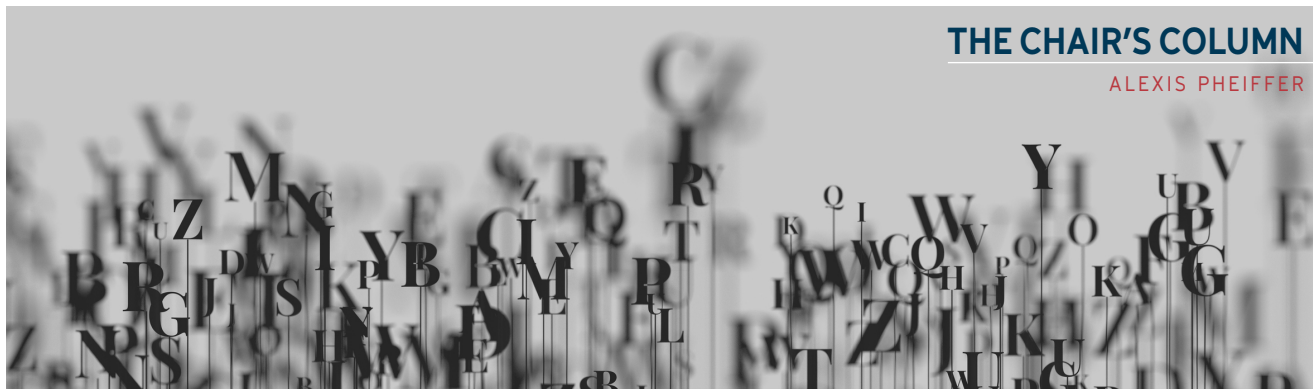




ARIZONA ADR FORUM

THE CHAIR'S COLUMN

ALEXIS PHEIFFER



ALEXIS PHEIFFER

is an experienced mediator, facilitator, and investigator based in Phoenix, Arizona. She is an AAA Affiliate and MC3 certified mediator, focusing on resolution of employment and personal injury disputes. Alexis' creative and party-focused approach to dispute resolution draws on more than 20 years of employment law and litigation experience, both in private practice and in-house. She has served on the Executive Council for the ADR Section of the State Bar of Arizona since 2020, previously holding the roles of CLE Subcommittee Chair and Section Vice-Chair. Alexis received her Certificate in Dispute Resolution from Pepperdine University's Straus Institute for Dispute Resolution, her J.D. from the University of Minnesota at Law School, and her A.B. in Psychology from Georgetown University. Learn more about Alexis and her approach to dispute resolution at alexispheiffer.com.

DEAR ADR Section Members, it is mid-May 2024, and we are less than 30 days away from the State Bar Convention at Wild Horse Pass. This issue of our Section newsletter should leave you eager to attend the Convention. Our Convention Committee has a full day of programming planned, and we hope to see many members at this year's Convention.

The Convention also marks the start of the 2024-25 State Bar Year, which means my term as Section Chair is nearly at an end. I want to thank my fellow ADR Section Executive Council members for their time, talents, and commitment, and I thank each of you as well – for reading the newsletter, attending Section programs, and being a part of the Arizona ADR community. As a solo practitioner, I value the connection that this community provides, and I value the relationships I've made because of this Section. I hope that each of you continue to increase your engagement with the Section and appreciate the value in the Section's community, educational offerings, advocacy, and articles.

It's been a busy year, full of engaging CLE, with opportunities to engage in-person or virtually, whether in a group of other ADR professional or mixed with other Sections. The 2024 Convention will provide more of the same high-quality programming you've experienced at past Conventions. We encourage you not only to attend the ADR Section programming during both the morning and afternoon sessions on Thursday, July 13, 2024, but to bring a friend along with you! We welcome new Section members, and there is no better way to learn about our Section than to sit in on our timely and engaging presentations. You'll find more detail on our Convention content as you read on.



2024 CONVENTION

Sheraton Grand at Wild Horse Pass • Phoenix • June 12-14, 2024



Also, during the ADR Section's June 2024 business meeting, held during the Convention, we will elect our new slate of ADR Section officers. If you will be attending the Convention, please join this business meeting to vote on officers and meet next year's leaders. Unfortunately, other commitments prevent me from attending the Convention, but I am familiar with our 2024-25 slate of candidates and am confident the 2024-25 team will serve the Section well.

CLE planning for Fall 2024 is already underway. Please mark your calendars now for the morning of October 1, 2024, when we'll present a Mediation Advocacy panel, designed for ADR professionals as well as litigators and other mediation advocates. More to come as fall approaches.

It has been a pleasure to serve you all over the past year. I wish you all a safe, happy, and cool summer. Safe travels to the Convention and wherever else your summer plans may take you.

All the best,

Alexis Pheiffer
Chair – ADR Section

EDITOR | DENNY ESFORD

We welcome comments about this newsletter and invite you to suggest topics or submit an article for consideration. Contact the Editor, Denny Esford at denny@windycitytrialgroup.com.

EDITOR

In our feature article in this issue, Roger Moss, a neutral in the national commercial real estate space authors a “call to action” using online dispute resolution tools as part of comprehensive approach to address Arizona’s growing housing crisis and its negative impact on our judicial system.

This issue also arrives in time to remind you to sign-up for the ADR presentations at the Bar Convention this month at <https://azbar.org/convention>. Along with the excellent Thursday ADR presentations on current issues here in Arizona, you will also experience a unique presentation of ADR insights applied to the Mountain Meadows Massacre in 1857. It promises to be a session not to be missed.

As always, feedback on each issue is welcome—the goal is to inform and keep you abreast of the latest news in ADR. If you have an idea or want to author an article, just drop me an email to start the process.

