

# SIMPLE DISPUTE RESOLUTION

## A HANDBOOK OF SETTLEMENT SCIENCE SOLUTIONS

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### CHAPTER 1

#### INTRODUCTION

- I. WHY DO WE NEED “ALTERNATIVE DISPUTE RESOLUTION?”
  - A. HISTORY
  - B. CULTURAL CONTEXT
  - C. MODERN USAGE
  - D. PARADIGM SHIFT
  - E. POUND CONFERENCE
  - F. CODIFICATION
- II. MECHANISMS FOR DISPUTE RESOLUTION
  - A. COLLABORATIVE NEGOTIATION/COLLABORATIVE LAW
  - B. MEDIATION
  - C. ARBITRATION
  - D. SUMMARY JURY TRIAL
  - E. MINI-TRIAL
  - F. MODERATED SETTLEMENT CONFERENCE
  - G. NEUTRAL EVALUATION
  - H. HYBRID PROCESSES
- III. ADVOCACY ISSUES
- IV. THE FUTURE

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#### REFERENCES

Uniform Collaborative Law Act

### CHAPTER 2

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- II. CORE CONCEPTS FOR OPTIMAL SETTLEMENTS
- III. KEY TERMS AND SPECIFIC LANGUAGE
- IV. THE NEGOTIATOR’S DILEMMA: HOW TO COOPERATE AND COMPETE EFFECTIVELY
- V. THE EXPERT NEGOTIATOR

- VI. NEGOTIATION STRUCTURE HAS TWO TASKS AND FOUR STAGES
  - A. BARGAINING ZONE (Task 1)
  - B. ALLOCATING SURPLUS (Task 2)
  - C. CREATING VALUE (Stage 1)
  - D. STRATEGY (Stage 2)
  - E. FRAMEWORK AGREEMENT (Stage 3)
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- VII. DISTRIBUTIVE NEGOTIATION HAS ONLY TWO STAGES
- VIII. INTEGRATIVE NEGOTIATION
- IX. PLANNING—THE KEY TO SUCCESS IN NEGOTIATION
- X. ETHICAL NEGOTIATORS CREATE LASTING AGREEMENTS
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  - C. HISTORICAL FACTS VERSUS FUTURE EVENTS
  - D. PREFERENCE OF THE PARTIES
  - E. COURT VERSUS INSTITUTIONAL VITALITY
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- II. CORE CONCEPTS
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  - C. COURT-ANNEXED, COURT-ORDERED, VOLUNTARY, AND CONTRACTUAL MEDIATION
  - D. AUTHORITY
  - E. GOOD FAITH
  - F. CAUCUS
  - G. MEDIATED AGREEMENT OR MEMORANDUM OF AGREEMENT
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  - I. RISK ASSESSMENT
- III. LANGUAGE
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  - B. SEPARATE SESSION
  - C. EMPOWERMENT
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- F. EXPANDING THE PIE
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IV. THE MEDIATION PROCESS AS RITUAL

V. IMPLEMENTING THE CHOICE TO MEDIATE

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- B. CONTRACTUAL MEDIATION
- C. COURT-ANNEXED AND COURT-ORDERED MEDIATION

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- B. EMPATHETIC LISTENER
- C. COLLECTOR AND DISTRIBUTOR OF INFORMATION
- D. TRANSLATOR
- E. FACILITATOR
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- Advantages and Benefits of Mediation
- Disadvantages of Mediation
- Evaluating a Case for Possible Mediation
- Qualities of an Effective Mediator
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Claimant's Counsel: Pre-mediation Agreements

Claimant's Counsel: Selecting a Mediator

Claimant's Counsel: Pre-mediation Checklist

Claimant's Counsel: Pre-mediation Conference with Claimant

Claimant's Counsel: Materials to Submit to Mediator in Preparation for Mediation

Mediator: Pre-mediation Checklist

Mediator: Creating an Effective Mediation Environment

### MEDIATION

Mediator: Opening Statement (Purpose)

Mediator: Opening Statement (Content)

Mediator: Exemplar Opening Statement

Claimant: Opening Statement

Respondent: Opening Statement

Mediator: Tools for Effective Mediation

Mediator: Establishing Credibility

Mediator: Maintaining Impartiality of the Mediator

Mediator: Facilitating a Pattern of Agreement Between Parties

Mediator: Fact-Finding Techniques (Clarifying the Essential Facts of the Dispute)

