

# Associates in Dispute Resolution LLC

Mediation

Arbitration

Dispute Resolution

## Dispute Resolution Update February 2014

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### ***Dispute Resolution Update***

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### **Dear Friends and Colleagues:**

This edition of Dispute Resolution Update features recent mediation-related court decisions, as well as news describing dispute resolution initiatives in this country and throughout the world. The information has been summarized by Keith L. Seat, a respected mediator and Editor of the International Academy of Mediator's newsletter.

For those readers interested in following advanced dispute resolution innovations, join Larry Rute in Miami for the 16<sup>th</sup> Annual ADA Section of Dispute Resolution where he will be presenting Successfully Mediating the Multi-Party Fair Labor Standards Act Case: Terminology, Tactics and Traps with Kansas City practitioners, Mike Hodgson (The Hodgson Law Group) and Heather Lake (Constangy Brooks & Smith LLC). The conference will include more than 80 concurrent CLE programs presented by leading ADR professionals, practitioners and academic faculty addressing court topics and cutting-edge issues in dispute resolution. The Spring Conference also provides a wide array of networking opportunities. You can earn up to one-year's worth of CLE credit. For more information regarding conference registration, [click here](#):

### **Featured Mediator**

**Patrick Nichols**

**Associates in Dispute Resolution LLC**



Mr. Nichols is a full time neutral practicing in mediation and arbitration. He is a partner in Associates in Dispute Resolution. Until December 2003, he maintained a litigation practice involving primarily personal injury, employment, and constitutional litigation. He now mediates and arbitrates in all areas including the following areas of particular emphasis.

- Personal Injury (due to automobiles, vehicles, premises, or criminal agency)
- Legal Malpractice
- Employment Claims, race, age and gender, harassment and discrimination

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- Insurance Coverage for fire, casualty, construction and automobile related Issues
- Cases of Catastrophic Injuries, life care plans and wrongful death
- Family Law Matters Including financial, custody and parenting issues.

He is committed to enhancing the abilities of lawyers and other neutrals, and as a result, writes and trains others extensively, including authoring a series of articles on effective advocacy in mediation, and seminar presentations on a wide range of topics including automobile and employment mediations, mediator ethics, high conflict divorce and using and understanding the power of emotion and behavior in mediation. A complete list of recent speaking engagements is included in his full mediator's resume. For additional information including contact information, click here.

  
Larry Rute



  
Patrick Nichols

***Distinguished Fellows***  
of the International Academy of Mediators



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## Mediation Quote

**"In negotiating the highways and byways of life, recipes can take us only so far. Beyond getting the right ingredients or dutifully following instructions, to become a 'quality chef' - in cooking and in life - we need to reach beyond the fundamentals and learn to adapt, improvise, and utensils - our "best practices" and techniques - but also our inner strengths and deeper wisdom.**

**"The key to mastery, to achieving greatness, in the kitchen or in the boardroom, is not your toolbox. *It's you.*"**

**- Erica Ariel Fox, *Winning from Within: A Breakthrough Method for Leading, Living, and Lasting Change* (HarperCollins 2013) at xv-xvi**

## Recent Mediation Cases & Resolutions

### New York Proposal for Mandatory Mediation of Commercial Cases in Comment Period

The Commercial Division Advisory Council of New York County's trial court has recommended an 18-month pilot program which would send every fifth commercial case to mandatory mediation, unless a party shows that mediation would be ineffective or unjust, or all parties in a case opt out. Parties would be able to choose their mediator or obtain a mediator from the court's roster. Comments on the proposal may be submitted through February 11, 2014.

[New York Unified Court System Memorandum and Appendices](#)

(December 11, 2013)

### Use of Planned Early Dispute Resolution

The ABA Dispute Resolution Section established the Planned Early Dispute Resolution Task Force in 2011 to encourage adoption of Planned Early Dispute Resolution (PEDR), a framework for using a variety of resolution processes tailored to the dispute at the earliest appropriate time. PEDR includes direct negotiation, mediation, standing neutrals, arbitration and hybrid processes. A User Guide has been developed to help parties tailor PEDR processes to their business needs.

