

Getting the Most Out of Your Mediation Session - Advanced Mediation Training
The West Virginia State Bar
Flatwoods, West Virginia
July 17, 2014

- 8:30 - 8:40 *Late Registration/Welcome/Introduction*
 Anita R. Casey, Esq., Executive Director
 The West Virginia State Bar
- 8:40 - 9:30 *“Lien on Me” – Working Through Liens in Mediation*
 Geraldine S. Roberts, Esq.
 McNeer, Highland, McMunn & Varner, LC
 Clarksburg, WV
- 9:30 - 10:20 *“Mediate Don’t Medicate” – Musical and Humorous Interludes*
 George Daugherty, Director
 The West Virginia State Bar Lawyer Assistance Program
 Anita R. Casey, Esq., Executive Director
 The West Virginia State Bar
- 10:20 - 10:50 **BREAK**
- 10:50 - 11:40 *“You Can’t Fire Me!” - Mediating Workplace Issues*
 Karen Engro
 Mediator
 Pittsburgh, PA
- 11:40 - 12:30 *“We Don’t Need You to Finish Last!” - Baseball and the Age of Arbitration*
 Debra Scudiere, Esq.
 Kay Casto & Chaney, PLLC
 William A. Scudiere
 St. Francis Central Catholic School
 Morgantown, WV
- 12:30 - 1:30 **LUNCH**
- 1:30 – 2:20 *“Can We Really Do That?” - Creative Solutions in Mediation*
 Elliot G. Hicks, Esq.
 Hicks Resolutions
 Charleston, WV
- 2:20-3:10 *New Alternatives to Alternative Dispute Resolution*
 Webster J. (“Jay”) Arceneaux, III
 Lewis Glasser Casey & Rolins, PLLC
 Charleston, WV
- 3:10-3:30 **BREAK**

3:30 – 5:10

*“Whose Mediation Is This Anyway?” - A Panel Discussion on Difficult Situations
in Mediation*

Panelists:

Charles R. Steele, Esq.
Steele Law Office
Clarksburg, WV

Oscar M. Bean, Esq.
Bean & Bean
Moorefield, WV

Landers P. Bonenberger, Esq.
McDermott & Bonenberger, PLLC
Wheeling, WV



GERALDINE S. ROBERTS

Geraldine S. Roberts is a director of McNeer, Highland, McMunn and Varner, L.C. and has been since 1994. Gerry is primarily involved in the firm's litigation department and her practice covers both state and federal courts throughout West Virginia.

Gerry acquired her law license over 36 years ago. She was born in Pittsburgh, Pennsylvania and graduated from Norwin Senior High School in North Huntington Township, Pennsylvania. In 1971, she received her Bachelor's Degree in Political Science and International Relations from Seton Hill College. Upon graduation, she moved to Morgantown, West Virginia, and taught school in Preston County and Tucker County, West Virginia. She left her teaching position in 1974 to attend the West Virginia University College of Law.

Following her graduation from law school, Gerry joined the law firm of Goodwin & Goodwin in Charleston, West Virginia. In 1980, Gerry moved to Elkins, West Virginia, and shortly thereafter, she began her tenure as Senior Law Clerk for the Honorable Robert E. Maxwell, Chief Judge of the United States District Court for the Northern District of West Virginia. During her time as Judge Maxwell's law clerk, she helped coordinate the first settlement week in West Virginia and was trained as one of the first group of court-approved mediators in 1987. She continues to serve as a mediator and has been involved in the Basic Mediation Training and Advanced Mediation Training sponsored by the West Virginia State Bar. She returned to private practice in Elkins in 1988. She joined McNeer, Highland, McMunn and Varner, L.C. in 1992 and, in January 1994, she became a director of the firm. Her primary practice areas are insurance defense litigation, municipal law, and all aspects of civil litigation. She has represented numerous insurance companies in all aspects of defense litigation, including defense of insureds, insurance coverage issues and insurance bad faith. She has represented the City of Clarksburg in matters related to its demolition of dilapidated structures program. Gerry has been the City Attorney for the City of Elkins since 2010. Gerry is a former member of the Board of Governors of the West Virginia State Bar and a State Bar approved mediator. She has served as an adjunct professor at West Virginia University College of Law, where she taught appellate advocacy. Gerry is a member of the Randolph County Bar Association, Harrison County Bar Association, the American Bar Association and Defense Research Institute, and the West Virginia Municipal Attorneys Association. She is currently serving as Secretary of the West Virginia Municipal Attorneys Association. Gerry recently was selected as a Fellow of the West Virginia Bar Foundation for the year 2014.

When not at work, Gerry has been engaged in a variety of community-related activities, including the Elkins City Council, Mountain State Forest Festival, Elkins Youth Soccer, Randolph County Humane Society, Habitat for Humanity, and the Elkins YMCA. Gerry is also a long-standing member of the West Virginia Hospital Finance Authority, recently re-appointed by Governor Earl Ray Tomblin.

Gerry is the proud mother of two children, Benjamin Roberts, and Kate Roberts White, and is the grandmother of Jackson White and Cameron White.

GETTING THE MOST OUT OF YOUR
MEDIATION SESSION --
ADVANCED MEDIATION TRAINING

“Lien on Me” -- Working Through Liens in Mediation

West Virginia State Bar

July 17, 2014
Flatwoods, WV

Presented by:

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*With appreciation to
Steele Law Offices
Clarksburg, West Virginia
who prepared this presentation
and was generous enough to share it*

*Also with appreciation to
Amanda L. Tomblyn
Summer Intern, Rising Third Year, WVU College of Law*

JULY 17, 2014
“LIEN ON ME” -- Working Through Liens in Mediation

Mediator's role in identifying liens; conveying information regarding liens during negotiations; and confirming how liens are to be satisfied out of settlement proceeds

I. "Made whole"

West Virginia has traditionally adhered to the "made whole" doctrine. That is, no right of subrogation exists until the injured party is made whole. However, contractual language and/or statutory enactments may limit or negate the applicability of the doctrine. Medical payments carriers who are claiming a right of subrogation versus a contractual right of reimbursement are still subject to the made whole rule. Additionally, private health insurers which are not governed by ERISA may be subject to made whole rule.

II. Common Lien Issues:

A. **Medicare** Centers for Medicare and Medicaid Services (CMS) administers Medicare and Medicaid

Medicare-Priority right of reimbursement- payments are to be secondary to Workers' Compensation, auto or liability insurance, self-insured plan or no fault insurance 42 U.S.C. § 1395y(b)(2)(A)(ii) (Also includes UM and UIM)

If prompt payment not available from primary insurer, then Medicare can make conditional payment. 42 U.S.C. § 1395y(b)(2)(B) (Prompt= 120 days after service rendered or hospital discharge)

Medicare has right of reimbursement if recovery is had from a "primary payer." 42 U.S.C. § 1395y(b)(2)(A)(ii),(ii)

****If Medicare is not timely reimbursed from settlement or verdict proceeds, then private cause of action potentially exists against primary payer for double damages 42 U.S.C. § 1395y(b)(3)(A)****
(Never seen utilized, and not realistic if case is settled, because no liability admission)

www.msprc.info
www.medicare.gov

www.cms.hhs.gov/COBGcneralInformation

Medicare Secondary Payer Recovery Contractor

Medicare website

Contact info for Coordination of Benefits/MSPRC

Recovery formula 42 C. F. R. § 411.37

A. If Medicare's payments are less than recovery
Calculate Procurement Costs (Attorney's fees, court costs, expert fees, etc.)

Procurement costs/Total Recovery = Applicable Ratio
Medicare Payment x Ratio= Medicare's Share of Procurement Costs

Medicare Payment - Medicare's Share of Procurement= Medicare's Recovery Amount

Example: \$50,000 recovery/settlement, Medicare paid \$10,000, attorney's fee 40%-\$20,000, costs \$2,000

$$22,000/50,000 = 44\%$$

$$10,000 \times .44 = 4,400$$

$$10,000 - 4,400 = \text{Medicare gets } \$5,600$$

If Medicare's payment is greater than recovery

Medicare's Recovery Amount is Total Recovery minus procurement costs

Same scenario above with 8,000 recovery/settlement

$$8,000 - (40\%)3,200 - 2,000 = \text{Medicare gets } \$2,800$$

Practical Info:

Medicare COB 1-800-999-1118

MS PRC (Medicare Secondary Payer Recovery Contractor) 1-866-677-7220 Where is conditional payments letter?-May be told that one will go out in 45 days.

<http://www.cms.hhs.gov/ICD9ProviderDiagnosticCodes/>

Diagnostic Codes

What if some bills are not related-older people sometimes go to the doctor

Conditional payment letter may be last communication with MSPRC until case is resolved, at which time it is necessary to request final payment letter.

Actual reimbursement is due to Medicare within 60 days of receipt of third party payment, or interest will accrue. 42 U.S.C. § 1395y(b)(2)(B)(I)(ii) and 42 C. F. R. § 41.1.24(h).

If seek reduction, likely cannot be done until after final payment letter is issued. No made whole doctrine-Look at MSP Manual Chapter 7. However, undue hardship on beneficiary is factor, as well as age, assets, physical or mental impairments and expenses for support of others.

Reporting-- Section 111 Medicare, Medicaid and SCHIP Extension Act of 2007 ("MMSEA") \$1,000 civil money penalty responsible reporting entities are liability insurance carriers, self insureds, no-fault insurers and workers' compensation insurers.

Reporting requirements may be triggered if assumption of ongoing responsibility for medicals

Total Payment Obligation to Claimant (TPOC) = one time or lump sum payment

Timing could be date of payment, date of agreement or date of Court approval.

Future Payments- Set-Asides Preserve Medicare's status as secondary payer

Can be a separate, interest bearing bank account with proceeds to be spent on future expenses

Medicare Secondary Payer Manual Chapter 1 Definitions (set asides do not just apply to WC)

But see Medicare Secondary Payer Manual Chapter 7, section 50.5 (no recovery of benefits after date of liability settlement)

No established procedures for MSA outside of Workers' Compensation cases.

CMS regional offices have discretion as to whether to review liability set asides

Risk of no set aside- Medicare will not pay for future benefits
Medicare will pay for benefits but will seek reimbursement

Submitting an MSA for approval is voluntary and not mandatory

Don't allege need for specific future medical treatment unless necessary and provable

B. Medicaid

Governed by West Virginia Code § 9-5-11. Places responsibility of satisfying lien on the plaintiff and his attorney. In the event of controversy as to amount of lien, plaintiff's attorney shall interplead the portion of the plaintiff's settlement that will satisfy the department, exclusive of attorneys fees and costs, regardless of any contractual arrangement between the client and the attorney.

1. Procedure for Negotiating Lien: Initial request for Lien Status and Waiver (hopefully done well in advance of mediation):

HMS
5615 High Point Drive, Suite 100
Irving, TX 75038
www.hrns.com
Attn: Tiffany Stewart

Phone: 855.386.4133
Fax: 877.757.7261

The information needed to request a Medicaid Lien status or waiver includes:

- a. Attorney Fee Contract;
- b. Proposed settlement amount and/or policy limits of the alleged tortfeasor;
- c. Costs expended;
- d. Complicated issues of liability; and
- e. Status of injury/medical treatment.

Ms. Stewart is the DHHR representatives assigned to West Virginia. She has the capability of reducing the Lien by the applicable attorney's fee (normally 1/3) and the pro rata costs incurred.

2. Request for further Lien reduction:

405 Capitol Street
Suite 503
Charleston, WV 25301
www.bms.com
Attn: Richard Levock

Phone: 304.342.1604
Fax: 304.342.1605

Mr. Levock will consider a further reduction - and you can feel free to advance any particular argument you find compelling. Once a written agreement has been reached, you can send the payment for the Lien to the following:

DHHR/HMS Tort Recovery (payee)
P. O. Box 11073
Charleston, WV 25339

Lewis v. W.Va. Dep't. of Health & Human Res. (In Re E.B.), 229 W.Va. 435 (2012). Court considers "true value" of claim, then compares to actual settlement, and determines ratio for purposes of calculating subrogation recovery. Also discussion of utilizing retail value of medical bills and DHHR payment as evidence of reasonable value of expenses.

3. Pursuant to **Arkansas Department of Health and Human Services v. Ahlborn**, 547 U.S. 268, 126 S. Ct. 1752, 164 L.Ed.2d 459 (2006), the West Virginia Department of Health and Human Resources may obtain reimbursement for medical expenses paid from only that portion of the settlement, compromise, judgment, or award obtained by a recipient of Medicaid assistance that constitutes damages for past medical expenses.

4. West Virginia Code § 9-5-11 (2009) is preempted to the extent that its assignment and subrogation provisions conflict with federal law. To the extent that our prior decision in **Grayam v. Department of Health and Human Resources**, 201 W. Va. 444, 498 S.E.2d 12 (1997), provided that pursuant to W. Va. Code § 9-5-11 the Department of Health and Human Resources possesses a "priority right to recover full reimbursement from any settlement, compromise, judgment, or award obtained from such other person or from the recipient of such assistance if he or she has been reimbursed by the other person," that holding is overruled.

C. Health Insurance-ERISA

ERISA (Employee Retirement Income and Security Act): 22 U.S.C. Section 1101 *et seq.* Purpose is to "promote the interests of employees and their beneficiaries in employee benefit plans, and to protect contractually defined benefits." **Firestone Tire and Rubber Co. v. Burch**, 489 U.S. 101 (1989).

State Court does not have jurisdiction to decide, limit, or enforce a Plan Administrator's subrogation rights. Turner v. Turner, 223 W. Va. 106 (2008). In other words, state created "made whole" rule is irrelevant. If no agreement can be reached, the Federal Court will have jurisdiction over dispute.

D. Medical Payments Coverage (Reimbursement v. Subrogation) Look at Policy

Subrogation is OK, reduce for attorney's fees and costs- Federal Kemper v. Arnold, 183 W. Va. 31 (1990)

No right of subrogation for insurer against its own insured- Richards v. Allstate, 193 W. Va. 244 (1995)

With appropriate language, reimbursement against own insured is OK- Ferrell v. Nationwide, 217 W. Va. 243 (2005)

Is arbitration pending between insurers? If so, a settlement resolves the medical payments dispute, and the arbitration claim should be dismissed.

