

Index

ACADEMY OF FAMILY MEDIATORS (AFM)

Ethics standards, **14:9**

ACCESS TO PUBLIC ADR

Administrative mechanisms, **2:28**
Court-connected mechanisms, **2:26**

ACTIVE LISTENING

Emotion management, **3:7**

ADJUDICATIVE PROCESSES

Conciliatory ADR processes
distinguished, **2:4**
Dispute processing, **2:4, 2:6**
Mediation, this index
Peer review, **2:15**

ADJUSTMENT

Conciliatory processes, **2:4**

ADMINISTRATION

Definition of administering agencies,
1:1

ADMINISTRATIVE ADR

Generally, **13:1**
Access requirements, **2:28**
Arbitration, **2:34, 13:3**
Civil rights, statutory ADR, **13:6**
Confidentiality standards, **13:18**
Consumer disputes
arbitration, **2:34, 13:8**
Lemon Laws, below
Disability law, statutory ADR, **13:6**
Environmental disputes, **13:5**
Facilitation of public disputes, **2:30**
Federal law, **13:2**
Inter-agency disputes, **13:5**
Lemon laws
generally, **2:34**
Georgia, **13:9 et seq.**
Local government entities, disputes
between, **13:6**

ADMINISTRATIVE ADR—Cont'd

Long term care facilities, Georgia
ombudsman program, **13:6**
Mechanisms of ADR generally, **2:28**
et seq.
Mediation
administrative forms, **7:4**
public disputes, **2:30**
restrictions, **8:35**
Medical malpractice arbitration, **2:35**
Natural resource disputes, **13:5**
Negotiated rulemaking, **2:29, 13:4**
Neg-reg, **13:4**
Ombudsman programs, **13:6**
Property tax disputes, **13:17**
Public disputes, **2:30, 13:5**
Public employment disputes, **2:33,**
13:7
Public law disputes, **13:1**
Reg-neg, **2:29, 13:4**
Rulemaking, negotiated, **13:4**
Secondary processes, **2:7**
Statutory rights ADR, **2:31, 13:6**
Taxation disputes, **13:17**
Workers' compensation, statutory
ADR, **13:6**

ADVANTAGES AND DISADVANTAGES OF ADR

Generally, **1:4**
Arbitration advantages, **9:5**
Arbitration disadvantages, **9:6**
Arb-med, **11:24**
Court-connected ADR, **12:24**
Disputant reluctance to invest in non-
binding processes, **1:8**
Dual ADR/litigation strategies, **4:13**
Fairness, **11:28**
Med-arb
generally, **11:4, 11:5**
fairness, **11:28**
Med-arb hybrids, **11:24**

**ADVANTAGES AND
DISADVANTAGES OF ADR
—Cont'd**

Mediation
 multiparty disputes, **7:14**
 negotiation compared, **7:5, 7:6**
 Mediation advocacy, **7:13**
 Med-then-arb, **11:18, 11:19**
 Mini-trials, **11:31, 11:46**
 Multiparty dispute mediations, **7:14**
 Negotiation, **6:6**
 mediation compared, **7:5, 7:6**
 strategies, **6:15**
 Pre- vs post-litigation-filing ADR,
 12:1
 Social and personal implications,
 14:20

ADVERSARIALISM

Arbitration hearings, **10:19**

ADVOCACY

Arbitration
 generally, **9:7**
 Lemon Law arbitrations, **13:14**
 right to counsel, **9:20**
 Case selection, **7:14 et seq.**
 Competency standards, **14:3**
 Conflicts of interest, **14:8**
 Counseling and advocacy
 generally, **1:1, 4:1**
 conflicts of interest, **14:8**
 distinctions, **4:1**
 negotiations, **6:4**
 overlapping roles, **1:1, 4:1**
 right to counsel, **9:20**
 Mechanisms of ADR generally, **2:36**
 Mediation advocacy
 generally, **7:12 et seq.**
 advantages and disadvantages for
 lawyers, **7:13**
 approaching opponents, **7:18**
 case selection, **7:14 et seq.**
 cost considerations, **7:16**
 counseling and preparing the client
 for, **7:17**
 difficult clients, educating, **7:13**
 issue defining and processing, **7:25**
 lawyer-to-lawyer approach, **7:18**

ADVOCACY—Cont'd

Mediation advocacy—Cont'd
 litigious clients, **7:25**
 mediator-advocate relationships,
 8:43
 role of the lawyer, **7:12**
 sessions, advocacy within, **7:25**
 timing issues, **7:15**
 Professionalism and Ethics, this
 index

AFFIDAVITS

Arbitration use, **10:22**

AGENCIES OF GOVERNMENT

Administrative ADR, this index
 Mini-trials use in inter-agency
 disputes, **11:30**

AGREEMENTS

See Contracts, this index

**AMERICAN ARBITRATION
ASSOCIATION**

Generally, **1:1, 9:1**
 ABA/AAA Code of Ethics for
 Arbitrators in Commercial
 Disputes, **14:14**
 Agreement forms, **15:60, 15:64**
 Alternative to litigation, ADR as, **1:6**
 Commercial Arbitration Rules (CAR)
 generally, **9:1, 9:8**
 costs, **9:14**
 evidence rules, **10:27**
 impartiality, **10:7**
 incorporation in arbitration agree-
 ment, form, **15:64**
 Costs, **9:14**
 Evidence rules, **10:27**
 Impartiality, **10:7**
 Large, Complex Case Dispute Reso-
 lution Program, **15:89**

AMERICAN BAR ASSOCIATION

ABA/AAA Code of Ethics for
 Arbitrators in Commercial
 Disputes, **14:14**
 Dispute Resolution Section creation,
 1:6
 Model Rules, professionalism and
 ethics in ADR, **14:2**

INDEX

ANNEXED ADR

- Administrative ADR, this index
- Court-Connected ADR, this index

APPAREL INDUSTRY DISPUTES

- Arbitration, **9:67**

APPEALS

- Settlement conferences, appellate, **12:11**

ARBITRATION

- Generally, **9:1 et seq.**
- ABA/AAA Code of Ethics for Arbitrators in Commercial Disputes, **14:14**
- Added claims, **10:16**
- Adding claims, **9:23**
- Adhesiveness defense, agreements to arbitrate, **9:12**
- Adjudicative process, generally, **2:4, 2:6**
- Administered and ad hoc arbitrations distinguished
 - generally, **9:8**
 - arbitrator selection, **9:28**
 - failure of appointment of arbitrators, **9:32**
 - institutional rules, incorporation in agreements, **15:19**
- Administration provisions, form drafting, **15:58**
- Administrators' professionalism and ethics standards, **14:19**
- Advantages, **9:5**
- Adversarialism in hearings, **10:19**
- Advisory or non-binding arbitration
 - generally, **2:11**
 - disputes review boards compared, **2:16**
 - peer review compared, **2:15**
- Advocacy roles
 - generally, **9:7**
 - Lemon Law arbitrations, **13:14**
 - right to counsel, **9:20**
- Affidavits, **10:22**
- Agreements
 - AAA pre-disputes clause, **15:60**
 - abandoned arbitration provisions, **9:17**

ARBITRATION—Cont'd

- Agreements—Cont'd
 - any and all disputes provisions, **9:16**
 - arising-out-of provisions, **9:16**
 - attorney's fees awards provisions, **9:54**
 - authority of arbitrator provisions, **9:37**
 - authority of arbitrator specifications, **10:9**
 - broad arbitration agreements, below
 - container contract validity, agreements to arbitrate, **9:12**
 - contract law applicable, **9:13**
 - defenses to enforcement of arbitration agreements, **9:11**
 - demands for arbitration, **10:10**
 - forms
 - AAA pre-disputes clause, **15:60**
 - generally, **9:13**
 - gateway questions of arbitrability, below
 - illegality defense to agreements to arbitrate, **9:12**
 - interstate contracts containing arbitration agreements, **9:10**
 - labor arbitration pursuant to collective bargaining agreements, dispute processing mechanisms not covered in book, **1:3**
 - partnership agreement, form of arbitration provision, **15:85**
 - pre- vs post-dispute agreements to arbitrate, below
 - repudiated arbitration provisions, **9:17**
 - scope of the arbitral agreement, **9:16**
 - selection of arbitrators, **9:27**
 - separability doctrine, agreements to arbitrate, **9:12**
 - submission agreements, below
 - unconscionability defense, agreements to arbitrate, **9:12**
 - validity, **9:13**
 - waived arbitration provisions, **9:17**

ARBITRATION—Cont'd

- American Arbitration Association, this index
- Ancillary court proceedings in arbitration
 - generally, **15:21 et seq.**
 - Forms, this index
- Answers, **9:22, 10:12**
- Any and all disputes provisions in agreements, **9:16**
- Appeals of awards to courts
 - generally, **9:57, 9:63**
 - form, **15:80**
- Appellate arbitration, **9:56**
- Applicable arbitration law, **9:10**
- Arbitrability
 - definition, **9:11**
 - gateway questions of arbitrability, below
- Arb-Med, this index
- Arising-out-of provisions in agreements, **9:16**
- Attendance at hearings, **10:21**
- Attendance of hearings, **9:40**
- Attorney representation rights, **9:20**
- Attorneys as arbitrators, **10:3**
- Attorney's fee awards, **9:54**
- Authority of arbitrator
 - generally, **9:1, 10:8 et seq.**
 - agreement provisions, **9:37**
 - confirmation of award, requirements, **9:61**
 - decision making authority, **10:24**
 - delegations to outside experts, **10:24**
 - flexibility of delegations, **9:5**
 - form drafting considerations, **15:56**
 - interim relief, **9:37**
 - post-award authority, **10:34**
 - remedies, **9:5**
 - subpoena powers, **9:38**
 - vacation of award for overstepping authority, **9:59**
- Awards
 - generally, **9:48 et seq., 10:32**
 - breakdowns of amounts awarded, **10:25**

ARBITRATION—Cont'd

- Awards—Cont'd
 - clarification requests, **10:34**
 - clarifications, **9:55, 10:34**
 - costs, fees, and expenses, **9:51, 10:32**
 - dispositive motions, **15:77**
 - fees and expenses, form, **15:82**
 - Forms, this index
 - high/low or control clause
 - arbitrator informed of limits, form, **15:75**
 - arbitrator not informed of limits, form, **15:74**
 - interest, **9:53**
 - post-award authority, **10:34**
 - settlements, awards upon, **10:33**
 - specific performance, **10:32**
 - time for, **10:30**
 - written opinions with awards, below
- Banking disputes
 - generally, **9:71**
 - form, **15:84**
- Baseball arbitration
 - generally, **9:64**
 - form, **15:76**
- Behavior of arbitrator implying partiality, **10:6**
- Bias
 - arbitrator challenges, gateway questions of arbitrability, **9:12**
- Commercial Arbitration Rules, **10:7**
- ex parte communications
 - interpreted as, **10:18**
- impartiality standards for arbitrators, generally, **10:5 et seq., 14:16**
- vacation of award for partiality, **9:58**
- Bifurcation
 - generally, **9:46**
 - form, **15:70**
- Breakdowns of amounts awarded, **10:25**
- Briefs
 - post-hearing, **9:47**
 - time for filing, **10:25**

INDEX

ARBITRATION—Cont'd

- Broad arbitration agreements
 - generally, **9:16**
 - form drafting considerations, **15:72**
- Chairpersons of panels, **9:30**
- Challenges to arbitrators, **9:31**
- Changing claims, **9:23**
- Checklist of points to consider, **15:59**
- Choice of law
 - generally, **9:10, 9:13**
 - form, **15:65**
- Claims
 - added claims, **10:16**
 - adding, modifying, or changing, **9:23**
 - multi-part claims, consolidation, **9:24**
 - new claims, **10:16**
 - statutory claims, arbitrability, **9:14**
- Clarification of awards, **9:55, 10:34**
- Class and collective actions
 - FAA, **9:15**
 - gateway questions of arbitrability, **9:15**
- Client's objectives, form drafting considerations, **15:50**
- Close of hearing, **10:30**
- Collateral estoppel preclusion, **9:62**
- Comments by arbitrator implying partiality, **10:6**
- Commercial arbitration, **9:66 et seq.**
- Commercial Arbitration Rules (CAR)
 - generally, **9:1, 9:8**
 - costs, **9:14**
 - evidence rules, **10:27**
 - impartiality, **10:7**
 - incorporation in arbitration agreement, form, **15:64**
- Common law grounds for vacation of award, **9:60**
- Compelling arbitration and staying litigation
 - generally, **9:25**
 - appellate review, **9:63**
 - Forms, this index
- Complex cases, **10:35**
- Compulsory arbitration, **9:3**

ARBITRATION—Cont'd

- Computer industry disputes, **9:68**
- Conciliatory processes, **2:4**
- Concilio-arbitration, **11:27**
- Conditions precedent defenses to arbitration
 - generally, **9:11**
 - form, **15:68**
- Confidentiality
 - generally, **10:34**
 - form, **15:73**
- Confirming the award, **9:61**
- Conflicts of interest, arbitrators'
 - generally, **14:7**
 - professionalism and ethics standard for arbitrators, **14:16**
- Consensual, pre- vs post-dispute agreements to arbitrate disputes, above
 - submission agreements, below
- Consolidation
 - generally, **9:24**
 - form, **15:71**
- Construction Arbitration Code (CAC), **9:10**
- Construction industry disputes, **9:66**
- Consumer disputes, gateway questions of arbitrability, **9:14**
- Container contract validity, agreements to arbitrate, **9:12**
- Costs
 - Commercial Arbitration Rules provisions, **9:14**
 - gateway questions of arbitrability, **9:14**
- Costs, fees, and expenses in awards, **9:51, 10:32**
- Counsel representation rights, **9:20**
- Counterclaims, **9:22, 10:12**
- Court-Connected ADR, this index
- Courts, role in arbitration, **9:9**
- Credibility of witness determinations, **10:29**
- Criminal liability of arbitrators, GAC, **10:36**
- Custody disputes, **9:75**
- Death or incompetence of a party, **9:41**