Mediator: Techniques for Achieving Final Agreement

Mediator: Things to Avoid (Traps for Ineffective Mediation)

Mediator: Determining When to Caucus

Mediator: Techniques for Resolving an Impasse

Mediator: Sample Questions for Use in Facilitating Discussion and Agreement

Mediator: Mediating on Appeal

Mediator: Ethical Considerations

Mediator: Objections to Opponent's Motion to Refer Case to Mediation

### POST-MEDIATION

Counsel: Drafting the Settlement Agreement

### REFERENCES

Uniform Mediation Act

Commercial Mediation Rules of the American Arbitration Association

Employment Mediation Rules

Model Standards of Conduct for Mediators

TMCA Ethical Rules

## CHAPTER 4

### ARBITRATION

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#### II. BASIC PRINCIPLES OF ARBITRATION

#### III. ADVANTAGES AND DISADVANTAGES

#### IV. LAWS GOVERNING ARBITRATION

##### A. THE FEDERAL ARBITRATION ACT

##### B. STATE ARBITRATION ACTS

##### C. JURISDICTION

- V. SUBJECT MATTER OF ARBITRATION
- VI. RULES OF ARBITRATION
- VII. THE ARBITRATOR
- VIII. DISCOVERY
- IX. PRELIMINARY HEARINGS
- X. THE ARBITRATION HEARING
- XI. THE ROLE OF THE ADVOCATE IN ARBITRATION
- XII. THE ARBITRATION AWARD
- XIII. ROLE OF THE COURTS IN ARBITRATION
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  - B. CONFIRMATION OF AN ARBITRAL AWARD
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#### ENDNOTES

#### CHECKLISTS

- Differences Between Arbitration and Litigation
- Advantages and Benefits of Arbitration
- Potential Disadvantages to Binding Arbitration
- Phases of the Arbitration Process
- Evaluating a Case for Possible Arbitration
- Agreement to Arbitrate
- Selecting the Location for the Arbitration Proceedings
- Qualities of an Effective Arbitrator
- Arbitrator's Role and Authority
- Claimant's Counsel: Pre-arbitration Checklist
- Arbitrator: Opening Statement (Purpose)
- Arbitrator: Opening Statement (Content)
- Arbitrator: Maintaining Impartiality
- Arbitrator: Things to Avoid (Traps for Generating Complaints from Parties)
- The Arbitration Award
- Grounds for Vacating an Arbitration Award
- Content of an Effective Arbitration Clause
- Objections to Opponent's Motion to Refer Case to Arbitration

#### REFERENCES

- Uniform Arbitration Act
- United States Arbitration Act (9 U.S.C. §§ 1 *et seq.*)
- Administrative Dispute Resolution (5 U.S.C. §§ 575-580) (in pertinent part)
- Commercial Arbitration Rules of the American Arbitration Association
- National Rules for the Resolution of Employment Disputes
- Title Insurance Arbitration Rules

Consumer Arbitration Cost

Commercial Arbitration Rules and Mediation Procedures (Procedures for Large, Complex Commercial Disputes)

The Code of Ethics for Arbitrators in Commercial Disputes

## CHAPTER 5

### SOURCES AND BIBLIOGRAPHY

#### ARBITRATION DECISIONS BY THE UNITED STATES SUPREME COURT

#### DECISIONS REGARDING MEDIATION FROM VARIOUS STATES DIVIDED BY ISSUE

- The Enforcement of Mediated Settlements
- Confidentiality
- Duty to Mediate/Condition Precedent/Court Power to Compel
- Sanctions/Attorneys Fees/Mediation Costs
- Mediation-Arbitration Hybrid Process
- Ethics/Malpractice
- Mediation in General

#### ARTICLES

- ADR in General
- Negotiation
- Mediation
- Arbitration
- Court-Annexed Arbitration
- International Arbitration

#### BOOKS

- ADR in General
- Negotiation
- Settlement
- Mediation
- Arbitration

#### STATE ADR STATUTES

#### WEBSITES

- ADR in General
- Negotiation
- Mediation
- Arbitration