THE RESOLVER

TURNING CONFLICT INTO RESOLUTION

Published by the Alternative Dispute Resolution Section of the Federal Bar Association

Message from the Section Chair

by Lisa Brown

On behalf of the ADR Section Board, we thank you for your membership and encourage you to become actively involved in the Section's activities. If you are interested in suggesting webinar topics, presenting a webinar, participating in a discussion group, or suggesting a project for the Section to sponsor, please email any one of the Board members.

Some Topics of interest to the Board members this year include:

- Teaching Alternative Dispute Resolution to inmates in our prisons;
- Enhancing Alternative Dispute Resolution options in rural or less accessible communities;
- Involving neutral facilitators in Special Education, such as 504 and IEP meetings;
- Educating our grade school students on dis-

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Message from the Editor

by Alexander J. Zimmer

We are very pleased to present the March 2019 edition of The Resolver, the newsletter of the Alternative Dispute Resolution (ADR) section of the Federal Bar Association. Once again, our contributors are ADR practitioners from across the country. This Issue's articles offer ideas, analysis, and practical tips across the varied ADR landscape. Several of our offerings challenge the reader to evaluate his or her own approach to ADR. Some of our authors invite the reader to pause and take the time to consider the elements of conducting a successful mediation. Others focus on important aspects of the arbitration practice.

Steven Bennett continues his examination of discovery in arbitration proceedings detailing those aspects of the process that offer particular challenges to participants. In the last of his two-part series, he zeros in on the challenges of managing the burden of complex and content-heavy proceedings. While revitalized arbitration clauses may mitigate the burden, the more effective solutions may rest with the arbitration-sponsoring institutions. This article includes many astute observations and suggestions to improve arbitration proceedings.

One of the benefits of both arbitration and mediation is the ability of the parties to control the selection of the arbitrator

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SPRING 2019

"HARD" TOOLS FOR CONTROLLING DISCOVERY BURDENS IN ARBITRATION – Part II

by Steven C. Bennett[1]

As discussed in Part I, the search for discovery materials could be confined to a fixed number of custodians and a fixed number of locations (or types of media).[2] Beyond that, on the assumption that a responding party generally best knows its own technological capabilities, a tribunal may defer to the responding party's reasonable choices of search methods. To avoid later disputes about the adequacy of search, however, the tribunal may mandate testing of search methodologies to help facilitate agreement between the parties.[3] Further, a tribunal may require that a party claiming excessive results from too-broad search terms provide the requesting party with relatively detailed information about the search results.[4] The tribunal, in turn, may require that the parties "meet and confer" to discuss the results of the sample search, and attempt to agree on a more efficient search protocol.

In addition, certain forms of software features have become increasingly common in ediscovery. One common feature, for example, is the use of de-duplication (and near-duplication) filters (which remove extra copies of the same document from a search population), and email "threading" (which eliminates the multiple copies of underlying emails, allowing review of only the "final" form of an email chain).[5] Many of these features could be authorized as presumptive elements of a search protocol.[6]

Limiting Use Of Depositions

Pre-hearing depositions are relatively rare in international arbitration, and some suggest that they have no place at all in arbitration.[7] Out-of-control deposition discovery could seriously undermine the efficiency of an arbitration process.[8] But an extreme no-deposition practice could have unintended consequences (lengthening a hearing where counsel confront a witness for whom they have no relevant documents or statements, to predict what they may say, and prepare for cross-examination).

One alternative to depositions, used extensively in international arbitration, involves the preparation of witness statements, not just for experts, but for fact witnesses (at least to the extent that they are within the control of a party).[9] The rules of domestic arbitration-sponsoring organizations permit testimony in that form.[10] Use of the witness statement system can save hearing time, by limiting (if not eliminating) direct testimony of witnesses, and by helping focus cross-examination on the witness' statement. Because the witness statement confines the scope of the witness' testimony, discovery (in the form of a witness deposition) may not be necessary.

There are circumstances where some witnesses are not available to provide written statements, although they are available for hearing testimony, or where the "live" direct testimony of a witness may be essential (as where there are complicated facts to be explained to the tribunal); in such cases, an arbitrator should not require written statements where counsel elect not to use them.[11] But an arbitrator could (at least) require that parties consider (and "meet and confer" regarding) the use of witness statements. And an arbitrator could provide (at least presumptively) that any witness who provided a written statement would not be subject to deposition. Less formal methods of information-gathering, such as witness interviews, might also substitute for depositions.[12]

Additional methods of streamlining depositions include time limitations, or the use of videoconferencing (to avoid travel costs, and increase scheduling flexibility), and "staging" of depositions, to depose the most knowledgeable person first, or the conduct of a Rule 30(b)(6) representative deposition under the Federal Rules of Civil Procedure (with the aim of determining whether, after limited depositions, there remains any reasonable need for additional deposition examination).[13] Here, again, an arbitrator (or an institution, as part of its guidelines) might require that parties at least consider imposing these kinds of limitations, even if such limitations are not expressly included in the parties' arbitration agreement.

Preclusion For Delay

A common remedy for failure to disclose requested information is an order of preclusion to the effect that related information may not later be offered as evidence in a hearing.[14] The remedy, however, is often softened by a "harmless error" rule, allowing late production and use of evidence. In the arbitration context, where speed and efficiency are at a premium, a harder version of the rule might obtain better results. Thus, for example, a party that failed to produce requested documents within the time periods set by the tribunal might simply be precluded from presenting any such evidence.[15] Such preclusion, however, should be tied specifically to an order of the tribunal directing discovery, to avoid claims that the tribunal has somehow unfairly prohibited a party from making its case in arbitration.[16] Alternatively, as explained above, arbitrators might inform a recalcitrant party that the tribunal may apply an adverse inference, or allocate costs, if the party does not produce information as specifically directed by the tribunal.

Limited Privilege Review

Costs associated with review of documents for privilege, and the generation of related privilege logs, can be substantial. The establishment, at the outset of a case, of less burdensome forms of privilege review and logging can help ensure that parties do not "over-designate" documents to be withheld from production, on grounds of privilege. Further, the creation of presumptive (or mandatory) protocols for privilege review and logging can reduce the uncertainty parties may face in determining what their privilege protection obligations may be.[17]

Examples of protective orders and privilege protocols abound. An arbitration sponsoring organization might offer one or more "standard" forms of protective orders. As a means to reduce the risks of inadvertent production of privileged information (and thus reduce the incentive to over-designate privileged documents), a standard form might incorporate a "claw-back" provision, such that no privilege waiver would occur from inadvertent production.[18] In addition, a standard form of privilege protection order might presumptively approve less burdensome forms of privilege logs, including "categorical" privilege listings, wherein categories of documents may be grouped, and privilege asserted on a group basis;[19] and email thread logging, where each uninterrupted email chain would constitute a single entry (versus individual logging of every part of a lengthy email chain).

