

DISPUTE RESOLUTION

The Newsletter for Conflict Resolution Neutrals and Attorneys published by the Dispute Resolution Section of the Tennessee Bar Association--July 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 <<mailto:haydenlait@gmail.com>> or Elizabeth Guenther at eguenther@boultcummings.com

I. MESSAGE FROM TBA DISPUTE RESOLUTION SECTION CHAIR

Last month, I traveled to Memphis with TBA DR Section Executive Council member Marietta Shipley to meet with Memphis Bar Association ADR Committee Chair Sheree Hoffman and her colleagues about promoting ADR across the State. I hope to touch base with other local ADR committees across the State this year, to promote collaboration among the state and local bar associations.

Regards, Marnie Huff
Chair, TBA Dispute Resolution Section

II. OPPORTUNITIES FOR TBA DISPUTE RESOLUTION SECTION MEMBERS

At its meeting on July 12, 2006, the TBA Dispute Resolution Section's Executive Council formed committees and appointed a liaison to another TBA committee, giving more TBA DR Section members an opportunity to participate in the Section's activities this year. The committees formed and the liaison appointed so far are:

1. CLE Committee (co-chairs Dan Nolan, Clarksville, and Pat Vital, Chattanooga)
2. Appellate ADR Committee (chair Mark Travis, Cookeville)
3. Public Education Committee (chair David Taylor, Nashville)
4. Liaison to Access to Justice Committee (Max Williams, Memphis)

The Appellate ADR Committee and the Public Education Committee are seeking members. To join, please contact:

Appellate ADR Committee chair Mark Travis at mtravis@wimberlylawson.com <<mailto:mtravis@wimberlylawson.com>> or 931-372-9123 Public Education Committee

chair David Taylor at dtaylor@boultcummings.com

If you have suggestions for future TBA Dispute Resolution Section projects contact Section Chair Marnie Huff at marniehuff@bellsouth.net or 615-812-5557.

III. PROPOSED AMENDED RULE 31

There are several proposed amendments to Rule 31 and the Supreme Court has asked for comments on these proposed amendments. All TBA Dispute Resolution Section members received an e-mail enclosing the proposed amendments and instructions for comment. Please review these amendments and submit your comments to TBA Sections Coordinator Lynn Pointer at lpointer@tnbar.org by THURSDAY JULY 27.

IV. PRIVILEGE OF SETTLEMENT DISCUSSIONS "AN OPEN QUESTION" OUTSIDE THE 6TH CIRCUIT

In the 2003 case Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc. the 6th Circuit expressly upheld the existence of a federal settlement privilege--prohibiting the discovery in future cases of settlement documents or negotiations from previous cases. Goodyear Tire, 332 F.3d 976, 977 (6th Cir. 2003). However, the D.C. Circuit recently held that a federal settlement privilege is an "open question" in federal courts. In re Subpoena to the Commodity Futures Trading Comm'n, 2006 WL 508066 (D.C. Cir. March 3, 2006). Until this law is settled, settlement discussions in matters that have not yet become litigated cases, or settlement discussions in federal cases outside the 6th Circuit, should be approached with caution.

Condensed from the National Law Journal article "Willing to Settle? Think Twice" by David A. Battaglia and Julian W. Poon (May 15, 2006).

V. ATTORNEY-IN-FACT MAY EXECUTE A NURSING HOME ADMISSIONS CONTRACT THAT INCLUDES AN AGREEMENT TO ARBITRATE

In the recent Tennessee Court of Appeals case Owens ex rel. King v. National Health Corporation the Court of Appeals found that "an attorney-in-fact's authority to execute any necessary waiver, release, or other document for implementing health care decisions includes executing an admission contract which includes an agreement to arbitrate."

See the full text at <http://www.tsc.state.tn.us/opinions/tca/PDF/062/OwensDorothyOPN.pdf>
<<http://www.tsc.state.tn.us/opinions/tca/PDF/062/OwensDorothyOPN.pdf>>

VI. CHILD SUPPORT OBLIGATION OF A NON-RESIDENTIAL PARENT WILL CONTINUE AFTER THE DEATH OF A RESIDENTIAL PARENT, EVEN IF CUSTODY IS AWARDED TO ANOTHER PARTY

In the July Tennessee Supreme Court opinion Kirkpatrick v. O'Neal, the Court found that, "a non-residential parent's obligation to support a minor child continues until the child reaches majority, no matter who retains custody of the child."

See the full text at <http://www.tsc.state.tn.us/OPINIONS/TSC/PDF/063/KirkpatrickMopn.pdf>

VII. REVISED UNIFORM ARBITRATION ACT

The Revised Uniform Arbitration Act (RUAA) was drafted and adopted in 2000 to update the Uniform Arbitration Act (UAA) of 1956, and it is now being considered at the state level. In June, 2006 the Association for Conflict Resolution (ACR) endorsed the RUAA. The endorsement called the RUAA "an appropriate Act" for states to adopt without modification, but acknowledged "the

concern that the RUAA does not expressly exclude application to labor arbitration under collective bargaining agreements.

VIII. USEFUL LINKS

1. American Bar Association Section on Dispute Resolution
<http://www.abanet.org/dispute/home.html>
<<http://www.abanet.org/dispute/home.html>>
 2. Association for Conflict Resolution
<http://www.acrnet.org>
<<http://www.acrnet.org/>>
 3. Pepperdine University Straus Institute for Dispute Resolution
<http://law.pepperdine.edu/straus>
<<http://law.pepperdine.edu/straus>>
 4. University of Missouri Center for Dispute Resolution
<http://law.missouri.edu/csdr>
<<http://law.missouri.edu/csdr>>
 5. Harvard Program on Negotiation
<http://www.pon.harvard.edu>
<<http://www.pon.harvard.edu/>>
- IX. HUMOR (Not the best alternative to brainstorming)

The internet provides this "essential" vocabulary addition for the workplace: "Blamestorming"--sitting in a group, discussing why a deadline was missed or a project failed, and who was responsible.