

**Grand Teton
Mediation Association**



<http://www.gtmediators.org>

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Grand Teton Mediation Association

Idaho Mediation Association

California Mediation Week



Henry Henscheid, President

email: hmgmediation@srv.net

The Meeting Room:

The GTMA luncheon will be at Happy's Chinese Restaurant 549 Park Ave., Idaho Falls and begin at 11:30 AM on **April, 9 2007**. Our featured speaker this month is **Bonneville County Prosecutor Dane H. Watkins, Jr.** He was born and reared in Idaho Falls. He graduated from Brigham Young University's J. Reuben Clark Law School. He has worked for the Department of Justice in Guantanamo Bay, Cuba, Immigration and Naturalization Services in Washington, D.C., and Attorney's Title Guarantee Fund in Salt Lake City. Prior to working in the prosecutor's office, he clerked for Seventh District Judge Gregory Anderson.



He became the elected Bonneville County Prosecuting Attorney in 2001. Dane's responsibilities include office administration, caseload management and the handling of violent offenses, including murders.

"Articles From The Prez"

"Have Your People Call My People!"

Several months ago I was talking with a longtime GTMA member about the purpose and the importance of a mediation association like ours. He had been a self-employed businessman for many years. While he was very familiar with the business world, the concept of volunteer nonprofit organization was somewhat of an odd concept to him. After some discussion, we agreed on the following example: In business, the members (employees) are there to serve the organization; on the other hand, with a nonprofit organization like GTMA, the organization is there to serve the members. "Ah ha!" he said, "Now I understand how this works!"

Although technically speaking, I suppose, even "for-profit" companies by rights, need to serve the 'members' in order to maintain their profitability, the analogy is very appropriate. In order for any nonprofit organization to survive, particularly one like GTMA, it must establish and maintain a working relationship with its members. In reality, all the goals, priorities and activities of the organization must spring from the goals, priorities and activities of its members. Frankly, unless it does, not only will the organization not survive, even worse, it comes irrelevant.

The GTMA Board of Directors and I share a passion, for knowing and understanding the interests and priorities of our members. Toward that end, one of the most important activities we are undertaking this year is a GTMA Member Interests/Needs Questionnaire. Rocky Clark, GTMA Vice President has been spending a great deal of time in the development of this survey, and will be coming out with that in the next few weeks. The most important goal we have for this whole process is to establish and maintain that vital working relationship with YOU!

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It's perhaps no surprise that mediation is concept unfamiliar to those in the throes of conflict. That can make it difficult for those of us who understand the importance of mediation. Addressing that reality and supporting our members as mediators are the two essential elements of the GTMA mission. It's perhaps no surprise that the success of the members dictates success of the Association. We want to hear about your reservations, your concerns, and your needs. But just as importantly, we want to know about your successes, your triumphs, your discoveries your victories!

So in the next few weeks, watch for that Member Survey! That's just one way we want to keep in touch! We only ask one thing in return: When you get that "wake-up call" from GTMA consider that an important mediation connection. Tell us what you're thinking! Give us a reply that will help us help you! In short, Have Your People Call My People!

Richard Struthers' Submitted Article

Is Arbitration More Costly Than Litigation for Corporations?

Harry N. Mazadoorian

The Connecticut Law Tribune

March 12, 2007

When the current ADR revolution was first building up a head of steam in the 1970s and 1980s, one of the main attractions of both arbitration and mediation was the opportunity to reduce the costs of resolving disputes. Corporate America, especially, felt that there had to be a more efficient way to resolve costly disputes, the vast majority of which were ultimately settled anyway. ADR processes came galloping to the rescue as the knights in cost-saving armor.

In the early years, corporations would often quantify their cost savings and boast that they got the same end result as produced by litigation but much more economically by using ADR processes. Over a period of time, however, other benefits of both arbitration and mediation began to take center stage. Mediation allowed for more party control and confidentiality than litigation, while allowing parties to focus on their real interests rather than simply their legal positions; most importantly, it allowed for win-win situations whereby combatants could preserve business relationships and continue to work together.

Similarly arbitration provided finality within a process that was more informal and less rigid than litigation, encouraged relaxed use of the rules of evidence and allowed for hearings to be scheduled within relatively short order. The cost benefits of the processes were considered to be a given.

While the benefits and limitations of arbitration and mediation are, of course, different, both processes rose in stature with the rising tide of ADR support.

But over a period of time arbitration and mediation didn't seem to fit so neatly under the same umbrella. For one thing, arbitration seemed to frequently get derailed from the fast track and appeared to some to become more like its litigation cousin than its mediation cousin.

A recent article in the ABA Journal indicated that arbitration has definitely lost some luster in the eyes of corporate counsel. While a number of arbitration shortcomings were cited, including the failure to live up to its promised informality, the common criticism was an increasing cost factor in using arbitration.

It was getting to look – and cost – too much like litigation, in the opinion of some inside counsel.

What was once de rigueur in the corporate legal department – the utilization of mandatory arbitration clauses in contracts – is apparently now a topic of some debate.

This concern was echoed in a revealing survey conducted by legal management consultant Altman Weil and LexisNexis Martindale-Hubbell. Despite anecdotal stories about inside counsel beating up on outside counsel to reduce their fees, the survey did not find a decline in outside counsel fees. On the contrary, corporate spending on legal fees actually increased by 5.5 percent for the year 2005. Admittedly, the survey, which was reported in *The Connecticut Law Tribune*, cited other factors which also drove outside counsel costs up, including Sarbanes-Oxley compliance issues and a rather tepid pursuit of alternative billing arrangements coupled with a continuation of the basic, but increased, hourly billing practice.

As one inside counsel noted in the above mentioned ABA article, arbitration can become more costly than litigation, in light of the fact that both processes utilize a comparable number of pretrial activities, but the arbitration procedure often involves paying an hourly fee for each of three members of the arbitration panel.

Meanwhile, in the judgment of many, mediation has stayed truer to its promise to reduce costs than has arbitration. They argue that the typical mediation can hardly be confused with arbitration or litigation. It continues to offer greater flexibility and party control while devoting most of its time to the actual process wherein the parties sit face-to-face and negotiate.

One thing is certain: the selection of a dispute resolution process – be it litigation, arbitration, mediation, or any of the growing number of hybrids that are emerging – should not be based on cost alone but rather on a careful assessment of the nature of the dispute, the needs of the parties, the obstacles to be overcome and the potential benefits of the processes being considered.

Harry N. Mazadoorian, a commercial arbitrator and mediator, is Distinguished Senior Fellow in the Center on Dispute Resolution at Quinnipiac University School of Law.

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