E. Workers' Compensation

West Virginia Code Section 23-2A-1 governs Workers' Compensation liens. The carrier or self-insured employer is entitled to pursue subrogation on all indemnity and medical payments for injuries occurring after January 1, 2006 (prior to that time, subrogation only applied to medical payments). Deduction for attorney's fees and reasonable costs is permitted. Further negotiation of lien is specifically allowed by statute. The statute places responsibility of satisfying lien on injured worker and his attorney. Must give notice of claim after claim is filed.

F. James Morton Catastrophic Illness Fund

West Virginia Code Section 16-5Q-4 provides a statutory right of the fund of subrogation to liable third parties. DHHR acts on behalf of the fund for reimbursement. Claim may be negotiated by DHHR. See Medicaid section, above.

G. CHIPS

West Virginia Code Section 5-16B-10 governs subrogation by the Children's Health Insurance Agency. Reimbursement for subrogated claim is to be sufficient to reimburse the Agency for the full amount of benefits paid. Pro rata attorneys fees and costs can be deducted. Negotiation of lien specifically allowed. www.chip.wv.gov

H. Claims against Government

W. Va. Code§ 29-12A-13(c)" ... in no event may any claim be presented or recovery be had under the right of subrogation."

I. Crime Victim's Fund, W. Va. Code§ 14-2A-23

III. Questions for Discussion

A. Is defendant entitled to know amount of lien for purposes of settlement negotiations given defendant's obligation to protect settlement proceeds and satisfy liens in accordance with Nationwide Mutual Insurance Company v. Dairyland Insurance Co., 191 W. Va. 243 (1994)?

B. Joint and several liability (if partial settlement, how does this affect lien satisfaction)?

W. Va. Code § 55-7-24 Apportionment of damages-applies to "defendant"

W. Va. Code § 55-7B-9 Medical Professional Liability-several liability against each defendant

W. Va. Code § 29-12A-7 Political subdivision defendants-Joint and several if 25% or more

C. Settlement agreement should reflect each party's contribution, not just total amount.

Haynes v. DaimlerChrysler Corporation, 101151 (W. Va. 6-17-2011).

D. Collateral source rule issues-what if plaintiff has received government benefits? i.e. what are the true special damages

E. Casaccio v. Curtiss, 718 S.E.2d 506 (2011) Insurance representative appear in person

F. Income tax consequences-settlement vs. trial

G. Bankruptcy (could affect either side)

George Daugherty was selected as the Director of the WV Lawyer Assistance Program after practicing trial law for 55 years and working actively in the field of recovery for 35 of those years. He believes addiction in its broadest sense is the biggest problem in America today and that lawyers ought to lead the fight in addressing the problem. He sees lawyers and judges in a unique position to work with people when they feel the "heat" brought about by the problem and should be well versed in guiding clients, lawyers and judges in learning how to encourage recovery at those crucial moments. He will offer graphic suggestions backed up by experience and respected literature. He will also offer specific suggestions to help lawyers and judges once again honor and appreciate their professions and find joy in life without drugs or alcohol or any other mood altering substance or method of escaping, as expressed in the psychological term "psychoneuroimmunology", and will offer literature as proof that festive living is the best antidote to stress.

MEDIATION BEST SOLUTION TO STRESS INVOLVED IN PRACTICING LAW

Anita Casey

Opening Remarks: Stress is killing lawyers

Purpose of WVLP

George Daugherty

The Extent of the Problem

Wrong Heroes

The Legal Profession's Hidden Secret: Substance Abuse by Professors Larry
Dubin and Ed Jenner

The Solution: The Hardison Case

The Power of Story: Henrietta Seiberling

The Founding of Recovery Programs

The Literature: The Big Book Of Alcoholics

Learning How To Relax and Minimize Stress: Psychoneuroimmunology

Song Mediate, Don't Medicate

Of those Wyoming lawyers participating in the 2011 Life Satisfaction Survey...

80% said there had been times when their family had been adversely affected by their work-related stress.

61% said the amount of work-related stress in their life was unhealthy for them (a 10% increase from 2001.)

57% said if they had the opportunity to get out of the practice of law and maintain their current financial situation, they would.

24% said the stress they felt from the legal profession had caused them to use alcohol or drugs.

Sadly, only **30%** said if they could turn back time, they would still choose to attend law school and enter the practice of law.

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HEALTH ADDICTION

OKAY

Alcohol Kills 1 Person Every 10 Seconds, Report Says

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Alexandra Siffertine [@alexstefine](#) 11:14 AM ET

A new World Health Organization report released on Monday finds the dangerous consumption of alcohol led to 3.3 million deaths around the world in 2012 and that 16 percent of alcohol consumers take part in binge drinking

Dangerous alcohol consumption was responsible for 3.3 million deaths worldwide in 2012, according to a new World Health Organization report Monday.

Harmful alcohol use not only leads to addiction, but it can put people at a higher risk of over 200 disorders like tuberculosis and pneumonia.

"This actually translates into one death every 10 seconds," Shekhar Saxena, head of the WHO's Mental Health and Substance Abuse department, told reporters in Geneva, *Global Post* reports.

On average, every person in the world age 15 and older drinks 6.2 liters of pure alcohol a year, according to the report. However, less than half the world's population drinks any alcohol, which means people who do drink average about 17 liters of pure alcohol a year. Men are more likely than women to experience alcohol-related deaths—though drinking among women is on the rise—and low-income communities are at a greater risk for social and health complications related to alcohol, the report said.

The report shows that 16% of drinkers partake in binge drinking, which is the most dangerous form of alcohol consumption. Europe has the highest alcohol consumption per capita, though consumption levels have been stable there for the last five years. Consumption has remained stable in Africa and in the Americas, but it appears to be rising in Southeast Asia and the Western Pacific regions, according to WHO. China is estimated to grow its per capita consumption by 1.5 liters of pure alcohol by 2025.

The WHO says it would like to see a voluntary global target of a 10% reduction in harmful alcohol use by 2025.

OF THE SEVEN native-born Americans awarded the Nobel Prize in literature, five were alcoholic. The list of other twentieth-century American writers similarly afflicted is very long; only a few of the major creative talents have been spared. In addition to the five Nobel laureates — Sinclair Lewis, Eugene O'Neill, William Faulkner, Ernest Hemingway and John Steinbeck — the roster includes Edward Arlington Robinson, Jack London, Edna St. Vincent Millay, F. Scott Fitzgerald, Hart Crane, Conrad Aiken, Thomas Wolfe, Dashiell Hammett, Dorothy Parker, Ring Lardner, Djuna Barnes, John O'Hara, James Gould Cozzens, Tennessee Williams, John Berryman, Carson McCullers, James Jones, John Cheever, Jean Stafford, Truman Capote, Raymond Carver, Robert Lowell and James Agee. The presence of the disease in so many of our notable writers surely

has never been as acute among modern English writers, as Anthony Powell informed me: "Good British writers are apt to be by no means total abstainers, but I should have thought you were right in supposing the matter to be less disastrous, in bulk, than in the US." Most American writers, however, assumed that drinking was good for them, accepting it as part of the rules of the game; drinking writers were, in effect, good writers.

Many of them became alcoholic, a malady that had much, if not all, to do with the erosion of their talents at ages that were characteristically far younger than those of their European counterparts. Nevertheless, many American writers were convinced that they had benefited richly from their early pact with alcohol and remained assured that it had been a necessary ingredient in the brief yet golden period of their youth. This, despite the fact that the muse of alcohol became increasingly deaf to the pleas of these writers as they aged. Fitzgerald's best work was concluded when he published *Tender Is the Night* at age thirty-eight. Hemingway's last notable book to appear in his lifetime was *For Whom the Bell Tolls*, published when he was forty-one, although his decline was evident at least four years earlier in *To Have and Have Not*. Faulkner's immense talent kept him functioning longer than most; he was forty-four when he completed his last important book, *Go Down, Moses*.

A closer look at the long list of alcoholic writers reveals that four were suicides (Jack London, Hart Crane, Hemingway and John Berryman), while nearly all the rest burned themselves out at surprisingly early stages of their careers. A few preserved legendary silences that persisted for decades (Djuna Barnes and Dashiell Hammett), but virtually all the rest continued to write, producing increasingly feeble works, a situation suggesting the relevance here of Fitzgerald's much-quoted remark "There are no second acts in American lives." We've had many brilliant beginnings in American writers but far fewer sustained careers. Unlike many of the chief European writers of the last one hundred years — extreme examples are Tolstoy and Thomas Mann, writing *Hadji Murad* and *Confessions of Felix Krull*, re-

The Legal Profession's Hidden Secret: Substance Abuse

Conversations With Recovering Lawyers—A Video Presentation

So we have this @ WVU

People go to law school believing that they are there for the sole purpose of learning the skills necessary to become lawyers. In addition to this obvious agenda, law students are also exposed to a hidden agenda; to start the process of becoming acculturated to the norms and standards of the legal profession.

This legal culture, which law students hope to join, will make rigorous demands upon them. They will be required to use analytical skills in disregard to their emotional reactions, advocate positions that may clash with personal beliefs, and place client's interests above societal interests. Some lawyers will pay a personal price in emotional terms for engaging in this difficult and complex role of being a lawyer. Law students need to be exposed to and better understand not only the professional pressures they will face after graduation, but also how these pressures can impact their personal lives. One such potential pressure that places law students at great future risk is alcohol or drug abuse.

If the only concern in understanding drug and alcohol abuse among lawyers was the destructive impact on their personal welfare, the issue would be one of great importance. However, the concern becomes even more significant when it is acknowledged that for every lawyer who struggles with addiction issues, the interests of many clients who have reposed trust in their lawyer are endangered.

Research clearly establishes that lawyers are at greater risk for alcohol and drug problems than the general population.¹ "Few professions and academic pursuits are as demanding and stressful as the practice of law or studying to become a lawyer."²

Research further demonstrates that law students tend to increase their use of alcohol

and drugs during their law school careers.³ Law schools cannot ignore the realities of this research. Law students and lawyers need to receive further education and information about the problem and consequences of alcohol and drug abuse. The lack of interest by legal educators and among members of the Bar may be a factor as to why it has been estimated that a high percentage of disciplined lawyers suffer from addiction issues.⁴

From time to time, a brave lawyer will come forward and write about how drug and alcohol abuse negatively impacted her or his personal and professional life.⁵ Since lawyers are generally concerned about their reputation, some lawyers will only disclose this type of personal account anonymously.⁶ The value of storytelling is that the reader can learn through the personal struggles of another lawyer that a better life can exist if the addicted lawyer seeks help.

The Lawyers and Judges Assistance Program of the State Bar of Michigan offers assistance and encouragement to lawyers who suffer from chemical dependency problems. Recent statistics indicate that the number of lawyers seeking such help has dramatically increased.⁷

With support from the Oakland County Bar Foundation, I have produced a 33-minute video documentary to help raise the level of awareness regarding chemical addiction among law students and lawyers. It is my intention to provide every accredited law school in the United States with a copy of

this program so that it can be aired and discussed in a Professional Responsibility course. Legal educators owe law students the obligation of providing useful information about drug and alcohol abuse.⁸

This video program opens and closes with people who have expertise in the area of chemical dependency within the legal profession. John Berry, Executive Director of the State Bar of Michigan, who also chairs the Professionalism Committee of the American Bar Association, conveys the damage that an addicted lawyer can cause to the lawyer's own life as well as the lives of clients. Robert Edick, Deputy Grievance Administrator, Michigan Attorney Grievance Commission, speaks to how the disciplinary system can assist some addicted lawyers in seeking treatment rather than suffering the normal consequences of discipline. Psychologist Bill Livingston, Director of the Lawyers and Judges Assistance Program, discusses the unique problems faced by lawyers that causes the high incidence of alcohol and drug abuse among lawyers.

The most compelling portion of the video consists of conversations with four Michigan lawyers who are successfully recovering from drug and alcohol addictions. Each lawyer has a unique and personal story to tell.

Steve, in his early fifties, was suspended for three years from the practice of law for misusing client trust funds. His real problem was severe drug and alcohol addiction. Approaching death and having lost everything that meant anything to him in his life, including his family, law license, and assets, Steve sought help and has been drug free over the past decade. During that time, he has been reinstated as a lawyer and has gained the respect of lawyers and judges throughout Michigan for his zealous desire to help other lawyers who suffer from substance abuse.

All columns are the opinion of the writer and do not represent the position of the Legal Education and Professional Standards Committee or the State Bar of Michigan.

Roger, in his early sixties, has been in practice for over 30 years and has never been disciplined. However, he almost died as a result of alcohol addiction that did not occur until he was almost 40 years old. He has not consumed any alcohol since he came out of a coma induced by his alcohol consumption 14 years ago.

David, in his mid-thirties, currently practices law with a large corporate law firm. He is a transactional and litigation lawyer. Drunk driving charges brought him within the disciplinary system. Although he has not been disciplined, he articulates the impact that his battle against the use of drugs and alcohol has had on his personal and professional life.

Catherine, a lawyer for the past five years, had her alcohol problem accelerate while a law school student. She has been plagued by a drinking problem throughout her adult life. A grievance was filed against her when she came to court appearing to be under the in-

fluence of alcohol. She received probation and retained her right to practice law upon her willingness to submit to various conditions including constant drug testing. She has been successful in her recovery and her life has dramatically improved.

One can only have great respect and admiration for the recovering lawyers who agreed to tell their stories so that law students and lawyers could become more conscious of the danger signals presented by drug and alcohol use and abuse and the help that is available to those in need. These lawyers have become positive role models for all lawyers who are willing to confront their issues with chemical dependency.

Although the program is not designed to solve the problem of substance abuse among members of the legal profession, hopefully it will provide the start for a discussion about a subject that has been kept under wraps for too long. ♦

Larry Dubin is a professor of law at the University of Detroit Mercy School of Law. Professor Dubin has taught Professional Responsibility for the past 30 years and is a former chairperson of the Michigan Attorney Grievance Commission.

