

# U.S. MEDIATION QUALIFICATION TRAINING

COURSE REVIEW

# CHAPTER 1: CONFLICTS AND DISPUTE RESOLUTION





# INTRODUCTION TO CONFLICT

- THE DYNAMICS OF CONFLICT
- THE CONFLICT SPIRAL

# DISPUTE RESOLUTION METHODS

- THE COMMON LAW
- THE AMERICAN SYSTEM



# DEVELOPMENT OF ADR

- THE ADR MOVEMENT
- ADR IN UNITED STATES

# COMPARISON OF METHODS

- VERTICAL VS. HORIZONTAL
- THE NEUTRAL FACILITATOR



# CHAPTER 2: THE TEXAS ADR ACT MODEL



# POLICY

- TO ENCOURAGE THE PEACEABLE RESOLUTION OF DISPUTES, ESPECIALLY DISPUTES INVOLVING THE PARENT-CHILD RELATIONSHIP, AND
- TO ENCOURAGE THE EARLY SETTLEMENT OF PENDING LITIGATION



# MANDATE

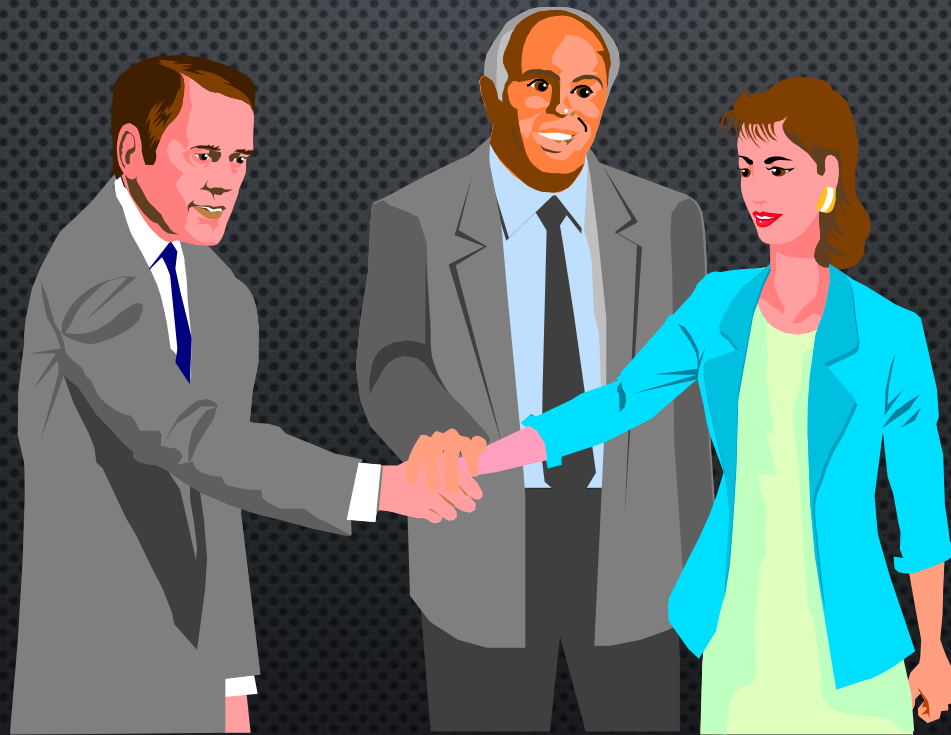
- TO THE TRIAL COURTS
- TO THE APPELLATE COURTS

# REFERRALS TO ADR

- INITIATING THE PROCESS
- CONFERENCE WITH COURT
- APPROPRIATE REFERRALS
- SELECTING THE NEUTRAL
- NOTIFICATION AND OBJECTION
- RESISTING REFERRAL
- APPELLATE REVIEW



# CHAPTER 3: NON-BINDING PROCESSES



# NON-BINDING PROCESSES

- MEDIATION
- NEUTRAL EVALUATION
  - THE MINI TRIAL
  - THE MODERATED SETTLEMENT CONFERENCE
  - THE SUMMARY JURY TRIAL
  - NON-BINDING ARBITRATION
- HYBRID ADR PROCESSES



