Supreme Court errs in eliminating parenting coordination

By Martricia McLaughlin

With a largely unanticipated stroke of the pen, the Supreme Court issued an order on April 23, 2013, (implemented as Rule 1915.1.1) which eliminates the use of court-ordered parenting coordinators in Pennsylvania. By most reports, this decision, which has a significant impact on Pennsylvania families and the resources available to those on the front line of “custody wars,” was rendered with little or no formal input from the public or the family law or alternative dispute resolution bar.

At the time of the recent order, the use of parenting coordinators was in its infancy in Pennsylvania. Some counties had no local rules for the appointment of such professionals; some counties had sophisticated programs; and some counties did not use the resource. Nonetheless, the elimination of parenting coordinators appears to be a short-sighted action that will likely negatively impact children in “high-conflict” families. It is extremely likely that the lower courts will also be impacted for the worse under this rule as well, since it renders a useful community and court resource unavailable in large part.

Parenting coordination has been utilized in several states around the country for many years. Colorado and Maryland, for example, have worked with the model over time, refining the programs so that a skilled community of parenting coordinator professionals has evolved, usually made up of attorneys also experienced in mediation and alternative dispute resolution. Our sister state of New Jersey launched a pilot program when it opted to create a parenting coordination option for litigants and has continued the option despite the fact that there are legitimate concerns regarding the qualifications, training, power and cost of such professionals.

If one takes a realistic look at the custody litigation terrain today, one will readily see reflections of the fact that our society has become more litigious and more conflictual over the past 30 years or more, with individuals increasingly motivated by the goal of “winning” against the other parent rather than attending to the best interests of the children. There has been a proliferation of special relief petitions in the courts to decide issues that can be critical to a child’s happiness and sense of stability but should not require the involvement of our overstressed court systems. These petitions present issues that call for common sense judgments, not acute legal analysis. Frankly, they may be the types of issues which try the patience of the courts. This impatience was clearly in evidence in the case of A.H. vs. C.M. 2012 Pa Super. 277 (2012), where the Superior Court clearly stressed that the use of parenting coordinators could not deprive a parent of his or her right to meaningful due process in addressing a grievance before an actual judge.

Few would contend that the parenting coordination field has matured to a necessary level of consistency and professionalism in its short existence as a resource in Pennsylvania. Nonetheless, many family law attorneys and mediators can look to A.H., recalling their own encounters with a trial court’s action or attitude. How often do courts consider special relief petitions a waste of valuable court resources and in one manner or another communicate to litigants or their counsel that a settlement would be far better than a hearing? How frequently do litigators in family law meet with judges with full dockets who can allot only limited time to the concerns of parents arguing over an issue which, in an intact family, could be decided around the dinner table with no professional intervention.

Continued on Page 11

Remember!
Conflict Resolution Day is Oct. 17, 2013.
For more information go to www.acrnet.org/crday/.
So you want to be a commercial mediator?

By Jed D. Melnick

I am a JAMS panelist, currently the youngest by close to 10 years. My calendar consists of securities class actions, bankruptcy claims, insurance coverage work and the occasional personal injury-related claim. Over the last few years, by way of example, I was part of the team that settled all of the securities claims in the Lehman bankruptcy; I settled the creditor claims against the former chairman of Dewey & LeBoeuf; and I was involved in settling some of the claims against defendants involved in the allegations against the former pediatrician Earl Bradley in Delaware in the only class-action settlement of sexual assault claims.

I am frequently asked what career advice I would give to someone who is interested in being a mediator. If you are a retiring jurist who is widely regarded as a “settlement judge,” this advice is probably not for you. I will be the first to tell you that my mediation career has benefited enormously from connections and lucky breaks. But if you are thinking about becoming a mediator and not already widely sought out for your neutral settlement guidance, you might consider the following:

The first step is to do a personality assessment. There are three key traits that one must have to even consider going down this path. First, do you naturally see both sides of every issue? Before I became a mediator I found myself torn during any given argument because I wanted to understand where each side was coming from. I had a natural inclination to see through the bluster, wordy arguments and emotions to understand what people were really trying to say. Next time you hear an argument, think about whether you are hearing what is really driving each side, or just getting frustrated by how hard-headed someone is being?

Second, are you patient? If you want to be a commercial mediator, you have to prepare yourself for long afternoons of begging for dollars in the hallways of conference centers. While some mediators very successfully and notoriously wield their tempers and short attention spans to drive quick settlements, stylistically my approach is to try to win the day with the more persuasive argument and allow parties the respect of going through their own decision-making process to arrive at a settlement.

Third, are you relentless? Despite innumerable moments in which a negotiation has appeared to be dead, I have never once stopped pushing or given up. I sometimes hear stories about other mediators that have gotten impatient and declare impasse. I never have. Sure, I have adjusted processes to give people more time or called it a night if someone tells me that they are at the limits of their authority but would like some additional time, but I have never stopped until someone stopped taking my calls.

