



# Alternative Dispute Resolution Section

## Washington State Bar Association

1325 Fourth Ave., Ste. 600  
Seattle, WA 98101-2539

2015-2016 Executive Committee

Craig Beles, Chair  
Courtney Kaylor, Chair-Elect  
Alan Alhadeff, Past Chair  
Courtland Shafer, Treasurer  
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Joanna Roth  
Lish Whitson  
Sasha Philip  
Mel Simburg

## ADR SECTION ANNUAL RETREAT

**Sleeping Lady, Leavenworth, WA**

**November 6-7, 2015**

**Friday, 11:00 a.m. – 5:00 p.m.**

**Saturday, 9:00 a.m. – 2:00 p.m.**

1. **Roll Call** – Alan Alhadeff, Craig Beles, Courtney Kaylor, Joanna Roth, Sasha Philip, Mel Simburg, Lish Whitson, Adrienne Keith Wills, Paul McVicker, Courtland Shafer, Jenna Bruce, Helen Ling, Sally Fox
2. **Theme for the weekend - Engagement:**
  - a. Schedule:
    - i. Friday AM – Personal
    - ii. Friday PM – Board membership and NWDR Conference
    - iii. Saturday AM – Outside constituencies
    - iv. Saturday PM – Action steps
3. **Friday AM – Personal Sharing:**
  - a. Each member of the committee shared: 1) Name, 2) Sound/gesture/expression of how this morning was, 3) Something unusual from your life recently or last weekend, and 4) One thing you'd like to come away with after this retreat.
  - b. Acknowledging work from the past year:
    - i. Alan's work with the ECCL Taskforce, monthly mediation colloquia, and other connections with ADR professionals – Paul refers to Alan's work as "octopus tentacles";
    - ii. Paul's legislative work and all other initiatives;
    - iii. Adrienne's work on the website;
    - iv. Jenna and Helen's work on membership committee events;
    - v. Courtland's work as treasurer for many years;

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- vi. Sasha's work in connection to the colloquia, NWDR Conference, and CLE/NLE;
- vii. Joanna's work in planning mediation trainings in family law;
- viii. Mel's connection to commercial litigation;
- ix. Courtney's work on LUEM work as a prototype for other practice areas of law; and
- x. Craig's work as a "straw boss" running all the meetings last bar year.

#### **4. Friday PM – Board membership:**

##### **a. Sharing exercise in pairs – 2 minutes of uninterrupted talking each while listener takes note of particular items of excitement.**

##### **i. How does this relate to engagement?**

1. Mel says it relates to how we listen – both verbal and nonverbal;
2. Alan mentions particular excitement along the theme of helping people to resolve issues without fighting;
3. Courtland says there was particular emphasis on finding global understanding of a situation with a good amount of "throw weight";
4. Sasha says she is more comfortable as a listener than speaker;
5. Craig says you have to know who your audience is;
6. Sally mentions that everyone told a story; it's more interesting to hear someone's story which is different than just hearing facts about someone's background;
7. Mel says it's more revealing and you learn on multiple tracks; each of us has a skill set in this exercise and we can see how we work better as a group;
8. Sasha mentions curiosity and how it's good to be curious about the other person;
9. Lish was interested in hearing about something someone is proud about; and
10. Sally concludes that engagement needs enthusiasm from the speaker to be interesting; listening is a way of doing this that makes people take action.

##### **b. Brainstorm: What creates engagement? (What makes us feel engaged on the Executive Committee?)**

- i. Cutting edge, change;
- ii. People;
- iii. Proud to be a lawyer and love the practice of law;
- iv. Lawyers to use all the skills in the toolbox – having a full set of skills;
- v. Connecting with lawyers from other practice areas – commonalities that inspire you;
- vi. We are highly functioning as a group; "we do stuff – we do a lot of stuff – a lot of cool stuff"; not only do we discuss policy and direction, but we also implement;

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- vii. Balance between talking and doing
- viii. Board is able to talk about ideas positively and look forward together;
- ix. Evolving new ideas; we don't get stuck;
- x. Work on this board creates potential connections with the great bar; it's a credible place to launch from;
- xi. Paul likes to work on his agenda and this board is dynamic;
- xii. Personally valuable with perspectives from people from outside of own practice area with collegial perspectives;
- xiii. Mel is looking to transition practice to being a full-time neutral and has interest in driving up the market place by raising consciousness of ADR services;
- xiv. Commonalities, but also differences; it's a diverse group of people, experience levels, and practice areas; we grow by getting input from everyone;
- xv. Committee members are given a lot of leeway to do their own projects;
- xvi. We have a lot of resources to make things happen; and
- xvii.** We are good listeners.

