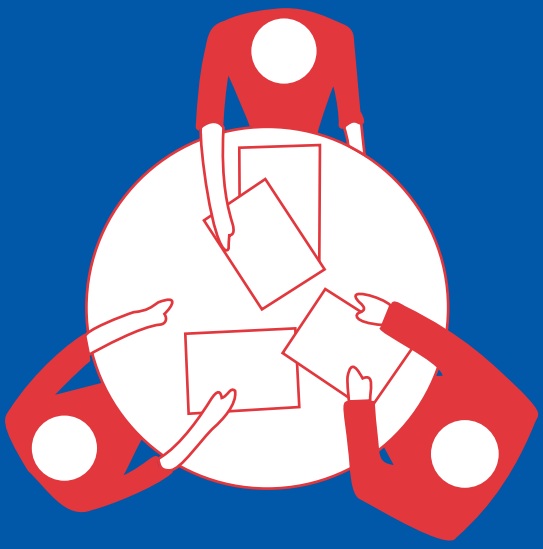
State Bar of Texas Alternative Dispute Resolution Section

DISPUTE RESOLUTION

TEXAS STYLE

Second Edition



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This second edition of Dispute Resolution Texas Style is sponsored by the Alternative Dispute Resolution Section of the State Bar of Texas. The Section acknowledges the special contributions of Mr. Marty Leewright, Publication Committee Chair; other members of the committee were Mr. Caliph Johnson and Ms. Marlene Labenz-Hough. The Section also acknowledges Ms. Jan Summer of the Center for Public Policy Dispute Resolution, Dr. Lou Ann Lasher and individuals who worked for the original Standing Committee on Alternative Methods of Dispute Resolution on the original version of this publication. Publication of this brochure was made possible by the generous financial support of the Texas Bar Foundation.

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INTRODUCTION

Guiding clients to a satisfactory resolution of their disputes is the heart of the practice of law. In some cases, the proper resolution can only be achieved through the presentation of competing positions before a judge and a jury. As guardian of citizen rights and final recourse when voluntary negotiations break down, the jury trial remains the cornerstone of our legal system. However, our system is organized on the assumption that most cases will settle outside of court. Supreme Court Justice Sandra Day O'Connor states that the "courts of this country should not be the places where the resolution of disputes begin. They should be the places where disputes end - after alternative methods of resolving disputes have been considered and tried."

While few would argue with Justice O'Connor's premise, practical questions remain. What strategies are available to resolve disputes outside of court? Where do these methods fit in our legal systems? Perhaps most important, how can I obtain a fair settlement while protecting important interests and rights? There is no single answer to these questions, however, the law does provide formal options for resolving citizen disputes outside of court.

For many years, the Federal Arbitration Act and the Texas General Arbitration Act have provided a legal framework for resolution of disputes outside of court. More recently, the Texas Legislature enacted the 1987 Texas Alternative Dispute Resolution (ADR) Procedures Act. This legislation contains policy of the State of Texas encouraging the early resolution of pending litigation through voluntary settlement procedures. Therefore, it is required of every Texas lawyer and court to become informed on the appropriate use of alternative procedures for settling disputes.

This publication was developed by the Alternative Dispute Resolution Section of the State Bar of Texas to promote the informed use of ADR procedures. It outlines the essential elements of ADR philosophy and practice under the Texas ADR Act and addresses common concerns and questions about ADR. The information presented here is offered to support attorneys and their clients, judges and other Texans working toward the effective administration of justice. The primary focus of this publication is to describe ADR practice as contemplated in the 1987 ADR Act. However, those considering use of any ADR process should be familiar with the full range of dispute resolution options and related laws. A list of related laws is contained on pages 13-14.

A comprehensive guide to ADR in Texas is provided by the *Handbook of Alternative Dispute Resolution: New Horizons for the Texas Justice System (Second Edition)* published by the State Bar of Texas. Additional information regarding alternative dispute resolution is available through the State Bar of Texas and local Bar Associations or from one of the resources listed at the end of this publication.

