



NEW YORK STATE BAR ASSOCIATION
DISPUTE RESOLUTION SECTION



So You Want to Be a Mediator and Arbitrator:

A Guide to Starting a New ADR Practice and Giving Your Existing Practice a Boost – for New York State Lawyers

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INTRODUCTION

Everyday someone decides they want to become a full- or part-time mediator or arbitrator. The people making these decisions all have very different backgrounds. First, there are law students who take a mediation clinic or other alternative dispute resolution course and become enthusiastic about becoming a mediator or arbitrator. Second, there are judges retiring from the bench who look to become a neutral¹ as a natural second career. Third, there are litigators, retiring from a long career fighting as an advocate, who look to transition to a different, but related second career. Fourth, there are business executives who seek to use their negotiation and decision-making skills in another way. Fifth, there are academics who look for another focus for their research. And finally, there is everyone else such as transactional attorneys, CPAs, expert witnesses and consultants.

There are many books written about and resources² available on how to launch an Alternative Dispute Resolution³ (ADR) practice as a neutral, but none are focused on the New York practitioner. You can spend lots of time researching and asking people, but there is no one repository of advice. This Guide, written for New York lawyers and judges, serves three purposes. First, the information contained in it will help lawyers and judges who want to establish themselves as a neutral by giving them start-up advice. Second, the Guide will give advice on how established neutrals can boost their practice. Finally, we asked established neutrals how they went about becoming successful. Their anecdotes and advice are contained herein.

The purpose of this Guide is to give advice to individuals on building an ADR practice. The Guide will describe options and details you might consider as you formulate and develop your own practice or you are looking to boost your existing practice. This is not the only resource that you should use. You should talk to people who have succeeded, as well as those who have not, so that you can gain perspectives from their stories and experiences. There are many books available on how to develop and build a practice; you should consult them as well.

We all learn in different ways and compiling this Guide was an education for everyone who contributed. We hope you will learn as much as we did.

Make no mistake about the decision you are making. This is a personal services business, and you need to proceed with the premise that you are selling yourself and your services. Everyone who considers going down this path has succeeded in other challenges they have undertaken. This is but another challenge. In reality, many people walk this road, but not everyone succeeds, and everyone is fighting to be appointed to a finite number of cases. You need a business plan and a focus, but you also need to manage realistic expectations about the amount of work you will secure and how long it will take you to build your practice to your desired level.

ESTABLISHING YOUR CREDENTIALS

Lawyers who have established a subject matter specialty now have to convert that experience into a new credential as a mediator or arbitrator. In a subsequent Section, we describe the steps needed to earn clients in your new role. It does take hard work and you should be prepared to take the training and lay the foundation to ease the process. Practicing lawyers should not wait until the moment they make a decision to become a neutral to obtain the necessary process skills. Volunteer in the court programs or community and neighborhood dispute resolution centers. Advocates gain significant and pertinent experience that helps them in their practice as advocates if they simultaneously serve with some frequency as mediators. A 2008 study concluded that settlement rates and the agreed-to settlement amount were higher when either side was represented by an advocate who was also trained as a mediator.⁴

On the other end of the spectrum, many former judges want to become mediators and arbitrators. Generally, those who succeed have a reputation as superior settlement judges or excellent trial judges. Former judges

1. In this guide, the term “neutral” refers to mediators and arbitrators. These are the two roles that this Guide targets. There are many other types of neutrals.

2. The Appendix 9 to this Guide lists available books and resources.

3. Alternative Dispute Resolution covers the spectrum of processes to resolve disputes outside of court. For definitions of terms from the court’s perspective go to http://ww2.nycourts.gov/ip/adr/What_Is_ADR.shtm The scope of the Guide is targeted on arbitration and mediation

4. See *Randall L. Kiser, Martin A. Asher, and Blakeley B. McShane, “Let’s Not Make a Deal: An Empirical Study of Decision Making in Unsuccessful Settlement Negotiations,” J. of Empirical Legal Studies*, Vol. 5, Issue 3 at 551–91 (Sept. 2008).

also should remember that they no longer wear robes, and that the skill sets necessary to becoming an accomplished mediator or arbitrator are similar to, but quite distinct from, those required for the bench. The parties have many choices when considering a mediator and arbitrator. Your ability to transition from the court to this new role will depend on your personality, flexibility, and willingness to learn the necessary skills and knowledge.

What are the trainings that may be most useful to you?

Laura Kaster

I can share my own approach to obtaining training at the beginning of my transition from a full-time litigator and litigation manager in-house (following many years at a law firm) to full-time neutral. At this point in your career, unless you are a young lawyer, which I will separately address, you are an accomplished professional comfortable in your skills and knowledgeable about process. Changing to being a beginner is not easy. Certainly, arbitration for those who do not have difficulty making decisions, is more consistent with law school training and possibly a legal career. You need to be sensitized to particular issues but the transition will not be strange to you. For arbitration, I would look to trainings by respected providers such as CPR, AAA, the ABA and various bar groups. Do your due diligence before you spend your time and money.

Mediation is different. It is a new skill even if you have been a judge, advocate in mediation, or student of negotiation. You will genuinely be a beginner and it will be uncomfortable in some ways until you build up confidence and experience. I didn't like being a beginner so I probably over-trained. I took three separate multi-day courses (40 hours is standard but not universal). I took the Understanding Based training, for which I am very grateful, even though those attending were primarily family lawyers and I exclusively do commercial mediation; it taught me that I can manage joint sessions and they are very important. I took the course Michael Lewis and Linda Singer teach (often for CPR), and I took a New York State Bar Association course – and several ABA advanced courses and eventually the excellent advanced course by CEDR, which included a heavy component of evaluation. Be mindful of the programs you need to satisfy. Different court programs make different demands and may specify programs. This is important because you need to get experience to be commercially viable and to be of any use. Some of the programs require you to shadow an experienced mediator – this is extremely helpful before you actually begin. Don't assume that 40 hours will make you a professional (law school took longer and you still had to spend years learning). Be an avid learner. Read and talk to other professionals and get all the experience you can get once you have the foundation. Join ADR professional groups and treat this as a deep professional commitment.

For those who are in the beginning of an advocacy career, I will share my reaction that I really wished I had had an ADR education much earlier in my career. A lawyer, any lawyer, is involved in negotiation all day long for clients and self. These skills and knowledge are now taught in law school but that may be just an introduction. Being able to listen and counsel negotiation and dispute resolution planning can really distinguish your career and pave the way for developing an ADR career. Advocacy in mediation and arbitration is a skill that is different from advocacy in litigation and can also be more readily developed because there are more opportunities for younger lawyers. The world of international mediation is going to be a growth field – don't rule it out.

PRACTICAL TIPS

How and when did you expand your area of expertise?

Charles Newman

My legal background matched two areas in which mediation has some penetration in downstate New York. I was eager to expand my mediation experience, and to get more mediations under my belt. I was fortunate to be accepted on the panel of mediators of the U.S. District Court for the Southern District of New York. That program (and others) puts great emphasis on enhancing mediator skill and assuring and improving mediation quality. As a member of that panel, I was allowed to take continuing education courses in three areas in which I had little professional experience. I observed and co-mediated cases in those areas, which allows me to mediate cases outside my lawyer experience.

What are some recommended panels you suggest a new person apply to get onto?

Charles Newman

I have two types of answer to this. One is about Court panels, and it deals with carts and horses. Greater New York area courts want experienced mediators. The U.S. District Courts in particular offer continuing ed on their own. To varying degrees, they either allow or require applicants to observe and then co-mediate cases with experienced mediators. So, I recommend those panels, but they're difficult to join when you're brand new. The second extended answer is about "panels", but not courts' panels. New York State has for decades had Community Dispute Resolution Centers (CDRC's) that provide mediation in every county. Most of the CDRC's offer trainings. Beyond that, they offer practicums and apprenticeships, in which new mediators get a great deal of support, coaching, observation, co-mediation, continuing ed, etc. CDRC's are a great place to get experience, but you should know three things. Many people who train at and mediator for CDRC's are not lawyers. There's nothing wrong with that, but be aware. There is normally a fee for the trainings and on-going programs. And when you get certified as a community mediator (the only mediator certification in NYS), you mostly have to volunteer your time when you mediate.

PRACTICAL TIPS

What training and credentialing did you undertake at the beginning of your ADR career?

Mary Austin

Having moved here from elsewhere, it seemed to me that perhaps one of the best ways to get trained is through the community mediation services, because then you might get to do some mediations. Even they are pretty guarded in their representations these days. People seem to scoff at training that didn't happen in New York, which I think is crazy. On the other hand, training here may help start the necessary networking momentum.

I want to be a mediator because I loved the Mediation Clinic I attended in law school. How can I become a mediator out of law school?

Conna Weiner

In many circles, it is going to be difficult to get clients unless you have significant experience as an attorney. The AAA requires at least 10 years of experience before they will consider you for a panel. Mediators and arbitrators are chosen because of their wisdom, experience and judgement, which means that starting a practice right out of school will be a challenge. To put it another way, in order to help parties assess their best next steps as a mediator, it can be important to parties that you have had the opportunity to make those assessments many times in your own career as an outside or inside counsel.

How do I gain experience?

Mark Morril

Gain experience through small cases and free work. For those qualified, small claims court and FINRA arbitrations may provide an opportunity to conduct a significant number of hearings. Work hard to gain experience, even if the cases available to you are not the type you hope ultimately will be your focus.

Recent law school graduates generally do not have the required experience to be considered for admission to the rosters maintained by most ADR provider organizations. The best advice to students excited about entering the field is to gain experience in a specialty area. While doing that, they should consider participating in programs such as those sponsored by community mediation centers to gain general experience as advocates in mediation or arbitration matters. In fact, many successful neutrals started their careers on volunteer rosters such as the NYS Part 137 Attorney-Client Fee Dispute Panel and as arbitrators in the Civil Court of the City of New York's Small Claims Parts. You are encouraged to start there to build experience by handling an increasing number of cases so as to strengthen your application when you apply to other private and court rosters in the near future.

There are other alternatives to break into the field for recent law graduates. These alternatives include, but are not limited to, working for the ADR programs in the courts; working for an ADR provider organization in a support capacity; working as an associate at a law firm that specializes in mediation and arbitration; working for a union; and working for a company in the human resources or employee relations department. In 2018, the NYSBA Dispute Resolution Section held an ADR clinic advocacy training program for recent law school graduates to represent unrepresented parties in mediation and arbitration proceedings. Recent law graduates will be better prepared to enter the field by participating in this and similar programs. In 2019, the Eastern District of New York announced a mediator incubator program as an entry point for young lawyers who want to break into the field.⁵

You should always look to continuously improve your skills by keeping up-to-date on reports and initiatives of the American Bar Association (ABA) and the NYSBA. In 2008, the ABA published a report on the quality of mediation practice for advocates and mediators, which is a good

5. See <https://www.nyed.uscourts.gov/mediator-incubator>.

How do courts feel about mediation? Is participating in court panels on a pro bono basis a good way to get experience?

