Michael S. Jordan

Retired Judge

Circuit Court of Cook County, Illinois

Mediation and Arbitration Services

3817 Brett Lane

Glenview, Illinois 60026-1201

Telephone number: 847-724-3502

Article published in both Bench Bar Section Council Newsletter and ADR Section Council Newsletter

**Blessing or Curse**

**Having an Eclectic ADR Practice**

By

\*Michael S. Jordan (Retired Judge)

When I left the bench after about 26 years and after having heard a wide variety of cases, I had to decide what direction my professional life would take. The analysis I pursued is problaly not much different from others pursuing a career in Alternative Dispute Resolution, (ADR). The first decision I made was to begin a practice where I would serve only as a neutral and not also have clients requiring me to serve as an advocate. While I knew I could and would avoid conflicts if I was an advocate and a neutral, I believed I might be perceived as biased if I represented clients having certain interests. I know others have made a different decision and I am sure those who jealously guard against conflicts as they accept each new client and accept each new ADR assigment can maintain a conflict-free practice. I chose to take an extra step and avoid even the appearance of inpropriety or interest or bias. I also decided I would not be hired to opine on the professional conduct of others to avoid becoming a “hired gun” and not seen as a neutral.

The next decision I had to make was whether I would affiliate with any one ADR entity requiring an exclusive relationship - meaning an affiliation where I would not be able to acquire work from other sources. On the one hand, exclusivity would give me a source of busineess, a mailing address, require only one format for paperwork and billing, and a sort of identiy, but there were serious downsides to this arrangement. If the entity decided I would only receive a certain type of case since they wanted others in their stable to get those other types of cases, I would find my options limited. Likewise, if a newer neutral member of their panel came in and took a large number of assignements while popular at first, I might see dips in my business with no option to go elsewhere. There would be no guarantee of a secure and constant source of business at a level I desired. Furthermore, the compensation would be limited by the amount the entity choose to offer me as a share of their fee.

Another issue I considered if I was exclusive with one entity and regually received cases from them was the possibility – perhaps probability – that I would develop an unrecognized bias to satisfiy the party who supplied the greatest number of cases or to be unable to resist the pressure from the entity to undertand the business end of satisfying a repeat customer in my behavior and awards in return for continued assignments and business. Perhaps others rightfully did not see any possible dilemna and I was incorrect in having this belief, yet I acted based upon my perceptions.

Due to those considerations and other factors, I decided to list my availability with entities not requiring exclusivity. Some entities did agree to place me on their panel without exclusivity. I did find that two entities only adversised and promoted those who did agree to exclusivity. When I was asked for by lawyers, one entity encouraged the lawyers to use others in their stable having exclusive agreements. A strong reason for giving an exclusive, therefore, is to better insure getting the business and being marketed by an entity. Although the lawyers on that case ultimately did get me as their mediator and only with their great insistance, the ADR provider resisted until they realized they would loose their fee if they persisted.

After making my decision to accept cases from multiple sources, including getting cases direct from the lawyers or parties, I soon realized that I could actually spend less time in scheduling when not going through an entity. I could charge the parties less than any entity would charge them yet take home more for myself. Finding a location to provide my service never became an issue. We have used lawyers’ offices, private areas of public places, sites of controversity where disputed damage to property or land could be seen, smelled, felt, etc., or other sites I have secured through friends.

I had to determine if I would accept both general areas of ADR - arbitration and mediation of matters - and whether the need to be judgmental in arbitration would hinder my approach in mediations. I had to decide if my awards in arbitration might show any bias on my part. I concluded that the skills of evaluation, understanding, deduction, and induction were useful and essential for all cases. In a mediation, my understanding of the facts and issues and my judgements are essential to privately hold parties accountable and to give valid reality checks to parties in mediation. I have found absolutely no problem accepting both cases requiring mediation and those ready for arbitration. So long as I am always fair, I would not show any bias. In fact, I decided to name my new business Mediation & Arbitration Services. I have been contacted to arbitrate matters and then the parties decided to have me mediate the matter instead. I have also been contacted to mediate matters and the parties decided to arbitrate instead.

The next matter I had to address was the subject matter of cases that I would accept considering my own temperment, experience, knowledge, and expertise. Honest self examination was essential. I examined the areas of law I had engaged in before becoming a judge and the nature of the cases I heard as a judge and decided that I could easily undertake assignments of all types of cases I had previous experience with but would more carefully review expanding my caseload to new areas.

One expansion I explored was security, contract, and employment cases for FINRA, (formerly NASD), and I quickly realized that the prime tasks for me in those cases involved determinatons of credibilty, reasonableness, and fairness under their rules. The industry terminology such as churning, cold call, suitability, etc. could easily be understood. Likewise, for the railroad industry, there were hundreds, if not thousands, of terms used for their labor discipline as well as contract interpretation cases for which definitions were readily available. The same situation was found in contract interpretation or discipline matters for the United States Postal Service and its unions, the Federal Avaition Administration and its controllers union for their discipline and contract interpretation cases. Likewise, for any commercial case, there was a need to become informed and understand the instrumentalities, process, and products like I had to do in my cases before.

