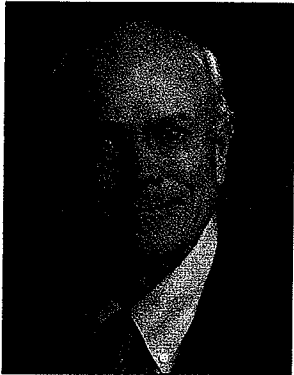


COMMENTS FROM THE CHAIR

The Last Waltz

By Robert J. MacPherson



Robert J. MacPherson

This will be the last of seven columns I have written as Chair-elect and then Chair of the Forum. Not being content with this state of affairs, I have decided to combine several column ideas into one, complete with titles.

The Low Spark of High-Heeled Boys

Lately, in addition to layoffs, law firms have been deferring the starting dates

for new associates from September to December. Many firms have reduced the salary offered to new associates. The economics of the practice of law have gone through many changes, but things took a radical turn with the upheaval in the economy that started last fall. And that is not necessarily a bad thing.

Lawyers, not unlike Starbucks, were getting close to making themselves unaffordable. Many firms claimed to have an interest in representing only "blue chip" companies that would pay "premium" rates, which strikes me as down-right mercenary. Now folks are singing a different tune. The consultants who advised firms to keep raising rates are now counseling firms to be sensitive to the pressure on in-house counsel to get control over legal costs. I saw where one legal publication was reporting that in-house counsel were demanding "slashed rates, predictable bills, and improved service." It should not seem so strange that clients want competent legal advice at a fair and reasonable price. Take care of your clients, and they will take care of you.

All Along the Watchtower

We all know that mediation is a very different process than litigation or arbitration and that mediators are not judges. So why do we insist on treating the processes as if they were one and the same? I am talking about mediation statements, both written and oral. I have served as a mediator, and I have yet to see a mediation statement that could not be used, with little change, as the opening statement in an arbitration of the same case. I have even gotten statements closing with a request that I, as mediator, "rule" in favor of the party submitting the brief. Who are we writing this stuff for? Do we

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expect the other side to read our brief and beg to settle on our terms? A mediation statement should be an honest examination of the other side's position and an explanation of why you disagree or what facts you need to understand to help you decide how the case can be resolved. It may be that you don't want to share that with the other side. If so, ask the mediator if you can submit a confidential statement. And if you do, don't waste the opportunity. Suggest to the mediator how the case can be resolved, or what you think are the roadblocks to resolution. When you get to the mediation, don't make your opening to the mediator. Talk to the other party. They are the ones you hope to make a deal with.

Hit Records

There are lots of very smart construction lawyers writing and speaking on a variety of subjects. Here are some of my favorites.

- If you want to learn why building information modeling is important to construction lawyers, read what Patrick O'Connor or Howard Ashcraft has written.
- Paul Lurie of Schiff Hardin in Chicago is the go-to guy for anything on arbitration, mediation, or ADR in general.
- Chris Cheatham has a good green building blog for lawyers: www.greenbuildinglawupdate.com.
- Kent Holland's ConstructionRisk.com Report is comprehensive and free.
- If you have a need to get an update on federal government contract law and want to be entertained at the same time, go to a seminar where Jim Nagle of Oles Morrison is speaking.

Reeling in the Years

Michael Bloomberg, the mayor of New York City, will soon run for a third term. When Bloomberg was elected, the mayor was limited to two terms. Mayor Bloomberg was a vocal supporter of term limits, until he saw that his limit was just about up. He then spent a few million dollars of his own money to change the law. I don't have the ability to wage a campaign to extend my term in the Forum's leadership. Even if I could, I wouldn't do it.

One of the Forum's great strengths is the constant change in its leadership, at all levels. Division Chairs serve a two-year term, and Governing Committee members, three years. Once nominated Chair-elect, that person serves in that role for a year, spends a year as Chair, and then a year as "past Chair." And then it's over, and space is made for new faces, which is as it should be. Thanks for allowing me this opportunity. ☐