Key ADR Terms:

Arbitration: Arbitration is a process where disputing parties agree that one or several individuals --- the arbitrators --- can make a decision about the dispute after receiving evidence and hearing arguments. Arbitration is different from mediation because the arbitrator has the authority to make a decision about the dispute. The process may be similar to a trial in that the parties make opening statements and present evidence to the arbitrator; however, it is usually less formal and is often faster. Arbitration may be **binding** or **non-binding**, which depends on either an agreement between the parties or any applicable law in this area, depending on the jurisdiction involved. In binding arbitration, parties agree to accept the arbitrator's decision as final. In nonbinding arbitration, the parties may request a trial if they don't accept the arbitrator's decision.

Mediation: Mediation refers to a confidential dispute resolution process in which a neutral third party --- the mediator -- helps parties identify issues, clarify perceptions, and explore options for a mutually acceptable outcome. The mediator does not decide the case, but helps the parties to resolve the dispute themselves. Mediation seeks to ensure that the parties arrive at a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome. Attorneys are strongly encouraged to participate in mediation, and in some contexts, may be required to participate. Mediation may be inappropriate if a party has a significant advantage in power or control over the other.

Presumptive mediation: In a presumptive mediation referral model, parties are referred to mediation at some point in the court process, preferably early, before costs rise and positions harden. Referrals are made to mediation based on predetermined case characteristics, rather than on a case-by-case basis, wherever possible. Mediation referrals include a provision for parties to opt-out, while case intake and screening further support party safety and assessment of case appropriateness for mediation.

Neutral Evaluation: Neutral evaluation is an ADR process that may take place soon after a case has been filed in court. If this process occurs early, it may be referred to as Early Neutral Evaluation. Regardless, a court may refer – or the parties may otherwise agree – at some point in the litigation process to refer the case to an expert, usually an attorney, who is asked to provide a balanced and unbiased evaluation of the dispute. The parties either submit written comments or meet in person with the expert. The expert identifies each side's strengths and weaknesses and provides an evaluation of the likely outcome of a trial. This evaluation can assist the parties in assessing their case and may propel them towards a settlement. Often, the expert's opinion may be of great significance to one or more parties as it may serve to confirm the evaluation of the case by that party's attorney.

Settlement Conferencing: A settlement conference is an important case management tool. Settlement conferences are often hosted by judges or court staff neutrals. Settlement conferences can be similar to mediation in that a third-party neutral assists the parties in exploring settlement options. Settlement conferences differ from mediation in that settlement conferences are usually shorter, typically focus on the attorneys and their arguments, and have fewer opportunities for direct party participation or for consideration of non-legal interests that may be driving the conflict.

Special Masters: Special master are experienced neutrals who can assist judges with effective case management, play a role in technologically complex disputes, assist with discovery oversight and management, facilitate resolution among parties or co-parties, and conduct mini-trials upon consent of the parties. [1]

Summary Jury trials: a summary jury trial is a one-day trial in which attorneys for each party present a shortened version of the case in a real courtroom before a jury. It is similar to arbitration except that a jury decides factual issues and renders a verdict as a jury would in a traditional trial. The trial may be either non-binding or binding, depending on the agreement of the parties and order of the court. Damages can be floored and capped on a high/low basis by agreement of counsel. The verdict is frequently helpful in getting a settlement, particularly where one of the parties has an unrealistic assessment of the case.

[1] The ABA recently promulgated Guidelines for Appointment and Use of Special Masters in Federal and State Civil Litigation (January 2019).