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'It's Part of the Judicial System Now': Retired Judges Say ADR Is Here to Stay

"When I first came on, it was 17 years ago, there were a handful of people doing this. But now many judges, when they retire, think of this. This is an alternative that works for a lot of people," said Mark Epstein, a former Middlesex County Superior Court judge who provides ADR at Hoagland, Longo, Moran, Dunst & Doukas in New Brunswick.

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Alternative Dispute Resolution



Charles Toutant

What You Need to Know

- ADR providers have gotten more clients due to COVID-related backlogs and judge shortages.
- Widespread use of Zoom instead of live hearings has allowed ADR providers to obtain clients without regard to geography.
- Retired judges who handle mediation and arbitration are confident that demand for their services will continue to be strong.

Retired judges providing mediation and arbitration services in New Jersey say demand for their services is robust, but is this booming sector headed for a shakeout?

Many alternate dispute resolution providers say they are as busy as ever, due in part to COVID-19-related trial backlogs and a judicial shortage in the Superior Court of New Jersey.

But will demand for services of the state's mediators and arbitrators take a hit if the court's backlogs are resolved and litigants end their recent renewed interest in ADR?

Competition in the ADR sector could intensify as new providers join the fray and technology gives providers a bigger geographic reach. But retired judges providing dispute resolutions say they are confident that demand for their services will continue to grow.

In September, Brach Eichler announced that it was forming an ADR practice with the addition of Lisa Chrystal, a former Union County Superior Court judge with 22 years of service.

And in May, DeCotiis, FitzPatrick, Cole & Giblin expanded its ADR practice, hiring of Terry Bottinelli, who served 11 years on the Bergen County Superior Court bench.

"I think there'll be continued demand for ADR because people are liking it. The other thing is, even though the courts are up and running, they have a two-year backlog. It's going to be forever before they get caught up on everything. This is as bad a judge shortage as I've seen," said Katherine Dupuis, a former judge in Union County Superior Court who is now providing ADR at Lindabury, McCormick, Estabrook & Cooper in Westfield.

"I don't see any slowdown," added Mark Epstein, a former Middlesex County Superior Court judge who is now with Hoagland, Longo, Moran, Dunst & Doukas in New Brunswick. "I think it's part of the judicial system now. When I first came on, it was 17 years ago, there were a handful of people doing this. But now many judges, when they retire, think of this. This is an alternative that works for a lot of

people," Epstein said.

Some neutrals said the pandemic has helped them build business not merely because clogged-up courts prompted some lawyers to find an alternative, but because many lawyers were unfamiliar with ADR before the pandemic.

"Until somebody does it and until it works and they can see the value, they may not be inclined to do it," said Bradley Ferencz, a retired Middlesex County Superior Court judge who provides ADR at Blick Law in Somerset. "It's not teaching an old dog new tricks, per se, but when we've done things a certain way our entire lives, sometimes you don't think of doing an alternate method."

Mediation has been around for a long time but lawyers were slow to accept it, said Marie Lihotz, who provides ADR at Archer in Voorhees and previously had stints at the Tax Court of New Jersey, the Superior Court of New Jersey in Burlington County and the Appellate Division of Superior Court.

"People got more accustomed to attending mediation. What the pandemic did was have more and more exposure to mediation, so lawyers are getting better at doing it and participating in it and getting better at getting results by using it," Lihotz said.

Another change brought about by COVID-19 is that as litigators have become accustomed to remote proceedings, ADR providers have used Zoom on many of their cases. As a result lawyers no longer feel the need to use a neutral who is located within easy driving distance, according to retired judges in the mediation and arbitration business.

Michael Brooke Fisher, a former judge of Superior Court in Cumberland County, practices in Avalon, in the state's far southern reaches, but now he gets mediation clients from a wider area, thanks to Zoom. Now, nine out of 10 cases Fisher hears remotely.

"It broadens the market, so to speak. I handle a lot more cases from North Jersey than I might have three or four years ago. It's not a negative that you live here and other people are there because you're all meeting electronically," Fisher said.

Participants in a Zoom mediation are more relaxed and able to focus because they don't have to take a two-hour drive before the session and then turn around and drive another two hours after the meeting is over, said Fisher.

After the pandemic-based backlogs and judge shortages are resolved, Zoom for mediations will continue, said Fisher. "It's taught us that it can work. Everybody's more relaxed in their own office. I think it just becomes a calmer atmosphere for everybody," Fisher said.

Hoagland Longo's Epstein uses Zoom to conduct proceedings in about half of his cases.

"Zoom has become very popular because it has such advantages. People are able to stay in their offices, a lot of the insurance carriers don't have to send their adjusters from far away to come to my office. Lawyers from North and South Jersey can stay in their office. A lot of people like it and I have not found it less effective," Epstein said.

Lindabury McCormick's Dupuis said she saw a big increase in interest in her services when COVID hit. She sees multiple reasons. In probate and family law cases, which typically involve relatives fighting with each other, they want "to get a resolution without destroying the family, and you can do that in mediation in a way you can't do it in court," Dupuis said. In business disputes, the slow pace of the courts is driving an increase in ADR, she said. "It can take years to get to a trial and a business doesn't want to have litigation hanging over its head. If you're a business person, you want to get back to doing business, you don't want to be in court," she said.

Although new arrivals to the ADR sector and the elimination of geographic barriers based on the expanding use of Zoom could raise the level of competition, Dupuis does not find the profession particularly competitive.

"I find it the most genteel of competitions. I do not feel in competition with any other judge. We all have our strengths and weaknesses," she said. "We're all looking for business, but we go out and look for business, we don't in anyway say anything negative about anyone else."

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