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THE CHAIR'S COMMENTS

IT HAS BEEN A FUN YEAR FOR ME, AND I hope also for those active in the section's projects. I am a programs kind of guy, and I think we made some real progress on several programmatic fronts.

At the beginning of this year, I set out some ideas for the section to pursue. Below is only a brief review of those ideas and where we have come. This will

be a mere sketch of each one, as elsewhere in this newsletter there are several reports of greater length and detail, and I do not want to steal their thunder.



FRANK C. LANEY

ADR Green Book

Two thousand more copies were printed, Carolina Dispute Settlement Services bought 500 of them, and about 250 more have been distributed. Plenty of copies remain available for \$8 by mail order, or \$5 if you pick it up at the North Carolina Bar Association.

Mediation in the Schools

After much investigation, the conclusion was reached that although many section members favor increasing dispute resolution in the public schools, that we do not have the right connections or sufficient energy among our members to carry out this project on our own. We recommended that interested persons contact the Lawyers in the Schools Committee, which is looking for additional volunteers for their efforts to promote ADR in the schools. See the report of the Peer Mediation Task Force of the Young Lawyers Division later in

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Arbitrators' Views From the Bench Or At Least From the Head of the Table

BY DAVID B. HAMILTON AND WAYNE P. HUCKEL

Editor's Note: The following article was originally published in the November 2004 issue of Change Order, the newsletter published by the NCBA's Construction Law Section. It is reprinted with permission.

Law school, continuing legal education, treatises, and even highly paid consultants bombard lawyers with information concerning how to present information to judges and juries. However, these resources are generally not available concerning how to present your case in arbitration. Hence, most lawyers are not privy to arbitrators' views and have not been educated on how arbitrators prefer to see matters presented to a panel.

The purpose of this article is to briefly set out the authors' views and preferences regarding "best practices" in an arbitration. Needless to say, our opinions are not universal, and we do not purport to speak for all arbitrators. However, between us we have acted as panelists in dozens of arbitrations and have seen all kinds of presentations.

When sitting on an arbitration panel, our goal is to hear a concise, though complete, presentation of the parties' respective claims and defenses. From the inception of a proceeding at the claim submission stage, through the preliminary conference, discovery and other prehearing stages, and continuing with the presentation of evidence during the hearing itself, panelists (especially those who are lawyers) remain cognizant of the law and evidentiary issues. However, our primary focus is on fully understanding the factual matters in dispute so that a decision addressing and resolving those issues can be issued expeditiously.

Presumably, parties choose panelists whom they believe are capable and knowl-

edgeable. As such, counsel need not repeat ad nauseum their arguments, testimony or theories. Panelists generally get it the first or second time! We do not need to hear it multiple times. Furthermore, we are not reluctant to ask for explanations of details that are not clear to us.

Certainly panelists expect counsel to be prepared and to have an interest in cooperation that will allow the process to proceed with as little conflict and gamesmanship as possible. We also expect the parties and counsel to be courteous to one another and the panel and to foster an atmosphere allowing a fair, expeditious and impartial proceeding. Similarly, no useful purpose is served when the lawyers "take it personally" and forget that their role is to advocate for their clients. Boisterous and repetitious objections also are unnecessary. We will hear all the evidence and decide its relevance and weight.

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COMMENTS *from page 1*

this newsletter.

Adult Guardianship Mediation

This morphed into an expanded Mediation in the Clerk's Jurisdiction program, which was designed over the winter, and became law this spring. The program should be up and running by the end of the year—a great success for the joint committee of the section and the Dispute Resolution Commission.

Permanency Mediation

We were following the lead of the AOC, which agreed that mediation would be very helpful in these cases deciding where children will be permanently placed and under whose care. But when the AOC did not pursue legislative funding, we formed a committee to study other ways of funding or implementing this fine program.

Real Estate Escrow ADR

A meeting was set up, bringing together representatives of all the major stakeholders. There, we shared ideas and concerns, and discovered that the Real Estate Commission had proposed a statutory amendment to try to handle the problem. Therefore we decided to wait and see if their idea becomes successful and will reconvene next winter to re-evaluate.

Information on Malpractice Insurance for Mediators

Thanks to our good friend Henry Mitchell at Lawyers' Mutual, we were able to print a fine article covering the issues of insurance for mediators.

CLE

We had an excellent CLE program in Greensboro in March. We also agreed to sponsor a Workers' Comp for Mediators CLE next year. So next year's CLE committee will have the opportunity to put on TWO programs!

Collaborative Law

In conjunction with CDSS, the Bar put on a fine CLE program about the use of Collaborative Law in family matters. It was so well-received that a Collaborative Law Committee was established to explore the further use and expansion of this growing area of practice.

I want to thank my committee chairs, the executive committee and newsletter editor, without which none of this work could have been accomplished. You have all been very supportive of me, and I hope I have reciprocated. You have been a joy to work with—I just hope it has been as much fun

and rewarding for you.

Looking Back to Look Forward

For those of you not into ancient history, the first manifestation of what is presently the Dispute Resolution Section was the Alternatives to Litigation Task Force. One of the primary accomplishments of the Task Force was to establish the Court-Ordered Arbitration Program, a program we may need to reconsider.

The program was the N.C. Bar Association's first foray into designing and setting up dispute resolution programs for use within the court system. It turned out to be a smashing success. It began a ground swell of enthusiasm for ADR within the bar and among litigants. A short war story to illustrate the point, if I may:

The Arbitration Program was first set up as a pilot program in three judicial districts. It was my job at the time to visit with the bar in each district to explain what this was and how it would work. In one district, I was quickly introduced by the local court administrator to a middle-aged attorney who was obviously a real community leader. He had served in the legislature, had then served as judge for a dozen years, but had recently stepped down to go back to private practice. The court administrator was pleased that he had agreed to serve as an arbitrator in the program, as he would bring real credibility to the pilot.

An hour later, as we were checking out of the restaurant, this local luminary was in front of me in line to pay, talking to the guy in front of him. "I think this arbitration program is a bunch of [junk], but they want me to give it a try, so I will," he said. I did not say anything, and he never knew I heard him.

Two years later, at the end of the pilot, I went back to the same restaurant to meet with the same bar to let them know how the program had worked out. The first person I met was this same lawyer. He said, "I don't know if you remember me (I did), but I have been an arbitrator in this program and it is the best thing that has happened since we reorganized the courts in the '60s. We have got to keep this going. The legislature needs to make this a permanent part of our courts. I used to be a legislator. I still have some friends in Raleigh. I will come down and talk to people, make phone calls, write letters. Just tell me what you want, and I will do it. We need this arbitration program." In short, he gave it a try, and the program sold itself.

The data from those pilot years was very impressive, with a very high (98.8 percent) disposition rate, and equally outstanding rates of satisfaction reported by lawyers, litigants and court officials.



