ADRoit
Dispute Resolution

ADR Taxonomy Summary Grid

ADR Technique	Key Features	Advantages	Potential Disadvantages and Considerations	When to Consider
ADJUDICATIVE PROCESSES – PROVIDES THE LEAST PARTY "CONTROL" OF THE OUTCOME				
Arbitration	Binding decision by a third party neutral (or panel of neutrals) based upon the respective legal rights of the parties as determined by the arbitrator(s). Depending upon the parties' agreement, the process can include/exclude many of the procedures associated with traditional litigation (expansive discovery, pre-hearing motions, etc.) Provides the parties with significant flexibility in the design of the arbitral process (limiting discovery, the number of depositions, etc.). As in the case of traditional litigation, parties lose control of the outcome of the	Parties select the decision maker(s) including one who may have expertise in the subject matter of the dispute. Parties receive a legally enforceable decision. Appeals are significantly restricted (successful appeals of arbitration decisions occur in less than 10% of cases appealed). A less formal and less public tribunal than in court. Parties receive "their day in court" but that 'day' is typically faster and less costly. Strict adherence to the Rules of Evidence is usually relaxed. The proceedings are confidential. The arbitration proceedings can be tailored to the parties' needs, for example:: • Limit discovery; • Limit the number of witnesses who will be deposed or testify at the hearing; • Present sworn affidavits in place of direct testimony. • Limit pre-hearing motion practice; • "Prevailing party" pays;	Party with greater economic resources who wish to leverage those resources during traditional litigation may have a lesser ability to do so. Parties who want to engage in very extensive discovery may not be afforded that opportunity. Parties who believe their cases will have significant "jury appeal" may not want to present the case to sophisticated neutrals. Limitation on the ability to appeal may be a disadvantage particularly when significant potential damages and important business or legal issues are involved. Arbitrators generally will not issue creative solutions; like a judge/jury, they are bound by contract and traditional legal principles. Some parties believe arbitrators tend to "split the baby" in their decisions. Unlike judges, the arbitrator(s) is compensated by the parties at his/her rate.	Parties want to select the decision maker(s). Parties want to preserve an ongoing relationship. Parties are desirous of a confidential forum for the dispute resolution. Parties desire to resolve the dispute in a forum that is typically less costly and faster. Parties are interested in restricting appellate review and receiving a decision that is final. Parties have exhausted or determined other ADR techniques are inappropriate.

	dispute that is otherwise available in other forms of ADR. Limited ability to appeal. .	• Arbitrator must award the last best offer, etc.; • High-low/baseball award possible. Motions to limit discovery are not uncommon.	Depending on the procedural agreements of the parties (including the scope of permissible discovery) arbitration cases can be just as expensive and lengthy as traditional litigation. Enforcement of the award may require court involvement. Enforceable arbitration clauses may require sophisticated counsel to draft. Parties lose control over the outcome of the dispute. Typically a significantly more expensive ADR technique than other evaluative and facilitative processes.	
Med-Arb or Arb-Med	Multiple processes that can be tailored in a very flexible manner. If mediation takes place first, the mediator or a neutral third person becomes the arbitrator who decides all the unresolved issues. If the arbitration takes place first, the arbitrator does not disclose the decision and he/she or third neutral person becomes	Typically viewed as faster and more economical than conducting a mediation and then an arbitration with different neutrals. The parties select the neutral(s). If the mediation takes place first: • The parties are incentivized to resolve at mediation to avoid the cost and expense of a certain arbitration that immediately follows. • Typically at least some of the issues in dispute are resolved that expedites the arbitration process.	See the Mediation and Arbitration discussion. Disclosures in mediation may be restricted if arbitration is to follow with the same neutral. The selection of ADR neutrals eligible to participate as both a mediator and arbitrator may be limited. There are some who believe the ethical and practical issues involved when the same neutral is the mediator and arbitrator could potentially taint	See the Mediation and Arbitration discussion. Typically a "late" stage ADR technique when prior settlement discussions have reached impasse. Parties want the opportunity to retain control of the resolution of the dispute prior to engaging in a certain and typically immediate arbitration.

