may be more adversarial than they were at the outset. Ongoing relationships may or may not be preserved.

Collaborative Law: The collaborative process is a structured, voluntary process, and cannot be court ordered. The process is designed for early intervention, to be used instead of litigation (although the parties do not waive their right to go to court if they are unable to reach a settlement). All parties are represented by collaboratively trained lawyers, who serve as dedicated settlement counsel.

The parties, after being fully informed of the benefits and risks of the process, enter into a contract (“Participation Agreement”), which serves as a road map as the parties work through the steps in the process to resolve the dispute. The parties and their lawyers engage in face to face meetings. Relevant information and documents are voluntarily produced, and should experts be needed, the parties may jointly engage mutually agreed-upon experts.

Negotiations in the collaborative process are always interest-based, seeking to arrive at a settlement that meets as many of the goals, interests, and concerns of all parties as possible.

Mediating in the Collaborative Process: Mediators trained in the collaborative process and knowledgeable about interest-based negotiations can work in the process in several ways as third-party neutrals. The parties and the lawyers should be involved in the selection of a mediator, and the mediator's role should be clearly defined at the outset.

At the beginning of the process, a mediator can serve as a facilitator or case manager. Having a facilitator at the outset is particularly helpful when there is a significant power imbalance among the parties. There may be cultural and language differences among the parties, and a suitable mediator can build bridges. A mediator can help control fees and time to resolution.

As the process progresses, a mediator can be helpful in managing specific issues, such as information disclosure. A mediator can keep all parties on track and following the steps in the process. Issues may arise regarding the need for retaining experts, and if it is determined that an expert would be helpful, a mediator can assist in reaching agreement on an expert to be retained.

When a party has unrealistic expectations and reality testing is needed, a mediator can more easily ask "Why?" questions than can a collaborative lawyer. A mediator can speak to all parties in confidence about their assessment of the situation and barriers to resolution.

If the parties are approaching impasse in their negotiations, experience has shown that having a skilled third-party neutral in the room adds a new dimension, and the parties may very well quit the dithering, and focus on reaching a resolution.

We encourage mediators to expand their skills and get trained in the collaborative process. Opportunities Await You in the Collaborative Process.

AAM Welcomes New Executive Director

We hope you get the chance to meet **Allison Ellis** very soon!

Allison comes on board with a great background in marketing and event planning. Allison is married to Matt and they have a two year old son, William. She lives in the Dallas area. Give her a call or send her an email at aam@attorney-mediators.org to welcome her!



Meet the 2019-2020 Elected Board Members

The AAM Annual Meeting was held on April 27, 2019 at 8:30 am at the Francis Marion Hotel, Charleston, SC. The following board members were elected and we welcome them to the AAM board of directors! They will serve a three year term.

Robert (Bob) Berliner practices in Chicago, IL and has been an AAM member since 2009. Bob has been elected to renew his term. For more information about Bob, please visit his website at www.berlingroup.com.

Jean Lawler practices in Los Angeles, CA and has been an AAM member since 2017. For more information about Jean, please visit her website at www.lawleradr.com.



Danielle Hargrove, Charlie Ochoa, Frank Neuner, Bob Berliner, Jimmy Lawson, John Trimble and Debra Leo. Not pictured Paul Clote, Mark Myers and Jean Lawler.



Dinner With A Group





Charleston 2019



Save the Date!

April 3 & 4, 2020
St. Louis, Missouri

AAM's Advanced Attorney-Mediator
Training and Annual Meeting



ST. LOUIS

