



# AAM-a-gram

**ASSOCIATION OF ATTORNEY-MEDIATORS**

## ***President's Message***

***June 2020***

*"...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."*

**2020–2021  
AAM**

### **BOARD OF DIRECTORS**

John Trimble, Immediate  
Past-President

Jimmy Lawson, President

Frank Neuner,  
President-Elect

Danielle L. Hargrove  
Secretary

Charlie Ochoa  
Treasurer

Bob Berliner

Misti Hill Carter

Jean Lawler

Anne Shuttee



Executive Director,  
Allison Ellis

### *Message from Jimmy Lawson . . .*

#### **The Year That Wasn't**

Unless you are a hermit, an agoraphobe, or a toilet paper vendor, the first four months of 2020 will not be reflected upon with fondness. Oh sure, we've gotten to expand our vocabulary with new words and phrases like "Covid", "Fauci", "shelter in place" and "social distancing." I'm all for learning new things and keeping up with the times – not very good at it but all for it – yet this months long educational experience has not been a pleasant one.

In less than six months I will be sixty years old. For your information, I just typed that sentence, then had to pause and read it several times to convince myself that it's true. When I was a kid, sixty was the age that meant "old." Now that I'm on the doorstep, it suddenly doesn't seem that way. But fantasy must give way to reality, as it did a couple of weeks ago when my wife and I were on a leisurely drive in the country, listening to a radio commentator rattle off statistics on how the virus disproportionately affects the elderly. I mumbled something like, "That's got to be scary if you are getting old." The look my wife gave me was priceless; equal parts irony and amusement. Her unspoken message was clear: "You ARE getting old."

Until some semblance of normalcy returns, 2020 will continue to be The Year That Wasn't. Closed businesses, no sports, cancelled primaries, shortened school years, and, of course, no AAM annual conference. As President-Elect, this was particularly disappointing because I was so eager to spend time in St. Louis with all my friends and colleagues. Nevertheless, I am firmly convinced that the call made by the Board of Directors to cancel the event was the correct one. Our primary obligation is to our members, not just to provide quality educational and social opportunities for them, but more importantly to keep them from harm's way.

By the time you receive this, I will be days away from assuming the position of President of AAM. I am honored and humbled to have

**CHAPTER  
PRESIDENTS**

**Bexar County/San  
Antonio Chapter  
Don Philbin**

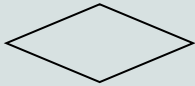
**Central Texas  
Chapter  
David Moore**

**Illinois Chapter  
Bob Berliner**

**North Texas Chapter  
John Shipp**

**Oklahoma Chapter  
Jake Jones**

**St. Louis Chapter  
Frank Neuner**



**Association of  
Attorney-Mediators**

**P O Box 741955**

**Dallas, TX 75374-**

**1955**

**1-800-280-1368**

**972-669-8101**

**972-669-8180 Fax**

**www.attorney-  
mediators.org**

**Email:**

**aam@attorney-  
mediators.org**

## ***President's Message—Continued***

been selected to serve, and I know the bar has been set incredibly high by my predecessors. Terrific mediators and persons like Sid McCollum, Jeff Kilgore, Debra Leo, Paul Clote and John Trimble, to name a few. In particular I want to give a huge shout-out to John, with whom I have worked closely over the past year and have had a chance to get an up close and personal look at the leadership he has provided. I told John more than once over the past couple of months that his term was likely the most challenging of any President due to the pandemic and the havoc it has created. Through it all he has been the voice of reason, leaving no stone unturned to insure we have kept the membership up-to-date and helping bring AAM into the twenty-first century in terms of social media. I'm grateful to John and can only hope I can fill his shoes – even though I'm a size 9 and I think he's at least a 16!

My other attaboy is reserved for our first-year Executive Director, Allison Ellis. Allison has handled all the behind-the-scenes issues and the day-to-day business of AAM flawlessly, and the transition between Brenda Rachuig and Allison was seamless. She has been such a big help to me and I know this will continue over the next year. With a new child in tow and all the conference arrangements that had to be scheduled and then cancelled, I'm know it has been a challenging, yet memorable year for her as well.

Looking forward, our tentative plans – as my late father would have said, “the good Lord willing and the creek don't rise” – are to meet in Dallas this September for our annual “Fly in, fly out” fall conference, and to be in St. Louis next April for the biggest and best annual conference AAM has ever had. World events permitting, I know I will be at both events. I hope you will be too.

Stay safe everyone.

