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The Future of ADR: Innovation, Training and Investments

By Chris Poole and Kimberly Taylor

Perspectives from JAMS leadership

The COVID-19 pandemic changed virtually all aspects of our lives. By some accounts, we experienced a decade of technological innovation in the span of two years, and that was certainly true in the legal industry and at JAMS.

JAMS has been strategically investing in technology for many years, although that accelerated in early 2020 as we learned about an emerging pandemic, lockdowns in different parts of the world, and anticipated supply chain problems. We doubled down on our investments to rapidly equip our entire workforce to work remotely, and we conducted daily sessions to assist our neutrals and clients adopt virtual platforms for mediations, arbitrations, and other dispute resolution processes.

JAMS had for many years offered virtual platforms such as Endispute™ and Case Anywhere for document management, but parties mostly preferred to conduct business as usual, believing that when there is an interest in preserving relationships, or when resolution requires the venting of feelings and emotions as a form of catharsis, only traditional, in-person mediation and arbitration are effective. There was strong skepticism about whether a fully online platform could be used to resolve complex disputes. However, when courthouses were temporarily shut down, and as lawyers continued to try to meet the needs of their clients, the adaption to this new virtual world occurred very quickly.



The JAMS Institute—an internal training and development arm—launched training sessions for neutrals and clients to stay abreast of trends and emerging technologies. In addition to ongoing programs aimed at honing mediation and arbitration skills, specialized courses are offered in a wide variety of fields, including cyber disputes, bankruptcy, complex insurance, employment, construction defect, and intellectual property. We also deliver courses on ethics and diversity, equity and inclusion. The JAMS Institute strives to provide programming that stays relevant and current, including sessions on how the pandemic has impacted the world of employment and supply chains issues in commercial disputes.

Throughout the last half of 2020 and into 2021, the vast majority of cases at JAMS were resolved remotely, although JAMS continued to invest in technology in anticipation of a return to in-person proceedings, including the build-out of dedicated “Zoom rooms” with state-of-the-art camera and microphone technology, and procured hundreds of laptops and other devices so that cases run

smoothly and our workforce can always support our clients, whether cases are in person, remote or hybrid (with some parties participating in person and others participating remotely to save time and money).

JAMS also increased investment in its people to make it a priority to continue providing the concierge level of service we pride ourselves on. Our Virtual ADR Moderators are available to assist parties throughout the process, including scheduling pre-hearing test runs, greeting parties as they arrive at their virtual or real conference room, ensuring everyone is in the right place, and providing after-hours technical support.

We are seeing a slow but steady return to our Resolution Centers, and based on client surveys we have conducted over the past several months, we anticipate that this trend will continue. At the same time, we recognize that the world has changed, and we are ready to handle matters whether virtually, in person, or hybrid.

Although the pandemic has been challenging, it has offered a unique opportunity to reset our expectations about how we will work—and resolve disputes—in the future. For example, the use of technology allows us to break down geographical barriers, both within the U.S. and across the globe. Parties can choose neutrals who are based in any location, which can result in time and cost savings. And while it is more difficult than ever to look into the future of ADR, we are more focused on anticipating changes and identifying new and enhanced ways to help our clients prevent and resolve conflicts.

Of particular note is a new offering from JAMS Solutions, which recently introduced JAMS Pathways™—an innovative set of in-person and remote facilitation services based on proven methods of dispute resolution that can help clients avoid conflict or address it before relationships become strained, reputations are tarnished, lawsuits are

filed and/or employees leave or become disenchanted or disengaged. This in turn often leads to higher productivity and lower costs of managing conflict.

Finally, the future of ADR can't be discussed without focusing on diversity, equity, and inclusion. The legal industry has historically not been very diverse, but through effort and investment, that is changing. JAMS has long been committed to highlighting the need for diversity in the ADR industry. We were one of the first ADR providers to sign the Equal Representation in Arbitration Pledge in 2016 and hired the first full-time director of diversity outreach in 2019.

We believe that in a global marketplace, a company should strive to employ a diverse workforce because it significantly enhances the quality of the services provided. For JAMS, that extends to how our clients choose neutrals to help resolve their cases. We introduced a series of steps to increase our efforts to present diverse neutrals to our clients and we offered a sample Diversity and Inclusion clause that calls for the consideration of diverse neutrals when choosing an arbitrator. To further shine a light on the need to increase the utilization of diverse neutrals, we created the JAMS Neutral Utilization Report to aid law firms and corporate counsel in measuring their use of diverse neutrals. Our hope for the future of ADR is that the cadre of dispute resolution professionals reflects the communities we serve and is more inclusive across all dimensions of diversity.

ADR will obviously continue to play a critical role in the legal industry for many years to come, but the past few years have provided a stark reminder that ADR providers and their clients must innovate and adapt their dispute resolution skills in this ever-changing landscape.

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