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Dispute Resolution Section

Introducing EDR: The Future of ADR

By Ellie K. Vilendrer

When used effectively, Alternative Dispute Resolution, "ADR," which refers to any method of resolving disputes without litigation, results in achieving faster dispute resolutions at lower costs and sometimes even improved relationships. But as critics have pointed out, ADR too often looks and costs like the litigation it's supposed to prevent.

"EDR," (*Early* Dispute Resolution) is an emerging area of law designed to address that concern. EDR is defined as *methods utilized to prevent potential disputes and resolve actual disputes in a time-efficient and cost-effective manner*. One example of EDR is a corporate conflict prevention and management system to monitor and proactively deal with issues before they escalate. Importantly, EDR is practiced *early* in the stages of a dispute, and optimally begins pre-dispute, at the point of contract inception. EDR contract clauses require a good faith meeting by party decision makers to discuss the dispute and attempt settlement prior to initiating a lawsuit. By shifting the focus to dispute prevention and time and cost efficiency, EDR avoids the criticisms of inefficient or delayed use of ADR.

While ADR and EDR share many common methodologies including negotiation and mediation, the term "alternative," may be falsely construed that such methods are an inferior option to litigation. Quite contrarily, as approximately 98% of cases settle before trial, the vast majority of disputes are resolved through the "alternatives." This misperception has unfortunately limited the appeal of ADR as the *first* choice in resolving disputes. Even though ADR is usually chosen eventually, the delay in utilizing it diminishes its full potential value.

When used as intended, ADR lives up to its full potential. Enter EDR, ADR at its best. EDR emphasizes the use of ADR early—at a point in time when parties are best positioned to secure a time-efficient and cost-effective resolution.

The benefits of EDR extend beyond the parties directly involved in a dispute. When disputes are resolved early, judicial resources are freed up for others who need them most. Trials are an essential right in our judicial system. They play the important role of setting precedence and creating a space for effective speech for matters of public concern. Not all cases are suitable for EDR. Some cases *should* go to trial. EDR reduces the court dockets allowing the cases that need to go to trial to do so without costly delay.

Litigators may be concerned that the adoption of EDR could lead to a decrease in business for them. However, this need not be the case. Litigators can actually benefit from EDR by creating value for their clients through expedient resolutions. By utilizing value-based fee agreements, lawyers can share in this created value and be rewarded for their expertise and ability *which is often inversely related to time spent*.

Finally, when dispute resolution is more affordable and less disruptive to conducting business, the cost of doing business decreases, leading to an increase in deal flow and a boost to the economy.

By embracing EDR as the preferred dispute resolution approach, we can shift the focus to resolving conflicts in a way that yields the most valuable outcomes. This addition to the legal lexicon will help to raise awareness of the benefits of early use of ADR and encourage more parties to consider this approach first in resolving their disputes. By making EDR the primary choice, with litigation being the alternative, we can improve the overall efficiency of the dispute resolution process, reduce the burden on the judiciary, and create a more prosperous society for all.

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