Jimmy Lawson



**James D. Lawson, P.C.**

10094 Ridgewood Oak Drive  
Lakeland, Tennessee 38002  
(901) 201-9668 (Telephone)  
[jimmy@hamlindispute.com](mailto:jimmy@hamlindispute.com)

***A message from John Trimble, Past-President...***

There are a lot of individual words that flooded my mind when I thought about this column and my year as president. Among them were “fast,” “frightening,” “strange,” “bizarre,” and “unexpected.” Some other words are “bittersweet,” “happy,” “challenging,” “opportunity,” and “eventful.”

The year began with the bittersweet news that our long time Executive Director, Brenda Rachuig, would be retiring. It was AAM’s good fortune that Brenda’s daughter, Allison Ellis, was interested in a career transition, and she has proved to be a wonderful new Executive Director. With Allison on board we had a well attended and very interesting Fly In meeting in Dallas in September. Many, many past presidents and long time members came so that we could give Brenda the send off that she so richly deserved.

President-Elect, Jimmy Lawson, had a stellar cast of speakers lined up for our Annual Meeting in St. Louis that was scheduled for April. Then, without warning, our world changed, and the meeting had to be rescheduled. Overnight, our lives were upended, and we were working from home. Mediations were cancelled, and we wondered how or when we would get back to normal.

Then, in what exemplifies the spirit and culture of AAM, members stepped up. Members like Sharon Corsentino stepped up and organized Zoom happy hours and seminars on the techniques for holding virtual mediations. We may have initially scratched our heads with doubt, but pretty quickly we all took online offerings, embraced Zoom, and before we knew it, most of us had mastered Zoom virtual mediations. Now, some of us are wondering, whether in-person mediations will happen again or whether lawyers and clients will prefer virtual. Only time will tell.

There was a whole lot that I hoped to accomplish this year. Most plans did not happen. We did get a Twitter account going, but we need to rev it up and get it active. Membership was stable, and we have two great new board members in Misti Hill Carter and Anne Shuttee. Allison is hitting her stride and keeping us moving forward. The future remains strong for AAM.

I want to personally thank Allison for her strength and positivity during this interesting year. She has kept us on track. I want to also especially thank outgoing Past President, Paul Clote, for his wisdom and guidance as we navigated a lot of change. Paul was a rock. Additional thanks to Jimmy Lawson who was always there with advice and humor. He is ready for a great year as president, and will continue to make sure that AAM remains strong to serve our members. Our new officers, Frank Neuner, Danielle Hargrove, and Charlie Ochoa are all committed and ready for a great year. Final thanks to outgoing board member and treasurer, Mark Myers for his reliable service.

Thank you all for your support this year. I look forward to seeing all of you the very next time we can gather. In the meantime, stay well!

Best, John

**John C. Trimble**

Lewis Wagner, LLP  
501 Indiana Avenue, Suite 200  
Indianapolis, IN 46202  
[jtrimble@lewiswagner.com](mailto:jtrimble@lewiswagner.com)  
(W) 317-237-0500  
(C) 317-258-2139  
Twitter: @indytrims

# AAM BOARD OF DIRECTORS

## INTRODUCTIONS

We are excited to introduce the newly appointed Officers and the two new Board Members. The newly elected Board Members will serve a three year term.

The complete list of the 2020-2021 Board of Directors, along with their contact information, may be accessed by [clicking here](#).

### **New Board Members:**

- ◆ **Misti Hill Carter** practices in College Station, TX and has been an AAM member since 2018.
- ◆ **Anne Shuttee** practices in Dallas, TX and has been an AAM member since 2010.

*For more information about Misti or Anne, please see their bios [here](#).*

### **Newly Appointed Officers:**

- ◆ **Danielle L. Hargrove, Secretary**, practices in San Antonio, TX and has been an AAM member since 2003, returning in 2017 after a brief absence.
- ◆ **Francis (Frank) Neuner, President-Elect**, practices in St. Louis, MO and has been an AAM member since 2012.
- ◆ **Carlos (Charlie) Ochoa, Treasurer**, practices in McAllen, TX and has been an AAM member since 2008.

*For more information about the newly appointed Officers, please see their bios [here](#).*

A very special thank you to **Paul Clote** and **Mark Myers** for serving on the Board! Their terms have expired as of the Annual Meeting 2020. We appreciate their service and commitment to making AAM an outstanding organization.

 **2020 President's Award**

Presented to **Jimmy Lawson** for the wonderful programming he planned for the 2019-2020 year. Although we did not get to experience the Annual Meeting, the programs planned were great and well designed.

