WAMS
Washington Arbitration &Mediation Service

ARBITRATION & MEDIATION NEWS

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History of WAMS

By Diane McGaha, President

Washington Arbitration Services was established in Seattle by attorney Michael S. Gillie in 1981. Mr. Gillie, a 1977 graduate of the University of Puget Sound School of Law, was hoping to develop a high-volume arbitration caseload to rival the American Arbitration Association, whose fees and rules at the time were primarily focused on construction disputes. Mr. Gillie's intent when establishing Washington Arbitration Services was to provide an alternative settlement forum for litigants involved in more traditional cases, such as automobile accident and consumer claims. Gillie found some initial success with consumer claims resolution programs he established for the Washington Attorney General's office, but in other areas of the law, so-called "alternative dispute resolution" was still not widely accepted. In 1985, Gillie and Seattle attorney Alan Alhadeff agreed to work together on the development of a mediation training and marketing program for insurance claims. Their objective was to provide insurance companies and plaintiffs' attorneys with an inexpensive and accessible alternative to trial: mediation.

...WAMS has grown to be one of the largest ADR organizations in the Pacific Northwest...

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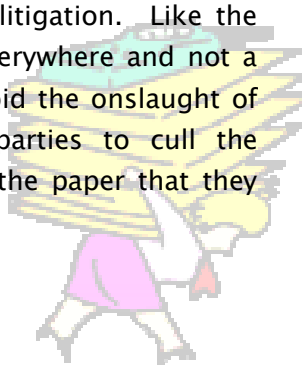
Paper, Paper Everywhere...

By Michele Sales, WAMS Neutral

Advocates in mediations and arbitrations often feel compelled to provide the mediator or arbitrator with every record and document produced or obtained in the litigation. Like the old saying of "water water everywhere and not a drop to drink," I prefer to avoid the onslaught of paper wars by asking the parties to cull the documents and only provide the paper that they will use in the proceeding.



1. Categories of records

The easiest documents to exclude are those medical records which have **no** relation to the case. For example, blood, radiographic or other diagnostic tests completely unrelated to the claims in the case have no reason to be in the packet sent to the neutral. Medical records for illnesses or conditions which are interspersed with those in which treatment is sought for the back condition can be excised: does the neutral really need to know about the plaintiff's gynecological exam or concerns?

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Mediator Focus

Kathleen Wareham

"What a fantastic addition Kathleen Wareham makes to WAMS' panel of mediators and arbitrators," said Judy Mikel-Blair, WAMS Managing Attorney. "She's so highly respected by fellow lawyers for her skillful mediation of complex and contested probate, guardianship, and trust cases." Kathleen Wareham, the most recent addition to WAMS, joined the panel in December 2004.

Known for her personable, gracious, and diplomatic style, Kathleen has established herself as a leader in the bar. A past Chair of the Guardianship and Elder Law Section of the King County Bar, she has chaired and instructed at numerous multi-county guardianship-training programs and at guardianship, probate, and trust CLE programs. Her peers have selected her as a Super Lawyer each year since 2000.

Kathleen is especially known for resolving thorny family disputes involving complex family dynamics. She is a TEDRA mediator under Washington's Trust and Estate Dispute Resolution Act.

Kathleen will continue her private practice in Seattle as a partner at MacDonald, Hoague & Bayless (started upon graduation from Columbia Law School in 1986): as petitioner's counsel in guardianship and trust matters; as counsel for incapacitated persons, family members, and professional fiduciaries; as a guardian at litem and settlement GAL; and as counsel for personal representatives and family members in probate matters.

Kathleen has further honed her mediation skills in pro bono service while a PTA president responsible for conflict resolution with community organizations, teachers, and parents. She is a conflict resolution educator for families and school children through the Family Guide to Second Step Conflict Resolution program.

WAMS Buzzzz…

By Tamara Roberts, WAMS Staff

As the New Year begins, WAMS would like to take a moment to fill you in on things that have happened this last year.

Adriana gave birth to her fourth child in mid December. Natasha Marie, her new baby girl was welcomed with lots of love on December 10th at 1:47 p.m.. She was 8 lbs 13 oz. and 20 inches long!

