

PRACTICE ALERT

New ADR Professional and Ethical Requirements

Alternative Dispute resolution processes are firmly established under federal and state laws. Competent legal representation therefore requires attorneys to be familiar with those laws and ADR issues, and to advise clients as to ADR alternatives. See Rules 1.1, 1.2(a) and 1.4(b).

Rule 1:40-1 (effective September 5, 2000) provides that State complementary dispute resolution programs are an integral part of the judicial process, and states specifically that "attorneys have a responsibility to become familiar with available CDR programs and inform their clients of them."

Current Trends in ADR

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Here in New Jersey, the use of Alternative Dispute Resolution ("ADR") methods is increasingly important to the Legal and Business communities. Whether called ADR or "CDR" – the New Jersey Court refers to alternatives to litigation as "Complementary Dispute Resolution" - the use of alternatives has in fact been a fast growing reality, and has now been given judicial imprimatur. Whether in the primary forms of alternatives to filing lawsuits such as mediation or arbitration, or some of the more elaborate forms such as summary jury trial or mini-trial, there is now an official mandate for lawyers to take note.

Among the many changes to the New Jersey Court procedures that went into effect September 5, 2000, there was included a directive that almost all commercial disputes be subject to mediation and/or arbitration. This now requires that all New Jersey attorneys be familiar with these processes and, in fact, to give guidance to their clients on the pro's and con's of using them related to the particular dispute at hand. And then, of course, to be prepared to effectively implement such processes.

For the businessperson, the realization will soon dawn that if it is necessary to utilize ADR methods after the lawsuit has commenced, then why not use such methods before doing so? Clearly, the businessperson will come to this conclusion, if only in order to optimize the potential for realizing the attendant benefits of doing so, notably savings in time and costs. And to ask why hasn't the attorney for the businessperson counseled him to do so!

Separately, the utilization of the Internet is increasingly a tool for effective implementation of ADR processes. The American Arbitration Association developed its own web site about two years ago, and is already measuring over 2.5 million hits per month. This reflects both the increasing interest in ADR as a subject matter, as well as the wealth of information that such a web site can provide.

Recently, the Association has added the biographical information for all of its Commercial, Construction, and Employment Mediators, as well as the means to conduct keyword searches by the need for a subject matter expertise, a geographic need, or a specific mediator by name. In effect, attorneys, company executives, and individuals engaged in resolving a dispute can research in “real time” for an Association mediator whose expertise and experience is best suited to their dispute. These mediators, considered the most experienced and qualified in the world, have experience handling a wide variety of disputes, including accounting, banking, bankruptcy, construction matters of all complexity, employment, intellectual property, international, real estate, and technology.

Here in New Jersey the trend is clear about the increasing use of ADR to resolve disputes. A 1998 New Jersey law requires the use of ADR to resolve most local Public Sector construction disputes. The State also supports the use of ADR through the institutionalizing of dispute resolution processes involved in high volumes of claims, such as for Auto Personal Injury Protection (“PIP”) matters, residential lien law matters, etc. In addition, arbitration has always been a preferred method in international disputes, if only to avoid one party having the “home court” advantage. This becomes increasingly important to the New Jersey business community as globalization – whether for additional customers or suppliers – becomes a larger portion of one’s business.

As noted in a recent editorial in one of the leading New Jersey law periodicals, New Jersey attorneys are encouraged to view ADR in its broadest application as now an integral factor not only in litigation planning and conduct, but in the negotiation and preparation of transactional documents as well.

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ADR INTERNET RESOURCES

American Arbitration Association

www.adr.org

American Bar Association Section of Dispute Resolution

www.abanet.org/dispute

ADR Resources

www.adrr.com

ADR World

www.adrworld.com

Association for Conflict Resolution

www.acresolution.org

CPR Institute for Dispute Resolution

www.cpradr.org

JAMS-Endispute

www.jamsadr.com

National Arbitration Forum

www.ARBITRATION-FORUM.com

The Conflict Resolution Information Center

www.crinfo.org

Mediation Information and Resource Center

www.mediate.com

State of New Jersey Judiciary Complementary Dispute Resolution

www.judiciary.state.nj.us/services/cdr.htm

NJ Association of Professional Mediators

www.njapm.org