



AMERICAN
ARBITRATION
ASSOCIATION®

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®

Energy ADR 101

Speaker



Andrew Barton

Vice President
American Arbitration Association

San Antonio, TX
bartona@adr.org





American Arbitration Association®

Founded in 1926, the not-for-profit American Arbitration Association® (AAA®)-International Centre for Dispute Resolution® (ICDR®) is the largest private global provider of alternative dispute resolution (ADR) services in the world.



Energy ADR at a Glance

2023 At A Glance:

86 Energy Cases Filed

222 arbitrators and mediators worldwide

30% Self-Identified as Diverse - 34% Appointments

\$594,326,091 Total Claims

\$170,691,000 Largest Claim

\$718,328,515 Total Counterclaims

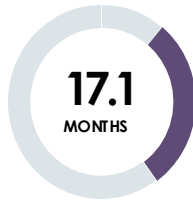
\$526,300,000 Largest Counterclaim

FILING TO AWARD

Cases that proceeded to hearing and award in 2023 did so much more quickly, especially when compared to U.S. District Courts.



QUICKEST
TIME TO AWARD



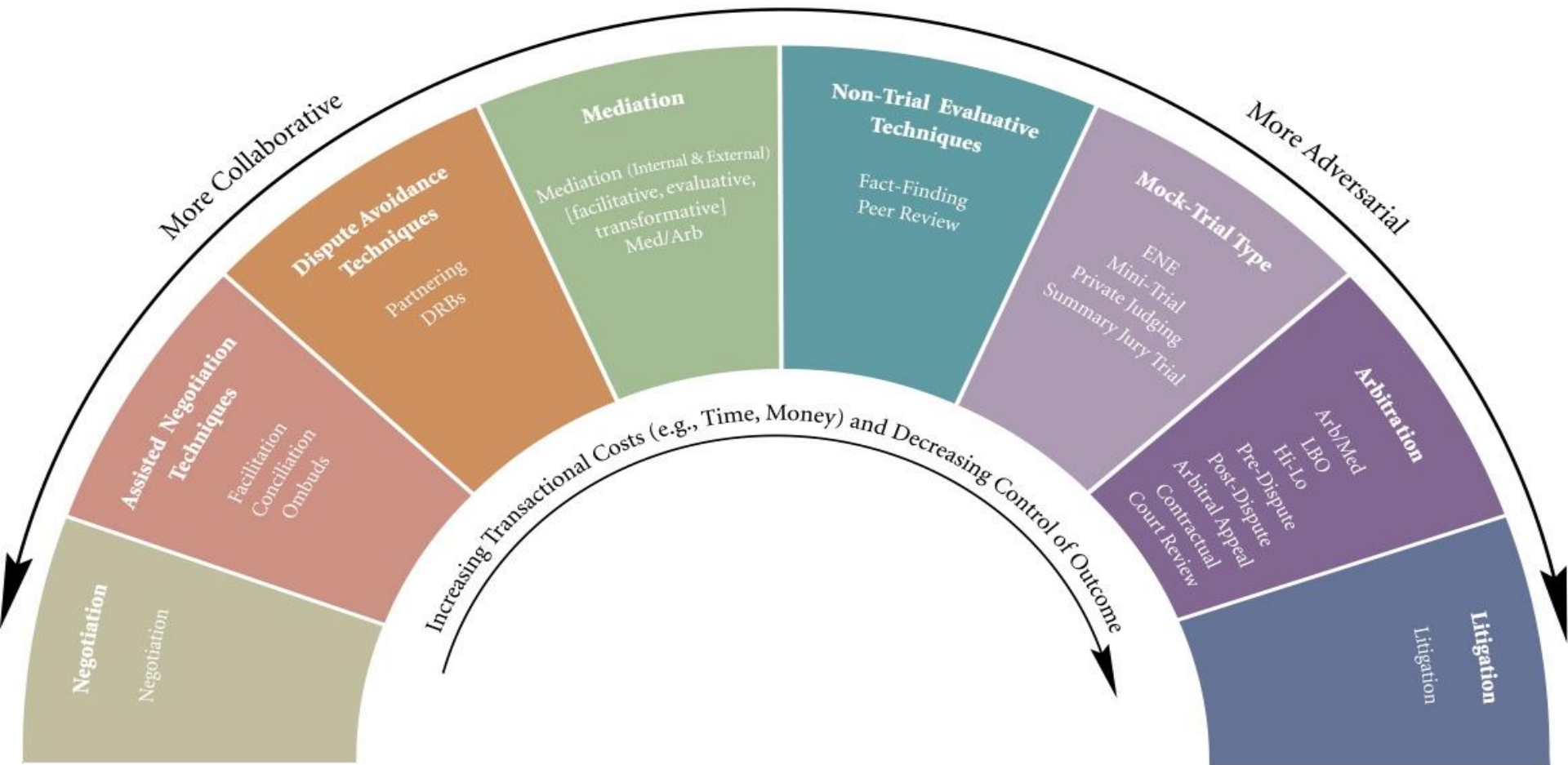
MEDIAN
TIME TO AWARD



MEDIAN
TIME TO TRIAL IN

Introduction to ADR

Dispute Resolution Continuum



Negotiation

Disputants communicate their differences to one another and with this knowledge try to resolve them.

Mediation

A neutral assists the parties in reaching their own settlement but does not have the authority to make a binding decision.

Arbitration

A referral of a dispute to one or more impartial persons for a private and binding determination.



