

ASSOCIATION OF ATTORNEY-MEDIATORS

Newsletter

September 2004

“...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.”

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ASSOCIATION OF ATTORNEY-MEDIATORS

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Dear Colleagues,

The late Steve Brutsché was the founder of the Association of Attorney-Mediators. From 1989 until 1991 it was a for-profit company and Steve was the sole shareholder, director and officer. In 1991 it was converted into a non-profit trade organization, the Articles of Incorporation being signed by Steve, Sid Stahl, Courtenay Bass, Ross Stoddard, Ross Hostetter, and Mike Amis. Bud Silverberg was the point man on the tax exemption matter with IRS. Mike Amis was AAM's first president.

These are all icon names to AAM members. It is an understatement to say they are among our most respected and honored colleagues. There is an award named after Brutsché. The others have been our teachers. These are some of the names that come to mind whenever I see the term “Attorney-Mediator.”

When I attended the American Academy of Attorney-Mediators in late summer of 1992, I had never heard of any of these people. I had spent over twenty years getting poured out of some of the best courts in Texas and having other lawyers look at me like a buzzard looks at road-kill. Then I had a mediation session with Jay Patterson (another icon) in a bit of commercial litigation. Jay helped us settle the case, and I made up my mind I wanted to do what Jay was doing when I grew up. Hence my attendance at the Academy. My teachers were Mike, the two Rosses and the late Peter Chantilis.

I joined AAM and immediately began to reap the benefits — the best CLE I have ever experienced, twice a year, drawing on the knowledge and experience of the master attorney-mediators. Being around these people always reminds me of how far back I am on the learning curve.

I spent my first nine years as an AAM member taking full advantage of my membership, including perfect attendance at each of the two annual CLE meetings, never tiring of the interactive format we enjoy and from which we benefit. Then I

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Letter from the President *continued from page 1*

was elected to the board of directors and, a little over a year ago, was notified that I was being asked by the nominating committee to be president-elect for 2003-04. Of course this meant that, unless I blew out all the tires, I would be president in 2004-05. What an honor! — To be asked to lead my favorite professional organization, whose members include my professional heroes. The past presidents, from whose leadership I am benefiting, read like an attorney-mediator hall of fame: Mike Amis, Thomas Proctor, Jay Patterson, Nancy Huston, Bud Silverberg, Michael Wilk, John Estes, Stevann Wilson, Anthony Atwell, Regina Giovannini, Walter Wright, Larry Maxwell, and Jeffrey Abrams.

I am standing on the collective shoulders of all of my thirteen predecessors, each of whom has provided unique leadership, making AAM the strongest professional association of attorney-mediators in the country.

The advantages of AAM membership are apparent — the CLE, the insurance coverage, the website, etc. — all of which are examples of ongoing benefits. But I have become aware, recently, of the strength of the resources we have in our members. It was gratifying to see the rally that resulted in preparation of the *amicus* brief for filing with the Texas Supreme Court in *Avary v. Bank of America*. We have now been asked to file another *amicus* brief, same court, this time in *Alford v. Bryant*. Many thanks to Professor Wayne Scott for being the point man on the briefs, and to Allen Butler and his firm for administrative help in finalizing and filing.

A number of agenda items are in the works for AAM, including looking at our website for possible expansion. Other events are beyond the scope of this article. It seems that hardly a week goes by without your board of directors acting on something. AAM's membership needs to know of the strength and leadership provided by this group. When we get together in Austin this November 12, 2004 for our Fall Advanced Attorney-Mediator Training, be sure to say thanks to Past President Jeff Abrams and the rest of the board: Sherrie Abney (Secretary), Gayle Cipriano (President-Elect), Allen Butler (Treasurer), Henry Blum, Skip Hulett, Trey Bergman, and David Kisner. And be sure to express an extra special thanks to Brenda Rachuig, our Administrative Assistant. I agreed to be President only on condition that Brenda acknowledge an exception to the 13th Amendment and that she has to continue working for AAM.

Finally, MARK YOUR CALENDARS TO BE IN AUSTIN on Friday, November 12, 2004. Gayle Cipriano has put together a program that will knock the ball out of the park. I look forward to seeing you there.