Mandatory Cooperation

The efficiency value of cooperation in discovery cannot be overstated. When parties (and their counsel) cooperate, they may avoid mistakes in the production of information, more easily focus on information that matters most to resolution of the dispute, and (in many instances) reduce the cost of information exchange, through shared protocols and platforms for information processing. As a "soft" tool, arbitrators certainly should encourage parties to cooperate in the discovery process. But backing up that approach, "hard" tools for enforcing an ethos of cooperation exist. One obvious requirement is an obligation to "meet and confer" (preferably, in advance of the first pre-hearing conference with the tribunal), to address topics related to the conduct of disclosure.[20] The obligation may be made even more specific. Parties may be required to fill out a form, confirming that they have discussed specific topics, and outlining the terms on which they have agreed, and what topics remain to be resolved by the tribunal. They might also be required to exchange initial discovery requests (as part of the "meet and confer" process), in order to facilitate discussion of discovery issues in the dispute.[21]

Further, when discovery disputes arise, during the course of pre-hearing proceedings, the tribunal again may require that parties "meet and confer" in an attempt to resolve the dispute, before raising the issue with the tribunal. Specification of an efficient process (such as short letters explaining the issue, followed by a swift telephone call with the tribunal) may further reduce costs (as many disputes can be resolved quickly, with a minimum of submissions to the tribunal).[22]

Finally, in allocating the costs of arbitration, the degree of good faith cooperation of the parties may be an appropriate consideration. In egregious circumstances, sanctions for bad faith practices may be imposed.[23] The expectation of cooperation, and the potential consequences for parties and their counsel, should be clearly stated (for maximum *in terrorem* effect) from the outset of the arbitration process.

Single Arbitrator For Discovery Management

Three-arbitrator tribunals are expensive; and when all three arbitrators must participate in resolving any discovery dispute, the cost of discovery can be inflated.[24] As a response, in three-arbitrator cases, the designation of the tribunal Chair (or another of the individual arbitrators) to rule on discovery disputes may be a simple, efficient method for reducing discovery costs.[25]

Conclusion: Implementing "Hard" Discovery Controls

Arbitration is a "creature of contract;" the existence of an obligation to arbitrate, the scope of the matters to be arbitrated, and the procedures for arbitration—all are generally determined by agreement of the parties (and, often, by their choice of rules from an arbitration-sponsoring organization).[26] In advance of any dispute, at the time of entry into a transaction (which may include negotiation of dispute-resolution provisions) parties may be in the best position to discuss "hard" discovery control methods. After arbitration begins, parties may resist implementation of stringent discovery controls,[27] especially in circumstances where one party perceives an advantage from more lenient discovery rules.[28] Arbitrators, moreover, may hesitate to impose significant restraints,[29] for fear (unfounded or not)[30] of later claims that the award may be challenged on due process grounds.[31] And, in any event, arbitrators differ widely in their views of what an "ideal" form of arbitration should encompass.[32]

Yet, arbitration clauses are often silent on the question of discovery, and if they do speak to discovery issues, generally they invoke only a specific limit (such as a prohibition against interrogatories, or a limitation on the number of depositions allowed). Indeed, in some instances, arbitration clauses go in the opposite direction, for example by adopting wholesale the Federal Rules of Civil Procedure (at least with regard to discovery).[33] Targeted, effective (and fair) forms of pre-litigation discovery cost control procedures are more than feasible.—they already exist.[34] Arbitration-sponsoring institutions could make such forms more widely available

for use in arbitration by offering them as "model clauses" on their web-sites.[35] Sponsoring institutions and bar groups, moreover, could more widely promote such forms, through continuing education and other outreach programs.

The model clause solution, however, cannot suffice to spark substantial discovery efficiency improvements in arbitration.[36] Instead, real change requires arbitration-sponsoring institutions to modify their rules, to establish a presumption that cost-control measures will apply, absent express agreement of the parties or ruling by the presiding tribunal for good cause. One example of such a system appears in the ICDR Guidelines for Arbitrators Concerning Exchanges of Information.[37] The Guidelines, by their terms, became effective in "all international cases administered by the ICDR commenced after May 31, 2008," with the proviso that they would be incorporated into the next revision of the ICDR's International Arbitration Rules. The Guidelines further provided that they could be "adopted in arbitration clauses or by agreement at any time in any other arbitration administered by the AAA," the domestic sister to the ICDR. The Guidelines stated that "[t]he parties may provide the tribunal with their views on the appropriate level of information exchange for each case," and that "[a]rbitrators should be receptive to creative solutions for achieving exchanges of information in ways that avoid costs and delay," but that "the tribunal retains final authority" to apply the Guidelines.

This form of guidance, committing the arbitration-sponsoring organization to the use of efficiency principles, ensures that the organization's principles are not routinely derailed by parties and arbitrators that refuse to adopt efficiency protocols "recommended" (but not required) by the organization. Further, careful drafting and review of the organization's principles may help ensure that the organization's rules are fair, and will withstand challenges on grounds of due process limitations or the inability of a party to present its case.

For arbitration-sponsoring institutions that choose not to make "hard" tools for discovery efficiency a mandatory element of their rules, there remains the option of treating the discovery limitations as "presumptively" applicable (unless the parties expressly "opt out" of their application). Alternatively, an institution might provide a general direction (broadly used in many of the protocols referenced in this Article), that arbitrators conduct proceedings in an efficient fashion, coupled with the recommendation that arbitrators and parties at least "consider" use of tools outlined in a guideline document. Even with this non-mandatory form, a "hard" tool is available. Parties might stipulate (in their arbitration agreement), or the sponsoring organization might require (in its rules), that, as part of the development of a pre-hearing order (and preferably in advance of the first conference with the tribunal), that the parties must "meet and confer" to discuss the issues outlined in the discovery guideline formulated by the organization, and must report to the tribunal on whether they will voluntarily "opt in" to one or more of the guideline tools. In effect, that form of guideline would mirror the Rule 26(f) requirements of the Federal Rules of Civil Procedure, and build upon the preliminary hearing requirement common in many arbitration proceedings.[38] Sponsoring organizations might provide a checklist of discovery issues for discussion between the parties, and with the tribunal, in connection with a preliminary conference.