FOOTNOTES

1. Professor Gerald Boston, "Chemical Dependency in Legal Education: Problems and Strategies," *Michigan Bar Journal*, p 298 (March, 1997).
2. *Id.* at 1.
3. *Id.* at 1.
4. *Id.*
5. Judge Sarah Krauss, "A Personal Story... My Journey from Alcoholism to Sobriety. Recovery and the Bench," *Michigan Bar Journal*, p 306 (March, 1997).
6. By Anonymous, "Personal Story," *Michigan Bar Journal*, p 304 (March, 1997).
7. Naseem Stecker, "What Ails Thee?" *Michigan Bar Journal*, p 28 (March, 2002).
8. Some prior television programs that I have produced that have been widely used in law schools include "Legal Heroes" and "I Stand By the Accused," both winners of the State Bar of Michigan's Annual Wade McCree Advancement of Justice Award. "A Day in the Life of Law School Teaching" funded by the Institute for Law School Teaching, and "What Went Wrong? Conversations With Disciplined Lawyers."

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Addiction and Lawyers: Substance Abuse in the Legal Profession

Ed Jensen: Yahoo Contributor Network

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The official web site of the Michigan Bar Association discusses the origins of the problem. Larry Dubin, a professor of law at the University Detroit Mercy School of Law, explains that the substance abuse of lawyers actually begins when they are in college.

According to Dubin when students attend law school they are going in order to obtain the skills they must acquire to be successful lawyers. But they

also are exposed to the lifestyles of lawyers. Once aspect that they are exposed to is substance abuse.

Dubin, who has taught Professional Responsibility for the past 30 years, explains that student's will learn that they must ignore their emotional and personal reactions, and represent positions that may be in disagreement with their own opinions and belief systems. The best interests of their client, which they have to represent, may be in opposition to the best interests of society. Dubin says that these professional pressures can adversely affect lawyer's personal lives and cause substance abuse problems.

It is pointed out by Dubin that research shows attorneys are more likely to have substance abuse problems than the average person. 1 These problems are also of greater concern to the general public than the average person's because the lawyer's addiction to drug and alcohol doesn't just affect that attorney. The addiction also negatively affects the client's of that attorney.

Research doesn't just show the substance abuse troubles of attorneys. There is also research that shows that law students increase their usage of drugs and alcohol while in law school. 2 Dubin explains that the Bar and legal educators have not shown interest in this issue and that could be part of the reason a large number of attorneys abuse alcohol and drugs. 3 Dubin adds that some lawyers are courageous enough to tell others about their problems, 4 but they sometimes do so anonymously to protect their reputations. 5 In Dubin's state of Michigan lawyers are being offered encouragement and assistance by the Lawyers and Judges Assistance Program of the State Bar of Michigan. The only other positive news in Dubin's article is that there are statistics which show more attorneys are seeking help. 6

The results are for the state of Florida. But if Florida is similar to the rest of the nation, then the legal profession throughout the country has a huge problem. Not only are the lawyers dealing with several issues that negatively impact their performance, these issues erode the public's confidence in both the legal profession and the legal system.

It is in fact quite apparent that the issue is a national one.

Florida Lawyer's Assistance, Inc. posted an article "Impairment in the Legal Profession" that is an invaluable resource for understanding these issues. Although the article was written for judges, it is useful for anyone who wants to gain a greater understanding of this complex problem.

According to the article, 10% of lawyers have some sort of problem with addiction, whether it be drugs, alcohol, gambling, sex, work, or food. This shocking number increases to an estimated 20% during their careers. Short-term or chronic symptoms of depression or stress affect 33% of legal professionals. These issues lead to a myriad of problems for the clients of the afflicted professionals.

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Some of the adverse effects for clients includes: missed court dates, violations of trust, poor decisions, and inadequate preparation.

The article explains that addiction can take years before it begins to negatively impact the daily life of the addict. Although there is a great deal of evidence that addictions stem from biochemical body processes, the evidence that legal professionals have higher rates of addiction is indisputable.

There are many common myths about addictions in the legal profession. The article proves all of these myths to be false. Some lawyers believe that they are just "recreational" users of drugs and/or alcohol, and that this will not harm them. This could not be further from the truth. Lung cancer and strokes and heart attacks can be caused by marijuana and cocaine respectively. Heroin can lead to mental disorders, death from respiratory collapse, infection, and AIDS if the heroin was taken by sharing needles. Barbiturate usage can also lead to death from respiratory collapse. Use of amphetamines can cause mental disorders and strokes. Alcohol abuse can lead to cancer as well as brain damage, heart disease, impaired muscular coordination and memory loss. Clearly "recreational" usage of drugs and alcohol can have negative affects.

The myth that drug use is none of the Bar's business and is strictly a personal and private matter of the attorney is incorrect. Due to the fact that drugs can still affect the user 24 hours after the drugs were taken, the attorney would still be under the influence even if they did not take the drugs while working.

A popular myth among alcoholics is that they can not be alcoholics because they show up to work every day. What they fail to realize is that the even though they are technically at work, they are not fully there mentally or physically, and because of this their performance is frequently inadequate. As the lawyer's alcoholism progresses their professional and personal life will both spiral downward.

Another erroneous myth is that alcoholics drink every day. How often someone drinks is not the determining factor of alcoholism. The determining factor is the person's ability to control their drinking once they have started. The comical belief that coffee and/or a cold shower will sober up a drunk is obviously false.

While the beliefs that overcoming depression is just a matter of time and that stress is a necessary part of the legal profession do have some merit, these are oversimplifications. Not all depression can be overcome with time. Clinical depression can only be defeated with treatment and proper medication because it is a biochemical illness. Stress is a part of the legal profession, but not every one responds to it in a healthy manner.

According to the piece there are many types of treatment ranging from inpatient detoxification, inpatient hospitalization, and outpatient and aftercare counseling. In order to be successful the treatment must deal with all aspects of the person's life, their mental, physical and emotional state, personal and family relationships, legal problems, financial status, how leisure time is spent, and of course their professional life.

While most addicts seem to believe they can stop whenever they want, and that if they ever felt they were addicted they would then seek help, both of these theories are unfortunately often incorrect. The article explains that addicts usually seek help due to an external factor. This occurs when their substance abuse causes them a legal, professional, or family problem.

Legal problems often involve driving under the influence charges, possession of controlled substances, and disturbing the peace. Since receiving treatment is deemed a better alternative than receiving punishment, addicts can be set on the right path after legal problems force them into treatment.

Professional pressure can arise when a lawyer is referred for help by their firm, a grievance committee a local judge, or their state's Bar. The possibility of losing their job or even their profession is strong motivation for attorneys to seek help with their substance abuse problems.

Family problems can begin when the lawyer's substance abuse causes friction with family members. If this friction reaches the point that the attorney is concerned about doing serious or permanent damage to their family relationships it can cause the addict to seek help.



The Heat

The role of those who can apply pressure, or heat

There are numerous clear warning signs that a lawyer has developed a substance abuse problem. The first is absenteeism - repeated and/or unexplained absences or lateness. Also falling under this category would be unusual or unlikely excuses for absences or lateness. The second warning sign would be confusion or having difficulty concentrating. Examples of this would be inability or difficulty remembering details, instructions, etc. Progressively more difficult time with completing complicated tasks. Greater effort required for work than should be necessary.

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How to Find Information About Substance Abuse Treatment Online in Eugene, Oregon

Eugene, Oregon is home to several treatment options for substance abuse. This article offers contact information for those accessible online.

Eating Disorders and Substance Abuse: The Link

Each year, more than five million Americans suffer from eating disorders such as anorexia and bulimia. Millions more are affected by alcohol and other substance abuse problems. Many don't realize that these two disorders...



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***A COURAGEOUS LANDMARK OPINION OF THE
SUPREME COURT OF APPEALS OF WEST VIRGINIA
IN 1999.***

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
January 1999 Term

No. 22430

LAWYER DISCIPLINARY BOARD,
Complainant

v.

RICHARD E. HARDISON,
A MEMBER OF THE WEST VIRGINIA STATE BAR,
Respondent

DISCIPLINARY PROCEEDING

SUSPENSION OF LICENSE WITH CONDITIONS

Submitted: May 4, 1999
Filed: July 9, 1999

X X X

The Board heard testimony from Hardison regarding his long and difficult history with alcoholism. Hardison told the Board that he has in the past participated in a number of inpatient programs for the treatment of alcoholism and for a cross-addiction to pain pills. In November 1996, he was the subject of an involuntary commitment at Huntington State Hospital following an incident in which police were called to his home. Hardison also treated with Dr. Lee Neilan (deceased), a Charleston psychiatrist, on a monthly basis and attended Alcoholics Anonymous meetings on average four times per week. He takes Antabuse for alcohol addiction and

Naltrexone for narcotic addiction. He clearly has diligently and aggressively attempted to deal with his problem.

The Board noted that on December 16, 1996, Hardison voluntarily entered inactive status with the West Virginia State Bar; his agreement with the State Bar provided that he would refrain from practice during the pendency of these charges and that he would refrain from abuse of alcohol and drugs. Hardison admits that subsequent to the agreement he relapsed three times, but stated at the May 11, 1998 hearing that he had been drug and alcohol free for six months.

Hardison testified that his problems with alcohol were not a contributing factor to any of his conduct which gave rise to the various ethics complaints filed against him. The Board, nonetheless, believes Hardison's involuntary alcohol addiction most likely contributed to his conduct and his return to the practice of law should involve continuing treatment for his addictions. The Board recommends the following sanctions: suspension for ninety days (prior inactive status should not be deemed as credit); refrain from consumption of alcohol and controlled substances to be supported by medical evidence obtained at his expense in the form of periodic drug and alcohol screening; continue counseling and participation in Alcoholics Anonymous; upon reinstatement, be supervised in the practice of law for eighteen months; upon reinstatement, maintain malpractice liability insurance not less than \$500,000.00; satisfy all requirements of the mandatory Continuing Legal Education Commission for the current period; complete the Multistate Professional Responsibility Examination with a passing score within twelve months immediately following reinstatement; pay all the costs of these proceedings, except costs which can be specifically identified as relating to those counts, if any, which are dismissed.

X X X

III. DISCUSSION

The gravamen of the complaints against Hardison shows a pattern of neglect or inattention to the needs of his clients, lack of communication with clients, and failure to pursue his clients' cases and meet deadlines. He also claimed attorney fees for collecting debts for doctors whose fees he guaranteed. As far as we can tell, all of the cases from which these charges originate have been resolved and there is no allegation that any of the doctors involved are owed any money.

The Board and ODC believe that Hardison's problems in the daily operation of his law practice are due to alcoholism and drug addiction. In his brief to this Court, Hardison states that "he did not ever desire to be an alcoholic[.]" This Court is convinced that Hardison's problems stem from his alcoholism and drug addiction. We also believe this is an illness he did not ask for, does not want and cannot control. An alcoholic does not want to suffer from alcoholism any more than a cancer patient wants to suffer from cancer. The paramount consideration for us now is protection of potential clients and the public. "The principle purpose of attorney disciplinary proceedings is to safeguard the public's interest in the administration of justice." Syllabus Point 3, *Daily Gazette v. Committee on Legal Ethics*, 174 W.Va. 359, 326 S.E.2d 705 (1984).

For many years alcoholics were viewed as morally defective individuals who were subject to scorn and pity but who were not seen as suffering from a disease. This Court noted on a

previous occasion that "[a]lcoholism and alcohol dependency is generally recognized as a disease which requires treatment or some form of therapy." *Frasher v. West Virginia Bd. of Law Examiners*, 185 W.Va. 725, 733, 408 S.E.2d 675, 683 (1991) (citations omitted). We subscribe to the modern view that alcoholism is an illness. Alcoholism is defined as a primary, chronic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. The disease is often progressive and fatal. It is characterized by impaired control over drinking, preoccupation with the drug alcohol, use of alcohol despite adverse consequences, and distortions in thinking, mostly denial. Each of these symptoms may be continuous or periodic. Roger E. Meyer, *The Disease Called Addiction: Emerging Evidence in a 200-year Debate*, *The Lancet*, Jan. 20, 1996, at 162.

It is commonly recognized that treatment for alcoholism begins with recognition of the problem. During detoxification the alcohol withdrawal syndrome produces such unpleasant manifestations as depression, anxiety, emotional discomfort (i.e., dysphoria), hallucinations and seizures. Despite suffering through these unpleasant manifestations, relapse is a dreaded but common event. Relapse simply means a return to drinking after detoxification. Once relapse occurs, the general clinical consensus is that physiological dependence is reinstated rapidly. John Littleton, M.D., Ph.D., *Neurochemical Mechanisms Underlying Alcohol Withdrawal*, *Alcohol Health & Research World*, Winter 1998 vol. 22 no.1, at 13.

Hardison recognizes he has a problem with alcohol dependency and has actively sought treatment. He has struggled valiantly against the addiction and has been hospitalized in inpatient programs, sought counseling, attended Alcoholics Anonymous, and is on drug therapy. Nonetheless, despite desperate resistance he continues to suffer from relapses. It is imminently clear to this Court that he cannot practice law at this time because of his impairment; we are not satisfied that he has fully recovered and has overcome the relapse problem so that he can competently practice his profession. The Board believes, as does this Court, that Hardison possesses considerable legal ability, and in the future will be a credit to the legal system if he can only control his alcohol addiction and take the steps to prevent relapses and recurrences of the conduct which gave rise to these complaints.

We understand that Mr. Hardison suffers from a disease not of his choosing and it our desire that he be rehabilitated so he can resume his practice; not that he be disbarred. We also understand that "[t]his Court is the final arbiter of legal ethics problems and must make the ultimate decisions about public reprimands, suspensions or annulments of attorneys' licenses to practice law." Syllabus Point 3, *Committee on Legal Ethics v. Blair*, 174 W.Va. 494, 327 S.E.2d 671 (1984), *cert. denied*, 470 U.S. 1028, 105 S.Ct. 1395, 84 L.Ed.2d 783 (1985).

In light of the problems he has encountered in the practice of law due to persistent alcohol addiction, this Court imposes the following sanctions:

1. Mr. Hardison's license to practice law in West Virginia is suspended indefinitely, with leave to petition for reinstatement to practice upon the completion of one year of sobriety and complete abstinence from consumption of alcohol and controlled substances. This period of abstinence must be supported by medical evidence, obtained at his own expense, in the form of periodic drug and alcohol screenings and the expert opinion of treating and consulting physicians;

2. Mr. Hardison will continue counseling and participation in Alcoholics Anonymous as directed by his physician(s);

3. Mr. Hardison will satisfy all the requirements of the Mandatory Continuing Legal Education Commission for the current period;

4. Mr. Hardison will complete an additional fifteen hours of continuing legal education credits in the area of office management;

5. Following reinstatement, Mr. Hardison will practice under supervision for a period of one year;

6. Following reinstatement, Mr. Hardison will maintain in full force and effect a policy of malpractice insurance with limits of liability not less than \$500,000.00. He will annually provide evidence to the ODC that his liability insurance continues to be in effect.