The ADR Umbrella

Alternative Dispute Resolution (ADR) generally refers to the use of a neutral third party to facilitate settlement of a dispute outside of a formal court of law. In Texas, a common use of "ADR" is as a reference to nonbinding settlement procedures described in and subject to the 1987 Texas Alternative Dispute Resolution Procedures Act ("ADR Act"). The inclusiveness of this ADR umbrella can be confusing. Clearly, a voluntary mediation subject to the ADR Act differs in form and purpose from a mandated arbitration subject to the Texas General Arbitration Act or the U.S. Arbitration Act. Under this definition, ADR includes a wide range of dispute resolution procedures from voluntary and nonbinding settlement procedures to mandatory and binding arbitration. The type of ADR used will always vary accordingly to the nature of the dispute and the limitations imposed by the disputants or the courts.

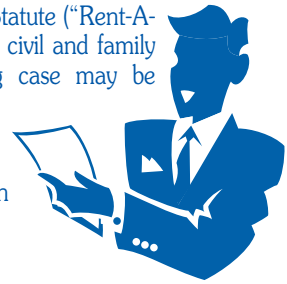
Federal Arbitration Act and Texas General Arbitration Act

These Acts provide a broad statutory framework for the specific enforcement of prior agreements in contracts in which parties have agreed to submit disputes to binding arbitration. Subject to certain limitations set out in the Acts, agreements to arbitrate are enforceable by court order. The outcome of the arbitration is binding on the parties and is subject to limited appeal to the courts. The Texas General Arbitration Act also provides a variety of substantive and procedural rules that govern the arbitration unless otherwise specified by the parties. Except in limited circumstances, the former notice requirements on the front of contracts (containing binding arbitration clauses) has been eliminated by the 1987 amendment of the Act. The Federal Arbitration Act preempts the Texas General Arbitration Act and is broadly applied to transactions involving interstate commerce. Many of the limitations regarding coverage in the Texas Arbitration Act are not found in the Federal Arbitration Act.

Other Applicable Statutes

In 1989, legislation was enacted requiring Texas counties with a population of 150,000 or more to conduct two **Settlement Weeks** each year. Settlement Weeks are cooperative efforts of the local bar and courts to resolve pending litigation. ADR procedures used in Settlement Weeks thus far are mediation and moderated settlement conferences.

The **Trial by Special Judge** Statute ("Rent-A-Judge") authorizes a procedure in civil and family law matters whereby a pending case may be stayed pending trial by a specially appointed and privately compensated judge. A list of other applicable statutes is provided on pages 13-14 of this publication.



1987 TEXAS ALTERNATIVE DISPUTE RESOLUTION PROCEDURES ACT

The 1987 Alternative Dispute Resolution Procedures Act provides a comprehensive framework for ADR practice in Texas. The Act outlines simple procedures **to encourage early settlement of lawsuits** while preserving all existing client rights and protections. The major elements of the Act are summarized below. The full text of the Act can be found in Chapter 154 of the Texas Civil Practice and Remedies Code. In addition, some courts have promulgated local rules regarding use of ADR.

Under the 1987 ADR Act ADR procedures may be used before a lawsuit is filed as the first step in settlement negotiations or late in the litigation process. All ADR procedures under the Act require client participation; others are structured as more formal hearings with lawyers presenting summaries of case information. However, all ADR proceedings subject to the 1987 Texas ADR Act are **nonbinding, confidential and flexible**.

Alternative dispute resolution under the Texas ADR Act provides an alternative to–not a substitute for–trial by jury. This Texas ADR system is nonbinding, even in court-ordered ADR the **parties cannot be compelled to settle**. If the ADR proceeding does not produce an agreement acceptable to all, the disputants maintain the option to proceed to trial. Under the 1987 Texas ADR Act, the communications relating to and any record made at an ADR proceeding are afforded confidentiality protection. This key protection provides a secure climate which frees participants to speak with candor and to negotiate in good faith.

ADR can be particularly beneficial when disputants have an ongoing business or personal relationship, when there is a need for privacy, or when economic or other pressures favor early settlement. With the exception of cases involving constitutional rights or gross disparities in bargaining power, ADR represents a prudent and economical intervention for most civil disputes.

ADR Referral

In any pending litigation, a referral to ADR may be initiated by agreement of the parties, by order of the Court on motion of a party, or by the Court on its own motion. If counsel files timely written objections to an ADR referral and the court finds that there is a reasonable basis for the objection, the court may withdraw the order. It should be noted that ADR is often used to settle disputes that are not in litigation. In these cases, since no court referral is necessary, the parties simply agree on the ADR provider and type of proceeding and schedule at their convenience.