Once you have done a personality assessment and decided that maybe you have the right natural temperament, you must confront the reality that you are going to need to form a five- to 10-year plan. It is not possible to decide you want to be a mediator and wake up the next morning as one. There are several steps that one must take to become a mediator.

Step one: Get mediator training. There are numerous options for getting the basic skills of a mediator and learning how the process works. You can get this training by signing up for a 40-hour training course sponsored by your local bar association or community mediation center or by looking for some of the commercial programs at Pepperdine or Harvard (among others) that offer these programs to the public.

Step two: Start mediating and don’t stop until you have mediated at least 25 pro bono matters. That’s right: You can start mediating right away. There are numerous volunteer opportunities available to new mediators through court systems, community mediation centers, government agencies, appellate programs and the like. Sign up for every list, court appointment and Equal Employment Opportunity Commission panel you can find. Once you have actually mediated 25 cases, you should have a really good sense of whether you are effective, whether the parties respond to you and whether you like it. Before I was paid to mediate my first case I had mediated close to a hundred cases on a volunteer basis throughout the community mediation centers and small claims courts of New York and Philadelphia. The reality is that while the subject matter might be different in a commercial mediation as compared with the average case in a community mediation center, the skills developed and the instincts honed are transferrable. When I had my first paid opportunity, I was ready.

Step three: Learn insurance law and try to understand their unique concerns regarding certain kinds of risks. In the commercial mediation context, insurance companies are often involved and frequently a key participant in the selection of a mediator. Respecting the role of an insurance carrier and treating the carrier as a party and not a checkbook

Continued on Page 10
First impressions are lasting: the importance of a mediator opening

By Dan Brookhart

There is typically a sense of uneasiness at the outset of a mediation. Having been engaged in a process that is adversarial by design, the parties are now together in a room expected to work jointly in seeking resolution of their dispute. It is the role of the mediator to help the parties navigate the path from perhaps years of contentious litigation to a conciliatory process aimed at settlement. This delicate transformation begins at the outset of the mediation with the mediator opening.

Each mediation begins with the mediator providing some opening remarks to the parties and counsel. What follows is a look at the importance of a mediator opening in setting the stage for settlement and resolution. Much of what is set forth below may appear self evident and simple. But, experience dictates that simple often needs a reminder and is not always easy!

**Attitude is Everything**

Setting the stage for resolution begins with understanding and appreciating the parties’ paths prior to mediation. More often than not the parties arrive at mediation somewhat battle-scarred from lengthy and emotionally-taxing litigation.

The mediator opening provides the first opportunity to move the parties from animosity toward conciliation, which is critical to achieving settlement. It is at this moment that the mediator begins to plant the seeds of resolution. The overarching goal of a mediator opening is to create a positive environment of optimism, hope and empowerment. From the outset, the mediator should model a spirit of cooperation, help reduce tension and demonstrate empathy. The parties must eventually trust this person they have invited into their conflict, so it is imperative that the mediator begin building credibility and a rapport during the opening. This can only be done by taking the time to know the details of the case and demonstrating a command of the mediation process. Trust and credibility know no shortcuts.

Thus, the underlying attitude and how a mediator comports himself or herself is of equal importance to what is actually said during an opening. Just as a seasoned trial attorney engages in behavioral advocacy, it is important to be intentional about the environment being created. Resolution comes much easier in an atmosphere of optimism, cooperation and trust.

**Elements of a Mediator Opening**

While stylistic differences certainly exist among mediators, there are some common elements to a mediator opening that help enhance the potential for settlement. As most attorneys have participated in numerous mediations and are quite familiar with the process, the remarks of the mediator are largely directed toward the parties. Moreover, it is helpful that everyone be on the same page with respect to process, roles and objectives.

A brief explanation of mediation helps to assist the parties in understanding the desired objectives. In many respects mediation is an assisted conversation about making informed decisions on the parties’ case. Viewed in that context, a conversation about good decision-making helps to frame the process as collaborative and not combative.

A description of the facets of mediation helps the parties distinguish it from the adversarial process which has, to date, defined their relationship. For instance, a mediator might explain that mediation is informal as compared to litigation. No court reporters, no cross examination – it’s just a conversation, albeit one with an intentional purpose of making good decisions that hopefully lead to settlement.

The mediator should stress the confidential nature of mediation to encourage open and forthright communication with the mediator and the free exchange of information and ideas for resolution. In the opening the mediator should remind the parties that, unlike at trial, they own the decision-making authority at mediation. However, that message comes with an important caveat. If settlement is unable to be achieved, the power of decision-making will be ceded to others. Authority over decision-making is often an important driver in settlement.

