

NEUTRAL NEWS YOU CAN USE

Winter 2007

► MEDIATION

-- **Don't be reluctant to propose mediation for fear that it is a sign of weakness.** The consensus of the litigators and neutrals who attended the New York State Bar Association Committee on ADR program, "*Winning Through Mediation: Know When to Hold 'Em and Know When to Fold 'Em*," is that it is always prudent to propose mediation and should not be viewed as a sign of weakness. Attorneys can propose mediation to their adversary even before a case is filed or in the early stages of litigation by using these strategies: state that it is your "practice in every case" to discuss mediation before the case gets too deeply into litigation; include an offer to mediate in a demand letter or position statement; ask the judge or law clerk to recommend mediation. Empirical research suggests that those making the first offer to negotiate may even strengthen their bargaining position by appearing to negotiate from a position of power and confidence.

► INVESTIGATIONS

-- **New Jersey court paves new ground affecting workplace investigations.** In *Spagnola v. Town of Morristown*, 05-CV-577 (12/15/06), U.S. District Judge Linares denied a motion to dismiss a complaint by a sexual harassment plaintiff against an attorney hired by her municipal government employer to investigate her internal complaint. The complainant stated a claim for relief for negligent misrepresentation by alleging that, during his investigation, the attorney made oral and written misrepresentations about her rights and the rules and responsibilities governing sexual harassment at her workplace.

► TRAINING

-- **In 2006, the EEOC saw the first increase in charges filed since 2002. It continues to endorse workplace training as an essential measure to promote diversity and prevent discrimination.** The EEOC reports that the most prevalent charges in 2006 were race, sex, and retaliation, with a fifteen (15%) increase in the number of sex harassment charges filed by men. EEOC Chair Naomi C. Earp states that

“The Commission continues to work closely with our stakeholders to implement new strategies to stop discrimination before it starts. We are striking a vital balance between outreach and education on the one hand, and enforcement and litigation on the other.” The EEOC often includes mandatory employee training in consent decrees and the failure to train is often cited as the basis for findings against employers. See “Job Bias Charges Edged Up in 2006,” www.eeoc.gov/press/2-1-07.



Speaking of employee training, Vault.com’s annual *Valentine’s Day “Office Romance”* survey yielded interesting results: of 550 surveyed employees, 47% report having had an office romance, 48% hid their romance from everyone in the office, 29% reported receiving unwanted sexual advances at work, and 41% were unaware of whether their company had a policy on workplace romances. *Happy Valentine’s Day!*

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