

— alternative dispute — RESOLUTION

The Peaceful Solution

With courts clogged and costly, alternative dispute resolution is gaining ground **BY MARY PILON**

The legal system, author Henry Miller said, “is often a mystery, and we, its priests, preside over rituals baffling to everyday citizens.”

So when an opportunity comes along to reduce that mystery and bafflement, many lawyers and consumers are eager to participate. Enter alternative dispute resolution.

ADR is a catchall term that describes processes that let parties in conflict find solutions while avoiding the cost and time commitment of a trial. Those processes can include mediation, arbitration and collaborative law.

As courts have become more clogged and costly over the last decade, ADR has soared in popularity for matters ranging from divorce to consumer to corporate law. ADR may also maintain privacy in a dispute and keep stress levels lower. Increasingly, law schools are training students in the nuances of navigating the legal system out of court.

The process is likely to continue growing in popularity, says Irene C. Warshauer, an arbitrator and mediator at the Law Office of Irene C. Warshauer who has mediated more than 100 matters.

So how do you find the right attorney?

Clients should look for someone “known to them or an acquaintance as reliable and trustworthy. Generally, someone with knowledge of the subject matter, if it is complicated, helps,” says Warshauer. “Someone they can work with; someone who has enough available time.”

The types of ADR vary. In mediation, a neutral party helps two sides try to resolve a conflict through compromise. Collaborative law is similar and particularly helpful in seeking peaceful solutions in divorce or custody cases.

“A good mediator is someone who can go back and forth between the parties until they can agree,” says Ruth D. Raisfeld, a mediator and arbitrator at Ruth D. Raisfeld, PC in White Plains. “Think of diplomats, people who can be helpful when two people say, ‘Can you help us negotiate this thing?’ A successful mediation culminates in an agreement, not a decision. A win is when both parties walk out with an agreement and are willing to leave the dispute behind them.”



Mediation can be very helpful in employment law, Raisfeld’s area of expertise.

“Both parties realize they’re going to have to give something up,” Raisfeld says. “The process helps the parties focus on the issues and getting to a resolution. You want people in a problem-solving mode who can walk in [a client’s] shoes. A good mediator will have emotional intelligence.”

In arbitration, a third-party arbitrator hears both sides of an argument, then decides the outcome, acting almost as a judge. Some attorneys caution that people should make sure what rights they’re signing away, such as accepting an arbitrator chosen by a company, before entering into an arbitration agreement.

“The arbitration provision, which usually includes a class action waiver, is often inserted amidst boilerplate language in the proverbial fine print,” says consumer law attorney Michele F. Raphael with Wolf Popper. “It is most often non-negotiable and take it or leave it, so that the consumer cannot, i.e., get the credit card or open the account unless he acquiesces to said provision.”

Other attorneys stress the upsides of arbitration. For one thing, rules tied to evidence-gathering are more relaxed than they would be in a trial setting.

“Arbitration is a creature of choice and has proven to be an effective dispute-resolution process since ancient Greece,” says Edna Sussman, with SussmanADR LLC in New York. “Arbitration is an excellent tool for the resolution of many kinds of disputes because it is a process that the parties can tailor to their needs.”

Jill E. Alward, a consumer law attorney representing businesses at Blank Rome, says that, overall, she thinks arbitration works well for everyone.

“I think, for both parties, the benefits outweigh the pitfalls,” she says. “It saves money, I think it saves time—it provides for a quicker resolution of the issues. A resolution in any New York court could take years, and an arbitration could resolve an issue within months or a year.”

And, perhaps, make the rituals of law for everyday citizens a bit less baffling. ●

you look at the first few pages of our Supreme Court brief," she says, "the first eight or so pages is a love story."

But was it the right case? Kaplan, who recently celebrated her 10th anniversary with her wife, thought so. Not everyone did.

"Rumor has it that other movement lawyers were not happy about Edie's case," says U.S. District Judge Colleen McMahon. "It did not fit into their strategy for achieving the right to marry. But Robbie saw a human being with a problem that needed to be solved—[Windsor] wanted her money back, and she needed a lawyer. Sounds mundane, but it allowed Robbie to present the issue in equal protection terms—which I thought was the only argument that would ever work—in a way that made it personal, affecting and compelling. ... Robbie, and Robbie alone, was able to see that *Windsor* was the perfect case to light a fire under the issue of gay marriage.

"It was not about a movement, it was not about a cause. It was about Edie Windsor."

Kaplan reminded herself via Post-it Note on her computer that said: *It's all about Edie, stupid.* "My job was to represent Edie, even though I was someone who was obviously impacted by DOMA, and who would reap benefits if we won—which I have."

Kaplan allows that there were moments when her emotions played out. "I was arguing in front of the chief justice and he asked me a question like, 'Aren't politicians falling over themselves to support your side?'" she says. "If you listen to the audio, you can hear my voice crack. I think that crack was Robbie Kaplan bubbling up, because I couldn't keep her down any more."

Marty London, of counsel at Paul Weiss, says there's no keeping Kaplan down, period. When he needed a lawyer to catch a flight to Tokyo to help sort out the Sumitomo copper financial scandal in 1995, he picked Kaplan. "I said, 'Listen. The magnitude of these issues is enormous, and daily; and I need you to go be in charge, and I need you to go now,'" he says. "The only women involved in Japanese corporate infrastructure, at the time, were known as OLS, 'office ladies.' Their one job: Serve tea. It was *Mad Men* to the third power."

He enlisted Kaplan, he says, because she's rock solid. "I'd like to be as intelligent as she, and be as dedicated as she, and to have her ability to make the people around her have 100 percent confidence. By the end of [the firm's] tenure there, about nine months, she had the complete confidence of the corporation. They started calling her *Robbie san*."

Kaplan remembers the assignment well. "The first time all the Japanese came for a meeting, I employed the lead paralegal—male—as an OL," she says. "The Japanese were all looking at each other, stunned, as he continued to walk around and politely pour tea. After a few moments, they all started laughing."

In addition to her civil rights work, Kaplan maintains a healthy roster of powerful clients including JP Morgan Chase, Fitch Ratings and Columbia University. She recently won a case for Airbnb. "The New York attorney general was basically seeking all the data for all people who used Airbnb in New York over a period of three years," she says. "We argued that, 'Look, while you're probably entitled to some information, you're not entitled to everything Airbnb has.'"

"Robbie ... never misses the forest for the trees," says Airbnb deputy general counsel Darren Weingard. "She's really taken the time to understand our business and its transformational effect on the world."

In Kaplan's office, guests sit in casual cream chairs that would fit a J. Crew summer catalogue. Her son's finger paintings hang

on the wall; plaques celebrating her career sit haphazardly on the floor. Bookcases are in the same state of disarray as the half-opened case of Perrier at her feet; she offers a bottle to anyone who stops by. She talks about hitting the city with playwright Terrence McNally and schmoozing with Vice President Joe Biden in the same relatable manner in which she admits she likes country music and fly-fishing.

Kaplan is thrilled that her son will grow up in a world where same-sex marriage is legal in all 50 states. "The amount of 'pinch me' is hard to put into words. The opinion is everything we could have wanted and more—it's not narrow, it's not limited. It's truly amazing."

Then Comes Marriage, her book chronicling *Windsor*, co-authored with Lisa Dickey, hit the bookstores last fall.

"I come from a religious tradition that says that the reason God put us here is to ... the Hebrew word is *tikkun olam*, 'to repair the world.' ... If I have done a little bit of that, I think I did OK." ■



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