

Litigation versus adr assignment



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Litigation Versus ADR Vigilante LAW/531 October 17, 2011 Litigation Versus ADR The current assignment is to compare and contrast traditional litigation and non-traditional ADR (Alternative Dispute Resolution). Within in the comparison and contrast two questions will be answered. The first is, what are the risks that businesses and other organizations encounter when dealing with traditional litigation? The second is, when might ADR be a more appropriate measure in order for business managers to reduce those risks? Litigation by definition is an action brought in court to enforce a particular right.

Litigation involves a plaintiff, a defendant, a judge, and possibly a jury depending on the severity of the lawsuit. Before litigation is started first the plaintiff has an allegation of wrong doing or injury against a defendant. If all means to settle the allegation have been exhausted and no resolution has been met then the allegation goes to trial. The first step of the trial process is the discovery phase. During this phase the courts send out a series of questionnaires to the defendant seeking information on the plaintiff's allegation.

This phase could take weeks to years to accomplish. Once this phase is complete then the next phase is for both parties to enter into a settlement conference. It is during this phase that both parties are given the opportunity to settle the allegation or go on to the trial phase. If neither party is willing to settle then the lawsuit proceeds to the trial phase. During the trial phase a judge and possibly a jury hears relevant evidence from both parties on the allegation. Once all evidence has been presented then the court or jury decides on the final outcome.

Once the final outcome has been decided the losing side has an opportunity appeal the decision of the court within a specified time. Non-traditional ADR (Alternative Dispute Resolution) has recently become more popular in solving disputes than traditional litigation. Two of the more common forms of ADR are mediation and arbitration. Mediation is a way for parties to solve their disputes with the aid of a neutral third party. In this case the third party or mediator does not impose any sort of decision but rather keeps both parties talking to each other till an equitable solution is reached by both parties.

There are five steps to the mediation process. The first step is for both parties to agree on procedural matters. The second step is for both parties to exchange their positions to the mediator. Each party will have their turn to present their cases. The next step involves the mediator meeting with each side separately and confidentially to explore solutions to the dispute. The fourth step has the mediator taking offers and counter offers to both parties. The fifth step is to have both parties sign the agreement that they have decided upon. That decision is final and enforceable by law.

Arbitration closely resembles traditional litigation except that the dispute does not go to trial. In arbitration a neutral third party hears the arguments from both sides and, unlike mediation, imposes a decision that is binding and enforceable by the courts. The risks that businesses and other organizations encounter when dealing with traditional litigation are the time and expense involved with the litigation process. the discovery phase alone in the litigation process can take weeks to years to accomplish. Expenses can mount especially the longer it takes to get a final decision.

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Also, the business relationship between the parties can be irreparably damaged. ADR may be more appropriate measure to reduce the risks of litigation when time is of great concern, expenses need to be kept to a minimum, and the business relationship is still viable. ADR is by far a shorter and quicker process and the expenses are kept to a minimum. Also, the final decision is normally agreed upon by both parties so the relationship between both sides is still kept intact. In conclusion, traditional litigation and non-traditional ADR have been discussed.

Both are similar in that they both are bound by law and seek to resolve a problem. The big differences are that litigation is a lengthy process that can take up to years to resolve and is expensive. Also, litigation can destroy a business relationship. ADR on the other hand is creative and more focused on problem solving. It is not as time consuming and the business relationship between the parties are still intact. Bibliography Legal Dictionary: The Free Dictionary. (2011). Retrieved October 16, 2011, from The FreeDictionary: <http://legal-dictionary.thefreedictionary.com/>