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Alternative dispute resolution in the United States: an international perspective for the Republic of Uzbekistan

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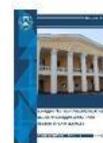


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ALTERNATIVE DISPUTE RESOLUTION IN THE UNITED STATES: AN INTERNATIONAL PERSPECTIVE FOR THE REPUBLIC OF UZBEKISTAN

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РЕШЕНИЕ АЛЬТЕРНАТИВНЫХ СПОРОВ В СОЕДИНЕННЫХ ШТАТАХ: МЕЖДУНАРОДНАЯ ПЕРСПЕКТИВА РЕСПУБЛИКИ УЗБЕКИСТАН

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АМЕРИКА ҚЎШМА ШТАТЛАРДАГИ МУНОЗАРАЛИ МАСАЛАЛАРНИ ҲАЛ ҚИЛИШ: ЎЗБЕКИСТОН РЕСПУБЛИКАСИ УЧУН ҲАЛҚАРО ПЕРСПЕКТИВА

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Annotation: *the Republic of Uzbekistan currently is considering a draft law on mediation. With regard to this, the article presents a brief account of the history and use of alternative dispute resolution in the United States, it also offers a comparison of the draft law with principles that is considered to be best practices for successful ADR programs in the United States.*

Keywords: *mediation, alternative dispute resolution (ADR), magistrate judges, mediator, ADR programs, ethical principles.*

Аннотация: *ҳозирги кунда Ўзбекистон Республикасида “Медиацiя тўғрисида”ги Қонун лойиҳаси кўриб чиқилмоқда. Шу муносабат билан АҚШда низоларни муқобил ҳал этишининг чоралари ва қўллаш тарихи қисқача таҳлил этилган, шунингдек мазкур қонун лойиҳаси АҚШда энг илгор деб топилган низоларни муқобил ҳал этиш амалиёти принциплари билан таққосланган.*

Калит сўзлар: *медиацiя, низоларни муқобил ҳал этиш, магистрат судьялари, медиатор, низоларни муқобил ҳал этиш дастурлари, одоб-ахлоқ принциплари.*

Аннотация: *в настоящее время в Республике Узбекистан рассматривается проект закона о медиации, в связи с этим в статье представлен краткий анализ истории применения в США мер альтернативного разрешения споров, также представлено сравнение законопроекта с принципами, которые в США признаны наилучшими практиками для успешности программ АРС.*

Ключевые слова: *медиация, альтернативное разрешение споров (АРС), судьи магистратов, медиатор, программы АРС, этические принципы.*

In 2017, the Republic of Uzbekistan published a draft law seeking to regulate the use of mediation and, in early 2018, the Legislative Chamber of the OliyMajlis adopted the law in its first reading[1]. Across thirty-eight Articles, the draft law establishes its purpose (to regulate the field of mediation), its scope (the use of mediation in civil, labor, family, and business disputes), and establishes the rights and obligations of parties in mediation, as well as the rights, duties, and responsibilities of the mediator.

Mediation is an internationally recognized alternative dispute resolution (ADR) [2] process intended to make the legal process take less time and cost money for the parties. To do this, an impartial, independent mediator works with the parties to help them reach a mutually acceptable solution. Article IV of the draft law provides definitions of mediation, mediator, and amicable agreement that echo this belief. Further stated in Article V of the draft law, mediation requires basic principles such as legality, voluntariness, confidentiality, cooperation and equality of parties, and the independence and impartiality of a mediator.

As the Republic of Uzbekistan seeks to expand and regulate the use of mediation, the authors here explore some of these basic principles while presenting a brief summary of the past and current use of ADR in the United States. The authors also present guidelines for creating well-functioning ADR programs and educational programs for training mediators to do their job effectively. It is important to note that the authors do not take a position on the draft law generally or with regard to any of the specific articles mentioned here. Whether or not the Republic of Uzbekistan passes the draft law on mediation, the authors believe that the below offers helpful background regarding the use of ADR in the United States.

I. History and Use of ADR in the United States.

The United States federal court system consists of ninety-four district courts that often create independent procedures to improve the functioning of their court. Thus, ADR procedures vary among the districts and have done so since the beginning of ADR. In 1978, three districts adopted rules for a mandatory arbitration program for selected cases [3]. By 1985, ten federal district courts used court-annexed arbitration.