7. Mr. Hardison will pay all the costs incurred in the investigation and hearing of this matter.

Suspension of license with conditions.

The full text of this case may be found in 205 WV 344, 518 S.E. 2d 101



The Origins of Alcoholics Anonymous

In the spring of 1971, the newspapers reported the passing of Bill Wilson of New York City, who was one of the two co-founders of Alcoholics Anonymous. The other co-founder, Dr. Robert Smith of Akron, Ohio, had passed on some years earlier.

Shortly after Bill's death, the Akron Alcoholics Anonymous groups asked my mother, Henrietta Seiberling, to speak at the annual "Founders Day" meeting in Akron, which is attended by members of Alcoholics Anonymous from all over the world. She lived then in New York and did not feel up to traveling, so they asked me to speak in her place.

I agreed to but felt that it would mean most to them to hear some of her own words, so I called her on the telephone and asked her to tell me about the origins of Alcoholics Anonymous so that I could make sure my remarks were accurate. I made a tape recording of the conversation and played part of it at the 1971 Founders Day meeting, which was held in the gymnasium at the University of Akron with a couple of thousand people present.

So many people have asked me for a transcript of the recording that I have finally had one typed. Attached is a copy of the transcript, which follows the tape recording as closely as possible, with only my remarks and some of the conversational asides and redundancies edited out.

The first meeting of Bob and Bill, described in the attached transcript, took place in the Summer of 1935 in Henrietta's house in Akron, which was the Gatehouse of Stan Hywet Hall, then my family's estate, now the property of Stan Hywet Hall Foundation.

Henrietta passed away in 1979 at the age of 91. Henrietta was not an alcoholic. She was a Vassar College graduate and a housewife with three teenage children. She, like Bob and Bill, would be deeply disturbed by any inference that she or they possessed any extraordinary virtues or talents. On the contrary, they would all emphasize the power of ordinary people to change their lives and the lives of others through the kind of spiritual discipline so successfully exemplified in Alcoholics Anonymous.

I am happy to make this transcript available to persons who are sincerely interested in learning more about Alcoholics Anonymous and its message. It is a way of sharing some of the insights which made and still make Alcoholics Anonymous a vital force in people's lives. I ask only that the transcript be held in the spirit in which it is offered and not used for publicity or in an effort to magnify any individual.

— John F. Seiberling

TRANSCRIPT OF REMARKS - HENRIETTA B. SEIBERLING

I would like to tell you about Bob in the beginning.

Bob and Ann came into the Oxford group, which, as you know, was the movement which tried to recapture the power of First Century Christianity in the modern world, and a quality of life which we must always emphasize. Someone spoke to me about Bob Smith's drinking. He didn't think that people knew it. And I decided that the people who shared in the Oxford group had never shared very costly things to make Bob lose his pride and share what he thought would cost him a great deal. So I decided to gather some Oxford group people for a meeting, and that was in T. Henry Williams' house. We met afterwards there for five or six years every Wednesday night.

I warned Ann that I was going to have this meeting. I didn't tell her it was for Bob, but I said, "Come prepared to mean business. There is going to be no pussyfooting around." And we all shared very deeply our shortcomings, and what we had victory over. And then there was silence, and I waited and thought, "Will Bob say anything?" Sure enough, in that deep, serious tone of his, he said, "Well, you good people have all shared things that I am sure were very costly to you, and I am going to tell you something which may cost me my profession. I am a silent drinker, and I can't stop." This was weeks before Bill came to Akron. So we said, "Do you want us to pray for you?" And he said, "Yes." Then someone said, "Do you want to go down on your knees and pray?" And he said, "Yes." So we did.

And the next morning, I, who knew nothing about alcoholism (I thought a person should drink like a gentleman, and that's all), was saying a prayer for Bob. I said, "God, I don't know anything about drinking, but I told Bob that I was sure that if he lived this way of life, he could quit drinking. Now you have to help me." Something said to me - I call it "guidance" - it was like a voice in the top of my head - "Bob must not touch one drop of alcohol." I knew that wasn't my thought. So I called Bob, and said I had guidance for him - and this is very important. He came over at 10 in the morning, and I told him that my guidance was that he mustn't touch one drop of alcohol. He was very disappointed, because he thought guidance would mean seeing somebody or going someplace. And then - this is something very relevant - he said, "Henrietta, I don't understand it. Nobody understands it." Now that was the state of the world when we were beginning. He said, "Some doctor has written a book about it, but he doesn't understand it. I don't like the stuff. I don't want to drink." I said, "Well, Bob, that is what I have been guided about." And that was the beginning of our meetings, long before Bill ever came.

Now let me recall some of Bill's very words about his experience.

Bill, when he was in a hotel in Akron and down to a few dollars, and owed his bill after his business venture went through, looked at the cocktail room and was tempted and thought, "Well, I'll just go in there and get drunk and forget it all, and that will be the end of it." Instead, having been sober five months in the Oxford group, he said a prayer. He got the guidance to look in a minister's directory, and a strange thing happened. He just looked in there, and he put his finger on one name: Tunks. And that was no coincidence, because Dr. Tunks was Mr. Harvey Firestone's minister, and Mr. Firestone had brought 60 of the Oxford group people down there for 10 days of gratitude for helping his son, who drank too much. His son had quit for a year and a half or so. Out of the act of gratitude of this one father, this whole chain started.

So Bill called Dr. Tunks, and Dr. Tunks gave him a list of names. One of them was Norman Sheppard, who was a close friend of mine and knew what I was trying to do for Bob. Norman said, "I have to go to New York tonight but you call Henrietta Seiberling." When he told the story, Bill shortened it by just saying that he had called Dr. Tunks, but I did not know Dr. Tunks. Bill said that he had his last nickel, and he thought, "Well, I'll call her."

See I, who was desperate to help Bob in something I didn't know much about, was ready. Bill called, and I will never forget what he said: "I'm from the Oxford group and I'm a Rum Hound." Those were his words. I thought, "This is really manna from Heaven." And I said, "You come right out here." And my thought was to put those two men together. Bill, looking back, thought he was out to help someone else. Actually, he was out to get help for himself, no thought of helping anyone else, because he was desperate. But that is the way God helps us if we let God direct our lives. And so he came to my house, and he stayed for dinner. And I told him to come to church with me the next morning and I would get Bob, which I did.

Bill stayed in Akron. He didn't have any money. There was a neighbor of mine, John Gammeter, who had seen the change in my life brought by the Oxford group, and I called him and asked him to put Bill up at the county club for two weeks or so, just to keep him in town. After that, Bill went to stay with Bob and Ann for three months, and we started working on Bill Dotson and Ernie Galbraith.

The need was there, and all of the necessary elements were furnished by God. Bill the promoter. And I, not being an alcoholic, for perspective. Every Wednesday night I would speak on some new experience or spiritual idea that I had read. That's the way we all grew. Eventually the meetings moved to King School. Some man from Hollywood came, an actor, and he said that he had been all over the country and that there was something in the King School group that wasn't in any other group. I think it was out great stress and reliance on guidance and quiet times.

Bill did a grand job. We can all see in his life what the Oxford group people told us in their message: That if we turn our lives to God and let him run it, he will take our very shortcomings and make them valuable in his way and give us our heart's desire. And what I got the word that Bill had gone on, I sat there, and it was just as if someone had spoken to me again on top of my head. Something said to me, "Verily, verily, he has received his reward." So I went to the Bible, and there it was, in Matthew VI. Then I looked at Bill's story in Alcoholics Anonymous where Bill had said that all his failures were because he always wanted people to think he was somebody. In the first edition of the book, he said he always wanted to make his mark among people. And by letting God run his life, God took his ego and gave him his heart's desire, but in God's way. And then he was gone, he was on the front page of the New York Times, famous all over the world. So it does verify what the Oxford group people had told us.

Father Dowling, a Jesuit Priest, had first met our group in the early days in Chicago, and came to Akron to see us. And then he went on to New York to see the others. And he said to one of our men, "This is one of the most beautiful things that has come into the world. But I want to warn you that the devil will try to destroy it." Of course, it's true, and one of the first things that the devil could have used was having money, and having sanitariums as the men were planning. Much to Bob's and Bill's and Ann's surprise, I said, "No, we'll never take any money."

Another way where I saw that the devil could try to destroy us was having prominent names. The other night I heard on a TV special about alcoholics, a man explaining why they are anonymous. And he showed that he didn't really know why. He just said that it wouldn't do to let people know that you were an alcoholic. That's not the reason. In fact, the surest way to stay sober is to let people know that you are an alcoholic because then you have lost something of yourself. I would say that the second way that I saw that the devil would be trying to destroy us was to have any names. Those who think that they are prominent or that they have become leaders, all fail people because no one is on top spiritually all the time. So I said, "We'll never have any names."

I feel that the whole wonderful experience of Alcoholics Anonymous came in answer to a growing great need in the world, and this was met by the combination of Bill, who was a catalyst and promoter, and

Bob, with his great humility (if you spoke to him about his contribution, he'd say, "Oh, I just work here."), and Ann, who supplied a homeyness for our men in the beginning.

And I tried to give to the people something of my experience and faith. What I was most concerned with is that we always go back to faith.

This brings me to the third thing that would have been destructive. In the early days, Bob and Bill said to me, "Henrietta, I don't think we should talk too much about religion or God." I said to them, "Well, we're not out to please the alcoholics. They have been pleasing themselves all these years. We are out to please God. And if you don't talk about what God does, and your faith, and your guidance, then you might as well be the Rotary Club or something like that. Because God is your only source of power." And finally they agreed. And they weren't afraid any more. It is my great hope that they will never be afraid to acknowledge God and what he has done for them.

The last AA dinner that I went to, over 3,000 people were there. And it was the first meeting that I went to which I was disappointed in. There were two witnesses there, a man and a woman, and you would have thought they were giving you a description of a psychiatrist's work on them. Their progress was always on the level of psychology. And I spoke to Bill afterwards and I said that there was no spirituality there or talk of what God had done in their lives. They were giving views, not news of what God had done. And Bill said, "I know, but they think there are so many people that need this and they don't want to send them away." So there again has come up this same old bugaboo - without the realization that they have lost their source of power.

This makes me think of the story of the little Scotch minister who was about to preach his first sermon, and his mother hugged him and said, "Now Bobbie, don't forget to say a word for Jesus." Your mother always wants to say a word for God.

And then there is one other thing I'd always like to stress, and that is the real fact of God's guidance. People can always count on guidance, although it seems elusive at times.

The Weekly Bulletin

St. John's Episcopal Church

Broad and Quarrier Streets Charleston, West Va.

HARRY LONGLEY, Rector

DOROTHY DUFFIE, Deaconess

J. HENRY FRANCIS, Choirmaster and Organist

HOURS OF WORSHIP

SUNDAY

8:00 A.M.

The Holy Communion

9:30 A.M.

The Church School

11:00 A.M.

Morning Prayer

Holy Communion at eleven on the first Sunday in each month

HOLY DAYS

10:30 A.M.

The Holy Communion

Other services as announced in the Bulletin

MEN'S FORUM BRINGING A HEAD HERE

March 28, 1943

William Wilson, Founder of the Alcoholic Foundation, whose article on Alcoholism in the Saturday Evening Post attracted nation-wide attention, and whose book Alcoholics Anonymous has resulted in the formation of hundreds of groups whose purpose is to help alcoholics with a problem which they cannot solve by themselves is being brought to Charleston by the Men's Forum of St. John's to speak on Monday night, March 29th, at 7:45 P. M. This is to be a men's meeting and is open without charge to any man who wishes to attend.

The work of Alcoholics Anonymous is a work carried on with individuals and not related to nor does it advocate Prohibition propaganda. It is not an "anti-liquor organization," but it has helped thousands of men and women to conquer an alcohol problem. All men, in all walks of life, will be interested in how its work is carried on and will be welcomed to this meeting.

THIS IS LENT

Keep Lent: It has been written, wisely (don't you think): "He who keeps Lent as a time for special and unusual study and devotion quickens his own conscience by realizing the holiness of God, feeds his mind by understanding more and more the truth of God, purges his imagination by the beauty of God, opens his heart to the love of God, and learns to devote his will to the purpose of God." Whether or not you "Keep Lent" is up to you. It cannot be denied that it helps a person to do it.

Lent At Home: The rector is advising a "home-Lent" this year with increased religious reading, increased family prayer, time out at home for meditation. No evening services or classes have been scheduled; but, in last week's Bulletin, books for home reading were suggested. These suggestions are posted on the book shelves in the church and parish house. Attention was called, also, to the Church and Parish House pamphlet shelves where such pamphlets as "My Own Steps Forward," "Proving Prayer," "To Those That Mourn," "Practise of the Presence of God," "On the Way" as well as the Lenten "Forward Day by Day" are available.

Public Services of common worship are only three in number: There is Holy Communion on Wednesdays at 11 o'clock; Evening Prayer on Tuesdays and Fridays at 5 o'clock; on Fridays, the five o'clock service is preceded by a meditative talk by the rector at 4:30.

MRS. ROGERS KINGSLAND, NEXT AUXILIARY SPEAKER

On Monday, March 29th, a week from this coming Monday, Mrs. Rogers Kingsland will be the speaker at the Auxiliary luncheon. As is well known, she is the immediate Past President of the Woman's Auxiliary of the Third Province and is, at the present time, a member of The National Executive Board.

She will bring a distinctly Woman's Auxiliary message from the Church at large, thereby helping to relate our work to the greater work of the whole Church. Her coming is a highlight of the year.

SOME TEXTS: LOOK THEM UP

The Barber's Text, St. Mark 4:26, The Dentist's Text, Psalm 81:10, The Gambler's Text, Job 6:15.



