



ALABAMA CENTER FOR DISPUTE RESOLUTION

2007 ANNUAL REPORT

**415 Dexter Avenue • Montgomery • Alabama 36104
Telephone: (334) 269-0409 • Fax: (334) 261-6312 • www.alabamaADR.org**



2007 ALABAMA SUPREME COURT COMMISSION ON DISPUTE RESOLUTION

Debra Black Leo, Esq., Chair **COMMISSION MEMBERS**

Thomas B. Albritton, Esq.
Steven A. Benefield, Esq.
Charles Y. Boyd, Esq.
Honorable Tommy Bryan
Honorable Ralph Coleman
William D. Coleman, Esq.
Honorable Aubrey Ford, Jr.
Honorable Ben A. Fuller
J. Noah Funderburg, Esq.
S. Anthony Higgins, Esq.
Anne Isbell, Director, BBB Huntsville
Karl Kirkland, Ph. D.
Honorable Richard D. Lane
Cheryl L. Leatherwood, AOC
Debra Black Leo, Esq.
Justice Harold See
Sandra I. Speakman, Esq.
Honorable Gerald S. Topazi
Ken Wallis, Esq. (Scott Rouse, Esq.)
Robert C. Ward Jr., Esq.

LIAISON MEMBERS:

Callie Dietz, Director (Dean Hartzog, Esq.)
Keith B. Norman, Executive Director

CENTER FOR DISPUTE RESOLUTION:

Judith M. Keegan, Esq., Executive Director

ALSO ATTENDING:

Celeste Sabel, Esq., Appellate Mediation Admin.
Rebecca Oates, Esq. Assistant Clerk
Lynn DeVaughn, Docket Clerk
Michelle Ohme, Executive Director

Andalusia
Birmingham
Gadsden
Montgomery
Bessemer
Montgomery
Tuskegee
Prattville
Tuscaloosa
Montgomery
Huntsville
Montgomery
Opelika
Ozark
Birmingham
Montgomery
Montgomery
Birmingham
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Charles Y. Boyd, Esq., Vice Chair **APPOINTING AUTHORITY**

Speaker of the House
Alabama State Bar
Alabama Association for Justice
Alabama Court of Civil Appeals
District Court
Alabama State Bar
District Court
District Court
At Large
Alabama Defense Lawyers
At Large
At Large
Circuit Court
At Large
Alabama State Bar
Supreme Court
Attorney General
Lt. Governor
Governor
Alabama Lawyers

Administrative Office of Courts
Alabama State Bar

Alabama Center for Dispute Resolution

Alabama Supreme Court
Alabama Court of Civil Appeals
Alabama Court of Civil Appeals
Appellate Mediation Program



EXECUTIVE SUMMARY 2007

The year 2007 absolutely flew by. We sponsored many excellent programs through grants and technical assistance, and provided many quality interactive mediation courses and CLEs for lawyers and other participants. The Center and individual Commission members conducted presentations for courts, national and local organizations, and bar associations. The Commission completed its most challenging project for the year, a revision of the *Mediator Standards and Registration Procedures*.

Our work with district court mediation programs (primarily small claims mediations by volunteers) continued as we encouraged counties to pilot a mediation program in their district court, provided materials and forms, assisted with mediator training, and helped the local coordinator as needed. We held special mediation training and lunch for three programs: Baldwin, Lee and Montgomery. This year, in addition to providing mediation statistics, we were determined to collect some stories from our top volume mediators that show the heart of the mediation process. Taking care to protect confidentiality, we have included them in this report.

The annual roster member survey sent to each mediator and arbitrator enables us to collect information about types and numbers of cases settled or decided in alternative dispute resolution processes conducted by our members. This is not to say that every member will respond. Currently, participation is voluntary. An annual e-mail from our district court coordinators lets us know the names of their volunteers and the number of cases mediated and settled. We have made a special effort to thank them this year by including their names in the report. Additional mediation (less often, arbitration) occurs in agency programs, non-profits, and restorative justice initiatives whose mediators or arbitrators may or may not be on the rosters. Most of the program executives voluntarily report statistics to us, enabling the

Center to present a clearer view of ADR in Alabama. This provides a not-quite-comprehensive but interesting report.

A few 2007 events that I particularly enjoyed:

- *The Power of Influence: Building Rapport & Enhancing Mediator Skills*, Dr. Jeannie Maes, Robert Shearer and Judith Keegan collaborating on a presentation for the annual Florida Conflict Resolution Conference sponsored by the Florida Office of Dispute Resolution.
- *Appellate Mediation in Alabama: A Model Program*. Judith Keegan presenting at the Mississippi Bar's Annual Meeting for the ADR Committee.
- December's Appellate Mediation training with Gary Canner (always great).
- A special CLE program for the ASB annual July meeting in collaboration with the Bar's ADR Committee. *Maximize Mediation Opportunities: Top Volume Mediators Give You Tips on How to Get the Best Results for Your Clients*. Art Hanes, Daniel Banks, Rich Pearson, Michael Walls, and Bill Gordon speak to a packed house.
- Mediating all day for the JAG School's negotiation course.
- Providing CLE programs for Talladega, Chilton, Lee and Walker County Bars.
- Louis Colley of Prattville selected as the first recipient of the Volunteer Lawyers Program *Pro Bono Mediator Award*. This is now an annual event, thanks to Linda Lund and her committee.

As always, I thank the Alabama Supreme Court, their Commission on Dispute Resolution, the Alabama State Bar, and the Governor and Attorney General's Offices, for their continued support of the Center and its work for Alabama.

