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ADR Prominent Part of "The Basics" at UM Law School

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ADR PROMINENT PART OF 'THE BASICS' AT UM LAW SCHOOL

The author, Greg Munro, is an associate professor and director of professional skills at the UM School of Law. Before teaching, he practiced plaintiff's civil trial work in Billings for 13 years.



that the theory and practice of ADR occupy a prominent spot in a law school's curriculum. This is especially true for the University of Montana School of Law which has gained national recognition for its progressive curriculum integrating theory and practice. UM's law faculty has not ignored the state and national developments in ADR and has specifically addressed ADR concerns in the law school curriculum.

More than a decade ago, the UM School of Law faculty set out to determine the future needs of the state's legal profession. After consulting with bench and bar, the faculty adopted the mission of educating students for entry-level practice competence in a non-urban setting. UM became one of the first "practice-referenced" law schools, requiring students not only to master legal theory but also to demonstrate their ability to apply theory in a broad range of common transactions. UM's approach is indeed unusual in a nation of law schools emphasizing "thinking like a lawyer," but doing little to develop in

students any ability to apply the law.

In pursuing the mission of preparing students for entry-level

competence, the law school faculty began the daunting task of expressly stating the "competencies," or legal transactions or tasks that every student graduating from UM School of Law should be able to perform. For purposes of identifying competencies, the faculty divided the curriculum into four tracks or general areas of focus: The Business/Property Track, Individual/Family Law Track, Public Law Track and Dispute Resolution Track. Competencies in the latter cover lawyer tasks, transactions and skills in every aspect of dispute resolution including initial client interview, fact finding, formation of

fact and legal theories, demand letters, civil and criminal litigation and the alternative methods of dispute resolution. In all, the faculty identified 50 explicit dispute resolution competencies.

Many of the competencies in dispute resolution are specifically related to ADR. The graduate shall be able to:

- Determine the appropriate forum (court or agency) for dispute resolution.

- Select an appropriate method or combination of methods for resolution of disputed legal rights or obligations.

Comment: The graduate shall be able to evaluate the advantages and disadvantages of resolving a dispute by various methods including negotiation, plea bargaining, mediation, arbitration, and litigation.

- Negotiate settlement of a civil legal dispute.

- Develop an appropriate plea bargain strategy in a criminal case of the kind defined in General Competency XI.

- Negotiate a plea bargain in a criminal case.

- Represent a client in mediating settlement of a civil legal dispute.

Comment: The competency is to represent a client in mediation and not to be a mediator.

- Represent a client in arbitration of a civil dispute.

- Represent a client in a civil "mini-trial" or "summary trial."

- Select an appropriate method or combination of methods for resolution of marriage dissolution disputes, including counseling regarding alternatives to dissolution.

- Negotiate settlement of a marriage dissolution dispute involving custody, child support, spousal support and property.

- Evaluate, draft and explain civil settlement documents including releases, mutual release agreements, settlement agreements, stipulations for dismissal of claims for relief and

(More ADR, page 4)

THE GOAL IS TO INSTILL IN THOSE WHO WILL ENTER THE LEGAL PROFESSION THE KNOWLEDGE, SKILL, PERSPECTIVE AND PERSONAL ATTRIBUTES NECESSARY TO THE EFFECTIVE PRACTICE OF LAW.

As a result, arbitration, mediation, court-annexed settlement conferences, and summary trials are increasingly becoming part of lawyers' practices. With few exceptions, most attorneys who have engaged in these activities would acknowledge that ADR procedures have served their clients' best interests. All concede that clients in the 1990s and beyond will expect their lawyers to advise them of alternative dispute resolution options, and to be competent to represent them in ADR proceedings.

The emergence of ADR as a significant part of the law practice dictates

(ADR, from page 3)

defenses, and disbursement statements.

