

Should I Quit My Day Job?

Two Paths to a Career in ADR



By Lisa Brogan and Alex Yaroslavsky

If there is one phrase that you can almost be guaranteed to hear at any program on getting started in ADR, it is “Don’t quit your day job.” The common wisdom is that it takes three to five years, and if eating and maintaining a roof over your head are among your goals, then—well, you get the idea.

But this is not a one-size-fits-all world. We thought it would be interesting to show you how two practitioners entered the ADR profession—one by honoring the common wisdom, and the other flying in the face of it. Having come at it from two completely different standpoints, we sat down and asked each other some questions about our journeys.

What is your background?

Lisa Brogan: I’ve been a lawyer for 26 years, having gone straight from college to law school, so it’s the only work I’ve ever really known.

I did a few different things along the way, but the bulk of my career was spent as in-house counsel, where I focused on business and corporate matters, and employment law issues.

Alex Yaroslavsky: I have a different background. I started my career as a systems integration consultant. I wrote computer programs and did a lot of technical work at the beginning of my career.

Some of my assignments included speaking with users about their needs, as well as doing presentations explaining the benefits of the new systems I was developing.

I quickly discovered that I enjoy interacting with the users and liked getting to understand their concerns and needs. I didn’t know it at the time, but those are just the qualities useful to a mediator.

What led you to ADR?

LB: My company was involved in a complex commercial arbitration administered through AAA. I had worked for this company for 12 years, and we were facing one of our biggest challenges. A tremendous amount was riding on the decision of the arbitrators.

I sat in the room, day after day, trying to discern how they were leaning, wondering if their questions reflected where they would come out, wondering if we would survive the outcome of this whole affair.

I jumped back and forth between hopeful, nerve-wracked, and despondent, and finally just couldn't wait for the whole thing to be over. Then I looked up at the head of the table at three men who, I trusted, would do their very best to understand the mountain of information being presented to them, and, in the most fair and just way they were able, render a decision. And then their work would be done. I wanted to be at the head of the table.

AY: When I was in graduate school, I saw a flier in my mailbox. A local community dispute resolution center was offering a free 40-hour mediation course. I didn't exactly know what mediation was, but the price was right, so I signed up.

I completed the course and found that I really liked mediating. I also noticed that I had a certain amount of instinct for when to caucus, when to ask probing questions, when to be quiet and listen, and so forth. Still, if someone had asked me if mediation was going to be a large part of my professional life, I doubt I would have said yes.

After graduating, I returned to New York and began looking for a job in the finance industry, where I had previously worked as a consultant. One night I was channel surfing and noticed an ad for mediators on one of the local access channels. I remembered that I was a mediator, so I wrote down the number and called up the agency. Soon thereafter, I began mediating cases.

How did you decide to go pro?

LB: My experience in our company's arbitration planted a seed, but it was several months before I committed to pursuing a career in ADR. I started out by attending a number of CLE programs on various ADR topics.

Arbitration was where I thought I was headed, but as I spent time listening to various speakers, I heard a lot about mediation, with which I had only fleeting familiarity; collaborative law, which I had never heard of; and hybrid and developing processes, which gave the field a depth and color that I found intriguing. I couldn't make out the big picture—what it would look like in the end—but the more I listened, the more I believed that this was where I wanted to put my energy. I knew, perhaps for the first time, that my personal values and professional goals were firmly in sync, and that meant a great deal to me. It would take my first training to seal the deal, but in those early weeks and months, I never heard anything that gave me pause. Rather, it all made me want to jump in with all I had.

AY: I have been consulting in the corporate sector for about 10 years. My projects are often technical (creating a database to collect and report business information) or process (creating more efficient ways of doing things). However, in some ways, I use my mediation skills every

day. Clients are often upset, under pressure, and aren't always clear about what they want. That's when active listening and asking open-ended questions helps me to understand the client and create a sense of comfort and build trust with the client.

For several years, mediation was something I did as a volunteer, on a part-time basis. Gradually, however, I began to meet more and more people in the industry. Over time, I began to hear of rosters that were accepting mediators. I applied for several rosters that seemed interesting to me, and slowly began to build my experience as a mediator.