The Arbitration Process

The Dispute Resolution Clause

A dispute resolution clause should address the special needs of the parties involved. An inadequate ADR clause can produce as much delay, expense, and inconvenience as a traditional lawsuit. When writing a dispute resolution clause, keep in mind that its purpose is to resolve disputes, not create them.



 New Clause

Arbitration Clause Options

- Number of Arbitrators
- Method of Arbitrator Selection: AAA Commercial Arbitration Rules
- Arbitrator Qualifications
- Diversity, Equity and Inclusion
- Locale Provisions
- Governing Law
- Discovery
- E-Discovery
- Documents Only Hearing
- Duration of Arbitration Proceedings
- Remedies
- Assessment of Forum Fees and Attorneys' Fees

Arbitration

Draft a commercial arbitration clause

Industry

Draft a healthcare arbitration clause

Mediation

Draft a construction mediation with arbitration clause

You

Draft a commercial arbitration clause

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Please be advised that you should consult with an attorney before incorporating this clause into your contract.



Enter prompt here



The Arbitration Process









AAA® ARBITRATION ROAD MAP

REACHING RESOLUTION



AMERICAN ARBITRATION ASSOCIATION®

Arbitration is the out-of-court submission of a dispute to an impartial third party or parties for a binding decision. The AAA arbitration administration process comprises a well-defined set of steps by which most commercial cases proceed.

