



American Arbitration Association

Dispute Resolution Services Worldwide

Introductory Guide

TO AAA ARBITRATION AND MEDIATION



An Introductory Guide to AAA Arbitration and Mediation

The American Arbitration Association, a public-service, not-for-profit organization, has been the leading advocate of alternative dispute resolution since 1926. ADR (Alternative Dispute Resolution) is a term that refers to a variety of techniques for resolving disputes without litigation. In keeping with its mission, the AAA is in the forefront of efforts to create alternative systems that respond to the needs of parties involved in disputes.

Two of the better known methods of ADR are arbitration and mediation.

What is Arbitration?

Arbitration is a submission of a dispute to one or more impartial persons for a final and binding decision. The arbitrators may be attorneys or business persons with expertise in a particular field. The parties control the range of issues to be resolved by arbitration, the scope of the relief to be awarded and many of the procedural aspects of the process. Arbitration is less formal than a court trial. The hearing is private. The arbitrator's decision, or award, is made in writing and is enforceable in court under state and federal statutes.

What is Mediation?

Mediation involves an attempt by the parties to resolve their dispute with the aid of a neutral third party. The mediator's role is advisory. The mediator may offer suggestions but resolution of the dispute rests with the parties themselves. Mediation proceedings are confidential and private.

Mediation opens the way to the exploration of options and the development of creative solutions that might not be as apparent when utilizing a more adversarial process.

What do Arbitration and Mediation Have in Common?

Control. Think of dispute resolution as a continuum with maximum control at one end and minimum control at the other. An example of maximum control might be thought of as any relationship in which disputes never arise (not a very common occurrence). Minimum control would be a solution that is imposed upon the parties to a dispute by the public courts. ADR consists of every alternative in between.

The ADR band within that continuum is marked by varying degrees of party control over the outcome. In negotiation, the parties achieve an agreeable outcome without the need for the involvement of any neutral party. In dispute avoidance strategies, like partnering, a neutral is involved to help parties anticipate likely sources of future

disputes in order to prevent them. In mediation, a neutral party is again involved, this time after a dispute has arisen. The mediator is called in to help facilitate the parties' own settlement process. In arbitration, the neutral provides the parties with a binding ruling after hearing each side argue its case.

Although the degree of control over the outcome varies from one method to another, in all methods the parties control the process. They will agree to the procedures and to the individuals who will assist in the dispute resolution process. The parties can agree to fashion a process or combination of processes especially well-suited to the dispute between them.

Arbitration and the Law

Many of the cases that the AAA handles stem from the inclusion of an arbitration clause in a contract between the parties. Rules applicable to specific types of disputes are available from the AAA free of charge.

Arbitration awards are legally binding and enforceable in most jurisdictions. The Federal Arbitration Act provides for enforcement of arbitration agreements and awards in interstate commerce and international contracts.

Speed

Despite the best efforts of our court systems to improve processing time of civil disputes, the burdens of criminal cases, tight budgets and other factors still create delays of years to bring a case to court in many jurisdictions. Appeals extend the time required to reach a final result still further.

In ADR there is no "docket"—no line in which to wait for your day in court. The only elements governing speed are the eagerness of the parties to end the dispute and the complexity of the cases to be resolved. Most mediations processed by the American Arbitration Association are completed in a few weeks; most arbitrations are decided within a few months of filing. The Association offers expedited services for disputes where the parties agree that speed is of the essence or where the claims are not large or complex.

Choice and Expertise of Impartial Neutrals

Parties who resolve their disputes through ADR enjoy the assistance of neutrals who are already expert in the subject matter of their disputes. The AAA's panel consists of expert and knowledgeable neutrals from many professions and industries.

For example, parties to a construction industry dispute might select an architect, a contractor or a lawyer with a lifelong practice in construction law to serve as their mediator or arbitrator. The "subject matter expertise" of the neutral reduces the time typically required

to attempt to educate a judge or jury about the technical elements of a dispute, and raises the confidence level of the parties that the result of the process will be well-informed. The Association maintains a panel of approximately 8,000 individuals with expertise in a broad array of businesses, technology, insurance, labor relations and many other fields.

Who Are the Neutrals?

Approximately 8,000 individuals in diverse fields and professions are listed on the AAA's national roster of arbitrators and mediators. These neutrals represent a broad spectrum of expertise. Many are nominated to the roster by leaders in their industry or profession. Others are invited directly by the AAA.