[PEDR User Guide](#); [Mediate.com](#) (November 2013)

### Ontario Insurance Regulator Eliminates Mediation Backlog

Mediations sought by claimants in disputes with insurers before Ontario's insurance regulator, the Financial Services Commission of Ontario (FSCO), had reached a backlog of 29,000 cases in March 2012, but has been eliminated by bringing in an outside mediation provider. When mediation is not successful, however, the cases move on to arbitration, where there is now a backlog with parties waiting nine months or more for arbitration dates.

[Law Times](#) (December 16, 2013)

### Other International Mediation Developments

- The **E.U.**'s Office for Harmonization in the Internal Market (OHIM) offers mediation for disputes involving trademarks and designs in which OHIM decisions are being appealed. [Lexology](#) (December 2, 2013); [OHIM Mediation](#)
- Mediation can be requested by parents or staff members over a child's course of treatment at the Evelina London Children's Hospital, which is a new project of the Medical Mediation Foundation in the **U.K.** [FierceHealthcare](#) (December 10, 2013)
- Homeowners having difficulty making mortgage payments in **Ireland** to AIB Group can obtain free mediation services from independent advisors who are part of the Irish Mortgage Holders Organization. [Irish Times](#) (November 4, 2013)
- A taskforce is being established by the government in **Scotland** to mediate disputes among fishermen competing in the same area of the sea over vandalism of fishing gear and other issues. [Herald Scotland](#) (November 16, 2013)
- With the government of **South Africa** preparing for court-annexed mediation, groups of internationally-accredited commercial mediators are being developed for "built environment" (including construction and real estate) disputes. [eProp](#) (November 12, 2013)
- **Saudi Arabia** has established a mediation panel to address the large number of disputes between domestic workers and employers, but if the parties cannot reach agreement the panel

will render a verdict. [Arabian Business](#) (December 16, 2013)

- The Lahore (**Pakistan**) Chamber of Commerce and Industry is promoting mediation to resolve commercial disputes and improve the environment for investment and business activities. [Business Recorder](#) (November 1, 2013).
- **Singapore** is moving toward becoming a dispute resolution hub in Asia with a proposal to create a Singapore International Mediation Centre recommended by the International Commercial Mediation Working Group, [glassBYTES](#). (December 4, 2013).
- A mediation bureau to address increasing numbers of medical malpractice claims is being established by the Malaysian Medical Association and the Medico-Legal Society of **Malaysia**. [The Star Online](#) (November 17, 2013)
- The non-profit LEADR NZ has taken the final steps to establish an integrated LEADR with over 2,600 members in **Australia, New Zealand** and **Asia-Pacific**. [Scoop Independent News](#) (November 13, 2013)
- A mediation center has been launched to minimize workplace conflict by the Petroleum Company of **Trinidad and Tobago** Ltd. (Petrotrin) in a landmark achievement in collaboration with three bargaining units. [Trinidad Guardian](#) (November 21, 2013)

## Other Notable News & Programs

- A pilot mediation program has been approved by the Citizens Police Review Board to address complaints against the police department in Columbia, Missouri. Funding is in place in the city budget and a Request For Proposals has been issued for mediation services. [Columbia Daily Tribune](#) (November 16, 2013)
- The South Dakota Department of Agriculture Mediation Program is seeking mediators in various parts of the state and is offering mediation training. Mediation is provided relating to agricultural lending, federal land grazing permits and surface depredation caused by oil and gas development. [Rapid City Journal](#) (November 3, 2013)
- Virtual conferencing for mediations is being offered by a U.K. provider where the parties cannot easily come together to mediate, such as workplace disputes within global or multi-site companies. [PRWeb](#) (November 28, 2013)
- A judge in Pima County, Arizona, is urging mediation to resolve consumer debt cases in her courtroom, with success in about 60 cases on her docket since 2012. [Arizona Daily Star](#) (November 29, 2013)

## Dispute Resolution News & Initiatives

### California Mediation Confidentiality Statute Prevents Enforcement of Settlement in Federal Court

A federal court in California "reluctantly" held that even though the parties settled in mediation by accepting in writing a mediator's proposal, and the mediator stated in writing that the case was settled, since there was no express statement that the settlement agreement was binding or admissible, as required by California law, the agreement could not be admitted or enforced by the court.

