

Contents

ABOUT THE AUTHOR	ix
INTRODUCTION	xi
CHAPTER 1 Need	1
1.01 Why ADR?	1
[A] Expense of Litigation	3
[B] The Vanishing Trial	6
[C] Client Attitudes	6
[D] Empirical Studies	9
[1] In-House Counsel Perspective	11
[2] Outside Counsel Perspective	12
CHAPTER 2 Benefits	13
2.01 What Are the Benefits?	13
[A] Privacy	14
[B] Confidentiality	15
[C] Discovery	15
[D] Expertise	15
[E] Location	16
[F] Timing	16
[G] Reduced Expense	16
[H] Finality	18
[I] Relationships	18
[J] Results	18
[K] Image	19
CHAPTER 3 Avoidance	21
3.01 Why Is ADR Avoided?	22
[A] Loss of Control	23
[B] Unwanted Disclosure	23
[C] Weakness	24
[D] Expense	25
[E] Time	25
[F] Uncertainty	26
[G] Loss of Fees	26

CHAPTER 4 Options	29
4.01 Options for ADR	32
[A] Negotiation	33
[B] Early Neutral Evaluation	33
[C] Settlement Conference	34
[D] Mediation	35
[E] Mini-Trial	36
[F] Summary Jury Trial	37
[G] Arbitration	38
4.02 Making an Effective Choice for Using ADR	39
4.03 ADR in Action	43
[A] National Advertising Division (NAD)	44
[B] ICANN UDRP	46
[C] Illinois Cook County Mandatory Arbitration	56
[D] Northern District of Illinois Lanham Act Mediation	57
[E] Trademark Trial and Appeal Board (TTAB)	59
[F] Federal Circuit Court of Appeals Mediation	62
[G] Court-Annexed ADR	64
[1] Non-Binding Arbitration	64
[2] Early Neutral Evaluation	64
[3] Settlement Week	64
[4] Michigan Mediation	65
[5] Settlement Conference	65
4.04 Dispute Resolutions Service Providers	69
CHAPTER 5 Arbitration	71
5.01 <i>Lakeside Informatics v. Northshore Housecall:</i> A Hypothetical Case Study	72
[A] The Arbitration Demand	73
[B] Confirmatory Notice and Answering Statement	74
[C] Arbitrator Selection	74
[D] Disclosure	75
[E] Prehearing	77
[F] The Arbitration Hearing	78
[G] Ruling	78
5.02 <i>The Facets of a Successful Arbitration</i>	79
[A] Valuable Arbitration Insights	79
[B] Questions to Consider	81
[1] How Do You Avoid Arbitrary Results in Arbitration?	81
[2] How Do You Require Another Party to Engage in Arbitration?	83
[3] Should Party-Appointed Neutrals Be Advocates for the Party that Appointed Them?	84

CHAPTER 6 Mediation	89
6.01 Why Mediation?	89
6.02 Mediation Process: Understanding the Standard Steps	90
[A] Preliminary Coordination	90
[B] The Hearing	91
[C] Post-Mediation Activities	92
[D] Mediation Example	92
6.03 Mediation Styles	93
[A] Evaluative Mediation	93
[B] Facilitative Mediation	94
[C] Transformative Mediation	94
6.04 Selecting a Mediator	95
6.05 Selecting Disputes for Mediation	96
6.06 Mediation Sample Documents and Language	97
[A] Mediation Clause	97
[B] Court-Annexed Mediation	97
[C] The Mediation Agreement	98
[D] Demand Letters and Statement of Position	102
[E] Sample Preparation Outline for Mediation	108
[F] Sample Outline for Mediation Hearing	113
[G] Sample Term Sheet Developed During Mediation	117
[H] Sample Settlement Agreement Based on Mediation	117
 CHAPTER 7 Legal Trends: When ADR Goes to Court	 121
7.01 Litigation Involving Arbitration	122
[A] Waiver of the Right to Arbitrate	122
[1] <i>Zimmer v. CooperNeff</i>	122
[2] <i>Glazer's Distributor's of Illinois, Inc. v. NWS-Illinois LLC</i>	125
[3] <i>Good Samaritan Coffee v. LaRue Distributing Inc.</i>	126
[4] <i>Woods v. Patterson Law Firm</i>	127
[5] Best Course for a Doctrine of Waiver?	128
[B] Challenges to Arbitration Provisions	129
[C] Challenges to Arbitral Awards	130
[1] <i>Hall Street Associates LLC v. Mattel Inc.</i>	131
[2] <i>Edstrom Indus. v. Companion Life Ins. Co.</i>	133
[3] How Are the Cases Reconciled?	134
[D] Who May Invoke Arbitration?	135
7.02 Litigation Involving Mediation	137
[A] Terra Museum Dispute	137
[B] NTP and RIM Dispute	141
[C] Term Sheet Tips	141
[D] Confidentiality	142

CHAPTER 8 Strategy and Advocacy	143
8.01 Contractual Provisions	143
8.02 Case Management	144
8.03 Initiating Mediation	145
[A] Mediation by Contract	145
[B] Ad Hoc Mediation	146
[C] Mediation Annexed to Other Forms of ADR	147
[D] Court-Annexed Mediation	147
8.04 Four Areas of Mediation Advocacy Focus	149
[A] Process	149
[B] Position	149
[C] Preparation	149
[D] Presentation	150
8.05 A New Mind-Set	150
CONCLUSION	153
APPENDICES	
A The Federal Arbitration Act (FAA)	155
B AAA Arbitration Rules	167
C <i>Hall Street Associates LLC v. Mattel Inc.</i>	181
D AAA Mediation Rules	195
E Model Standards of Conduct for Mediators	201
F ICANN Uniform Domain Name Dispute Resolution Policy	209
G ICANN Rules for Uniform Domain Name Dispute Resolution Policy	215
H Standing Order Setting Settlement Conference	227
I Instructions for Settlement Conference, U.S. District Judge Matthew F. Kennelly	231
TABLE OF CASES	233
INDEX	237