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To kick off its new exhibition, "Books That Shaped America," the Library of Congress asked curators and experts to compile a list of books that have influenced us as a nation. The selections come from different centuries and different experiences. They range from Thomas Paine's *Common Sense*, to Louisa May Alcott's *Little Women*, to *The Autobiography of Malcolm X*, to the "Big Book" of Alcoholics Anonymous. The exhibit will be on view from June 25 through Sept. 29 at the Library's Thomas Jefferson Building. Do you agree with the list? Comment at [loc.gov/bookfest](#).

Here is their list of 88 books, in the order in which they were published:

1. Benjamin Franklin, *Experiments and Observations on Electricity* (1751)
2. Benjamin Franklin, *Poor Richard Improved* (1758) and *The Way to Wealth*
3. Thomas Paine, *Common Sense* (1776)
4. Noah Webster, *A Grammatical Institute of the English Language* (1783)
5. *The Federalist* (1787)
6. *A Curious Hieroglyphick Bible* (1788)
7. Christopher Colles, *A Survey of the Roads of the United States of America* (1789)
8. Benjamin Franklin, *The Private Life of the Late Benjamin Franklin, LL.D.* (1793)
9. Amelia Simmons, *American Cookery* (1796)
10. *New England Primer* (1803)
11. Meriwether Lewis, *History of the Expedition Under the Command of the Captains Lewis and Clark* (1814)
12. Washington Irving, *The Legend of Sleepy Hollow* (1820)
13. William Holmes McGuffey, *McGuffey's Newly Revised Eclectic Primer* (1836)
14. Samuel Goodrich, *Peter Parley's Universal History* (1837)
15. Frederick Douglass, *The Narrative of the Life of Frederick Douglass* (1845)

'To Kill a Mockingbird' by Harper Lee has been named one of the 88 'Books that Shaped America.'

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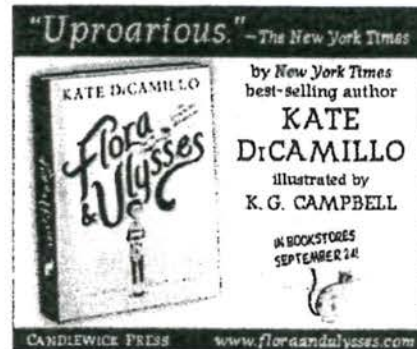
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1 The Longest Ride

by Nicholas Sparks

2 Thankless in Death

by J.D. Robb

3 The Final Cut

by Catherine Coulter

4 The Quest

by Nelson DeMille

5 Never Go Back

by Lee Child

[GO TO OUR BEST-SELLER LIST](#)

USA TODAY Book Reviews

In 'American Revolution,' Sullivan crosses the Delaware and I-78



Robert Sullivan's 'My American Revolution: Crossing the Delaware and I-78' is a delightful and quirky history lesson.

USA TODAY Rating:

1 2 3 4 5

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'My primary purpose is to stay sober'

By Sandy Wells
STAFF WRITER

"My name is Tom. I'm a doctor. I'm an alcoholic. It's more important for me to tell you I'm an alcoholic than to tell you I'm a doctor. If I ever forget that, I'm probably going to die of my disease."

"My primary purpose isn't to be a doctor," he said. "My primary purpose is to stay sober and to help other alcoholics achieve sobriety. The only way I can help them is to tell them my story."

Tom told his story during an open meeting of Alcoholics Anonymous Friday at the Heart-O-Town Holiday Inn. The meeting was arranged by members of the West Virginia Society of Osteopathic Medicine in conjunction with a seminar at their 80th annual convention.

The seminar, "Escapism: An American Dilemma," was developed to make the osteopaths more aware of the problems of alcoholics and to help them recognize signs of alcoholism in their patients. The program opened with scenes from "Dylan," a portrayal of alcoholic rationalization from the play on the life of poet Thomas Dylan, and closed with a panel discussion.

The speaker from Alcoholics Anonymous talked candidly about his 20-year journey into the depths of despair and the organization

that put him on the road to recovery.

People keep trying to find a better name than alcoholism," he said. "Something about that term turns people off. Elvis Presley said it should be called the disease of loneliness. That's how I think of it. Alcoholism is a disease of loneliness, a soul sickness, a gangrene of the spirit. There are more than a million recovering alcoholics. If you talk to any of them they will give you the same line — 'I was so lonely all the time.'"

Alcoholics are loners, he said. When they reach the end of the line, they are "the loneliest of the lonely." They can sit with a group, he said, "but they are encased in their own selves, walled off from the human race. You have to break through that wall with a sledgehammer." Remembering that point in his own life, he said the only comfort he had was the bottle.

"We keep people away," he said. "We don't want them interfering with our drinking. We keep them away with arrogance and anger. I used every technique for distancing myself from people." He said he wrote off community work first, followed by his peers, his family and his friends.

"My colleagues didn't know I was sick," he said. "For 10 years, I operated on automatic pilot. I

used to get in bed with my patients. I'd go in the operating room and sew up the wrong patient. With a wet brain, you do things like that."

Eventually, he lost his hospital practice, his office and his home. "They took away my hospital privileges. My wife sued for divorce so I had no home. Then my office was closed over a disagreement with the Internal Revenue Service." But he had grandiose ideas, which is typical of many alcoholics, he said.

"I started practicing out of the back of a truck." That's an example of the fantasy world alcoholics live in, he said. "We can't see ourselves as others see us. I couldn't see that I was dying."

The years of drinking included three suicide attempts. He was diagnosed as a schizophrenic, a psychopath and a manic-depressive. "The last person I'd send an alcoholic to is a doctor," he said. "Everybody was doing their best, but they all missed the alcoholism. I miss it in my own patients."

Doctors have a lot of misconceptions about alcoholism, he said. "I was talking to five doctors who were all very knowledgeable about alcoholism. They said to me, 'It most certainly is a disease, but it's their own damn fault. It's self-inflicted.'" What they don't realize, he said, is that 86 percent of all alcoholics are genetically predis-

posed to alcoholism.

"My family tree is riddled with alcoholics," he said. His mother was dying of alcoholism before she enrolled in AA. His son is in AA. "I can't seem to reach him." His cousins, an uncle, a grandfather and eight aunts all were alcoholics.

When he took his first drink, he felt comfortable for the first time in his life. "The hole in my stomach went away," he said. "I was born this way," he explained. "It's not because of drinking that I'm an alcoholic. I was drinking because I'm an alcoholic."

By the time he enrolled in AA, "I was hopeless, helpless and spiritually dead," he said. "I felt worthless. Alcoholics in our society, because of the stigma associated with it, are considered worthless. Any alcoholic with tell you this. I graduated at the top of my class. I had all these accolades. I used to go look at all my diplomas to see the man I was. When an alcoholic comes in for treatment, build him up. Find his resources and build on them. He's been humiliated enough."

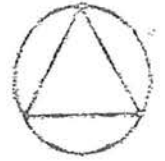
He said he isn't responsible for his alcoholism any more than he would be responsible for diabetes. "But I am responsible for my recovery. I am in therapy every day, all day," he said. "The man I am will drink again, if I let him."

*Dr Tom Haymond
Founder Kingwood Treatment Center*



SPIRITUAL EXERCISES

"SUGGESTED" BY JESS LAIR



Every morning do the following:

1. Meditate until you become calm, read something of a spiritual nature of your choice, clear your mind, then get the Big Book and read the following with a completely opened mind.
2. Read pages 86-87-88, "On awakening," "As we go through the day," and "When we retire at night."
3. Read page 25, "There is a solution" through the second line of page 26.
4. Pray the Third Step prayer on page 63.
5. Pray the Seventh Step prayer on page 76.
6. Read page 77, "Our real purpose ----."
7. Read page 85, "It is easy to let up on the spiritual program ----."
8. Read the first two paragraphs of page 89, "Working With Others."
9. Read pages 69-70 "We reviewed our own conduct ----."

The above pages from the Big Book are attached hereto so those who are lazy will have no excuse.

- Jess and Jackie Lair have been my spiritual guides since 1979. They have continued to help me immeasurably in my journey toward enlightenment. I have followed to the best of my ability every suggestion they have made to me over the past 21 years, and the above suggestions were given to me by Jess shortly before his recent death. Do the above exercises and go to a 12 Step Meeting daily for ninety days, then ask you sponsor if it would be wise to continue these exercises, one day at a time, on a permanent basis.

God grant me the
Serenity
to accept the things I
cannot change...

Courage to
change the things I can

and Wisdom to
know the difference...

George D.

April 2000



MEDIATE, DON'T MEDICATE

Words and Music by The Earl of Elkview/Duke of Dunbar
Inspired by Debra Scudiere

I

Trial work is exciting
And sometimes a lot of fun
Especially when you winnin'
You're a smart son of a gun
But sometimes the jury differs
And their answer is zero
You're left out in the cold
And feelin' mighty low

SO

Mediate, Don't Medicate
Goin' home with a victory
Is a comfort don't you know
Your wife and kids will thank you
In more ways than you can think
There is nothing quite so soothing
As some money in the bank

II

We've been talkin' bout the Plaintiff's side
The same for the Defense
You think you've got a winner
And the jury has some sense
But a settlement is for certain
And the odds are mighty low
That the jury buys your whole pitch
And returns a big zero

SO

Mediate, Don't Medicate
Avoid the drugs and drink
They will screw up what you think
Good lawyers get together
On a sum that is for certain
So it isn't in the bar room
That they pull that final curtain

THE SIMPLE GIFTS

LOVE OF GOD, FAMILY, COUNTRY, STATE, COMMUNITY,
OUR FELLOWMAN, AND OURSELVES

BY

THE EARL OF ELKVIEW, P.N.I., D.P.C.
PSYCHONEUROIMMUNOLOGIST, DOCTOR OF PERPETUAL CELEBRATION

I Wanna Go Back To West Virginia

All God's Chillun' Got A Place In The Choir

Fiddler Ira Mullens

Simple Gifts

Hail West Virginia

Hear That Wildwater Call To West Virginia

Yes, Virginia

Boy Up At Elkview

There's Too Many Kids In This Tub

Little Third Graders

A Very Cautious Man

Our Local Psychiatrist, Sigmund Sizemore

The Interstate's A-Comin' Through My Outhouse

Country Roads

Pope Raising Urinals In Vatican

Bonnie Collins

Mother

Yankee Doodle Dandy

Tribute To Old Glory

Grand Old Flag

Daisy A Day

The Water Is Wide

Today

Ode To A Pig

Snuff Dippin' Woman

Girl Friend Home On Elk

Legend Of Danny Boy

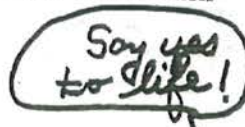
America The Beautiful

Battle Hymn

Born On A Mountaintop

The West Virginia Hills

I Can't Help Falling In Love With You



Entertainer • Toastmaster
Musician • Actor • Humorist
Songwriter • Theatrical Producer

The Earl offers three shows, all
featuring songs and stories with
visual background

"And Evening of Apple Pie, Motherhood, and Country
featuring America, West Virginia, and Your State"

"Another Evening in an Irish Pub" - A Musical Tour of Ireland

"Me and Sam, Riley Wilson and George Burns"
- Songs and Humor



FOR BOOKINGS:

304-546-8900

Karen Engro, Esq.

Ms. Engro is the Alternative Dispute Resolution Coordinator for the United States District Court for the Western District of PA having designed and implemented the Court's ADR program that is a mandatory part of the civil litigation process (see www.pawd.uscourts.gov). She received her B.A. from Gannon University and her J.D. from Tulane Law School. Following law school graduation, she worked as an associate at Burns, White & Hickton in Pittsburgh. In 1993, she joined the faculty at the University of Pittsburgh Law School where she created and ran a legal clinic in addition to teaching alternative dispute resolution. She served as Executive Director of the Judicial Council for the Supreme Court of PA from 2004-2008. Ms. Engro has mediated and arbitrated cases from more than 18 years. She is an adjunct professor at Duquesne University School of Law and provides mediation training nationally and internationally, as well as designing and consulting on institutional mediation programs. She was a member of the PA Board of Law Examiners 2004-2010, serving as its chair 2008-2010. Ms. Engro a member of the bars of Massachusetts, Pennsylvania, District of Columbia and the U.S. Supreme Court.

MEDIATING WORKPLACE DISPUTES

Karen Engro



WORKPLACE CONFLICT

Workplace conflict follows a predictable, retaliatory path when two or more task interdependent employees find fault with the other and utilize perceptions and behaviors that end up causing a business problem.

-- *Dan Dana, Ph.D.*
Dana Mediation
Institute



COST OF WORKPLACE CONFLICT

The cost of losing a single mid-level employee due to conflict within a hypothetical organization:

- Employee's annual salary: **\$80,000**
- Multiply by 1.4 (140%) as the investment you have in the employee: **\$112,000**
- Multiply by 1.5 (150%) as the cost of replacing the employee: **\$168,000**
- Multiply by .6 (60%) average role of conflict in voluntary terminations: **\$100,800**
- If there is a 10% turnover rate in a company of 100 employees, $10 \times \$100,800 = \mathbf{\$1,008,000}$

-- Dana Cost Calculation



INTERNAL DISPUTE RESOLUTION SYSTEMS

- Reduces liability and avoids litigation
- Resolves issues quickly
- Improves communication and prevents misunderstandings
- Builds relationships based on mutual trust
- Provides greater harmony in the workplace
- Increases employee longevity and productivity and reduces turnover



INTERNAL DISPUTE RESOLUTION SYSTEMS

- Variety of processes that combine interest-based methods (e.g., negotiation, facilitation, and mediation) and rights-based methods (e.g., peer review panel, management review panel and arbitration)
- Encourages employees and managers to identify, address and resolve conflict early and effectively
- Effective method of resolving internal conflict in organizations before disputants turn to outside administrative agencies or court systems.



