



# Alternative Resolutions

State Bar of Texas

Alternative Dispute Resolution Section

*Erich Birch, Chair, ADR Section*

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## Chair's Corner

They say time flies, but it seems to be on adrenaline these days. We are at the end of another Texas Bar year, and the ADR Section continues to do much in meeting its commitment to educate the public and be a resource about the proper role of alternative dispute resolution in our society. In the 2015-2016 year the ADR Section implemented changes that will keep

the Section on track for improving its service into the future.

The most visible change this year was in January, when the Section held its first Annual Meeting in conjunction with the Section's Annual CLE. The move required some quick action by the Council after the last Annual Meeting in June, because in this transition year the timing for nominations of new Council members, officers, and candidates for the Frank Evans Award was significantly compressed from previous years. In fact, there was actually only one Council meeting between the two Annual Meetings.

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# Mediation Facilities: 3 Questions to Get Mediators Started

by John DeGroot

“What's the wireless passcode again?” “*Will we be going out for lunch?*” “Is there somewhere I can print?” As a mediator I encourage everyone in the room to ask questions, but none of these get us any closer to settlement.

Yet with just a little empathy, focus, and effort, you and your mediation facilities can help clients get past these questions, so they'll have the comfort and confidence to get a deal done.

Environmental details matter, and the success of your next mediation could depend on them.<sup>1</sup> Before you decide to use that interior conference room or to put off lunch just a little longer—or paint your conference

room  
green  
o r  
hang  
a



picture  
of a lone deer or put red markers near your whiteboard—recognize that these choices have consequences.

It's the mediator's job to provide for the parties' comfort and to consider “the messages the mediation environment broadcasts and the frame of mind it invites.”<sup>2</sup>

Concrete suggestions for mediation facilities are few and far between,<sup>3</sup> but a class<sup>4</sup> I took a few years ago from Douglas Noll<sup>5</sup> and Don Philbin<sup>6</sup> helped me recognize the

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<sup>1</sup>[\*I Hear What You Say, But What Are You Telling Me?: The Strategic Use of Nonverbal Communication\*](#), 99 (Barbara G. Madonik, 2001)(“The environment in which the mediation occurs can strongly influence the success of the mediation.”).

<sup>2</sup>Barbara G. Madonik, [\*Managing the Mediation Environment\*](#) (undated), Mediate.com at <http://www.mediate.com/articles/madonik.cfm>.

<sup>3</sup>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>.

<sup>4</sup>[law.pepperdine.edu/straus/training-and-conferences/professional-skills-program/malibu/tactical-interventions.htm](http://law.pepperdine.edu/straus/training-and-conferences/professional-skills-program/malibu/tactical-interventions.htm)

<sup>5</sup> [dougnull.com](http://dougnull.com)

<sup>6</sup> [www.donphilbin.com](http://www.donphilbin.com)

value of natural light, low-glycemic snacks, and more as we negotiate. This class, and the work of Barbara Madonik, have helped guide my facilities choices, but is there more out there to guide mediators as they choose what our mediation environment will be like?

While Part II will explore mediation facilities in more detail, the 3 questions here in Part I can start the conversation as mediators decide how they'll manage where we mediate.

### Do the Parties Know What To Expect?

Managing expectations is nothing new to negotiation,<sup>7</sup> and helping parties and counsel visualize their physical surroundings before mediation day is an easy way to start.

Madonik suggests that mediators “[i]nvite parties to visit the location before the mediation to become more comfortable about driving the route and meeting at the facility.”<sup>8</sup> There's no question that an advance visit can make participants feel more at home when mediation day arrives.

In today's digital world, however, physical visits aren't as important as they once were. Mediators can take several steps that are even easier and almost as helpful:

- Invest in a mobile-friendly, easy to find [website](#);
- Include a reader-friendly [bio](#);
- Include photos (and, for today's audience, [videos](#)) of the mediator; and
- Give some [additional resources](#) that allow participants to explore how the mediator approaches negotiation and settlement;
- Send all participants a [map](#) with directions before the mediation, including a picture of the facility and a phone number; and
- Offer a [mediation center tour](#) for those who don't come to the mediation facility before mediation day.

Providing these details in advance can give participants a sense of control,<sup>9</sup> and that's good for everyone involved.

### What First Impression Does Your Space Give?

As a longtime mediation client, I learned that there is a difference in the services mediators provide, and how and where they provide it. The sense clients get when they first walk in the door to your facility may not be their first impression of you, but it can be the most impactful.

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<sup>7</sup>See, e.g., <http://settlementperspectives.com/2008/09/managing-expectations-an-unexpected-lesson-on-the-bus-to-hertz/>

<sup>8</sup>Madonik, [Managing the Mediation Environment](#).

<sup>9</sup>Madonik 2001 at 104.

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Mediators need to recognize that environments send messages. They must create a place where people are able to approach, rather than freeze, flee, or fight.

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I recommend mediators walk in from the parking lot like they have never been to their mediation center before, and consider “the messages the mediation environment broadcasts and the frame of mind it invites.”<sup>10</sup> They should ask themselves:

- What is my first impression as I approach the front door?
- As I open the door, is it calm or chaotic inside?
- Am I greeted immediately?
- Is it clear where I should sit?
- If I wanted to sit, would I be asked to sit with my opponent?
- Is the paperwork handled smoothly and discreetly?
- Does what I see inspire confidence?

## Do You Provide the Basics?

Like it or not, no mediator gets it all right. While a comprehensive list is beyond the scope of this article, the physical basics certainly include:

- A conference room and table large enough to accommodate the mediation, with a shape consciously chosen by the mediator to fit his or her practice and style;
- Adjustable conference room chairs that swivel;
- Power outlets;
- A comfortable temperature (maintained throughout the day);
- Natural light; and
- Noise abatement between caucus rooms;

Physical comfort isn't all that matters, of course. Modern businesspeople need access to many things to be at ease:

- Wireless access;
- A cellular signal for mobile calls;
- A private place to make phone calls;
- Coffee, beverages and snacks;
- Private caucus rooms;

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<sup>10</sup>Madonik, [Managing the Mediation Environment](#).

- A speakerphone (to call the occasional absent decisionmaker);
- A printer, a fax machine, and other support; and
- The right to stay in the space as long as necessary, with no artificial deadline.

At this point expectations have been managed, first impressions have been set, and the basics have been covered. More important, we understand that “[e]nvironments send messages,”<sup>11</sup> and that mediators “must create a place where people

are able to approach, rather than freeze, flee, or fight.”<sup>12</sup>

In the second half of this essay we'll discuss food choices, caucus rooms, and other details—and the one question that ties it all together. Come back for Part II. You'll be glad you did.



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business disputes. He can be reached at [john@degrootepartners.com](mailto:john@degrootepartners.com).



<sup>11</sup>Madonik 2001 at 99.

<sup>12</sup>Douglas Noll, [Ten Principles of Peacemaking](http://www.mediate.com/articles/noll5.cfm) (undated), Mediate.com at <http://www.mediate.com/articles/noll5.cfm>.