

Hamline University School of Law
Dispute Resolution and Health Law Institutes



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Conflict Resolution Glossary

Prepared for the Fall 2007 Biennial Symposium on Conflict Resolution:
“An Intentional Conversation About Conflict Resolution in Health Care”
November 8-10, 2007 Saint Paul, Minnesota

This document is a work in progress. Please email your suggestions to Sukhsimranjit Singh, DRI Post-graduate Fellow, at ssingh01@hamline.edu. This glossary is not intended to be a comprehensive catalogue of resources; rather, it has been intentionally limited to commonly used conflict resolution terms related to the anticipated themes of the Symposium. We hope the glossary will be helpful for all those participating, as well as for those with a general interest in the field.

ADR: The term “ADR” is most commonly recognized as an acronym for Alternative Dispute Resolution and is often coupled with processes or mechanisms so as not to be confused with the resolution of alternative disputes.¹ It is also used as an acronym for the related but distinct concept of Appropriate Dispute Resolution.²

Adjudication: The process of decision-making by a third party with authority to determine a resolution through some form of judgment or award.³ More properly, the term refers to a

¹ DOUGLAS H. YARN, *DICTIONARY OF CONFLICT RESOLUTION* 10 (Jossey-Bass, Inc., 1999). This term is defined distinctly in other nations. See NATIONAL ALTERNATIVE DISPUTE RESOLUTION ADVISORY COUNCIL, *DISPUTE RESOLUTION TERMS 1-3* (2003), [http://www.nadrac.gov.au/agd/WWW/rwpattach.nsf/VAP/\(CFD7369FCAE9B8F32F341DBE097801FF\)~1Report8_6Dec.pdf/\\$file/1Report8_6Dec.pdf](http://www.nadrac.gov.au/agd/WWW/rwpattach.nsf/VAP/(CFD7369FCAE9B8F32F341DBE097801FF)~1Report8_6Dec.pdf/$file/1Report8_6Dec.pdf) [hereinafter NADRAC]. For example, in Australia, the National Alternative Dispute Resolution Advisory Council’s (NADRAC) glossary defines “ADR” as “an umbrella term for processes, other than judicial determination, in which an impartial person assists those in a dispute to resolve the issues between them.” *Id.* at 4. The glossary also states that “ADR is commonly used as an abbreviation for alternative dispute resolution, but can also be used to mean assisted or appropriate dispute resolution.” *Id.* Finally, the glossary points out that the term “ADR” includes “approaches that enable parties to prevent or manage their own disputes without outside assistance.” *Id.*

² NADRAC, *supra* note 1, at 4.

³ *Id.* Adjudication has a wide variety of definitions. *Id.* The NADRAC glossary defines it as follows:

Adjudication is a process in which the parties present arguments and evidence to a dispute resolution practitioner (the adjudicator) who makes a determination which is enforceable by the authority of the adjudicator. The most common form of internally enforceable adjudication is determination by state authorities empowered to enforce decisions by law (for example, courts, tribunals) within the traditional judicial system. However, there are also other internally enforceable adjudication processes (for example, internal disciplinary or grievance processes implemented by employers).

determination made through the use of an Adjudicative Process.⁴

Arbitration: A generic term for a range of Dispute Resolution Processes involving the referral of a dispute to an impartial third party who, after giving the parties an opportunity to present their evidence and arguments, renders a determination in settlement of the dispute.⁵ It is most commonly used in the United States to describe a private, voluntary, adjudicative, and usually binding process established by mutual agreement of the disputants to resolve existing or future disputes.⁶

Automated negotiation (or blind-bidding): An automated negotiation is a form of computer assisted negotiation in which no practitioner is needed.⁷ The two parties agree in advance to be bound by any settlement reached, with the understanding that once blind offers are within a designated range, they will be resolved by splitting the difference.⁸ The software keeps the offers confidential, unless and until they come within this range, at which point a binding settlement is reached.⁹

