

17TH ANNUAL  
**ADVANCED MEDIATION  
 & ADVOCACY  
 SKILLS INSTITUTE**

Mastering Your Skills:  
 Mediation Do's and Don'ts...  
 as Viewed Through the Lenses of  
 Parties, Advocates, and Mediators



# HOUSTON



**November 15-16, 2019**

South Texas College of Law Houston  
 Houston, TX

This two-day interactive Institute features opportunities to learn from some of the leading mediators and advocates in North America by bringing you "into the room" via video. Advocates and mediators alike shouldn't miss this opportunity to learn what their constituents find works well, and not so well, in direct negotiations and mediated settlement discussions!

[ambar.org/med2019](http://ambar.org/med2019)



AMERICAN ARBITRATION ASSOCIATION



TEXAS ASSOCIATION OF MEDIATORS



New Mexico Statewide Alternative Dispute Resolution Commission

New Mexico Mediation Association



AMERICAN BAR ASSOCIATION

Criminal Justice Section

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This year's Institute will provide an overview of seminal findings and take-aways from key research studies in the field including by the ABA, AAA and others. The program will encompass a discussion of seven specific mediator techniques that parties and advocates find both appealing and unappealing, effective and less effective, as identified and informed by these cutting-edge studies.

Through unique videos created by Suffolk University Law Professor Dwight Golann, you'll see a diverse group of seasoned neutrals and advocates demonstrate techniques for breaking impasse and facilitating agreement. You'll observe the neutrals confront common issues, sometimes using controversial techniques; we'll then ask you to discuss how one might respond, and invite you to critique what they did.

Plenary sessions will be followed by small group discussions led by experts in the field. These discussions provide an opportunity for mediators and advocates to interact in small facilitated groups and create a unique environment to enhance your skill, knowledge and understanding of direct negotiation and third-party mediation processes.

## WHO SHOULD ATTEND?

- Litigators
- In-House Counsel and Other Corporate Users of Mediation
- Mediators
- Judges
- Claims Professionals

## INSTITUTE PLANNING

### PROGRAM CHAIRS

- Harold Coleman, Jr., Susan E. Guthrie, Edd McDevitt, Ana M. Sambold

### PLANNING COMMITTEE

- James J. Alfini, Debra Berman, Bryan Branon, Ingeuneal C. Gray, Rekha Rangachari

## SPONSORSHIPS

Sponsorship opportunities are still available!

Contact Ana Sambold at [sambold@sambold-law.com](mailto:sambold@sambold-law.com) for details.

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## AGENDA

### LEARN FROM EXPERIENCED PRACTITIONERS

Program Faculty Will Answer Your Questions on an Array of Topics, Such As:

- Proper drafting of a mediation agreement and retention letter
- Proper use of risk analysis
- Emotional and psychological issues in mediation
- How and when to use an apology
- Ethical dilemmas
- Developing and marketing a dispute resolution practice
- Confirming the settlement

## FRIDAY, NOVEMBER 15TH

8:00am – 9:00am

### Registration & Continental Breakfast

9:00am – 9:10am

### Welcome & Introductions

INSTITUTE CO-CHAIRS

**Harold Coleman, Jr.**, Mediator/Executive Director, AAAMediation.org

**Susan Guthrie**, Mediator/Principal, Breaking Free Mediation, Inc.

**Edd McDevitt**, Mediator/Arbitrator, ADR Office of Edd McDevitt

**Ana Sambold**, Mediator/Arbitrator, Sambold Law & ADR Services

9:10am – 10:10am

### Mediator Techniques & Emotions Plenary

BEHAVIORS STUDIED

- Addressing disputants' emotions, relationships or hostility
- Working to build rapport and trust, expressing empathy, structuring the agenda, or other "process" styles and actions

PRESENTATION/DISCUSSION

- "Humanizing" the disputing parties one to another by diffusing hostilities and negative emotions from

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the outset can inevitably make for a much more satisfying and productive mediation experience for all. Thus, the topics highlighted in Plenary #1 should arguably be “Job 1” for any serious mediator and for insightful counsel in best representing the interests of their principals...not only substantively, but emotionally and attitudinally as well. Similarly, a mediator’s primary focus from the outset (pre-mediation and beyond) must be to build rapport and genuine trust with the parties.

#### MODERATOR

- **Susan Guthrie**, Breaking Free Mediation, Inc.