To further lay the foundation for settlement, the mediator may inform the parties that mediation represents a change in mindset from litigation. While advocacy doesn’t take a holiday in mediation, it is helpful to encourage the parties to temporarily move from an adversarial process to one seeking resolution. The parties need to understand that mediation provides an opportunity to take off the litigation boxing gloves for a day and to jointly explore the possibility of settlement.

**Not a Potted Plant**

The role of the mediator should also be covered during the opening. If executed well, the opening should allow the parties to see the mediator as a true neutral third party who is invested in helping them reach resolution. Counsel and parties alike generally appreciate a mediator who intentionally facilitates the process rather than engaging in shuttle diplomacy.

While acknowledging a fluid process, the mediator should demonstrate a well thought-out approach tailored to the needs of that particular mediation. In short, while not assuming a dictatorial stance, the mediator should own and be responsible for the process. In the opening, the parties should be informed that one of the roles of the
By James A. Rosenstein

An incoming chair of our committee, such as me, typically uses the committee’s initial newsletter of the program year to reflect on the committee’s past accomplishments and share his or her vision for the committee in the near future. I will not deviate from this practice.

Initially, I want to say how honored I am to serve as your chair (with the able assistance of our vice chair, Cheryl Cutrona) and how challenged I feel to be able to help build on the firm foundations laid by our immediate past chair, Stephen G. Yusem, and his predecessors, to whom we owe a great debt of thanks. They have left very big shoes to fill, and I hope that, with your help, we will be able to fill them together as we strive to advance the committee’s stated principal purpose of encouraging the widespread use of alternative dispute resolution processes throughout Pennsylvania, with a particular focus on their appropriate use by members of the Pennsylvania Bar Association in the representation of clients, as neutrals and on their own behalf.

To a greater or lesser degree, all of our subcommittees address this mission – as is both proper and necessary. However, I believe that we will have made a substantial positive impact on the people of Pennsylvania and the practice of law in our commonwealth if, in the next year or so, we make real strides in encouraging and supporting programs that provide Pennsylvania lawyers with the knowledge and skills needed to advise their clients regarding the use of ADR processes in resolving disputes and to represent them effectively in these processes. Parenthetically, this is a central part of the work of our Public Relations Subcommittee, in which it will undoubtedly be collaborating with other subcommittees, particularly those on Continuing Legal Education and Liaison with the Bar. I will be more than satisfied if we achieve this objective by the time my term as chair ends – so I guess this is my vision!

As Yusem reported in his final chair’s message to our committee, in addition to the significant accomplishments of the committee during his chairmanship, there are a number of important continuing projects affecting the Pennsylvania Bar Association generally that call for our ongoing attention. At the risk of omitting any (for which I apologize in advance), the following come immediately to mind:

- Development of model local rules for use of mediation in connection with Orphans’ Court proceedings (a project of the Fiduciaries & Orphans’ Court ADR Subcommittee);
- Implementation of a statewide dispute resolution program for use in resolving disputes between and among lawyers and law firms in Pennsylvania (a project of the Lawyer Dispute Resolution Program Subcommittee);
- Encouraging the use of mediation to resolve disputes between low-income individuals (a focus of the Pro Bono Mediation Services Subcommittee) and expanding the use of ADR generally (the ambitious charge to the Public Relations Subcommittee); and
- Enactment in Pennsylvania of the Revised Uniform Arbitration Act (the mission of the RUAA Action Subcommittee).

A full list of our subcommittees, their missions and chairs appears on pages 6-7. Please, please, please volunteer to serve on at least one of them by completing the form on page 9 and returning it to the bar association as soon as possible. Also, please invite any member of the bar association who you think would be interested in our committee to join it (without any additional cost) by sending his or her name and place of practice (such as Susan Jones, Harrisburg) to Herb Nurick, the chair of our Membership Subcommittee, at 717-783-5428 or hnruck@pa.gov, and be sure to attend our next committee meeting, during PBA’s semi-annual Committee/Section Day, at 1:30 p.m. on Thursday, Nov. 21, at the Holiday Inn – Harrisburg East.

Many thanks!

Jim Rosenstein was recently appointed chair of the ADR Committee for 2013-14. He has practiced commercial mediation since 1997, during which time he has also served as vice chair of the committee, co-chair of the Philadelphia Bar Association’s ADR Committee, president of the Association for Conflict Resolution and its Greater Delaware Valley Chapter and board member of the Pennsylvania Council of Mediators.
Message from the editor

By Clymer D. Bardsley
Resolution editor

Have you ever been in a conflict in which the real reason you were climbing up the anger volcano was not about what you were arguing over but the way in which the other side was communicating? They might have had legitimate points but because of their particular behavior, their use of language, their unwillingness to engage in discussion the way you wanted them to, you were bouncing off the walls.

Me, too.

