

Preface

The landscape of alternative dispute resolution (“ADR”) is constantly changing. In recent years, lawyers have become savvy in anticipating potential conflicts and finding ways to address them through ADR. Federal and State legislatures have been increasing the mandate to use ADR in various circumstances while limiting its application in others. Courts continue to refine their rulings, clarifying when ADR can be compelled or resisted, and how it can be used in different cases.

Contractual arbitration and mediation remain the most popular ADR options, and predispute clauses are routinely included in most types of contracts. Other options remain available in various circumstances, including mini-trials, summary jury trials, private judging, med-arb, partnering, collaborative law, dispute review boards, and various hybrid combinations. Counsel and their clients need to determine when to opt for which ADR option and how to successfully resolve their disputes through the most appropriate process.

This book is designed to guide counsel and their clients through these ADR options. It discusses the various processes and provides yearly updates on the applicable laws and rules. It also provides insight into the use of ADR in specific practice areas as well as practice tips on how best to succeed with the appropriate process.

Our goal is to provide counsel and their clients with the most current, comprehensive, and useful resource available on many of the existing forms of dispute resolution. Accordingly, we have been updating this Practice Guide regularly as the courts and legislatures are constantly revising and updating laws and rules. However, recognizing that being fully current at all times is an impossibility, in utilizing this publication, practitioners are best advised to confirm that there has been no change in status with the cases and rules cited herein before relying upon or citing them as definitive authority.

It has long been recognized that lawyers are most valuable to their clients when they have the good judgment to

forego traditional litigation in favor of more creative and efficient solutions. As Abraham Lincoln so aptly advised, more than a century and a half ago:

“Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser: in fees, expenses and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough.”

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