



ALTERNATIVE DISPUTE RESOLUTION

JANUARY 26, 2023

UNIVERSITY AT BUFFALO SCHOOL OF LAW
LAW ALUMNI ASSOCIATION

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Meet the Panelists



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Agenda

Meet the Panelists
What is ADR now?
Navigating ADR in State Courts in NY
Questions

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What are the benefits of ADR?

 Party Experience Procedural Justice Self-Determination	 Time Issues Narrowed Positions Explored	 Cost Cost to Litigants Cost to Justice System
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What is Presumptive ADR?

Parties are referred to mediation or another form of ADR as early in the court process as possible, before costs rise and positions harden.

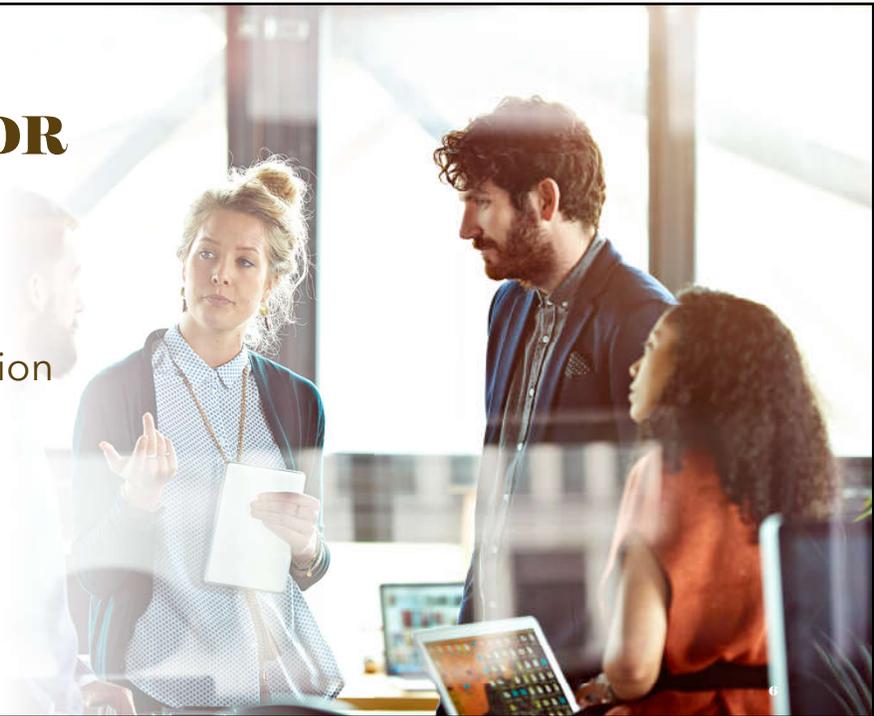
Referrals include a provision for parties to opt out; case intake and screening further support party safety and assessment of the appropriateness of the case for ADR/mediation.

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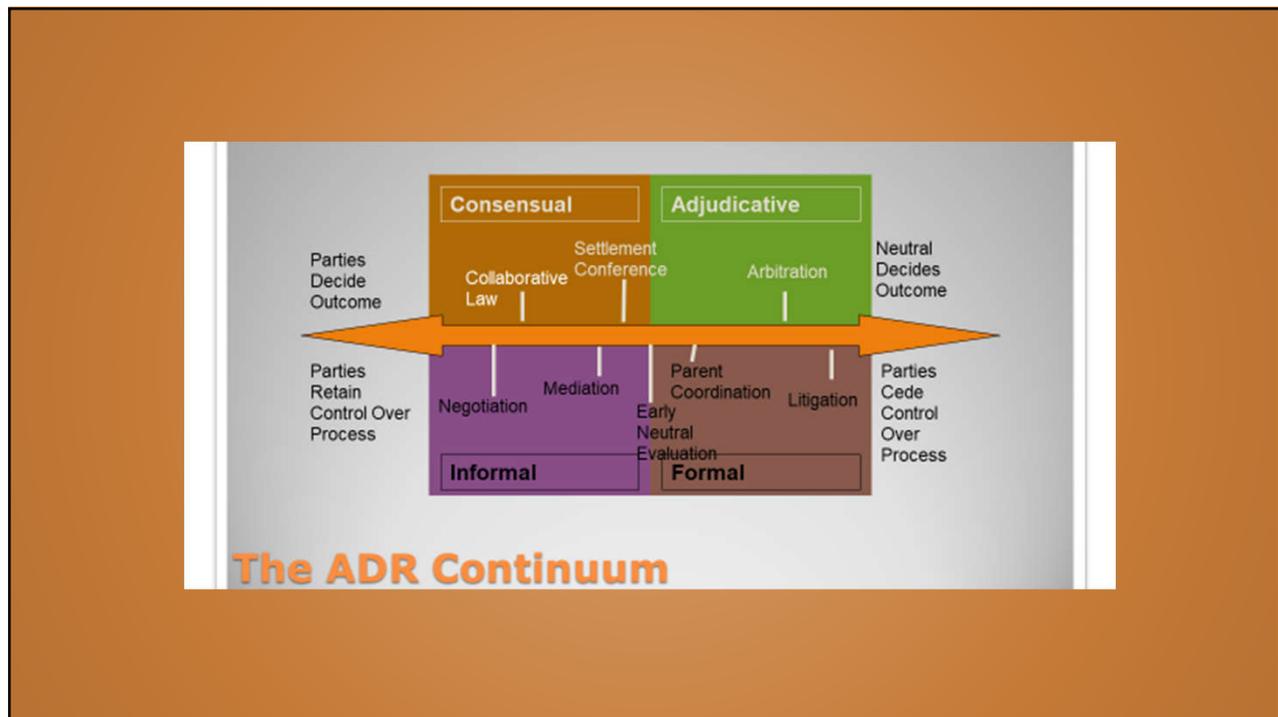
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Types of ADR

