

THE MULTI-DOOR COURTHOUSE



This article discusses the concept of the *multi-door courthouse* and how it has been implemented in Nevada. In Nevada, we are fortunate to have a range of alternative dispute resolution (ADR) programs to assist us in resolving cases without the need for trial or the completion of an appeal.

Alternative dispute resolution is a concept that seeks methods of dealing with disputes between parties other than traditional litigation. The Nevada Supreme Court and the Ninth Circuit

Court of Appeals have expressed a preference for the use of ADR. Three reasons for the growth of ADR are:

1. Its ability to lighten the caseloads of judges who would normally hear the matters;
2. It reduces the amount of time cases spend in the courts; and
3. Dispute resolution is less costly than litigation.

Multi-Door Courthouse

The concept of the multi-door courthouse was developed by Harvard Professor Frank Sander in 1976. At the time, he had participated in some labor arbitration and had experience with family disputes in the courts. His impression was that the courts were not well suited for resolving disputes. He also felt that arbitration provided a viable method for resolving labor disputes.

Sander gave a presentation at a conference on the topic of dissatisfaction with the legal system, including dispute resolution. At issue were problems including overcrowding, delays and high costs. Sander advocated that the key to resolving problems with the legal system was to save time and money for both the disputants and the court, while improving overall satisfaction with the process.

At the time, most cases went through the typical litigation model. A complaint was filed and served, then an answer was filed. The obligation to provide discovery was limited when compared to the rules of today's courts. Trial by ambush was common.

Sander promoted the idea of providing options to the litigants. If they so desired, the parties could follow the traditional litigation model. However, various forms of alternative dispute resolution existed at the time, and others have developed since.

IN NEVADA

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Many different forms of ADR may exist in a multi-door courthouse. Some are formal and part of the court rules. Others are simply agreements reached by the parties involved.

Arbitration

Arbitration is a method of dispute resolution that became part of statutory law due to the Industrial Revolution. The state of New York adopted statutes to provide for the enforcement of arbitration agreements in 1920. Five years later, the U.S. Congress passed the United States Arbitration Act of 1925 (now the Federal Arbitration Act).

Arbitration is normally a voluntary or contractual process, similar to a trial before a sitting judge. It differs in three significant ways from a trial. First, the matter is not heard by a sitting judge but someone else, usually, but (depending on the circumstances of the case) not always, an attorney. The Financial Industry Regulatory

Authority (formerly the National Association of Securities Dealers), American Arbitration Association and private arbitrations frequently utilize non-attorneys for panel members. The rules of evidence are relaxed—some would even say thrown out. Finally, the award (decision of the panel) is not subject to appeal.

Nevada has provisions for arbitration in two forms. If a civil case is brought in the district court, seeking recovery of less than \$50,000, the Nevada Arbitration Rules require the case to go through the Court-Annexed Arbitration Program. The case is heard by a court-appointed arbitrator. If a party is not happy with the decision of the arbitrator, that party has the right to appeal and go through a short trial with a pro tempore judge.

The Nevada Legislature adopted the Uniform Arbitration Act of 2000, set forth in Chapter 38 of Nevada Revised Statutes (NRS). If parties

have an arbitration provision in their agreement, the Nevada courts will enforce the agreement and require them to arbitrate their matter rather than go through the courts. Additionally, a party may agree to arbitrate a matter even without an agreement to do so. Generally, an arbitrator's decision is final and not subject to appeal. Arbitration panels usually consist of one or three arbitrators. NRS §38.241 contains provisions for vacating an award, however, the bases for doing so are very limited, and the courts are reluctant to set aside an award.

Mediation

Mediation is an option to litigation available in a multi-door courthouse. Mediation is a process through which disputing parties are provided with an environment conducive to resolution, accomplished through guidance of a

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trained mediator acting to facilitate a resolution of the dispute.

