THE BUSINESS OF LAW

LAWYERS and CLIENTS

By Margaret A. Jacobs

Arbitration and the Like Attract More Converts And Revenue at Firms

NOTHING DELIGHTS corporate clients more these days than reducing costs. And nothing trims the cost of litigation better or faster than avoiding court altogether.

So it isn't surprising that after years of viewing mediation and arbitration as threats to their lifeblood, law firms have slowly begun to incorporate so-called alternative dispute resolution into their practices.

What's startling is that they are now collecting sizable chunks of revenue for doing it. Several firms now bill more than $1 million a year in mediation and arbitration-related fees, and scores more have designated ADR partners and practice groups, according to a recent survey of 124 law firms by the CPR Institute for Dispute Resolution, a nonprofit consortium of businesses and law firms. Last year, 19 of the top ADR-billing firms collected $18.9 million from court alternatives.

In the past two years, ADR expertise has become a necessity for law firms to win and retain ever-fickle corporate clients. About two-thirds of firms surveyed by CPR had organized themselves to meet corporate demand for ADR, and a third of those had generated new business as a result.

"Until now, it's been us pushing them," says L. Gene Lemon, vice president and general counsel of Dial Corp., formerly Greyhound Corp. "We'll try damn near anything anyone will suggest" to avoid costly court litigation, he says.

For law firms, ADR practices involve representing clients in mediation or arbitration, or having partners serve at their regular hourly rates as arbitrators or mediators in disputes between nonclients. In arbitration, disputes are resolved by arbitrators whose decisions are usually binding. Mediators try to negotiate compromises.

Nowadays, some ADR disciples at law firms sound eerily similar to general counsel in their enthusiasm for "court lite." Mediation and its counterparts are "like motherhood, baseball and ice cream," gushes John E. Nolan Jr., a **Steptoe & Johnson** partner in Washington. They are "a cry for reason in the judicial system," he adds.

LITIGATORS AREN'T likely to be easily weaned from their lucrative argumentative habits. Only 5% of cases handled by outside counsel last year were resolved through mediation or arbitration, according to a Price Waterhouse survey of law firms. "I wouldn't exactly call it a growth area," cautions Bud Holman of Kelley, Drye & Warren in New York.

But the firms that have been most successful in profiting from the trend have designated a senior partner or a committee to serve as a combined ADR cheerleader and librarian. They provide information, advice and encouragement in an attempt to put more ADR in the firm's professional diet.

The ADR gurus now tell their own partners to consider placing flexible mediation and arbitration clauses in contracts. Litigators at the firms, meanwhile, are told to consider ADR to settle new disputes. A few have created marketing materials touting their ADR services, and some have offered client seminars.

Jean S. Moore, the partner responsible for ADR at **Hogan & Hartson** in Washington, fields three to four queries a week from firm colleagues. They ask about the rules, the qualifications of particular arbitrators and the advantages or drawbacks of different private-justice companies. Last year's retreat for partners at the firm devoted a half-day to the topic, she adds. Steptoe & Johnson's own partnership agreement provides for mediation or arbitration of disputes that might arise, says ADR partner Mr. Nolan.

Attorneys say representing clients in arbitration - a trial - like hearing before a private judge - is the most lucrative form of ADR. In terms of billable hours, if litigation is filet mignon, arbitration is a porterhouse steak and mediation the vegetarian option. Indeed, single arbitrations have generated more than $1 million in fees for some firms.

BUT in another sign that they have banished expensive adversarial attitudes, many partners at law firms say they recognize that mediation is usually preferable to arbitration because of its speed, low cost and high success rate.

General counsel like mediation, too. "Conventional arbitration proceedings just don't appeal to most general counsel," says John W. Martin, who holds that title at Ford Motor Co.

Some big mediation money has been made in Florida. Since 1988, state courts there have required parties to attempt mediation before going to trial. Two of the three federal court districts in the state have followed suit.

Ignoring initial lawyer hostility to the program, John Upchurch, a litigator and former state-court judge, began offering his services as a mediator. "I frankly thought it would be a small part of my practice," he says.

But last year, his **Cobb Cole & Bell** firm in Daytona Beach generated $1.5 million, some 17% of its revenue, by supplying mediators in 2,200 commercial disputes. Eight of its 45 attorneys work as full-time mediators. Twelve others mediate part-time. "It's been our fastest growth area," he says.

The firm also has parlayed its mediation experience into an unusual association with Toro Corp. The lawnmower manufacturer has paid the firm an annual fee in the "low six figures" to serve as its national settlement counsel. Under the program, a Cobb Cole lawyer assists before product-liability complaints are filed in court to see if disputes can be resolved by negotiation and limited fact-finding. If that fails, a mediator is used.

So far, more than 90% of claims have been settled, and Toro has saved almost $3 million in insurance premiums and legal fees, Mr. Upchurch says.

The program hasn't gone unnoticed. Last fall, CPR nominated Cobb Cole for its ADR achievement award. The firm lost, but only because it had nominated the winner: Toro.