Hon. Elizabeth S. Stong

Courts – and judges – vary in their level of experience and approach to referring a case to mediation, to be sure. But more and more, courts view a referral to court-annexed mediation as an integral part of the case management process. It can be helpful to the parties, their clients, and needless to say, the judges who are faced with large dockets and limited resources. As one example, in the bankruptcy courts, which are best viewed as problem-solving courts, there is great value to moving a case forward in the most efficient and cost-effective way, because disputes may well need to be resolved as quickly and effectively as possible in order for a company's reorganization efforts to have the best prospects for success. As another example, in the Commercial Divisions of New York Supreme Court, where I got my first mediation experience as a neutral, the cases tend to be fundamentally business problems, and they may be particularly appropriate for a business – or negotiated – resolution. For aspiring neutrals, this means that participating as a member of a court mediation panel or roster of neutrals can be an excellent way to get practical experience and to become known within a particular segment of the bar. And of course, it is a great service to the court and to the justice system.

PRACTICAL TIPS

When you began your ADR practice did you focus on one subject matter area or were you a generalist?

Theo Cheng

There are many, many neutrals practicing in the greater New York metropolitan area and being able to distinguish yourself, in my view, is part of what I've seen other successful neutrals do. Thus, from the very beginning, I decided to brand myself not just in the commercial arena, but leverage my specific strengths in the intellectual property, technology, and entertainment fields. Those are fields in which I already had some kind of recognizable reputation as an attorney, had previously spent a lot of my business development and networking time, and could easily identify past examples of prior engagements to support my marketing. I also knew that I had always had some level of practice in labor and employment law, both in litigated and transactional matters, so I added that as another subject matter area. As I become more seasoned, my hope is to incorporate other areas of practice beyond these discrete fields and also to expand into handling international disputes.

How do I gain experience as a mediator?

Conna Weiner

Getting experience is a giant chicken and egg problem. You need to have experience to get experience. This means doing lots of pro bono work and trying to get on as many local and regional panels as you can when you are starting out. Every mediation or arbitration is a learning opportunity, no matter how small. Identify every mediator or arbitration panel in your area and have a go at getting cases from them. Getting arbitration practice is harder than mediation.

resource for establishing best practices.⁶ The College of Commercial Arbitrators has resources that are very beneficial to advocates and arbitrators⁷.

Court programs historically have been a training ground for securing experience. Some of the court rosters are closed, while others periodically accept applications. Appendix 1 lists the court programs in New York State and their admission requirements.

Inclusion on an ADR provider's roster increases your credibility because it serves to function as a form of vouching of your skills and abilities. What do you do if you don't have the experience to be considered for admission to a roster maintained by an ADR provider organization? There are alternatives that should be considered. You are not limited to the American Arbitration Association (AAA), JAMS, or the International Institute for Conflict Prevention and Resolution (CPR). FINRA is continuously recruiting candidates as arbitrators. You can also gain experience by taking on smaller cases and offering to do work for free. For those who are qualified, small claims court arbitration and perhaps other administrative agencies are potential avenues. You should work hard to obtain relevant experience, even if it is not on the types of cases they you hope ultimately to handle. Smaller provider organizations may also be worth exploring, but vet them carefully. The key is to get as much practical experience as you can so that you can practice your craft.

Provider organizations may have opportunities for you to resolve cases on the documents or expedited cases. Take any opportunity to be considered for these cases. Each of them builds your skill and credentials. An area that is gaining popularity is on-line mediation. Look for opportunities in this technologically focused area. It may be the future.

Remember that just because you are on a roster doesn't mean that you will receive appointments. You need to find ways to distinguish yourself and highlight why you should be selected instead of someone else. This may come down to personal relationships, your reputation, your individual credentials and life experiences, and your branding and marketing abilities.

CHOOSING A PRACTICE AREA OR NICHE

Where have you succeeded in your career? If you are a commercial litigator, you might have worked in a number of areas such as healthcare, insurance, employment, business/commercial, etc. Thinking about and focusing in a subject matter area or niche helps you identify to whom you would send out your announcements about becoming a neutral and how you will distinguish your services as a neutral from others. You will have to change clients' perceptions of you as a litigator to that of a neutral, and, in doing so, it may be easier to focus on expertise in a particular subject matter area or niche.

Next, decide where your process skills are the strongest. Former judges can emphasize and leverage their case management skills. Former

6. See <https://www.americanbar.org/content/dam/aba/migrated/dispute/documents/FinalTaskForceMediation.pdf>.

7. See <https://www.ccaarbitration.org/resources/cca-guide-best-practices/> and other resources provided by the College. Look also to the NYC Bar Association for additional resources and reports.

PRACTICAL TIPS

Should I be a generalist or specialize?

Krista Gottlieb

Do what you know and for which you have a reputation. Or become the master of the process so that subject matter matters not and the participants understand that, particularly in certain typed of issues (i.e elder issues, interfamily etc.)

Can you work at a firm and start your own ADR practice at the same time?

Hon. Carol Heckman (Ret.)

The answer is yes. That is the model that I have chosen. Why? For one thing I still love practicing law and have a few select clients that I enjoy working with. For another I like the comradery of a private firm and get a great deal out of working as a team and particularly with young lawyers. And finally I was not sure when I started out that I would have a sufficient volume of ADR work to meet my own financial goals. So for all of these reasons, I decided to keep my partnership with a private firm and at the same time market my ADR work by becoming a member of the AAA and on several panels there. It helps that my firm is located in upstate New York and I let it be known that I was willing to travel for arbitrations. The firm's location results in very few conflicts when I run conflict checks involving New York City matters. So I seem to have the best of both worlds, including great support (IT and an assistant, whom I share) and nice conference rooms. I have done this now for almost 10 years and my ADR practice has grown quite a bit in the last two to three years.

judges may need to overcome the perception that they will treat every arbitration like a litigation or every mediation like a settlement conference; they should show that they understand the differences among those processes. Many people think that mediator and arbitrator skills are interchangeable; they are not. If most of your experience has been negotiating between parties, then you might find mediation more comfortable and familiar, and, in fact, be better as a mediator. You should attend at least one (if not more) required training programs on each process to increase your skills, meet people who are working towards a goal similar to yours, and gain confidence. Many people start in one process and then expand into another. Remember that just because you were a mediation or arbitration advocate doesn't mean that you can easily make the transition to being a neutral.

I can settle any type of case. Can I be a generalist as a mediator?

Conna Weiner

Unless you are an ex-Judge, it can be very difficult to build momentum or success in this arena without having a focused substantive area of expertise. It can seem difficult to decide whether or not to emphasize your general over specific experience, but especially when you are starting out, it is important to emphasize your areas of expertise.

There seems to be a trend and high interest in developing an international practice. However, again, consider where your past experience resides. Some of you might have represented international businesses or worked for global companies. If so, your ability to navigate in the international arena may be relatively easy and comfortable. International arbitration requires an additional skill set and training if you have not practiced in this area because the rules, norms, and practices are quite different.⁸ Most people, however, start out with local practices that they may transition to a regional, national, or international scope over time.

Your ego tells you that you can attract clients, but that is, in part, a function of reputation and personal relationships. If your past clients respected your talents, they will be the ones to use you and recommend you to others. Talk to them about your plans and gain their support.

Did you launch yourself internationally or did you start locally?

Stephanie Cohen

Though I practice primarily as an international arbitrator and my prior experience as counsel was in international arbitration, I concentrated my early marketing efforts locally. Word-of-mouth recommendations figure prominently in arbitrator appointments and it's common for a potential arbitrator's local colleagues to be asked about their reputation, so I wanted to strengthen my reputation among New York colleagues first. I have increased my global marketing activities over time.

8. The New York Branch of the Chartered Institute of Arbitrators typically offers two courses each Spring where you can network with experienced international practitioners. The first is a comprehensive week-long examination of the law and practice of international arbitration, presented in conjunction with Columbia Law School. The second course is an assessment of candidates' knowledge of the principles and procedures of an international arbitration, including award writing, and enables successful candidates to apply for Institute Fellowship.

SHOULD YOU JOIN A ROSTER MAINTAINED BY AN ADR PROVIDER ORGANIZATION

As noted above, inclusion on an ADR provider's roster increases your credibility. Provider organizations promulgate specific requirements before they will consider you for inclusion on their roster of neutrals. You should ask what they are before applying. For example, the general rule of thumb is that you need at least 5 to 10 years of legal or other relevant work experience. In addition, the provider will consider applications for admission based upon the volume of work they attract in certain subject matter areas. The volume may vary and change year to year. Thus, in one year, they may be recruiting people with intellectual property experience, while the next year, they will focus on healthcare. Each year, providers will cull their roster and drop many experienced neutrals because they do not have work in a specific practice area. All providers are interested in diversifying their roster of neutrals, so if you fit the diversity goals of a provider, you might have a competitive advantage in being considered (although fundamental experience requirements are highly unlikely to be waived). A list of providers and their requirements, including their diversity efforts, are attached in Appendix 2.

All providers also require a certain level of training in mediation and/or arbitration processes. You don't have to wait to apply before attending training, but you might be required to attend mandatory training delivered by that provider once your application is accepted. Local bar associations offer programs at least annually, and oftentimes, more frequently. Harvard's Program on Negotiation is a well-respected provider of negotiation and mediation training. Attached is a listing of training programs in New York State. The New York Unified Court System's website also offers upcoming training opportunities.⁹

You should also note that ADR provider organizations generally operate under two different economic models: exclusive and non-exclusive.

If an ADR provider model is exclusive, you will sign an agreement with the organization under which all the fees that you charge will be collected by the ADR provider and shared, in part with the provider. The amount that you share with the provider varies but can be high when you start out and have few cases. Some of the benefits of an exclusive arrangement may include the following: the provider will market you to their clients and your client list; it will develop a case profile for you and promote you on its website; it will bear the risk on any outstanding collections, thereby ensuring that you do not have an accounts receivable problem; it will provide hearing rooms, refreshments, and food for clients at no cost to you; it will provide business development and case management staff; it will provide malpractice insurance and access to legal advice; and it will provide office space, although it may be a simple cubicle rather than a traditional office. You may accept work on *ad hoc* cases or from other providers, but the matter will be managed by the ADR provider with whom you have an exclusive relationship, and the revenue-sharing may or may not apply to those cases. Typically, exclusive providers often limit the people they accept to former judges with a proven experience settling cases or experienced mediators and arbitrators who have an existing book of business. These requirements might be loosened if your background and profile fit a special need.

9. See <http://www2.nycourts.gov/ip/adr/Training.shtml>.

Should a new ADR professional join an ADR Provider or "go it alone"?

Hon. Carolyn Demarest (Ret.)

I urge association with a provider entity, such as JAMS or AAA, to get started. This is especially true for retired judges, like myself, who have not had to run a law office for many years and have been somewhat "cut off" from members of the legal profession that might become clients, by the ethical constraints of judicial service.

If you left a firm to start an ADR practice, what were some of the issues you faced when jumping ship?

