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A Mediator's Tools

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"If this organization were a fairy tale character, it would be 'Doraemon', because it always meets the needs of the people it serves, no matter what that need is. This organization pulls tools out of its pocket that solve any problem, and it works across generations and cultures... just like Doraemon."

- A WAMS admirer

It is not every day that WAMS is compared to a famous Japanese cartoon character, but if one takes the time to read about the exploits of Doraemon, the famed robotic feline from the future, then the comparison does not sound so farfetched.

Doraemon made his first appearance in print in 1969; the stories centered on a fifth grade schoolboy, Nobita Nobi, and the robotic cat's efforts to help his friend. Nobita would come home from school and confide in Doraemon about a problem he had encountered that day. The latter would offer immediate advice on how to handle the issue without conflict or confrontation.

Likewise, the first tool used by a WAMS mediator is **administrative guidance** to all sides in advance of mediation, typically with the help of WAMS Case Administrators. Parties are encouraged to mediate

only when the case is "ripe", after direct negotiations have been undertaken. Pre-hearing memos that identify each party's view of the dispute are encouraged, as is the participation of anyone with settlement authority. In some instances, this initial preparation leads to a better mediation outcome because the parties are more educated and prepared for the process from the start.

In Nobita's case, advice alone was never enough; he always asked his feline friend for a device that could fix his problem or help him get revenge against an adversary. At Doraemon's disposal were futuristic wonders he could pull out of his pouch like **'The Anywhere Door'** (a door that opens up to any location the user wants), **'The Voodoo Camera'** (a camera that takes a picture of a person and then creates a voodoo doll), and **'The Dream Reader'** (a television that allows someone to watch what another person is dreaming about). Although Doraemon's gadgets sometimes caused unexpected problems of their own, by story's end, Nobita's problem would be resolved in some fashion and the clear moral would always come to light: It is better to work through your problems than to take the easy way out by avoiding them or fighting back in anger.

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Mediator Focus: Michele Sales

By: Penny Gans, WAMS Staff

In her 20+ years as a mediator and arbitrator with WAMS, Michele Sales has earned the respect of plaintiff and defense counsel alike for her understanding of legal issues, her ability to put injured parties at ease in highly stressful situations, and her diligence in following through after the mediation to resolve any remaining issues. As one of her long-time clients puts it, “Michele does more to get a case settled than any other mediator I have ever worked with.”

Michele believes that “most cases should settle, and sooner than a week before the trial.” She values the mediation process for “forcing people to talk to each other sooner than they otherwise might and for helping attorneys settle cases without risking being seen as weak.” She believes successful mediation requires the mediator to have experience in the subject area and come to the table thoroughly prepared. Michele says that although the mediator can’t know everything about the case, it is important to demonstrate to both client and attorney that she is engaged and actively listening. Settlement may depend on the financial situation of the parties, the influence of another similar case, relationships, desire for confidentiality, or other issues that are not initially evident to the mediator. Michele is known for her persistence and encouragement of clients to keep working toward settlement if the case doesn’t resolve at mediation. As the complexity of her mediation practice has grown in recent years, Michele has often found herself without enough time to fully resolve all issues requiring attention. As a result, she decided in 2011 to require clients scheduling with her to devote a full day to the mediation. Michele understands that some of her clients may not require a full day for all of their cases, but she is confident that most of the cases she mediates will benefit from having the additional time allocated.

Michele grew up in El Paso, Texas, polished her “convincing” skills in high school debate, and completed undergraduate and law school at Duke University. An active

Duke alumna (particularly during college basketball season, when she “bleeds Duke Blue”), she has served as president of the Alumni Association Board of Directors and as a member of the University Board of Trustees. Duke Law School has asked her to serve as Referee and mediator for major medical product liability class action suits, as well as gender discrimination and sexual harassment class actions against national firms. On a lighter note, it was at Duke that Michele took her first golf lesson, beginning a lifetime of joy and frustration. Michele met Chris, her future husband, while he was a Naval officer stationed in California. His transfer to Italy during her last two years of law school meant summers and Christmas in Italy and an opportunity to spend time in the Navy’s Legal Service Office, assisting with courts-martial. After a move to Seattle in 1981, Michele joined the Oles Morrison firm and spent the next few years handling personal injury, insurance, and employment defense matters, plus “any case that needed a woman”. She became a partner in 1989, then left to establish Steele and Sales with Katherine Steele in 1990, specializing in asbestos litigation. Although Michele had been a WAMS neutral since 1988, it was in 2001 that she became a full-time mediator, focusing on employment, product liability, personal injury, and other areas involving complex legal issues.

