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DIGEST

2005 APEX® AWARDS FOR PUBLICATION EXCELLENCE

Analyzing the Potential for ADR In Estate Planning Instruments

BY JOHN R. PHILLIPS, SCOTT K. MARTINSEN & MATTHEW L. DAMERON

With children filing suits against parents, parents countersuing their offspring, and families turning to courts to untangle their disputes, one has to wonder if our litigious society has reached its apex. The days of discreetly handling intra-family squabbles have given way to competing legal teams and years of litigation using scorched-earth tactics. We need only to peruse the daily newspaper or watch the nightly news to see families entering the courtroom, instead of the living room, to solve their problems.

CONTRACT CLAUSES

While most of these courthouse dramas continue to arise in the traditional domestic law context, an increasing number of them are entering the courts via legal actions relating to estate planning, including disputes over the administration of trusts and wills, which are the focus of this article.

Estate planning disputes can turn vicious, partly because they sometimes involve vast amounts of money, but also because they often are charged with intra-family emotions and conflict. For example, in the recent highly publicized dispute involving the Pritzker family in Chicago, two siblings have filed suit against their father claiming he raided their trust funds to move assets and benefit their cousins. Certainly, the amount of money in question was substantial, but the tantalizing public element of the case was not the money. Instead, the element that gave this story life in the national media was the emotionally charged subplots of betrayal and deceit.

In addition to satisfying a voyeuristic desire by the media to report on members of prominent and wealthy families litigating against one another, highly publicized estate planning disputes also provide a rare glimpse into the private and intricate finances of some of the nation's wealthiest families. Not only can this publicity be embarrassing, it also can expose the inner workings of the companies behind the family's wealth.

In light of the publicity surrounding the Pritzker dispute and other high-profile family business or estate planning disputes, prominent families should consider building alternative dispute resolution provisions into family trusts. The provisions will be a better, less costly, and, perhaps most important, a less public way of resolving disputes that may affect the family "jewels"—not to mention personal relationships between family members. These families should recognize that these issues should be addressed while there is harmony within the family, rather than after disputes arise.

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Estate Planning ADR

(continued from front page)

With this impetus in mind, we set out to develop a predispute progressive dispute resolution process for estate-planning documents. Unfortunately, there is a dearth of binding case law regarding the development of such a process. Some useful secondary resources, however, include Richard Z. Kabaker, Joseph F. Maier, Frank Gofton Ware, "The Use of Arbitration in Wills and Trusts," *Actec Notes* Vol. 17, No. 3 at p. 177 (1991); Steven M. Fast, "Structuring Trusts to Avoid Beneficiary Dissatisfaction," SGO12 ALI-ABA 29 (2001); Dominic J. Campisi, "Using ADR In Property and Probate Disputes," 9 *Prob. & Prop.* 48 (1995); Mary F. Radford, "An Introduction to the Uses of Mediation and Other Forms of Dispute Resolution in Probate, Trust, and Guardianship Matters," 34 *Real Prop. Prob. & Tr. J.* 601 (2000). In addition to using these resources, practitioners need to consult the controlling law for their specific jurisdiction.

Drafters should consider whether to impose a long waiting period between the trust and estates mediation and the arbitration.

Below is a brief overview of a multi-step ADR provision using these resources and the authors' additional research. Additionally, we have highlighted where the development of a dispute resolution clause for a trust might diverge from developing a traditional commercial arbitration provision. While using ADR clauses in an estate planning instrument such as a trust might sound novel, they have been used before and date back most notably to George Washington's will. This article provides a short roadmap for future practitioners whose clients, like Washington, wish to incorporate predispute mediation and arbitration into their estate planning documents to minimize family conflict or shield family disputes from the glare of public scrutiny.

The remainder of the article refers to paragraphs and provisions of the detailed trust dispute resolution provision that is reproduced beginning on page 12.