Oftentimes, our clients—and we—get stuck in conflict not because of the issues themselves but because of the clashing of each person’s style of communicating. Dr. Mitchell Hammer, the co-creator of the Intercultural Conflict Style Inventory, along with his wife, Diann, contends that each of us has a preferred style of communicating in conflict. We may communicate differently in different settings and with different adversaries because we have the reasoning skills and versatility to do so, but each of us has a particular preference for how we would like to communicate when in conflict.

Some of us are discussion-style folks who like to use reason, direct communication and keep our emotions restrained when in an argument. Just the facts, please. Others are engagement-style. We don’t mind getting in someone’s face and really expressing ourselves and our emotions directly. In fact, we hate it when someone appears disinterested in the conflict. It’s downright disrespectful.

Still others of us are dynamic-style individuals. We’re very emotional, like to talk fast and loud and use hyperbole, and we take our time getting to the point. We need to really trust in the other before we’re ready to negotiate about brass tacks.

Lastly, some of us use the accommodation-style of communication. We prefer to keep our emotions to ourselves, sometimes remain mysteriously quiet in conflict situations, and we don’t elaborate on our interests or positions unless we feel comfortable doing so. We’re no pushovers, like some people think, but we like to ease into the joining of problem-solving.

What’s more is that all of us are normal, regardless of what category we fall into. It’s how we’re wired. It’s where we come from. It’s how we were raised. Yet people cast blame in our direction because of these tendencies or preferences: “If only you’d calm down.” “Will you just get to the point?” “Why don’t you ever bring stuff to my attention?” “Will you show some feeling, please?”

The differences in our communication styles need to be appreciated and allowed. Too often, people are labeled rude, irrational, deceptive, unfeeling, aggressive and so on. Rather, we need make a stronger effort to meet our adversaries where they are and understand what makes them tick, so we can allow for their behaviors as much as they might be allowing for ours. Moreover, we must educate our adversaries as to what makes us tick so they might meet us where we are. In that way, we can all add value to the conflict resolution processes we participate in and deepen our understanding of one another.

First impressions are lasting: the importance of a mediator opening

Continued from Page 3

mediator is to ask questions about their case, to help assess strengths and weaknesses and to get them to view the case from another perspective.

Conclusion

While a mediator opening is not a guarantee of settlement, it can certainly increase the potential for resolution if conducted with intentionality. During the opening, parties will be sizing up the mediator. Is this someone I can trust? Does this person have a solid grasp of the case and command of the process? Is this someone who inspires confidence and knows the path to resolution?

If, at the conclusion of the opening, the answers to these questions are a resounding “yes,” then the parties will be well on their way to a successful mediation.

Clymer D. Bardsley is the director of Divorce Done Right, a divorce mediation group with its headquarters in Philadelphia. He is also an instructor for the International Center for Cooperation and Conflict Resolution at Columbia University.

Dan Brookhart, of Brookhart Law & Mediation, is an experienced civil trial attorney who provides full-time mediation and arbitration services in various areas of civil litigation, including personal injury, business and commercial litigation, employment matters and construction disputes. He may be reached at 717-459-3948 or Dan@BrookhartMediation.com.
Subcommittees of the PBA’s ADR Committee for 2013-14

ADR Continuing Legal Education Subcommittee:
The mission of the ADR/CLE Subcommittee is to (1) support the ADR/CLE needs of the PBA’s Sections and Committees; (2) facilitate ADR/CLE for neutrals, advocates and users; and (3) monitor trends in continuing legal education.

Fiduciaries & Orphans’ Court ADR Subcommittee (previously called the Fiduciary ADR Subcommittee):
The Fiduciaries and Orphans’ Court ADR Subcommittee, working collaboratively with the Elder Law and Real Property, Probate & Trust Law Sections of the PBA, is charged with considering, proposing, promoting and facilitating alternative dispute resolution processes in Pennsylvania involving agents, custodians, guardians, personal representatives and trustees, in (1) inquiries from or disputes with those persons to whom such fiduciaries owe duties, including principals, incapacitated persons or minors and beneficiaries, and (2) proceedings before the Orphans’ Court divisions of the Courts of Common Pleas.

The subcommittee’s current projects focus upon:
Development of proposed model local rules for ADR in Orphans’ Court Divisions (and, specifically, in conjunction with the Real Property, Probate & Trust Law Section of the Pennsylvania Bar Association), proposal of such model local rules for trial court mediation or examination in Orphans’ Court Division matters, for deployment when the proposed new Supreme Court Orphans’ Court Rules become effective statewide; standards and guidelines for appointment of ADR professionals with expertise in the unique issues addressed by fiduciaries and in the Orphans’ Court divisions; and professional education programs in alternative dispute resolution suited to fiduciaries and parties in Orphans’ Court Division proceedings.