#### PRESENTERS:

- **Kathleen Coble**, Coble Law and Mediation
- **Dr. Debra Dupree**, Relationships At Work Inc
- **Lori LaConta**, LaConta ADR

**10:10am – 10:20am  
Break**

**10:20am – 11:35am**

### **Small Group Discussions on Mediator Techniques and Emotions in Mediation**

Mediations are often highly charged emotional experiences for the principals and learning to manage those emotions and to create empathy and trust can be powerful tools for the mediator and advocate alike. Discuss how you address disputant emotions, create trust and show empathy and the outcome of each with your group. How do you find this helpful or no so helpful? Groups will have tracks such as Family, Young Lawyers, and Litigation.

**11:35am – 12:15pm  
Lunch**

**12:15pm – 1:15pm**

**Keynote with Professor Dwight Golann**, Suffolk University Law School

### **Grieving over Settlement: The Impact of Loss Reactions in Mediation**

#### BEHAVIORS STUDIED

- Distortions in decision-making provoked by feelings of loss
- Bargaining behaviors that appear adversarial or unethical

#### PRESENTATION/DISCUSSION

The story of mediation is one of success: Parties are happy to escape from intractable disputes, lawyers increasingly choose mediation as their path to agreement, and teachers celebrate the ability of the process to craft value-creating deals, even repair relationships. These claims are true, but they obscure an underlying reality—that many litigants experience settlement at least in part as a process of loss. The perception of losing powerfully distorts human decision-making, especially when a loss is perceived as unfair. It generates feelings strikingly similar to those in patients who confront a terminal illness or the loss of a loved one. These emotions, in turn, provoke parties to act in ways strikingly similar to tactics used by adversarial and unethical bargainers. This keynote explores why parties’ perceptions of loss in settlement are so strong, how they derail the negotiation process, and how mediators can respond to and deal with them.

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**1:15pm – 2:15pm**

## **Eliciting Disputant Suggestions and Caucusing Plenary**

### BEHAVIORS STUDIED

- Eliciting disputants' suggestions or solutions
- Using pre-mediation caucuses
- Using caucuses during mediation

### PRESENTATION/DISCUSSION

This plenary focus explores effective techniques by which skillful mediators and advocates draw parties/ participants into the process willingly and cause them to take greater ownership of the problem by eliciting suggestions/solutions through: (1) *pre-mediation caucusing* (largely for purposes of trust building and process design); (2) *course of mediation caucusing* (largely for options generation and problem solving); and even (3) *post-mediation caucusing* (largely for maintaining momentum, continued problem solving, and ultimately for purposes of "conflict containment", should a complete resolution of the issues not be in sight at that stage of the conflict management continuum.)

### MODERATOR

**Theo Cheng**, ADR Office of Theo Cheng LLC

### PRESENTERS

**Debra Berman**, South Texas College of Law Houston

**Hon. Deborah Hankinson**, Hankinson PLLC

**2:15pm – 2:30pm  
Break**

## **2:30pm – 3:40pm Small Group Discussions on Caucusing and Eliciting Disputant Suggestions**

Share your thoughts, "pro" or "con" causing at various stages of the mediation process. Explore with your group strategies, including limitations on what is presented and how it is presented during a joint session. Share your experience in joint sessions, both good and bad. Groups will have tracks such as Family, Young Lawyers, and Litigation.

**3:40pm – 3:50pm  
Break**

**3:50pm – 5:00pm**

## **Negotiating / Mediating Effectively AND Ethically**

This plenary will include a much needed focus on relevant lawyer ethical canons of the Model Rules of Professional Conduct (ABA, 2018) and the Model Standards of Conduct for Mediators (2005) concerning: (1) the ethical boundaries of "puffing," nondisclosure and deception within the framework of lawyer negotiations; and (2) how mediators are charged with being the principal guardians of process safety – *physical, psychological and emotional*, for the wellbeing of all participants. Mediators should be attitudinally and emotionally attuned to the spirit and mechanics underlying this ethical precept, applicable to all mediation types and settings.

### MODERATOR

**Harold Coleman, Jr.**, AAAMediation.org

### PRESENTERS

**James J. Alfini**, South Texas College of Law Houston

**Hon. Bruce E. Meyerson (Ret.)**, Bruce Meyerson PLLC

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5:30pm

## Welcome Reception with Institute Faculty

The faculty will be available to informally discuss questions raised during the first day's presentations. This social hour is a unique opportunity to take advantage of their experience in the dispute resolution field.