ARBITRATION—Cont'd

- Decision making authority of arbitrators, **10:24**
- Defaults, **9:41**
- Defenses to arbitration, gateway questions, **9:11**
- Defenses to enforcement of arbitration agreements, **9:11**
- Definitions, **9:2, 10:28**
- Delay defenses to arbitration, gateway questions, **9:11**
- Delegation of authority by arbitrators, **10:24**
- Delegation to arbitrator of arbitrability questions, **9:12**
- Demands for arbitration, **10:10**
- Disadvantages, **9:6**
- Disclosures by arbitrators
 - generally, **9:31, 10:5**
 - professionalism and ethics standard for arbitrators, **14:16**
- Discovery
 - generally, **9:35**
 - form, **15:78**
- Dispositive motions, **9:46**
- Dispositive motions, award provisions, **15:77**
- Disregard of the law, vacation of award for, **9:60**
- Divorce, **9:75**
- Documents-only arbitrations, **9:42**
- Employment disputes
 - agreement form, **15:86**
 - attorney's fee awards, **9:54**
 - FAA, **9:14**
 - gateway questions of arbitrability, **9:14**
- Escrow provision form, **15:69**
- Evidence principles, **10:28**
- Evidence rules
 - generally, **9:44**
 - Commercial Arbitration Rules, **10:27**
- Evidentiary hearings, **9:39**
- Ex parte communications
 - generally, **10:18**
 - professionalism and ethics standards, **14:17**

ARBITRATION—Cont'd

- Ex parte hearings, **9:41**
- Exchanges of information, **10:25**
- Exhibits, **10:25**
- Expedited arbitration, **9:64**
- Expert arbitrators
 - generally, **9:28**
 - independent investigations by, **10:23**
- Experts, delegations of arbitral authority to, **10:24**
- Extra-judicial review of the award, **9:56**
- Facts, form drafting considerations, **15:51**
- Failure of appointment of arbitrators, **9:32**
- Fairness, professionalism and ethics standards, **14:15**
- Federal Arbitration Act (FAA)
 - generally, **9:10**
 - appeals of awards to courts, **9:63**
 - class and collective actions, **9:15**
 - employment relationships subject to, **9:14**
 - gateway questions of arbitrability, **9:14**
 - Georgia Arbitration Code conflicts, **9:14**
 - judicial review of awards, **9:63**
 - manifest disregard of the law challenges to verdicts, **9:60**
 - petition requirements, **9:19**
- Fees and expenses, form, **15:82**
- Filings, **10:25**
- Filling vacancies of arbitrators, **9:33**
- Final judge, arbitrator as, **10:4**
- Final offer arbitration, **9:64**
- Finance industry disputes
 - generally, **9:71**
 - form, **15:84**
- Findings of facts, **10:25**
- Formal requirements of awards, **9:48**
- Formalities at hearings, **10:15**
- Forms, this index
- Forms of relief, **9:50**
- Functions and roles of arbitrators, **10:1 et seq.**

INDEX

ARBITRATION—Cont'd

- Gateway questions of arbitrability
 - generally, **9:11**
 - abandoned arbitration agreement provisions, **9:17**
 - adhesiveness defense, **9:12**
 - any and all disputes provisions, **9:16**
 - arising-out-of provisions, **9:16**
 - biased arbitrator challenges, **9:12**
 - broad arbitration agreements
 - generally, **9:16**
 - form drafting considerations, **15:72**
 - class and collective actions, **9:15**
 - conditions precedent defenses to arbitration
 - generally, **9:11**
 - form, **15:68**
 - consumer disputes, **9:14**
 - container contract validity, **9:12**
 - costs challenges, **9:14**
 - defenses to enforcement, **9:11**
 - delay defenses to arbitration, **9:11**
 - delegation to arbitrator, **9:12**
 - employment disputes, **9:14**
 - FAA, **9:14**
 - illegality defense, **9:12**
 - legal exclusions, **9:14**
 - limitation provisions, **9:18**
 - procedural vs substantive contract provisions, **9:17**
 - repudiated arbitration agreement provisions, **9:17**
 - res judicata preclusions, **9:16**
 - scope of the arbitral agreement, **9:16**
 - separability doctrine, **9:12**
 - statutory claims, **9:14**
 - staying arbitration, **9:26**
 - unconscionability defense, **9:12, 9:13**
 - waiver, **9:11, 9:17**
- Georgia Arbitration Code (GAC)
 - generally, **9:10**
 - appeals of awards to courts, **9:57, 9:63**

ARBITRATION—Cont'd

- Georgia Arbitration Code (GAC)
 - Cont'd
 - criminal liability of arbitrators, **10:36**
 - FAA conflicts, **9:14**
 - judicial review of awards, **9:57, 9:63**
 - manifest disregard of the law challenges to verdicts, **9:60**
 - petition requirements, **9:19**
- Georgia International Arbitration Code (GIAC), **9:73**
- Governing law. Choice of law, above
- Hearings
 - generally, **9:39 et seq.**
 - adversarialism in, **10:19**
 - attendance
 - generally, **10:21**
 - right to attend, **9:40**
 - close of, **10:30**
 - evidentiary, **9:39**
 - ex parte, **9:41**
 - formalities, **10:15**
 - informality of hearings, **9:39**
 - locating, **9:36**
 - notices, **9:41**
 - on-site hearings and inspections, **9:45**
 - outline of simple hearing, **10:26**
 - post-hearing briefs, **9:47**
 - postponing, **9:36**
 - preliminary, **9:35, 10:25**
 - records of, **9:43**
 - reopening, **10:31**
 - right to attend, **9:40**
 - scheduling, **10:25**
 - telephone participation, **9:42**
 - transcripts, **9:43**
- High/low arbitration, **9:64**
- High/low awards forms
 - arbitrator informed of limits, **15:75**
 - arbitrator not informed of limits, **15:74**
- Historical background, **9:4**
- Illegality defense to agreements to arbitrate, **9:12**
- Immunities of arbitrators, **10:36**

ARBITRATION—Cont'd

- Impartiality. Bias, above
- Independent investigations by expert arbitrators, **10:23**
- Individual vs panels of arbitrators, **9:27**
- Informality of hearings, **9:39**
- Information exchanges, **9:35, 10:25**
- Initiating the arbitral process, **9:21**
- Inspections on-site, **9:45**
- Insufficiency of evidence, vacation of award for, **9:60**
- Insurance disputes, **9:70**
- Interest inclusion in awards, **9:53**
- Interim relief, **9:37**
- International arbitration
 - generally, **9:73**
 - forms, **15:83**
- Interstate contracts containing arbitration agreements, **9:10, 9:13**
- Irrationality, vacation of award for, **9:60**
- Issue statements, **10:13**
- Judgment vs award decisions, form drafting considerations, **15:53**
- Judicial appeals
 - generally, **9:57, 9:63**
 - form, **15:81**
 - vacation of awards, **9:57 et seq.**
- Judicial role in arbitration, **9:9**
- Jurisdiction of arbitrator
 - generally, **10:13**
 - authority of arbitrator, above
- Jurisdictional issues, **9:11, 9:19**
- Labor arbitration pursuant to collective bargaining agreements, dispute processing mechanisms not covered in book, **1:3**
- Language provisions, form, **15:66**
- Last best offer, form of award, **15:76**
- Last-offer arbitration, form, **15:47**
- Law of the case, form drafting considerations, **15:51**
- Lawyer representation rights, **9:20**
- Legal exclusions, gateway questions of arbitrability, **9:14**
- Lemon Law arbitrations advocacy, **13:14**

ARBITRATION—Cont'd

- Limitation provisions affecting arbitrability, **9:18**
- Limitations, legal precedent in ADR, **1:5**
- Litigation distinguished, **2:6**
- Locating hearings
 - generally, **9:36**
 - form, **15:64**
- Maintaining order, **10:20**
- Majority action by arbitrators, **9:34**
- Mandatory arbitration, **9:3**
- Manifest disregard of the law, vacation of award for, **9:60**
- Medaloes, **15:47**
- Med-Arb, this index
- Mediation distinguished, **2:1**
- Mediators and arbitrators
 - distinguished, **10:1**
- Medical malpractice disputes, **9:74**
- Modifying awards, **9:55**
- Modifying claims, **9:23**
- Motions, dispositive, **9:46**
- Multi-part claims, consolidation, **9:24**
- Nationality of arbitrators, form, **15:63**
- Neutral arbitrators, **9:28**
- New claims, **10:16**
- Non-binding arbitration, **2:11**
- Non-statutory grounds for vacation of award, **9:60**
- Notice of hearings, **9:41**
- Number of arbitrators
 - generally, **9:27**
 - forms, **15:61**
- Oaths of arbitrators, **9:39, 10:33**
- Objections to evidence, **9:44**
- On-site hearings and inspections, **9:45**
- Option to arbitrate or litigate, form drafting considerations, **15:54**
- Order, maintaining, **10:20**
- Order of proceedings, **10:17**
- Overstepping authority, vacation of award for, **9:59**
- Panels of arbitrators
 - generally, **9:27**
 - chairpersons, **9:30**

INDEX

ARBITRATION—Cont'd

- Partiality. Bias, *above*
- Partiality, vacation of award for, **9:58**
- Partnership agreement, form of arbitration provision, **15:85**
- Party-appointed arbitrators, **9:29**
- Petitions, **9:19**
- Physical evidence, **9:45**
- Pleadings, **9:22**
- Post-hearing briefs, **9:47**
- Postponing hearings, **9:36**
- Practice pointers, **9:76**
- Pre- vs post-dispute agreements to arbitrate
 - generally, **9:3**
 - agreements to arbitrate disputes, *above*
 - form drafting considerations, **15:48**
 - gateway questions of arbitrability, *above*
 - submission agreements, *below*
- Precedent, form drafting considerations, **15:51**
- Preliminary hearings, **9:35, 10:25**
- Preliminary relief, **9:37**
- Primary dispute processing mechanisms, **2:3, 2:6**
- Principles of evidence, **10:28**
- Privacy at hearings, **9:40**
- Problems, **2:1**
- Procedural concerns, **9:19 et seq.**
- Procedural rules
 - generally, **9:7, 10:14**
 - form drafting considerations, **15:52, 15:57**
- Procedural vs substantive contract provisions, gateway questions of arbitrability, **9:17**
- Professionalism and ethics standard for arbitrators
 - generally, **14:14 et seq.**
 - ex parte communications, **14:17**
 - fairness, **14:15**
 - providers and program administrators, **14:19**
- Property tax disputes, **13:17**
- Providers and program administrators, professionalism and ethics

ARBITRATION—Cont'd

- standards, **14:19**
- Provisional remedies, **15:67**
- Punitive damages, **9:52**
- Qualifications of arbitrators
 - generally, **10:2**
 - form, **15:61**
- Quasi-judicial nature of arbitrator's office
 - generally, **10:3**
 - immunities of arbitrators, **10:36**
- Records of hearings, **9:43**
- Remedies
 - generally, **9:50**
 - form, **15:72**
- Reopening hearings, **10:31**
- Res judicata preclusion
 - generally, **9:62**
 - gateway questions of arbitrability, **9:16**
- Right to attend hearings, **9:40**
- Right to counsel, **9:20**
- Roles and functions of arbitrators, **10:1 et seq.**
- Rules of evidence
 - generally, **9:44**
 - Commercial Arbitration Rules, **10:27**
- Rules of procedure. Procedure rules, *above*
- Scheduling hearings, **9:36, 10:25**
- Scope of arbitration
 - generally, **9:16**
 - broad arbitration agreements, *above*
 - form drafting considerations, **15:56**
- Securities law disputes
 - generally, **9:69**
 - form, **15:87**
- Selection of arbitrators
 - generally, **9:27 et seq.**
 - form, **15:62**
- Separability doctrine, agreements to arbitrate, **9:12**
- Settlements, awards upon, **10:33**
- Severability, form drafting considerations, **15:55**

ARBITRATION—Cont'd

- Shadow mediation during, **8:47, 11:25**
- Shadow-of-the-law principle, relevance, **1:5**
- Specific performance awards, **10:32**
- Statements of issues, **10:13**
- Statutory claims, gateway questions of arbitrability, **9:14**
- Staying arbitration, **9:26**
- Staying litigation and compelling arbitration
 - generally, **9:25**
 - appellate review, **9:63**
 - Forms, this index
- Submission agreements
 - AAA submission agreement form, **15:60**
 - authority of arbitrator provisions, **9:37, 10:11**
 - choosing ADR processes, **4:16**
 - form, **15:60**
 - initiating the arbitral process, **9:21**
- Subpoenas, **9:38, 10:22**
- Sufficiency of evidence, vacation of award for, **9:60**
- Support disputes, **9:75**
- Telephone participation in hearings, **9:42**
- Textile and apparel industry disputes, **9:67**
- Time to render award, **9:49, 10:30**
- Transcripts of hearings, **9:43**
- Tripartite panels of arbitrators, **9:27**
- Unconscionability defense, agreements to arbitrate, **9:12, 9:13**
- Vacancies of arbitrators, filling, **9:33**
- Vacating the award, **9:57 et seq.**
- Validity of agreements to arbitration, **9:13**
- Voluntary arbitration, **9:3**
- Waiver, **9:11, 9:17**
- Witness credibility determinations, **10:29**
- Written opinions with awards
 - generally, **10:25, 10:32**
 - form, **15:79**
- Yours, mine, and ours arbitrators, **9:27**

ARB-MED

- Generally, **11:23**
- Advantages and disadvantages, **11:24**
- Form of agreement, **15:48**

ASSESSMENT

- Integrated conflict management system design, **2:3**

ASSOCIATION FOR CONFLICT RESOLUTION (ACR)

- Standards, **14:10**

ATLANTA, JUSTICE CENTER OF

- Creation, **1:6**

ATTORNEYS

- Generally, **1:1**
- ADR challenge, law, lawyers and reconciliation, **1:9**
- ADR specialization, **1:6, 1:7**
- ADR-attorney, term defined, **1:1**
- Advocacy and counseling
 - generally, **1:1, 4:1**
 - arbitration advocacy roles, below
 - conflicts of interest, **14:8**
 - distinctions, **4:1**
 - negotiations, **6:4**
 - overlapping roles, **1:1, 4:1**
- Advocate, role as, **1:1**
- Alternative to litigation, ADR as, **1:6**
- Arbitration advocacy roles
 - generally, **9:7**
 - Lemon Law arbitrations, **13:14**
 - right to counsel, **9:20**
- Arbitration fee awards, **9:54**
- Arbitration representation rights, **9:20**
- Arbitrators, lawyers as, **10:3**
- Barriers to ADR, **1:8**
- Case selection, **7:14 et seq.**
- Challenges of ADR for the legal profession, **1:9**
- Choosing ADR Processes, this index
- Collaborative lawyering model of legal representation, **6:5**
- Competency standards in ADR
 - counseling and advocacy, **14:3**
- Conflicts of interest, intermediation of disputes between clients, **14:8**