Confidentiality

The ADR Act establishes the confidentiality of communications between ADR participants, both before and after initiation of a suit. Such communications are not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding unless it is discoverable independent of the ADR procedure. Oral communications or written materials that are otherwise admissible or discoverable, however, do not become inadmissible or nondiscoverable simply by reason of their use in an ADR procedure. Neither the participants nor the third-party neutral can be required to testify, nor are they subject to process requiring disclosure of confidential information. The third-party neutral may not disclose to either party information given in confidence by the other unless expressly authorized to do so. Also, if there is some other legal requirement for disclosure, the issue may be submitted to the court "in-camera" (privately in judge's chambers) for its determination.

Third-Party Neutrals

The Act sets forth the qualifications, duties and means of compensation of third-party neutrals. Neutrals are not required to have any specific professional background. To qualify for court-appointment to facilitate ADR proceedings, the third-party neutral must complete 40 hours of training as set forth in the Act. Neutrals facilitating family disputes must receive additional training. In special circumstances, the court may appoint neutrals who do not meet the training requirement but who have unique skills or expertise. The role of the ADR facilitator is to assist the parties in reaching an agreement. It is not appropriate for the neutral to compel or coerce

settlement. The State Bar of Texas ADR Section has adopted Ethical Guidelines for Mediators. Other ADR organizations have adopted ethical guidelines as well.

ADR Procedures

The Act lists five ADR procedures available to Texas citizens; mediation, mini-trial, moderated settlement conference, summary jury trial and nonbinding arbitration. In addition, variations or combinations of the five basic procedures can be used if acceptable to parties and to the court. These procedures can be modified with the agreement of the parties and any court involved and "hybrid" ADR procedures devised. Thus, each attorney and court is afforded an opportunity to design a process that best fits the case and the people involved. Information regarding use and practice for the five major ADR procedures are outlined on pages 8-10.

SETTING THE STAGE FOR ADR

The first step in preparing for an ADR proceeding is to select the type of ADR that best fits the case. The 1987 ADR legislation lists five nonexclusive procedures above and these procedures vary in their applicability, level of client participation and formality. Mediation, especially, is often used before the parties file suit or even contact attorneys. Mediation and moderated settlement conferences can be used in a broad spectrum of cases and at many points as a case develops. These procedures are fairly flexible and relatively simple to schedule and manage. Mini-trials, nonbinding arbitration and summary jury trials are generally utilized later in case preparation and are somewhat limited in their application. The mini-trial was designed for use in corporate or government disputes; the summary jury trial requires a judge, courtroom and jurors. Many nonbinding arbitrations call for neutrals with specialized technical expertise.

There are no absolute rules governing selection of an ADR procedure. The characteristics of the case, the preferences of the client, the temperament and skills of the attorneys, and the inclination of the court should all be taken into consideration in the selection process.

Match the Person to the Problem

Once the ADR process is selected, the next step is to identify a third-party neutral or team of neutrals. A basic requirement of third-party neutrals facilitating an ADR proceeding is that all involved perceive them to be objective. If any party (including the third-party neutral) has concerns about objectivity, then another third-party neutral should be selected. While legal education or related dispute resolution experience pro-

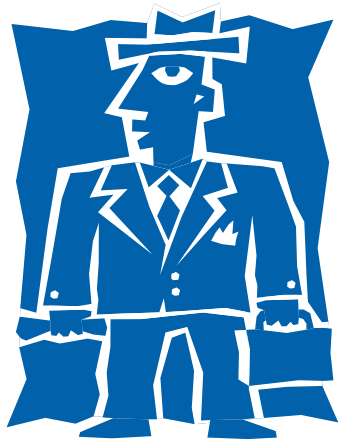
vides an important background for ADR, it is recognized that facilitating an ADR proceeding requires distinct skills or knowledge separate and apart from legal education and experience. Therefore, outstanding performance in a particular area of law or trial practice does not necessarily prepare an individual to perform as a third-party neutral.

The case may require that the ADR facilitators possess special information or other professional experience. Mental health professionals often serve on mediation teams involving families; individuals with business, technical or other special expertise have historically served on arbitration panels. It is important to remember that when attorneys serve as third-party neutrals, they do not serve as advocates or protectors for either party. As third-party neutrals, they serve as guardians of the objective dispute resolution process.

ADR facilitators can be located through a variety of sources. Good starting places are the local Bar Association, local dispute resolution centers, the Academy of Family Mediators, the Texas Association of Mediators or the Society of Professionals in Dispute Resolution. If there is a governmental party, then the Center for Public Policy Dispute Resolution can help.

