

THE COMMUNICATOR

Association of Missouri Mediators,
Inc.

WINTER 2020



momediators.org
(573) 313-8555

IN THIS ISSUE:

Mentoring Pilot

President's Message
Help Reluctant Party

Ethics Brainteasers

2019 Conference
Access now available

2020 Board and
Member News: Marta
Pappa's 7 Secrets

VISA scholarships

Community Mediation
2019 Highlights

Speak Up Forum:
Advocate for Diversity
and Inclusion in ADR
by Jane Cohen

Mediation in the News

New Members and
Member Profile:
P. Glen Smith

Special Feature:
Pre-dispute Arbitration



Liz Cutbirth

AMM Mentoring Pilot a Success

Recently the AMM Board of Directors approved a pilot project to link new members seeking a mentor with more experienced member-volunteers willing to offer a mentorship. Our first match was member Liz Cutbirth of Mt. Vernon and former AMM President Lisa Blumenstock, who lives in Springfield.

Lisa and Liz met twice, once for morning coffee and once for lunch. Lisa says, "I thought they were very productive conversations." Liz says "Lisa was wonderful. She gave me the confidence I needed before my second mediation. I wish I had asked for this sooner! In my first mediation a lot of issues arose that I wasn't as prepared for as I thought I was. Meeting with Lisa helped me prepare better for the hard conversations that *could* arise, instead of just the conversations I was certain would. Lisa helped me think 2 steps ahead of the parties I was working with so that *if* conversations took a turn, I could meet them head on. She also helped me learn some "tricks" for keeping the parties on topic and to the point. It's easy to feel like you're drowning in a pool of emotion when parties start dumping it on you. As mediators, we're there to help them get *beyond* their emotional stuff to reach a mutually acceptable agreement. Often that requires a firm refocusing of the conversation. While it's important to let people know you've heard what they have to say, it's more important to help them look forward instead of backwards in the mediation process. Lisa is a pro at this and helped me gain the confidence to be firm about moving past emotion into resolution. She was also a wealth of information about specific tools and software that are invaluable in the mediation process, and I have since implemented them into my practice. I can't imagine not having them now! I recommend mentoring to anyone just getting started."

Members seeking a mentor or wishing to mentor others are invited to contact the AMM administrator.

Upcoming Events

February 5, 2020 Market
Your Mediation Practice.
JCCC, Kansas City.

February 14, 2020 AMM
First Quarter Webinar

February 28,
2020 Heartland Mediators
Winter Training, Topeka KS.

April 2-3, 2020 - AFCC MO
Chapter conference, St. Louis.

April 2-3, 2020 Nebraska
Mediation Assn Conference,
Omaha, NE.

April 22-25, 2020 - ABA
Section of Dispute Resolution
Conference. New Orleans, LA.

May 27-30, 2020 - AFCC
Conference, New Orleans, LA.

October 2020 - AMM Annual
Conference

See more event information
at www.momediators.org



Lisa Blumenstock

Mentoring – cont'd

A mentoring team decides for themselves the length and scope of mentoring. “It was a really positive experience for me,” says Lisa, “It was a really positive experience for me. I thoroughly enjoyed working with Liz and I know her enthusiasm and dedication will take her far. It’s a great opportunity to mentor through AMM and I would highly recommend being a mentor.”

President’s Message



John Richardson

HELPING A RELUCTANT PARTY

By John Richardson

It is great when both (or all) parties in a conflict are ready to sit down at the mediation table to resolve their issues. Often, however, there are parties to the conflict who are not ready. These reluctant parties may be suspicious of the process or perhaps they fear the potential losses. Regardless of the underlying reasons for hesitancy, a mediator often finds his or her first task that of helping a reluctant party to come to the mediation conversation.

Working with a reluctant party is a lot like hooking a 20-pound fish with 6-pound test line on your reel. At any moment, too much pressure could result in the line breaking and losing the catch. It is possible to land a 20-pound fish with 6-pound test line, but the fisherman/woman must exercise great patience and cajole the fish gently. With this metaphor in mind, here are some tips for working with a reluctant party.