Whether the guidelines of a specific arbitration-sponsoring organization will include all of the elements outlined in this Article is very much a matter for discussion between all the constituents affected by rules changes (parties, counsel, arbitrators and the sponsoring organization itself). As with most matters of rules changes in arbitration, the process is likely to be iterative, as organizations experiment with specific changes, and gather feedback from their constituents. At a minimum, the development of proposed rule changes should spark dialogue, and may (at least) lead to heightened awareness of the importance of developing sound practices to balance fairness with efficiency in the arbitration process.

Steven C. Bennett's practice at Park Jensen Bennett LLP (New York City) focuses on complex domestic and international commercial litigation and arbitration. Mr. Bennett is an arbitrator and mediator, and co-chair of the ADR and the Courts committee of the New York State Bar Association, Dispute Resolution Section.

Endnotes:

[1]The views expressed are solely those of the author and should not be attributed to the author's firm or its clients. This is Part II of a two-part article examining discovery burdens in arbitration. Part I appeared in the Fall 2018 issue of *The Resolver*. The footnotes in this version have been limited. The complete, more fully footnoted, article is published in *Mealey's International Arbitration Report*.

[2]*See generally* Rand/Institute For Civil Justice, *Where The Money Goes: Understanding Litigant Expenditures For Producing Electronic Discovery* at 91 (2012).

[3]Deborah Rothman & Thomas J. Brewer, *ADR Technology Survey Indicates Case Management Issues And Arbitration E-Discovery Problems Are Spreading, Growing More Expensive* (2009), available at www.nadn.org.

[4]*See The Sedona Conference Commentary on Proportionality In Electronic Discovery*, 14 Sedona

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Providing for Neutrals with Industry, Legal, and Business Expertise

by Theodore K. Cheng

Imagine that you are the human resources manager at a record label and you have just received a copy of a federal court complaint filed by a recently terminated employee who is now claiming that her firing was discriminatory. The court has also automatically referred the case to mediation. Although there are any number of potential mediators with expertise in the employment field, you wonder whether someone with knowledge of the music industry might better understand the context of the employment situation.

Or maybe you negotiate agreements for the purchase of artwork for your museum's own collection. Allegations have surfaced that your most recent acquisition from a private gallery may be a counterfeit. Your agreements with galleries always contain a standard, generic arbitration clause, but you now wonder whether having an arbitrator with knowledge, training, or expertise in art history might better understand both the background of the dispute, as well as appreciate the technical information that might be adduced at the evidentiary hearing.

Or perhaps your company licenses the logo of a professional basketball team and makes and sells various articles of clothing and other merchandising on which that logo appears. Recently, the team's in-house director of intellectual property and licensing contacted you and is upset about the quality of the apparel being made by your overseas manufacturer, which she contends is damaging the brand. She is threatening to terminate the licensing agreement, pointing to some arguable language in the agreement as a basis for doing so. You wonder whether you might suggest that the parties try mediating the dispute using someone with knowledge of sports merchandising and licensing in the apparel industry.

In each of the above scenarios, the characteristics of the person being selected as the arbitrator or mediator could make a difference in how (and sometimes whether) the dispute is resolved, how quickly a resolution is achieved, and how cost-effective the process will likely be. Because alternative dispute resolution mechanisms like arbitration and mediation are voluntary and consensual in nature, they are processes detailed in dispute resolution clauses that are (outside of the mandatory, adhesion context) customizable by the parties, in that the parties have broad flexibility to design a dispute resolution mechanism that best fits the dispute in question. One of the aspects of this customization is the ability of the parties to select neutrals who are "experts" familiar with the subject matter of the dispute, the industry or background business norms in which the dispute arises, or the legal framework governing the dispute itself. Exercising this flexibility is something often overlooked by many parties.

Arbitration is seen as having a number of significant advantages over litigation. One of these advantages is that the parties have the ability to choose their own decision maker. That decision maker can be someone who is an acknowledged expert in the subject matter of the dispute, such that an arbitration should (at least in theory) be conducted more quickly and efficiently than having it heard and decided by a randomly assigned and, most likely, generalist judge, who has no special expertise, knowledge or insight into the dispute, the relevant industry, or the business context.

A mediator who is an acknowledged expert in the industry or the business norms underlying the dispute could assist in helping the parties to furnish or uncover creative and innovative solutions. A mediator who is an acknowledged expert in the subject matter of the dispute could also add a helpful, perhaps more evaluative, perspective for the parties, oftentimes offering a different kind of reality testing – not a reality testing of the legal contentions, but the practicalities of implementing certain proposals.

Delineating the qualifications and/or credentials of the arbitrator or mediator can also lead to increased savings in both time and cost because the parties do not need to expend additional time and energy educating the neutral as much about the underlying industry, business norms, or legal framework applicable to the dispute. The parties can begin thinking about this option when they first draft and enter into a dispute resolution provision. Here is an example of an arbitration clause that requires a certain level of subject matter experience:

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules before a single arbitrator. The arbitrator shall have at least 10 years of experience in intellectual property licensing matters. Judgment on any award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

Or, for employment matters in a particular industry, the clause might read something like this:

If a dispute arises out of or relates to this employment contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Employment Mediation Procedures before resorting to arbitration. The mediator shall be currently employed at either a record company or a music publisher, neither of which is affiliated with the parties to the contract. Any arbitration shall be administered by the American Arbitration Association under its Employment Arbitration Rules and Mediation Procedures before a single arbitrator, who shall also similarly be currently employed at either a record company or a music publisher, neither of which is affiliated with the parties to the contract. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

Depending upon the circumstances, some degree of expertise can matter. Why not provide for it upfront in the dispute resolution clause?

For the situation where a court has automatically

referred or mandated the dispute to be resolved, in the first instance, through one or more alternative dispute resolution mechanisms, many courts maintain rosters of individuals with varying degrees of industry, business, and legal backgrounds. Parties can choose someone from those rosters with the appropriate background for that dispute. And if the practice is for the court to assign a neutral, the rules usually permit parties to opt out of that selection and choose a replacement – someone who would be a better fit.