Judith M. Keegan, Executive Director

2007: YEAR IN REVIEW

BY THE NUMBERS

- 322 (of the 474) mediators registered on the *Alabama State Court Mediator Roster* maintained by the Center responded to the end-of-year survey.
- Those 322 mediators mediated 4,775 cases (less than reported in 2006). Their settlement rate was 79%.
- 641 of those cases were divorce/family cases (50 less than reported last year).
- Roster members conducted 641 pro bono mediations (up 248 from 2006).
- 81 (of the 97) arbitrators on the *Alabama Arbitrator Roster* responded to the end-of-year survey.
- Those 81 conducted 304 arbitrations (about 100 less than last year). 45 were court-ordered, and 187 were considered by the arbitrators to be consumer cases.
- The Workers' Compensation Ombuds Program of the Alabama Department of Industrial Relations mediated 2,228 cases, with 1,766 resolutions (79.2%). Cases where parties went to mediation voluntarily resolved 81.5% of the time vs. 59.5 % for those who were ordered by the court. (Al Pelham, reporter)
- The Alabama Agricultural Mediation Program mediated 59 cases with over 215 participants who reach some degree of agreement 98% of the time. (Lana Harms, reporter)
- The free Attorney/Client Fee Dispute Resolution Program of the Alabama State Bar has been extended to attorney disputes over fee splitting. The program received 42 cases. One case was mediated with resolution and four were settled by other means. Attorneys voluntarily participate in this program, and in a majority of the other cases, attorneys were not willing to mediate. (Rita Gray, reporter)
- The Alabama Public Service Commission mediated 7 cases. (Roland Casey, reporter)
- In 2007, the American Arbitration Association Atlanta office received 306 commercial cases (37 mediations and 269 arbitrations) filed with a request for an Alabama locale. Types of cases: 88 consumer, 85 construction, 56 employment, 11 banking, 11 real estate, 9 franchise, 9 insurance, 7 partnership/joint venture, 5 asset purchase, 25 other. The top amount for consumer cases is now \$175,000. (Sha N. Glynn, Esq., reporter)
- The Better Business Bureau offices in Huntsville, Birmingham and Mobile conducted 36 binding arbitrations, 77 auto-line arbitrations (not binding on the consumer, binding on the automobile manufacturer) and 10 mediations. (Anne Isbell, reporter)
- The Birmingham EEOC Office mediated 268 cases with a 75% agreement rate. (Debra Leo, Esq., reporter)
- The US Bankruptcy Court continued its successful mediation program, with 31 cases mediated, 22 settled. (Tom Corbett, Esq., bankruptcy mediator, reporter)
- Volunteer mediators in district and family court programs mediated over 1,000 cases at no cost to the courts or the parties. (Michelle Obradovic, Esq., Read Haughery, Michael Godwin, Esq., Cheryl Leatherwood, Marjorie Stellingwerf, Vicki Bonner-Ward Lee Davis, Regina Hammond, Kim Gully, reporters)
- The Center received \$65,225.00 through mediator and arbitrator roster registration.
- The Center raised \$8,890.69 after expenses, through ADR training programs.
- The Center paid out \$20,800 in grants awarded by the Alabama Supreme Court Commission on Dispute Resolution in support of ADR programs.
- The Center director made over 20 presentations and appearances for various programs and functions during the year.
- The Alabama Supreme Court referred 103 cases to mediation settling 61; the Alabama Court of Civil Appeals referred 169 cases to mediation, settling 81.
- The Alabama Department of Insurance received 17 mediation requests in 2007, under Insurance Resolution 481-1-135 for alternative procedures for resolution of insurance claim disputes arising from hurricanes, tropical storms, tornadoes and other disaster damage. 7 settled in mediation, 3 settled without, 3 were at impasse, 3 were withdrawn and 1 was ineligible for the program. (J. Fairley McDonald, III, reporter)

THE ALABAMA SUPREME COURT COMMISSION ON DISPUTE RESOLUTION

The Commission, chaired by Debra Leo, Esq., EEOC Birmingham, and co-chaired by Charlie Boyd, Esq., Gadsden, met four times in 2007: January 12, March 9, May 4, and September 14. The Honorable Tommy Bryan, appointee of the Alabama Court of Civil Appeals, and Tom Albritton, appointee of the Speaker of the House, became new members in 2007. After hearing the recommendations of the Grants Committee, the Commission awarded \$20,000 in mini grants for court mediation programs in Montgomery, Jefferson, and Mobile Counties, and for the Cumberland Community Mediation Program, and the restorative justice program of the Alabama Appleseed Center for Law & Justice. (The Commission has awarded over \$250,000 in program grants since 1997.)

At the March meeting, guests Robert Shearer, Esq. and Jeanne D. Maes, Ph.D. from the University of South Alabama spoke to the Commission about a future ADR Center at the University which would work with businesses.

During the year the Commission operated with the following six committees and their chairs:

ADR Effectiveness, Debra Leo

Center for Dispute Resolution, Bill Coleman

School and Community Mediation, Anne Isbell

Grants Committee, Charles Boyd

Legislative Matters, Ralph Coleman

Neutrals Qualifications Review Task Force, Noah Funderburg

The Alabama Supreme Court supports the work of the Commission with an annual grant in the amount of \$125,000. Additional revenue to support Center staff, programs, publications and operations is generated by the Center through roster registration, publication sales and training. The Alabama State Bar provides the Center office space.

After twelve years, the Commission implemented the first increase in roster registration fees (a \$25 increase for a total of \$125) to raise Center revenues.

Agenda and Minutes of the Commission are available by calling the Center. Members of the Commission and appointing authorities are listed inside the front cover of this report and at the website.

ALABAMA CENTER FOR DISPUTE RESOLUTION

When the Center opened in 1994, Alabama became the 18th state to have a state office of dispute resolution. The majority of other state offices, most under the supreme courts of their jurisdictions, only provide ADR assistance to their courts. However, when the Alabama Supreme Court established the Center, it gave it the ability to function as an ADR clearinghouse to serve all organizations, agencies, and citizens of Alabama.

The Center is the operational arm and secretary for the Commission. As part of its work in 2007, the Center tracked and disseminated national, regional and local ADR information, and monitored legislation, uniform law development, and cases dealing with mediation and arbitration. It provided assistance with ADR research, court mediation programs and rules, statistics, community mediation programs, state agency ADR. Additionally, the Center was involved with school peer mediation initiatives, university dispute resolution programs, mediator and arbitrator education and training, and dissemination of ADR information to the public and businesses.

Judith Keegan, Center Executive Director, attends and participates at meetings of the Alabama Supreme Court Commission on Dispute Resolution, serving as secretary, the Alabama State Bar's ADR Committee (Co-chaired by the Hon. Bill Gordon, and Beverly Poole Baker), the Board of Bar Commissioners, local bar associations, the Jones Law School Mentoring Program, the Alabama Academy of Attorney Mediators, the Alabama State Agency ADR Support Group, and the state offices of dispute resolution. Judy made over 20 presentations in 2007.

The Center has been instrumental in the development of the district court volunteer mediation programs, establishing the benchmark Montgomery County District Court Mediation Program with a Commission grant in 1998. That program has been replicated in other counties, some with money from AOC, others, with

Commission grants. All program materials are available at no cost for use by any district court. The Center visited and presented a mediation update, discussion and lunch for the Montgomery, Lee and Baldwin programs in 2007.

Besides court programs, part of the Center's work includes training. The Center, using objective criteria, reviews private mediation and arbitration training in the state to make sure that the various courses would sufficiently prepare individuals to qualify for the mediator and arbitrator rosters. In 2007, we had 11 in-state mediator training courses and an appellate mediation course. At many of the trainings the Center director taught the mediator ethics portion of the course. All courses were approved for CLE by the Alabama State Bar.

The Center continues to include a new disclosure statement in the mediator and arbitrator registration forms. This allows the Center to check with the Office of General Counsel for any ethical complaints filed against roster applicants. It also requires neutrals to notify the Center within 30 days of a conviction of a felony or misdemeanor.

In 2007, Judy's special projects and activities included working with the ABA to select the ABA Pro Bono and Legal Services Mini-Grant recipients, guest lecturing at Jones Law School, participating in the JAG school negotiating course, working with the Air Force civilian mediation program, and speaking about alternative dispute resolution as part of the American legal system at the International Officers School breakfast meetings. Additionally, Judy spoke on appellate mediation at the Mississippi Bar's annual meeting, and on Christian Conciliation at Dexter Avenue United Methodist Church in Montgomery. She was a presenter at the Florida Conflict Resolution Conference in Orlando, and attended the ABA Section of Dispute Resolution meeting in Washington, D.C.

