

Praise from the Experts

Tanya Dominick, after appearing on the Oprah Winfrey Show, wrote this book that hits the Alternative Dispute Resolution Career nail right on the head in her brilliant and realistic book, *How to Make it Big Resolving Disputes*. She leads you by the hand from total darkness to revelation of this exciting field. Her book reveals jealously guarded secrets of making money in mediation, arbitration, training, consulting and much, much more.

I highly recommend that you follow her road map to your success.

Martina S. Moore, President & Licensed Counselor
Moore Counseling and Mediation

How *To Make It Big Resolving Disputes* is a “must have” for any mediator’s bookshelf. In her book, Tanya Dominick makes it easy to find mediation resources and contacts in every state to enhance your practice. And the best part is the resources are all at your fingertips in one book, *How To Make It Big Resolving Disputes*. Tanya offers sage advice on finding the perfect mediation career for you from writing and consulting to arbitration and training. She also offers valuable tips and resources for starting a mediation practice, from phone services to setting up a virtual office.

I particularly enjoyed the positive flavor in which this book is written. The myth that you have to be an expert to mediate is dispelled by Tanya and is replaced by a positive yes-you-can message. At first, I felt intimidated entering the field of mediation. Between the book and Tanya’s expertise in her online mediation training, I gained the confidence I needed to not only know that I can mediate, but mediate well without a law degree.

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How to Make It Big

Resolving Disputes

How to Make It Big Resolving Disputes

*A Step-by-Step Guide to
Making Serious Money in
Conflict Resolution*

Tanya L. Dominick

Second Edition



Brooklyn, NY

How To Make It Big Resolving Disputes
by Tanya L. Dominick

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ISBN-13: 978-0-9722088-3-3
ISBN-10: 0-9722088-3-6

Printed in the United States of America.

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Brooklyn, NY 11201

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1

What Is Alternative Dispute Resolution?

Objective

To provide a background of
Alternative Dispute Resolution.

Introduction

The field of law has explored various ways of solving disputes. For centuries the most effective and popular way of solving disputes was going to court and having a formal trial. As time went by, scholars continued to study methods other than litigation that could be effective and justified in solving disputes. Such methods were closely examined by the American Bar Association at its annual convention on Hawaii in 1989. The convention was devoted to “Resolving Disputes in Pacific Ways” and attracted many visitors. More than fifteen years after the convention, “Alternative Dispute Resolution” or “Appropriate Dispute Resolution” (hereafter referred to as ADR) became an important substitute for litigation. For many years it has been explored and debated. It gained a significant place in the reports concerning new ways of dispute resolution all over the United States.

Alternative Dispute Resolution comprises more than ten methods, referred to as “alternatives to litigation as a means of dispute resolution.” A person who decides to forgo a formal trial but refers to ADR companies always has a choice concerning which method of solving the dispute to

use. Usually, ADR costs less than pursuing litigation; thus, it appears to be more attractive to people than participating in a full and formal trial. Despite the fact that ADR is less formal than litigation, it does result in some form of negotiation between the parties. ADR is confidential and offers a level of self-determination for every client.

This chapter was designed to explore the essence of Alternative Dispute Resolution and its peculiarities and advantages as compared to other methods of dispute resolution. It will focus on various types of ADR—including mediation, negotiation, conciliation, arbitration, and others—which are used to resolve disputes. Pros and cons of every type of ADR also will be discussed.

Recent Recognition

ADR is rapidly growing across America. It currently exists in every state. More than 600 of the largest corporations in the United States have agreed to sign a pledge to seek to resolve disputes out of court before filing lawsuits against each other.

The rise of ADR is highly attributable to the overload of litigation thrown upon the American court system. Additionally, stresses of modern society and confrontation make ADR a growth opportunity.

In 1990, Congress enacted the Administrative Dispute Resolution Act, which mandates that agencies explore the development of Alternative Dispute Resolution programs. In addition, many court systems have also begun to utilize ADR to pare down their dockets.