Stephanie Cohen

I used to review, mark-up, and file everything for ongoing reference in paper format, aided by my secretary. Without administrative support and physical office space, I quickly realized my preference for paper was costly and inefficient, and ended up investing significant time and energy to figure out how to set up an efficient and secure digital practice environment suited to my workflow. While there's no one-size-fits-all tech set-up, I learned that security and efficiency don't have to mean expensive. I also found it useful to ask established arbitrators what tech tools and service providers they use and why.

Should I be concerned about cybersecurity?

Mark Morril

The ABA and NY ethics codes now include knowledge of technology as an element of lawyer competence. Attention to cybersecurity is required also as part of a lawyer's obligation to maintain confidentiality rules. More importantly, it is a significant risk area and many users will not work with neutrals who are not up to date on technology and data protection. Good technology tools and cybersecurity protection is accessible to people who are not expert in technology and without significant expenditures. The ICCA-NYC Bar-CPR Framework on Cybersecurity in International Arbitration contains helpful guidance for both domestic and international practitioners.

In short, the cost associated with an exclusivity arrangement can be high, but you need to weigh that cost against the potential benefits to you.

If you associate with an ADR provider on a non-exclusive basis, the provider may or may not provide all of the benefits cited above, but you generally retain all the fees you charge (although some providers retain a nominal amount off the top of your fee or charge a nominal annual fee). You will generally not have an individual case manager or personalized marketing support. Rather, any marketing support offered by the provider will be more general in nature and scope.

Under either model, unless you perform other duties, you will be considered an independent contractor and are responsible for maintaining and managing your other financial obligations, including tax reporting and filing.

TECHNOLOGY

If you don't already have a laptop, you should invest in one. Some people are using notebooks and tablets instead of laptops to communicate through e-mail and to create documents. The choice is a matter of preference and comfort with this tool. You should have a printer to print drafts, oaths, etc. Printers are inexpensive and the best options have multiple uses as a printer/scanner/etc. Fax machines are not as popular as they were in the past; however, courts and others use e-fax and some printers have this capability. Scanners are pretty much essential, as is a good tablet with a robust PDF reading and mark-up app, at least for people who want larger cases. Most large ADR cases now are conducted almost exclusively electronically.

Set up a professional e-mail address maintained by a secure hosting service. Doing so presents a message to the consumers of your services, as opposed to having an e-mail address offered for free from services like Yahoo! or Gmail. More importantly, those free services generally do not afford any tools or protections for maintaining the confidentiality of the information you are entrusted to handle as a neutral. Refraining from using those services demonstrates that your career as a neutral is a professional venture and not a hobby.

Increasingly, people are communicating using video technology such as Skype and Zoom. Witnesses are even testifying or appearing using this technology. The frequency of use and length of time of each session will dictate whether to upgrade to a particular business application. Otherwise, the free application, which is limited to 40-45-minute sessions, should serve most purposes.

Even if you have a secretary, you should invest in a smart phone that will enable you to read documents and consider employing other applications such as "WhatsApp." This last application is very easy to use and does not charge (except for data) for domestic or international calls.

You should also explore internet phone applications. They enable you to access phone calls wherever you are. You will appear to the caller to be in your office and not on a cell phone or away from your office.

You may need tech support for your home office.

PRACTICAL TIPS

Do you use Linked in?

Theo Cheng

Yes, I use LinkedIn. I think it is an extraordinarily powerful platform for, among other things, delivering and sharing content with your connections, who are both your prospective clients and peers. Although I have had an account since 2004, it was only after becoming a partner in a law firm and having to heavily engage in business development activities that I truly appreciated how that platform could be of assistance. I took a short course on how to use LinkedIn and then hired a LinkedIn consultant to help me revise my profile and learn some of the pertinent algorithms. Because it is a social media platform, the features and algorithms change frequently, and although the on-line resources are helpful, the only real way to absorb and employ these changes is to read articles about the platform, use and experiment on the platform yourself, and learn from other users.

Do you have a website?

Theo Cheng

Yes, I have a website. I think it is an absolute must to have some kind of on-line presence outside of social media that is completely within your control. Having your own website allows you to customize and present information about you and your services framed in the way that best complements your branding strategy. It also allows you to have complete flexibility and control as to what and how things are displayed or made available to visitors. Additionally, to some degree, if done well, having a website legitimizes you as a stand-alone dispute resolution professional and raises both your credibility and profile.

PRACTICAL TIPS

Social media is new to me. Are there any hidden traps?

Mark Morril

If you use social media you should understand risks and manage what others see. Written words and pictures should always be professional. Be sure not to disclose confidential material. You should expect all social media postings to be accessible indefinitely, so consider carefully how both personal and professional postings will reflect on you. You should also be aware that parties and counsel frequently conduct searches on potential neutrals that will turn up their social media postings.

Do you write or otherwise promote your practice?

Theo Cheng

Yes, I publish a variety of different kinds of articles, columns, and other writings throughout the year. Annually, I plan out a publishing calendar by noting in my business development plan the upcoming copy deadlines, and I also try to identify topics in advance. Amidst that calendar, I write a quarterly column in an electronic magazine that is sent to over 180 in-house legal departments in the U.S., and I also write a thrice-yearly column that is published in a hard copy periodical published by one of the sections of the New York State Bar Association. These regular columns allow me to be in front of essentially the same audience multiple times throughout the year, thereby building equity in those readership bases and further cementing my brand on the topics on which I write. I also try hard to repurpose my published writings so that they can either be republished in another periodical (thereby reaching a new and different audience altogether) or used as supporting materials for a public speaking engagement or presentation. Conversely, I will derive inspiration from the topics of my speaking engagements to try and write some kind of article or column.

Cybersecurity is a concern for neutrals and reasonable steps should be taken to protect the confidentiality of the material and information you are handling.¹⁰ Consider consulting with experts on this issue.

In order to facilitate payment of fees or retainers, you might consider a money securing app such as E-Square or a PayPal account.

MARKETING YOUR PRACTICE IN A DIGITAL AGE

Should you have a website? The short answer is “yes.” There are many services available to help you create and maintain your website.¹¹ Your website should be simple to navigate and highlight your experience, listing organizations of which you are a member, articles you have written, and presentations you have delivered. Including sample engagement agreements and the rates you charge can also be helpful. Some ADR providers are now using marketing videos that parties considering using you as a mediator or arbitrator can access. If your ADR provider does not have that capability, or you are not associated with an ADR provider who can create a video, you might include a “YouTube” video on your website. This is a way for potential clients to see you more informally before appointing you to a matter. To ensure your visibility, you should take advantage of all opportunities to post your profile on websites. Don’t rely just on arbitral and mediation forums. Get out your profile on LinkedIn and other sites.

What makes a website useful?

Krista Gottlieb

A Website is important with user comments being of most value.

Once you have a website, you should ensure that you are optimizing its visibility. Some website services will periodically review your website for “mobile-friendliness,” page download speed, and other aspects to ensure that you are getting the best value for your marketing dollars. It is important that your links are not broken, and that no one is using the content on the website without your permission.¹²

You should periodically Google yourself to find out how you are viewed by others, including prospective clients. You should also see how high your website pops up on the list of search hits. The higher up your website, the higher your visibility.

Mediators and arbitrators should acquire basic marketing skills to appreciate how and why they should brand themselves. The branding starts with the information on your website describing who you are and what

10. See ABA Cybersecurity Handbook https://www.americanbar.org/groups/international_law/publications/international_law_news/2017/fall/cybersecurity-handbook-second-edition/. Another helpful resource is the FTS Guide for Small Businesses at <https://www.ftc.gov/tips-advice/business-center/small-businesses/cybersecurity>; A Call to Cyberarms: The International Arbitrator’s Duty to Avoid Digital Intrusion ;and ICCA-NYC Bar-CPR Cybersecurity Protocol.

11. Three examples of such services are Go Daddy <https://www.godaddy.com/websites>; Websites for neutrals www.TKOWebdesigns.com; and 1 & 1 IONOS <https://www.ionos.com/>

12. A blog citing the best tips and resources can be found at <https://www.websolutions.com/blog/cool-free-tools-to-optimize-your-website/>. Conversely, if you incorporate content into your website that was created by others, you should ensure that you have the appropriate copyright and other permissions.

PRACTICAL TIPS

I haven't written a resume in years; how do I write one to attract clients?

Alfrieda Kenny

Obtain assistance from a professional resume writer to assist with preparing the appropriate resume that is directed to the dispute resolution community. That professional should be able to assist with using key words in the resume that panels use to search for the appropriate neutral to include on their lists that will be circulated to the parties. If you never used one before, consider using a career coach to focus on this new endeavor.

How do I balance getting work with the cost or pursuing work?

Mary Austin

If you aren't a former judge and you don't have a particular area in which you already shine and that is in high demand, I think it is impossible to be too pessimistic about how hard it can be to get started. The training costs a lot of money and then it is really hard to even volunteer your time. Even then, there is no guarantee it will lead to reasonably paid work. People shouldn't attempt this with the idea of making rent, so I agree with your thoughts about keeping costs low.

My thought is that you have to get out there and be seen and let people know what you want and then if you are incredibly lucky you might get on a panel and at least get to do some free cases.

you do. Consider creating a mission statement with a biography. Highlight your representative experience. If you are new and seeking intellectual property cases, describe cases you have handled as an advocate. As you gain experience as a neutral, update the biography with neutral experience in the subject matter. Separate your work as a mediator versus an arbitrator. You might consider hiring a professional resume writer to help you focus the biography. You might also consider hiring a branding consultant or a business coach.

Collect articles written by you and about you. You might consider creating a promotional brochure in a PDF format and available for download from your website. Consider your pocketbook when deciding whether to have hard copy of any material. You should have a business card to leave with people you meet. One neutral thinks it is better to take a card and send a follow-up e mail rather than give a card – food for thought.

One basic mode of communication with your network is through a LinkedIn account. This is a perfect way to let people know what you are doing and where you are going. The NYSBA Dispute Resolution Section offers support on how to create your on-line profile. While a professional an online presence is encouraged, be mindful of what you publish (including what you comment on and "like"), especially on social media such as Facebook and Twitter. Many clients, parties, and even attorneys will search for you on the internet for biographical information as well as potential conflicts of interest. If you have social media accounts, you should spend some time updating your privacy settings¹³ and adjusting the previously posted content to give yourself a professional image.

Some people create their own blogs but there are also already existent blogs and listservs on which you can contribute content to get out your name and experience.

NETWORKING AND EARNING CLIENTS

When considering networking and earning clients, one way to start is by "old-fashioned" marketing. Get on the phone and call people who might be potential clients or referral sources. Join them for lunch or dinner. See them at cocktail parties. Reaching out via e-mail is also a productive choice because your communication can be forwarded by your contact to members of their network. Approach every lawyer you know on earth. This is a scorched earth approach. However, an alternative is to be careful and selective. If you go to a conference, instead of sending a mass or boilerplate e-mail after-the-fact, follow-up only with the one or two people with whom you made a meaningful connection, and cement it by sending the article you discussed. At conferences, be genuine and personable as opposed to going right to your elevator pitch. The most effective connections often start with a personal touch.