INDEX

ATTORNEYS—Cont'd

- Continuing Education, this index
- Continuing legal education, **1:7, 1:8**
- Contract formation, prevention counseling, **4:3**
- Counselor, role as, **1:1**
- Difficult clients, educating through mediation, **7:13**
- Fee awards, arbitration, **9:54**
- Georgia Supreme Court ADR Rules, continuing education mandates, **1:7**
- In-house attorneys, counseling for ADR, **4:7**
- Interviewing the client, **4:10**
- Lemon Law arbitrations advocacy, **13:14**
- Litigators, counseling for ADR, **4:8**
- Mediation, lawyer-to-lawyer approach, **7:18**
- Mediation advocacy
 - generally, **7:12 et seq.**
 - advantages and disadvantages for lawyers, **7:13**
 - approaching opponents, **7:18**
 - case selection, **7:14 et seq.**
 - cost considerations, **7:16**
 - counseling and preparing the client for, **7:17**
 - difficult clients, educating, **7:13**
 - issue defining and processing, **7:25**
 - lawyer-to-lawyer approach, **7:18**
 - litigious clients, **7:25**
 - mediator-advocate relationships, **8:43**
 - role of the lawyer, **7:12**
 - sessions, advocacy within, **7:25**
 - timing issues, **7:15**
- Mediators, service as, **7:23**
- Negotiation, role of lawyers in, **6:4**
- Neutrals, lawyers as, **1:1**
- Non-litigator attorneys, counseling for ADR, **4:6**
- Practice of law issues, non-lawyer ADR practitioners, **14:6**
- Prevention counseling, **4:2 et seq.**
- Problems with definitions, **2:1**
- Professionalism and Ethics, this index

ATTORNEYS—Cont'd

- Risk Analysis, this index
- Role, advocate or counselor, **1:1**
- Settlement counsel model of legal representation, **6:5**
- Team negotiation, roles of team members, **6:43**
- Transactional attorneys, counseling for ADR, **4:6**
- Why lawyers should learn about ADR, **1:7**

ATTORNEY'S FEES

- Awards, **9:54**

AUTHORITY

- Adjudicative processes, **2:4, 2:6**
- Arbitration, this index
- Conciliatory processes, **2:4**
- Court-connected ADR, authority issues, **12:22**
- Experts. delegations of arbitral authority to, **10:24**
- Med-arb neutrals, **11:4, 11:15**
- Mediation, this index
- Mini-trials, authority of executives on panels, **11:34**
- Negotiation authority, **6:27**

AVOIDANCE

- Dispute processing mechanisms, **1:3, 2:3**

AWARDS

- Arbitration, this index
- Attorney's fees, **9:54**
- Med-arb, **11:15**

BACKGROUND

- Historical Background, this index

BANKING DISPUTES

ARBITRATION

- Generally, **9:71**
- Form, **15:84**

BARGAINING

- See Negotiation, this index

BARRIERS

- ADR barriers, **1:8**

BASEBALL ARBITRATION

Generally, **9:64**

Form, **15:76**

BATNAs (BEST ALTERNATIVE TO A NEGOTIATED AGREEMENT)

Negotiation preparation, **6:18**

Risk analysis evaluations, **5:1, 8:46**

BIAS

Partiality or Impartiality, this index

BLOCK SOLUTIONS

Dispute processing mechanisms generally, **1:3**

BODY LANGUAGE

Communication skills, **3:9**

BRAINSTORMING

Conflict resolution concepts and skills, **3:8**

BUSINESS DISPUTES

Mediation, **7:36**

CASE EVALUATION

Court-connected ADR, **2:22, 12:5**

CAUCUSES

See Mediation, this index

CHOICE OF LAW

See Arbitration, this index

CHOOSING ADR PROCESSES

Generally, **4:11 et seq.**

Cost-benefit analyses, **4:11**

Dual ADR/litigation strategies, **4:13**

Risk Analysis, this index

Sequential vs concurrent processes, **4:15**

Submission agreements, **4:16**

CIVIL RIGHTS

Statutory ADR, **13:6**

CLASS AND COLLECTIVE ACTIONS

Arbitrability, gateway questions, **9:15**

CLASSIFICATION OR CLASSIFICATIONS

Dispute processing mechanisms, **2:1 to 2:11**

COGNITIVE BIASES

Debiasing techniques, **5:8**

Risk analysis impacts, **5:8**

COLLABORATION

Bargaining, collaborative, **6:12**

Lawyering, collaborative, **6:5**

Win/win solutions, **3:3**

COLLATERAL ESTOPPEL

Arbitration, **9:62**

COLLECTIVE BARGAINING

Agreements, **1:3**

COMMERCIAL DISPUTES

Arbitration, this index

Mediation, **7:36**

COMMITMENT

Negotiation, commitment to, **6:21**

Obtaining party commitments to agreements

form drafting, **15:6**

mediators' functions, **8:21**

COMMON LAW

ADR challenge, law, lawyers and reconciliation, **1:9**

COMMUNICATION

Generally, **3:9 to 3:14**

Body language skills, **3:9**

Channels of communication, mediators opening, **8:16**

Confirming responses skills, **3:12**

Conveying responses, **3:13**

Eliciting information, **3:11**

Framing issues, mediators' roles, **8:17**

Halo effect skills, **3:9**

Listening skills, **3:10, 3:11**

Mediator skills, generally, **8:15 to 8:22**

Nonverbal language skills, **3:9**

Questioning skills, **3:11**

Reframing, **3:14**

INDEX

COMMUNICATION—Cont'd

- Responses, conveying, **3:13**
- Skills facilitating dispute resolution, generally, **3:9 et seq.**
- Translating and transmitting information, mediators' roles, **8:17**

COMMUNITY DISPUTES

- Mediation, **7:38**

COMMUNITY JUSTICE CENTERS

- Historical background, **1:6**

COMPETENCY STANDARDS

- Lawyers, **14:3**
- Neutrals, **14:5**
- Society of Professionals in Dispute Resolution, **14:5**

COMPLEX DISPUTES

- AAA Large, Complex Case Dispute Resolution Program, **15:89**
- Arbitration, **10:35**
- Court-connected ADR, management through, **12:4**
- Dual ADR/litigation strategies, **4:13**
- Multi-Party Disputes, this index
- Negotiation, **6:34**

COMPROMISE

- Conciliatory processes, **2:4**
- General policy favoring, **6:55**

COMPUTER INDUSTRY DISPUTES

- Arbitration, **9:68**
- Mini-trials, **11:30**

CONCILIATION

- Mediation compared, **7:1**
- Mediation distinguished, **2:8**
- Reconciliation, lawyers' duties, **1:9**
- Secondary ADR processes, **2:8**

CONCILIATORY ADR PROCESSES

- Adjudicative ADR processes distinguished, **2:4**
- Mediation, this index

CONCILIO-ARBITRATION

- Generally, **11:27**

CONFIDENTIALITY

- Administrative ADR, **13:18**
- Arbitration provision form, **15:73**
- Arbitrators, confidentiality standards, **10:34**
- Court-connected ADR, **7:30, 12:19**
- Mediation
 - generally, **7:5, 7:30 et seq.**
 - court-connected mediation, **7:30**
 - mediator disclosure duties, **7:32**
 - nondisclosure agreements, **7:31**
 - privilege, **7:30**
 - public body participants, **7:32**
- Mini-trials, **11:38**
- Nondisclosure agreements, **7:31**
- Privilege, **7:30**
- Settlement negotiations, **6:56**

CONFIRMING RESPONSES

- Communication skills, **3:12**

CONFLICT

- Conflict Resolution Concepts and Skills, this index
- Data conflicts, **3:4**
- Definition, **2:2**
- Dynamic model of, **3:15**
- Identifying sources of conflict, mediators' functions, **8:33**
- Integrated conflict management systems, **2:3, 2:17**
- Interests. See Conflicts of Interest, this index
- Objectivity, management skills, **3:6**
- Sources of, mediators' function to identify, **8:33**

CONFLICT RESOLUTION CONCEPTS AND SKILLS

- Generally, **3:1, 3:1 et seq.**
- Active listening, emotion management, **3:7**
- Brainstorming, **3:8**
- Communication, this index
- Confirming responses, **3:12**
- Conflict dynamic model, **3:15**
- Consensus, **3:3**
- Conveying responses, **3:13**
- Creative thinking, **3:8**
- Cross-gender disputes, **3:6**

**CONFLICT RESOLUTION
CONCEPTS AND SKILLS**

—Cont'd

Data conflicts, **3:4**
 Denial, **3:3**
 Disputes and conflicts distinguished
 generally, **2:2, 3:1**
 medical analogy, **4:9**
 Dissensus, **3:3**
 Dominance, **3:3**
 Eliciting information, **3:11**
 Emotion management, **3:7**
 Grievances and disputes
 distinguished
 generally, **2:2**
 medical analogy, **4:9**
 Interest conflicts, **3:3**
 Listening, **3:10, 3:11**
 Medical analogy, **3:2, 4:9**
 Neutral restatement, emotion
 management, **3:7**
 Orange scenario, **3:2, 3:4, 4:10**
 Power, **3:3**
 Principle conflicts, **3:4**
 Questioning, **3:11**
 Reframing, **3:14**
 Relationship conflicts, **3:4**
 Sources of other types of conflict, **3:4**
 Structural conflicts, **3:4**
 Value conflicts, **3:4**

CONFLICTS OF INTEREST

Generally, **3:3**
 Arbitrators, **14:16**
 Lawyers' intermediation of disputes
 between clients, **14:8**
 Mediators, **14:7**
 Professionalism and ethics in ADR,
 14:7, 14:16

CONSENSUS

Generally, **3:3**

**CONSTRUCTION INDUSTRY
DISPUTES**

Arbitration, **9:66**
 Med-arb, **15:46**
 Mini-trials, **11:30**

CONSULTANTS

See Experts, this index

CONSUMER DISPUTES

Administrative ADR, **2:34**
 Arbitration
 attorney's fee awards, **9:54**
 gateway questions of arbitrability,
 9:14
 statutory, **2:34, 13:8**
 Lemon Laws
 generally, **2:34**
 Georgia, **13:9 et seq.**

CONTINUING EDUCATION

Generally, **1:7, 1:8, 14:1**
 Georgia Supreme Court ADR Rules,
 1:7

CONTINUOUS IMPROVEMENT

Integrated conflict management
 system design, **2:3**

CONTRACTS OR AGREEMENTS

Adhesiveness defense, agreements to
 arbitrate, **9:12**
 Arbitration agreements
 Arbitration, this index
 Forms, this index
 historical background, **1:6**
 Collective bargaining agreements,
 1:3
 Forms, this index
 Integrated conflict management
 system design, **2:3**
 Litigiousness drafting, **4:3**
 Mediated settlement agreements,
 validity and enforcement, **7:28**
 Mediation agreements
 Forms, this index
 Mediation, this index
 Mediation of contract disputes, **7:36**
 Mediator engagement agreements,
 8:34
 Nondisclosure agreements, **7:31**
 Prevention counseling, **4:3**
 Settlement agreements. Settlement,
 this index
 Unconscionability defense to agree-
 ments to arbitrate, **9:12, 9:13**

INDEX

CONVEYING RESPONSES

Communications skills, **3:13**

CORPORATIONS

Counseling for ADR, role of the in-house attorney, **4:7**

Mediation, essential and non-essential participants, **8:43**

Mini-trials use to resolve disputes, **11:29, 11:30**

Stockholder arbitration agreement, **15:88**

Team negotiation
corporate officers participation, **6:43**
institutional representatives, **6:46 et seq.**

COST-BENEFIT ANALYSIS

Choosing ADR processes, **4:11**

COSTS, FEES, AND EXPENSES

Arbitration, this index

Attorney's fee awards, **9:54**

Form drafting considerations, **15:18**

Med-arb, **11:4**

Mediation, **7:16**

Med-then-arb, **11:20**

Mini-trials, costs awards, **11:39**

COUNSELING FOR ADR

Generally, **4:1 et seq.**

ADR pledges, **4:5**

Advocacy and counseling, overlapping roles of lawyers
generally, **1:1, 4:1**

conflicts of interest, **14:8**

negotiations, **6:4**

Advocacy and counseling
distinguished, **4:1**

Basic problem-solving, **4:9**

Choosing ADR Processes, this index

Conflicts of interest, **14:8**

Contracts, prevention counseling, **4:3**

In-house attorney roles, **4:7**

Interviewing the client, **4:10**

Lawyer competency standards, **14:3**

Litigator roles, **4:8**

Mediation preparation, **7:17**

COUNSELING FOR ADR—Cont'd

Partnering, prevention counseling, **4:4**

Prevention counseling, **4:2 et seq.**

Process, **4:9**

Professional and ethical responsibilities of lawyers, **4:1**

Professionalism and Ethics, this index

Risk Analysis, this index

Role of the in-house attorney, **4:7**

Role of the litigator, **4:8**

Role of the non-litigator attorney, **4:6**

Transactional attorneys, **4:6**

COUNSELORS

See Attorneys, this index

COURT-CONNECTED ADR

Generally, **12:1**

Access requirements, **2:26**

Advantages and disadvantages, **12:24**

Ancillary court proceedings in arbitrations

generally, **15:21 et seq.**

Forms, this index

Appellate settlement conferences, **12:11**

Appointments of neutrals, **12:17**

Arbitration

generally, **9:3, 12:7**

mechanisms of ADR generally, **2:21**

shadow-of-the-law principle, relevance, **1:5**

Authority issues, **12:22**

Case evaluation

generally, **12:5**

mechanisms of ADR generally, **2:22**

Complex litigation management, **12:4**

Compliance standard, **12:23**

Confidentiality standards

generally, **12:19**

mediation, **7:30**

Early neutral evaluation, **2:22, 12:5**

Efficacy, **12:24**

COURT-CONNECTED ADR

—Cont'd

- Federal courts
 - generally, **12:21**
 - magistrates, use in, **12:4**
 - reference, trials by, **12:9**
- Forms, this index
- Georgia Commission on Dispute Resolution, **12:14**
- Georgia Court-connected Alternative Dispute Resolution Act, **12:14**
- Georgia model rules, **12:2**
- Georgia Office of Dispute Resolution studies, **12:24**
- Georgia statewide court-annexed system, **12:14**
- Georgia statewide framework for ADR, **12:20**
- Georgia Supreme Court ADR Rules, **12:14, 12:15**
- Good faith requirements, **12:23**
- Historical background, **1:6**
- Immunity of neutrals, **12:18**
- Informalism, **1:4**
- Judges' referral discretion, **12:16**
- Judicial acceptance of ADR processes
 - generally, **1:6**
 - Georgia, **1:9**
- Jury trial rights issues
 - generally, **12:1**
 - references, use of, **12:9**
- Magistrates use in federal courts, **12:4**
- Mechanisms of ADR generally, **2:21 et seq.**
- Mediation
 - certification of mediator, form, **15:94**
 - confidentiality standards, **7:30**
 - consent order to extend time for mediation, **15:93**
 - court-ordered, **2:20**
 - Forms, this index
 - mechanisms of ADR generally, **2:20**
 - notice of scheduled mediation session, form, **15:92**