# CHAPTER 4: BINDING ADR PROCESSES



# ARBITRATION

- UNDER COMMON LAW
- UNDER TEXAS STATUTES
  - TEXAS GENERAL ARBITRATION ACT
  - BINDING ARBITRATION IN TEXAS
- FEDERAL ARBITRATION ACT
- TRIAL BY SPECIAL JUDGE



# DRAFTING ARBITRATION AGREEMENTS

- FORUM SELECTION
- CHOICE OF LAW
- SCOPE OF CLAIMS
- SELECTION OF ARBITRATORS

# PROCEDURAL ISSUES

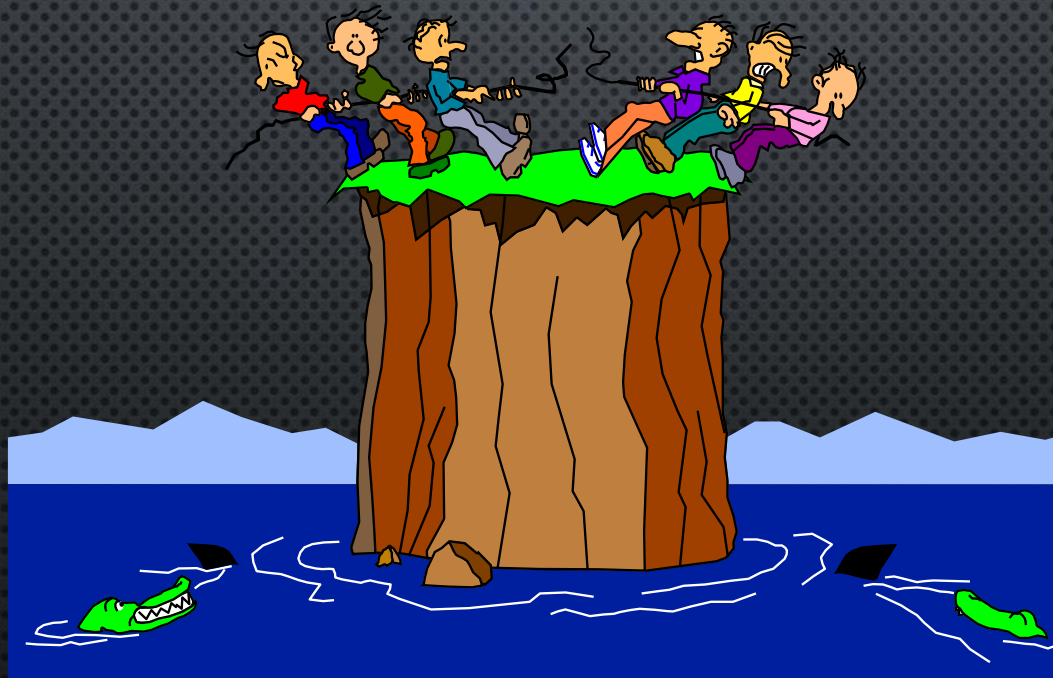
- PLEADING
- PRE-HEARING CONFERENCE
- TIME, DATE AND PLACE OF HEARING
- CONDUCT OF HEARING
- PARTIES' DEFAULT



# ARBITRATOR'S AWARD

- REMEDIES
- ISSUANCE AND ENFORCEMENT
- VACATION AND REVIEW

# CHAPTER 5: NEGOTIATIONS AND STRATEGIES





# METHODS OF NEGOTIATION

- POSITIONAL BARGAINING
  - EFFECT ON SETTLEMENT
  - IMPACT ON RELATIONSHIPS
- ALTERNATIVE METHODS
  - FOCUS ON INTERESTS
  - SEPARATING THE PROBLEM

# IMPROVING COMMUNICATIONS

- REDUCING EMOTIONS
- CHANGING PERCEPTIONS
- STEPPING INTO THEIR SHOES
- COLLABORATIVE PROBLEM-SOLVING
- CREATING VIABLE OPTIONS



# CHAPTER 6: THE MEDIATION PROCESS



# THE PROCESS

- NATURE OF MEDIATION
- MEDIATOR'S ROLE
- KEY TO SUCCESS
- MEDIATION ATMOSPHERE
- MEDIATION ATTITUDE



# CONDUCTING THE MEDIATION

- MEDIATOR'S INTRODUCTION
  - DISCLOSURES AND EXPLANATIONS
  - PARTIES' COMMITMENTS
    - AUTHORITY TO MAKE DECISIONS
    - TIME AND GOOD FAITH NEGOTIATIONS

