

Arbitration & Mediation Dictionary

http://www.arbitration-and-mediation.com/dictionary/arbitrationmediation_adjudicator-expertdetermination.php

adjudicator: Someone who presides, judges and arbitrates during a formal dispute.

ADR: See alternative dispute resolution.

advocacy: The act of supporting an idea, person or cause.

alternative dispute resolution: Conflicts that are resolved outside of the normal court legal system. Mediation, negotiation and arbitration are all forms of alternative dispute resolution.

American Arbitration Association (AAA): An organization with a long history and experience in alternative dispute resolution. The AAA provides services to individuals and organizations who wish to resolve conflicts out of court.

Alternative Dispute Resolution (ADR): Dispute resolution processes and techniques that fall outside of the government judicial process.

answer: A written response to a claim.

arbiter: Another word for arbitrator.

arbitral tribunal: A panel of one or more adjudicators that is convened and sits to resolve a dispute by way of arbitration.

arbitration: A legal technique for the resolution of disputes outside the courts, wherein the parties to a dispute refer it one or more persons (arbitrators, arbiters or arbitral tribunal) by whose decision (the award) they agree to be bound.

arbitration award: An arbitration tribunal's determination, which is like a judgment in a court of law, on the merits of an arbitration proceeding.

arbitration clause: A commonly used clause in a contract that requires the parties to resolve their disputes through an arbitration process.

arbitrator: Also referred to as adjudicator; a person who may be the only member of an arbitral tribunal.

award: An award is a legal decision or grant.

baseball arbitration: A form of binding arbitration wherein each of the parties chooses one and only one number, and the arbitrator may select only one of the figures as the award.

BATNA: See best alternative to a negotiated agreement.

best alternative to a negotiated agreement: The likely course that the case would take if negotiations fail and the case goes to court.

binding: A term that describes proceedings in which parties agree that they will abide by the decision and that the decision is legally enforceable.

brief: See mediation brief.

child custody: A determination of how much time a child will spend with each parent after a divorce. Child custody also determines which parent has primary care of the child.

claim: A request for money or some type of compensation.

claimant: A person who is asking for the claim or compensation.

collaborate: To work together.

collaborative law: A type of ADR wherein each party has an attorney who facilitates the resolution process within specifically contracted terms. The parties reach agreement with support of the attorneys and mutually agreed experts, with no one imposing a resolution on the parties.

collective bargaining: A process whereby workers organize collectively and bargain with employers regarding workplace issues.

co-mediation: The use of two or more mediators during a mediation proceeding.

concession: The act of yielding a point to the other side.

confidential: Describes situations in which details of the proceedings will not be discussed with anyone outside of the negotiating process.

conflict: An open, ongoing disagreement between two or more parties.

consensus: The event in which all parties have reached an agreement.

contract: A legally binding exchange of promises or agreements between parties that the law will enforce.

counsel: Another word for lawyer or attorney; the representative of a side during a dispute.

damages: Monetary compensation for injuries or losses in a legal case.

debt arbitration: A way to reduce debt by negotiating with creditors to pay a lesser amount of the owed monies.

declaration: A judgment of the court or an award of an arbitration tribunal that is a binding adjudication of the rights or other legal relations of the parties. Declarations don't provide for or order enforcement.

declaratory award: A condition in which declaratory relief is awarded by an arbitrator.

dialogue: Conversation or discussion between two or more parties.

divorce: The legal dissolution of a marriage.

divorce arbitration: A case involving the separation of marriage that is resolved outside the courts by some arbitrating party.

ethical: Describes morally acceptable standards and principles.

evaluative mediation: A process in which a mediator will make suggestions in an effort to bring the parties to an agreement.

expert determination: A form of dispute resolution invoked when there is not a formulated dispute in which the parties have defined positions that need to be subjected to arbitration. Instead, expert determination occurs when both parties are in agreement that there is a need for an evaluation.

facilitative mediation: A process in which a mediator helps resolve a dispute by controlling the mediation process. During facilitative mediation, the mediator tries to move the mediation to a “win-win” proposition based on the premise that people can come to agreements despite conflict.

