



Fox Rothschild Podcast

Featuring Delaware Partners Vincent Poppiti and Leslie Spoltore

Today we are going to talk about an ever increasing trend in resolving litigious, often complex and highly charged legal disputes without going to court. This process is known as alternative dispute resolution and it has broad implications for corporate, family law and other areas.

Fox Partners Vincent Poppiti and Leslie Spoltore are going to share their insights based on their considerable experience in alternative dispute resolution. Both Vincent and Leslie, who are located in Fox's Delaware office, represent clients in all Delaware Courts, including those seeking alternative dispute resolution services.

Vincent practices in Litigation, Alternative Dispute Resolution and Family Law. He has held multiple judicial appointments, including as the former Chief Judge of the Family Court of Delaware and he is a panel member and member of the Judicial Panel of the American Arbitration Association. Leslie is a member of the Litigation, Alternative Dispute Resolution, Appellate Practice and Family Law Practice Groups. She is a frequent lecturer on family law topics and contributes to two Fox blogs that provide valuable information about the Delaware court system. Vincent and Leslie, welcome.

Vincent Poppiti and Leslie Spoltore: Good morning. Thank you for that introduction.

***Question:** Leslie, help us get the ball rolling. What is alternative dispute resolution from the perspective of a non-attorney?*

Leslie Spoltore: Alternative dispute resolution, which we commonly refer to as ADR, is an option for working out conflicts that typically would end up in court. Instead of a trial, with lawyers representing both sides in front of a judge and jury, ADR works through mediation or arbitration or a combination of both. Both of those processes are less formal than taking a dispute to court. And mediation and arbitration allow for "early intervention," so parties can begin to resolve differences at an earlier point than a courtroom trial would allow. Finally, ADR is usually much less stressful than litigating in court.

***Question:** And are there differences between mediation versus arbitration, Vincent?*

Vincent Poppiti: There are differences. A mediation is overseen by a neutral mediator who helps the conflicted parties resolve their dispute through the give and take of negotiation. But the mediator does not decide the winner or loser. An arbitration differs in that it is handled by a neutral arbitrator who hears both sides and decides the outcome. So there is a "judgment"



element in an arbitration that does not exist in mediation, but, again, arbitration does not take place in a court, with a jury and a judge on the bench.

***Question:** Are there any hybrid types of ADR or does a client have to choose between mediation and arbitration?*

Vincent Poppiti: There are actually two other possible approaches. A neutral case assessment involves a neutral third party who hears and analyzes both sides of a dispute and then, based on the information that has been presented in the mediation or arbitration, offers a nonbinding, well-reasoned oral or written evaluation of the conflict to the involved parties. The assessor may then use mediation and/or arbitration to reach a settlement. And there is a fourth possibility: A blended approach combines both mediation and arbitration to resolve an issue.

Leslie Spoltore: One of the many benefits ADR offers is its flexibility in solving disagreements. One area of flexibility, as Vincent just described, involves options for the format of the resolution – all out of court, but with approaches that can be tailored to each individual party’s situation. That kind of flexibility is key in family law and in corporate disputes.

***Question:** You mentioned family law. ADR is well known as an option in divorces and child custody disagreements. Why is that?*

Leslie Spoltore: Yes, there’s a long history of families choosing ADR in domestic relations disputes because it offers a less stressful, more relaxed and more private setting for families going through a challenging time. In addition, out-of-court resolutions are, generally speaking, far less costly than in-court battles. And, going back to the point about flexibility, in mediation and arbitration, parties in dispute are not tied to court dates – they can set their own meeting schedules and even use technologies like Skype to attend official discussions.

Vincent Poppiti: Leslie is making a critically important point: The same characteristics that make ADR attractive to families also apply to any matter in dispute – after all, corporate leaders, business owners and general counsel do not want to end up in court if they can avoid it. Plus, time is money for a business owner, and having greater control over one’s time instead of being held captive by an overwhelmed court system, means less expense in terms of cash and time, both important in corporate disputes.

***Question:** So alternative dispute resolution has broader applicability beyond family law disputes?*

Vincent Poppiti: Absolutely. In fact, ADR is rapidly becoming the first option of choice for corporations involved in disputes – in other words, they try ADR before pursuing formal courtroom litigation – indeed many commercial contracts require some form of ADR. More and more it is not unusual to see mandatory binding arbitration in the commercial world.