[In re TFT-LCD \(Flat Panel\) Antitrust Litigation](#), No. M 07-1827 SI (U.S.D.C. N.D. Cal., December 3, 2013)

### Mediator Improperly Testified About Oral Settlement in Kansas Mediation, Absent Statutory Exception

A Kansas appellate court concluded that the trial court erred in permitting a mediator to testify that an oral agreement had been reached in mediation and what the terms of the purported agreement were.

The appellate court noted that several states, including Louisiana, Ohio, Wisconsin, Kentucky, Connecticut, Iowa and Wyoming, have express exceptions allowing mediators to testify about disputed agreements, but that Kansas does not have such an exception. Thus, the general rule of mediation confidentiality applies as long as any party objects to admitting mediation communications, which occurred in this case. Without the mediator's testimony there was not sufficient evidence of the terms to enforce any agreement. The appellate court urged parties to put settlement agreements in writing, citing a law review with a form checklist and term sheet.

[Baraban v. Hammonds](#), No. 105,993 (Kan. Ct. App., October 18, 2013)

## Oral Settlement Agreement Not Enforceable Due to Disagreement over Material Term

While the parties agreed that an oral settlement agreement had been reached in mediation, a Delaware court refused to enforce it because of disagreement over the scope of the release, which the court concluded was a material term. Mediation confidentiality was waived by the parties relying on mediation communications. However, statements of the mediator during the mediation were generally excluded as hearsay because the court found no applicable hearsay exception.

[United Health Alliance v. United Medical](#), CA No. 7710-VCP (Del. Ch., November 27, 2013)

## Florida's Sunshine Laws Override State Mediation Confidentiality, But Not Federal Court Mediation Provisions

A Florida state court held that confidential mediation sessions in a related federal case between city officials, union leaders and a Pension Board involved collective bargaining and thus violated the state's Sunshine Laws because they were not open to the public. The court rejected the argument that Florida's mediation laws provide an exemption from the state's Sunshine Laws, but noted that a federal court order requiring private mediation would override the Sunshine Laws. The court enjoined the parties from negotiating pension benefits in any subsequent confidential federal mediation sessions, unless ordered to mediate in private by the federal court after the parties informed the federal court of the injunction and sought a waiver.

[Denton v. Mayor Brown](#), No 16-2013-CA-5799 (Fla. Cir. Ct., December 31, 2013)

## Ontario Court Imposes Costs for Sham Mediation

An Ontario, Canada, court ordered defendant to pay C\$60,000 in costs for "sham" mediation after a C\$248,000 verdict was rendered against it. Defendant's counsel had agreed to briefly mediate but wrote that defendant was "not interested in settling" and then stood firm on its modest offer in the mediation. The court did not rely on any other details from or about the mediation, but noted in imposing costs that a C\$50,000 gap between the offer and demand required a six-day trial.

[Ross v. Bacchus](#), 2013 ONSC 7773, No. 10-22627 (Ontario Super. Ct., December 16, 2013); [Kluwer Mediation Blog](#) (December 23, 2013)

## Progress in Mediation of Massive Detroit Bankruptcy

- A settlement in Detroit based on the recommendation of the lead mediator was reached on Christmas Eve with banks who underwrote a controversial pension funding plan, which will reduce the amount Detroit owes by \$128 million or 43% of the secured debt. The settlement must be approved by the bankruptcy judge. [The Sacramento Bee](#) (December 24, 2013)
- The lead mediator has proposed that nine nonprofit foundations create a fund to defend the Detroit Institute of Art, which has a 66,000 piece collection, and prop up the city's pension funds. [Chicago Tribune News](#) (November 14, 2013)
- The lead mediator required Detroit to disclose details of its proposal to spin off the water and sewer department which will be the focus of two days of mediation scheduled in New York. [Detroit Free Press](#) (December 31, 2013)
- The lead mediator - a federal judge - is able to avoid scheduling challenges by simply ordering

the parties to appear, including the session on Christmas Eve, at which lack of attendance could have resulted in immediate sanctions, including default judgment. [The Detroit News](#) (December 19, 2013)