Lawyer Dispute Resolution Program Subcommittee:
The mission of the Lawyers Dispute Resolution Program Subcommittee is to provide a forum for the prompt, efficient and private resolution of disputes between and among lawyers and law firms.

Legislative Subcommittee:
The function of this very important subcommittee is to work with PBA Legislative Affairs Director Frederick Cabell Jr. and PBA Legislative Counsel Steven Loux to monitor all proposed and existing legislation relating to alternate dispute resolution issues or concerns, to keep the committee advised of the status of relevant legislation and to provide liaison with the Joint State Government Commission Advisory Committee regarding S.R. 160.

Liaison with the Bar Subcommittee:
This Subcommittee will work with other PBA committees and sections to maintain communications and to enable the committee to make presentations to other PBA groups. Liaison should be maintained with the Insurance Staff Attorney Committee, In-House Counsel Committee, Business Law Section, Civil Litigation Section, Government Lawyers Committee, Legal Ethics and Professional Responsibility Committee, Legal Services to the Public Committee, Minority Bar Committee, the Real Property Probate and Trust Law Section and any other PBA entities relating to alternate dispute resolution issues. Liaison Committee members may invite their counterparts to attend committee and subcommittee meetings.

Membership Subcommittee:
The mission of the Membership Subcommittee is to recruit and retain as many members of the ADR Committee, who are interested in ADR, as possible and to encourage them to play an active role in the work of the ADR Committee through membership in one or more of its subcommittees and attendance at its meetings.

Newsletter Subcommittee:
The ADR Committee’s newsletter has evolved to its current status as a credible professional means of communication within and outside committee membership. The newsletter will provide both internal and external communications, covering not only articles of interest from the membership but also minutes of committee meetings and reports of subcommittee chairs.

Pro Bono Mediation Services Subcommittee:
The mission of the Pro Bono Mediation Program Subcommittee is to (1) encourage PBA attorneys to provide pro bono services for low-income individuals and (2) encourage legal services and pro bono attorneys and their clients to use mediation to resolve their disputes.

Public Relations Subcommittee:
The mission of the Public Relations Subcommittee is to educate Pennsylvania lawyers and their clients on the primary reasons for ADR: cost control and speed. The focus on lawyers is to educate them on the benefits of the many forms of ADR that exist, and to make it easy for them to explain ADR solutions to their clients. The focus on clients is to show that dispute resolution does not always mean litigating in court and that cost control and speed are manageable goals under ADR. We intend to encourage prominent figures in our judicial and legal community to participate in a

Continued on Page 7
Subcommittees
Continued from Page 6

Campaign based on a simple theme for these two target audiences, for example: “Lawyers and their clients can end disputes by an efficient and cost-effective means: Alternative Dispute Resolution.” Public service announcements and simple promotional materials should be provided to the target audiences. As part of this program, the Public Relations Subcommittee will sponsor Conflict Resolution Day (Thursday, Oct. 17, 2013) on a statewide basis and will utilize the ADR Committee’s page on the PBA website (including periodic updating with links to articles, reports, references to ADR issues, etc.)

RUAA Action Subcommittee:
In 2008, the ADR Committee endorsed the Revised Uniform Arbitration Act (RUAA) legislative initiative, after which the PBA likewise endorsed the committee’s resolution. The RUAA bill, HB23, has been working its way through the legislative process at a glacial pace. The RUAA Action Subcommittee is charged with working closely with appropriate Pennsylvania legislative contacts and endeavoring to resolve differences within the bar, toward the end of having Pennsylvania join other progressive states that have adopted the RUAA.

Sir Francis Bacon ADR Award Subcommittee:
The function of this subcommittee is to identify, select and advise the committee on appropriate candidates for this prestigious annual award.

Resolution Subcommittee

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By Lindsey Bierzonski  
ADR Committee Secretary

The Alternative Dispute Resolution (ADR) Committee held a meeting at the Committee/Section Day on April 11 at 1:30 p.m. at the Radisson Hotel in Camp Hill. Committee Chair Stephen Yusem announced that he will be stepping down and will be succeeded by Jim Rosenstein at the PBA Annual Meeting in Pittsburgh in May 2013.

Rosenstein announced that a free webinar titled “Five Failures of Mediation and What Mediators Can Do About It” was available online by the Association for Conflict Resolution on April 17, 2013.

Subcommittee reports included the following:

The Gettysburg Retreat followed the CLE Subcommittee’s recommendation to partner with other groups, and it was a huge success. The CLE Subcommittee organized a panel discussion event at the retreat at the request of the Civil Litigation Section in conjunction with the Labor and Employment Law Section. The ADR component was well attended, and there was active audience participation as the attendees had numerous questions for the ADR panel. The CLE Subcommittee plans to schedule more CLEs following this partnering structure.

