

## ALTERNATIVES TO LITIGATION

When litigation through the courts is the method of resolving a dispute, the process will usually be time consuming and expensive. However, there are a number of different options which fall under the general category of "Alternative Dispute Resolution (ADR)," to prevent or at least minimize the burden of full litigation. Here are some ADR techniques used by Minnesota attorneys:

**Mediation:** Mediation generally means relatively friendly meetings between both sides with an experienced mediator. The goal of the mediator is to help the parties talk through their differences, find common ground, and reach a mutually agreed settlement. By definition, a mediator has no power to make a binding decision on the parties, although he or she may give an opinion on the case. Mediation is done with or without attorneys. A typical example would be the use of a mediator to resolve a labor dispute between union workers and management, resulting in a new union contract. Mediation is also successful in many divorce cases.

**Arbitration:** Arbitration is generally recognized as a more formal process than mediation, where an arbitrator is jointly selected by the parties to actually make a ruling in the case. Each side is allowed to "present" their case. Arbitrators even have subpoena power in most situations. Many arbitrations are governed by the guidelines from the American Arbitration Association, which has a pre-designated set of rules for arbitration, plus a set of rules for selecting an arbitrator. A typical example would be salary arbitration in baseball, where the arbitrator's decision is binding. Arbitration is also a frequent clause in real estate purchase agreements.

**Partial Stipulations:** Another way to partially resolve issues and minimize the cost of litigation is to reach a partial stipulation with the other side in a dispute. In many cases, the lawyers and litigants become so upset at the other side, they are reluctant to reach any agreement even on common sense matters. If the attorneys or other representatives can cut through the emotions, sometimes the two sides can literally establish a lengthy list of factual agreements, especially with regard to undisputed events/dates, and for admission of certain documents which can later be presented to a judge. This way, the attorneys can focus more clearly on the **disputed** issues.

**Judge-for-Hire:** Currently, there are a number of retired judges or former judges who resolve cases for a fee. Although they may act as "arbitrator," a former judge will likely have experience in evidentiary rulings, procedure, and general background of law much more so than an arbitrator. A retired judge can focus his or her complete attention on just one case, since the judge is not burdened by a huge case load like active judges. Scheduling a hearing with a judge-for-hire is a matter of months, whereas scheduling a full court trial may take a matter of years. Perhaps most important, a former judge may command great respect from the parties and make each side feel like they had "their day in court."

**Contract Provisions:** Many business contracts contain an "arbitration clause." This is typically a paragraph stating that any controversy between the parties over the interpretation of the contract will be submitted to binding arbitration. Reference is usually made to the rules of the American Arbitration Association, which rules are very standardized and well-accepted. Thus, by contract, the parties must proceed to arbitration instead of litigation. Sometimes the clause can even be customized to provide that the parties first try mediation to resolve their differences, and then move on to arbitration if they have not reached settlement.

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