Denny Esford
Editor – ADR Section
Newsletter

EDITOR'S MESSAGE

DENNY ESFORD





RIDE THE TSUNAMI: OPPORTUNITIES WITHIN THE EVICTION CRISIS

BY ROGER MOSS

As I write, literally thousands of eviction cases are striking Arizona’s courts. The situation is unmanageable. Whether the metric is human suffering or impacts on judicial system and the public treasury, it is a horror show. And while there is no magic bullet to dispatch the lack of affordable housing that drives today’s crisis, much can be done to streamline the handling of the current caseload and create a superior system for the future.

Affordable and nimble online dispute resolution (ODR) programs are now available that could manage rental disputes for the entire state, and could be implemented rapidly. However, technology alone cannot transform crisis into opportunity. Transformation emerges from thinking differently. In the context of the eviction crisis, we must shunt aside the notions of traditional mediation and replace them with best practices for engaging conflicts in real estate. What does that look like?

We start by prioritizing this truth: few things in life trigger fear as quickly and violently as threats to home, family, and the means to support them. These threats demand urgent attention. The best results for both disputants and the community depend on the swift delivery of services grounded in practical experience and empathy for all involved. The most effective eviction prevention system depends on early intervention, a collaborative process, and creating value for tenants and landlords alike. When those elements build constructive landlord/tenant relations, they can prevent serious disputes from occurring and make them easier to manage when they do arise.





RIDE THE TSUNAMI: OPPORTUNITIES WITHIN THE EVICTION CRISIS

We should also keep in mind that the solutions to real estate disputes are always practical actions, no matter what legal issues or lease provisions are involved. There are three basic sources of real estate conflict: physical characteristics of the built environment, economic issues, and relational issues, particularly when people are not respecting one another. Usually, two or more of these conflict drivers operate at the same time.

Put differently, the doctrine of habitability cannot fix a roof. Contract provisions do not pay the rent. The sooner we shift from legal wrangling to practical problem-solving, the better the outcomes. Professional neutrals with real-world real estate experience (many of us are lawyers, too) are best positioned to quickly disrupt disputes and fashion mutually beneficial solutions.

Meeting the current crisis requires a program with dynamic operational elements:

- Rapid Response
- Compassion Centered Communication
- Interdisciplinary Team
- Collaborative Process
- Outcome Driven Approach

The importance of *Rapid Response* cannot be overstated. A powerful de-escalation tool rapid response disrupts fear, creates relief, and sets the stage for productive exploration of complex problems. Importantly, Rapid Response is not merely “intake.” Rapid Response provides anxious people with emotional comfort while simultaneously commencing situational analysis and proposing solutions. Rapid Response requires skilled professional neutrals with emotional intelligence and subject matter expertise, *who have been empowered to be the solution*. Experienced mediators trained in traditional models often find it hard to be outcome driven. But once they make the shift, they feel liberated.

This thinking springs from a practical reality: housing providers cannot afford to engage in traditional mediation or loiter in extended reflective listening sessions. They also do not respond well to people who do not get the realities of managing real estate, particularly at the portfolio level. Property managers are often as traumatized as the residents facing legal action.

Investigation takes time. So rapidly delivered “first contact” moments employ *Compassioned Centered*

Communication. Establishing connections calms people and builds trust. When engaging other parties is required, it is best to start with small private conversations before bringing people together. Many situations can then be resolved by providing situational analysis and conflict coaching, without moving into structured mediation. Most serious real estate disputes are best handled through asynchronous dialogue. Of course, we should bring disputants together when it is possible to convert hostilities into constructive relationships. But success in those situations depends on advance work and small conversations.

A diverse *Interdisciplinary Team* is essential to deliver real estate conflict intervention services at scale. Each case should be customized for the people and landscape involved. The built environment should be viewed as a participant in conflict. “Going to the conflict,” literally, produces solutions that cannot be achieved at court or in a conference room. One must walk the landscape, which holds clues to creative solutions.

This brief article barely covers the basics of applying dynamic neutral services to real estate conflict, nor can it fully illuminate the potential it offers. But implementing an ODR system based on these ideas can be done quickly and affordably. The platform can also connect people to a myriad of resources crucial to address rental conflict, including local “boots on the ground” when required.

You may be thinking “He’s dreaming. It won’t work.” I know differently. I built a successful program that launched in late 2016 to prevent homelessness of vulnerable people. It is funded by the city of San Francisco and operated by the Bar Association of San Francisco. The program stabilized over 5,000 homes and small business locations while meeting the needs of landlords over a six-year period. Before the pandemic, the program generated a 97.1% positive outcome rate. A similar program in Canada serves British Columbia, a province of 5 million people. It provides self-help tools and coaching to 200,000 people annually, while mediating or adjudicating 30,000 cases, entirely online.

Arizonans needs relief from the present crisis and deserve 21st Century tools and thinking to stabilize homes and businesses.

Let’s build it. 



Mediation Counsel **ROGER A. MOSS** has an extensive background in commercial real estate negotiation, dispute resolution, and executive leadership. Known for strategic insight and perseverance, he has resolved complex disputes from Honolulu to Manhattan. He has channeled this experience into the creation of groundbreaking programs that have stabilized thousands of homes and small business locations.

Roger created and teaches Radical Neutral Advocacy™, a methodology recognizing that conflict involving home and community requires a swift, nimble, solution-driven response. He graduated Phi Beta Kappa from UC Berkeley, where he studied medieval history and spun vinyl at KALX FM.

An active member of the California and Washington State Bar Associations, Roger has served as the chair of the Association for Dispute Resolution of Northern California and the vice chair of the WSBA ADR section.

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