



## **Article written for the IAA Newsletter – Summer 2002 Alternative Dispute Resolution**

What do you advise your clients when they have someone damage one of their trees? Some might say go ahead, “Sue them!” but before you advise them to start that lawsuit, there are means that should be exhausted first. To quote Abraham Lincoln,

**“Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser: in fees, expenses and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good person.”<sup>i</sup>**

Alternative Dispute Resolution (ADR) is a means that allows for a speedier, less expensive resolution to a dispute. Four areas that should be tried before litigation are

- Negotiation- Your client and the plaintiff by themselves.
- Assisted Negotiation- Your client, the offending party, and an objective unbiased mediator.
- Mediation- Both parties, their attorneys, and an unbiased mediator.
- Arbitration- Formal procedure with a binding outcome.

Many people say “but Alternative Dispute Resolution is a new process and may weaken my case”. Actually ADR is not a new process, in fact George Washington had an arbitration clause in his will, and Abraham Lincoln arbitrated a boundary dispute while practicing law<sup>ii</sup>. These well-respected men sought for other means to settle a dispute rather than litigation. In my opinion in a bench trial your case may look stronger because you tried to settle the case without wasting the judge’s time.

Alternative Dispute Resolution is often a better answer. It is quicker and less expensive for both parties. Many times the fact that both parties can meet face to face allows them to air their differences and to resolve the situation. This process also brings a closure when resolution comes because each party was part of the resolution, which helps both parties to move on in life.

Again Alternative Dispute Resolution (ADR) involves

- Negotiation
- Assisted Negotiation
- Mediation

- Arbitration

All forms except arbitration are nonbinding and voluntary unless ordered by a court of law. That means that your client can walk away at any time and go the litigation route. Just remember a lawsuit make cost \$20,000 or more and take 2-3 years from start to finish.

In my opinion, it is in the best interest of all parties to exhaust every means of resolution before litigation. Hopefully you can advise your clients to resolve their difficulties using the first step of negotiation but if you can not call or email me and I can help you find an objective unbiased mediator.

This article is more about common sense than legal advise. Neither Jud Scott nor Vine & Branch imply legal advise by this article. Proper legal advice should be sought from your company attorney.

Sincerely,

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#### Note on the Author

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<sup>i</sup> Abraham Lincoln, in "Notes for a Law Lecture," July 1, 1850, from Bruce Bohle, *The Home Book of American Quotations*, Dodd, Mead, New York 1967 P. 226, and *Settle it Out of Court*, Thomas Crowley, John Willey and Sons, New York, New York, 1994.

<sup>ii</sup> *Settle it Out of Court*, Thomas Crowley, John Willey and Sons, New York, New York, 1994.