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I have looked at some of the most recent numbers, and the program continues to be quite impressive. It currently operates in 33 judicial districts, covering about 75 percent of the state. In fiscal year 2003-04, statewide 5,231 cases were ordered to arbitration. Although the arbitration is generally set within 30-45 days of filing an answer, 46 percent of the cases were settled and dismissed prior to the hearing, so only 2,812 hearings were held. Of those, 72 percent were concluded by the arbitrator's award and only 791 asked for a trial de novo. Of those cases in which a trial was requested, 62 percent settled before trial and were dismissed. Thus, of the 5,231 cases ordered to arbitration, only 5.7 percent of them culminated in a trial, and almost half of them were disposed of within two months of the joining of the case with no further action by the court required.

At this point my data runs out, but I think there are some logical conclusions that may be drawn. Not only does the Arbitration Program reduce the number of trials that the courts must provide and thus reduce the costs of operating the system, but also it is a great case management tool. Cases no longer are filed and languish on the docket until there is a calendar request or a cleanup calendar setting. A very high percentage of cases are resolved and resolved quickly with little consumption of scarce court resources, because the courts are requiring the parties to do something (attend an arbitration hearing) very soon after filing.

The downside is that despite all of the very positive effects of this program, it has to fight for its fiscal life in just about every meeting of the General Assembly. In its 16 years of existence, it has been zeroed out of either the House or Senate budget numerous times. This should not happen to good programs like this one.

So how can the Arbitration Program be moved out of the path of the ever-menacing budget axe? The program originally was completely paid for out of general revenues. The costs were the arbitrator's fees (\$75 per case) and the salary of a local coordinator. By the early part of this decade, those costs had mounted to more than \$1 million.

In 2003, the legislature sought to cut that appropriation by requiring the parties to pay a \$100 arbitration fee, to be divided among the parties. With some non-payment and some indigent petitions, the fees collected roughly covered the \$75 fees paid by the state. With the arbitrators' fees having increased to \$100 earlier this year, the fees collected versus fees paid probably will begin running a bit in the red. A second revenue stream from the program is a trial de novo fee

that is paid by those seeking to go on in court from the arbitration. In 2003-04 the trial de novo fees collected were \$66,500. In the first six months of 2004-05, they were \$39,500. However, that stream is a trickle compared to the other major expense, the \$673,500 paid for the local program administrators. Assuming the fees collected and fees paid from July-December 2005 reflect a rough count of the number of arbitrations held, the administrative cost per case is about \$270 per case arbitrated. (Remember that almost half the cases these program administrators handle do not make it to the hearing but settle first.) So how do we cover those costs?

Even if we were to double the arbitration fees to \$100 per side (\$100 for plaintiffs and \$100 for defendants), that would still leave us about \$170 in the hole for each case. If we factor in the trial de novo fees, that reduces the deficit to about \$140 per case, or a total of \$350,000. While I think an increase in the arbitration fee to \$100 per side is quite reasonable, I have some qualms about tripling it to \$150 per side or \$300 per case. Without a lot more data to examine, I am not sure going that far would be a wise way to help save the program. Another idea is to assess some sort of fee in each case ordered to arbitration, whether it actually has a hearing or not. That would reach about twice as many cases and thus lower the fee needed from each case. However, as those cases have limited contact with the court once the answer is filed, collection of such a fee might be problematic.

These are just my thoughts. My last one is that this may be an issue the section needs to take another look at and see if we can derive a funding mechanism that is fair, effective, does not destroy the program it is intended to help, and is much more stable than legislative appropriations.

But that is for Jon Harkavy to worry about. ■

VIEWS *from page 1*

Cooperation, hopefully, can start with a presubmission agreement which, at a minimum, defines the issues for the panel to decide and, at its most comprehensive, addresses most, if not all, prehearing matters.

To the extent the parties have not fully set out the road map for the hearing in a presubmission agreement, a prehearing conference (either by phone or in person) among counsel and the panel members is important. The hearing can be used, among other things, to define the scope and timing of discovery, establish mechanisms for resolving discovery disputes, address the need for and timing of prehearing dispositive and other motions, determine what information regarding witnesses and exhibits will be exchanged prior to the hearing, discuss whether a prehearing brief is warranted and, if so, its length and scope and, finally, set hearing dates and estimated completion times.

Our experience tells us that panelists do not like to spend time resolving discovery disputes. Again, we prefer to focus on resolving the disputed substantive issues, rather than refereeing discovery matters. If a discovery issue is not addressed in a presubmission agreement, in the order following the preliminary hearing, or in the applicable rules, we prefer to have counsel make every reasonable effort to work it out and to bring only critical and insoluble issues to the attention of the panel.

Prior to the hearing, we also prefer to have the issues presented in a brief prehearing memorandum or other written submittal. Panelists have differing views on whether it is helpful to see exhibits prior to the hearing. Determine your panel members' preferences on this point. Even if the arbitrators do not see the exhibits in advance of the hearing, each party should provide each arbitrator with an exhibit notebook for use during the hearing. Again, sharing these exhibits with the other parties is essential.

It is also important to keep the panel fully informed on the identity of witnesses, including experts, who will be called, and on those nonwitnesses with material roles in the matter in dispute. These disclosures should begin with the initial submission and continue as new witnesses or others requiring disclosure are identified. No one in the process wants a last-minute disclosure which could require the resignation or removal of a panel member due to a conflict.

At the hearing, concisely present your case. We appreciate brief, informative openings, but it is best to avoid detailed summaries of what you expect your witnesses to say under oath. Brevity is even more appreciated if prehearing memoranda have been provided to the panel. Again, at the hearing, you need not have a point made repeatedly by multiple witnesses. Avoid repetitive questions and duplicative evidence. If panel members say, "we understand your point," take that as your cue to move on!

In addition, we prefer live testimony where it is available. We will accept affidavits, but we understand who generally prepares them, and we will give them "the weight and credibility they deserve." If deposition testimony is submitted, indicate what you want the panel to read. It is generally not a good idea to hand up a transcript and ask that it be read in its entirety. Act on the assumption that exhibits presented at the hearing are authentic and admissible, and allow the panel to assess the weight and importance to be given them. If there are serious disputes regarding exhibits, bring them to the attention of the panel before the hearing. Do not play games with exhibits and hold back documents on the premise that what was not disclosed is somehow a "rebuttal" exhibit or some other bit of evidence not requiring disclosure during discovery. Full disclosure is essential. We are aware

of the rules of evidence but prefer to conduct a hearing without constantly addressing evidentiary objections.

As panelists, we often ask questions of witnesses. We generally wait until the lawyers are finished, but, on occasion, we may prefer to ask questions during the examination of a witness. Do not read anything into the questions asked by panelists. Our experience is that panel members take their role seriously and maintain an open mind until it is time for the panel to make its decision. If we ask questions, it is only to make sure we understand as fully as possible the evidence presented to us and to make certain we do not forget to raise the question by waiting until the end of the lawyer's examinations.