	a mediator who works with the parties to resolve the dispute; if unsuccessful the arbitration decision is issued and binding.	• After impasse is reached the parties can further refine the arbitration process to meet their needs. If the arbitration takes place first, the parties are fully aware of the strengths and weaknesses of their cases that may lead to a greater willingness to modify settlement positions. Approximates the impact of engaging in a Mini-trial prior to a mediation (although more costly and the arbitration decision will be binding). Savings can be achieved by not having to educate two different neutrals on the issues in dispute and the relevant facts and law. The parties enjoy all of the advantages of mediation to control the outcome of the dispute.	the process (this impediment can be addressed by selecting different neutrals, Med-Arb Different or Arb-Med Different).	Parties have determined this process is more appropriate for their dispute than other ADR process staging such as: • Mediation followed by FOC Referee hearing or Special Magistrate decision; • Summary jury trial followed by mediation; • Mini-Trial followed by mediation; • Mediation followed by a Fast Track Jury Trial • Etc.
Fast Track Jury Trial	A "private judge" who is called upon to conduct voir dire and preside over the proceedings in accordance with the procedures agreed to by the parties. The Fast Track Jury Trial issues a binding decision that is	The parties voluntarily agree to submit the dispute for a binding decision by a jury selected from a standard jury pool. The manner in which the dispute is presented to the jury can be very flexible and governed by the agreement of the parties. Rules of procedure and evidence are often relaxed to expedite the trial of the matter.	It may not be suitable in significant damage cases or when important legal issues are involved. Parties who desire to preserve all appellate rights may not want to consider. Parties who desire to exploit all procedural and evidentiary protections may not want to consider.	Parties prefer a decision by a jury rather than an arbitrator. Parties want to preserve an ongoing relationship. Parties are desirous of a confidential forum for the dispute resolution.

	typically no subject to review.	The trial and jury deliberation will typically be completed within one or two days. Parties will often stage this technique with other ADR techniques such as mediation in a manner similar to Med-Arb. Parties who are not comfortable with an arbitration as the ultimate dispute resolution may opt for a Fast Track Jury Trial. Is a less expensive technique than conducting a traditional trial.	The parties compensate the private judge/hearing officer. The court may not want to sanction the time or use of administrative court personnel in the selection of a jury from the court's jury pool or the use of a court room.	Parties desire to resolve the dispute in a forum that is typically far less costly and faster than a traditional jury trial. Parties are interested in restricting appellate review and receiving a decision that is final. Parties are desirous of staging with other ADR techniques such as mediation similar to the med-arb process but desire a decision from a jury rather than an arbitrator. Parties are not comfortable with the med-arb hybrid where the mediator will act as the arbitrator in the event the mediation does not resolve all aspects of the dispute.
Special Magistrate or Special Master	A "private judge" who is called upon to make specific decisions as agreed to by the parties or as ordered by the Court.	Parties generally select or have input into the selection of the decision maker. Parties desire a decision maker who has expertise in the subject matter of the dispute.	Parties generally compensate the Special Magistrate. Parties often select when they prefer a decision maker other than the court or do not have confidence in the Special Master selected by the Court.	Often used in complex or multi-party litigation that has the potential of being very expensive to litigate. Parties are desirous of spending more time with the decision maker than