COURT-CONNECTED ADR

—Cont'd

- Mediation—Cont'd
 - professionalism and ethics standard for mediators, **14:13**
 - referrals, **12:6**
 - report of mediation, form, **15:94**
 - restrictions, **8:35**
 - shadow-of-the-law principle, relevance, **1:5**
 - Medical malpractice screening panels, **12:10**
 - Mini-trials, **12:8**
 - Multi-door courthouse concept, **1:6, 2:27, 12:13**
 - Neutrals
 - expert fact-finding, **2:24**
 - immunity, **12:18**
 - qualifications and appointment, **12:17**
 - Policy considerations, **12:24**
 - Practice pointers, **12:25**
 - Processes
 - generally, **1:4**
 - secondary processes, **2:7**
 - Qualifications of neutrals, **12:17**
 - Reality testing aspects, **12:1, 12:25**
 - Referees, use of, **12:9**
 - Reference, trials by, **12:9**
 - Referral discretion of judges, **12:16**
 - Secondary processes, **2:7**
 - Settlement conferences, court-ordered, **2:19, 12:3**
 - Settlement week schedules, **12:12**
 - Shadow-of-the-law principle, relevance, **1:5, 12:1**
 - Special master appointments, **2:23, 12:4**
 - Standards, **12:15**
 - State law variations, **12:2**
 - Statewide court-annexed systems, **12:14**
 - Summary jury trials, **2:25, 12:8**
- ## CREATIVE THINKING
- Conflict resolution concepts and skills, **3:8**

INDEX

CROSS-GENDER DISPUTES

Conflict resolution concepts and skills, **3:6**

CUSTODY DISPUTES

Arbitration, **9:75**

Mediation

generally, **7:33**

mediators' roles, **8:50**

practice of law issues, non-lawyer mediators, **14:6**

Practice of law issues, non-lawyer mediators, **14:6**

DECISION MAKING

Generally, **5:1 et seq.**

Arbitrators' authority, **10:24**

Risk Analysis, this index

DEFENSES

Arbitration, this index

Negotiation tactics defenses, **6:23 et seq.**

DEFINITIONS

Adjudicative ADR, **2:4**

Administered arbitration, ad hoc arbitration, **9:8**

Administering agencies, **1:1**

ADR, **1:4**

ADR providers, **1:1**

Arbitrability, **9:11**

BATNA, **5:1**

Brainstorming, **3:8**

Caucus, **7:7**

Collaborative lawyering, **6:5**

Co-med-arb, **11:21**

Co-mediation, **8:48**

Complex case, **10:35**

Compulsory arbitration, **9:3**

Conciliation, **7:1**

Conciliatory ADR, **2:4**

Concilio-arbitration, **11:27**

Conflict, **2:2**

Conflict dynamic model, **3:15**

Consensus, **3:3**

Container contract, **9:12**

Disputant, **1:1**

Dispute, **2:2**

Dispute processing, **2:2**

DEFINITIONS—Cont'd

Disputing, **2:2**

Dissensus, **3:3**

DRB, **2:16**

Dual track strategy, **4:13**

Equitable negotiating position, **6:13**

Expected value, **5:2**

Facilitation, **7:1**

Grievance, **2:2**

Halo effect, **3:9**

Heuristics, **5:8**

Homo economicus, **5:1**

Hybrids, **2:7**

Informalism, **1:4**

Interests, **2:2**

Litigotiation, **6:50**

Mandatory arbitration, **9:3**

Maximalist negotiating position, **6:13**

Medaloe, **15:47**

Med-arb, **11:2**

Med-arb2, **11:22**

Mediation, **7:1**

Med-then-arb, **11:17**

Mini-trial, **11:29**

Negative transference, **3:6**

Negotiation, **6:2**

Neg-reg, **13:4**

Neutrals, **1:1**

Participants, **1:1**

Parties, **1:1**

Partnering, **4:4**

Party, **1:1**

Polycentric dispute, **7:33**

Problems with definitions, **2:1**

Public dispute, **2:30**

Reality testing, **6:4**

Reframing, **3:14**

Reg-neg, **2:29**

Restimulation, **3:6**

Secondary processes, **2:7**

Shadow mediation, **8:47**

Stakeholders, **1:1**

Transference, **3:6**

Variations, **2:7**

DENIAL

Conflict resolution concepts and skills, **3:3**

DESIGN OF SYSTEM

Generally, **2:3**

DICTATION

Dispute processing mechanisms not covered in book, **1:3**

DIRTY TRICKS

Negotiation, **6:23 et seq.**

DISABILITY LAW

Statutory ADR, **13:6**

DISADVANTAGES OF ADR

See Advantages and Disadvantages of ADR, this index

DISCLOSURE

Arbitration information exchanges, **9:35**

Arbitrator disclosures, **9:31, 10:5**

Confidentiality, this index

Information exchanges, **9:35**

Mediators' disclosure duties, **7:32**

Negotiations, ethical considerations, **14:4**

Nondisclosure agreements, mediation, **7:31**

Professionalism and ethics standard for arbitrators, **14:16**

DISCOVERY

Arbitration, **9:35**

Arbitration form, **15:78**

Form, arbitration, **15:78**

Mini-trials, **11:40**

DISPUTANTS

ADR participation limitations, form drafting considerations, **15:13**

Definition, **1:1**

Mediation, essential and non-essential participants, **8:43**

Parties distinguished, **1:1**

Public body participants, confidentiality standards, **7:32**

Stakeholders distinguished

generally, **1:1**

negotiation considerations, **6:7**

DISPUTE REVIEW BOARDS (DRB)

Secondary ADR processes, **2:16**

DISPUTES

As to particular types of disputes, see more specific topics

Conflicts distinguished

generally, **2:2, 3:1**

medical analogy, **4:9**

Definition, **2:2**

Grievances distinguished

generally, **2:2**

medical analogy, **4:9**

DISSENSUS

Generally, **3:3**

DIVORCE

Arbitration, **9:75**

Cross-gender disputes, conflict resolution concepts and skills, **3:6**

Mediation

generally, **7:33**

court-connected, **15:96**

mediators' roles, **8:50**

practice of law issues, non-lawyer mediators, **14:6**

stipulation/settlement agreements, **15:96**

Practice of law issues, non-lawyer mediators, **14:6**

Stipulation/settlement agreements, **15:96**

DOMINANCE

Conflict resolution concepts and skills, **3:3**

DRAFTING AGREEMENTS

See Forms, this index

DUAL TRACK STRATEGIES

Generally, **4:13**

EARLY NEUTRAL EVALUATION (ENE)

Court-connected ADR, **2:22, 12:5**

Mediation distinguished, **12:5**

EDUCATION

Continuing Education, this index

ELICITING INFORMATION

Communication skills, **3:11**

INDEX

EMOTION MANAGEMENT

Conflict resolution concepts and skills, **3:7**

EMPLOYMENT DISPUTES

Arbitration, this index
Civil rights, statutory ADR, **13:6**
Public Employment Disputes, this index
Workers' compensation, **13:6**

ENTRY

Integrated conflict management system design, **2:3**

ENVIRONMENTAL DISPUTES

Administrative ADR, **13:5**
Mediation, **7:37**

ESCROW PROVISION

Arbitration form, **15:69**

ETHICS

See Professionalism and Ethics, this index

EVALUATION

Integrated conflict management system design, **2:3**
Mechanisms of ADR, **2:7**

EX PARTE COMMUNICATIONS BY ARBITRATORS

Generally, **10:18**
Professionalism and ethics standards, **14:17**

EX PARTE DISCUSSIONS

Mediation, **7:7**

EX PARTE HEARINGS

Arbitration, **9:41**

EXCLUSIONS OR EXEMPTIONS

Dispute processing mechanisms not covered, **1:3**

EXPECTED SATISFACTION THEORY

Negotiation strategy, **6:11**

EXPECTED VALUE CALCULATIONS

Risk analysis, **5:2**

EXPENSES

See Costs, Fees, and Expenses, this index

EXPERTS

ADR consultants, use of, **2:3**
Arbitrator delegations of authority to, **10:24**
Arbitrator experts
generally, **9:28**
independent investigations by, **10:23**
Biased vs neutral, use in negotiations, **6:31**
Court-connected ADR, neutral expert fact-finding, **2:24**
Delegations of arbitral authority to, **10:24**
Form drafting considerations, expert consultations, **15:4**
Form of mediation agreement for engagement, **15:37**
Independent investigations by, **10:23**
Med-arb, experts as med-arbitrators, **11:10**
Mediation participation, **8:43**
Mediators, expertise
process knowledge and experience, **7:21**
substantive knowledge and expertise, **7:22**
Negotiation, use in, **6:31**
Neutral expert fact-finding
court-connected ADR, **2:24**
secondary ADR processes, **2:10**
Neutral vs biased, use in negotiations, **6:31**
Team negotiation, roles of team members, **6:43**

EXTERNAL CONSULTANTS

Integrated conflict management system design, **2:3**

FACILITATION

Mediation and, terms compared, **7:1**
Mediators as facilitators, **8:4**
Secondary ADR processes, **2:9**

FAIRNESS

Med-arb proceedings, **11:28**

FAIRNESS—Cont'd

- Mediation, fairness of outcomes, **14:12**
- Professionalism and ethics standard for arbitrators, **14:15**
- Settlement conference fairness requirements, **6:58**

FAMILY DISPUTES

- Cross-gender disputes, conflict resolution concepts and skills, **3:6**
- Custody Disputes, this index
- Divorce, this index
- Mediation, **7:33, 7:34**
- Support Disputes, this index

FEES

- See Costs, Fees, and Expenses, this index

FIGHTING

- Dispute processing mechanisms not covered in book, **1:3**

**FINANCE INDUSTRY
ARBITRATION**

- Generally, **9:71**
- Form, **15:84**

FORMALITY LEVELS

- Mechanisms of ADR, **2:1**

FORMS

- Generally, **15:1 et seq.**
- Ancillary court proceedings in arbitration
 - generally, **15:21 et seq.**
 - motion/petition, below
- Arbitration
 - AAA rules incorporation, **15:64**
 - agreements to arbitrate, **9:13, 15:60**
 - appeals, **15:80**
 - awards
 - baseball arbitration, **15:76**
 - dispositive motions, **15:77**
 - fees and expenses, **15:82**
 - high/low or control clauses
 - arbitrator informed of limits, **15:75**

FORMS—Cont'd

- Arbitration—Cont'd
 - awards—Cont'd
 - high/low or control clauses
 - Cont'd
 - arbitrator not informed of limits, **15:74**
 - last best offer, **15:76**
 - banking disputes, **15:84**
 - bifurcation, **15:70**
 - choice of law, **15:65**
 - conditions precedent, **15:68**
 - conference or hearing procedures, **15:16**
 - confidentiality, **15:73**
 - consolidation, **15:71**
 - discovery, **15:78**
 - drafting considerations. Arbitration, drafting considerations, below
 - employment agreement, **15:86**
 - escrow provision, **15:69**
 - fees and expenses, **15:82**
 - governing law, **15:65**
 - hybrid clause for mediation and last-offer arbitration, **15:47**
 - international arbitration clauses, **15:83**
 - judicial appeals, **15:81**
 - language provisions, **15:66**
 - locale provisions, **15:64**
 - motion/petition, below
 - nationality of arbitrator, **15:63**
 - number of arbitrators, **15:61**
 - partnership agreement, **15:85**
 - pre-conference or pre-hearing activities, **15:15**
 - pre-disputes clause, **15:60**
 - provisional remedies, **15:67**
 - qualifications of arbitrators, **15:61**
 - remedies, **15:72**
 - securities agreement, **15:87**
 - selection of arbitrators, **15:62**
 - stockholder agreement, **15:88**
 - submission agreement, **15:60**
 - written opinions, **15:79**
 - Arbitration, drafting considerations
 - generally, **15:48**

INDEX

FORMS—Cont'd

- Arbitration, drafting considerations
 - Cont'd
 - administration provisions, **15:58**
 - authority, **15:56**
 - broad arbitration agreements, **15:72**
 - checklist of points to consider, **15:59**
 - client's objectives, **15:50**
 - facts, **15:51**
 - judgment vs award decisions, **15:53**
 - law of the case, **15:51**
 - option to arbitrate or litigate, **15:54**
 - pre- vs post-dispute agreements, **15:48**
 - precedent, **15:51**
 - procedural details, **15:57**
 - procedural variables, **15:52**
 - scope of arbitration, **15:56**
 - severability, **15:55**
- Arb-med agreement, **15:48**
- Banking disputes arbitration, **15:84**
- Baseball arbitration, **15:76**
- Choice of law, arbitration, **15:65**
- Conference or hearing procedures, drafting considerations, **15:16**
- Consent order to extend time for mediation, **15:93**
- Construction industry disputes, **15:46**
- Costs and expenses, drafting considerations, **15:18**
- Court-connected mediation
 - generally, **7:4**
 - certification of mediator, **15:94**
 - consent order to extend time for mediation, **15:93**
 - guidelines for mediation, **15:92**
 - notice of scheduled mediation session, **15:92**
 - order for mediation, **15:90, 15:91**
 - report of mediation, **15:94**
 - stipulation/settlement agreements
 - generally, **15:95**
 - divorce, **15:96**
- Discovery arbitration, **15:78**