Sincerely,

John V. Dowdy, Jr.
President

CHAPTER NEWS

SAN ANTONIO/BEXAR COUNTY CHAPTER NEWS

The President of the Bexar/San Antonio Chapter, William Lemons, was recently elected as Chair of the ADR Section of the State Bar of Texas. Due to the plethora of other CLE and meeting opportunities in the San Antonio area, the Bexar/San Antonio chapter does not have regular monthly meetings. We exist as an informal group for interacting from time to time and to advertise in the San Antonio Bar Association Directory and in the San Antonio Lawyer. For membership information, please contact William Lemons, Chapter President at 210-224-5079.

CENTRAL TEXAS NEWS

The Central Texas Chapter is preparing to host the Fall AAM Advanced Attorney-Mediator Training in Austin on November 12, 2004 and looks forward to the event. We have updated our website, www.AAMCTX.org. Member resumes are currently being updated. The site offers each Central Texas member an opportunity for a free mini-home page. It also has a feature that will print a complete Central Texas Directory. Steve Nelson is our new Chapter President. Gayle Cipriano remains "CLE Coordinator for Life." We hold semi-regular monthly meetings, with CLE credit, on the second or third Friday of the month. For information on chapter events, please contact Steve Nelson, Chapter President, at 512-732-0099.

HOUSTON CHAPTER NEWS

The Houston Chapter is beginning its Fall Season seminar series, which will be co-sponsored by the ADR Section of the Houston Bar Association. The first seminar will be held on September 14, 2004 from 7:30 a.m. to 8:45 a.m. in the first floor conference room of the Wortham Tower located at 2727 Allen Parkway, Houston, Texas. Trey Bergman, III will conduct the seminar on the topic of "Importance of Cultural Understanding In Conflict Resolution."

The Houston Chapter will be holding its annual organizational meeting and members' reception for the election of officers and directors on September 21, 2004, from 6:00 p.m. to 7:30 p.m. at 1302 Marshall Street, Houston, Texas. The event will be hosted by the Selig Bergman ADR Group. Louis Selig will take over the position of Houston Chapter President at that time. He can be contacted at 713-807-1707.

The Houston Chapter will be hosting a booth for AAM at the State Bar Association's Annual ADR Section Institute to be held October 14-15, 2004 at South Texas College of Law in Houston. The event will be co-sponsored by the Frank Evans Center For Conflict Resolution. All AAM members attending this event are welcome to assist. If interested, please contact Allan Davis at 713-850-1271.

NORTH TEXAS CHAPTER

The North Texas Chapter has continued its practice of holding quarterly CLE breakfast meetings. In March, we heard an excellent presentation by Tom Railsback of Roberson & Railsback, on interest-based negotiations as presented in "The Power of Nice: How to Negotiate so Everyone Wins — Especially You!" a book by Ronald M. Shapiro, James Dale, and Mark A. Jankowski. In April our Chapter was honored to serve as the "Host Chapter" for the Association's Annual Meeting and Advanced Training. We were particularly pleased by the recognition of Dallas as the "Birthplace of AAM." Our June breakfast-meeting program has been mired in a bit of controversy with the MCLE Committee of the State Bar. The program featured a stimulating presentation entitled "Forgiveness, Apology, and Acknowledgement in Mediation" by Tina E. Paterson, ACI Arb. Ms. Paterson was on a panel that gave a similar presentation at the ABA's ADR Section Annual Conference earlier this year in New York. Unfortunately, for reasons that remain unclear and despite the Chapter's best efforts, the MCLE Committee of the State Bar has taken the position that the program did not meet their "Accreditation

CHAPTER NEWS

Standards” for MCLE credit and they have denied CLE credit for the program. An appeal of the MCLE Committee’s decision to the Executive Director of the State Bar is under review at this time. Undeterred by the State Bar’s action, the NTX Chapter is planning another CLE breakfast meeting for the fall. For information on the North Texas Chapter, please contact Allen Rudy, Chapter President at 214-696-1242.

OKLAHOMA CHAPTER NEWS

The Oklahoma Chapter is alive and well. Several of our members are active on the Oklahoma State Bar ADR Section which is planning a seminar for the OBA convention in Oklahoma City in November. Our topic is aimed at trial lawyers, “How to Get the Best Results from Your Mediation.” For additional information on the Oklahoma Chapter and upcoming events, please contact Peter Bradford, Chapter President, at 405-272-5711.