Case presentation (or Mini-trial): Case presentation is a hybrid dispute resolution process combining elements of conciliatory and adjudicative processes.¹⁰ It typically involves an abbreviated adversarial presentation of the case before the parties who subsequently engage in negotiations.¹¹

Combined or hybrid dispute resolution processes: This term denotes a class of processes that derive their characteristics from both adjudicative and conciliatory processes.¹² In most typologies, this class would include private, voluntary processes such as med-arb, variations of med-arb, and mini-trials, as well as court-related, evaluative processes such as mandatory nonbinding arbitration and summary jury trials.¹³

Co-mediation: Co-mediation is a mediation conducted simultaneously or jointly by two or more mediators.¹⁴ Co-mediation is sometimes used in cross-gender, cross-ethnic, and cross cultural disputes when characteristics of a single mediator, such as gender, nationality, ethnicity, or

NADRAC, *supra* note 1, at 4. Adjudication has also been defined as “[a] process of decision in which the affected party is afforded an institutionally guaranteed participation,” consisting of “the opportunity to present proofs and arguments for a decision in that party’s favor.” L.L Fuller, *Collective Bargaining and the Arbitrator*, 1963 WIS. L. REV. 3, 19 (1963).

⁴ NADRAC, *supra* note 1, at 4.

⁵ YARN, *supra* note 1, at 28.

⁶ *Id.*

⁷ NADRAC, *supra* note 1, at 4 (stating that computer software serves as the practitioner in these proceedings).

⁸ *Id.*

⁹ *Id.*

¹⁰ YARN, *supra* note 1, at 28.

¹¹ *Id.*

¹² *Id.* at 214.

¹³ *Id.*; see also NADRAC, *supra* note 1, at 5 (stating that hybrid processes are those in which the dispute resolution practitioner plays multiple roles, including facilitator or advisor in conciliation or conferencing scenarios, or where the practitioner uses one process (mediation) to start and then switches to a different one (arbitration) to end the session).

¹⁴ YARN, *supra* note 1, at 86-87.

culture, may match that of one of the parties and lead the other party to assume partiality or bias on the part of the mediator.¹⁵ Thus, co-mediators are selected to represent the full range of contrasting characteristics found among the disputants.¹⁶

Collaborative Law: This term refers to a process for solving disputes in which the attorneys commit to reaching a settlement without using litigation.¹⁷

Consensus building (consensus decision making): The ultimate goal of this process is to reach consensus.¹⁸ Usually parties seek consensus on shared norms and attitudes for application to specific issues rather than on specific solutions to specific issues, although they are not precluded from pursuing consensus on the latter.¹⁹

Early Neutral Evaluation: A non-binding process wherein the parties and their counsel meet shortly after the initiation of a court proceeding and confidentially present the factual and legal bases of their cases to each other, all overseen by a dispute resolution practitioner who identifies the issues, assesses the strengths of the cases, structures a plan for the progress of the case, and, if requested by the parties, may encourage settlement.²⁰

Mediation: Mediation is a procedure for resolving controversies. It is a process in which a neutral intervener assists two or more negotiating parties to identify matters of concern, develop a better understanding of their situation, and, based upon that improved understanding, develop mutually acceptable proposals to resolve those concerns. Mediation embraces the philosophy of democratic decision-making.²¹

¹⁵ YARN, *supra* note 1, at 87.

¹⁶ *Id.*

¹⁷ See FindLaw for the Public, Collaborative Law, <http://public.findlaw.com/library/collaborative-law.html> (last visited Oct. 11, 2007) (stating that “[t]he hallmark of the collaborative law process is active participation and decision-making by the parties (and their attorneys) without the involvement of a third party.”).

¹⁸ YARN, *supra* note 1, at 122.

¹⁹ *Id.*; see also NADRAC, *supra* note 1, at 6 (defining this process as one in which parties to a dispute, with the assistance of a facilitator, identify the facts and stakeholders, settle on the issues for discussion, and consider options, allowing them to build rapport through discussions that assist in developing better communication, relationships and agreed understanding of the issues).

