



# Alternative Resolutions

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Alternative Dispute Resolution Section

*Lionel M. Schooler, Chair, ADR Section*

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## Chair's Corner



This is my inaugural column as Chair of the Alternative Dispute Resolution Section. I hear it frequently said by persons assuming the helm of an organization like this one that they “have a hard act to follow.” In my case, that is not merely a throwaway phrase: I am following in the footsteps of the latest group of outstanding

Section leaders—Ronnie Hornberger, Hon. Alvin Zimmerman, Don Philbin and Erich Birch. Individually and collectively, they are a very hard act to follow and each, in his own way, has left big footprints for me to fill. I hope to do so. Luckily, I have the good fortune to take the reins at a time when the Section is functioning very well, and when I am very ably supported by a stellar Council.

**Service to the Section.** My first priority is for the Council to provide service to the Section. To further that goal, I am presently discussing with

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# Mediation Facilities, Part II: The One Question that Should Guide the Rest (and More)



by John DeGroot

As I lay back in my dentist's chair a few years ago, I immediately noticed the ceiling. The exposed beams—and everything I could see while looking straight up—was *spotless*. The light fixtures were clean, the wiring was tucked away, and the soft lighting trained on the woodwork detail made it clear she had considered my perspective as she finished out her office.

With that experience in mind, I took another look at my own mediation center from the client's point of view. This perspective led to many of the tips found **Mediation Facilities, Part I: 3 Questions to Get Mediators Started**,<sup>1</sup> including how to manage pre-arrival expectations, how to ensure that first impressions put your mediation on the right path, and a few “must-haves” for any mediation center.

## Be Guided by One Question

Beyond the basics, mediators can, and should, do more. If we want to make clients and counsel more comfortable and productive, our next steps should be guided by one question:

### ***Should they have to ask?***

Think for a moment about your last visit to a truly nice hotel. What set it apart? Sure there was a marble lobby and a shrimp buffet, but there was something else. The umbrella at the bell stand, the robe behind the door, and the sewing kit in the bathroom were there just in case you needed them—and you didn't have to ask.

Whether we like it or not, in mediation customer service goes beyond one's skill in the conference room. As a client, I once watched 6 lawyers try to

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<sup>1</sup> John DeGroot, [Mediation Facilities, Part I: 3 Questions to Get Mediators Started](#), *Alternative Resolutions* Spring 2016: Vol. 25, No. 2 (2016) 9.

share 4 outlets. I have seen attendees sheepishly ask to borrow paper, and I myself have looked for a shredder to rid myself of unnecessary litigation ballast.

There's no doubt that mediation attendees are stressed during mediation, and satisfying their needs in advance can reduce this stress. Neither clients nor counsel should ever have to ask for a power strip, a legal pad, a shredder, a flash drive, or anything else that mediators provide on a weekly basis.<sup>2</sup> With an eye toward customer service, these can be the easy points any mediation facility can make.

### Food Choices

Mediation attendees are (i) in a strange place, (ii) meeting with people they (often) don't want to be around, (iii) with money, careers, ego, and more on the line. Whether it's a half day mediation with just coffee and cold drinks, or a full day mediation that might run late, mediators can set themselves apart:

- by what they serve;
- by how they serve it; and
- by letting clients and counsel know in advance what will be available when.

There isn't enough literature available on what food to serve at mediation,<sup>3</sup> but the food that mediators offer is a frequent topic of discussion among attendees. Separately, any parent knows the contrast between a child who has had a donut versus one who has just eaten a balanced meal. These 2 simple concepts, paired with the notion that attendees shouldn't have to ask, have led us to offer:

- fajitas from [a well-known Mexican restaurant](#);
- an option to accommodate special dietary needs in advance;
- top-shelf coffee, decaf, tea, sodas, and juices;
- fresh fruit;
- low-glycemic and other snack options; and
- something (else) to eat when your mediation or the drafting of your Mediated Settlement Agreement slides past dinnertime.

Far from viewing food as a chore or an expense, our mediation center has openly embraced the food choices we have made, and we feature both prominently in our Mediation Agreement correspondence and [collateral materials](#).

