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Trending ADR Topics

By: Melissa Fuller, WAMS House Counsel

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As House Counsel at WAMS, I take great pride in my affiliation with an organization that is intensely committed to providing top-quality dispute resolution services statewide while simultaneously acting as an informational and educational resource to our clients and the community for over 30 years. I have always been motivated to be of help and service to people in the midst of conflict. That motivation steered me towards a career in law and, ultimately, a focus in alternative dispute resolution. As a trial lawyer since 2001, I gained great experience in the areas of employment, personal injury, construction and complex litigation. I have had the unique opportunity to advise and advocate for a wide range of clients, including injured plaintiffs and insureds, government agencies, employees, employers, corporations and business partners. I've educated clients on applicable law and procedure and provided good counsel and an empathetic ear during what was an intensely stressful and challenging experience for most. Taking a cue from numerous mentors, I encouraged my litigation clients to utilize mediation with great success.

Now I have the distinct pleasure of interacting with WAMS' clients and responding to inquiries regarding current issues and case law impacting ADR. By way of recent example, WAMS Staff Attorney Judy Mikel and I met with a long-time client to discuss a recent Division One opinion, Evans v. Mercado, et al., No.

71390-6-1 (Nov. 17, 2014), and the court's analysis of the admission of insurance limits in a case adjudicated under mandatory arbitration rules. The Evans court concluded that nothing in RCW 7.06 et seq. prevents an arbitrator from admitting evidence of insurance limits. We discussed that opinion in the context of a WAMS UM/UIM arbitration guideline that asks parties to refrain from disclosing underlying policy limits and offsets so arbitrators may determine liability and damages without exposing themselves to potentially prejudicial factors. WAMS encourages clients to bring current issues to our attention and we appreciate candid discussions of WAMS policies and guidelines.

Another topic for discussion in ADR is the use/non-use of the joint session in commercial mediation. A traditional cornerstone of the mediation process, the joint session is used to bring participants together initially in the same room with the mediator for face-to-face discussion and negotiation. Some in the ADR community speculate that the noticeable trend to abandon the joint session is primarily driven by the opinions of lawyers and mediators that joint sessions are "a waste of time" or too risky when emotions among participants are high at the outset of mediation. Experienced mediators know, however, that when joint sessions are properly orchestrated, they can provide a sense that positions and interests have been advocated and heard by all and an

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Mediator Focus: Michelle Corsi

By: WAMS Staff

“Navigator” is a word Michelle Corsi often uses when describing her role as an actively practicing trial attorney and member of the WAMS mediation and arbitration panel. With a practice focus that includes professional liability, employment and personal injury, Michelle’s commitment to clients and effectiveness over her 20-year legal career have earned her top honors and distinguished recognition among her peers. She finds it personally rewarding and challenging to help clients navigate the litigation process which, for most, is their first and only experience with the law.

As a mediator, Michelle uses her perceptiveness and communication skills as navigational tools to help guide parties through mediation to resolution. She sees mediation as a conversational forum in which participants are encouraged to tell their stories and be heard by a neutral, compassionate listener. She prepares herself well in advance of the mediation by reading submissions, contacting counsel with questions as needed, then listening actively to discover the respective parties’ motivations and goals to establish a course for resolution. Michelle’s practical experience as a trial lawyer makes her a relevant guide, as she is current in litigation trends and knows what courts and juries are doing. As Michelle says, “I believe that most cases have a resolution point and it is always worth the effort to find it.”

Following a family tradition, Michelle earned her undergraduate degree at WSU, where she, her

brothers and cousin often played on the same intramural softball and flag football teams. An English major, Michelle became interested in pursuing a legal career after completing a course in Constitutional Law. While at Willamette University College of Law, she earned a Certificate of Judicial Dispute Resolution and volunteered in a legal clinic run by local attorneys.

After receiving her law degree from Willamette in 1994, she clerked for a Snohomish County judge before receiving an invitation to join the Lee Smart firm in Seattle, where she is now a shareholder. Years of positive experiences with WAMS rekindled her interest in becoming a mediator, and Michelle was welcomed to our mediation and arbitration panel in 2013 after completing the University of Washington’s Professional Mediation course and WAMS Advanced Mediator training.

Michelle’s navigational skills are also instrumental in her private life. As parents of two sports-loving sons, Michelle and her husband are fully involved with community events and youth activities in Edmonds. They both serve on the Board of Directors of Pacific Little League, an organization serving 800-plus boys and girls playing baseball and softball between the ages of 5 and 18. As a board member and “player agent,” Michelle forms the baseball teams, schedules games and organizes the all-star teams. Her husband is also a team coach and last summer coached the team that represented the entire Northwest Region at the Little League World Series in Williamsport, Pennsylvania. During winter, the whole family enjoys snowboarding and skiing at Stevens Pass and Whistler.