One cautionary note is to exercise some restraint in drafting such specificity into the clause. Being too specific can inadvertently limit the pool of arbitrators or mediators from which the parties can make their selection. For example, a clause that mandates that "the mediator shall possess a Ph.D. degree in the field of experimental plasma physics and/or quantum particle acceleration" would obviously result in few available candidates because, even if the pool of such Ph.D. degree recipients is large, the likelihood that they also possess the requisite mediation skills (or can even conduct anything approaching a mediation process) is undoubtedly low. Depending also upon the geographic area where the dispute is located, it may be difficult to find a sufficient number of neutrals within the local area who satisfy a very detailed set of qualifications. Thus, over-specifying the qualifications and/or credentials of the arbitrator or mediator may inadvertently lead to situations where very few suitable neutrals can be identified (or, in some cases, none), thereby thwarting the original intent of the parties in trying to design a more cost-effective and efficient process.

If the parties had not exercised this flexibility to insert the qualifications and/or credentials of the neutral into the dispute resolution clause before the dispute arises, all is not lost. Although the parties may disagree on the merits and preferred outcome of the dispute, it is conceivable that they will each recognize the benefits of agreeing, after the dispute has arisen, to select a neutral who has certain industry, business, or legal expertise. In matters administered by a provider such as the AAA, the CPR Institute, or Resolute Systems, the parties may be afforded an opportunity, after the case is filed, to articulate any preferences they may have for the neutral, particularly in situations where the dispute resolution clause is generic or silent as to the neutral's qualifications and/or credentials. Such an opportunity is another time when the flexibility and customization of alternative dispute resolution mechanisms can be leveraged to ensure that the neutral might have a better understanding of the industry, business norms, and/or legal framework in which the dispute has arisen and appreciate any technical information that might be adduced at the evidentiary hearing.

The ability to provide for, and ultimately select, the neutral with the right background and experience for the dispute in question is one of the hallmarks of a voluntary, consensual alternative dispute resolution process. It distinguishes arbitration and mediation, for example, from the traditional litigation model for resolving disputes and is well worth considering, not only at the moment when dispute resolution clauses are being drafted and entered into, but also when disputes actually arise.

* * *

Theo Cheng is an independent, full-time arbitrator and mediator, focusing on commercial, intellectual property, technology, entertainment, and labor/employment disputes. He has been appointed to the rosters of the American Arbitration Association, the CPR Institute, Resolute Systems, and the Silicon Valley Arbitration & Mediation Center's List of the World's Leading Technology Neutrals. He was recently inducted into the National Academy of Distinguished Neutrals. Mr. Cheng also has over 20 years of experience as an intellectual property and commercial litigator. More information is available at www.theocheng.com, and he can be reached at tcheng@theocheng.com. *An earlier version of this article appeared in the NYSBA Entertainment, Arts and Sports Law Journal, Vol. 29, No. 3 (Fall/Winter 2018).*

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Conf. J. 167-68 (2013) (hereinafter cited as the "Sedona Proportionality Commentary").

[5]*See* Sedona Conference Commentary On Defense Of Process: Principles And Guidelines For Developing And Implementing A Sound E-Discovery Process (2016), available at www.thesedonaconference.org..

[6]*See, e.g.*, NYSBA, Report by the Arbitration Committee of the Dispute Resolution Section, *Arbitration Discovery in Domestic Commercial Cases* (Apr. 2009) at 17.

[7]*See* Albert Bates, Jr. & R. Zachary Torres-Fowler, *Expectations and Practices Concerning Examinations in International Arbitration*, Legal Intelligencer (Jan. 15, 2018).

[8]*See* New York State Bar Association, *Guidelines for The Arbitrator's Conduct of The Pre-Hearing Phase of Domestic Commercial Arbitrations* at 6 (2010) (hereinafter cited as the "NYSBA Guidelines"), at 14.

[9]*See* Raymond G. Bender, *Presenting Witness Testimony in U.S. Domestic Arbitration: Should Written Witness Statements Become The Norm?* 69 Dispute Resol. J. 39 (2014) (hereinafter cited as "Bender").

[10] *See* JAMS Rules, R-22(e); AAA Rules, R-35(a).

[11]*See* Bender at 55.

[12]*See* Philip E. Cutler, *I Am Your Arbitrator: Here Is What to Expect from Me . . . And What I Expect from You*, 70 Disp. Resol. J. 15, 26 (2015).

[13]*See* Stephen J. O'Neil, *Managing Depositions In Arbitration To Minimize Cost And Maximize Value*, 69 Disp. Resol. J. 15, 20-22 (2014)

[14]*See* Fed. R. Civ. P. 37(c)(1).

[15]*See* CPR Protocol.

[16]*See Glen Rauch Sec., Inc. v. Weinraub*, 768 N.Y.S.2d 611 (1st Dep't 2003).

[17]*See* Kyle C. Bisceglie, *LexisNexis Practice Guide: New York e-Discovery and Evidence* Sec. 8.21 (2014).

[18]*See* Federal Circuit Advisory Council, Model E-Discovery Order, available at www.cafc.uscourts.gov; *see generally* The Sedona Principles On Protection Of Privileged ESI, 17 Sedona Conf. J. 99 (2016) (Principle 2 on use of claw-back orders).

[19]*See* John Facciola & Jonathan Redgrave, *Asserting And Challenging Privilege Claims In Modern Litigation: The Facciola-Redgrave Framework*, 4 Fed. Ct. L. Rev. 19, 53 (2010).

[20]*See* NYSBA Guidelines at 7.

[21]*See* Sedona Proportionality Commentary at 160.

[22]*See* JAMS Protocols.

[23]*See* Steven C. Bennett, *Who Is Responsible For Ethical Behavior By Counsel In Arbitration?* Chapter 25 in *AAA Handbook On Arbitration Practice* (2010)..

[24]*See Streamlined Three-Arbitrator Panel Option for Large Complex Cases*, available at www.go.adr.org..

[25]*See* NYSBA Report.

[26]*See* generally Steven C. Bennett, *Conflicts Between Arbitration Agreements And Arbitration Rules*, 15 Cardozo J. of Confl. Resol. 221 (2013).

[27]Joerg Risse, *Ten Drastic Proposals For Saving Time And Costs In Abitral Proceedings*, 29 Arb. Int'l 453, 454 (2013).

[28]Jonathan W. Fitch, *The Limitations on American-Style Discovery in International Arbitration, Chapter 6 in Strategies for International Arbitration* (2012) (hereinafter cited as "Fitch")

[29]*See* Cher Seat Devey, *Electronic Discovery/ Disclosure: From Litigation to International Commercial Arbitration*, 74 Arbitration 369, 382 (2009).

[30]*See* Tracey B. Frisch, *Death by Discovery, Delay, And Disempowerment: Legal Authority for Arbitrators To Provide A Cost-Effective And Expeditious Process*, 17 Cardozo J. of Confl. Resol. 155, 156 (2015).

