



BANKRUPTCY MEDIATION NEWS

A Word From The Administrator. . .

Please join me in welcoming our newest judges: Judge Magdalena Reyes Bordeaux and Judge Ronald A. Clifford III. Judge Reyes Bordeaux is serving in the Riverside Division and Judge Clifford is serving in the Northern Division. On January 1, 2022, Judge Theodor C. Albert assumed the post of Chief Bankruptcy Judge for the Central District of California. Judge Albert succeeds Judge Maureen A. Tighe, who has served as Chief Bankruptcy Judge since 2019. On April 28, 2022, judges and honored guests gathered in the honored tradition of the Passing of the Gavel ceremony held at the United States Court of Appeals for the Ninth Circuit, Richard H. Chambers courthouse. And last but not least, we bid a very fond farewell to Judge Mark Wallace who retired on March 1, 2022.

Our Mediation Program will turn 27 on July 1 of this year! With this celebration comes change and a moment to reflect: Sue Doherty, my Mediation Program Coordinator for the last 28 years, has retired and moved on to her next great adventure! Sue was pivotal in making my mediation dream become a reality, not only in developing the Program but working to keep it the success that it remains today. Sue is succeeded by my Judicial Assistant, Ann Sokolowski

Many of our mediators have served on the panel since the very beginning. Our program has been an outstanding success because of our mediators' excellent service to the Court. Due to the Program's longevity, however, we are reaching a point where quite a few mediators have decided to retire and have resigned from the panel as they begin new chapters in their lives.

In focusing on recruiting new mediators, we have some wonderful insights from our contributing authors this month including: Zev Shechtman writing about recently becoming a mediator in "I'm The New Guy", Peter T. Steinberg keeping us current with his article "Mediation In 2022 And The Bromance Factor" and one of our Subchapter V Trustees, Greg Jones sharing his insights in "Subchapter V Meets Mediation".

Please let us know how we are doing. We would really love to hear from you ! Contact us anytime at mediation_program@cacb.uscourts.gov.



MEDIATION PROGRAM

Administration

Judge Barry Russell
Program Administrator

Ann L. Sokolowski
Program Coordinator

Advisory Board

Hon. Dorothy W. Nelson
Senior Circuit Judge
Ninth Circuit
Court of Appeals
Pasadena, CA

Donna J. Stienstra
Senior Researcher
Research Division
Federal Judicial Center
Washington, D.C.

Prof. Peter Robinson
Professor of Law
Pepperdine University
School of Law
Straus Institute for
Dispute Resolution
Malibu, CA

Newsletter

J. Scott Bovitz, Esq.
Contributing Editor



I'm the New Guy! Notes From Recent Mediation Training

***By Zev Shechtman*
Bankruptcy Attorney & Mediator***

I had the great privilege of participating as a student in the “Mediating the Litigated Case” training program at the [Pepperdine Law Straus Institute for Dispute Resolution](#) on February 28 through March 4 and March 16, 2022. The first five days of class were held in-person at the magnificent Malibu campus of Pepperdine University. The sixth day was held via Zoom. There were 41 participants from around the country, as well as Canada and Brazil. Our esteemed class included two retired Federal District Court judges, four sitting Los Angeles Superior Court judges, a number of sitting and retired judges from other states, including Delaware, Montana, Oklahoma, and Wisconsin, two law enforcement officers, and numerous attorneys. A broad range of legal practice areas were represented, including employment, construction, personal injury, intellectual property, bankruptcy and others.

The phenomenal faculty was led by [Professor Sukhsimranjit Singh](#), Managing Director of the Straus Institute. Every day of the program, Professor Singh was joined by Straus faculty colleagues. Each member of the faculty was an experienced mediator with a unique style and perspective. To provide a very abridged summary, our faculty included: [Stephanie Blondell](#) who presented on “[Riskin's Grid](#)” and distributive bargaining; [Denise Madigan](#) on creativity and integrative bargaining; [Peter Robinson](#) on communication and opening statements; [Stacie Hausner](#) on closing and overcoming barriers to settlement; [Shaphan Roberts](#) on community mediation; [Bruce Edwards](#), a founder of JAMS, on the business of mediation; and [Hon. Alexander Williams III \(Ret.\)](#) on mediation ethics. We also received insights on best practices in mediation from [Hon. Daniel Weintraub \(Ret.\)](#), another founder of JAMS, and [Steven Rottman](#), who are among the nation's top mediators.

