

The Structural Engineer, the Architect, Dispute Resolution, & Partnering

Conflict is often the spice of life in politics, football games, and grade school spelling bees. However, when conflict turns to nasty confrontations and hurt, the fun quickly disappears.

Design and construction is not free of conflict, though most clashes are routinely settled as true professionals move to positive accomplishments. The effects of severe conflict may however permanently damage an otherwise profitable relationship.

Slow fee payments are frequently the cause of such conflict, and, occasionally, and more seriously, may result in a distressed business.

Why do professionals encounter slow fee payment from other professionals? An example might help explain.

Let's call the billing party George, a consulting structural engineer, and the billed party Marion, a client of George's and the project architect of record. Reasons why Marion might not pay George promptly could include:

- Poor billing practices by George.
- Poor accounting practices by Marion.
- Dishonest business practices by Marion.
- Slow payment to Marion by clients.
- Personal or professional dislike of George by Marion.
- Lack of performance by George.

- Poor tracking of accounts receivable by George.
- Poor billing follow up by George.
- Marion running out of fee or operating capital.

The question to be addressed here is what are George, Marion, and the Owner to do in such cases? Alternative dispute resolution (ADR), and partnering techniques may offer hope for better business and professional relations.

Alternative dispute resolution is a system used to solve business problems short of obtaining a third party binding settlement. *Partnering* is a dispute resolution method and a restatement of the handshake agreement. Many honorable people have used it for years as an informal way of enjoying respectable and trouble-free coexistence.

Members of our litigious business society often remember the handshake but forget the accompanying obligations. Partnering helps reestablish and remind us of those obligations.

Partnering is a moral agreement based on a concise written statement of the mission and objectives of the professional business parties engaged in the project. The agreement, called the charter, also defines methods to measure achievement of the success desired and offers guidelines for professionally resolving disputes. It is not a new technique.

In 1984, one of the first contemporary partnering agreements was used to establish relationships and define accountability between an oil company and an engineering contractor. The program consisted of several projects in various locations. The relationship defined in the

agreement was to help create a design and construction environment of continuous improvement through trust, appropriate risk assignment, and the use of incentives to reward good performance on the total program.

More recently, partnering agreements have been used primarily to establish good construction phase relationships. I strongly believe the techniques common to successful construction partnering agreements can be profitably applied to the architectural and engineering design of facilities

How might partnering be applied in a design program?

Let us consider a large laboratory building on which you have been retained as a consulting structural engineer by the architect of record. The owner is a public organization and derives its funding from many sources.

The architect is known as a slow payer to his consultants. The owner's representative is a well-respected facilities manager for the client. Other design team members are enthusiastic about the job; however, all members of the project team are concerned that the architect's payment practices may seriously cripple chances for program success.

The owner's representative, always alert to trouble potential, has offered to support -- and strongly recommends -- a partnering effort for the design program.

The first step taken by the owner in conjunction with the architect of record is to hold a full project participant charter preparation session

from which comes a charter containing:

- 1.) The mission and objectives of the design team,
- 2.) The methods by which progress toward achieving the objectives is to be measured, and
- 3.) A statement of the methods to be used to resolve disputes that arise during the design phases.

All members of the project team are to be invited by the owner's representative and the architect of record to participate in the working meeting to help write and to sign the charter. The owner's active participation will most certainly encourage support from the architect, and from all other consultants who depend on the owner for program leadership.

The charter is a moral agreement to behave in a certain manner. The signatures merely affirm the acceptance of the moral agreement. It's easy to understand why the partnering charter must be carefully written so as not to supersede or contradict conditions of legal contracts the parties have with each other.

The role of partnering in resolving disputes can be seen in Figure 1, Route of Issue & Dispute Resolution.

Line YY is where the contract for structural design is executed with the architect of record. Area A is the zone where low-cost, non-binding resolution methods are best used to dampen conflict. Here, the participants themselves decide the outcomes of a specific conflict.

Area A is also a province, exclusive of formal legal action. Freedom from attorney involvement in A allows the parties to explore professional resolution methods within their control.

If the dispute moves through preventive measures (box #1), internal negotiations (box #2), informal exterior neutral advice (box #3), and formal exterior neutral advice (box #4) without resolution, the parties may wish to resort to binding resolution.

Line XX is where the reentry of legal help is generally needed. Here the costs of resolution escalate rapidly, and delays in settlement become disruptive to the project.

