The Collision of Two Ideals: Legal Ethics and the World of Alternative Dispute Resolution

Ohio State Journal on Dispute Resolution Symposium 2005

January 20, 2005
8 a.m. – 3:45 p.m.
The Ohio State University
Moritz College of Law
Saxbe Auditorium
55 W. 12th Avenue
Columbus, Ohio
The Collision of Two Ideals: Legal Ethics and the World of Alternative Dispute Resolution

Lawyers are regulated by moral, professional, and legal constraints in fulfilling their varied responsibilities as representatives of clients, officers of the legal system, and public citizens. This regulation goes by many names including “legal ethics,” “professional responsibility,” or the “law governing lawyers.” Whatever the label, individual states, the American Bar Association, and other groups actively develop rules, standards, and regulations to assist lawyers in the discharge of their ethical obligations. The ideal of legal ethics, however, was forged from a traditional, adversarial model.

While the adversarial model remains, it has increasingly given way to alternatives. As the comment to Rule 2.4 of the ABA Model Rules of Professional Conduct now explicitly recognizes: “Alternative dispute resolution has become a substantial part of the civil justice system.” At the core of many forms of ADR is an ideal of non-adversarial, participatory, creative problem solving. What happens when this vision collides with traditional notions of legal ethics?

This symposium examines the intersection of legal ethics and ADR. The opening panel presents a baseline, exploring the current standards and guidelines governing lawyers and ADR and assessing their adequacy. The mid-morning panel then looks to the future and discusses the potential for new ethical regulations better suited for ADR. In the afternoon, the presenters turn from the ideal to the practical. This panel focuses on suggestions for practitioners and third-party neutrals on how to avoid the pitfalls inherent in a world where legal ethics and alternative dispute resolution collide.

The Ohio State Journal on Dispute Resolution and The Ohio State University Moritz College of Law are privileged to host this symposium. We hope that you will join us in Columbus, Ohio, to participate in this stimulating event. All symposium papers will be published in Volume 21, Issue 1, of the Ohio State Journal on Dispute Resolution, scheduled for publication in the fall of 2005.
All events to occur at The Ohio State University Moritz College of Law, John Deaver Drinko Hall, Saxbe Auditorium, 55 West 12th Avenue, Columbus, Ohio 43210-1391.

**PROGRAM**

**THURSDAY, JANUARY 20, 2005**

8 – 8:30 a.m.  **REGISTRATION AND BREAKFAST**

8:45 – 9 a.m.  **WELCOME**  Dean Nancy Hardin Rogers

9 – 10:30 a.m.  **PANEL 1**  
**An Examination of Current Standards and Guidelines Governing Alternative Dispute Resolution and the Adequacy or Inadequacy Thereof**  
Panelists include: Robert C. Bordone, Lela Porter Love, and Jack C. Hanna

10:45 a.m. – 12:15 p.m.  **PANEL 2**  
**An Eye Toward the Future: Potential and Ideal Ethical Regulations to Govern Alternative Dispute Resolution Processes**  
Panelists include: Christopher M. Fairman, Kimberlee K. Kovach, and Martin Malin

12:30 – 1:30 p.m.  **LUNCH AND GUEST SPEAKER**  (Stecker Lounge, Ohio Union)  
1:30 p.m.  **Professor Joseph Stulberg**

1:45 – 3:45 p.m.  **PANEL 3**  
**Avoiding Ethical Pitfalls: Suggestions and Requirements for Legal Practitioners and Third-Party Neutrals to Avoid Ethical Dilemmas in ADR Practices**  
Panelists include: Paula Young, Richard A. Bales, Jack Cooley, and Rodney Max

**SYMPOSIUM SPEAKERS**

**RICHARD A. BALES**  
Richard A. Bales is a professor at Northern Kentucky University Chase College of Law. He has authored or coauthored 42 scholarly articles, most on the subject of employment ADR, and he is the author of *Compulsory Arbitration* (1997) and a coauthor of *ADR in the Workplace* (2000).

**ROBERT C. BORDONE**  
Robert C. Bordone is the Thaddeus R. Beal Lecturer on Law at Harvard Law School and the deputy director of the Harvard Negotiation Research Project. Since 2001, he has been an adjunct professor at Georgetown University Law Center. He is currently coauthoring a book on dispute resolution to be published in 2005 and a book on career options in alternative dispute resolution, also to be published in 2005.

**JACK COOLEY**  
John W. (Jack) Cooley is an adjunct professor at Northwestern University School of Law and a former U.S. Magistrate, Assistant U.S. Attorney, Senior Staff Attorney for the U.S. Court of Appeals for the Seventh Circuit, and litigation partner in a Chicago law firm. He has authored more than 60 articles...
on litigation, judicial, and ADR topics and several books, including *Mediation Advocacy* (2002) and *Arbitration Advocacy* (2003), among others.

**CHRISTOPHER M. FAIRMAN**
Christopher M. Fairman is a professor at The Ohio State University Moritz College of Law where he teaches Civil Procedure I & II, Professional Responsibility, and Legal Writing. His scholarly interests include both civil procedure and legal ethics, and he has published four articles in these and related areas.

**JACK C. HANNA**
Jack C. Hanna is the business manager at the JAMS offices in Washington, D.C., and in Philadelphia where he leads the offices in the delivery of resolution excellence. He is a former director of the American Bar Association Section on Dispute Resolution and an experienced mediator and trainer who has edited and/or coauthored a number of books.

