



NOVEMBER 2017 NEWS

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President's Message by: Stephen L. Shields

The Lone Burning Coal

The weather here in Memphis turned cold a couple of weeks ago and I noticed as my fire burned out, there was one coal slightly burning. However, without "fuel" and other coals burning around it, it slowly grew colder. I am afraid that is what is happening to many of our mediators in the State. They are lone burning coals. I want you to know that TAPM and its representatives are working diligently to try to increase opportunities for mediators (at least for pro bono meditations) and to increase awareness of mediation in order to help each of you promote your business as a mediator. We have already announced in our newsletter several opportunities, one with the VA and the other with the EEOC.



Agreement With TALS

We have signed our agreement with Tennessee Alliance of Legal Services (TALS). We are excited about this relationship. TALS not only has a great facility but also has the technology for us to conduct webinars and online discussions, etc. We are looking forward to an exciting 2018 with the help of their organization.

Save The Date

Kimberlee Kovach is going to be our annual speaker on March 2, 2018. Please see the attached Save The Date. I have read a great deal of her material. It is excellent and I understand she is an outstanding trainer.

Pro Bono Mediators Needed

The ADR Unit of the Memphis District Office of the Equal Employment Opportunity Commission is compiling a panel of volunteer mediators to serve in a pro bono capacity for EEO mediations across the State of Tennessee (west, middle and east). If you are interested in conducting (face-to-face) mediations, please feel out the attached application and return it to either [Mark Travis](#) or [Steve Shields](#).

[Download the application here.](#)

ABA Section of Dispute Resolution seeks Volunteers

As part of an Access to Justice initiative, the ABA Section of Dispute Resolution is working with the Veterans Administration in Memphis to create a pilot project using an Online Dispute Resolution (ODR) platform to deliver services. This ODR platform will provide a free process that veterans can use to resolve parenting plan issues.

The platform is provided at no charge through the nonprofit Internet Bar Organization (see www.internetbar.org) working with the American Bar Association. We are asking members of the Tennessee Association of Professional Mediators to volunteer as online mediators using the platform provided through the Internet Bar Organization.



You will be trained on how to use the platform and will have access to ongoing webinar trainings including programs on ethics.

As a volunteer, you will be asked to work with veterans referred to the program by the Veterans Administration's social work department. The VA will screen veterans to ensure their legal problem is appropriate for the pilot prior to referral. Volunteer Mediators will be assigned on a rotating basis and will be able to decline a referral in which instance the case will be referred to the next mediator in the rotation.

Because this is a pilot project, we will be asking the volunteer mediators to assist us in assessing the platform and how it works. We will be actively seeking your input on both the platform and the referral process. Ultimately, we hope to use the platform through the American Bar Association's ABAFreeLegalAnswers portal to provide low income persons across the United States with an option to choose ODR as a process to resolve disputes in a variety of substantive areas of law.

We hope you are intrigued enough to volunteer to get this project off the ground! If you have any questions or concerns, please contact Linda Warren Seely at 731 217 8013 or linda.seely@americanbar.org.

Note: Since this is online, it is not necessary that you be located in Memphis, Tennessee.

[Download the Application Here.](#)

Guardians Ad Litem and Mediation by: Michael K. Williamson

Many domestic relations proceedings involving custody of minor children go to mediation. In many of these cases a Guardian Ad Litem has been appointed under Rule 40 or Rule 40A of The Rules of the Tennessee Supreme Court.

Rule 40. Guidelines for Guardians Ad Litem for Children in Juvenile Court Neglect, Abuse and Dependency Proceedings specifically provides at section (d) (7) (iii) that responsibilities and duties of a lawyer Guardian Ad Litem under Rule 40 include "Participating in settlement negotiations to seek expeditious resolution of the case, keeping in mind the effect of continuances and delays on the child;"



Rule 40A. Appointment of Guardians Ad Litem in Custody Proceeding provides in section 9 (b) that a Guardian Ad Litem appointed in a custody proceeding is entitled to all rights and privileges according to any attorney representing a party, including but not limited to the right to: " receive notice of, attend, and participate in each hearing in the proceeding , including alternative dispute resolution proceedings, and take any action that may be taken by an attorney presenting a party pursuant to the Rules of Civil Procedure."