	The specific decisions can be either preliminary issues or issues dispositive of the case which are typically subject to de novo review by the judge assigned to the case. The evaluation of the Special Master may be accepted by the parties or appealed to the trial court.	The Special Magistrate may spend significant time with the parties before rendering a decision. When involved in complex legal or factual issues or multi-party litigation it can lead to significant streamlining of the litigation and result in cost and time savings. Parties obtain preliminary legal ruling(s) that may impact the case and cause the parties to reconsider settlement positions. May lead to other ADR techniques. Parties can establish a mutually agreeable and aggressive case management plan. If requested, the Special Master may also provide mediation services to the parties or utilize the Special Master's evaluation to mediate with another neutral.	Tactically a party desires an immediate decision from the judge assigned to the case. The decision of the Special Magistrate will be based upon the legal rights of the parties and will not generate creative solutions. The decision of the Special Magistrate may entrench a party's settlement position. There is a loss of control over the litigation management plan. There may be a tendency by the assigned judge to affirm the decision of the Special Magistrate particularly if selected by the Court.	might otherwise be provided by the assigned judge. Parties desire to have input into the selection of the decision maker. Parties desire to avoid delays in the making of certain legal decisions (or having those decisions delayed if taken "under advisement") to foster the effectiveness of other ADR techniques as soon as possible or to streamline the litigation.
EVALUATE PROCESSES – PROVIDES MODERATE PARTY "CONTROL" OF THE OUTCOME				
Friend of the Court Referee Hearing	A court appointed Referee makes certain rulings in contested divorce matters upon agreement of the parties or upon the Order of the Court. Reports address the Referee's recommendations on the questions of custody, support,	Parties do not pay the Referee. Parties may have the ability to select the decision maker. Hearings on the contested issues are not held in a public forum and provides for a greater measure of confidentiality. Referee may assist the parties in reaching a voluntary resolution of the issue in dispute before issuing a recommended decision.	Parties may not have confidence in the court ordered Referee. Referral to the Referee takes place before the parties believe they have engaged in needed discovery. The recommendation of the Referee may entrench the settlement position of a party.	When the parties desire to expedite the divorce proceedings. When the parties desire a more confidential forum. When the parties require an evaluation of certain legal issues before engaging in other ADR techniques.

	parenting time, health care and child care in divorce cases involving minor children, prior to the entry of a judgment of divorce. Referee presides over the contested hearing, makes evidentiary rulings and hears witness testimony (lay and expert) and receives exhibits. The referee's decision can be accepted or appealed de novo to the assigned judge.	Referee's recommendation may be agreed to by the parties or be a vehicle to further settlement discussions. It can streamline and expedite the contested divorce proceeding.	Tactically a party wants a hearing and decision before the Judge who will decide the case. The decision of the Referee will be based upon the legal rights of the parties and will not generate creative solutions. Non-acceptance of Referee recommendation may lead to a second "trial" before the Judge of the same dispute.	When facilitative processes have failed to achieve a complete resolution of the dispute.
Dispute Resolution Board	Traditionally a dispute resolution step contained in a contract between the parties to the dispute. A panel of three experts conducts a truncated hearing (typically very early in the dispute resolution process) and renders a decision which is binding unless appealed by one of the parties.	The parties select the decision makers. The decision makers can be subject matter specialists (e.g., engineer, architect) Most often associated with resolving disputes during the course of the performance of a contract that preserves the ongoing relationship between the parties and avoids delays in the performance of the contract. Provides a very early neutral expert evaluation of the merits of the dispute that may often foster further settlement discussions.	The parties compensate the members of the Dispute Resolution Board. Typically the Board is convened very early in the life of the dispute and before any significant discovery. The party with greater access to information may be at an advantage. The proceedings before the Dispute Resolution Board are typically very truncated and may not provide for calling any witnesses. The Dispute Resolution Board does not result in creative solutions but is	When there is a desire to maintain a relationship with an important stakeholder. When parties will have fairly comparable access to the information that is relevant to the dispute. When the parties are desirous of obtaining a very early neutral expert evaluation of the dispute. When the amount in dispute or interests at

	Can be an ADR technique in a post dispute agreement crafted by the parties. The decision may be binding or appealed depending upon the agreement of the parties.	If a party is dissatisfied with the decision it can be appealed de novo to the next stage of the dispute resolution process. The hearing before the Dispute Resolution Board typically takes place very quickly and usually before any significant discovery takes place. Can be used prior to initiating formal litigation.	based upon the terms of the contract and applicable law. The decision of the Dispute Resolution Board may entrench the position of a party.	stake justify the cost of the Dispute Resolution Board. When the parties are desirous of creating stability in their relationship with a binding preliminary determination that can lead to a longer term more permanent resolution; a quick decision is more important than a "correct" decision.
Summary Jury Trial	A summary trial to a "mock" jury that is presided over by a neutral serving as the judge. The parties can structure how extensive the presentation is to the jury but the process is typically no longer than 1-2 days. The jury renders a verdict and the parties have the opportunity to engage in discussions with the "mock jury" on the strengths and weaknesses of the case.	The parties are in need of a simulated jury deliberation and verdict that cannot be replicated by any other ADR process. Provides a party with a needed "day in court" without undergoing the expense of a full trial that might otherwise last weeks or months. A unique ADR technique that permits the parties to evaluate a jury's reaction to the strengths and weaknesses of the case. Can be an excellent trial preparation technique. Can assist in the selection of "optimal" jurors once the traditional trial is commenced.	A relatively expensive ADR technique and typically more expensive than other evaluative or facilitative processes. The parties are able to sufficiently approximate the benefits of a summary jury trial through other less expensive evaluative processes. The jury verdict although not binding may entrench the bargaining position of a party. The mock jury selected may be an aberration and not reflective of the jury selected at trial (to overcome this possibility parties may make more than one presentation to different	When other ADR techniques have come to an impasse and there is a desire to have an "ice breaker." When a party representative has taken an unreasonable position and there is a desire to educate the unreasonable party. When there is significant disagreement between decision makers of one party as to the exposure and risks of litigation.