The question of ADR costs must also be addressed. The ADR Act allows the ADR third-party neutral's fee to be taxed as other costs of suit unless the parties otherwise agree. Some ADR facilitators charge an hourly rate; others charge a flat fee. Whatever the fee structure, most third-party neutrals require that the parties share the payment of fee equally. When clients possess limited resources, many ADR third-party neutrals accept pro bono cases or will adjust their fees on an individual case basis. In addition, community dispute resolution centers (see page 17) offer ADR services at relatively nominal or no cost.

The Bottom Line



Whatever their philosophical preferences regarding settlement discussions, the practical question for all considering an ADR proceeding is "What do I have to lose?" If an acceptable agreement is not reached through ADR, disputants and their attorneys will forego some time and money. However, this loss is generally minimal and information gathered in preparation for an ADR proceeding can certainly be used later in trial preparation. And, when cases do move on to the courts, the ADR process has often clarified or limited the issues with a reduction in court time. Also, even

when cases do not settle in ADR, the chance to "have my say" is of significant value to many clients. The success of an ADR proceeding cannot be solely tied to formal settlements. Rather, if significant progress is made, if issues are limited, or if the client has a more realistic view of the case, then the ADR proceeding can serve a useful role.

We know that only a small percentage of cases go to trial and the overwhelming majority of those remaining are settled, usually on the courthouse steps. The basic question is whether the parties want to settle early or on the courthouse steps. Informed use of ADR generally saves time and money, leads to settlements that are realistic and hold up over time, and limits the expenditure of emotional energy associated with trial. ADR also fosters a consensual climate which enables clients to maintain constructive communications in the future. Perhaps most important, the ADR process returns the responsibility for resolving disputed issues back to those directly affected, freeing the courts for cases which require a trial for their disposition.

ENFORCEMENT OF SETTLEMENT AGREEMENTS

The Texas Alternative Dispute Resolution Procedures Act provides for the enforcement of a settlement agreement as follows:

§154.071. Effect of Written Settlement Agreement

(a) If the parties reach a settlement and execute a written agreement disposing of the dispute, the agreement is enforceable in the same manner as any other written contract.

(b) The court in its discretion may incorporate the terms of the agreement in the court's final decree disposing of the case.

(c) A settlement agreement does not affect an outstanding court order unless the terms of the agreement are incorporated into a subsequent decree.

There has been substantial litigation in Texas concerning the enforcement of settlement agreements reached at mediation. A party who participates in an alternative dispute resolution procedure should obtain competent professional advice concerning the enforceability of settlement agreements.

ADR PROCEDURES

Mediation

Mediation is a process in which a trained facilitator assists disputing parties in communicating their positions on issues and exploring possible solutions. The mediator does not render any decision or provide any evaluation of the cases; rather, he or she facilitates the exchange of information and settlement alternatives between parties. Mediation is characterized by a business-like, cooperative climate which sets the stage for constructive communication in the future. Accordingly, mediation is used extensively in family disputes, particularly those involving child custody issues, and in business or other cases involving an ongoing relationship.

The mediator establishes and enforces procedures which are fair and even-handed and which allow all sides a chance to be heard. Mediation also provides an opportunity to express emotions or frustration which may be blocking negotiations and to address these underlying concerns in a controlled environment. The mediator acts as an agent of reality helping parties think through their claims and ensuring that all parties participate in fashioning any settlement agreement.

Lawyers may attend mediation sessions and represent their clients. In most meditations, it is anticipated that the parties themselves will have the opportunity to discuss issues with other disputants and with the mediator. Because the disputants themselves participate, there is usually a high degree of client satisfaction with any settlement reached and with the mediation process itself. The length of time needed for a mediation depends on the complexity of the dispute, the commitment and communication skills of the parties and the orientation or limitations of the mediator. Many disputes can be resolved in one mediation session of two to four hours; other cases may require multiple sessions.

Mini-Trial

The mini-trial is used in corporate or government litigation to provide decision makers with the opportunity to resolve legal disputes while protecting future business or relationship interests. In a mini-trial, opposing counsel present their best

case to the parties (represented by top decision-makers with authority to settle) and to a third-party neutral. The decision-makers then meet, either with or without the neutral advisor, and negotiate. The focus is primarily on reaching business solutions rather than on settling specific legal issues.

