

Mediation Choices for Effective Representation and Advocacy

Monday, October 29, 2018 | New York City

New York Law School
185 W Broadway
New York, NY 10013

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Alternative Dispute
Resolution Skills Program

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Mediation Choices for Effective Representation and Advocacy

This program is designed for in-house and outside counsel to learn how to optimize results from mediation. The panelists are experienced mediation advocates and mediators who will add tools to your mediator's toolkit.

9.0 MCLE Credits: 8.0 Skills; 1.0 Ethics

Program Agenda

8:15 a.m. Registration

8:45 a.m. – 9:00 a.m. Welcome and Introduction

Section Chair, **Deborah Masucci, Esq.**, Masucci Dispute Management and Resolution Services

9:00 a.m. – 10:30 a.m. **Session 1: Preparing for Mediation and Selecting the Mediator**

Strategic preparation in advance of a mediation session is essential in order to efficiently settle a case. Through interactive vignettes and group discussion, this panel will discuss how to effectively prepare for a mediation session. The discussion will include how to engage the other side in a mediation, managing client expectations, strategically selecting a mediator, and developing a negotiation strategy tailored to the mediation process.

- Key Benefits of Mediation
- Managing Client Expectations
- Strategic Mediator Selection
- Developing Mediation Strategy

Elizabeth Champnoi, Esq., Mediator/Director of Mediation and Conflict Resolution, New York City Commission on Human Rights

Lauren J. Wachtler, Esq., Co-Chair Litigation Department, Phillips Nizer LLP

Robyn Weinstein, Esq. ADR Administrator, United States District Court for the Eastern District of New York

James M. Wicks, Esq., Partner and General Counsel, Farrell Fritz P.C.

10:30 a.m. – 11:00 a.m. Break

11:00 a.m. – 12:30 p.m. **Session 2: You Get Out of It What You Put Into It!**

Preparing for the mediation may be as important as the mediation session itself. When counsel and parties walk into a session without having necessary information or without having thought through positions, interests and how they will negotiate inevitable impasses, they risk wasting time and resources. You will learn how to effectively prepare for a mediation so that you and your clients stand in the best possible position to find a resolution.

From the moment mediation becomes a part of your case, there's a lot to consider. Our panelists will outline and provide guidance to advocates on how to begin the mediation process starting from the first phone call with the mediator to statements at the opening session.

Topics to be covered include:

- Developing strong pre-mediation checklists so as to prepare clients, adversaries, the mediator and most importantly, self.
- Utilizing submissions and pre-mediation phone calls to give and get information, demonstrate strength and flexibility.
- Using the joint session to set the foundation for the day and the resolution.

Krista Gottlieb, Esq., ADR Center & Law Office

Adam J. Halper, Esq., Director, Legal Wellness Institute (LWI) at The Family Center

Mark Morril, Esq., Morril ADR

12:30 p.m. to 2:00 p.m. Lunch

1:10 p.m. – 2:00 p.m. **"Careful the Things You Say: Ethics for Negotiators"**

F. Peter Phillips, Esq., Distinguished Professor of Law, Director, Alternative Dispute Resolution Skills Program, New York Law School

1.0 MCLE Credit in Ethics

2:00 p.m. – 3:30 p.m. **Session 3: Negotiating Within the Mediation**

This panel will explore how you can apply negotiation theory and skills to maximize value for your client during the middle stages of a mediation. Learn how best to use the mediator to gather, analyze and communicate information; handle choppy emotional waters; assess risk; deliver tough news to the other party; determine what matters most to you and other parties; and help you move towards a deal during the middle, core, phases of mediation. You will be brought face to face with one of the toughest questions in case bargaining: how to handle the “spigot of disclosure” – knowing when and how much information to disclose, both to the mediator and to the other parties.

Negotiation skills that will be the focus of the session and ways to use the mediator, include:

- Client counseling and role division;
- Adjusting the spigot of disclosure – delivering the right information at the right time in a well-crafted message;
- Building effective risk and transaction cost analyses.

Simeon Baum, Esq., President, Resolve Mediation Services, Inc.

Ed Frischling, Esq., Assistant General Counsel, Coty

Yun G. Lee, Esq., Associate General Counsel, AIG.

Paul Sarkozi, Esq., Co-Chair, Litigation and Dispute Resolution Department, Tannenbaum Helpern Syracuse & Hirschtritt LLP

3:30 p.m. – 3:40 p.m. Break

3:40 p.m. – 5:10 p.m. **Session 4: Speed Bumps Along the Road to Resolution: Avoiding Impasse and Closing the Deal**

This panel will discuss what you can do when a mediation appears to be falling apart and resolution of the dispute seems further away than at the outset. At the other end of the spectrum, the panel will talk about how to ensure that a successful mediation ends with a binding agreement.