ST. LOUIS CHAPTER NEWS

The St. Louis Chapter meets monthly to update members on developments in mediation in the St. Louis area and for a 1.0 credit hour MCLE program on a mediation topic. Recent topics have included mediation of employment cases; different styles of preparing parties for mediation; and dealing with lawyers who may have misevaluated their case. Future topics include multi-party mediation (a two-part program) and mediations involving a public agency. For information on the St. Louis Chapter and upcoming events, please contact Richard Sher, Chapter President, at 314-721-1516.

Newsletter Thanks

We owe special thanks to the law firm of Hunton & Williams LLP for compiling and mailing the newsletter, to Allen Butler for supervising his firm’s newsletter work, and to John Feather, Newsletter Committee Chair, for putting it all together. Thank you all for a great job!

AAM To Be Founding Member

AAM is proud to be a Collaborator of the 5th Annual Institute for Responsible Dispute Resolution co-sponsored by South Texas College of Law and the State Bar of Texas Alternative Dispute Resolution Section being held October 14-15, 2004 at South Texas College of Law in Houston. In addition, AAM is honored to be a Founding Sponsor of The Frank Evans Center for Conflict Resolution which will be dedicated the first evening of the Institute. This dedication promises to be a unique and memorable ceremony planned to honor the founding role played by Judge Evans, acknowledged by many as the father of alternative dispute resolution in Texas. Speakers, judges and invitees from across the State of Texas will attend this dedication and AAM’s name will be prominently displayed along with some of the largest corporations and foundations in the state which are committed to supporting alternative dispute resolution. AAM is also honored to serve as a Founding Sponsor of this Center and to help shape its growth both nationally and internationally and pursue its purpose in the years to come.

2004 President’s Awards

For outstanding service “behind the scenes,” AAM’s 2004 President’s Awards were given to Training Committee Chair, **Suzanne Duvall** of Dallas, Texas, and Newsletter Chair, **John Feather** of Houston, Texas. Congratulations and thank you for your continued efforts on AAM’s behalf!

Brutsché Award Recipient

The Brutché Award is a very special and prestigious award “Given to the person(s) personifying the principles of service and commitment to the profession that are the foundation of the ADR movement.” Congratulations to **Courtenay Bass of Dallas, Texas**, the 2004 Brutsché Award Recipient. Special thanks for all you do for AAM and the mediation profession, Courtenay!

Advanced Certified Mediators

AAM congratulates the following members who have achieved or renewed their Advanced Certified Mediator status for the 2004 year (subsequent to the prior newsletter printing):

Jeffrey Abrams
 Pamela Hoerster
 Michael Wilk

In order to retain Advanced Certified Mediator status, holders of the certification must submit renewal applications annually. To receive an application for Certified Mediator or Advanced Certified Mediator, please contact the National Office at 1-800-280-1368/972-669-8101 or email a request to aam@airmail.net.

2004 AAM Annual Meeting Huge Success

AAM's Annual Meeting and Advanced Attorney-Mediator Training, "Birthplace of AAM," held in Dallas, Texas on April 2 & 3, 2004 was a huge success. One hundred twenty-two attendees enjoyed the "unusual" format put together and led by Mike Amis. Some of the most experienced AAM mediators presented topics and led discussions that kept the audience members on their toes. Mediators from near and far got new insight on various subjects throughout the two day seminar and had great fun at the evening dinner activities with their guests and others. We welcomed AAM members and non-members from Texas, Oklahoma, Arkansas, Ohio, West Virginia, Washington, South Carolina, Illinois, Mississippi and Louisiana. Everyone took away great new ideas and renewed enthusiasm for mediating. Don't miss out on the fun and invaluable training! Please join mediators from across the nation at one of our upcoming Advanced Mediator Trainings.

AAM Welcomes New Members

We are pleased to announce the following new AAM members:

Ted Akin, Dallas, Texas
Carol Anderson, West Palm Beach, Florida
Robert Barbee, Dallas, Texas
Louis Bien, Horseshoe Bay, Texas
Faith Bruner, Dallas, Texas
David Carlson, Houston, Texas
William Cobb, Reno, Nevada
Richard Davis, Canton, Texas
Sam Day, Fort Worth, Texas
Dawn Estes, Dallas, Texas
Frank Finn, Dallas, Texas
Robert Fritz, Houston, Texas
Albert Hand, Shreveport, Louisiana
James Jarvis, Georgetown, Texas
Jake Jones, Oklahoma City, Oklahoma
Jerry King, San Antonio, Texas
Stacey Langenbahn, Irving, Texas
William Leininger, Staten Island, New York
Thomas Lightsey, Houston, Texas
Thomas Morris, Dallas, Texas
John Ovard, Dallas, Texas
Robert Power, Irving, Texas
Shawn St. Clair, Austin, Texas
Gary Wallace, Dallas, Texas
Arthur Weber, Cincinnati, Ohio
Rob Wiley, Houston, Texas

We welcome you to the Association of Attorney-Mediators and look forward to your active participation within this organization!