²⁰ See NADRAC, *supra* note 1, at 6; MEDIATE.CA, Glossary of Dispute Resolution Terms, <http://www.mediate.ca/glossary.htm> (last visited Oct. 11, 2007). Early neutral evaluation has also been defined as intervention “in a lawsuit by a court-appointed evaluator to narrow, eliminate, and simplify issues and assist in case planning and management.” COLO. REV. STAT. § 13-22-302(2) (2006).

²¹ JAMES J. ALFINI, SHARON B. PRESS, JEAN R. STERNLIGHT & JOSEPH B. STULBERG, *MEDIATION THEORY AND PRACTICE 1* (LexisNexis, 2d ed. 2006). Mediation has also been defined as:

[A] process in which an impartial third party acts as a catalyst to help others constructively address and perhaps resolve a dispute, plan a transaction, or define the contours of a relationship. A mediator facilitates negotiation between the parties to enable better communication, encourage problem-solving, and develop an agreement or resolution by consensus among the parties.

CARRIE J. MENKEL-MEADOW ET AL., *MEDIATION: PRACTICE, POLICY, AND ETHICS* 91 (Aspen 2006); see also CARRIE J. MENKEL-MEADOW ET AL., *DISPUTE RESOLUTION: BEYOND THE ADVERSARIAL MODEL* 266 (Aspen 2005) (defining mediation in a similar manner).

Mediation is practiced using many different models, characterized by different degrees and types of mediator intervention (and motivated by different theoretical frameworks). Three common approaches are summarized as follows:

Facilitative Mediation: “The mediator who facilitates assumes that the parties are intelligent, able to work with their counterparts, and capable of understanding their situations better than the mediator and, perhaps, better than their lawyers. Accordingly, the parties can develop better solutions than any the mediator might create. Thus, the facilitative mediator assumes that his principal mission is to clarify and to enhance communication between the parties in order to help them decide what to do.”²²

Evaluative Mediation: “The mediator who evaluates assumes that the participants want and need her to provide some guidance as to the appropriate grounds for settlement--based on law, industry practice or technology--and that she is qualified to give such guidance by virtue of her training, experience, and objectivity.”²³

Transformative Mediation: “In this model, the mediator's goal is helping the parties to: identify the opportunities for empowerment and recognition shifts as they arise in the parties' own conversation; choose whether and how to act upon these opportunities; and thus change their interaction from destructive to constructive, as they explore specific disputed issues. Success is measured, in transformative mediation, not by settlement but by party shifts toward strength, responsiveness and constructive interaction. Effective practice is focused on supporting empowerment and recognition shifts, by allowing and encouraging party deliberation and decision-making, and inter-party perspective taking, in various ways.”²⁴

Mediation-Arbitration: A hybrid ADR process in which the parties agree first to mediate and then to arbitrate any unresolved issued using the same neutral both as mediator and as subsequent binding arbitrator.²⁵

Negotiated Rulemaking: A collaborative process in which government agencies seek input from a variety of stakeholders before issuing a new rule.²⁶

Facilitation, Facilitator: A collaborative process used to help a group of individuals or parties with divergent views reach a goal or complete a task to the mutual satisfaction of the participants.²⁷ The facilitator functions as a neutral process expert and avoids making

²² Leonard L. Riskin, *Understanding Mediators' Orientations, Strategies, and Techniques: A Grid for the Perplexed*, 1 Harv. Neg. L. Rev. 7, 24 (1996).

²³ *Id.*

²⁴ Website of the Institute for the Study of Conflict Transformation, Inc., “transformative framework” link (<http://www.transformativemediation.org/transformative.htm>), last visited October 15, 2007.

²⁵ YARN, *supra* note 1, at 268.

²⁶ See 5 U.S.C. § 561 (2006).

