

### A NOTE FROM THE EDITOR:

Dear colleagues and friends:

We are pleased to share our inaugural edition of the JAMS Washington state newsletter, where you can read about recent developments and learn practical tools about ADR to benefit your practice. Contents in this issue include 2013 Highlights, Arbitration tips, and a column about eDiscovery and Special Masters.

If you have any comments or questions about the newsletter, ideas for future content, or if you would like additional information about our Washington state panel, please feel free to contact me.

Sincerely,  
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### EVENTS AND CONTINUING LEGAL EDUCATION

JAMS is dedicated to staying involved in the Washington legal community through sponsorships of local bar associations, attendance of local events and providing continuing legal education courses.

*For more information about events and educations programs, contact Michelle Nemeth at mnemeth@jamsadr.com or 206-292-0441.*

### 2013 Highlights

It has been a tremendous year for our Seattle Resolution Center. In 2013, we welcomed to our esteemed panel, three retired judges: Hon. Sharon Armstrong (Ret.), Hon. Paula Casey (Ret.), and Hon. Thomas McPhee (Ret.).

**Judge Armstrong** joined JAMS after 27 years as a judge on the King County Superior Court and has 40 years of legal experience, including many years as a trial lawyer. Judge Armstrong is lauded by the legal community for being intelligent, incisive, engaged, and prepared. In June of last year, Judge Armstrong was honored by the King County Bar Association with the “William L. Dwyer Outstanding Jurist” award, which recognizes a lifetime of achievement as a judge in King County. Several months after that honor, the Washington State Bar Association awarded her with their “Outstanding Judge Award” for 2013.

**Judge Casey** joined JAMS after 30 years on the Thurston County Superior Court, where she had numerous achievements, including being a founder of the Thurston County Dispute Resolution Center, as well as being instrumental in the restructuring of the family and juvenile court system. Called the “Unified Family Court Project,” the new system of processing family and juvenile cases was designed to better serve families and children involved with the court system. The project has since become a model for other courts around the state. As tribute to her great successes and contributions as a judge, Judge Casey’s law school alma mater, Willamette University, honored her in May of last year with their Distinguished Alumni award.

**Judge McPhee** brings to his ADR practice more than 40 years of legal experience, including 22 years on the Thurston County Superior Court. He has tried nearly every type of case imaginable, earning a reputation for being one of the hardest working jurists in the region. In honor of Judge McPhee’s dedication to the judicial process, he was designated “Judge of the Year” in 2013 by the Washington State Association for Justice. ●

## Discovery Special Masters Can Streamline the Discovery Process

BY HON. THOMAS MCPHEE (RET.)

The emergence of electronically stored information as the near universal document storage format for business, government and medical providers has made document discovery more complicated and contentious. Using a discovery special master can help a great deal to speed discovery and control its costs. In current discovery, litigants want not only the document itself, but also details about how and when it was produced, who reviewed, edited, or commented on it, and the identity of all who saw it. Today, the phrase “including all metadata” is a staple of ESI discovery and often the source of costly litigation even before the value of the discovery is known to either side. A court appointed special master can materially reduce the cost and time to resolve those issues.

To appreciate the economy of a special master, balance the master’s charges against a litigant’s savings in time and cost to pursue the matter in court. Consider the following:

- A trained discovery special master will bring considerable expertise and experience to the resolution of discovery disputes, reducing the time and expense of counsel in educating a trial court. A special master has access to ESI focused training and resources; most trial judges do not.
- A special master provides faster, more efficient service than a trial court. Detailed motions and long briefs are usually not required; scheduling is by telephone; hearings can occur very quickly, often by telephone.
- A special master will work with counsel and the trial judge to precisely frame procedures at the beginning and end of an appointment, reducing the time and expense for counsel.
- Final resolution of discovery issues is efficient, and the judge is kept in the loop. By court rule a special master recommends an outcome to the court, and courts will most often order the parties to show cause why the recommendation should not be adopted. Thus a party preserves the right to be heard by a trial or appellate court. ●

## Spotlight on Global Engineering and Construction (GEC) Panel

The JAMS GEC panel provides ADR services to the construction industry to resolve disputes in a timely and cost effective manner. The neutrals resolve complex matters efficiently utilizing mediation, arbitration, early intervention structured negotiations, project neutrals, initial decision-making, adjudication, dispute review boards, and mini-trials. In Washington State, the GEC panel includes **Douglas S. Oles, Esq.** ([www.jamsadr.com/oles](http://www.jamsadr.com/oles)) and **James F. Nagle, Esq.** ([www.jamsadr.com/nagle](http://www.jamsadr.com/nagle)) and **M. Wayne Blair, Esq.** ([www.jamsadr.com/blair](http://www.jamsadr.com/blair)).

## How to Customize Commercial Arbitration

BY LARRY MILLS, ESQ.

One of the primary advantages of commercial arbitration versus traditional litigation is the participants’ ability to agree on the structure of the proceedings. Within very broad limits, business parties’ agreements to shape arbitration procedures will be enforced by arbitrators and respected by courts.

Whether drafting pre-dispute arbitration clauses or fashioning post-dispute agreements submitting issues to arbitration, counsel should consider streamlining the arbitration process by:

- Shortening the time from the demand or submission to the arbitration award by specifying reduced, but reasonable, time frames for case events;
- Choosing a capable managerial arbitrator;
- Limiting discovery to exchange of specified categories of documents, including electronically stored information, and one or two depositions of party witnesses;
- Barring pre-hearing dispositive motions unless all parties and the arbitrator agree;
- Preparing an agreed chronology of the material events;
- Submitting all direct testimony, with exhibits, by written declaration, subject to cross-examination of the declarants at the hearing; and
- Providing the arbitrator with proposed forms of awards detailing the specific relief each party is seeking.

Even when electing to use JAMS arbitration rules, arbitration proceedings are not one-size-fits-all; arbitration procedures may be tailored to the specific dispute. If you can imagine an efficient procedural innovation in arbitration, it can happen by agreement. Use wisely your power of choice. ●