Court-annexed arbitration is a process in which attorneys and their clients attend an arbitration hearing led by a neutral arbitrator or panel of three arbitrators. Attorneys for each side of the case present their case in an expedited, adversarial hearing. Then, the arbitrator(s) issue a decision based on the facts and applicable law. This is generally a non-binding decision, meaning that the parties may accept the decision, in which case it becomes the final decision of the court, or they may request a trial [4]. Three years later, Congress provided statutory guidance on how arbitration programs should operate [5].

The use of ADR rapidly expanded in the 1990s in response to a series of laws that still guide the use of ADR in the United States federal courts today. For example, the Civil Justice Reform Act of 1990 (CJRA) [6] required all ninety-four federal district courts to adopt procedures to make federal civil litigation less expensive and take less time. The CJRA offered financial incentives to adopt these procedures, and many district courts used those incentives to develop ADR programs [7], many of which are still used by those courts today.

In 1997, the Judicial Conference of the United States, the policymaking body of the United States Judiciary, submitted to the U.S. Congress a report supporting the further use of ADR. The report stated that “many courts have shown the ability and commitment to administering court-annexed ADR programs under judicial supervision that yield increased satisfaction with the court’s fairness and responsiveness while not increasing cost or delay” [8]. Twenty years later, the success of an ADR program might still be judged by those same factors: Is the ADR process fair? Is it responsive to litigants’ needs? And does it achieve its objectives without undue increases in cost or delay in getting the case decided? As the Republic of Uzbekistan considers regulating and expanding the use of mediation, an evaluation of these objectives would help to assure that mediation in Uzbekistan meets the needs of the judicial system and the people served.

One of the most important pieces of U.S. legislation on the topic of ADR was the ADR Act of 1998, which mandated ADR in all of the districts [9]. Specifically, the ADR Act of 1998 required each district to:

- Authorize the use of ADR processes in all civil actions
- Devise and implement its own ADR program and promote its use
- Examine the effectiveness and possible improvements to an ADR program if one already exists
- Designate an employee to implement, administer, oversee, and evaluate the court's ADR program
- Adopt processes to make neutrals available for parties and develop procedures for selecting neutrals that meet specified qualifications and training requirements
- Establish the amount of compensation, if any, that each arbitrator or neutral shall receive

The ADR Act provided guidance that applied across different types of ADR, including arbitration, mediation, and early neutral evaluation [10]. While arbitration and mediation are briefly described above, it is important to distinguish between mediation and both arbitration and early neutral evaluation processes.

Mediation, as defined in Article IV and V of the draft law and in the United States, involves voluntary negotiation between parties, facilitated by an impartial and independent third party mediator, in order to achieve a mutually agreeable outcome. Unlike in arbitration or trial, the parties in mediation are responsible for negotiating the mutually acceptable agreement that ends their dispute. The neutral's role is to facilitate and, when possible, improve communication between the parties and generate options for settlement. Mediators should not make the final judgment or lead the parties into an outcome they do not support. Mediation sessions are generally less formal than arbitration hearings, though they remain confidential and should be attended by both the attorneys and their clients [11].

In early neutral evaluation, the parties (usually through attorneys) present their arguments to a neutral third party evaluator who then gives the parties a nonbinding evaluation of the strengths and weakness of their case. In early neutral evaluation, the neutral evaluates each side's positions in an effort to streamline the case. This is a less facilitative approach than in mediation, and the goal of the evaluator is not just to settle the case. The evaluator is usually trained in law and able to offer guidance on the next steps for the case, providing parties on both sides of the dispute with a new perspective about their case [12].

In 2011, the Federal Judicial Center (FJC) researched which ADR processes were authorized and used across the ninety-four U.S. federal district courts [13]. The largest number of district courts authorized more than one type of ADR process. Of districts that only offered one type, the most common type offered was mediation [14]. Many courts also use magistrate judges to settle cases. According to separate statistics maintained by the U.S. Courts, between 2012 and 2016, magistrate judges across the nation conducted an average total of about 22,000 settlement conferences/mediations each year [15]. However, as will be described below, settlement conferences held by judges and mediations with impartial mediators are different types of ADR. Whichever ADR process is used, though, it is important for the court to ensure that the ADR process is fair and impartial and responsive to the parties' needs. The next section assesses attributes that should be examined when creating or evaluating an ADR program.

II. Attributes of Well-Functioning ADR Programs

In 1997, the Judicial Conference Committee on Court Administration and Case Management noted eight attributes of a well-functioning court ADR program [16]. This section of the article will proceed through each of the attributes, with references to the United States and the Republic of Uzbekistan, as applicable.

