

DISPUTE RESOLUTION

The Newsletter for Conflict Resolution Neutrals and Attorneys
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DISPUTE RESOLUTION is an e-newsletter publication of the TBA Dispute Resolution Section. Articles may be submitted to its editor Elizabeth Guenther at eguenther@boultcummings.com

MESSAGE FROM TBA DISPUTE RESOLUTION SECTION CHAIR

This month's e-newsletter includes matters of interest to our colleagues in the TBA Litigation Section, who are receiving a complimentary copy of this e-newsletter. Our e-newsletter circulation this month will be over 900 lawyers and mediators in Tennessee! We hope you will consider joining the Dispute Resolution Section - at a cost of only \$20.00 per year.

Benefits of DR Section membership include:

- * networking with outstanding dispute resolution neutrals from across the State
- * this monthly electronic newsletter which provides timely news and information to mediators and others interested in conflict management
- * opportunity to contribute short articles to this e-newsletter
- * service to the bar through participation in DR Section committees and Executive Council
- * active DR section members plan CLE, comment on proposed rules that impact alternative dispute resolution, support pro bono mediation and the TBA Access to Justice Committee, and plan events surrounding Mediation Day

If you are already a TBA member, please click on this link to join the Dispute Resolution Section

http://www.tba.org/sections/join_section.html

Regards, Marnie Huff
Chair, TBA Dispute Resolution Section

INVITATION FROM INSTITUTE FOR CONFLICT MANAGEMENT AT LIPSCOMB UNIVERSITY IN NASHVILLE - SEPTEMBER 19, 2006 DINNER FEATURING TERRY WAITE

From the ICM: We have a unique opportunity to share informal time with a world class negotiator. Terry Waite, the Anglican Church hostage negotiator who became a hostage himself, will be in Nashville on September 19 in conjunction with the Forum on Negotiated Outcomes being sponsored by the Institute for Conflict Management at Lipscomb University (see: <http://icm.lipscomb.edu>). The Tennessean is planning to run an article about Terry's perspective on the crisis in the Middle East and his personal experience with the Hezbollah next week.

The Institute is extending a special invitation to the Tennessee mediator community to attend a dinner with Terry Waite on that evening. It will be held at the historic Scarritt-Bennett Center in the Raintree Room in Bennett Hall near the Vanderbilt Campus (see map: http://www.scarrittbennett.org/about/documents/sbc506_001.pdf)

Dinner will be served at 7:00 p.m. consisting of a beef tenderloin entrée. If you would like another meal, those arrangements can be made if you contact Lipscomb promptly.

You will be given a rare opportunity to converse with Terry Waite in an informal Q&A session about the role we play as mediators and negotiators. If you have specific questions you would like to ask Terry you can provide them in advance or ask them in person. This is a once in a life opportunity you will not want to miss.

There is room to accommodate 100 guests and seats are filling up quickly. If you would like to participate, the cost will be \$20 per person. Please R.S.V.P. by contacting Sherrie Guenther at Lipscomb University (615-279-6680) or by email at sherrie.guenther@lipscomb.edu. Responses after Friday, September 15 cannot be guaranteed to be honored.

OCTOBER 19, 2006 IS MEDIATION DAY IN TENNESSEE

Governor Bredesen issued a proclamation declaring October 19 Mediation Day in Tennessee. The TBA DR Section spearheaded formation of the new Tennessee Coalition for Mediation Awareness, collaborating with local bar associations, community mediation centers, and other non-profit organizations across the State to increase public awareness of alternative dispute resolution and peace-making. The text of the Coalition's press release issued on Sept. 12 is at <http://www.tsc.state.tn.us/geninfo/PRESSREL/2006/063pr.htm>.

October 19 is also International Conflict Resolution Day, begun last year by the Association for Conflict Resolution. This year the World Mediation Forum joins in co-sponsoring the global celebration. Click here for information - www.acrnet.org/crday.

Watch for news about upcoming Mediation Day events in Tennessee in the October issue of this e-newsletter from the TBA.

CASELAW UPDATE

Rule 31 discussed in case holding judge's participation in approval of settlement with minor did not require recusal at trial involving non-settling defendants

In *Vannucci v. Memphis Obstetrics and Gynecological Assn, P.C. et al*, No. W2005- 00725-COA-R3-CV (Tenn. Ct. App. July 11, 2006), the Court of Appeals held that the trial court was not required to recuse herself "under the unique facts of this case." By performing her role required under T.C.A. 34-1-121(b) (requiring that the trial court hold a hearing to determine that a settlement with a minor should be approved by the court), the trial court did not lose her impartiality. "Although it appears as though [the trial judge] received certain evidence at the hearing for the limited purpose of fulfilling her statutory obligation, we cannot say that she has prejudged the remainder of the case or no longer remains impartial." The non-settling defendants were excluded from the in-chambers hearing held on the settlement. The terms of the settlement were kept under seal. The trial judge ordered, but did not preside over, mediation between the parties. There was no transcript of the in-chambers hearing. In a statement of evidence, the trial court stated that "[d]uring the settlement hearing everyone carefully avoided any discussion

of the non-settling defendants." Rejecting the non-settling defendants' argument that the trial judges conduct was analogous to presiding over a mediation, the court distinguished this case from *Team Design v. Gottlieb*, 104 S.W. 3d 512 (Tenn. Ct. App. 2002) where the trial court had conducted off-the-record discussions with each of the parties and subsequently entered an order adjudicating their claims.

TBA SUPPORTS CONSTITUTIONALITY OF MANDATORY PARTICIPATION IN FEE DISPUTE RESOLUTION

As recently reported in TBAToday, in a supplemental comment filed on August 29, 2006 with the Supreme Court, the TBA responded to concerns about the constitutionality of a new fee dispute resolution rule. The TBA cited cases from four other state appellate courts and two federal courts in support of the position that the fee dispute resolution rule is constitutional. For the full text of the TBA supplemental comment, see http://www.tba2.org/tbatoday/news/2006/feecomment_082906.pdf.

OPPORTUNITY TO WRITE ARTICLE - Special issue of The International Journal of Conflict Management Call for Papers on Alternative Dispute Resolution of Workplace Conflicts

All papers will be blind reviewed and manuscripts should be submitted in electronic form by November 1, 2006 to: Richard A. Posthuma, rposthuma@utep.edu. For inquiries contact: Richard A. Posthuma, Editor, International Journal of Conflict Management, College of Business Administration, Room 230, University of Texas at El Paso, El Paso, Texas 79968 (PHONE:(915) 747-8646; FAX: (915) 747-5348).

USEFUL LINKS ON THE WEB

- * American Bar Association Section on Dispute Resolution
<http://www.abanet.org/dispute/home.html>
- * Association for Conflict Resolution <http://www.acrnet.org>
- * Harvard Program on Negotiation
<http://www.pon.harvard.edu>
- * Institute for Conflict Management (ICM) at Lipscomb University in Nashville <http://icm.lipscomb.edu>
- * Pepperdine University Straus Institute for Dispute Resolution
<http://law.pepperdine.edu/straus>
- * Tennessee Association of Professional Mediators (TAPM)
<http://www.tennmediators.org/index.cfm>
- * University of Missouri Center for Dispute Resolution
<http://law.missouri.edu/csdr>