Rule 31 governs alternative dispute resolution proceedings. Appendix A. Standards of Professional Conduct for Rule 31 Neutrals includes Section 7. Confidentiality

(a) **Required.** A neutral shall preserve and maintain the confidentiality of all dispute resolution proceedings except when required by law to disclose information.

(b) **When Disclosure is Permitted.** A neutral conducting a Rule 31 Mediation shall keep confidential from the other parties any information obtained in individual caucuses unless the party to the caucus permits disclosure.

(c) **Records.** A neutral shall maintain confidentiality in storing or disposing of records and shall render anonymous all identifying information when materials are used for research, training or statistical compilations.

It would appear that a Guardian Ad Litem appointed under either Rule 40 or Rule 40A should at the very least be made aware of alternative dispute resolution proceedings such as a Mediation and afforded an opportunity to participate. Further, it appears that pursuant to Rule 40 and 40A a Guardian Ad Litem is absolutely entitled to participate in Mediation but that Rule 31 Appendix A. Section 7 "confidentiality" would mandate that the mediator keep confidential from the other parties including the Guardian Ad Litem any information obtained in individual caucuses unless the parties to the caucus permit disclosure.

It is important to remember that the confidentiality requirement applies only to the Mediator. Too often, lawyers make the mistake of treating the Guardian Ad Litem as a "neutral" in custody proceedings. Quite clearly, a Guardian Ad Litem is advocating the position of his/her client, the minor child. Any information which the Guardian Ad Litem might gather from participating in a Mediation would not be protected by confidentiality and might well be used by the Guardian Ad Litem in advocating his/her client's position.

In addition to actual factual information which might become available to the Guardian Ad Litem during the Mediation process, the Guardian Ad Litem might well draw inferences from the conduct and demeanor of a party during the Mediation. The presence of the Guardian Ad Litem could effectively destroy confidentiality in the Mediation process as could the presence of any other third party.

If in fact a Guardian Ad Litem were to ask or insist upon being allowed to participate in Mediation, it would seem that the only way to maintain confidentiality would be to isolate or sequester the Guardian Ad Litem from the parties to the litigation throughout the proceeding. The Mediator might well wish to place each of the parties and the Guardian Ad Litem in separate rooms to prevent an inadvertent breach of that confidentiality mandated by Rule 31.

While the Mediator might well wish to communicate with the Guardian Ad Litem for the purpose of gathering information to assist in attempting to mediate an Agreed Resolution of the matter, the Mediator should be very cautious about sharing information with the Guardian Ad Litem without the express consent of the party from whom that information was obtained or allowing the Guardian Ad Litem to be in the presence of other parties during the Mediation.

Michael K. Williamson is licensed to practice law in Tennessee and Kentucky and is listed as a Tennessee Supreme Court Rule 31 General Civil/ Family Mediator. The law office of Michael K. Williamson is located at 114 Franklin Street, Clarksville, TN 37040. (931) 647-8500 www.clarksvilletnlaw.com

Featured Mediator - Chris Bales

I grew up on the bluffs of Memphis and attended the University of Tennessee, Knoxville and the College of Financial Planning. I enjoy the outdoors, running, camping, hiking and am an avid scuba diver having earned the Master Diver designation. I currently volunteer at the Tennessee Aquarium in their educational outreach program and reside in Signal Mountain, TN outside of Chattanooga.

In finding your niche what area do you practice in? How did you get started in this? As a Certified Financial Planner® and a Certified Divorce Financial Analyst®, I practice in the family law mediation niche specifically where I can be a financial neutral. Being a financial planner, I noticed an increasing need with my clients to assist them in the post-divorce financial planning. During our conversions, I noticed financial areas in their divorce proceeds that were not being addressed and felt that I would be able to provide my expertise from my financial acumen to family mediation and make a difference in reaching agreeable resolutions.



