

DISPUTE RESOLUTION

The Newsletter for Conflict Resolution Neutrals and Attorneys published by the Dispute Resolution Section of the Tennessee Bar Association June 2006 issue

DISPUTE RESOLUTION is an e-newsletter publication of the Dispute Resolution Section of the Tennessee Bar Association. Articles may be submitted to its co-editors, Hayden Lait at haydenlait@gmail.com or Elizabeth Guenther at eguenther@boultcummings.com <<mailto:eguenther@boultcummings.com>>

MESSAGE FROM INCOMING TBA DISPUTE RESOLUTION SECTION CHAIR

The TBA Dispute Resolution Section concluded its year with an excellent CLE program at the TBA convention on the concept of "good faith" in mediation. The CLE was presented by outgoing Section Chair Earle Schwarz and panelists Hayden Lait, Pamela Reeves, Max Williams and Howard Vogel. Thank you Earle for all your work as DR Section Chair!

The DR Section met at the TBA convention, with members suggesting great ideas for the Section. I encourage DR Section members to be active this year. If you are interested in serving on the Section's Executive Committee this year, email Lynn Pointer at the TBA.

I look forward as serving as Section Chair this year. Best regards, Marnie Huff

LIPSCOMB UNIVERSITY INSTITUTE FOR CONFLICT RESOLUTION IN NASHVILLE

On June 20, 2006, Lipscomb University announced a new project called the Institute for Conflict Resolution (ICR). As reported in The Tennessean, "The ICR plans to be a national leader in providing training and resources in the rapidly expanding professional competency of conflict management and resolution of disputes in business settings as well as within the educational, religious and family contexts."

In September the Institute will host its Inaugural Conference on Conflict Resolution with British humanitarian, hostage negotiator, and author Terry Waite as its keynote speaker. Later this fall the Institute will host a National Conference on Dispute Resolution in Employment with Pepperdine Law School Dean Kenneth Starr as its keynote speaker.

For more details, see

<http://www.tennessean.com/apps/pbcs.dll/article?AID=/20060620/NEWS04/60619011>
<<http://www.tennessean.com/apps/pbcs.dll/article?AID=/20060620/NEWS04/60619011>> and http://www.lipscomb.edu/filter.asp?SID=4&fi_key=640&co_key=9916
<http://www.lipscomb.edu/filter.asp?SID=4&p:fi_key=640&co_key=9916>

COURT OF APPEALS CASE TEACHES IMPORTANCE OF CLEAR SETTLEMENT AGREEMENTS

On June 19, 2006, the Court of Appeals filed its opinion in Noah v. Noah, No. E2005-02511-COA-R3-CV. In this family law case, the trial court ordered mediation on disputes about alimony, child support arrearages and the appropriate amount of current child support. The parties reached an agreement memorialized in a handwritten agreement. Later, when counsel for the parties attempted to incorporate the agreement in a proposed court order, there was a disagreement as to the parties' intent regarding child support. The mother filed a motion to enforce the handwritten agreement's provision that the father provide certain financial information. At a hearing where both the father and his attorney were absent, the trial court went beyond the scope of the mother's motion and set a new amount of child support. The trial court denied the father's motion for relief from the judgment.

The Court of Appeals reversed, holding that the trial court erred in denying the father's Rule 60 motion for relief from judgment. The Court vacated the judgment and remanded the case to the trial court to require the father to provide current income information (as he had agreed in the mediated settlement) and determine the father's child support obligation.

PROPOSED FEE DISPUTE ARBITRATION RULE PUBLISHED FOR COMMENT

As recently reported in the TBA Today newsletter, on June 13, 2006 the Tennessee Supreme Court published for comment a proposed new rule requiring lawyers to participate in a fee dispute resolution arbitration program. The rule "closely follows the concept of the TBA proposal submitted a year and a half ago," according to TBA Immediate Past President Charles Swanson, who headed the court-appointed group that reviewed the proposal. Clients could begin the process by filing a petition that would stay any court action to collect a fee. A Fee Dispute Resolution Commission, financed by filing fees, would appoint arbitrators to hear cases. Client consent would be required to bind clients, but initial fee agreements could include client consent to submit to the process.

SUPREME COURT SEEKS COMMENT ON RULE 31 REVISIONS

On June 22, 2006, the Tennessee Supreme Court published for comment revisions to Rule 31 on court-annexed alternative dispute resolution. The proposal made by the court's ADR Commission would require Rule 31 mediators who are licensed by another agency to be in good standing with that agency; establish a new designation for Rule 31 family mediators who are "Specially Trained in Domestic Violence"; provide for Rule 31 mediator designation for sitting judges upon retirement; permit non-lawyer mediators to use continuing education credits for licensing by another agency to satisfy mediation training requirements; and, establish new procedures for revocation and suspension of Rule 31 designations. Comments are due not later than Aug. 21. See the order and the proposed rule:

http://www.tba2.org/tbatoday/news/2006/rule31_062206.pdf
<http://www.tba2.org/tbatoday/news/2006/rule31_062206.pdf>

PRACTICING LAW THE COLLABORATIVE WAY

The June 2006 issue of the ABA Journal includes an article on "Collaborative Counselors." Collaborative law is gaining popularity in certain parts of the country,

particularly in family law. This type of ADR involves a different relationship between lawyer and client. At the beginning of a case, the parties identify their goals and interests. They and their lawyers agree to protocols that promote an exchange of ideas (that are agreed to be confidential and not admissible in court) with their goal being the best possible settlement for all the parties without going to court. If the parties are unable to settle, the lawyers are required to withdraw, and the parties must retain new counsel for litigation.

INTERESTING WEB SITES

ADR professionals might want to check out some interesting web sites:

* Tennessee Association of Professional Mediators at
<http://www.tennmediators.org/index.cfm>
<<http://www.tennmediators.org/index.cfm>> .

* Mediate.com at <http://www.mediate.com>

* EEOC web page on mediation:
<http://www.eeoc.gov/mediate>
<<http://www.eeoc.gov/mediate>>

* Humorous article on an "unusual" form of ADR--rock, paper, scissors!
http://money.cnn.com/2006/06/07/magazines/fortune/rps_fortune/
<http://money.cnn.com/2006/06/07/magazines/fortune/rps_fortune/>