[31]*See* Tom Aldrich, *Arbitration's E-Discovery Conundrum* (Dec. 16, 2008), available at www.cpradr.org .

[32]*See* George Gluck, *Great Expectations: Meeting the Challenge Of A New Arbitration Paradigm*, 23 Am. Rev. of Int'l Arb. 231, 232-33 (2012).

[33]*See* Charles Moxley, Jr., *Discovery In Commercial Arbitration: How Arbitrators Think*, 63 Dispute Resol. J. 1 (Aug./Oct. 2008).

[34]*See* CPR Economical Litigation Agreement, available at www.cpradr.org;.

[35]*See* Thomas J. Stipanowich, *Arbitration and Choice: Taking Charge Of The "New Litigation" (Symposium Keynote Presentation)*, 7 DePaul Bus. & Comm. L.J. 383, 386 (2009).

[36]*See* Kent B. Scott & Adam T. Mow, *Creating an Economical And Efficient Arbitration Process Is Everyone's Business*, 67 Dispute Resol. J. 36, 39 (Aug./ Oct. 2012).

[37]The ICDR Guidelines are available at www.apps.adr.org.

[38]*See, e.g.*, AAA Commercial Rule P-1; Rule P-2; JAMS Comprehensive Rules, R-16.

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pute resolution skills;

• Involving a neutral facilitator in the ADA interactive process with employees.

• Developing alternative dispute resolution programs for health care and continuing care retirement communities.

If you have expertise to share with our membership on these or other topics, please let us know how you would like to become involved.

We are considering offering optional membership participation in a listserv to share ideas, circulate relevant articles, provide professional opportunities, and connect our membership across the country. This also may be a vehicle to update you on webinars, job postings, programs of interest, speaking and writing opportunities, as well as discussion groups on topics of interest. We encourage Section members to connect with one another in their respective regions of the country and through their local FBA Chapters, and we are hopeful a listserv may facilitate those connections.

Please let us hear from you and share your ideas to enable us to make your Section membership more relevant to your practice. If you would like to become more involved in the Section, please contact any one of your Board members:

Lisa Brown, Chair, is an attorney, mediator and arbitrator in Portland, Oregon and can be reached at lisa@lisabrownattorney.com.

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Each of us would be delighted to hear from you. If you are already a member, thank you for participating in the ADR Section. If you are not yet a member of our section, we encourage you to join our ADR Section.

Lisa Brown, Chair

How the Mediator Gains the Parties' Trust
Step 1 - Demonstrating Mastery over the Process

by Arthur L. Pressman

In the last issue of The Resolver, I wrote about what matters most to the parties in mediation and identified trust in the mediator as the single most important factor in a client's overall assessment of the fairness of a mediation. If a client senses that a mediator is "untrustworthy" a successful resolution is unlikely. Interestingly, the converse is not true. If you recall from my last article, one of the most surprising findings by Dr. Jean Poitras, a Canadian academic and mediation researcher, is that parties do not judge a mediation solely by its result; that is, resolution "in their favor" or even no resolution at all, is not the lens through which actual mediation participants gauge their satisfaction with the experience. Instead, it is participants' impressions of the fairness or unfairness of the process that remain with them long after the mediation's result has faded. Was it a fair process generally, and was it fair to them specifically? Or did elements of their experience of the process leave them with a feeling of distrust or unease?

Let us remember that most mediation participants come into the experience "cold" – most usually, they are not veterans of prior mediations and their only pre-mediation education is what their lawyers have told them to expect, based on the lawyer's experiences. But Unlike a party in mediation, a lawyer as a professional is interested primarily, if not exclusively, in outcome – A settlement that meets the lawyer's parameters, whatever they may be. As the old expression goes, "a pick pocket only sees pockets," so too a lawyer who only is interested in whether the dispute has settled near her terms may not see much more beyond outcome. For a participant, however, especially one new to dispute resolution, the experience of mediation is more nuanced, and anxiety-fraught, than it is for a lawyer. Whether the participant trusts or distrusts the process may be entirely dependent on how she or he experiences the mediator.

The success of mediation as a process demands its acceptance by participants as a fair and efficient way of dispute resolution. That can't happen without the parties' trust in the mediator, which is not a given that comes with a mediator's appointment. It's up to the mediator to win the trust of the participants. And one of the ways the mediator accomplishes that goal is through demonstrating mastery of the process. The first step in the mediator's trust-building is welcoming the participants to the process and explaining to them the mediator's experience with the mediation process. As many times as the mediator has given his introduction, and as many times as the lawyers have heard it, it's usually the first time that the mediator has addressed the lay participants, and first impressions matter. thoughtful, thorough, and most of all unrushed -- the parties, and not the lawyers, are the mediator's audience and it is critical for the mediator to keep that in mind.

The parties want to know that the mediator has helped other parties reach resolution and is committed to helping them do the same. If the mediator has experience in similar cases, letting the parties know that reassures them they have come to the right person for help. If the mediator has spoken with them or their lawyers before the mediation, mentioning that again at the mediation shows the participants the mediator's commitment, professionalism, and familiarity with the case.

Of the more than 100 respondents interviewed in Dr. Poitras' study, more than 35% reported that their mediator had inspired trust by his or her professionalism, familiarity with the case, reference to prior mediation and self-assurance. All of these qualities, referred to collectively as the "mediator's mastery" of the process, were a commonly reported factor in participants' reaching a conclusion that they held a high level of trust in the mediator.

The sometimes rush to get into caucus sessions may lead a mediator to dispense with or give short-shrift to the opening joint session. Short-cutting or hijacking the opening session in favor of caucuses has its risks, however. A party who doesn't see the mediator dealing with the other side, misses experiencing the mediator's even-handedness and control of the process. Many mediators fear joint sessions because parties' emotion and hard feelings may be on display. IMHO, that's no reason to dispense with a joint session. Those emotion and hard feelings will follow you into the caucus room, and if unexpressed during the joint session, 1) may boil over in caucus, and more importantly, 2) deprive the mediator of a crucial opportunity to display mastery over the process by hearing and responding to the emotion in a fair, even-handed way in both parties' presence.

Mediator trust does not come by mastery of the process alone. Dr. Poitras' research has identified Other factors as well that contribute to participants' sense of mediator trustworthiness. Following his team's review of questionnaires of parties who had completed a total of 105 mediations with 36 trained, full-time mediators, he identified from the parties' perspective 5 key subject areas of interaction with the mediator that parties emphasized in answering why they trusted (or didn't trust) their mediator:

1. degree of mastery over the process,
2. explanation of the process,
3. warmth and consideration,
4. chemistry with the parties, and
5. lack of bias toward any party.