This was a special program because it was the first conducted in-person on campus since the outset of the pandemic about two years ago. In addition to

being an expertly designed, engaging and productive program, there was palpable joy shared by those in attendance for simply being able to gather and connect in person. After all, mediators are “people persons.”

One topic that we addressed on several occasions was the efficacy of Zoom (or other videoconferencing) mediations. There is broad consensus among town and gown, bench and bar, that Zoom is effective and, according to some experts, it's a tool that helps close more deals. At the same time, everyone I spoke with was grateful to meet in person. People have a greater appreciation now for the human, social element of in-person connection. The in-person class dynamic affords much more socializing, and the ineffable aspects of getting to know each other, than Zoom class does. The chit-chat, schmoozing, banter, and other manner of conversation, before, in-between, and after classes is incredibly valuable for relationship building. Yet, Zoom is not going away. The pros say that most mediations will continue to be via videoconference, even though some local cases and other special situations may warrant in-person meeting.

Some of the insights that I took away from the program are: (1) What works? There is no single trick or talent that makes a mediator successful. A combination of tools will be necessary for a successful mediation practice. Any mediation may require the mediator to range from the evaluative to the facilitative and from the narrow to the broad on Riskin's Grid. Although our profession prizes substantive knowledge, emotional qualities such as flexibility, creativity, open-mindedness, and kindness are some of the qualities that can help us succeed as mediators. (2) What is success in mediation? While a successful mediation traditionally means actually settling a dispute (“always be closing”), there can be a successful process that doesn't hinge exclusively on whether the parties settle, but rather on how the parties feel coming out of the process. (3) Practice, practice, practice. There is no better way to learn than to do. The top attribute that the mediation faculty had in common was vast experience in mediation. I'm not sure whether mediation is more “art” or “science,” but I am sure that practice is a big part of success. (4) Listen.

I'd love to hear from you about your experience as a mediator, what got you into it, and what you recommend to new mediators starting out. Please email or call me: zs@DanningGill.com / (310) 201-2443.

**Zev Shechtman specializes in business bankruptcy and restructuring and is a partner at Danning, Gill, Israel & Krasnoff, LLP.*



SUBCHAPTER V MEETS MEDIATION

By Gregory K. Jones*
**Subchapter V Trustee, Bankruptcy
Attorney & Mediator**

In March 2020, I was fortunate enough to be selected as one of the subchapter V trustees for the United States Bankruptcy Court for the Central District of California. Upon my selection, one of the first new Bankruptcy Code sections that obviously needed to be analyzed was section 1183 (“Trustee”), which sets forth the subchapter V trustee’s duties. Subsection 1183(b)(7) stuck out to me as a significant provision. Specifically, it stated that the trustee “shall facilitate the development of a consensual plan of reorganization.” As noted by courts, this specific duty “appears nowhere else in the Bankruptcy Code and is specific to subchapter V.” *In re Ozcelebi*, 2022 Bankr. LEXIS 854, *18 (Bankr. S.D. Tex. April 1, 2022); see also *In re 218 Jackson, LLC*, 631 B.R. 937, 947 (Bankr. M.D. Fla. 2021). Courts presiding over subchapter V cases have observed that “[i]t is not a stretch then to conclude that the subchapter V trustee’s role was intentionally designed to be less adversarial . . . [a]s a result, the subchapter V trustee acts more like a mediator than an adversary.” *218 Jackson*, 631 B.R. at 947; *In re Seven Stars on the Hudson Corp.*, 618 B.R. 333, 346 n. 81 (Bankr. S.D. Fla. 2020) (stating that the subchapter V trustee “should be to serve as a de facto mediator between the debtor and its creditors.”). The United States Trustee’s Handbook for Small Business Chapter 11 Subchapter V Trustees (the “Handbook”) even goes so far to provide “that facilitation of a consensual plan is a *principal* duty of the trustee.” Handbook, at 3-9 (emphasis added).