# CONDUCTING THE MEDIATION

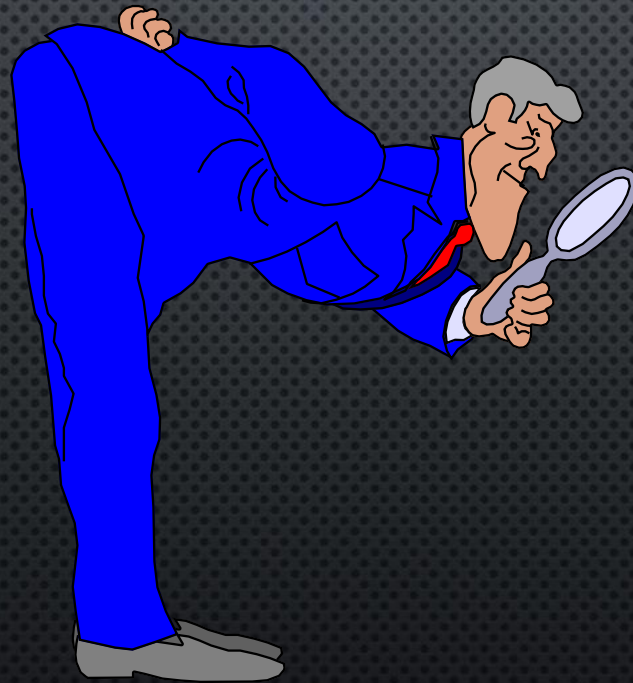
- PARTIES' SUBMISSIONS
  - ROLE OF THE ADVOCATE
  - ROLE OF THE PARTIES
  - MEDIATOR'S FUNCTION



# CONDUCTING THE MEDIATION

- PARTIES' NEGOTIATIONS
  - JOINT AND SEPARATE CONFERENCES
  - OBTAINING AND TRANSMITTING OFFERS
  - CREATING AND TESTING OPTIONS
- CLOSING THE AGREEMENT

# CHAPTER 7: DIFFERENT PERCEPTIONS AND STEREOTYPING





# PERCEPTIONS

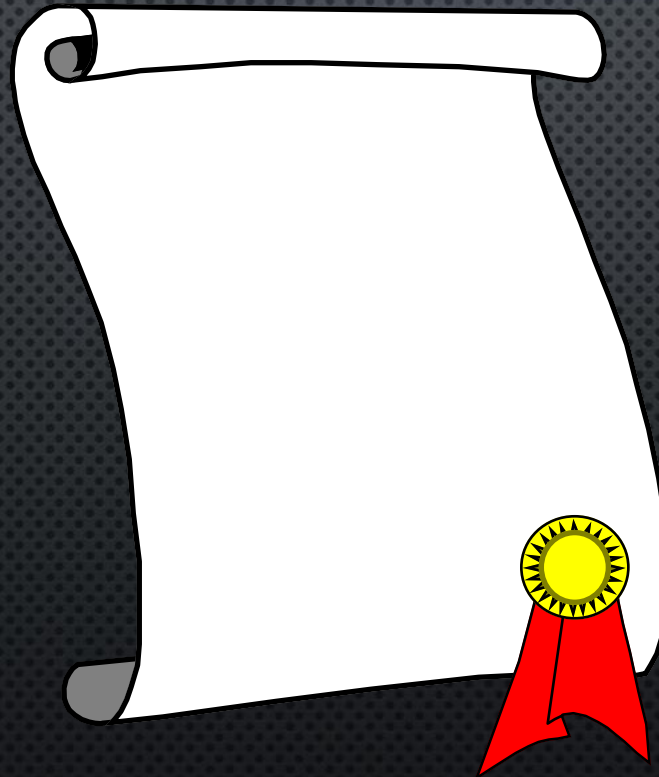
- NON-VERBAL COMMUNICATIONS
- VERBAL COMMUNICATIONS
  - EFFECTIVE LISTENING
  - GATHERING INFORMATION
  - MAINTAINING NEUTRALITY