We value closing arguments. We are especially interested in having counsel at closing tell us precisely what they want and what each thinks his case is worth. If you are a claimant, state what relief you are seeking and why you seek it, including precisely the amount of damages sought. Be reasonable in assessing your claims and defenses. A compromise award, or what seems like one, may occur if unrealistic or overly aggressive positions are being advocated. Accept questioning by the panel during closing argument. The conclusion of an arbitration is not the time to negotiate your case by placing unreasonable values (either high or low) on them. Remember, respect is generated by reasonableness. Again, do not read anything into the questions being asked. Post-hearing memoranda are often helpful but can be considered on a case-by-case basis. Assuming you are relying on case law to support your positions, make certain that each panel member is provided with copies of your appellate decisions.

If you seek a reasoned award, ask for it. We regularly provide some reasoning to support our awards, simply because we think the parties and the lawyers deserve some explanation of how we arrived at our decision. However, reasoned awards are not generally required, so if you want some detail in an award, ask for it. Most arbitrators will not hesitate to provide the general rationale supporting an award.

Remember that arbitration is an alternative to the courtroom. An arbitration proceeding is not meant to mimic a trial. Arbitration can and, in our view, should be a relatively informal process. Arbitrators are not obligated to act like judges or jurors. Arbitrators can and will work hard to conduct a fair and impartial proceeding and render a reasoned and fully considered award based upon the evidence submitted and the equities involved. But do not insist upon or expect the equivalent of a trial from an arbitration. Arbitration is a unique procedure designed to resolve disputes fairly and expeditiously. In our experience the procedure works, and good lawyering makes it even more effective. However, disputes that come to arbitration for resolution involve complicated facts and hard questions, and arbitrators are asked to decide issues that the parties and attorneys have not been able to resolve. Consequently, these decisions are not easy and not every party can get what it wants. However, every party can get to present its case and have a fair, measured and impartial decision rendered—which is the true goal of every arbitrator. ■

HAMILTON IS A MEMBER OF HAMILTON, GASKINS, FAYE & MOON, PLLC. HUCKEL IS A PARTNER WITH KENNEDY COVINGTON LOBDELL & HICKMAN, LLP, IN CHARLOTTE. THEY ARE TWO OF THE FOUNDING MEMBERS OF THE ARBITRATION GROUP, AN ORGANIZATION DEDICATED TO PROVIDING STREAMLINED, COST-EFFECTIVE AND LAWYER-FRIENDLY ARBITRATION.

Empirical Evidence Indicates Individuals Fare Well in Arbitration

BY KIRK D. JENSEN

A FEW MONTHS AGO I ATTENDED A CLE PRESENTATION ON CONSUMER arbitration. The speaker told of a family that developed serious health problems allegedly because of chemicals used by an exterminator. The family's agreement with the exterminator contained an agreement to arbitrate any disputes. The family sued the exterminator, which then moved to enforce the parties' arbitration agreement. The speaker's account ended with the court ordering the family to pursue its claims against the exterminator in arbitration. Although the speaker admitted that he knew nothing about the outcome of the arbitration of the family's claims, to the speaker's mind the tragedy was already complete. For him, requiring the family to arbitrate its claims amounted to depriving them of their rights. Even though the speaker asserted that nobody knows how individuals fare in arbitration, he seemed certain of one thing: arbitration must be bad for individuals.

Contrary to this speaker's contention, numerous studies have been conducted to find out how individuals fare in arbitration. And the speaker may be surprised to find that these studies show that consumers fare well in arbitration—and often much better than they fare in litigation. This body of empirical evidence shows that consumers prevail more often in arbitration than they do in court litigation and that those who win in arbitration generally recover more than those who win in court. These studies also show that arbitration resolves disputes faster—often much faster—than litigation. This evidence also shows that arbitration costs less than litigation. Finally, and importantly, individuals who have participated in arbitration overwhelmingly report that they believe they were treated fairly.

Before reviewing some of this empirical evidence, it is important to emphasize that this discussion of the benefits of arbitration assumes that the individual's arbitration agreement allows the enforcement of all rights and the provision of all remedies available under the law. While individuals generally fare better in arbitration than in litigation, this might not be the case if the arbitration agreement contains provisions that preclude the vindication of substantive rights or restrict otherwise available remedies. Companies would be well-advised to avoid such provisions. See, e.g., Kirk D. Jensen, "How to Draft an Unenforceable Arbitration Agreement and Increase Your Client's Risk of Class Arbitration," *Notes Bearing Interest*, Vol. 26, No. 3, at 5 (January 2005), reprinted (as updated) in *Dispute Resolution*, Vol. 19, No. 2, at 8 (February 2005). Happily, studies have shown that such restrictive arbitration provisions are far less prevalent than arbitration critics claim. See, e.g., Christopher R. Drahozal, "'Unfair' Arbitration Clauses," 2001 U. Ill. L. Rev. 695.

Outcomes

In 2004, Ernst & Young published a study showing that consumers fared well in arbitrating consumer lending claims. Reviewing 226 lending-related, consumer initiated cases filed with the National Arbitration Forum over a four-year period, Ernst & Young found that when cases went to an arbitration hearing, consumers prevailed 55 percent of the time. Additionally, when settlements and claimant-initiated dismissals were included, Ernst & Young found that nearly 80 percent of consumers obtained favorable results in arbitration. Ernst & Young concluded that their findings "do not support the allegations

that consumers are disadvantaged by mandatory arbitration clauses. In fact, these findings suggest that consumers find the arbitration process beneficial to resolving disputes." Ernst & Young, "Outcomes of Consumer Arbitration: An Empirical Study of Consumer Lending Cases" (2004), available at [www.ey.com/global/download.nsf/US/Outcomes_of_Arbitration/\\$file/OutcomesofArbitrationAnEmpiricalStudy.pdf](http://www.ey.com/global/download.nsf/US/Outcomes_of_Arbitration/$file/OutcomesofArbitrationAnEmpiricalStudy.pdf).

A comparison of the outcomes of individual arbitrations and of court litigation further suggests that arbitration is beneficial to individuals. In 2000, the National Arbitration Forum ("NAF") reported that individual plaintiffs win 71 percent of the claims brought against corporate entities before the NAF. In contrast, between 1987 and 1994, individuals won less than 55 percent of claims brought in federal court under original diversity jurisdiction, and only about 30 percent of claims brought under removal jurisdiction. See Eric J. Mogilnicki & Kirk D. Jensen, "Arbitration and Unconscionability," 19 Ga. St. U. L. Rev. 764 (2003).