I completed mediation training through Pepperdine in early 2021. However, before such instruction, I was appointed to act as subchapter V trustee in a number of cases. Most of these cases involved a dispute between a debtor and one active secured or unsecured creditor. These cases included *In re G-Star Raw Retail*, 20-16040-WB; *In re FDZ Homes*, 20-20772- ER; *In re Joe & Lo*, 20-19575-WB, and *In re Remy’s HRN LLC*, Case No. 21-11026-WB.

As noted, I was no expert in mediation. However, I had a duty to try to facilitate a consensual plan of reorganization, and I could only do that if I was fair and credible to both sides of the dispute. In a broad sense, I approached each side with what I considered to be the realities of the situation that confronted them. I would tell debtors that while subchapter V was a new powerful tool, they had to comply with the strict time limits and disclosure obligations placed upon them and that there was not time to dicker with silly offers. For creditors, among other things, I would stress to them that it was best not to throw good money after bad money and to instead work on an agreement that provided the creditor with remedial tools in the event of a default. For the most part, these strategies worked, but the skill and practicality of the attorneys that I worked with were my biggest resource.

To tap into these attorneys’ capabilities, I needed to be as neutral, impartial, and pragmatic as possible. In a recent case, *218 Jackson*, the subchapter V trustee acted like a litigant and paid the consequences. While the *218 Jackson* trustee initially verified that he was “disinterested” pursuant to section 101(14), he was also appearing as counsel for a party adverse to the debtor’s Chairman. The trustee’s actions in the case seemed to indicate that he was using his trustee status to advocate for his client in the related case – for instance, he argued for dismissal of the *218 Jackson* case and later objected to confirmation on feasibility grounds. *218 Jackson*, 631 B.R. at 943-44.

Pending the determination of plan confirmation, the trustee filed a fee application seeking \$11,870. The Court denied the application, and went as far as to remove the trustee from his position. The Court found that the trustee was not disinterested and had not performed essential services. *218 Jackson*, 631 B.R. at 948-49 (“The Trustee’s time records reveal that he spent no time trying to bring the parties together or encouraging a consensual plan of reorganization.”). The fact that the Bankruptcy Judge wrote a published opinion on the matter was further punishment for this subchapter V trustee.

In sum, I realize how privileged I am to play a role in small business bankruptcies, and I will strive to use my mediation skills to enhance the bankruptcy process, while being as neutral and productive as possible.

**Gregory K. Jones specializes in the representation of multiple parties in bankruptcy cases, including chapter 11 debtors, committees, bankruptcy litigants, creditors, and trustees. Greg is a shareholder at Stradling Yocca Carlson & Rauth.*

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MEDIATION IN 2022 AND THE BROMANCE FACTOR



By Peter T. Steinberg*
Bankruptcy Attorney & Mediator

Having practiced law for 42 years, and having served as a Mediator for 25 of those years, I am able to conclude that the practice of law has become increasingly solitary and compartmentalized. This trend gained momentum with increased digitizing of legal practice in the first two decades of the 21st Century, which snowballed with the Covid Pandemic of 2020 on. Lawyers and their Clients and their antagonists increasingly communicate by and through the internet/zoom, leaving personal interaction by way of court, conference or even the friendly lunchbreak meeting, as a thing of the past. The psychological effect of this trend is to dehumanize the legal practice, creating more situations of unfamiliarity and emotionless interaction.

You may be asking if the above trend is necessarily a bad thing as perhaps objectivity is maximized due to a minimization of the subjective. The purpose of this brief article is not to resolve this question, best left to psychiatrists, but to relate the above-referenced trend to the effectiveness of mediation as a dispute resolving tool.

Due to the above trend in digital lawyering, I have noticed that much more often that parties and their attorneys present themselves at Mediation with little or no familiarity with their opponent/counsel. Unless you believe Chaucer's 14th Century admonition that "familiarity breeds contempt", this is a negative because basic human nature is to distrust and demonize the unknown, especially a litigation opponent one is focused on prevailing against.

As most experienced Mediators understand, conflict resolution is more apt to occur if the parties and their counsel do not demonize the opponent due to unfamiliarity, either consciously or subconsciously, translating these feelings into mistrust or even fear.