***Question:** In what specific ways does ADR differ from a court proceeding to resolve a conflict?*



Leslie Spoltore: They are light years apart. Trials can be long, messy, expensive and gut-wrenching. In the traditional courtroom route, people do not choose the judge hearing the case and parties have little control over the courthouse process. Formal court rules are not very flexible and can be intimidating for non-lawyers. ADR is dramatically different: Parties in dispute can choose their mediator or arbitrator, so there is a much greater chance that the parties in the dispute will “connect with” the person hearing their case. As we’ve mentioned, mediation sessions and arbitration hearings occur when it is convenient for both sides, including time after traditional business hours and weekends.

***Question:** How do these differences in format and approach between the courtroom and the ADR setting translate into a difference for the people trying to resolve their differences?*

Vincent Poppiti: Because ADR is guided by rules agreed to by the parties, not an outside entity such as a court, ADR is much more customized and flexible. For the people in dispute, this means having more control in the form of choosing an arbitrator or mediator and setting your meeting schedule. Also, ADR cases typically conclude more quickly than trials held in a bogged-down court system. This means less money is spent on legal fees. On balance, ADR offers adherents more control in a less costly, more flexible and less stressful way to solve problems.

***Question:** Sounds like ADR could be a great option for many people in various kinds of disputes. What should individuals seeking ADR look for and expect in their ADR process?*

Leslie Spoltore: The first thing to remember is this: When choosing your mediator and/or arbitrator, keep experience (the longer the better), flexibility and customized service in mind.

Vincent Poppiti: It is certainly a bonus if a mediator has experience not only in ADR, but also in the courtroom, either as a litigator or, better yet, a decision maker – as a former judge.

Leslie Spoltore: Let me add here that, as you noted earlier, Vincent held several judicial appointments prior to joining Fox Rothschild, as the former chief judge of the Family Court of Delaware, former resident judge of the New Castle County Superior Court and former associate judge of the Superior Court of Delaware. So he has precisely the right background for clients seeking advice from an attorney experience not only in ADR but also with an insider’s view of how courts operate.

Vincent Poppiti: Thanks, Leslie! Leslie is also experienced in alternative dispute resolution, particularly around family law matters. Listeners, you may want to check out Leslie’s posts on the [Delaware Trial Practice Blog](#) and the [Delaware Chancery Law Blog](#), both on the Fox website. Those blogs provide up-to-the-minute developments involving Delaware’s court system.

***Question:** Any other tips for clients seeking ADR representation?*



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Leslie Spoltore: Let me just drive home this point once more: Flexibility is key: A good neutral – a mediator or arbitrator – will allow clients’ schedules, availability and needs to drive the process. If the neutral party you are considering throws up roadblocks around issues of scheduling and availability, it’s time to look elsewhere.

Vincent Poppiti: For me, the most important element when looking for ADR assistance is the level of customization offered to clients. The best mediators and arbitrators will go to great lengths to accommodate clients in everything from meeting times and formats to pricing and the actual plan for resolution of a conflict. At Fox Rothschild, our ADR mantra is “the client comes first,” meaning that we let our clients define what their ADR experience is going to look and feel like – and we do what is best for them, financially, practically and emotionally.

***Question:** Any parting words about ADR?*

Leslie Spoltore: No matter what dispute you are facing – corporate, family related or otherwise – if you think the matter is headed to court, consider ADR instead.

Vincent Poppiti: That’s right. You really cannot put a price on the reduced stress, greater control, increased efficiency and cost-effectiveness that ADR can offer.

Thank you so much, Vincent and Leslie, for providing such a thorough analysis of alternative dispute resolution’s attractiveness to all types of clients facing litigation.

Listeners, if you would like to speak with either Vincent Poppiti or Leslie Spoltore about Fox’s alternative dispute resolution services and capabilities, you can reach Vincent at 302.622.4274 or vpoppiti@foxrothschild.com, or Leslie at 302.622.4203 or lspoltore@foxrothschild.com.

Fox Rothschild LLP is a full service law firm with more than 650 lawyers in 21 offices coast to coast. We serve businesses of all sizes as well as individuals in more than 55 areas of law. Clients choose us because we understand their issues, their priorities and the way they think. We become trusted business advisers working in the trenches with those we serve. At Fox, we care about your success as much as you do.

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