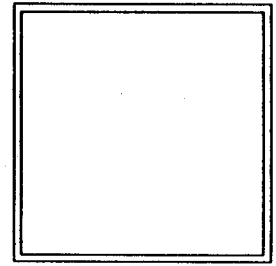


Alternative Dispute Resolution for CPAs

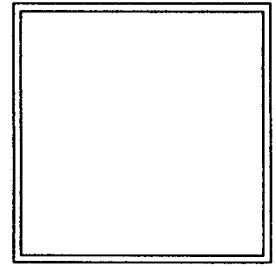


Alternative Dispute Resolution for CPAs

James John Jurinski



AMERICAN MANAGEMENT ASSOCIATION



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When Can You Initiate ADR?

- In the Contract
- When a Dispute Arises
- During Litigation

Where Do You Find ADR Services?

- Court-annexed Arbitration
- Private Services
- Private Practitioners

How Do You Find a Qualified Decision-Maker?

- Experience
- Subject Matter Expertise
- Referrals
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2 The Downside of Traditional Litigation 21

Quantifiable Disadvantages of Litigation

- Attorney's Fees
- Other Litigation Costs

Nonquantifiable Costs of Litigation

- Delay
- Adverse Publicity
- Loss of Business Relationships
- Decision Out of Parties' Control
- Emotional Drain
- Opportunity Costs

Advantages of Litigation

- When a Decision Is Needed
- When Principle Is at Stake
- When an Outright Win Is Essential
- Sending a Message
- When Delay Is the Strategy

American Civil Litigation

Stages in Litigation

- Pleadings Stage
- Discovery
- Trial
- Appeals

Litigation Risk Analysis

- Steps

What Do Lawyers Really Think About Litigation?

- What Do Lawyers Think About ADR?

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3 Arbitration

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Definition of Arbitration

Key Elements of Arbitration

- Privacy
- Informality
- Flexibility
- Cost Effectiveness
- By Agreement
- Decision by Impartial Decision-Maker
- Decision by Knowledgeable Party
- Trial-Like Process
- Timely Decision
- Final Decision

Criticisms of Arbitration

- Adversary Procedure
- Cost
- No Control over Decision
- Secrecy

The Arbitration Clause

- Resolving Ambiguities
- Arbitration of Existing Disputes

Role of the Arbitrator

- Qualities of a Good Arbitrator
- Knowledge
- Bias
- Lawyers as Arbitrators

Variations on Arbitration

- Nonbinding Arbitration
- Court-Annexed Arbitration
- Administered vs. Nonadministered Arbitration
- High/Low Arbitration
- Baseball Arbitration
- Night Baseball
- Med-Arb
- Medola
- Transborder Disputes

Enforcement and Appealability of Decisions

- Enforcement Overseas
- Appealability

The Arbitration Hearing

Preparing For Arbitration

- Understand the Process
- Understand the Rules
- Select an Advocate
- Gather Evidence
- Decide Who Should Attend
- Anticipate Problems

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4 Mediation

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Advantages of Mediation

- Preservation of Relationships
- Solution by the Parties Themselves
- Costs
- Speed
- Privacy
- Catharsis

Disputes That Call for Mediation

- Small Matters
- When Compromise Is the Best Solution
- Difficult Negotiations
- Failed Negotiations
- Legal Solution Is Inappropriate
- Client Disputes
- Employee Disputes

Why Mediation Is Not Always the Best Tool

How to Bring a Dispute to Mediation

- Mediation Clauses
- Involving the Mediator

Role of the Mediator

- Qualities of a Good Mediator
- Mediators and Mediation Services
- How to Find the Best Mediator

Facilitative vs. Evaluative Mediation

- Facilitative Mediation
- Evaluative Mediation
- Which Mediation Style Is Appropriate?

Keys to a Successful Mediation

- Identify the Real Goal
- Be Flexible
- Know the Rules
- Work with the Mediator
- Be Solution-Oriented
- Do Your Homework
- Select the Right People to Attend

The Mediation Session

- Opening Statements
- Caucuses
- Responding to Offers
- Breaking the Logjam
- Mediator Magic

Writing and Enforcing the Agreement

- Advantages of a Written Agreement
- Key Elements of the Agreement

- Enforcing the Agreement
- Modifying the Agreement
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The Full Toolbox Approach

Med-Arb

- Limits of Traditional Mediation
- Combining Mediation and Arbitration
- Advantages of Med-Arb
- Downside to Med-Arb

Mini-Trials

- Goal of Mini-Trials
- Mini-Trial Procedures
- Decision-Makers
- When Mini-Trials Are Likely to Work
- Advantages of Mini Trials
- Disadvantages of Mini Trials

Summary Jury Trials (Mock Trials)

- Procedures
- Goals of Summary Jury Trials
- When Summary Jury Trials Are Likely to Work
- Disadvantages of Summary Jury Trials

Early Neutral Evaluation

- Two Goals of ENE
- Who Serves as Evaluator?
- The Evaluation Session
- The Written Evaluation
- Advantages and Disadvantages of ENE
- Settlement Conferences

Rent-a Judge

- Advantages of Private Courts
- Procedure

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Employment Relationships

- At Will Doctrine
- Union Contracts

Who Is an Employee?

- Definition of an "Employee"

Typical Employment Law Problems

- Pay Problems
- Discrimination Claims
- Testing
- Job Performance Evaluations
- Emerging Issues

Risks in an Employment Dispute

- Alienating the Workforce
- Bad Publicity
- Risk of a Large Jury Award

Advantages of ADR in Employment Disputes

- Improving Employee-Management Relations
- Minimizing Litigation Cost and Litigation Risk
- Heading Off Unionization

Potential Disadvantages of ADR

ADR Solutions

- Ombudsman
- Problem Review Boards
- In-House Mediation
- Outside Mediation
- Binding Arbitration

Legal Limitations on ADR Clauses

- Gilmer v. Interstate/Johnson Lane Corporation
- Adhesion Contracts
- ADR and Public Policy
- Recent Developments

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Common Legal Disputes

- Disputes with Employees
- Covenant Not to Compete
- Disputes Among Partners
- Disputes with Clients
- Vendor Disputes

Partnership Agreements

Using ADR in a CPA Practice

- Tax Disputes
- Bankruptcy
- Litigation Assistance
- Avoiding the Unauthorized Practice of Law
- AAA Initiative

Setting Up an In-House ADR Program

- Do an Internal Audit
- Adopt an ADR Pledge
- Assign Responsibility

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Follow-Ups
Use a Questionnaire
Select the Right ADR Tool
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