HYPOTHETICAL

- Mary, one of few women in predominantly male sales force
- Notices male Sales Manager and salesmen golf together and hang out together after work at a local pub, and at discuss their social activities together
- Didn't bother her until she realized that all the best sales prospects were given to male salesmen who socialized with Sales Manager



HYPOTHETICAL

- Upset that this affected her pay by virtue of reduced commissions
- Wanted this to be corrected, but unsure how to go about it
- Feared retaliation from Sales Manager and fellow sales force if she complained
- If not place to safely vent internally, Mary is likely to file a sex discrimination complaint with the EEOC or sue in court



HYPOTHETICAL

- Internal conflict management system would provide a “safe” way to express concerns and develop solutions early on
- Company would opportunity to learn about issue and deal with it early on
- Good opportunity to resolve issue internally and avoid costly litigation



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

- Federal enforcement agency for workplace discrimination claims under Title VII, ADEA and ADA
- 93,727 discrimination charges filed in 2013
- Voluntary mediation has been offered to Charging Parties and Respondents since 1999
- Offers Charging Parties and Respondents to settle confidentiality and for things not available as legal remedies in the Charge or litigation process (e.g., apology, used cars, computers, pizza delivery)



EEOC'S 10 REASONS TO MEDIATE

- ✓ **Mediation is free.** EEOC's National Mediation Program is available at no cost to the parties.
- ✓ **Mediation is fair and neutral.** Parties have an equal say in the process and they, not the mediator, decide the terms of the settlement. There is no determination of guilt or innocence in the process.



EEOC'S 10 REASONS TO MEDIATE

- ✓ **Mediation saves time and money.**

Mediation usually occurs early in the charge process, and many mediations are completed in one meeting. Legal or other representation is optional but not required.

- ✓ **Mediation is confidential.** All parties sign a confidentiality agreement. Information disclosed during mediation will not be revealed to anyone, including EEOC investigative or legal staff.



EEOC'S 10 REASONS TO MEDIATE

- ✓ **Mediation avoids litigation.** Mediation costs less than a lawsuit and avoids the uncertainty of a judicial outcome.
- ✓ **Mediation fosters cooperation.** Mediation fosters a problem-solving approach to complaints and workplace disruptions are reduced. With an investigation, even if the charge is dismissed by EEOC, underlying problems may remain, affecting others in the workforce.



EEOC'S 10 REASONS TO MEDIATE

- ✓ **Mediation improves communication.**
Mediation provides a neutral and confidential setting in which the parties can openly discuss their views on the underlying dispute. Enhanced communication can lead to mutually satisfactory resolutions.
- ✓ **Mediation helps to discover the real issues in your workplace.** Parties share information, which can lead to a better understanding of issues affecting the workplace.



EEOC'S 10 REASONS TO MEDIATE

- ✓ **Mediation allows you to design your own solution.** A neutral third party assists the parties in reaching a voluntary, mutually beneficial resolution. Mediation can resolve all issues important to the parties, not just the underlying legal dispute.
- ✓ **With mediation, everyone wins.** An independent survey showed 96% of all respondents and 91% of all charging parties who used mediation would use it again.



EEOC MEDIATION STATISTICS

2012

11,376 mediations

8,714 resolutions

■ 76.6% of all mediations

**\$153.25 million in
monetary benefits**

**7,488 persons
monetarily benefited**

**912 persons benefited
non-monetarily**

**Average length – 101
days**

2011

13,002 mediations

9,831 resolutions

■ 75.6% in 2011

**\$170 million in monetary
benefits**

**8,725 persons
monetarily benefited**

**1,106 persons benefited
non-monetarily**

**Average length – 101
days**



EEOC MEDIATION PROCEDURE

- Mediation session scheduled by EEOC.
- Mediator can be EEOC employee, contract mediator or volunteer mediator.
- Parties may or may not be represented by counsel.
- Parties must sign confidentiality agreement and agreement to mediate.



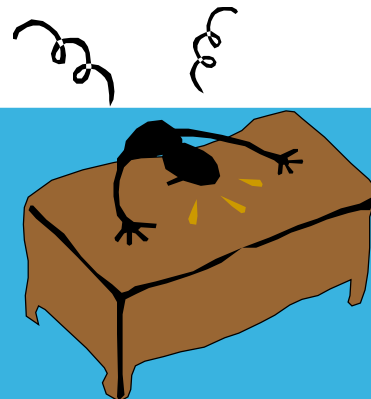
EEOC MEDIATION PROCEDURE

- If charge resolved, parties must sign standard EEOC settlement agreement. Respondents often require Charging Party to execute separate settlement agreement.
- If charge is not resolved, matter goes back into investigation, but no information is shared with the investigator other than the fact that no settlement was reached.



PRIVATE OR COURT-RELATED MEDIATION

- A large percentage of federal and state lawsuits are employment related.
- At-will employees who have been terminated often file administrative complaints and lawsuits out of a sense of frustration, even if there is no legal basis for their claim.



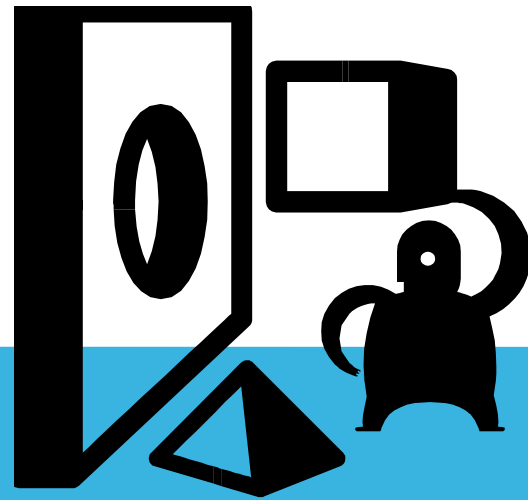
PRIVATE OR COURT-RELATED MEDIATION

- Mediation provides an outlet for emotional venting and a forum for employees to have “a day in court” without the formality, time and expense of litigation.
- Mediation provides an ideal opportunity to address non-economic issues and develop creative options to meet the interests of the parties in a confidential setting.



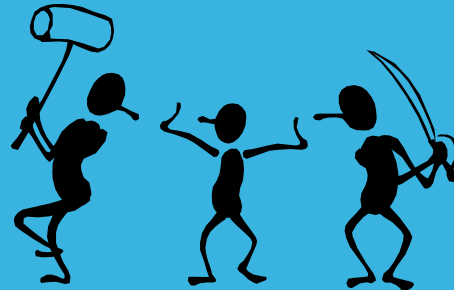
CHOOSING A MEDIATOR

- It's not a “one size fits all” approach.
- Interview mediators – ex parte communications are fine.
- Consult colleagues.
- Get references.



CHOOSING A MEDIATOR

- Preferable to choose a mediator who understands the many employment laws that come into play
- Choose a mediator who uses an approach that will best be received by the parties
 - Empathetic listener?
 - Agent of reality?
 - Chameleon who can morph to fit the situation?



WHERE TO MEDIATE

- Private, neutral location
- Definitely not at the workplace
- Give each party a comfortable and private room for private caucus and to allow them privacy
- Consider ADA reasonable accommodation issues



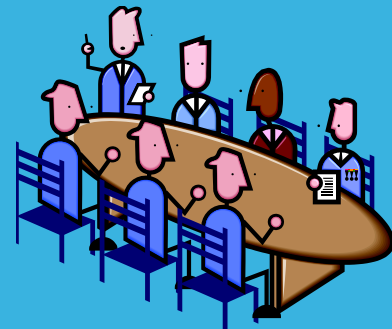
SCHEDULING

- Remember that employees usually must take a vacation or personal day to attend, so make the best use of the day
- In the pre-mediation call, address this issue
- Remind the parties that they should make arrangements to be there all day, perhaps late into the evening
- As one component of a settlement involving an active employee, the Company could offer to reinstate the vacation or personal day used by the employee for the mediation



WHO SHOULD ATTEND

- Employee
- Any key support person of the Employee (e.g., spouse, friend, etc. but generally not a fellow employee due to confidentiality concerns)
- Employer representative with settlement authority
- Insurance carrier representative, if any
- Attorneys for the parties (ADR advocate vs. bulldog litigator)
- Everyone should sign a Mediation Agreement containing confidentiality requirements



WHO SHOULD ATTEND

- Consider whether there should be a joint session (in cases of sexual harassment or workplace violence, may not be appropriate)
- Beware of bringing the manager who made the decision or in-house counsel who gave the legal advice to terminate the person (problematic if they feel as though settlement in effect invalidates their decision)



PRE-MEDIATION PREPARATION

- Confidential pre-mediation submissions to the mediator can be very beneficial
 - Factual background
 - Legal issues
 - Strengths and weaknesses of the case
 - Barriers to settlement
 - Prior settlement negotiations
- If can't submit in writing, consider calling the mediator to discuss these items



PRE-MEDIATION PREPARATION

- In employment cases, the following information is important:
 - Status of administrative claim or litigation
 - Complainant's employment history, including any performance appraisals and disciplinary actions
 - Complainant's compensation and benefits
 - Information/documentation concerning the "triggering event" that led to the Complainant's termination or cause of action



PRE-MEDIATION PREPARATION

- Relevant policies or procedures
- Any other relevant documents (e.g., medical reports, expert reports, comparative data, etc.)
- Summary of case law on contested legal issues
- Consideration of risk of summary judgment
- Consideration of jury verdict amounts in comparable cases



AT THE MEDIATION

- Consider allowing the Complainant to speak at the joint session (allows venting/"day in court")
- If the Complainant speaks, Company representatives should be prepared to patiently listen without reacting
- Company representatives should avoid giving a verbal "punch in the nose" to the employee or ex-employee in the joint session
- Nevertheless, the mediator should always give the Company representatives the opportunity to vent/respond in private caucus



IN PRIVATE CAUCUS

- Save inflammatory or sensitive discussions for caucus.
- Don't waste time trying to convince the mediator that you are right and the other side is wrong.
- Discuss what you want to be shared and what you don't want to be shared.
- Consider sharing key information (e.g., documentation of wrongdoing) or theories of the case – it is going to come out anyway.
- Don't become a barrier to settlement because you (the advocate) don't want to settle when the client wants to settle.



IN PRIVATE CAUCUS

- Be honest with the Mediator – don't scheme or "game" the Mediator.
- Share information concerning your client's interests with the Mediator.
- Ask for the Mediator's ideas of how to posture demands or offers so they will best be received by the opposing party.
- Ask the Mediator to explain the opponent's barriers to settlement.



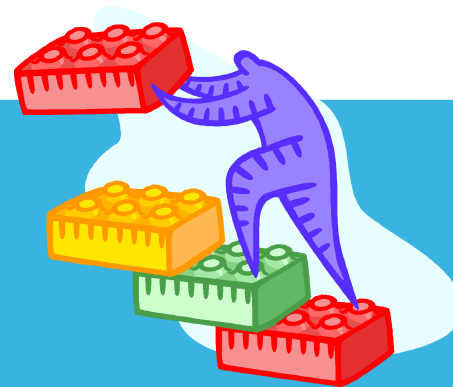
IN PRIVATE CAUCUS

- Ask the Mediator to help brainstorm options and creative solutions.
- Have an honest discussion of strengths and weaknesses and interests with the Mediator.
- Remember pros and cons of asking the Mediator to evaluate the case.



IN PRIVATE CAUCUS

- Consider Mediator-chaperoned discussion with opposing counsel to problem solve.
- Consider sharing documents or information with the opponents that may shift perceptions (e.g., comparative data, contradictory documentation, etc.)
- Look for small points of agreement to build on.



EMPLOYMENT SETTLEMENT TERMS

- **Continued employment or reinstatement**
- **Back pay, front pay, wage continuation**
- **Continuation of or reimbursement for benefits, COBRA payments**
- **Compensatory and/or punitive damages**
- **Tax treatment of payments (W-2 or 1099)**
- **Timing of payments (including impact on unemployment compensation)**
- **Non-admission clauses or acknowledgements or apologies**



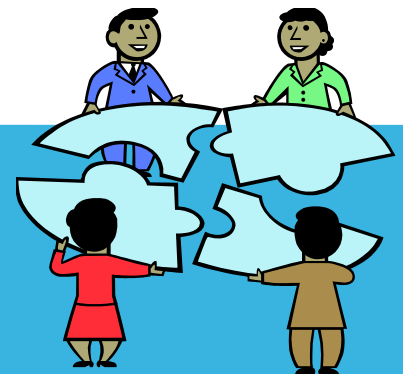
EMPLOYMENT SETTLEMENT TERMS

- Confidentiality and/or non-disparagement provisions
- No reapplication/no rehire provisions
- Neutral reference/contact person
- Outplacement services
- Restrictive covenants (non-compete/non-solicitation)
- Return of Company property and equipment
- Posting notices
- New policies/training program/internal hotlines



EMPLOYMENT SETTLEMENT TERMS

- **Restrictions on contact with current employees/clients/customers**
- **Establishment of dispute resolution systems**
- **News releases**
- **Donations to charity**
- **Comprehensive general release (Remember Older Workers Benefit Protection Act requirements)**
- **Payment of mediator's fee**
- **Payment of attorney's fees and costs**



EXAMPLES OF CREATIVE SOLUTIONS

- **Race discrimination claim filed by employee who didn't get a promotion – Provided a job coach to counsel the employee on how to maximize talents in the workplace**
- **Age discrimination claim filed by secretary terminated for attendance issues – provided used computer system to allow her to work from home**
- **Disability discrimination claim filed by mentally challenged man who did not get pizza delivery job – pizza delivery every Friday for a year**
- **Sex discrimination claim filed by ex-car salesperson – provided used car**



QUESTIONS?

THANK YOU!

“We Don’t Need You to Finish Last” ~ Baseball and the Age of Arbitration
The West Virginia State Bar Advanced Mediation Training
Bios of the Speakers
Flatwoods, West Virginia
July 17, 2014

William Scudiere

- Graduate of Wheeling Jesuit University.
- History and Social Studies Teacher and former Interim Principal at St. Francis de Sales Central Catholic Church in Morgantown.
- Teaches a class on Sports and History.
- Four-Time Champion Coach for the West Virginia State Geography Bee.
- Works with students in the National Geography Bee which is sponsored by The National Geographic Society.
- Member of SABR (Society of American Baseball Research).
- Member of LBHA (Little Bighorn Association).

Debra Scudiere

- Member of the Morgantown Office of Kay Casto & Chaney PLLC.
- Adjunct Lecturer at the WVU College of Law teaching Pre-Trial Litigation and Trial Advocacy.
- Past President of The West Virginia State Bar.
- Past President of The Southern Conference of Bar Presidents.
- *Best Lawyers* “Lawyer of the Year” in Mediation for 2014.
- Member of the ABA House of Delegates.
- Chair of the West Virginia Judicial Vacancy Advisory Commission.

