



## Dispute Resolution Advisory Questionnaire

Richard Hurford Dispute Resolution Services, P.C. offers assistance to counsel without charge in evaluating the timing and staging of ADR processes that best match the needs of their clients. If you would like to take advantage of this service, please complete the attached grid to the extent possible and e-mail it to richard@hurfordresolution.com. Please check all applicable responses.

If desired, a conference call will be scheduled to explore various ADR processes within two business days after receipt of the completed grid.

1. Are all the parties represented by counsel?
  - a.  Yes
  - b.  No
  
2. The parties desire to schedule a dispute resolution event because:
  - a.  It is being driven by the court or arbitrator
  - b.  No complaint has been filed yet (or just recently filed) and all the parties desire to explore a resolution as early as possible
  - c.  The parties have engaged in extensive discovery and want to explore a resolution at this time to avoid additional costs, delay, uncertainty of a trial or arbitration and/or any potential appeal
  - d.  There is a dispositive motion pending and the parties are willing to schedule an event before a decision
  - e.  Other (please explain):  

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3. Do the parties desire to maximize the potential of maintaining or enhancing an ongoing relationship?
  - a.  Only the outcome is important
  - b.  While the outcome is important, the potential of maintaining or enhancing the relationship would be of some benefit to the parties
  - c.  While the outcome is important, the potential of maintaining or enhancing the relationship would be of significant benefit to the parties
  - d.  Maintaining or enhancing the relationship is of primary importance to one or both of the parties
  
4. How important is maintaining control over the outcome of the dispute to the parties?
  - a.  Not important as the parties believe an unbiased impartial neutral party must decide all issues involved in the dispute based upon the evidence and the law



- b. \_\_\_\_\_ Somewhat important as the parties believe an unbiased impartial neutral party must decide some of the issues involved in the dispute based upon the evidence and the law, but the parties desire to maintain control over the resolution of the remaining issues
- c. \_\_\_\_\_ Maintaining control is important to at least one of the parties
- d. \_\_\_\_\_ Maintaining control is important to all of the parties
5. If maintaining control is important, will both parties benefit from a neutral, non-binding evaluation of the legal merits of their positions and/or legal claims?
- a. \_\_\_\_\_ No
- b. \_\_\_\_\_ Not initially and only if necessary to resolve the dispute
- c. \_\_\_\_\_ Yes on the issue of liability
- d. \_\_\_\_\_ Yes on the issue of damages
6. How important is creativity in developing the terms of a resolution to the parties:
- a. \_\_\_\_\_ Creativity is not believed to be significantly important as the non-financial terms will not be that difficult; this dispute is really all about the money
- b. \_\_\_\_\_ Creativity as to the non-economic terms will be moderately important
- c. \_\_\_\_\_ Creativity as to the non-economic terms will be significantly important
- d. \_\_\_\_\_ Don't know
7. Are the parties in agreement as to the legal issue(s) that will be dispositive of the dispute?
- a. \_\_\_\_\_ Yes
- b. \_\_\_\_\_ No
- c. \_\_\_\_\_ Don't know
8. If so, is the law settled?
- a. \_\_\_\_\_ Yes
- b. \_\_\_\_\_ No
- c. \_\_\_\_\_ Don't know
9. Do the parties desire or need a neutral non-binding evaluation of specific legal issues or the extent and scope of legally recoverable damages?
- a. \_\_\_\_\_ Very likely
- b. \_\_\_\_\_ A possibility
- c. \_\_\_\_\_ Very unlikely
- d. \_\_\_\_\_ Don't know
10. How important is maintaining confidentiality with regard to the outcome of the dispute?
- a. \_\_\_\_\_ Very important
- b. \_\_\_\_\_ Important to some but not all the parties
- c. \_\_\_\_\_ Not important at all