**c. What would enhance engagement?**

- i. Sally says in generally 3 things: 1) adding value, 2) value is recognized, and 3) accomplishing something.
- ii. Discussion on "changing context" – Old School vs. New School

<b>OLD SCHOOL</b>	<b>NEW SCHOOL</b>
Put a program together and they will come	Critical mass on social media
General messages	Targeted messaging; specific targeting (i.e. create an app!)
Just enough to provide information	Buzz – peer group motivation and different motivations
Lots of facts	Storytelling and what do the facts mean
Credentials	Experience, notoriety, enthusiasm, belief, compelling, and authentic
Stability	Change
Give information	Give an experience with visuals
Comprehensive	Terse, succinct, reasonable expectations for attention spans
Longer attention span	Shorter attention span
Law school academics	Practical skills; un-law school experience
Not immediate access to information	Immediate access to information; multitasking
Client base in 40s and 50s	Clients will be different
Top down – client does what attorney says	Client decides whatever they want; attorney

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<b>OLD SCHOOL</b>	<b>NEW SCHOOL</b>
	is a resource
Primary competitor is another attorney	Primary competitor is i.e. Legal Zoom showing shifts in industry
Objective	Personal; hunger for purpose

**d. Engaging section members – Who are our constituents?**

**i. Constituents in broad terms:**

1. Non-lawyer ADR practitioners;
2. Lawyers who use ADR; and
3. Lawyers who practice ADR.

**ii. Different audiences:**

1. Law students;
2. Brand new lawyers;
3. Transitioning lawyers;
4. Lawyers in different practice areas;
5. MAR attorneys;
6. Land Use and Environmental law attorneys;
7. Low bono lawyers;
8. Lawyers from around the state – i.e. eastside lawyers;
9. Litigators;
10. Transactional lawyers – contract drafters;
11. Diverse lawyers – age, race, disability, etc.;
12. In-house counsel; and
13. Collaborative lawyers.

**e. Finding the “face” of your membership (Avatar):**

**i. Top 4 Categories:**

1. New and Young Lawyers;
2. Transitioning Lawyers;
3. Eastside Lawyers – geographic diversity; and
4. Lawyers from different practice areas:

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- a. Litigators;
- b. Transactional attorneys;
- c. In-house counsel; and
- d. Ethnically diverse attorneys.

ii. Exercise – present each avatar to the group – create strategies for each as a group

AVATAR	BENEFITS	CORE MESSAGE	EVENTS
New and young lawyers	<ol style="list-style-type: none"> <li>1. Distinguish yourself with 21<sup>st</sup> century skills;</li> <li>2. More responsibility and authority for what you do;</li> <li>3. Create value added;</li> <li>4. Gain a peer group and mentors;</li> <li>5. Don't need to be a mediator or arbitrator;</li> <li>6. Practical skills;</li> <li>7. Welcoming - "We're not jerks!"; mind/heart connection; it's a hard profession and you need to feed the heart – come before you burn out;</li> <li>8. How to survive financially; and</li> <li>9. Networking.</li> </ol>	<ol style="list-style-type: none"> <li>1. Are you overworked and underplayed?</li> <li>2. Cutting edge – the future of practice; 97%+ cases settle many by mediation;</li> <li>3. Expand your negotiation skills.</li> </ol>	<ol style="list-style-type: none"> <li>1. Program on advocacy in mandatory arbitration;</li> <li>2. Program on advocacy in mediation;</li> <li>3. Program on MAR;</li> <li>4. Program on negotiation skills;</li> <li>5. NLE programming – January 2016 – nuts and bolts of mediation;</li> <li>6. Partnering with other sections (i.e. solo small firm); target solo small firm attorneys;</li> <li>7. Resource online through NLE library online and webinars;</li> <li>8. Bridging the gap series; opportunity to partner with LOMAP;</li> <li>9. Partner with other groups i.e. Minority Bar Ass'ns;</li> <li>10. Career panel at local bar level (i.e. county bars)</li> </ol>
Transitioning lawyers	<ol style="list-style-type: none"> <li>1. Remind them of their own strength and who they are;</li> <li>2. Find purpose;</li> <li>3. Lawyer describes what is effective;</li> <li>4. Help address economic hardship – you can make a living?;</li> <li>5. Mentorship help;</li> <li>6. Marketing help – using success stories of transition;</li> </ol>	<ol style="list-style-type: none"> <li>1. Tell stories that they've experienced;</li> <li>2. Find purpose in your profession.</li> </ol>	<ol style="list-style-type: none"> <li>1. Get lawyers together – forum for people to discover what they can learn from themselves – what is effective?;</li> <li>2. Membership events – do different events for different individuals;</li> <li>3. Shadowing, but confidentiality issues?;</li> <li>4. Advance skills training with experienced presenters;</li> </ol>