Similarly, a 2002 study published by Professor Perino of St. John's University School of Law found that consumers fared well in securities arbitrations. Reviewing more than 31,000 arbitrations from 1980-2001, Professor Perino found that consumers prevailed in nearly 53 percent of cases. In comparison, plaintiffs in stockholder suits prevailed only 32 percent of the time in federal court. Michael A. Perino, "Report to the Securities and Exchange Commission Regarding Arbitrator Conflict Disclosure Requirements in NASD and NYSE Securities Arbitrations," available at www.sec.gov/pdf/arbconflict.pdf.

Numerous studies have reached similar conclusions in the employment context. A 2003 study by attorney Michael Delikat and Professor Morris Kleiner compared outcome and timing factors in 125 employment discrimination cases filed in the Southern District of New York with 186 arbitrations involving employment disputes in the securities industry found that claimants prevail more often and obtain higher awards in arbitration than in court. The study found that claimants prevailed 46 percent of the time in arbitration compared with 34 percent in court. The study also found that the median monetary award was nearly \$4,500 higher in arbitration than in court. Michael Delikat & Morris M. Kleiner, "An Empirical Study of Dispute Resolution Mechanisms: Where do Plaintiffs Better Vindicate Their Rights?" *Disp. Resol. J.*, Nov. 2003-Jan. 2004, at 56. The findings of another employment arbitration study suggest even more strongly that individuals fare better in arbitration than in court. Lewis Maltby, then the Director of the ACLU National Taskforce on Civil Liberties in the Workplace, compared employment arbitrations from 1993 and 1995 with federal District Court cases from 1994. The study found that 63 percent of employees won in arbitration, while only 15 percent of employees won in federal court. Additionally, Maltby showed that approximately 60 percent of cases brought in court are resolved by summary judgment, and that employers prevail on such motions 98 percent of the time. These findings led Maltby—hardly an industry shill—to conclude that "it would be a serious mis-

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take for the civil rights community to attempt to stop the trend to employment arbitration.” Lewis L. Maltby, “Private Justice: Employment Arbitration and Civil Rights,” 30 *Colum. Hum. Rts. L. Rev.* 29 (1998).

Some consumer advocates have attempted to rationalize this evidence by arguing that although individuals may prevail more often in arbitration, they do not recover as much—or as much as they should—because arbitrators tend to “split the baby.” While more studies on this topic would be helpful, the current evidence indicates that individuals still benefit from arbitration even if allegations of baby-splitting are true. In his study, Lewis Maltby found that although average awards for employees were lower in arbitration and litigation, employees as a group win a higher percentage of the amount they demand (18 percent in arbitration versus 10.4 percent in court)—due in large part to higher win rates. Maltby also concluded that comparing average awards is misleading, since the combination of higher win rates and lower procedural costs in arbitration result in a higher adjusted outcome in arbitration than in litigation. Making the same observation, Professor Estreicher has explained that litigation gives Cadillacs to only a few and rickshaws to the many, while arbitration gives Saturns to everyone. Samuel Estreicher, *Saturns for Rickshaws: The Stakes in the Debate Over Predispute Employment Arbitration Agreements*, 16 *Ohio St. J. on Disp. Resol.* 559 (2001).

Many more studies could be cited, but the above sampling is sufficient to show that arbitration offers significant benefits to individuals in terms of outcomes.

Time

Individuals not only benefit from arbitration in terms of outcomes, they also benefit from the faster resolution of disputes in arbitration. Maltby’s study found that, on average, arbitration resolved employment disputes in 21.4 fewer months than in litigation. Delikat and Kleiner’s study found that disputes were resolved in 8 1/2 fewer months than in litigation. This is not surprising, since court procedures are complicated and time-consuming, and since the number of judges is limited and the number of cases they hear continues to grow. Even simple cases filed in court must wait behind a line of potentially more time consuming cases. From 1999 to 2004, the average median time in federal courts from filing to disposition (even if the disposition is summary judgment) is nearly 9 months, while average median time from filing to trial is more than 21 months. And for the same time period, an average of about 12 percent of all civil cases filed in the federal courts were more than 3 years old. See Administrative Office of the United States Courts, “Judicial Caseload Profile Report,” available at www.uscourts.gov/cgi-bin/cmsd2004.pl. In contrast, procedures are more streamlined in arbitration, and parties can factor availability into their choice of arbitrators. Thus, the NAF reports that most individual arbitrations can be resolved in 3-6 months. See Mogilnicki & Jensen, *supra*.

There can be little doubt that arbitration offers individuals a faster means of resolving a dispute. This is a significant benefit to individuals, particularly working families and the elderly, who may not be able to afford to wait years for the resolution of a dispute.

Cost

While there has been much debate about the cost benefits of arbitration in recent months, empirical evidence suggests that arbitration’s

lower costs allows many individuals to bring claims they otherwise could not afford to bring. Maltby’s study shows that, in large part because of costs, only 5 percent of those who seek help from lawyers succeed in retaining legal counsel. This is, in part, because lawyers will not represent clients with small claims. See, e.g., Jill Schachner Chanen, “Pumping Up Small Claims,” *A.B.A. J.*, December 1998, at 18 (showing that lawyers rarely agree to pursue claims less than \$20,000). Professor Theodore Eisenberg and Elizabeth Hill recently showed that 72 percent of employees who brought claims in arbitration could not have afforded to bring those claims in court. Theodore Eisenberg & Elizabeth Hill, “Arbitration and Litigation of Employment Claims: An Empirical Comparison,” *Disp. Resol. J.*, November 2003-January 2004, at 44. Because arbitration does not require a lawyer, and often offers fee-waivers to individuals who cannot afford costs, arbitration allows a larger number of individuals to vindicate claims that they could not otherwise vindicate in court.

The class action device does not fully resolve the problem of court costs. Many claims are not eligible for class treatment. Additionally, lawyers are often unwilling to represent a class unless a significant monetary award is available. One study, sponsored by the RAND Institute for Civil Justice, found a large number of putative class claims are dropped when the plaintiff attorney concludes the case cannot be certified or settled for money. See Deborah R. Hensler et al., “Class Action Dilemmas: Pursuing Public Goals for Private Gain” (1999). For individuals whose claims cannot be brought as lucrative class actions, arbitration may be the individual’s only means of vindicating important rights.

Perception

Surveys of individuals who have resolved disputes in arbitration show that individuals overwhelmingly believed their arbitrations were conducted fairly and without bias. For example, 93 percent of consumers interviewed in Professor Perino’s study reported that they were treated fairly in arbitration, and 91 percent said their arbitrators demonstrated a level of fairness that was “excellent” or “good.” Ernst & Young also found that 69 percent of consumers they interviewed reported that they were satisfied or very satisfied with their experience in arbitration. It is no wonder that, in a recent survey, 64 percent of Americans said they would choose arbitration over lawsuits in disputes involving monetary relief. RoperASW, 2003 Legal Dispute Study (April 2003), available at www.adrinstitute.org/adri-lds2.pdf.

