ALTERNATIVE DISPUTE RESOLUTION

United States District Court
Northern District of Texas

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IN THE

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1993

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Judges of the Northern District of Texas

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Table of Contents

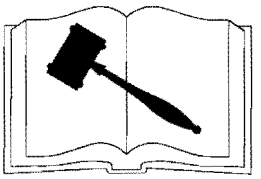
Introduction

This booklet is your introduction to Alternative Dispute Resolution (ADR) in the United States District Court for the Northern District of Texas (Court). Each method of ADR endorsed by the Court is described including its advantages and use in the Court. We have also included answers to the most common questions asked about ADR.

ADR has been widely used in the state courts of Texas and to a lesser extent in the federal courts. These programs have been shown to streamline the discovery process, facilitate early direct communication and understanding, preserve ongoing party relations, and save trial expenses. As part of its plan to reduce the cost and delay in bringing civil cases to trial, the Court encourages attorneys and litigants to consider ADR as an option to trial. These procedures are not binding, meaning that if they fail to resolve the case, the parties retain their full rights to a trial with no penalties. If all parties agree, however, these procedures can be made binding and the right to appeal can be waived.

The Court believes that these programs may be helpful in reaching an early settlement. Further, the Court urges counsel to share this material with their clients so that together they can explore alternatives that may result in faster and less costly resolution of civil disputes.

ADR Methods Endorsed by the Court



Mediation. This option is the least formal ADR process and is nonbinding. It differs from settlement negotiations in that a mediator helps both sides reach a settlement. The mediator does not make any decision or give an opinion of the case; rather he/she carefully listens to the parties' positions and then by questioning, negotiating and generating options, helps the parties work out their own solution to their dispute. Any agreement reached can be made legally binding by putting it in writing and having the agreement signed by the parties and their attorneys. However, if a case does not settle in mediation, you are still free to proceed to trial.

Summary Jury Trials. In a summary jury trial, the attorneys present a summary of the evidence to a jury which then renders a verdict that is advisory only. The jurors are not told that their opinion is nonbinding until after the verdict is rendered. Attorneys may then question the jurors about their responses to and reasoning concerning the issues and facts. A summary jury trial is usually completed in a day or less. In many cases, the jury's reaction to the case will influence the parties to negotiate a settlement and avoid an actual trial.

Mini-Trials. In a mini-trial the opposing attorneys present their best arguments to the top decision makers for the companies and/or governmental agencies involved in the dispute and to an impartial third party advisor. The advisor generally possesses expertise in a specific area. The parties may agree upon a summary or an abbreviated hearing. After the presentations, the decision makers meet (either with or without the third party advisor) to try to negotiate a settlement. Mini-trials are private, confidential and nonbinding. Mini-trials appear to work best where (1) there are a small number of parties and where expertise is needed, (2) one party overestimates the strength of its position, or (3) policy issues must be presented to decision makers.

Use by the Court

The Court may refer a case to ADR 1) on the motion of any party, 2) on the agreement of the parties, or 3) on its own motion. Most of the time the judge will accept the parties' agreement except in cases where the judge believes another ADR method or impartial third party is better suited to the case. The judge may also suggest or require other settlement procedures in addition to ADR. If you object to having your case referred to ADR or the appointment of the impartial third party, you may file a written objection with the Court explaining the reason(s) for your objection.

The ADR method most commonly used by the Court is mediation. Once a case has been referred to mediation, the parties may select their own mediator or the Court will choose one. Costs for the mediation are generally shared equally by the parties to the lawsuit.

If a summary jury trial is selected, the Court will preside at the trial and will provide a panel from which jurors will be selected.

For a mini-trial the parties are expected to work out their own arrangements including the payment of all costs. Upon request the Court may assist in the selection of the neutral third party.

Common Questions About ADR

1. What is the basic difference between the various forms of ADR?

In mediation, the mediator does not give an opinion or make a decision regarding the merits of the dispute. In the other ADR processes, the impartial third party does give an opinion or make a decision.

2. Why is mediation more widely-used than the other forms of ADR?

Because in mediation the mediator works directly with the parties to determine their needs, desires, fears and concerns and to help them reach an agreement that, hopefully, will address these interests.

3. How does the mediator resolve a dispute?

By giving the parties the opportunity to tell their stories, to vent their anger, frustration and emotions, and by helping the parties analyze their case, communicate with each other, create options and structure a settlement that will meet their needs. The mediator does this without judging the actions or motives of the parties.

4. What are the advantages of mediation?

The advantages are that mediation:

a. can be scheduled quickly;

b. is inexpensive;

c. can usually be completed in one day;

d. helps to preserve the relationship between the parties;

e. is private and confidential;

f. is informal and conducted in a relaxed atmosphere compared to a trial that is formal and often filled with anxiety and trauma for the participants; and,

g. when successful, ends the dispute.

5. When should mediation be considered?

a. When you want to minimize your costs.

b. When you want to settle the dispute promptly.

c. When a court trial cannot provide the remedy you want.

d. When you want to end the dispute but not the relationship.

e. When your dispute is private and you want it to stay that way.

6. How quickly can a mediation be scheduled?

Depending upon the mediator's schedule, from a few hours to a few weeks.

7. How long are the mediation sessions?

Most disputes are resolved in one day or less. Occasionally, a mediation will last more than one day. This usually occurs when the case is complicated, and there are a number of issues and parties involved.

8. What are the disadvantages of mediation?

If the dispute does not settle, then the parties have spent the time and cost of the mediation without any immediate results. However, even when a dispute does not settle during the mediation, sufficient progress is often made to enable the dispute to be resolved much easier and quicker at a later time.

9. If I go to mediation or to another ADR process, am I required to settle?

No.

10. If the case does not settle at mediation or during another ADR process, can I still go to trial?

Yes. You do not give up your right to a trial if the case does not settle.

11. How much does mediation cost?

Most mediators in Texas charge either a daily fee, which starts at a few hundred dollars per party per day (depending on the amount in controversy and the number of parties), or an hourly fee.

12. What do I do if I cannot afford to pay the mediator's fee, but want to go to mediation?

Talk to the mediator about his or her fee. Most mediators will either reduce their fee or eliminate the fee entirely, depending upon your financial situation.

13. Is everything that takes place in mediation kept confidential?

Yes. The Court Rules for Mediation prohibit disclosure of anything that is said or that takes place in mediation. There may be an exception to this rule in the case of the commission of a crime or breaking a civil law. In the absence of those exceptions, when the mediation ends, the only thing that the mediator can tell the Court is that the case settled or that it did not settle.

14. Can a party bring a tape recorder or stenographer to mediation to record the proceedings?

No. Mediation proceedings are private.

15. Where do I find a mediator?

You can ask the Judge or your attorney or a friend who has been to mediation to recommend a mediator. You can also phone the Dallas Bar Association at 214-969-7066 (if you live in Dallas), or your local Bar Association, and request the names and telephone numbers of mediators.

16. Can I attend the mediation without an attorney?

Yes. However, it is better for you to bring an attorney with you or at least to have an attorney available to you by telephone during the mediation. The mediator is not your attorney, cannot represent you, and cannot give you legal advice.