Arbitration and medical malpractice cases

By Richard P. Kidwell

While mediation has come to be widely accepted by both plaintiff and defense counsel in medical malpractice cases, arbitration of such claims is also emerging as another method to resolve cases more efficiently and swiftly than jury trials. In appropriate cases, such as where damages are limited or where the impact of limited insurance coverage is of significance, many lawyers are now discussing and agreeing to arbitration.

Selection of an arbitrator is of utmost importance. Either practicing or retired counsel or retired judges familiar with this area of law who have the reputation for fairness or impartiality should be chosen. This selection process is similar to that of selecting an appropriate mediator. Once the selection is made and agreed to by the arbitrator, then the ground rules can be decided upon by the parties and arbitrator.

These rules cover both the form and the substance of the arbitration process. Similar to a court’s pre-trial order, many issues are determined, such as: when and where the hearing will take place and how much time will be allotted for it; whether the parties, counsel and witnesses appear live or just submit materials; whether experts may testify or just provide written reports; how many witnesses will be permitted; and whether and what rules of procedure and evidence apply. As this is their day in court, the parties should attend and testify. In the absence of a jury, however, the hearing can proceed apace and be more informal. Pre-arbitration submissions can prepare the arbitrator for the facts and issues to be presented. Post-arbitration briefings may or may not be requested by the arbitrator. The arbitrator’s decision is usually not rendered immediately at the hearing’s conclusion, but it is usually given within several days thereafter when the arbitrator has had time to digest the testimony and exhibits and other submissions. The verdict can range from a simple finding for plaintiff or defendant or a monetary award if the plaintiff prevails. Though not usually done, a full-blown opinion can be written explaining the rationale behind the decision.

One of the attractions of arbitration is its decreased cost compared to a jury trial. The hearing most often can be done in a day. Another attraction is that arbitration, if necessary, can be staggered to accommodate the parties’ and witnesses’ schedules. The hearing

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Message from the ADR Committee chair

By Stephen G. Yusem

Our ADR Committee is moving forward. The Executive Council convened on Oct. 31 at PBA headquarters in Harrisburg. Vice Chair Jim Rosenstein and I are honored to have such knowledgeable and competent colleagues to lead our 11 subcommittees:

Lindsey Bierzonski, secretary

Conflict Resolution Day:
Charles Shaffer, chair
James Kozuch, vice chair

Committee Newsletter:
Mary Kate Coleman, editor

Continuing Legal Education:
Ross Schmucki, chair
Judy Weintraub, vice chair

Fiduciary ADR:
Neil Hendershot, co-chair
Hon. Richard Klein (Ret.), co-chair

Lawyer Dispute Resolution Program:
Mel Shralow, chair
Robert Johnston, vice chair

Public Relations:
David Doto, chair
Denise Pekelnicky, vice chair

Legislative:
Richard Kidwell, chair
John Toczydlowski, vice chair

RUAA Action:
Hon. Mason Avrigian (Ret.), chair
Michael McDowell, vice chair

Liaison:
Jim Rosenstein, chair
Charles Kenrick, vice chair

Sir Francis Bacon ADR Award:
Cheryl Cutrona, chair
Ed Blumstein, vice chair

Membership:
Herb Nurick, chair
Laura Cooper, vice chair

At our committee meeting on Nov. 17 at the Holiday Inn Harrisburg East, to be held in conjunction with PBA Committee/Section Day, I shall ask each subcommittee leader to report on subcommittee objectives and activities to date. Our committee meeting will commence at 1:30 p.m. and conclude no later than 3:30 p.m. A buffet lunch will be provided from 12:30 to 1:30 p.m. at no cost to our committee members.

In addition to first reports from our Executive Council members, we will consider other agenda items including whether or not to create an Environmental ADR Subcommittee, whether the name of our committee should be changed from Alternative Dispute Resolution to Dispute Resolution and whether we should accede to a request that we provide pro bono mediation services in partnership with the PBA Delivery of Legal Services Committee. We also expect PBA Legislative Counsel Steve Loux to brief us on current legislative initiatives. If there are items and issues that any member wishes to raise, he or she need only advise me as far in advance of our meeting as possible so that I may add such items to our agenda.

