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PERSPECTIVE

ADR sees another boom year, becomes 'way of life'

By Malcolm Maclachlan

Daily Journal Staff Writer

The alternative dispute resolution business is booming for the second straight year, according to executives at the leading companies. But the reasons may be different this year.

"I don't think it's COVID anymore," said Lucie Barron, founder and president of ADR Services Inc. "I think people have adapted to a totally different way of life."

That way of life demands a lot more client centered, 24/7 attention from alternate dispute resolution companies, she said. Attorneys and insurance claims adjusters are more likely to ask questions of staff and schedule virtual sessions on evenings and weekends, Barron added, options the courts don't offer.

After an initial dip in the first few months of the pandemic, many of the top companies told the Daily Journal business shot up above prepandemic levels in the second half of 2020. At least some of this boom appeared to be driven by plaintiffs who despaired of ever seeing the inside of a courtroom as courts shut down and backlogs grew.

Courts have gotten more active in recent months, through a combination of virtual hearings and the resumption of in-person trials using COVID-19 safety measures. This second transition appears to have put the industry in a no-lose situation.

With trial dates now looming, said Dario Higuchi, managing

member at Signature Resolution, defendants are now driving new business.

"Business has been even better than 2020, which was already a record year," he said. "I think it's mostly due to more of the courts reopened and moving more of the

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cases. That's something we suspected from the beginning, that once the courts opened up more, it would drive even more work to the private sector."

This echoes something former Consumer Attorneys of California President Micha Star Liberty said a year ago: "Trial dates get cases settled."

Plaintiffs' employment attorney Cliff M. Palefsky contested the idea the civil courts system is opening back up. He said he's seeing huge backlogs, even in getting a default judgment where a defendant failed to show up.

"It's true compared to a year ago, but it's not true across the board," said the partner with McGuinn Hillsman & Palefsky in San Francisco.

Palefsky is known as a critic of forced arbitration, often testifying in the California Legislature. But he said he supports voluntary arbitration, and completed two complex arbitrations from start to finish this year.

"I never thought virtual hearing

could work, but they worked better than I thought," Palefsky said.

He added, "It makes sense to me that the ADR industry is booming because they've done a better job of adapting."

But Barron said she's seen a new trend: arbitration dates get

said. Employment cases have grown the fastest, she added, with a lesser increase in business interruption claims. Barron said ADR Services has seen an uptick in wildfire cases.

Higuchi said business and employment makes up the majority of Signature's work, with a smaller but stable family law practice. The mass tort and intellectual property matter have grown, along with a variety of case types spilling out of California's overburdened federal courts, he said.

Much of his company's business has been driven by the improving economy, with more business leading to more disputes, he added. Barring another significant economic downturn, he said he expects bookings to continue to grow.

The industry also doesn't seem to have had the same difficulty hiring new workers as many other sectors have complained of. Taylor said JAMS added nearly 25 new neutrals this year and plans to hire a similar number in 2022. ADR Services added about 10 during 2021, while three left the firm due to retirement or other reasons. But one newcomer was former California Supreme Court Justice Ming W. Chin.

Signature was founded in 2017 by four retired Los Angeles County Superior Court judges. The company's selling point has been the quality of its panel. Higuchi said eight to 10 neutrals were added during 2021. The company opened a San Diego office with two neutrals in August. It added four more in November. They included Ronald S. Prager, a former

San Diego County Superior Court judge who made a lateral move from Judicate West.

“I don’t think it’s been that hard,” Higuchi said. “I think there are more people trying to enter the private ADR world.”

Neutrals are only part of the employment equation. Taylor said the company has been hiring virtual ADR monitors to help manage online sessions. JAMS has also grown its information technology staff by 30% since the beginning of the pandemic, though much of that hiring would have hap-

pened without COVID.

“JAMS’ investment in technology began well before the pandemic hit in 2020,” Taylor said.

ADR Services was in the midst of a four-year overhaul of its technology platforms when the pandemic hit, Barron said, a project that was completed this past spring. She added that the company’s information technology spending has gone up by more than \$1 million. She said she now employs about two dozen Zoom coordinators, a job that didn’t exist at the company before the pandemic.

A year ago, many companies touted the thousands of virtual sessions they held with clients. Taylor said recently JAMS has done more than 20,000 virtual sessions since the pandemic began.

ADR Services has held almost 11,000 virtual sessions, Barron said, with 15% to 18% of sessions held in person.

But this metric now seems less relevant, many say, as tools like Zoom are simply integrated into the way these companies do business. Going forward, many cases will include both virtual and

live portions.

“The majority of our cases continue to be virtual,” Taylor said. “We are seeing a little bit more in person. We were anticipating that hybrid would be our future, and that’s been borne out.”

She added: “We’ll never go back to completely in person. This just works really well. The biggest surprise is how people have embraced it. It’s just going to be a regular way of conducting ADR forever.”

malcolm_maclachlan@dailyjournal.com