THE FIRST STEP

The first key decision is whether to have the provision be arbitration alone, or incorporate a mediation-arbitration program where the parties will mediate the dispute and then, if the mediation fails, proceed to binding arbitration.

In the interest of maintaining positive family relationships, strong consideration should be given to incorporating a mediation step into the dispute resolution clause. Thus, any disputes arising under the trusts will go to mediation and, if the mediation is unsuccessful, only then will they proceed to binding arbitration. The goal of requiring pre-arbitration mediation is to engage in a full, dispassionate discussion about the dispute in a less adversarial setting, and prevent a minor dispute from erupting into a full-blown legal battle.

Moreover, in addition to requiring mediation prior to arbitration, drafters should consider whether to impose a long waiting period between the mediation and the arbitration. In the example clause, a six-month waiting period is used to allow for a long deliberation period before initiating an arbitration. *See* ¶ 1(d). In an ordinary commercial setting, six months might well be too long, because the parties would quickly realize they are at an impasse. But a longer period may be beneficial for family relationships, because it provides the parties more time to work out a peaceful solution.

BINDING EFFECT

A threshold issue that must be addressed is whether arbitration can be binding on the trust beneficiaries, including minor, legally incompetent, unborn and unascertained beneficiaries (collectively, the "unavailable beneficiaries"). Just as there is little case law or scholarly commentary about arbitration clauses in estate planning documents, there is even less authority regarding the ability to bind the trust beneficiaries to an arbitration clause involving disputes relating to the trust.

To address this concern, practitioners may want to consider asking a court to modify the terms of an existing irrevocable trust to include ADR provisions. Under the Uniform Trust Code, a court may modify the terms of an irrevocable trust with the consent of the "qualified beneficiaries." See Uniform Trust Code § 411 (2000). In states that have not adopted the Uniform Trust Code, it might be possible to modify an irrevocable trust pursuant to a similar state statute or the common law. Assuming the proper procedures are followed under the applicable state law, a court order modifying an irrevocable trust will be binding on all present and future beneficiaries of the trust. Accordingly, court modification of an irrevocable trust to add alternative dispute resolution provisions should assure that the provision will withstand a future challenge by a disgruntled beneficiary.

With respect to the actual entry of an arbitration award that is binding on all the beneficiaries, including unavailable beneficiaries, a mechanism should be included in the arbitration clause that allows the arbitration panel to appoint someone to act in a role that is comparable to a guardian ad litem to represent the interests of any unavailable beneficiaries. See ¶ 3(d). To guarantee the competency of the independent individual representing these beneficiaries, the example clause mandates that the individual be a licensed, practicing lawyer who has devoted at least 10 years of his or her practice to wills or trusts.

MAINTAINING CONFIDENTIALITY

Another primary concern is how to maintain the confidentiality of both the mediation and the arbitration to the greatest extent possible. In the mediation section, the dispute resolution clause requires the consent of all adult beneficiaries and the trustee before any information from the mediation can be disclosed. See ¶ 1(g). Moreover, the

confidentiality provision in the mediation section explicitly states that no mediation statements may be used during the subsequent arbitration, if one occurs.

Similarly, making confidentiality a priority in the event an arbitration occurs often is a primary goal for the client. The arbitration section contains a standard confidentiality statement indicating that the existence, contents, or results of any arbitration are all confidential. See ¶ 5. In addition, consideration might be given to adding teeth to the confidentiality provision by allowing the arbitrator to maintain his or her jurisdiction for one year from the award date. During this time, the arbitrator may impose sanctions or even revoke his or her ruling as a penalty against any party who breaches the confidentiality provisions. Further, if a party breaches the confidentiality clause, then that breach is grounds for initiating another proceeding under the trust's dispute resolution provision, even if the breach occurs more than one year after the award date.