BRIEF ENCOUNTERS FOLLOWED BY TIME TO PROCESS

Rather than constant and growing pressure to resolve the conflict, the mediator will be more likely to succeed with short conversations about the process followed by time for processing and developing questions.

STAY CONNECTED

A reluctant party needs time to process and own his/her choice to participate. At the same time, it is important for the mediator to maintain a light level of ongoing communication so he/she can accurately gauge any changes. This can be through email, phone calls or even by prefacing all contacts with the assurance that he/she needs to own his/her involvement.

MONITOR OTHER PARTIES

You cannot forget the other parties in the conflict while you are giving special attention to the person who is hesitant to participate. Regular communications and preparatory assignments can keep everyone involved. It is good to let everyone know that the process will be most effective when everyone is ready to begin.

SPEAK DIRECTLY TO FEARS AND QUESTIONS

Explaining the process and answering questions is the best way to draw the hesitant party to the table. Sometimes this even involves a bit of shuttle diplomacy between all parties to bring about an agreement to mediate.

Reluctant Party – cont'd

MAKE THE CATCH

Once you have earned the trust of the reluctant party and have done all you can do to encourage him/her to participate, it helps to add that last little bit of pressure. This is not manipulation, but rather acknowledging that it is sometimes impossible to quell all fears. Giving the person the hope of resolution is sometimes more than chasing down every objection.

It is very rewarding to see a reluctant party embrace the mediation process. They are often the most engaged and involved because they have wrestled with the implications and cost of ongoing conflict. This creates a determination to reach an agreement.

New Year Resolution: Renew Your Membership

A new membership year began on January 1, 2020. If you haven't renewed for 2020, please resolve to do it now. You can check your membership status in the Members Directory in the Members Only section of the website www.momediators.org or email our administrator at info@momediators.org

Ethics Brainteasers

Fall Ethics Pop-Quiz: In our Fall edition we asked whether members thought it was ethical to refer a prospective mediation participant to a lawyer to represent the participant during the mediation. A few thought it was appropriate when the other participant(s) would attend with counsel, but more were concerned about potential conflicts of interest and appearance of bias if they recommended a particular lawyer. Sharing a generic referral list or referring the participant to a lawyer referral service was the preferred response.

New Pop-Quiz: A participant in mediation is unsure of the law as it pertains to the dispute in question. The other participant(s) seem well-informed of their legal standing. What, if anything, do you as the mediator say to the clueless participant or do to insure a fair mediation process? Send your answer to info@momediators.org

IT'S NOT TOO LATE TO VIEW THE 2019 ANNUAL CONFERENCE

Presentations from our 2019 Annual Conference are available until October 2020 for those who already registered. Registration remains open if you missed it.

Topics included: 2020 Mediation Legislation Proposal; World of Conscious Negotiation; Setting the Mood for Mediation; Role of Dignity in Mediation; and Confidentiality in Settlement Discussions.

Registered and needing access? Email us at info@momediators.org

To register for access, do so online at www.momediators.org/2019conference.html
\$70 for active members; \$140 for non-members

AMM's 2020 Board of Directors

At the Annual Meeting on October 11, 2019 we elected a new board member and re-elected three others board members. We'd like to introduce our newest board member.

DIONNE KING heads an executive leadership and inclusion firm based in Kansas City. She offers services in race relations, strategic inclusion initiatives, leadership development and mediation. Dionne recently provided a lively TED-style talk at the Kansas Institute of Peace and Conflict Resolution conference on "*Mediation Mishaps & The Stuff I Got Right* " The key to success requires continual practice, flexibility and a sense of humor," says Dionne, " because you never know what will happen when you sit between fussers and cussers!" Mediators can turn their mishaps into successful mediations, she asserts. Her own practice uniquely fuses cultural diversity with conflict resolution that includes bias training, sensitivity and



Dionne King

cross-cultural decoding for nonverbal triggers. In addition to professional development and communication training, Dionne provides expert commentary for television, radio and magazines. Dionne is an advocate for homeless mothers and children and was recognized by the Ford Motor Company with the Unsung Hero Award for her community service. This is her first term as an AMM director, ending in October 2022.