As we strive to increase our membership, Committee/Section Day represents an excellent opportunity for you to invite colleagues to join us for lunch and our committee meeting as a means to orient them to our activities and alert them to the opportunities that await them by joining our committee. Obviously new members enhance our networking potential and enable us to move forward more effectively.

Please join us for our Committee/Section Day on Nov. 17.

Best regards,

Welcome new committee members

The Pennsylvania Bar Association Alternative Dispute Resolution Committee extends a warm welcome to the following new committee members:

Dianne Dusman, Pennsylvania Office of Consumer Advocate, Harrisburg
Edward J. Greene Jr., Riley Riper Hollin & Colagreco, Easton
Judith W. Weintraub, Weintraub Legal Services, Valley Forge

The committee hopes that Dusman, Greene and Weintraub enjoy their committee membership and experience the many benefits of serving on the Alternative Dispute Resolution Committee.
I hope you are enjoying a beautiful Pennsylvania autumn! We are pleased to issue our committee’s fourth and final newsletter of 2011. I trust that you will find it to be of interest and wish to thank everyone who contributed items for the newsletter or otherwise assisted in its production.

It is my pleasure to welcome new members to our newsletter subcommittee. Stephen Hall, Denise Pekelnicky and John Toczydlowski have joined me, Chuck Kenrick and Clymer Bardsley on the newsletter subcommittee, and we are grateful to have them on our subcommittee.

In addition to our usual, wonderful substantive articles, this newsletter contains several new features. We have added an Ask the Dispute Resolution Professional column, a Members in the News section and a Welcome to New Members section. Our committee strives to improve each newsletter that we publish, and we welcome any suggestions for future additions or improvements.

As in the past, we are soliciting items for our next newsletter. We would appreciate receiving articles, book reviews, case summaries, subcommittee reports, photos, notices of upcoming events, etc., that may be of interest to your fellow committee members. The deadline for items for the next edition of the newsletter is Feb. 1, 2012. You may send your newsletter items to me at mkcoleman@rhwrlaw.com.

Best wishes for a wonderful holiday season!

Mary Kate Coleman
is a civil litigation attorney, mediator and arbitrator with Riley, Hewitt, Witte & Romano P.C. in Pittsburgh.
By Charles A. Shaffer

My good friend, Steve Yusem, has asked me to chair the Conflict Resolution Day Subcommittee of the Alternative Dispute Resolution Committee of the Pennsylvania Bar Association. My first order of business was to recruit Jim Kozuch as vice chairman, upon Yusem’s recommendation. My second order of business was to find out what Conflict Resolution Day is.

The Association for Conflict Resolution is a professional organization enhancing the practice and public understanding of conflict resolution. It is the nation’s largest professional association for mediators, arbitrators, educators and other conflict resolution practitioners. The Association for Conflict Resolution works in a wide range of settings throughout the United States and around the world.

The Association for Conflict Resolution Board of Directors adopted a resolution designating the third Thursday in October as Conflict Resolution Day in order to increase public awareness about conflict resolution and its many benefits. The first Conflict Resolution Day was celebrated in 2005. The Association for Conflict Resolution encourages individuals, conflict resolution organizations, and local, state and international groups to hold celebrations in connection with Conflict Resolution Day.

Conflict Resolution Day was conceived to promote awareness of mediation, arbitration, conciliation and other creative peaceful means of resolving conflict, to promote the use of conflict resolution in schools, families, businesses, communities, governments and the legal system, to recognize the significant contributions of peaceful conflict resolvers and to obtain national synergy by having celebrations happen across the country and around the world on the same day. October has become a time to promote and celebrate peaceful conflict resolution practices worldwide. Dedicated dispute resolution practitioners are helping to educate the public about mediation and other innovative conflict management processes.

The American Bar Association declared the third week of October “ABA Mediation Week,” in part building on the efforts of many other national, state and local organizations, including the Association for Conflict Resolution.

The United States Institute of Peace is now jointly co-sponsoring Conflict Resolution Day with the Association for Conflict Resolution. According to the website of the United States Institute of Peace, Conflict Resolution Day is an international day set aside to promote and honor the work of conflict resolution. The United States Institute for Peace and the Association for Conflict Resolution are jointly sponsoring an event focusing on international conflict resolution and peacemaking and on examining the current challenges in the field.