In addition to the possible enforcement mechanisms outlined above, another feature requires that the arbitration panel issue a reasoned opinion, and delineate how the opinion may be used. The clause states the reasoned opinion is to be physically separate from the award, and only the award may be filed with a court for the entry of judgment. See ¶ 2(i). If a court requires the parties submit the reasoned opinion, then it provides for it to be submitted under seal. Thus, with the separation of the reasoned opinion and the award, only a minimal amount of information will be filed with the court and, in turn, available to the general public if court enforcement is required.

CONSIDER TAX CONSEQUENCES

For trusts that are exempt from generation-skipping transfer, or "GST," tax, or other transfer taxes, arbitration provisions may present a unique problem. For trusts that are exempt from the GST, the construction or amendment of the trust instrument may cause the trust to lose its exemption. Thus, drafters must include appropriate language in the event an arbitration decision may have adverse tax consequences to the trust.

In the suggested provision, the arbitration tribunal's authority and jurisdiction are limited to preclude any decision that would cause adverse tax consequences to the trust. See ¶ 2(g). Moreover, the parties are authorized to obtain a private letter ruling from the Internal Revenue Service regarding the potential tax implications of the arbitration tribunal's decision. Finally, under this provision, if the arbitrator's decision might have adverse tax consequences and there would be no adverse tax consequences to the trust if a court resolved the dispute, then the arbitrator must enter an award stating the arbitrator has reached the limit of his or her authority. If this occurs, then the trustee or an interested party may petition a court to resolve the dispute.

It is important to incorporate flexibility because it is impossible to foresee every dispute that may arise; it is possible that there may be disputes that relate to only some of the beneficiaries.

PICKING PROCEDURES

In the example clause on the next page, a service provider has been selected that has a specific set of rules governing wills and trusts. Any service provider could be inserted, but specific reference should be made to the applicability of rules.

Flexibility is a feature in the design of this arbitration panel. As a default, the arbitration will be conducted by one arbitrator, but any arbitration party may request a three-arbitrator panel, with the attendant responsibility of covering the additional cost. See ¶ 2(d). The arbitrator must be a practicing lawyer or retired judge who substantially devoted his or her practice to wills and trusts for at least 10 years prior to the arbitration. In the event there is a three-arbitrator panel, at least one of the arbitrators must satisfy these qualifications.

STANDING AND PARTICIPATION

Sometimes, given the complexity and scope of other trust provisions, standing to participate in the dispute resolution proceedings can be a critical issue for the family. Certainly, the trustee and the qualified beneficiaries—that is, those who may receive trust distributions—have standing to participate in the proceedings. But this issue becomes more difficult when a beneficiary is unavailable or is a charitable organization. As noted above, this dispute resolution clause allows for the appointment of an independent individual to represent the interests of any unavailable beneficiaries. See ¶ 3(d).

In the example, if the beneficiary is a charity, then standing to participate turns on whether the trust states the distribution should be made to a specified charitable organization or a class of charitable organizations. See ¶ 3(c). If the trust names a specific charity as a beneficiary, then that charity—and not the state's attorney general—has standing to participate in the proceedings. If the trust names a class of charitable organizations, then only the state attorney general or, at the trustee's option, a designated public charity, have standing to participate in the proceedings.

The mediator or arbitrator has discretion to determine which beneficiaries must participate, or have the right to participate, in the mediation or arbitration proceeding. See ¶ 3(b)(iii). It is important to incorporate flexibility because it is impossible to foresee every dispute that may arise; it is possible that there may be disputes that relate to only some of the beneficiaries.