What This Means

Although more studies reaching similar conclusions could be cited, the above sample is enough to show a clear trend: empirical studies show that individuals can benefit greatly from arbitration. While more research should be done, the research that has been performed proves, at a minimum, that arbitration does not disadvantage individuals. These studies prove Congress right when it asserted that [t]he advantages of arbitration are many: it is usually cheaper and faster than litigation; it can have simpler procedural and evidentiary rules; it normally minimizes hostility and is less disruptive of ongoing and future business dealings among the parties; it is often more flexible in regard to scheduling of times and places of hearings and discovery devices” H.R. Rep. No. 97-542, at 13 (1982).

So given this evidence, why are consumer and employee advocates so hostile toward arbitration? One reason may be that some

What is LISTSERV?

LISTSERV

Background

A LISTSERV is an electronic mailing list that consists of a list of people's names and e-mail addresses and offers its members the opportunity to post suggestions, comments or questions to a large number of people. Submitting an e-mail to the LISTSERV will automatically distribute the message to all participants on that list simultaneously.

You must be a North Carolina Bar Association member and member of the associated section or division to be able to participate on the associated LISTSERV. You can join an NCBA section or division online by selecting the following link: <https://www.ncbar.org/sectionsDivisions/application.aspx>.

Reminder: New section or division members normally have to wait two business days before they can use the associated LISTSERV.

Frequently Asked Questions

User Agreement, Tips & Etiquette and Frequently Asked Questions (FAQs) were created to help members by providing user-friendly tools that allow eligible members to

- automatically subscribe and/or unsubscribe from a LISTSERV:

<https://www.ncbar.org/listServ/manager.aspx?Auth=0here>

- change their LISTSERV e-mail address:

<https://www.ncbar.org/listServ/email.aspx>

- change their LISTSERV subscription options from delivery of individual messages (regular) to daily digests:

<https://www.ncbar.org/listServ/options.aspx>

Note: Click on any link above to visit the Web page described. You may be prompted to log into the NCBA Web site.

Additional Support

The NCBA LISTSERV Web site can be accessed by visiting any NCBA Web page (www.ncbar.org) and selecting the LISTSERV quick link that is located in the right-hand part of the top navigation panel. For answers to questions not available on the NCBA's LISTSERV FAQs page, please contact the NCBA Information Technology staff via e-mail (support@ncbar.org) or phone (1-800-662-7407 or 919-677-0561).

advocates—such as the speaker at the CLE presentation mentioned above—are unaware of the benefits individuals stand to gain through arbitration. Much has been learned about the experience of individuals in arbitration in recent years. While more can be learned, what we now know should quell much of this hostility.

Another reason for hostility may be the “numerator problem.” No means of resolving disputes—whether arbitration, litigation, or some other mechanism—is perfect. For example, if 1 percent of individuals have a bad experience with arbitration, few arbitrations will result in few complaints. However, as the use of arbitration increases—as it has dramatically in recent years—the number of complaining individuals increases, even if the percentage of problems remains constant or decreases. Those working with the complainants may believe the problems with arbitration are greater than they really are, simply because the number of complainants is greater. The evidence discussed above shows that even though arbitration is not perfect, it provides many benefits to individuals that are unavailable elsewhere.

Chief Justice Warren Burger proposed two other reasons for why some are hostile to arbitration: fear of loss of power, and fear of loss of money. Some people acquire power and prestige by participating in the litigation system. Any means of resolving disputes outside that system threatens their power. Additionally, some people make substantial sums of money by participating in the litigation system. A system of resolving disputes outside litigation—particularly one that is less lucrative to them—threatens their income stream. My hope is that these people are few, and that we, as a profession, will not deprive individuals of the manifold benefits of arbitration merely because it

conflicts with the selfish interests of a few.

Finally, some may be hostile to arbitration because they believe individuals want to resolve disputes in the public courts. Chief Justice Burger, advocating greater use of arbitration, addressed this view nearly 30 years ago: “The notion that most people want black-robed judges, well-dressed lawyers, and fine paneled courtrooms as the setting to resolve their disputes is not correct. People with problems, like people with pains, want relief, and they want it as quickly and inexpensively as possible.” Warren Burger, “Our Vicious Legal Spiral,” 16 *Judges J.* 23 (1977).

The evidence presented above shows that arbitration is and can be beneficial to individuals in resolving disputes with companies. Given these benefits, energies currently spent fighting arbitration would be better spent working with arbitration proponents to improve the process so that it serves individuals even better. ■

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ADR at Cross Company

Solving Problems and Helping Employees

BY KEN CARLSON

IF PRIVATE BUSINESS EVER NEEDS A CORPORATE AMBASSADOR FOR alternative dispute resolution, it might consider Pat Janke at Cross Company. Janke is human resources director for this Greensboro-based company that began an ADR program in June 2004.

Although to date no Cross employee has needed more than the initial “open door” stage of the four-step process, Janke says that the system is in place to accommodate whatever issues come their way.

“Our bottom line is to provide employees with a better and more effective process to resolve problems with less cost to them and to Cross Company,” Janke said in a recent interview. “We believe ADR can deliver this goal.”

Cross Company is the leading distributor of hydraulic instrumentation and factory automation solutions in the Southeast. It first considered an in-house ADR program after an unpleasant experience with a 2002 lawsuit in another state—and after the Supreme Court decided the *Circuit City* case that attracted nationwide attention to the arbitration process. That lawsuit was eventually settled on the eve of trial, but only after a lot of time and expense to Cross—not to mention the “extreme inefficiencies of the [legal] process,” according to Janke.

Spearheaded by human resources and a corporate management team, Cross Company decided to explore a different path. The team inquired into various ways of implementing alternative dispute resolution before settling on a plan developed by the Halcyon Group for Workplace Dispute Resolution, a leading private ADR provider. The company worked diligently to analyze and fine-tune the proposed program for about six months before adopting it company-wide. It now affects all of Cross Company’s 200-plus employees, providing internal avenues for resolving disputes that never before existed.

In summary, the Cross Company Alternative Dispute Resolution Program involves the following steps:

1. **Open Door Program.** At this initial step, employees are encouraged to informally discuss any problem or concern with their immediate supervisor, manager and/or human resources. If the issue is not resolved with that person, employees may then go to the next successive higher levels of management up to and including the company’s president or chief executive officer.
2. **Ombudsman.** At this second step, employees are provided a toll-free “800” number to report and discuss a problem or concern with a Halcyon representative. Although Cross Company pays for the call and consultation, both are strictly confidential between the employee and Halcyon. The Halcyon representative will essentially take one or two actions: (1) confidential counseling on how to work internally at Cross to resolve the issue; or (2) meet with the employee and a Cross Company manager to resolve the situation. Multiple sessions and visits are allowed if needed. At the end of this step, if the employee is still not satisfied he or she may proceed to the next stage of the ADR Program.
3. **Mediation.** Assuming the first two steps of the ADR program do not resolve the issue, Halcyon will assign a neutral mediator to meet with the employee and Cross Company. The mediator may not be a Halcyon employee, and is typically an attorney, retired judge, senior human resources professional, or someone else with similar skills and

experience in employment situations. If mediation resolves the issue, a document is drafted to memorialize the resolution/agreement and it’s considered “closed.” Cross Company also pays for the entire mediation process, as well as up to \$200 in attorneys’ fees for the employee to seek legal counsel of his or her choosing.

