



ADRreport

*Alternative Dispute
Resolution Section*

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Maryland State Bar Association, Inc.

Volume Nine, No. Two
Winter 2014

Message from the Vice Chair

By Ceecee Paizs

Our stalwart leader, Bob Mueller, is currently recovering from surgery. I have therefore taken a step forward as the first runner up, (oh, sorry, that is the Miss America Pageant!) I mean, I have taken a step forward as the Vice Chair of the ADR Section Council to "chat" with our members about life on the Council and participation in section sponsored programs. Not only do both offer educational experiences, but participation builds camaraderie amongst mediators from different areas.

I have learned a great deal by being a member of the ADR Section Council to include that there are as many styles of mediation as there are mediators. Each of us is unique in how we practice mediation, regardless of the model we follow. We bring who we are to the table with us, both the good and the bad! Interacting with other mediators, and attending the various webinars and programs offered by the section allows us to see how other mediators mediate. I have yet to observe a mediation, a mediation simulation in conjunction with a training program or lecture without coming away with a renewed sense of how I mediate, and how I can do it better. I usually walk away with at least one nugget of gold that will assist me in my own practice going forward.

And the Section Council and section programs allow us to participate in many mediation related conversations that we might not have otherwise. For example, Council members and section members participated in commenting on the drafting and passage of the Maryland Mediator Confidentiality Act. We are working towards being able to comment about the development of any new court rules related to mediators. The ADR Section recently participated in a conversation between the Conflict Resolution Center of

Montgomery County (CRCMC) that will facilitate a positive working relationship between CRCMC and the private practitioners in Montgomery County.

I have also come to appreciate styles of mediation that I may not have been trained in, and do not necessarily practice. I believe myself to be a problem solving/facilitative mediator. Yet, I have observed transformative and inclusive mediations that have demonstrated new ways of listening in a mediation. I have observed negotiators in other areas who could have benefited from these listening skills. I have attended meetings with mediators who come from different approaches, and yet we were able to work together to resolve issues raised in the mediation community. (See CRCMC above!)

Participating in the ADR Section activities and programs is a wonderful way to network, keep your finger in the pot and much more. I hope to see all of you at the Pizza and Professionalism program on February 3, 2014. If you don't know about that event, check out our website! And look me up in June at the annual meeting in Ocean City.

Ceecee Paizs

The Neutral's Perspective: Lessons from the Trenchesⁱ

By Ellen F. Kandell, Esq.

Estate cases are always about family dynamics which are merely playing out in a different arena. Rather than the family kitchen table it's the mediator's conference table. As a mediator my hope is to help these families resolve the issues in front of them with a minimum of pain and tears and less money than a full blown contested hearing or trial. Disputes about small estates are often about "stuff", whether it be mom's jewelry, dad's coin collection, old furniture or other articles that are embedded with meaning by the siblings. Sometimes in these estates only the personal representative has counsel so the other siblings may be coming into mediation unrepresented. In this event the first issue that gets mediated is who gets to participate in the process. In one case the dispute was between the personal representative who had inherited the family home in which he lived and another sibling. When the other siblings showed up at the mediation the attorney for the estate wouldn't let them participate. They stayed in the waiting room and served as a resource if needed. The strong box with some of the personal property was brought into the mediation room and the parties went through every item, comparing it against the vague description left by mom as well as the memories of the brother and sister.

"Stuff" can also be an issue in much larger estates. It's only of a bigger magnitude and value. The issues and the emotional content are the same. In another matter I handled the attorneys, the parties to the mediation were two sisters, one of whom was the personal representative. Both represented by able counsel who, taking on their clients preferences, asked to start the mediation in separate rooms. I declined to do this. One counsel and her attorney sat at one end of a long conference table while the other sat at the far end with me. It wasn't my preferred seating arrangement but if I had handled the mediation by shuttling back and forth the case would not have settled. Each of these sisters had to get something off their chest before they could compromise and settle the dispute. They wouldn't have done it by my relaying their emotionally charged statements.

The degree of conflict in some disputes can be minimized by more sharing of information by the personal representative with the heirs. Several of the cases I've handled could have been avoided if the attorney for the personal representative shared accountings, bank statements and other important documents without the unnecessary expense of first being compelled to do this by motions filed by an heir. When interested parties don't have information it is natural for them to become concerned, distrustful and even suspicious.

Mediator Tips:

- Do convening calls in advance of the mediation to find out the general scope of the issues and the parties
- Find out who would like to participate even if they aren't ordered by the Court to be present
- Determine from the parties if there are any sensitivities about having all siblings present in the mediation room
- Ask how not having someone physically present in the room will help facilitate settlement
- Allow the mediator to handle the emotional content with the parties.
- Even if there are sensitivities and the parties want to start in separate rooms use your own best judgment about whether counsel's request to start separately is advisable.

ENDNOTES

ⁱ This is an excerpt of a chapter from a forthcoming ABA book about use of mediation in trust and estate matters.