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Sample Trust Agreement ADR Clause

ARTICLE X.
ALTERNATIVE DISPUTE RESOLUTION

Any dispute arising out of or relating to the construction, interpretation or validity of this Trust Agreement or the administration of any trust estate created herein or any matter related thereto, whether such dispute is between the Trustee and one or more of the beneficiaries (including any claimed beneficiaries) or is between or among such beneficiaries (a "Dispute"), shall be submitted to mediation and, if mediation is unsuccessful, finally resolved by binding arbitration, as provided in this Article X. Any mediation or arbitration under this Article X shall be administered by the [insert provider name] or its successor organization(s). If neither [the provider] nor any successor to it is then in existence, the mediation or arbitration shall be administered by another national arbitration organization or service provider mutually agreed to by the Trustee and qualified beneficiaries as hereinafter defined (individually an "interested party" or collectively the "interested parties"), or if the interested parties fail to reach such an agreement within thirty (30) days after an interested party requests mediation or arbitration of any such Dispute, by another national arbitration organization or service provider selected by the then acting Judge of the [local probate court]. The following provisions shall apply to any such mediation or arbitration proceeding:

(1) Prior to initiating an arbitration proceeding, the parties to the Dispute must first attempt in good faith to settle the Dispute by mediation using a neutral, independent mediator. The following provisions shall apply to any such mediation proceeding:

(a) The mediation shall be conducted in accordance with the [designate rules] to the extent those rules do not conflict with the provisions of this Article X.

(b) The mediator shall be selected from a roster of neutrals provided by [the provider]; provided that the mediator may be any person agreed upon by all interested parties. If the parties fail to agree, within 20 days after submission of a roster from [the provider], on who the mediator should be, the mediator shall be appointed in accordance with the [designated rules].

(c) The mediation may be attended by all interested parties. If an interested party refuses to participate in the mediation when requested to do so by the mediator, such interested party shall not have the right (but may nevertheless be compelled) to participate in any arbitration or other proceedings relating to the Dispute. The Dispute shall not proceed to arbitration unless and until the mediation is concluded in accordance with subparagraph (d) below.

(d) The mediation will be concluded upon the first to occur of the following events: (i) the Dispute is resolved by an agreement in writing signed by all participating interested parties; (ii) the mediator declares in writing that the parties are at impasse and that all efforts to amicably resolve the Dispute have been exhausted; (iii) the mediator states in writing, or all parties agree, that further efforts to resolve the Dispute through mediation would be futile; or (iv) six (6) months have passed since the matter was referred to the mediator.

(e) Any statute of limitations that may apply to a claim asserted in the Dispute under mediation shall be tolled from the time the request for mediation is made to [the provider] until 30 days after the time the mediation is concluded pursuant to subparagraph (d) above.

(f) The administrative costs of the mediation, including the fee and expenses of the mediator and the attorney's fees and expenses of the Trustee, shall be paid from the trust estate unless otherwise agreed by all interested parties. The attorney's fees and expenses of the other parties shall not be paid from the trust estate unless otherwise agreed by all interested parties.

(g) The mediation proceedings shall be confidential and may not be disclosed by the Trustee, any beneficiary, the mediator, or the representatives of any of them, without the prior written consent of the Trustee and all of the adult and otherwise legally competent beneficiaries. Neither a beneficiary nor the Trustee nor the mediator shall be subject to subpoena for testimony or otherwise questioned regarding statements made during the course of the mediation and no such statement shall be admissible in any subsequent arbitration.

(2) Except as otherwise provided below, if the Dispute is not resolved by mediation in accordance with subparagraph (1) above, any interested party may file a request for arbitration of the Dispute with [the provider]. The following provisions shall apply to any such arbitration proceeding:

(a) If the Trustee and all of the adult and otherwise legally competent qualified beneficiaries consent, the Dispute may be resolved in a court having jurisdiction thereof rather than by arbitration.

(b) The terms of this Article X shall not preclude the Trustee or any beneficiary or beneficiaries from filing an action to modify, amend or vary the terms of this Trust Agreement in a court having jurisdiction thereof.

(c) The arbitration shall be conducted in accordance with the Federal Arbitration Act set forth in Title 9 of the U.S. Code and the arbitration rules [the provider] determines should apply based on the issues raised in the Dispute (the "Rules"), as modified by this Article X.

