



Alternative Dispute Resolution: When, Why, and How to Use Arbitration, Mediation, and Binding Mediation



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Who We Are

- Russell Beck, Foley & Lardner LLP
 - Commercial/IP Litigator
 - Chair, Trade Secret/Noncompete Litigation Task Force
- Steve Riden, Foley & Lardner LLP
 - Commercial/IP Litigator
 - Complex civil litigation
- Peter Resnick, Huron Consulting Group
 - Forensic accountant
 - Financial consultant
- Eric Van Loon, JAMS
 - Mediator, Arbitrator
 - Specializing in complex, multi-party, high-stakes disputes

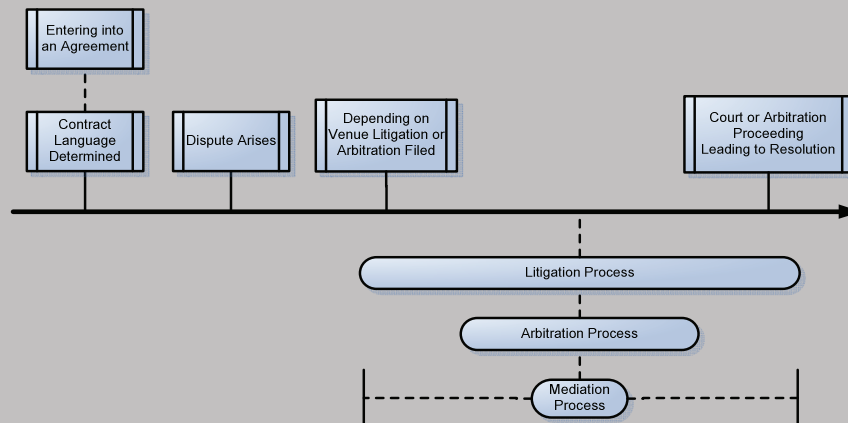


Topics

- ADR Overview
- Advantages and Disadvantages
- Planning for Disputes
- Finding the Right Mediator and Arbitrator
- Preparation
- Strategy
- The End Game
- Final Thoughts



ADR Overview





Advantages and Disadvantages

- Level of Party Involvement
- Procedural Protections
- Control of Costs
- Control/Duration of Proceedings
- Control of Outcome
- Finality/Appealability

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Planning for Disputes

- Business advice approach
 - Confidentiality
 - Likely outcomes that would lead to litigation, mediation or arbitration
 - Likely desired relief
 - Cost of obtaining a given result
 - Step clauses (e.g., mediation (or some other dispute resolution mechanism) first; arbitration or litigation second)
 - Discovery needed to obtain the result
 - Cost allocation
 - Rules
- JAMS Guide to Dispute Resolution Clauses for Commercial Contracts

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FOLEY EXECUTIVE BRIEFING SERIES

AFFIDAVIT

(Request for Excuse from Jury Service for Case at Issue)

STATE OF MONTANA)

County of Gallatin)

I, ERIK ANTHONY SLYE, being first duly sworn upon oath, depose and say that jury service would entail undue hardship on me and that I request to be excused from jury service for the following reasons:

Apparently you morons didn't understand me the first time. I CANNOT take time off from work. I'm not putting my family's wellbeing at stake to participate in this [REDACTED]. I don't believe in our "justice" system and I don't want to have a [REDACTED] thing to do with it. Jury duty is a complete waste of time. I would rather [REDACTED] than sit on a jury. Get it through your thick skulls. Leave me [REDACTED] alone.

Signature

Erik Slye
56 4/10 Ave

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FOLEY EXECUTIVE BRIEFING SERIES

Finding the Right Mediator and Arbitrator

- Elements in Selecting
 - Knowledge v. Skill
 - Importance of Experience
 - Personality/Style
- Nature of the case
- Goal

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Preparation

- How important is it really?
- Why?

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Strategy: Litigation and Arbitration

- Litigation
 - Analysis of case
 - Awareness of Judge: Federal v. State v. BLS
 - Discovery: Facts v. Trial
 - Whether, when, how to pursue settlement
 - Evolution of strategy
- Arbitration
 - Analysis of case
 - Arbitrator Selection
 - Applicable Rules
 - Discovery
 - Whether, when, how to pursue settlement
 - Evolution of strategy

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Strategy: Mediation and Binding Mediation

- Mediation
 - Briefing
 - Who is there?
 - Who is the “voice”?
 - What is the goal?
 - What to do in a caucus?
 - When and how to make an offer?
 - How to use the mediator
- Binding Mediation
 - Impact of a “decider”

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The End Game: What's the Relief?

- Litigation
- Arbitration
- Mediation
- Binding Mediation

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Final Thoughts

- ADR Provider
 - Lawyer
 - Expert
 - Client
-
- Litigation v. Arbitration v. Mediation v. Binding Mediation

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