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ADR in Action



Editor's Note: "ADR in Action" introduces our readers to accomplished practitioners who have compelling insights and have led major new initiatives in the field of ADR.

*The interview with **Erin Gleason Alvarez** has been conducted by **Bennett G. Picker**, Stradley Ronon Senior Counsel. Erin Gleason Alvarez previously served as Global Head of ADR Programs for AIG. She is now an*

arbitrator and mediator. Her practice is focused on commercial and insurance disputes.

In March 2017, the CPR Institute's Mediation Committee released "Mediation Best Practices Guide for In-house Counsel: Make Mediation Work for You." The Guide was created to address concerns raised by in-house counsel that the mediation process can be frustrating and inefficient from the perspective of the parties. The Mediation Committee, then led by a team of in-house lawyers and leaders in mediation practice, set off on a mission to learn what practices work best and what issues were most troubling to in-house lawyers. The resulting Best Practices Guide addresses these issues, from how to get counterparties to the mediation table to negotiation planning and advice on what to do if the case does not settle.

Ben: Why did CPR's Mediation Committee create this Guide?

Erin: Our Committee's corporate members wanted to provide mediation best practice materials that specifically spoke to the concerns of in-house counsel. There were too many stories of in-house counsel who felt disengaged from the mediation process and were not sure what the best role was for the in-house lawyer. In this Guide, we sought to empower corporate counsel by providing practice tips and general advice on how they could remain in control of the mediation process.

Ben: Is that why the title includes the phrase "Make Mediation Work for You"?

Erin: It is. We are all told ad nauseam that mediation is the parties' process. But our review found that many parties felt that the process had slipped away from them – that it felt more and more like the process belonged to advocates and mediators.

Ben: What are some examples of how this Guide is different from others?

Erin: It was not only written for an in-house audience but was largely written by in-house lawyers who specialize in mediation practice, including two of the Mediation Committee's chairs (namely, Rick Richardson, Vice President and Associate General Counsel for GSK, and me, while I served as Global Head of Alternative Dispute Resolution for AIG) and David Burt, CPR Executive Consultant and former Corporate Counsel at DuPont. The

CPR Philadelphia Regional Meeting at Stradley Ronon on Effective Mediation Strategies for Client and Counsel

By Anna M. Hershenberg, Esq., Vice President, Programs and Public Policy, CPR

On April 10, the International Institute for Conflict Prevention and Resolution (CPR) held its first Philadelphia regional meeting at the offices of Stradley Ronon Stevens & Young, LLP, a long-standing CPR member and first recipient, more than a decade ago, of CPR's "Law Firm Award for Excellence in Alternative Dispute Resolution" for the firm's commitment to principled and creative conflict management and resolution.

The meeting drew more than 130 people, with the attendees split evenly between in-house counsel from Fortune 500 companies, trial attorneys from the nation's top law firms and highly sought-after neutrals. The prominent attendees included 15 former judges and general counsels and chief legal officers from Aetna Inc., Comcast Corp., Deloitte, General Motors Corp., GlaxoSmithKline, Hewlett-Packard Co., Independence Blue Cross, Johnson & Johnson, KPMG LLP, Merck & Co., Monsanto Co., Pfizer Inc., TE Connectivity Ltd., Triumph Group Inc. and Verizon Communications Inc., among others.

The program, "Effective Mediation Strategies for Client and Counsel," was divided into three parts. Bennett G. Picker, Senior Counsel at Stradley Ronon, CPR neutral and member of CPR's Council, and Noah Hanft, President and CEO of CPR, kicked off the meeting with welcoming remarks.

Wharton School lecturer and mediation trainer Eric Max then led the first part of the program, "Negotiating Strategies for Clients and Counsel," by facilitating an interactive discussion among the in-house counsel, outside counsel and mediator audience members. Professor Max outlined the multiple layers of negotiation occurring at any given time during a mediation. He challenged the audience with provocative questions, such as pressing each stakeholder to reveal whether they lie to each other during the course of a mediation and exploring the reasons for their conduct.

After a networking coffee break, the program resumed with Sophia Lee, Partner at Blank Rome and former Chief Litigation Counsel at Sunoco Inc., skillfully moderating a panel discussion on the keys to effective preparation and advocacy with panelists Francine Friedman Griesing, Managing Member of Griesing Law; Scott S. Partridge, Vice President of Global Strategy at Monsanto and a member of CPR's Board of Directors; and John Wright, Senior Vice President and General Counsel of Triumph

Group. Of particular interest to the attendees was Mr. Partridge's explanation of how he created a relationship-based conflict identification and resolution process to shrink Monsanto's – and then the entire industry's – litigation portfolio.