Rules. There should be written rules that define an ADR program's goals and characteristics. Most, if not all, of the ninety-four U.S. federal districts explain their use of ADR or settlement conferences in their court's local rules. One example is the Western District of Pennsylvania, which describes ADR in its Local Rules and provides a separate "ADR Policies and Procedures" document outlining its use of ADR, defining its processes, and highlighting the role of confidentiality [17]. The Republic of Uzbekistan also took this important step in 2017 through its draft law on mediation. The draft law includes Articles to ensure the rights and obligations of the parties to mediation (Article 12), the rights, duties, and responsibilities of the mediator (Article 14), as well as the Articles discussed above regarding the law's purpose and scope. Rules can offer helpful guidance when developing a mediation program, but they can also serve as a standard to compare the program to in later years to make sure it still meets its purpose. For example, if the draft law is enacted in 2018 and the mediation process is regulated accordingly, researchers in five years can assess whether the mediation program still meets the goals of the program and still follows best practices.

Administration. ADR programs should also provide for administration to help the program run effectively and efficiently. In the United States, the level of administration in court ADR programs varies. For example, in a few United States federal district courts there is a full-time ADR administrator who oversees the entire ADR process. These administrators might maintain a roster of active neutrals, establish and maintain rules on such issues as training and compensation, and monitor cases through the legal process. The majority of district courts use a specified judge or a member of the clerk's office to administer the program in addition to their regular duties.

In addition, some district courts do not offer mediation or arbitration. Instead, they only offer settlement conferences with judges, which is not the same as mediation. In those courts that only offer settlement conferences with judges, it is essential that courts make sure that the judge leading the settlement conference is impartial and that confidential information revealed during the settlement conference is not communicated to the trial judge or anyone else. For this reason, the settlement conference judge should not be the judge deciding the case. Assigning impartial judges to settlement conferences might require administrative procedures.

In addition, an administrator might be necessary to oversee a list of approved mediators. In Article 15 of the draft law on mediation, the Ministry of Justice of the Republic of Karakalpakstan, the justice departments of the regions, and the city of Tashkent will maintain a list of approved, professional mediators, which will be placed on their official websites. Maintaining both the list and the official website requires administrative personnel who also must make sure that the list includes the required information listed in Article 15 such as each neutral's name, location, and area of specialization.

Training and Experience of Neutrals. ADR programs should provide specific levels of training and experience for neutrals. The quality of the neutral is one of the most important factors in the effectiveness of the ADR process [18], and effective training is often required to achieve that quality. The FJC provides training programs for mediators who are employed by the United States Courts, as described in Part III below. Neutrals (which includes mediators, arbitrators, and evaluators) benefit from experience with the judicial system, and the parties benefit from a neutral who is knowledgeable, trustworthy, and impartial. Specific training and experience requirements can vary based on the type of ADR process used. This is understandable as an arbitrator or early neutral evaluator provides a type of judgment based on the law and facts of the case, which requires a legal background. Mediators, however, focus more on facilitation and getting the parties to work together to reach an amicable agreement, which requires more experience in psychological methods.

To better explain this, consider the training requirements of one U.S. federal district court, the Western District of Pennsylvania.

Mediators. Mediators who are also attorneys must have been admitted to practice law for at least seven years and must have significant litigation experience in the federal court, forty hours of mediation trainings (including sixteen hours of participating in practice mediation sessions), and a showing of strong mediation skills [19]. Mediators who are not attorneys can also be used but only if the parties consent. Non-attorney mediators must still be knowledgeable of civil litigation in federal courts and have forty hours of training and strong mediation skills. But they must also have experience mediating at least five cases and appropriate professional credentials in their non-law discipline [20].

Arbitration. Arbitrators must have been attorneys for at least ten years and must also (1) have spent at least half of their professional work time on court litigation for at least five years, (2) have substantial experience as a neutral, and (3) agree to model standards of conduct for arbitrators [21].

Early Neutral Evaluation. Early neutral evaluators must have been attorneys for at least 15 years, and possess (1) substantial experience in civil litigation in the federal court, (2) substantial expertise in the subject matter, (3) the appropriate temperament and ability to listen and facilitate communication, and (4) the ability to adhere to model standards of conduct [22].

In the draft law on mediation, Article 13 provides the requirements for mediators. Both Article 13 and Article 15 note a "special training course under the program of preparation of mediators, approved by the Ministry of Justice of the Republic of Uzbekistan." While Article 13 does not specify the nature or content of the training course, suggestions are provided in Part III of this article so that mediators are best prepared to help the parties reach a mutually acceptable agreement.