Directors re-elected for 3-year terms: John Heisserer, Paul Ladehoff, and Meredith Morrow IIIa.



THANK YOU WAYNE SNYDER

Wayne Snyder of Kansas City recently announced his resignation from the AMM board of directors. We thank him for his service since 2014. During his term he was chair of the membership committee but is best known for his warm welcome at the registration table during our annual conferences

2020 AMM Officers:

President 2018-2020	John Richardson (St. Louis)
President-elect	Jason Rugo (St. Louis)
Secretary	Kathy Robinson (Independence)
Treasurer	David Gibbons (Columbia)

2020 Board Members: Heather Blades (Springfield), Dan Chadwick (Hamilton), Vickie Harris (Lee's Summit), John Heisserer (Cape Girardeau), Meredith IIIa (Palmyra), Dionne King (Kansas City); Paul Ladehoff (Columbia), Jim Reeves (St. Louis), Liza Tsahiridis (Branson).

MEMBER NEWS

Marta Pappa recently held a book party for release of her book *7 Secrets from The Divorce Whisperer: Saving Yourself, Your Money & Your Children During Divorce* (Balboa Press \$12.99). A divorce attorney and mediator with three decades of experience, Marta uses this book to help spouses assess whether a divorce will really resolve their unhappiness. She explores the effect of divorce on children and how to mitigate any negative impact on them. Marta has a post-graduate certificate in Marriage & Family Therapy from the Menninger Institute and has conducted training for mediators for over twenty years. She has been featured in The Wall Street Journal, Time Magazine, Sky Radio and Marie Claire as well as numerous radio programs and T.V. commentaries.

VISA OFFERS DISPUTE RESOLUTION SCHOLARSHIPS

The financial services company VISA proposes to fund 500 scholarships to students and workers to offset the cost of training for dispute resolution. VISA is experiencing a struggle to get skilled candidates for job openings. "Certificate programs offer an alternative to a traditional degree, giving candidates the opportunity to develop the skills and experiences needed for a particular job in a shorter period of time and for less cost," said VISA CEO and Chairman Al Kelly. "Certification in dispute resolution is an in-demand skill in the payments sphere. Workers will not only get an advanced set of skills, but the company also benefits as they can train people for the demand of the industry." Those who hold certificates receive 20 percent more wage over individuals who do not.

2019 Community Mediation Highlights Around the State

The Center for Dispute Resolution at Missouri State University

Professor Char Berquist, Director, and Heather Blades, Associate Director of the M.S.U. Center for Dispute Resolution wish to thank the many people who provided support and volunteer service that allowed them to have quite an impact in 2019. Here is a list of the accomplishments:

- Forty trainings, workshops and conference presentations on mediation, circle facilitation, family group decision-making, and conflict management.
- Offered gender-specific educational groups for girls and guys in area schools (9th year).
- Received its 725th referral to the Victim Impact Panel Program.
- Provided victim-offender dialogue training and services for the eleventh year.
- Led a peer mediation training for area high school students.
- Provided experiential learning opportunities for 39 internship and practicum students.
- Provided communication and conflict management training for City of Springfield supervisors for the third year in a row.

The Center for Conflict Resolution in Kansas City

The Center for Conflict Resolution is a non-profit organization working with people to create a culture of dignity and understanding in schools, workplaces, and neighborhoods. The uptick in gun violence in Kansas City in 2019 prompted CCR to issue a statement that "we see the devastation first hand and try to find ways to reach people before a feeling of hopelessness outweighs the importance of relationships and strong community rooted in safe and honest facilitated conversations that help heal trauma instead of creating more."