## Other Notable & High Profile Proceedings

- Rulings in the Detroit bankruptcy, such as the bankruptcy court's holding that pensions are not above other creditors, will impact the San Bernardino, California, bankruptcy which is also in mediation developing a term sheet for the bankruptcy plan. The California mediation has made significant progress and eight additional mediation days are scheduled. [The Bond Buyer](#) (December 10, 2013); [San Bernardino County Sun](#) (December 10, 2013).
- The West Virginia Supreme Court upheld a lower court decision to deny discovery into mediation relating to settlement of class actions that was sought by those objecting to the settlements. The court held that the difference between the opening settlement offer and the final agreement was merely the normal give and take of negotiation, rather than evidence of collusion between the parties. [Allen v. Monsanto Co.](#), No. 13-0418 (W. Va., November 22, 2013).
- The first four settlements have been reached in early mediation of Stryker hip recall cases; two other mediations did not reach settlement. Additional mediations are scheduled. Following the Stryker hip recall of 20,000 hip stems worldwide in 2012, over 500 lawsuits have been consolidated in New Jersey state court, with over 450 additional cases in federal multidistrict litigation in Minnesota. [The Sacramento Bee](#) (December 18, 2013).
- After four years of litigation, Toyota is entering an intensive settlement process involving two-stage mediation in an effort to resolve 375 pending state and federal lawsuits over claims of unintended acceleration by its vehicles. [Law Times](#) (December 16, 2013)
- The NCAA and a group of plaintiffs' lawyers began mediation in November in a landmark concussion lawsuit. A second set of plaintiffs is scheduled to begin mediating with the NCAA in February. [CBS Sports](#) (November 4, 2013)
- Mediation of a securities class action lawsuit against Chanticleer Holdings has resulted in a class-wide settlement in principle, subject to final documentation and court approval. [MarketWatch](#) (December 19, 2013).

## Update on Home Foreclosure Mediation

### UPDATE ON HOME FORECLOSURE MEDIATION

- A new mortgage foreclosure mediation program has been established in **Lake County, Illinois**, to provide free mediation services to homeowners who choose to participate. The mediation program is receiving funding from the state attorney general's office and case filing fees. The Chicago company responsible for the mediation program has recently trained 24 mediators for the program. [Chicago Daily Herald](#) (December, 12, 2013)
- Lenders appealed the federal district court's decision upholding the foreclosure mediation program in **Springfield, Massachusetts**, asserting a constitutional challenge that the state is the exclusive regulator of the foreclosure process, so that the city could not create a foreclosure mediation program without state approval. The federal appellate court has now certified the state preemption question to the Massachusetts Supreme Judicial Court for its determination. [Easthampton Savings Bank v. City of Springfield](#), No. 12-1917 (U.S.C.A. 1st Cir., November 22, 2013)

- The city council of **Worcester, Massachusetts**, gave unanimous preliminary approval to a foreclosure mediation ordinance, despite the advice of the city manager not to move forward until litigation against the similar Springfield mediation ordinance is resolved. The city manager favors mortgage mediation being addressed by a statewide solution. [Worcester Telegram](#) (November 12, 2013)
- Taking further steps to comply with a federal appellate court's June order, the federal district court in **Rhode Island** streamlined the processing of hundreds of cases in its foreclosure mediation docket by removing many, preventing multiple mediations per case, and setting specific time limits for mediations by the special master. As of mid-October, the special master had handled some 1,100 cases, of which nearly 750 were still active. [Providence Journal](#) (December 12, 2013); [Providence Journal](#) (November 4, 2013)
- Homeowner advocates are concerned about the way the **Maryland** foreclosure mediation program is operating and hope to see legislative improvements in 2014. In particular, they note that many resolutions are contingent and require additional steps, but the contingencies are not adequately documented and lenders move forward with foreclosure. Maryland's foreclosure rate has increased 42% percent in a year and is the third-highest in the country. Since the state's mediation legislation went into effect, about a fourth of all eligible homeowners have chosen to participate. With about 9,000 closed mediations in Maryland, some 26% reached agreements between the homeowner and lender, but a majority of those were contingent on additional steps being taken. [The Baltimore Sun](#) (December 20, 2013)
- The **Vermont** Attorney General has sued the Bank of America for violating Vermont's foreclosure mediation statute by failing to comply with settlement agreements reached in mediation and billing homeowners for more than agreed to in mediations. [VermontBiz](#) (December 11, 2013).
- A non-profit group is considering an appeal to the U.S. Supreme Court after the **Nevada** Supreme Court rejected its efforts to obtain personal identifying data in mediations from the Nevada Foreclosure Mediation Program due to confidentiality. [Reno Gazette-Journal](#) (December 28, 2013).