Ethical Principles. There should be written ethical principles for neutrals. In 1997, the Committee also released eight ethical principles for ADR neutrals. They were:

1. Neutrals must act fairly, honestly, competently, and impartially.
2. Neutrals should disqualify himself or herself if there is a conflict of interest arising from a past or current relationship.

3. Neutral should avoid future conflicts.
4. Neutral should disclose any facts or circumstances that may give rise to bias or an appearance of bias.
5. Neutral should refrain from soliciting legal business from an ADR participant.
6. Neutral should protect confidential information obtained during the ADR process.
7. Neutral should refrain from communicating with the assigned judge.
8. Neutral should timely disclose all fee and expense requirements.

These principles are intuitive. Neutrals should be just that: neutral. Any act of dishonesty could affect the relationship between the parties and the neutral and undermine the legitimacy of the process. Thus, it is essential that the neutrals remain of good moral character and remain unbiased. They are there to serve the interests of the parties, not their own interests.

Similarly, Article 13 of the draft law on mediation requires mediators to comply with the Code of Professional Ethics of Mediators approved by the Chamber of Advocates of the Republic of Uzbekistan. Article 14 also addresses ethical responsibilities for mediators in the Republic of Uzbekistan. For example, mediators must explain the purpose of mediation, as well as the rights and duties of the parties. If there is a situation that could lead to the mediator no longer being impartial, the mediator must inform the parties. Article 14 also notes that the mediators can be liable for damages caused by mediation, and Article 36 provides that parties will be liable for violating the legislation on mediation. However, the draft law does not offer examples of those penalties and assurances that they are matched to the violations.

Compensation. Compensation rules should be explicit and indigent parties should be excused from paying the neutrals. The ADR Act of 1998 explicitly required all district courts to “establish a local rule or policy regarding the compensation, if any, of neutrals” [23]. The Act allowed individual courts to maintain discretion over whether to offer pro bono services.

The 2011 survey of U.S. federal district courts found a wide range of compensation structures. Almost two-thirds of courts that authorize mediation require parties to pay the mediator’s fee; only a few provided free non-court mediators [24]. Some mediation programs offer a limited number of free mediation hours (typically 4-6) before the parties are required to pay unless the mediator agrees to waive the fee [25]. For arbitration, it is far more likely in the United States for the court, not the parties, to pay the arbitrator [26]. It is important to remember, however, that some districts use settlement conferences with judges as their form of ADR; some only use this process and do not use other processes such as mediation. These conferences place no additional expense on the parties, except the cost of attorney representation. However, even when the neutral is provided free of charge, parties often have to pay the attorneys’ hourly fees, which can get expensive with long sessions.

While Article 13 of the draft law on mediation notes that being a mediator is not an entrepreneurial activity, Article 14 states that mediators in the Republic of Uzbekistan can demand reimbursement of expenses incurred due to the mediation. Article 30 further discusses compensation, noting that mediation can be performed either on a paid or unpaid basis. Professional mediators, who are attorneys, can demand compensation. Non-professional mediators are not compensated for the mediation, but should be reimbursed for expenses incurred in connection with the mediation, such as travel expenses, accommodations, and meals. Overall, for mediation to be voluntary and encouraged, it must not be cost prohibitive and the compensation arrangement must be agreed upon by the parties and the mediator.

Confidentiality. Confidentiality should be well-defined. The ADR Act of 1998 established confidentiality standards for the ADR process [27]. The level of confidentiality should be discussed at the beginning of any session, and the parties can use confidentiality agreements to assure that the information does not reach the judge deciding the case. There should also be an established process on how to respond to inappropriate disclosures of information by anyone in the process (attorneys, parties, or the neutral).

Articles 8, 28, and 29 of the draft law on mediation provide confidentiality rules for mediation. Articles 8 and 28 clearly state that the mediator and mediation participants are not entitled to disclose confidential information from the mediation without consent of the parties. In addition, information from the mediation cannot be used during trial without consent, and the mediator cannot be questioned as a witness regarding that information, except in cases provided for by law. This information includes willingness to participate in mediation, opinions or confessions during the mediation, or the willingness to resolve the dispute. As noted earlier, Article 14 of the draft law on mediation states that mediators are liable to the parties for damages caused by mediation. This should include damage stemming from the disclosure of information that should have been kept confidential.

