
THE ADR INSIDER

A Newsletter for ADR Professionals

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Welcome: "New Year's Wish." Greetings to all. I do welcome you to another issue of this irregular ADR newsletter. It's a new year, and I hope you are well, busy and happy (the three seem to go together) in your personal and professional endeavors.

The Winter gets long after the bowl games fade, so be sure to capture some time off for your own well being. I always figure that it's hard to bring peace and resolution to others if I don't have it myself. Think on it.

As always, I solicit your views and invite your participation. Please note that this newsletter is free and open to all. Prior issues are available on

my website: www.blairadr.com. You may unsubscribe by sending an email to davidblair@blairadr.com.

Mediation Topic: “Trust the Process.” It’s a truism of recent years that mediation counsel, as they have become skilled in the mediation process, also have honed their evaluation and negotiation skills to a high degree. (The complete package requires all three, not just one or two.) Still, it’s the toughest cases these days that find their way to mediation, thus raising the question why even these tough cases – cases which no one expects to settle – usually do settle during or resulting from the process? To put it another way, why are experienced mediators so very calm in the midst of tumult and storm? What do they know that we don’t?

Some of us, of course, are dumb as posts, which would explain the phenomenon, and I could be one such mediator. More frequently, however, the reason is that the experienced mediator simply trusts the process because he/she knows that it usually works very well indeed.

So stay in the boat and don’t tip it over; keep paddling and working; never quit before lunch and don’t skip it either; have a bowl of soup or a hot ham & cheese; sit back, relax and cool your heels; and let the negotiation take its course. *Trust the process.* All will yet be well.

Arbitration Topic: “Let the Work Fill the Time; Then Stop.” Looking for a dynamic case management tool to control arbitration costs? *I find that a prudent setting and allocation of hearing time is just such a tool.*

This should be done early in the arbitration process, preferably as part of a comprehensive scheduling conference in which critical procedural, discovery and hearing dates are identified and established.

Each side should be allocated a fair share of time, which usually means the same amount of time. For example, in a typical two party case, I might set two days for the hearing, one day per side, with that single day

to cover all of a party's hearing time for testimony (both direct examination of a party's witnesses and cross-examination of opposing witnesses) and argument. I would require that evidence not "fitting" within the one day allowance could only be offered post-hearing, in writing, with prior notice and permission.

The governing principle is that "one-and-done" means exactly that.

I find that this management tool, if employed correctly and fairly, based upon a realistic allocation of hearing time and attuned both to the stated needs of the parties and the size and complexity of the case, produces a submission which is focused, compelling and cost-effective.

Try it; you'll like it!

Windshield Justice: Back Roads, Good Books & Memorable Eateries.

*The late Judge Dick Cooper of Storm Lake
Referred to "windshield justice" as the phenomenon
Of two judges passing each other on the highway
Going in opposite directions
Each bound for the home of the other to hold court.
It was not a complimentary term.
However, as used here,
"Windshield Justice" refers to the itinerant life we lead
And the particular moments of surprise, instruction and inspiration
We encounter along the way.*

Good Books (with assistance from our literary mentor, Dave Braden of Dallas, TX): Mark Winegardner, "The Godfather's Revenge" and "Crooked River Burning." John Grisham: "The Painted House" and "The Innocent Man." Larry McMurty, "Anything for Billy" and "The Berrybender Narratives" (four volumes) and "The Desert Rose." Gay Talese, "A Writer's Life" and "The Bridge." Joseph M. Marshall III, "The Day the World Ended at Little Bighorn."

Back Roads. You need to know about The Foothills Inn, 1625 N. LaCrosse St., Rapid City, SD (good lodging at non-tourist rates); Spearfish Canyon Lodge, 10619 Roughlock Falls Road, Lead, SD (a creek side inn & restaurant on a forested, deep canyon road). And the old village of St. Charles, MO (already an established village when Lewis & Clark dined and slept there in 1804 before taking off upriver on their expedition – now on Main Street a fine collection of shops and eateries housed in restored brick buildings dating to 1820 – feels a bit like Colonial Williamsburg, VA). And Highway 31 from Quimby, IA to Smithland, IA, then south and west along county roads to Onawa, IA. (This is the Little Sioux River Valley, along the eastern slope of the Loess Hills – home to deer, fox, wild turkeys in abundance, coyotes, wolves, manifold other critters and the occasional mountain lion). And Kevin Stoos writes to advise me of “hedge balls,” fruit of the hedge tree, yellow-green in color and used decoratively or for their anecdotal cricket-repelling qualities, often seen along country roads, primarily in southern Iowa, from whence Mr. Stoos hails.

Eateries. Scott Rhinehart writes that Scoobies at 525 Pearl Street in Sioux City serves loosemeats from an original 1924 recipe attributed to the former Ye Olde Tavern at 14th & Jackson. And don't miss George's Chili King, formerly a downtown Des Moines tradition before modernity pushed this culinary oasis out to 5722 Hickman Road. I love the chili dogs and rings. Tell George that I sent you and you might get waited on.

Closing Thanks: To Jim Giachino of Troy, MI, for sending his perceptive notes on non-lawyer construction industry professionals serving as arbitrators and mediators; and to Michael Dady of Minneapolis, MN, for sharing his ten commandments of effective mediation.

Stay safe out there. See you in ADR.

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