

Tampa Chapter
Federal Bar Association Seminar
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Alternative Dispute Resolution

I. Arbitration

- A. Controlled by Federal Arbitration Act - 9 U.S.C. §§ 1-16
- B. Recent Developments at U.S. Supreme Court
 - 1. *American Express Co., v. Italian Colors Restaurant*, 133 S.Ct. 2304 (2013)
 - 2. *Oxford Health Plans, LLC v. Sutter*, 133 S.Ct. 2064 (2013)
- C. Issues
 - 1. Arbitrability decided by the Court, not arbitrators.
 - 2. Waiver if not demanded before participation in litigation.
 - 3. Contract can determine procedure.
 - 4. Rules / Procedure, AAA, FINRA, etc.
 - 5. Limited discovery.
 - 6. Expenses – pay the panel.
 - 7. Extremely limited review

II. Mediation

- A. Local Rules, Chapter 9, Court Annexed Mediation
- B. Approved mediators – Middle District website
- C. Process – How to Succeed
 - 1. Choose mediator – First chance to agree.
 - 2. Prepare your client.
 - Explain process.
 - Be realistic about money.

3. Opening Statements
 - Don't waive.
 - Only chance to talk to other side.
 - Look at them not the mediator.
4. Don't "hide" your evidence.
5. Surprises don't usually work.
6. Elements of persuasion.
 - Principle of scarcity.
 - Principle of obligation.
 - Principle of authority.
 - Principle of consensus.
 - Principle of consistency.
 - Principle of liking.