

CPR Law Firm Policy Statement on Alternatives to Litigation

More than 1,500 law firms have signed the CPR Law Firm Policy Statement on Alternatives to Litigation[®], including 400 of the nation's 500 largest firms. The Law Firm Pledge obliges subscribing firms to assure that appropriate lawyers are knowledgeable about ADR and to discuss the availability of ADR with clients. The full list of subscribers is available on the CPR Website at www.cpradr.org.

CPR LAW FIRM POLICY STATEMENT on ALTERNATIVES TO LITIGATION[®]

FIRM

ADDRESS

CITY, STATE, ZIP

TELEPHONE

We recognize that for many disputes there may be methods more effective for resolution than traditional litigation. Alternative dispute resolution (ADR) procedures — used in conjunction with litigation or independently — can significantly reduce the costs and burdens of litigation and result in solutions not available in court.

In recognition of the foregoing, we subscribe to the following statements of policy on behalf of our firm.

First, appropriate lawyers in our firm will be knowledgeable about ADR.

Second, where appropriate, the responsible attorney will discuss with the client the availability of ADR procedures so the client can make an informed choice concerning resolution of the dispute.

PARTNER EXECUTING ON BEHALF OF FIRM (signature)

PARTNER'S NAME (please print or type)

DATE

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By James F. Henry, Former President
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"Too much, too time-consuming and too expensive." That is the consensus about litigation in the business community.

Over the last decade, leading corporate counsel and practitioners have begun addressing these problems through development of alternatives to traditional litigation — designing and testing alternative dispute resolution (ADR) procedures, serving as mediators and in other neutral roles in ADR proceedings and institutionalizing case review and ADR training within firms.

Important in the course of these activities was development in 1984 of the CPR Corporate Policy Statement on Alternatives to Litigation by which subscribing CEOs and General Counsel agree to explore negotiation or ADR in disputes with other signers. The CPR Corporate Policy Statement has now been endorsed by more than 800 of the nation's largest companies (and their 3,200 subsidiaries) — a cross-section of American business that accounts for about one half the gross national product. Those adopting it can choose from the full spectrum of ADR techniques, including mediation, the minitrial and arbitration. Seventy percent of the respondents to a recent survey reported significant savings in time and money as a result of invoking the CPR Policy Statement.

A number of leading practitioners believe that adoption by law firms of their own Policy Statement will evidence the practice's commitment to ADR and respond affirmatively to growing client demands. The CPR Law Firm Policy Statement on Alternatives to Litigation has been developed by an advisory committee of lawyers representing major firms throughout the country. Several practical considerations support execution of the Law Firm Policy Statement:

- The private bar has the most critical role to play in ADR and must be familiar with it. By signing the Policy Statement, a firm demonstrates concurrence with this assessment and leadership in this role.
- Sophisticated litigators recognize ADR tools and options as complements to the litigation process. The Policy Statement helps articulate these options and capabilities to clients.
- The Policy Statement also enables lawyers to discuss ADR with clients and opposing counsel without a concern that doing so may be perceived as a lack of confidence in the client's case.
- Courts are taking a lead role in ADR and it is important for firms to assure the competence courts may require. Additionally, Congress has mandated all federal agencies to adopt ADR policies so government requirements may soon come into play as well.*
- The Policy Statement reaffirms the role of lawyer as counselor and problem solver.
- Efforts to avoid unnecessary litigation, such as an ADR Policy Statement, are in the public interest and should reflect favorably on firms and companies adopting such policies.
- The overwhelming majority of disputes are resolved before trial. ADR stands to improve the cost-effectiveness and quality of these resolutions.

It should be noted:

- The Policy Statement does not commit the firm to discuss ADR with clients in all cases; e.g., where the case is intended to prove or test a legal principle. (It should also be noted, however, that some leading attorneys have taken the position that lawyers **do** have a professional obligation to discuss alternatives in all cases and that failure to do so may represent a violation of the standard of care.)
- The Policy Statement leaves the question of timing — of when to raise discussion of ADR with a client — to the judgment of counsel.
- Negotiation and ADR are compatible with vigorous advocacy on behalf of the client.
- ADR is relevant in many practice areas and the Policy Statement is meant to raise awareness of ADR by all firm members. Consideration of ADR should not just begin with a dispute, but should be brought to bear during negotiation of the transaction and contracts which are the basis of the business relationship, be it employee-employer or a complex joint venture. It is up to firms to decide which lawyers in the different practice areas must be qualified to discuss ADR with clients.

For firm members and clients requiring ADR education, numerous means are available to address these needs. These include specialized and generalized ADR training for firm members, ADR seminars for clients and distribution of ADR memos, newsletters and other materials to firm members and clients alike. The International Institute for Conflict Prevention & Resolution and others offer resources to meet the needs of firms, from onsite training programs to a range of publications and videotapes.

CPR publishes and widely distributes the list of signatories to the CPR Law Firm Policy Statement and works with the media and others to communicate this proactive initiative of firms taking leadership roles in ADR. The assumption of leadership by these firms should serve to positively influence the bar at large and enhance the image of the practice.

Please note: This Commentary should not be construed as a part of the CPR Corporate Policy Statement. In signing the Policy Statement, a company is subscribing only to the terms of the Statement itself.