Follow-Up: The Next Stage

Mike Amis, Dallas, Texas

“Follow Up” is a term embracing the “next stage” efforts following the initial mediation session.

I realized that a frontier awaited us mediators when I interviewed a respected trial judge for this newsletter some time ago. AAM at the time was collecting reports of individual cases, and an average 80% settlement rate from all our members had emerged. As I was just sitting down in our interview, his Honor opened with, “Amis, your 80% settlement rate doesn’t impress me!” I was taken aback, my spirits sank, and I struggled to keep my voice from cracking. “I have a 95% settlement rate,” was his next statement. He went on to explain that the great thing about mediation for his court was not settlement but, rather, *early* settlement. From his view, the odds heavily favored the case settling, and a method to reach that result earlier, without the predictable two or three continuances reduced his administrative burden and freed him up to be a jurist.

Here are some next stage thoughts in those situations where the case has not yet settled. There are two types of deadlocks: (1) the “airball”; and (2) the “we-almost-made-it.” Our follow-up techniques will depend on which type of exit was accomplished. Example of an airball: exiting offers are \$2 million vs. \$10,000. Example of we-almost-made-it would be \$180,000 vs. \$120,000.

1. Follow-up on the airball includes tickling the file for relevant events between break-up and the trial date, important motion or discovery events, checking with them periodically to see if the time is ripe to revisit the settlement phase of the litigation, a parallel track we have helped lay down. The questions, are: (1) When can these folks exchange serious offers? (2) What has to happen to enable one of them to make a serious offer? Remember, the settlement track carries the train which will arrive first at the station 95% of the time. That’s the train we’re on, it’s *our* train, and we want to help pull it into the station. When the

time is ripe, then the techniques below can bear fruit. The main thing in the interim is to maintain periodic contact so the settlement track, although temporarily at rest, is ready for traffic at any moment.

2. Follow-up on the we-almost-made-it is substantially different. Here, they have exchanged serious offers; each counsel could write an essay detailing why the last offer of the opponent could be/should be accepted. But, they’re tired, they’re frustrated, it’s just not going to happen at the session. We have various tools to test their digging in while still at the office: mediator’s proposals, meeting with the attorneys, and meeting with the clients either with or without the lawyers. Two principles here: (1) be sure you’re in any meeting with between the parties; otherwise, the heavy odds are that you won’t get back into the game; (2) from our late colleague Peter Chantilis, never let the principals in a business case leave without meeting with each other (always secure the attorneys permission; of course, if they object, don’t press it).

A caution: be alert as we wrap things up, *we* don’t give up even if they talk like they have. We may be talking about leaving, calling them tomorrow, or reconvening, but we are alert to the fact that their body language may be telling us that they really want to get this over today — right now. Here’s where our suggestions may be appropriate and pay off. We walk them to the lobby or the car. We are aware of where all parties are in the building or on the floor. They have paid us to be their “third ear,” and this is show-time.

Okay, assume we’ve done all that, but they’re still dead in the water. Everyone leaves frustrated it didn’t settle. We drive home, mulling over what else we could have done. If we fuss and fume and wake up in the middle of the night thinking about the negotiation, what do we think *they’re doing??* It’s not even our case! Next morning, we review why the case didn’t settle, it should have, what can we do that day, tomorrow, next week. What is the best time to call the lawyers? Give him/her the morning off, we don’t want to be a pest, we’ll call at 2:00, a little after lunch. We do that;

they've talked to the client, they're ready to make another offer. Ah, the afterglow. We're still in the hunt, it's not over, and they want us to be a part of it! Offers are exchanged, maybe a mediator's proposal. They come up with a brand new idea that we should have thought of but for some crazy

reason did not. Momentum builds, faxes fly, emails erupt, and the case settles that day or the next. Now, we have satisfied customers (still the best marketing plan) who left somewhat frustrated and disgruntled and who is now singing our praises. *SETTLED!*

Amicus Brief Filed on Behalf of AAM

Wayne Scott, Professor
St. Mary's School of Law

There are two recent cases out of the Dallas Court of Appeals directly affecting mediation, *Avary v. Bank of America, N.A.*, 72 SW3 779, 782 (2002), and *Alford v. Bryant*, No. 05-03-00449-CV, 2004 WL 1345077 (2004). *Avary* is currently before the Supreme Court of Texas on application for writ of mandamus. Motion for Rehearing at DCA has only recently been denied in *Alford*.