The first half of this segment will explore how to determine the factors at play in a stalled mediation and what you can do about them. The panelists will talk about tools you have for getting your adversary, the parties and the mediator back on track, including:

- Identifying stumbling blocks and redefining goals
- Using arbitration techniques
- Strengthening the mediator's hand
- Calling for a break

In the second half, the panelists will discuss how to ensure that you walk away with a binding deal including:

- The terms and conditions of a binding MOU
- Using the mediator to assist in drafting
- Keeping everyone in the room until the sign off

David M. Brodsky, Esq., Brodsky ADR LLC

Stephen A. Hochman, Esq., Stephen A. Hochman Mediator and Arbitrator

Michael Kreitman, Esq., Senior Counsel, Law-Employment, Macy's, Inc.

Barbara S. Mehlsack, Esq., Partner, Gorlick, Kravitz, & Listhaus, P.C.

5:10 p.m. – 6:00 p.m. **How Mediation Works in Practice**

A Discussion of the Advocate's best overall approach to the Mediation Process, with emphasis on the important themes raised during the day's discussion. What is best for the client and how should the advocate's approach vary depending on the venue, the style of the mediator, and the matters at issue?

- Building on the tools provided during the day
- Mediating with lawyers you know versus those you do not – effect on the negotiation and your approach.
- Balancing a desire not to be aggressive with the need to effectively convey your position
- Change in negotiating tactics when in-house and outside counsel are present

Darya Geetter, Esq., Executive Vice President, Deputy General Counsel, Head of Litigation, Privacy, and Insurance, LPL Financial

Robert N. Holtzman, Esq., Chair, Commercial and Federal Litigation Section; Kramer Levin Naftalis & Frankel LLP

Daniel F. Kolb, Esq., Immediate Past Chair, Dispute Resolution Section; Davis Polk & Wordell LLP

6:00 p.m. Adjournment and Networking Reception

9.0 MCLE Credits

This course is approved for MCLE credit in New York for all attorneys, including those newly admitted.

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California and Pennsylvania: 7.5 Substantive Law, 0.0 Ethics

New Jersey: 9.0 Total Credits: 1.0 Ethics/Professionalism, 0.0 towards certification in civil trial law, criminal trial law, workers compensation law and/or matrimonial law

Uniform Certificates of Attendance can be issued for use in other jurisdictions.

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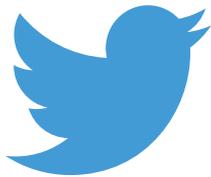
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The Dispute Resolution Section recognizes the critical importance of negotiation, collaboration, mediation, neutral evaluation, arbitration and new and hybrid forms of dispute resolution in all areas of legal practice. The Section is a forum for improving these processes and the understanding of dispute resolution alternatives, for enhancing the proficiency of practitioners and neutrals, and for increasing the knowledge and availability of party-selected solutions.

The Section will serve this mission by:

- Creating committees to explore and research developments in ethics, substantive law, and legislative initiatives relating to our shared interests;
- Sponsoring publication of analysis and opinion on dispute resolution processes;
- Providing continuing legal education and training to practitioners and neutrals;
- Promoting relevant legislation;
- Providing commentary on ethical issues affecting dispute resolution; and
- Providing a venue for practitioners, law school faculty and students, and dispute resolution providers to network, exchange ideas, and interact with other members of the Bar and with the public on issues relating to dispute resolution.

www.nysba.org/DRS

Section Chair

Deborah Masucci, Esq.

Masucci Dispute Management and Resolution Services



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Mediation Choices for Effective Representation and Advocacy

Arbitration and Mediation, 2017-18

Arbitration and Mediation examines the two most common forms of alternative dispute resolution and resolves the misconception that these two procedures are interchangeable by discussing their differences and providing examples of both procedures. This practice guide provides useful practice tips on navigating arbitration hearing procedures and describes how mediation is used to resolve disputes.

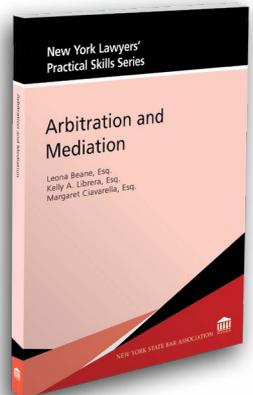
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