Each of these areas of interaction provides the mediator with AN opportunity to build or destroy trust. For the most part, parties (non-institutional, non-repeat player parties, that is) come to mediation wanting to trust the mediator. They ARE HOPING THAT HE OR SHE WILL HELP SETTLE THEIR DISPUTE IN A WAY THAT IS MEANINGFUL TO THEM. By Paying a fee, they are literally invested in the process but unsure what it involves. It's all up to the mediator – it can't be, "you pay your money and you take your' chances." In truth, that's too much like going to trial before the next judge or jury up. In mediation, the parties and lawyers pick you; you don't pick them. Being a mediator is a huge responsibility that begins with understanding what the parties want from you – more than a resolution, it's fairness and an opportunity to be heard.

For those of you who want to read more of Dr. Poitras' study, it is available at https://doi.org/10.1111/j.1571-9979.2009.00228.x. I intend to follow this article with additional ones that speak further to each of the subject areas that his paper identifies – degree of mastery over the process, explanation of the process, warmth and consideration, chemistry with the parties, and lack of bias toward any party—and what it is a trusted mediator can do to improve the mediation experience for the participants and with it improve the likelihood of a successful result.

Arthur Pressman is a mediator, arbitrator, law professor and lawyer, specializing in helping parties resolve complex franchise and other commercial disputes. he teaches adr, negotiation and professional responsibility at Boston University School of Law and is senior counsel at Nixon Peabody LLP in Boston, Massachusetts.

EDITOR *continued from page 1*

or the mediator. Theodore Cheng reminds readers of the importance of matching the characteristics of the neutral to the dispute.

This issue includes three articles that provide practical considerations for neutrals and attorneys representing clients in mediation. Cynthia Augello shares her experience mediating Fair Labor Standards Act disputes and gives advice from the representative's perspective for achieving successful mediation. Practitioners would be well-advised to pay attention to the suggested preliminaries and the role of preparation in her prescription for achieving a beneficial agreement. From another perspective, Arthur Pressman continues his observations on Traits of a Mediator and examines the importance of trust in the mediator as a starting point to effective mediations. Finally, John Shipp rounds out our attention to the mediation process with his offering of advice and practice pointers for a successful mediation.

We hope that our readers will find this issue of The Resolver useful and stimulating. We welcome your comments and reactions, and we invite you to contribute your own thoughts, analyses and opinions to our next issue which will be published in time for the FBA Annual Meeting in September 2019.

Thank you for your support.

Alexander Zimmer, Editor

Alexander J. Zimmer is an attorney and mediator in New York City. He has pursued a career in law and in business span for more than 30 years. Mr. Zimmer can be reached at alex@azimmerlaw.com.

Eight Negotiation Tips Designed to Get Better Results at Mediation

by John Shipp

Despite the misconception that great negotiators come out of the womb with their negotiation abilities fully formed, negotiation is a learned skill. We can all become better negotiators through education, practice, and preparation. Here are eight tips designed to improve your negotiating skills and your results at mediation.

1. Know your Negotiating Leverage before Mediation

You won't know whether you should take the deal on the table until you know what your alternatives are. Before mediation, consider in detail what are your alternatives to a settlement agreement, and do the same thing from the other side's perspective. This exercise will give you insight into the realistic settlement range, whether you are dealing from a position of strength or weakness, and how hard you can push for concessions. **Bonus tip:** Sometimes the best deals are the ones you walk away from.

2. Know the Difference Between Positions and Interests

Knowing the difference between a party's position and his or her underlying interests can lead to creative solutions. A position is what someone demands, while his or her underlying interest is why they are making the demand. For example, a homeowner demands $20,000.00 from a contractor in a construction dispute. However, the contractor can't pay the demand. The homeowner's demand is his position. His underlying interest may be that he wants the money to repair his roof. If you know why someone wants something, you may be able to craft a creative solution. In this example, rather than pay monetary compensation, perhaps the contractor can repair the roof instead. **Bonus tip:** One of the most powerful tools available to discern the underlying interests of someone's position is to ask "why" they have taken a particular position.

3. Set Expectations before Mediation and Identify Interests

The more information you have regarding what is important to the other side, the more likely you will be able to craft a negotiated agreement that everyone can live with. Likewise, if you can set expectations with opposing counsel before mediation, you minimize the potential for getting bogged down over an issue because it was brought up for the first time in mediation. You can address both of these points by having a substantive discussion with your counterpart before mediation. This discussion can be effective in identifying interests, potential barriers to an agreement, and possible paths toward settlement. **Bonus tip:** Ask questions and listen. When you want to talk, resist the urge, and then listen some more. You can gain valuable insight into the other side's interests, which you can then leverage to get the deal points that are important to you.

4. Make a Demand or Offer Before Mediation

When dealing with large companies and insurance carriers, make a detailed demand or offer weeks before the actual mediation session. These cases are often evaluated through roundtable discussions and committees, and these matters often go through several levels of leadership before the case is valued and settlement authority is given. If you fail to provide your counterpart with your view of the case, he or she is setting the valuation in a vacuum. While mediation can shift perceptions of case value, it's tough for any party to substantially change the case value on the fly or obtain sufficient additional authority at mediation -- so you're better off helping them set that value earlier in the process. Providing the other side with a detailed demand or offer before mediation forces your counterpart to consider your evaluation of the case, tests his or her preconceived views of the value of the case, and sets expectations for mediation. **Bonus tip:** The more information you provide to support your evaluation, the more likely your counterpart will consider your valuation.

5. Make the First Offer

Anchoring is when one party sets an initial position that begins the offer/counter-offer process. The party that sets an anchor first often achieves better results. A well-placed, realistic anchor can move the range of a possible agreement closer to your initial position. To increase your chances of moving the settlement range in your direction, you should anchor just within the realistic value of the case. **Bonus tip:** When the other party makes an unrealistic first offer and anchors outside the value of the case, it can have the opposite effect. He or she will lose credibility, and you can now set a more realistic anchor, which can move the possible settlement range in your direction.

