

# Mediation Choices for Effective Representation and Advocacy

Friday, October 18, 2019 | New York City

New York Law School  
185 W. Broadway  
New York, NY 10013

NEW YORK  
LAW SCHOOL

Alternative Dispute  
Resolution Skills Program

NYSBACLE



Includes  
1.0 Ethics Credit



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Sponsored by the Dispute Resolution Section,  
the Commercial and Federal Litigation Section,  
the Corporate Counsel Section, the General  
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Continuing Legal Education of the New  
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# Mediation Choices for Effective Representation and Advocacy

This program is designed for in-house and outside counsel to learn how to optimize results from mediation. The panelists are experienced mediation advocates and mediators who will add tools to your mediator's toolkit.

**5.0 MCLE Credits: 4.0 Skills; 1.0 Ethics**

## Program Agenda

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- 8:15 a.m.** Registration
- 8:45 a.m. – 9:00 a.m.** Welcome and Introduction by Deborah Masucci
- 9:00 a.m. – 10:00 a.m.** **Session 1: Preparing for Mediation and Selecting the Mediator**  
Chair – Elizabeth Champnoi | Champnoi Dispute Resolution and Management Services, Inc.
- Panel  
Gabrielle Y. Vázquez | McGrail & Bensinger LLP  
Stephen P. Younger | Patterson Belknap Webb & Tyler LLP
- Topics to be covered include:**
- Key Benefits of Mediation
  - Managing Client Expectations
  - Strategic Mediator Selection
  - Developing Mediation Strategy
- 1.0 Credit in Skills*
- 10:00 a.m. – 11:00 a.m.** **Session 2: You Get Out of It What You Put Into It!**  
Chair – Mark Morril | Morril ADR
- Panel  
Mitchell F. Borger | Corporate Counsel Section Chair | Ellenoff Grossman & Schole LLP  
Laurel R. Kretzing | Commercial and Federal Litigation Section Chair | Office of the Nassau County Attorney
- Preparing for the mediation may be as important as the mediation session itself. When counsel and parties walk into a session without having necessary information or without having thought through positions, interests and how they will negotiate inevitable impasses, they risk wasting time and resources. You will learn how to effectively prepare for a mediation so that you and your clients stand in the best possible position to find a resolution.
- From the moment mediation becomes a part of your case, there's a lot to consider. Our panelists will outline and provide guidance to advocates on how to begin the mediation process starting from the first phone call with the mediator to statements at the opening session.
- Topics to be covered include:**
- Developing strong pre-mediation checklists so as to prepare clients, adversaries, the mediator and most importantly, self.
  - Utilizing submissions and pre-mediation phone calls to give and get information, demonstrate strength and flexibility.
  - Using the joint session to set the foundation for the day and the resolution.
- 1.0 Credit in Skills*
- 11:00 a.m. – 11:10 a.m.** Break

**11:10 a.m. – 12:10 p.m. Session 3: Negotiating Within the Mediation, Avoiding Impasse and Closing the Deal**

Chair – David Brodsky | Brodsky ADR LLC

Panel

Vivian O. Berger | Columbia University Law School  
Marjorie E. Berman | Krantz & Berman LLP

This panel will explore how you can apply negotiation theory and skills to maximize value for your client during the middle stages of a mediation. Learn how best to use the mediator to gather, analyze and communicate information; handle choppy emotional waters; assess risk; deliver tough news to the other party; determine what matters most to you and other parties; and help you move toward a deal during the middle, core phases of mediation. You will be brought face to face with one of the toughest questions in case bargaining: how to handle the “spigot of disclosure” – knowing when and how much information to disclose, both to the mediator and to the other parties. The panel will also discuss impasse-breaking techniques, when to use them, and how they will get the deal done.

**Negotiation skills that will be the focus of the session and ways to use the mediator, include:**

- Client counseling and role division;
- Adjusting the spigot of disclosure – delivering the right information at the right time in a well crafted message;
- Building effective risk and transaction cost analyses.

*1.0 Credit in Skills*

**12:10 p.m. – 1:40 p.m.** Working Lunch

**12:50 p.m. – 1:40 p.m. “Careful the Things You Say: Ethics for Negotiators”**

Danielle Shalov | Adjunct Professor Mediation Clinic | New York Law School

How to balance cooperation and competition when negotiating on behalf of your client. A presentation of challenges facing negotiators, applicable ethical guidelines, and an interactive discussion using hypotheticals.