A tentative flyer was distributed for a July 31 simulcast event titled “Problems, Solutions, and Developments,” with updates on the latest news in ADR topics, including class action waivers, the new consumer protection issue and the Ryan v. JPMorgan Chase & Co. employment lawsuit.

The revised Lawyer Dispute Resolution (LDRP) Program is ready to be activated. It is designed to better serve disputes arising in the legal profession. More neutrals will be involved, as a current problem is that many neutrals are already known to one or more of the parties involved. The LDRP Subcommittee has created flexible criteria to select a neutral and is prepared to provide a short orientation to the selected neutral. The subcommittee will use a flexible fee schedule to enable the parties to select their best option, after which the neutral will take over the administrative process and schedule meetings and communications with the parties. The subcommittee recommended putting an advertisement in local bar association newsletters to spread awareness and get the program running. A motion to proceed was made, seconded and passed approving the revised LDRP.

A motion was also made and seconded to support a new Pro Bono Mediation Project. The program will provide pro bono mediation services to indigent people. It will also provide limited assistance to pro se litigants in common dispute areas such as landlord/tenant and small claims matters. Issues were discussed concerning parties who get a “free ride” if only one party is determined to be indigent as well as mediators getting compensated for their professional services. Those matters will be discussed at the subcommittee level.

The Legislative Subcommittee reported that the Marcellus shale issue is not an appropriate matter for the ADR Committee action. At this stage, corporations involved seem to favor obtaining a court judgment in order to obtain an interpretation of the law. Also, the Apology Bill is awaiting full Senate approval. This will address apologies made only in respect to the medical profession.

The Liaison Subcommittee is making attempts to partner with other sections and committees to have a symbiotic relationship with other groups. This initiative will promote
PENNSYLVANIA BAR ASSOCIATION
ALTERNATE DISPUTE RESOLUTION COMMITTEE
2013-2014 SUBCOMMITTEE PREFERENCE FORM

Name: ________________________________________
Attorney ID: ________________________________________
Address: ________________________________________
________________________________________
Phone:  ________________________________________
Fax:  ________________________________________
Email:   ________________________________________

Please indicate your subcommittee preferences by placing the appropriate numbers 1st, 2nd and 3rd choice before the subcommittee on which you would like to serve.

Please complete and return this form to our PBA Committee Relations Coordinator, Louann Bell, at louann.bell@pabar.org or by fax to her at 717-238-7182 as soon as possible.

1. _____ ADR Continuing Legal Education Subcommittee
2. _____ Fiduciaries & Orphans’ Court Subcommittee
3. _____ Lawyer Dispute Resolution Program Subcommittee
4. _____ Legislative Subcommittee
5. _____ Liaison with the Bar Subcommittee
6. _____ Membership Subcommittee
7. _____ Newsletter Subcommittee
8. _____ Pro Bono Mediation Services Subcommittee
9. _____ Public Relations Subcommittee
10. _____ RUAA Action Subcommittee
11. _____ Sir Francis Bacon ADR Award Subcommittee

Save the Date!
Committee/Section Day
is Nov. 21, 2013,
at the Holiday Inn East,
Harrisburg, Pa.
So you want to be a commercial mediator?

Continued from Page 2

and understanding how insurance works are critical skills for a mediator to have. Not building these skills is the quickest way to undermine an otherwise budding mediation career.

I have personally found that trial experience — and, in the process, learning how to think and talk like a lawyer — was an incredibly valuable experience and important building block in my own journey to becoming a mediator. As a public defender and later in private practice in Philadelphia, I tried over a hundred bench trials, litigated countless motions and tried seven jury trials appearing in both state and federal court in a variety of jurisdictions. I found this education, even though it was predominantly in the criminal, not civil, context to be immensely valuable. The point is that going out and getting court experience, in some form, is highly recommended. When you have spent nights thinking about how to deal with certain facts and arguments and then had to stand up in front of a judge or jury and represent your client, you develop an appreciation for what makes for strong arguments and bad facts. Understanding the difference, through first-hand experience, of appearing in front of a judge whom you’ve had a cocktail with as distinguished from the one in a city and court room you’ve never been in before, may seem obvious, but is valuable to experience first-hand. The reality is that if, as the mediator, you want to challenge a trial lawyer on the bravado of his or her position, it is easier to do if you have stood in his or her shoes.

So, you have gotten trial experience, decided that you have the personality of a mediator, trained and mediated numerous cases as a volunteer, finding with each passing case that parties respond to you and that the relentless drive to get parties to settlement is both exhilarating and something that people seem to think you are good at. The next step is to start to collect the names of lawyers and parties you have successfully settled cases for (even in the volunteer context). I have found that references have finessed my pathway into numerous retentions. Becoming a known quantity as a mediator is an immensely valuable place to be. Once you are experienced and armed with references, find out who the respected mediators are that mediate the kinds of cases that you are interested in. Reach out to them, explain the steps you have already gone through, and ask if you can shadow them on a case. I am a firm believer that busy mediators should welcome budding mediators to shadow. With that being said, I am much more likely to invite you along for the day if you show that you have done the legwork described in this article. Shadowing is an invaluable opportunity to watch how the process flows in the commercial context.