## Other Mediation News

### Updating the Multi-Door Courthouse

The classic notion of a "multi- door" courthouse needs in order to be significantly reformed based on experience and current needs in order to develop efficient court screening processes for determining which cases will benefit from mediation and which will not, according to Barry Edwards in "Renovating the Multi-Door Courthouse: Designing Trial Court Dispute Resolution Systems to Improve Results and Control Costs" (Harvard Negotiation Law Review, Spring 2013). The lengthy article examines the elements that result in settlement and encourages system design to build on them. Using empirical data from real world observations rather than relying on pilot projects as common in the past, the article contains many points of interest, including:

- Settlement rates are no higher even if the mediator charges more per hour or is more frequently selected by the parties.
- Female mediators have a significantly higher settlement rate than male mediators, even after controlling for other variables.
- Subsequent mediation sessions have settlement rates similar to initial sessions, despite the pessimism of counsel that further mediation would be helpful.

- Mediations ending in settlement take significantly longer than those ending in impasse.
- Cases sent to mediation very often are negotiated and resolved prior to mediation; many more settlements occur outside mediation than in mediation.
- New dispute resolution products are not needed, just better arrangement of offerings and greater self-service, like the first Wal-Mart.
- Courts are ill-equipped to make decisions for parties and should empower litigants to make their own strategic choices.

A key conclusion of the article is that resolving routine cases through mediation will reduce the great personal hardships of those involved, as well as reducing court congestion and permitting courts to focus on the novel cases requiring judicial attention. [Court ADR Connection](#) (September 2013); [Full Article](#) (Subscription Required)

### **Other Cases & Resolutions:**

- Securities fraud litigation brought by the Securities and Exchange Commission against the city of Miami was sent by the court to mediation, which is scheduled for May 2014. [The Bond Buyer](#) (October 7, 2013)
- King William County, Virginia, and the Town of West Point have not been able to resolve a tax dispute between them, so will work with three mediators through November, but if agreement is not reached by then the mediators will shift roles and make a final decision to present to the General Assembly. [Tidewater Review](#) (October 3, 2013)
- Mediation is addressing a legislative stalemate in Kansas over whether to create a new mid-level class of dental providers in an effort to remedy a growing shortage of dentists in the state. [KHI News Service](#) (October 3, 2013)
- Land use issues on the Eastern Shore of Maryland are going to mediation, with two sessions planned involving about twenty individuals representing local government, farmers, environmental advocates, bankers, appraisers and nonprofit organizations. [Delmarva Now](#) (October 13, 2013)
- The Minnesota Orchestra's locked-out musicians rejected a management offer, instead urging management to work within the mediation process with former Senate Majority Leader George Mitchell as mediator. The mediator's earlier proposal for the musicians to return to work while negotiations continued was supported by the musicians, but not the board. [Minnesota Public Radio](#) (Sept. 6, 2013)
- A homeowners group opposed to a \$450 million shopping center development in West San Fernando Valley has been referred to the court's mediation program while considering whether to appeal dismissal of their lawsuit. [Los Angeles DailyNews](#) (October 10, 2013)
- A financial morass involving a retirement center, which is facing a dozen lawsuits including foreclosure, is headed to mediation in Kansas City. [Kansas City Star](#) (September 26, 2013)
- The owner of a tanker that struck a bridge between New Hampshire and Maine has agreed to mediation with the two states over the \$2.4 million bond he had to post to get the tanker released. [WLBZ2](#) (October 21, 2013)
- A settlement of \$1.7 million was reached in mediation for a mother injured in a severe car wreck. [Yahoo! Finance](#) (October 17, 2013)



