

**FOCUS:  
ALTERNATIVE DISPUTE  
RESOLUTION**



**Chris McDonald**

*The Nassau County Bar Association provides attorneys and their clients the opportunity to use expeditious, timesaving, and cost-effective arbitration or mediation to resolve disputes that might otherwise be litigated in the courts.*

That statement, while true, may not strike readers as particularly newsworthy. After all, NCBA’s alternative dispute resolution (“ADR”) program has been in existence for many years. While it is also true that significant work went into revamping, reinvigorating, and expanding the program within the last decade, if *news* is defined as “a report of recent events,”<sup>1</sup> the program’s overhaul isn’t particularly newsworthy either.

That said, NCBA’s ADR program may in fact be news to many members of the bench and bar. Why? Because the program is woefully underutilized. Indeed, at this very moment there are dozens of highly qualified arbitrators and mediators on the program’s panels who have no active matters currently assigned to them through the NCBA. Defining *news* as “previously unknown information,”<sup>2</sup> the program’s infrequent use suggests that it may be unknown to many or, alternatively, that its benefits are un- or underappreciated. Either way, further exploration of the program is in order.

**Information About the NCBA ADR Program is Easy to Find**

The NCBA ADR program (and/or its benefits) may not be well known, but that is not to say that NCBA has kept the program under wraps. In fact, the opposite is true. A quick visit to NCBA’s website ([www.nassaubar.org](http://www.nassaubar.org)) demonstrates the point. Click on the “For Members” dropdown menu and the very first link—ADR Panels—leads to a page dedicated to the ADR program. That page goes on to explain that NCBA:

[P]rovides an opportunity for attorneys and their clients to

## The Best ADR Program You’ve (Probably) Never Heard Of

use expeditious, time-saving and cost-effective arbitration or mediation to resolve disputes that might otherwise be litigated in the courts.

These NCBA services are available to the public as well as to all legal professionals. The panels of arbitrators and mediators are highly skilled and qualified attorneys, admitted to the New York bar a minimum of 10 years and screened by the NCBA Judiciary Committee.<sup>3</sup>

The ADR page has links to submission forms, agreements to arbitrate or mediate, the applicable rules for each process, lists of the panel members, and much more.

Not a member of NCBA? The website’s “For Attorneys” dropdown also lists the ADR Panels link first. Not a lawyer? The first link in the “For the Public” dropdown likewise steers visitors to the ADR page (although, presumably because non-lawyers might not know what “ADR” stands for, the link itself helpfully says “Arbitration and Mediation” instead). NCBA even has colorful, glossy brochures explaining the program and its many benefits.<sup>4</sup>

The program’s main benefits—the caliber of the neutrals and the time-saving, cost-effective ADR services they provide—are discussed briefly below.

**NCBA’s Highly Experienced Neutrals Have Wide Ranging Expertise**

Having ten years of experience and being screened by NCBA’s Judiciary Committee are minimum requirements for inclusion on the program’s arbitration or mediation panels. Before a panel applicant even gets to the Judiciary Committee, the application is first vetted by NCBA’s ADR Committee. NCBA’s strict vetting process means that program neutrals are typically far more accomplished than the minimum requirements might suggest. The panels include former jurists, thought-leaders who teach and write on ADR and other legal topics, past and present chairs of dispute resolution-focused bar association committees, and faculty members for arbitration and mediation training CLEs.

Panel members also have subject matter experience in a wide variety of areas. Successful panel applicants don’t just get placed on generic “mediator” or “arbitrator” lists. NCBA panels are subdivided into nineteen categories, and panel

members typically have experience in multiple areas of the law. Whether it’s a dispute between businesses or family members, or a dispute that pits employee against employer, insured against insurer, or tenant against landlord, or involves any number of other areas from accidents to zoning, there are panel members with relevant experience.<sup>5</sup>

Moreover, program rules state that preferences for a neutral having subject-matter experience “may be requested and will be considered, subject to availability.”<sup>6</sup> Thus, even for categories *not* listed, parties may request neutrals with relevant experience. In that instance, the program’s Advisory Council will work to identify the panel members best suited for handling the dispute.

**NCBA ADR Program Is Expeditious and Cost-Effective**

Assuming their paperwork is in order, parties who commence a mediation or arbitration through NCBA will be provided with lists of potential neutrals to choose from within a day or two.<sup>7</sup> Once selected, the neutral (or neutrals, if a panel of arbitrators is called for) will begin working to quickly and efficiently guide the matter toward a resolution. The NCBA Arbitration and Mediation Rules include various deadlines to keep the proceedings on track.<sup>8</sup>

The program’s costs consist of (1) an administrative fee for NCBA

utilize the program gain access to experienced arbitrators or mediators at low—often below market—hourly rates. By offering their services at sometimes steeply discounted rates, program neutrals effectively help subsidize the parties’ payment of the NCBA administrative fee while also providing them with what amounts to “low bono” ADR services.