The Essence of Alternative Dispute Resolution

Due to the increasing costs of paying for litigation and the growth of court congestion, individuals as well as whole companies slowly but steadily are starting to turn to Alternative Dispute Resolution in order to solve their disputes. The acronym ADR stands for the set of methods by means of which legal conflicts and various disputes are solved outside the courtroom. Usually, ADR is less formal than litigation but does include the presence of a third party to preside over the hearing between the two disputing parties. It is also less expensive and time-consuming. The specialists working at the Center for Effective Dispute Resolution (CEDR) gave the following definition of the term ADR: “A body of dispute resolution techniques which avoid the inflexibility of litigation and arbitration, and

focus instead on enabling the parties to achieve a better or similar result, with the minimum of direct and indirect cost.” As mentioned above, there are different methods used in ADR, and each of them possesses certain characteristics. However, it is possible to identify certain characteristics that are peculiar to the whole process of ADR.

The first characteristic feature of ADR is that it deals with all disputes confidentially, meaning that the process of dispute resolution and its outcomes are usually kept in secret unless disclosure is mandated by a special law or mandatory reporting obligation. For example, most mediators are considered to be mandatory reporters, and the law compels them to report child abuse or elder abuse if it is revealed during a mediation session.

ADR is more flexible than usual litigation. It leaves room for creativity and cooperation to come to a common solution and to meet the requirements of both parties. This is mainly due to the fact that it is less formal than litigation. ADR gives an opportunity to gain more control over the process of dispute resolution.

ADR involves personal communication among all parties, who might be working or living together after the process ends. Thus, it maintains the existing relationship by using methods that encourage people to cooperate in order to reach an agreement. Often ADR leads to the improvement of the relationship and elimination of further conflicts. This is the reason that many families and businesses have come to rely on this type of conflict management, since employees and family members usually have long-term relationships, that require preservation.

ADR establishes certain rules that govern the process of solving disputes. Methods of ADR involve the presence of a third party, termed neutrals or peacemakers. These individuals are normally chosen because they do not advocate for one disputant but rather manage the process. Generally, the process of ADR is not as expensive in comparison with litigation, along with being more expeditious and less complex.

ADR affords disputants the possibility of personal satisfaction, as they take a more active part in the process and can decide for themselves which method of ADR to use. Normally, in a court setting there is a “winner” and a “loser;” however, with this form of resolution the parties can enter into a mutually satisfactory agreement through the use of collaboration. ADR helps to reach the compromise between the parties, while litigation results in the satisfaction of only one party.

The last characteristic is: by means of ADR, it is possible to get to the root of a problem due to the use of personal approach. In ADR

the decision-making is the responsibility of the disputing parties or the neutral.

Though ADR has many obvious advantages compared to usual litigation, there are some disputes that cannot be solved by means of ADR. For example, cases of violence—when courts are able to provide better protection for victims of violence—or cases when one of the parties possesses too much power. Also, ADR is improper when one of the parties wants the issue in dispute to become public knowledge or wants the outcome to set precedent. Such a desire goes against standard practice. ADR cannot be used as the means of dispute resolution when the outcome may influence a great number of people, for example where a definite and broadly applicable solution is required. Court proceedings are more effective for the above-mentioned cases.

Advantages of ADR

Below is a summary of the benefits of ADR.

ADR saves money. It is less expensive than litigation. According to ADR experts, the cost is often 10–50 times less expensive than going through the court system.

ADR saves time. Typically, there is little or no need for case preparation. Additionally, one may participate in an ADR process almost immediately—unlike litigation, where it may take months or years to present a case before the court.

ADR is private. ADR proceedings are usually confidential; therefore ADR protects the reputation of the participants and there is no public record of the proceedings.

ADR is convenient. Scheduling can be done at a time and place that is amenable to all parties involved.

ADR prevents litigation. The use of ADR is a consensual process that provides a non-adversarial way to resolve a dispute.

ADR is creative. It allows the parties involved in the dispute to “think outside the box.” This usually gives rise to results not available in typical court settings.

Types of ADR and Their Peculiarities

There is a great variety of disputes as well as a great variety of methods to handle them. Legal practice has shown that usual forensic

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