- d. \_\_\_\_\_ One or both parties desire to disclose the outcome to third parties
11. How important is it to the parties to discuss the potential of a resolution and candidly explore their mutual interests and needs in a setting that protects those discussions with confidentiality and assurances those discussions will not be disclosed to third parties?
- a. \_\_\_\_\_ Very important
  - b. \_\_\_\_\_ Moderately important
  - c. \_\_\_\_\_ Not important
  - d. \_\_\_\_\_ Don't know
12. Is there agreement between the parties as to what information and data will be exchanged before any dispute resolution event?
- a. \_\_\_\_\_ Yes
  - b. \_\_\_\_\_ Only, in part
  - c. \_\_\_\_\_ No agreement at all
13. How certain is the need to engage in an exchange of information before the dispute resolution event?
- a. \_\_\_\_\_ The parties do not believe that any further information exchange is necessary
  - b. \_\_\_\_\_ At least one of the parties believe the exchange of certain limited information will be important
  - c. \_\_\_\_\_ At least one of the parties believe the exchange of significant additional information will be important
  - d. \_\_\_\_\_ Don't know
14. Please indicate the status of discovery.
- a. \_\_\_\_\_ No discovery has been undertaken
  - b. \_\_\_\_\_ Less than 50% of the anticipated discovery has been completed
  - c. \_\_\_\_\_ More than 50% of the anticipated discovery has been completed
  - d. \_\_\_\_\_ Discovery is completed
15. Please indicate how cost effective the discovery referred to in No. 14 has been beneficial to the parties in focusing and refining the strengths or weakness of the factual and legal positions of the parties?
- a. \_\_\_\_\_ Very helpful to all parties
  - b. \_\_\_\_\_ Very helpful to one party
  - c. \_\_\_\_\_ Somewhat helpful
  - d. \_\_\_\_\_ Not helpful at all
16. Are all parties committed to exploring a mutually beneficial resolution of the dispute without the need of proceeding to a trial or arbitration?



- a.  Yes
- b.  One party only
- c.  Not necessarily
- d.  Not certain

17. If one or more parties are committed, please indicate the reason(s) (check all that are applicable):

- a.  Uncertainty as to the outcome of a trial or arbitration
- b.  To satisfy the court or arbitrator
- c.  The desire to minimize additional direct and indirect costs of proceeding to a trial or arbitration
- d.  The desire to resolve the matter as quickly as possible
- e.  The desire to maintain or repair the parties' relationship
- f.  Maintaining the confidentiality of any resolution discussions
- g.  Educating the client and decision-makers of the legal risks
- h.  Educating the opposing party of the weakness of its case
- i.  Avoiding the involvement of third parties in the trial or arbitration
- j.  To reality test the strengths and weaknesses of a party's legal position and/or factual arguments
- k.  To meet the needs of an insurance carrier
- l.  Obtaining information about the opposing party's litigation or arbitration strategy
- m.  Providing a party with the opportunity to vent in a confidential setting
- n.  Providing a party with the opportunity to make a statement of regret in a confidential setting
- o.  Anticipated upcoming developments that may negatively impact the perceived strength or weakness of a party's position
- p.  Fashioning a creative resolution that will not be available from the court or arbitrator
- q.  A party cannot afford, economically or otherwise, to lose the matter at trial or arbitration
- r.  The finality of a resolution
- s.  To avoid publicity
- t.  Other (please explain):

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18. Have counsel provided a litigation/or arbitration budget to their clients?