The ADR field offers a vast opportunity for you to join organizations and pay membership fees but not all organizations are created equally. Look to organizations that serve three distinct purposes: organizations at which your prospective clients attend events and in which they are active; organizations through which you can improve your ADR skills

13. On LinkedIn, for example, two account settings you should manage to minimize potential conflicts-of-interest include opting out of receiving endorsements and choosing the private mode for viewing others' LinkedIn profiles.

PRACTICAL TIPS

and learn best practices; and organizations that provide credentialing or otherwise increase your stature in the field. Look for leadership opportunities within any organization you target. You may be surprised to discover how quickly you can move up the ladder.

Appendix 2 lists organizations that you might consider. The first group include local, state, and national bar associations. The second group include peer-nominated organizations such as the College of Commercial Arbitrators, International Academy of Mediators, and the American College of Civil Trial Mediators. The third group are providers and membership organizations such as CPR and the American Health Care Lawyers Association. The fourth group provide training and certification, such as the International Mediation Institute and the Chartered Institute of Arbitrators. Getting involved in bar, business, or other groups is an excellent way to build your credentials and get known, but only if you actively participate. Again, consider taking a leadership role and getting involved in policy issues and legislative activities. Where are your clients? If you are in the securities field, they might be at the FINRA¹⁴ regional conferences of the SIFMA¹⁵ annual conference or local lunch meetings. If you are in the insurance industry, you might join the Defense Research Industry or the Claims and Litigation Management Alliance. Carefully monitor the amount of money you pay to join the groups versus the amount of business you secure.

There also may be opportunities outside the above organizations to market your name such as the National Academy of Distinguished Neutrals, the Women in Dispute Resolution Committee of the ABA Dispute Resolution Section, and Mediation.org.

One of the best ways to demonstrate your expertise is by writing articles. Many newsletters and periodicals are looking for authors. Well-known legal publications, such as the *New York Law Journal*, often have special sections dedicated to Alternative Dispute Resolution. Make sure you retain reprint rights for anything you write so you can repurpose the article. Post the articles on your website and publicize it on LinkedIn. Some neutrals write periodic newsletters. This is very intensive and may be difficult to keep up.

As with joining organizations, you could attend a conference a week or more often and never find a client or referral source. Be strategic when determining which conferences to attend and speak at. If you are asked to be a speaker, ask for your expenses to be paid if you are experienced or provide a special viewpoint, but it is unlikely you will receive reimbursement if you are new to the field. So, you may not receive reimbursement but – you never know.

Finally, teaching is another way to establish your credentials. There may be opportunities to teach in a law school or a college on a specific subject matter course or on a specific ADR process like mediation or negotiation. Some industries create training programs providing certificates to those who attend.¹⁶

Should I transition part-time or go fully full time?

Krista Gottlieb

It's hard to balance both litigation and neutral work and perceptions may affect those who have to choose you as a neutral, especially if you are perceived to be on one side vs. all sides (i.e. plaintiff or defense in specific areas, as opposed to doing both). If you are viewed as "plaintiff" side in PI or Employment, may be hard to be chosen by defendants.

Can I be a mediator if I have an active litigation practice?

Dan Kolb

I believe that advocates would gain significant and pertinent experience that would help them in their practice as advocates if they served with some frequency as mediators. Having become a mediator after years as an advocate I wish I had done it sooner because of the added perspective it provides as to how best to serve the clients as an advocate.

How did you transition from doing practicing as both a lawyer and neutral to just a neutral?

Theo Cheng

During my last few years as an equity partner in a law firm, I began to see that I was gradually getting a lot more appointments as an arbitrator and mediator. I thus began shedding most of my litigation work and stopped actively trying to develop new litigation business. At the same time, I also noticed that my share of the law firm profits was adversely being impacted by having an ADR practice because I had to absorb my share of the costs that were associated with services I did not use at the firm, such as the accounting department, paralegals, and copy services. After essentially test-running an all-ADR business model within a law firm for two years, I fortunately realized that there was a certain level of ADR business that I seemed to be able to generate. I then made the decision to withdraw from the partnership and launch my own practice, which is exclusively focused on serving as an arbitrator or mediator.

14. Financial Industry Regulatory Authority.

15. Securities Industry and Financial Markets Association.

16. For example, the Claims and Litigation Management Alliance offers special courses for claims professionals in the insurance industry. See www.theclm.org.

ESTABLISHING YOUR BUSINESS

You do not have to wait until you retire to consider becoming a neutral. In fact, many people start their practices on a part-time basis while employed full-time. For example, if you are an associate or partner at a law firm, you might accept assignments as permitted by your practice, if no conflicts exist. You might also have opportunities to accept assignments if you work for a corporation. This is especially so if you are a senior executive. Consider that, if you proceed on a part-time basis, you will have less time to invest in service as a mediator or arbitrator. Your income will be lower with a limited opportunity to increase income and you may be overworked. The law firm or company you work for might require you to pass-through your fees from your ADR work to the law firm or company. By contrast, your out-of-pocket costs will be less because you may be able to use your existing infrastructure and administrative staff to support your ADR practice (although your share of the overall expenses of the firm, if you are an equity partner, may be disproportionate to your use of these internal services). An argument can be made that parties prefer, as an arbitrator or mediator to be appointed to their case, someone who is actively working because they are assured that the person is more attuned to business needs, and that the person will be more efficient because they don't have the time to waste.

Do you work under your own name or did you form an LLP?

Theo Cheng

When I launched my practice, I decided to form and work under a limited liability company. The choice of whether to conduct neutral work as a sole proprietor or form a business entity depends on a number of factors. Most obvious is the issue of limited liability, which may or may not be relevant depending on the law in your jurisdiction and what other services you intend to offer. For me, I wanted the option to be able to receive compensation for non-neutral work (e.g., conducting ADR consulting work or paid speaking engagements), and I also wanted to protect my personal and family assets as much as possible. Additionally, there are some tax and other benefits that I am able to access because of having formed a business entity, rather than practicing as a sole proprietor. Moreover, in New Jersey (unlike in New York), forming a limited liability company is relatively easy and cost-effective, which made my decision that much easier.

That said, most people enter the field as a second career. Consider how you need to change your profile so that people see you in a new and different role. Create a story about yourself that describes your style as a mediator or arbitrator. What services do you provide? What do you want your clients to say about you, especially if they will serve as a referral source?

As you think through how you now describe yourself, consider what you want your business to be called. Do you select a name that includes your own name? Do you select a name that describes what you do? Some neutrals form a limited liability company or other business entity to protect assets or for tax reasons, or simply for branding purposes, but others feel that is unimportant.

How does one get selected to the big cases?

Jack P. Levin

Being a neutral is all about reputation, which means that a career is built over time performing well with the audience that will use and recommend your services. For this reason there is no way to become a neutral overnight or in a short time. Taking courses to acquire skills is important but will not accelerate the process. Acceptance on panels is also a function of reputation. And, of course, reputation needs to be maintained. The most successful neutrals — those in most demand — have earned their way to that place and are continually assessed for their ability to maintain high standards. Being visible is important, but it matters where you are visible and for what reason. So just showing up at conferences is useful, but speaking and writing can be more significant. Developing a good reputation with other neutrals can be quite valuable.

How did you establish your rate?

Mark Bunim

I spoke with other mediators and arbitrators in my geographic market about their rates and compared my specialty areas to theirs and the years of my experience. So, when I first started as a full time ADR professional my rate was much lower than it is today, but I raised it periodically as I mediated and arbitrated more cases.

Do you set your rate based on your expenses or your market?

Mark Bunim

Yes, based on the geographic market; not on expenses at all.

PRACTICAL TIPS

Do you have an hourly, day or per case rate?

Mark Bunim

I have an hourly rate for mediations and do arbitration on an hourly rate except that Hearing days are on a flat per-day rate. That way the parties should not feel that the arbitrator is stretching the Hearing for his own benefit (i.e. if a Hearing goes 10 hours it is the same flat rate as 7 hours) while at the same time if a Hearing day goes for only a few hours on a given day, the arbitrator loses the balance of the day since one has committed the day to the Hearing. I find that the flat rate encourages the parties to use each Hearing day to the maximum, from an hour's perspective. I have no "per-case" rates.

Does your rate change based on the type of case you handle?

Mark Bunim

No

Do you charge a postponement fee?

Mark Bunim

I do not charge a postponement fee if the matter is adjourned. If an arbitration (not a mediation) is cancelled on less than two weeks notice (for example the parties settle a few days before the Hearing days that are reserved are set to commence) I charge 50% of each Hearing day reserved but not used.

Should I charge a cancellation fee?

Mark Morril

Cancellation fees may function as a disincentive to some users considering your appointment as a neutral, especially if you are relatively inexperienced. Some neutrals and institutions dislike cancellation fees because they may be an impediment to settlement.

Although neutrals generally enjoy immunity for actions taken during the course of their duties, that does not stop an unhappy party from bringing an action in court against the neutral. If the matter was administered by a provider organization, that organization may undertake to represent you in such an action, and its rules may provide you with additional protections. However, research shows that there is a rise in actions taken by unhappy parties. You should consider additional insurance to protect yourself. If you are a member of the ABA they offer insurance for neutral services.

You should also consider writing a business plan, describing your services, your target clients, your costs, and your marketing efforts. A sample business plan is attached in Appendix 3.

There also are certain forms that you might create to facilitate intake of cases, handling retainers and other deposits, and executing agreements to mediate or arbitrate. Sample forms are attached in Appendix 4, 5, and 6. Tracking your cases, including the names of parties, counsel, and witnesses, will help you monitor conflicts as you are considered or invited to sit on future cases. If you associate with an ADR provider, you will not need many of the documents described above, but don't overlook the *ad hoc* case that come to you. In those situations, you will have to provide guidance and specialized forms.

If you associate with an ADR provider on an exclusive basis, you might have built-in facilities and staff, including marketing, administrative, and business development assistance.

BUDGETING FOR SUCCESS

You now have to decide what rate to charge for your neutral services. Law firm partners and associates already understand the concept of billable hours and setting rates. As in the legal marketplace, rate-setting is dictated by local competition and the prevailing norms in the marketplace. Ask around and find out what your competition charges. Remember that your time is valuable, but you are just starting out, so your law firm billable hour rate might well be too high as you enter the new field of neutral services and in consideration of lower overhead costs. The type of cases you handle might also dictate what will be acceptable billable rates. Certain subject matter areas also tend to expect and accept lower rates.

At the same time, do not undervalue your services either. Consider whether to charge a cancellation fee. Some neutrals don't have a cancellation fee because they can use the time reserved for other billable work. Others, especially neutrals who solely arbitrate, cannot easily substitute other arbitration work in the face of a sudden cancellation. Some neutrals dispense with cancellation fees for fear of turning away or alienating prospective clients.

As your career progresses, you might consider alternative billing options such as day- and half-day rates or even a per case flat rate.

Consider whether you will charge for travel, lodging, and meal expenses. There are neutrals who have several residences across the country, and they need to determine whether to charge for travel expenses when they are not in the location of the hearing. Consider whether you will charge

PRACTICAL TIPS

Do I establish a physical office?

Krista Gottlieb

On having an office or not: Having a truly neutral and suitable space, although obviously a major expense, can be a valuable resource and project a much more professional and permanent image.