While the next part, getting retained, may be the hardest part, I have a few suggestions: First, hold yourself out as a mediator. When you hold yourself out as a mediator, you need to have a web presence that people can find that explains your background, your successes and explains how you approach mediation. It does not matter whether your experience and successes were pro bono or not. What matters is that you are perceived as a mediator and not perceived as a novice or somebody doing something “on the side.”

Second, reach out to several distinct groups of people. Reach out to busy mediators and offer your assistance as free labor. Learning from a busy mediator while getting experience and getting parties comfortable with your involvement can be extremely valuable. Reach out to the claims departments of insurance companies and explain your experience as a mediator and your willingness to understand the unique issues of insurance companies in mediating claims. Reach out to the lawyers handling cases that fall into any discernable niche you might have. If you have a background in the fashion industry or worked as an engineer before law school, reach out to the lawyers handling cases that you have a special familiarity with. Making parties comfortable that you are sensitive to the unique aspects of their industry and disputes makes getting retained to mediate their disputes that much easier.

My last piece of advice may seem self-serving. Bring your disputes to mediation and show the mediator how spectacularly adept you are at handling the mediation process. I have personally seen, on numerous occasions, parties to a dispute start to look at a lawyer participant as a peacemaker. If you want to be seen as a mediator, bring your cases to mediation and show how good you are using the mediation process.

Jed D. Melnick has been involved in the mediation and successful resolution of hundreds of complex disputes with an aggregate value in the billions of dollars. He has mediated over 750 disputes, published articles on mediation, founded a nationally-ranked dispute resolution journal and taught young mediators. Melnick serves as a mediator in the Lehman ADR Derivative Contract Program. He is the managing partner for Weinstein Melnick LLC, working alongside retired Judge Daniel Weinstein, one of the nation’s pre-eminent mediators of complex civil disputes. In 2010-12, Melnick was selected as a Pennsylvania Super Lawyers “Rising Star,” the only “Rising Star” in the Alternative Dispute Resolution category in Pennsylvania. He was also selected to the 2010 list of Pennsylvania “Lawyers on the Fast Track,” a recognition given to 30 Pennsylvania Lawyers under the age of 40 by The Legal Intelligencer and the Pennsylvania Law Weekly.
Eliminating parenting coordination

Continued from Page 1

of any kind?

Parenting coordination, at its best, offers disputing parents a safe forum in which to have the concerns that might appear trivial to others addressed in a meaningful manner. The use of this forum may allow the dispute to be resolved in a prompt fashion at a fraction of the cost that would be expended in court. In the hands of a skilled parenting coordinator who has meaningful training in family law, domestic violence and mediation skills, parents in the most successful cases may learn the patterns of their conflicts and the underlying reasons for the frequency of conflict. They may also learn about the impact their continued disputes have on both the emotional health of the child and that child’s view of conflict resolution and relationships.

Many parents enjoy communication skills that allow them to exercise conflict resolution skills acquired through life experience, co-parent classes or counseling. The reality remains, nonetheless, that there are couples for whom conflict is intransigent. It is in these situations where damage from poorly managed parental communication affects the greatest harm and into which the courts are repeatedly asked to intervene. One certainly applauds the Supreme Court’s necessary vigilance for the due process of litigants and judicial control of decisions. However, we must ensure that our courts have the ability in reality to respond effectively. In addition, there is a question as to whether judges are the appropriate resource to deal with these trenchant conflict patterns where disputes erupt often and seemingly about trivial issues. Admittedly, the court must maintain the ultimate decision-making authority for individuals aggrieved by a parenting coordinator’s decision. The court also must have exclusive jurisdiction over major custodial issues.

The April 23, 2013, order can be seen as a radical action taken prematurely and without sufficient input from parents and practitioners. Parenting coordinators with appropriate training and well-defined authority are no more of a challenge to the decision-making power of the lower courts than child custody hearing officers or masters, guardians ad litem, court-appointed counsel for the child or mental health experts relied upon by trial courts routinely. The elimination of a forum that had the potential for parents to move forward on a positive path by developing an understanding of the dynamic of their conflict and its destructive force is a decision that should be revisited promptly. Any development to reinstate the role of the parenting coordinator should be as inclusive as possible, including public feedback and professional assessments. Only through an open process can the benefits and limitations of parenting coordination practices be adequately understood.

