

American College of Trial Lawyers' Code of Pretrial and Trial Conduct (2009)

“A lawyer must never be reluctant to take a meritorious case to trial if the dispute cannot otherwise be satisfactorily resolved. However, a lawyer must provide the client with alternatives to trial when to do so would be consistent with the client’s best interests. A lawyer should educate clients early in the legal process about various methods of resolving disputes without trial, including mediation, arbitration, and neutral case evaluation” (p. 5).

Beginning Questions

- What is your experience?
- What questions or concerns have you had about the effectiveness of the process used?
- Do you have questions about advocacy skills and how to improve satisfactory outcomes?

WHAT IS ALTERNATIVE DISPUTE RESOLUTION?

- ADR provides *alternatives* to traditional processes – does not take *the place of* traditional processes
- Generally, ADR is *voluntary*
- ADR *empowers and enables the disputants* to seek solutions which *they* decide meet their needs
- Generally, ADR uses a *neutral third party* to help the parties communicate and resolve their dispute

MANY FORMS OF ADR

- Negotiation
- Conciliation
- Facilitation
- Mediation
- Settlement Conferences
- Neutral Evaluation
- Neutral Fact-Finding
- Mini-Trial
- Peer Review Panels
- Non-Binding Arbitration
- Binding Arbitration
- Ombuds
- Negotiated Rulemaking
- Partnering

Interest-Based Conflict Resolution Principles

- Focus on the issues
 - *Separate the people from the problem*
- Explore the interests underlying the issues
 - *Look at needs (interests), not just wants (positions)*
- Be alert for new possibilities
 - *Be open, creative*
- Seek ways to meet both parties' needs
 - *Look for “win-win” solutions*