**SATURDAY,  
NOVEMBER 16TH**

7:15am – 8:30am

## Continental Breakfast & Networking

8:30am – 9:30am

## Pressing/Directive Mediator Actions and Mediator Recommendations /Opinions Plenary

### BEHAVIORS STUDIED

- Pressing or directive actions or approaches
- Offering recommendations, suggestion, evaluations, or opinions

### PRESENTATION/DISCUSSION

This plenary turns to the more conventional impasse-breaking approaches used by some mediators and advocates, but bordering on the unethical in some cases, in their zeal to "seal the deal." The exploration would focus on when and how *effective yet ethical* mediators and counsel navigate among facilitative, evaluative, transformative and yes...even *directive* models in varying degrees, but, significantly, always in manners respectful of party self-determination. Techniques will be demonstrated and "unpacked" for how a seasoned/circumspect mediator might offer recommendations, suggestions, evaluations or opinions in a "self-determined" manner (even when operating primarily in a facilitative mode) and how counsel can work most effectively in partnership with mediators to achieve these outcomes.

### MODERATOR

**Debra Berman**, South Texas College of Law Houston

### PRESENTERS

**Hon. Jeff McElroy**, New Mexico Eighth Judicial District Court

**Angela Reddock-Wright**, Reddock Law Group

9:30am – 9:45am

## Break

9:45am – 10:55am

## Small Group Discussions on Pressing /Directive Mediator Actions and Mediator Recommendations /Opinions

Discuss your experience with directive mediator actions and mediator opinions and recommendations. When do you feel this can veer into the unethical? How do you walk the fine line between the two? Groups will have tracks such as Family, Young Lawyers, and Litigation.

10:55am – 11:05am

## Break

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**11:05am – 12:05pm**

## **The Rise of International Mediation: the Singapore Convention**

Why has mediation been the lagging sidekick to arbitration in the world of international conflict resolution? We all know the myriad advantages that mediation has over arbitration; why is mediation not being embraced as enthusiastically as arbitration?

This session will address this question through the lens of a potentially paradigm shifting event: the August 7th signing of UNCITRAL's "The Singapore Mediation Convention", on the Enforcement of International Settlement Agreements. This agreement provides an enforcement mechanism for mediated settlements similar to that promulgated in 1958 for arbitration awards. The arbitration agreement, known as the "New York Convention", shook the world, and put arbitration on the map, for having married the impartial dispute resolution methodology of arbitration (in distinction to litigation held in potentially biased local courts) with transnational enforcement mechanism.

Will the Singapore convention put some extra vitamins in Robin's Wheaties, bringing him out of Batman's

shadow to perhaps create a new co-equal or even superior superhero? Our panel will discuss the mechanics and potential impact of the Singapore Convention, just a short few months after its initial signing.

### MODERATOR

**Ana Sambold**, Sambold Law & ADR Services

### PRESENTERS

**Gary Birnberg**, JAMS

**M. Imad Khan**, Hogan Lovells

**M. Salman Ravala**, Criscione Ravala, LLP

**Dr. Johannes P. Willheim**, Jones Day

**12:05pm – 12:45pm**

## **Lunch**

**12:45pm – 2:00pm**

## **Keynote with Trey Bergman, Bergman ADR Group**

**2:00pm – 2:15pm**

## **Break**

**2:15pm – 3:45pm**

## **Mediation Marketing Plenary**

Pitch-perfect mediation marketing and practice development in an ever-expanding digital age.