While *Avary* and *Alford* most directly impact Texas Attorney-Mediators, there could be national implications. Accordingly, our non-Texas members may want to stay tuned to what the Texas courts ultimately do in both of these cases.

The Association of Attorney-Mediators has filed an *amicus* brief with the Texas Supreme Court in the *Avary* case. While the brief is *Avary* specific, it does address the *Alford* case as well. The significance is that the DCA cited *Avary* as authority in *Alford* to the effect that a mediator may be called to testify to disclosures allegedly made (or not made) by an attorney during a mediation. These two cases, if they stand up, would cloud the status of mediation confidentiality in Texas. Since the Texas statute contains what is perhaps the strongest language of any ADR statute favoring confidentiality of the mediation process, Texas would not be the only jurisdiction where the mediation practice could be severely impacted.

The *Alford* decision appears to be an even more dangerous decision than *Avary*. The DCA did not make a distinction

between the language in the Texas ADR statute and other types of confidentiality/privilege. We think the distinction is clear and that the legislative intent is clear, and our *amicus* brief addresses the distinction.

The Dallas Court of Appeals has cast a significant shadow over the status of mediation-confidentiality. In fact, two Dallas decisions may well destroy the mediation practice in Texas, as it currently exists. *Avary v. Bank of America, N. A.*, 72 S.W.3d 779, 782 (Tex. App.—Dallas 2002, pet. denied), now before this Court, deals with one of the more difficult facets of the confidentiality of mediations: does either or both of the mediation confidentiality statutes protect mediation communications, when they form the basis of another, different, action, when proof is to be made by the parties, as opposed to the mediator? In *Avary*, the information sought to be disclosed related to a tort allegedly committed during the mediation (breach of fiduciary duty). The information sought was held by an objecting party, and not by the mediator. The case was remanded to the trial court for a determination of whether, in light of the “facts, circumstances, and context,” disclosure was warranted. The trial court, on remand, did order disclosure. The court of appeals denied the subsequent request for a protective writ of mandamus. The party seeking to protect the information from disclosure now seeks a writ of mandamus before this court. It is AAM's position that *Avary* was wrongly decided, and the writ of mandamus should be granted.

Significantly, the *Avary* decision has been cited as authority in a much more dangerous case, in which the Dallas Court of

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Appeals held that a **mediator** may be called to testify to disclosures allegedly made (or not made) by an attorney during a mediation. That case is *Alford v. Bryant*, No. 05-03-00449-CV, 2004 WL 1345077 (Tex. App.—Dallas 2004, no history at this time). *Alford* involved an action for attorney malpractice, purportedly committed during the course of a mediation. At trial, the trial court refused to allow the mediator to testify. The Dallas Court of Appeals reversed and remanded, holding that the mediation privilege could not be used offensively. The Dallas Court failed to consider the fact that the mediator had not made use of the information, and failed to recognize the mediator's own privilege not to testify.

The broad issue presented is whether communications made during a mediation are confidential, and not subject to disclosure at trial. It is AAM's position that the answer to this issue is that information given in a mediation is not subject to disclosure, unless otherwise discoverable, or unless the parties consent to the disclosure by a participant in the mediation other than the mediator.

In both cases, the courts must determine whether there is any exception to the broad protection of communications in mediations. In *Avary* the sub-issue is whether a party may offer evidence of an act or omission, by another party or attorney, that constitutes a separate tort. In *Alford*, the sub-issue is whether the mediator may be required to testify to a disclosure (or non-disclosure) made (or not made) during the course of a mediation. Of the issues presented, the latter is the most important, and must be answered with a resounding NO!

The proper holding in both cases is to preclude testimony relating to matters that occurred during the mediation. At a minimum, the courts must recognize that the Texas statutes create a separate confidentiality right in the mediator (as opposed to the parties), which precludes the testimony of the mediator. The Texas statutes could not be plainer.

