



CCA Fellows' Newsletter

----- Volume 8, Issue 1 -----

April 2022

- ◆ [Reflections on the Past Two Years](#) ◆ [Going Paperless](#) ◆ [ABA Arbitration Training Institute](#) ◆
◆ [Traveling Fellows](#) ◆ [In Memoriam](#) ◆ [News About Fellows](#) ◆

THE PRESIDENT'S LETTER

by Mark J. Heley, President

I have some questions for your consideration:

- Did you know that the United States Supreme Court will consider five separate cases regarding arbitration related issues in this term?
- Did you hear about the FINRA arbitration award vacated due to manipulation of the arbitrator panel candidates?
- Did you see the US Senate just passed the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act?

I can answer yes to each of these questions for one reason. That reason is the Mediation and Arbitration Listserv (the "Listserv"). I saw and read posts from Listserv subscribers, including several CCA Fellows, that addressed and explained these items. These issues all surfaced within the last six weeks. This list of questions I can now answer thanks to the Listserv is in fact longer and more detailed. Simply stated, the Listserv is a treasure trove of information for those looking to stay on top of developments in the field of ADR. However, this treasure trove did not just magically appear. Instead, the Listserv developed due largely to the vision and work of one man, **Paul Lurie**.

Paul Lurie started the Listserv over 20 years ago as a service to allow ADR professionals, including all CCA Fellows, to follow and stay up to date on legal developments in the fields of arbitration and mediation. At last count, 720 professionals in the ADR field subscribed to the Mediation and Arbitration Listserv.

The Listserv has been referred to as the "premier" educational resource and information sharing network among ADR professionals within the United States.

Paul Lurie singlehandedly established, maintained and operated the Mediation and Arbitration Listserv from its inception through today. Paul encouraged participation, grew the Listserv and maintained the archives. When necessary, Paul served as the "Listserv police" and supervisor. The burden rested on Paul to remind participants of the Listserv rules, encourage substantive and meaningful subject descriptions, call a question to conclusion if appropriate or in certain cases diffuse tense exchanges. Paul also bore the burden of sending the annual voluntary "bills" to Listserv subscribers for the \$10 annual fee. To call Paul's work remarkable or valuable would be an understatement.

Paul called me a couple of weeks ago to advise me that at age 82, he will finally accept some help with the Listserv. Specifically, Paul entered into an agreement with CCA leadership some time ago to develop a succession plan for administration of the Mediation and Arbitration Listserv. The CCA will not have responsibility for content. This year the CCA sent out the annual invoices. Sometime soon, Paul will be turning over ultimate responsibility for the Listserv to the CCA and its officers. When that happens, the CCA officers collectively will have some big shoes to fill. ◆

Best wishes,

-- *Mark J. Heley*

GOING PAPERLESS: A JOURNEY, NOT A DESTINATION

by David M. Brodsky

During a particularly difficult commercial arbitration, after the parties had submitted witness statements and exhibits for six fact witnesses and four experts, I was looking at thirty three inch and four inch three-ring notebooks jammed with documents each separated by a numbered tab and wondering how I was ever going to handle them at the upcoming hearing or balance them on my desk as I took notes.

That episode helped me to give up on my fifty-year love-hate affair with three-ring notebooks and paper, paper, and MORE PAPER. I decided to “go paperless” without even knowing what that entailed. What follows is a description of the path I followed and my thoughts on what I have learned. Going paperless is a journey, not a destination. The practices I have adopted are subject to being replaced by others, but, since I made my decision, I have transformed my practice as an ADR professional, resulting in a cleaner, neater, and organized office, and, hopefully, a better output. I offer myself as one example of how to embark on that journey.

When I decided to try to go paperless, I still wanted to mark up the pages of a brief or exhibits, carry a notebook in which I would take notes during hearings, have a file system that enabled me to easily find key documents and was backed up to a storage system, and bill and collect for my services. But without handling masses of paper. And even more critically, I wanted everything to be backed up so if something went wrong, I could find and download everything. And so I had to develop a system or systems.

I chose to work with a tablet, in my case an iPad Pro, that contained applications that would allow me to store documents and write notes on them. I quickly learned that I should insist that all documents sent to me be formatted in PDFs that have optical character recognition (OCR) built into them, allowing me to search each document for specific words or to copy text from exhibits or memoranda into draft orders or awards, thus making my work significantly less time-consuming. I now specify in my engagement letters and pre-hearing orders that documents be sent to me only as scannable PDFs and that briefs or memos of law contain linked references to the cited authorities.

