

About ADR



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This brochure describes a number of commonly used ADR processes. It does not aim to define all ADR processes or limit the scope of ADR.

What does ADR mean?

ADR is used as an abbreviation for “*Alternative Dispute Resolution*”, but is also used to mean *assisted* or *appropriate* dispute resolution. ADR refers to non-judicial processes in which an impartial person (an *ADR neutral*) assists parties in a dispute to resolve the issues between them.

Some also use the term ADR to include conflict management approaches that enable parties to prevent or manage their disputes without outside assistance. However, this brochure describes only those processes in which an ADR neutral is involved to directly assist parties in a dispute.

Types of ADR

ADR processes may be *facilitative*, *advisory* or *determinative* in approach, or even a combination of them.

In a *facilitative* process, an ADR neutral or facilitator assists disputing in identifying the disputed issues, developing resolution options, considering alternatives and

endeavoring to reach an agreement about some or all issues in dispute. Examples of facilitative processes are *mediation*, *facilitation* and *facilitated negotiation*.

In an *advisory* process, an ADR neutral considers and appraises the dispute and provides an opinion as to the facts of the dispute, the law and, in some cases, a proposed outcome and how it may be achieved. Advisory processes include *early neutral evaluation*, *appraisal*, *non-binding arbitration* and *advisory mini-trial*.

In a *determinative* process, an ADR neutral evaluates the dispute (which may include a formal presentation of evidence from the parties at hearing) and makes a binding determination. Examples of determinative ADR processes are *arbitration*, *statutory hearing officer proceedings* and *private judging/trials*.

In *combined* or *hybrid* processes, the ADR practitioner may play multiple roles. For example, in *conciliation* and *conferencing*, the ADR practitioner may facilitate discussions, as well as provide advice on the merits of the dispute. In *hybrid* processes, such as *proactive arbitration*, *partnering* and two-step, *med-arb* or *arb-med*, the neutral first uses one process (*mediation*) and then a different one (*arbitration*).

Variations

Various ADR processes may also be described according to their objectives, the specific strategies used or the type of dispute. For example, in *transformative* mediation, the mediator aims to enhance the relationships and understanding between parties, while in evaluative mediation, the mediator will suggest solutions. In *co-mediation*, two mediators work as a team. Arbitration can take the form of oral testimony at hearing or the exchange of written documentation only. Mediation and arbitration can be binding or non-binding, by agreement of the parties and the neutral.

ADR may be used for different categories of disputes, for example, victim-offender conciliation, EEOC mediation or commercial arbitration. *Multi-party ADR* refers to proceedings involving more than two parties or groups of parties.

Legal issues

Legislation or contractual arrangements give rise to differing legal rights and obligations in ADR.

Participation in ADR may be *voluntary* or *mandatory*. Parties may agree to use ADR when a dispute arises in the future, simply by agreeing to do so. Alternatively, a contract, code of practice or set of rules may

require parties to use ADR when a dispute arises. For instance, insurance policies with uninsured or underinsured coverage often provide for arbitration by a sole arbitrator or 3-member panel of arbitrators. Each party to a solo arbitration must agree to the appointment of a sole arbitrator, but with a 3-member panel, each party appoints one of the arbitrators, then those two arbitrators appoint the third or “swing” arbitrator. In some cases, a court may order parties to arbitrate or use other forms of ADR.

In some situations, the outcomes of ADR processes may be readily enforceable. For example, an arbitration award will generally have the same effect as a court judgment. In other situations, the parties may need to take further steps before the outcome of an ADR process can be enforced, i.e., by seeking enforcement of a mediated settlement agreement.

Legislation or contractual arrangements may also provide legal protection for the parties or for the ADR practitioner. For example, in Washington State, matters discussed in some ADR processes may be confidential, but, in other processes, they may be used in a later court hearing. In most circumstances, ADR neutrals will be immune from civil liability or prosecution.

What ADR does WAMS offer?

WAMS offers a full range of ADR services, including mediation, arbitration, private trial, early neutral evaluation, appraisal, statutory hearing officer and numerous hybrid processes.

More information about WAMS and its ADR processes may be found at www.usamwa.com

ADR

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