If one wanted to provide absolute immunity to a mediator, and to the participants in a mediation, one would copy the Texas ADR Statute. What wording would need to be added to, or taken away from, the Texas statutes? The intent to provide an absolute privilege is apparent from the plain face of the provisions of the statute.

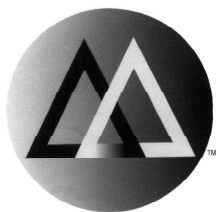
It is generally agreed that the Texas Alternate Dispute Resolution Statute contains the broadest provision of any state's statute to protect communications made during a mediation. Clearly, as currently practiced in Texas, the participants in a mediation, whether court ordered or conducted by consent, expect what is said and done in the mediation to be kept confidential, just as a penitent expects a clergyman to keep any communication confidential.

Stated another way, if the Texas statute does not protect statements made in the course of a mediation from disclosure, and does not protect a mediator from being called to testify, then no statute can do so.

It does not require citation of authority to state that the practice of mediation has transformed the litigation system in Texas, and throughout the nation, significantly reducing the number of cases tried, and cleared the backlogs that previously existed on many trial courts' dockets. The Texas Legislature, as well as Congress, has declared that confidentiality is essential to mediation. Certainly, mediators regularly assure the participants in the mediation process that their statements, with certain limits (for example, the duty to report child abuse), will be confidential, and not admissible in evidence.

It is absolutely essential to the continued success and viability of mediation in Texas that the mediator's promise of confidentiality be validated by court decision.

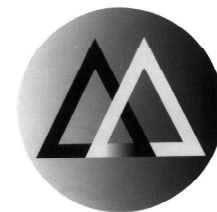
A full copy of AAM's brief is available by email at the Association's office (aam@airmail.net).



Association of Attorney-Mediators

presents its

Advanced Attorney-Mediator Training



FOCUS ON ETHICS

Friday, November 12, 2004

Omni Austin Hotel

700 San Jacinto Street at 8th Street
Austin, Texas

- 8:00 – 8:45 A.M. **Registration and Continental Breakfast**
- 8:45 – 9:00 A.M. **Welcome and Announcements**
John V. Dowdy, Jr., National AAM President
Steve Nelson, CEO, SureTec Information Systems, Inc.; President, Central Texas Chapter of AAM
- 9:00 – 9:30 A.M. **Evaluative Mediators and Their Potential Liability for Legal Malpractice: Crossing the Ethical Line**
Walter Wright, San Marcos
A discussion of practices by mediators that may cross the ethical line of neutrality and constitute the practice of law will give us invaluable boundaries on how far a mediator can go without becoming an advocate. This is the wake-up call we need!
- 9:30 – 10:00 A.M. **The *Avary* and *Alford* Decisions; Ethical Dilemma of Eroding Confidentiality**
Wayne Scott, San Antonio
Wayne will discuss the decisions in two cases decided by the 5th Court of Appeals in Dallas — *Avary v. Bank of America, N. A.*, 72 S.W.3d 779 (2002), *Alford v. Bryant*, No. 05-03-00449-CV, 2004 WL 1345077 (2004). These decisions cloud the status of mediation confidentiality in Texas, the state whose ADR statute contains what is perhaps the strongest language of any ADR statute favoring confidentiality of the mediation process.
- 10:00 – 10:30 A.M. **Ethical Quandary: The Erosion of Mediation Confidentiality**
Wayne Scott, panel chair
Jimmy “Skip” Hulett, San Antonio
David Kisner, Oklahoma City
Brian Shannon, Lubbock
Michael Curry, Austin
Our panel of experienced mediators will lead an interactive discussion on the ethical considerations of confidentiality in mediations, including the impact decisions like those in the *Avary* and *Alford* cases may have on the interpretations of states’ ADR confidentiality statutes.
- 10:30 – 10:45 A.M. **Break**

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Agenda - continued

10:45 – 12:00 P.M.

Mediator Ethics Quiz — Interactive Session

Jeff Abrams, Houston

Henry Blum, Houston

This energetic and enlightening session is sure to stimulate your thinking and provide check-points to apply to your own mediation practices.

12:00 – 1:30 P.M.