(d) The arbitration shall be conducted by a single arbitrator, unless any party to the arbitration requests three arbitrators, in which event the arbitration shall be conducted by a panel of three neutral arbitrators (in either event, the "Tribunal"). At least one arbitrator shall be a practicing lawyer or

retired judge whose practice has been devoted substantially to wills or trusts for at least ten years prior to the arbitration. The Tribunal shall be selected in accordance with the Rules unless otherwise agreed by all parties to the arbitration.

(e) Except as otherwise provided in the last sentence of this subparagraph (e), the administrative costs of the arbitration, including the fees and expenses of the Tribunal and the attorney's fees and expenses of the Trustee, shall be paid from the trust estate unless otherwise agreed by all interested parties. The attorney's fees and expenses of the other parties shall not be paid from the trust estate unless otherwise agreed by all interested parties. The additional administrative costs incurred for a panel of three arbitrators, including the additional arbitrators' fees and expenses, shall be paid by the interested party or parties that requested such a panel, unless all parties agreed that there should be three arbitrators.

(f) The Tribunal shall apply the substantive law, the law governing the attorney-client privilege and work product immunity and, if applicable, the law of remedies of the State of _____. The Tribunal is expressly granted the power to determine its jurisdiction and to rule on the arbitrability of any Dispute. The Tribunal may, if the Tribunal determines that the interests of justice and economy would thereby be served, order the consolidation of two or more arbitration proceedings brought under this Article X.

(g) The Tribunal shall have no power to make any decision that would cause the trust estate to be subject to gift, estate or generation-skipping transfer ("GST") taxes. Any decision by the Tribunal may be conditioned upon one or more interested parties obtaining a ruling from the Internal Revenue Service that the decision will not cause the trust estate to be subject to gift, estate or GST taxes, and the Tribunal may require one or more interested parties to request such a ruling from the Internal Revenue Service. Notwithstanding the foregoing, if the Tribunal determines that a Dispute that would otherwise be subject to arbitration under this Article X would have adverse tax consequences to the trust estate and there would be no such adverse tax consequences if the Dispute were to be resolved solely by a court having jurisdiction thereof, then the Tribunal shall enter an award stating that it has reached the limit of its jurisdiction, and the Trustee or any interested party may then submit the Dispute to such a court to be resolved by such court.

(h) Judgment upon the award rendered by the Tribunal may be entered in any court having jurisdiction thereof, provided, however, that if an appeal from an award is taken in accordance with subparagraph (j) below, judgment may be entered only upon the award of the Appeal Tribunal.

(i) The Tribunal shall issue a reasoned opinion in conjunction with its award; provided, however, that the reasoned opinion shall be physically separate from the award in such a manner that the filing of the award in a court of competent jurisdiction for enforcement or other purposes may be done without the public disclosure through filing of the reasoned opinion. The reasoned opinion shall be delivered only to the parties to the arbitration and, if the Trustee is not a party, to the Trustee. The reasoned opinion may be filed with a court only if the court orders it to be filed under seal.

(j) The award of the Tribunal shall be final and binding on the Trustee and all beneficiaries of the trust estate (including all unavailable beneficiaries), subject to the provisions of this subparagraph. If the arbitration is conducted by a single arbitrator, no party shall seek to enter the award in any court until 30 days after the award is issued. Within 30 days after such an award is issued by a single arbitrator, any interested party may appeal an adverse award to an Appeal Panel of three neutral arbitrators, by delivering a notice of appeal to [the provider] and all parties to the arbitration, in which event the award of the Tribunal shall immediately be considered to be an interim award. The Appeal Panel shall be appointed in accordance with the Rules and shall include at least one arbitrator with the same qualifications as required in subparagraph (d) above. The Appeal Panel shall, pursuant to such procedures as the Appeal Panel may establish, conduct a review of the award and the accompanying reasoned opinion of the Tribunal for errors of law, based on the record as it existed when the hearing was closed by the Tribunal. The Appeal Panel shall then issue an award, which will be the final award for purposes of the Federal Arbitration Act, that may either affirm, modify, or supersede the award of the Tribunal. The Appeal Panel shall explain its decision in a reasoned opinion, physically separate from its award, as provided with respect to and subject to the same restrictions as the award of the Tribunal.