- a.  Yes as to all parties
- b.  One party only



- c.  Don't know
19. If yes, have the costs estimated in the preliminary budget:
- a.  Been exceeded
  - b.  About to be exceeded
  - c.  Right on track
  - d.  Significantly under
  - e.  Don't know
20. What is the likelihood this matter can be disposed of completely by a prompt decision on a dispositive motion?
- a.  Very unlikely as the law is unsettled
  - b.  Very unlikely as the facts are in dispute
  - c.  Very likely
  - d.  A possibility
21. Is there a dispositive motion pending?
- a.  Yes
  - b.  No
22. If yes, when is a decision on the dispositive motion anticipated?
- a. \_\_\_\_\_
23. If yes, will the dispositive motion dispose of all the legal issues involved in the case?
- a.  Yes
  - b.  No
  - c.  Don't know
24. Is there an irreconcilable credibility dispute on key factual issues?
- a.  Yes
  - b.  No
  - c.  Don't know
25. Does this dispute involve a "battle of experts"?
- a.  Yes, primarily
  - b.  Yes, but only in part
  - c.  Not at all
26. If yes in whole or in part, have all the experts been deposed and issued their reports?
- a.  Yes
  - b.  Only some experts



- c. \_\_\_\_\_ None to date
27. What is the realistic potential range of monetary damages from the different perspectives of the parties?
- a. \_\_\_\_\_ Highest Realistic Potential - Plaintiff
  - b. \_\_\_\_\_ Lowest Realistic Potential - Plaintiff
  - c. \_\_\_\_\_ Highest Realistic Potential - Defendant
  - d. \_\_\_\_\_ Lowest Realistic Potential – Defendant
  - e. \_\_\_\_\_ Highest Realistic Potential – Party A \_\_\_\_\_
  - f. \_\_\_\_\_ Lowest Realistic Potential – Party A \_\_\_\_\_
  - g. \_\_\_\_\_ Highest Realistic Potential – Party B \_\_\_\_\_
  - h. \_\_\_\_\_ Lowest Realistic Potential – Party B \_\_\_\_\_
  - i. \_\_\_\_\_ Don't know
28. How important will creativity be to the successful resolution of the non-economic terms to any resolution?
- a. \_\_\_\_\_ None, it's just about the money
  - b. \_\_\_\_\_ While the money is important, some creativity will be important
  - c. \_\_\_\_\_ Creativity will be extremely important
  - d. \_\_\_\_\_ Don't know
29. To what extent are fundamental principles and interests at stake in the dispute?
- a. \_\_\_\_\_ Clearly at stake for at least one of the parties
  - b. \_\_\_\_\_ Hard to say with accuracy
  - c. \_\_\_\_\_ Not a significant factor for any party
30. How damaging would an adverse decision at trial or arbitration be to the parties?
- a. \_\_\_\_\_ Extremely damaging to all parties
  - b. \_\_\_\_\_ Extremely damaging to one party
  - c. \_\_\_\_\_ Moderately damaging to all parties
  - d. \_\_\_\_\_ Moderately damaging to one party
  - e. \_\_\_\_\_ Not particularly significant to any party
31. How certain are the parties that they will prevail in court or in arbitration?
- a. \_\_\_\_\_ At least one party is confident it will ultimately prevail
  - b. \_\_\_\_\_ Hard to state with accuracy
  - c. \_\_\_\_\_ There is not a high degree of confidence by any party
32. What is the emotional climate between the parties?
- a. \_\_\_\_\_ One of deep-seated hostility, contempt and/or distrust
  - b. \_\_\_\_\_ Moderately antagonistic and distrustful