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AVATAR	BENEFITS	CORE MESSAGE	EVENTS
	<ol style="list-style-type: none"> <li>7. Shadowing;</li> <li>8. We offer less stress being a neutral;</li> <li>9. Skills you can use even if you don't become a neutral;</li> <li>10. Develop a good reputation.</li> </ol>		<ol style="list-style-type: none"> <li>5. Needing a confidence booster – share success stories from people who transitioned within the last 5-10 years successfully;</li> <li>6. Need to do research and follow up on who we need to know – who are we talking to (i.e. are you well enough capitalized for the next 3 years?)</li> <li>7. Use website profiles as a way people can relate (i.e. fictional avatar profile describing particular group)</li> </ol>
East of King County lawyers	<ol style="list-style-type: none"> <li>1. Enhance your reputation – we provide credentials;</li> <li>2. We have resources and our committee can provide content to your local bar and law schools;</li> <li>3. Announce that you've attended the colloquiums as a way to boost credentials.</li> </ol>	<ol style="list-style-type: none"> <li>1. We care about members outside of King County</li> <li>2. WSBA is statewide – i.e. Steve Crossland launched his career after getting involved in WSBA ADR</li> </ol>	<ol style="list-style-type: none"> <li>1. Lawyer referral services – a panel of insured, no discipline, and up to date on CLE reporting; we could use website for these referrals;</li> <li>2. Gonzaga is creating DR center – interested in having ADR section assist in process;</li> <li>3. Involve other sections in our events – makes them “credentialized”;</li> <li>4. “We need you!” to sponsor local programs in your area.</li> </ol>
Lawyers from other sections and groups	<ol style="list-style-type: none"> <li>1. ADR Section is relevant to many practice areas;</li> <li>2. King and Pierce County have required ADR in court process;</li> <li>3. We provide useful information on a regular basis.</li> </ol>	<ol style="list-style-type: none"> <li>1. ADR is about practicing law in any section or practice area.</li> </ol>	<ol style="list-style-type: none"> <li>1. Find out the specific was we can help the sections; get into a conversation about what they need to figure out what action to take;</li> <li>2. Survey monkey to discrete groups to find out suggestions for joint programming;</li> <li>3. Conversations with other section heads;</li> <li>4. Each section defines</li> </ol>

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AVATAR	BENEFITS	CORE MESSAGE	EVENTS
			what early mediation is for them; 5. Set up what the program will look like; 6. Provide free CLEs for ADR Section members.

**f. NWDR Conference discussion:**

**i. Initial thoughts:**

1. Involvement must be more than just on the planning committee;
2. Need proposals!;
3. Mediation heavy right now – open to arbitration proposals as well.

**ii. Action Items:**

1. Sponsor reception;
2. Sponsor young lawyer reception (John Butler from membership committee can handle collaboration);
3. Proposal for young lawyer presentation;
4. Lunch with speakers on Saturday;
5. Craig will attend next Planning Committee meeting;
6. Proposal for arbitration;
7. Craig to do 5 minute intro at beginning of conference; and
8. Proposal on NYT article on arbitration.

**5. Saturday AM – ADR Stakeholders:**

- a. Check-in exercise: Share 1) word for this morning, 2) take away, 3) what do you want to feel or have accomplished?
- b. Discuss outside stakeholder:
  - i. Minimum viable structure (off of minimum viable product – how to get product out fast) – just enough structure for what we need.
- c. Questions to ask about stakeholders”
  - i. What is their pain?
  - ii. What possibility we offer?
  - iii. What is the message?

