

## **Toolbox of Dispute Resolution Processes**

John Lande

You may have heard the saying, “If the only tool you have is a hammer, everything looks like a nail.” The ADR movement has produced many processes to choose from, expanding the toolboxes of lawyers and parties. The following list is not exhaustive and some of the processes don’t fit neatly into the general categories. Although only a few of the following processes may be widely available for a given case in a particular area, people can craft their own processes in many situations. Note that processes vary by subject area. For example, mediation is very different in small claims, family, civil, victim-offender, and environmental cases. Similarly, arbitration is different in labor, consumer, employment, construction, securities, and international commercial cases. Even within subject areas, there are significant differences. The nature and quality of the process often varies based on the amount of resources invested. There are at least 50 ways to resolve disputes (*cf.* Paul Simon, [50 Ways to Leave Your Lover.](#))

### Bilateral negotiation

- Positional negotiation
- Interest-based negotiation ([“positional” “and “interest-based” terms are misleading](#))
- Norm-based negotiation
- Settlement counsel
- Collaborative law
- Cooperative law

### Mediation

- Transformative mediation
- “Facilitative” mediation ([“facilitative” and “evaluative” terms are misleading](#))
- “Evaluative” mediation (could be included in “evaluative processes”)
- Mini-trial
- Ombuds (not exactly mediation, but sometimes close)
- Online dispute resolution (ODR belongs in other categories too.)
- Other models (e.g., narrative, “understanding model” mediation)

### Evaluative processes that may promote negotiation

- (Early) neutral evaluation
- Fact-finding
- Non-binding arbitration
- Incentive arbitration
- Summary jury trial
- Med-arbitration
- Arb-mediation

### Binding adjudication outside courts

- “Standard” binding arbitration (quotation marks reflect great variations in procedures)
- High-low arbitration
- Final offer arbitration
- Private judging (sometimes called rent-a-judge or private referral)
- Parent coordination (special masters appointed in high-conflict family cases)
- Administrative adjudication (in government executive agencies)

### Adjudication in (or supervised by) trial-level courts

- Hearings on summary judgment and other dispositive motions
- “Standard” trial
- Ad hoc “designer trials” (where parties negotiate their own procedures and rules)
- Trials regulated by court case management systems (e.g., expedited, complex cases)
- Mass claims processes (e.g., tort and bankruptcy)