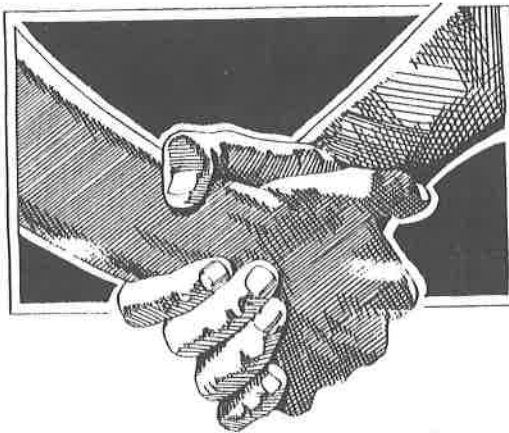
Through a variety of classes, the UM School of Law addresses each of the competencies stated for the Dispute Resolution Track, including the ADR competencies. Treatment of ADR begins in the introductory program, a three-week intensive course to introduce entering students systematically to basic materials necessary to all first-year courses and to explain the various aspects of a lawyer's work and professional life.

The course consists of five basic "blocs," one of which is called the Dispute Resolution Bloc. That bloc introduces students to the concept of ADR as a component of dispute resolution in the American justice system and surveys ADR techniques, including mediation, negotiation, voluntary and court-annexed arbitration and "mini" or summary trials. The bloc involves two demonstrations. In the first demonstration, faculty, members of the State Bar ADR Committee, and upper class law students collaborate in mediating a civil legal dispute. In the second, faculty demonstrates a judge trial of a civil legal dispute. Critique, comments and questions follow each demonstration. Guided by faculty and practicing attorneys, the students discuss the strengths, weaknesses and applications of each of these methods of dispute resolution.

ADR is next treated in Pretrial Advocacy I, a required first-year course in which students examine the history of the American adversarial system and analyze its strengths and weaknesses. Using the excellent American Bar Association *ADR Primer*, students study the essential elements of each of the recognized methods of alternative dispute resolution, noting the possible applications of each method and its strengths and weaknesses.

The second year of the Dispute Resolution Track is devoted to required courses in Evidence, Trial Practice and Criminal Law and Procedure, all

of which address the more traditional methods of dispute resolution. In the third year, however, the required course in Lawyering is primarily based in ADR and includes instruction in common ADR techniques, including negotiation, mediation, plea bargaining, arbitration and the law and drafting of releases. In addition to attending lectures on each of the ADR methods, students must apply their knowledge of ADR in the resolution of hypothetical legal disputes. For example, half the class drafts a formal demand letter using a fact pattern and supporting documents provided by the faculty. The other half prepares responses, setting the stage for a negotiating session. Students then meet to negotiate the disputes under the tutelage of practicing civil attorneys and faculty who provide critique and mentoring on the negotiation process.



Students also plea bargain in a simulated criminal case and assume the role of attorneys, parties and mediators in mediation of a civil legal dispute. Each of these exercises is followed by a critique, comments and questions. Finally, the faculty provides the students with a complex fact pattern involving negotiated settlement by one defendant in a multi-party lawsuit. The students have the task of drafting an appropriate release that will protect the settling defendant from further claims from the plaintiffs and remaining defendants.

It is likely that students' first opportunity to apply their knowledge to

real client problems occurs in their third-year clinics. The law school affords students a choice of nine clinics dealing with areas of civil justice, criminal justice and public law. Under the supervision of law faculty and practicing attorneys, students often have occasion to use ADR techniques of negotiation, mediation and arbitration.

As this brief overview suggests, the UM School of Law's Dispute Resolution Track is a comprehensive and carefully ordered program designed to provide students entry-level competency in handling disputed legal rights in our criminal and civil justice systems. The Track addresses both traditional and alternative forms of dispute resolution requiring students to analyze the strengths, weaknesses and appropriate applications for each form. Far from treating ADR as a replacement for trial, the faculty emphasizes that ADR techniques are part of a wide section of methods for resolving disputes. The goal is to instill in those who will enter the legal profession the knowledge, skill, perspective and personal attributes necessary to the effective practice of law.

As the curriculum at the law school continues to evolve, the theory and practice of techniques in ADR will remain a prominent component of the education of Montana law students. If the school equips those entering the profession with a wider variety of skills to resolve the disputes of Montana citizens, the profession will have increased flexibility to deal with the many and diverse cases arising in society as we near the year 2000. □

RESOLUTIONS MUST BE SUBMITTED BY MAY 1

Members of the State Bar of Montana who wish to present resolutions at the June 19 Annual Meeting must submit them no later than May 1 to George L. Bousliman, executive director, State Bar of Montana, P.O. Box 577, Helena, MT 59624.