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The American Bar Association designed the week of Oct. 16-22, 2011, as Mediation Week. The ABA Mediation Week initiative was a
PBA ADR Committee Members in the News

Mary Kate Coleman, editor of this newsletter, was presented with the Eric W. Springer Professionalism Award by the W. Edward Sell American Inn of Court at the inn’s April 20 meeting. The award was created to honor Springer, a prominent Pittsburgh health law attorney, who was the inn’s first recipient of the national American Inns of Court Professionalism Award. The award is given to a chapter member whose life and practice display sterling character and unquestioned integrity, coupled with ongoing dedication to the highest standards of the legal profession and the rule of law. Coleman is the second recipient of the award.

Ann L. Begler, past co-chair of the PBA ADR Committee and founder and principal of the Begler Group, is writing an opinion column, The Anti-Antagonist. You can read her blog each Wednesday on the Pittsburgh Post-Gazette’s, online, ipso facto page, and prior posts by entering “Ann Begler Anti-Antagonist” into your Google browser.

Dan Cusick, past chair of the PBA ADR Committee, accepted an appointment in May as an administrative law judge (ALJ) with the Social Security Administration in Morgantown, W.Va. He writes: “I started in mid-July, spent August in the Washington, D.C.-area with 47 other new ALJs, learning how to do the job. Since then, I have been commuting from my home to Morgantown every day and hearing and deciding Social Security disability cases involving disability applicants from West Virginia, Ohio and Pennsylvania. It is not an adversarial hearing (ADR?) since the applicant may or may not have a representative (who may or may not be an attorney), and there is no attorney or representative opposing the disability applicant. Not one of the usual types of dispute resolution, but I love it.”

Conflict Resolution Day

Continued from Page 4

essay contest on a conflict resolution topic
• Recognize conflict resolution leaders and or volunteers in your community
• Sponsor a day of cooperative games for peer mediators and the public
• Produce and distribute information on how to establish peer mediation programs

ACTIVITIES IN CHURCHES, SYNAGOGUES AND TEMPLES
• Organize a mock mediation for the faith-based congregates
• Organize an art contest or essay contest on a conflict resolution topic
• Sponsor a day of cooperative games for kids and parents at a church/temple/synagogue fun day
• Create a “peace quilt”

PEACE AND JUSTICE ORGANIZATIONS
• Provide a declaration or letter of support from your organization
• Create a conflict resolution (or mediation) pledge and get signatures from public figures and the public
• Get a mayoral or gubernatorial proclamation
• Get a court resolution or legislative resolution
• Create conflict resolution promotional material and distribute it to the public on Conflict Resolution Day
• Propose story ideas to print and broadcast media
• Hold a press conference
• Make a presentation regarding conflict resolution that is open to judges, attorneys, court personnel, school personnel and/or public, possibly in collaboration with other conflict resolution organizations
• Hold an informational meeting for those interested in learning more about conflict resolution, as potential consumers or practitioners
• Hold a promotional event such as a luncheon, reception or other gathering
• Organize educational meetings with local, state or federal elected officials
• Hold a “brown bag” professional development talk on a campus or for professionals in your community
• Organize a speaker’s bureau for presentations at business, community or professional/trade association meetings
• Recognize conflict resolution leaders and/or volunteers in your community
• Hold a one-day conference
• Send out conflict resolution information packet to magistrates and other court personnel, including an overview of Conflict Resolution Day and other information

Our Committee is looking for suggestions and ideas as to how we can promote the goals of Conflict Resolution Day. If you have any suggestions or ideas as to how our committee can promote the goals of Conflict Resolution Day or if you would like to join our committee, please contact me at Shaffer@pfslawyer.com.

Charles A. Shaffer is a partner with the law firm of Pugliese, Finnegan, Shaffer & Ferentino L.L.C. in Kingston, Pa., and serves as a mediator and arbitrator for various court/private provider panels.
The Executive Council strives to “move onward and upward” through its leadership and subcommittees. The purpose and mission of each subcommittee was discussed.