4. **Arbitration.** If mediation fails, the employee can request arbitration. Halcyon will present a panel of four to five experienced arbitrators. After a short elimination process in which the employee and Cross can both strike up to two arbitrators if they fail to agree on one, an arbitrator is selected, a brief discovery period occurs, and an arbitration hearing is held. The hearing must occur within six months of the matter being first assigned to an arbitrator. The decision of the arbitrator is final and binding upon all parties, and is also the last step in the ADR Program.

“The Alternative Dispute Resolution Program is consistent with our corporate culture,” Janke said. “We became an ESOP (Employee Stock Ownership Program) soon after the regs were introduced. Currently our employees own about 70 percent of the company.”

For its ADR efforts, the North Carolina Society of Human Resources Management awarded Cross Company its 2004 Best Practices Program. Janke also speaks to various civic groups and industry organizations about the program, touting its benefits as a way to effectively address any matter that might concern an employee.

“We are a 50-year-old company that has only had one employment-related lawsuit,” Janke said. “But as society becomes more litigious, we can’t presume that record will hold for us. We would rather our employees come to the table to resolve problems instead of the court system, and our ADR Program provides that opportunity.” ■

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HE IS ALSO THE OUTGOING EDITOR OF THE
ADR SECTION NEWSLETTER.**

Welcome New Editor

Welcome—and many thanks!—to John N. Ogburn Jr., our new 2005-06 ADR Section newsletter editor. John actively practiced law in Asheboro from 1958 to 2001, concentrating on a wide variety of civil and criminal matters, and also served as district attorney. He has been a member of numerous NCBA sections and has served on a number of Bar committees through the years. He is currently “of counsel” to Nexsen Pruet Adams Kleemeier, PLLC, and became a certified mediator in 2001. John is also a major in the U.S. Army Reserves JAG (retired), and a member of the ordained Episcopal clergy.

It’s been a pleasure to serve as newsletter editor of the ADR Section, and I thank everyone for their help. The newsletter is only as good as its contributors—and you’ve been great! Please give John your continued support with articles and article ideas in the coming year.

—Ken Carlson

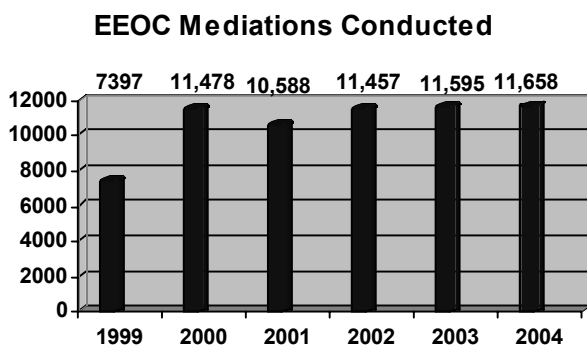
EEOC's Mediation Program: Growing and Succeeding

BY MICHEL D. VAUGHAN

Editor's Note: This article has not been reviewed or sanctioned by the EEOC, and the opinions expressed herein are those of Michel Vaughan.

The EEOC's mediation program, which began in 1992, when mediation pilots were established in five field offices, has grown by leaps and bounds. Since it was implemented agency-wide in 1999, the mediation program has demonstrated remarkable achievements. Studies have been conducted by independent researchers to evaluate the program's effectiveness. The studies have shown that participant satisfaction has been extremely high and that 91 percent of Charging Parties and 96 percent of Respondents would be willing to participate in the program again if the opportunity was presented.

Since 1999, the EEOC has mediated more than 64,000 charges and approximately 44,000 charges have been resolved through the mediation program. The breakdown is as follows:



During this same period, the Charlotte District Office, which covers North and South Carolina, has resolved more than 2,300 charges through its mediation program.

The EEOC's program usually offers mediation to the parties after the charge has been filed and prior to its being investigated. Charges are evaluated prior to being sent to the mediation unit to determine if they are appropriate for mediation. In most instances, charges that require additional investigation are eligible for mediation. Because the program is voluntary, the parties are contacted to determine their willingness to mediate. If both parties agree, the mediation is scheduled for a mutually convenient date.

During the mediation, the mediator assists the parties in exploring the underlying reasons for the dispute as well as assists the parties in exploring options for resolving the charge. Often, traditional options for resolution are explored during mediation, but mediators also encourage the parties to look for creative solutions to the dispute, particularly when the parties have a difficult time agreeing on the traditional options.

Because the parties are able to craft their resolutions, nonmonetary benefits developed through the mediation process, that normally are not available or required under normal EEOC procedures, can be obtained. Between 1999 and 2002, 46 percent of the mediated resolutions included a non-monetary benefit, and for 20 percent of the mediated resolutions the only benefit received was non-monetary. The following are examples of non-monetary benefits, minimum monetary benefits and creative options:

- ♦ A charging party, who had filed a sexual harassment charge, was granted use of the employer's construction equipment during a weekend.

- ♦ A charging party in a sexual harassment and retaliatory discharge charge received a honeymoon trip courtesy of the employer after the Charging Party indicated that she was so consumed with the charge that she could not set a wedding date.

- ♦ Respondent provided EEO training to all of its employees in a racial harassment charge.

- ♦ In an ADA charge, Respondent agreed to provide an amplifier for Charging Party's phone.

The possibilities for resolving charges are limitless. The parties only need to be open-minded and flexible as they search for solutions to their dispute.

During the past six years, Charging Parties' average participation rate in the mediation program is 83 percent while Respondents' participation rate is only 32 percent. The EEOC wants to increase the rate of employers participating in the mediation process. There are many reasons for employers to participate in the EEOC's mediation program. For example, the program is free, fair and neutral, and much quicker than the investigative process. Similarly, mediation fosters cooperation, improves communications, permits the discovery of the real issues in the workplace and allows the parties to design their own solution.

In addition, the EEOC has implemented several initiatives to encourage employers to participate in its mediation process. The first initiative involves Universal Agreements to Mediate (UAMs). The EEOC encourages employers to enter into UAMs at the local, regional and national levels. UAMs are agreements between the EEOC and an employer to mediate, prior to the investigation, eligible charges filed against the employer. Under the UAM, participation in mediation is still voluntary; therefore, either party may opt out of mediation on any charge. The benefits of a UAM include establishing a contact person for the employer which expedites the free flow of information between the employer and the EEOC as well as the scheduling of a mediation conference. To date, the EEOC has more than 700 local UAMs and more than 80 Regional/National UAMs. Within the Charlotte District, employers such as Ryan Steakhouse and Golden Corral have publicized their partnership with the EEOC in the UAM program. Since the inception of this program, the Charlotte District office has entered into approximately 40 NUAM/ UAMs.