- Mediation
- Neutral Evaluation
- Arbitration
- Settlement Conferencing



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What is Mediation?

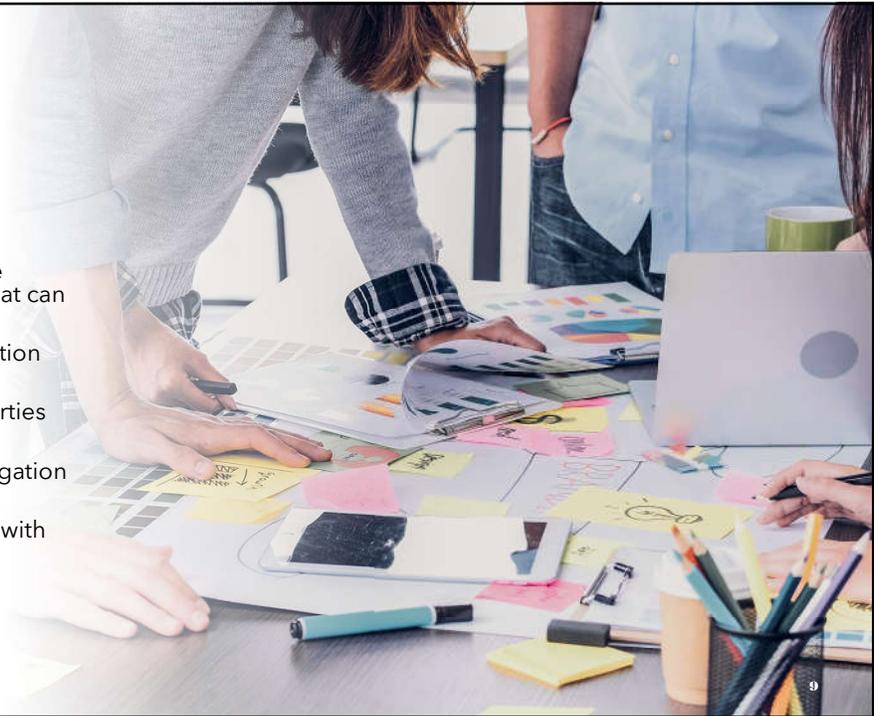
- Mediation is an efficient user-friendly means for resolving conflicts, creating plans, fostering discussions and organizing disputes. It is confidential and the resolution is voluntary.
- Parties meet with a trained mediator who helps them communicate with one another and if possible, build a solution that satisfies everyone.

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Benefits of Mediation

- Opportunities for creative customized resolutions that can better meet party needs
- Can expand the conversation beyond the legal issues
- Can include necessary parties not party to the lawsuit
- Forestalls unnecessary litigation expenses
- Can improve compliance with agreed upon terms
- Can preserve business or personal relationships



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New Developments



Rules



Staffing



Stakeholders



Technology



Programs



Training

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RULES

- Proposed Part 60 & Part 160
- Section 202.11 of the Uniform Civil Rules For The Supreme Court & The County Court
- 202.29/202.70

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ACCESSING ADR



Presumptive



Volunteer



Court Referral

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Becoming a Mediator in NYS

- Part 146 (Rules of the Chief Administrative Judge)
- Training Opportunities
- Roster Membership

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University at Buffalo School of Law Commitment to ADR

- Clinic Program
- Class Offerings
- Representation in Mediation Competition



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Advocacy in ADR

Know the Process

Familiarity with the Process
Planning with the Neutral

Prepare your Client

The Role of the Attorney in Each
Role of Advisor (Rule 2.1)
Attorneys as Third-Party Neutrals (2.4)

Prepare your Case

Realities of Discovery
Desired Language
Identifying BATNA/WATNA

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Advocacy in ADR

- Preparing your Client
 - Consult and Recommend (1.2;1.4)
 - Review the Process
 - Let them know the role of the neutral
 - Discuss the clients needs and goals
 - Review which type of discussions are helpful and which are not...
 - Remember to share that unlike court, this process is driven by the parties and their ideas
 - Review the documents you will submit in advance or bring to the session
- Preparing Yourself
 - Act in good faith.
 - Be as respectful and pleasant as possible
 - Let the other attorney or the other party "save face" where possible
 - Encourage the parties to speak to one another...in some case types, think about the many conversations most of these parties have ahead of them...give them a chance to practice use of appropriate, productive dialogue.
 - Help your clients remember why you chose to take part in the mediation
 - Give the process time

Based on Materials first Created by the Center for Resolution and Justice

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