



Alternative Dispute Resolution Section

Washington State Bar Association

1325 Fourth Ave., Ste. 600

Seattle, WA 98101-2539

2016-2017 Executive Committee

Adrienne Keith Wills, Chair
Courtney Kaylor, Chair-Elect
Craig Beles, Past Chair
Courtland Shafer, Treasurer
Joanna Roth, Secretary

Hon. Paris K. Kallas
Paul McVicker
Lish Whitson
Sasha Philip
Mel Simburg
Alan Alhadeff

EXECUTIVE COMMITTEE RETREAT

November 11-12, 2016
Sleeping Lady Resort
Leavenworth, Washington

In attendance: Craig Beles, Adrienne Keith Wills, Helen Ling, Alan Alhadeff, Mel Simburg, Sasha Philip, Lish Whitson, Paul McVicker, Courtland Shafer, Joanna Roth, Courtney Kaylor, John Butler.

Craig Beles, Facilitator

Friday, November 11, 2016

MORNING

Introductions

Why are you on the executive committee?

Connect with a supportive community around ADR, promote ADR, make use of resources to fund programs, benefit from perspectives of other mediation and arbitration professionals, create a problem-solving culture of attorneys, develop awareness of ADR among attorneys, encourage use of and best practices in ADR, support adoption of ADR and CL bills, make practice of law more functional and more satisfying.

LUNCH

What are your responsibilities?

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Explore what we can do in service to help member be better ADR practitioners. The WSBA webinar tool may provide a cost-effective and geographically flexible means to provide trainings to members, in response to that comment. There is a widely shared concern that while we are well-meaning, we have difficulty implementing ideas from the retreat.

Define individual responsibility rather than group responsibility. Treasurer and secretary roles are easily defined. Membership, Legislative and Communications committee duties are also discrete roles. Regular meetings provide continuity, and regular attendance is valuable. Because executive committee members have a breadth of practice areas, having liaisons on the committee with land use and collaborative law communities could be useful.

Our bylaws require a minimum level of attendance at meetings. The frequency and length of meetings can be adjusted in function of the committee goals. Honorary or emeritus membership may be extended to those who have an interest in the committee and have a contribution to offer, but will not directly participate. Lish offered to speak with Paris Kallas to see if an emeritus membership would be desirable. Bylaws will likely need to be amended following the next BoG meeting

**** Lish and Craig have volunteered to generate draft bylaws in response to the upcoming expected requirements from the BoG.***

Two-thirds of our historic revenue has come from the DR conference, and the remainder from membership dues. Paris Kallas' CLE several years ago was the last CLE to generate significant revenue. Courtney suggests looking for a new revenue stream, such as experimenting with other trainings. [Courtney's summary varies from the way the WSBA tallies our income, as Adrienne shared.]

Courtland updated us on the WSBA sections meeting. Five section leaders were chosen to represent the sections in the last sections meeting. The WSBA has requested a standardized fiscal year for sections, Oct 1-Sept 30, which is our year anyway. The WSBA has largely abandoned its requested that sections have standardized executive committee roles. Maximum retreat reimbursements are now \$175/night outside Seattle and \$200/night in Seattle per person, not including taxes and fees. Food is considered separately where lodging is a package cost.

Our committees are staffed largely from the executive committee. Adrienne noted that that is common among WSBA sections.

Alan indicated that the executive committee members have a passion that falls within the ADR sphere, and a willingness to take on a task or a project. Craig confirmed that a minimum requirement, in addition to attendance at meetings, is monitoring income and expenses. Lish brought up the need to serve members across Washington; we also have a responsibility to serve new lawyers and other diverse groups. Courtney articulated that another shared responsibility is to recruit new committee

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members as needed and to communicate effectively with each other. Mel noted our shared commitment and the effectiveness of our contributions.

Action Spreadsheet

Adrienne shared a summary of our activities relative to sections of similar size; we have extensive forums and new lawyer outreach activities. We have few new lawyers.

Craig drew our attention to a summary of activities that we created at the last retreat. Lish gave us additional detail on the Inn of Court; the committee has given its imprimatur to move ahead with creating an ADR Inn. In order to monitor our progress, we will review our list of actions in March. The budget is discussed in May, and finalized before our July meeting. The nominating committee would meet in February, so March would be fitting.