Somewhat recently I mediated a matter wherein the opposing parties and their counsel had never met. Each side was nervous appearing and seemingly suspicious of the other at the initial caucus in my office. Each side was locked into their respective position, and distrusted the other due to what I believed to be their digitized interaction, having never met previously, and perhaps fearing the other. What I thought might help the parties proceed toward resolution would be getting the litigants to find commonality in an unrelated subject which would allow the parties to relax and banter. As was the case, each male litigant was a dyed in blue Dodgers fan, who each thought he knew more about the Dodgers than the other guy. For a short time I channeled the discussion between the parties to Dodger minutia, such as who were the 5 consecutive Dodgers Rookies Of The Year in the 1990s (solely the Mediator knew this answer -see below, . (1). But because of this seemingly irrelevant conversation, the parties had a "bromance", felt commonality, distrust receded, and each felt more comfortable discussing the facts and legal issues involved in their case--with a fellow Dodgers fan. Discussion without observable distrust and demonization occurred, which in the end assisted a settlement at the Mediation.

A suggestion to the new or relatively inexperienced Mediator(s) reading this is to find commonality and popular discourse between your mediating opponents and counsel, keep the conversation going, and settlement chances increase -- even in our generally more isolated and distrusting legal environment.

(1): 1992-Eric Karros ; 1993-Mike Piazza; 1994-Raul Mondesi; 1995-Hideo Nomo; 1996-Todd Hollandsworth.

** Mr. Steinberg is a founding member of Steinberg, Nutter & Brent and has been practicing in the counties of Los Angeles, Ventura, Orange and Santa Barbara for over 35 years. Expert in a variety of fields such as bankruptcy, civil, litigation and real estate, his main emphasis is bankruptcy-related matters, as well as federal and state court litigation. He has served as a bankruptcy mediator since 1997.*

Spotlight



"[KIMBERLY WINICK]: Ms. Winick was an excellent mediator who showed great patience and resilience in getting the parties to reach an agreement and then remained engaged until an agreement was signed by the parties."

And in another successful mediation conducted by Ms. Winick:

"Ms. Winick did an excellent job of settling a very complex matter that no one ever thought would settle. She was prepared and her demeanor and intellect were instrumental in finally resolving the disputes between the parties."

We could not have selected a better person to mediate this matter."

"[DAVID MEADOWS]: Mediator was well-informed, supportive and diligent in processing a reasonable mediation between all parties."

And in another successful David Meadows mediation:

"Mr. Meadows handled the mediation masterfully. I was very impressed and will use him again."



"[STEVEN M. SEPASSI]: Mediator was intelligent, very well-prepared, informative, impartial and professional"

"[LEONARD GUMPORT]: Leonard Gumport is an excellent mediator. He was very well prepared and independently researched the relevant case law. He also donated three full days of his time to conduct the lengthy mediation, and he refused the parties' offers to compensate him for his time. I have no doubt that without Mr. Gumport's diligence and skill, the parties would be mired in years of additional litigation."

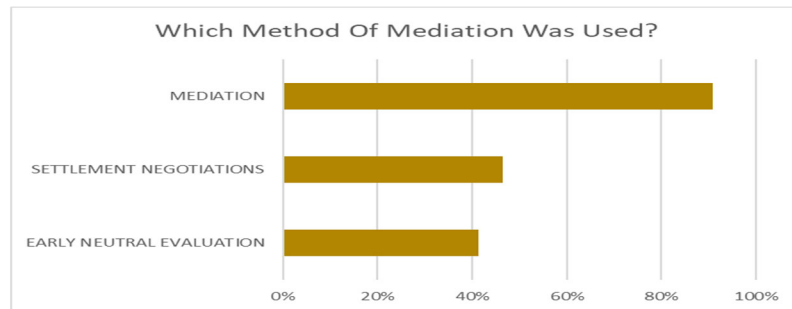


ARTICLE OF INTEREST:

American Bankruptcy Institute Journal, May 2022 Edition:

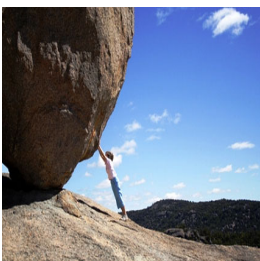
"Mediation Privilege And Confidentiality: New Local Rules And The Need For National Guidance"
authored by Tyler Layne.