I had also been doing training as part of my corporate practice and enjoyed it. I liked building presentations, and working with audiences. I am an impatient trainee, so I try to present the kind of training that I would enjoy if I were sitting in the audience. At one point, nonprofit agencies began asking me to help them train new mediators. After I did several modules in nonverbal communications and had gotten positive feedback from the audience, I started looking for more opportunities to train.

For me, having constant income while I was building my practice was important—financially and psychologically. My average client engagement is approximately two years long, and usually takes up all of my time during business hours. Consequently, I could only grow my mediation practice part-time and during gaps in my consulting schedule.

What trade-offs were you faced with as part of your decision?

LB: Does being terrified count? Actually, I'm kidding. The trade-off was obvious—I sacrificed security and financial freedom. But once I made the decision, it became an article of faith for me—I would do what was necessary, and everything would work out fine.

I didn't know what that looked like, or how long it would take, but I was so sure about what I was doing that I honestly can't recall any moments of real fear. I made a full-bore commitment, emotionally and psychologically, to move forward and make a career in this field, and I had complete peace of mind with my decision, even though I was engaging in the professional equivalent of jumping off a cliff.

Of course, I had to make financial arrangements to get through at least a couple of years without an income,

Lisa Brogan is a full-time arbitrator and mediator in labor, employment, and commercial matters in Manhasset, New York. Full biographical information is available at www.lisabrogan.com, or contact her at lisa@lisabrogan.com.

Alex Yaroslavsky is a mediator, trainer, and executive coach in New York City specializing in commercial and workplace disputes. His full biographical information is available at www.yarogroup.com. Alex may be contacted at alex@yarogroup.com or 347-229-1690.

and that meant paring back my lifestyle a bit. I didn't miss anything. I was so fulfilled with building this new professional life for myself, I had neither the time nor the inclination to feel that I had given up much of anything.

AY: Building a business part-time is not ideal. Over the past 10 years I have had to put marketing and business development on hold because a corporate client hired me for a long-term project. As a result, while I have been able to earn a stable income over the past decade, the income came as a result of corporate projects rather than mediations.

My dilemma is that, in the short run, I have been able to earn significantly more by working with corporate clients on technical projects than I could as a mediator. However, corporate clients expect a high level of service, and I am rarely able to do mediation work while on an engagement.

Over time, the compromise of building my practice part-time has resulted in my overall ability to make a living, but not always from doing the work I love.

How did you select your training?

LB: The first one selected me. I was groping around in the dark, doing Internet searches and the like, but couldn't figure out if I needed a 40-hour training or a masters in mediation! At one CLE program, someone mentioned the John Jay Dispute Resolution ListServ, as if it were the Holy Grail of information in the field.

I signed up. As the email started rolling in, I felt like I had finally tapped into the community.

When Woodbury Institute at Champlain College advertised a basic mediation training that was just a few weeks off, I saw my first opportunity to get my feet. So, with my husband and my pup in tow, we headed for Vermont. The next four days revealed to me that I had found my way right to the place I was meant to be. I loved it, or as I like to say, I drank the ADR Kool-Aid. I was hooked.

AY: I took my first training class while I was in grad school. The class was free, so I took it. Since then, I have taken other mediation training classes to expand my knowledge of the field. Some classes appeal to me because I have heard good things about the instructor.

Other trainings help me understand a narrow specialty with which I am not familiar (e.g., victim-offender mediation). At other times I take a course to qualify for a new roster.

What did you do after the training?

LB: More training. And then some more training. And then . . . I really wanted to be good at this, and unlike Alex who jumped right in, I needed to build my confidence through more demonstrations, role plays, and the like. Part of me had been harboring a yen to go back to school for some time, so I felt great about it.

I also knew that much more had to be revealed about the different ADR practices before I would know where I felt most comfortable and where my skills were strongest, be it mediation, arbitration, collaborative law, ombudsman, or some other newly emerging discipline.

In one year, I completed more than 300 hours of stand-alone training programs. I also completed a certificate program at the Cornell Industrial & Labor Relations School, which has given me a real leg up in the field of labor arbitration.

I recognized myself for what I was—brand new to this work—and the more perspectives, advice, guidance, and practice I could get from and with those who had distinguished themselves before me, the better off I knew I would be.

For me, it was an investment in my future—and not a small one, both in terms of time and money. I can already see that investment paying dividends.