Thank you, Jimmy!



## AAM Welcomes New Members

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

Maria Aceves, Irving, TX

Josette Belvedere, Chicago, IL

Angela DeSilva, Houston, TX

Gary Fowler, Dallas, TX

Bob Friedenber, San Diego, CA

Daniel Gonzales, Corpus Christi, TX

Janine Gorell, Lubbock, TX

Brian Hewitt, Indianapolis, IN

Bixler Howland, Louisville, KY

Alex Jacobson, Chicago, IL

Stephen Lagoy, West Chester, PA

John Lewis, The Woodlands, TX

Patrick Sanders, St Louis, MO

Rhea Stevens, Pearland, TX

Alan Wharton, Tyler, TX

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!*



# Thank you

Thank you to all of our Members who shared tips for online mediation! Many of you emailed the AAM Office offering to help other Members who might be new to online mediation and need guidance. Together we worked to navigate the new normal of work-from-home during the COVID-19 pandemic.

A special thank you to Member **Sharon Corsentino** for organizing Zoom happy hours and virtual mediation tours.

*(Image is from the Virtual Happy Hour on 4/2/2020.)*



Attorney Susan Guthrie, an online mediation expert, took AAM Members through a practical review of the basics of conducting mediations and meetings through video-conferencing. Topics included equipment and set up, programs, screen sharing, caucusing, troubleshooting, best practices and ethical considerations.

Did you miss the online mediation overview with Susan Guthrie? You can access a recording of it here: <https://youtu.be/k5fpuvlg-l34> or on the AAM website in the Members Only section. Visit Susan's website for more information on the in-depth webinars she offers: [www.learntomEDIATEonline.com](http://www.learntomEDIATEonline.com)



## **Online Mediation and Social Distancing**

***Heather McFarlane, Houston, TX***

The Covid-19 pandemic has created an opportunity for the growing field of online mediation. Because online mediation allows everyone to participate remotely, cases can proceed even with mandatory stay-at-home directives.

When I first heard about online mediation services, I was skeptical. How can a process that depends on accurate communication (including nonverbal information) work when people are not with each other? I also worried about confidentiality: how could the parties feel comfortable that no one was eavesdropping or recording the mediation? Finally, I doubted that the participants would give the process their full attention if they were not corralled in a conference room.

Now that I mediate online, I am comfortable that online mediation preserves the mediation process, and, in some cases, provides benefits that the in-person process cannot.

### **How it Works – The Mechanics of Online Mediation**

I use the Zoom.us videoconferencing platform for online mediation. Before the scheduled mediation, all participants take a few minutes to create a free account and download the Zoom app on their desktop, smartphone, or tablet.

Five minutes before the scheduled session, the participants click on a link that the mediator sent them upon confirmation of the mediation. This hyperlink sends the participants to a virtual waiting room, and then Zoom notifies the mediator when each person joins. Once everyone has arrived, the mediator places the parties and their lawyers into pre-assigned, private rooms: the virtual equivalent of having a receptionist usher the parties into their own conference room. All of the members of a particular room can see and hear each other; no telephone is required.

No one can secretly enter the room. Once someone joins, everyone can see who is in the private room.

When ready, the mediator can move the participants into a joint session. There, all of the parties have the ability to share their screens with the other participants. The screen share allows the pre

*(Online Mediation and Social Distancing continued)*

sender the opportunity to show a slide show, photographs, video, or other documents relevant to the case. While the parties see the shared screen, they continue to view images of the other participants, which allows the parties to watch each other's reactions. Unlike an in-person mediation, the participants see their own image; this helps them monitor their own body language and reaction to the process.

Throughout the mediation, the mediator maintains control of who sees one another, thus protecting confidentiality of the process.

If the parties reach a settlement, the lawyers work collaboratively on a settlement agreement through a shared screen process. Once the agreement is completed, the mediator sends the agreement to all of the participants with the ability to sign with DocuSign. DocuSign does not require the signers to have an account, and everyone immediately gets a secure copy of the fully executed agreement.

**Online Mediation Maintains Protection of the Mediation Process**

*Privacy and Confidentiality.* By statute, mediation is completely confidential. Nothing that the parties discuss during mediation can be used outside the mediation. The mediator cannot be subpoenaed or testify about what happened. Additionally, anything that the parties discuss with the mediator during a separate caucus (where the parties are separated into different rooms) can be shared with anyone else without permission. Online Mediation also protects privacy and confidentiality. As discussed above, the Zoom platform provides for separate caucus rooms. Once participants enter a room, their image shows on the screen, and there is no way to eavesdrop or listen without the participants' knowledge.