The Conflict Resolution Day Subcommittee’s main function is to spread the word about ADR as a dispute resolution process. Possibilities include having the governor issue a proclamation, have the speaker of the Pennsylvania House of Representatives or Senate president proclaim Conflict Resolution Day, or have the Legislature pass an ongoing resolution to declare a certain day each year to be Conflict Resolution Day. The subcommittee also plans to follow the American Bar Association’s Mediation Month Committee’s plans and examples. The ABA’s Mediation Month Committee has templates and forms available for use by bar associations.

The CLE Subcommittee strives to be forward-thinking and dynamic. It plans to create more cost-effective, efficient Continuing Legal Education events. Unfortunately, the Pennsylvania Bar Institute has lost nearly $19,000 since 2007 on the CLE Institute. The CLE Subcommittee will look into webinars for CLE events to minimize the time and cost involved, instead of having an annual institute in only a single location. There should also be one or more physical locations that can be determined later. Specific CLE events can include focusing on how to use ADR in any area of legal practice and how to encourage clients to use ADR.

The Fiduciary ADR Subcommittee is focusing on ADR applicability to trust and estate matters. The ability of the ADR process to preserve confidentiality is particularly appropriate for these issues. The subcommittee will be focusing on upcoming revisions to Orphan’s Court rules.

The Lawyer Dispute Resolution Program Subcommittee has had very little function in recent years. Despite that, about half of ADR funding goes to this subcommittee. This subcommittee has lists of fees, panels of mediators, arbitrators, etc. Currently, the bar association encourages parties to choose their own mediators and arbitrators. The subcommittee wishes to change this policy to first appoint mediators or arbitrators from a pool of qualified neutrals.

The Legislative Subcommittee is focusing on RUAA as well as a health care pre-dispute resolution process for nursing home patients and the applicability of the Model Administrative Procedures Act.

The Liaison Subcommittee focuses on keeping its current connections to other Committees and groups open and available, as well as establishing new connections.

The Membership Subcommittee focuses on obtaining new membership. The ADR Committee currently has 136 members. The goal is to achieve membership of 300 by the end of the bar year. We can easily achieve this goal if each current ADR Committee member successfully recruits one or two PBA members to join our committee. The subcommittee will prepare a welcome form letter to send to new members. The Membership Subcommittee hopes to follow the direction of the ABA’s ADR Committee, which has significantly grown its membership in recent years.

The Newsletter Subcommittee does a wonderful job compiling all recent ideas and upcoming events into a newsletter. It encourages all members to submit short articles for publication.

The Public Relations Subcommittee strives to spread awareness about ADR as an alternative to litigation.

The RUAA Action Subcommittee seeks to ensure adoption of the RUAA.

Other discussions involved whether to create an environmental and land use subcommittee. The bar is not sufficiently aware of the application of the ADR processes to environmental and land use law.

The Executive Council discussed whether to consider changing the name of the committee from ADR to Dispute Resolution as the American Bar Association did several years ago. It was agreed to include this item in the agenda for the next ADR Committee meeting.

The Dauphin County Bar Association Public Services Coordinator, Sandra Ballard, has requested agenda time to propose that the committee maintain a program to offer pro bono mediation services to certain classes of people. It was agreed to invite her to address the next committee meeting.

Finally, the council discussed the possibility of using videoconferencing for Executive Council and/or committee meetings.

The next committee meeting will be held in conjunction with PBA Committee/Section Day on Nov. 17 at the Holiday Inn Harrisburg East from 1:30 to 3:30 p.m. Lunch will be served at 12:30 p.m. at no cost to committee members.
What parties look for in a mediator

By Sally Griffith Cimini

Why did (or didn’t) they choose me to mediate this case? Every mediator seeking to grow his or her ADR practice often wonders what qualities parties find important when choosing a mediator. In celebration of Conflict Resolution Day on Oct. 20, the Mediation Council of Western Pennsylvania posed that question to an esteemed panel of individuals who choose mediators for various types of disputes in the program, “What Parties Look for in a Mediator.” Moderated by mediator/arbitrator and PBA ADR Committee member Michael McDowell, the panel featured Richard T. Sedory, general counsel and vice president administration, Transtar Industries Inc.; Michael Sweeney, senior vice president and general counsel, Westinghouse Electric Company L.L.C.; Trisha Gill, senior partner, Wallis, Collis & Blackmer; Amy Ross, family court mediation program manager, Allegheny County Court of Common Pleas; and Robert M. Wilson, Ph.D., psychologist. In a lively interactive discussion with attendees, all of the panelists stressed the importance of trust, honesty and perseverance when choosing a mediator. Most of the panelists preferred mediators with significant experience in the particular area of the law involved in the dispute. The cost of the mediator was not an important consideration for most of the panelists. Mediators were encouraged to reveal potential conflicts, including any prior mediation that the mediator handled for any potential clients or attorneys representing the clients. Several panelists indicated a reluctance to use mediators who were repeatedly used by opposing parties/attorneys in prior disputes out of a concern of possible bias. A reception followed in the atrium of the U.S. District Court for the Western District of Pennsylvania.

