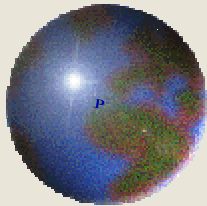




Nationwide Mediation Academy



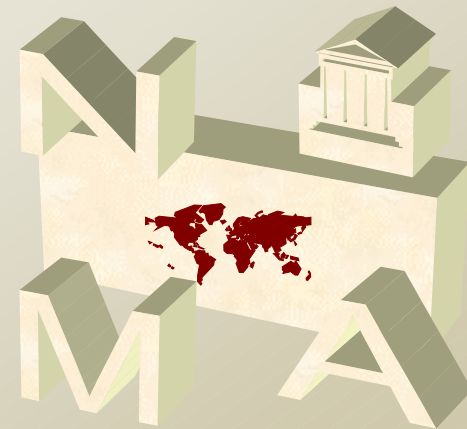
SEMINAR 2

Introduction to Civil and Commercial Mediation

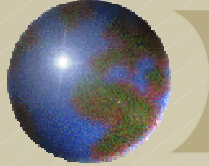
Program Leader

Corbett Haselgrove-Spurin

An NMA program on behalf of NADR UK Ltd.



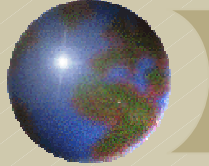
**NATIONWIDE MEDIATION
ACADEMY**



Session Two

Definitions and significance of ADR

- ❖ **Comparison of principal forms of dispute resolution.**
- ❖ **The significance of ADR practice**
- ❖ **Regulation of ADR services**
- ❖ **Professional status of practitioners.**



Session Two

Distinguishing between forms of ADR

DOES ADR MEAN ANY NEGOTIATION?

✚ Bargaining

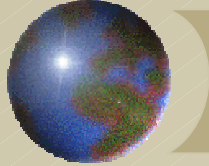
Any negotiation not requiring a solution

✚ Dispute Negotiation - inter-partes

Unassisted - no legal / professional assistance

✚ Assisted Dispute Negotiation

Legally / professionally assisted – classic pre-trial scenario – *see later for limitations.*



Session Two

Distinguishing between forms of ADR

✚ Conciliation – advisory

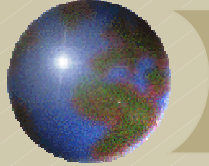
- Binding process
- Non-binding settlement / or
- Advisory determination

✚ Conciliation – binding

- Binding process
- Binding settlement / or
- Binding determination

Frequently referred to as mediation – 75% US Case references make it clear binding conciliation

is subject to Judicial Review and DUE PROCESS



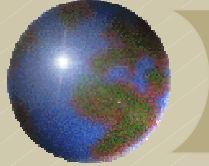
Session Two

Distinguishing between forms of ADR

- ❖ **Counselling – one to one**
 - Voluntary process
 - No settlement

- ❖ **Counselling – two party mediation**
 - Voluntary process
 - No settlement – meeting of minds and reconciliation

SOCIAL CONTEXT



Session Two

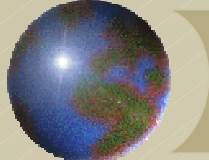
Distinguishing between forms of ADR

☉ **Mediation – non-binding**

- **Binding process**
- **Non-binding settlement**
- ***DUE PROCESS REQUIREMENT MINIMAL***

☉ **Mediation – binding**

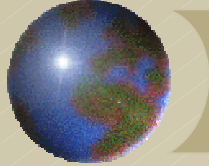
- **Binding process**
- **Binding settlement**
- ***POTENTIAL DUE PROCESS REQUIREMENT***



Session Two

Setting up the mediation

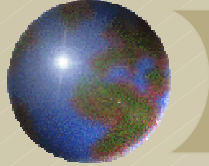
- ❖ **Contract Mediation**
- ❖ **Ad hoc Mediation**
- ❖ **Application to court for mediation**
- ❖ **Court recommended Mediation**
- ❖ **Court ordered Mediation**



Session Two

Beyond mediation

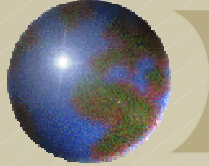
- ❖ **Contracted Mediation Resolex**
- ❖ **Dispute Review Boards**
- ❖ **Dispute Resolution Panels**
- ❖ **Expert determination – judicial review – adjudication – J.R. - appeal**
- ❖ **Adjudication – Judicial Review – de nouvo trail - appeal**
- ❖ **Arbitration – judicial review – appeal**



Session Two

Significance of ADR - Litigation

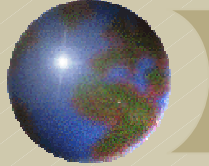
- ❖ **Formal & intimidating**
- ❖ **Expensive**
- ❖ **Pre-trial preparation rigorous**
- ❖ **Court schedule protracted**
- ❖ **Lack of privacy**
- ❖ **Adversarial nature damages relationships – winner takes all**
- ❖ **No peer relationship**



Session Two

Contrast mediation

- ❖ **Informal**
- ❖ **Less expensive**
- ❖ **Less time consuming**
- ❖ **Quicker**
- ❖ **Private**
- ❖ **Relationship friendly**
- ❖ **Peer involvement**



Session Two

Regulation of mediation

See position paper – “Regulating Mediation”.

- ❖ **Self regulated**
- ❖ **Professions provide regulation e.g. Law Society**
- ❖ **Provider regulation e.g. CEDR & CIArb**
- ❖ **No state regulation in the UK**
- ❖ **Potential legal liability minimal**
- ❖ **Potential regulation for EU pending**