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- iv.** What is our action?
- d.** Identify all stakeholders:
  - i.** Legislators;
  - ii.** Judges/judiciary;
  - iii.** People in conflict = everyone;
  - iv.** Law schools and professors (academic connection);
  - v.** In-house counsel;
  - vi.** Government lawyers;
  - vii.** WMA;
  - viii.** DRCs;
  - ix.** BOG;
  - x.** Minority Bar Associations;
  - xi.** Other bar associations; lawyers who use mediation;
  - xii.** Litigators;
  - xiii.** Professional neutrals;
  - xiv.** Insurance claim professionals;
  - xv.** Companies with in-house dispute resolution;
  - xvi.** Ombudsmans;
  - xvii.** County ADR Sections;
  - xviii.** ABA ADR;
  - xix.** Corporate employment departments – external DR groups;
  - xx.** Invitation only groups – i.e. ICDR; and
  - xxi.** Mediation organizations.
- e.** Today we will use the following mission: Increasing the use of ADR – (Increasing the use/importance of ADR in use, quality, and education)

[See next page]



STAKEHOLDER	PAIN	POSSIBILITY WE OFFER	ACTION
WMA and DRCs	<ol style="list-style-type: none"> <li>1. Lawyers are snobs;</li> <li>2. Funding by KC Council – if they can't show they are adding value to the county, their budget will be cut (must demonstrate they are worth the money)</li> </ol>	<ol style="list-style-type: none"> <li>1. We are the snobs – we each have value to the other – mediators as a whole to speak with a more unified voice about mediation;</li> <li>2. Our people do volunteer work with them;</li> <li>3. We can't help with funding;</li> <li>4. Disproportionate representation at the NWDR Conference – too much DRC involvement and not enough legal voices;</li> <li>5. Programs for membership meetings.</li> </ol>	<ol style="list-style-type: none"> <li>1. Collaborative programming;</li> <li>2. Support and bring clarity to ADR.</li> </ol>
Legislators and Judges	<ol style="list-style-type: none"> <li>1. Budget issues;</li> <li>2. Heavy case loads and backlog;</li> <li>3. Too many pro ses – purpose of the DRCs;</li> <li>4. Escalating cost of civil litigation;</li> <li>5. Is there a supreme court committee that can hear these issues? No, they are overburdened.</li> </ol>	<ol style="list-style-type: none"> <li>1. Showing how they could work in more innovative ways;</li> <li>2. Cheaper, faster, happier – providing more satisfactory resolution at higher quality and lower cost = satisfied consumers;</li> <li>3. Mandatory ADR rule – med/arb; then pro ses get representation;</li> <li>4. Equitable and efficient;</li> <li>5. Create ideas of how to resource the pro ses – pro ses need lawyers;</li> <li>6. Address access to justice.</li> </ol>	<ol style="list-style-type: none"> <li>1. Have the conversation – find out where there is common interest;</li> <li>2. Ask people what they need – we need to be curious;</li> <li>3. Create a committee that handles this;</li> <li>4. Bringing legislators and judges together; schedule it during a conference; we can help facilitate the discussion;</li> <li>5. Work with DRCs on projects;</li> <li>6. Organize process to reach out.</li> </ol> <p><b>FOLLOW UP NEEDED</b></p> <ol style="list-style-type: none"> <li>1. Take inventory of who we know in courts and legislature;</li> <li>2. Agenda item for next meeting;</li> <li>3. Need to broaden to beyond just the ExComm</li> </ol>
Law students and law professors	<ol style="list-style-type: none"> <li>1. Missing content in classes (torts, civ pro, etc.);</li> </ol>	<ol style="list-style-type: none"> <li>1. We can offer complementary and complimentary material</li> </ol>	<ol style="list-style-type: none"> <li>1. Integrate material into existing courses;</li> <li>2. Possible Gonzaga DR</li> </ol>

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STAKEHOLDER	PAIN	POSSIBILITY WE OFFER	ACTION
	2. Practice skills; 3. Limited clinics and small class size in clinics (20 students vs. 100 students in other classes) 4. Need to stay up-to-date with future; 5. Need new law students and provide innovative classes; 6. Need ADR for students who may not focus exclusively on ADR.	and teach some of the classes.  [be aware to tread lightly in the political environment]	Center – kills many birds at once; 3. Make offerings more conceptually generous; 4. Offer panels of practitioners; 5. Free section membership; 6. Free attendance at events; 7. Notices of events sent to law schools; 8. Website feed with content distribution; 9. Reduce fees; 10. Our Education Committee will increase to include NLE and young lawyer education; 11. Add hyperlinks to website to best articles to create a more prominent resource section; 12. Involve the DR boards at each law school.