(3) The following rules shall apply in determining who has the right to participate in mediation and/or arbitration proceedings under this Article X:

(a) The Trustee shall have the right to participate in the proceedings.

(b) Each qualified beneficiary shall have the right to participate in the proceedings. The term "qualified beneficiary" means:

(i) A person or entity who is entitled or eligible, or claims to be entitled or eligible, to receive distributions of income or principal from the trust estate on the date the proceedings are commenced;

(ii) A person or entity who would be entitled or eligible, or claims to be entitled or eligible, to receive distributions of income or principal from the trust estate on the date the proceedings are commenced if the trust terminated on that date; and

(iii) Any other person or entity that the mediator or Tribunal

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determines should have the right to participate in the proceedings to protect the interests of such person or entity.

(c) If a specified charitable organization is a qualified beneficiary, then such specified charitable organization shall have the right to participate in the proceedings. If no specific charitable organization is a qualified beneficiary but a class of charitable organizations are qualified beneficiaries, then only the Attorney General of _____ (or, at the option of the Trustee in the Trustee's sole and absolute discretion, only [designate public charity] in lieu of the Attorney General of _____) shall have the right to participate in the proceedings on behalf of such class and the arbitration shall be binding on each member of the class.

(d) The parties shall have the right to rely on virtual representation in the proceedings to the same extent that the parties would have the right to rely on virtual representation if the Dispute were litigated in a _____ state court. The Tribunal shall determine with respect to each Dispute if the adult and otherwise legally competent individual qualified beneficiaries adequately represent the interests of the minor, legally incompetent, unborn and unascertained beneficiaries who are qualified beneficiaries (the "unavailable beneficiaries"). If the Tribunal determines that there is adequate representation of the interests of the unavailable beneficiaries, the Tribunal shall not appoint a person to serve as a guardian ad litem to represent those interests. If the Tribunal determines that there is not adequate representation of the interests of the unavailable beneficiaries, the Tribunal shall appoint a person to serve as if he or she were a guardian ad litem appointed by a _____ court to represent those interests, whose expenses shall be paid from the trust estate. The person appointed to serve as if he or she were a guardian ad litem shall be a practicing lawyer licensed to practice law in the State of _____ whose practice has been devoted substantially to wills or trusts for at least ten (10) years prior to his or her appointment.

(4) The place of the arbitration and/or mediation proceedings shall be in _____ unless otherwise agreed by all participants.

(5) Except as may be required by law, the existence, content or results of any mediation or arbitration hereunder shall not be disclosed by the Trustee, any beneficiary, mediator or arbitrator, or the representatives of any of them, without the prior written consent of the Trustee and all of the adult and otherwise legally competent beneficiaries. The Tribunal shall have continuing jurisdiction and authority for one (1) year from date of the award to enter such sanctions as the Tribunal deems appropriate against any party who violates, or whose representative violates, the provisions of this subparagraph (5), including the rendering of a decision against such party on any or all issues in the arbitration proceeding or revocation of a decision favoring such party. Notwithstanding the above, nothing shall prevent any interested party from invoking remedies otherwise available at law with respect to an award hereunder, but no application for any such remedy shall attach the reasoned opinion of the Tribunal or the Appeal Panel unless the court orders it to be filed under seal. Any interested party may initiate a new proceeding under this Article X to address any violation of the provisions of this subparagraph (5).