							
FILING AND INITIATION	ARBITRATOR SELECTION	PRELIMINARY HEARING	INFORMATION EXCHANGE AND PREPARATION	MEDIATION STEP	HEARING	POST-HEARING SUBMISSIONS	THE AWARD
<p>DAY 1 - 15</p> <p>The AAA typically commences administration of an arbitration case when one party submits a Demand for Arbitration, a copy of the arbitration provision from the contract between the parties, and the appropriate filing fee to the AAA. The AAA acknowledges receipt to all parties and sets a deadline for the respondent to answer and/or to file a counterclaim. If no arbitration clause exists or the AAA is not named as the resolution provider in the parties' contract, cases may commence with the consent of all parties, a filed Submission to Dispute Resolution, and the appropriate filing fee to the AAA.</p>	<p>DAY 15 - 44</p> <p>Based upon the parties' expressed criteria of qualifications, the AAA identifies arbitrators from the AAA National Roster of Arbitrators and provides their curriculum vitae to the parties. If parties are unable to agree upon the arbitrator(s), the AAA establishes a deadline for each party to independently state its preferences from the list. The AAA invites the most mutually agreeable arbitrator(s) to serve on the case.</p>	<p>DAY 44 - 85</p> <p>Conducted by the arbitrator often via conference call, this management meeting is the first time the parties and arbitrator discuss the substantive issues of the case and procedural matters, such as exchange of information, witness lists, and dates. The Scheduling Order, which serves as the framework for hearing preparations, is established.</p>	<p>DAY 85 - 222</p> <p>The parties work within the time frames set forth at the Preliminary Hearing to exchange information and prepare their presentations. The arbitrator addresses any impasses or challenges related to information sharing.</p>	<p><i>Subject to the right of any party to opt out, in cases where a claim or counterclaim exceeds \$75,000, the rules provide that the parties shall mediate their dispute with the AAA concurrently with arbitration, at no additional fee. The mediator assists parties in reaching a settlement but has no authority to make a binding decision or award.</i></p>	<p>DAY 222-223</p> <p>Parties present testimony and evidence to the arbitrator.</p>	<p>DAY 223 - 258</p> <p>If the arbitrator allows, parties may submit additional documentation, usually shortly after the hearing.</p>	<p>DAY 258 - 288</p> <p>The arbitrator closes the record and, no more than 30 days later, issues a decision addressing all claims raised in the arbitration. The award may direct one or more parties to pay another party a monetary amount, or it may direct parties to take specific actions. Aside from any administrative matters unrelated to the merits of the case, the services of the arbitrator and the AAA are completed when the award is issued.</p>
<p>EXPECTED COSTS AT THIS STAGE</p> <p>Filing fees are based on claim amounts and are paid by the party that asserts the claim or counterclaim.</p>	<p>EXPECTED COSTS</p> <p>Partial refunds of filing and counterclaim fees are available under some AAA fee schedules. No refunds are available after an arbitrator has been appointed.</p>	<p>EXPECTED COSTS</p> <p>Parties will incur compensation charges by each arbitrator for time spent before and during the Preliminary Hearing and in preparation of the Scheduling Order.</p>	<p>EXPECTED COSTS</p> <p>The time spent by the arbitrator in this phase is proportional to the number of procedural matters needing resolution. Additionally, the arbitrator will spend time reviewing the parties' pre-hearing submissions, if any.</p>	<p>EXPECTED COSTS</p> <p>The parties are responsible for the mediator's compensation plus an AAA fee of \$75 for each hour charged by the mediator.</p>	<p>EXPECTED COSTS</p> <p>The arbitrator is compensated for time spent in hearings, reviewing evidence, and reasonable expenses, such as mileage and tolls.</p>	<p>EXPECTED COSTS</p> <p>The arbitrator is compensated for reviewing evidence and any post-hearing submissions, as well as drafting the award. Any unused deposits are returned to the parties.</p>	<p>EXPECTED COSTS</p> <p>The arbitrator apportions arbitrator compensation and expenses and AAA fees among the parties.</p>

Advantages/Disadvantages of Arbitration

Advantages of Arbitration



Faster



Less
Expensive



Private



Arb Selection



Expertise



Flexible



Final & Binding



Disadvantages of Arbitration



Final & Binding



Less Formal



Ltd Discovery



Can be Costly



Enforcement



No Precedent



Advantages/Disadvantages of Litigation

Advantages of Litigation



Appeals process



Enforcement



Traditional



Precedent



Remedies



Public Record



Disadvantages of Litigation



Time Consuming



Costly



Adversarial



Public



Ltd Control



Lack of expertise



Appeals process



Key Takeaways

- Pay Attention to Clause
- Select Experienced Attys
- Choose the Right Arbitrator
- Limit Discovery
- Participate in the Prelim
- Remain Open to Settlement
- Trust Expertise of Arbitrator
- Present Case Efficiently





Andrew Barton
Vice President
210.998.5750
Bartona@adr.org





AMERICAN
ARBITRATION
ASSOCIATION®

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®