# STEREOTYPING

- CULTURAL DIFFERENCES
- GENDER-BASED DIFFERENCES
- SOCIO-ECONOMIC DIFFERENCES
- SPECIAL SKILLS NEEDED



# CHAPTER 8: DUTIES, STANDARDS AND QUALIFICATIONS



# DUTIES, STANDARDS AND QUALIFICATIONS

- STATUTORY AND ETHICAL
- RULES AND GUIDELINES
- PROFESSIONAL STANDARDS
- LICENSING AND CREDENTIALING



# CHAPTER 9: CONFIDENTIALITY



# CONFIDENTIALITY

- POLICY CONSIDERATIONS
- EXCLUSION OR PRIVILEGE
- STATUTES AND COURT ORDERS
- CONTRACTUAL PRIVILEGES
- DUTY TO DISCLOSE



# CHAPTER 10: THE SETTLEMENT AGREEMENT

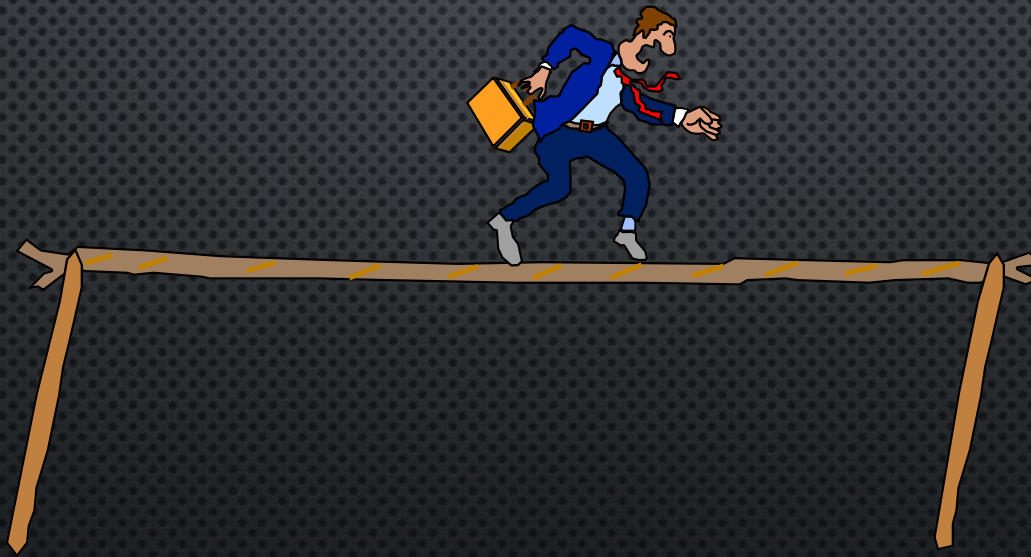


# THE SETTLEMENT AGREEMENT

- LEGAL EFFECT
  - ENFORCEMENT AS A CONTRACT
  - PANAMA LEY 5 AGREEMENTS
  - CONSENT JUDGMENTS
    - INCORPORATION IN DECREE
    - WITHDRAWAL OF CONSENT
    - THE FAMILY LAW STATUTE
- MEMORANDUM OF UNDERSTANDING



# CHAPTER 11: IMPASSE AND BARRIERS TO SETTLEMENT



# IMPASSE AND SPECIFIC BARRIERS TO SETTLEMENT

- IMPASSE HAPPENS
- IMPASSE AVOIDANCE
- WHEN IMPASSE OCCURS
- SPECIFIC BARRIERS TO SETTLEMENT



# CHAPTER 12: DESIGNING AN ADR SYSTEM

- TRADITIONAL METHODS
- ADR PROCESSES



# TRADITIONAL METHODS

- EMPLOYMENT GRIEVANCES
  - OPEN-DOOR POLICY
  - OMBUDSMAN
  - GRIEVANCE PLANS
- COMPULSORY ARBITRATION



# ADR PROCESSES

- SYSTEM DESIGN
- EXAMINING PROGRAM DESIGNS
- THE NEEDS ASSESSMENT
- SELECTING THE MODEL
- OBTAINING CRITICAL SUPPORT
- DESIGNING THE ADR PLAN
- IMPLEMENTING THE PROGRAM
- CREATING A FAIR SYSTEM