A "Conflict Resolution Hub" was created at the Gregg/Klice Community Center, with daily staffing by CCR. It offers weekly conflict resolution training for children, youth and adults plus training in restorative justice practices. A collaborative process with community engagement addresses crime, harm and violence within neighborhoods. A "Family Feud to Family Fun" event was facilitated by CCR mediators to offer up meaningful ways family members can build harmony and stronger relationships with respect, empathy, and greater understanding. The Hub project has the support of H&R Block, the Hall Family Foundation, KC Parks, and the Health Forward Foundation.

CCR's Debbie Bayless and Greg Winship are working with men who reside at the Kansas City Release Center (KCRC), teaching restorative justice concepts to help residents deal with conflict without resorting to violence. Future plans include creation of a "Restorative Re-entry Community" in

a single housing unit where restorative practices are employed to work in greater depth with the residents in preparation for life after incarceration. Residents will create detailed reentry plans and participate in family group conferences to put supports in place once they are released. To date, CCR says post engagement surveys tell them the program is working.

In 2019 CCR worked with 1,244 adults in ICR, mediation, restorative justice, restorative discipline and circle facilitation. It interacted with 750 adults in mediations and facilitated dialogues. Conflict resolution skill training was offered to 2,399 students. Presentations about restorative justice and conflict resolution were made to 1,461 people.

The Community Mediation Center of St. Louis

Community Mediation Services of St. Louis (CMS) is implementing several mediation programs in collaboration with the City of Ferguson. In the aftermath of unrest in Ferguson following the fatal shooting of Michael Brown, CMS received an inquiry from the U.S. Department of Justice. A DOJ Community Relations Conciliation Specialist engaged in several meetings with CMS's Director and board members to discuss provision of mediation services in the Ferguson community. After several months of meeting and observation of CMS mediations and its operation of the Police-Citizen mediation program, CMS was named in the *U.S.A. vs The City of Ferguson* consent decree as the provider of neighborhood mediations for the City of Ferguson. The City also requested that CMS assist in the development of additional mediation services.

CMS board members Melvin Kennedy and Angela Lawson collaborated with members with the U.S. DOJ Civil Rights Division, members of the Ferguson City Council, Ferguson Police Department, Ferguson legal counsel, and Ferguson community leaders and clergy, to implement the following services in 2020:

Mediation Training - CMS will provide mediator training to individuals living in or around Ferguson who wish to volunteer as mediators to serve the Ferguson community.

Neighbor to Neighbor Mediation – CMS will provide low or no cost mediation services to the Ferguson community that promote lasting resolutions of appropriately selected disputes among community members.

Community-Police Mediation - CMS will facilitate dialogue of disputes or grievances citizens have concerning an officer interaction as a voluntary alternative to internal investigation for approved complaints.

Community Dialogue - CMS will host a series of facilitated dialogues to provide an opportunity for community members and groups who have not had a strong or positive relationship with the Ferguson Police Department.

Court Intervention - CMS will partner with the City of Ferguson Municipal Court to provide an alternative to formal court proceedings for cases referred by the Municipal Court.

Since 2016, CMS has conducted five facilitated community conversations within the City of Ferguson and provided a forty-hour mediation training with the assistance of 16 trained volunteer mediators on the CMS mediator panel. CMS is pleased to have ten dedicated volunteer board members who collectively manage our daily operations and sixteen trained mediators who volunteer their services to conduct mediations. We welcome additional volunteers who have an interest in working toward providing an effective alternative for peace in the St. Louis Community.

First Quarter Webinar – Friday February 14, 2020 12 noon by video conference (free for AMM members)

Mindfulness in The Mediator’s Toolbox – Professor Richard Reuben

Mindfulness is a practice that enhances the mediator’s ability to be present in the moment during mediation to manage conflict and respond appropriately and effectively to the participants. Professor Reuben is the James Lewis Parks Professor of Law at the University of Missouri Law School and coauthor of *Dispute Resolution and Lawyers* (5th ed. 2014). He has a particular interest in mediator mindfulness. Participants will be sent Len Riskin’s article on mindfulness to review in advance..