How did you decide whether to have a physical or a virtual office?

Theo Cheng

Upon launching my own practice, I decided to save overhead by not having a physical office outside of my home. Living out in the New Jersey suburbs, I was cognizant of the branding downsides of not having a physical presence in Manhattan, but I felt that I needed to be on more firm footing before considering an investment in real estate. I was encouraged to make this decision because of the way both legal and ADR practices have embraced technology; I spend most of my time reviewing and responding to e-mails or conducting conferences by phone or video (using Skype or Zoom). Because I am (more) comfortable and productive working in my home environment, there was little incentive for me to incur expenses on a physical office. Losing the very long commute between Central Jersey and Manhattan (and, thereby, gaining back a lot of personal time and being able to spend more time with my family) was another strong incentive as well.

Where do you hold hearings or meetings with prospective clients?

Theo Cheng

Ideally, I would like to be able to offer clients the opportunity to hold hearings or sessions at a location I host so that I can better control the environment and provide the level of services I wish to offer. But I am finding that most of my clients either prefer to hold hearings or sessions at one of the attorneys' offices or do not mind incurring the small extra charge to rent space at, for example, the AAA's Midtown Offices or a provider of commercial office space like Regus.

for time spent traveling and even developing a "Rate Card"¹⁷. In doing so, be sure to consider any policies or best practice guidelines of any ADR providers you work with¹⁸. Lastly, but importantly, update your resume. As you edit it, look at resumes of other established neutrals to see how information is communicated and expressed.

Study time and drafting time (for arbitrators) is usually charged at the billable rate. Some mediators, though, fold into their fee any time spent preparing for the mediation session and any post-session follow-up time. Clients appreciate not being nickel-and-dimed for these charges, but will gladly pay a fee commensurate with the overall time spent on the matter, especially (in the case of mediators) if it results in a resolution.

Ensure that you are able to collect for the time you have expended for a case by requiring a retainer based on your estimate of the amount of time you will be required to spend on the engagement. Provider organizations will collect all retainers and deposits, but you should still follow-up with the case administrators to ensure that they have the money in hand before you start the work.

If you are not associated with a provider, the better practice is to ensure that you have asked for a retainer, and that all the funds are received in advance. Some providers offer a separate service to collect retainers and administer payments of fees to the neutral. They do charge a fee to the parties for this service, but it keeps you out of the middle.

A sample budget is attached in Appendix 7

TO HAVE OR NOT HAVE AN OFFICE

This is a difficult question for many people, especially those who are used to going to an office every day or who rely on administrative support to get work done. More and more people are creating flexible and customized work-life balances by using home and/or virtual offices.

Law firm partners might establish a relationship with the firm they are leaving so that they can use office facilities, including conference rooms, and administrative assistants. Such arrangements should be viewed cautiously, as it may create actual or potential conflicts of interest that will have to be disclosed and may result in blocking you from appointments to cases.

Providers usually offer support staff and conference room space to conduct hearings, but not all provide office space. The most usual accommodation for neutrals is not an office but a cubicle that is shared with other neutrals and used on days when a case is scheduled. Neutrals in the office will share information, bounce around ideas and problems, and create relationships that lead to future business and other opportunities.

You do not necessarily have to rely on a provider or a law firm for conference room space. Sometimes the parties want to use the facilities of one of the participating attorneys to reduce expenses, as many providers

17. A rate card is commonly used in print publication to explain the organization's rate for advertising and other details including deadlines, policies, and additional fees.

18. The American Arbitration Association, for example, has specific billing guidelines for its neutrals.

PRACTICAL TIPS

I am a lawyer who is very ethical. Is there anything else I should know?

Deborah Masucci

ADR Provider Organizations follow ethical guidelines. You should be familiar with the ethics guidelines that are adopted by providers. In addition, the New York Rules of Professional Conduct followed by NY lawyers have specific provisions for lawyers involved in mediation proceedings. The NYS Bar Association Dispute Resolution Section has an Ethics Committee that holds regular meetings and discusses ethical issues that might arise in mediation or arbitration proceedings. Consider joining.

charge a fee to use their facilities. Some neutrals use executive office space¹⁹ and charge clients the cost as a pass-through expense. If you are a member of a bar association,²⁰ investigate whether it has rooms available to rent for hearings or meetings.

If you do set up your own office to accommodate clients, you should consider certain requirements. For a mediation session, you will need a main room and also smaller break-out rooms. The tables should be round to reduce confrontation. For an arbitration, you would need a large room with a rectangular table. There should be a head table for the arbitrator(s) and the parties on either side. Each room should be set up for video or telephonic conference calls and PowerPoint presentations and have the capability to show videos. Increasingly, witnesses are appearing through electronic methods. You should have coffee/tea/water set-up and menus for lunch. Snacks are greatly appreciated by parties, counsel, and stenographers. There may be a client library used for downtime. The office should be decorated in soothing colors and pictures should be pleasing. Staff should be trained to welcome visitors and address them by name. Remember, your office is a form of marketing and should be welcoming and comfortable.

When not in the office, the vast majority of neutrals work out of their homes. It is important to create a professional work space in your home that is separate from your living space. Depending on the volume of cases, you will need file cabinets to store case material and a service to shred files after the cases are closed or a shredder for your own personal use.

ETHICS

As a lawyer or judge, you recognized your ethical obligations to your clients, the courts, and the participants in the judicial system. Arbitrators and mediators have ethical obligations too. The obligations are different from, and in addition to those of lawyers. As you launch your ADR practice, you should know and understand what those obligations are and work to follow them. As a practicing ADR professional, you should keep up-to-date on these obligations by attending continuing education presentations and conferring with ethicists. ADR provider organizations will have separate ethical obligations that you are required to follow and will require training for you to understand and comply with those obligations.

How you market yourself and the ethics that apply to how you market are covered by the various applicable codes of ethics or standards of conduct, which are different from arbitrators and mediators. You should understand them as you develop your marketing plan, website, and collateral material. Using social media especially Linked-In gives rise to added disclosure requirements. Appendix 8 is a sample disclosure statement that you might consider that covers social media connections and marketing.

The primary code of ethics for arbitrators who handle commercial dis-

19. Some examples are WeWorks (<https://www.wework.com/new-york-city--NY>), Jay Suites (<https://www.jaysuites.com>), and Corporate Suites (<https://www.corporatesuites.com>).

20. For example, consider the facilities of the New York City Bar Association, the New York County Lawyers Association, and the Nassau County Bar Association. Some offer food services as well as rooms to rent.

putes is the ABA/AAA Code of Ethics for Arbitrators in Commercial Disputes.²¹ The canons in that Code set forth your obligations on neutrality and independence, ex parte communications, confidentiality, and other important considerations. There also are nuances to obligations required for party-appointed arbitrators that you should understand.

There are different obligations that apply to mediators. ADR providers²² and the courts²³ provide them to mediators on their respective rosters. The obligations cover the parties' right to self-determination in mediation – very different in arbitration. Note also the different treatment of ex parte communications. In arbitration, ex parte communications between the mediator and the parties are common.

Despite all the guidance provided, there still might be litigation about conduct and outcome of an arbitration or mediation. You should keep up-to-date on case law and evolving decisions in the area.²⁴

PAVE THE WAY FORWARD

So, you have taken all the steps described above and then some. Give back to the younger generation by teaching in law school or other programs. Offer your experience in dispute resolution either through teaching or becoming a mentor, sharing your experience and advice. The people you mentor do not need to be chronologically young; they could also be young in the number of years they have served as a mediator or arbitrator. Mentoring also is not a one-way street. Arbitral Women started a mentoring program where the mentors are equally learning from the mentees.

Another way to give back to the younger community is by judging moot competitions.²⁵ You might meet a referral source there, too.

Offer a writing opportunity to a young lawyer. Co-writing with young lawyers gives them unique visibility that only you can offer. There are also a number of writing competitions²⁶ open to law students. Some are focused on New York State law schools while others are broadened to include national and international law schools. Let your alma maters know

Who can I reach out to about questions on developing my mediation or arbitration skills or development issues?

Deborah Masucci

The NYS Dispute Resolution Section has a wealth of resources available to individuals who want to develop a career in the dispute resolution field. Consider joining the Section and attending the programs offered. Join a Committee to network with colleagues. A mentor can be secured through the Diversity Committee. These are just a short list of available resources.

21. See https://www.americanbar.org/content/dam/aba/migrated/dispute/commercial_disputes.pdf. The Code was first adopted in 1977 and last revised in 2003

22. See JAMS Guidance to mediators at <https://www.jamsadr.com/mediators-ethics/>. The ABA also has a resource page that lists ethical obligations for both mediators and arbitrators including separate obligations by subject matter. See https://www.americanbar.org/groups/dispute_resolution/policy_standards/

23. See http://ww2.nycourts.gov/sites/default/files/document/files/2018-07/Standards_of_Conduct.pdf for ethical considerations for community mediators

24. Hamline Dispute Resolution Center examined litigation about mediation and offers a digital analysis and review at https://digitalcommons.hamline.edu/dri_mclsummaries/

25. The NYSBA Arbitration Competition is in its 5th year in 2019 and its inaugural Mediation Moot launched in 2019. New York also is a center for numerous moot tournaments offered by law schools and professional organizations that are consistently looking for judges.

26. See <https://lawcomm.pepperdine.edu/announcing-third-annual-nysba-acctm-national-championship-adr-law-student-writing-competition-2019/> for the NYSBA/AAA Writing Competition; Boesky writing competition https://www.americanbar.org/groups/dispute_resolution/awards_competitions/james_b_boskey_law_student_essay_contest_on_dispute_resolution/; and NY Branch of Chartered Institute of Arbitrators writing competition <https://ciarbn.org/student-writing-competition/>