AGREED: We will meet for an additional hour, 12-2:30, at our usual date in March to accommodate the longer agenda.

Courtney, Courtland and Mel each offered their conference rooms.

We then updated the summary of planned activities from last year.

AGREED: The Education and Membership Committees will fuse to form the Professional Development Committee. No chair has been named.

*** Adrienne will speak with Paris about her potential participation in the Professional Development Committee, and shift away from membership in the executive committee. Lish is available to assist.**

We do not expect to have a fixed description of honorary or emeritus membership, and such membership would be offered depending on circumstances.

BREAK

We resumed our update of the action spreadsheet, attached as updated. We intend to maintain the distinction, developed in last year's retreat, between the steering function of the executive committee, and the detailed task work performed within committees.

*** At the December meeting, we will review our outreach to the local bar associations. Helen will run point. Adrienne will speak with Lori Buchsbaum before the December meeting.**

We intend to hold the 2017 retreat at Sleeping Lady; they may be willing to hold the date before signing a contract. Adrienne began scheduling the 2016 retreat in August; because we have our retreat at a slow time of year, it is relatively easy to secure a reservation at Sleeping Lady. Kiana Lodge at Suquamish may provide an alternative venue.

AGREED: Helen will head the Professional Development committee, by acclamation. John, Paul and Alan will assist on that committee.

NW DR Conference

ROLE: We founded the conference, and then transitioned to being a sponsor. We are now in a position to place people on the planning committee, and raise funds to sponsor the conference and also to provide scholarships for the conference. The UW provides space and staff support as our co-sponsors. We are increasing our participation in planning the conference. Kathleen Wareham, Julia Gold and executive committee member Sasha Philip are now planning the 2017 conference as co-chairs.

REVENUE: 55-65% of our total revenue for the section comes from the conference. Law firms and AAA provide funds to cover the cost the conference; but for their combined contributions, there would be little or no revenue. The UW fronts all money for the conference, and we receive a check for our net proceeds after the accounting is complete, taking into account a contribution from the ADR Section. Mel had a question about the bookkeeping, and will speak with Courtland off-line. This is a longstanding arrangement, which has proved beneficial for the Section.

PROGRAMMING: Programming has been set for 2017. One ongoing question is whether and how much to pay speakers. Donations now from executive committee members would allow conference planners to commit to pay speakers, and eventually increase returns from the conference. Mel suggested a follow-up email to potential donors, emphasizing the need for prompt donations. Having executive committee members on the NW DR planning committee allows us to oversee the budget numbers and maximize return.

FUNDRAISING: One way we contribute to the success of the conference is encouraging our contacts to attend. AAA is sponsoring this year's conference; their interest is in being known to attorneys, and they need to see attorneys in attendance. Right now, attorneys are approximately 1/3 of attendees. If that number rose, AAA could be willing to increase their sponsorship. Structured settlement brokers and similar vendors who rely on ADR for their business may be other sources of sponsorship.

*** John will contact Serena at AAA to ask for a list of general counsels, from whom to request donations.**

Encouraging Diverse Membership

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VALUE OF MEMBERSHIP: Usual answers are to meet colleagues, develop skills, and receive opportunities for CLE credit. Alan suggested that we can easily provide \$35 in annual value through webinars which offer training in relevant subjects such as early stage mediation. Mel offered that a mentorship program may address needs of young lawyers. Craig pointed out that we have content that is relevant to both providers and consumers of ADR services. Lish brought up the possible value of our hosting an intensive ADR training, covering mediation, arbitration and collaborative law, destined for providers and consumers. Craig noted that many sections host events at large law firms, in order to draw attorneys located nearby. When Sasha and Craig manned the ADR table at the open sections night in Spokane, the construction section banner was attractive and inviting. We may want to improve the presentation of our materials.

Alan posited that arbitration can be a gateway to mediation, and providing arbitration trainings could attract attorneys who are litigators, familiar with arbitration, and perhaps not as familiar with mediation.