Moderated Settlement Conference

A moderated settlement conference provides parties with a confidential, nonbinding case evaluation by an impartial panel of experienced attorneys. This process is helpful whenever counsel and their clients can benefit from an objective evaluation of the case.

The format for the moderated settlement conference is quite simple. First, the attorney for each side presents the case to the panel. This presentation generally takes no more than thirty minutes with information provided in summary form. The initial presentations are followed by questions from the panel to the attorneys and perhaps to the parties. The hearing concludes with very brief closing statements from the attorneys. Following the presentations of the case, the panel confers privately and then provides the parties an evaluation of the strengths and weaknesses of their case. The parties use this evaluation as background for further settlement negotiations.

Summary Jury Trial

The summary jury trial is conducted by the court in the usual manner of a jury trial, except that questioning jurors and presentation of evidence are greatly limited. The rules of evidence are relaxed and the jury decision is advisory in nature. The process gives the parties an opportunity to experience a formal court hearing and to see how a jury of their peers would view the case. A summary jury trial is usually completed in a day or less. It is useful when a full trial on the merits will require considerable time. This ADR proceeding is often appropriate in cases involving credibility of a special witness or a factual dispute about damages.

The jurors (usually a panel of six) are selected from the regular jury panel and are not informed of the advisory nature of their opinion until after the verdict is rendered. At that time, the parties and their attorneys have the opportunity to discuss the verdict with the jurors.

Nonbinding Arbitration

In an arbitration hearing under the ADR Act, an impartial third party or panel meets with the parties, listens to presentations of both fact and law, and renders a confidential, advisory award. The parties may, if they desire, stipulate in advance that the award will be binding. If such an agreement is made, then the award is enforceable in the same manner as

any court judgment. If such a stipulation is not made, the advisory award serves only to provide additional information for use in further settlement negotiations. Binding arbitration procedures agreed to by the parties to resolve many construction, labor and industrial disputes are usually governed by the Texas General Arbitration Act and/or the Federal Arbitration Act. Therefore, when arranging for an arbitration, the type of hearing and relevant statutes should be specified.

COMMON QUESTIONS ABOUT ADR

What is ADR?

Under the 1987 Texas ADR Act, alternative dispute resolution ("ADR") refers to a nonbinding confidential proceeding in which an objective third party facilitates the resolution of a dispute. ADR also refers to agreed binding arbitration under the Texas General Arbitration Act or the U.S. Arbitration Act.

What types of ADR exist?

The 1987 Texas ADR Act outlines five basic nonbinding ADR procedures: mediation, mini-trial, moderated settlement conference, nonbinding arbitration and summary jury trial. Other types of nonbinding ADR procedures can be created by agreement of parties. Agreed binding ADR is only available under the Texas General Arbitration Act or the U.S. Arbitration Act.

What are the benefits of ADR?

ADR processes tend to be informal, quick, economical, flexible and less traumatic than more formal procedures. Because parties participate more directly in resolving the disputes, ADR generally yields practical and creative agreements and more satisfied clients.

If 90% of cases settle prior to trial, why the need for ADR?

Parties tend to wait until shortly before trial to commence serious negotiations. Earlier settlements save time, money and emotional expenditure. The ADR process can also aid attorneys seeking an appropriate way to illustrate for clients the practical possibilities and limitations of a case. ADR also provides attorneys the opportunity to advocate a process that is

likely to preserve ongoing relationships between parties and lead to creative and practical solutions.

Why is it that ADR tends to result in voluntary settlements?

Under the 1987 Texas ADR Act, ADR is a confidential and nonadversarial process for constructive negotiations. The ADR neutral, acting as an agent of reality, facilitates negotiations by ensuring that all points of view will be considered, establishing other procedures which free attorneys and clients to focus on mutually acceptable settlements.

How do you obtain participation of the other side in an ADR procedure?

The appearance of the other side for an ADR procedure can be obtained by personal request or by court order subject to the right of the other side to make timely and reasonable objection. The actual participation in good faith at an ADR proceeding is essentially at the discretion of the other side.

What if a party is unable to pay its share of ADR costs?

Many ADR neutrals accept some pro bono cases; others will adjust their fees on a sliding scale or on a case-by-case basis. Dispute Resolution Centers are available in many communities to provide ADR services at minimal cost.

How often does use of ADR lead to settlement?

Settlement rates vary depending on the type of ADR process used, the point in litigation when the ADR referral occurred, and the time, commitment and skills brought to the table by the parties. Nationally, approximately three-quarters of the cases brought to community dispute resolution centers reach agreement.

