

Missing a Strategy for Your ADR Practice? Here Are Some Tips

By Anna Rappaport

When you ask ADR professionals about their business strategy, most will say something along the lines of “being an expert in my specialty area and great customer service”. Some may specify a niche but few clearly differentiate themselves from their direct competitors. This is a sign that they don’t have a real business strategy. It is one of those terms that gets bandied about but which few people truly understand. A business strategy is a deliberate choice regarding where to focus your time and resources, with the ultimate intention of distinguishing yourself from the competition and becoming more profitable. ADR professionals are not the only ones who tend to lack an actual strategy. Even multi-billion dollar corporations struggle with the same challenge. Professor Roger L. Martin, an award-winning author and consultant, works with Fortune 500 companies and asks a brilliant question that separates a real strategy from an imposter in the blink of an eye. “Could you make the opposite choice without looking stupid?” Applied to our example, that would mean, “Do you know of any ADR professional who is aiming for lack of expertise and lousy customer service AND making lots of money at it?” Not likely. This article will first look at why real strategy is so rare and then offer some guidelines for designing a tailored, viable strategy of your own.

The reason that genuine strategy is so uncommon is that it requires hard choices among competing options, where intelligent people could disagree and brilliant people could, potentially, make an erroneous judgment call. In short, when we make a decision, we face the risk of being wrong. Consequently, most people sidestep difficult choices in their personal and professional lives: they stay in jobs they don’t like, postpone firing employees who clearly need to go, and make themselves crazy trying to do it all rather than narrow their focus. It’s natural and normal. It just isn’t very effective. This inclination to dodge hard decisions tends to be even more extreme among lawyers, who are among the most risk-averse professionals. Attorneys are paid to be exceedingly detail oriented, never make mistakes, select the ideal words, etc. The focus is on anticipating and protecting against problems. Performing the job as flawlessly as possible is the way lawyers keep themselves and their clients safe. Yet, the perfectionism, which is a core value of the legal profession, is in opposition to risk-taking, which is essential to effective business strategy. Although neutrals are different from other attorneys in many ways, the legal training and years of operating in a legal environment still have an impact. The silver lining in all of this, however, is that the propensity for most people to avoid making difficult choices and thus not pursue a real business strategy leaves open immense opportunities for those who ARE willing to deal with the discomfort and take a leap of faith.

Once you decide that is worth your time and energy to create a business strategy, the first task is selecting which clients to target. Ideally, you want to choose a segment of the market that is large enough to give you a thriving business but small enough for you to be seen as the obvious go-to neutral of choice. Lets look at examples, starting with the question of how to narrow down a broad specialty area. Say you are a divorce mediator. What is a segment of that market that you could dominate? You would want to consider both geography and specialty. What kind of cases do you really love working on? With what type of cases have you been particularly successful? You may want to target divorces where the spouses have come from different countries or cases where there is a custody issue involving children with special needs. Once you know the segment of the market that

you want to target, you need to decide the appropriate geographic region. The narrower your area of specialty, the larger the region on which you could reasonably focus. Lets also consider the opposite dilemma, how to broaden a narrow target market. Say you are a well-known neutral in a small city specializing in business transactions. You may have been doing this for years and have a reputation that provides a steady stream of business. You have dominated your niche and yet the amount of work it supplies is not enough for you to leave your firm and be a full-time neutral. The question becomes how to expand your customer base. You could continue doing what you are doing, and add an additional niche area. Niches don't have to be exclusive. You could also expand your target area geographically. Once you have dominated one segment of the market, you are ideally positioned to expand.

Now that you have identified the best clients on whom to focus, the next step is to decide how you will stand out from your peers and provide something different from your competitors. Creating a good website, public speaking, publishing articles, and other marketing activities are important; but what makes those meaningful and effective is that your approach, demeanor, attitude, expertise or some other factor makes you noteworthy. You want to offer something that others do not. In the world of entrepreneurship, this is called your value proposition. At this stage, we are not talking about marketing and perception; it is about substance. I find that ADR professionals generally have difficulty identifying what really makes them different from the competition. Litigators and transactional attorneys see each other in action or at least see one another's work product; but mediators and arbitrators rarely get that opportunity. This creates a bit of a challenge for deciding how to differentiate yourself from someone else in the same niche. You may be tempted to focus on previous experience. "He was inside counsel, while I was a partner at a law firm." Of course, that will have some bearing on your perspective. Yet, the most important factor is not what you did in the past but how your services offer something better or different from what clients could get elsewhere. Another factor to consider is the distinction between providing a better service and having happier and more satisfied clients. Simply being a better mediator or arbitrator according official standards or your own subjective opinion does not necessarily buy you anything. You need to make sure that the special qualities or competencies that you choose to focus on are ones that make a real difference to the clients. The goal is to surprise and delight the clients, both parties and attorneys. Happy clients translate into more clients and a profitable business.

If the key to a solid value proposition is happy clients, how do you determine what makes clients in your target market happy? Generally speaking, you must discover areas where your target clients are dissatisfied with their current options. This is where market research comes in. You don't have to do any sort of formal surveys or focus groups. Just ask parties and attorneys what they like and don't like in a mediator or arbitrator. I spoke to an employment lawyer recently who told me about her experience with mediation. She represents employees and said that the employers offer to pay for mediation "in order to be politically correct," but that the mediators they provide are young, with "no empathy or life experience" and that they are biased. According to this lawyer, when her clients make proposals, the mediators don't dig deeper to understand what the clients are proposing. Having spoken to a fair number of attorneys about their experiences with mediation, this type of perception is not as unusual as we would wish. I'm not necessarily saying that these clients are correct in their assessment of the mediators. Even the most objective neutral can be misperceived from time to time. Nonetheless, when clients are dissatisfied, it indicates an opportunity for others to differentiate themselves and create highly successful practices.

Once you know areas of dissatisfaction, it is important to ensure that you are well suited to address those particular issues. This is where self-awareness comes in. We all have strengths and weaknesses. One person may be great at coming up with creative alternatives that leave both parties far more satisfied than they expected. Someone else may have a talent for resolving cases quickly. One person's empathy may be "off the charts" while another's responsiveness and efficiency "knows no peer." There are many styles and approaches that can fit well with clients. The key is to find the sweet spot where your personal style, talents and competencies intersect with the needs and preferences of your target market.

By now it may be clear that developing a business strategy is a subtle and complex process. Some individuals may have exceptional clarity and prescience right off the bat, but for most people, developing a strategy is a process involving some degree of trial and error. Indeed, we haven't even touched on tactics or implementation, which present their share of challenges. Like most things in life worth pursuing, creating a successful ADR practice will likely require developing new competencies as well as achieving a higher level of self-awareness. Nevertheless, the fulfillment, satisfaction, opportunities and income it produces are well worth the effort.

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