Luncheon

Guest Speaker: *Dr. Chris Thurman*

Integrity: The Key to Successful, Ethical Mediation

Dr. Chris Thurman is a psychologist, seminar speaker, and author. He holds a Ph.D in counseling psychology from the University of Texas at Austin. Prior to entering private practice, Dr. Thurman was a psychologist with the Minirth-Meier Clinic and a professor in the psychology department at the University of North Texas. Dr. Thurman is the author of numerous books, including the bestseller, *The Lies We Believe*, and also *The Stress Factor* and *The Pursuit of Intimacy*.

1:30 – 2:00 P.M.

The Historical Roots of Dispute Resolution

Jeff Jury, Austin

Jeff's lively interactive presentation will give you a new perspective on evolving dispute resolution techniques.

2:00 – 2:30 P.M.

Train Wrecks and Steam Rollers: Ethical Ways for Mediators to Address Extreme Power Imbalances Without Abandoning Neutrality

Reed Leverton, El Paso

Reed will discuss possible interventions in cases where extreme power imbalances are present. The focus of the discussion will deal with the tension between a mediator's ethical duties of neutrality and impartiality and the various means by which he or she can assist in creating a level playing field.

2:30 – 3:00 P.M.

Lies in Mediation — Undermining Ethical Standards?

Mark Perlmutter, Austin

A lot of people lie and manipulate in mediations without really thinking about it, because they think everyone does it. Mark will discuss "white lies," "black lies" and other lies in mediation, how to minimize your risk as a mediator, and how to deal with lies in mediation.

3:00 – 3:15 P.M.

Break

3:15 – 3:45 P.M.

The Mediator's Proposal — Its Use and Abuse: Ethical Overview

Steve Nelson, Austin

Steve will explain the technique and the danger of crossing the ethical line from being a third-party neutral to taking positions or having opinions about how the case should be settled and discuss how to explain the use of the mediator's proposal to the parties at mediation to avoid the appearance of advocacy for any party's position.

3:45 – 4:45 P.M.

The Last Frontier — The Joint Opening Session

Mike Amis, Dallas

Courtenay Bass, Dallas

Ross Stoddard, Dallas

Mediators are taught and believe that an opening, joint session with all parties and counsel present is a very important element of the mediation process. Yet, we are often faced with counsel and parties wanting to waive or forego the joint session. These very experienced mediators will lead the popular interactive session, focusing on the mediator's role in furthering the conduct of an effective joint session in civil cases of all types, including encouraging its use, being alert to danger signs, sharing principle-based techniques available to the mediator in this unique meeting, and under what, if any, circumstances a mediator should agree to forego the opening session.

4:45 – 5:00 P.M.

Closing Remarks — See you in New Orleans in the spring!

Texas and Oklahoma MCLE credit pending: 6.5 hours; 4.0 ethics hours.
To request MCLE credit in other states,
contact Brenda Rachuig ASAP at (800) 280-1368 or aam@airmail.net.

Advanced Attorney-Mediator Training Speakers and Panelists

Professor Walter Wright is an Associate Professor in the Legal Studies Program, Department of Political Science, Texas State University, and a past president of AAM. He designed the ADR component of the Legal Studies Program at Texas State University; and has been an instructor at numerous mediation courses in the United States and Latin America. He has authored articles and book chapters on the subject of mediation. He is fluent in Spanish.

Professor Wayne Scott teaches at St. Mary's University School of Law. He has taught International Mediation at the Institute on World Legal Problems in Innsbruck, Austria. Professor Scott is a frequent lecturer and writer on civil trial and appellate procedure, mediation and negotiation. He is AAM's point man in preparing the *amicus* briefs for the *Avary* and the *Alford* cases.

Jimmy "Skip" Hulett, is a former Texas District Court judge. He has over 20 years of broad-based experience in litigation. He is board certified in Personal Injury Trial Law by the Texas Board of Legal Specialization. He is a past recipient of the Outstanding Young Lawyer Award for Jefferson County

David Kisner is a full-time mediator in Oklahoma City who has conducted over 2,000 mediations. He has served as president of the Oklahoma Chapter of AAM and is currently a member of AAM's board of directors.

Professor Brian Shannon is a Professor and Associate Dean at Texas Tech University School of Law, Lubbock. In 2004 he was awarded the Justice Frank Evans Award by the State Bar of Texas. He is co-author of Rau, Sherman & Shannon's *Texas ADR and Arbitration: Statutes and Commentary*, and as author of numerous other articles on ADR, he has contributed invaluable to the development of ADR in Texas and beyond.