“We Don’t Need You to Finish Last” ~ Baseball and the Age of Arbitration
The West Virginia State Bar Advanced Mediation Training
Flatwoods, West Virginia
July 17, 2014

William Scudiere
St. Francis Central Catholic School
Morgantown, WV

Debra Scudiere
Kay Casto & Chaney PLLC

Introduction
NABBP (1857)
Cincinnati Red Stockings (1869)
National Association (1871-1875)
Davy Force (1875)
National League (1876-)
Louisville Colonels (1877)
Charles Jones (1879)
Reserve Clause (1879)
American Association (1882-1891)
Union Association (1884)
Players League (1890)
American League (1901-)
Ty Cobb (1912)
Federal League (1914-1915)
Chicago “Black Sox” (1919)
Kenesaw Mountain Landis (1920)
***Federal Baseball Club v. National League* (1922)**
Farm System (1920s)
Joe DiMaggio (1938)
Danny Gardella and the Mexican League (1946)
George Toolson (1953)
Don Drysdale and Sandy Koufax (1966)
Collective Bargaining Agreement (1968)
Curt Flood (1970)
Players’ Strike (1972)
Lock Out (1973)
Catfish Hunter (1974)
Andy Messersmith and Dave McNally (1975)
Strikes and Lock Outs (1976-2006)
Modern Arbitration
Questions

Elliot G. Hicks has practiced law in Charleston, West Virginia for thirty-three years, three years as a sole practitioner or in a small firm, and more than thirty years with several of West Virginia's most distinguished law firms. He recently opened a solo mediation and arbitration practice under the name of Hicks Resolutions in March of 2014.

Elliot has taken well over one hundred jury trials to verdict in the state circuit courts and the federal district courts. He has demonstrated his versatility by trying lawsuits to a jury verdict in the areas of products liability, premises liability, corporate and commercial litigation, insurance defense, and medical malpractice defense. He is in demand as a mediator in all parts of West Virginia, and in Eastern Virginia.

He was elected a Fellow of the American College of Trial Lawyers, and is a member of the Federation of Defense and Corporate Counsel. He maintains the highest rating of "AV"® with Martindale-Hubbell, and he is recognized by inclusion in the publications, Best Lawyers in America®, and Super Lawyers®. Elliot is also a charter member of the Judge John A. Field, Jr. Chapter of the American Inns of Court, Charleston, West Virginia, as a Barrister in 2002. He has presented lectures on mediation advocacy and ethics, insurance law, trial tactics, and office technology throughout West Virginia.

Mr. Hicks attended Washington and Lee University, and then graduated from West Virginia University with a Bachelor of Arts degree in Political Science in 1978. He graduated from West Virginia University College of Law with a *Juris Doctorate* degree and was admitted to practice law in West Virginia in 1981.

Mr. Hicks served as President of the West Virginia State Bar from 1998-1999, and sat on the West Virginia State Bar Board of Governors from 1993 to 1996. He sat in the American Bar Association House of Delegates in 1998 and 1999. He served as President of the Kanawha County Bar Association in 1988-1989.

Among his several other community activities, Mr. Hicks served for seven years on the West Virginia Higher Education Policy Commission, establishing policy for all state-supported colleges and universities, and currently serves as the Chairman of the Concord University Board of Governors. He has served on the Board of Directors for the Legal Aid Society of Charleston, and as Chairman of the Kanawha County Housing and Redevelopment Authority. He served as Chairman of the Board of Trustees at the First Baptist Church of Charleston, and later served as the Chairman of the Board of Trustees of the Unitarian Universalist Congregation, also in Charleston. He was a member of the Board of Directors of the West Virginia Bar Foundation. He has been a regular panelist on "The Law Works" West Virginia Public Television show on legal issues of interest to the public.

Webster J. "Jay" Arceneaux handles litigation matters in a variety of areas including: commercial, consumer, employment and labor, personal injury, including toxic torts, and environmental. He also provides arbitration and mediation services for parties in West Virginia and other States. Mr. Arceneaux has received an AV rating from Martindale Hubbell; he is listed in *Best Lawyers in America* for Litigation - Labor and Employment, and Mediation; he is listed in *West Virginia Super Lawyers* for Business Litigation, Employment and Labor and Alternative Dispute Resolution; and he is a Fellow of the Litigation Counsel of America.

New Alternatives to Alternative Dispute Resolution

Webster J. Arceneaux, III



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Traditional Mediation

- Face to Face
- Usually takes place over one or several days
- All counsel and party representatives physically present



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Online Dispute Resolution

Websites utilizing online dispute resolution (“ODR”) were created around 20 years ago. In the beginning years of ODR, there were only a few websites offering ODR services.

However, the number of websites utilizing ODR has grown substantially over the years. Some top ODR websites include: Mediate.com, Modria (Juripax), ADR Center, CyberSettle, Smartsettle, Virtual Courthouse, and Virtual Mediation Lab. These websites offer various ODR services from mediation of family disputes to negotiation of business conflicts.



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BENEFITS OF ODR

- The eBay and PayPal Resolution Centers resolve more than 60 million disputes per year in more than a dozen different languages around the world.
- It is the largest Online Dispute Resolution (ODR) system in the world, resolving disputes in areas as diverse as item payment, item receipt, and item condition.
- Buyers and sellers who have never met each other face to face can use the Resolution Center process to reach amicable agreements that are enforced immediately.



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- More than 90% of the disputes filed are resolved without requiring the intervention of a third party to render a decision.
- This system saves time, money, and increases customer satisfaction and trust in transactions.



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ODR WEBSITES

Modria and **Cybersettle** are two ODR websites that continue to grow every year. Modria was founded by the team that created the ODR systems utilized by PayPal and Ebay to resolve disputes.

Modria resolves more than 60 million disputes by means of negotiation, mediation, and arbitration. Cybersettle was created in 1996 and has facilitated settlements of \$1.9 billion in claim-based transactions.



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Cybersettle was the creator of the online, double-blind system for accelerated dispute resolution. The double-blind system allowed debtors and creditors to develop a repayment scheme that both parties find acceptable and reasonable.

One of the benefits of using Cybersettle is the ease of submitting a claim as Cybersettle provides an interactive demo, including how to submit a case and how to respond to one.



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Expert Analysis of Cybersettle



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Cybersettle.com is both a trap for the unwary and a blessing for the informed. It's a trap because it is, at its core, Cybersettle is a modified auction in which the bidders are trying to divide up a fixed pie. Whatever one side offers, the other takes away, a classic zero sum game. Once in the auction, attorneys representing clients are likely to justify their further participation by staying in the game. After all, it only takes a few more dollars to keep playing rather than miss out on a quick and dirty settlement opportunity.



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This site will primarily serve insurance companies by trying to more efficiently administering volume cookie cutter disputes.

Essentially the pioneers at Cybersettle will cash in on the age old marketing strategy of advising the insurers that the transaction costs of keeping a claim's file open will be reduced if they submit the case to Cybersettle.

The ultimate goal, of course, will be a closed file.



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THE CHALLENGE:

...convincing plaintiffs' attorneys that this service actually serves their clients, the true victims in this game of chance. From an ethical standpoint, the dilemma faced by lawyers is whether their clients are receiving adequate representation from a judicial formula cranked out by a microchip.



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Cybersettle's application to disputes outside the routine disputes encountered by the insurance industry is extremely limited.

Generally, attorneys and their clients are not willing to give up the element of control that is found in typical negotiations. Even in cases where the negotiations are at a stalemate, attorneys can always recommend private mediation with a professional neutral third party.



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eBay Dispute Resolution



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WHAT IS ONLINE DISPUTE RESOLUTION?

Online dispute resolution is a new, unbiased method that can help you resolve disputes that may arise involving eBay transactions. SquareTrade, eBay's preferred dispute resolution provider, offers two services: a free web-based forum which allows users to attempt to resolve their differences on their own or if necessary, the use of a professional mediator.



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What are the benefits and costs of this service?

All eBay buyers and sellers can use this online dispute resolution service. It's free to file a complaint. SquareTrade will contact and encourage the other party to respond to your case.

You can then try and settle your dispute through SquareTrade's free Web-based process and patent-pending technology. A significant number of complaints are directly resolved in this way.

Because we believe this service helps make eBay a better place to trade, you can request the assistance of a professional mediator **for \$15** (eBay will subsidize the rest of the cost).



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Benefits of eBay Dispute Resolution

In addition to turning a negative episode into a positive one, using SquareTrade can help:

- Resolve misunderstandings fairly
- Provide a neutral go-between for buyers and sellers;
- Reduce pre-mature negative feedback
- Generate trust in the eBay community

How can I start the dispute resolution process?

To start the process, file a complaint.



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How to File a Complaint

You will be asked to complete these steps via an online form:

- Create a SquareTrade User ID and password
- Enter complaint details.

SquareTrade will send a notification email to the other party who can then respond to you. Your complaint and the other party's response will appear in a secure area on the SquareTrade Web site. Only you, the other party and the mediator (if you choose to involve one) will be granted access. Disputes are often successfully settled with this independent resolution method.



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If you'd like, you can also use a SquareTrade mediator for \$15 to guide you through the Web-based process. The mediator works to understand both points of view and to help develop a fair, agreeable settlement. If a resolution can't be reached, the mediator will recommend a solution based on principles of fairness and good conduct.

This process generally takes 10 days.



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Log In

Already have an account? Log in here.

Email Address

Password

[Forgot Password?](#)

Continue

Set Up Your Account

Enter the email address you gave when you purchased your warranty and we'll set up your account.*

Email Address

Set Up





SquareTrade Services:

Seal Program

Dispute Resolution

My Seal

**SQUARE
TRADE**

Overview

Learn More

File A Case

My Cases

Buyer Tools

Working with



Home

Help

Online Dispute Resolution (ODR)

Trouble with an Auction?



[File a Case](#)



[Respond to a Case](#)



[Case in Progress](#)

SquareTrade's free Dispute Resolution
Service helps Buyers & Sellers work things out.

Information for

New
Users

Find out how to get

Feedback
Removed



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Step 1: Your Background Details

About you:

* Title:

Mr. ▼

* First Name:

* Last Name:

* required

* Email:

* Confirm Email:

* Create new or enter existing password:
(5 - 20 characters)

* Confirm password:

Transaction details:

* Date of transaction:

1 ▼ January ▼ 2002 ▼

* eBay item # under dispute:

* Was the item paid for? ☒ Yes ☐ No

If **Yes**, enter **total amount paid** including shipping costs:

Currency:

US Dollars ▼

Amount:

Form of payment:

Enter a form of payment ▼

* Basic item description: (you will explain the dispute later)

* Your eBay User ID: [Why do you need it?](#)

* Your role in the transaction:

☒ Buyer ☐ Seller

* Your eBay Password:

Filing a case takes 3 easy steps

This process normally takes 10 minutes to complete.

Common Filing Concerns

[Over 80% of SquareTrade case filers said they would use the service again. Learn more >](#)

[It is free to file and there is no obligation! Learn more >](#)

[SquareTrade can help you get feedback removed! Learn more >](#)

[All of your filing information is confidential. Read our Privacy Policy >](#)

[Learn about our User Agreement >](#)

[What is mediation?](#)

[What can I do if my case is not resolved?](#)

[What if I don't remember my eBay password?](#)

[Why do you need my eBay ID and password?](#)



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Step 2: Tell Us About the Problem

Type of problem:

*(check all that apply)

Feedback Related

- ☒ I would like both of our feedback removed.
- ☐ I would like only the feedback that was left for me removed.
- ☐ I would like only the feedback that I left for the other party removed.
- ☐ Negative feedback being threatened.

Merchandise Related

- ☐ Payment sent but merchandise not received.
- ☒ Damaged merchandise.
- ☐ Incomplete merchandise.
- ☐ Received merchandise late.
- ☐ Merchandise different than described.

Payment Related

- ☐ Returned the merchandise but no refund received.
- ☐ Shipping cost discrepancy.

Other Issues

- ☐ Bid shilling.
- ☐ No response to my messages.



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Step 3: Identify Potential Solutions

You have stated the problems listed below:

*** What would you consider as a potential resolution or settlement for these problems?**

Check all that you would be willing to consider as a resolution. This information will be seen by the other party.

I would like both of our feedback removed.

- ☐ The other party already agreed to this removal and there is nothing else remaining to occur.
- ☒ We have agreed to the removal but we are still finalizing the completion of our agreement.
- ☐ The other party has not yet agreed to the removal but I would like to discuss how to resolve this.
- ☐ Other. Please enter additional details.

Damaged merchandise.

- ☐ I would be willing to accept a full or partial refund. Please enter the amount. \$
- ☐ I would like the other party's help to file a shipping insurance claim if possible.
- ☐ I would like to return the item and I will pay for return shipping.
- ☒ I would like to return the item and have the other party pay for return shipping.
- ☐ I would like to exchange the item for another one and would like the other party to pay for the return shipping.
- ☐ I would like to exchange the item for another one and I will pay for return shipping.



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Step 3 - What potential solutions would you consider?

* Check all that apply

The ★ indicates solutions requested by the filer.

Negative or neutral feedback was posted about me.

☐ ★ I would agree to removing the feedback.

☐ Other. Please enter additional details.

Damaged merchandise.

☐ I am willing to give a full or partial refund. Please enter the amount. \$

☐ ★ I would be willing to help file a shipping insurance claim.

☐ ★ I would be willing to accept the returned item if the filer pays return shipping.

☐ I would be willing to accept the returned item and I am willing to pay for return shipping.

☐ I would be willing to exchange the item and I am willing to pay for return shipping.

☐ I am willing to exchange the item for another one if the filer pays return shipping.

☐ Other. Please enter additional details.

Incomplete merchandise.

☐ I am willing to give a full or partial refund. Please enter the amount. \$



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Direct Negotiation

Welcome Steve Sony ...

New messages awaiting your response:

June 3, 2003

at 8:00 PM

From: steve@squaretrade.com

Yes but I barely dropped it. I figure you should design your computers to be dropped since they are mobile computing devices

You may communicate with the other party in your case by entering a message below.

Please enter your message in 4,500 characters or less.

Please refer to your product warranty guidelines.

We would like to offer you a discounted screen replacement of \$300. This is a 50% discount. When including labor this will be below cost for us as to accommodate your issue.