Sally Griffith Cimini is the immediate past chair of the Pennsylvania Bar Association Alternative Dispute Resolution Committee and current president of the Mediation Council of Western Pennsylvania. She chairs the ADR and Employment Practice Groups of the Pittsburgh law firm Leech Tishman Fuscaldo and Lampl L.L.C.

NAFCM’s 2011 report: ‘The State of Community Mediation’

By Clymer D. Bardsley

The National Association of Community Mediation (NAFCM) is set to issue the “The State of Community Mediation: 2011 Report,” co-authored by Executive Director Justin Corbett and Wendy E.H. Corbett, who is a local Community Mediation Center program coordinator, doctoral student in community mediation sustainability and Justin Corbett’s wife. Check the website to learn more about the report and its release (www.nafcm.org).

Some key data from the report:
- There are some 400 community mediation programs in the United States employing a total of 1,300 full-time staff.
- 25,000 volunteer mediators assist these agencies.
- 30+ different service types are offered (e.g. mediation, facilitation, conflict coaching, etc.) and 100 different case types (e.g. neighbor, family, co-worker, peer, etc.) are mediated.

Here is an excerpt from the report’s introduction:

The State of Community Mediation: 2011 Report, undertaken by the National Association for Community Mediation (NAFCM), contains the wisdom from colleagues throughout the U.S. Its data is derived from NAFCM’s program membership applications, as well as an extensive, well-subscribed survey of community mediation program administrators which generated over 36,000 data points supplemented by over 250 qualitative accounts of program operations and impact. Combined, this report draws upon nearly five times the number of reported experiences than was contained in its previous and most recent 2004 iteration. Most importantly, it provides practitioners and supporters with a timely view of where the community mediation fields stands, what it has accomplished, and where future growth potential exists.
Call for ADR Committee liaisons

By Jim Rosenstein and Chuck Kenrick

The Liaison Subcommittee of the ADR Committee invites members of the ADR Committee to serve as an “official liaison” between our committee and other segments of the Pennsylvania Bar Association.

Official ADR Committee liaisons are expected to:

- Identify any matters being considered by either the ADR Committee or the other group with which they are serving as our official liaison (the “Other Group”) that are likely to be of interest or concern to the ADR Committee or the Other Group, as the case may be; share this information with the leadership of each body; and assist both of them in addressing the matter in question to their mutual satisfaction.

- Initiate and help implement any proposals for ways that the ADR Committee and the Other Group can work together to advance their respective goals and objectives.

The Liaison Subcommittee of the ADR Committee has identified the following PBA committees and sections as our first priority for liaison assignments (i.e. those that we think would benefit most from this assignment and vice versa), and has recruited the committee members identified below to serve in this capacity where indicated.

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Arbitration and medical malpractice cases

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can convene on one day and pick up again days later, even outside normal business hours, if need be.

Arbitration is sometimes used as an adjunct to mediation in cases involving multiple defendants. If the defendants agree to settle at a certain price with plaintiffs but cannot agree on the allocation of that settlement, the underlying case can be resolved and then the defendants can arbitrate who pays what percentage of the total settlement. This option is often discussed but infrequently invoked.