Mediation provides many benefits not present in litigation. The parties control whether the mediation is a success. The mediator does not make any decisions and cannot force a party to agree to a resolution. The parties are empowered and are responsible for the success or failure of the mediation.

In 2001, Nevada adopted the Court-Annexed Mediation Program, requiring the consent of all parties, for cases with a value under \$50,000. Rule Two of the Nevada Mediation Rules provides, “[t]he stipulation must be filed with the commissioner within 15 days after the filing of an answer by the first answering defendant.” This short-fused requirement has resulted in few cases having been brought into the program. Many cases that are part of the Court-Annexed Arbitration Program have been mediated before an arbitration hearing but have not been conducted through the Court-Annexed Mediation Program.

Settlement Conferences

Settlement conferences are similar to mediation.

However, a settlement judge is usually a judge other than the one assigned to the case. The use of a settlement judge enables the parties to discuss their positions regarding the strengths and weaknesses of their cases without worrying that the judge assigned to the case is listening. A settlement judge may be facilitative and proceed in a manner similar to a mediator. More often, a settlement judge will be evaluative and give opinions regarding the merits, or lack thereof, of a position. The key is that the parties are getting the input, or opinion, of a sitting judge. The judges in Nevada’s district courts offer settlement conferences to litigants. There is no standard procedure for obtaining a

settlement conference from the various district courts in Nevada.

In 1996, the Nevada Supreme Court adopted a mandatory settlement judge program, requiring most civil cases to proceed through a settlement conference before the court would hear the matter. The settlement conferences are now conducted as mediations and are handled by settlement judges—experienced attorney/mediators appointed by the Supreme Court. This program has been very successful; approximately one-half of all cases that go through the Settlement Judge Program are resolved.

Summary Jury Trial

Summary Jury Trial is a form of alternative dispute resolution enabling parties in a dispute to have a matter heard on an expedited, limited basis. Nevada has adopted a summary trial program known as the Short Trial Program. These trials may be conducted with or without a jury.

The Nevada Short Trial Rules require the parties to agree to exhibits or address any evidentiary issues prior to the trial.

While sitting judges can sit as Short Trial Judges, most of the cases in this program are heard by appointed pro tempore judges. The trial is completed in one day, with each party receiving 15 minutes in which to conduct voir dire and three hours to present their cases. Four jurors are utilized and receive a trial notebook containing the exhibits to be utilized in the trial. These trials are conducted in the same manner as “full” trials, including voir dire of the jury, challenging jurors, opening statements, presentation of evidence, reading of jury instructions, closing arguments and jury deliberation.

If not satisfied with the arbitrator’s decision, a party involved in such a case

has recourse to a trial de novo. Once a party requests a trial de novo, the matter is assigned to a short trial judge and scheduled for trial. The Nevada Short Trial Rules require the parties to agree to exhibits or address any evidentiary issues prior to the trial. Documents to be utilized, jury instructions and verdict forms are also established prior to entering the courtroom. This helps ensure that the entire case can be heard and decided in one day.

Early Neutral Evaluation

Early neutral evaluation (ENE) is a process that usually takes place early in a litigation. Attorneys and clients in a litigation first meet with a neutral evaluator, someone with expertise in the area in question, and present summaries of their case. The neutral evaluator usually asks questions and offers an assessment of each side’s position and chances for success. The process is confidential, and any recommendations by the neutral evaluator are non-binding. Federal Courts in the Ninth Circuit use mandatory ENE in employment discrimination cases.

Nevada has embraced the concept of the multi-door courthouse. Litigants in Nevada have numerous options other than proceeding directly to litigation. **NL**



NELSON SEGEL has practiced law in Nevada since 1981. He was appointed as an arbitrator, mediator and short trial judge in the Eighth Judicial District Court when each of the programs was instituted, and still serves in each capacity. Segel has been a Supreme Court settlement judge since 1999. He currently provides mediation and arbitration services through Advanced Resolution Management.