I also joined a number of bar associations and began attending events regularly. People got to know me, and I started to become comfortable identifying myself as an ADR professional. The importance of networking and getting yourself known cannot be overstated.

AY: After I took my training and returned to New York City, I started mediating cases in Staten Island, Manhattan, and Brooklyn. I did as many cases as I could fit into my schedule to gain as much experience as possible. Although these cases didn't pay, each one I did helped me to sharpen my skills and feel more confident. I also felt a great sense of accomplishment when I was able to help parties end the mediation in a better place than they were when we started.

What are the critical skills of an arbitrator/mediator?

LB: To quote one of my teachers, "patience and perseverance, patience and perseverance, patience and perseverance."

AY: There is a healthy debate among mediators about the relevance of industry skills in the role of mediator.

I also noticed that I had a certain amount of instinct for when to caucus, when to ask probing questions, when to be quiet and listen, and so forth.

—Alex Yaroslavsky

In my view a mediator needs to understand the language of the parties, including industry terms, standard legal practices, and so forth.

Of the mediators I've observed, the one skill I have found to be vital to moving the case forward is helping parties let go of the conflict, its injustice, hurt feelings, etc., gain clarity about their interest, opportunities, and risks, and move the conversation into the area of brainstorming possible solutions that will address their needs.

To do this, the mediator needs to make each party feel heard and understood without being judged.

This ability to capture the emotion of the conflict is the one skill I have seen effective mediators display. It is a subtle skill, but highly effective in moving the mediation forward.

How did you start getting on rosters?

LB: I waited until I had enough cases under my belt in the pro bono arena that I felt I had something meaningful I could say on the applications, and it paid off.

There are many opportunities for practicing your skills on a pro bono basis that anyone starting out should take advantage of. The most important of these for me was the apprenticeship at the community dispute resolution center (for me, it was CMS in Queens), which gave me 13 weeks of progressively greater involvement and responsibility in live mediations, and built not only my skills but also my confidence. Similarly, the New York court program that provides arbitration and mediation services for the resolution of attorney-client fee disputes needs volunteer neutrals to handle a heavy case-load. They will train you and offer you opportunities every month to take on cases.

Once I had some "seat time," the applications were easier to approach. I was accepted onto many court rosters and began getting work right away. Since then, momentum seems to have taken over.

The important thing is to get started and build your resume. The best starting place for paying work is the court-annexed mediation programs.

AY: I am on several rosters: CCRB, FINRA, NYC-OATH, NYS Supreme Court, NJ Civil court, and the US Bankruptcy Court (Eastern District).

Some rosters are more difficult to join than others,

but all require a basic training course and relevant experience.

Most of the opportunities to join rosters came to me through mediation experience, being in the industry for a period of time, continued training, and active networking.

What advice do you have for a new mediator?

LB: Those getting started in the field will want to develop relationships with established professionals in the field, and approach one or more of them about acting as their mentor. Of course, the best of these practitioners have very busy schedules, but they really do want to help. Set yourself apart. Be the person who is doing all the right things, putting in the footwork, doing the pro bono work, getting involved. That is the person they are most inclined to help, because they know you are serious and that their time with you will be well spent.

I have worked hard at developing relationships with the people I've come in contact with, either as teachers, serving on committees, chairing programs, or just sharing experience and information. Alex was one of

my teachers in the mediation training I took at John Jay. A year later, he had me back to talk about how I was progressing in the field, and we continue to collaborate on various projects.

Also, don't discourage easily. You will hear a lot of people talking about how hard this is, how long it takes, how many obstacles to entry there are. That may all be true, but it can be done. Hang in there.

AY: First, find a good training course. Ask to speak with recent graduates of any training you are considering and find out the students' experience.

Next, immerse yourself in the field as much as you can. Take a good training course (or two). Get onto mediation distribution lists, join LinkedIn groups, read blogs, attend conferences. Meet as many colleagues as you can, and volunteer your services to the extent possible. Organizations are always looking for energetic volunteers and will appreciate your commitment to the field. Your name will become known, and you may be invited to present at a workshop or speak at an event and thus promote your practice.

At the same time, keep in mind that your colleagues are not likely to be your clients. So be sure to join organizations and networking groups where your clients (or potential clients) are likely to congregate. ♦

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