## 6. ACTION STEPS:

- a. How to support action steps:
  - i. Create lists with due dates;
  - ii. Create due dates for all future conversations;
  - iii. Prioritize actions;
  - iv. Make time for appreciation and recognition;
  - v. Send out notices of what you are doing and where you need help; and
  - vi. Share baby steps in progress.
- b. See spreadsheet for action steps for bar year 2015-2016

[See next page]

Action	Person	I'll Do It	Committee Approval	Needs Discussion	Save for Later
Create Inn of Court	Craig, Lish		x		
RFP for NWDR Conference re New and Young Lawyers	Adrienne, Sasha, Mel	x			
Content from above that can be offered in the future	Adrienne, Sasha, Mel	x			
RFP for NWDR Conference re NYT article on arbitration	Lish, Craig				
TASKFORCE! Comprehensive plan to reach new and young lawyers and law students	Craig, Sasha, Lish, Courtney, Helen, Adrienne		x		
Joint committee LUEM - finish pilot report, quarterly CLEs, RFP for NWDR Conference	Courtney	x			
Liaison to NLE - with emphasis to include arbitration	Sasha, Mel, Courtland	x			
Future of the Education Committee				x	
Colloquium - programming and scheduling (anyone can offer suggestions)_	Alan, Joanna, Paul	x		x - ADR funds to pay for venue	
Early mediation bill - find stakeholder representatives to participate; give suggestions of people who can participate to Paul	Paul	x	x		
ResWA	Paul			x	
Website finish revisions and get individual feedback	Adrienne		x		
Discussion with early mediation in family law - talking with lawyers about training, CLE, edu - then embellish with child inclusive expand toolbox	Joanna	x	x		
Law school curriculum - seeking feedback and guest speakers	Sasha, Mel, Courtland			x	
Redo WSBA invite to join our section				x	
Add resources to website				x	

Action	Person	I'll Do It	Committee Approval	Needs Discussion	Save for Later
Committee on Legislators and Judges	Lish, Craig			x - discuss at next meeting	
Conversations with Section heads	Courtney (ELUL), Craig (Int'l Law)		x	x	
Reception at NWDR Conference	Lish, Sasha, Craig		x	x	
Lunch at NWDR Conference	Lish, Sasha, Craig		x	x	
Craig speaking at NWDR Conference	Sasha, Mel, Courtland		x		
Lunch or Dinner for Speakers after NWDR Conference	Sasha, Mel, Courtland		x		
Review exterior communication	Adrienne, Craig			x	
Gonzaga DR Center	Craig		x	x	
Revise mission statement - create 3 person committee	Craig			x	
NWDR Conference - 2017 planning: 1. What is our role? 2. What do want in programming?				x - discuss at next meeting	
Oct 2016 WMA "Unconference" seeking participation, input, planning, presentations	Courtney			x - discuss at next meeting	
Develop membership participation and volunteering - committee heads can recruit non-ExComm member				x	
Invite colleagues to committee meetings and small events	Everyone				
Talk to Chamber of Commerce and Rotary(access to many companies and organizations - the end user)	Craig, Mel		x		
Master calendar - utilize google plus?	Helen, Adrienne		x		

Action	Person	I'll Do It	Committee Approval	Needs Discussion	Save for Later
Local bar associations - conversations and connections; targeting: 1. outside of King County; 2. Minority bar associations; 3. KCBA ADR Section	Mel, Sasha (KCBA connection)	x			
Discuss details of 2016 annual meeting - when/where	Craig, Lish			x	
Next year's annual retreat	Courtney			x	
DRC conversation - bridging the gap	Sasha			x	
Membership events - content	Jenna, Helen	x			