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**THE USE OF ALTERNATIVE DISPUTE RESOLUTION (ADR) TO RESOLVE LEGAL DISPUTES**

**WHAT IS ALTERNATIVE DISPUTE RESOLUTION?**

Alternative Dispute Resolution (“ADR”) is the use of various means other than litigation (court trials) to resolve a legal dispute, such as mediation, arbitration or settlement conferences. Litigation can sometimes be a costly and time-consuming endeavor that should only be considered as a last resort to resolving a dispute. In many instances, responsible parties can utilize resources to reach a negotiated settlement that avoids the costs and time involved in litigating a dispute.

**WHAT ARE THE ADVANTAGES OF USING ADR TO RESOLVE A DISPUTE?**

- Significant savings on legal fees and litigation expenses;
- Confidentiality, privacy, and lack of publicity;
- Savings in time and energy for the parties;
- Prompt resolution;
- Assistance of mediator to rationally evaluate case and overcome negotiation barriers;
- Creative “win-win” solutions that might not be available in Court;
- Preservation or restoration of an important business relationship;
- Ability to resort to litigation if settlement cannot be reached.

The advantages of ADR are that in many instances it can resolve a dispute with less time and cost than litigation. ADR allows the parties to rationally evaluate the strengths and weaknesses of their case, their opponent’s case, the risk of proceeding with litigation and the possible outcomes at trial. Even where ADR does not reach a settlement, it often better prepares a party to take their case to trial with an understanding of how a neutral judge may view their case and what aspects of the case may be stronger or weaker. Other advantages to ADR are that it provides resolution of a dispute in a private and confidential forum that can aid in preserving a business relationship and developing business-driven “win-win” solutions that may not be available in Court.

**WHAT TYPES OF ADR ARE AVAILABLE?**

While mediation and arbitration are the two most common types of ADR, there are several different types of ADR that can be implemented to resolve a legal dispute. The nature of the case, the position of the parties, the requirements of a Court, or the agreements of the parties may impact the decision on which form of ADR is best for a legal dispute.

Arbitration—Arbitration is a form of ADR where one or more arbitrator(s) act in essentially the same capacity as a trial judge, where the arbitrator(s) hear and accept evidence and testimony from the parties to the dispute and render an enforceable decision to resolve the dispute. An arbitration, therefore, is substantially similar to a court trial with the exception that the arbitration hearing may be more streamlined, less formal and may not involve some of the rules or technical issues involved in litigation. Arbitration decisions in Colorado are enforceable in essentially the same manner as a judgment received from a Court. However, arbitration decisions generally cannot be appealed in any fashion without extraordinary circumstances present. A dispute can only be submitted to arbitration if the parties to the dispute entered into an agreement to submit any disputes to arbitration. In most instances, an agreement to arbitrate a dispute is included in a contract the parties signed before the dispute arose; however, parties can also mutually agree to submit a dispute to arbitration after a dispute has arisen; however, one party cannot compel another party to utilize arbitration without an agreement to arbitrate.

Mediation—Mediation is a form of ADR where the parties meet with a trained mediator who works with the parties towards reaching a mutually-acceptable settlement of the legal dispute agreed to by all parties. Mediation utilizes a neutral mediator who is trained to assist each party to rationally evaluate the its case and propose settlement offers. Mediation is a conciliatory procedure, where the mediator typically helps the parties develop creative, business-oriented options for settlement. Unlike arbitration, a mediator in mediation does not make a binding decision and cannot force the parties to settle, but rather attempts to work with the parties to understand the nature of the dispute and suggest settlement possibilities. Generally, parties participate in mediation voluntarily; however, mediation can be mandatory where the parties signed a contract requiring disputes to be referred to mediation or in certain jurisdictions (including Boulder County) where the courts require all litigants to participate in mediation as a prerequisite to a case proceeding to trial. In many instances, mediators are former judges or attorneys who can provide parties with significant insight into the strengths and weaknesses of their case, providing perspective of how a judge may view their case and the parameters of a fair settlement.

Early Neutral Evaluation—Early Neutral Evaluation is essentially a form of mediation where a neutral party (often a former judge or attorney) provides an evaluation of a case very early in the litigation process that is designed to allow the parties to better understand the strengths and weaknesses of their position to help facilitate settlement discussions to resolve the dispute.

Mediation-Arbitration—Mediation-Arbitration (“Med-Arb”) is a form of ADR where the processes of mediation and arbitration are combined in one forum. Essentially, the parties agree to submit a dispute to Med-Arb and agree on a person to act as both the mediator and arbitrator. The appointed mediator-arbitrator first conducts a mediation of the dispute to attempt to reach a negotiated settlement. If that fails, the same mediator-arbitrator then acts as an arbitrator conducting a binding arbitration where an enforceable decision is rendered.

Settlement Conference—A settlement conference is a form of ADR that typically involves the parties to a dispute meeting in person to discuss what they believe to be the strengths and weaknesses of their case and their positions, with the intention that that parties each propose settlement offers designed to resolve the dispute. Settlement Conferences may or may not involve a neutral mediator or facilitator.

Other Forms of ADR—Other forms of ADR include mini-trial, summary jury trial, and appointment of special masters. These forms again are designed to help parties understand how neutral parties may see their case, the strengths and weaknesses of their positions, and the possible outcomes of taking a matter to trial in hopes that a settlement may be reached that avoids a trial. In some instances, special masters are appointed in litigation to resolve pre-trial disputes.

## **HOW CAN ADR HELP RESOLVE MY CASE?**

If you have further questions about the use of ADR to resolve a legal dispute, please contact The Law Firm of Jessica H. Miller, LLC at (303) 443-0568 or [jessica@jhmillerlaw.com](mailto:jessica@jhmillerlaw.com).

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