	Depending upon the facility selected and the desires of the parties, the parties can actually observe the jury deliberations in a confidential manner. The decision of the jury is not binding.		mock juries during a one or two day time period). The decision of the mock jury will not be "creative" but is based upon the legal instructions given by the neutral.	When the exposure and legal issues at stake warrant the expense. When there is a desire to engage in a robust evaluation of a jury's reaction to a party's case followed by time to refine the actual jury presentation to be made. When there is a desire to shape the voir dire and identify the profile of the optimum juror to select at the time of trial. When there is a desire to educate a client on the risks of the litigation in a fairly realistic setting.
Mini-Trial	Typically a panel of three individuals who hear a presentation in a format agreed to by the parties and then meet and render an evaluation of the case. The panel may consist of a neutral and representatives of the parties with decision making authority, or three neutrals.	Provides an evaluation of the case by a neutral panel. It can be an excellent vehicle for educating the decision makers on the risks of further litigation and the strengths and weaknesses of the case. Like a summary jury trial, it can be an effective trial preparation technique. It can be very effective in educating a client or client representatives.	Although not usually as expensive as a summary jury trial it is still an expensive ADR option. One side may not be motivated to put its best case forward and reveal trial tactics and "surprises." It will not be effective where one of the parties needs a binding decision for precedential purposes. If the parties are fully familiar and knowledgeable about the strengths and weaknesses of the opposing	Where the amount in dispute or issues involved are significant and the parties do not have a full understanding of the strengths and weaknesses of the opposing party's case. Where the parties are desirous of evaluating the effectiveness of opposing counsel at the time of trial.

	Following the evaluation the representatives on the panel may "meet and confer" to determine if a resolution can be achieved or immediately move into a traditional mediation.	Provides a client in need of a day in court with the opportunity to hear its case argued in a more formal setting than typically takes place during other forms of facilitative processes. It provides the parties with control of the outcome and the terms of any resolution.	party's case, the cost may not be justified.	Where the parties need an independent evaluation of the strengths and weaknesses of their cases.
Early Neutral Fact Finding	A Neutral Expert engages in fact finding to evaluate disputes involving highly technical and/or science based issues. Depending on the agreement of the parties the decision can be binding or non-binding.	The parties select the neutral who has subject matter expertise in the issues in dispute. May be used pre-dispute by only one party to the dispute (e.g. employment investigation, claimed violations of Sarbanes-Oxley, etc.) Even if a dispositive decision is not issued, it can narrow the issues in dispute and streamline the discovery and litigation process. Provides an early evaluation to the party(ies) of the strengths and weaknesses of their respective cases and can lead to settlement or other ADR techniques to resolve the matter. It can remove highly technical issues from the decision making of a judge or jury.	The neutral is compensated by the parties. The decision of the neutral may entrench the settlement position of a party. A party believes additional discovery is needed to inform the neutral's decision. The neutral's evaluation may or may not be admissible.	A technique used in complex cases involving highly technical or scientific issues (insurance coverage, medical malpractice, products liability, class certification, etc.). When the parties desire a neutral's expert evaluation on highly technical and/or scientific issues. When the parties desire to identify areas of agreement and disagreement and focus discovery and litigation on narrowed issues involved in the dispute. A party desires to educate a party on the strengths and weaknesses of the case.