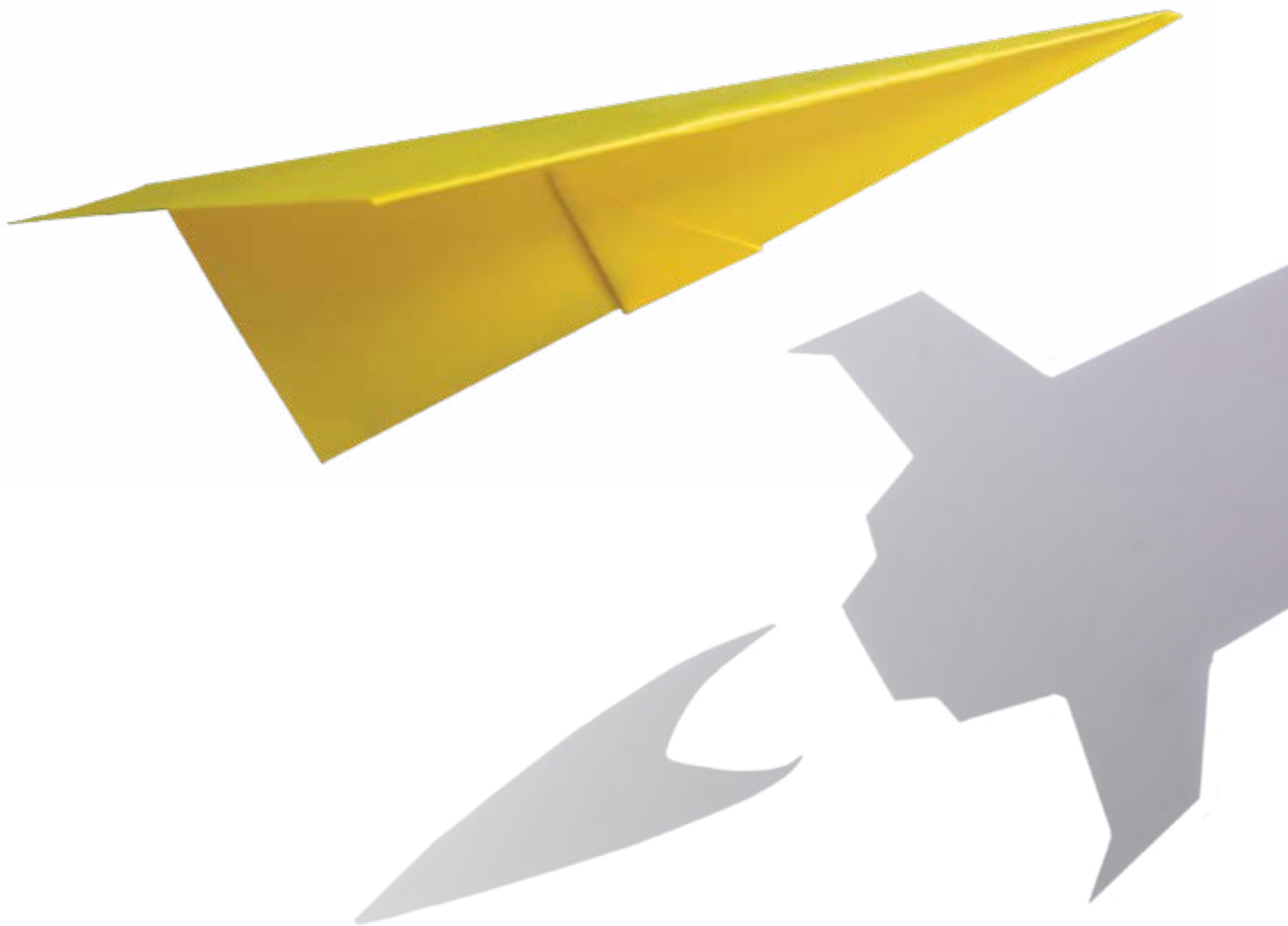
about these opportunities. If you are an adjunct professor, encourage your students to enter the competitions. The prizes can be substantial.

Paving the way for others and paying it forward is filled with many rewards.

CONCLUSION

We hope this Guide is helpful to you as you launch your ADR practice. As noted many times, this is just one resource for you. You can pick and choose what you will execute. For those of you whose practice is stalling you might try a strategy in this Guide that you hadn't previously considered or decided against.

Good luck to you!



Thank you and Acknowledgments

When I came up with the idea of the Guide, I knew I had to rely on my network to ensure that the content would be relevant and helpful to anyone who read it. My thanks to the following people who made the Guide possible through their practical advice incorporated in the Guide and the content.

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APPENDIX 1

COURT-ANNEXED ADR/MEDIATION PROGRAMS

This is a very abbreviated list. Most court-annexed programs strongly prefer experienced mediators. Some court mediation programs require the parties to pay the mediator from the start, or after a period of session time; some court programs ask the mediators to work without compensation. The ADR information at the courts' websites are also useful for lawyers who will be advocates, as opposed to neutrals, in those courts' ADR programs. Many courts open their rosters for new applicants only at certain times.

Metropolitan New York City are:

U.S. Court of Appeals for the Second Circuit. They do not solicit applications, but you might want to know that the program exists: http://www.ca2.uscourts.gov/staff_attorneys/mediation.html

U.S. District Court, Eastern District of New York: <https://www.nyed.uscourts.gov/alternative-dispute-resolution>

U.S. Bankruptcy Court, Eastern District of New York: <http://www.nyeb.uscourts.gov/alternative-dispute-resolution-mediation>

U.S. District Court, Southern District of New York: <http://nysd.uscourts.gov/mediation.php>

U.S. Bankruptcy Court, Southern District of New York: <http://www.nysb.uscourts.gov/mediators>

N.Y.S. Supreme Court, Appellate Division, First Department: <http://www.courts.state.ny.us/courts/AD1/committees&programs/specialmasters/index.shtml>

N.Y.S. Supreme Court, Appellate Division, Second Department: <http://www.courts.state.ny.us/courts/ad2/camp.shtml>

N.Y.S. Supreme Court, Kings County: Two divorce and matrimonial Parts started a pilot "presumptive mediation" program in early 2019. The panel is closed during the pilot program, but you may want to know of the program's existence.

N.Y.S. Supreme Court, Nassau County, Commercial Division: http://www.nycourts.gov/courts/comdiv/nassau_ADR_Rules.shtml

N.Y.S. Supreme Court, New York County, Commercial Division: http://www.nycourts.gov/courts/comdiv/ny/ADR_overview.shtml

N.Y.S. Supreme Court, Queens County, including Commercial Division: <http://www.nycourts.gov/courts/11jd/supreme/civilterm/adri/index.shtml>

N.Y.S. Supreme Court, Suffolk County, Commercial Division: <http://www.nycourts.gov/courts/comdiv/suffolk.shtml>

N.Y.S. Supreme Court, Westchester County, Commercial Division: <http://www.nycourts.gov/courts/comdiv/PDFs/9th-ADR-Rules.pdf>

Around New York State, some Family Courts have mediation programs, as do some Supreme Court matrimonial parts and other parts. More information is available at links from:

http://www.nycourts.gov/ip/adri/Info_for_parties.shtml#courtbasedprograms <http://www.nycourts.gov/ip/adri/NYCSupreme.shtml> (State Supreme Courts in NYC)

http://www.nycourts.gov/ip/adri/court_annexed_OutsideNYC.shtml (State courts outside NYC)

<https://www.nycourts.gov/courts/nyc/family/mediation.shtml> (NYC Family Courts)

Federal courts in upstate New York, the Western and Northern District Courts, have extensive and well-regarded mediation programs: <http://www.nywd.uscourts.gov/alternative-dispute-resolution>. <http://www.nynd.uscourts.gov/adr-programs>

Most civil cases in New Jersey go into a mediation program and you do not have to be admitted in New Jersey to get on the panels. Overview information and links to more details and trainings are at the court system's website: <https://www.judiciary.state.nj.us/civil/medipol.htm>

APPENDIX 2

ABOUT the ADR Providers

American Arbitration Association/International Center for Dispute Resolution or AAA/ICDR

www.adr.org

www.mediation.org

www.icdr.org

The AAA is a not-for-profit offering mediation, arbitration and other neutral services. The AAA roster includes over 8,000 people with backgrounds as business executives, law firm partners, educators and others. They are the largest administrator of alternative dispute resolution services worldwide. The AAA offers specialty rules for sectors such as commercial, construction and labor/employment. Their website contains educational tools for users that provides options for drafting clauses and other important information. The AAA also trains thousands of neutrals and advocates each year.

The AAA provides services in the U.S and abroad through the International Center for Dispute Resolution (ICDR). Its headquarters is in lower Manhattan but they have twenty offices throughout the U.S. The AAA established Mediation.org in 2013 to focus its efforts on mediation.

The AAA offers education to mediators and arbitrators through AAA Education Services.

CPR or International Institute for Conflict Prevention and Resolution

www.cpradr.org

CPR was formed in 1977 bringing together Corporate Counsel and their firms to find ways to lower the cost of litigation. CPR was the first to develop an ADR Pledge®. Today, this Pledge obliges over 4,000 operating companies and 1,500 law firms to explore alternative dispute resolution options before pursuing litigation.

CPR's membership is comprised of executives and legal counsel from global companies and law firms, government officials, retired judges, highly experienced neutrals, and leading academics. Through their numerous Committees and Task Forces, CPR uses the expertise of these legal minds to develop rules, protocols, white papers and other tools to more effectively resolve conflict.

CPR is best known as a think tank that publishes books and best practices that are models in the dispute resolution field. They have an award-winning newsletter called *Alternatives* that previews many of the changes, and a blog called "*CPR Speaks*" that covers more fast-breaking developments.

Until recently CPR's model was to offer non-administered rules. They developed rules and a list of mediators and arbitrators but it was up to the parties and the panel to administer the case unless the parties arranged for CPR administration through a program (e.g. The Wellington Agreement) or in their contracts. CPR will serve as billing agent for matters filed under the non-administered rules charging the parties on an hourly basis.

On July 1, 2013, CPR launched its administered rules targeting complex commercial disputes. The rules provide for party appointment of arbitrators but absent party agreement, the Chair must be from the CPR arbitrator panel. Several companies have included the administered rules in clauses and one matter (later settled) was filed under the new Rules. In another case, the filing party filed under the Administered Rules but in the end the case used the Global Accelerated Commercial Rules due to the date of the clause. The International Administered Rules were released in December 2014.

JAMS – The Resolution Experts

www.jamsadr.com

JAMS was founded in 1998 by combining a California based dispute resolution provider named Judicial Arbitration and Mediation Service²⁷, an East Coast dispute resolution provider named Endipute and a Washington State Provider called Bates/Edwards. The company has since added other small practices and expanded internationally.

27. Judicial Arbitration and Mediation Service was established in 1979.

Some JAMS' neutrals have an ownership interest in JAMS and take part in the management and direction of the Organization. Historically, JAMS is known for having a panel primarily comprised of retired federal and state judges because of its roots in California. By combining with dispute resolution providers like Endispute and active recruitment, JAMS has expanded its panel to include attorneys that do not have prior judicial experience and neutrals that do not serve full-time. Similar to the AAA, JAMS resolves disputes involving a myriad of subject matters including business/commercial, construction, and disaster recovery. The majority of JAMS filings are resolved through mediation; however, it has a robust arbitration practice.

ARIAS-US

www.arias-us.org

ARIAS•U.S. is a not-for-profit corporation that promotes improvement of the insurance and reinsurance arbitration process for the international and domestic markets.

They are promoting mediation, however most disputants in the reinsurance arena want a resolution and not a compromise.

Most cases are resolved by a handful of arbitrators. Most of their arbitrators are former senior executives with carriers.

FINRA

www.finra.org

FINRA operates the largest securities arbitration forum in the United States to assist in the resolution of monetary and business disputes involving investors, securities firms, and individual brokers. All rules related to the FINRA arbitration program have been filed with and approved by the SEC, after publication in the Federal Register and a finding by the SEC that such rules are in the public interest. FINRA's arbitration forum has 71 hearing locations—at least one in every state. Depending on the amount of damages being sought, disputes in the arbitration forum are heard by either a panel of three arbitrators, or by a single arbitrator. In all cases involving investors, parties have the option to have their case decided exclusively by public arbitrators who have no ties to the securities industry. Brokerage firms pay for most costs, and FINRA waives fees for investors experiencing financial hardship. The average turnaround time across all arbitration cases is 15 months. FINRA publishes detailed arbitration statistics on its website, including the number of cases filed and their respective outcomes. All arbitration awards are made publicly available on FINRA's website.

