Reshaping Dispute Resolution: The Future of ADR in New York Courts
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Introduction

In recent years, the role of Alternative Dispute Resolution (ADR) has undergone a profound transformation in New York. Once considered an alternative to traditional litigation, ADR has and continues to become more integrated as a mandatory element of court proceedings.

This change, stemming from docket backlogs exacerbated by the COVID-19 pandemic, has been driven by legislative reform and growing court mandates.

With the rapid advancement of AI and its potential as a tool in the ADR process, efforts to integrate ADR and ease the burdens on the court system are expected to continue.

This article explores the evolving role of ADR in New York, focusing on court-mandated mediation, institutional reforms, and the promise of AI in revolutionizing ADR.

The Rise of Court-Mandated ADR

Introduction of Presumptive ADR

ADR processes have always existed as alternatives to expensive and time-consuming court litigation. Historically, however, ADR was a voluntary party-driven process. This changed in 2019 with the introduction of the Presumptive ADR Initiative.

Launched by the New York State Unified Court System, the Presumptive ADR Initiative required a broad range of civil lawsuits, from personal injury and matrimonial cases to estate matters and commercial disputes, to be referred to mediation or some other form of ADR before proceeding in court.

Prior to the introduction of the Presumptive ADR initiative, court-sponsored mediation and other ADR processes remained underutilized as parties had to either opt in or be referred by individual judges in each case.

By making the previously voluntary ADR processes mandatory at the onset of most civil cases, the Presumptive ADR Initiative laid the groundwork for a cultural shift, which was only accelerated by the COVID-19 pandemic and resulting court backlogs.

Part 160 Alternative Dispute Resolution in the Trial Courts

Initially, it was envisioned that state-wide uniform rules would be introduced to implement the Presumptive ADR Initiative. However, it wasn't until 2024 that Part 160 was added to the New York Rules of the chief administrative judge, creating a formal framework for ADR in trial courts.

Part 160 establishes a framework for the presumptive referral of civil disputes to ADR processes in New York state trial courts "at the earliest practicable time."

The few exceptions to this mandatory referral include, but are not limited to, such referral being prohibited under law, the court determining that the parties cannot participate effectively in an ADR process or that such a process will not serve the interests of justice, or a party opting out "in accordance with local rule of court or administrative order".

Part 160 favors mediation over other ADR processes, stipulating that "the court shall refer [a] dispute to mediation unless there are compelling reasons to select another ADR process." §160.2 (3), Part 160. Alternative Dispute Resolution in the Trial Courts.

Currently, pursuant to §160.5, each district administrative judge is developing local rules for implementing Part 160 in the courts of their respective judicial district.

This process is being carried out in consultation with local bar associations and, as appropriate, with others, including the Chief Judge's Advisory Committee on ADR, the UCS Commercial Division Advisory Council (Commercial Division), the office of Court Administration Office of ADR, and various bar organizations such as the New York County Lawyers Association ADR Committee.

The adoption of Part 160 reflects growing consensus that ADR is not merely a procedural detour, but a core component of modern dispute resolution in New York, requiring rules and a surrounding formal framework.

Commercial Division's Adoption of ADR

The Commercial Division has long been the pioneer of efficiency and has adopted multiple ADR-related rules and rule amendments to give teeth to the Presumptive ADR Initiative.

Rule 3 (a) of the Commercial Division Rules allows a court, on its own initiative or upon the parties' request, to direct the appointment of a mediator to resolve the dispute between the parties.

However, the technical qualifications for a mediator were a barrier to entry for many as Rule 146.4 (b) requires that "mediators who wish to qualify for appointment to a court roster must have successfully completed at least 40 hours of approved training as follows: (i) at least 24 hours of training in basic mediation skills and techniques; and (ii) at least 16 hours of additional training in the specific mediation techniques pertaining to the subject area of the types of cases referred to them."

In 2021, an amendment dramatically lowered the training necessary for those wishing to help resolve matters in the Commercial Division. It also addressed the need to expand ADR resources in the wake of the COVID-19 pandemic and diversify the pool of qualified practitioners.

The change was further fostered by the belief that experienced business lawyers or former judges could serve as neutrals and bring their years of commercial experience to the ADR process without undertaking the same level of formal training.

The amendment provides for the appointment of a 'neutral evaluator', as an alternative to a mediator, for the purpose of helping to achieve a resolution of all or some of the issues presented in the litigation.

Rule 146.4 (a) only requires that "neutral evaluators who wish to qualify for appointment to a court roster must have successfully completed at least six hours of approved training in procedural and ethical matters related to neutral evaluation and be (i) lawyers admitted to practice law for at least five years who also have at least five years of substantial experience in the specific subject area of the cases []; or (ii) individuals who have served at least five years as a judge with substantial experience in the specific subject area of the cases []."

Further, Rule 3(b) allows the parties to request a settlement conference before a justice other than the judge assigned to their case at any time in the litigation.

Rule 8 places an obligation on the counsel for all parties to consult and discuss, among other things, the use of ADR to resolve all or some issues in the litigation prior to a preliminary or compliance conference and Rule 10 requires counsel to certify that they've discussed with the party the availability of ADR mechanisms provided by the Commercial Division and/or private ADR providers and whether the party is presently willing to pursue mediation.

More recently, a new Rule 9-b was added in 2024 to the commercial division rules, which references CPLR 4301 and 4317(a) and reminds parties that they can, with the court's agreement, consent to largely forego the judge altogether and appoint a neutral third party as a referee to adjudicate the dispute.

The Role of AI in ADR

The growth and integration of ADR is expected to accelerate as neutrals, who do not have the resources that the courts have, become better equipped to address disputes with emerging technologies.

AI innovations have the potential to reshape the practice of law, including ADR, and are already doing so. Institutions such as the AAA-ICDR (American Arbitration Association–International Centre for Dispute Resolution) have encouraged arbitrators to embrace AI.

AI-powered tools can now assist with routine document review, evidence analysis, and legal and factual research.

They are also being used to analyze historical case data to predict likely outcomes, helping parties evaluate their positions and potential paths to resolution.

AI can also streamline the process of selecting a neutral by matching parties with appropriate candidates based on dispute characteristics, complexity, and past performance. Several online dispute resolution platforms, such as Modria and Matterhorn, utilize AI in facilitating negotiation and settlement for consumer, family, and small claims disputes.

While parties are not yet relying on AI models as neutrals, it is inevitable that litigants will increasingly look to AI as a tool within the ADR process.

It would not be surprising to see parties begin to agree on parameters and prompts for AI tools, allowing AI to evaluate outcomes, make settlement suggestions, and ultimately serve as an agreed-upon alternative to litigation.

While AI will continue to have limitations in assessing human credibility, for matters where the facts are undisputed or turn on the interpretation of contractual language, the technology will undoubtedly be an additional tool incorporated by neutral evaluators and mediators who are increasingly taking the burden off the courts.

Conclusion

Over the coming months, New York judicial districts are transitioning from ADR rule-making to operational implementation, meaning local courts will begin to make routine referrals under their own versions of ADR protocols.

Watch for local administrative orders or public rule postings in each judicial department announcing formal adoption of ADR procedures. In the coming years, the expansion of digital and AI-driven ADR tools is likely to further supplement the ADR process and provide neutrals and litigants with valuable tools to save parties expense and time in resolving matters.

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