Participation by business executives and professionals as arbitrators is vital to the system. Because of their specialized knowledge and experience, the parties are not required to spend time educating the arbitrator about relevant industry practices and customs. In labor-management relations, impartial experts arbitrate disputes arising out of the application and interpretation of collective bargaining agreements.

Biographies of neutrals, describing their occupations, qualifications, and availability, are maintained in the AAA's computerized network for submission to the parties.

Informality and Flexibility

Alternative dispute resolution is conducted in a manner that is more businesslike than litigation. Each party tells its side of the story to the arbitrator in an atmosphere that is less formal than a court proceeding.

For example, where a court must apply complex rules of evidence, and the decision of the trial judge can be overturned for admitting evidence that should have been excluded, arbitrators may admit any evidence which might be relevant. Arbitrators will of course discount questionable testimony and evidence, such as obvious hearsay, but the relaxed rules of evidence do allow each side to present their case in a more informal manner. The parties better understand the process and feel confident that they had the opportunity to present their entire situation.

Since the parties control the process, they enjoy tremendous flexibility. Hearings might take place at the site of the dispute or during evening hours. Testimony might be taken by telephone.

Privacy

Arbitration, Mediation and other forms of ADR are generally not open to public scrutiny like disputes settled in court. The hearings and awards are kept private and confidential, which helps to preserve positive working relationships.

Economy

Time saved is money saved. ADR processes are designed to be faster, more streamlined, and more informal than litigation. Many of the costly procedures associated with formal court processes, such as filing appeals and motions can be eliminated.

Finality

AAA arbitration awards are final, binding and legally enforceable, subject only to limited review by the courts. Parties may also agree in advance that awards will be advisory only. Mediation agreements are also legally enforceable.

How to Commence an AAA Arbitration

By Demand for Arbitration

If the contract or insurance policy has an arbitration clause providing for arbitration under the rules of the American Arbitration Association, the following steps are necessary to commence an arbitration:

- 1 Complete and sign the Demand for Arbitration forms in triplicate. Use of this form is not mandatory; a dispute may be filed with the AAA by correspondence if all of the necessary information is provided. Keep copies of all documents for your own records.
- 2 Attach a copy of the arbitration clause contained in the contract or insurance policy to each completed Demand.
- 3 Send one of the completed Demands with a copy of the clause to the respondent (the other party to the arbitration). Some states require that the Demand be forwarded by Certified Mail-Return Receipt Requested. Please check your state's arbitration statute if you are uncertain about this requirement.
- 4 Send two copies of the Demand and clause to the Case Management Center of the AAA or AAA Regional Office nearest the desired hearing site. Include a check or charge card authorization for the appropriate filing fee.

When AAA Rules are not Specified

If there is an existing dispute with no arbitration clause, or an arbitration clause does not provide for arbitration under the AAA rules, the parties may submit a dispute to AAA for administration by:

- 1 The parties must jointly complete and sign four copies of a submission form, including the claim and counterclaim, if any, amounts.
- 2 Each party must retain one copy of the submission form.
- 3 Send the two remaining submission forms to the AAA Case Management Center nearest the desired hearing site or your AAA Regional Office. Include a check or charge card authorization for the appropriate filing fee with the submissions.



The Advantages of Arbitration and Mediation

Most persons do not want to become involved in lawsuits. Litigation can entail lengthy delays, high costs, unwanted publicity and ill will. Appeals might be filed, causing further delay, after a decision has been rendered. Arbitration and mediation, on the other hand, are usually faster and less expensive. Arbitration is also conclusive.

Based on more than 75 years of experience, the AAA processes each case so that it moves smoothly from initiation to resolution. If problems arise, a case administrator will assist the participants. Each dispute is handled with confidentiality and integrity by the AAA and its neutrals. Professionalism is the key to the AAA's services, which explains why so many parties bring cases to the AAA.

Where Can I Get More Information?

In a sometimes-too-litigious society, it makes sense to recognize the potential for disputes in every relationship and to develop a strategy to avoid disputes by anticipating how they might arise, and to plan for the most effective methods to resolve conflicts once they occur. A simple one-sentence ADR clause in your agreements can ensure that your disputes will stay out of court. To download a guide to ADR provisions in contracts and other basic materials, visit our website at www.adr.org.

To learn more about how ADR might benefit your business or law practice, the Association invites you to call 800.778.7879 or visit our website at www.adr.org/offices to locate the office nearest you.



American Arbitration Association
Dispute Resolution Services Worldwide