National Arbitration and Mediation or NAM

www.namadr.com

NAM was founded in 1992. NAM works with commercial entities, including many Fortune 100 companies. NAM offers litigants a nationwide panel of more than 2,600 former judges and practicing specialists who facilitate the resolution of disputes. NAM maintains rosters in all 50 states, Puerto Rico and in major cities around the world, with specific expertise in the areas of complex commercial, construction, employment, entertainment, financial services, international, insurance, medical malpractice, personal injury (including third-party and first-party actions), professional liability and real estate dispute resolution.

Resolution Systems LLC.

<https://resolutesystems.com>

Resolution Systems is a national dispute resolution provider that has New York City offices in Manhattan and Long Island. They were established thirty years ago and are known in the insurance industry

Training and Credentials for Becoming an Arbitrator or Mediator

International Mediation Institute

www.imimediation.org

IMI is a non-profit public interest initiative that drives transparency and high competency standards into mediation practice across all fields worldwide.

IMI has 40 Qualified Assessment Programs (QAPs) worldwide that certify mediators. In the U.S. the AAA, CPR, JAMS, The New Jersey City University Center for International Dispute Resolution, Columbia University's School of Continuing Education and The Bridges Academy are QAPs. IMI is user driven and the feedback digest for mediators that is required as part of being a certified mediator is a resource for potential users considering the selection of a mediator. The digests can be found on IMI's website.

In 2011, IMI established Intercultural certification. This is particularly important in cross border mediation. In 2013 IMI launched standards for certifying mediation advocates. Law firms can use certification as a competitive edge. In 2018, IMI launched certification of training programs.

IMI has a network with the Singapore International Mediation Institute/Singapore International Mediation Center (SIMC) and the Florence International Mediation Chamber (FIMC). Additional relationships in Africa, the Middle East, Europe, and South America are being formed. Both SIMC and FIMC require IMI certification for inclusion on their panels.

ABA/DR Section

www.americanbar.org/groups/dispute_resolution.html

The ABA offers training for neutrals on a regular basis. Some particular programs include:

Arbitration Institute – Three-day program developed by the College of Commercial Arbitrators, AAA and JAMS. The program is focused on arbitrators and arbitration practitioners and is held in the early summer.

Mediation Institute – Three-day program focused on mediator and mediation advocacy. The program is held each year in November.

Spring Conference – The Conference will be held in Minneapolis in April 2019. The ABA solicits presenters and programs during the summer preceding the conference and generally accepts 90 programs.

The ABA offers international programs. In November 2014 a trip was offered for Cuba and in 2015 a Summit was held in India. In 2019 they will be traveling to Florence, Italy.

Monthly webinars and teleconference CLEs are offered.

Women in Dispute Resolution or WIDR was established in 2012 to develop women neutrals. WIDR offers programs that combine practice development, networking and substantive learning. In 2015, the ABA launched **Minorities in Dispute Resolution** with similar goals to WIDR.

The ABA also offers professional liability insurance for mediation and arbitration practice. Specifics can be found on the Section's webpage.

AAA

All candidates for the AAA panel of neutrals are required to satisfy their requirements and attend annual trainings offered by the AAA. Information about the AAA's educational programs can be found at <https://www.adr.org>

The AAA is committed to diversity and offers a special program for people with diverse backgrounds to break into the field – the Higginbotham Fellows Program.

Neutrals are paid their going hourly or per diem rate for services provided.

CPR

When determining whether to accept a candidate for CPR's panel of neutrals, CPR considers candidates' education, experience with complex commercial matters, ADR training, ADR experience, references and, where appropriate, substantive experience in a given field. CPR strives for geographic and other diversity. All CPR neutrals are expected to maintain the highest ethical standards as set out by the governing ethical codes and rules.

To apply to be a CPR Neutral, a candidate must complete a Neutral Application Form and return it by email. Neutrals are approved for specific panels such as employment, insurance, policy-holder, intellectual property to name a few. Committees in each of the specialized areas review completed applications. There is a three to six-month backlog for Specialty Committee review of applications to CPR's Panels.

CPR does have a listing fee to continue on its panel. The fee is \$395 for the first panel and \$100 for each additional panel plus 5% of amounts billed for hearing/mediation sessions. A refund of a portion of the fee will be made the following year for years in which no case is received. Panelists set their own rates for assignments. For more information go to www.cpradr.org

CPR offers arbitrator training in collaboration with other organizations like the Chartered Institute of Arbitrators. CPR also offer mediator skills training in conjunction with the Center for Effective Dispute Resolution (CEDR).

Chartered Institute of Arbitrators

www.ciarb.org

The Chartered Institute of Arbitrators is located in London, England. They deliver training programs for individuals who want to be recognized as experts in international arbitration. There are chapters throughout the world and a very active one in New York City. See <https://www.internationalarbitrators.org/>

FINRA

FINRA maintains a roster of more than 7,500 arbitrators. FINRA regularly recruits professionals with established careers, including attorneys, professionals with MBAs, and business owners. More than 3,500 of FINRA's approximately 7,500 arbitrators are attorneys. More than 100 arbitrators are currently, or were formerly judges. Additionally, FINRA actively recruits minority and female arbitrators, and publishes data on the diversity of the arbitrator pool on its website.

Arbitrator applicants must have a minimum of five years of paid work experience—inside or outside of the securities industry—and two years of college-level credits. No previous arbitration, securities, or legal experience is required to apply. FINRA provides free training and continuing education for arbitrators on a broad range of topics.

Arbitrators receive an honorarium for each hearing session they attend: typically, \$600 per day or \$725 per day for arbitrators serving as chairpersons.

In addition to arbitrators, FINRA has a highly qualified roster of mediators. FINRA mediators have subject matter knowledge and significant and relevant experience in both investor disputes and securities employment disputes. For more information about becoming a FINRA arbitrator or mediator, go to the Become an Arbitrator and Become a Mediator pages on FINRA's website.

ARIAS-US

ARIAS neutrals are generally senior executives or lawyers from the insurance or reinsurance industries. ARIAS has a number of ways to become certified that include industry experience and training. Recertification is required every two years. Look to the ARIAS-US website at <http://www.arias-us.org> for details. There is a separate website for reinsurance arbitrators in London.

Neutrals are paid their going rate. A limited number of arbitrators are appointed to most of the cases.

ICC

www.iccwbo.org/Products-and-Services/Arbitration-and-ADR/Articles/2014/ICC-Court-further-extends-world-wide-reach-in-2013

In 2013 the ICC opened an office in New York to administer cases in North America. The entity formed is called SINCANA, Inc. Anyone can add their name to ICC's directory of experts for consideration as an arbitrator or mediator. In order to be selected, a potential neutral needs to become known by the SINCANA staff or the lawyers who select neutrals. The ICC charges a fee to be listed as an expert on their list of experts.

American Health Care Lawyers Association

<https://www.healthlawyers.org/dr/Pages/default.aspx>

Peer Nominated Organizations

College of Commercial Arbitrators

www.ccaarbitration.org

International Academy of Mediators

www.acctm.org

American College of Civil Trial Mediators

www.acctm.org

The National Academy of Distinguished Neutrals

www.nadn.org

OTHER ORGANIZATIONS

New York State Bar Association Section for Dispute Resolution

www.nysba.org

The Section for Dispute Resolution offers many education programs for potential mediators and arbitrators. Some target new neutrals while others enrich the skills of more experienced neutrals and advocates. Some regular offerings include:

Mediator Skills and Advanced Mediator Skills – This is a two-part multi day program that will help qualify an attendee for the Commercial Division mediation panel.

Arbitration Training – This is a multi-day program offered for new and experienced arbitrators and arbitration advocates both domestic and international.

Fall Conference – This is a one-day program focused on skills for members.

Annual Meeting – This is a half day program held during the NYSBA annual meeting in January each year.

The Section also offers programming and other opportunities for law students and young lawyers including:

- Arbitration Competition
- NYSBA ACCTM Writing Competition
- Mediation Moot
- Dispute Resolution Clinic
- Law Student and Young Lawyer Reception
- Scholarships for women and minorities
- Mentoring for women and minorities

The Section has about 20 Committees that develop policy, monitor the field, and offer education programs. The Committees are subject and field oriented including: Arbitration, Mediation, ADR in the Courts, International Dispute Resolution, Diversity, and Legislation. The Mediation Committee created a video for pro se disputants so they understand the value and goal of mediation.

Finally, the Section publishes a quarterly magazine focused on the field. The Section regularly seeks contributors to the Dispute Resolver

Federal Bar Association

www.fedbar.org/Membership/Add-Sections-Divisions-Online.aspx

The Federal Bar Association brings together lawyers focused on practice in the federal courts. There is a Western, Southern and Eastern Court division and an alternative dispute resolution section.

Association for Conflict Resolution for Greater New York

<https://acrgny.org>

ACRGNY has a breadth of dispute resolution opportunities to learn and be join. There is one annual conference that provides an opportunity for networking and delivering presentations.

Small Business Arbitration Center of New York

www.sbacnyc.com

This Center was established in New York to assist small business owners in resolving disputes. They describe their neutrals as planning change advocates. The Center offers several certification programs for neutrals.

Arbitral Women

www.arbitralwomen.org/aw-outline/

Arbitral Women is a global membership organization promoting the appointment of women to international arbitration panels. They offer opportunities to be listed, deliver presentations, and publish.

OTHER GOVERNMENT AND QUASI-GOVERNMENTAL ADR/MEDIATION PROGRAMS

U.S. Equal Employment Opportunity Commission

The EEOC has staff mediators and use some outside mediators to try to resolve disputes at various stages of the EEOC's processes. National and New York District Offices: <http://www.eeoc.gov/eeoc/mediation/index.cfm>
<http://www.eeoc.gov/field/newyork/mediation.cfm>

U.S. Postal Service

For many years, the Postal Service has run a highly successful workplace mediation program, REDRESS. (Resolve Employment Disputes Reach Equitable Solutions Swiftly Program.) The local panels of mediators have been closed for a long time. Also, if you can get an application in, you will be required to take their free training. Their processes are largely in the transformative mediation model: <https://about.usps.com/what-we-are-doing/redress/about.htm>

The New York City Bar Association

www.nycbar.org

The New York City Bar Association has a number of Committees focused on dispute resolution including the ADR Committee, the Arbitration Committee, and the International Disputes Committee. The President of the Citybar appoints Chairs persons yearly for a three year term. Inclusion on each Committee is determined by the Chair person.

N.Y.C. Civilian Complaint Review Board

www1.nyc.gov/site/ccrb/mediation/mediation.page

The CCRB is an independent agency that handles some complaints about police officers. They have a well-developed mediation program.

N.Y.C. Commission on Human Rights

www1.nyc.gov/site/cchr/enforcement/mediation.page

Complaints to the Human Rights Commission may be mediated if both parties want it and the Commission's Law Enforcement Bureau thinks that mediation is appropriate in that situation.