Formal settlement is not the only criteria for the success of an ADR proceeding. Even when a written agreement is not finalized, the ADR process often clarifies or limits the issues and sets the stage for continued and constructive negotiation. And, even when agreements are not reached, client satisfaction with ADR tends to be high, especially in ADR processes that rely on client participation.

What if ADR is ordered before discovery is completed or before the judge has ruled on legal issues such as motions for summary judgment?

Sometimes ADR is most effective when commenced before discovery is underway. If discovery is partially complete, the

court may ask that no further discovery be completed pending the outcome of the ADR case. The timing of the ADR process can usually be worked out with the court, the ADR neutral and the other party. Most judges are sensitive to the need to rule on any legal issues essential for case evaluation prior to an ADR procedure.

What cases are not appropriate for ADR?

Most civil disputes are appropriate for referral to an ADR proceeding. However, it is generally believed that cases involving a gross disparity in bargaining power (such as cases involving spouse or child abuse) should not attempt an ADR procedure. Also, cases involving questions of constitutional rights or other test cases may not be suitable for ADR.

Is ADR part of a movement to do away with jury trials?

No. ADR will never replace the right to jury trial. In fact, the efficacy of ADR under the 1987 Texas ADR Act depends on the parties' right to trial if the negotiations fail. The jury trial then becomes the alternative against which a proposed settlement is tested.

What is the attorney's role and responsibility in ADR?

Lawyers are obligated to assist clients in evaluating and preparing settlement options, including ADR. Attorneys prepare for and participate with clients in ADR procedures. If no settlement is reached, they try their cases in court. Attorneys are obligated to advise clients to comply with a court order for ADR subject to the right to object under Section 154.022 of the Texas Civil Practice and Remedies Code.

Does a request for or participation in an ADR hearing imply weakness?

No. A settlement initiative based on careful research of the case is generally considered a strong move. Further, no adverse inference whatsoever can be drawn from participation in a court-ordered ADR proceeding under the ADR Act.

What if the other side participates in an ADR procedure but does not make any offer?

Under the ADR Act, there is no requirement that ADR participants make any offer and there are no consequences for not doing so.

SELECTED REFERENCES

Texas Alternative Dispute Resolution Procedures Act

The 1987 Texas Alternative Dispute Resolution Procedures Act (passed in 1987 as SB 1436, Ch. 1121, 70th Regular Legislative Session) is codified as Chapter 154 of the Texas Civil Practice and Remedies Code. The Act establishes a general statutory framework for ADR in Texas and authorizes a court to refer a pending dispute to an ADR procedure either on the motion of a party or on the court's own motion. Although a court can compel ADR, the results of ADR are not binding upon the parties unless agreed to by the parties. Generally, the ADR proceedings are confidential.

Alternative Dispute Resolution System Established by Counties

Chapter 152 of the Texas Civil Practice and Remedies Code establishes a county-by-county system for the creation, funding and administration of an "alternative dispute resolution system," commonly known as community dispute resolution centers or mediation centers. Funding for these centers is obtained by an additional court cost in civil cases in the county courts and district courts.

Settlement Week

In 1989, the Texas Legislature enacted Senate Bill 1625 (Texas Civil Practice and Remedies Code Ann. Ch. 155) requiring counties with a population of 150,000 or greater to conduct two Settlement Weeks each year. During Settlement Weeks, attorneys submit pending cases to an ADR procedure facilitated by volunteer attorneys who usually conduct mediations or moderated settlement conferences.

Trial by Special Judge

Chapter 151 of the Texas Civil Practice and Remedies Code authorizes a procedure in civil and family law matters whereby a pending case may be stayed pending trial by a specially appointed and privately compensated judge (Texas Civil Practice and Remedies Code Ch. 151, Vernon Supp. 1990).

Texas General Arbitration Act

The Texas General Arbitration Act provides a statutory framework for the specific enforcement of contracts whereby the parties agree to submit existing or future disputes to binding arbitration (Text Civ. Prac. & Rem. Code, Chapter 171). The statute furnishes a variety of substantive and procedural rules that govern the arbitration unless otherwise specified by the parties.

International Commercial Disputes

A separate Texas statute enacted in 1989 deals with arbitration and conciliation of existing or future controversies that qualify under the statute as being "international" and "commercial" in character (Text Civ. Prac. & Rem. Code, Chapter 172).