Finally, what has become the most popular form of arbitration is a high-low agreement between the parties that sets the parameters of any damages to be awarded. This concept comes into play to assure plaintiff some recovery but to limit the exposure of a defendant. More often than not, this mechanism is used when liability or causation is questionable, but damages are profound. To avoid a potential jury award that could exceed a defendant’s insurance coverage, a defendant will agree to arbitration and to a plaintiff recovery of some amount even if the arbitrator finds in defendant’s favor. Plaintiff, on the other hand, in such circumstances, will agree to arbitrate and cap his or her recovery at or under defendant’s insurance limit to be assured of not walking away empty-handed even if the arbitrator finds against plaintiff. For example, the parties submit a case to an arbitrator with an agreement that if the plaintiff prevails, he or she will not collect more than $400,000 (thus saving defendant’s insurance carrier money off the defendant’s primary policy limit of $500,000). If, however, the defendant wins, plaintiff still will collect $200,000. Plaintiff collects the amount of any award rendered between $200,000 and $400,000. The parties usually do not disclose the terms of the high-low agreement to the arbitrator, but do let the arbitrator know that such an agreement exists. One other advantage is that a recalcitrant physician will consent to this means of resolution because he/she avoids a report to the National Practitioner Data Bank if the arbitrator decides in favor of the defendant, even though the insurer pays some amount to the plaintiff.

Arbitration, especially using a high-low agreement, is fast becoming a popular method of alternative dispute resolution in medical malpractice claims. Parties are increasingly taking advantage of arbitration’s savings of time and expenses and its flexibility of scheduling and presentation of evidence. While few medical malpractice cases are resolved by jury trials, the two mainstays of alternative dispute resolution, arbitration and mediation, have become the most frequently used methods of deciding these complex cases.

1 The issue of the enforceability of pre-injury, mandatory, binding arbitration clauses, often found in nursing home admission documents is not the subject of this article. Rather, this paper focuses on voluntary arbitration agreed to by the parties in a medical malpractice claim.

Richard P. Kidwell is senior associate counsel and vice president of risk management at University of Pittsburgh Medical Center (UPMC). Kidwell joined UPMC in November 2004 after more than 10 years at Johns Hopkins Medicine in Baltimore, Md., where he was director of risk management and the managing attorney for claims and litigation. Kidwell is a 1976 graduate of Mount Saint Mary’s University in Emmitsburg, Md., and a 1979 graduate of the University of Maryland School of Law. He was in private practice with the law firm of Miles & Stockbridge in Baltimore from 1979 to 1994.

Call for ADR Committee liaisons

Continued from Page 8

Please volunteer to serve as the ADR Committee’s official liaison to one or more of the groups listed above for which no liaison has been listed, by communicating your interest to the subcommittee’s co-chairs, Chuck Kenrick (ck@kenricklaw.com) and Jim Rosenstein (jrosenstein@finemanlawfirm.com).

Your appointment will be confirmed as soon as we have obtained the consent of the Other Group’s leadership to your appointment.

Jim Rosenstein divides his time between his commercial mediation and public policy facilitation practice and his real estate law practice with the Philadelphia firm of Fineman Krekstein & Harris, P.C. Charles W. Kenrick offers ADR services as part of his civil litigation practice. He may be reached at ck@kenricklaw.com.
Plea fromMembership Committee

By Herb Nurick

The mission of the Pennsylvania Bar Association Alternative Dispute Resolution Committee is:

The Alternative Dispute Resolution Committee shall address current issues of mediation, arbitration and other alternative dispute resolution processes, including mediation and arbitration of private and court-connected ADR programs. The committee shall conduct professional education programs in alternative dispute resolution, and study and recommend standards of practice of neutrals. The committee shall propose and monitor legislation regarding alternative dispute resolution.

This mission statement contains only a few sentences, but the impact from them can be immense. In order to make this impact, the committee must have a large enough number of members to fulfill our mission.

At the present time, we have 136 members on our committee. While this figure may sound good, it is not good enough. Only a small number of these members attend our meetings, and even a smaller number take an active role in advancing our cause. We believe that if we had a larger group, we would have proportionately more persons serving on our subcommittees and making our committee the best that it can be.

Additionally, through an enhancement of membership, we hope to interest more people throughout the state about the benefits of ADR. We all are aware of statistics that demonstrate that, in the future, many more lawyers will be involved in ADR proceedings than trials. Our committee is a perfect place to share, and learn about, various aspects of ADR practice. We need to expose ADR to as many lawyers as possible, and we can start with encouraging membership in our committee.