The second initiative is the EEOC's outreach program in which members of the Mediation Unit make presentations about the benefits of the EEOC's mediation program to employer groups, employers, bar associations, etc. The Charlotte District Office is also involved in a pilot Referral Back program—another EEOC initiative—with Central Piedmont Community College. Under this program, a charge filed against an employer can be referred back to a participating employer's dispute resolution program for mediation if the charge is appropriate for mediation and the parties agree.

For more information on the EEOC's mediation program, interested parties can review its Web site at the following address: www.eeoc.gov/mediate/index.html. ■

VAUGHAN IS A LICENSED ATTORNEY WHO SERVES AS THE ADR COORDINATOR FOR THE EEOC'S CHARLOTTE DISTRICT. SHE PREVIOUSLY SERVED AS A SENIOR TRIAL ATTORNEY FOR THE CHARLOTTE DISTRICT OFFICE. SHE CAN BE CONTACTED AT (704) 344-6689 OR MICHEL.VAUGHAN@EEOC.GOV.

ADR Section Committee and Task Force Updates

The Next Frontier: Permanency Mediation

By Marilyn Shannon

On Feb. 11, 2005, I had the pleasure of joining the Child Custody and Visitation Mediation Advisory Committee as liaison between the Dispute Resolution Section of the Bar and the AOC in order to explore the issue over the expansion of the Permanency Mediation project. The section is very interested in exploring its role in this expansion and in helping to move the program forward statewide. Currently the only existing program in the state is in Charlotte.

A goal of Permanency Mediation is to enable the permanent placement of children involved in abuse, neglect or dependency, instead of these children remaining in foster care, on the streets, or in inappropriate settings that are harmful and negative.

The ultimate goal of the program, however, is to eventually unify the children with their parents and family. When this is not appropriate for permanency, placement with other family members or adoptive parents can be explored.

Included in the permanency mediation session are the parents, family members, grandparents, attorneys, case managers and other professionals. The professionals involved are from various service agencies, such as mental health. All members of the mediation are given an opportunity to be involved in drafting the petition presented to the court and in the development of a case-plan adapted to the family's particular needs. The issues discussed during these mediations include safe and appropriate housing, employment, substance abuse treatment, individual therapy, family therapy, domestic violence, visitation/supervision and economics. During the mediation session communication and relationship issues are very vital. They are also worked through and handled. Having been in existence for three years, the program in Charlotte has had tremendous results:

- ♦ In 2001, 31 cases were mediated, impacting 66 children
 - ♦ In 2002, 63 cases were mediated, impacting 162 children
 - ♦ In 2003, 78 cases were mediated, impacting 214 children
 - ♦ In three years, 442 children were impacted
- Permanency Mediation has the potential to

positively affect our schools, our homes, our courts and our communities.

During the advisory committee meeting in February, the issues discussed surrounding the permanency project included where the program would eventually be housed and how it would be funded. Both the custody and permanency programs were discussed and both have the potential of remaining at the AOC or possibly being included in the family court expansion.

Regardless of where the programs are housed, it was decided that even though the committee members wanted to see the expansion of the permanency program, due to funding they agreed to the statewide expansion of the custody mediation program first. The permanency program would, however, be kept on the radar. The custody program is in its final stages of expansion. Some of the committee members felt that it was possible to do both and that these programs could be integrated. With integration the pie would only get bigger. It was suggested that the Dispute Resolution Section look to see how creatively it could help in the establishment of the program and possibly even look to sponsor legislature for this to occur.

Judge Walker spoke at the meeting and is an advocate of the program and quite open and interested in supporting it. He is open to discussing other models that would not require money from the legislature. Judge Walker is also interested in looking at volunteer mediators, but believes that quality and staying power for the program are main issues.

A committee has been appointed by Frank Laney to explore these issues further. Included is Elaine Cigler from Charlotte. Elaine is responsible for maintaining the only existing AOC-funded permanency program in the state. Melissa Johnson is a section member and executive director from the Dispute Settlement Center from Boone who currently does some permanency mediation from her center. Family Mediation Service Director Jan Woloson from the Dispute Settlement Center of Henderson County is also a member. Jan is very involved in programs with DSS currently. Nina Starr Cohen is also committed to this project. Nina is the assistant administrator for the AOC Custody Mediation. Heading the committee is Marilyn Shannon. If anyone else is interested in being included on the committee or if you

just want to pass along information please let us know. You can reach me at marilyn@powerofdialogue.com.

From the Peer Mediation Task Force Young Lawyers Division

By Co-Chair Julia Young

It has been a phenomenal year for the Peer Mediation Task Force. In addition to publishing and distributing pamphlets advertising our PEP* (Peer-Evaluated Problem Solving) Rallies to all middle school guidance counselors in North Carolina, we've been responding to more than 75 requests for our task force to bring our conflict resolution program to schools throughout the state! Thankfully we've gotten some great assistance from our committee, and help from those outside it as well. Special thanks to Patricia Perkins, Ed Sharp, Travis Martin, Katie Ferraris, Jim Gilreath, Elizabeth Poremba, Elizabeth Wade, Allyson Labban, Patti Ramseur and Ward Davis for agreeing to take our show on the road. (Kudos also to Jacquelyn Terrell-Fountain at the N.C. Bar Center. Without her this would have been an impossible year.)

In addition, we've had fabulous support from Brandon Trusty, Theron Thomas Jr. and Jawon McBryde of the N.C. A&T football team, along with the Aggie mascot Wendy Williams; Hannah Nail from the High Point University Women's Soccer team; Jeff Daniels from the Carolina Hurricanes; and Waehdee Blidee, Ronnie Colbert and Joe Black from the Shaw Bears women's track and men's basketball and baseball teams at many of our programs.

All in all, we're on target to host at least 15 rallies this spring, with a long waiting list of interested schools for the fall. We'd love to have assistance—minimal reading skill for about an hour is the only requisite! From Murphy to Manteo is our goal . . . we just need a little help from you. For more information on how you can get involved, please contact Julia Young at jyoung@bdppa.com or Ward Davis at ward.davis@belldavispitt.com.

Update on Escrow Task Force

By Deborah Isenhour

Frank Laney, chair of the Dispute Resolution Section, asked me to convene a task force to look into the need for ADR in cases where there was a dispute over the disbursement of earnest money held in escrow for residential real estate transactions that fell apart. The committee was comprised of the following: Deborah Isenhour, committee chair; Frank Laney, DR Section chair; Dottie Bernholz, DR Section representative; Miriam Baer, legal counsel for the N.C. Real Estate Commission; Will Martin, legal counsel for the N.C. Association of Realtors (NCAR); and Lewis Fisher, Real Property Section Representative.

