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ADR Glossary

Adjudicative Process – A neutral third party is brought in to hear and consider facts and/or arguments presented by the parties and to render a reasoned, binding decision or solution based upon an agreed standard of legality or fairness. The neutral's role in the adjudicative process is to deliver a resolution for the parties, not to help them reach an agreed-upon solution to their dispute.

Alternative Dispute Resolution (ADR) – Commonly used to refer to a variety of alternatives to litigation, wherein a neutral party assists the disputing parties, includes a full range of dispute resolution processes between direct negotiation and litigation.

Arbitration – Long used as an alternative to litigation in commercial and labor disputes, this dispute resolution process offers less formal procedures, abbreviated presentations and the undivided attention of the neutral(s). The arbitrator rules on discovery requests and disputes. The process can be binding or non-binding.

Bracketed Arbitration (or "high-low" arbitration) – An arbitration proceeding whereby the parties agree to "bracket," or limit the possible range of damage awards. The plaintiff agrees to accept not less and the defendant agrees to pay not more than agreed upon sums. If the arbitrator's demand award falls within the agreed upon sums, the arbitrator's decision is binding. If the arbitrator's decision is higher than the ceiling or lower than the floor agreed to by the parties, damages are limited or increased respectively in accordance with the agreed upon bracket.

Discovery Master/Referee – This neutral third party assists with disputes that are legally or administratively complex. The Special Master or Discovery Master assists in designing case settlement options and may mediate specific issues in a case, or groups of cases. Masters may be court-appointed and selected by the parties. Also known as "special master" or "referee."

Evaluative Mediation – Using this process, parties may "test" the potential outcomes of a case. The mediator allows the parties to present their factual and legal arguments. He or she may then offer his or her own assessment or predictions as to a trial outcome. It is often used for more difficult cases, in which the gap between the parties is large, the issues are somewhat complex and the stakes are high.

Facilitative Mediation – In this process, outcome control remains almost entirely in the hands of the parties and their counsel. A mediator enhances communication and helps to create options for resolution by ensuring that all relevant information is exchanged and heard by the parties. The mediator also helps to distinguish the parties' issues from their interests.

Final Offer Arbitration ("baseball") – In this form of arbitration, the plaintiff and the defendant each separately submit a "final offer" to the arbitrator. The arbitrator chooses between the offer or the demand presented based upon the arguments heard. It is called baseball arbitration because it was long used to resolve disputes between baseball players and teams.

Med-Arb – The parties agree to mediate their dispute and, if unable to settle, they participate in binding arbitration using the same neutral.

Mediator – A neutral professional who facilitates negotiations between disputing parties and may evaluate the relative merits of the claims and defenses. The mediator does not have power to impose a solution or decision – the parties retain ultimate control over the outcome. He/she sets the ground rules and may profoundly affect the order of the proceedings, the parties' collective and individual analyses, and the general dynamic of the settlement discussion. A mediator can be a private judge, facilitator, special master (or referee), neutral advisor or anyone selected by mutual agreement of the parties to the dispute.

Mediative Process – A process whereby a third party mediator (neutral) works to facilitate a negotiated settlement between disputing parties. Only the interests and creativity of the parties and the mediator limit the terms of the agreement. There can be two or more disputing parties to a single mediation.

Mini-Trial – A highly structured, formalized and evaluative mediation process in which the parties cede a great deal of procedural control in order to reframe the dispute from the context of litigation to the context of a business problem. It requires the participation of non-legal party representatives with settlement authority who sit as a panel with the neutral.

Neutral – An individual who facilitates the ADR process, including mediators, arbitrators, private judges, facilitators, and special masters (or referees). Also known as "panelist."

Neutral Evaluation – A non-binding process in which the parties to a dispute retain a neutral to provide an valuation based solely on the merits of the case.

Neutral Expert Fact-Finding – Used to help resolve a disputed technical issue, this may be a stand-alone, non-binding process or it can be part of a larger, non-binding process.

Non-Binding Arbitration – A hearing process that looks and feels like arbitration, but is advisory and non-binding.

Panelist – An individual who facilitates the ADR process, including mediators, arbitrators, private judges, facilitators, and special masters (or referees). Also known as "neutral."

Private Judging – A private trial conducted by a former judge and is most similar to a conventional trial in that judgment may be appealed for errors of law or as against the weight of the evidence.

Settlement Conference – A simple, evaluative mediation frequently used in uncomplicated cases, where the party representatives meet with a neutral who is typically a retired or former judge.

Special Master– This neutral third party assists with disputes that are legally or administratively complex. The

Special Master or Discovery Master assists in designing case settlement options and may mediate specific issues in a case, or groups of cases. Masters may be court-appointed and selected by the parties. Also known as "discovery master/referee".

Summary Jury Trial – A highly structured, formalized and evaluative mediative process in which a private "jury" is assembled to hear the case. The jury decision is non-binding and mediation proceedings typically follow.