6. Deal with Insulting Offers and Responses

Parties are often insulted with offers made in mediation. These offers typically have no relation to the value of the case. Although it may seem counterintuitive, an effective technique is to respond with a reasonable offer within the realistic range of possible settlement. You should send the offer with the message that the insulting offer was not considered in making the current offer as it has no relation to the value of the case, and that this latest offer was made with the intent to invite the other party to counter with a reasonable number. If the other party is unwilling to respond accordingly, he or she must know that there is a disconnect in the process. **Bonus tip:** This technique can be effective when a negotiation has begun to stall when one party is unwilling to move off its number.

7. Consider Making Multiple Simultaneous Offers

Consider making multiple simultaneous offers in a negotiation. At the beginning of a negotiation, you can often determine the true interests of parties by offering different terms in multiple offers. Parties will often counter with select terms from the multiple offers presented, which allows you to determine the underlying interests of the counterpart which you can then leverage to obtain favorable concessions from the other side. **Bonus Tip:** You can also use this technique at the end of a negotiation when the parties are bogged down over numbers by making an offer at your number, and an offer at your counterpart's number with additional terms. This will often highlight for the other side the value of your number offer. Your counterpart will often determine that there is more value in your number rather than in his or her number with preconditions.

8. Close the Deal and Maximize your Results

You have to do two things to maximize your results at mediation. Give your counterpart hope that there is an opportunity for a deal, and then make it painful for them to walk away. You can give hope by making an offer within a realistic range of the settlement value of the case. They don't have to like the terms, but it should be attractive enough that it encourages them to negotiate off of their number. As the midpoint gets closer to each side's number, urgency and pressure increase to get a deal done. You can often obtain additional concessions and push your counterpart past his or her desired resolution by making a final offer close enough to the other side's bottom line that it is too painful to walk away from the deal. **Bonus tip:** A good rule of thumb is that most parties will not walk away from five to ten percent off of their bottom line.

In conclusion, we can all become better negotiators if we take the time to develop the necessary skills. While this list is by no means exhaustive, implementing these tips can often lead to better results for your clients

John Shipp a full-time mediator, arbitrator, and settlement counsel focusing on the resolution of complex disputes. He previously practiced as a partner at a litigation boutique in Dallas, Texas, and practiced in the area of commercial and business litigation and worked as a transactional lawyer performing real estate, commercial leasing, and general corporate work. He also served as outside general counsel for several of his business clients, and counseled them on litigation, employment, regulatory, and transactional matters, as well as all aspects of risk management and dispute resolution. John practices in these same general areas as a mediator. He has twenty-three years of experience as a lawyer and nineteen years of experience as a mediator. He has been named a "Texas Super Lawyer" by Thompson Reuters and Texas Monthly Magazine from 2011-2018, and a "Best of Dallas" by D Magazine from 2015-2018, both in the areas of alternative dispute resolution. He is based out of Dallas, but is available to mediate cases nationwide. He can be reached at john@shippmediation.com

The Key to the Mediation Room is Preparation

by Cynthia A. Augello

Preparation can Make or Break an FLSA Mediation

Mediation has become a highly-utilized method of resolving Fair Labor Standards Act (FLSA) disputes. In fact, in many jurisdictions throughout the United States, the District Courts mandate mediation in all FLSA actions. The FLSA establishes minimum wage, overtime pay, and child labor standards for most, but not all, private and public employees.[1] Mediation allows parties to resolve disputes in a quick and efficient manner while minimizing costs to the parties.

When to Mediate?

Deciding when to mediate is done on a case-by-case basis. In some instances, it is better to mediate immediately. In this situation, neither party has expended large sums of money and the prospect of having to start the expensive discovery process may make the parties more willing to settle. Additionally, at this point, typically there have not yet been motions or decisions concerning class or collective certification.

In other cases, it may be more beneficial to mediate after discovery has been conducted. Yet other times, mediation might not be beneficial until immediately prior to trial. And sometimes, more than one session at different stages of the litigation might be necessary. Whenever the time seems right, the parties should focus their time, energy and efforts on preparing to resolve the matter.

For A Successful Mediation, Preparation Is Key.
Prepare Yourself.

In order for you to effectively participate in the mediation and to have the best chance at reaching a resolution, you need to be fully conversant in the claims being raised, the defenses, the documents involved and the weaknesses of the case on each side of the "v". Typically, a proper preparation involves:

- Gathering all applicable documents.
  - •Detailed payroll details/pay stubs
  - •Computer logins
  - •Telephone records
  - •Daily employee time records/sign in sheets
  - •All other relevant financial documents
  - •All other documentation which would help understand when the employee was working and what he or she were paid including, but not limited to:
    - •Punch clock records
    - •Restaurant patron checks
    - •Credit card receipts
    - •Diaries/calendars/schedules
    - •Tip logs
    - •Records of deliveries made
- Organization of the records related to each plaintiff by date and type of record.
- Making notes of any missing documents and the relevance of such documents.
- Ensuring each document complies with any applicable state/federal laws (i.e., do the paystubs contain the correct hourly rate and number of hours worked?).
- Reviewing the employer's policies and procedures concerning overtime.
- Preparing a chart summarizing the claims and the records pertaining to such claims.
- Preparing a damages calculation concerning each plaintiff identifying the best case, middle case and worst case scenarios including attorneys' fees, interest, and liquidated damages.
- Reviewing the applicable laws and determining any possible defenses.
- Determining the assets that may be at issue in the litigation.
- Review the pleadings and determine if the settlement will be on behalf of a class or certain individuals only.
- Knowledge of local court requirements concerning settlement agreements (i.e., is a confidentiality clause permitted, must a court approve a settlement, etc.).

Prepare your Client.

Often, the clients have not previously experienced a mediation session. Having a prepared client will allow the client to understand the process and make a more informed decision with respect to settlement terms. If you and your client decide that the client should attend the mediation session, you must prepare the client for the process. Often having a client with decision making authority at the mediation is helpful for both you and your client. First, the client is invested in the process if she will be in attendance. Second, sometimes, despite how many times you have told your client about an issue with their case, if she hears it from a neutral third party it will reinforce your good counsel. Typically, a proper client preparation includes:

- An explanation of the mediation process (do not forget to explain to the client that the mediator may seem to be pushing the client to raise or lower the settlement offer, or stating the bad facts rather than the good facts of their particular case).
- A discussion of the relevant law and whether the facts as applied to the law are positive or negative for the client's case.
- Explaining the process and costs of going forward with the litigation should the matter not be resolved through mediation.
  - oDiscovery
  - oConferences
  - oMotion practice

oTrial preparation
oTrial

• A review and explanation of the damages charts including a discussion concerning the statutory damages available to a successful plaintiff.

• Explaining mediation confidentiality.

