

Introduction to How To Use ADR

March 20, 2015

Joint ADR Committee

## ATTACHMENT A

Virginia Judicial System Website Resource

[www.courts.state.va.us](http://www.courts.state.va.us)

The screenshot shows the homepage of the Virginia's Judicial System website. At the top, the URL [www.courts.state.va.us](http://www.courts.state.va.us) is displayed in the browser's address bar. The page features a header with the text "VIRGINIA'S JUDICIAL SYSTEM" and a navigation menu with three tabs: "For Citizens", "For Legal Community", and "For Students/Teachers". The "For Citizens" tab is circled in red, and a red arrow points to it from the URL above. Below the navigation menu, there is a search bar and a "Go" button. The main content area is divided into several sections, each with a heading and a list of links or descriptions. A red arrow points to the "Mediation Informational Videos" section, which is enclosed in a red rounded rectangle. The sidebar on the left contains a vertical menu of navigation options, and the sidebar on the right contains a "Quick Links" section with various links and a "Maps of Virginia" section with a map of the state.

www.courts.state.va.us/citizens.html

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# VIRGINIA'S JUDICIAL SYSTEM

For Citizens For Legal Community For Students/Teachers

Search this Site Go

**Quick Links**

- RSS
- What's New
- Pay Traffic Tickets and Other Offenses
- Employment Opportunities
- Find a Local Court
- Opinions
- Rules of the Supreme Court of Virginia
- Frequently Asked Questions
- Legal Links
- Maps of Virginia

**Home**

**Virginia's Court System**

**Online Services**

**Case Status and Information**

**Court Administration**

**Directories**

**Forms**

**Judicial Branch Agencies**

**Programs**

**Judicial Branch Expenditures**

## Americans with Disabilities Act (ADA)

Provides basic information about the requirements of the ADA as they pertain to Virginia's Judicial System, including how to request an accommodation.

## Court Contact and Operational Information

- General Contact Information for All Courts
- Individual Court Homepages

Please select from list below

- Map of Virginia's Judicial Circuits and Districts
- Map showing Magisterial Regions

## Court Informational Pamphlets

Please select from list below

## Commissioners of Accounts

## Employment with the Judicial Branch

- Benefits of Working for the Virginia Judicial System
- Employment Opportunities

## Frequently Asked Questions

## Glossary of Terms Commonly Used in Court

## Jury Service

Please select from list below

## Mediation Informational Videos

- Mediation: The Alternative**  
Produced by the Virginia Mediation Network in 2002, this video describes the facilitative model of mediation most often used by Virginia certified mediators.
- The Three Little Pigs Go to Mediation**  
Produced by the United States Department of Veterans Affairs, this video demonstrates mediation using familiar story characters.

By Judicial Circuit/District

By Magisterial Region

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## Attachment B

### TIPS from the Trenches

The first set of tips was used originally in a 2010 program Jeanne Franklin and Larry Hoover, Jr created for lawyers of the Alexandria Bar Association about need and ways to arrange for use of ADR on behalf of clients. The second set includes communications ideas originally developed for mediation training by Jeanne Franklin, customized for health lawyers trying to bring clients into early dispute resolution. They can be useful for lawyers when working with clients generally to strategize about goals and objectives and when working in a negotiation or mediation process.

## First Set: Practice Pointers in view of the VRPC concerning ADR

1. Evaluate dispute resolution options (pros/cons/characteristics) in light of client needs and interests
2. No question is a dumb one! If not comfortably familiar with particular dispute resolution processes and their attributes, make a plan to find out more about them, e.g., speak with colleagues, study CLE materials, consult with neutrals for their advice
3. Beware: what if your advice as to preferred process is actually because it is the one you happen to know well and you don't know much about the others?
4. Bear in mind that processes can be shaped to fit needs. Mediation is NOT one-size-fits-all. Its practice varies depending upon the neutral, and expressed needs of the situation.
5. As part of evaluation of ADR, consider optimal timing for its use. Early intervention is gaining recognition as preferable for mediation or facilitation in many instances. Why?
6. Be prepared to discuss with the client any reasons for client resistance. "Enlightened leadership."
7. Be prepared to speak persuasively and collaboratively with opposing counsel to create access to a dispute resolution process and to shape it. Consider sources of attorney resistance and work with other side to avail clients of the best forum for your client's situation. Remember the ACTL Pretrial and Trial Code of Conduct (2009).