We also have a need to have more minority representation in our group. Unfortunately, to my knowledge, there are only two or three persons of color currently on our roster. In an attempt to correct this deficit, I recently attended a meeting of the Minority Bar Committee and implored those in attendance to assist us in our attempt to achieve more diversity.

In all, the more participants that we have, the more and varied ideas and views we will be able to enjoy in working for advancing ADR.

I ask you to join me and Membership Subcommittee Vice Chair Laura Cooper in recruiting new members for the ADR Committee. If every current member would make the effort and succeed in recruiting just one new member, I firmly believe that we will well serve the committee, as well as the field of ADR in general.

PLEASE HELP! Your assistance will be greatly appreciated.

Herb Nurick, chair of the ADR Committee’s Membership Subcommittee, is the mediation coordinator for the Pennsylvania Public Utility Commission and a past co-chair of the PBA ADR Committee.

Continuing Legal Education Subcommittee News

By Ross F. Schmucki and Judith W. Weintraub

The Pennsylvania Bar Association Alternative Dispute Resolution Committee offers meaningful continuing education that is valuable to advocates, neutrals and parties/users. Since 2005, the committee has presented excellent ADR Institutes that bring together top dispute resolution practitioners to share insights and techniques.

This year, in partnership with PBI, the committee will focus on (1) delivering content through webinars to increase accessibility and decrease the cost; (2) featuring differing viewpoints about dispute resolution processes; and (3) outreach to a variety of Pennsylvania counties.

Ross F. Schmucki and Judith W. Weintraub are the chair and vice chair, respectively, of the Continuing Education Subcommittee. There are 13 members of the subcommittee who hail from the counties of Allegheny, Chester, Dauphin, Delaware, Erie, Lackawanna, Luzerne and Philadelphia, plus one member from out-of-state (Michigan).

Please feel free to join our subcommittee, volunteer as a presenter at one of our programs or suggest content for our programs by contacting Schmucki (rschmucki@verizon.net) or Weintraub (judy@weintraublegal.com) by e-mail.

Ross F. Schmucki, of Ross F. Schmucki, Esq., L.L.C. in Swarthmore, is a nationally recognized attorney (former DuPont corporate counsel) who is known for fostering collaboration and teamwork, while achieving challenging dispute resolution goals in an innovative and cost efficient way. Judy W. Weintraub provides corporate law services through her law firm, Weintraub Legal Services in Valley Forge, as well as dispute resolution services through ACCORD L.L.C. and ADR training and consulting through Advanced Business Law Resources (ABLR), with partner Harrie Samaras.
The goal of this new column is to share advice on how to handle situations that stump dispute resolution professionals. One or two questions will be selected for each newsletter and will be posed to the ADR Committee membership for comment by committee members.

The following is a situation that recently occurred:

A community mediation center that uses the transformative model of mediation assigned a mediator to mediate a dispute between two individuals. The mediator began the mediation by making opening remarks to the two parties. Shortly after the mediator finished his opening remarks and after the complainant made some initial remarks, the respondent turned to the mediator and said, “Do I have to talk to this person (indicating the complainant)? Can’t I just talk to you?”

If you were the mediator, how would you respond to this outburst?

Does it make a difference if the mediator is assigned the dispute by a court-annexed mediation program which uses a facilitative model?

The following suggestions for dealing with this situation have been submitted:

Clymer D. Bardsley: “My instinct in this situation would be to ask the respondent to tell me more about why he only wants to talk to me to learn if that is a preferred mode of communicating, at least to start. Something deeper could well be in play, so I might even have this conversation in caucus, depending on the circumstances.”

The Mediator: “I was assigned to the above case in which this situation occurred. I was taken aback by the outburst because the community mediation center prepares the mediation participants prior to the mediation (to talk to each other). I was in the process of silently formulating a response to the outburst when the respondent turned to the complainant and began talking to the complainant! The points I took away from this experience were that: not every question needs to be answered – some questions are rhetorical questions, and if you give the participants a chance, they sometimes will figure it out themselves. Nonetheless, I was curious as to what other mediators would do in this situation had it not resolved itself.

“If I were in a court-annexed mediation program that uses a facilitative model, I might have said something along the lines of, ‘Why wouldn’t you want to talk to the complainant? Your dispute is with the complainant and not with me. As long as you’re here, why don’t you use this opportunity to talk to the complainant about this situation?’”