SPEAK UP FORUM

AMM members are invited to share their thoughts..

Advocate for Diversity and Inclusion in ADR as a Personal 2020 Resolution

By Jane Cohen

Diversity and inclusion are important aspirations in all aspects of the legal profession including ADR. The American Bar Association recently adopted Resolution 105 aimed at increasing diversity in the selection of diverse neutrals. The text of the Resolution sponsored by the ABA’s Section of Dispute Resolution appears below.



RESOLVED, That the American Bar Association urges providers of domestic and international dispute resolution services to expand their rosters with minorities, women, persons with disabilities, and persons of differing sexual orientations and gender identities (“diverse neutrals”) and to encourage the selection of diverse neutrals; and

RESOLVED, That the American Bar Association urges all users of domestic and international legal and neutral services to select and use diverse neutrals.

There are two important aspects to ABA Resolution 105. The first is for ADR providers to champion the inclusion of diverse neutrals on neutral rosters and on selection lists. There must be more diverse candidates from which to choose. If service providers do not already systematically include diverse individuals on their neutral selection lists, they should commit to do so. In-house counsel and insurance adjusters who make decisions related to neutral selection should also demand diverse lists.

The second aspect of ABA Resolution 105 is the need to increase the selection of diverse neutrals. There cannot be an increase in the selection of diverse neutrals until the neutral lists become diverse. ADR consumers will benefit greatly from neutrals with different backgrounds and points of view. When servicers and judges are given the opportunity to make appointments or recommend possible neutrals, they should include diverse candidates. Further, attorneys must promote diverse selection within their firms and institutional organizations. Clients and their counsel need to branch out to select diverse neutrals in arbitrations and mediations instead of selecting the same people from the same handful. Company goals of utilizing a percentage of diverse legal service providers should extend to ADR services as well.

As ADR professionals, we study and discuss implicit bias, yet we suffer from it. It is our obligation as neutrals to educate ADR consumers about the benefits of diversity and inclusion. Arbitration neutrals who are given the opportunity to select the chair of a panel should consider selecting a diverse chair. More experienced neutrals should mentor diverse neutrals in their practice development such as

offering to co-mediate or shadowing. Moreover, neutrals should consider nominating and sponsoring diverse neutrals for membership in ADR organizations, suggesting them for talks and writing opportunities. I hope you all adopt ABA Resolution 105 as a personal resolution in 2020.

MEDIATION IN THE NEWS

CANADA – The Supreme Court of Canada has recognized the need for a culture shift in resolving disputes in order to promote timely and affordable access to the civil justice system. In 2014 the court stated that “while trial has long been seen as a last resort, other dispute resolution mechanisms such as mediation are more likely to produce fair and just results when adjudication remains a realistic alternative. Currently over 90% of civil cases settle prior to trial. The provinces of Alberta, Ontario, and Quebec have a mandatory dispute resolution requirement. British Columbia provides for settlement conferences by voluntary request.

CHINA – Guidelines for mediation have been introduced in the Supreme People’s Court for civil price-related disputes such as traffic accident damages, medical services, and insurance claims. Agreements reached are valid contracts and parties may apply for judicial confirmation and enforcement.

FLORIDA – Mediation is being urged to resolve a federal suit involving prayer over stadium loudspeakers. The suit was initiated by two Christian Schools who competed in the Division 2A state football championship and were prohibited from broadcasting prayers during the game.

FRANCE – Air France has reduced the volume of labor-related court cases by utilizing mediation, according to Frank Raimbalt, the carrier’s director of legal affairs. “We realized that judicial litigation is not in the interests of the company and rarely in the interests of staff,” he reported. Above all, the problem stemmed from a culture of going to court to settle minor issues. The Macron Law (2015) provides that all individual labor disputes can be dealt with using conventional mediation. The mediator is paid for by Air France. Workers can access a two-minute video presentation and

choose from among pre-selected dispute resolution professionals.

