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**ENTREPRENEURSHIP FOR NEUTRALS**

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## **Entrepreneurship for Neutrals**

A colleague of mine jokingly calls his mediation practice “an expensive hobby” among other colorful things. (Avi Schneebalg of Brussels Business Mediation Centre - [http://www.cedr.co.uk/congress/pdfs/mediation\\_advocacy.pdf](http://www.cedr.co.uk/congress/pdfs/mediation_advocacy.pdf)). In actuality, Avi is a prominent attorney and mediator in Belgium, but his point is well taken; to develop a sustainable practice, resolutionists everywhere must overcome many challenges. Most full-time ADR practitioners I know are solo mediators and/or arbitrators. Those who have affiliated with others usually have done so as members of a panel or as contractors. Some share staff and conference rooms with another complementary practice. Still others have joined together in boutique ADR firms or as a subgroup of a law firm.

The solo, small group and firm business models each have distinct advantages and disadvantage. For example: A solo or small group practice is often closely identified with its owners; therefore, a reputation earned in a prior practice can easily transfer to the new venture. Lifestyle advantages include not only that one can choose to mentor, publish, teach and volunteer, but also that one can do so without having to account to anyone for ‘lost’ time. The chief competitive advantage of the solo and small group practice is that the business can quickly innovate in response to market conditions and can scale up or down with relative ease. The fixed-fee-for-service pricing model is an example of such innovation. Early adopters found that they can provide more personalized services, that their fees and services were better received by consumers and that their profit margins were higher when the hourly billing model was discontinued. However, a solo or small group practice must be managed well in all aspects in a limited amount of time. An emphasis must be placed on cooperative relationships and proactively seeking guidance. Nevertheless, the business will always be vulnerable to normal disruptions and fluctuations in the marketplace, and a natural disaster or catastrophic illness can bring the business to an end in a stunningly short period of time.

Alternatively, operating as a well managed niche firm or subgroup of a large firm allows the impact of periods of individual decreased productivity to be spread among the group. A well connected firm can better develop and capitalize on political influence and

a well placed firm can provide a nice exit strategy for its owners should a lucrative merger opportunity emerge. On a day to day basis, substantially more cumulative resources can be directed toward marketing the firm's name as a brand of ADR services, nicer facilities, better benefits and an abundant support staff. The firm may create standardized forms for convening cases, drafting orders and post ADR process administration. It may have detailed internal operating procedures and uniform marketing, fee and collection policies that everyone must follow. Access to such a body of institutional knowledge can be very beneficial to a new ADR practitioner or to one who has no interest in practice management. However, the environment will feel more constrained and the compensation structure will typically be directly tied to how many hours one bills and collects for providing competent service. Affiliation will likely come at a steep price, either in terms of a fee splitting arrangement or an up-front cash contribution, or both. The firm culture may not be as collegial as one would hope because the incentives created will be to behave territorially toward 'good' contacts and to jockey for status. There will also be strong disincentives towards activities that are non fee generating or that do not clearly enhance the firm's bottom line.

Despite the unavoidable downsides of solo, small group or firm life, the ADR practitioners I know feel the positives far outweigh the negatives. So, if your goal is to become a full-time ADR practitioner or you are looking for ways to invigorate your existing part-time ADR practice, then an entrepreneurship booster may be just what you need. Moving beyond our discussion above of the risks and rewards of entrepreneurship let us take up the following question: What are some characteristics of successful entrepreneurs?

In short, successful entrepreneurs are self-reliant, motivated, and confident in their abilities, disciplined as well as creative, and are tolerant. A history of planning effectively is an important indicator of long-term success, as is balance (although my definition of balance could be closer to workaholic, depending upon who you ask). People with an inclination toward entrepreneurship simply prefer to direct their own career and business. It is a lifestyle choice. The goal is not purely wealth accumulation;

rather, it is the chance to do meaningful work exceptionally well, and to have flexibility and independence. Sure, we need to make a living, and although it can be a very good living, a typical ADR practice is not likely to generate the kind of returns that will attract investors, and for some licensed professionals, ethical rules prohibit such arrangements anyway. What this means is that the business concept has to be well developed before any entrepreneurial activities are begun and it has to be able to sustain itself.