What is in your mediator tool kit? What is your favorite or most used tool?

My kit includes a mediation agreement, a synopsis of the negotiation process, explanations of various investment terms, tax ramifications and liquidity options, and types of liabilities outlining good to bad debt and a calendar scenario of child custody. My most used tool is the color-coded child care calendar showing how the proposed days would look on a typical rotating four week schedule.

Once you have been selected as the mediator, what do you do to prepare the attorneys and their clients for the mediation?

I inquire of any detailed financial situations that need to be researched or addressed prior to mediation; otherwise, I explicitly mention that I do not want details of the case prior to our meeting for mediation. I do request that marital balance sheets, statements and supporting documents be brought to mediation should these documents be necessary to facilitate the mediation.

If you were a superhero/mediator what would be your name and slogan?

Captain Friday "Just the Facts Ma'am" and who doesn't like Fridays?

What is your pet peeve in mediation?

Individuals and their support professionals taking an unreasonable position that has little room for negotiation or compromise even though precedent has shown that they have an invalid position or argument. And professionals attempting to support that position for the sake of posturing for their client.

Are you married/do you have kids/pets etc?

I have two grown boys, and two wild Jack Russell terriers i.e. Big Dogs in Little Bodies

Why did you become a mediator?

I became a mediator because I witnessed a need for specialized financial neutrals in divorce through my financial practice and my divorce financial analysis business. My belief is that by being able to clarify positions to each party facilitates the mediation process by assisting them in understanding what they are agreeing to, then at least the settlement will be understood, possibly reasonable, acceptable and hopefully, lasting.

What is your favorite mediation read and why?

Getting to Yes by Fisher and Ury. It discusses practical information on the fundamentals of negotiation and helped to improve my conflict resolution skills.

What are you most afraid of in mediation?

My afraid is more of a concern. Forthough neutral in mediation, I am concerned when emotions are the driving force behind one's decision making rather than fact and reality.

How do you debrief yourself after a mediation?

My daily exercise routine helps to debrief and destress from the challenges of the day, mediation or not.

Personal or professional accomplishments you are particularly proud of:

Personally, would be being a father that supported his children to guide them in becoming the men they are today, prepared to face the world ahead of them.

Professionally, would be that in my career I have guided and helped individuals to effectively plan for their future providing them peace and comfort that they will be financially in good shape in the future. Furthermore, the opportunities where I have been able to provide solutions to and guidance on difficult marital property division situations to enable divorce couples begin to rebuild their new life.

Please complete these 3 sentences:

1. "I have a burning desire to... set 3 sheets to the wind and visit all the islands in the Caribbean."
2. "People tell me I look like... Frank Underwood (not good tag these days!) and Tim McGraw for whatever reason."
3. "If I could have a 30-minute conversation with anyone (alive or otherwise, famous or not),... I would want to speak with my Grandmother Collier who had a wonderful disposition and insight into so many things.

What do you see for the future of mediation?

I believe that mediation is going to be a growing field due to the desire of parties to reach reasonable resolutions that are less costly, timely and emotional. The greater acceptance of collaborative law by the law community will further increase the need for mediation.

Knowing what you now know about life etc., would you choose the same career path?

If not, what would you like to do? My career path provided me with a plethora of insights into business structures, negotiations, and the challenges operating a business presents. It also provided an understanding of individuals dreams, concerns and aspirations and how an individual's personality influences their decision making process. I have always been the person that friends, families and acquaintances came to for advice both financially and with legal matters. Having grown up in a legal family, it is assumed that I am familiar with the law. I guess in some ways I am a "breakfast table lawyer" or at least stayed at a Holiday Inn Express last night. So, if I had the opportunity to take a different cross road, I would have pursued a law degree.

Save the Date: Mar. 2, 2018

TAPM ANNUAL SEMINAR

**Lipscomb University
Institute for Conflict Management
KIMBERLEE KOVACH**

Kimberlee K. Kovach has over thirty-five years of experience in dispute resolution as a leading teacher, trainer, scholar and practitioner.