A meeting of the Escrow Task Force was held on Wednesday, April 6, 2005. Miriam shared the N.C. Real Estate Commission's regulation on the matter, which requires the real estate licensee to hold the disputed funds in trust until they have a "written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction."

Some discussion ensued regarding the escheating of disputed funds left unclaimed after a period of years. Miriam said that the state was sometimes unwilling to receive the funds due to the fact that they could not be identified with one specific person. Both Miriam and Will noted that they get a large number of calls every week regarding disputed earnest money deposits, underlining the need to look at possible actions for relief. Dottie added that in her work with UNC students, she frequently dealt with cases where earnest money was disputed; albeit, the claims were generally under \$10,000 since most students are first-time homebuyers. Lewis, however, noted that he had polled the members of the Real Property Section and that the response he received did not indicate any demand for action to resolve disputed escrow funds.

Lewis did note that when there was a dispute, it was effectively handled through small claims court. In cases where the disputed amount was over the \$5,000 limit of small claims court, Lewis stated that an attorney would probably be involved and that sometimes suits for Specific Performance were initiated. Miriam noted that the N.C. RE Commission rarely sees suits for Specific Performance; rather, the parties move on to other transactions and just want to resolve the earnest money dispute. She also noted that there is a form for Termination of

Contract Without Release of Earnest Money that, when completed, eliminates the fear of suit over specific performance and just leaves the earnest money in dispute. There was some discussion regarding the aversion most people have for going to small claims court and the problem presented when the defendant does not reside in the county where the property in the transaction is located.

Miriam presented a copy of proposed legislation that was introduced to the General Assembly in March 2005, which added a statute to Section GS 93A regarding real estate law. The proposed legislation (GS 7A-211.2) is entitled "Declaratory judgment in small claims court" and would allow a real estate broker to obtain a declaratory judgment ruling in small claims court to allow disbursement of the funds. Heretofore, the real estate broker had no authority to file a declaratory judgment action in small claims court and had to rely on the parties to the transaction to pursue action. Further, the new legislation would provide for jurisdiction in the county where the property was located instead of where the defendant lives. There was discussion of the merits of the proposed legislation as well as where it may fall short. To address the problem of service, Miriam and Will agreed that their organizations would need to develop forms to facilitate the process. They also noted that the Institute of Government at UNC would train the magistrates regarding the process and that it would be included in the required annual Update Class for realtors. There was also some discussion around the possibility of adding a provision to deduct the costs of filing from the money in dispute before disbursing it. Dottie asked about the possibility of adding a pre-litigation requirement for mediation. Miriam responded that the Commission was not likely to support forcing mediation first. Other limitations were discussed such as the \$5,000 limit and the aversion brokers may have to filing a lawsuit in a situation where they have fiduciary relationships.

I commented that from my experience, realtors liked having things spelled out in the Offer to Purchase Contract and were generally averse to litigation. I also noted that because the residential real estate business relies to a large degree on relationships, mediation may be a better method of conflict resolution. I added that the current Listing Agreement contains a paragraph on mediation stating that in the event of a dispute the parties will attempt to settle

through mediation before resorting to arbitration, litigation, or some other dispute resolution process. Will noted that there had been a proposal several years ago to the NCAR/N.C. Bar Association Joint Forms Committee to have mediation added to the Offer to Purchase Contract, and that it had been rejected. There was also concern about mediation in the context of smaller dollar amounts, which led to a discussion of arbitration. It was noted that there was not a statewide process for arbitration. Lewis stated that he could not speak for the Real Property Section, but the response to his request for comment from the LISTSERV did not demonstrate a perceived need.

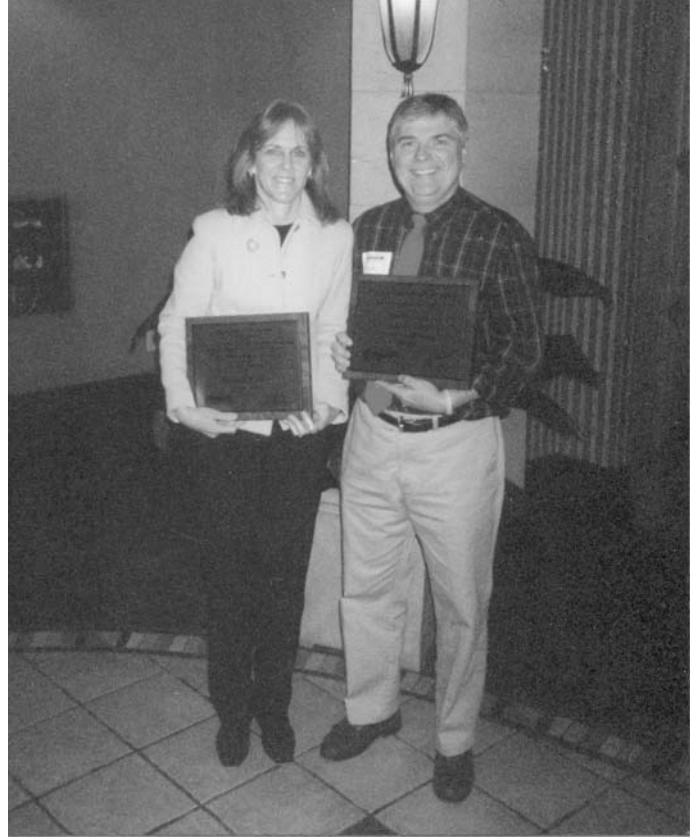
Frank proposed that we take a "wait and see" approach to the proposed legislation before continuing with further discussions. Miriam felt that the bill would probably pass this summer and that we should be able to assess its effect by fall 2005 or spring 2006. There was a consensus in the group to follow the legislation and once it passed to follow up with Miriam and Will to determine whether or not it had made an impact on the number of calls they receive regarding disputes over earnest money. I agreed to stay in touch with Miriam and to report back to the group. Frank noted that he would recommend to the incoming chair of the DR Section to leave the task force intact until further determination could be made as to the efficacy of the legislation. ■

ADR Section Photos



Spring section council meeting at the N.C. Bar Center in Cary.
Front row, left to right: Margaret McCreary, Ken Carlson, Lynn Gullick, Maggie Sloan, Jack Ogburn; *Middle row:* LeAnn Brown, Ann Anderson, David LaBarre, Diann Seigle, Frank Laney; *Back row:* Andy Little, Melissa Johnson, Ellen Gelbin, Nancy Hemphill, Jonathan Harkavy, Sandy Vreeland, Nahomi Harkavy, Hezekiah Goodson Jr. and John Schafer.

(Right) Jackie Clare with her 2005 Peace Award and Section Chair Frank Laney, 2004 Peace Award recipient.



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