- Mediation is scheduled in a wrongful death case involving a 13-year-old who was killed in an avalanche on a Vail ski run. [Summit Daily News](#) (October 24, 2013)
- Town officials in Sheffield, Massachusetts, have agreed to mediation over the proposed construction of a Dollar General store. [Berkshire Eagle](#) (September 26, 2013)
- McDonald's and a group of protesters were sent to mediation by a Victorian Supreme Court justice in an ongoing dispute over construction of a McDonald's restaurant in the Australian town of Tecoma. [Herald Sun](#) (September 20, 2013)
- After beginning mediation in Dublin with two mediators following a breakdown in direct negotiations, the mediators released an agreed statement for a European rugby framework; the mediation process is ongoing. [The Score](#) (October 24, 2013); [The Guardian](#) (September 18, 2013)

## **Worth Noting:**

### **Boosting International Commercial Mediation**

The viability of international commercial mediation as a substitute for arbitration is examined in a law review article that not only looks at the value of mediation in international commercial disputes, but examines how public international law might be used to address deficiencies in international mediation and ensure its long-term success. In particular, international mediation might be enhanced by international treaties to ease the enforcement of mediation agreements and settlement agreements, taking lessons from international commercial arbitration.

*Professor S.I. Strong, "[Beyond International Commercial Arbitration? The Promise of International Commercial Mediation](#)," 42 Washington University Journal of Law and Policy (forthcoming 2014); University of Missouri School of Law Legal Studies Research Paper No. 2013-21*

### **ICC Issues New Mediation Rules**

The International Chamber of Commerce has released new Mediation Rules that went into effect on January 1, 2014, and replace the ICC's Amicable Dispute Resolution rules. The new Mediation Rules can also be used for conducting other processes, such as neutral evaluation and conciliation. The ICC's non-refundable filing fee is now \$2,000, in addition to administrative expenses. The accompanying Mediation Guidance Notes provide information on procedural and administrative issues relating to conducting mediations.

[ICC Mediation Rules](#); [Mediation Guidance Notes](#)

### **Mediation Advice**

\* Mediating class actions can be more complicated than regular mediations and may require special effort by the parties and the mediator. [Mondaq](#) (December 9, 2013)

\* Preparation in general, by parties as well as mediator, is vital to give mediation its best chance of success. [HospitalityNet](#) (November 27, 2013)

\* Parties often benefit from early mediation in Lanham Act disputes. [Mondaq](#) (December 19, 2013)

\* The benefits of mediation are illustrated by the three-day mediation that resulted in San Diego Mayor Bob Filner's resignation after accusations of sexual harassment even though widespread pressure had not been successful. [Poughkeepsie Journal](#) (December 12, 2013)

### **Other Cases & Resolutions**

The liquidator of a stockbrokerage mediated its £15,000,000 claim against a former insurance broker for chronic underinsurance and finally agreed on a £550,000 settlement following the mediation. [Irish Times](#) (November 28, 2013); [Irish Times](#) (December 5, 2013)

Mediation resolved litigation between Trinidad and Tobago and a professor at the University of the West Indies over ownership of inventions in which the government had invested \$33 million. [Trinidad Express](#) (November 1, 2013)

LG Electronics and a group of consumers have been ordered into mediation by a New Jersey court in a proposed class action over moldy washing machines. [Law360](#) (December 4, 2013)

Mediation is scheduled in federal litigation seeking to block a passenger cruise terminal in Charleston, SC. [Skift](#) (December 3, 2013)

Mediation is beginning in disputes over ambulance service coverage between two municipal emergency organizations. [Mass Live](#) (November 25, 2013)

A tax abatement case on appeal to the New Hampshire Supreme Court is being mediated by the city and property owner. [Valley News](#) (November 7, 2013) (Registration required)

A "secret" mediation session was held in a bitter dispute over commercial development on Denver International Airport property. [Denver Post](#) (November 7, 2013)

A year after filing bankruptcy, Brooklyn's Interfaith Medical Center is closing after unsuccessful court-ordered mediation between unions, creditors, management and state officials. [Crain's New York Business](#) (December 20, 2013)

Months-long mediation efforts have not resulted in resolution of disputes between housing developers and the Renaissance City Development Association, but talks continue. [The Day](#) (November 22, 2013)