N.Y.C. Office of Administrative Trials and Hearings

www1.nyc.gov/site/oath/conflict-resolution/conflict-resolution.page

OATH is the City's central independent administrative law court. Within OATH, the Center for Creative Conflict Resolution (CCCR) serves as a conflict resource for the New York City government, its agencies, employees, unions and the public they serve. (Descriptions are from OATH's website.) CCCR has a highly-regarded mediation program as part of a larger, diverse set of conflict resolution offerings for use by the City and people who interact with the City and its agencies.

List Serves and Blogs

John Jay Listserve

<http://listserver.jjay.cuny.edu/cgi-bin/wa.exe?SUBED1=NYC-DR&A=1>

Peter Lurie's Arbitration Listserve

MEDIATE-AND-ARBITRATE@PEACH.EASE.LSOFT.COM

Arbitration Nation

www.Arbitrationnation.com

APPENDIX 3

Sample Business Plan

(Your Company Name)
Smith Arbitration and Mediation Services

(Date of Plan)
January 1, 2019

(Company Address)
35 Success Avenue
ADR City, NY

Executive Summary

Develop a short summary of the services you deliver and the market you are targeting.

Mission

Describe your goal for delivering services

Business Description and Strategic Alliances

Describe the ADR business you deliver and the ADR Providers or other associations you are connected with

What you Deliver

More broadly describe the services you provide including the types of cases you worked on and your success

What is your Target Market?

Describe to whom you want to provide services. This forms the basis of your Marketing Plan.

Who is your Competition?

Describe how you distinguish yourself from others who serve the same target market. You may not have any competition because your services are unique. Describe your unique qualifications.

Detail your Market Plan

Identify what conferences you want to attend, publications where you want to be published, development of website or use of social media, and any other outward looking activities. Be sure to include the cost of the activities.

Financial Plan

Determine rate. Estimate income and expenses for one year and three years.

APPENDIX 4

SAMPLE MEDIATION INTAKE FORM

Please take a few moments to answer this questionnaire. This document is strictly confidential and will be seen only by our office personnel. Please mark clearly any information, which you are uncomfortable discussing with the other party in mediation. Each party must complete this form. Please respond to each question.

Date: _____

Case Number (if applicable): _____

Court (if applicable): _____

Person completing form is (check one):

Claimant/Mediation Initiator Respondent/Agreed to Mediation Intervenor/Third Party

This matter is being referred for mediation upon request of (check all that apply):

Claimant Claimant's Attorney Respondent Respondent's Attorney Judge Magistrate

Deadline to Mediate, if any: _____

Check one: Half Day Mediation Full Day Mediation Multi-day Mediation

Who will attend the mediation session?

Claimant

Name: _____

Address: _____

Telephone: _____

Claimant Attorney (if applicable)

Name: _____

Address: _____

Telephone: _____

E-Mail address: _____

Respondent

Name: _____

Address: _____

Telephone: _____

Respondent's Attorney (if applicable)

Name: _____

Address: _____

Telephone: _____

E mail address: _____

Insurance Company Involvement

For: _____

Representative Name: _____

Address: _____

Telephone: _____

E-Mail Address: _____

Total Amount Claimed by All Plaintiffs: _____

Non-Monetary Relief Requested by Plaintiffs: _____

Claims Asserted: _____

Last communicated demands and offers: _____

Statement (please summarize your understanding of the dispute and what are the three things you are willing to do to resolve this dispute).

Matter/Case Type: Business/Foreclosure Family Employment Marital

Other (please specify) _____

Would you have a concern about sitting in the same room with the other party in an effort to resolve the matters in dispute? Yes No

Please explain your concerns: _____

Appendix 5

(Arbitrator Name)

Party Appointed ARBITRATOR RETAINER AGREEMENT

1. Purpose

The Party, _____, has chosen to appoint me, _____, to serve as a party appointed arbitrator (“Arbitrator”), in a currently pending dispute. {The arbitration will be conducted on an ad hoc basis without an administering institution} or {The arbitration will be administered by _____}. The party agrees to proceed under the _____ Rules of _____.

2. Neutrality

The Party understands and agrees that I shall act in a strictly neutral capacity as a decision-maker and not as a mediator or advocate for either party.

3. Fees

Fees for my services by will be determined by the number of hours (or portion) spent on the matter, plus expenses. I will bill on this basis for all time spent on the matter, including initial contacts after the execution of this agreement, electronic communications and telephone conferences, travel, reviewing submissions and other material in preparation for the hearing, hearing, post-hearing deliberations, and preparation of awards. I will charge an hourly rate for services of \$, which rate will remain in effect for the duration of the arbitration. My time is billed in quarter-hour increments. Case management services are included in my hourly fee. Expenses, such as conference room and meal charges, long distance telephone, transportation or copying charges, will be billed at cost, which in some cases may be estimated. Invoices will be prepared monthly and are payable within 30 calendar days thereafter.

4. Cancellation Policy

If a scheduled arbitration hearing is cancelled more than 30 calendar days before a session, professional fees are fully refundable, except to the extent my preparation time has already been incurred. Scheduled arbitration dates cancelled or rescheduled in less than 30 days will incur cancellation charges based upon an eight-hour day for each day reserved unless the time can be scheduled by me for another matter. If an arbitration session is completed in less time than was reserved, the actual time reserved but not used will be billed unless my time can be scheduled for another matter.

5. Advance Payment

The Party agrees to my fees and expenses as follows: The Party agrees to pay an advance amount of \$_____, as estimated by me for fees and expenses. This is an estimate only, and the Party is responsible for all fees and expenses incurred. The party shall pay an advance amount prior to the commencement of the case set forth in an invoice to be forwarded to the Party. All advance fees not used will be returned to the Party at the conclusion of the Arbitration. If the advance account is exhausted prior to the end of the Arbitration, the Party may be asked to replenish the account. I retain the right to suspend the proceedings in the event any invoices are not timely paid. The deposit will be maintained in a non-interest-bearing account.

6. Disqualification of Arbitrator and Exclusion of Liability

The parties agree not to call me as a witness or as an expert in any pending or subsequent litigation or arbitration involving the parties to the arbitration. The parties agree to defend and/or assume the costs and attorneys’ fees of defending me from any subpoenas from third parties arising out of this Agreement or the arbitration. The parties agree to pay me my hourly rate set forth above for time spent in connection with any proceeding in which I might become involved arising out of or relating to the Arbitration. The parties agree that I will have

the same immunity from liability for any act or omission in connection with the arbitration as judges have under applicable state and federal law.

7. Agreement

If the above is acceptable, would you kindly have the enclosed copy of this Retainer agreement executed by the Party and returned to me along with the initial deposits payable to _____. I will execute the Arbitrator's Oath annexed hereto upon receipt of an executed copy of the Retainer Agreement and disclosure of all parties to the dispute and their counsel.

Arbitrator _____

_____ Date

Agreed to

Arbitrator _____

_____ Date

APPENDIX 6

Sample Mediation Agreement

-----X

Docket No.

Plaintiff,

-against-

Defendants

-----X

AGREEMENT

WHEREAS the above captioned matter has been ordered to Mediation with the agreement of the parties:

NOW THEREFORE, the parties and the Mediator whose signatures appear below agree that:

1. The Mediation shall be conducted in accordance with the _____
2. All written and oral communications made by any party, attorney, other participants, or the Mediator in connection with or during any Mediation session are privileged and confidential and shall NOT be disclosed or used for any purpose in this or any other pending future proceeding. However, evidence that would otherwise be discoverable or admissible shall not be rendered non-discoverable or inadmissible as a result of its use in this Mediation.
3. No party shall be bound by anything said or done at Mediation sessions, unless a written and signed settlement is reached or the parties enter into a written and signed agreement about the pre-trial management of the case. Any agreement reached shall be in writing and, when signed, shall be binding upon all parties to the agreement.
4. The parties agree not to subpoena the Mediator or any notes, documents or other materials prepared by the Mediator in the course of or in connection with the Mediation. In no event will the Mediator voluntarily testify on behalf of a party.
5. In accordance with _____ the mediator's fee will be \$____ for the first four (4) hours of mediation session or part thereof and \$____ per hour thereafter. The fee will be split among the parties unless otherwise agreed.

Plaintiff

Defendant

Counsel for Plaintiffs

Counsel for Defendant

Mediator

DATED: *

APPENDIX 7

Sample Budget

How much income will be required over a year to successfully cover both personal budgetary needs and the costs of running a practice.

Hourly rate (or daily income if you won't charge hourly) \$_____

Your anticipated overhead

- Office rent
- Equipment (scanner, printer, etc)
- Furniture
- Telephone
- Business cards and Letterhead
- Website costs (development and on-going expenses)
- Insurance
- Legal fees (if creating an LLC or other formal entity)
- Marketing (Attendance at Conferences)
- Membership fees

Your personal budget

- Mortgage or housing cost
- Food
- Transportation expenses
- Other

APPENDIX 8

Social Media Disclosure

I interact frequently with members of the legal profession, including through active involvement in bar associations and other professional organizations. I regularly attend, speak at, and organize professional seminars, conferences, and training events relating to arbitration. I write about arbitration matters for publication, both individually and as part of committees in which I am involved. **I am also a member of various online professional communities, networks, and list serves, such as LinkedIn. It is possible that I may have had contact with case participants or their firms/affiliated organizations through such professional activities.**

My practice is not to make inquiries in regard to these types of activities as I have contact with so many lawyers and others through them that it is not feasible to keep track of all such connections or to conduct a complete and accurate conflicts search of persons and entities with whom I have, or have had, such contact. Furthermore, such connections do not constitute a "relationship which might reasonably affect impartiality or independence in the eyes of any of the parties." For the same reasons, it is not my practice to keep track of or to investigate ongoing professional contacts of the nature described above or occasional social contacts that I may have for professional networking purposes (such as casual group dinners organized for women in international arbitration), including occasional contacts of such nature with persons who may be associated with matters in which I serve as an arbitrator. Accordingly, I make no disclosures with regard to any connections of the nature described above other than with respect to persons directly involved in this matter as to whom I have knowledge based on present recollection without inquiry.

APPENDIX 9

Books and Other Resources

BOOKS

Thinking Fast and Slow by Daniel Kahnemanm Farrar, Straus and Giroux (2011)

Getting Past NO: Negotiating Your Way from Confrontation to Cooperation, William Ury, Bantam Books

Getting to YES: Negotiating Agreement Without Giving In (Second Edition With Answers To Ten Questions People Ask), Roger Fisher, William Ury, and Bruce Patton, Penguin Books USA (1991)

Getting Together: Building Relationships As We Negotiate, by William Ury, Penguin Books USA (September 1, 1989)

The Power of a Positive No: How to Say NO and Still Get to YES, by William Ury, Bantam Books (December 26, 2007)

Influence: Science And Practice, by Robert B. Cialdini, Allyn & Bacon (July 9, 2000)

Beyond Reason: Using Emotions As You Negotiate, by Roger Fisher and Daniel Shapiro of the Harvard Negotiation Project, Penguin Books USA, Inc. (September 26, 2006)

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