4266

Characters remaining.

post message

Please keep in mind that all communications in this process are confidential. Please refer to the [User Confidentiality Agreement](#) for details.

Sender	Date	Message
steve@transecure.com	Tue, Jun 03, 2003 7:58 PM	Unfortunately our returns policy does not cover misuse such as you dropping your computer
steve@squaretrade.com	Tue, Jun 03, 2003 7:39 PM	I don't think it is fair that you will not replace my computer screen at no cost to me. I hardly dropped it and the thing broke. What kind of product is that

[back to the Case Page](#)



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My SquareTrade Case 1251663570

You are using SquareTrade's Direct Negotiation tool to discuss issues and possible solutions.

WHAT WOULD YOU LIKE TO DO NEXT?

M [BRING IN A PROFESSIONAL MEDIATOR](#)

Professional mediators help settle your case.
Over 80% success rate!

DN [Conduct the Case Yourself](#) (Direct Negotiation)

[READ / SEND MESSAGES](#)

[Send Evidence](#)

[Extend Case](#)

[Close Case](#)

Continue the case for 60 days.

If a resolution has been reached.

DETAILS OF MY CASE

Case Number: 1251663570

Order Number: 124560

Case Filed On: Tuesday, June 03, 2003

Who Filed the Case: Steve Abernethy <steve@squaretrade.com>
buyer

Who's the Respondent to the Case: Steve Sony <steve@transecure.com>
seller

Description of Goods: Sony VAIO Z1 laptop

Dollar amount of case: \$2250

Transaction Date: Thursday, January 23, 2003



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Modria/Juripax



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JURIPAX™
Technology for early dispute resolution

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Worldwide leader in online mediation software - *Innovate, Mediate, Accelerate!*



Technology can significantly enhance your mediation practice in terms of uninterrupted access, increased participation and facilitating autonomy.

Juripax facilitates instant collaboration, enabling to resolve your clients' issues faster and at lower costs.

The Juripax system is uniquely designed to streamline online negotiations and mediations. It is ideally suited for fully online proceedings, but can also supplement and be integrated into meeting-based procedures.

Newsletter

Like to receive our Newsletter?

E-Mail:

Latest news

Modria Acquires Juripax

Apr 29, 2014

Modria, provider of the world's leading online dispute resolution (ODR) platform, announced today that it has acquired Netherlands-based Juripax B.V., an online mediation softw...[more](#)



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Products and services available

1 2 3

Juripax products and services

Certain aspects of the Juripax system are conflict-specific, for example conflict (diagnosis) forms, documents and/or certain questionnaires. Once you have selected the type of dispute below, you will be given access to the library of corresponding forms in the discussion forum.

-  Select the type of dispute for which*
you want to file a case
- | | |
|---|---|
| <input type="radio"/> Issues of varying nature | Denoting issues and disputes of a general nature such as small claims, landlord/tenant or neighbor disputes, etc. |
| <input type="radio"/> Divorce-related issues | Including, but not limited to, issues and disputes in relation to co-parenting, child support, division of assets and debt, and/or spousal support. |
| <input type="radio"/> Employment-related issues | Denoting any work-related issues and disputes, including, but not limited to, mobbing, issues with co-workers or termination of employment. |

Previous

Next



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Current situation with regard to spousal support

1 2

Select one of the following options:

Have any arrangements been made yet regarding how you want to organize spousal support? *

- ☐ Yes, I am paying spousal support to my (ex)partner
- ☐ Yes, my (ex)partner is paying spousal support
- ☐ No, no arrangements have been made yet.

Save as draft

Previous

Next



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What is your current living situation? Select one of the following options:	We are (still) living together	We are (still) living together	<i>We are (still) living together</i>	
---	--------------------------------	--------------------------------	---------------------------------------	--

Minor children - Minors are children below the age of 18. In this form, we use the term "child(ren)" to denote one or more biological chil(dren), adopted chil(dren) and/or stepchild(ren). If you have any foster children or children between the ages of 18 and the age of emancipation, you can indicate this later in the form.

Do you have any minor children and/or children that cannot provide for themselves?	No	No	<i>No</i>	
---	----	----	-----------	--

What, according to you, is the main reason for the divorce? Select one or more of the following options:	<ul style="list-style-type: none"> Miscommunication or lack of communication 	<ul style="list-style-type: none"> Lack of recognition or respect Stress and/or insecurity 	<i>Need to be discussed</i>	
--	---	--	-----------------------------	--

What are the issues you would like to resolve during mediation? Select one or more of the following options:	<ul style="list-style-type: none"> Issues related to co-parenting 	<ul style="list-style-type: none"> Issues related to co-parenting 		
--	--	--	--	--



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PartiesKarin Weinstein [Action](#)Juripax, Lucas Moureau [Action](#)Hans Müller [Action](#)**Start date**

22. Jun 2011 10:59

Agreement ID:


853273

Version 3[View](#) | [compare](#) | [Export](#)

23. Apr 2012 16:32

By Hans Müller

<< First < Previous Changes 5 Next > Last >>

Version 3 > Version 2 

23. Apr 2012 16:32 23. Apr 2012 16:31

Aenean sit amet erat id ligula sollicitudin congue vitae et enim. Sed sed purus lectus, quis convallis libero. Sed et lacus felis. In nibh augue, convallis eu venenatis nec, auctor vel quam. Nunc faucibus placerat dolor ut imperdiet. Integer elementum augue id dui dictum in Aenean eget quam a eros congue ornare pellentesque neque ullamcorper. In imperdiet dolor ut justo suscipit vitae cursus ante ornare! Praesent eleifend dui sed nibh venenatis condimentum. Sed ullamcorper venenatis neque non vestibulum. Sed metus est, suscipit nec lobortis eget, feugiat ac nisi. Curabitur dfsfsa luctus nibh sit amet arcu porta laoreet a sit amet neque. Vestibulum ante ipsum primis in faucibus orci luctus et ultrices posuere cubilia Curae; Curabitur iaculis malesuada faucibus. Phasellus orci velit; adipiscing eu semper ut, iaculis et urna. Nam gravida libero et neque iaculis non fringilla mauris dictum. Nulla eleifend tincidunt elit, eu mattis tortor tincidunt afsafaas ut?



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American Arbitration Association

Mediation.Org



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ONLINE MEDIATION

Online Mediation is a service designed for disputes in which there are only two parties and neither the claim nor any counterclaim has a value greater than \$10,000. The entire mediation process is conducted online with no telephone sessions and no face-to-face meetings.



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Disputes parties consider to be fairly straightforward are good candidates for this service due to its speed, efficiencies and very lower cost. The service offers the following:

- A trained, experienced Mediator.org/AAA Staff Mediator is assigned to handle the matter from start to finish.
- The mediator usually is appointed within 48 hours of receipt of the responding party's agreement to mediate.
- A flat fee of **\$200** includes the mediator's time; there are no additional mediator-related or administrative costs.

The mediation is conducted via chat room and instant messaging (IM), which provides both a private chat room for each party to chat with the mediator in a confidential setting and an ability for the parties to chat in joint session.



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Picture It Settled®

- Helps parties evaluate cases with probabilistic scenarios.
- Draws on historically successful negotiating rounds to help users plot successful negotiation moves targeting their evaluations.
- Uses the Settlement Prophet™ application to project when the parties are likely to settle and the amount of the settlement.



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Data

The Picture It Settled® database contains thousands of cases contributed by lawyers, companies, mediators, and other sources. So that we could test early conclusions from this control set of data, we introduced smartphone apps that allowed users to draw settlement infographics with an algorithm. In doing so, they augmented the control data set with several thousand more anonymous cases.



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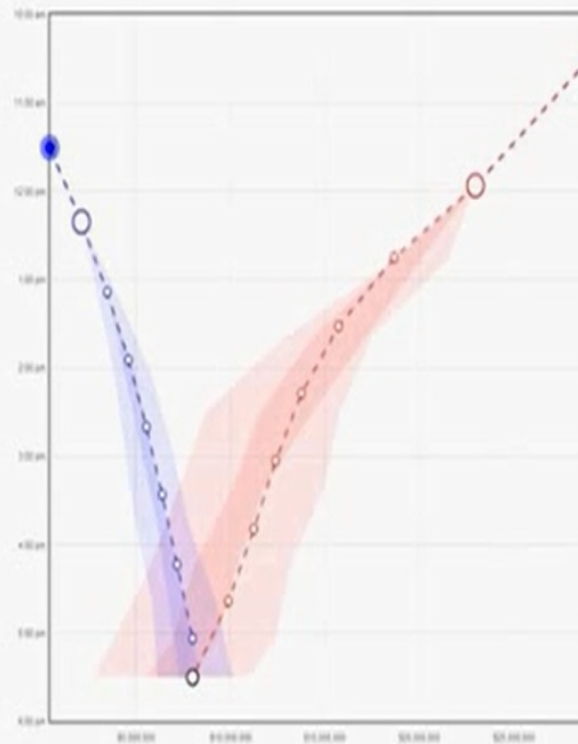
The resulting database looks like U.S. case filings. Employment and personal injury cases represent the largest concentrations, but intellectual property and construction claims are well represented. Since litigation is localized, the cases cover most jurisdictions but expectedly concentrate in the major litigation centers.



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Least Most

Probabilistic Projections



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REGISTRATION AND REPORTING BY SCIENCE

IBM Demo 95062013a

for info@pictureitsettled.com | Sign Out

☒ All Cases
 ☒ Live
 T1 State
 Taxes
 Intellectual Property
 \$
 \$ 2,000,000

Amount: \$ 1,300,000
 Date: 05/05/2013
 Time: 1pm 40
 Report Issue Offer

Date	Time	Amount
05/05/2013	12:22 PM	\$27,500,000
05/05/2013	12:24 PM	\$1,500,000
05/05/2013	12:26 PM	\$27,500,000
05/05/2013	12:28 PM	\$1,100,000
05/05/2013	12:30 PM	\$25,500,000
05/05/2013	12:36 PM	\$2,500,000
05/05/2013	12:44 PM	\$23,500,000
05/05/2013	12:49 PM	\$2,200,000
05/05/2013	12:54 PM	\$21,500,000
05/05/2013	12:59 PM	\$2,300,000
05/05/2013	1:04 PM	\$20,500,000
05/05/2013	1:08 PM	\$2,600,000
05/05/2013	1:13 PM	\$19,500,000
05/05/2013	1:20 PM	\$1,800,000
05/05/2013	1:25 PM	\$18,500,000
05/05/2013	1:40 PM	\$1,300,000

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ADR via Skype/FaceTime

Skype was initially created as a way for users to communicate by video and instant messaging over the internet. However, as technology has increased so has Skype's services. On top of video and instant messaging, Skype now offers file transfers and videoconferencing. Traditional mediators and negotiators have taken advantage of these advanced services. Mediators can work with clients from all over the world at lower costs than traditional face-to-face mediations.



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FaceTime is an application on iPhones that allow users to communicate via video as well. While it is not identical to Skype, its video capabilities are identical.

Both Skype and FaceTime are ideal options for clients who cannot or do not want to travel to the mediator's office (or the mediation's location). It would be difficult to review all documents over video, however, necessary and important documents can be sent by email, fax, or Skype's file transferring.



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- Skype and FaceTime are types of online dispute resolution (“ODR”) that allow clients to resolve their disputes from anywhere in the world.
- These types of ODR reduce costs, eliminate barriers to resolution, and better accommodate busy schedules.



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Charles R. Steele

Steele Law Offices

360 Lee Avenue
Clarksburg, WV 26301
304-624-4004

www.steelelawoffice.com

Chuck Steele is a 1992 graduate of the West Virginia University College of Law. Following graduation, Chuck practiced law with the firm of Cozen O' Conner in Charlotte, NC – primarily representing plaintiffs in the field of real property subrogation/recovery. He has taken and passed three bar exams: North Carolina; South Carolina; and West Virginia.

In 1996, he returned home to West Virginia to begin a practice with his much older brother, Tom. While at Steele Law Offices, the two have collectively tried over 125 cases to jury verdict representing both plaintiffs and the defendants. He has litigated cases involving personal injury; product defect; aviation; construction; employment; professional negligence; insurance coverage; extra-contractual liability; toxic torts; fires; and structural collapse.

Both Tom and Chuck maintain an active mediation practice – though most would say Chuck is more effective; easier to get along with; and more fun.

Difficult Insurance/Coverage Issues In Mediation

I. Construction Case:

Homeowner sues Contractor for his work and that of his subcontractors.
Contractor counterclaims against Homeowner for unpaid work.
Insurance Co. defends Contractor under ROR.
Do you promote harmony or conflict?

II. Personal Injury Action:

Defendant brings questionable counterclaim for damages on a pro se basis. His rationale: It's the principle of the matter.
Defendant's insurer wants to settle – but claim can only settle if Defendant drops counterclaim.
Litigating and mediating over Principle

III. Insured/Insurer Conflicts:

Insured-Defendant wants to fight it out.
Insurer wants to reach a resolution.
Which Buttons are you going to push?
Is our role merely to help settle cases in all cases?

IV. Shamblin Tactics:

Trial approaching.
Insurer has offered limits.
Plaintiff's counsel says its too late.
Insured is present at mediation.
When the policy just isn't enough.

Oscar M. Bean is a graduate of the WVU College of Law and has been practicing law in West Virginia, continuously since 1975. For the last fifteen years, he has primarily mediated civil cases, excluding divorces, but for most of his practice, he was devoted to the general practice of law, with a concentration in personal injury work on both the Defendant and Plaintiff's side. Bean is a former prosecuting attorney, an inactive real estate broker, and a longtime bank director of a NASDAQ listed bank holding company. He practices with the law firm of Bean & Bean, in Moorefield, WV. Bean estimates that he has mediated 1200 or more cases in Circuit or Federal District Court.

Landers Bonenberger is Of Counsel with the Wheeling firm of McDermott & Bonenberger. He received his undergraduate and J.D. degrees from The University of Notre Dame. He is a member of several Bar Associations and practice before multiple West Virginia and Federal courts. He has been granted privileges before the U.S. Supreme Court. He is a Fellow of the American College of Trial Lawyers and a West Virginia Bar Foundation Fellow. He has been a litigator for over 45 years and has 15 years of mediation experience.