

Alternative Dispute Resolution in 2004

By Jeff Kilgore Mediator/ Lawyer/ Arbitrator

The Supreme Court may interpret confidentiality within the mediation context if it accepts the Writ of Mandamus in *Avery v Bank of America* 72SW 3rd 779 or in *Alford. Bryant* 137 S.W. 3rd 916 where the Dallas Court of Appeals overturned the trial court's denial of testimony by the mediator or review of the conduct of the parties during mediation that allegedly lead to a new tort, as being protected by the statutory confidentiality afforded mediations under the Tex. Practice and Remedies Code Section 154 .053 and 153.073 Will the actions, comments and testimony by a party, their attorney or a mediator be allowed to support allegations of new wrongdoing that were derived from the settlement discussions in mediations? We will have to see.

Mediations are growing outside to the courtroom as more and more agencies, businesses and private groups are turning to mediation rather than heading straight for the courthouse. This is seen in the reduction of cases being filed in the civil arena. The number of cases going to jury trial are also shrinking, studies show. Trials before the court are also down, indicating mediation is helping resolve disputants' issues prior to the last push to trial.

Studies do show that family law cases are on the rise. The need to mediation in the area of inter personal relationships are; therefore, need more and more.

Arbitration is becoming prevalent in contracts at most levels of consumer transactions including the Texas Residential Construction Commission Act of 2003. The concern of consumer groups and possibly future legislative sessions is to maintain fundamental fairness so that there is no loss of remedies or causes of action because of going to arbitration.

The Texas Mediators Credentialing Association (TMCA) came into being early this year. This voluntary Association credentials novice through experienced mediators in the state that agree to comply with stated Ethical Standards and who agree to advanced mediation education requirements.

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