				A client is in need of education on the strengths and weaknesses of the case.
Hot Tubbing	The neutral meets with the opposing experts to identify areas of agreement and narrow areas of disagreement. The experts of the parties engage in a presentation, presided over by the neutral, which focuses on the areas of disagreement between the experts. During the presentation the experts typically respond to questions posed by the neutral, counsel, and the opposing expert. The presentation is attended by representatives of the parties with settlement authority.	In a case involving a "battle of experts" it can narrow the factual and legal issues in dispute and refine the focus of discovery. Provides opportunity to evaluate the strengths and weaknesses of the respective cases. Provides the parties with an opportunity to evaluate the effectiveness of their respective experts should the matter proceed to trail. The neutral is available to conduct a mediation immediately after the hot tubbing event.	There is a cost to the process but typically less expensive than an early neutral expert evaluation. The process does not provide an independent, objective evaluation by a neutral expert party. Depending upon the effectiveness of the presentation it can entrench a party's settlement position.	When the dispute is complex and involves a "battle of the experts." When there is a desire to focus discovery on the areas of disagreement between the experts. When settlement discussions have come to an impasse due to a disagreement over the position of the experts and their effectiveness at the time of trail. Where a party has an unrealistic expectation of the effectiveness of anticipated expert testimony. When there is a desire to educate the decision makers on the risks of the litigation. Where the parties desire a facilitative mediation after an evaluative event.

Early Neutral Evaluation	The neutral is a seasoned and experienced litigator with subject matter expertise. The neutral, following a presentation by counsel with the decision makers present, renders an evaluation of the strengths and weaknesses of the respective cases of the parties. The role of the neutral is to play the "devil's advocate" with the parties and their counsel.	The evaluation of the neutral assists in focusing discovery efforts on pertinent key issues or can assist in the staging of discovery. The neutral provides the parties with an independent assessment of the strengths and weaknesses of their respective cases. Provides the decision makers with a greater appreciation of the risks and benefits of future litigation. Can provide "realism" to a party who has mis-evaluated the value of the dispute. The neutral may also be retained to conduct a mediation and in this setting may only share his or her evaluation during the mediation caucus or as otherwise agreed to by the parties.	The parties compensate the neutral. Typically takes place early in the life of a dispute and a party may believe more discovery is needed to make an effective presentation. It is not helpful if a party, in spite of the evaluation of the neutral, is determined to engage in extensive and prolonged discovery. The evaluation may entrench a party's negotiation position.	Where the parties are interested in a process that will tailor discovery. Where the parties are interested in an early neutral evaluation of the strengths and weaknesses of their cases by a seasoned and experienced litigator. Where the parties are interested in educating the decision makers on the risks of the litigation. Where the parties are interested in an evaluative process before engaging in mediation.
Case Evaluation	Three court appointed attorneys comprise a panel that evaluates the case and places a dollar figure the panel believes is the value of the case or is a figure that will assist the disputants in resolving the case. Under the Michigan Court Rules, the presentation made to	A relatively inexpensive ADR technique. The parties desire an evaluation of the value of the case by three attorneys. There is a significant difference of opinion between the parties on the value of the case. The panel may be selected by the parties and have subject matter expertise or not. The panel may extend the time and format of the process by consent of the parties.	It is not appropriate when the issues are primarily equitable or do not involve economic damages. The evaluation of the panel does not lead to creative resolutions; the evaluation is monetary and either accepted or rejected. The decision of the panel will not lead to binding legal precedent that may be desired by one of the parties.	It is court ordered in most tort cases. When there is a need for a neutral opinion on the strengths and weaknesses of the case. When there is a need for an economic value of the case by three attorneys.

	the panel is typically very short (no more than 15 to 20 minutes). Depending on the rules, penalties may attach if a party rejects the evaluation and fails to secure the requisite damages at trial. The parties to the dispute are not provided the opportunity to participate in the presentation made to the panel.		Under the Michigan General Court Rules, it is a late stage process that typically occurs after all discovery has been completed (and significant litigation costs have been incurred) and the trial is scheduled. A favorable evaluation may entrench a party's negotiation position to a greater degree than other evaluative processes. Unless specifically requested by the parties the parties do not have an input into the selection of the members of the panel. Recent studies have suggested that Case Evaluation conducted under the Michigan Court Rules is not as effective as mediation in resolving disputes.	
Moderated Settlement Conference	The trial court or the trial court's designee meets with counsel and party representatives with settlement authority in an attempt to resolve the case shortly before trial.	Provides the parties the opportunity to meet with the trial judge (potentially for the first time) and assess the trial court's evaluation of the case based upon the judge's experience (if a bench trial, the judge will not be exposed to all pertinent confidential information that might be disclosed at trial). The trial court's evaluation can be very effective in breaking some negotiating impasses.	Takes place very late in the life of the litigation after most litigation costs have been incurred including extensive trial preparation. While the parties with settlement authority are present, they typically will not take part in any presentation made to the trial judge on the strengths and weaknesses of the case or the identification of important interests.	Court ordered.

