

Dispute Resolution Forum 2019

April 26, 2019

Willis Center – Nashville, Tenn.



Program Producer(s): Stephen Shields, *Jackson, Shields, Yeiser & Holt*

Total CLE Credits: 2.75 General, 3.75 Dual

Join a distinguished group of speakers discussing some of the most cutting edge legal and ethical issues relating to ADR practice. Part of the forum will focus on case law updates dealing with significant cases involving arbitration and mediation. In addition, the forum has been carefully crafted to provide timely and practical information that will benefit practitioners, both lawyers and mediators, in dealing with ethical issues as well as a discussion of best practices.

8:30 a.m. – 9 a.m.



Registration

9 a.m. – 9:15 a.m.

Introductions

Stephen Shields, Jackson, Shields, Yeiser & Holt

9:15 a.m. – 10 a.m.

.75 DUAL

Ethics Advisory Opinions and Revised Rule 31

Tennessee Supreme Court Rule 31 has recently undergone its most comprehensive revision since its adoption two decades ago. The changes have not only sparked new requests for Ethics Advisory Opinions but have also impacted those that had been issued prior to the revision. This session will feature a discussion of those new opinions as well as some new perspectives about existing opinions.

Frank Cantrell, Shuttleworth PLLC

10 a.m. – 10:15 a.m.



Break

10:15 a.m. – 11 a.m.

.75 General

Arbitration Case Law Update

This session will take a careful look at two recent U.S. Supreme Court cases, *Epic Systems Corp. v. Lewis* and *Henry Schein, et al. v. Archer & White Sales, Inc.* involving enforcement of arbitration agreements. This session will also focus on a recent 6th Circuit case, *Jammal, et al. v. American Family Insurance Co., et al.*, and other cases dealing with the enforceability of arbitration cases post-Supreme Court cases.

Steve Groom, Neal & Harwell, PLC

11 a.m. – 11:45 a.m.

.75 General

Mediation Case Law Update

The discussion will focus on recent mediation cases, including cases addressing the issue of enforcing mediation agreements as well as those cases addressing issues pertaining to compelling mediators to testify and, if compelled, under what circumstances.

Debbie Fulton, *Frantz, McConnell & Seymour, LLP*
Stephen Shields, *Jackson, Shields, Yeiser & Holt*

11:45 p.m. – 12:15 p.m.



Lunch (provided)

12:15 p.m. – 12:45 p.m.

.5 DUAL

A Look to the Future - Online Dispute Resolution

As commerce is increasingly conducted through the means of the internet, disputes which arise there are being addressed in the same forum: online. The United Kingdom, the European Union, the Asia Pacific Economic Conference as well as several US states and Canadian provinces are developing policies, protocols and procedures related to Online Dispute Resolution (ODR). This session will explore the global movement toward ODR mechanisms and the technology platforms that are providing these services to disputants in a "better, faster, cheaper" approach to dispute resolution.

Larry Bridgesmith, *Co-Founder & CEO, Legal Alignment LLC*

12:45 p.m. – 2 p.m.

1.25 DUAL

Ethics for Advocates and Mediators in Mediation

Effective mediation can take a variety of forms depending upon the needs of the parties and the personality of the mediator and the advocates. As a result of the flexibility of the mediation process, advocates and mediators frequently encounter situations in which ethical parameters are unclear. This presentation focuses on some common ethical issues faced by mediators and advocates during mediation and offers guidance for dealing with some of the most difficult ethical issues.

Stephen Shields, *Jackson, Shields, Yeiser & Holt*
Cindy Ettingoff, *Attorney & Owner, Law and Mediation Office of Cindy Cole Ettingoff*
Mary Kampa O'Mara, *Attorney at Law*

2 p.m. – 2:30 p.m.

.5 DUAL

Ethical Dilemmas Regarding Non-Disclosure Agreements in Tennessee After Ethics Opinion F-166

This session will explore a variety of ethical issues following Ethics Opinion F-166. Specifically, what are the ethical constraints on confidentiality or non-disclosure provisions in settlement agreements? What are the ethical issues for counsel? For mediators? What drafting tips can the presenters offer?

Robert Arrington, *Wilson Worley Moore Gamble & Stout PC*

2:30 p.m. – 2:45 p.m.



Break

2:45 p.m. – 4 p.m.
1.25 General

Panel Discussion (Civil and Family) – Best Practices Regarding Reality Checking and Overcoming Impasse

One of the ways to prevent an impasse in mediation is to have a pre-mediation conference with the attorneys for the parties. That initial conference should focus on all issues that must be resolved at mediation and the priority of those issues. By having clearly defined goals of the parties, the mediation has a better chance of resolving because the mediator can refocus the participants rather than allow rehashing or a complaint session about what got the parties to litigation in the first place. The participants will learn how to suspend a mediation rather than allow it to go to an impasse by defining what due diligence may be needed in order to accept or reject an offer, what additional discovery might be necessary, or to give the party time before accepting an offer or providing a counteroffer. The panel will discuss this approach as well as other ways to overcome impasse and engage the parties in “reality checking.”

Jocelyn Wurzburg, *Mediation Services*

Robin Miller, *Clerk & Master, Hamilton County Chancery Court*

Rachael Henry, *Staff Attorney, Clerk & Master Office, Hamilton County Chancery Court*

Moderator: Patricia Best Vital, *Vital Law Office & Dispute Resolution Services*

4 p.m. – 4:45 p.m.
.75 DUAL

Ethical Issues Pertaining to the “Practice of Law” Inside the Dome of Mediation: You mean I can be disciplined for conduct under the Dome --- I thought that was secret?

This segment will penetrate the Dome of Confidentiality to examine unethical conduct by lawyers and mediators beneath the Dome. Hear the Board of Professional Responsibility’s view when complaints arise from lawyer or mediator conduct within this realm. Is showing up enough? “My lawyer was not prepared and never met with me before the mediation? What matters can the mediator be forced to reveal . . .?”

Sandy Garrett, *Tennessee Board of Professional Responsibility*

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