Epiphanies & Insights on ADR for New Lawyers

A young lawyer's perspective on the rise of ADR and the preparation process

By Sheri Stewart

As a young attorney, I discovered very quickly that the scenarios I learned in law school didn't generally relate to actual day-to-day practice. Since law school places only slight emphasis on alternate dispute resolution (ADR), I encourage law firms to provide more training and real-world experience in ADR. Additionally, I hope new lawyers can learn from my personal experience and gain new insight.

I was fortunate to get this training within my first year of practice. Just a couple months after being sworn into the Minnesota State and Federal Bar, I got the opportunity to work on a case with a veteran attorney at my firm, Andrew Marshall (Andy). The case was a new matter and it quickly became my introduction to arbitration. Unbeknownst to me at the time, Andy was a fellow East Coaster, originally from New Jersey, who moved to Minnesota with his family where his renowned father, Professor Don Marshall, taught torts at the University of Minnesota Law School for 40 years.[1] Throughout this case, Andy not only gave me impromptu quizzes that highlighted my law school knowledge but also trained me on what was most likely to *actually* occur in practice.

The case we worked on was *700 Hennepin Holdings LLC v. Seven Acquisition LLC*. This article will highlight epiphanies that came to me while working on this case and that can guide newer lawyers as they practice. Some came as a result of the quizzes Andy gave me, while others were a result of preparing for arbitration and doing most of the legal work for the first time.

New lawyer epiphany #1: Sometimes in ADR, the best defense is a necessary offense.

The case began as an eviction action in Housing Court, where the landlord was attempting to evict our client, Seven Acquisition LLC, the owners and operators of the Seven Steakhouse and Sushi Restaurant, located in Downtown Minneapolis on 7th Street and Hennepin Avenue. When we filed our temporary restraining order (TRO) in Hennepin County District Court, we started our own lawsuit and instead of being on the defensive we were on the offensive. The case became *Seven Acquisition LLC v. 700 Hennepin Holdings LLC*. This technique highlighted the litigation toolkit I so frequently heard attorneys refer to, but now I was using the tools first-hand. The judge stayed the eviction and granted our request for the TRO on the ground that Minn. Stat. § 572B.06 applied and mandated arbitration.

From that point on, I began to learn how arbitration was not only mandated in our case based on the terms of the parties' lease but also preferred in law because public policy favors using and abiding by arbitration agreements. This was an epiphany for me because there was little exposure to arbitrations in law school, possibly because arbitration decisions are not appealable and thus are not included in Minnesota reporters.

New lawyer epiphany #2: Preparing for arbitration is similar to trial preparation.

When I heard the word "arbitration," I assumed the proceeding would be less adversarial, and more seat of the pants, but we prepared the case as if we were going to trial. We hired experts, prepared multiple fact witnesses, conducted discovery, took depositions, and made sure we had extensive email communications, photographs, and videos to tell the story of our client in the most vivid, accurate, and persuasive way possible. One key difference I noticed in the ADR process was the parties' ability to weigh in on who they want as an arbitrator. In addition, unlike the trials I read about in law school, there was no record in this arbitration.

The fact that ADR is a growing trend in our profession was solidified for me when I learned that the American Bar Association Dispute Resolution Section at its Annual Spring Conference in April 2019 discussed numerous programs that emphasized how to use alternative dispute resolution effectively both in the U.S. and globally.[2]

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[1] *m.startribune.com/death-won't-silence-u-law-school-s-voice-for-justice/95378839/*

[2] ABA meeting in Minneapolis to focus on using ADR to resolve a range of disagreements (May 20, 2020, at 2:30 p.m.) *https://www.americanbar.org/news/abanews/aba-news-archives/2019/04/aba-meeting-in-minneapolis-to-focus-on-using-adr-to-resolve-range-of-disagreements*

New lawyer epiphany #3: Know your role and then "manage up."

I was introduced to the importance of "managing up" when I worked as a sourcing professional at NBCUniversal in New York City, and I used it in the business context before attending law school. But law school does not teach you how entrepreneurial the practice of law *actually* is. The concept of managing up in the business context is a transferrable skill for a junior lawyer to use when working on a case that requires multiple tasks including, but not limited to: creating an exhibit book that goes to the court, creating a hearing notebook for your managing partner, and being the go-to researcher. In order to manage all these tasks, a checklist saves the day.

Methodically create a checklist of everything your team wants to include in the package for the court and managing attorney. This requires working with the managing attorney on the case to make sure everything that is most relevant and compelling to the case is discussed and included. Then review the checklist of items and the contents of the binder to make sure what you plan to present during the hearing is accounted for before you produce them to opposing counsel and before you get to the hearing.

New lawyer epiphany #4: Prepare, prepare some more, and then prepare for the unexpected.

Once the hearing began, I had no control over the process and how long the examination of witnesses would take. As a new lawyer, the element of surprise is not what you want when you are in a hearing. Dealing with a late witness, scheduling conflicts, or other personal obligations that occur during the hearing is challenging. I had to use my interpersonal skills to build rapport with our team of witnesses to emphasize the important role they played to accomplish the overall goal of the case. It was a fine balance between being able to manage witness expectations while simultaneously adjusting the order of appearance for each witness.

Unlike the mental preparation involved for a law school class or a law school exam, the mental preparation involved for our arbitration hearing was a marathon. Once the case was built there were some intermediary steps we took before the hearing commenced. (1) Make sure the courtroom's equipment is compatible with your technology. (2) Have both parties sign the Agreement to Arbitrate and provide it to the arbitrator. (3) Keep in mind that the traditional rules of evidence are relaxed during arbitration, but they are still enforced based on the arbitrator's discretion. At the end of the hearing the parties had to submit a draft memorandum containing proposed findings of fact, conclusions of law, and the arbitration award to the arbitrator to aid in the decision.

New lawyer epiphany #5: Amendments and stipulations to extend deadlines are more normal than you think.

Despite the deadlines provided in the arbitration agreement, parties can stipulate to extensions that can occur in the arbitration process to accommodate their circumstances. This was one of the most surprising things I learned. In law school, the deadlines are so hard and fast that they almost seem cast in concrete unless you have some exceptional circumstances. But in practice, stipulations and amendments to deadlines are a more common practice than I had realized.

New lawyer epiphany #6: Don't be afraid to ask questions even if you think they are silly.

As I got older, I became more and more self-conscious about asking questions because I was afraid the answers were obvious. But the truth is, a lot of things in practice are NOT obvious and sometimes you really don't know what you don't know. The practice of law sometimes feels like the Wild, Wild West. Given that we are in Minnesota, it feels like the Wild, Wild Midwest, so I asked a lot of questions along the way. Much of what I learned came from the quizzes Andy gave, which forced me to dig deep and investigate in order to understand our case. Better to ask questions than to remain quiet and get it wrong! There was never a dull moment in this case. By asking questions, I learned a lot from the way Andy practices law and hope to keep learning as I develop my own style.

New lawyer epiphany #7: The ADR process will continue to be favored by the courts.

Since ADR is preferred in public policy, attorneys will continue to see an increase of arbitration clauses in agreement because the process is generally faster than the typical litigation process and more cost-effective. But, in order to effectively represent the client, the amount of preparation needed is just as intense as preparation for trial. Therefore, an emphasis on training new attorneys for these scenarios will pay dividends.

Takeaway: Winning is good and hard work pays off.

Enough said!

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