Among the many community activities she has enjoyed, Michele singles out her involvement as a member of the Navy League committee to commission ships accepted into the Navy, a ceremony known as “bringing the ship alive”. In addition to working locally on the commissioning of the *USS Shoup* in 2002, Michele attended the commissioning of the *USS Ronald Reagan* in Norfolk, VA in 2003, watching Nancy Reagan formally bring the ship into the U.S. Navy. Through her association with the Navy League, Michele became involved with Seafair and served on its Board of Directors from 2002–2009. As Chairman of the Board in 2009, she delighted the friends and colleagues watching her waving graciously to the Seafair Parade crowds from the back of a bright yellow Corvette convertible.

Chris and Michele enjoy cruising in the San Juans and have recently traveled in Spain, Argentina, and New Zealand, sharing their highly entertaining travel blogs with friends and associates. They also try to attend the National Finals Rodeo in Las Vegas as often as possible – Michele is a Texas gal, after all!



...WAMS Buzzz

Adriana Sirb, WAMS Accounts Manager, spent a six-week sabbatical in Honolulu, Hawaii donating her time to the Meals-On-Wheels organization. Adriana, along with her husband and four children, participated by delivering meals three days a week to approximately 25 senior citizens. Since they were often on the same route, they were able to get to know the people they were helping which made the experience even more enjoyable. The time spent in Hawaii was amazing, but even more so was the

invaluable lesson of compassion and humanity they all shared. This was an opportunity that Adriana will always be thankful to have been a part of. For more information about the Meals-On-Wheels organization, you can visit them on the web at www.mowaa.org.

In other news, Tamara Roberts, WAMS Mediation Director, welcomed a healthy baby girl, Keira Dawn, on February 14, 2011 (5 lbs. 7 oz.). Congratulations!

A Mediator's Tools, Continued from page 1...

For mediators, the gadgets in their pockets are the tools of their trade that have been proven to be successful and, unlike Doraemon's, rarely lead to *more* trouble. Beyond basic attributes like **patience**, **experience**, **persistence**, and **objectivity**, an effective intermediary must have the **intuition** to pick up on cues during mediation, both verbal and non-verbal, in order to develop the strategy to be employed in moving the negotiations forward. For instance, mediators sometimes find it necessary to ask the plaintiff's friend or relative to "take a break" from the mediation to permit the plaintiff's voice to be heard. Additionally, there must be a bond of **trust** created between the parties and mediator that will allow everything from random thoughts to deep secrets to be shared. Sometimes in mediation, information is disclosed for the first time that proves pivotal in finding resolution. One such example was the revelation in a recent mediation of the defendant's potential bankruptcy filing. Because of that prospect, the plaintiffs chose to settle the case for an immediate and guaranteed payment rather than wait for trial and risk being embroiled as creditors in the defendant's bankruptcy proceeding.

Problem solving skills are imperative due to the solutions mediation allows for that the courts do not (e.g. meeting non-monetary needs). Margo Keller and other WAMS mediators have used Skype successfully to involve unexpectedly absent participants whose visual interaction was an important factor in reaching settlement. It also does not hurt to have a timely **sense of humor** that can temper the stress and exhaustion that intense negotiations can cause—Don Kelley is well-known for his efforts at levity. It is an effective way to remind the parties involved that mediation is a nicer, more humane process than going to trial.

Doraemon and mediators alike have the ability to quickly figure out what is at the core of an issue and how to resolve it. By listening to parties in need, offering consultation on how to come to a peaceful resolution, and occasionally using outside-the-box methods, all have the tools at their disposal to resolve disputes. Whatever the case might be, it is good to know that help—whether it be in the form of a mediator with extensive experience and negotiating tools or a robotic cat from the future with a gadget-producing pouch—is there when it is needed.



If Labor & Industries or other lien holder or coverage counsel is involved in your case, please be sure to alert WAMS at the time of scheduling of the likely participation by that non-party entity. If WAMS doesn't have ample prior notice, that essential coverage attorney or representative from L&I or lien holder could be relegated to the WAMS hallway, which is not a popular location to be for 4 or more hours. Without prior notice from counsel, WAMS will be unaware of any such additional participants and cannot make suitable hearing room arrangements for them.

Additionally, those non-party participants really appreciate receiving a copy of the scheduling confirmation notice and directions from WAMS. If you send WAMS an email with the name and contact info for that participant in your case, we'll be sure to send proper notification.

Lastly, if the lien holder happens to be Medicare, it's advisable to provide notice to Medicare of an upcoming mediation at the earliest possible opportunity. Otherwise, plaintiffs' attorneys have experienced delays of up to 6 months in resolving Medicare liens if notice was not provided well in advance of the mediation session.

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John Cooper

"The matter has settled, and it did so through the continued efforts of Mr. Cooper - he graciously offered to help after we were unsuccessful in arriving at a resolution during the mediation."

- WAMS Client

"John's relentlessness as a mediator is relentlessly appreciated by us."

- WAMS Client

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View our online calendar for short notice scheduling availability within 2 weeks!

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