Michelle’s personal and professional experience, knowledge and commitment to the mediation process make her an effective navigator for clients and a valuable addition to the WAMS panel.

Scheduling Tips from the WAMS Case Administration Staff

- When you contact WAMS to schedule a case, let us know if you have a mediator preference and if you need a full-day, half-day or Express option. Also advise if you have a preferred hearing location. This information helps us narrow down the options and provides you and your client the most accurate information.
- Be prepared to tell us a bit about your case and which dates don't work. That way, we won't waste time providing you with mediator or date options that will not be a good fit for your particular case type and time frame.
- Provide email addresses for scheduling assistants you have been working with to help facilitate our efforts to coordinate the details.
- Let us know whether L&I or other subrogated interests are involved in a case. If such representatives are expected to attend the mediation, we can add them to our attendance list and coordinate scheduling, as needed.
- Make sure to read the fee memo you receive from WAMS and notice if a fee deposit is required and note the due date and cancellation deadline.
- Provide the names of all representatives attending on behalf of your client so that WAMS can allocate appropriate rooms according to party size and also ensure the accuracy of our conflicts check process.
- Always advise WAMS if you expect another party to participate. Since WAMS fees are partially based on the number of parties and rooms allocated, it is imperative that WAMS be informed prior to the mediation date of all expected attendees and any changes.
- We recommend that mediation materials be submitted three (3) business days prior to the mediation. The best and quickest way to get information to the mediator is to email your brief to WAMS (wams@usamwa.com). Please do not fax or send lengthy attachments or large files via email. Instead, send a hard copy of exhibits and materials that can't be sent by email.
- Take advantage of WAMS' online calendar for short-notice scheduling (cases submitted within 10 business days of the requested mediation date). This handy tool can make the scheduling process much faster for you. The Short-Notice Calendar can be found at: www.usamwa.com/calendar/

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opportunity for parties to express regret without admitting liability. WAMS mediator John Cooper's view is that joint sessions also offer a useful opportunity for parties to better assess case value. For example, in a pre-suit matter or when little or no discovery has been completed in a case, the joint session allows parties to identify certain factors or nuances that might impact their respective evaluations. John points out, however, that there are risks associated with having a joint session. For example, counsel could use the opportunity to assert a damaging positional statement or argument that isolates the parties. The time it takes for emotions to cool and for the mediator to get the parties and negotiations back on track eats up valuable time. WAMS mediator Harry Goldman always offers the opportunity for a joint session to his clients and uses it to explain the process to the participants, invite their comments and allow them to see who's in the

other rooms. Harry says the current trend is a complete departure from the early days of mediation practice when joint sessions were always used. He finds joint sessions problematic when counsel use the time to advance argument and make comments of no significance to the negotiations. I fully expect the topic of joint sessions to be part of an ongoing discussion in ADR circles this year.

Did you know?

All WAMS conference rooms allow free, easy access to the internet. Additionally, clients have utilized video conferencing for participants unable to attend in person. Let your WAMS Case Administrator know if your case or clients require special accommodations or technology for your hearing.

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As usual, 2015 will find WAMS neutrals and staff offering informative materials and presentations on topics ranging from ADR basics to more specialized and current issues of interest to our clients, the legal community and the community at large. WAMS mediator Kathleen Wareham will be moderating an intriguing presentation at the American Bar Association's 17th Annual Section of Dispute Resolution Spring Conference, April 15 – 18, at the Westin Seattle. Kathleen's presentation, *The Effective Interview: Tips from Journalists and Storytellers for Lawyers and Mediators*, will enlist a panel comprised of experienced journalists and a performance artist to share interview techniques that cross over from the discipline of journalism to law and mediation. As Kathleen explains, "Communication is an important part of any lawyer's job. We are asked to 'listen attentively,' but what does that mean?" The panel will describe the skills used when interviewing a subject and how to effectively listen to identify the real issues and ask the sort of follow-up questions that get people to talk.

I am honored to act as Content Editor of *Alternatives to Litigation: Arbitration and Mediation*, a chapter devoted to ADR in the Washington Lawyers Practice Manual, an annual project of the King County Bar Association designed to serve as a comprehensive legal reference for lawyers statewide. Chapter content has been provided over the past 20+ years by various WAMS staff attorneys, mediator Bill Joyce, and family law attorney John Kydd. The updated publication will be available through the KCBA, with proceeds used to support local pro bono programs.

WAMS staff and panel members work hard to stay current and provide the opportunity and resources to learn about and effectively use ADR, so please take advantage of everything we have to offer.

**Harry Goldman**

"Thank you for all of your hard work helping us reach settlement in a worthy matter. I and my client greatly appreciated your unfailing attention and commitment up to the very last minute. I know I will heartily recommend your services and hope to work with you again."

- WAMS Client

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