- c. \_\_\_\_\_ Relatively objective and unemotional but the parties are significantly entrenched in their respective positions
- d. \_\_\_\_\_ Relatively objective and unemotional and the parties have not yet become entrenched in their positions
33. What is the relative power of the parties as to their financial resources and sophistication?
- a. \_\_\_\_\_ Very disparate
- b. \_\_\_\_\_ Moderately disparate
- c. \_\_\_\_\_ Substantially similar
34. Is there insurance coverage for the dispute?
- a. \_\_\_\_\_ Yes, for one party
- b. \_\_\_\_\_ Yes, for all parties
- c. \_\_\_\_\_ No
- d. \_\_\_\_\_ Don't know
35. Has any insurance carrier issued a reservation of rights letter?
- a. \_\_\_\_\_ Yes
- b. \_\_\_\_\_ No
- c. \_\_\_\_\_ Don't know
36. Is there an issue as to insurance coverage for any of the parties?
- a. \_\_\_\_\_ Yes
- b. \_\_\_\_\_ No
- c. \_\_\_\_\_ Don't know
37. If yes, does that insurance issue need to be resolved prior to the dispute resolution event?
- a. \_\_\_\_\_ Yes
- b. \_\_\_\_\_ No
- c. \_\_\_\_\_ Not necessarily
- d. \_\_\_\_\_ The insurance issue and the dispute resolution event should occur simultaneously
- e. \_\_\_\_\_ Don't know
38. Are all insurance carriers supportive of conducting a dispute resolution event?
- a. \_\_\_\_\_ Yes
- b. \_\_\_\_\_ Yes but only after certain information is obtained
- c. \_\_\_\_\_ Yes but only after there has been a resolution of the coverage issues
- d. \_\_\_\_\_ No
- e. \_\_\_\_\_ Don't know
39. How would you characterize the extent of any settlement discussions to date between counsel?



- a. \_\_\_\_\_ Extensive
- b. \_\_\_\_\_ Minimal
- c. \_\_\_\_\_ None

40. State whether one or all of the parties have had prior experience with any of the listed ADR techniques:

- a. \_\_\_\_\_ Personal meet and confer discussions between the principals to the dispute (without counsel present)
- b. \_\_\_\_\_ Personal meet and confer discussions between the principals to the dispute (with counsel present)
- c. \_\_\_\_\_ Real time mediation
- d. \_\_\_\_\_ Discovery masters/advisors/facilitators (other than court personnel)
- e. \_\_\_\_\_ Facilitative mediation (i.e., no evaluation by the mediator)
- f. \_\_\_\_\_ Evaluative mediation (i.e., significant evaluation by the mediator)
- g. \_\_\_\_\_ Analytic mediation (i.e., mixed evaluative and facilitative)
- h. \_\_\_\_\_ Case evaluation by one or more expert(s) who is experienced in litigating the type of dispute (non-binding)
- i. \_\_\_\_\_ Settlement conference with the court or arbitrator
- j. \_\_\_\_\_ Offer of Judgment
- k. \_\_\_\_\_ Neutral Expert case evaluation (non-binding)
- l. \_\_\_\_\_ Mediation-Arbitration processes (or some variation)
- m. \_\_\_\_\_ Arbitration-Mediation processes (or some variation)
- n. \_\_\_\_\_ Interim Dispute Resolution Boards
- o. \_\_\_\_\_ Expert “Hot Tubbing”
- p. \_\_\_\_\_ Summary trial proceedings (non-binding)
- q. \_\_\_\_\_ Mock trials (one party only)
- r. \_\_\_\_\_ Mock trial (joint sessions)
- s. \_\_\_\_\_ Dispute Resolution Advisors
- t. \_\_\_\_\_ Short form arbitration (non-binding)
- u. \_\_\_\_\_ Arbitration (1 arbitrator)
- v. \_\_\_\_\_ Arbitration (3 arbitrators)
- w. \_\_\_\_\_ Hi-Low Arbitration
- x. \_\_\_\_\_ Baseball Arbitration
- y. \_\_\_\_\_ Other (please explain)

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41. Have any of these or other ADR techniques already taken place in this dispute?





- a. \_\_\_\_\_ Yes
- b. \_\_\_\_\_ No
- c. \_\_\_\_\_ Please indicate which ones and when:

ADR Technique

When

_____	_____
_____	_____
_____	_____
_____	_____

42. State briefly why you believe any of the listed ADR techniques were not successful in resolving the dispute:

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\_\_\_\_\_

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\_\_\_\_\_

**Contact Information:**

Name: \_\_\_\_\_

E-mail: \_\_\_\_\_

Work phone: \_\_\_\_\_

Please contact me to schedule a conference call:

\_\_\_\_\_ Yes

\_\_\_\_\_ No

Please state how you believe this questionnaire might be improved:

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\_\_\_\_\_