FORMS—Cont'd

- Drafting considerations
 - generally, **15:1**
 - arbitration, drafting considerations, above
 - conference or hearing procedures, **15:16**
 - costs and expenses, **15:18**
 - executory ADR clauses, **15:1**
 - expert consultations, **15:4**
 - future dispute ADR clauses, **15:1**
 - ground rules, **15:8**
 - incorporating and modifying institutional rules, **15:19**
 - information exchange, **15:61**
 - information gathering, **15:2**
 - initiation of process provisions, **15:9**
 - innovation, **15:3**
 - institutional rules, use of, **15:19**
 - litigation effects of ADR processes, **15:10**
 - logistics provisions, **15:12**
 - med-arb, **11:8**
 - mediation agreements
 - generally, **15:35**
 - information exchange, **15:41**
 - mini-trials, **11:35, 15:43**
 - motions and petitions in ancillary court proceedings, **15:21, 15:22**
 - neutrals, **15:14**
 - participant limitations, **15:13**
 - party commitments to agreements, obtaining, **15:6**
 - pre-conference or pre-hearing activities, **15:15**
 - pre-dispute ADR clauses, **15:1**
 - pre-dispute agreements, **15:5**
 - pre-dispute negotiation agreements, **15:20**
 - privacy standards, **15:13**
 - procedures, **15:8**
 - scope of agreement, **15:7**
 - settlement incentives, **15:42**
 - termination provisions, **15:17**
 - time provisions, **15:11**
 - trigger provisions, **15:9**

FORMS—Cont'd

- Drafting considerations—Cont'd
 - withdrawal provisions, **15:17**
- Escrow provision, arbitration, **15:69**
- Executory ADR clauses, drafting considerations, **15:1**
- Expert consultations, drafting considerations, **15:4**
- Expertise provision, mediation agreements, **15:37**
- Future dispute ADR clauses, drafting considerations, **15:1**
- Governing law, arbitration, **15:65**
- Ground rules, drafting considerations, **15:8**
- Hybrid clause for mediation and last-offer arbitration, **15:47**
- Incorporating and modifying institutional rules, drafting considerations, **15:19**
- Information exchange in mediation, drafting considerations, **15:41**
- Information gathering, drafting considerations, **15:2**
- Initiation of process provisions, drafting considerations, **15:9**
- Innovative drafting, **15:3**
- Institutional rules, use of in drafting, **15:19**
- International arbitration clauses, **15:83**
- Litigation effects of ADR processes, drafting considerations, **15:10**
- Logistics provisions, drafting, **15:12**
- Medaloo provision, **15:47**
- Med-arb
 - basic agreement, **15:45**
 - construction industry dispute, **15:46**
 - drafting considerations, **11:8**
- Mediation agreements
 - authority of mediator, **15:38**
 - basic mediation clause, **15:36**
 - conference or hearing procedures, **15:16**
 - court-connected mediation, above drafting considerations, **15:35**
 - expertise provision, **15:37**

FORMS—Cont'd

- Mediation agreements—Cont'd
 - hybrid clause for mediation and last-offer arbitration, **15:47**
 - pre-conference memoranda, **15:40**
 - pre-conference or pre-hearing activities, **15:15**
 - time limitations, **15:39**
- Mini-trials
 - drafting considerations, **11:35, 15:43**
 - executives on panels, **11:34**
 - sample clauses, **15:44**
- Motion/petition
 - generally, **15:21**
 - compel arbitration and stay pending action
 - drafting considerations, **15:22**
 - federal district court, **15:24**
 - Georgia superior court, **15:23**
 - confirm award
 - federal district court, **15:32**
 - Georgia superior court, **15:31**
 - confirm award, lift the stay, and enter judgment
 - federal district court, **15:34**
 - Georgia courts, **15:33**
 - modify or correct award
 - federal district court, **15:30**
 - Georgia superior court, **15:29**
 - stay arbitration
 - federal district court, **15:26**
 - Georgia superior court, **15:25**
 - vacate award
 - federal district court, **15:28**
 - Georgia superior award, **15:27**
- Neutrals, drafting standards, **15:14**
- Orders for mediation, **15:90, 15:91**
- Participant limitations, drafting considerations, **15:13**
- Petitions. Motion/petition, above
- Pre- vs post-dispute arbitration agreements, form drafting considerations, **15:48**
- Pre-conference memoranda, mediation agreements, **15:40**

INDEX

FORMS—Cont'd

- Pre-conference or pre-hearing activities, drafting considerations, **15:15**
- Pre-dispute agreements, drafting considerations
 - generally, **15:1, 15:5**
 - negotiation, **15:20**
- Privacy standards, drafting considerations, **15:13**
- Procedures, drafting considerations, **15:8**
- Scope of agreement, drafting considerations, **15:7**
- Settlement incentives, drafting considerations, **15:42**
- Stipulation/settlement agreements, court-connected mediation
 - generally, **15:95**
 - divorce, **15:96**
- Stockholder arbitration agreement, **15:88**
- Termination provisions, drafting considerations, **15:17**
- Time limitations, mediation agreement, **15:39**
- Time provisions, drafting considerations, **15:11**
- Trigger provisions, drafting considerations, **15:9**
- Withdrawal provisions, drafting considerations, **15:17**

FUTURE DISPUTE ADR CLAUSES

- Drafting considerations, **15:1**

GAMBLING THEORY

- Risk analysis, **5:6**

GAME THEORY

- Negotiation strategy, **6:10**

GEORGIA ARBITRATION CODE (GAC)

- Generally, **9:10**
- Appeals of awards to courts, **9:57, 9:63**
- Criminal liability of arbitrators, **10:36**
- FAA conflicts, **9:14**
- Judicial review of awards, **9:57, 9:63**

GEORGIA ARBITRATION CODE (GAC)—Cont'd

- Manifest disregard of the law challenges to verdicts, **9:60**
- Petition requirements, **9:19**

GEORGIA COMMISSION ON DISPUTE RESOLUTION

- Court-connected ADR, **12:14**

GEORGIA COURT-CONNECTED ALTERNATIVE DISPUTE RESOLUTION ACT

- Generally, **12:14**

GEORGIA INTERNATIONAL ARBITRATION CODE (GIAC)

- Generally, **9:73**

GEORGIA OFFICE OF DISPUTE RESOLUTION

- Court-connected ADR studies, **12:24**
- Creation, **12:14**

GEORGIA STATEWIDE FRAMEWORK FOR ADR

- Generally, **12:20**

GEORGIA SUPREME COURT ADR RULES

- Continuing education mandates, **1:7**
- Court-connected ADR, **12:14, 12:15**
- Mediation, **14:13**

GOOD FAITH DUTIES

- Court-connected ADR, **12:23**
- Court-ordered mediation, **2:20**
- Negotiation, good faith and bad faith in, **6:51**
- Settlement conferences, **2:19**

GOOD GUY/BAD GUY TACTICS

- Complex disputes, dual ADR/litigation, **4:13**
- Defenses, **6:27**
- Negotiation
 - generally, **6:26**
 - defenses, **6:27**

GOVERNING LAW

- Arbitration, this index

GOVERNMENT AGENCIES

Administrative ADR, this index
Mini-trials use in inter-agency disputes, **11:30**

GRIEVANCES

Conflicts and disputes distinguished generally, **2:2**
medical analogy, **4:9**
Definition, **2:2**

HALO EFFECT

Communication skills, **3:9**

HEURISTICS

Risk analysis impacts, **5:8**

HISTORICAL BACKGROUND

Generally, **1:8, 1:9**
Agreements to arbitrate, **1:6**
Arbitration, **9:4**
Colonial Georgia, **1:9**
Court-connected ADR, **1:6**
Great Britain, **1:9**
Judicial acceptance of ADR, **1:6**
Mediation, **7:2**
Mini-trials, **11:30**
Neighborhood or community justice centers, **1:6**
Ombudsing, **2:14**

HOMO ECONOMICUS

Generally, **5:1**

HYBRIDS

Advisory med-arb, **11:26**
Arb-Med, this index
Concilio-arbitration, **11:27**
Definition, **2:7**
Med-Arb, this index
Mini-Trials, this index
Shadow mediation, **8:47, 11:25**

IMMUNITIES

Arbitrators, **10:36**
Court appointed neutrals, **12:18**

IMPARTIALITY

Partiality or Impartiality, this index

IMPASSE

Med-arb procedures, **11:11**

IMPASSE—Cont'd

Mediation, this index
Negotiation, this index

IMPLEMENTATION

Integrated conflict management system design, **2:3**

IMPROVEMENT

Integrated conflict management system design, continuous improvement, **2:3**

INFORMALISM

Definition, **1:4**

INSURANCE DISPUTES

Arbitration, **9:70**
Liability insurance
duty to settle within policy limits, **6:52**
mediation, **7:35**
Med-arb, **11:7**
Mediation, **7:35**

INTEGRATED CONFLICT MANAGEMENT SYSTEMS

Generally, **2:3, 2:17**

INTEGRATIVE STRATEGY YIELDING

Win/win solutions, **6:14**

INTELLECTUAL PROPERTY DISPUTES

Mediation, **7:36**

INTERESTS

Definition, **2:2**

INTERNATIONAL ARBITRATION

Generally, **9:73**
Forms, **15:83**

INVESTMENT STRATEGIES

Negotiated, **2:30, 13:5**

JUDGES

ADR participation by active judges, **14:5**
Rent-a-judge and private judging ADR, **2:26, 12:9**

INDEX

JUDICIAL ACCEPTANCE OF ADR

- Administrative ADR, this index
- Court-Connected ADR, this index
- Historical background, **1:6**
- Public policy favoring ADR, **7:27, 9:4**

JURIES

- Court-connected ADR, jury trial rights issues
 - generally, **12:1**
 - references, use of, **12:9**
- Mini-Trials, this index
- Summary jury trials, **2:25, 12:8**
- Verdict reports, negotiation use, **6:18**

JURISDICTION

- See Arbitration, this index

JUSTICE CENTER OF ATLANTA

- Creation, **1:6**

LABOR DISPUTES

- Dispute processing mechanisms generally, **1:3**
- Med-arb, **11:3, 11:6**
- Mediation, **7:2**

LANGUAGE PROVISIONS

- Arbitration, language of, **15:66**

LAWYERS

- See Attorneys, this index

LEGAL EXCLUSIONS

- Gateway questions of arbitrability, **9:14**

LEGAL PRECEDENT

- See Precedent, this index

LEMON LAWS

- Generally, **2:34**
- Georgia practice, **13:9 et seq.**

LIMITATIONS OF ACTIONS

- Arbitrability, limitation provisions affecting, **9:18**

LIMITATIONS OR RESTRICTIONS

- Arbitration, limitation provisions affecting arbitrability, **9:18**

LIMITATIONS OR

RESTRICTIONS—Cont'd

- Judges, limitations on ADR activities, **14:5**
- Legal precedent in ADR, **1:5**
- Mediation, this index

LISTENING

- Communication skills, **3:10, 3:11**

LITIGATION

- Adjudicative process, generally, **2:4, 2:6**
- ADR agreements affecting pending litigation, form drafting considerations, **15:10**
- ADR alternatives to, **1:6**
- Advantages and disadvantages of ADR, pre- vs post-litigation-filing, **12:1**
- Alternative to litigation, ADR as, **1:6**
- Ancillary court proceedings in arbitration
 - generally, **15:21 et seq.**
 - Forms, this index
- Arbitration distinguished, **2:6**
- Choosing ADR alternatives, **4:12**
- Dual ADR/litigation strategies, **4:13**
- Form drafting considerations
 - litigation effects of ADR processes, **15:10**
 - option to arbitrate or litigate, **15:54**
- Mediation, effects on pending litigation, **7:29**
- Mini-trials, impacts on pending litigation, **11:36**
- Option to arbitrate or litigate, form drafting considerations, **15:54**
- Pending litigation
 - ADR agreements affecting, form drafting considerations, **15:10**
 - advantages and disadvantages of ADR, pre- vs post-litigation-filing, **12:1**
 - mediation, effects on, **7:29**
 - mini-trials, impacts on, **11:36**
- Primary dispute processing mechanisms, **2:3, 2:6**
- Shadow mediation during, **8:47, 11:25**

LITIGATION—Cont'd

Shadow-of-the-Law Principle, this index

LITIGIOUS CLIENTS

Generally, **1:6**
Contract drafting pointers, **4:3**
Mediation advocacy, **7:25**

LITIGOTIATION

Generally, **6:50**

MAGISTRATES

Federal courts, use in, **12:4**

MANAGEMENT

Integrated conflict management system design, **2:3**

MECHANISMS OF ADR

Generally, **2:1 et seq.**
Administrative ADR, this index
Advisory arbitration, **2:11**
Advocacy tips, **2:36**
Arbitration, **2:21**
Arbitration and litigation distinguished, **2:6**
Case evaluation, **2:22**
Choosing ADR Processes, this index
Conciliation, **2:8**
Conciliatory and adjudicative processes distinguished generally, **2:4**
Mediation, this index
Consumer arbitration, **2:34, 13:8**
Continuum of mechanisms, **2:3**
Counseling for ADR, this index
Court-Connected ADR, this index
Disputes review boards, **2:16**
Evaluative processes, **2:7**
Expert ADR consultants, use of, **2:3**
Facilitation
 public disputes, **2:30**
 secondary ADR processes, **2:9**
Formality levels, **2:1**
Hybrids, this index
Integrated conflict management systems design, **2:3, 2:17**
Litigation and arbitration distinguished, **2:6**
Med-arb, **2:12**