The Zoom platform has a feature that allows for the recording of the proceedings; however, the mediator can turn off this feature when scheduling the mediation. Nothing stops a participant from recording the proceeding independently (such as a screen/audio record or recording on a separate device); however, that is true during an in-person mediation. The rules for the mediation in both forums prohibit the recording of the mediation.

*Non-Verbal Communication.* Because a majority of human communication is non-verbal, conducting a mediation where the parties are not sitting across from one another requires adaptation and practice. The audio feature keeps tonality, emphasis, and inflection intact. For body language, I emphasize the need to angle the camera so that each person's face is fully visible, and ask that everyone concentrate on making gestures that can be seen.



*(Online Mediation and Social Distancing continued)*

*Focus on the Mediation.* Mediation provides an opportunity for the participants to carve out time to focus on the dispute and to dedicate their attention on the problem and the potential solutions. If the parties are allowed to stay in their home or office, what prevents them from splitting their attention away from the mediation? This issue must be addressed when scheduling the mediation and when signing the agreement to mediate. My agreement to mediate explains that the participants are agreeing to treat the online mediation the same way they would treat any other commitment. Further, just because the participants aren't in the same physical location, the video feature exposes anyone who is working on something else.

### **Benefits of Online Mediation**

*Health of Participants.* No one can transmit a virus to each other when they're not together!

*Efficiency.* Online Mediation allows all parties to participate from anywhere they have access to the internet and a computer, tablet, or smartphone. No one has to fight traffic. Without the need to travel, the mediation takes much less time than it would if it had been conducted in person.

*Comfort.* Mediation can be a high anxiety event. Allowing parties to participate in a comfortable environment promotes the productive expression of emotion.

*Cost Savings.* Online mediation saves airfare, hotel, and other travel expenses; this leaves more money to use for settlement.

*Ease of Information Sharing.* The screen sharing feature in online mediation creates a powerful way to present and share information, and also to create and collaborate on documents. The encrypted platform also provides a "share document" feature that allows any of the participants to securely send documents to any other participant, and to carefully control who gets the document.

*The Green Factor.* As more people and corporations focus on the environment, the ability to save people from traveling to a mediation serves as a motivation for on-line mediation.

## Member Profile Privacy

Members set their own privacy settings within their Member profile of the AAM website. Each member is able to select what information and data on their searchable profile is public (i.e. email address, website, etc.). All public items are accessible by anyone - both the public you want to find you and some of those searching for contacts to serve their own purpose. The choice is yours. Please look over your selected privacy settings and update based on your preferences.

If you are ever unsure of the authenticity of an email received from the AAM Office or AAM Board Member, please reach out to Allison at [aam@attorney-mediators.org](mailto:aam@attorney-mediators.org).

### Member Profile privacy settings may be changed by following these steps:

- Log into your AAM Member profile at [www.attorney-mediators.org](http://www.attorney-mediators.org)
- Select “View profile” in the bottom left-hand corner
- Click on the “privacy” tab
- Click the “Edit profile” button to edit privacy settings
- Make selections as appropriate to allow Anybody (Public), Members or No Access to each profile detail. See example selection chart to the right.

Show details			
in member directories, forum and blog posts			
	Anybody	Members	No access
Send message form	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Membership level	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
ID Number	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Suffix	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
First Name	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Initial	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Last Name	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Nickname	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Organization	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Phone	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Office Fax	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Email	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Address (Street-Suite)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
City	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
State	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Zip Code	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Secondary Email Address	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Photo	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Website	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please also take a moment to log into your account and refresh your information. It's important that you update the number of mediations performed along with your contact information if it has recently changed.



## **Convening and Preparing for Mediation:**

### **Pre-Mediation Questions**

*Michael Leech, Chicago, IL*

*This content was presented at the AAM Annual Meeting and CLE Seminar in Atlanta titled “Excelling at Every Stage of Mediation”.*

### **Pre-Mediation Questions**

Culture/language concerns?

Food/accessibility concerns?

Who is coming to the mediation?

Tell me about your client

- Purposes, objectives, concerns
- Capacity & attitudes

Why did you select me as the mediator?

What do you need from me in this mediation?

Why is this the right time to mediate the case?

Do we have authority?