(6) If any provision of this Article X is ruled to be unlawful or unenforceable by a court of competent jurisdiction, other than the restriction regarding tax consequences contained in subparagraph (2)(g) above, the provision shall be deemed severable and shall not restrict the enforcement of any and all other provisions regarding dispute resolution contained herein.

—By John R. Phillips, Scott K. Martinsen & Matthew L. Dameron

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In many cases, the trust will continue well beyond the lifetimes of its drafters and current family members. Thus, there is a need to incorporate a method in which unnamed or unascertained parties can be represented in the processes if the mediator or arbitrator feels it is necessary.

FEES' FAIRNESS

For some clients, the primary impetus for implementing the dispute resolution processes into trusts is confidentiality, often overriding concern about litigation costs. In order to ensure fairness and enhance the clause's enforceability, consideration should be given to providing that the trust pay the fees associated with submitting a dispute, except the challenging party's attorney's fees.

In this example, the trust is required to pay the mediation's administrative fees, including the mediator's fee. See ¶ 1(f). Similarly, under the clause's arbitration provision, the trust pays the administrative fees, the arbitrator's fees, and the trustee's attorneys' fees. See ¶ 2(e). If a party requests a panel of three arbitrators, then that party is responsible for the additional arbitrators' fees, unless all the parties, including the trustee, agree there should be three arbitrators.

The clause's fee provisions are intended to protect beneficiaries who may decide to challenge the trust and its administration. Again, a major goal is to maintain positive familial relationships and minimize the financial burden the dispute resolution clause imposes on beneficiaries.

APPEALS PROVISION

In the event a party is not satisfied with the arbitration award of a single arbitrator, the clause provides a process in which the parties can appeal the award using a service provider appeal procedure. Notably, the trust requires that at least one individual on the appeal panel have qualifications that are comparable to the arbitrator qualifications set out in paragraph 2(d). See ¶ 2(j). Additionally, the appeal provision also requires the physical separation of the reasoned opinion and the award.

The traditional arguments for ADR may not be persuasive to a family that wants to keep disputes out of the public eye.

The incorporation of the appeal provision is intended to maintain the confidentiality of the arbitration proceedings and the subsequent award. An internal appeal process provides a means where an aggrieved party can seek further review, but without the negative publicity that inevitably would follow.

* * *

Dispute resolution clauses in family trusts or other estate planning instruments pose special challenges, even for practitioners who are well versed in alternative dispute resolution. The traditional arguments for ADR—it's faster and less expensive—may not be persuasive to a family whose first concerns are maintaining its familial bonds and keeping disputes out of the public eye. In fact, as drafted, the extended six-month mediation timeline may pose a tradeoff of timeliness for confidentiality.

But the sample clause's primary goal is to facilitate the resolution of family disputes in a more amicable and private manner than the court system would allow. As the use of predispute mediation-arbitration clauses are incorporated into estate planning documents, we should all be prepared to let our clients' goals guide the drafting instead of our traditional concepts of alternative dispute resolution.

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tions and unethical behavior.

- Advocacy in International Arbitration—Panelists from Washington, D.C., Madrid, Paris, and Montreal discuss the problems and opportunities that arise when representing clients in front of international tribunals.
- Drafting Contracts that Manage the Risk of Conflict—Veteran CPR meeting presenters will discuss real-life contract examples and how they fit into negotiating a customized conflict management positions.
- "Partnering" Outside of Construction—Complex-project managers long have created communications methods to identify conflicts early, so building efforts won't be interrupted. This seminar will apply partnering principles beyond the construction site to information technology operations.
- Corporations' Call for Diversity in ADR Services—Corporate counsel explain why ADR and legal services providers must diversify their staffs to serve their clients' needs.
- Collaborative Law in the Civil Context—A panel will discuss how cutting-edge practitioners are adapting the principles of collaborative law, from the family mediation area, to problem solving in commercial conflicts.
- Corporate Counsel Roundtable—Senior attorneys in global companies share their consensus building, cor-

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