Evaluation and Oversight. Regarding the final two attributes, a successful ADR program is not static. It can change over time. Accordingly, it is important to (1) adopt a mechanism for receiving complaints and enforcing rules, and (2) evaluate and measure program success.

Some federal districts have web sites dedicated to the district's ADR program. Web sites can also feature answers to frequently asked questions and guidance regarding how to use ADR, including sample forms for parties to use when beginning the ADR process. Whether or not there is a web site, the court should provide contact information for an ADR coordinator or court staff member who can receive complaints or comments about the ADR program. In the same manner, the court should oversee the program to make sure that everything is working as intended and that the court continues to use high quality neutrals.

It is important to continually evaluate the program to make sure that it is meeting its goals and offering a fair procedure to the parties. Researchers can determine how successful a program is through questionnaires to attorneys, parties, and neutrals regarding how they feel treated by the process and whether those involved met their responsibilities ("Was the neutral fair?", "Was the process fair?"). Additionally, research can examine the rate at which settlements occur due to mediation to better understand if the ADR program is indeed reducing the costs and delays associated with more formal judicial proceedings.

Following these guidelines, of course, does not create a perfect ADR program. There are many additional questions such as *when* ADR sessions should take place, and *what* rules should be in place regarding the sessions themselves. However, these guidelines aim to provide a strong foundation to form a successful ADR program.

III. Successful education of neutrals

In 1967, the United States Congress made it the responsibility of the FJC "to stimulate, create, develop, and conduct programs of continuing education and training for personnel of the judicial branch...including, but not limited to, judges, United States magistrate judges, clerks of court, probation officers, and persons serving as mediators and arbitrators" [28]. According to that purpose, the FJC provides educational programs about ADR for judges and for court-employed mediators. This section discusses the nature and content of those programs.

One principal aim of these programs is to train mediators to remain neutral while facilitating discussion between the parties. Because the quality of the neutral is one of the most important factors in the effectiveness of the ADR process [29], effective training of federal court mediators is required. What is the "state of the art" in such training?

Nature of ADR education. In the 4th century B.C., Aristotle proclaimed, "For the things we have to learn before we can do them, we learn by doing them" [30]. Learn by doing. Centuries later, American educational psychologist Benjamin Samuel Bloom reframed this simple Aristotelian concept into what became known as Bloom's Taxonomy [31]. Today, the wisdom gained by centuries of trial and error has informed the way in which professional educators design and deliver educational programming.

Content of ADR programming. Each year, the FJC typically offers one of two educational programs for those who provide ADR services for the U.S. courts. The *Workshop for Federal Court Mediators* is intended to educate federal court ADR administrators and court-employed mediators. Alternately, *Mediation Skills for Federal Judges* is designed to teach judges about the ADR services that are available to the courts, and acquaint judges with the distinctions between settlement conferences led by a judge, and mediations, arbitrations, or early neutral evaluations generally led by neutrals.

Both programs include discussion of the relevant United States laws discussed earlier in this article. Participants are also provided with written examples of relevant orders, memoranda, and other useful materials. Most importantly, the programs include judges and professional mediators demonstrating different facilitation styles. Each participant is offered multiple opportunities to practice being the neutral in a series of mediation sessions using hypothetical fact situations they might encounter as mediators. The ability to practice what they have learned allows the participants to better apply the lessons when they return to the court house.

Participants are also introduced to the proper structure of a mediation. By way of example, the steps in a mediation generally include the following: (1) pre-mediation preparation; (2) mediator's introduction; (3) opening presentations of the parties; (4) understanding the problem by identifying the issues and recognizing the parties' underlying interests; (5) working with the problem by developing options and moving toward agreement; (6) concluding the mediation. The final step includes an examination of what must happen when agreement is reached versus when no agreement is reached. For each of the six steps in a mediation, participants are given a demonstration and an opportunity to practice.

According to Bloom, education is successful when educators identify and students achieve measurable outcomes in three “learning domains [32]. Each of these domains focuses on a different aspect of knowledge, and a different type of goal: (cognitive) knowledge-based goals, (psychomotor) skills-based goals, and (affective) attribute-oriented goals [33]. At the end of the FJC’s *Mediation Skills for Federal Judges* program, judges are expected to be able to do the following:

- distinguish classical mediation processes from the techniques commonly used in settlement conferences;
- identify differences between classical mediation processes and the techniques commonly used in settlement conferences;
- differentiate between facilitative and evaluative mediation styles, and know when to use each;
- introduce the parties to mediation and explain the nature and structure of “joint” and “caucus” sessions;
- conduct caucus sessions separately with each of the parties to identify the priorities and goals of participants that might lead to successful resolution of the case;
- identify and practice techniques to break an impasse;
- identify and develop strategies for mediating complex litigation;
- practice the art of remaining neutral while helping to facilitate the parties’ resolution of a dispute; and
- identify and develop strategies for handling ethical problems that may arise in conducting mediation sessions.