		May provide insights to the parties on the trial court's position on pending motions or other anticipated legal issues and rulings.	Typically a very short conference that does not provide a forum for a full airing of the competing positions of the parties or an exploration of their interests.	
FACILITATIVE PROCESSES – PROVIDES THE PARTIES WITH THE MOST "CONTROL" OF THE OUTCOME				
Meet and Confer	The parties informally meet to explore their interests and positions in an attempt to resolve the dispute. The parties can meet and confer before litigation has been commenced or at any time during the course of the litigation. Typically the first step in a contractually required progressive dispute resolution strategy. The parties may meet without counsel being present. If the parties come to an impasse they may consider engaging in "Real Time" mediation or a dispute resolution board process to	Typically takes place pre-litigation or very early in the life of a dispute before any significant litigation costs are incurred and before positions have hardened. Can be very effective in stabilizing the relationship of the parties particularly if an ongoing relationship is desired or anticipated. Beneficial in exploring very creative interest-based solutions. The meeting can be attended by counsel or facilitated by a neutral ("Real Time" Mediation)	The parties are not necessarily aware of all their legal rights. The parties may not be aware of all the issues that need to be addressed during the course of the meet and confer process. There is the potential to exploit unequal bargaining experience or one party may attempt to intimidate or threaten the other party. As the meet and confer usually takes place early in the life of the dispute, one party may have access to greater information than the other party. Not beneficial if a party is committed to "winning" or teaching the opposing party a "lesson." Process may or may not be restricted in duration.	Where there is a mutual desire to maintain the relationship between the parties or establishing ground rules for the ongoing relationship. Where the parties are sufficiently mature and sophisticated and have comparable knowledge of their legal rights and the facts involved in the dispute. Where the parties are motivated to engage in interest-based bargaining rather than purely positional bargaining.

	facilitate further meet and confer discussions.			
Collaborative Process	The parties retain counsel and execute a "Participating Agreement" promising not to engage in contested litigation unless certain pre-conditions are met. The attorneys agree they will not represent the parties if litigation is initiated. The attorneys will work "collaboratively" to exchange relevant information and advise the parties of their rights. When necessary experts can be added to the collaborative team as necessary to foster information sharing and an understanding of the issues that need to be addressed in the ultimate resolution. Primarily utilized in family law divorce proceedings but has	Where there is going to be an ongoing relationship between the parties that requires the resolution of issues to maximize the stability of the ongoing relationship. Traditionally, used in family law to regulate the relationship between divorcing parents for the benefit of minor children and to resolve visitation, custody, and support issues. Encourages true interest-based bargaining and the generation of creative solutions. Leads to greater commitment by the parties to abide by the terms of the settlement agreement. Typically less expensive to the parties than a traditional contested divorce. Minimizes or eliminates the disadvantages associated with unrepresented parties or meet and confer events.	Not beneficial if a party is committed to "winning" or teaching the opposing party a "lesson." Finding qualified counsel and experts who have undergone the required training in collaborative law. Added cost of retaining two attorneys if the process does not succeed	Where there is a mutual desire to maintain the relationship between the parties or establishing ground rules for the ongoing relationship. Where the parties are motivated to engage in interest-based bargaining rather than purely positional bargaining.