Tamara was married to Danny Roberts on September 20, 2004, on Kapalua Bay Beach in Maui. Afterwards, they enjoyed their wonderful honeymoon on Kaanapali Beach, Maui.

The office dynamics have changed a little this last year, with Judy Mikel-Blair now serving as the Managing Attorney. We have two new additions to the WAMS team, Penny Gans and Riveka Crooms. Penny G. will start on January 3rd as a full time Case Administrator. Riveka will start on January 10th as a part time Administrative Assistant in the Seattle office. We are all pleased to have them join our staff.

Val, Judy, Alisa, Adriana, Nancy, Tamara Diane & Penny

The Times They are a Changin'…

By Harry Goldman, WAMS Neutral

""The mediators, attorneys, and parties were feeling their way along."

I started as a mediator back in 1986. It seems difficult to believe it has been that long, but I've participated in approximately 3,500 mediations during the eighteen-year period. There are many constants and just as many changes. A retrospective review may tell us as much about the future as the past.

When I first began mediating cases, it was a wide-open field. Litigants in the family law and labor law arenas employed mediators, but it was fairly unknown in the context of civil litigation. Attorneys didn't contemplate utilizing the services of an outside practitioner. WAMS pioneered the practice of mediation as an alternative to trials and arbitrations.

I was fortunate to be one of the early practitioners and encountered a specialty without many rules and with few parameters. The mediators, attorneys, and parties were feeling their way along. We all knew there had to be a better way to resolve disputes than protracted litigation, but we were also engaged in a certain leap of faith with each other. We were each establishing the rules of engagement as we went along, while keeping our eyes on the objective of settlement. I believe mediation has accomplished the goal of dramatically reducing the number of cases that go to trial and arbitration, but it continues to be a work in progress.

In the tort field, insurance carriers were more receptive to mediation than the plaintiff's bar. Attorneys representing plaintiffs were concerned mediation would deprive their clients of their day in court and that clients would be hesitant to bring an unknown individual into a discussion and analysis of their injuries. I remember many a plaintiff wondering who in the world I was and why he or she was engaged in this mediation. I still find that to be an issue on occasion and always remind myself that the "routine" case to the attorneys, insurance claims representative, and me is anything but routine to the person who is there for the first time.

The mediation field has changed most significantly in the sophistication of the frequent users of the service. Law students study alternative dispute resolution, and mediation in particular, in law school. Insurance companies conduct seminars for their claims representatives on the art of mediation. Parties in construction, real estate, and contract disputes are more knowledgeable about the law and what to expect in mediation. The expectations are higher and the rules more definitive.

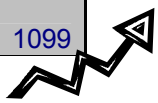
What has not changed is the desire of the parties to resolve the case before me in mediation. I begin each mediation with the belief that each party is present with the good faith desire to engage in settlement discussions in an effort to resolve the case. It is not an inexpensive process, and we should all approach it with the attitude that we will get the job done. What continues to make my job interesting and rewarding is the knowledge that each case is unique and involves different people that have asked me to assist in helping to resolve the dispute. I feel honored and privileged that I have been invited into the litigation. Thank you for that opportunity, and let us all continue to improve the mediation process.

"We all knew there had to be a better way to resolve disputes than protracted litigation, but we were also engaged in a certain leap of faith with each other."

History of WAMS Continued… (From Page 1)

In the early 1980s, Gillie developed a pilot program for the resolution of insurance claims with Travelers Insurance. Travelers agreed to refer claim files into mediation on an experimental basis and track the overall settlement and transaction costs versus litigation. In conjunction with the Travelers project, Gillie expanded the business model used to establish Washington Arbitration by franchising ADR businesses throughout the U.S., Europe and Canada under the names of United States Arbitration & Mediation, Inc. (USAM) and International Dispute Resolution, Ltd. (IDR). By the late 1980s, Gillie had established a franchise network of affiliated ADR providers in 22 states, the U.K. and Canada. Travelers was gradually joined by most casualty insurance companies, law firms and businesses in promoting the use of mediation for claims resolution. From an initial mediation and arbitration caseload of less than 10 hearings per month, WAMS has grown to be one of the largest ADR organizations in the Pacific Northwest, with an annual caseload of nearly 2,000 hearings.