*1.0 MCLE Credit in Ethics*

**1:40 p.m. – 2:30 p.m. Emphasis on Mediation Advocacy Skills and the Importance to the Courts**

Chair – Deborah Masucci | Masucci Dispute Management and Resolution Services

Panel

Lisa Denig | NYS Office of Court Administration  
Hon. Timothy Sean Driscoll | NY Supreme Court Commercial Division  
Daniel F. Kolb | Davis Polk & Wardwell LLP  
Paul D. Sarkozi | Tannenbaum Helpert Syracuse & Hirschtritt LLP  
Robyn Weinstein | ADR Administrator, U.S. District Court Eastern District of New York

This panel will talk about the New York courts’ Presumptive Mediation Initiative and how it will impact the cases advocates file in court. The discussion will include how advocates need to prepare for the challenges they will face. Some federal courts maintain Mediation Advocacy Programs that offer pro bono opportunities to gain experience as limited scope mediation advocates. How are they working?

*1.0 MCLE Credit in Skills*

## 5.0 MCLE Credits

This course is approved for MCLE credit in New York for all attorneys, including those newly admitted.

**New York:** 5.0 Total Credits: 4.0 Skills, 1.0 Ethics, 0.0 Areas of Professional Practice, 0.0 Diversity, Inclusion and Elimination of Bias

**California and Pennsylvania:** 3.0 Substantive Law, 1.0 Ethics

**New Jersey:** 5.0 Total Credits: 1.0 Ethics/Professionalism, 0.0 towards certification in civil trial law, criminal trial law, workers compensation law and/or matrimonial law

Uniform Certificates of Attendance can be issued for use in other jurisdictions.

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For information about the CLE Rules, visit [www.nycourts.gov/attorneys/cle](http://www.nycourts.gov/attorneys/cle)

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[www.nysba.org/CLEProgramPolicies](http://www.nysba.org/CLEProgramPolicies)

## SAVE THE DATE!

### Dispute Resolution Section Fall Meeting

The Future of ADR: Where Are We Going and How Do We Get There?

October 25, 2019 | New York Law School

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# Dispute Resolution Section

The Dispute Resolution Section recognizes the critical importance of negotiation, collaboration, mediation, neutral evaluation, arbitration and new and hybrid forms of dispute resolution in all areas of legal practice. The Section is a forum for improving these processes and the understanding of dispute resolution alternatives, for enhancing the proficiency of practitioners and neutrals, and for increasing the knowledge and availability of party-selected solutions.

## The Section will serve this mission by:

- Creating committees to explore and research developments in ethics, substantive law, and legislative initiatives relating to our shared interests;
- Sponsoring publication of analysis and opinion on dispute resolution processes;
- Providing continuing legal education and training to practitioners and neutrals;
- Promoting relevant legislation;
- Providing commentary on ethical issues affecting dispute resolution; and
- Providing a venue for practitioners, law school faculty and students, and dispute resolution providers to network, exchange ideas, and interact with other members of the Bar and with the public on issues relating to dispute resolution.

[www.nysba.org/DRS](http://www.nysba.org/DRS)

## Section Chair

**Theodore K. Cheng**

ADR Offices of Theo Cheng, LLC

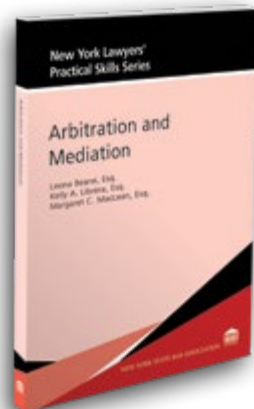


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### Arbitration and Mediation, 2018-19

This practice guide examines the two most common forms of alternative dispute resolution—arbitration and mediation. *Arbitration and Mediation* resolves the misconception that these two procedures are interchangeable by discussing their differences and providing examples of both procedures. This invaluable text provides useful practice tips on navigating arbitration hearing procedures and describes how mediation is used to resolve disputes.



Print: 40249 | 2018-19 | **NYSBA Members \$165** | Non-Members \$125  
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