- Your side
- Their side
- Corporate authority (whose budget?)
- Insurance
- Spouse or significant other

Attorney-Client Relations

- How long (firm/lawyer)

---

*(Convening and Preparing for Mediation Continued)*

- How client got to you
- History of client relationship
- Relationship partner?
- Client confide in you about negotiating strategy, bottom line thoughts?
- Is there a referring attorney, family member or friend who has the client's confidence?
- Does the client basically follow your lead on what to do, or give directions?
- Does the client let you in on his/her expectations & where they come from?

Assigned judge? (if case in suit)

- Rulings to date?
- How do you feel about being before the judge?
- What do you know or hear about the judge from other lawyers?
- Any meaningful comments from the bench?

Status of case?

What will be the key points in dispute?

Damages

- Detailed damage calculations done?
- Backup so that sources of information and calculations are understandable?
- What are the disputed damage issues?
- What does the other side say about damages?

Attorney fee records or information (fee shifting cases)?

- Fee arrangements on both sides
- Give plaintiff's attorney's hours, rates, totals to defendant
- Bring fee records to the mediation in case needed
- Defense counsel—bring your hours, rates & totals, and fee records

Relations between the attorneys in the case?

---

---

*(Convening and Preparing for Mediation Continued)*

What is the negotiating history?

Do you have a settlement template and have you given it to the other side?

People who won't be at the mediation but who you might need to consult during the mediation—please make sure they are available for a call, you have cellphone numbers

Observations on personalities—

- How would you expect the client on the other side to negotiate—what does your client think?
- Any strong egos or explosive types—if so, what could set them off?
- How does attorney on the other side tend to negotiate, if you know—any pattern?
- Other personality issues I should know about?

Non-case considerations affecting settlement decisions you know of on either side?

- Business or institutional needs?
- Personal needs?
- Financial limitations on what can be paid
- Financial needs affecting settlement judgments

Non-economic considerations/deal points

- Management side needs and employee ability to satisfy
- Employee side needs and management ability to satisfy

Time commitment

- Any evening commitments?
- Commitment to go late?
- Reserve a second day?

Process

- Shared and confidential mediation statements?
  - Client-client meetings without lawyers
  - Opening statements—discuss doing them or not doing them
    - ◆ If not, consider opening statement options
-

---

*(Convening and Preparing for Mediation Continued)*

- o Mediator asks specific questions to each side, speakers address only issues raised
  - o Each side previews content of statement to be given with me and if needed, I check with the other side and statements are nixed or revised accordingly
  - o Each lawyer previews their statement to the other lawyer for reaction
  - o Clients make statements but do not attempt to make legal arguments (may be expression of emotion, reach out to other side, affirm good faith, apologize)
  - o Mediator gives opening statement describing case and views
  - o We bargain and if we can see we are getting stuck, then we hold a joint session (everyone or lawyers only)
- How will your client feel about lawyer only meetings?
  - Document or information exchange sought or needed on either side

What do I need to know about that I have not asked about?

---



## Keep AAM Membership Strong



Take time to encourage at least three (3) colleagues of yours who are not AAM Members to consider joining AAM. We want to continue Past President, Sid McCollum's mantra of **"Each One – Get One"**.

Benefits include the group liability insurance policy through Complete Equity Markets covering mediation (and arbitration) in the amount of \$500,000 - \$2,000,000 aggregate with a \$500 deductible. Ask anyone that has had the misfortune to need this coverage – it is a great addition!

## Completing Your AAM Membership Renewal

You've paid your dues for 2020 - great! Did you let the AAM Office know you've met the continuing membership guidelines and the insurance company know that you have no possible pending claims? **We need to verify this information from each member, each year.** It's a simple process!

The form is archived for our insurance carrier. If you received an email with **"OOPS"** in the subject line, or if you have not received a membership renewal confirmation with your 2020 insurance coverage letter embedded, please click [here](#) and fill out the **Membership Qualifications 2020, with the very important insurance question at the bottom.** Submit and you will be finished! Thank you.

## Let's get social!

Join us on social media as AAM becomes more active on [Twitter](#), [Facebook](#) and LinkedIn.



We're looking for content from our Members! Submit articles and photos to the AAM National Office to be included in our upcoming posts.

### We hope that you will join us!



We are tentatively planning to host the Fall CLE Seminar in Dallas, TX on September 11, 2020. Please **Save The Date** to join us. Once available, more details will be shared via the AAM website and via email.

Our Spring 2021 Annual Meeting and CLE will be held in St. Louis, Missouri on April 23-24, 2021.