Martricia McLaughlin has been an attorney in Pennsylvania since 1979. In addition, she currently practices collaborative law, mediation and conflict coaching through Beacon Conflict Resolution Center.

Committee/Section Day recap

Continued from Page 8

the use of ADR in other areas. The In-House Counsel Committee expects to partner with the ADR Committee for a CLE event in the fall.

As of April 2013 ADR Committee membership is at an all-time high of 215. However, as bar memberships are renewed, the number of committee memberships tend to drop. ADR Committee members were urged to encourage people to begin or renew their memberships and join the ADR Committee. ADR Committee members are encouraged to sign up for the ADR Committee page on LinkedIn. More information will be forthcoming with specific directions on how to do this because many members had difficulty in finding and signing up.

The Public Relations Subcommittee reported that the ADR Committee website has more materials than ever available online for member use. The Resolution editor, Clymer Bardsley, published his first issue and encourages ADR Committee members to submit articles for publication in the next issue. He hopes to get a more web-friendly newsletter in place to make the Resolution readable by email and thereby eliminating the need to download a PDF attachment.

The RUAA remains a hot topic as it wends its way through the Legislature. The RUAA Action Subcommittee is reaching out to the Association for Justice to coordinate efforts. The Sir Francis Bacon ADR Award will be presented to retired Judge Richard Klein at the PBA Luncheon at the Annual Meeting in Pittsburgh. The SR 160 Committee Status Report for the Joint State Government Commission Advisory Committee on Alternative Dispute Resolution was largely prepared by Diane Sacks, whose help we are fortunate to have. She has retired from state government and is volunteering her services.

The Collaborative Law Committee, which has grown to more than 130 members, has requested training in mediation and would like to partner with the ADR Committee for that purpose.

A resolution was presented to the committee by John Bergdoll III to promote the use of ADR in matters involving police complaints. There was an active discussion concerning the phrasing of the proposal noting its lack of details. The ADR Committee will coordinate efforts to revise the wording of the resolution to be more specific. Therefore, the resolution was tabled until more details and information regarding specific procedures are provided. A motion was made, seconded and passed to support developing a formal position to address this area of concern.
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Continued on Page 13
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Continued from Page 12

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Mark your calendars for upcoming PBA events

PBA Committee/Section Day
Nov. 21, 2013 • Holiday Inn East, Harrisburg, Pa.

PBA House of Delegates Meeting
Nov. 22, 2013 • Sheraton Harrisburg-Hershey, Harrisburg, Pa.

PBA Midyear Meeting
Jan. 29-Feb. 2, 2014 • Frenchman’s Reef & Morningstar Marriott Beach Resort, St. Thomas, U.S. Virgin Islands

PBA Board of Governors Meeting
May 14, 2014 • Hershey Lodge, Hershey, Pa.

PBA Annual Meeting
May 14-16, 2014 • Hershey Lodge, Hershey, Pa.

Check the PBA Events Calendar at www.pabar.org for more information, or call the PBA at 800-932-0311.
Welcome new committee members

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

- Michael W. Babic of Hartman Underhill & Brubaker LLC, Lancaster
- Michael J. Betts, Betts Mediation & Dispute Resolution LLC, Pittsburgh
- Robert Bleecher, Pecht & Associates PC, Lemoyne
- Weldianne Climo, law student, Roseville, Mich.
- Tom Ford, Tom Ford Business Law Office PC, Mount Pocono
- Jacques H. Geisenberger Jr., Jacques H. Geisenberger Jr. PC, Lancaster
- Rebecca Glenn-Dinwoodie, Law Office of Rebecca Glenn-Dinwoodie, Ambler
- James L. Goldsmith, Caldwell & Kearns, Harrisburg
- Mark Gubinsky, The Gubinksy Law Firm PC, Bridgeville
- Timothy Holman, Smith Kane, Malvern
- Bernice J. Koplin, Schachtel Gerstley Levine & Koplin PC, Philadelphia
- Ken Mack, law student, State College
- John D. McLaughlin Jr., Franklin Mediation LLC, Wilmington, Del.
- Joyce Novotny-Prettiman, Quatrini Rafferty, Greensburg
- Barbara S. Rosenberg, Law Office of Barbara S. Rosenberg, King of Prussia
- Amber Sizemore, Pennsylvania Department of Labor & Industry, Harrisburg
- Cathy Skidmore, Office for Dispute Resolution, Pittsburgh
- Jennifer L. Spears, Martson Law Offices, Carlisle
- Catherine E. Walters, Saul Ewing LLP, Harrisburg
- Phoenicia Williams, Philadelphia, PA
- Michael Winfield, Rhoads & Sinon LLP, Harrisburg
- Barbara Zulick, Zulick Law LLC, Norristown

The committee hopes that these new committee members enjoy their committee membership and experience the many benefits of serving on the Alternative Dispute Resolution Committee.

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