We can also offer an arbitration track through the NW DR Conference which allows attorneys to qualify for MAR work on the AAA panel. Courtney reported that the Land Use and Mediation committee offered two webinars last year, both of which were very successful and drew an audience from a wide geographic area. Helen had a similar experience on a different committee.

WSBA WEBINARS: The WSBA charges \$100 per webinar to use their technology. We have an option to charge or not; the WSBA does not take a cut of any revenue. Webinars are more valuable when they are live; they are less compelling if they are recorded and hosted on our website.

MEMBERSHIP DUES: Dues are waived for attorneys in their first year, and law students join at a reduced cost. The WSBA may have a limited ability to adjust the cost.

NEW LAWYER CONTENT: Encourage membership among law students by providing relevant content through webinars, boot camps, and pizza lunches with discussion at law schools.

Saturday, November 12, 2016

MORNING

Craig welcomed us back, with a brief overview of the day's agenda. Adrienne then lead us on a tour of the section website, as chair of the communications committee. Presentation is included at the end of these notes.

*** Adrienne will verify that if users log in via Facebook/Twitter/etc., rather than with their Ning account credentials, that the webmaster still approves those log-ins.**

*** Adrienne will approve Craig as a member of the ADR section LinkedIn group.**

There is no hyperlink on our website to our YouTube channel, but there is content from the YouTube site embedded on our website. We reviewed the WSBA sections page, and considered updating the picture for our section to add appeal. We have social media presences and a website separate from the state bar. If we were trying to establish those resources now, the bar would not allow it. We may need to keep our content fresh on those resources, for the bar to allow us keep them in the future. Adrienne suggested keeping meeting notes, bylaws and other relevant content on both the Ning website, and on the Google account.

AGREED: We will select a new photo from iStockPhoto for our section page on the state bar website.

The Ning website has some content that is outdated. The DR Conference committee is functionally redundant, and hasn't been updated since 2012. The executive committee page has several former board members. Adrienne may delete the DR Conference committee from the Ning website; this is bookmarked for further discussion. Lish wondered if there was a more stable platform than Ning; this is also bookmarked for further discussion.

Content on the Ning site is not optimally organized and presented, which means people are unlikely to make full use of the site. Sasha posited that non-attorneys are not immediately aware that they can join the section, and Adrienne suggested that highlighting member benefits would also be important. Sasha regularly generates content she would be happy to add to the site, but would need to be one among other regular contributors. Our Facebook page is not heavily subscribed; we have an average number of Twitter followers. Our LinkedIn page is neglected. While it makes sense to have multiple avenues to the section, we need to have a minimal level of activity for the LinkedIn page to be useful. Our YouTube page would be more user-friendly if the videos were shorter; the videos as posted are very long by current norms. Our Google Plus presence is minimal and not visible.

Another bookmarked topic for discussion is how many people should have the ability to originate messages from the ADR Section listserv. The Ning users imperfectly overlap with the WSBA e-blast and section listserv members. Sending information solely via Facebook and Twitter would be largely ineffective. A question arose about the usefulness of recorded video on our YouTube page; that could be more thoroughly vetted within the communications committee, and then brought back to the executive committee. Mel wondered if there were obvious ways to post content we are already reviewing and generating to our existing communication tools. This has been a persistent topic, and would require enough commitment and support on the part of individual members to make the shift. Craig suggested picking one or two improvements based on impact and ease of implementation. Helen noted the divide in how older and younger lawyers tend to use technology and social media. We may need to present content effectively before asking younger attorneys to package and present content on our behalf. Sasha offered that prioritizing efforts to appeal to either older attorneys

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(website and email) and or younger attorneys (dynamic tools such as Facebook), rather than trying to maximize use of all tools for all messages.

The guided tour of our internet presence complete, we contemplated useful next steps.

BREAK

We resumed our communications committee discussion. If we found an alternative (and hopefully more stable) platform, we could use the same domain name with new software. The Ning website developer would likely suggest we move to SocialEngine that will allow us to migrate profile pages for existing people to the new network, so we would not lose our 600 contacts.

