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**Sofia Androgué**

**Caroline Baker**

# **Texas Business Litigation**

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### **Chapter 1: Alternate Dispute Resolution—Issues in Business Litigation**

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# Chapter 1

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## Alternative Dispute Resolution—Issues in Business Litigation

*Alice Oliver-Parrott, P.C.*<sup>1</sup>

### 1-1 INTRODUCTION

There are several types of Alternative Dispute Resolution procedures available for the resolution of business disputes in Texas. In practice, however, two methods clearly dominate the field, mediation and arbitration. For that reason, this chapter is limited to a discussion of those processes.

### 1-2 LAW GOVERNING MEDIATION IN TEXAS

#### 1-2:1 The Process in Texas

The 1987 Alternative Dispute Resolution Procedures Act provides an all-inclusive format for Alternative Dispute Resolution (ADR) practice in Texas.<sup>2</sup> There are several different types of ADR addressed in the Act, but they are all confidential and nonbinding.<sup>3</sup>

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<sup>2</sup> Tex. Civ. Prac. & Rem. Code § Ann., Chapter 154.

<sup>3</sup> Tex. Civ. Prac. & Rem. Code § Sec. 154.023. Mediation. (a) Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement or understanding among them. (b) A mediator may

It is important to note that ADR in Texas is not a substitute for a trial by jury, nor is it a deterrent to the same. Instead, ADR in Texas is a tool offered to litigants to assist in fully exploring settlement before deciding whether or not a trial is necessary. Even in court-ordered mediation, no party can be compelled to settle.

The ADR Act's mandate of confidentiality is comprehensive in scope. Any communications during the mediation process are absolutely confidential and may not be used as evidence in any judicial or administrative proceeding.<sup>4</sup> It is important to note that if communications are otherwise discoverable or admissible, the confidentiality requirement of mediation will not protect them.<sup>5</sup> Confidentiality extends not only to the party participants, but also to the neutral mediator.<sup>6</sup>

Finally, there is no particular predicate required for mediation in Texas. The process can be by agreement or compelled by judicial

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not impose his own judgment on the issues for that of the parties. (c) Mediation includes victim-offer mediation by the Texas Department of Criminal Justice described in Article 56.13, Code of Criminal Procedure. Added by Acts 1987, 70th Leg., ch. 1121, Sec. 1, eff. June 20, 1987. Amended by Acts 2001, 77th Leg., ch. 1034, Sec. 12, eff. Sept. 1, 2001. Sec. 154.024. Mini-trial. (a) A mini-trial is conducted under an agreement of the parties, (b) Each party and counsel for the party present the position of the party, either before selected representatives for each party or before an impartial third party, to define the issues and develop a basis for realistic settlement negotiations. (c) The impartial third party may issue an advisory opinion regarding the merits of the case. (d) The Advisory opinion is not binding on the parties unless the parties agree that it is binding and enter into a written settlement agreement. Added by Acts 1987, 70th Leg., ch. 1121, eff. June 20, 1987. Sec. 154.025. Moderated Settlement Conference. (a) A moderated settlement conference is a forum for case evaluation and realistic settlement negotiations. (b) Each party and counsel for the party present the position of the party before a panel of impartial third parties. (c) The Panel may issue an advisory opinion regarding the liability or damages of the parties or both. (d) The advisory opinion is not binding on the parties. Added by Acts 1987, 70th Leg., Ch. 1121, Sec. 1, eff. June 20, 1987. Sec. 154.026. Summary Jury Trial. (a) A summary jury trial is a forum for early case evaluation and development of realistic settlement negotiations. (b) Each party and counsel for the party present the position of the party before a panel of jurors. (c) The number of jurors on the panel is six unless the parties agree otherwise. (d) The panel may issue an advisory opinion regarding the liability or damages of the parties or both. (e) The advisory opinion is not binding on the parties. Added by Acts 1987, 70th Leg., ch. 1121, Sec. 1, eff. June 20, 1987. Sec. 154.027. Arbitration. (a) Nonbinding arbitration is a forum in which each party and counsel for the party present the position of the party before an impartial third party, who renders a specific award. (b) If the parties stipulate in advance, the award is binding and is enforceable in the same manner as any contract obligation. If the parties do not stipulate in advance that the award is binding, the award is not binding and serves only as a basis for the parties' further settlement negotiations. Added by Acts 1987, 70th Leg., ch. 1121, sec. 1, eff. June 20, 1987.

<sup>4</sup> Tex. Civ. Prac. & Rem. Code § Ann., Chapter 154.073(a).

<sup>5</sup> Tex. Civ. Prac. & Rem. Code § Ann., Chapter 154.073(c).

<sup>6</sup> Tex. Civ. Prac. & Rem. Code § Ann., Chapter 154.073(a).

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