

# WHAT IS ALTERNATIVE DISPUTE RESOLUTION IN CALIFORNIA?

*Alternative Dispute Resolution May Be Preferable in Important Ways to Taking a Case to Court, But You Should Ensure Your Attorney Is Familiar with ADR and Can Advise You on the Appropriate Method of Alternative Resolution*



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Involvement in litigation can be bad for business. Whether a company files suit to protect its interests or is sued by others, litigation can be expensive and time consuming. It can also draw negative publicity for the company and disputed matters can become public record and result in undue scrutiny on company operations.

Although your business may wish to avoid adversarial proceedings like litigation, there likely will come a time when a dispute or disagreement arises that the legal system must resolve. One option to consider when this occurs is alternative dispute resolution.

Alternative dispute resolution may be preferable in important ways to taking a case to court, but you should ensure your attorney is familiar with ADR and can advise you on the appropriate method of alternative resolution. Your attorney should also guide you and your company throughout the process to ensure that your business interests are fairly represented; your rights protected; and your chances of the desired outcome maximized.

## Alternative Dispute Resolution in Commercial Litigation



Alternative dispute resolution is so named because it is an alternative to litigation. When a case would normally go to court and be heard before a judge, alternative dispute resolution provides another solution that may be preferable.

There are two primary types of alternative dispute resolution that are an alternative to commercial litigation: mediation and arbitration.

### Mediation

Mediation is a collaborative process. A third-party is hired to lead a discussion, facilitate communication and aid stakeholders in coming up with a solution to their dispute or

disagreement. Mediators may be former judges or trained attorneys, but they may also be individuals with degrees and experience in social work, psychology or behavioral sciences.



The role of a mediator is not to make any binding decisions; not to take anyone's side and not even to suggest possible or desired resolutions to disagreements. Instead, a mediator makes it possible for the parties involved in the disagreement to communicate more effectively and openly so they can devise an amicable resolution.

Mediation is cooperative and collaborative where litigation is adversarial. Mediation is usually voluntary and will be a viable approach to resolving commercial disputes only in cases where both parties have an incentive to be fair and reasonable. Either party may walk away at any time and mediation should be attempted only if there is a chance of success based on the relationships of the involved parties and the nature of the disagreement. If one or both parties

is unwilling to compromise and has a winner-takes-all approach, this will undermine mediation and likely result in an unsuccessful outcome.

Attorneys for all parties involved can help facilitate effective mediation by advising stakeholders what the likely outcome of litigation would be. With knowledge of what their actual rights are and what would occur if the case proceeded to trial, individuals may be more flexible and fair in coming to an amicable agreement.

## Arbitration

Arbitration is the other primary method of dispute resolution that is an alternative to litigation. Arbitration clauses are frequently included in agreements between companies and customers, between healthcare providers and patients, and between product manufacturers and customers.

When a contract contains an arbitration agreement, the agreement specifies that disputes or disagreements must be heard by an arbitrator rather than in court.



Arbitration clauses in contracts are generally enforceable except under limited circumstances where one party had all the negotiating power and the terms of the contract would result in arbitration that strongly favored the more powerful party. Contracts where one party has virtually all control and the other

person must take or leave the deal are generally referred to as contracts of adhesion. The terms must be unconscionable or grossly unfair for a court to decline to enforce an arbitration clause in a contract of adhesion.

Because of the deference to arbitration agreements, it is difficult or impossible for people who have signed contracts with arbitration clauses to subsequently pursue a case in court. This means many individuals will enter the arbitration process involuntarily, having signed a contract without really considering the consequences and then learning when a disagreement arises that they have waived the right to sue in court.

Arbitration does not depend upon the cooperation of the parties. Generally, an arbitrator will hear information presented by all parties to the disagreement and will then issue a binding ruling that the parties must follow. An experienced attorney should be consulted to represent clients during the arbitration process to help make the best and most compelling arguments.

While arbitration may be entered into involuntarily and as a result of a binding arbitration clause, this is not always the case. There are some circumstances where parties to a dispute will voluntarily decide to submit the case to arbitration at the time the conflict arises even though the claim could go to court.

Choosing arbitration can have far-reaching benefits. Unlike court cases, the information shared in arbitration is not generally public record and can be kept private. Further, an arbitrator can be chosen that has specialized knowledge of technical issues that are under dispute. This can be especially helpful in complicated patent cases or situations where a true understanding of the issues involves industry-specific knowledge. An arbitrator more familiar with the subject of the conflict may be able to make a better decision than a judge who would rely only on conflicting testimonies and arguments presented during litigation without the outside knowledge necessary for full understanding of the disagreement.

An attorney can provide guidance on when arbitration may be a preferred alternative to litigation for resolving your company's conflicts.

# About Sepahi Law Group, APC



SEPAHI LAW GROUP  
APC

## Trusted Counselor and Effective Courtroom Advocate

At the Sepahi Law Group APC, we have established a reputation for providing sophisticated legal expertise, extraordinary dedication to our clients' needs and innovative solutions to the legal challenges confronting businesses. We offer the detail-oriented and specialized legal services normally associated with the largest law firms in the country while delivering the personalized attention more closely associated with smaller firms. Whether we are providing counsel on regulatory compliance and contractual terms or representing our clients in a business litigation dispute, our firm is committed to formulating a clear understanding of our clients' objectives and providing a level of service that makes it seem like we have no other client.

## Providing Innovative Outside the Box Solutions in Complex Commercial Litigation and Transactions

Since our law firm was founded, we have employed compelling advocacy and innovative strategies to obtain optimal results for our clients in the courtroom. Our successful results in commercial and business litigation are the product of relentless preparation and a commitment to excellence. Our law firm can handle complex litigation involving multiple parties, multi-state parties and international entities. Our law firm has the experience and expertise to practice in state and federal courts as well as regulatory tribunals of all types and appellate courts.

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