This list includes all three learning domains. For example, the first objective is an example of a knowledge-based goal, because it requires the participant to learn what constitutes a mediation, what constitutes a settlement conference, and how these two forms of conflict resolution differ. Having participants use techniques to break an impasse is an example of a skills-based goal because participants practice a skill they will perform in mediation. Finally, giving participants the opportunity to practice remaining neutral is an example of an attribute-oriented goal, because it calls upon the participant to assimilate a personal (affective) attribute: neutrality.

Establishing learning objectives when creating educational programs is essential for both instructors and learners to better understand the purpose of their time together. These learning objectives should include knowledge, skills, and attributes, and afford participants the opportunity to practice what they have learned before returning to conduct mediation sessions. If learning objectives are clearly established, it is simpler to assess whether the material has been learned.

IV. Conclusion

The Republic of Uzbekistan is in the process of enacting a law that would regulate the practice of mediation. In our review of a translated version of that draft law, it is clear that many of the proposed rights and responsibilities of mediators and parties would be the same in the United States and Uzbekistan. Across cultures, mediation should be voluntary, fair to the parties, led by an impartial, independent mediator, and confidential. In addition, the decision reached (if any) should be a mutually acceptable agreement.

There remains more to be done to ensure that ADR is used fairly, and that neutrals of all ADR processes remain ethical and meet training requirements. Training should not be a one-time event. Situations constantly change and neutrals should remain active in continuing education about how to best use mediation. A successful ADR program should offer significant cost savings and also reduce the time it takes a case to reach a final decision or agreement. It is difficult to predict if mediation will be successful. However, an ADR program that considers the attributes of successful programs and creates trainings that take into account important learning objectives should have a greater chance of success from the perspectives of the parties, the attorneys, the mediators, and the judicial system itself.

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9. Alternative Dispute Resolution Act of 1998, Pub. L. No. 105-315, 112 Stat. 2993 (codified at 28 U.S.C. §§ 651-658).
10. There are also other, less-utilized ADR processes used in the courts such as summary jury trials and summary bench trials. Some courts also use a joint process, such as a referral to both early neutral evaluation and mediation
11. ADR Guide, *supra* Note 6 at p. 14.
12. ADR Guide, *supra* Note at p. 15.
13. Stienstra, 2011, *supra* Note 9.
14. *Id.*, at p5.
15. See Table S-17 — Matters Disposed of by U.S. Magistrate Judges During the 12-Month Periods Ending September 30, 2007 Through 2016, U.S. Courts, available at, http://www.uscourts.gov/sites/default/files/data_tables/jb_s17_0930.2016.pdf
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18. ADR Guide, *supra* Note 6 at p. 67.
19. ADR Policies and Procedures, *supra* Note 19 at P. 7-8.
20. *Id.* at p.8
21. *Id.* at p.10
22. *Id.* at p. 9
23. ADR Act of 1998, 28 U.S.C. § 658(a).
24. Stienstra, 2011, *supra* Note 9 at p11
25. *Id.* at p12. Five courts did not provide information regarding compensation of neutrals for mediators.
26. *Id.* at p12; Additionally, a non-court neutral served pro bono on arbitration in one court, there was a tiered scheme of some pro bono and some paid arbitration time in one court, and one court did not respond to the survey.
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28. Pub. L. 90-219, title I, §101, Dec. 20, 1967, 81 Stat. 664, codified at 28 U.S.C. §620 (b)(3).
29. ADR Guide, *supra*, note 6 at p. 67.
30. Aristotle, *The Nicomachean ethics*, 1103a.33.
31. Bloom, B.S.; Engelhart, M. D.; Furst, E. J.; Hill, W.H.; Krathwohl, D.R. (1956). *Taxonomy of educational objectives: The classification of educational goals*.
32. *Id.*
33. *Id.*, Bloom (Cognitive Domain) and Krathwohl (Affective Domain); Simpson, E.J. (Psychomotor Domain) (1966). *The classification of educational objectives, psychomotor domain*.