

The Texas Lawbook

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From the Courtroom to the Classroom to ADR: An Austin-Based Attorney's Professional Journey

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Having practiced law in Austin, Texas, since 1986, I have a healthy respect for the legal community in the Lone Star State. The stature of my fellow legal professionals in Austin has done nothing but soar over the past few decades as our region has grown to become a powerful hub of business.

With this business growth has come an inevitable rise in legal disputes that have necessitated the time-honored and distinguished skills of my many colleagues across the Austin legal landscape.



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Because Austin is a vibrant hub for technology and investment, it is no surprise we are also a hub for large-scale intellectual property (IP) litigation across the region and the country. Trade secret and employment disputes are just a few of the types of cases that are filling court dockets.

At the same time, alternative dispute resolution (ADR) is growing in popularity as a highly effective means for resolving and settling matters, thus eliminating the high cost and uncertainty of litigation.

A Front-Row Seat to the Rise of ADR

When I was starting out as a litigator, ADR was somewhat new here in Austin. My first experiences with ADR were representing clients in both mediation and arbitration. This is when I began to see the utility of the ADR process as another important tool in the attorney's toolkit for resolving disputes.

This appreciation for ADR was further refined later in my legal career as I began to teach as an adjunct professor at the University

of Texas at Austin School of Law. I eventually took on the role of a full-time professor, where I have had the privilege of instructing generations of lawyers in Texas civil procedure, evidence, trial advocacy and dispute resolution advocacy.

It was in the classroom that I began to see the importance of teaching students how to be effective lawyers in mediation and arbitration. The skill set of being a problem-solver is not one that has typically been taught at law schools. This prompted me to design a course on advanced problem-solving, which helps my law students find workable solutions through the use of mediation and arbitration.

Professors Are Neutrals in the Making

As it turns out, the role of a professor is akin to that of an ADR neutral. During my many years in the classroom, I have literally functioned as an arbitrator and mediator with my students. My skills as a neutral have been refined as I endeavor not to engage on either side of my students' discussions. I'm proud to say this skill set has been developed thoroughly and it has served me well in my third "career" as a JAMS neutral.

One of the things I like most about being a neutral is being able to help lawyers and their clients to solve problems, either through mediation or arbitration. ADR is a powerful tool for resolving disputes.

ADR is on the Rise for Good Reason

While ADR is widely used today, its use is only going to increase in the coming years for a number of important reasons. Amongst those, the Texas Legislature recently passed a bill creating a business court. As this new

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court becomes established, with all the requisite challenges of getting up and running, many attorneys are likely to invoke arbitration or seek mediation. Lawyers are likely going to want to have business disputes resolved outside of this court until the dust settles and they can more accurately predict how cases will be settled.

In my opinion, the use of ADR will continue to grow as an invaluable option for handling employment construction disputes, investor financing disputes and ESG-related disputes, as well as patent and creativity disputes arising out of the growth of artificial intelligence (AI). Today's increasing reliance on AI and growing focus on ESG (environmental, social and governance) will inevitably lead to the need for ADR.

How Attorneys Can Make the Most of ADR

Getting the most out of ADR starts with accurately identifying what the issue is going to be at trial. Even though the ADR process is intended to avoid trial, the same standard for evaluating a settlement applies. So, the best preparation for settlement is having the very best trial position. A common error lawyers make when coming into the ADR process is they don't sharpen their focus on the real issues and how the evidence speaks to those issues. Being thoroughly prepared is the best way to make ADR as effective as possible.

Another way to maximize the effectiveness of ADR is through early neutral assistance. Neutrals can help to assess an attorney's case early and gain a better understanding of how the fact finder is going to evaluate that case. There's tremendous value in getting feedback early in the process, which can allow attorneys to decide if conducting extra depositions and extra discovery is going to provide greater value. Is the benefit really going to be worth that cost? Early neutral assistance can help to do that cost-benefit analysis and evaluate the likelihood of success. This can help in making the decision to go to mediation over trial.

In the case of an arbitration, attorneys should avail themselves of the opportunity to

craft a proceeding that meets their needs. If the attorneys want the arbitrator to apply all the rules of evidence and procedure, that should be stated at the outset. However, if the attorneys don't see the need for big discovery, that can lead to a much more efficient proceeding. It's incumbent on the attorneys to communicate with the arbitrator in order to achieve the appropriate resolution to the dispute.

The Value of Neutrals

With Extensive Knowledge

If there's one thing I have learned through my many years as a litigator and university professor, it's that the experience and skill set of a neutral are crucial to achieving the best outcome for all parties. JAMS' Resolution Centers in Houston and Dallas have a stable of neutrals who possess exceptional legal knowledge and stellar credentials. With JAMS' expansion in Austin, the panel of neutrals will be even deeper, which will further enhance JAMS' ability to handle any type of dispute.

After many years practicing law in Austin, I can say the dynamics of the legal market have changed dramatically. What started as a city with just a handful of local firms has blossomed into a metropolis with a presence from virtually every national and international law firm. And as the sophistication of the disputes has risen, so too has the quality of the legal representation. JAMS has become an important part of this vibrant legal landscape.

Tracy Walters McCormack, Esq., is a JAMS mediator, arbitrator and neutral evaluator. She joined JAMS after retiring as director of advocacy at the University of Texas at Austin School of Law. As a professor, Tracy instructed generations of UT lawyers in Texas civil procedure, evidence, trial advocacy and dispute resolution advocacy. Prior to her academic career, Tracy practiced insurance/reinsurance, ERISA, complex litigation and appellate law for Akin, Gump, Strauss, Hauer & Feld, LLP. Before this, she maintained a traditional litigation practice, including commercial, personal injury, fiduciary and energy litigation.