A Win For Arbitration In 2018

By Tara Muller

In the world of public opinion, alternative dispute resolution still struggles to compete with its crusty cousin – the traditional, costly, and lengthy trial process. For years, parties interested in enforcing arbitration provisions in lieu of trial have wrestled with the obstacle of unclear North Carolina appellate precedent as to whether courts would compel mandatory arbitration when the parties engaged in some initial litigation before moving to enforce the arbitration provision. Fortunately for the up-and-coming arbitration protagonist in this tale, the North Carolina Court of Appeals kicked off 2018 with a bang, clearing up a history of self-described “divergent case law” and handing a win to parties interested in enforcing arbitration provisions.

In IPayment v. Grainger, et al, (COA16-1908, 2 Jan 2018), the Court recognized strong public policy in favor of arbitration and held the plaintiff had not waived its right to compel arbitration either 1) by waiting two months after a counterclaim to move to compel arbitration, or 2) by amending its complaint to add a split funding argument against another defendant not subject to arbitration. While some of the opinion is admittedly fact-specific regarding whether the allegations involving funding were inextricably linked to the causes of action governed by the arbitration provision, the Court of Appeals revealed in its opinion very strong support for the idea of arbitration, using the term “public policy” five times in its 19-page decision. If there ever were a doubt about the North Carolina judiciary’s support of alternative dispute resolution, IPayment v. Grainger clears the waters, perhaps signaling a more generalized trend toward future enforcement of alternative dispute resolution provisions. Onward and upward, young ADR.

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A Lawyer’s Recommitment

By Doug Kenyon

I’m clinging to eighteen, my age when life seemed to come together as an idea – real love, my own car, and a compelling belief, fueled by the perfect discernment of youth, that people are good, that the future is ours for the making, and that each of us has an obligation to do something every day to make someone else’s life better. That’s why I became a lawyer. Within a rounding error, I’d bet that’s why you did too.

Today, our American brand of democracy is threatened in unprecedented ways. Civility, trust in government and the media, contextual knowledge essential for responsible citizenship, and even the shared affirmation of the importance of free speech and respectful, fact-based debate are, it seems, at all-time lows. If those trends continue, and there is good reason to believe they will, our future looks frighteningly bleak.

The urgent question is how we, as lawyers, can help. One important way is by recommitting ourselves to the habits of character, compassion, and courage. By “character” I mean both integrity and the deportment grounded in respect for the inherent dignity of every individual. By “compassion” I mean the ability to “feel with” another, whether client or adversary. And by “courage” I mean the willingness to do what’s right. These, together with our training and skills, are the essence of our professional DNA.

But most urgently, perhaps, is our need to protect the rule of law and our federal and state judges against unwarranted attacks and degradation, regardless of our own political views. Not insignificantly, political leaders have that same obligation. And, in a more general way, so too do business, education, religious, and community leaders. Principled and respectful disagreement over a judge’s opinion is entirely appropriate and, in many cases, adds substantial value to the public’s understanding of, and discourse about, important societal issues. But bullying, name-calling, and other personal attacks add nothing of value. At their core, they are frontal attacks on government itself, because their goal is to undermine the public’s understanding of and respect for the independent and co-equal role of the courts.

The Preamble to our Rules of Professional Conduct exhorts us to “further the public’s understanding of and confidence in the rule of law and the judicial system.” That’s vitally important “because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.” Given the importance of those considerations, each of us should speak out individually and support the organized bar in condemning unwarranted attacks on our judicial system. We can do that in various ways, but especially through the prudent and respectful use of social media to facilitate a broader public understanding of what courts do and why and how they do it. Perhaps courageous steps to underscore respectful debate and defend the judiciary will remind us of the reasons we all became lawyers in the first place.

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Endnotes

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