

A NOTE FROM THE EDITOR:

Dear Colleagues and Friends,

This year is off to a great start and I am pleased to share some of the high points from 2014 as well as some of our newer endeavors in the Seattle Resolution Center and JAMS as a whole.

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

Sincerely,

Michelle Nemeth
Business Manager
206.292.0441
mnemeth@jamsadr.com

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.

2014 Year in Review

Last year was another successful year for the JAMS Seattle Resolution Center.

We welcomed esteemed King County Superior Court Judge Deborah Fleck to our panel, added 1,900 square feet to our space and experienced unprecedented success with our in-house CLE programming and client events. Following are a few highlights from 2014 and a glimpse into what you can expect this year.

Late last year, Judge Fleck joined JAMS after serving more than two decades on the King County Superior Court. Judge Fleck handled a wide range of complex civil cases and is highly respected for her work ethic, fairness and intellect. She is also highly regarded among colleagues on the bench and in the bar for her hard work, tenacity and commitment to improving the justice system in Washington State. Judge Fleck plans to continue her work on a variety of cases in the areas of employment, estate and probate, family law, insurance, personal injury and securities, here at JAMS.

To accommodate our growing panel and caseload, 2014 also brought us a much needed expansion in office space. The extra space has proved to better serve our growth, and also allowed us to host more events benefiting clients and the Washington State legal community at large. We hope to increase the number of complimentary education programs offered here in our Resolution Center, and will continue to provide in-firm MCLE programming and partner with local bar associations in those efforts as well. JAMS offers a myriad of programs, many of which can be customized to meet the specific needs of local firms, bar and diversity organizations.

We look forward to continued growth and success in 2015.

The Power of Difference™

It is of great importance to JAMS that we create the most professional and results-driven experience for every client in every Resolution Center. We are constantly looking for ways to improve our clients' experiences and it starts with the unparalleled depth of knowledge and proficiency of our panel. Here in Seattle we have a solid mix of retired judges and seasoned attorneys with strong ties to the legal community across a myriad of areas (see our 2014 Year in Review to hear about the most recent addition to our panel, Hon. Deborah Fleck). It continues with our superior case management. This is the Power of Difference™ only JAMS provides.

Subject Matter Expertise & Training A well-known differentiator at JAMS is our distinguished panel. JAMS neutrals hear cases of every size and type over dozens of practice areas. As such, it is imperative to have a depth of subject matter expertise in all areas necessary to best serve clients and an evolving legal landscape. JAMS stays ahead of the curve by recruiting the top neutrals in their

The Power of Difference cont'd

fields and once a neutral joins the panel they receive expert training in mediation, arbitration, as well as practice-focused training. In addition to the extensive training, most neutrals stay abreast of current trends in their respective fields by continuing to write, lecture and research.

Real Results The subject matter expertise of our neutrals is only the beginning of the road to settlement. Each JAMS neutral is trained to pursue creative, collaborative solutions that are consistent with the facts of the case. Neutrals make candid observations and assist both sides in assessing risk. JAMS neutrals create a unique process to settlement for each case. Judge Paula Casey, has been known to bring an easel to her family law mediations creating impactful visuals in order to get parties to an understanding and ultimately resolution.

Unparalleled Client Service Another major way in which JAMS creates the Power of Difference™ is our case management. Like our neutrals, JAMS case managers receive ongoing training and have strong ADR backgrounds.

Our team here in Seattle is known for their strength in ADR with a combined 38 years of experience at JAMS, making them two of the most seasoned employees. They are adept at handling case management in all forms of ADR, including mediation and arbitration, as well as court reference work and neutral analysis.

Commitment to Diversity As an industry leader in the ADR space, JAMS recognizes that the legal landscape and business world at large is becoming increasingly more diverse. It is a company-wide goal at JAMS to keep diversity and inclusion at the forefront of business endeavors, recruiting and client relations. We are proud to announce the addition of Judge Fleck and hope to continue our efforts in building the most diverse panel possible.

We invite law firms, corporations, and legal organizations to partner with us in a collective effort to bring more diversity to ADR. For more on JAMS commitment to diversity and inclusion in ADR please visit our website at <http://www.jamsadr.com/diversity/> ●

In Privacy Cases, Should Statutory Standing Be Sufficient To Satisfy Article III?

BY HON. JAMES WARE (RET.)

In recent years, there have been many privacy lawsuits targeting the giants of the Internet economy. Google, Facebook, Yahoo and LinkedIn all have been sued for allegedly violating their users' privacy. The cases have involved complicated federal statutes and a host of state law claims. Regardless of the legal framework under which the plaintiffs have asserted their claims, however, one common question is posed by all of these cases—namely, how is it that the plaintiffs have standing to appear in federal court?

In order to maintain a lawsuit in federal court, the case must satisfy the “case or controversy” requirement of Article III: It must be ripe, the claim must not be moot, and the plaintiff must have standing to sue. In order to satisfy the standing requirements of Article III, it is well known that a plaintiff must demonstrate that the plaintiff has suffered some “injury in fact.” But as any user of Gmail or Facebook is aware, those companies provide their services to consumers free of charge. How, then, have plaintiffs—who received their email accounts and social media pages for free, and thus cannot have suffered any economic harm in regard to them—been able to show that their right to privacy was injured by those companies' practices?

In the 9th Circuit—the home of Silicon Valley, and thus a frequent venue for many of these cases—the answer is simple. The court has held (*In re Zynga Privacy Litig.*) that statutory standing is sufficient. A plaintiff may establish standing by virtue of bringing a claim “under a statute that prohibits the defendant's conduct,” so long as that statute

grants “persons in the plaintiff's position a right to judicial relief.” Thus, the mere fact that a plaintiff alleges that a defendant violated the Wiretap Act—a popular source of potential liability in privacy cases—is itself “sufficient to establish standing,” insofar as that statute both prohibits certain uses of electronic communications and permits those whose communications have been so used to recover in a civil lawsuit, per 2013's *In re Google Inc.*

The Ninth Circuit's statutory standing requirement could be scrutinized by the Supreme Court if the Court grants certiorari in *Spokeo v. Robins*. The issue in *Spokeo* is whether a plaintiff who “suffers no concrete harm” may nonetheless have Article III standing conferred upon him by a law “authorizing a private right of action based on a bare violation of a federal statute.” The *Spokeo* petition observes that the Courts of Appeals are divided over whether an “injury in law” can suffice to establish standing under Article III. Amicus briefs have been filed by a number of leading technology companies urging the Supreme Court to grant certiorari, on the ground that the Ninth Circuit's rule allows unharmed plaintiffs to “seek class action damages that could run into the billions of dollars.”

Technology advances at a rapid pace in this day and age, and privacy law can barely keep up. Attorneys who represent companies in privacy lawsuits are encouraged to watch cases and trends in the high courts as they strive to enforce the laws related to these cases. ●