

6.5: Other Methods of Alternative Dispute Resolution

Learning Objectives

- Learn about in-house dispute-resolution methods, med-arb, private judging, minitrials, and summary jury trials.
- Explore the benefits and drawbacks to forms of alternative dispute resolution (ADR) discussed in this section.

Remember that ADR is a broad term used to denote methods to resolve disputes outside of litigation. This can really be any method, whether or not it bears a specific label or adheres to a particular procedure. For instance, negotiation might be a quick meeting in the hallway between disputants, or it might involve a formal round of negotiations where all parties are represented by legal counsel.

However, when parties are attempting to resolve a dispute, it makes sense for them to agree to a specific procedure for doing so beforehand, so that each party understands how to proceed. Negotiation, mediation, and arbitration are the most common forms of ADR. However, these methods might not be appropriate for every dispute. Other forms of ADR exist, ranging from in-house programs to very formal external processes. This section briefly discusses commonly used alternatives to resolving disputes besides negotiation, mediation, arbitration, or litigation.

Some ADR processes or programs are available only to certain groups of people, such as members of a particular organization. For instance, some organizations, like Boeing, have an internal ethics hotline. This hotline is available for employees to report perceived ethics violation that they have observed. Ethics advisors answer employees' questions and follow up on reports that need further investigation. One major benefit is that reporting parties generally (but not always) remain anonymous. Another benefit is that the company has time to redress problems that could give rise to disputes of much greater magnitude if left unaddressed.

An open-door policy is an in-house program that allows company employees to go directly to any level of management to file a complaint or grievance, without threat of retaliation for their reporting. In theory, this policy creates an open atmosphere of trust, and it breaks down class barriers between groups of employees. However, many employees may not feel comfortable in making a complaint about a manager's decision. Moreover, supervisors may not be comfortable with their employees bypassing them to file complaints. Open-door policies sound very good in theory, but they may not work as well in practice.

Another type of in-house program is an ombudsmen's office. These stations generally hear complaints from stakeholders, such as employees or customers. Ombudsmen try to troubleshoot these complaints by investigating and attempting to resolve the issues before they escalate into more formal complaints.

More formal methods of ADR include mediation-arbitration (med-arb), which is essentially a mediation followed by an arbitration. If the mediation does not produce a satisfactory outcome, then the parties submit to arbitration. The neutral party mediating the dispute also serves as the arbitrator if the dispute-resolution process goes that far. Med-arb has the same benefits and drawbacks as mediation and arbitration alone, with some important differences. For instance, parties in a med-arb know that their dispute will be resolved. This is unlike mediation alone, where parties may walk away if they do not think that the mediation is serving their interests. Moreover, the parties in med-arb have an opportunity to reach a win-win outcome as in mediation. However, if they do not reach a satisfactory outcome, then one party will "win" and one party will "lose" during the arbitration phase. The knowledge that an arbitration will definitely follow a failed mediation can be a strong incentive to ensure that the mediation phase of a med-arb works.

Private judging, contemplated by many state statutes, is a process in which active or retired judges may be hired for private trials. Private judging is essentially private litigation. The hired judge can preside over a private trial that is not truncated by limits on discovery or abbreviated rules of procedure, as would be the case in arbitration. Additionally, the judge who oversees the process is highly experienced in such matters as evidence and decision rendering. Moreover, the parties who can afford to pay for this service have a substantial benefit in not having to wait to have their cases heard in the public court. The private trial is also private rather than public, which may be important to parties who require confidentiality. In states where statutes permit hiring a judge for such matters, the parties' ability to appeal is often preserved. Drawbacks include the sometimes questionable nature of enforceability of judgments rendered, though some state statutes allow enforceability of those judgments as if they were issued in public court. Moreover, this system may benefit those who can afford to pay for this service, while others must wait for their case to appear on the docket in public court. This raises questions of fairness. See "Hyperlink: Private Judges" for one state's frequently asked questions (FAQ) regarding private judges.

Hyperlink: Private Judges

www.in.gov/judiciary/admin/private-judges/faq.html

Check out Indiana Courts' Web page with frequently asked questions about private judges.

Does your state permit private judging?

A minitrial is a procedure that allows the parties to present their case to decision-makers on both sides of the dispute, following discovery. This is a private affair. After the cases are presented, the parties enter into mediation or negotiation to resolve their dispute.

A summary jury trial is a mock trial presented to a jury whose verdict is nonbinding. The presentation is brief and succinct, and it follows a discovery period. The jury does not know that its verdict will be advisory only. This process allows parties to measure the strengths and weaknesses of their cases prior to engaging in litigation, which presumably saves both time and money. After the minitrial, parties are in a better position to negotiate or mediate an outcome that fairly represents their positions.

Key Takeaways

Methods of ADR other than negotiation, mediation, and arbitration are available to disputants. For example, minitrials, med-arb, private judging, and summary jury trials are common alternatives, as are in-house programs like ombudsmen, anonymous ethics hotlines, and open-door policies. Benefits and drawbacks to these methods exist relative to other methods of ADR and to litigation.

Exercise 6.5.1

1. Visit Boeing's Ethics Line Web page: www.boeing.com/companyoffices/aboutus/ethics/hotline.html. Do you think this program can address all disputes before they get out of hand? Why or why not? What type of dispute might not be appropriate to bring to an ethics hotline program?
2. Locate two "ethics hotline" programs from an online search. Compare these programs. What are the benefits and drawbacks to each?
3. Check out "Hyperlink: Private Judges". Do you think that people should be permitted to hire judges to preside over private trials if they can afford to do so? What benefits to litigants in a private trial have over litigants in a public trial? What ethical issues exist with respect to private judges?
4. Why would a party choose med-arb over mediation or arbitration alone?

This page titled [6.5: Other Methods of Alternative Dispute Resolution](#) is shared under a [CC BY-NC-SA](#) license and was authored, remixed, and/or curated by [Anonymous](#).

- [4.5: Other Methods of Alternative Dispute Resolution](#) by Anonymous is licensed [CC BY-NC-SA 3.0](#). Original source: <https://2012books.lardbucket.org/books/business-and-the-legal-and-ethical-environment>.