• A discussion of expectations for the mediation (i.e., what does the client want to accomplish at the mediation, and will it be possible).

• A discussion concerning payment plans/ability to pay and these could impact the settlement negotiations.

• An explanation of the difference between a class and collective action and the benefits of settling with either an entire class or certain plaintiffs.

• A discussion of court requirements concerning settlement agreements and terms (i.e. you don't want your client to insist on confidentiality if it is not permitted in these types of cases in your jurisdiction).

Prepare the Mediator.

Typically, the mediator selected will be knowledgeable with respect to the area of law being mediated; however, it is important to advise the mediator if there are any unique issues involved in the matter which will require the mediator to research prior to the scheduled session. If the mediator is well prepared in advance, the mediation can be more focused on how to bring the parties together in settlement. In order to make sure the mediator is well-versed and prepared to mediate your case, the parties should:

• Draft a detailed mediation statement including:

• The claims, defenses, any problems/disputes to that point in the litigation (i.e., discovery disputes, attorney disputes, etc.), any relevant orders from the court, your client's position, any unique issues of law with relevant research.

• Be sure to point out your client's weaknesses, if any. As mediations are confidential, a mediator will appreciate the candor and exposing those issues upfront will allow the mediator to prepare to address them with both parties should it become necessary.

• Submit the damages calculations in excel or some other document that can be manipulated by the mediator.

• Send all relevant documents to the mediator.

• Send a list of the individuals attending the mediation and their role in the litigation.

• Advise the mediator of any special concerns of your client (i.e., the client wants to discuss how she treated the employees like family and is very hurt by the lawsuit).

• Address any and all information the client wishes to keep confidential.

Prepare the Other Side.

There are few things worse than walking into a mediation having no idea what the other side is thinking concerning settlement. The attorneys should exchange information as much time in advance of the mediation as possible. The attorney for the plaintiff should give the defense damage calculations in Excel. The attorney for the defense should give payroll records to the other side. This exchange will allow the attorneys for both sides to properly manage client expectations and walk into the mediation with full knowledge of the positions of the other side.

Remember To Listen and Respect One Another!

Although mediation is helpful in reducing the time and costs usually associated with litigation, the parties and attorneys must remember to remain patient throughout the entire mediation process even during times where the mood is tense.

Both parties should remember to respect and give one another an equal opportunity to discuss any discrepancies in numbers and explanations for any actions that they may have taken.

Remember to explain to your client that the mediator is a neutral party who respects both the attorneys and the parties equally, and is there to help the parties reach a resolution.

Conclusion.

The potential benefits of mediation are numerous for both parties in an FLSA matter. To take full advantage of these benefits, preparation of yourself, your client, the mediator, and the other side is key. If both parties and their counsel properly prepare and remain respectful of each other and the process, the more likely a beneficial settlement will occur.

Cynthia Augello is Partner in the Commercial Litigation Department of Cullen and Dykman LLP. She is a New York State certified mediator and regularly handles FLSA matters as well as all areas of employment law. Ms. Augello also sits on the ADR Advocate Panel for the Eastern District of New York ADR Section and is also the current FBA Eastern District of New York Chapter President. Ms. Augello wishes to thank Kuljit Kaur, a FBA EDNY Chapter Law Student Division member and clerk at Cullen and Dykman LLP for her assistance with this article.

Endnote:

[1]See Alfred B. Robinson, Jr., "The FLSA After 80 Years, Part II: Eight Decades of the Fair Labor Standards Act," The National Law Review, (July, 3, 2018), available at https://www.natlawreview.com/article/flsa-after-80-years-part-ii-eight-decades-fair-labor-standards-act.

Upcoming ADR Section Events

ADR Section/Litigation Section Sponsorship of the Cardozo/Touro Law Symposium on the New Singapore Convention Enforcement of Mediated Settlement Agreements (New York, NY, March 18, 2019)

On March 18, 2019, please join the FBA Litigation and ADR Sections at Cardozo Law School, for a symposium to celebrate and explore The New Singapore Convention on Mediated Settlements. The need for the Convention and its significance, the role of UNCITRAL, legal issues surrounding mediated settlements, and key issues debated in the Convention's adoption will be explored. A reference book will be developed on the new UN Singapore Convention on Mediated Settlements as a result of the Symposium which the FBA Litigation and ADR Sections' sponsorship will also support. The book—to be published as a dedicated issue of the Cardozo Journal of Conflict Resolution—will cover keys topics relevant to any country considering adopting the Mediation Convention. Most of its chapters will be written by authors who served as delegates at the UN during the drafting of the Convention.

CLE credits will be available. Visit the ADR Section Pages on the FBA Website to register.

Sponsorship of the 25th Annual Northwest Dispute Resolution Conference (Seattle, WA, March 28, 29, 2019)

The Annual Northwest Dispute Resolution Conference has been jointly organized and presented by the Washington State Bar Association's Alternative Dispute Resolution Section and the University of Washington School of Law since it was first held in 1993.

Every year, the conference features a wide variety of dispute resolution topics in more than 50 sessions covering negotiation, mediation, arbitration, communication, and other skills applicable to dispute resolution and conflict engagement since its inception, the Northwest Dispute Resolution Conference has offered timely and relevant programming to promote the use of dispute resolution and conflict engagement. Every year, it provides compelling presentations and practical skills for attorney advocates, mediators, and other professionals. Attendees of the Northwest Dispute Resolution Conference praise the quality of the presentations and the high level of organization, citing "the wide variety of topics", "the practical advice from experienced mediators", and "the great and inspiring speakers." In addition, the conference has become a much-anticipated and invaluable networking opportunity for speakers and attendees.

CLE credits will be available. Visit the ADR Section Pages on the FBA Website to register.

FBA ADR Section Webinar: "The Value of Mediation and Arbitration in Healthcare" May 1, 2:30 ET

Panel:
Mary Austin, Marcia Adelson, Lisa Brown
Registration through the FBA

FBA ADR Section and the Southern District of New York Chapter Present a Networking Reception and Panel Discussion on Optimizing Mediation
(The SDNY Court House, New York, NY, May 16, 2019, 6-8pm)

Panel of Neutrals: Simeon Baum, Joan Hogarth, Alexander Zimmer
CLE credits pending. Registration to be announced. Additional details to be provided on the ADR Section Pages on the FBA Website.

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ADR Section Leadership

If you are interested in becoming the ADR liason for your chapter, please send an email to Alea Al-Aghbari, sections and divisions coordinator, at aalaghbari@fedbar.org.