

Hamilton for lawyers #2



Richard Harrison returns with Ten DR Commandments inspired by *Hamilton: An American Musical*

Previously in this journal I wrote an article inspired by Lin-Manuel Miranda's celebrated musical *Hamilton*. It looked at the legal career of Alexander Hamilton and some of the lessons, including mediation skills, to be learned from the negotiation of the 1790 Compromise which led to Washington DC becoming the US capital (see '*Hamilton for lawyers*', 167 *NLJ* 7761, p22).

One of the main, and tragic, themes of the show is the culture and consequences of the duelling code prevalent in the late 18th and early 19th centuries. Litigation is nowadays one of the main substitutes for the duel and the elaborate code of challenge, compromise and mediation is now used to deal with legal problems. As is made clear in the song 'Ten Duel Commandments': '*Most disputes die and no one shoots*'.

And given that the song is highly catchy, I had a think about it in the context of 'Ten DR (dispute resolution) Commandments'.

The first step in any dispute resolution procedure is to identify the issues and engage in a pre-action protocol process. This might also enable an early settlement. If this is not possible, the next step is to complete the legal team by retaining counsel who will, of course, act as your hired gun.

As statements of case are prepared, it is possible that a return to the negotiation process may produce results. The popular perception of litigation is that, almost immediately after the first consultation with a client, the parties are in a court room approaching the bench and making objections on such fascinating grounds as 'argumentative' or 'badgering the witness.' This derives from such TV imports as *LA Law* or more recently *Suits* but the reality is that most disputes are settled in the course of a lengthy and draining pre-trial process and do not get anywhere near to trial.

One option which should be seriously

considered is methods of alternative dispute resolution, primarily mediation. The involvement of a mediator can focus negotiations, make a settlement more likely and enable more imaginative trade-offs for any future relationship. The mediator's fees will, of course, need to be provided for but the process is without prejudice and the mediation agreement will make the confidentiality of the process paramount.

If the mediation fails, it is worth keeping the possibility of settlement in mind. However, until the moment a deal is agreed, it is necessary to make it clear to the opponent that you are fully preparing for trial, adhering to your budget and making sure the necessary trial bundles are prepared on time and in accordance with the relevant Practice Direction.

The important thing is to make sure that all necessary expenditure is funded, that counsel can be paid and that your witnesses are available. You can make it clear that you will go to court and are able to do so from a position of strength.

Counsel prepares the skeleton argument which is filed with the court and exchanged with our opponent and you then have the buzz of walking into court. Of course, this may lead to a last minute settlement at the door of the court, something which is not unusual.

Litigation is a high stakes business but if you are going to do it, you count to ten (if in cases, not paces) and you then move on, having not thrown away your shot.

On the right is how to put the foregoing gems of turgidly expressed strategy and know-how into a pastiche of a real Hamilton song. Performing it is probably beyond me, without a hip-hop backing and a chorus but listen along to the soundtrack while reading: it definitely fits.

NLJ

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Ten DR Commandments

One two three four five six
seven eight nine

It's the Ten DR Commandments

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Number One

Read the protocol, demand satisfaction
If they concede, no need for further action

Number Two

If they don't, grab a lawyer, that's
your second

Your counsel, when there's reckoning
to be reckoned

Number Three

Have your lawyers meet face to face
Negotiate a peace

Or negotiate a time and place

You don't rush off to court like *LA Law*
or in *Suits*

Most disputes die and no-one shoots...

Number Four

If they don't reach a peace but it's just
an aberration

Find a mediator and engage in mediation
You pay him in advance, you treat him
with civility

Without prejudice, so he can have
deniability

Five

If it fails go to Court, keep your budget in
sight

Prepare like you mean it, but get your
bundles right

Number Six

Get your funds in early

For all you're gonna need

Get your witnesses briefed

Get your brief up to speed

Seven

Prepare your skelly, ready for the moment
Of adrenaline when you finally face your
opponent

Number Eight

Your last chance to negotiate

Or send in your counsel, see if they can
set the record straight

My Lord

I'm bored

Some might agree that litigation's dumb
and immature

Sure

But as a matter of fact it can't finish any
shorter

It's what you do and you want your day
in Court, Sir

Hang on, it might go wrong, because
the experience might be ruinous

Okay, so we're doing this

Number Nine

Look the judge in the eye, it's not too late
Summon the courage you anticipate

Then count

One two three four

Five six seven eight nine

Number

Ten cases...

Litigate

(Original words by Chris Martin,
Khary Kimani Turner,
Lin-Manuel Miranda)