The highlight of the evening came when the Honorable Timothy K. Lewis (Ret.), Counsel at Schnader Harrison Segal & Lewis LLP, former federal circuit and district court judge and chair of CPR's Diversity Task Force, and Mr. Picker led the third part of the program, "Promoting Diversity in Mediation." Mr. Picker – who has been championing diversity and leading by example for decades – provided concrete steps that in-house counsel, outside counsel and mediators can take to drive diversity and inclusion in the dispute resolution field. Judge Lewis then delivered deeply moving and personal remarks on his experiences as a black attorney and federal court judge in a predominately white legal world. He challenged the audience to mentor colleagues

from historically disadvantaged backgrounds, reminding them that everyone got to where they are by standing on someone else's shoulders, and "that talent is distributed equally across all races and ethnicities and genders and identities. Opportunity is not."

He set out his vision for what true workplace inclusion should look like and how to achieve it: "The goal here is not to be included simply because of race or gender; the goal is not to be excluded simply because

of these qualities. But in order for us to get there, we have to make a concerted effort, and we must challenge ourselves, our assumptions, and sometimes each other." Judge Lewis' remarks, which received a standing ovation, will appear in "Alternatives to the High Cost of Litigation," CPR's monthly international newsletter (<https://onlinelibrary.wiley.com/journal/15494381>).

The evening concluded with closing remarks by Thomas J. Sabatino, Jr., CPR Board Vice Chair and Senior Vice President, General Counsel, Law & Regulatory Affairs at Aetna and a networking cocktail reception.

In short, the CPR Philadelphia Regional Meeting introduced attendees to what CPR does best: create opportunities for high-level conversations between inside and outside counsel and provide businesses with the tools to cultivate a corporate culture that embraces diversity of perspective, and early and creative ways to prevent and resolve business disputes. ■



From left: Bennett G. Picker and Hon. Timothy K. Lewis.

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Guide was also developed not only by a team of in-house writers and editors but also with the help of experienced and respected members of CPR's Panel of Distinguished Neutrals.

In it, we cover topics including:

- Why it is a good idea to let your counterparty select the mediator – even if that mediator is not your first choice.
- Advice on how to prepare for mediation in a way that will ensure productive negotiations.
- How to manage counsel and the mediator in preparing for negotiations.
- What to do when the mediator appears to be biased against your company or just clearly inefficient.
- Practice tips that in-house counsel can utilize to overcome impasse during the mediation.

Ben: Can mediation advocates learn from the Guide?

Erin: The Guide should be instructive for both advocates and mediators. In drafting these guidelines for in-house lawyers, we

hoped that other participants in the process would also take heed, perhaps learning a bit more about the in-house perspective and what clients expect of counsel and of neutrals.

Ben: What is the Mediation Committee doing to spread the word?

Erin: The Mediation Committee will host an event in New York later this year. This will be a great opportunity to hear from leaders in the mediation field on how to put paper into practice.

Ben: Tell us about your own professional career since leaving AIG.

Erin: I started my own arbitration, mediation and consulting practice in September 2017. My cases have focused on insurance and commercial matters, including coverage, corporate dissolution, shareholders and breach of contract disputes. Working as a neutral was a natural next step for me, after years of working as an advocate and then in-house. I have greatly enjoyed the transition to my new role in dispute resolution practice. ■

Stradley at Work

25 Stradley Ronon Attorneys Named to 2018 *Best Lawyers in America* List



Twenty-five Stradley Ronon attorneys were named to the recently released 2018 edition of *The Best Lawyers in America*, regarded as a definitive guide to legal excellence. Two attorneys from Stradley Ronon's ADR

Group were included on the list: **Ben Picker** and **Kevin Casey**.

Stradley Ronon Listed in U.S. News – *Best Lawyers* “Best Law Firms”

Stradley Ronon received top marks in several practice areas in the 2018 *U.S. News – Best Lawyers* “Best Law Firms” publication. The ADR Group was ranked in the top-tier rankings in Philadelphia for Arbitration and Mediation.