²⁷ YARN, *supra* note 1, at 268.

substantive contributions, whereas the facilitator’s task is to help bring the parties to consensus on a number of complex issues.²⁸

Fact finding: A process in which the parties to a dispute present arguments and evidence to a dispute resolution practitioner (the investigator) who makes a determination as to the facts of the dispute, but who does not make any finding or recommendations as to outcomes for resolution.²⁹

Fast-track arbitration: A process in which the parties to a dispute present, at an early stage in an attempt to resolve the dispute, arguments and evidence to a dispute resolution practitioner (the arbitrator) who makes a determination on the most important and most immediate issues in dispute.³⁰

Judicial dispute resolution (or judicial ADR): A term used to describe a range of dispute resolution processes, other than adjudication, which are conducted by judges or magistrates.³¹ An example is judicial settlement conference.³²

Ombudsman (or Ombud): An Ombudsman is a person appointed by an institution to investigate complaints within or against the institution and to help resolve and prevent disputes.³³ The English plural is ombudsmen; the gender neutral terms are ombuds or ombudsperson.³⁴

On-line dispute resolution, ODR, eADR, cyber-ADR: Processes where a substantial part, or all, of the communication in a dispute resolution process takes place electronically, especially via e-mail.³⁵

Private judging: A process in which the parties to a dispute present arguments and evidence to a dispute resolution practitioner chosen on the basis of their experience as a member of the judiciary (the private judge) who makes a determination in accordance with their opinion as to what decision would be made if the matter was judicially determined.³⁶

Statutory conciliation: Statutory conciliation takes place where the dispute in question has resulted in a complaint under a statute.³⁷ In this case, the conciliator will actively encourage the parties to reach an agreement which accords with the advice of the statute.³⁸

²⁸ *Id.*

²⁹ *Id.* at 178 (stating that “[i]n the broadest sense, process of determining the facts relevant to the controversy and, as such, a crucial aspect of most dispute resolution processes.”).

³⁰ NADRAC, *supra* note 1, at 8; *see also* YARN, *supra* note 1, at 173 (noting that this is also called “expedited arbitration”).

³¹ NADRAC, *supra* note 1, at 8.

³² *Id.*

³³ YARN, *supra* note 1, at 331.

³⁴ *Id.* (noting that ombudsman may refer to either a person or an office containing one or more people who perform ombudsman functions).

³⁵ NADRAC, *supra* note 1, at 9.

³⁶ YARN, *supra* note 1, at 331.

³⁷ NADRAC, *supra* note 1, at 10.

³⁸ NADRAC, *supra* note 1, at 10.

Additional Resources for Dispute Resolution Terminology

British Columbia Bulletin Dispute Resolution Office publishes a valuable collection of dispute resolution terms which are available at <http://www.ag.gov.bc.ca/dro/publications/bulletins/terminology.htm>.

Conflict Research Consortium, University of Colorado, USA provides a good resource on Conflict Resolution Terms which are available at <http://www.colorado.edu/conflict/peace/glossary.htm>.

Mediate.com has a glossary of Dispute Resolution Terms available at <http://www.mediate.ca/glossary.htm>.

The Federal Election Commission has a practical and graphic form of dispute resolution terms available at <http://www.fec.gov/pages/brochures/adr.shtml>.

Peacemakers Publications has ADR term definitions available at <http://www.peacemakers.ca/publications/ADRdefinitions.html>.

The Native Dispute Resolution Network publishes a glossary of basic dispute resolution terms available at <http://nativenetwork.ecr.gov/?link=106>.

The Ohio Commission on Dispute Resolution and Conflict Management glossary is available at <http://disputeresolution.ohio.gov/terms.htm>.

The U.S Institute for Environmental Conflict Resolution publishes a glossary of basic dispute resolution terms available at: <http://www.ecr.gov/ecr.asp?link=202>.

The U.S Office of Personnel Management has a collection of dispute resolution terms available at <http://www.opm.gov/er/adrguide/Section1-a.asp>.