The Center/Commission website is located at www.alabamaadr.org, and contains the most current versions of the Alabama State Court Mediator Roster and the Alabama Arbitrator Roster.

The Center's income and expenses appear in this report.

COURT MEDIATION

Appellate Mediation

The Appellate Mediation Program for 2007 continues to be exceptional, although fewer cases were referred to mediation by the courts. Statistics show that between January 1, 2007, and December 31, 2007, the Supreme Court of Alabama referred 103 cases to mediation with 62 settlements; the Alabama Court of Civil Appeals referred 169 cases, settling 81. Michelle Ohme is the Executive Director of the Appellate Mediation Program. Celeste Sabel, Esq., attorney for the Alabama Supreme Court serves as Appellate Mediation Administrator, and Rebecca Oates, Esq., Assistant Clerk of the Court of Civil Appeals is over their program.

In 2007, Rebecca Oates and Lynn DeVaughn, Docket Clerk for the Court of Civil Appeals, presented a program on appellate mediation during an ABI-CLE seminar. In collaboration with the Center, the Appellate Mediation Program trained 38 new appellate mediators in December of 2007.

District Court Mediation

District court mediation programs (listed as part of this report) are made up of volunteer mediators (lawyers or non lawyers), and their coordinators who are either court employees with multiple roles where they work, or are simply volunteers. The programs are primarily for small claims and for specially set district cases, but some of the mediators have had family mediation training, and the judges will send divorcing couples with children to them for help in constructing parenting plans. All district court programs are similar, based on Montgomery's program, but there are differences.

Montgomery County: The longest continually running district court program in Alabama began in 1998 with a Commission grant to Judges Bright and Givhan, and became the model Alabama district court program. It was overseen in 2007 by Brian San Souci, Esq., law clerk to the three district judges. Brian reported that the volunteer lawyers and law students from Jones School of Law mediated 241 small claims cases with 159 settlements. Seventeen

mediators volunteer in Montgomery County. The program is aided by a Commission grant for \$5,000 in 2007.

Jefferson County: This program also utilizes volunteer lawyers, and is coordinated by Michelle Obradovic, Esq., a private mediator and ADR expert. The program was supported by a \$4,000 Commission grant. The mediators, all attorneys who volunteer, mediated over 400 small claims cases. This program also mediated over 100 tax appeal cases, the only district court program in the state to do so.

Baldwin County: This program was not fully operational in 2007.

Lee County: The Lee County program was established in 1998 under an AOC grant. Read Haughery, a court employee, is the volunteer coordinator under Judge Richard Lane (Commission appointee), and heads the district mediation program as well as the juvenile conferencing and peer mediation programs. Read has 17 other mediators working with him. He reported that in 2007 his volunteer non-lawyer mediators mediated 41 small claims cases settling 29 of them; 10 district civil cases, settling 5; 3 family cases, settling 3; and 2 juvenile restitution cases settling 2. The Lee County program has trained peer mediators in several schools. The most active are Sanford Middle School, 5th-8th grades, and Morris Avenue Intermediate School, 4th-5th grades.

Madison County: Marjorie Stellingwerf is the volunteer coordinator for Madison County District Court. Marjorie mediates and has a great group of 9 other non-lawyer volunteers. In April of 2007 she began a newsletter to provide everyone with additional information. Madison County mediated 132 district court cases with 76 settlements. This is twice the number of 2006!

Morgan County: Kim Gully works for the court, is the Judicial Volunteer Coordinator, and has been overseeing mediation since 1999. There are three additional volunteer non-lawyer mediators who work with her.

Dale/Geneva Counties: Cheryl Leatherwood (Commission appointee) is the Family Court Coordinator. Her 98 mediations centered on access and visitation issues.

Elmore County: Vicki Bonner-Ward is an unpaid volunteer who coordinates mediation in this county. Vicki reported 44 mediations with 30 settlements.

Cullman County: Lee Davis coordinates the Cullman program, and is joined by one other mediator, Regina Hammond, a member of the Alabama State Court Mediator Roster. They mediated 60 cases in 2007 (more in circuit court than in district court) and have an 86% settlement rate.

Probate Court Mediation

Deborah Geiger is the paralegal for Judge Don Davis of the probate court in Mobile County, and keeps track of the cases the Judge orders to mediation. Judge Geiger encourages litigants to mediate because unlike litigants in circuit court, in most probate instances, the litigants are family members, and are going to remain family members after litigation is concluded. He uses a list of trained mediators and rotates down the list.

Circuit Court Mediation

Circuit Court mediation is the arena for entrepreneurial lawyers who add mediation as an adjunct to the practice of law. Most of the mediation in Alabama falls into this "private mediation" category, differentiating itself from the court-ordered settlement conference. Statistics this year show that 4,187 cases were mediated by roster mediators at the circuit level. Our top volume roster mediators are recognized by name on the back cover of this report. Also at the circuit court level, the Ombuds Program of the Alabama Department of Industrial Relations mediated 2,228 cases with a 79.2% settlement rate.

Victim-Offender Conferencing/Criminal Mediation Montgomery County Circuit Court Victim-Offender Conferencing Program:

The first court-connected victim-offender conferencing program in Alabama continues to thrive under the direction of the Honorable Tracy McCooey at Montgomery County Circuit Court. This program received Commission funding for training volunteer facilitators who

conduct the conferencing in pairs. Agreements between victim and offender do not affect the sentence, and the conference may be requested by the victim or the offender. The Victim-Offender Conferencing Program is now being assisted by the Alabama Appleseed Center for Law & Justice, Inc., which hopes to replicate the program in other counties.

Additionally, the program expanded in the summer of 2002 to include criminal mediation conducted by trained lawyer-mediators. Disputes include harassment, trespass, trash, pets, and noise. These cases would otherwise have been appealed to the circuit court from municipal court.

U.S. Bankruptcy Court Mediation

Tom Corbett, Esq. is the Chief Deputy Bankruptcy Administrator and mediator for the Northern District of Alabama. He mediated 31 cases with 22 settlements.

PRO BONO MEDIATION

Mediators on the Alabama State Court Mediator Roster conducted 641 pro bono mediations in 2007. In thanks, we recognize them by name in this report.

AGENCY MEDIATION

From 1998 through the fall of 2002, the Governor's Task Force on State Agency ADR, established by Executive Order 50, completed four years of ADR awareness and training for state agencies and executives. Before it submitted a final report to the governor, the Task Force established a successor group, the Alabama State Agency ADR Support Group. The Support Group is currently co-chaired by Tori Burks of the Attorney General's Office and John Wible, General Counsel for Public Health, and has met since 2003 to expand the use of mediation in state government. The remainder of the leadership team consists of: Bill Butler, Esq., Medicaid; Lt. Col. Bryan Morgan, JAG Officer; Mose Stuart, Finance; and Judy Keegan, Center for Dispute Resolution.

At the request of the Support Group, agency directors appointed 82 ADR coordinators to serve as liaisons to the Support Group from their organizations.