Senior Counsel, **Ben Picker** served as Conference Chair when Stradley Ronon hosted the Philadelphia Regional Meeting of the International Institute for Conflict Prevention and Resolution entitled “Effective Mediation Advocacy: The Roles of Client and Counsel.” The four-hour conference included mediation training, a corporate counsel panel on best mediation advocacy practices, and a discussion on diversity and inclusion initiatives led by Hon. Timothy K. Lewis and Ben.

Ben delivered the keynote address at the Canadian National Mediation Conference held at Osgoode Hall Law School in Toronto. Ben's topic was “The Changing Landscape of Mediation – the Past 40 Years.”

Ben was presented with the PNC Achievement Award during the Philadelphia Bar Association's annual meeting luncheon. The award honors significant accomplishments in improving the administration of justice. Ben was recognized for being a “pioneer in the field of alternative dispute resolution” who has “changed the ADR landscape regionally, nationally and internationally.” He was also lauded for his leadership in promoting diversity in ADR. Picker donated his honorarium to Pennsylvanians for Modern Courts and Philadelphia VIP.

Ben delivered an address, “The Landscape of ADR: The Past 40 Years,” at a dinner meeting of the Association of Conflict Resolution's Greater Philadelphia Chapter. The presentation explored the origins of commercial mediation from its start in the mid-to-late 1970s through the present, and the ways in which the process and business of mediation have changed over the decades.

Ben was selected by *Best Lawyers* as a 2018 “Lawyer of the Year” for mediation in Philadelphia. *Best Lawyers* names a single lawyer in each specialty in each community as “Lawyer of the Year.” Those honored have received particularly outstanding ratings in the surveys by earning a high level of respect among their peers for their abilities, professionalism and integrity.

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Partner **Pat Kingsley** was appointed to the Arbitration Committee of Conflict Prevention and Resolution. CPR is an independent nonprofit organization that helps global businesses and their counsel prevent and resolve commercial disputes more effectively – both directly, by enhancing their capabilities, and indirectly, by improving

ADR capacity worldwide.



Counsel **Karl Myers** served as a moderator at the 2018 Commonwealth Court Practicum. The program, titled “Practices, Procedures, and Perspectives from the Bench,” was presented by the Pennsylvania Bar Association’s Administrative Law Section and took place in the Commonwealth Court’s en banc courtroom in Harrisburg. Karl’s panel, entitled “Court Operations,” featured three Commonwealth Court administrators who discussed the Court’s rules and procedures in a Q&A session with Karl.

Karl recorded “Optimizing Technology for Appellate Practice,” a podcast for the American Bar Association that provided practical advice for practitioners on how to use technology to achieve efficiencies in preparing appellate briefs and appendices.



Partner **Ellen Rosen Rogoff** presented an employment webinar with Randy Powell, President of the Center for Applied Preventive Psychology. The webinar – “#MeToo: Are Potential Sexual Harassment Claims Keeping You Up at Night?” – discussed how to identify sexual harassment under federal and state law, risk

assessment of current culture, policies and procedures, guidance on responding to workplace incidents, the role of culture in preventing sexual harassment and how to create the desired culture.



Partner’s **Craig Blackman** and **Kevin Casey** presented at The University of the Arts’ Graduate School Program in Museum Services in Philadelphia. Craig presented “The Role of Insurance in the Fine Arts and Museum

World,” and Kevin spoke on “Intellectual Property Law for Museums.”

Kevin served as a panelist at Temple University Beasley School of Law in Philadelphia. The panel, titled “*Matal v. Tam*: Disparaging Trademarks,” discussed the June 2017 U.S. Supreme Court decision in *Matal v. Tam*, which involved an Asian-American rock band called “The Slants,” and other disparaging trademarks, such as the Washington Redskins mark. The audience included law students, professors and staff interested in IP Law and in Sports and Entertainment Law. Their questions to the panel addressed the trademark law, civil rights and free speech aspects of the case.

Kevin authored the chapter “Tools Useful to Persuade, Evaluate, and Communicate in ADR Proceedings” in the second edition of the *American Bar Association’s* book “ADR Advocacy, Strategies, and Practices for Intellectual Property and Technology Cases.” Kevin’s chapter provides guidance and practical knowledge of different screening and technology tools for use in ADR.



Partner **Steve Scolari** presented at the Chamber of Commerce for Greater Philadelphia’s Excellence Awards: Winner’s Roundtable. The roundtable, exclusive to executives from past and current Excellence Award-winning companies, focused on effective succession planning for small and midsize growth-oriented businesses. ■