Year	Cases Scheduled
2003	1684
2001	1523
1996	1386
1991	1099



Alan Alhadeff served as the first mediator and mediation trainer for Washington Arbitration, with the first panel of mediators trained in 1986. The first WAMS mediator panel was comprised of attorneys personally known by Gillie or Alhadeff, since a deep commitment to the development of mediation was and still is an important attribute for a successful professional mediator. Current WAMS mediators Larry Levy and Harry Goldman were part of that first WAMS mediator panel. Penny Humphrey became the first staff employee of Washington Arbitration in 1985 and Diane McGaha joined her in 1986, while still in law school. WAMS became a 100% women-owned business in 1996 when Michael Gillie retired and Diane and Penny became WAMS shareholders.

Paper, Paper Everywhere Continued… (From Page 1)

I often encourage the parties to agree on a set of medical records in an arbitration so that duplicate copies are eliminated or at least kept to a minimum in the parties' submissions. Closing arguments become confusing when we switch from page 16 of Plaintiff's Tab 3 to Defendant's Exhibit C page 3 to find the same record. On the other hand, counsel do themselves no good by producing only the records which favor their argument. A little more honesty with the arbitrator increases credibility.

An exception to my general rule may arise in an arbitration in which defense counsel wants to argue the plaintiff saw doctors for numerous other conditions but did not mention the particular injuries for which he now seeks compensation. But instead of producing volumes of records, why not consider a summary? The evidence rules permit summaries to be used without producing the underlying documents. Frankly, I often find an accurate and clean (i.e., no editorial comments or bold words) chronological summary of records to be more useful than switching back and forth among the masses of records.

Medical bills comprise the next category of records that I rarely want to see. In a mediation, the neutral rarely needs to have copies of those as part of the packet submitted before the mediation. In an arbitration, if the issue is whether reasonable and necessary treatment should have stopped at a

particular date, provide the arbitrator a summary detailing what (s)he should award for each provider based on a particular cut off date.

The accident report prepared by the investigating officer usually has little or no value. His estimate on the amount of damage to a vehicle rarely means anything in either setting. His citation of the defendant is not relevant on the issue of fault. If the report contains information about the factual setting or weather or road conditions which are in dispute, then certainly consider including the report.

Tax returns or W-2's are not the best way to present wage loss arguments or the lack thereof, especially if the plaintiff is self employed and there is no expert who interprets the records. In a mediation, the neutral is not likely to need the records themselves to discuss the pros and cons of the wage loss claim. In an arbitration, if the advocates present no expert testimony on the issue, do you want the neutral to make her own interpretation of the records?

2. My rationale

My intent is to shred all documents provided to me in arbitrations and mediations which contain medical information or which contain Plaintiff's social security number or other private information, but when I receive voluminous amounts of materials, I am not always able to do that. Depending on the quantity of submissions and the number of proceedings in a

given time period, I may not shred all the documents. I do worry about papers flying out of my recycling bin and very personal information about a plaintiff flying around my neighborhood.

I also think that although the court rules and courts provide plaintiffs little privacy about their lives once litigation is started, legal professionals (advocates and neutrals) need not conduct ourselves with little sensitivity. While the plaintiff's drug use in the early 1980's may be a little piece of titillating information, does it help promote settlement?

Finally, paper costs money as do the notebooks advocates use and then leave with the neutral. The less paper used, the better.

I realize that staff in the advocate's office often prepare the submissions, and it may be easier to simply tell the secretary or paralegal to "make a copy of the records to send to the mediator". In the long run, spending the time and effort up front in preparing a good set of materials for the neutral, especially in an arbitration setting, will redound to the advocate's best interest.

Note from the Editor:

Your thoughts and comments are greatly appreciated. Please contact either Judy Mikel-Blair at jmikel-blair@usamwa.com or Tamara Roberts at troberts@usamwa.com to submit your comments and ideas for future stories. Thank you.

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