Alabama Public Service Commission

The Public Service Commission has been training mediators and mediating over the past few years. Judy McLean and Roland Casey currently serve as mediators, and reported that 7 cases were mediated between regulated industries and large users of their services.

Alabama Department of Industrial Relations, Workers' Compensation Ombuds Program.

This program, under the direction of Al Pelham, sets high standards, and consistently keeps statistics. In 2007 they mediated 2,228 cases, with 1,766 resolutions. Funded through insurance companies, mediators travel to where the workers are to mediate disputes between workers, employers and physicians at no cost to the state or the employee.

Alabama Department of Insurance Mediation

After hurricanes Ivan and Katrina, the Department of Insurance established Insurance Regulation 482-1-135 to provide for alternative procedures for resolution of claim disputes arising from hurricane, tropical storms, tornados and other disasters. The regulation says that the Commissioner will advise companies by bulletin when the Department deems the program to be available in the wake of a specific disaster, and this happened after the March 2007 tornadoes. Associate Counsel, Fairley McDonald, mediates both by phone and in person, traveling to where the policy holders live to conduct mediations as necessary. In the calendar year 2007, the Department received 17 mediation requests, disposed of as follows: 7 settled in mediation, 3 settled without mediation (probably as a result of the mediation process being invoked parties talked about solutions), 3 were not settled, 1 was ineligible for the program, and 3 requests were withdrawn.

Alabama Department of Agriculture Mediation

Lana Harms heads up the agricultural mediation program in Alabama, traveling around the state to mediate farmer/creditor disputes and other agricultural conflict. Many of the issues are settled on the telephone in an informal manner. From October 1, 2006 to September 30, 2007, the program mediated 59 cases (more than double the prior year) involving a total of 215 participants. Some degree of agreement was reached in 98% of the cases.

COMMUNITY MEDIATION

The Cumberland Law School Community Mediation Center began in 2006 with Cassandra Adams, a trained mediator and facilitator, as director. It is the only one of its kind in a southeast region law school. The Center works with the Jefferson County Family Court to assist parents of college-bound teenagers in the area of post minority support, and is launching a program with St. Clair County District Court. Twenty five volunteers serve to confidentially mediate disputes between family members, neighbors, friends or roommates at no charge. This program will grow well with the great support of Dean Carroll and the law school, and Cassandra's fund raising.

FORWARD INTO 2008

I have not said anything about our legislative efforts in 2007, but there was plenty of action and the Mediator Confidentiality Bill did not pass the legislature. However, since I am writing this after the 2008 legislative season, I can tell you that all our hard work finally paid off! I even have an official copy of the legislation and a picture in the *Addendum* to prove it. There will be more in the next annual report.

Thank you Patsy Shropshire, my able assistant, for your loyalty, faithfulness, and great administrative and personal support. The Center's ADR work is an exciting challenge, and an important one for Alabama. We always look forward to serving.

09/25/08

Alabama Center for Dispute Resolution, Inc.
Custom Report
January through December 2007

	<u>Jan - Dec '07</u>
Ordinary Income/Expense	
Income	
ADR Course Approval	25.00
ADR Programs, Projects, Training	14,723.12
Brochure Sales	25.00
Interest	127.18
Interest on Investments	2,850.63
Refund	240.99
Roster Registration Fees	65,225.00
Supreme Court Reimbursement	125,000.00
Travel to Train	1,301.90
Total Income	<u>209,518.82</u>
Expense	
ADR Programs, Projects, Training	5,832.43
ASB ADR Committee	19.57
Center Outreach	766.18
Check Order	35.40
Commission Expenses	3,492.23
Contractors/Administration	19,840.25
Grants Awarded	20,800.00
Honorarium/Gifts	450.00
Membership Dues	819.25
Office Equipment	1,810.91
Office Supplies	1,774.29
Other/Miscellaneous	47.35
Postage/Shipping	5,730.70
Printing & Publications	8,410.60
Programing/Web/Database	4,951.58
Salaries/Benefits	119,318.45
Staff Conference/Travel	2,559.11
Staff Planning	72.72
Subscriptions/Books, etc	1,048.43
Tax Preparation	735.00
Telephone/Fax	208.12
Travel to Speak/Train	3,928.97
Void Check	0.00
Total Expense	<u>202,651.54</u>
Net Ordinary Income	<u>6,867.28</u>
Net Income	<u><u>6,867.28</u></u>

Mediated by Members of the Alabama State Court Mediator Roster

Case Year 2007

<i>Circuit Courts</i>								<i>Appellate Courts</i>				<i>District Courts</i>			<i>Non Court</i>				
<i>Civil Mediation Non Divorce</i>				<i>Civil Mediation Divorce</i>				<i>Appellate Mediation</i>											
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)
# Cases	Crt Ord'rd	Settled	Pro Bono	# Cases	Crt Ord'rd	Settled	Pro Bono	Suprm Crt	Crt CivAppl	Non Divorce	Divorce	Settled	Pro Bono	Cases	Settled	Pro Bono	Cases	Settled	Pro Bono
3546	1695	2959	323	641	417	434	135	75	134	153	49	107	11	157	113	135	222	177	37

Total Mediated (cols 1+5+9+10+15+18):

4775

Total Settled (cols 3+7+13+16+19):

3790

PerCent Settled: 79.37%

Total ProBono (cols 4+8+14+17+20):