	applicability to other disputes. Negotiations mirror meet and confer meetings where counsel is present and other experts as needed.			
Friend of the Court Conciliation	Mandatory in some circuit courts immediately after the filing of the Complaint for Divorce that involve minors. The recommendation of the Friend of the Court may be agreed to by the parties or appealed to the assigned judge.			Court ordered.
Mediation	The ADR process that maximizes the parties' control of the process and the terms and conditions of any resolution. Third party neutral assists the parties in communications designed to lead to a resolution of all or a portion of the issues in dispute.	Provides for confidentiality of all communications as established by Court Rule, statute and case law. It is very beneficial when the parties to the dispute will have an ongoing relationship and can re-establish effective communications between the parties. It is very beneficial in leading to lasting, creative solutions that could not otherwise be achieved through a trial or arbitration award.	If a party's sole desire is a binding decision with precedential impact, this is not a process that will be effective if the goal is a global resolution. If a party's best alternative to a negotiated agreement (BATNA) will not change or become flexible. If a party needs a victory at trial or arbitration.	If the parties are desirous of developing a creative solution and avoiding as much litigation costs as possible. Where the parties intend to have or desire an ongoing relationship. Where the parties want to maximize confidentiality of ongoing settlement discussions.

	The process can be very flexible depending upon the style of the third party neutral (from highly evaluative to highly facilitative) selected by the parties. The nature of the process (all joint sessions to no joint sessions, etc.) can be tailored by the parties. The neutral has no decision making authority; the only "power" is that voluntarily given by the parties. If court mandated the neutral must comply with standards established by SCAO.	It can be very helpful to parties who need to express emotions that might otherwise impede communications. Provides reality testing to the parties concerning the strengths and weaknesses of their cases. It is a risk free forum for risk adverse clients. It leads to greater predictability in the resolution whereas the outcome in trial or arbitration is uncertain. It can lead to an early resolution of the dispute and avoids the direct and indirect costs of further litigation.	Where the parties are not acting in good faith or pressing a claim without any merit. Where a party needs to establish legal precedent. Where the participants lack settlement authority.	When ordered by the court. When the parties are desirous of narrowing the issues in dispute.
Dispute Resolution Advisor	A third party neutral who can participate in Real Time Mediation (typically during "meet and confer" events) and/or assists the parties in "right sizing" or staging a dispute resolution strategy that	Where the parties desire to have an ongoing relationship this is a very effective ADR technique to preserve the relationship. The parties can be very creative in retaining control over the manner and methods of the dispute resolution strategy and the terms of any resolution.	The parties are content with "boiler plate" dispute resolution mechanisms in the contract between the parties that culminates in either litigation or binding arbitration. The party who wants to leverage greater assets or power during litigation may not be interested in	Where the parties to a contract want to maximize flexibility and creativity in the manner disputes under the contract are resolved. Where the parties to a dispute make the decision as early in the dispute as

	meets the mutual needs of the parties. An ADR technique that has been used in a number of construction contracts but has applicability to other disputes. The Dispute Resolution Advisor can be named in a contract or retained after a dispute has arisen.	Depending on the staging and "right sizing" of the dispute resolution strategy, it can lead to a significant savings in traditional litigation costs.	pursuing the services of a Dispute Resolution Advisor. The Dispute Resolution Advisor costs are borne by the parties.	possible to craft a mutually beneficial mechanism for the resolution of the dispute in the fastest and most economical fashion possible. Where the parties want to maximize their control over the dispute resolution mechanism.
Early Intervention Conference	Usually done at the direction of the assigned judge and conducted at the court house. An independent neutral facilitates a dialogue among counsel and clients to explore the nature of the case, how it might be resolved at the EIC and/or through another type of ADR processes. Approximates the role of a Dispute Resolution Advisor.	Occurs early in the life of a litigated case (90-120 days after filing). Conducted at the court house with trained facilitation leaders who direct the content of the dialogue. Decision makers may or may not be present. Can streamline discovery and/or narrow focus of issues in dispute. Settlements reached in EIC are typically put on the record and bind the parties that same day. The facilitator may be retained to provide other ADR services during the course of the litigation.	May come too early in the life of the dispute if the parties lack the necessary information to explore settlement. Requires use of court personnel and resources. It may not be perceived as an effective substitute for the early intervention of the court to oversee and approve of the litigation decisions made at the EIC.	Where counsel and parties have an early understanding of the dispute and the ability to narrow topics for discovery, discussion and settlement. Where there is a need to argue and potentially resolve the scope, extent and form of discovery, especially in a complex case. Where the dollar amount in dispute is small.