Alan launched our discussion on the ECCL recommendations regarding early mediation. Because the ECCL did not make recommendations regarding best practices or methodologies for early mediation, we can reach out to other sections to develop early mediation. Having attorneys engage in the discussion will be useful to create a credible methodology. The ECCL recommendation did not comment on the use of early mediation in family law, and that will be a multi-faceted discussion, depending on whether attorneys are involved, and whether there are parenting or financial issues. Alan requested that executive committee members share individual interests and passions within this topic, to construct detailed steps and tasks.

Craig observed the move toward mediation/conciliation, in terms of setting an appropriate process in international disputes, and also in terms of minimizing expense. Lish noted the ability in early mediation to adapt process to cultural norms. Having many short videos on the website to run through many topics would be one way to share a variety of topics and viewpoints on the topic.

In a report on the state of mediation in Washington a few years ago, there was an effort to represent practice across a range of areas. This report could give a starting place to identify topics of interest to various sections. The annual meeting panel discussion on early mediation was not recorded. When Alan presented at the Oregon Mediation Association conference, he noticed the impact of mediator evaluation on early mediation. Mediators typically do not meet separately with clients, although mediators are often working between clients and their counsel. Sasha suggested that we begin by asking lawyers what use they would make of mediation; we can expect immediate pushback if we start with our own ideas or suggestions. Craig commented that there is a presentation on early mediation at the next NW DR Conference. Mel reiterated an earlier comment, that having a checklist of talking points that would be broadly applicable across practice areas would help to gather thorough responses from sections. Examples are: cultural norms, involvement of stakeholders, interests/policies of insurance companies, and identification of interests. Craig suggested pulling together a subcommittee to develop this idea further. Sasha drew our attention to a similar checklist from John Lande. Mike Wampold may be willing to present on his experience as an attorney in early

mediation. There will be a discussion between what we currently believe to be “best practices” and what we will learn from other practitioners. The ECCL took five years to put together their report and recommendations, and is useful to promote early mediation and best practices. Paul suggested that we promote the recommendations of the ECCL as we offer our perspective and training to sections. Sasha noted that we may not want to brand our outreach as related to the ECCL, as there are complicated political relationships involved.

LUNCH

Mel proposed that we use our existing internet-based platforms to invite feedback on the use of early mediation. Lish suggested a survey, and Adrienne offered that SurveyGizmo would be a way to present the survey. After considering the suitability of a group or a discussion, Adrienne suggested creating a group on the website. The group will allow for collection of relevant documents, as well as discussion. Alan suggested approaching people who have experience with early mediation in particular practice areas

*** Adrienne and Lish will develop survey questions together.**

*** Adrienne, Mel, John and Alan will assist in creating an open discussion group for early mediation.**

We use our listserv approximately monthly. We can set up a new, dedicated listserv, or we can update the member list on the WSBA-hosted listserv. We will have more control over a listserv that is not run through the bar, and an existing listserv may have an archive that would enrich the discussion. We follow the model of the tax law section, with a moderated listserv. Moderated listservs are becoming less common, as notions of privacy have changed. One option would be to keep our moderated listserv, and have another open listserv.

*** Adrienne will contact Julianne Unite requesting a change of settings so that executive committee members can post on our listserv.**

Paul encouraged committee members to re-post interesting content to the website or social media sites; original content is not required.

Craig raised the question of whether having a WSBA section website and a Ning section website created confusion, and distracted from our Ning section website. Other sections have a similar setup. The family law section has minimal information on the WSBA section website, and directs users to their own section website. That approach could work for us. Courtney pointed out that there are functions the Ning website performs well, and others it performs poorly. Therefore, we may want to divide content between the two sites. Mel offered that the transition between sites could be

seamless. Courtney agreed, although that approach can't be implemented entirely now, due to technical limitations.

Lish expressed a wish for the website to be streamlined, and for some content on the homepage to be deleted. The Ning platform may not be long-lasting.

Helen, as the chair of the newly formed Professional Development committee, will convene meetings on the 2nd Wednesday of every month at noon. John will act as liaison between the committee and the executive committee. The structure of this committee provides a template for how to form committees with members who live outside the Seattle/King County area. An ADR boot camp would fall under the umbrella of this committee, as could a future Inn of Court.