MECHANISMS OF ADR—Cont'd

Mediation
 court-ordered, **2:20**
 public disputes, **2:30**
Medical malpractice arbitration, **2:35**
Mini-trials, secondary ADR processes, **2:13**
Multi-door courthouses, **2:27**
Negotiated rulemaking, **2:29**
Negotiation and mediation distinguished, **2:5**
Neutral expert fact-finding, **2:10**
Non-binding arbitration, **2:11**
Ombudsing, **2:14**
Peer review, **2:15**
Primary mechanisms, **2:3**
Private judging, **2:26**
Public employment arbitration, **2:33**
Reg-neg, **2:29**
Rent-a-judge, **2:26**
Secondary ADR processes, **2:7 to 2:35**
Settlement conferences, **2:19**
Special master appointments, **2:23**
Statutory rights ADR, **2:31**
Summary jury trials, **2:25**
Win/win solutions, **2:4**

MEDALOA

Generally, **15:47**

MED-ARB

Generally, **11:2 et seq.**
Advantages and disadvantages generally, **11:4, 11:5**
 fairness, **11:28**
 med-then-arb, **11:18, 11:19**
Advisory med-arb, **11:26**
Arbitration phase, **11:14**
Arb-med
 generally, **11:23**
 advantages and disadvantages, **11:24**
 form of agreement, **15:48**
Authority of the neutral, **11:4, 11:15**
Awards, **11:15**
Choosing a case for, **11:7**
Co-med-arb, **11:21**
Concilio-arbitration, **11:27**

INDEX

MED-ARB—Cont'd

- Construction industry dispute, form, **15:46**
- Costs
 - generally, **11:4**
 - med-then-arb, **11:20**
- Definition, **11:2**
- Demands initiating, **11:9**
- Distinction from mediation, **11:4**
- Drafting med-arb hybrid agreements, **11:8**
- Efficacy, **11:28**
- Expert med-arbitrator, **11:10**
- Forms, this index
- Hybrid variations, **11:16**
- Impasse, **11:11**
- Initiation, **11:9**
- Insurance disputes, **11:7**
- Issues eliminated during mediation phase, **11:13**
- Labor disputes, **11:3, 11:6**
- Med-arb2, **11:22**
- Mediation distinguished, **11:4**
- Mediation phase, **11:12**
- Med-then-arb modifications, **11:17 et seq.**
- Neutrals conducting, **11:4**
- Phases of procedure, **11:11 et seq.**
- Potential, **11:28**
- Purposes, **11:2**
- Secondary ADR processes, **2:12**
- Selecting the neutral, **11:10**
- Shadow mediation, **8:47, 11:25**
- Transition from mediation to arbitration, **11:13**
- Value, **11:28**
- Withdrawal rights in mediation phase, **11:12**

MEDIATION

- Generally, **7:1 et seq.**
- Acceptability of mediator to all sides, **7:24**
- Adjudicative and conciliatory models
 - generally, **7:1**
 - how far can the mediator go, **8:52**
 - style of individual mediators reflecting, **8:2**
- Adjudicative mediators, **8:2**

MEDIATION—Cont'd

- Administrative forms, **7:4**
- Advantages in multiparty disputes, **7:14**
- Advocacy in mediations
 - generally, **7:12 et seq.**
 - advantages and disadvantages for lawyers, **7:13**
 - approaching opponents, **7:18**
 - case selection, **7:14 et seq.**
 - cost considerations, **7:16**
 - counseling and preparing the client for, **7:17**
 - difficult clients, educating, **7:13**
 - issue defining and processing, **7:25**
 - lawyer-to-lawyer approach, **7:18**
 - litigious clients, **7:25**
 - mediator-advocate relationships, **8:43**
 - role of the lawyer, **7:12**
 - sessions, advocacy within, **7:25**
 - timing issues, **7:15**
- Agenda, reaching agreement on, **8:38**
- Agreements
 - generally, **7:7**
 - labor mediation pursuant to collective bargaining agreements, dispute processing mechanisms not covered in book, **1:3**
 - mediator engagement agreements, **8:34**
 - principle proposals, **8:45**
 - validity and enforcement of, **7:27**
- Alternative solutions, mediator exploration of, **8:18**
- Anger management role of mediators, **8:8**
- Approaching opponents, **7:18**
- Arbitration distinguished, **2:1**
- Arbitrators and mediators distinguished, **10:1**
- Arb-Med, this index
- Assessing consequences of an impasse, mediators' functions, **8:28**
- Attorneys as mediators, **7:23**
- Authority of mediators
 - generally, **8:1, 8:3**

MEDIATION—Cont'd

Authority of mediators—Cont'd
 court-connected and administrative
 mediation, **8:35**
 form, **15:38**
 sources of mediator power, **8:32**
 Bias perception, mediator selection
 criteria, **7:20**
 Bridge-issue agreements, mediators'
 functions, **8:41**
 Business disputes, **7:36**
 Case selection, mediation advocacy,
 7:14 et seq.
 Caucus sessions of mediator with
 each party
 generally, **8:9**
 advantages, **7:7**
 guidelines for mediators, **8:44**
 mediator tool, incorporation as,
 8:44
 restrictive models, **7:33**
 when to use, **8:44**
 Certification of mediator, form, **15:94**
 Chairing meetings, mediators' roles,
 8:11
 Channels of communication, media-
 tors opening, **8:16**
 Classical model, **7:7, 8:36**
 Co-mediation, **8:48**
 Commercial disputes, **7:36**
 Commitment of parties to an agree-
 ment, mediators' functions to
 secure, **8:21**
 Communication, this index
 Communicative functions of media-
 tors, **8:15 et seq.**
 Community disputes, **7:38**
 Conciliation and, terms compared,
 7:1
 Conciliation distinguished, **2:8**
 Conciliatory mediators, **8:2**
 Conciliatory models. Adjudicative
 and conciliatory models, above
 Confidentiality
 generally, **7:5, 7:30 et seq.**
 court-connected mediation, **7:30**
 mediator disclosure duties, **7:32**
 nondisclosure agreements, **7:31**
 privilege, **7:30**

MEDIATION—Cont'd

Confidentiality—Cont'd
 public body participants, **7:32**
 Conflicts of interest, mediators', **14:7**
 Consequences of an impasse, media-
 tors' assessments, **8:28**
 Contract disputes, **7:36**
 Cost considerations, **7:16**
 Court-Connected ADR, this index
 Creating momentum toward an
 agreement, mediators' functions,
 8:26
 Current trends in mediation use, **7:2**
 Custody disputes
 generally, **7:33**
 mediators' roles, **8:50**
 practice of law issues, non-lawyer
 mediators, **14:6**
 Deferred settlement of certain issues,
 mediator suggestions as to, **8:13**
 Definitions, **7:1**
 Deflating extreme positions, media-
 tors' functions, **8:25**
 Determining priorities of parties,
 mediators' roles, **8:23**
 Difficult clients, educating, **7:13**
 Disclosure duties of mediator, **7:32**
 Divorce
 generally, **7:33**
 court-connected mediation,
 stipulation/settlement agree-
 ments, **15:96**
 mediators' roles, **8:50**
 practice of law issues, non-lawyer
 mediators, **14:6**
 Early neutral evaluation
 distinguished, **12:5**
 Educational functions of mediators,
 8:5
 Emotion management role of media-
 tors, **8:8**
 Engagement agreements, mediator,
 8:34
 Environmental disputes, **7:37**
 Essential and non-essential
 participants, **8:43**
 Ethical Standards for Mediators in
 Georgia, **14:7**
 Ex parte discussions, advantages, **7:7**

INDEX

MEDIATION—Cont'd

- Expert participation, **8:43**
- Expertise, mediator selection criteria
 - process knowledge and experience, **7:21**
 - substantive knowledge and expertise, **7:22**
- Extreme positions, deflating by mediators, **8:25**
- Facilitation and, terms compared, **7:1**
- Facilitators, mediators as, **8:4**
- Fact finding by mediators, **8:9**
- Fairness of outcomes, **14:12**
- Family disputes, **7:33**
- Finalizing and ratifying the agreement, **8:30**
- Forceful, interventionist mediators, **8:2**
- Forms, this index
- Framing issues, mediators' roles, **8:17**
- Functions of mediators, **8:1 et seq.**
- Generating options, mediators' functions, **8:20**
- Georgia Supreme Court ADR Rules, **14:13**
- Good mediators, finding, **7:19 et seq.**
- Guardian of details, mediator as, **8:7**
- Historical background, **7:2**
- Hostility management role of mediators, **8:8**
- Hypothetical questions and proposals, mediator use of
 - generally, **8:18, 8:27**
 - impasse situations, **8:41**
- Identifying sources of conflict, **8:33**
- Impartiality, mediator selection criteria, **7:20**
- Impasse
 - assessments of consequences, **8:28**
 - hypothetical questions and proposals to break, **8:41**
 - reality testing to break, **8:46**
 - tactics to avoid or break, **8:41**
 - walk out as mediator strategy, **8:41**
- Influencing climate and duration of meetings, mediators' roles, **8:10**
- Information exchange, mediation agreement drafting

MEDIATION—Cont'd

- considerations, **15:41**
- Insurance disputes, **7:35**
- Intellectual property disputes, **7:36**
- Interventionist mediators, **8:2**
- Issue defining and processing, mediation advocacy, **7:25**
- Issue defining stage, **7:9**
- Joint sessions, **8:9**
- Labor disputes, **7:2**
- Labor mediation pursuant to collective bargaining agreements, dispute processing mechanisms not covered in book, **1:3**
- Last-offer arbitration form, **15:47**
- Lawyers as advocates. Advocacy in mediations, above
- Lawyers as mediators, **7:23**
- Lawyer-to-lawyer approach to mediation, **7:18**
- Legal issues, **7:26 et seq.**
- Liability insurance disputes, **7:35**
- Limitations and restrictions
 - administrative ADR, **8:35**
 - caucus sessions of mediator with each party, restrictive models, **7:33**
 - court-connected ADR, **8:35**
 - participant limitations, **15:13**
 - time limitations, mediation agreement, **15:39**
- Litigious clients, advocacy difficulties, **7:25**
- Logistics of meetings, **8:38**
- Maintaining order, mediators' roles, **8:11**
- Medaloe, **15:47**
- Med-Arb, this index
- Meetings, joint, separate, and summit, **8:9 et seq.**
- Models, mediator, **8:2**
- Monitoring the agreement, **8:31**
- Movement reminders by mediators, **8:22**
- Multiparty disputes
 - advantages, **7:14**
 - mediators' roles, **8:49**
- Negotiation compared
 - advantages, **7:5**

MEDIATION—Cont'd

Negotiation compared—Cont'd disadvantages, **7:6**
 Negotiation distinguished, **2:5**
 Nondisclosure agreements, **7:31**
 Non-interventionist mediators, **8:2**
 No-nonsense, forceful, interventionist mediators, **8:2**
 Note-taking by mediators, **8:42**
 Notice of scheduled mediation session, form, **15:92**
 Offering specific solutions, **8:27**
 Online ADR, **7:3**
 Opening statements, **8:38, 8:39**
 Ownership of the process, settlement value of, **7:5**
 Participants, essential and non-essential, **8:43**
 Pending litigation, effect of mediation on, **7:29**
 Personal injury disputes, **8:51**
 Policy objectives in mediation and law, **7:26**
 Polycentric disputes, **7:33**
 Power imbalance concerns, **14:11**
 Practice of law issues, non-lawyer mediators, **14:6**
 Pre-conference memoranda, mediation agreement forms, **15:40**
 Pre-conference preparation, mediators' functions, **8:37**
 Primary processes, **2:3, 2:5**
 Priorities of parties, determining by mediators, **8:23**
 Privilege, **7:30**
 Problems with definitions, **2:1**
 Procedural functions of mediators, **8:9 et seq.**
 Procedural standards, **7:7**
 Process, reaching agreement on, **8:38**
 Process knowledge and experience, mediator selection criteria, **7:21**
 Processing the issues, **7:10, 8:40**
 Professionalism and ethics standard for mediators
 generally, **14:10 et seq.**
 court-connected programs, **14:13**
 fairness of outcomes, **14:12**
 power imbalance concerns, **14:11**

MEDIATION—Cont'd

Progress reminders by mediators, **8:22**
 Public policy disputes
 generally, **7:38**
 mediators' roles, **8:49**
 Qualifications of mediators, **7:19 et seq.**
 Reaching agreement on process, roles, and agenda, **8:38**
 Reality testing
 generally, **2:5, 8:46**
 definition, **6:4**
 effects, **7:13**
 impasse breaking through, **8:46**
 Recessing meetings, mediators' functions, **8:14**
 Recommendations of mediators, **8:29**
 Reconciliatory agent, mediator as, **8:8**
 Reexamination of parties' positions, **8:24**
 Reframing issues to reach agreement, **8:45**
 Relating rigidities, mediators' functions, **8:19**
 Report of mediation, form, **15:94**
 Resolving the issues, **7:11, 8:41**
 Resource expander, mediator as, **8:6**
 Roles and functions of mediators, **8:1 et seq.**
 Roles of mediators
 generally, **8:1 et seq.**
 reaching agreement on, **8:38**
 Selecting a mediator, **7:19 et seq.**
 Separate sessions. Caucus sessions of mediator with each party, above
 Sequential classical model, **7:7, 8:36**
 Sequential discussion and grouping of issues, mediators' roles, **8:12**
 Sessions, advocacy within, **7:25**
 Setting the stage for the mediation process, **7:8**
 Settlements, mediated, validity and enforcement, **7:28**
 Shadow mediation, **8:47, 11:25**
 Shadow-of-the-law principle, relevance, **1:5**
 Shuttle diplomacy, **8:9**

INDEX

MEDIATION—Cont'd

- Single negotiating text document, use to reach agreement, **8:45**
- Solution creator, mediator as, **8:6**
- Sources of conflict, identification of by mediators, **8:33**
- Sources of mediator power, **8:32**
- Specific solutions, offering by mediators, **8:27**
- Stages of the mediation process, **7:7 et seq.**, **8:36**
- Style of individual mediators, **8:2**
- Substantive functions of mediators, **8:24 et seq.**
- Substantive knowledge and experience, mediator selection criteria, **7:22**
- Substantive roles of mediators, **8:1 et seq.**
- Support disputes
 - generally, **7:33**
 - mediators' roles, **8:50**
 - practice of law issues, non-lawyer mediators, **14:6**
- Techniques for reaching agreement, **8:45**
- Therapeutic mediators, **7:33**, **8:2**
- Time for, consent order to extend, **15:93**
- Timing advantages, **7:5**
- Timing issues, **7:15**
- Tools for the mediator, **8:33**
- Translating and transmitting information, mediators' roles, **8:17**
- Validity and enforcement of agreements to mediate, **7:27**
- Validity and enforcement of mediated settlements, **7:28**
- Visual aids, use of, **8:41**
- Walk out as mediator strategy, **8:41**
- What mediators can do, **8:3**
- Witness participation, **8:43**