Federal Arbitration Act (first enacted in 1925): A statute that provides for judicial facilitation of private dispute resolution through arbitration.

forbearance: The act in which a lender does not enforce a past due debt. In terms of foreclosure, the lender might allow the homeowner to pay past due payments within a given time period rather than take the house.

foreclosure: A legal act in which a lender takes back property because mortgage payments are past due. During a foreclosure, the lender will sell the property in an attempt to regain his losses.

grievance arbitration: A type of labor arbitration that provides a method for resolving disputes over the interpretation and application of a collective bargaining agreement.

high-low arbitration: An arbitration wherein the parties have agreed in advance to the parameters within which the arbitrator may render his or her award.

impartial: Describes a person who will not take any side in a dispute.

information-centered mediation: A process that involves using a mediator with experience and information beyond the “norm.” Mediators used in information-centered mediation can be retired judges, academic experts or other experienced professionals.

interest arbitration: A type of labor arbitration that provides a method of resolving disputes about the terms to be included in a new contract when the parties are unable to agree.

joint session: A session in which all parties involved in the process, including lawyers, attend the proceedings.

judicial appraisal: A process in which parties involved in the dispute choose a judge who will examine all sides and give an analysis of what would probably happen if the case were to be taken to court.

labor arbitration: A type of arbitration that occurs between workers (laborers) and their supervisors for salary negotiation and/or special rights.

lawsuit: A legal action brought to court where the problem or dispute will be given a legal remedy.

litigation: The process of taking a lawsuit to a legal court with the intent of resolving it.

mandatory arbitration: A legislatively mandated or court administered scheme for the resolution of pending court cases using informal rules of evidence. Mandatory arbitration also invokes informal procedure in a non-binding, advisory arbitration process that is ordered by the court at an early stage of a lawsuit.

mediation: A form of alternative dispute resolution in which the interested parties come to an agreement themselves rather than having a third party, such as an arbitrator, impose a solution on them.

mediation brief: A document that lists the disputing parties, facts pertaining to the case and other issues, such as background and the nature of the dispute.

mediator: An impartial person who works with the disputing parties in a mediation to facilitate communication and help overcome disagreements to help the parties come to a resolution or agreement.

National Academy of Arbitrators (NIAA): A non-profit professional organization of labor arbitrators in the U.S. and Canada.

negotiation: The process by which two or more parties come to an agreement through a series of discussions.

night baseball arbitration: A form of arbitration wherein the parties exchange their own determination of the value of the case, but the figures are not revealed to the arbitrator. The arbitrator will assign a value to the case, and then the parties agree to accept the high or low figure closest to the arbiter's value.

non-binding: Describes proceedings in which parties do not have to follow any recommendations and are not legally bound to the final resolutions.

parties: The people in a dispute who are the basis for the legal action. For example, the parties in a divorce proceeding would be the soon-to-be ex-spouses.

pendulum arbitration: A special mechanism of arbitration in which the arbitrator has to decide completely in favor of one or the other position on the bargaining table. In pendulum arbitration, the arbitrator cannot split the difference between the two opposing parties.

pre-marital agreement: A legal agreement made before marriage that determines how assets will be distributed in the event of a divorce.

process center mediation: A process that uses a mediator who might not be an expert at the subject involved but who knows the dynamics of conflict and how to move parties from conflict to resolution.

reconvening: The event in which all parties involved in the dispute get together to discuss the details of the agreement after a settlement has been negotiated.

rent-a-judge: See judicial appraisal.

securities arbitration: A preferred method of resolving disputes between brokerage firms, as well as between firms and their customers.

separate caucuses: The events in which the mediator meets privately with each party involved in the dispute.

settlement agreement: A document that lists the terms of the agreed upon resolution. All disputing parties sign the settlement agreement.

summary jury trial: A process in which a panel of jurors is used in a mock trial as part of the mediation process.

termination: The event in which the disputing parties are deadlocked and cannot come to an agreement. Upon termination, the mediation is cancelled.

Third-party claim: A claim made by one of the parties of an arbitration that is made against a party not party of the proceedings.

transformative mediation: A process in which the mediator will help the parties understand each other's points and handle conflict positively. This form of mediation is based on the premise that conflict makes people feel weak.

Unspecified damages: A claim regarding an unstated or otherwise unknown amount of any type of relief.

win-win: Describes situations in which all parties get something that they want out of the mediation proceedings.