The newsletter committee did not receive any suggestions on how to deal with this situation.
Good Shepherd Mediation Program celebrates Conflict Resolution Day 2011

By Clymer D. Bardsley

The Good Shepherd Mediation Program honored four extraordinary individuals on Wednesday, Oct. 19, at The Union League of Philadelphia as part of Conflict Resolution Day 2011. The Fifth Annual Shepherds of Peace Dinner and Award Ceremony hailed the accomplishments of four individuals who diligently work to restore civil dialogue and encourage peace and social justice in our community: Jane Golden, executive director of Philadelphia Mural Arts Program; Rue Landau, executive director of Philadelphia Commission on Human Relations; Chris Satullo, director of news and civic engagement, WHYY; and Harris Sokoloff, executive director of the Penn Project on Civic Engagement at the University of Pennsylvania.

Under Golden’s leadership, Mural Arts incorporates the concepts of restorative justice through art instruction, mural making and community service work within the criminal justice system. Current inmates, ex-offenders and juvenile delinquents are given the opportunity to learn new skills and make a positive contribution to their communities to repair the prior harm they may have caused.

Landau’s work at Philadelphia’s Human Relations Commission has focused recently on the 2009 attack on Asian immigrant students at South Philadelphia High School. In response, the commission arranged face-to-face meetings between the students and the administration in an effort to end the boycott and resolve the students’ grievances. The commission also conducted a year-long series of 11 public hearings to give the community the opportunity to voice their concerns on issues related to intergroup tension and violence in the city’s public schools. The commission’s report, “Widening the Circle of our Concern: Public Perceptions of the School District of Philadelphia’s Response to Intergroup Conflicts,” issued findings and recommendations and has initiated discussions with the School District of Philadelphia to implement some new programming.

Satullo, a leader in the deliberative democracy field, founded the Philadelphia Inquirer’s Citizen Voices program of civic dialogues on public issues and in 2006 co-founded the Penn Project for Civic Engagement with Sokoloff, where the two men have worked on many projects designed to get the citizenry and electorate more engaged and involved.

Sokoloff works with school superintendents, school boards and district staff to help them keep pace with state-of-the-art educational and management theory, research and practice. His initiatives with school districts and community organizations are designed to bring students, teachers and leaders together to strengthen community principles, values and discourse. In 2010, he and Satullo engaged more than 1,700 taxpayers in deliberative budget workshops, which Philadelphia Mayor Michael Nutter credited with informing his budget decisions. Sokoloff’s current projects address the dropout rate in Philadelphia, the challenges of integrating new immigrants into commercial corridors and mental health policy.

Others attending the event included Good Shepherd Executive Director Cheryl Cutrona and her whole staff, Board President Antoinette Robbins and members of the board, Immediate Past President of the Association for Conflict Resolution Jim Rosenstein, Executive Director for the Support Center for Child Advocates Frank Cervone and Temple University men’s basketball coach Fran Dunphy, who served as master of ceremonies.

Good Shepherd also produced a Conflict Resolution Day 2011 video on the benefits of mediation, in collaboration with sponsors Pennsylvania Council of Mediators and Association for Conflict Resolution’s Greater Delaware Valley Chapter. It can be found on Good Shepherd’s website, www.phillymediators.org, or on YouTube at http://www.youtube.com/watch?v=MvEG4aU5CX0.

Clymer D. Bardsley, Good Shepherd Mediation Program’s Training and Consulting manager, is a mediator in Philadelphia who focuses on family, school-based, and workplace dispute resolution.
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**Ask the Dispute Resolution Professional**

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respond to the situation from mediators trained in the transformative model. If you are a transformatively-trained mediator and have an idea on how you would deal with this situation, please let Mary Kate Coleman know, and we will publish your suggestion in the next newsletter. If you have had a situation as a dispute resolution professional that has perplexed you, please e-mail the details to Mary Kate Coleman ([MKColeman@rhwrlaw.com](mailto:MKColeman@rhwrlaw.com)) for inclusion in the next “Ask the Dispute Resolution Professional” column. We look forward to hearing from you and learning from your experience!