



The Facts On Alternative Dispute Resolution

Yes, even in this acrimoniously litigious day and age, you, too, can be a peacemaker. Alternative Dispute Resolution (ADR) is quickly becoming a larger and larger tool of the attorney's trade. Why? In many cases, arbitration or mediation is mandated as part of a contract or agreement. But, most important, more of your clients are discovering (and demanding) the benefits of ADR.

To them, ADR — chiefly mediation and arbitration — are a satisfying and cost-effective alternative to the slow, crowded and costly U.S. court system. And why not? ADR's benefits are many, including:

- Speed and efficiency
- Low cost
- Privacy
- Ease of access
- Informality
- Confidentiality
- Non precedent-setting judgments

One recent study revealed that more than 80 percent of participants found ADR a more satisfactory process than litigation, and more than 90 percent indicated that ADR was a critical cost control alternative.

Also telling is the fact that legislatures and judges across the country have implemented mandatory ADR programs that redirect certain types of disputes into alternative dispute programs. In fact, Florida recently adopted a law mandating ADR for homeowner disputes. Another piece of legislation in the Sunshine State created a statewide ombudsman office to help settle claims before a formal complaint is filed.

What Cases Make Good ADR Candidates?

Mediation — Virtually any civil matter can be mediated. Mediation can be successful at any time, but is best done early in any dispute before the parties commit to hard and fast positions, and before anger and the expenditure of large sums in litigation have poisoned the atmosphere. Mediation is often very helpful in situations where the parties have ongoing personal or business relationships.

It may also be appropriate when strong emotions are involved — mediating would allow both parties to vent their negative feelings and look forward to more objective ways to resolve their disputes. Mediation may not work if one party is far more powerful than the other, when one party's position is completely frivolous and easily disposed of in court, or when one party has a vested interest in delay.

Arbitration — If a dispute cannot be mediated, the other alternative, short of litigation, is arbitration. In general, nearly any dispute that could be litigated can be arbitrated. While not as cost effective as mediation, arbitration is normally much less expensive than a traditional litigation of the same issues.

Very often, written contracts contain mandatory arbitration provisions. In Nevada, for example, many civil disputes involving amounts under \$40,000 and most homeowner association disputes must be taken through a non-binding arbitration process before a complaint can be filed. Note that the situations in which arbitration are required are so complex that your clients will nearly always need the advice of counsel to determine whether arbitration is mandated by contract, statute or rule.

With all of this in mind, consider adding a qualified CPA — either as a neutral or consultant — to your case team.