

# Chicago Daily Law Bulletin®

Volume 160, No.245

## Law school and ADR — the legal profession's two common bonds

In spite of their differences, whether in practice area, firm size, specialty or otherwise, there remains at least one common thread between all attorneys — law school.

It is fairly obvious to say that law school plays an important role in the lives of all attorneys, not only serving as the formative years during which all legal minds are crafted but also laying the groundwork for a substantial part, if not all, of the foundation upon which any attorney's endeavors in practice are built.

Another point, seemingly unrelated at first, is that a mere 2 to 5 percent of the approximately 16 million lawsuits filed annually in the United States are ultimately disposed of at trial. As for the remaining 95 percent, a nominal portion are dismissed for various reasons, leaving in excess of 90 percent of the total cases filed to be disposed of via settlement.

The universality of law school for attorneys and the overwhelming case settlement rate do not, as noted above, exist in a vacuum.

The interconnectedness of the two concepts gives rise to an increasingly important question: If, in practice, 90 percent of lawsuits are settled and law school is designed to prepare students for the practice of law, to what extent does law school education prepare lawyers-to-be for the reality of practicing law?

Although no hard and fast answer to this question exists, the importance of alternative dispute resolution education is undeniable and on the rise in many law schools, including here in Illinois.

ADR, which encompasses numerous methods for dispute resolution — from the lesser known mini-trial and summary jury trial to the commonly used mediation arbitration and negotiation — has long-standing roots.

ADR dates as far back as World War II, when the federal

government sought a solution to avoid wartime work stoppages and required employers and unions to use arbitration and mediation to resolve their disputes, rather than halt production of necessities such as tanks and airplanes.

Despite that fact, however, ADR remains widely misunderstood. As noted by visiting professor of conflict management studies at DePaul's Driehaus College of Business and longtime ADR practitioner Robert "Rocky" Perkovich, "even in the year 2014, I encounter (clients) that think mediation is where we're going to burn incense and chant, or they get (mediation and arbitration) confused and think the mediator is going to make a decision."

As 99 percent of the cases over which he presides as an arbitrator and/or mediator involve parties represented by counsel, Perkovich's point sheds light on the inability to properly educate and advise clients through the ADR process best suited to resolve their problems.

The enforcement of ADR classes and programming in law school curricula are, by the numbers, at bit underwhelming. According to the American Bar Association's Section of Dispute

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Resolution, only 23, or approximately 11 percent, of the 204 law schools approved by the ABA reported requiring some form of ADR coursework to graduate.

Fortunately, this statistic is far more bleak than the forecast provided by those in the field working with law schools and students.

Alyson M. Carrel, clinical assistant professor and director of

### COLLABORATIVE CONCEPTS



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the Center on Negotiation and Mediation at Northwestern University School of Law, positively characterized the current state of ADR education, noting "almost every law school has some sort of dispute resolution programming or courses in their curriculum ... so I would say that we've definitely seen growth in that area in the last 10 years, which a positive change in the past 10 years."

Reflecting on the absence of any ADR courses during his law school experience, Perkovich opined, though anecdotally, "that the breadth of ADR in law school curricula is significant," concluding, "I would be shocked if there was a law school that didn't have some sort of ADR portion in its curriculum."

In August, the ABA announced changes to its accreditation standards set to take effect next year and increase over the next several years. Law schools must now require students to take at least six hours of clinical coursework or other "experiential" learning opportunities.

This new requirement speaks directly to the increased understanding of the importance of ADR education, as it is most effectively taught in a simulation or clinical setting. There are currently 40 ABA-approved law schools maintaining some form of an ADR clinic. Countless me-

diation, arbitration and negotiation classes in law schools are conducted through simulations.

The bottom line for ADR education, however, goes far beyond the practical effects it may have on an attorney's work. Learning the various ADR techniques is likely to make attorneys more successful and well-rounded people.

From Perkovich's perspective, "it's important to teach (ADR as early as) high school," given that few of the skills learned are exclusive to the various ADR processes, but are in fact fundamental communication skills, such as managing emotions, listening, asking good questions and empathizing."

Such core skills, as echoed by Carrel, afford attorneys an opportunity to become better problem solvers and remove themselves from the traditional "issue-spotting" mindset in order to best identify and meet their clients' true needs.

The benefit of ADR education that goes unspoken, but pointed out by Carrel, is that attorneys with these ADR skills "have higher client satisfaction and see creative ways to solve problems, [thus] have better work satisfaction and better balance because (their practice) is not fighting all the time with other people ... but instead, it is conversation and dialogue and problem-solving, and I think it's just less stressful."

The pervasive notion that litigation is the "only way" to handle legal disputes is surely, even if slowly, eroding due in large part to the increasing implementation of ADR programming in law schools.

Clients are increasingly demanding options, and it is imperative that law students learn all of the skills necessary to become a great lawyer.

Right alongside courses in counseling and negotiations and trial advocacy, we must be teaching these prospective lawyers how to properly prepare a client and a case for any form of alternative dispute resolution.