How does a concept become well developed? Asked another way: What is the entrepreneurial cycle in the context of an ADR practice? It starts with someone perceiving that there may be a need that could potentially be met by an ADR service that he/she can provide or aspires to provide. From here, specific opportunities are identified; beginning with gaining a better understanding of the need, with exploring ones own personal circumstances, skill level, interests and motivations for wanting to move in a particular direction, and with thoroughly researching the business environment, both as to the present condition and as to future trends. For example: (1) Can a new ADR practice find a place in this already well developed market? (2) Can my practice be one of the first in a new market? (3) What do I have to offer that will set me apart from other providers? (4) How can I be accepted into a maturing market as an equivalent service provider? (5) Are my personal and professional responsibilities compatible with my pursuit of this venture? If not now, when and under what circumstances? (6) Can I afford the investment of my time, my money and lost opportunity? (7) Am I ready to start over? (8) Am I prepared start over again in a few years if I fail? (9) If I am wildly successful, then what? (10) Will I be creating the same situation I am in now all over again?

Let's say that you have now learned everything you need to know about yourself and your circumstances and generally understand your market. You are prepared to move forward. At this point, focus on management issues is essential. For example: (1) What is the purpose of the business? (2) What values will be important to you? (3) What is your start-up strategy? (4) What is your growth strategy? (5) What is your vision of success? (6) What resources will it take to get there? (7) What is your financing

strategy? (8) Which legal structure is best? (9) What is the regulatory environment? (10) What kind of facility and staff will you have? (11) What is a reasonable marketing budget? (12) What marketing methods will be most beneficial? Each of these questions, and many more, must be answered with specificity. It will also be very helpful to discuss your answers with several trusted business advisors and to consider their objective feedback when further developing your answers into a business plan.

Yes, you will need a business plan. You can avoid the most common mistake that is made by finishing your business plan before you commit any resources, other than time spent on planning, to the venture. Do not try to figure it out as you go. If your idea is a good one, then it will withstand healthy scrutiny. Once the business plan is close to being complete, then additional detailed analysis can be undertaken to further refine the scope of the venture and to allocate resources. A well chosen business model, reasonable objectives and a management and marketing plan that is designed to create a successful venture for you will be the most important things that you can do to ensure that you will get the ADR practice that you want and need. With your accurate and complete plan in hand, form your business entity and enter the market. ADR entrepreneurship is about selling your ideas, your skills and time on your calendar. Communicating the benefits of your services to potential consumers is the only way to accomplish this. Also, remember that without a bank account full of seed money, the main resource of the business will be its social capital - reputation, status and legitimacy. A new venture with these assets is substantially more likely to succeed. A new venture with no record of past performance, no status in the marketplace and no reputation must rely on its creator to bring these assets to the venture from a prior or even simultaneous career. If that is not possible, then understand your resources, mainly time and money, are going to have to be split between providing quality services and activities that create that social capital, your start-up period will be longer and the normal challenges to establishing a new business will be more difficult to overcome.

How does one build reputation, status and legitimacy? The answer partly depends on the results of your market analysis. Is it a relatively new service that you will be

providing or is it a service that is already well established? As an analogy, consider a dental school graduate who has decided to open a general practice. If everyone knows what a dentist does and the benefits of same, then the new practitioner probably does not need to devote a substantial amount of resources to educating potential customers and encouraging them to embrace the idea of routine dental care. Instead, resources can be spent on a convenient location, a pleasing office environment, extended hours of operation and on projecting an image that the quality of services offered are consistent with other established providers. In such a market, a differentiation strategy may be detrimental to the business. On the other hand, if a new type of dental service is being offered or some kind of specialty practice, then resources must be spent on educating the potential customer base about the procedures performed and how those procedures will be of benefit to them. A public relations plan that is based on an education model will provide the benchmark for the public's valuation of the services being offered and a marketing plan will help to create a customer base where none existed before. In this situation, differentiation and creating a buzz may be the best approach. Here again is where you will use your business plan to guide you as to which activities create value, and which aspects put you at risk for destroying the value you have created. For example, does a particular activity increase cash flow, or increase your expected growth rate, or give a competitive advantage for a longer period of time or reduce costs? If so, then the activity adds value. Your success in the early months or even years will be measured by how closely your operations match your business plan. It is not as simple as asking whether or not you are operating in the red. Evaluation and reevaluation will allow you to answer the question: Am I on track for economic health? Using your plan in this way will help you to work smarter, to avoid quagmires and to direct your attention to value creating activities, plus it will help you to stay positive and motivated.