8. Running into trouble with opposing counsel about details of the process to be used (e.g. timing, location, selection of neutral, limits on discovery)? This *might* occur when you are not operating under a contract ADR provision that has set forth such details or that calls for application of particular rules of procedure of an administering service. If getting stuck at such point, what does that tell you? Consider facilitation for establishing the process? Does your firm have a “settlement counsel” or “coach”?
  
9. Pick your neutral carefully – tips for selecting a mediator may be republished by the Joint ADR Committee. (A handout of tips was included in the Well Tailored ADR 2009 and 2010 programs).
  
10. Consider how much discovery/information you need to settle (as opposed to in order to try the case). This is a timing issue as well as a process issue.

Second Set:

## **Some Thoughts and Considerations for Lawyers and Clients**

**Jeanne F. Franklin, Esq.**

### In General:

- Less is More - we don't have to say it all or at least all at once
- Think before you burn your bridges
- Put that letter in the drawer before sending
- Things said or done in anger often feel good but rarely work out well in the long run ("I really told him!" Un huh...and then what...?)
- Flip the ABCs (i.e. beware your assumptions) See below

### Regarding the problem before us:

- [Remember the joy of deflecting – breathe - step back – bring it back down]
- How do we think the other person will perceive what we say and how we say it?
- What's the *desired* effect?
- What might it cause them to do? Turn away?
- Can you think of one good thing you respect or appreciate about the other? Is that worth something to you? Are you willing to say it out loud?
- What might the other person really like to hear?
- What would you (I) like the other person to be able to say about you (me)?
- What would you like someone else to do for you? (i.e., how would you like to be treated?)

- Testing questions: How does it benefit you to .....(do or say or insist upon)?
- What is to be lost by.....?
- What would you like your life to look like in one year? Two years? What effect does this conflict and how we handle it have on that coming about?
- Are we part of something else (a specific community)? How is this matter and how we handle it affecting the larger community?
- Can we agree to minimize losses – real and potential – as we work through this?

### We're Stuck

- Let's remember and return to our initial idea – we'll work together to work something out
- [That] is talking about the past and about how we got here. Let's focus for now on the future – avoid getting stuck in the “retread” (Assuming there has been sufficient review of the past) (from John Settle)
- If we can't seem to get out of hashing over the past what does that tell us? Is there something else we need to do? Can we address it differently - constructively?

### Hope

- Solutions *do* tend to build on themselves; one or two smaller breakthroughs can open the way to other understanding or agreement in the future
- People often act differently, even if subtly, once they've worked hard and reached some agreement – Honest! Be open to it.
- What's your wisdom?

## Don't Forget to Flip the ABCs – Dealing with Assumptions and Other Unhelpful Thinking

We all sometimes get stuck and play the same message in our heads over and over, reinforcing our opinions and inhibiting open minded inquiry and learning. Sometimes we don't even know that is what we are doing, and perhaps it is especially true when we are upset about the matter in which we are involved.

These are often the **ABCs** of fatigued, rigid, or unproductive thinking:

**A** ssumptions

**B** lame

**C** riticism

**To break this unhelpful thought pattern, try “flipping the ABCs:”**

**C** huck the assumptions, at least momentarily, and check out facts and perceptions

**B** egin to reframe, redefine the situation

**A** cknowledge other facts, perspectives or possibilities

**See what “flipping the ABCs” allows you to achieve in terms of fresh thinking.**