641

PerCent ProBono: 13.42%

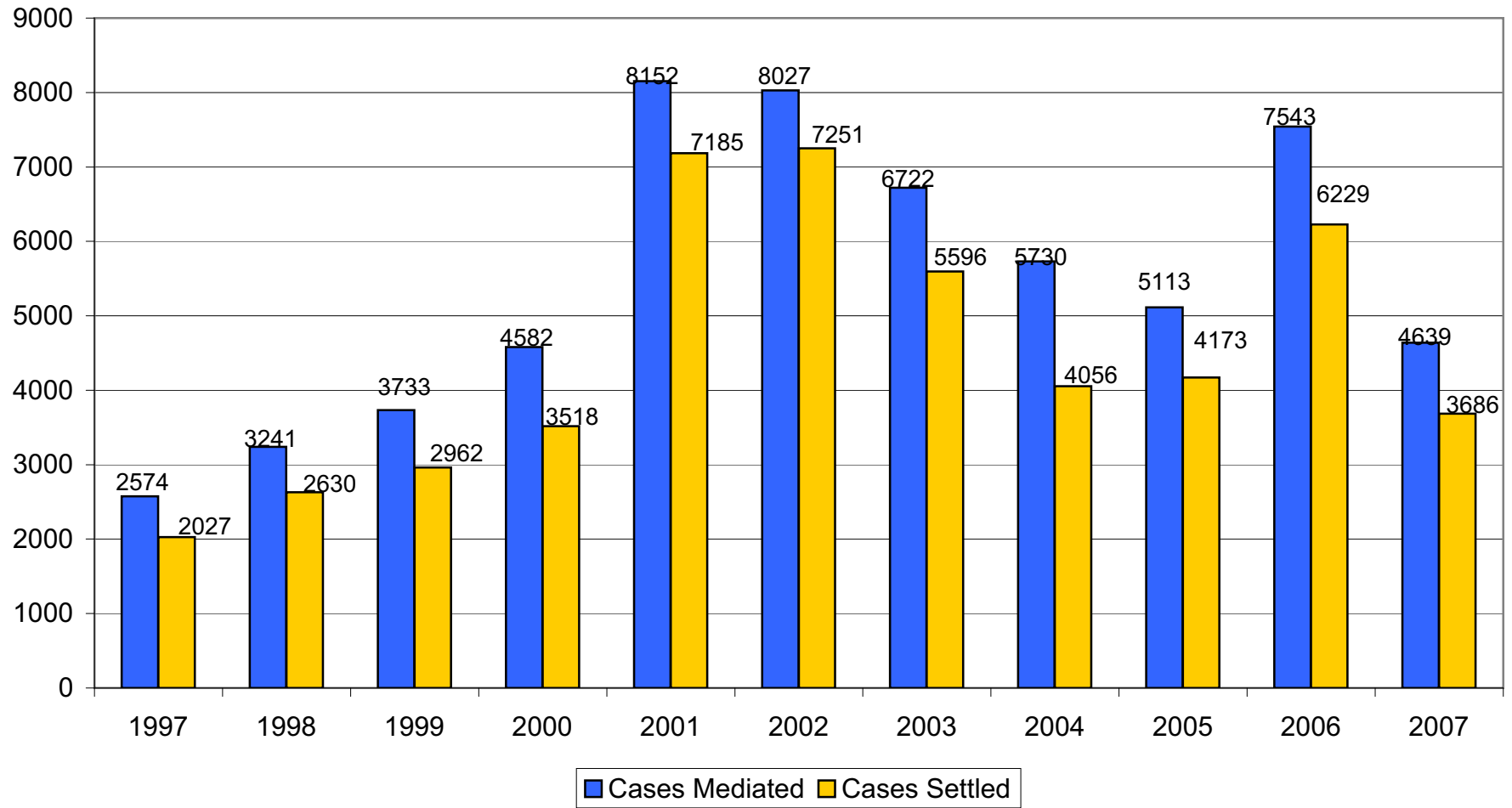
Registered Mediators: 474

Mediators Reporting: 322 (67%)

Alabama State Court Mediator Roster Statistics

Cases Mediated and Settled: 1997-2007

(As reported by mediators on the Roster)



Arbitrated by Members of the Alabama Arbitrator Roster

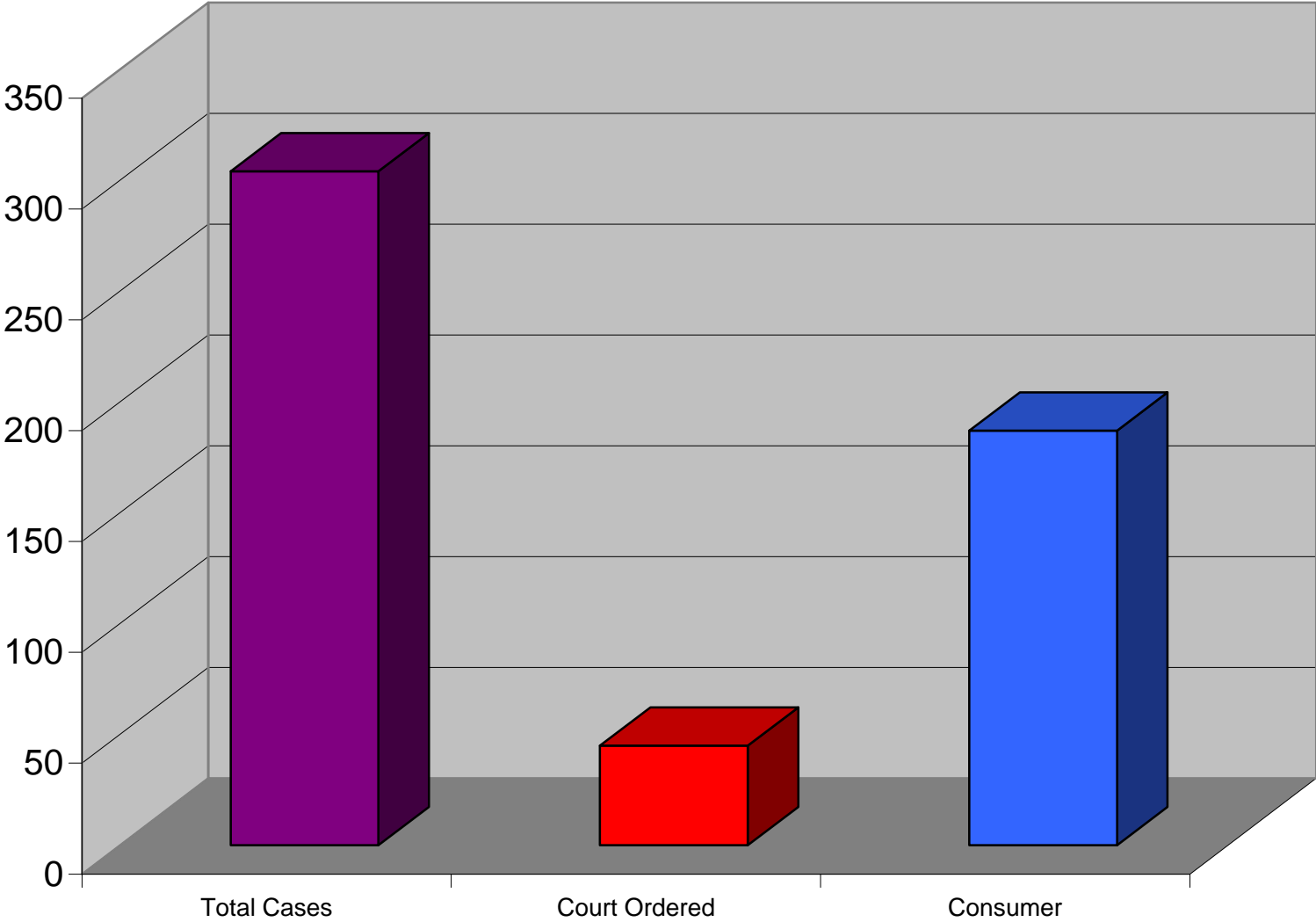
Case Year: 2007

<i>Arbitrations</i>				<i>Administrative Organizations</i>					<i>Subject Areas</i>						
<i># Cases</i>	<i>Court Ordered</i>	<i>Consumer</i>	<i>PB</i>	<i>AAA</i>	<i>CPR</i>	<i>JAMS</i>	<i>NAF</i>	<i>NASD</i>	<i>Contract</i>	<i>Labor/ Employment Securities</i>	<i>Credit/ Banking</i>	<i>Construction</i>	<i>Auto</i>	<i>Insurance NurseHome</i>	<i>Other</i>
<hr/>															
<i>Case Totals:</i>	304	45	187	27	16	5	1	7	5	7	25	109	24	12	127