Now, let's say you have achieved a sustainable practice. How shall you capitalize on this opportunity? An ADR practice is a very personal thing, and it is not always easy to view it impartially. However, repeating the same steps initially undertaken to start the business will inform your decisions. Asking such questions as: (1) Do I want to simply maintain my current level of activity? (2) Am I interested in branching out into new

geographical or specialty areas? (3) Have I lost my focus? (4) Are my services still relevant to consumers? (5) Does my practice need to be revitalized? (6) Have I fallen into the trap of expert bias? The answers to these questions could reveal that you should be doing anything from hiring additional staff skilled in convening and administering cases, to creating a position for an inexperienced but well qualified resolutionist who can assist you; or that you should give up some equity to gain a junior partner. If planned well, letting go of some aspects of your practice may be the best thing for you and for the business. You may find yourself personally energized by a collaborative relationship with a younger provider. While you serve as a role model and offer the use of your existing resources, in return you benefit from new ideas, their contribution of social capital to your firm, their exposure to opportunities that would not be available to you as an established provider and a portion of their revenue stream. Such relationships may be key to your firm's survival and to your personal satisfaction as your practice continues to mature.

Now, I would be doing you a disservice if I didn't include the following section: What are some indicators that entrepreneurship is not for you? Probably the most common reason people decide that ADR entrepreneurship is not for them is that they are still developing their skills and expertise as a practitioner. All of the best intentions will not make up for the time it takes to gain the knowledge, skills and abilities necessary to perform as a resolutionist. If you are still developing in these areas, then running the business at the same time you are providing the services will not help you to close that gap any quicker. Ultimately, it may keep you from achieving your goal of a sustainable ADR practice.

Second, although most everyone's job is stressful some or even much of the time, it comes in predictable ways and in fixed blocks of time. As an entrepreneur, your practice is your livelihood, so the needs of the business and the family become inseparable, both financially and in terms of demands on your attention and energy. You never leave the office behind. Similarly, running any business can take a significant toll on your mental and physical health, but particularly so when managing an ADR practice

and at the same time being the main service provider. When you are in the middle of an ADR process, your consumers are looking to you for your undivided attention. It takes everything, mentally, physically and emotionally, to help people to work through their conflict. It often means no lunch break, no water breaks and no time to read e-mails or to respond to telephone messages during the day. It is also virtually impossible to provide direction to your staff on anything during their normal work day. Therefore, your days will start early, and will end late and things will have to routinely get done in an acceptable way without you. You have to be ready to do it all over again the next day. It does not stop. So, if you find yourself susceptible to anxiety or have a tendency to try to do everything yourself, then you could be getting into a situation that will likely exacerbate a preexisting problem. With all that stress comes related health problems like heart disease, hypertension and insomnia. Therefore, we end up where we started with some people simply being better suited to working as a provider for an established entity rather than being an ADR entrepreneur.

So, however we got here, we find ourselves in the middle of a growth industry. My hope for you would be that you have the luxury to make a good living, doing work that you love, and that you also do well, and that you can choose to go about it in the way that best suits your talents and inclinations. That being said, I urge you to consider it a matter of self-preservation for resolutionists everywhere to help each other to succeed. By that I mean helping each other to provide high-quality, reasonably priced services, in a professional manner and in strict adherence to the highest ethical standards. It is equally important for practitioners to build relationships with researchers and scholars and to work in tandem with them to improve and expand the theoretical foundations for what has become common knowledge among practitioners. If each of us commits to doing these two things, our industry will certainly grow strong.