**KIMBERLEE K. KOVACH**
Kimberlee K. Kovach is currently the Distinguished Lecturer in Dispute Resolution at South Texas College of Law and a past chair of the State Bar of Texas ADR Section, as well as the American Bar Association Section on Dispute Resolution. She has published several articles on ADR topics and is the author of *Mediation: Principles and Practice* (3rd ed. 2004) and *Mediation in a Nutshell* (2003).

**LELA PORTER LOVE**
Lela Porter Love is a professor of law and director of the Kukin Program for Conflict Resolution at Benjamin N. Cardozo School of Law. She founded and directs Cardozo's Mediation Clinic, has written widely on the topic of mediation and dispute resolution, and mediated a simulated product liability dispute for *Court TV*.

**MARTIN MALIN**
Martin Malin is a professor and director of the Institute for Law and the Workplace at the Chicago-Kent School of Law. He is past president of the Chicago chapter of the Industrial Relations Research Association and past chair of the Association of American Law Schools Labor Law Section. He is a member of the National Academy of Arbitrators and serves on a number of state and national arbitral panels.

**RODNEY MAX**
Rodney Max is licensed to practice law in Alabama and Florida and has established a highly successful national mediation practice, specializing in mass torts, class actions and complex torts, and commercial and consumer cases. He has authored numerous articles on mediation for professional journals and seminars and is a noted speaker on mediation throughout the country.

**JOSEPH STULBERG**
Joseph Stulberg is a professor at The Ohio State University Moritz College of Law where he teaches courses primarily in the area of dispute resolution. He also currently serves as a member of the Ohio Supreme Court Committee on Dispute Resolution, vice chair of the Mediation Committee of the Section on Dispute Resolution of the ABA, and reporter for the Joint Committee on the Model Standards of Conduct for Mediators. He has written widely on theoretical, policy, and practice issues in dispute resolution.

**PAULA YOUNG**
Paula Young is a professor at the Appalachian School of Law where she teaches primarily Dispute Resolution, Legal Process, and skills courses in arbitration, negotiation, and mediation. Previously, she was a commercial litigator, mediator, and arbitrator specializing in insurance and other commercial disputes and was the sole proprietor of Pathways Mediation and Arbitration Center. She has published extensively in the field of ADR.
Registration

Online registration available on our web site: http://www.moritzlaw.osu.edu/jdr/symposium.htm

No registration permitted after January 13, 2005.

Cancellation Policy: Registrations cancelled by December 17, 2004, will receive a full refund by mail. Please note that a $60 fee will be withheld for any cancellations made after January 13, 2005. No refunds will be made for cancellations made on the day of the symposium, January 20, 2005. Registrants unable to attend the symposium may designate a substitute.

Special Accommodations: We aim to satisfy the needs of each symposium participant. Please advise us of any special accommodation requests at (614) 292-7170 by December 17, 2004, so that we may procure and/or provide assistance.

Hotel Accommodations

The Blackwell Inn (walking distance to event)
2110 Tuttle Park Place
(614) 247-4000
(866) 247-4003

Hyatt Regency Columbus
350 North High Street
(614) 463-1234

Super 8 at University
3232 Olentangy River Road
(614) 261-7141

University Plaza Hotel & Conference Center
3110 Olentangy River Road
(614) 267-7461

Acknowledgments

The Ohio State Journal on Dispute Resolution would like to extend a very special thank you to David A. Ward. We would also like to extend our sincere gratitude to Dean Nancy Hardin Rogers and the Moritz College of Law, the Dispute Resolution Association, and the Dispute Resolution and Youth organization. Our gratitude extends as well to all of the presenters, faculty, staff, and students whose hard work made this event possible.
ONLINE REGISTRATION available on our web site:
http://www.moritzlaw.osu.edu/jdrl/symposium.htm

Ohio CLE: The symposium will be offered for 90 minutes of ethics, 120 minutes of professionalism, and 90 minutes of general CLE.
Kentucky CLE: Pending approval, the symposium will be offered for 5 CLE hours. For questions regarding CLE credit or symposium registration, please contact symposium editor Rebecca Owen at (614) 292-7170 or via e-mail at jdlsymposium2005@yahoo.com.

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Please mark the status for which you wish to register.

☐ General Participant, plus one-year subscription (non-ABA Section on Dispute Resolution member):
  $125 Registration Fee
  Fee includes admission to all panels, lunch, CLE credit, and a one-year subscription to the Ohio State Journal on Dispute Resolution.

☐ General Participant, plus one-year subscription (ABA Section on Dispute Resolution member):
  $100 Registration Fee
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☐ General Participant, without subscription
  $90 Registration Fee
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☐ Ohio State Participant: $15 Registration Fee (No CLE credit)
  Open to all students, staff, and faculty of The Ohio State University. Fee includes admission to all panels and lunch.

☐ Ohio State Guest: No Registration Fee
  Open to all students, staff, and faculty of The Ohio State University. Includes admission to panels only. Please register by e-mailing symposium editor Kara Marshall at jdlsymposium2005@yahoo.com or by placing this registration form in her SL mailbox.

Please mail the registration form with the appropriate fee to:
Ohio State Journal on Dispute Resolution, Symposium 2005,
55 West 12th Ave., Columbus, OH 43210-1391. Make checks payable to Ohio State Journal on Dispute Resolution.