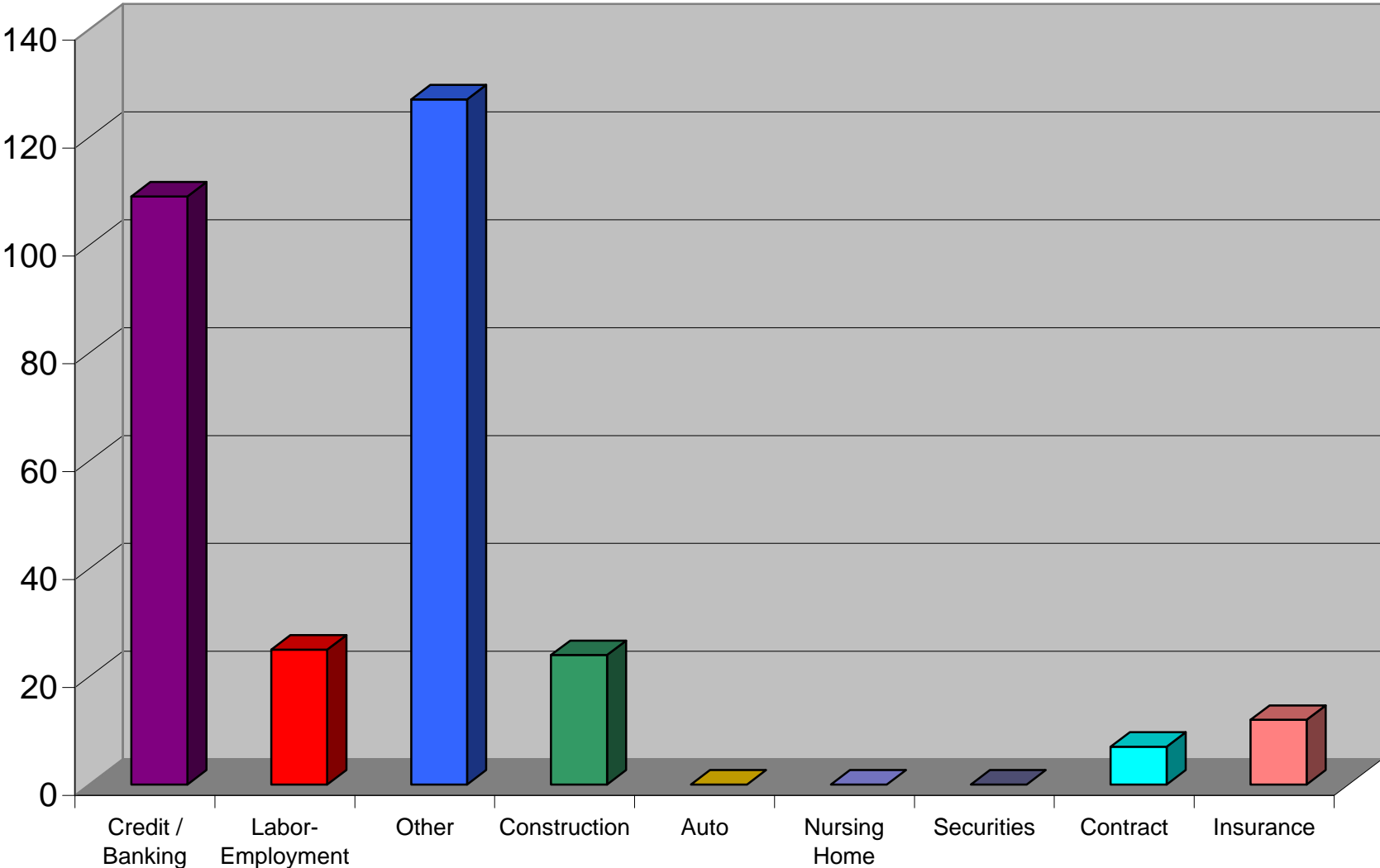
Registered Arbitrators: 97

Arbitrators Reporting: 81

2007 Arbitration Statistics



2007 Arbitration Subject Area





Stories from Alabama Mediators

The value of mediation is often not in statistics or docket management success, though these are important, but in the way it impacts the lives of parties caught up in conflict that consumes their time, money, energy, and emotions.

When conflicts arise, we in the legal profession set our sights in the law, the rules, the precedent. But, at the center of every conflict there is a place for man's better nature to break through and for grace to abound. That place may just be a seat at the mediation table. To borrow a phrase and sentiment that our second president and able barrister John Adams used regarding the drafters of the Constitution: these are settlements facilitated by "good heads prompted by good hearts." Thank you, mediators.

Families Matter

- I mediated a conflict involving a family business in which the family members had not spoken to each other for over two years! After about five hours of mediation we resolved the dispute, but more importantly, the parties were reconciled as a family. This is the way it is supposed to work!
- I mediated a business dispute involving a brother and sister. Though their attorneys were great lawyers, there was a great deal of animosity between the siblings. There's no doubt that their animosity would have been permanent and destructive for the rest of the family (and their own relationship) had the case tried. By mediating, one could see that the bargained-for resolution resulted in no loser at trial, and could sense that the healing process had begun when they settled.
- I have had couples refer their friends to me and tell their friends that "the children will be better" if the parents can agree and not go to court.

- In domestic cases, “most” of the time the lawyers tell me the case won’t settle and they are there because the judge ordered them. “Most” of the time those cases settle. The proof is in the pudding.
- Both lawyers provided statements as to why their client should get custody. I asked the father why, and he provided a good list. I then asked the wife, not the lawyer, why she should get custody. She said she should not. Without mediation, the lawyer would have forced an unnecessary and bitter custody fight. Mediation lasted 15 minutes.

Mental Health and Relief

- I settled a case and one of the parties called me to tell me that he was on the verge of a nervous breakdown because of the stress of litigation, and mediation saved his life.
- Without reference to a specific mediation, the most rewarding aspect of mediation to me is the looks of relief and the words of kindness from parties and lawyers alike when a case is resolved. You see the value of mediation on their faces and hear it in their voices.

A Chance for Change, Transformation, Empowerment, Accomplishment

- I have had attorneys telephone me in advance of mediation and tell me there is no realistic possibility the case will settle. Usually, these calls are accompanied by a request to cancel the mediation session. I ask the attorneys to give the mediation process a chance, and I have found that the majority of these cases settle at mediation, often to the surprise of the attorneys and their clients. This experience suggests to me that clients frequently have an interest in settlement which they do not recognize until mediation, or which they do not communicate to their attorneys.
- Typically, my mediations start off with one party or the other stating that they know we are not going to be successful. After a while, it is gratifying to see how the opinions change and how everyone works toward resolving the disputed issues for the betterment of all parties.
- My most memorable mediations are the ones where I can tell from the outset that I am the only one in the room who doesn’t think the mediation is going to be a waste of time (you can see it in their eyes!). The trick then is to present a constant positive outlook, to mention prior successful mediations which no one thought would settle, and to convert the persons present, beginning with the

attorneys, to be open to the possibility of success. When these mediations work it feels good to me of course, but the transformation of the parties is a wonder to behold.

- The parties were having thoughts of taking the law into their own hands if they had lost in court. By settling the case, they both left with a feeling of empowerment and accomplishment.

