

# Verdicts

## & Settlements

### A Pioneer

**“Governmental and regulatory issues can be resolved privately and expeditiously through ADR,” mediator-arbitrator Lee Kanon Alpert says.**

BY REENA FURUTANI

Alternate dispute resolution (ADR) has been available for many years, but recently it has enjoyed a growing popularity. Even clients now request it. Lee Kanon Alpert has been a mediator and an arbitrator for 20 years; he was the American Arbitration Association’s first West Coast mediator and has assisted in developing the program that is now in place. But this is only the tip of Alpert’s iceberg. In addition to arbitrating and mediating privately, he specializes in administrative and governmental relations, business, commercial and construction, and real estate transactions and litigation.

Originally from Detroit, Alpert received his undergraduate degree in Education from the University of Southern California and his J.D. from Loyola University School of Law. Admitted to the California Bar in 1972, he began his legal career at Newson & Wolfberg in Beverly Hills, where he developed his dispute resolution skills through his then divorce and personal injury practice. In 1967, he co-founded what is now Alpert & Barr, a law firm which practices in the areas of administrative and government relations, bankruptcy, business, corporate, real estate, civil litigation, estate planning, insurance defense and mobile home law, among others. Alpert is a past member of the Los Angeles World Airports Board of Airport Commissioners; a past president of the Los Angeles Building and Safety Commission; a commissioner of the Los Angeles County Commission on Judicial Procedures; and co-chair of the California State Assembly Small Business Commission for the assembly speaker Robert Hertzberg.

Alpert is a strong supporter of ADR, especially arbitration. “There are a lot of benefits to arbitration,” says Alpert. “The most significant benefit is the ability to have it done expeditiously, by experts in the field and in a very timely fashion.” Parties enter into arbitration either by a contract requiring arbitration before a lawsuit may be filed or by a submission agreement, which is signed after a dispute arises. The process is very flexible, and the location, the applicable law, the bases of appeal, and the date and time can all be chosen by the parties. The parties also mutually choose the arbitrator and can select one for his or her expertise within the relevant area of law; the parties can even choose a panel of different experts for different issues. Although the unique facts of the case still need to be presented, there is a better chance that they will be understood, interpreted properly and will form the foundation for a fair decision in this context. The process also saves time and money, in that counsel does not need to take the time to educate a judge or jury on the law and issues.

“If an expert is trying your case, you better play to their expertise because that is what they want to hear, even if they don’t say that,” says Alpert. “Arbitrators and mediators don’t want to hear the [emotional aspects] because it won’t be a factor in the decision. Give me the facts, give me the law; I already know how it’s impacted you.”

With regard to his work in the public arena, Alpert does an extensive amount of arbitration and mediation work involving governmental entities, disputes between municipalities and also represents other clients before administrative boards and governmental bodies.

Some regulatory bodies are somewhat restricted in their ability to use the ADR process, both statutorily and constitutionally, but use arbitration and mediation to resolve disputes when they can. Administrative agencies do not generally arbitrate or mediate, but instead have their own rules and procedures to follow.

Cities and counties will use ADR more and more in the future, says Alpert, because of the tremendous amount of news exposure they experience when a dispute arises. Not only does arbitration cut down the possibility of media coverage, but the parties also usually agree to keep the facts of the case confidential. Another benefit of such confidentiality is that there is no case precedent that is necessarily set that others must follow, says Alpert.

Alternate dispute resolution has become so common that every real estate contract automatically includes a mediation/arbitration provision, as do many government contracts. As a result, Alpert believes that with regard to every civil matter, an attorney must at least discuss with the client the possibility of mediation or arbitration so that an informed decision can be made. Not only must an attorney explain the process itself, but also address the risks involved, such as potentially giving up the right to discovery, a limited right to appeal or the inability to keep certain facts from being revealed.

Strategically, an attorney must decide if a trial, arbitration or mediation is the best way of getting the most for a client and at what cost. “There are some cases where I would want a jury because I think I can get a bigger award because they are understanding,” says Alpert. “There are times when a person has truly been wronged, and if I go into an arbitration, the arbitrator . . . will give me my damages but isn’t going to give me the type of punitive damage this client truly deserves.”

It is true that the arbitration of a case can be completed within a few months as opposed to several years if tried in court. Although this saves clients money in the long run, initially there is a larger out-of-pocket commitment. Not only must clients pay attorney’s fees and experts’ fees, but also arbitrator’s fees, administration fees and possibly rental fees for the location of the arbitration. This may also be a factor in deciding whether to arbitrate a case.

However, once a case has begun, says Alpert, it is unlikely that there are other cases that will cause your case to be continued, which saves on re-preparation time and costs. “If you were to put arbitration on one scale and put civil trial on the other scale, you’re going to find in most cases that the positives involving arbitration far outweigh any negatives that anybody can come up with,” says Alpert.

In choosing an arbitrator, Alpert has found that the most critical factors are honesty and integrity. “You’re going to find a lot of knowledgeable, well-trained arbitrators, but you have to make sure they’re fair because there are fewer restrictions and rules,” says Alpert. “Large corporations want someone who is predictable and fair. They’ll take a loss but they know it’s not going to be a multimillion dollar loss and if it is it will be for the right reasons.”

It is also important to know as much as you can about your arbitrator. Alpert suggests reading the arbitrator’s resume, getting information from the ADR provider and finding out what type of law the arbitrator practices, if he or she is an attorney. The more detailed the knowledge, the better. In many instances, it can even make or break your case. And since arbitrations move more quickly than trials, attorneys should have everything prepared and be prepared for everything.

Overall, it can be a very satisfying process for all concerned, with special time, media and cost savings which are especially appealing to governmental entities.

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