HOW'D WE DO?



It's always nice to know how our Mediators are doing! Confidential Mediation Questionnaires are forwarded to all participants in YOUR mediation—assuming you, as the mediator, filled in Form 709 and e-mailed/mailed it to mediation_program@cacb.uscourts.gov!

	Strongly Agree	Agree	Neither	Disagree	Strongly Disagree
The mediator was effective in getting the clients to engage in meaningful discussion of the matter.	36	13	2	0	2
The mediator was effective in getting the attorneys to engage in meaningful discussion of the matter.	33	15	3	0	1
The mediator was fair and impartial.	37	15	1	1	0
The mediator adequately informed me about the purpose of the conference and my responsibilities.	34	12	7	0	0
When the mediator was selected, I was confident in the mediator's abilities.	34	12	7	0	0
I would use the mediator again.	41	11	1	0	1



MOVING A MOUNTAIN

HUGE ongoing note of thanks and gratitude to our Court's movers and shakers who have taken on the enormous task of rewriting our Mediation Program.

BANKRUPTCY MEDIATION NEWS

Dear Program Staff:

Q: Opposing counsel and I have been instructed to mediate this matter. We assume that your office determines the availability of the mediators and arranges the mediation conference. The judge has given us a relatively short completion date and so time is of the essence. Thank you for arranging everything for us.

A: Our Program Administrator and staff do not assign mediators. We realize that other courts' program staff do so; perhaps that is why you assumed that our staff performs this function. Plaintiff's counsel in the matter is responsible for taking the initiative in locating the primary and alternate mediators. It's unfortunate that you have a short time frame, so you'll need to consult the list of mediators on the Mediation Program page of the court's website (www.cacb.uscourts.gov) and complete and lodge the mediation order as quickly as possible. Hopefully, all of the attorneys involved in the matter will cooperate in the process and you will be able to handle everything in time.

Q: We want to go to mediation but need a Farsi speaker. There do not appear to be any Farsi speakers on the mediation panel but a member of the Beverly Hills Bar Association speaks the language. May we ask that person to mediate the matter for us? We would agree to stipulate to it and make sure the mediator does also.

A: Yes, you may but you should arrange for the judge to whom the case is assigned to sign an order approving your stipulation before holding the mediation. Section 5.3 of the Third Amended General Order which governs the Program provides that "The Judge may, in his or her sole discretion, appoint individuals who are not members of the Panel as the Mediator and Alternate Mediator at the request of the parties and for good cause shown."

Q: I'm interested in applying as a mediator on your panel but am wondering why only attorneys are eligible. Perhaps I'm mistaken, but the electronic submission form seems geared towards attorneys only and California attorneys at that! I have over 20 years of experience on the creditors' side as a non-attorney and would like the opportunity to be considered.

A: Non-attorneys are eligible for panel membership as long as they meet the eligibility criteria set forth in paragraph 3.3.b of the Third Amended General Order. You can find the General Order on the Mediation Program page on the court's website. In addition, a list of "Mediators' Professions" can be found under the Mediator Information/Search link on that page and will show you the types of professionals the judges have approved in the past (such as accountants, real estate brokers, professional mediators, etc.). Remember, mediation training is a requirement. See our list of suggested courses on page 8 of this publication.

Q: I just conducted a mediation in a nasty dischargeability action that I never thought would settle, but after 5 1/2 hours straight with no lunch break, we settled! Plaintiff's counsel and the parties will be advising the judge assigned to the case when they have their post-mediation status conference next week. Plaintiff's counsel is drafting the settlement agreement and related stipulated judgment, etc. This is my first time serving on the panel, so what reporting should I do to indicate that the parties have settled? Incidentally, this was my "freebie" for the quarter. Happy to do it!

A: You only need to do two things to complete your part of the mediation: (1) complete and file Form 706 (the Certificate of Completion) on the court docket, and (2) complete Form 709—that's a confidential report of the mediation conference, but please don't file it anywhere! A courtesy copy of both of these forms may be sent directly to mediation_program@cacb.uscourts.gov. Thank you!