MEDICAL MALPRACTICE

- Arbitration, **9:74**
- Screening panels, court-connected ADR, **2:35**, **12:10**

MINI-TRIALS

- Generally, **11:29 et seq.**

MINI-TRIALS—Cont'd

- Advantages and disadvantages, **11:31**, **11:46**
- Agreements to implement, **11:29**
- Authority of executives on panels, **11:34**
- Computer disputes, **11:30**
- Confidentiality, **11:38**
- Construction industry disputes, **11:30**
- Cooling-off periods, **11:44**
- Corporations' use to resolve disputes, **11:29**, **11:30**
- Costs awards, **11:39**
- Court-connected ADR, **12:8**
- Definitions, **11:29**
- Discovery, **11:40**
- Document list exchanges, **11:41**
- Drafting mini-trial agreements, **11:35**
- Efficacy, **11:46**
- Exchanges of position papers, witness and document lists, **11:41**
- Executives on panels
 - generally, **11:32**
 - authority of, **11:34**
- Forms, this index
- Hearings, **11:42**
- Historical background, **11:30**
- Impacts on pending litigation, **11:36**
- Juries, use of, **11:34**
- Negotiation enhancement through, **11:32**
- Negotiation phases, **11:43**
- Neutrals, **11:34**
- Panels
 - composition, **11:34**
 - executives on panels, above
- Pending litigation, impacts on, **11:36**
- Position papers exchanges, **11:41**
- Potential, **11:46**
- Practice pointers, **11:45**
- Procedure, **11:29**
- Rationale, **11:29**
- Secondary ADR processes, **2:13**
- Settlement enhancement through, **11:32**
- Suitability of disputes for, **11:31**, **11:32**
- Summary jury trials, **12:8**

MINI-TRIALS—Cont'd

Termination procedure, **11:37**

Timing issues, **11:33**

Value, **11:46**

Witness lists exchanges, **11:41**

**MISREPRESENTATIONS OF LAW
OR FACT**

Negotiations, **14:4**

**MULTI-DOOR COURTHOUSE
CONCEPT**

Generally, **1:6, 2:27, 12:13**

MULTI-PARTY DISPUTES

Consolidation of parties, arbitration
form, **15:71**

Mediation

generally, **8:49**

advantages, **7:14**

mediators' roles, **8:49**

NATURAL RESOURCE DISPUTES

Administrative ADR, **13:5**

Negotiated investment strategies,
2:30, 13:5

NEGATIVE TRANSFERENCE

Generally, **3:6**

**NEGOTIATED INVESTMENT
STRATEGIES**

Natural resource disputes, **2:30, 13:5**

NEGOTIATED RULEMAKING

Generally, **2:29, 13:4**

NEGOTIATION

Generally, **6:1 et seq.**

Advantages and disadvantages of
different strategies, **6:15**

Advantages and disadvantages of
negotiation, **6:6**

Aggressive behavior tactics, **6:13,
6:24**

Agreements as to negotiation process,
6:7

Alliances, team negotiations, **6:45**

Alternative models, **6:5**

Analysis of factual and legal ele-
ments, preparatory, **6:18**

Anger tactics, **6:24**

NEGOTIATION—Cont'd

Assessing negotiations and settle-
ments, **6:49**

Authority issues, **6:27**

Avoiding negotiation, **6:6**

Bargaining patterns theory, **6:12**

BATNAs, WATNAs, and PATNAs
developing, **6:18**

Choosing negotiation, **6:6**

Coalitions, team negotiations, **6:45**

Collaborative bargaining theory, **6:12**

Collaborative lawyering model of
legal representation, **6:5**

Commitment, **6:21**

Competitive bargainer tactics, **6:23 et
seq.**

Competitive styles, **6:13**

Complex negotiations, **6:34**

Computer displays, use of, **6:32**

Conciliatory processes, **2:4, 2:5**

Conditions required for successful
negotiation

generally, **6:7**

no-negotiation conflicts, **6:6**

Confidentiality of settlement negotia-
tions, **6:56**

Constituencies bargaining, team
negotiations, **6:36**

Constructive engagement, **6:16**

Defenses to negotiation tactics, **6:23
et seq.**

Definitions, **6:2**

Dirty tricks, **6:23 et seq.**

Disclosures, ethical considerations,
14:4

Discussion processes, **6:20**

Dispute resolution vs settlement
negotiation, **6:2**

Distributive and integrative bargain-
ing patterns and strategies

generally, **6:14**

advantages and disadvantages,
6:15

choosing a strategy, **6:12**

Emotional outburst tactics, **6:24**

Enforceability of settlement agree-
ments, **6:57**

Equitable position, **6:13**

Ethical considerations, **14:4**

INDEX

NEGOTIATION—Cont'd

- Expected satisfaction theory, **6:11**
- Experts
 - generally, **6:31**
 - team negotiation, roles of team members, **6:43**
- Factual and legal elements, preparatory analysis, **6:18**
- False demand tactics, **6:28**
- Frivolous or pure nuisance suits., **6:6**
- Game theory, **6:10**
- General policy favoring compromises, **6:55**
- Good faith and bad faith in, **6:51**
- Good guy/bad guy tactics, **6:26**
- Hidden agendas in team negotiations, **6:48**
- Impasse
 - avoidance, **6:13**
 - tactics precipitating, **6:23**
- Influences, **6:22**
- Information sharing strategies, **6:13**
- Inscrutability tactics, **6:25**
- Institutional representatives in team negotiations, **6:46 et seq.**
- Integrating strategies, **6:17**
- Integrative bargaining. Distributive and integrative bargaining patterns and strategies, above
- Integrative styles, **6:13**
- Interest claims, pre-judgment, **6:53**
- Interest-based approach, **6:12**
- Interim communication processes, **6:19**
- Investment strategies, negotiated, **2:30, 13:5**
- Judicial review, settlement agreements subject to, **6:58**
- Jury verdict reports, use of, **6:18**
- Lawyer-to-lawyer models, **6:5**
- Legal issues, **6:50 et seq.**
- Legal precedent arguments, relevance, **1:5**
- Liability insurers' duty to settle within policy limits, **6:52**
- Litigation, **6:50**
- Maximalist position, **6:13**

NEGOTIATION—Cont'd

- Mediation compared
 - advantages, **7:5**
 - disadvantages, **7:6**
- Mediation distinguished, **2:5**
- Mini-trials
 - enhancing negotiation through, **11:32**
 - negotiation phases, **11:43**
- Misrepresentation of law or fact, **14:4**
- Motives for negotiation, **6:6**
- Multilateral negotiations by teams, **6:38**
- Multiparty or multi-issue disputes
 - generally, **6:34**
 - team negotiation, below
- Nibbling tactics, **6:29**
- Offers of settlement, **6:54**
- Opening offers, unrealistic or unreasonable, **6:28**
- Personal style, **6:13**
- Phases of the negotiating process, **6:17**
- Positional bargaining
 - generally, **6:5, 6:14**
 - phases of the process, **6:17**
- Pre-dispute negotiation agreements, form drafting considerations, **15:20**
- Pre-judgment interest claims, **6:53**
- Preparation, **6:18**
- Primary dispute processing mechanisms, **2:3, 2:5**
- Principled negotiation, **6:16**
- Problems with definitions, **2:1**
- Problem-solving approach
 - generally, **6:12**
 - phases of the process, **6:17**
- Process agreements, **6:7**
- Psychological moves, **6:23**
- Purposes of negotiation, **6:6**
- Requirements for successful negotiation
 - generally, **6:7**
 - no-negotiation conflicts, **6:6**
- Role of lawyers, **6:4**
- Satisfaction model, **6:11**
- Settlement brochures, **6:32**

NEGOTIATION—Cont'd

- Settlement counsel model of legal representation, **6:5**
- Settlement vs dispute resolution negotiation, **6:2**
- Shadow bargaining, team negotiations, **6:37**
- Shadow-of-the-law principle
 - relevance, **1:5**
 - tool, use as, **6:3**
- Silence tactics, **6:25**
- Sources of power in, **6:22**
- Stakeholders
 - influencing, **6:7**
 - negotiation motives, **6:6**
 - representation on team negotiations, **6:41**
- Strategy
 - advantages and disadvantages of different strategies, **6:15**
 - choosing a negotiation strategy by context, **6:14**
 - constructive engagement, **6:16**
 - distributive and integrative bargaining patterns and strategies, above
 - information sharing, **6:13**
 - integration of strategies, **6:17**
 - negotiation theory, **6:9 et seq.**
 - principled negotiation, **6:16**
 - recognizing strategies by tactics, **6:13**
 - tactics distinguished, **6:8**
 - team negotiations, leadership considerations, **6:42**
- Structural conflicts in team negotiations, **6:48**
- Tactics
 - aggressiveness, **6:13, 6:24**
 - anger, **6:24**
 - competitive bargainers, **6:23 et seq.**
 - defenses to negotiation tactics, **6:23 et seq.**
 - emotional outbursts, **6:24**
 - false demands, **6:28**
 - good guy/bad guy, **6:26**
 - impasse, tactics precipitating, **6:23**
 - inscrutability, **6:25**

NEGOTIATION—Cont'd

- Tactics—Cont'd
 - nibbling, **6:29**
 - recognizing strategies by tactics, **6:13**
 - silence, **6:25**
 - strategy distinguished, **6:8**
- Team negotiation
 - generally, **6:35 et seq.**
 - alliances, **6:45**
 - coalitions, **6:45**
 - constituencies bargaining, **6:36**
 - dynamics of team negotiation, **6:35 et seq.**
 - ground rules, **6:44**
 - hidden agendas, **6:48**
 - institutional representatives, **6:46 et seq.**
 - internal bargaining, **6:35**
 - leadership considerations, **6:42**
 - management of the team, **6:39 et seq.**
 - multilateral negotiations, **6:38**
 - number of team members, **6:40**
 - roles of team members, **6:43**
 - selection of members, **6:41**
 - shadow bargaining, **6:37**
 - stakeholder representation, **6:41**
 - structural conflicts, **6:48**
 - vertical bargaining, **6:36**
- Technical aids, **6:30 et seq.**
- Technique, **6:17 et seq.**
- Theory, **6:9 et seq.**
- Transactional negotiation, **6:2**
- Unrealistic or unreasonable opening offers, **6:28**
- Variables affecting the negotiation dynamics, **6:8**
- Vertical bargaining, team negotiations, **6:36**
- Video displays, use of, **6:32**
- Whether and when to negotiate, **6:6**