MISSOURI – The Board of Governors of The Missouri Bar has approved sponsorship of a mediation bill proposed by the MOBar ADR Committee for introduction in the 2020 legislature. ADR Committee Chairman Mike Geigerman says the bill is meant to extend provisions to mediation not connected to litigation. While there are miscellaneous state statutes authorizing the use of mediation in various sectors, Missouri does not have a comprehensive mediation act.

SOUTH DAKOTA - Cody Miller, a law student at the University of South Dakota, won the Best Mediator Award and a \$2,000 scholarship at the 2019 national contest held at the University of Houston in October. The competition, started in 2010, involved twelve law students from across the country. Competitors work their way through a series of three problems based on actual commercial mediations. "To my knowledge, this competition is the most 'real-to-life' mediation competition in the country," said Jim Lawrence, executive director of the Blakely Advocacy Institute which sponsors the competition."

TEXAS – The independent dispute resolution portal for medical billing disputes went live on January 1st according to the Texas Department of Insurance. Legislation was passed recently supporting the right of policyholders to dispute out of network pass-through charges.

VIRGINIA- The state’s Workers’ Compensation Commission is providing translators for non-English speaking participants in mediations, following the recommendation of a legislative analysis.

MEMBER PROFILE

P. Glen Smith says he genuinely enjoys people and listening to their story and situation. As an estate planning attorney, Glen helps clients develop a plan to fit family circumstances, financial positions and life values. He believes that “each person is a masterpiece created to thrive in this life”. As a mediator he also strives to assist people in a friendly, compassionate, effective and supportive manner. Those of us who met Glen can attest to that. He was our gracious host to view the 2019 AMM conference by video in his newly renovated offices in Liberty. Glen is a husband, father of five, and grandfather to a growing number of grandchildren.

WELCOME NEW MEMBERS:

Douglas Bellon	St. Charles
Tana Benner	Columbia
Gary Brown	Laclede
Kati George	Lebannon
Melissa Gragg	Ballwin
Jill Kirkpatrick	Kansas City
Stephen Mace	Wildwood
David Remley	Cape Girardeau
Stephen Snead	Springfield

Special Feature – *For our members who are also arbitrators, compliments of AMM member Jane Cohen.*

Legislative Update: Pre-dispute Arbitration

Law Offices of Jane Cohen LLC
www.janecohen.com

Forced Arbitration Injustice Repeal Act (FAIR Act)

Federal efforts to ban pre-dispute arbitration agreements have been unsuccessful to date. However, it appears they may be gaining momentum. The Forced Arbitration Injustice Repeal Act (FAIR Act) passed the House this year and was referred by the Senate to the Judiciary Committee.

The FAIR Act seeks to prohibit (1) pre-dispute arbitration agreements that force arbitration of future employment, consumer, antitrust, or civil rights disputes; and (2) agreements and practices that interfere with the rights of individuals, workers, and small businesses to participate in a joint, class, or collective action related to an employment, consumer, antitrust, or civil rights dispute.

California

California was also busy in busy in 2019 passing legislation to ban on pre-dispute arbitration in certain areas.

AB 51: On October 10, 2019, California Governor Gavin Newsom signed into law AB 51. The new law bans mandatory arbitration agreements, under the Fair Employment and Housing Act and the CA Labor Code; bans arbitration agreements in which employees must take an affirmative action to escape arbitration, such as opting out or to reserve rights; and applies to employment contracts executed, modified, or extended on or after January 1, 2020.

