



Addressing the COVID-19 Trial Backlog: Is ADR the Solution?

According to the State's Office of Court Administration, an average of 186 jury trials took place each week in Texas before the COVID-19 pandemic. From March 2020 through January 2021, just 222 jury trials took place within the entire state. Thus, it should come as no surprise that Texas courts are scrambling for ways to dig out from under a staggering backlog of cases. In Harris County, for example, cases were already in a backlog due to Hurricane Harvey and have grown more than 35% during the pandemic.

While to a certain extent, virtual technologies have allowed courts to advance the administration of justice during a global pandemic, an immediate return to in-person trials remains doubtful. The courts now must address how to tackle the trial backlog COVID-19 has caused over the past year. There is a compelling argument that Alternative Dispute Resolution (ADR) may be the answer. Both mediation and arbitration are more promising than ever as alternatives to court trials in reaching a final resolution. Now may be the time for counsel and clients alike to strongly consider ADR to timely and more efficiently resolve their conflicts.

Mediation, as a non-binding ADR proceeding, has always been an option. CDC guidelines have caused the number of dispute resolutions attempted in mediation to increase. This method has worked very well during the pandemic because, other than during a brief opening session, the parties are not required to be present in the same room. The procedure involves the mediator separately meeting one-on-one with the parties in an attempt to convey positions and assist in the realistic recognition of the strengths and weaknesses of a party's claims or defenses. One may even argue that mediation is perfectly suited to occur entirely remotely because mediation proceedings do not necessarily require face-to-face confrontations to begin with. There is no doubt that the increased use of in-person or remote mediation will result in a higher percentage of disputes resolved amicably, thereby ultimately also relieving overburdened court dockets.

Likewise, arbitration, as a binding ADR proceeding, is not dependent on courthouse access. In a jury trial setting, litigants could wait a year or two from now for a result. They could instead opt for a final arbitration hearing that is potentially over in a matter of months because arbitration generally offers increased flexibility in the scheduling of hearings. The parties' ability to coordinate the arbitral proceeding based on their agreement makes arbitration ideally suited for dispute resolution in times of a global pandemic. Even if the parties never before considered arbitration for their already-pending dispute, they can still agree to submit the dispute, in whole or in part, to an arbitrator.

For more information, please contact [Manuel Schoenhuber](#).