



PDHonline Course P101 (4 PDH)

Alternate Dispute Resolution

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Module #5 **Recent Trends in ADR**

Both State and Federal Authority Courts have been embracing ADR as possible solutions to the overload of the court system resulting in many delays and increased costs, especially in the construction and commercial contracting areas. At the same time, ADR companies are struggling to implement significant IT Types of solutions. These issues are being discussed at the highest level within the industry.

However, some of the judges are reluctant to turn over their cases to ADR firms because of the fear of losing control. There is simply no other realistic alternative. The expectation is that ADR will continue to grow at 20% to 25% per year.

Lawyers will continue to dominate the process as they continue to turn ADR into mini-trials. The cost of ADR will continue to rise as well as time despite the efforts of the various ADR companies to control it.

There is an expectation that technology will drive ADR costs and timelines down. There has been consistent growth in the use of mediation and arbitration as a means of settling business disputes, especially in the areas of insurance, reinsurance, multi-party disputes, contracts of a technical nature, and even class action disputes. This growth is attributable to the increased skills of the neutrals and the increasing experience of in-house and outside counsel in the use of ADR.

Corporate America has finally awakened to the fact that we have a vehicle other than the court system to resolve major cases. Lower cost, speedier timeline, and the confidentiality of ADR continue to be the major draw.

Companies will increasingly use ADR to resolve intellectual property disputes. The internet makes it much easier for entities to violate intellectual property laws.

In the area of patent disputes, mediation will continue growing much faster than arbitration. For many years, patent disputes were considered too important to warrant mediation. That perception is rapidly changing. Significant growth is also expected in the use of mediation and arbitration in regions of the US such as the

mid-west, northeast, and mid-Atlantic states as they begin to catch up with Florida, California, and Texas.

All the above is dependent on in-house counsel education themselves and insisting their outside counsel do the same on the various ADR techniques.