Note, that the partnering method is positioned as a early means of dampening professional conflict before it gets out of hand. The use of partnering among professionals may well offer the owner, the architect, and the engineer an opportunity to achieve prompt fee payments, more closely control professional liability premiums, and substantially reduce overhead costs associated with debilitating internal project conflict.

It's certainly worth a try!

Ralph J. Stephenson, P. E.

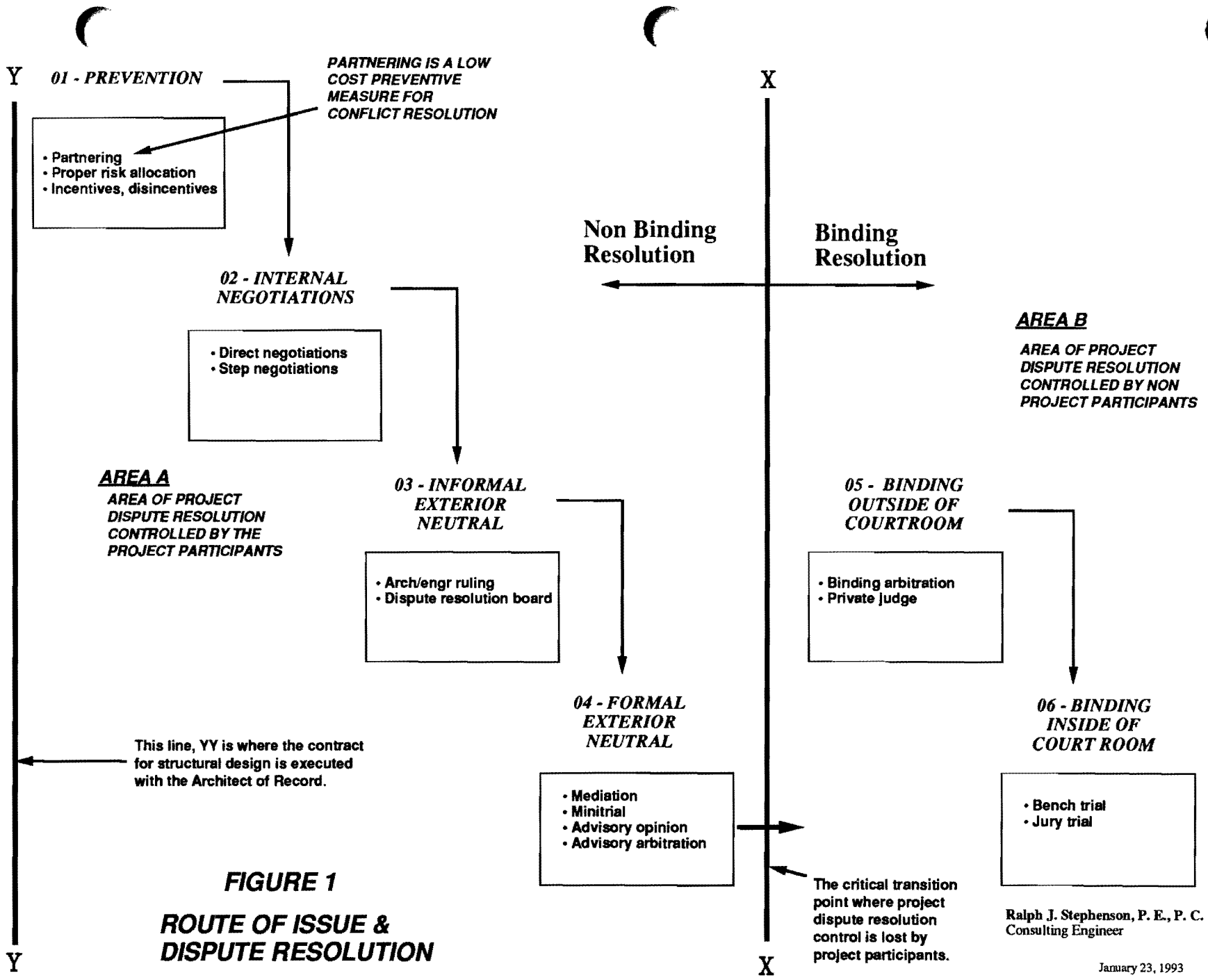


FIGURE 1
ROUTE OF ISSUE & DISPUTE RESOLUTION

Ralph J. Stephenson, P. E., P. C.
Consulting Engineer

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