Mediation was ordered to begin in May 2014 between the Australian Essendon Football Club and its manager who is seeking over A\$2 million for breach of contract. [ABC News](#) (December 9, 2013)

Inclusion of a mediator in discussions held before Christmas on the future of European club rugby is being viewed favorably. [Irish Times](#) (December 19, 2013)

A mediation is being held between organizers and anxious residents over a major new festival proposed for Leicester city center prior to a council licensing meeting. [Event Magazine](#) (November 20, 2013)

# Book Review

**Erica Ariel Fox**  
***Winning from Within: A Breakthrough***  
***Method for Leading, Living, and Lasting Change***  
**(HarperCollins 2013)**

Book review by Eleanor Barr ([Eleanor@eleanorbarr.com](mailto:Eleanor@eleanorbarr.com))

I was thrilled to learn that Erica Ariel Fox has published *Winning from Within*, a well-written and engaging book based on her leadership workshops. Erica has presented at IAM conferences and many IAM members have taken Erica's workshops over the years as she was developing the material on which her book is based. The book begins by explaining that we all have performance gaps in our personal and professional lives and that we can overcome these pitfalls by understanding and balancing the internal influences in our minds. Erica focuses on the most prevalent influences, based on Carl Jung's archetypes: Dreamer, Thinker, Warrior and Lover. She calls these influences the "Big Four" internal negotiators. Her thesis: In order to overcome our performance gaps, we need to balance our Big Four.

From my perspective, there are two ways to read this book and, if you can possibly make the time, I recommend the second! The first is to read it quickly and get a relatively superficial understanding of the material. The second is to read it slowly and spend time reflecting on the occasions when we conduct our lives with the Big Four in balance, and when we experience performance gaps because one or more of these internal influences are wildly exaggerated or extremely deficient. According to Erica, the way to achieve balance is to have an internal negotiation with these influences. After all, if we've had certain internal influences dominating or lacking in our lives for decades, we'll need to negotiate with them to convince them either to come to center stage or to move to stage left.

The book is divided into three parts. In the first, Erica encourages readers to identify their performance gaps and gives an overview of her approach. She draws on corporate structure to describe our inner influences: Dreamer as CEO, Thinker as CFO, Lover as VP of HR and Warrior as COO. And she stresses the need for an internal Board of Directors - which she describes as the Lookout, Captain and Voyager - to keep our Big Four in check.

The second part of the book describes in detail the characteristics of the Dreamer, Thinker, Lover and Warrior and gives examples drawn from her workshops where each is inflated, deflated and balanced. And the last part of the book focuses on managing the Big Four influences by paying close attention to our inner thoughts and reactions. Erica describes the need for our inner Board of Directors, where the Lookout observes our internal reactions and begins to break the cycle of our habitual neural patterns, the Captain observes the outer landscape to discern the best course of action to be taken by the Big Four, and the Voyager pays attention to our center and helps us stay true to our core values as we continue to expand and grow.

*Winning from Within* is not simply another book with tips and techniques to try out tomorrow. Rather, it creates a framework that enables us to engage in our own personal inquiry. Ultimately, the goal is to develop internal awareness so we can create positive internal thoughts that result in a positive outer world. Some readers have remarked that the book unnecessarily repeats core concepts. My perspective, however, is that the repetition helped me go deeper in my personal exploration. The book is an ambitious achievement in fusing the more traditional goal-oriented growth approach with Jungian psychology and spiritual traditions that focus on our inner journey of self-actualization and enlightenment.

Although *Winning from Within* is not specifically written for conflict resolution or mediation, the book is useful for mediators who want to gain deeper insight into how their own reactions may be affecting the mediation process. As mediators, it's easy for us to rely on what comes naturally to us. But sometimes we need to approach a specific mediation differently. Are there certain mediations when we

seem to hit a wall and get stuck? This book can teach us how to become aware of our own internal reactions during mediations and help us choose a different and more appropriate course of action. It can help mediators develop new, more effective and more sustainable ways to engage in our most challenging mediations. For those of us who have been mediating for more than 10, 15 and even 20 years, it's a very useful book to help keep us fresh.

[Purchasing Information](#)



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