AB 51 was to take effect on January 1, 2020, but on December 30, 2019, District Judge Kimberly J. Mueller of the Eastern District of California issued a temporary restraining order barring California’s Attorney General, Labor Commissioner, and other relevant officials from enforcing AB 51. The court found that a collection of business groups led by the U.S. Chamber of Commerce “have raised serious questions regarding whether the challenged statute is preempted by the Federal Arbitration Act as construed by the United States Supreme Court.” A hearing was scheduled on the preliminary injunction for January 10, 2020. According to Nick Cahill of the Courthouse News Center, the Judge heard argument and set a briefing schedule and extended the TRO until January 31, 2020 the Motion for preliminary injunction.

It will be interesting to see what impact, if any, the language included in the law will have that states “[n]othing in this section is intended to invalidate a written arbitration agreement that is otherwise enforceable under the Federal Arbitration Act....” If I was a gambler, I would bet that this case will work its way to SCOTUS. This is a case for us ADR professionals to keep our eyes on.

SB 707: CA SB 707 was also signed into law on October 10, 2019. It has not been stayed but went into effect on January 1, 2020. SB 707 requires the drafting party of an arbitration agreement to timely pay arbitration costs within 30 days before or during the pendency of an arbitration proceeding with the failure to do so resulting in a material breach of the arbitration agreement, is in default of the arbitration and waiver of its right to compel arbitration. Failure to timely pay also allows the employee or consumer to move the case to court or to compel arbitration. Upon such a default, the drafting party becomes

subject to possible adverse evidentiary consequences and possible cost shifting at the end of the case even if the drafting party is successful in the case in court.

If the employee or consumer moves to compel arbitration after a default by the drafting party, the drafting party is required to pay the reasonable attorney's fees and costs related to the arbitration.

If the employee or consumer proceeds with an action in a court, the statute of limitations for all claims brought or that relate back to any claim brought in arbitration are tolled. In such event, the court is also required to impose a monetary sanction on the drafting party who materially breached an arbitration agreement and authorizes the court to impose other sanctions.

Existing law requires a private arbitration company involved in consumer arbitration cases to collect and make certain information regarding those cases available to the public. Private arbitration companies will now also be required to collect and report demographic data in the aggregate relative to ethnicity, race, disability, veteran status, gender, gender identity, and sexual orientation of all arbitrators.

The California legislature's intent underlying SB 707 was to codify the rulings in three California court decisions: **Armendariz v. Foundation Health Psychcare Services, Inc.**, 24 Cal. 4th 83 (Ca. 2000); **Brown v. Dillard's, Inc.**, 430 F.3d 1004 (9th Cir. 2005); and **Sink v. Aden Enterprises, Inc.**, 352 F.3d 1197 (9th Cir. 2003).

In **Armendariz**, the California Supreme Court concluded that "when an employer imposes mandatory arbitration as a condition of employment, the arbitration agreement or arbitration process cannot generally require the employee to bear any type of expense that the employee would not be required to bear if he or she were free to bring the action in court." 24 Cal 4th at 110-111. In **Brown**, the Ninth Circuit held that, under federal law, an employer's refusal to participate in arbitration pursuant to a mandatory arbitration provision constituted a breach of the arbitration agreement. 430 F. 3d at 1012. Finally, in **Sink**, the Ninth Circuit held that, under federal law, an employer's failure to pay arbitration fees as required by an arbitration agreement constitutes a material breach of that agreement and results in a default in the arbitration. 352 F.3d at 1197.

This statute is intended to obviate companies' ability to strategically fail to pay fees and costs to prevent employees or consumers from vindicating their rights. A company's failure to pay the fees of an arbitration service provider when due hinders the efficient resolution of disputes and according to the California legislature contravenes public policy.

The Communicator is the quarterly newsletter of the Association of Missouri Mediators. We welcome submission of articles about mediation and news of mediation activities in the state of Missouri.

Kathleen Bird, administrator
Kathy Robinson, copy editor
Mailing address: P.O. Box 901384, Kansas City, MO 64190
AMM Email: info@momediators.org
AMM phone: 573-313-8555