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# Maximizing ADR: Strategic Insights for In-House Counsel on Mediation Day

By Gina Miller, Senior Vice President, Operations, JAMS

Litigation has never been easy. It has always carried the burden of cost, complexity, and uncertainty. But today, those challenges have intensified: expenses continue to rise, outcomes can feel less predictable, timelines stretch longer than ever, and reputational risks loom large. This “perfect storm” has pushed parties to look beyond the courtroom for solutions. In this environment, alternative dispute resolution (ADR) has shifted from being a helpful option to becoming a strategic necessity for resolving conflicts efficiently and effectively.

Even with ADR now a well-established part of corporate dispute resolution, many in-house counsel still wonder how to get the most out of the process. What role should they play in shaping strategy? What questions should they ask when selecting a mediator or ADR provider? And how can they make sure the mediation day delivers real value to the company, not just a resolution?

What follows is a roadmap designed to help in-house counsel maximize every mediation opportunity by moving beyond logistics to focus on strategy, preparation, and execution.



Gina Miller

## The Strategic Role of In-House Counsel in ADR

Corporate counsel are not passengers on the ADR journey—they are drivers who set the tone, manage risk, and align outcomes with business objectives. One of the first strategic decisions is determining when and whether to use ADR.

Early mediation can prevent a dispute from hardening into costly litigation, while post-discovery mediation may be more effective when parties need a clearer view of risk exposure. Additional factors include the relationship with the opposing party, confidentiality requirements, and the company’s appetite for creative settlement options.

In-house counsel who recognize ADR as a tool for managing risk—rather than simply

avoiding court—are better positioned to align dispute resolution with the company’s broader business interests and culture.

### Selecting the Right ADR Provider and Mediator

Mediation outcomes often hinge on choosing the right mediator and provider. For corporate counsel, the selection process should balance practical logistics with strategic priorities:

- **Industry experience:** Mediators familiar with the business context can cut through jargon and spot creative solutions faster.
- **Reputation and neutrality:** A mediator respected by both sides can instill confidence and keep negotiations productive.
- **Infrastructure and technology:** Corporations with teams spread across states or countries need reliable virtual options and consistent facility quality.
- **Confidentiality safeguards:** Robust protocols for document security, breakout rooms, and remote access are critical.

Five questions can guide this selection:

1. What is the mediator’s experience with similar disputes?
2. How does the provider support hybrid or fully remote mediation?
3. What confidentiality safeguards are in place?
4. How does the provider handle last-minute changes or extended negotiations?
5. What technology and facilities are available across multiple locations?

Providers who combine deep industry experience with seamless technology and consistent quality across all locations give in-house counsel confidence that mediation will be handled with the same professionalism and care they bring to their own organizations.

### Preparing for Mediation Day: Beyond the Logistics

While dates, locations, and tech platforms matter, strategic preparation drives successful outcomes. In-house counsel should do the following:

- **Align internal stakeholders early.** Make sure business leaders, executives and legal teams share the same objectives and understand settlement parameters.
- **Plan information flow.** Decide what to share with the mediator up front and what to keep for caucus discussions.
- **Anticipate deal-breakers and creative options.** What terms might preserve a business relationship while resolving the dispute?

Counsel who approach mediation with a clear settlement strategy—not just a legal strategy—tend to achieve better results.

### Maximizing Outcomes During the Mediation

On mediation day, small decisions can shape big outcomes. Experienced in-house counsel use the process strategically by:

- **Leveraging private caucuses:** These confidential sessions allow candid conversations about risk, settlement ranges, and deal priorities.
- **Managing remote participation:** Hybrid mediations are now common, but keeping virtual participants engaged requires clear communication protocols and reliable tech support.
- **Recognizing emotional dynamics:** Even in corporate disputes, personalities and emotions influence outcomes. Skilled mediators help diffuse tension so parties can focus on solutions.

Some counsel also build in decision breaks, pausing to confer with executives or outside counsel before responding to settlement proposals and avoiding rushed decisions late in the day when fatigue sets in.

### **The Business Case for ADR: Cost, Time and Risk Reduction**

Increasingly, corporate counsel view ADR as a business tool, not just a legal one. Mediation resolves disputes far faster than litigation, helping companies avoid months—or even years—of uncertainty. It keeps costs in check by reducing discovery battles, motion practice, and the risk of runaway trial expenses.

Just as importantly, mediation allows companies to manage sensitive matters privately, preserving relationships and protecting reputations. These advantages often prove as valuable as the resolution itself, offering a strategic path forward compared to the public, high-stakes environment of the courtroom.

### **Lessons Learned: Observations From the Mediation Room**

Over time, certain practices have consistently improved mediation outcomes:

- **Treat mediation as a meaningful opportunity**—thorough preparation, sometimes approaching trial-level readiness, leads to better results.
- **Keep decision-makers accessible** so negotiations stay on track.

- **Plan for practical needs** such as meals, extended hours, or immediate document execution to keep momentum when discussions run long.

**ADR as a Strategic Advantage** Mediation is no longer the alternative; for many companies, it is the preferred path. By approaching ADR strategically—choosing the right provider, preparing effectively, and aligning the process with business goals—in-house counsel can deliver faster, more cost-effective, and more predictable outcomes.

As ADR evolves with hybrid formats, data-driven insights, and new technologies, one constant remains: success depends on thoughtful execution from start to finish. Providers like JAMS, with 28 Resolution Centers, nearly 500 experienced neutrals, and dedicated support teams, deliver a consistent, high-quality experience wherever clients are located—helping companies resolve disputes efficiently, effectively, and with confidence.

***Gina Miller** is Senior Vice President of Operations at JAMS, where she oversees operations, client experience initiatives, and strategic business development. With extensive leadership experience across case management, marketing, and practice development, she is also a frequent speaker and author on alternative dispute resolution.*