Q: The parties participating in my mediation have provided information for me to use in completing Form 709. After I forward Form 709 (the confidential report of the mediation) to mediation_program@cacb.uscourts.gov, what happens?

A: We use the information provided on the form to reach out to mediation participants asking them to evaluate the mediation and the mediator. This form is sent to the participants via email and allows for (hopefully) easier access not only in responding but returning the questionnaire to us. This information is so helpful in creating our statistics. Every Form 709 helps!

BANKRUPTCY MEDIATION NEWS



Why use up paper printing down the lists of mediators and all information?

Visit the Mediator Information/Search pages, insert your search information including Search Panel Members By:

Name

City Zip

Code Profession

Foreign Languages

Counties Where Authorized to Serve

Voila! All information to open dialogue to select a mediator is there!

Our Local Mediation Training Programs Include:

Pepperdine University School of Law
Strauss Institute for Dispute Resolution
24255 Pacific Coast Highway
Malibu, CA 90263
(310) 506-4655
www.law.pepperdine.edu/strauss

Los Angeles County Bar Association
1055 W. 7th Street
Los Angeles, CA 90017
(213) 627-2727
www.lacba.org

Kenneth Cloke Law Offices
Conflict Resolution Services
2411 18th Street
Santa Monica, CA 90405
(310) 399-4426
www.kencloke.com
kcloke@aol.com

Conflict Resolution Institute
(Ventura Center for Dispute Resolution)
555 Airport Way, Suite D
Camarillo, CA 93010
(805) 384-1313
www.conflictresolutionvc.org
aculberson@centerforcivicmediation.org

ZOOM INTO ADVANCED MEDIATION TRAINING: JUNE 2022

Advanced Mediation Training for our mediators will be held on June 9 and June 22, from 9:00 a.m. to noon both days (on Zoom).

BE SURE TO REGISTER FOR BOTH DAYS!

Not very often that a bankruptcy issue is heard before our Supreme Court of the United States, much less a case stemming from the Ninth Circuit.

QUESTION PRESENTED: May an individual be subject to liability for the fraud of another that is barred from discharge in bankruptcy under 11 U.S.C. § 523(a)(2)(A), by imputation, without any act, omission, intent or knowledge of her own?

The case is [Bartenwerfer v. Buckley](#), U.S., No. 21-908, cert. granted 5/2/22.

Circuit courts are irreconcilably split on this issue.



LOS ANGELES DIVISION

NB = Judge Neil W. Bason
BB = Judge Sheri Bluebond
WB = Judge Julia W. Brand
SK = Judge Sandra R. Klein
RK = Judge Robert N. Kwan **
ER = Judge Ernest M. Robles
BR = Judge Barry Russell
DS = Judge Deborah J. Saltzman
VZ = Judge Vincent P. Zurzolo

SAN FERNANDO VALLEY

DIVISION

AA = Judge Alan M. Ahart **
MB = Judge Martin R. Barash
VK = Judge Victoria S. Kaufman
GM = Judge Geraldine Mund **
DS = Judge Deborah J. Saltzman
MT = Maureen A. Tighe

NORTHERN DIVISION

PC = Judge Martin R. Barash
RA = Judge Ronald A. Clifford III
DS = Judge Deborah J. Saltzman

RIVERSIDE DIVISION

MH = Judge Mark D. Houle
WJ = Judge Wayne Johnson
RB = Judge Magdalena Reyes-Bordeaux
SY = Judge Scott H. Yun

SANTA ANA DIVISION

TA = Chief Judge Theodor C. Albert
SC = Judge Scott C. Clarkson
ES = Judge Erithe A. Smith

Recalled judges **

WE ABSOLUTELY VALUE YOUR INPUT AND ENCOURAGE YOU TO PARTICIPATE
IN MAKING OUR NEWSLETTER CURRENT AND FULL OF INFORMATION FOR ALL
OF US.

THANK YOU TO ALL OF OUR MEDIATORS —
WITHOUT YOU, THERE WOULD BE NO PANEL.