



DISPUTE RESOLUTION SECTION

April 2011

“Disputes arise across a broad spectrum of relationships and substantive areas of the law. Alternatives to litigation may best serve client needs for resolving many of these disputes. The NYSBA Dispute Resolution Section has prepared a series of White Papers to set forth some of the special advantages of mediation and arbitration in the various contexts in which disputes commonly arise.”

*Edna Sussman, Chair, NYSBA Dispute Resolution Section
David Singer, Chair, White Paper Subcommittee*

THE BENEFITS OF ALTERNATIVE DISPUTE RESOLUTION FOR RESOLVING CONSTRUCTION DISPUTES

By John Rusk, Walter Breakell, Esq., Amy K. Eckman, Esq.

"Traditional litigation is a mistake that must be corrected... For some disputes trials will be the only means, but for many claims trial by adversarial contest must in time go the way of the ancient trial by battle... Our system is too costly, too painful, too destructive, too inefficient for really civilized people." Chief Justice Warren E. Burger of the U.S. Supreme Court

Any litigator will attest that litigation has become a lengthy and expensive proposition. It is a stressful process that destroys relationships. As some disputes will inevitably arise, lawyers seeking to best serve their clients must consider forms of alternative dispute resolution (“ADR” or “dispute resolution”) which can avoid much of the delay, expense and disruption of traditional litigation. Mediation and arbitration, both of which are responsive to party needs in a way that is not possible in a court proceeding, are two of the most frequently utilized forms of dispute resolution.

The construction industry involves coordination of many different parties with different contractual relationships, interests, and time frames for performance. Owners, contractors, construction managers, subcontractors, material suppliers, design professionals all must coordinate to achieve the final goal, but along the way disputes can