

TEXAS LAWYER

Alternative Dispute Resolution Has a Rich Texas History and Continues to Serve an Important Role in Settling Cases

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Since the Federal Arbitration Act was enacted in 1925, alternative dispute resolution (ADR) has grown in importance, helping to lighten the load for an oftentimes overburdened court system, providing an expedient and cost-effective way to settle cases across the country.

To address the backlog of cases in the Texas court system, a statute was passed in September 1988 that authorized judges to require mediation in certain cases. According to Hon. Harlan A. Martin, a former district judge in the 192nd Judicial District Court in Dallas County, Texas, and a JAMS arbitrator, mediator, hearing officer and neutral evaluator, judges were empowered to appoint mediators. "In those early days, judges tended to appoint colleagues they knew from the bench to serve as mediators. At the time, I had already retired from the bench and was doing mediation work prior to the statute, so I guess that made me a logical choice to serve as a mediator in many of those early court-appointed cases," explained Judge Martin.

As arbitration and mediation became more widely relied upon in Texas, ADR firms began to offer expert neutral services in the state. JAMS, one of the leaders in the field, opened its first Resolution Center outside of California in Dallas in April 1991. The company's roster of neutrals expanded from judges to include distinguished attorneys and other ADR professionals as well.

Cases on the Rise

The pandemic clearly added to the court's backlog in Texas, with overall cases up 8% in 2021 compared to



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active pending cases the previous year. According to the Annual Statistical Report for the Texas Judiciary, the court closed out 2021 with more than 6.9 million filings. Of those cases, the courts were able to dispose of a little more than 6.4 million. This presented an opportunity for ADR to help reduce the backlog and bring resolution to these cases. Further evidence of this trend can be found with JAMS Houston Resolution Center, which saw the number of ADR cases double from 2021 to 2022.

"During the pandemic, it became much more important for lawyers and their clients to seek out alternative means of resolving their disputes because of the backlog and delays in the court system. That trend continues today. ADR offers a means of getting a quicker and oftentimes less costly resolution of issues. In the time I've been working with JAMS, the firm has earned a reputation for having the highest-quality mediators and arbitrators, many of whom are retired federal or state

judges and highly accomplished attorneys, lending a high degree of credibility to the organization and reassurance to clients,” explained Hon. Vanessa D. Gilmore, a former U.S. district judge in the Southern District of Texas and a JAMS mediator, arbitrator and special master/referee.

ADR Trends in the Lone Star State

While the most prevalent ADR cases are not unique to Texas, some come with the territory. Oil and gas disputes rank among the most common, along with intellectual property disputes. Judge Gilmore points out that as the fourth-largest city in the country, Houston has a large trucking and transportation presence, which accounts for a large number of personal injury cases. Judge Martin added that with the Eastern District in Texas, patent and condemnation cases are also prevalent. Many of these are handled in Dallas. Both judges listed employment arbitrations; consumer disputes; partnership disputes among lawyers, doctors, accountants and auditors; medical, legal, architectural and engineering negligence cases; and antitrust and security cases as those typically resolved via ADR in Texas.

“Houston is a city that has a very heavy litigation presence in both the state and federal courts. The judges in the state courts are overwhelmed by the number of cases they have to handle at any given time. Mind you, they do amazing work keeping up with this tremendous docket, but to the extent that ADR is able to provide relief by assisting with early resolution of litigation, it’s a very good thing for all concerned,” stated Judge Gilmore.

Keys to a Successful ADR Outcome

For those less familiar with the mediation process, Judge Martin recommends that attorneys and clients alike keep an open mind. He believes that the opportunity to settle requires an understanding of your opponent’s position. “Be prepared to listen to the other side, be prepared to compromise, but always keep your eye on the prize. The prize in mediation is the settlement. Mediation offers a way to avoid court and get to a quicker resolution. It’s true you might not get everything you hoped for, but as Judge Stowell—a well-known Houston judge—is fond of saying ‘All settlements are like a new pair of shoes. When you put them on the first day, they look good

but hurt your feet. After about a week, they still look good, but they don’t hurt anymore.”

Judge Gilmore agrees that mediation is all about the art of compromise. “Coming into a mediation, all parties need to understand that the role of the neutral is to make suggestions and not orders and that they have to work hard toward reaching a compromise if they want to have a successful resolution of their claims,” stated Judge Gilmore.

ADR Is Texas-Friendly

If recent trends are any indication, ADR will continue to grow across Texas. “Litigants see ADR as a viable way of resolving their disputes quicker and more cost-effectively than going all the way through the entire trial process. As long as there’s litigation in Texas, there’s going to be a major role for ADR,” concluded Judge Gilmore.

JAMS has a strong presence in Texas with robust Resolution Centers in Dallas and Houston. The company has invested heavily in meeting the needs of its clients, whether through state-of-the-art virtual sessions or in-person proceedings in dedicated conference rooms. JAMS has gone out its way to recruit some of the best, most diverse neutrals in the industry.

In the spirit of Texas hospitality, the doors of the Dallas and Houston Resolution Centers are always open, and everyone is invited to see firsthand how their ADR needs can be accommodated.

***Hon. Harlan A. Martin (Former)** has been a mediator or arbitrator in more than 3,000 cases. He has resolved hundreds of disputes and significant multi-party litigation across the country.*

***Hon. Vanessa D. Gilmore (USDJ Ret.)** was sworn in as the youngest sitting federal judge in the nation, serving 27 years as a United States district judge in the Southern District of Texas. She went on to develop extensive experience in handling matters involving patents and copyrights, labor and employment, and securities class actions.*

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