She was a founding officer and Past Chair of the American Bar Association Section of Dispute Resolution, as well as a former Chair of the State Bar of Texas and Houston Bar ADR Sections. Kim was also actively involved with the development of early dispute resolution programs at the local, state and national levels.

Kim was instrumental in the development of court-annexed mediation and dispute resolution programs, working with courts throughout Texas. She also served as a consultant to courts in several other jurisdictions nationwide. Kim was an early pioneer in the creation of community dispute resolution centers, and trained several hundred initial volunteer mediators in Texas.

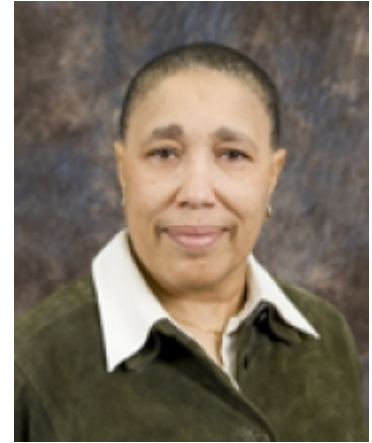
Professor Kovach has taught a variety of ADR courses in legal education for nearly twenty-five years, and is the author of a text book for law school use, *Mediation: Principles And Practice* (3rd ed. 2004). She is also the author of *Mediation In a Nutshell* (3rd ed. 2014). In addition, Kovach has published numerous law review articles, book chapters



as well as short articles on a variety of ADR related topics. Kovach has also lectured extensively throughout the United States and abroad, working in advancing the awareness and use of dispute resolution processes.

Kim was the first recipient of the State Bar of Texas ADR Section Evans' Award for exceptional work in the field of dispute resolution in 1995. More recently, Kim was honored with the prestigious Lifetime Achievement Award by the International Academy of Mediators (IAM) in recognition of her extensive work in the field of mediation and ADR. In presenting this award, Howard Vogel, then President of IAM noted, "Kim Kovach is a Texas treasure, legend and pioneer. She was an early voice for the advancement of ADR in the United States. That voice has remained strong and highly respected around the world."

From the Editor's Desk by: Regina B Newson, Editor



Important News:

TAPM has a new number. It is 615-775-9686

TAPM DUES

Have you renewed your TAPM DUES? Your dues expire on the one year anniversary date of your last payment. We hope you will continue to support TAPM and renew today.

TAPM appreciates you being a member and you, as a member, receive benefits in return!

This has been reprinted with permission of the Administrative Office of the Courts (ADR) from their ADR Summer 2017 Newsletter.

IMPORTANT NEWS

The deadline for submission of your 2018 Renewal Form is December 31, 2017. ADRC Policies 19 and 20, which set out the renewal fee structure, can be found on the AOC website. <http://www.tncourts.gov/programs/mediation/resources-mediators/policies>

For a list of approved Continuing Mediation Education courses, please go to: <http://www.tncourts.gov/programs/mediation/resources-mediators/continuing-mediationaleducation>. To file online mediation reports, go to: <http://www.tncourts.gov/programs/mediation/resourcesmediators>.

On the renewal forms it is important to remember to provide proof of continuing education hours. ADR asks that providers provide a list of attendees to their classes; however, it is the responsibility of the mediator to provide this proof. It is suggested that all mediators request two (2) copies of hours of attendance - one for their records and one for the provider.

If you have forgotten your username and password needed to submit an online mediation report, please contact Caitlin Vasser, Programs Assistant, at (615) 741-2687 or by email at caitlin.vasser@tncourts.gov.

IMPORTANT ADR DATES

March 2, 2018 - TAPM will have its Annual Conference. This year's speaker is Kimberlee Kovach. The conference will be at Lipscomb University. At this meeting TAPM will have its annual business meeting and present the Greyford Grey Award.

If you have an article that you want published in the TAPM Newsletter, please contact the Editor, Regina B. Newson at reginanevson@bellsouth.net.

[Click here to visit our website.](#)