Federal Arbitration Act

The Federal Arbitration Act ("FAA") is found at Title 9 of the United States Code (9 U.S.C.A. Sec.1-15 West 1970 and Supp. 1990). The FAA is a broadly written statute sanctioning and encouraging binding arbitration by private agreement in maritime transactions and contracts evidencing a transaction involving interstate or international commerce. The FAA is similar to the Texas General Arbitration Act in many respects.

1988 Judicial Improvements and Access to Justice Act

This Federal Act, Public Law 100-702, was signed into law November 19, 1988 and became effective May 18, 1989 (28 U.S.C.A. Sec. 654-658 West Supp. 1990). The Act provided the framework for a project in the federal courts for "court-annexed" arbitration. Only 20 judicial districts were included in the project. Some of the designated pilot districts may compel court-annexed arbitration and some may not. Unlike private, consensual arbitration under the Federal Arbitration Act, a losing party in a court-annexed arbitration may obtain a "trial de novo" (new trial), although the party requesting a trial de novo can be taxed with certain costs. The Western District of Texas is one of the ten districts that may compel court-annexed arbitration (Local Rule 300-9 United States District Court for the Western District of Texas [Arbitration]).

Duty to Seek Settlement

Canon 8 of the American Bar Association Canons of Professional Ethics (1957) requires that whenever controversy will admit of fair adjustments, clients should be encouraged to avoid or end litigation. This canon assumes that early settlement is generally in the best interest of the client and that attorneys make good faith efforts to negotiate and to exhaust all available settlement procedures prior to bringing a case to court.

Common Law Principles and Doctrines

Common Law Arbitration
Contract Law
Accord and Satisfaction
Compromise and Settlement
Bar Associations

ADR RESOURCES

The State Bar of Texas and the American Bar Association maintain Sections on dispute resolution. Many local Bar Associations sponsor a similar committee focused on implementing ADR at the local level. In addition, an increasing number of Bar-sponsored Continuing Legal Education programs on ADR are routinely available.

Professional Associations

Professional associations devoted to the development of ADR practice and standards are available to provide information on ADR. Examples of such associations are:

Society of Professionals in Dispute Resolution (SPIDR){815 15th Street, NW, Suite 530, Washington, D.C. 20005-2201, (202) 783-7277, Fax: (202) 783-7281,
Email: spidr@spidr.org}

Academy of Family Mediators {4 Militia Drive, Lexington, MA 02173, (617) 674-2663, Fax: (617) 674-2690,
Email: afmoffice@igc.org}

Texas Association of Mediators {P. O. Box 191208, Dallas, TX 75219-1208}

Association of Family And Conciliation Courts {329 W. Wilson Street, Madison, WI 53703-3612, (608) 251-4001, Fax: (608) 251-2231, Email: afcc@igc.apc.org}

Association of Attorney-Mediators {One Galleria Tower, 13355 Noel Road, Suite 500, Dallas, TX 75240, (800)280-1368, (972)869-1183, Fax: (214)739-2056,
Email: aaam0000@counsel.com}

Resolution Forum, Inc. {P.O. Box 984, Houston, TX 77001-0984, (713)646-2913, Fax: (713)646-2996}. (A Texas non-profit corporation which provides continuing education and public awareness on conflict management and dispute resolution concepts and techniques for the legal, business and professional communities. Its members work: (a) to improve the quality of dispute resolution services available to the public; (b) to provide multi-disciplinary panels of mediators and arbitrators to the courts, businesses, schools, government, and the community at affordable costs; and (c) to enhance the professional education and training of law students as effective practitioners and counselors in dispute resolution.)

Local mediation associations are also active in major Texas cities.

American Arbitration Association

The AAA is a nonprofit corporation operating nationwide that has been administering arbitrations, mediations and other ADR procedures since 1926. Texas AAA offices are in Dallas {1750 Two Galleria Tower, 13455 Noel Road, Dallas, TX 75240-6636, (972) 702-8222, Fax: (972) 490-9008} and in Houston {1001 Fannin Street, Suite 1005, Houston, Texas 77002, (713) 739-1302}.

A.A. White Dispute Resolution Institute

The A.A. White Dispute Resolution Institute is a nonprofit corporation organized in 1988 to promote alternative dispute resolution and can be a valuable resource for Texas lawyers. The Institute is part of the University of Houston. {A.A. White Dispute Resolution Institute, University of Houston, 325 Melcher Hall, College of Business Administration, Houston, TX 77204-6283, (713) 743-4933,
Email: aawrgp@ricsl.cba.uh.edu}.

