

## A Guide to Dispute Resolution Processes

### ◆ *What Is Dispute Resolution?*

Dispute resolution is a term that refers to a number of processes that can be used to resolve a claim or dispute. Dispute resolution may also be referred to as alternative dispute resolution, appropriate dispute resolution, or ADR for short. Dispute resolution processes are alternatives to having a state or federal judge or jury decide the dispute in a trial. Dispute resolution processes can be used to resolve any type of dispute including family, neighborhood, employment, business, housing, personal injury, consumer, and environmental disputes.

### ◆ *Why Use Dispute Resolution?*

Dispute resolution processes have several advantages. For instance, many dispute resolution processes are cheaper and faster than the traditional legal process. Certain processes can provide the parties involved with greater participation in reaching a solution, as well as more control over the outcome of the dispute. In addition, dispute resolution processes are less formal and have more flexible rules than the trial court.

### ◆ *What Are the Different Types of Dispute Resolution Processes?*

Dispute resolution takes a number of different forms. Here are brief descriptions of the most common dispute resolution processes:

#### **Arbitration**

Arbitration is a private process where disputing parties agree that one or several individuals can make a decision about the dispute after receiving evidence and hearing arguments. Arbitration is different from mediation because the neutral arbitrator has the authority to make a decision about the dispute. The arbitration process is similar to a trial in that the parties make opening statements and present evidence to the arbitrator. Compared to traditional trials, arbitration can usually be completed more quickly and is less formal. For example, often the parties do not have to follow state or federal rules of evidence and, in some cases, the arbitrator is not required to apply the governing law.

After the hearing, the arbitrator issues an award. Some awards simply announce the decision (a "bare bones" award), and others give reasons (a "reasoned" award). The arbitration process may be either binding or non-binding. When arbitration is binding, the decision is final, can be enforced by a court, and can only be appealed on very narrow grounds. When arbitration is non-binding, the arbitrator's award is advisory and can be final only if accepted by the parties.

#### **Early Neutral Evaluation**

Early neutral evaluation is a process that may take place soon after a case has been filed in court. The case is referred to an expert, usually an attorney, who is asked to provide a balanced and unbiased evaluation of the dispute. The parties either submit written comments or meet in person with the expert. The expert identifies each side's strengths and weaknesses and provides an evaluation of the likely outcome of a trial. This evaluation can assist the parties in assessing their case and may propel them towards a settlement.

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### **Mediation**

Mediation is a private process where a neutral third person called a mediator helps the parties discuss and try to resolve the dispute. The parties have the opportunity to describe the issues, discuss their interests, understandings, and feelings, provide each other with information and explore ideas for the resolution of the dispute. While courts can mandate that certain cases go to mediation, the process remains "voluntary" in that parties are not required to come to agreement. The mediator does not have the power to make a decision for the parties, but can help the parties find a resolution that is mutually acceptable. The only people who can resolve the dispute in mediation are the parties themselves.

There are a number of different ways that a mediation can proceed. Most mediations start with the parties together in a joint session. The mediator will describe how the process works, will explain the mediator's role and will help establish ground rules and an agenda for the session. Generally, parties then make opening statements. Some mediators conduct the entire process in a joint session. However, other mediators will move to separate sessions, shuttling back and forth between the parties. If the parties reach an agreement, the mediator can help reduce the agreement to a written contract, which may be enforceable in court.

### **Mini-Trial**

A mini-trial is a private, consensual process where the attorneys for each party make a brief presentation of the case as if at a trial. The presentations are observed by a neutral advisor and by representatives (usually high-level business executives) from each side who have authority to settle the dispute. At the end of the presentations, the representatives attempt to settle the dispute.

If the representatives fail to settle the dispute, the neutral advisor, at the request of the parties, may serve as a mediator or may issue a non-binding opinion as to the likely outcome in court.

### **Negotiation**

Negotiation is a voluntary and usually informal process in which parties identify issues of concern, explore options for the resolution of the issues, and search for a mutually acceptable agreement to resolve the issues raised. The disputing parties may be represented by attorneys in negotiation. Negotiation is different from mediation in that there is no neutral individual to assist the parties negotiate.

### **Neutral Fact-Finding**

Neutral fact-finding is a process where a neutral third party, selected either by the disputing parties or by the court, investigates an issue and reports or testifies in court. The neutral fact-finding process is particularly useful for resolving complex scientific and factual disputes.

### **Ombuds**

An ombuds is a third party selected by an institution-for example, a university, hospital or governmental agency-to investigate complaints by employees, clients or constituents. The ombuds works within the institution to investigate the complaints independently and impartially. The process is voluntary, private and non-binding.

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### **Private Judging**

Private judging is a process where the disputing parties agree to retain a neutral person as a private judge. The private judge, who is often a former judge with expertise in the area of the dispute, hears the case and makes a decision in a manner similar to a judge. Depending on court rules, the decision of the private judge may be appealable in the public courts.

### **Settlement Conferences**

A settlement conference is a meeting in which a judge or magistrate assigned to the case presides over the process. The purpose of the settlement conference is to try to settle a case before the hearing or trial. Settlement conferencing is similar to mediation in that a third party neutral assists the parties in exploring settlement options. Settlement conferences are different from mediation in that settlement conferences are usually shorter and typically have fewer roles for participation of the parties or for consideration of non-legal interests.

### **Summary Jury Trial**

In summary jury trials, attorneys for each party make abbreviated case presentations to a mock six member jury (drawn from a pool of real jurors), the party representatives and a presiding judge or magistrate. The mock jury renders an advisory verdict. The verdict is frequently helpful in getting a settlement, particularly where one of the parties has an unrealistic assessment of their case.

#### **◆ *If I Participate in Dispute Resolution, Can I Later File a Lawsuit?***

In most instances, dispute resolution processes do not preclude parties from later pursuing their case in court if they fail to reach a resolution. Parties can use dispute resolution before, or even after, they have filed a case in court. However, binding arbitration is final and prevents a party from bringing a court action.

#### **◆ *Do I Need an Attorney to Participate in Dispute Resolution?***

In many processes, you are not required to have an attorney to participate. In cases where the court or judge has referred the case to a dispute resolution process, attorneys often participate. The role of an attorney in a dispute resolution process varies depending upon the nature of the dispute and the type of dispute resolution process. In many dispute resolution processes, attorneys accompany their clients and participate either as counselors or as advocates.

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### **For more information:**

ABA Section of Dispute Resolution  
<http://www.abanet.org/dispute>

American Arbitration Association  
<http://www.adr.org>

Association of Family and Conciliation  
Courts  
<http://www.afccnet.org>

Association for Conflict Resolution  
<http://www.acresolution.org>

Center for Analysis of ADR Systems  
<http://www.caadrs.org>

Conflict Resolution and Information  
Network  
<http://www.CRInfo.org>

CPR Institute for Dispute Resolution  
<http://www.cpradr.org>

JAMS

Mediation Information and Resource  
Center  
<http://www.mediate.com>

National Arbitration Forum  
[www.arbitration-forum.com](http://www.arbitration-forum.com)

National Association for Community  
Mediation  
<http://www.nafcm.org>

Network of Communities for  
Peacemaking and Conflict Resolution  
<http://www.apeace maker.net>

Policy Consensus Initiative  
<http://www.policyconsensus.org>

U.S. Department of Justice Office of  
Dispute Resolution  
<http://www.usdoj.gov/odr>

Victim Offender Mediation Association  
<http://www.voma.org/>

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