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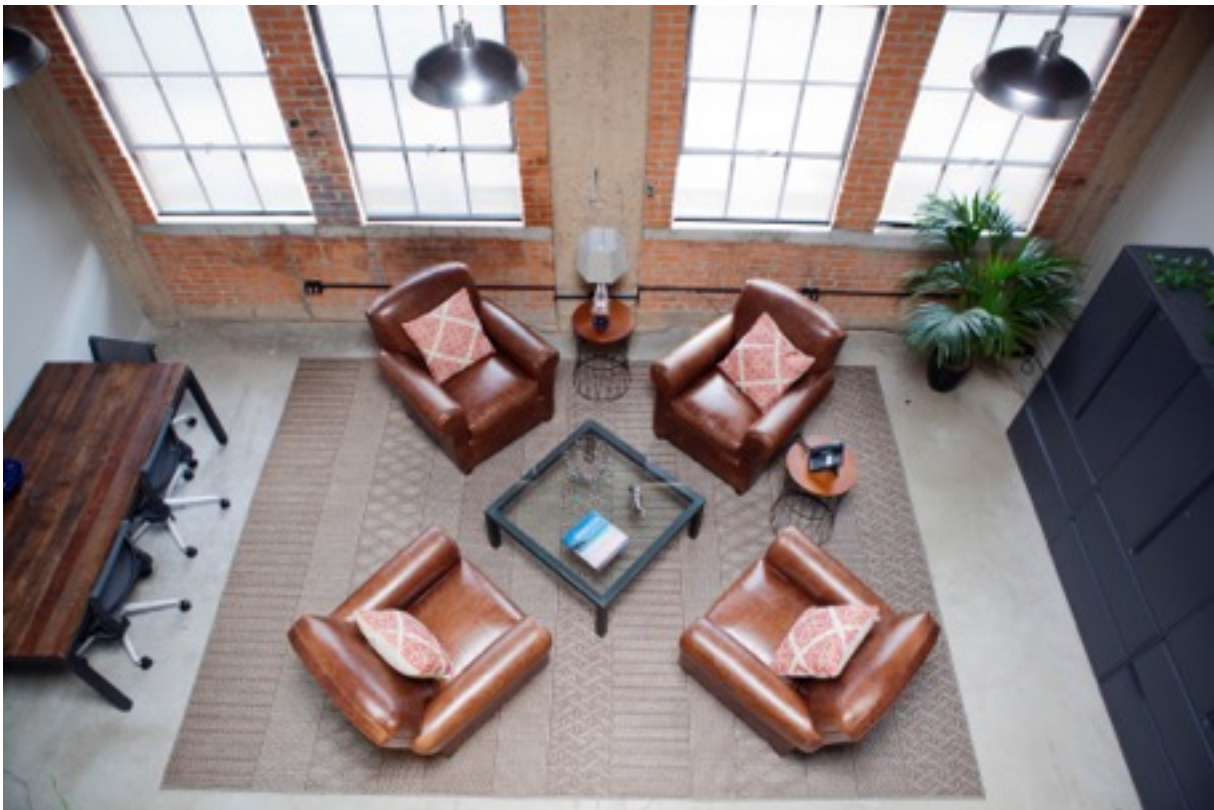
<sup>2</sup>Today's mediators should add to this list Apple TV-equipped televisions. The days of the projector and screen are almost at an end, and iPads and iPhones are giving mediation attendees a seamless, easy way to present material with little to no connection stress.

<sup>3</sup> But see Paula Young, [The Where of Mediation: Choosing the Right Location for a Facilitated Negotiation](#) (2007), Mediate.com at <http://www.mediate.com/mobile/article.cfm?id=2385>.

## Caucus Rooms

As a veteran of hundreds of mediator caucus rooms, I can tell you they aren't fungible; there is a difference. I have been in conference rooms that were too hot, too crowded, and too small—and many that had no windows at all. Barbara Madonik tells

- windows;
- individual temperature controls;
- paper;
- colored markers;
- calculators; and



us that "[c]aucus rooms provide a safe environment in which parties can find privacy."<sup>4</sup> This safe environment merits real attention. Madonik's list of things for mediators to consider for their conference rooms includes:

- tissues.<sup>5</sup>

In addition to these important points, our experience has added a few more, including:

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<sup>4</sup> Barbara G. Madonik, *Managing the Mediation Environment* (undated), Mediate.com at <http://www.mediate.com/articles/madonik.cfm>.

<sup>5</sup>*Id.*

- Adequate room between the back of the chair and the wall (so no one feels trapped);
- Chairs that will still be comfortable after 8:00 p.m.;
- Natural light in every room;
- White noise makers; and
- Presentable space heaters and fans, for those who'd like more influence over their own environment.

### Control

No doubt the world is changing, and perhaps trends set by outfits like [airbnb](#) and [Regus](#) signal the end of the dedicated mediation space. But before that happens, I am reminded of the story of a Dallas lawyer who was "just this close" to settling, when his mediator's access to the conference rooms he shared ended. Sure, the parties promised to close the gap sometime soon, but momentum was lost; the hope for

settlement quickly dimmed.

Before we focus on the finer points of mediation facilities, like whiteboards and speakerphones and [Kind bars](#), perhaps it needs to be said that we should start with the idea that mediator control of the mediation facility is key. As I close this article, I'm reminded that there are dozens of other tips to include, like conference tables that can be configured to taste, [sound absorbing art](#), and more.

Instead, I'll close with the question that ties it all together: "***Should they have to ask?***"



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