When I started looking at various apps, I went online to an App Store to search for Document Collection, or some similar keyword. In my case, I chose from among Google Docs, Documents by Readdle, PDF Expert, Adobe Acrobat, Office Suite, and a few others. I ultimately chose Documents by Readdle, and later PDF Expert, and found they had many features that I liked. Each enabled me to create electronic file folders for my matters, and, within each such folder, subfolders for briefs, hearing exhibits, invoices, orders, or others. Each allowed me to mark-up and annotate, in handwriting and via typing, each of the PDFs with which I was working. And each allowed immediate filing of documents into a cloud storage app, which, in my case, is iCloud.

My list of automatic folders for each arbitration matter is as follows: conflict checks, correspondence, orders, pleadings, motions, hearing exhibits, hearing notes, invoices, miscellaneous; and for each mediation: engagement letter, pleadings, pre-hearing conference notes, mediation briefs, cited cases, mediation notes, miscellaneous.

As a solo practitioner with a home office, I knew I would not always be at my desk when a billing event took place. There could be a telephone call to my cellphone or an email exchange while I was in another room. I needed some system that would be available to me wherever I was and, since I seem to be joined at the hip to my cellphone and my iPad, a system that was accessible on my portable devices and would sync to all my devices.

After some experimentation, I discovered a software application called CLIO, which continues to fit all my needs. It is available through membership in my and many other state bar associations. Through CLIO, I record my time, compose bills using my own logo and billing format, and keep track of when bills are due.

CLIO also allowed me, through the Contacts segment of the billing program, to maintain a searchable record of the name of every party, law firm, lawyer, insurance carrier, expert witness, among others, that appeared before me in any mediation or arbitration — a critical part of the arbitrator’s disclosure responsibilities. That is now my go-to when checking conflicts.

I am also entering the names of all relevant persons and entities from the prior matters I worked on before I adopted my current method.

I also had to determine how to file the documents that I was accumulating in cases. Just filing them in the format they were received in, such as 13099670_4_Jones-Smith_12-10-2021 Proposed Settlement Terms, would make searching for and finding a particular document a month or a year after receipt practically impossible.

So time-consuming as it was, I named every document I received in exactly the same format as recommended by a fellow arbitrator: four-digit year. two-digit month. two-digit day, as in 2021.06.15, followed by a brief description of the document, as in Claimant's Arbitration Demand, or Respondent's Motion to Compel. Even when using a month or day that can be notated by a single digit, such as June, it is important to use a two-digit symbol, such as 06, when logging a document in, because otherwise, the document will not be filed in actual chronological order.

If, as often occurs in the writing of arbitration award or orders, there are multiple revisions of the same

document, I add the name and date of the editor after the title of the document, such as 2021.08.25 Jones v. Smith Partial Final Award BJF 2021.08.26. Each separate version has its own unique and searchable identifier. This naming format is easy to remember, which is why I recommend it. But whatever system you develop, you must use it on every document, otherwise, the document that you don't label will likely be lost in your system.

Although you may have gone paperless, there will still be paper you will need to integrate into your digital system, such as your existing paper files, everyday business correspondence, old-fashioned checks, or receipts for business expenses. The easiest and most reliable way to preserve them in your system is to scan them. If you're scanning multiple pages, you should use a service or the scanning function on your home office copying machine. Or, if you're just dealing with a page or two, such as an invoice or 1099, you can download a scanning app such as Scanner Pro for hand scanning single pages up to four or five pages. It functions using your tablet camera and can be labeled in the manner you choose.

I hope this has been, and will be, helpful in your journey. ♦

THE ANNUAL ABA ARBITRATION TRAINING INSTITUTE

by Harrie Samaras

The ABA Section of Dispute Resolution will be presenting its *15th Arbitration Training Institute & Arbitration Practice Development Program* from June 1 to June 3. It will be in-person event at the Loyola University Chicago School of Law.

As in previous years, the Institute is a two-day comprehensive training in advanced arbitration skills with plenary sessions followed by facilitated breakout discussions. This year the faculty includes CCA Fellows **Karl Bayer, Gary Benton, Rebecca Callahan, Timothy Eaton, Neal Eiseman, Jim Giles, Sandy Jeskie, Mark Lassiter, Mitch Marinello, Skip Netzorg, Merriann Panarella, Barbara Reeves, Gerald Saltarelli, Harrie Samaras** and **Dana Welch**.

Some of the other features of this year's Institute are:

- A half-day program before the Institute begins that is dedicated to providing practical guidance for developing, managing and improving a successful career as an arbitrator.
- Concurrent sessions on handling employment, international, construction, health care, and smaller cases in arbitration.
- A special plenary session on "Learning the Ropes from Case Managers" featuring experts from AAA, JAMS and CPR.
- Interactive ethics session.
- A special plenary session on "Cases Not Worth Missing."

Don't delay, register today at <http://ambar.org/arb2022>. Because CCA is a "cooperating entity" of the DR Section, if you are not an ABA member you may register at the ABA member rate using code CEI050. ♦