More than Money

- A life insurance company allegedly wrongfully paid insurance proceeds to the deceased's father instead of the deceased's widow and two children. A mediation settlement agreement appeared likely. Finally, the widow said she would accept the terms of the company's last offer provided the company would pay for and arrange delivery of a large (and expensive) flower arrangement, which the mediator had to bless, in honor of the two children. The case settled on those terms. Juries can only award money—mediation can explore other special needs of the parties, especially when emotions run high.
- I am reminded of a case brought for the death of a teenager. The mother of the decedent was distraught and reluctant to enter the mediation. During the course of mediation, the tortfeasor, another teenager, expressed to the mother his sorrow and regret for the tragic results of his negligence. There was an instant change in the mother's demeanor, and she indicated that a terrible burden had been lifted from her shoulders. The case was quickly settled, and the money received by the mother funded a scholarship program for other students. The mother wrote to the judge commending her for referring the case to mediation as the "civilized way" to resolve what once were hard feelings. It is said that there are no winners in mediation-- not so in this case.
- The dispute was between an owner of several manufacturing facilities and a contractor hired to conduct a major overhaul. It was not over the quality of work, but other issues. Parties reached resolution by agreeing that the contractor would conduct similar work at owner's second facility with new control of the administration of the work, and at a discounted price.

After a final offer ...

- This was a breach of contract case where the parties had been partners. The partnership had been dissolved, and later, one contracted some work from the other who was not paid appropriately. There was really bad blood on both sides. After mediating all morning, breaking for lunch, and going into the afternoon, I told the parties and their attorneys that I believed we were at an impasse.

However, I said that if both sides wished to proceed with good faith negotiations, I would continue. At around 3:00 pm the plaintiff said, "I'm going to make him a final offer, take it or leave it." I took the offer to the defendant who said, "I'll counter with my drop dead offer, that's it." The plaintiff considered the drop dead offer and said, "I'll make one final, final offer." The defendant liked it and said, "I'll make him my drop dead, drop dead offer." They reached settlement on the final, final, final offer modified by the drop dead and go-to-hell offer. They left by separate doors.

Amazing Settlements, Amazing Lawyers

- The plaintiff's opening demand was 5 million dollars. The defendant's first response was \$5,000.00. Amazingly, we settled the case about 3 hours later for \$400,000.00.

- I mediated a case several years ago that stands out. What occurred would not have happened in a courtroom. A truck belonging to a family-owned company from Illinois hit a vehicle driven by a young pregnant woman in a county close to Mobile County. The young woman received a serious, permanent brain injury. She soon thereafter delivered her child, who also had a brain injury of a degree that was not yet fully known. The accident was caused by an act of carelessness, but not wantonness. The trucking company did not have insurance coverage for the accident due to an oversight in the procurement of coverage following a change in insurers. The company was successful and profitable, but relatively small. The plaintiffs were represented by a highly successful, prominent lawyer from Birmingham. The defendant was represented by an equally successful and prominent lawyer in Mobile. The company was owned and run by a man in his late sixties who had formed the company and watched it gradually expand and prosper. His son was in line to take over the operation of the company from him in the near future.

The parties came to my office to attempt to resolve the case. I remember vividly, however, how stricken the devastated family of the young woman was, as were the owner of the company and his son. Before the mediation, the company made all of its financial records available to the plaintiffs and the plaintiffs' accountant. There were no secrets. There were a number of obstacles to compromise. The family, who had substantial medical needs, had tremendous resentment against the company because it had failed to obtain insurance. There was of course terrible anxiety on the part of the company owner and his family about the future of their business. The mediation lasted all day and into the evening. One of the primary subjects of discussion was the amount that the company could afford to pay. Hanging over the plaintiffs was the prospect of the company declaring bankruptcy. The company had creditors, and bankruptcy presented dangerous risks for the plaintiffs. On the other hand, the owner of the company was a proud, conscientious man and considered bankruptcy a mark of failure and humiliation. The owner also felt responsibility for both the accident and the absence of insurance.

The lawyers for both parties were interested in one thing, and one thing only: doing their best to help their respective clients make the best out of an impossible situation. The lawyers kept the conversation on a high plane, which resulted in an atmosphere of relative goodwill. The opening remarks of the lawyers were careful and restrained, and from the beginning I sensed that what was happening was special. Rather than attack the other side or, in the case of the defendant, trumpet the specter of bankruptcy, the two seasoned lawyers talked at length about the concerns and point of view of the opposing party.

Late in the evening, a deal was reached. It was put in writing, and signed by the parties. Everyone was physically exhausted and emotionally drained. As I was preparing to say goodbye to the departing parties, the lawyer for the defendant told me that I had to keep everyone there – the defendant had to talk to me. I worried that the defendant had decided that he could not afford the settlement after all, and was going to ask to undo what had just been done. I could not have been more wrong. I went into the conference room with the defendant. He had tears in his eyes. He told me that he had been thinking hard about the settlement number, and it was not truly the most that he could afford to pay. He said he could do more and survive. With a shaking voice, he told me the amount that he felt he could afford to pay. This amount was a significantly higher (although not hugely so) than what the plaintiff had just agreed to. Our conversation was so emotional that I had to gather myself before I reported to the plaintiff. When I told the plaintiffs, they got emotional. The documents were amended with the higher number replacing the original number. At the conclusion of the mediation, the two families came together, with handshakes, hugs, and tears. The lawyers and I stood off to the side. This mediation produced something good and worthwhile that could not have been accomplished in further litigation and trial.

Pre-Suit Success

- A nationally known business suggested mediation prior to the filing of a suit by an injured customer. The adjuster came in from out of town and the case was settled to the satisfaction of all parties prior to suit being filed.

Separation of Church and State, or Maybe Not

- I spent 40 hours doing a pro bono mediation of a church dispute involving a church with over 1,000 members. There were judges, lawyers and prominent citizens on both sides of the dispute. Church disputes are generally very emotional, and either way the circuit judge decided the case would have angered many prominent, influential citizens. No decision by the court would have been able to accomplish the result that was reached in mediation. The mediation agreement even included a joint press release that the two groups would encourage and support each other in their respective ministry after the church split.

- In a multiparty rear end collision case, at about 6:00 P.M. after an all day mediation, the “holdout” plaintiff said, “You don’t have to talk about the number (of dollars) it will take for me to settle the case; God knows the number.” Apparently God communicated “the number” to the insurance adjuster and the case was settled at 6:15 P.M.

Timing

- Baseball players speak of the sweet spot on the bat that produces the power hits. Golfers talk about the sweet spot on the head of the driver. Tennis players know that every racquet has a sweet spot. Similarly, there is a “sweet spot,” an ideal time in every litigation when the insertion of mediation into it is most likely to lead to a negotiated, pretrial settlement; and the ideal time varies from case to case.