Center for Public Policy Dispute Resolution

This Center is a part of the University of Texas School of Law and the LBJ School. Their mission is focused on government use of ADR processes in developing public policy and in conducting other government business and litigation. {Center for Public Policy Dispute Resolution, University of Texas School of Law, 727 E. 26th Street, Austin, Texas 78705,
(512) 471 -3507, Fax: (512) 232- 1191,
Email: cppdr@mail.law.utexas.edu}.

Dispute Resolution Centers

Community dispute resolution centers (or mediation centers) are available in most of the major population centers in Texas. The dispute resolution centers vary in administrative structure, but generally rely on cooperative efforts between the Commissioners Court, citizen advisory boards and the local Bar Association. Dispute resolution centers currently in operation are listed below. Additional lists may be obtained from your local center or the State Bar of Texas.

TEXAS DISPUTE RESOLUTION CENTERS

Amarillo

Dispute Resolution Center
c/o Panhandle Regional Planning Commission
P.O. Box 9257
Amarillo, TX 79105-9257
(806) 372-3381
(806) 373-3268 Fax

Austin

Dispute Resolution Center
5407 North IH-35, Suite 410
Austin, TX 78723
(512) 371-0033
(512) 371-7411 Fax

Bastrop

Bastrop County Mediation Services
804 Pecan
Bastrop, TX 78602
(512) 321-2244
(512) 321-4519 Fax

Beaumont

Dispute Resolution Center of Jefferson County
1149 Pearl, 3rd Floor, Old Section
Beaumont, TX 77701
(409) 835-8747
(409) 784-5811 Fax

Carrollton

Center for Dispute Resolution of Collin County, Inc.
3740 N. Josey, Suite 210
Carrollton, TX 75007
(972) 394-4297

Conroe

Dispute Resolution Center of Montgomery County
P.O. Box 3609
Conroe, TX 77305
(409) 760-6914
(409) 788-8364 Fax

Corpus Christi

Nueces County Dispute Resolution Center
901 Leopard, Suite 401.2
Corpus Christi, TX 78401
(512) 888-0650
(512) 888-0754 Fax

Dallas

Dispute Mediation Service, Inc.
3400 Carlisle, Suite 240 LB9
Dallas, TX 75204-1261
(214) 754-0022
(214) 754-0378 Fax

El Paso

El Paso County Dispute Resolution Center
1100 N. Stanton, Suite 610
El Paso, TX 79902
(915) 533-4800
(915) 532-9385 Fax

Fort Worth

Dispute Resolution Service of Tarrant County, Inc.
One Summit Avenue, Suite 210
Fort Worth, TX 76102-2609
(817) 877-4554
(817) 877-4557 Fax

Houston

Dispute Resolution Center Harris
County Courthouse Annex #2
1302 Preston, Suite 100
Houston, TX 77002-2013
(713) 755-8274
(713) 755-8885 Fax

Lubbock

South Plains Dispute Resolution Center
P.O. Box 3730 Freedom Station
Lubbock, TX 79452
(806) 762-8721
(800) 858-1809
(806) 765-9544 Fax

Lewisville

Center for Dispute Resolution of Denton County, Inc.
P.O. Box 1282
Lewisville, TX 75067-1282
(972) 221-9333
(972) 436-7657 Fax

San Angelo

Mediation Center of San Angelo
P.O. Box 61364
San Angelo, TX 76906
(915) 944-2457

San Antonio

Bexar County Dispute Resolution Center
Bexar County Justice Center
300 Dolorosa, Suite 1102
San Antonio, TX 78205-3009
(210) 220-2128
(210) 220-2941 Fax

Stafford

Fort Bend County Dispute Resolution Center
10701 Corporate Dr., Suite 145
Stafford, TX 77477
(281) 565-9800
(281) 565-9803 Fax

Waco

McLennan County Dispute Resolution Center
c/o Virginia Cobb
P.O. Box 1470
Waco, TX 76703-1470
(254) 755-4100
(254) 754-6331 Fax

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(The Council of the ADR Section of the State Bar of Texas has general supervision and control of the affairs of the Section subject to the provisions of the Charter and Bylaws of the State Bar of Texas and the Bylaws of the Section.)

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