Michael Curry is a full-time mediator, and also an Adjunct Professor, University of Texas Law School, Austin. He has authored/co-authored numerous law review and CLE articles. He was a member of the Pattern Jury Charges Volume IV Committee (1994-1996) and is a Fellow, Center for Public Policy Dispute Resolution.

Jeffrey S. Abrams, Immediate Past AAM President, has conducted over 2,400 mediations of almost every conceivable type of case. He is an experienced mediator trainer and has given presentations and helped train mediators in such diverse places as Argentina, Australia and Hong Kong.

Henry Blum, Chair-elect of the ADR Section of the Houston Bar Association, is a full-time mediator and has conducted almost 1,500 mediations. He has conducted numerous trainings, presentations and facilitations.

Jeff Jury has a statewide litigation, mediation and arbitration practice. Jeff teaches dispute resolution and negotiation techniques to attorneys and law school students and is a prolific writer and speaker on dispute resolution topics throughout the United States.

Reed Leverton is a former Texas District Court judge and is now a full-time mediator. He has a strong business background in commercial real estate development and securities. Reed is a Certified Advanced Mediator, Association of Attorney-Mediators; and a Certified Distinguished Mediator, Texas Mediator Credentialing Association. He is currently working on his LL.M. in Dispute Resolution from Pepperdine School of Law/Straus Institute for Dispute Resolution.

Mark Perlmutter is a seasoned trial attorney and also an experienced mediator. He is presently on the City of Austin Ethics Commission and has served on the Board of Directors of the State Bar of Texas. He is a frequent CLE presenter. He is a past president of Volunteer Legal Services of Central Texas. Mark is the author of *Why Lawyers (and the Rest of Us) Lie and Engage in Other Repugnant Behavior*.

Steve Nelson practiced construction law for 19 years. He is currently president of a construction risk management firm. He is a past Chair of the Dallas, Travis County, and State Bar of Texas Construction Law Sections; a Fellow of the University of Texas Center for Public Policy Dispute Resolution; and an Adjunct Professor at the University of Texas School of Civil Engineering. He mediates construction and surety cases.

Mike Amis is an experienced trial attorney who is now a full-time mediator and mediator trainer. He is a co-founder, original board member, and former president of AAM. He has trained over 1,000 mediators and has conducted over 1,000 mediations. He is Board Certified, Civil Trial Law, Texas Board of Legal Specialization.

Courtenay Bass is a full-time mediator and a charter member of AAM. She has been on the faculty of many mediator training programs in the U.S. and elsewhere, and has conducted well over 2,000 mediations. She also is an Adjunct Professor, SMU School of Law Trial Advocacy Program. Courtenay was the 2004 recipient of AAM's Brutsché Award.

Ross Stoddard is a full-time mediator and has conducted 3,000+ mediations in virtually all areas of law. He frequently presents programs for local, state and national mediation/ADR organizations. He teaches negotiations courses in the Executive MBA Program at SMU.

To Do List:

- ☑ Register early for the AAM Advanced Mediator Training Seminar in Austin and make hotel reservations. Reservation deadline for the hotel's reduced rate is October 21, 2004.
- ☑ Update the national office with any changes to your address, phone, fax or email.
- ☑ Texas AAM Members — mail your Texas Lobby Fund contribution to AAM's national office at P.O. Box 741955, Dallas, Texas 75374-1955.
- ☑ Add AAM's website link to your law firm/mediation firm/personal website. It increases AAM's priority and exposure. www.attorney-mediators.org.
- ☑ **TELL ONE COLLEAGUE OR FRIEND ABOUT AAM.** Brochures are available for your circulation upon request to the National Office. 1-800-280-1368 or aam@airmail.net.

2005 Annual Meeting New Orleans Now In Planning Stages

The 2005 AAM Annual Meeting Advanced Attorney-Mediator Training will be held in **New Orleans, Louisiana**. The dates and venue have not been selected, but information will be published as it is available, on our website at www.attorney-mediators.org. Members will receive details by email and fax when selected. Gayle Cipriano, AAM President Elect, will be planning a stimulating and enjoyable format. You may contact Gayle at jjcip@aol.com or 512-346-7484 if you would like to assist with this planning. Attendees will have a wonderful destination to enjoy along with the benefits of a first-class mediation training.



ASSOCIATION OF ATTORNEY-MEDIATORS

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