That time for mediating must be early enough in the life of a particular lawsuit for the value of a mediated settlement to offer not only risk reduction, but also substantial litigation cost reductions for both parties. However, it must be far enough along in the process for the parties to appreciate the substance of the position of the party opponent. If mediation is undertaken too early in the process, it is likely that neither party can effectively and accurately evaluate the strengths and weakness of their own position. If, however, mediation is undertaken too late in the process, that is, too close to the trial date, it is likely that either party may find less advantage to settling prior to trial. Mediation cannot be used as an additional discovery tool – the case must be sufficiently developed that such is not the case. Mediation cannot be perceived by either party to be a delaying tactic – it must be sufficiently early in the process that such perception may be avoided.

I have found this issue of proper timing of mediation to exist in both settled cases and in cases which failed to settle. In a recent case which was scheduled for trial within two weeks of the mediation, after well over a year in run-up to that point, the parties could not be brought to a mediated agreement. After deductions for costs and contingency fees against an offer from the defendant, the plaintiff could not find sufficient reason (value) to settle for what defendant offered. Conversely, the defendant, who had to consider his own costs up to the date of the mediation as part of his settlement cost, could not justify an offer that could provide sufficient net value to the plaintiff. While neither party found the value of a mediated agreement would offset the risk of trial, the potential for success in this mediation was compromised by the late timing of the mediation.

The court must consider this timing issue when scheduling mediation. Awareness of the “sweet spot” issue will allow mediation to become a more valuable tool of the court and will significantly increase the success rate for mediation.

Hypothetically Speaking

- Frequently an opinion is requested on an evidentiary, trial or discovery issue. Sometimes the parties agree to be bound; sometimes everything is hypothetical. Whether or not this promotes settlement, at the very least it can solve or smooth some later potential trial difficulties.

Mediation Manner

- The most telling and rewarding comment is that I have had several parties indicate that they appreciate the manner in which the mediation was conducted.

Alabama District Court Volunteer Mediators

Cullman County

Lee Davis, Coordinator
Regina Hammond

Dale County

Cheryl Leatherwood, Coordinator

Dallas County

Debbie Hughey, Coordinator
Danny Crenshaw
James Durry
Margaret Hardy
Jeff Harrison
William Hasberry

Elmore County

Vicki Bonner-Ward, Coordinator
Walker Allen-Phillips
D. C. Franklin
William Hamrick
Jahazel Hooks
Roger Ingram
Dean Mack
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Mary Peck
Beverly Snyder

Jefferson County

Michelle Obradovic, Coordinator
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Martha Cook
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Suzanne Paulson

Lee County

Read Haughery, Coordinator
Barbara Barall
Betsy Blake
William Brown
Bob Couch
Gloe Dyne
Maletta Elliott
Joseph Harrington
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Robert Juster
Gerald Koellsted
Betty McDonough
Jerrell McNutt
Sandra Newkirk
Jerome Pollard
Bob Winffofer
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Madison County

Marjorie Stellingwerf, Coordinator
Barbara Burhans
Bill Cade
Lew Koch
Henning Krome
Kathy Lettieri
Paul Lettieri
Ron Williams
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Montgomery County

Michael Godwin, Coordinator
Charlie Anderson
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Juraldine Battle-Hodge

Brent Beal

Jean Brunner
Cheryl Bullard
Dayna Burnett
Demetrius Coleman
Ken Dunham
Mike Griggs
Larry Hall
Jackson Brett Harrison
Jennifer Mae Holton
Karen Jackson
Nancy Kirby
Tommy Klinner
Barry Leavell
Tiffany McCord
Bill Messer
Susie Norris
Diane Paris
Carroll Puckett
Paul Puckett
Adler Rothchild
Elizabeth Spears
Gary Tomlin
Stewart Vance
Bob Varley
Chenoa Vick
Joe Warren

Morgan County

Kim Gully, Coordinator
Joe Barbin
Linda Buchanan
Ken Hayes

THANKS

*The Alabama Center for
Dispute Resolution
wishes to thank the
following mediators
who performed pro-bono
mediations in 2007.*

Philip Adams
James Anderson
Charles Anderson
Beverly Baker
Kaye Barbaree
Mary Lynn Baker
Joseph Battle
Richard Bell
Betsy Blake
Clyde Blankenship
Emily Bonds
Charles Booth
Benjamin Bowden
Paul Brantley
Quentin Brown
Robin Burrell
Warren Butler
Terry Lucas Butts
John Calhoun

Lois Carney
Laura Chain
Lois Colley
James Corbett
Samuel Crosby
Dan Cushing
John Davis
Lee Davis
Todd Derrick
Bernard Eichold
Robert Faulk
Charles Fleming
George Ford
Michael Ford
Robert French
Regina Hammond
Arthur Hanes
Robert Harper
Patrick Harris
Banks Herndon
Jerry Hicks
Eric Hoaglund
Claire Holland
Christopher Hughes
Anne Isbell
John Karrh
Douglas Key

Karl Kirkland
Sammye Kok
Oliver Latour
Lionel Layden
Blake Lazenby
Cheryl Leatherwood
Debra Leo
Yancey Lott
William Lyon
Tony Marsal
David McAlister
John McClusky
Ed Meyerson
Boyd Miller
Harlan Mitchell
James Moffatt
Terinna Moon
Larry Moore
Roger Morrow
Pamela Nail
Claud Neilson
Pamala Oliver
Julie Palmer
Candace Peeoples
Ezra Perry
Paul Puckett
John Quenelle

William Ratliff
Ferris Ritchey
James Rives
William Roedder
Sandra Segall
Jere Segrest
Thomas Sherk
Kenneth Simon
Fern Singer
Donna Smalley
Jeffrey Smith
Donald Spurrier
Roderic Steakley
Burse Stone
John Tate
Robert Thetford
Randall Thomas
Jerome Thompson
Brian Turner
Michael Upchurch
Marty Van Tassel
Robert Varley
Robert Whittaker
Scott Wright
Tad Yancey

TOP VOLUME MEDIATORS FOR 2007

Phillip Adams
James Anderson
Daniel Banks
Joseph Battle
Richard Bell
Clyde Blankenship
Charles Booth
Richard Brooks
Louis Colley
James Corbett
Lee Davis
Charles Denaburg
Robert Faulk
Charles Fleming
Michael Ford
Robert French
Regina Hammond
Arthur Hanes
Francis Hare
John Karrh
Douglas Key
Richard Kingrea
Karl Kirkland
Oliver Latour

Opelika
Montgomery
Huntsville
Huntsville
Birmingham
Huntsville
Birmingham
Birmingham
Prattville
Birmingham
Cullman
Birmingham
Prattville
Mobile
Florence
Fort Payne
Hanceville
Birmingham
Birmingham
Tuscaloosa
Pelham
Foley
Montgomery
Foley

Blake Lazenby
Cheryl Leatherwood
Debra Leo
Rodney Max
Edward McDermott
Boyd Miller
James Moffatt
Claud Neilson
Jerry Oglesby
Julie Palmer
Ezra Perry
William Ratliff
Ferris Ritchey
James Rives
Joseph Schreiber
Kenneth Simon
Fern Singer
Donald Spurrier
Harold Stephens
Robert Thetford
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Birmingham
Birmingham
Birmingham
Montgomery
Birmingham
Birmingham
Huntsville
Huntsville
Montgomery
Montgomery
Gadsden
Mobile
Birmingham
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