NEIGHBOR DISPUTES

- Mediation, **7:34**

NEIGHBORHOOD JUSTICE CENTERS

- Historical background, **1:6**

INDEX

NEUTRAL RESTATEMENT

Emotion management, **3:7**

NEUTRALS

Appointments, court-connected ADR, **12:17**

Arbitrators

generally, **9:28**

practice of law issues, **14:6**

Competency standards, **14:5**

Conflicts of interest, **14:7**

Court-Connected ADR, this index

Definition, **1:1**

Early Neutral Evaluation, this index

Ethical standards, **14:9**

Expert neutral arbitrators, **9:28**

Expert neutral fact-finding, court-connected ADR, **2:24**

Experts

fact-finding, **2:10, 2:24**

neutral vs biased, use in negotiations, **6:31**

Form drafting considerations, **15:14**

Immunity of, **12:18**

Lawyer-neutrals, term defined, **1:1**

Lawyers as neutrals, **1:1**

Med-arb neutrals, authority, **11:4, 11:15**

Mediators, practice of law issues, **14:6**

Mini-trials, **11:34**

Practice of law issues, mediators and arbitrators, **14:6**

Professionalism and Ethics, this index

Qualifications, **12:17, 14:5**

Registration, **14:5**

Secondary processes, **2:7**

NO-FAULT LAWS

ADR provisions in, **2:31**

Dispute processing mechanisms generally, **1:3**

NONDISCLOSURE AGREEMENTS

Mediation, **7:31**

NONVERBAL LANGUAGE

Communication skills, **3:9**

OBJECTIVITY

Conflict management skills, **3:6**

OMBUDSMAN PROGRAMS

Federal agencies, **13:2**

Historical background, **2:14**

Long term care facilities, **13:6**

Secondary ADR processes, **2:14**

United Nations promotion of, **2:14**

ONLINE ADR

Mediation, **7:3**

PARTIALITY OR IMPARTIALITY

Arbitrators

challenges, gateway questions of arbitrability, **9:12**

Commercial Arbitration Rules, **10:7**

ex parte communications interpreted as bias, **10:18**

impartiality standards for arbitrators, generally, **10:5 et seq., 14:16**

vacation of award for partiality, **9:58**

Cognitive Biases, this index

Ex parte communications interpreted as, arbitration, **10:18**

Experts, use in negotiation situations, **6:31**

Mediator selection criteria, **7:20**

PARTICIPANTS AND PARTICIPATION

Conciliatory processes, **2:4**

Definition of participants, **1:1**

Limitations, form drafting considerations, **15:13**

PARTIES

Definition, **1:1**

Disputants distinguished, **1:1**

PARTNERING PROCESS

Prevention counseling, **4:4**

PARTNERSHIP DISPUTES

Arbitration agreement form, **15:85**

**PATNAs (PROBABLE
ALTERNATIVE TO A
NEGOTIATED AGREEMENT)**

Negotiation preparation, **6:18**

PEER REVIEW

Secondary ADR processes, **2:15**

PERSONAL INJURY DISPUTES

Mediation, **8:51**

PLEDGES

Generally, **4:5**

POLYCENTRIC DISPUTES

Mediation, **7:33**

POST-DISPUTE AGREEMENTS

See Submission Agreements, this
index

POWER

Conflict resolution concepts and
skills, **3:3**

PRACTICE OF LAW ISSUES

ADR practitioners, **14:6**

PRACTICE POINTERS

Arbitration, **9:76**

Court-connected ADR, **12:25**

Mini-trials, **11:45**

**PRE- vs POST-DISPUTE ADR
AGREEMENTS**

Generally, **9:3**

ADR pledges in non-contractual
relationships, **4:5**

Arbitration, this index

Negotiation agreements, **15:20**

**PRE- vs
POST-LITIGATION-FILING
ADR**

Advantages and disadvantages, **12:1**

PRECEDENT

Limits in ADR, **1:5**

Relevance to ADR generally, **1:3, 1:5**

Relevance to arbitration, **15:51**

Settlement to avoid setting, **6:48**

PREVENTION COUNSELING

Generally, **4:2 et seq.**

**PRIMARY DISPUTE PROCESSING
MECHANISMS**

Generally, **2:3 et seq.**

PRIVACY

Arbitration hearings, **9:40**

Form drafting considerations, **15:13**

PRIVATE ADR

Public ADR and, goals compared, **1:4**

PRIVATE JUDGING

Generally, **2:26, 12:9**

PRIVATE ORGANIZATIONS

Continuum of dispute processing
mechanisms, **2:3**

**PRIVATE VARIATIONS AND
HYBRIDS**

Generally, **1:4, 2:7**

Alternative to litigation, ADR as, **1:6**

Integrated conflict management
system design, **2:3**

PRIVILEGE

Mediation, **7:30**

PROBABILITIES THEORY

Generally, **5:2**

Assessing probabilities, **5:5**

Risk Analysis, this index

PROCESS OR PROCESSES

Dispute processing mechanisms, **1:3,
2:1 to 2:11**

PROFESSIONALISM AND ETHICS

Generally, **14:1**

ABA Model Rules, **14:2**

ABA/AAA Code of Ethics for
Arbitrators in Commercial
Disputes, **14:14**

Academy of Family Mediators, stan-
dards, **14:9**

Alternative Dispute Resolution
Rules, **14:1**

Arbitrators' ethical standards

generally, **14:14 et seq.**

ex parte communications, **14:17**

fairness, **14:15**

providers and program administra-
tors, **14:19**

INDEX

PROFESSIONALISM AND ETHICS

—Cont'd

- Aspirational Statement on Professionalism and Aspirational Ideals, **1:9**
- Association for Conflict Resolution standards, **14:10**
- Attorney competency, **14:3**
- Attorneys
 - competency, **14:3**
 - continuing education duties, **14:1**
 - intermediation of disputes between clients, **14:8**
- Competency of neutrals, **14:5**
- Conflicts of interest, **14:7**
- Counseling for ADR, **4:1**
- Dirty negotiation tricks, **6:23 et seq.**
- Disclosures in negotiations, **14:4**
- Ethical Standards for Mediators in Georgia, **14:7**
- Ex parte communications, arbitrators' ethical standards, **14:17**
- Fairness, arbitrators' ethical standards, **14:15**
- Georgia Supreme Court ADR Rules, **12:14**
- Good Faith Duties, this index
- Intermediation by lawyers of disputes between clients, **14:8**
- Judges, limitations on ADR activities, **14:5**
- Mediators' ethical standards
 - generally, **14:10 et seq.**
 - court-connected programs, **14:13**
 - fairness of outcomes, **14:12**
 - power imbalance concerns, **14:11**
- Negotiations
 - dirty tricks, **6:23 et seq.**
 - disclosures, **14:4**
 - misrepresentation of law or fact, **14:4**
- Neutrals
 - competency, **14:5**
 - ethical standards, **14:9**
- Power imbalance concerns, mediation, **14:11**
- Practice of law issues, mediators and arbitrators, **14:6**
- Professionalism standards, **14:2**

PROFESSIONALISM AND ETHICS

—Cont'd

- Reconciliation, lawyers' duties to counsel, **1:9**
 - Society of Professionals in Dispute Resolution, **14:9**
- ### PROPERTY TAX DISPUTES
- Arbitration, administrative ADR, **13:17**
- ### PROVIDERS OF ADR
- Alternative to litigation, ADR as, **1:6**
 - Definition, **1:1**
- ### PSYCHOLOGICAL MOVES
- Negotiation, **6:23**
- ### PUBLIC ADR
- Access to ADR, this index
 - Private ADR and, goals compared, **1:4**
- ### PUBLIC CONTRACTS
- Administrative ADR, this index
 - Mini-trials use to resolve disputes, **11:30**
- ### PUBLIC DISPUTES
- Generally, **2:30, 13:5**
- ### PUBLIC EMPLOYMENT DISPUTES
- Administrative ADR, **13:7**
 - Arbitration, **2:33**
- ### PUBLIC LAW DISPUTES
- Administrative ADR, **13:1**
- ### PUBLIC ORGANIZATIONS
- Continuum of dispute processing mechanisms, **2:3**
- ### PUBLIC POLICY DISPUTES
- Mediation, **7:38, 8:49**
- ### PUBLIC POLICY FAVORING ADR
- Generally, **7:27**
 - Arbitration, **9:4**
- ### QUALIFICATIONS
- Arbitrators. Arbitration, this index
 - Integrated conflict management system designer, **2:3**

QUALIFICATIONS—Cont'd

Mediators, 7:19 *et seq.*

Neutrals, 12:17, 14:5

QUESTIONING

Communication skills, 3:11

RATIONALITY ASSUMPTIONS

Risk analysis, 5:1

REALITY TESTING

Court-connected ADR, reality testing aspects, 12:1, 12:25

Definition, 6:4

Mediation, this index

RECONCILIATION

ADR challenge, 1:9

Lawyers' professional duties to counsel, 1:9

REFERENCES

Court-connected ADR, use of referees, 12:9

REFRAMING

Communications skills, 3:14

REG-NEG

Administrative ADR, 2:29, 13:4

RELIGIOUS COMMUNITIES

Mediation of other relationship disputes, 7:34

RENT-A-JUDGE

Generally, 2:26, 12:9

RES JUDICATA PRECLUSION

Arbitration, 9:62

RESOURCE ALLOCATION

DECISIONS

Risk analysis, 5:4

RESTIMULATION

Generally, 3:6

RISK ANALYSIS

Generally, 5:1 *et seq.*

Adverseness to risk factors, 5:6

Availability heuristic factors, 5:8

BATNA use, 8:46

Cautions, 5:9

Certainty, decisions under, 5:1

RISK ANALYSIS—Cont'd

Choosing ADR processes, 4:14

Cognitive biases impacting, 5:8

Debiasing techniques, 5:8

Decision making under uncertainty, generally, 5:1 *et seq.*

Decision trees, 5:3

Expected value calculations, 5:2

Expected value of information, 5:4

Gambling theory, 5:6

Heuristics impacting, 5:8

Homo economicus, 5:1

Ignorance, decisions under, 5:1

Imperfections of risk analysis models, 5:9

Information, expected value of, 5:4

Modeling decisions, 5:3

Models, caution in use of, 5:9

Non-monetary objectives factors, 5:6

Outcomes and decisions distinguished, 5:9

Overview of treatment, 1:2

Probabilities theory

generally, 5:2

assessing probabilities, 5:5

Rationality assumptions, 5:1

Resource allocation decisions, 5:4

Subjective assessment, 5:5

Time value of money as factor, 5:7

Uncertainty, decision making under, 5:1 *et seq.*

Utility theory, 5:6

WATNA use, 8:46

SATISFACTION MODEL

Negotiation, 6:11

SCHOOL DISPUTES

Mediation, 7:34

**SECONDARY DISPUTE
PROCESSING MECHANISMS**

Generally, 2:7 to 2:35

SECURITIES LAW ARBITRATION

Generally, 9:69

Form, 15:87

SETTLEMENT

Advisory arbitration, use in, 2:11

INDEX

SETTLEMENT—Cont'd

- Alternative to litigation, ADR as, **1:6**
- Appellate settlement conferences, court-connected ADR, **12:11**
- Brochures, settlement, use in negotiation, **6:32**
- Conciliatory processes, **2:4**
- Conferences
 - agreements of settlement, contract law applicability, **6:58**
 - arbitration, settlements in, **10:33**
 - assessing negotiations and settlements, **6:49**
 - contract law applicability to settlement agreements, **6:58**
 - enforceability of settlement agreements, **6:57**
 - fairness requirements, **6:58**
 - good faith requirements, **2:19**
 - judicial review, settlements subject to, **6:58**
 - mechanisms of ADR generally, **2:19**
 - voluntariness requirements, **6:58**
- Counseling for ADR, this index
- Court-connected mediation, stipulation/settlement agreement forms
 - generally, **15:95**
 - divorce, **15:96**
- Court-ordered settlement conferences, **12:3**
- Dispute resolution vs settlement negotiation, **6:2**
- Drafting considerations, settlement incentives, **15:42**
- General policy favoring compromises, **6:55**
- Incentivising settlement, drafting considerations, **15:42**
- Interest claims, pre-judgment, **6:53**
- Mini-trials enhancing, **11:32**
- Negotiation distinguished, **6:2**
- Non-binding arbitration, use in, **2:11**
- Offers of settlement, **6:54**
- Party commitments to, obtaining form drafting, **15:6**
 - mediators' functions, **8:21**
- Pre-judgment interest claims, **6:53**

SETTLEMENT—Cont'd

- Risk Analysis, this index
- Scheduling of settlement weeks, **12:12**
- Settlement counsel model of legal representation, **6:5**
- Stipulation/settlement agreement forms, court-connected mediation
 - generally, **15:95**
 - divorce, **15:96**

SHADOW-OF-THE-LAW PRINCIPLE

- Court-connected ADR, **12:1**
- Negotiation tool, **6:3**
- Relevance to ADR, **1:5**
- Settlements, enforceability considerations, **6:58**

SOCIAL AND PERSONAL IMPLICATIONS OF ADR

- Generally, **14:20**

SOCIETY OF PROFESSIONALS IN DISPUTE RESOLUTION (SPIDR)

- Competency standards, **14:5**
- Professionalism and ethics in ADR, **14:9**

SOLUTIONS

- Block solutions, **1:3**

SPECIAL MASTERS

- Court-connected ADR, **2:23, 12:4**

SPECIFIC PERFORMANCE

- Arbitration awards, **10:32**

STAKEHOLDERS

- Generally, **1:1**
- ADR participation limitations, form drafting considerations, **15:13**
- Critical stakeholders, **6:7**
- Definition, **1:1**
- Disputants distinguished
 - generally, **1:1**
 - negotiation considerations, **6:7**
- Mediation, essential and non-essential participants, **8:43**

STAKEHOLDERS—Cont'd

- Negotiation
 - motives, **6:6**
 - stakeholders influencing, **6:7**
 - team negotiations, stakeholder representation, **6:41**
- Team negotiations, stakeholder representation, **6:41**

STARE DECISIS

- See Precedent, this index

STATUTE OF LIMITATIONS

- Arbitrability, limitation provisions affecting, **9:18**

STATUTORY CLAIMS

- Gateway questions of arbitrability, **9:14**

STATUTORY RIGHTS ADR

- Generally, **2:31**

STOCKHOLDERS

- Arbitration agreement, **15:88**

SUBJECTIVE ASSESSMENT

- Risk analysis, **5:5**

SUBMISSION AGREEMENTS

- AAA submission agreement form, **15:60**
- Authority of arbitrator provisions, **9:37, 10:11**
- Choosing ADR processes, **4:16**
- Form, **15:60**
- Initiating the arbitral process, **9:21**

SUBPOENAS

- Arbitration, **10:22**

SUMMARY JURY TRIALS

- Court-connected ADR, **2:25, 12:8**

SUPPORT DISPUTES

- Arbitration, **9:75**
- Cross-gender disputes, conflict resolution concepts and skills, **3:6**
- Mediation
 - generally, **7:33**
 - mediators' roles, **8:50**
 - practice of law issues, non-lawyer mediators, **14:6**

SUPPORT DISPUTES—Cont'd

- Practice of law issues, non-lawyer mediators, **14:6**

**SUPREME COURT OF GEORGIA
ADR RULES**

- Continuing legal education requirements, **1:7**

SYSTEM OR SYSTEMS

- Dispute resolution system design, **2:3**
- Integrated conflict management system design, **2:3**

TAXATION DISPUTES

- Administrative ADR, **13:17**

TEAM NEGOTIATIONS

- See Negotiation, this index

TERMINATION PROVISIONS

- Form drafting considerations, **15:17**

**TEXTILE AND APPAREL
INDUSTRY DISPUTES**

- Arbitration, **9:67**

THIRD PARTIES

- Conciliatory and adjudicative processes, **2:4, 2:5**

TIME

- Form drafting considerations, **15:11**
- Mediation
 - generally, **7:5**
 - agreement form, **15:39**

TIME VALUE OF MONEY

- Risk analysis factors, **5:7**

TRANSFERENCE

- Negative transference, **3:6**

UTILITY THEORY

- Risk analysis, **5:6**

VARIATIONS

- Definition, **2:7**

VARIETIES OF ADR

- See Mechanisms of ADR, this index

VIOLENCE

- Continuum of dispute processing mechanisms, **2:3**

INDEX

VOLUNTARY MATTERS

What is ADR, **1:4**

VOTING

Dispute processing mechanisms not covered in book, **1:3**

WAIVER

Arbitration agreements, **9:11, 9:17**

WARFARE

Dispute processing mechanisms not covered in book, **1:3**

WATNAs (WORST ALTERNATIVE TO A NEGOTIATED AGREEMENT)

Litigation risk analysis, use in, **8:46**

Negotiation preparation, **6:18**

WHY CHOOSE ADR

Generally, **1:4**

WIN/WIN SOLUTIONS

Collaboration achieving, **3:3**

Definition, **2:4**

Integrative strategy yielding, **6:14**

Mechanisms of ADR, **2:4**

WITHDRAWALS FROM ADR

Form drafting considerations, **15:17**

Med-arb, withdrawal rights in mediation phase, **11:12**

WORKERS' COMPENSATION

Statutory ADR, **13:6**

WORST ALTERNATIVE TO A NEGOTIATED AGREEMENT

Litigation risk analysis, use in, **8:46**

Negotiation preparation, **6:18**