### MODERATOR

**Ingeuneal C. Gray**, American Arbitration Association

### PRESENTERS

**Erin Levine**, Levine Family Law Group and Hello Divorce

**Jeffrey T. Zaino**, American Arbitration Association

**3:45pm – 4:00pm**

## **Closing Remarks**

**4:00pm**

## **Adjourn**

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## FACULTY

### **James J. Alfini**

South Texas College of Law  
Houston  
Houston, TX

### **Trey Bergman**

Bergman ADR Group  
Houston, TX

### **Debra Berman**

South Texas College of Law  
Houston  
Houston, TX

### **Gary Birnberg**

JAMS  
Miami, FL

### **Theo Cheng**

ADR Office of Theo Cheng LLC  
Princeton Junction, NJ

### **Kathleen Coble**

Coble Law and Mediation  
Austin, TX

### **Harold Coleman, Jr.**

AAAMediation.org  
Los Angeles, CA

### **Dr. Debra Dupree**

Relationships At Work Inc  
Coronado, CA

### **Richard P. Flake**

Richard P. Flake, PLLC  
Houston, TX

### **Dwight Golann**

Suffolk University Law School  
Boston, MA

### **Ingeuneal C. Gray**

American Arbitration Association  
Houston, TX

### **Susan Guthrie**

Breaking Free Mediation, Inc.  
Chicago, IL

### **Hon. Deborah Hankinson**

Hankinson PLLC  
Dallas, TX

### **M. Imad Khan**

Hogan Lovells  
Houston, TX

### **Lori LaConta**

LaConta ADR  
Houston, TX

### **Mark E. Lassiter**

The Lassiter Law Firm  
Tempe, AZ

### **Erin Levine**

Levine Family Law Group & Hello  
Divorce  
Oakland, CA

### **Edd McDevitt**

ADR Office of Edd McDevitt  
Charleston, WV

### **Hon. Jeff McElroy**

New Mexico  
Eighth Judicial District Court  
Taos, NM

### **Hon. Bruce E. Meyerson (Ret.)**

Bruce Meyerson PLLC  
Phoenix, AZ

### **M. Salman Ravala**

Criscione Ravala, LLP  
New York, NY

### **Angela Reddock-Wright**

Reddock Law Group  
Los Angeles, CA

### **Ana M. Sambold**

Sambold Law & ADR Services  
San Diego, CA

### **John A. Sherrill**

American Arbitration Association  
Atlanta, GA

### **Dr. Johannes P. Willheim**

Jones Day  
Frankfurt, Paris and London

### **Jeffrey T. Zaino**

American Arbitration Association  
New York, NY

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## REGISTRATION

Note: This program has a limited capacity of participants. Please register early to ensure a seat.

## ONLINE REGISTRATION

[ambar.org/med2019](http://ambar.org/med2019)

## OFFLINE REGISTRATION

To pay with check, money order, or purchase order, [submit the form linked here](#) to:

**American Bar Association  
Attn: Service Center -  
Meeting/Event Registrations  
Department,  
321 N. Clark Street, Floor 16  
Chicago, IL 60654**

### Secure Fax Number

312-988-5850

## RATES

### Early Bird

(Through October 18, 2019)

### Starting

**October 19, 2019**

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### ABA DR Section Member or Collaborating Organization Member

\$525

\$625

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### ABA Member

\$625

\$725

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### Non-ABA Member

\$725

\$825

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### ABA Young Lawyer Member

\$300

\$300

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### ABA Student Member

(Space is limited)

\$150

\$150

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## TRAVEL INFORMATION

### LOCATION

South Texas College of Law Houston  
303 San Jacinto St  
Houston, TX 77002

### LODGING

#### Room Block

Courtyard by Marriott Houston Downtown/  
Convention Center  
916 Dallas St  
Houston TX 77002

\$149 per night

To reserve, call 832-966-1600 and refer to ABA  
Dispute Resolution Advanced Mediation Institute. The  
deadline for reserving is October 3, 2019 at 5pm CST.

Please visit <http://ambar.org/med2019> and click  
"Travel" on the left-hand side for more information.

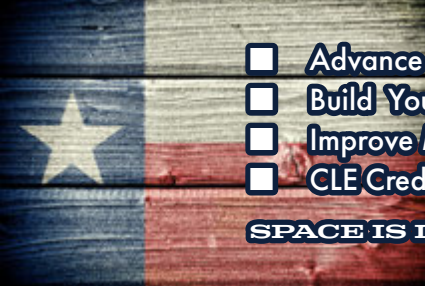
## OTHER INFORMATION

### CANCELLATIONS

Cancellations must be received by October 25, 2019  
via email to [Melissa.buckley@americanbar.org](mailto:Melissa.buckley@americanbar.org) in  
order to receive a refund less a \$50 processing fee.  
After this deadline, no refunds will be granted, but  
registration substitutes will be allowed.

### SPECIAL NEEDS

Confirmed registrants should notify [Melissa.buckley@americanbar.org](mailto:Melissa.buckley@americanbar.org) ASAP if special assistance for ADA  
and/or dietary needs is required.

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## SCHOLARSHIPS

Scholarships to defray tuition expense for ABA programs are available upon application on a program-by-program, case-by-case basis. Preference will be given to public interest lawyers, government lawyers, full-time law professors, solo or small firm practitioners of limited means, and unemployed attorneys.

Visit <http://ambar.org/med2019> for the link to the scholarship application. Applications are due by 5 pm ET on October 4, 2019; applications received after this date will not be considered.

You will be notified of a decision prior to the early bird registration deadline. A minimum fee may be charged on all approved scholarship applications to defray expenses.

## CLE CREDIT

The ABA will seek 12.5 hours of CLE credit, including 1.17 hours of ethics credit, 2 hours of skills credit, and 1 hour of professionalism credit, in 60-minute states, and 15 hours of CLE credit, including 1.4 hours of ethics credit, 2.4 hours of skills credit, and 1.2 hours of professionalism credit, for this program in 50-minute states. Credit hours are estimated and are subject to each state's approval and credit rounding rules. Please visit the program website at [ambar.org/med2019](http://ambar.org/med2019) for program CLE details or visit [americanbar.org/mcle](http://americanbar.org/mcle) for general information on CLE at the ABA.

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