

# LOYOLA LAWYER

One fact has become blatantly apparent—California’s legal system is floundering. The court system is overburdened, and no relief is visible on the immediate horizon. Frustrated by the congestion, more and more litigants are turning to alternative means to resolve their disputes.

**Alternative Dispute Resolution (ADR)** is a term of art used to refer to procedures for settling disputes other than litigation. ADR includes, but is not limited to, arbitration, conciliation, and mediation. Arbitration is actually very similar to litigation. It is a process of dispute resolution whereby the parties submit their dispute to a neutral third party (arbitrator) who has the power to render a final and binding decision.

**Conciliation and mediation**, by contrast, are much less adversarial. **Conciliation** is the settlement of a dispute in a friendly, non-antagonistic manner. It is often used before trials as a means of avoiding litigation or in labor disputes to avoid arbitration. **Mediation** is an informal process of dispute resolution in which a neutral third person (mediator) facilitates disputing parties to reach a settlement. Unlike arbitrators, mediators have no power to impose a binding decision on the parties.

Experts predict that with the growing congestion in the court system, ADR is the way of the future for the legal profession. For several Loyola alumni, ADR is already the way of today. Loyola alumni figure prominently into the ADR field both locally and nationally. Alumnus Robert H. Pitman, '94, on behalf of the Loyola Lawyer, recently interviewed some of these alumni to obtain their thoughts on ADR and the future of the law.

...**Lee Kanon Alpert**, '72, was the first mediator for the AAA on the West Coast. Soon after accepting his position on his first mediation, which was a family law matter, he met with Jerry Murase of the AAA and developed expanded mediation services into other areas of the law. **Alpert** noted the same trend of back-logged caseloads in the civil courts, as earlier faced by family law courts, and suggested mediation could successfully alleviate some of the strain in these other areas.

Under then AAA Regional Vice President Rocco Scanza’s guidance, the AAA took **Alpert’s** suggestion and working with **Alpert** and others to establish the mediation services center. The center was first introduced in San Francisco and then spread to Los Angeles. The center has flourished since its introduction,

and today, it is part of the AAA’s national program.

**Alpert** has mediated many very complicated cases and has received high praise for his work from the attorneys involved in those cases and from his peers. He views his role in mediation first as a listener and second as a facilitator.

Good listening skills are essential for all mediators to enable them to distinguish fact from fiction. **Alpert** noted that in many instances disputes are not purely legal matters. Often, parties’ egos or personal differences come into play. When such is the case, the mediator’s first job is to try and ascertain what the real dispute is.

...The role of the mediator is quite different from the arbitrator. After defining the dispute, the mediator then attempts to assist the parties in effectuating a solution that is comfortable for all involved. This is often very tricky, particularly since the mediator has no authority to impose a decision upon the parties. Their participation is strictly voluntary, and only their own commitment to the

process will allow them to reach a binding agreement.

**Alpert** opined that a lot of what he can do as a mediator depends on the existing relations between the parties. Unlike litigation, mediation can be a way of resolving disputes without dissolving the relationship. Thus, the stronger the relationship between the parties, the more flexibility the mediator may have to fashion an acceptable solution.



**LEE KANON ALPERT, CLASS OF '72  
FIRST MEDIATOR FOR AAA ON WEST COAST**

Principal/shareholder, **ALPERT & BARR, APLC IN ENCINO, CA**; expertise in administrative and governmental relations, business, commercial and construction arbitration, mediation and real estate transactions and litigation; member/past president, San Fernando Valley Bar Association, member, Panel of Arbitrators and Mediators, American Arbitration Association; co-chair, California State Assembly Small Business Advisory Commission; past chair/current member, Los Angeles County Commission on Judicial Procedures; AAA Outstanding Commercial Arbitrator of the Year, '84; past president, City of Los Angeles Board of Building and Safety Commissioners; past member of the Los Angeles World Airports Board of Airport Commissioners. (818) 881-5000. LKA1pert@AlpertBarr.com



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EXCERPTS FROM: **LOYOLA LAWYER**  
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by Robert H. Pitman, '94