For police, security guard, nurse, other medical provider, or teacher discipline cases the contract language was always essential to master and prior arbitration award precedent was necessary to master. The parties and their advocates always submitted the guideline precedents to consider in all of the many types of cases as lawyers had done in the cases that had been before me over the years. For mediations, I always asked for and received the party position statements with appropriate case law supporting their respective positions to guide me in understanding the principles of law involved. Malpractice cases in various professions were challenging in that much was at stake but aided by talented counsel involved on both sides.

I have taken many types of subject matter cases now over the years but have not found it appropriate to undertake intellectual property matters, although there may be some case in the future in that area that is really no more than a who done it mystery that I would love to help resolve or solve. I found one does not have to know all of the intricies of probate to unrufflle the ruffled feathers of siblings believing their sibling was loved more by dear mom than them. Also, while I am able to deal with matters loaded with emotion such as partnership breakups, siblings fighting over estates, property division for divorcing couples, I prefer those cases that involve sufficient assets or dollar amounts to make things worth while. I shy away from a situtation where I see huge debt that my fee will cause to be increased. Also, I do wish to be compensated to be better able to pay my own expenses.

Having a variety of matters to mediate and to arbitrate, for me, is an advantage. I am not confusing someone’s right tibia injury in one personal injury tort case from someone else’s left femur injury in another case when I have pending a commercial case, a probate case, a tort case, a labor contract interpretation case and another labor discipline case. The change of pace and variety keeps me fresh. Fourtunately for me and for those who use my services, my case load on the bench and before and since has been varied and contiues to go off in new directions. Every case, every person, and every circumstance is different, yet so many are alike. I learn more with each case I am assigned. Experience is a fantastic teacher and opporutnity for growth. I feel I do service for people going through home foreclosure when I mediate their issues and help them find the least painful of many awful choices. Continued education on my part is not only useful; it is essential. Continued personal growth on my part is essential for continued good service.

I feel for me that I am blessed with an eclectic caseload. I have always enjoyed variety in life. I recall the day I was on the bench in Skokie when I had motions on a capital murder case, then heard a traffic case when another judge hearing traffic cases had a personal conflict on one case, heard motions in limine in a law division jury case assigned to me, and finished with a bench trial for a commercial case. The breadth of difference, the burdens of proof, the dynamics, and procedures were all different and kept me going. I was energized and engaged.

There is a challenge getting cases from many sources in addition to the financial burden of paying various panel fees to several agencies such as the Federal Mediation and Concilliation Service and the American Arbitration Association. One has to submit invoices and hours in differenct ways and in different formats. With the National Medition Board, through which I get railroad discipline and contract interpretation cases, I can not do any work or get paid unless there is a federal congressional budget or a continuing resolution for a period in excess of 60 days. Lately, the last year, that has been a problem. I have to track payment from various sources and I have many entities in my ledger and tax records.

The cases I have been assigned have taken me to many states and many cities where I have met many fantastic people and I have seen things I would never have seen had I taken cases only from one source in Chicago. I have served individually and with other neutrals on panels always learning and sometimes teaching while collaborating. The cases vary in value from thousands of dollars to a billion dollars. On balance for me the path I have taken has been on course and the advantages have greatly outweighed any disadvantages.

For someone else it may be best to do only mediation of cases supplied by an exclusive provider of ADR cases, go to the same place each day and to the same office and have most of the arrangements made by someone else working for the entity. There would only be one type of form to fill out for billing hours and only one U.S. Form 1099 at the end of the year for taxes. To me, it would be boring; but for you it might be satisfying. I am delighted with the work I do!

\*Michael S. Jordan, is a retired judge working under the company name of Mediation & Arbitration Services. He may be reached at [Jordanms@comcast.net](mailto:Jordanms@comcast.net) or 847-724-3502. Judge Jordan sat in various divisions and districts of the Circuit Court of Cook County, Illinois from 1974-1999. He has been serving as a mediator and arbitrator since 1999. He was trained in mediation at the National Judicial College in 1998 and later received advanced mediation training through FINRA. He has taught mediation many times for the National Judicial College, the Circuit Court of Cook County, the Illinois State Bar Association and the Decalogue Society of Lawyers. He is a certified arbitrator for the Illinois mandatory arbitration program in Lake and Cook Counties and is a panel mediatior for major cases in Cook, DuPage, and Lake Counties. He serves on panels for the National Mediation Board, Federal Mediation & Conciliation Service, American Arbitration Association, Illinois State Labor Board, Illinois Educational Labor Relations Board, panel arbitrator for the Postal Service and the NALC and APWU in various areas of the Great Lakes Region. He has served on many other panels for other entities. Judge Jordan has authored many articles and delivered many lectures on ADR related subjects. He served as Chairman and is a longstanding member of both the Bench Bar Section Council and the ADR Section Council of the ISBA.