Alternative Dispute Resolution

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Douglas R. Kay
Brian A. Loffredo
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Richard L. Wasserman

Court trials are often long and expensive and are both emotionally and financially draining for all parties involved. That explains why Alternative Dispute Resolution (ADR) is a rapidly growing trend among businesses and individuals. ADR is the use of different methods to resolve legal disputes between individuals, family members, or businesses without going through the very formidable, protracted, and expensive court process. ADR offers parties engaged in disputes with alternative approaches that are more efficient, faster, and much less expensive than litigating in court. The methods range from arbitration, which is the most similar to a court proceeding, to mediation, which is the least similar.

With the numerous and substantial benefits of ADR, it is no surprise that one form or another of ADR is often required in many contracts. Many courts have, or are developing, ADR programs in which the parties must participate prior to scheduling the matter for trial. The successful use of ADR lessens the burden on an overcrowded court system.

At Offit Kurman, we develop contracts for our clients to include ADR, and we represent them in the actual ADR proceeding when necessary. Our attorneys are also experienced in facilitating ADR proceedings.

MEDIATION

Mediation can be a voluntary process and in some jurisdictions court-ordered, in which the parties or the court select an impartial person to serve as a neutral mediator. Mediation is very different from a trial in a courtroom (or binding arbitration) in many respects, including the process and the outcome. Instead of a proceeding conducted by a judge or panel of arbitrators, the mediator will facilitate a discussion of the issues and possible resolutions among the parties. Conversations and statements made during mediation are confidential and typically cannot be used at trial in the event mediation does not succeed. In general, there are three possible outcomes in mediation: (i) the parties arrive at a full resolution that they have fashioned themselves, (ii) the parties achieve partial resolution and narrow their differences, or (iii) mediation is terminated without any resolution. There is no worst-case scenario outcome where none of the parties is pleased with the outcome as there might be in court or binding arbitration. Also, in an agreement fashioned by the parties, there may be terms agreed upon that would not be available to the parties in a judgment handed down to the parties in court.

SETTLEMENT CONFERENCES

Settlement conferences are conducted in some jurisdictions, often by retired judges, and providing an evaluation of the strengths and weaknesses of the parties' positions, and the risks and rewards each party will face if there is no settlement. Settlement conferences are typically attended by counsel, and the facilitator may meet several times with each party separately to narrow the gap and get the parties to reach a settlement.

ARBITRATION

Arbitration is very similar to a court proceeding. A dispute is presented by the parties, typically following evidentiary and procedural rules that are more relaxed than those followed in court. Instead of a judge or jury, arbitration is before one or more arbitrators who were selected in advance by the parties, often with a focus on the arbitrators' experience and expertise in the areas of law or industry that are involved in the dispute. Thus, the parties have more control over the arbitration process than the court process. The arbitration may be binding or nonbinding. If the parties have agreed to binding arbitration, then much like in a court proceeding, the arbitrators' decision may not be viewed as a favorable outcome by any of the parties. The outcome binding arbitration is not appealable.

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