



# 7 Benefits to Using Alternative Dispute Resolution



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*A firm dedicated to reducing risk and preserving profit.*

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# WELCOME



The following information has been prepared to assist you in learning how to proceed when considering alternative dispute resolution (ADR) efforts. Both mediation and arbitration are designed to give more control to how you, the client, control costs and outcomes as you work to resolve disputes.

Mediation and Arbitration both allow the parties to fashion resolutions to disputes that fit their needs and budgets. My twenty-six years of experience as in-house counsel to two of the largest construction firms in the United States have provided a broad range of knowledge related to almost every business problem a large corporation encounters. I have assisted in the conclusion of thousands of disputes, including hundreds of matters resolved through mediation and arbitration.

As a practicing business and trial lawyer for the remainder of my career, I also have experience in the legal pursuit of my client's positions. This, coupled with my in-house practice, has helped in understanding the true costs of litigation. Such costs include far more than the direct outlay for legal expenses. Disputes divert employees from their normal work obligations. Rather than earning money for the company, their time is spent in pursuing claims.

The following 7 Benefits to Using Alternative Dispute Resolution are designed to allow you to focus your efforts on controlling your own destiny through ADR rather than handing a dispute over to a judge or jury who may not understand the problem, or who just want to get it concluded. After you review the benefits, please consider allowing me to assist you with the ADR process. This would include serving as a mediator or/and arbitrator for voluntary or court mandated ADR.

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# 7 Benefits to Using Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) is an umbrella term for a collection of strategies designed to resolve disputes and disagreements by mutual agreement of the parties. Parties can conduct ADR as an alternative before filing litigation, or they may be involved in ADR as a court ordered strategy. By resolving disputes and disagreements without recourse to the court system and litigation, parties can craft very effective agreements that can be superior to the results obtained through litigation. ADR brings many tangible and intangible benefits to the table. The main list of these benefits can be distilled into seven concrete advantages to ADR that behoove anyone embroiled in a civil dispute of any complexity or any nature to at least consider ADR as a potential strategy for creating a solution.



## More Cost-Effective

First and foremost, ADR – whether arbitration or mediation – is almost always a much less costly avenue of redress than litigation. It can save costs by moving much more quickly and involving many fewer resources. In fact, in some cases, mediation can involve just a certified neutral mediation professional and the parties involved in the dispute, and can be held in existing office space at no additional cost. Even more complex arbitrations or mediations involving more people are generally much less expensive than litigation of any kind. Settlements attained during court ordered ADR save the additional expense of preparing a law suit for and conducting a trial.



## Faster

Mediation and arbitration usually move much more quickly towards a resolution than litigation. When proceeding with court cases, you must deal with several calendars that have to be coordinated: yours, the other party's, attorneys on both sides, and the court's. Delays due to motions and other legal maneuvers are common, and even the most briskly-paced lawsuit is

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subject to the slow motion of the law itself, which often requires many small incremental steps hard-coded into the language of the law. With ADR, if approached in a spirit of cooperation by both sides, the only schedules that need to be accommodated are yours, the other party and the mediator/arbitrator.

## 3 Less Combative

Litigation is, by nature, aggressive and combative. One side presents a case against, and the other counterattacks. The parties are kept separate from each other and communication is discouraged and sometimes outright forbidden. The end result is often a very negative experience. Such a destructive atmosphere can damage even long-term friendships and partnerships. ADR is a more positive and friendly approach, where discussion between the two parties is not only allowed, but encouraged. The end result is a resolution in which the parties have participated to shape a settlement of their dispute.

## 4 More Control Over The Outcome

In a court case, the final result is out of the hands of both disputants: The judge or the jury decides the final outcome. Not only do they determine who is in the right, but they also determine what the compensation or solution will be. It is completely out of the hands of the people who are actually involved in the dispute. ADR keeps that control in your hands. While a solution must be negotiated between the disputants, it, at least, is a solution that both sides contribute to and agree to.

## 5 More Private

Court proceedings are a matter of public record. All testimony is recorded and made available to any interested party. ADR, on the other hand, is a private negotiation and thus all statements and facts are kept within the boundaries of the conference room. Separate agreements regarding confidentiality can be drawn up and agreed to, either between the disputants or between the disputants and the ADR professionals brought in to assist. Your private business more easily remains private.

## 6

### More Flexible

ADR allows for more creativity and flexibility in the solutions. In a court case, the judge or jury will be bound by precedent and legal limitations on the redress they can impose on a situation. In ADR, especially mediation, there are no limits: As long as the solution is within the bounds of the law itself, any agreement can be forged. This allows for an incredible amount of fine-touch control over every detail of the final agreement that settles the dispute. Even tiny details can be specifically addressed, and unconventional solutions can not only be entertained, but enacted.

## 7

### Maintain Options

With mediation, if the negotiations are not successful, there is always the option to either attempt again (with a different mediator or a different approach) or to go forward with litigation if there seems to be no more room for negotiation. Whereas in litigation a poor outcome is non-negotiable, with ADR, other avenues can be pursued even if the mediation does not actually resolve the problem. Keeping options open is compelling reason to engage in low-cost, fast ADR solutions, as a full slate of options remains on the table even if these negotiations fail.

Alternative Dispute Resolution is almost always worth consideration before launching into litigation or other court-based strategies. Simply by virtue of being a low-cost, low-risk strategy that keeps options on the table ADR is compelling, but ADR has also proven to be a very effective strategy that gets results, making it a winning strategy in addition to being less invasive and disruptive than court proceedings. In almost any civil dispute, mediation or arbitration can be a superior avenue to pursue a resolution than litigation, an avenue that preserves wealth, relationships, and control over the situation.



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