The up-front cost for a NCBA mediation or arbitration is \$2,300, consisting of the administrative fee to NCBA (\$500), plus a deposit (\$1,800) to cover the first six hours of arbitrator or mediator time, at a rate of \$300 per hour.<sup>10</sup> If fewer than six hours are spent on the case, the unused portion of the deposit will be refunded to the parties. If a case continues past the six-hour mark, the parties make arrangements to pay the neutral directly at the rate of \$300 per hour for the duration of the matter.<sup>11</sup>

As noted above, many of the experienced neutrals who serve on NCBA panels can and often do charge more than \$300 per hour for their ADR services in non-program matters. To demonstrate the program’s cost savings, take as an example a mediator who, in private practice, charges \$450 per hour. The up-front costs for the NCBA program are greater, but after a short time—here, by hour number four—the NCBA program becomes more economical:

Mediator Fee Structures	Hour 1	Hour 2	Hour 3	Hour 4	Hour 5
Private Practice Rate (\$450/hour):	\$450	\$900	\$1,350	\$1,800	\$2,250
NCBA Rate (\$500 + \$300/hour):	\$800	\$1,100	\$1,400	\$1,700	\$2,000

and (2) capped hourly rates for participating neutrals. Service to the community is a key driver for both components of the program’s cost structure. Administrative fees help NCBA maintain its vital role as “the leading source for legal information and services for the legal profession and the local community in Nassau County”<sup>9</sup> (Additional information about the services offered by NCBA, including community education, school programs, and legal consultation clinics, is available on the NCBA website; just click the “For the Public” dropdown menu). And, the capped fees are a significant benefit for the disputing parties themselves. Parties who

To be clear, these are the total costs; in a typical two-party mediation, each side would pay half of the amounts shown. For a five-hour NCBA mediation costing \$2,000, the plaintiff and the defendant would each pay \$1,000, or the equivalent of \$200 per hour.


The cost savings are even greater for multi-party and/or complex cases that might require multiple sessions over the course of several days. Because the NCBA program rate holds steady at \$300 per hour throughout the engagement, the delta between the aggregate private cost and the aggregate program cost will continue to grow over time. For

example, if the fee comparison table above were extended out to the ten-hour mark, the difference between the aggregate rates would be \$1,000 (\$4,500 for a private mediation vs. \$3,500 for a NCBA program mediation). The differences are most pronounced with panel arbitrations. Three-panel members, each charging \$450 per hour in a private arbitration, would exceed the NCBA program cost by hour number two (\$2,700 for a private arbitration vs. \$2,300 for an NCBA program arbitration).<sup>12</sup>

### Final Thoughts

Courts are perpetually overwhelmed, so there is an almost limitless supply of disputes that should be in mediation but aren't (yet). And there are contracts being negotiated every day that could have provisions identifying the NCBA program as the forum for arbitrating future disputes, but don't (yet). If NCBA's ADR program were used more often; (1) participating parties and their counsel would have their disputes addressed expeditiously by highly competent neutrals (often at discounted rates); (2) program neutrals would have the opportunity

to put their dispute resolution skills to good use; (3) matters resolved through the program would ever so slightly help to reduce the burdens on court dockets; and (4) the administrative fees collected by NCBA would help it to continue its important work for the benefit of legal profession and the community at large—a rare win-win-win-win.

Incidentally, a third definition of news is “something having a specified influence or effect.”<sup>13</sup> Whether any of what has been discussed above will spur greater interest in, and utilization of, the NCBA ADR program remains to be seen. In other words, only time will tell whether *this article* might qualify as “news.” 

1. See <https://bit.ly/34H03fg> (definition 1 a)  
 2. See <https://bit.ly/34H03fg> (definition 1 b).  
 3. See <https://www.nassaubar.org/alternative-dispute-resolution-2/>.  
 4. An online version of the brochure (the “NCBA ADR Program Brochure”) is available here: <https://bit.ly/3qiiuzl>.  
 5. The complete list of panel categories with active members is as follows: Commercial, Construction, Elder Law, Environmental, Foreclosure, Guardianship, Health Care, Insurance Coverage, Intellectual Property, Labor and Employment, Landlord-Tenant, Land Use / Municipal / Zoning, Matrimonial / Family Law,

Personal Injury / Property Damage / Medical Malpractice, Professional Malpractice, Real Property, Securities/Investments, Surrogate's Court, and Special Needs.  
 6. See Arbitration Rules of the Nassau County Bar Association Mediation and Arbitration Panels (“NCBA Arbitration Rules”), Rule ARB-8(a), available at <https://bit.ly/33pAqyG>; Mediation Rules of the Nassau County Bar Association Mediation and Arbitration Panels (“NCBA Mediation Rules”), Rule MED-6(a), available at <https://bit.ly/3HWXaVM>.  
 7. The rules also permit parties to select from the panels the arbitrator or mediator “they wish to serve as [the neutral] in their case.” NCBA Arbitration Rule ARB-8(e); NCBA Mediation Rule MED-6(e).  
 8. See, e.g., NCBA Mediation Rule MED-12(a) (unless otherwise agreed, mediation statements are due “at least ten (10) days before the first scheduled mediation session”); NCBA Arbitration Rule ARB-13(a) (“The Arbitrator shall fix the date and time for a pre-hearing conference which shall be conducted not less than five (5) business days, nor more than thirty (30) business days, after the Arbitrator has received notice of appointment.”).  
 9. <https://www.nassaubar.org/who-we-are/>.  
 10. Per the NCBA ADR Program Brochure, “[i]n mediation, all costs and fees are shared equally by all parties unless the parties or their governing agreement provide otherwise. In arbitration, the claimant customarily advances the non-refundable administrative fee of \$500. Arbitrator costs and fees are then usually shared equally by the parties unless the governing agreement provides differently, the parties agree otherwise, or the

arbitration award allocates costs and expenses differently.”  
 11. See NCBA Arbitration Rule ARB-24(b) and annexed Schedule of Arbitration Fees, n.1; NCBA Mediation Rule MED-17(b) and annexed Schedule of Mediation Fees, n.1.  
 12. Three private arbitrators charging \$450 each over the course of two hours ( $450 * 3 * 2$ ) is \$2,700; three NCBA arbitrators charging \$300 each over the course of two hours ( $500$  administrative fee +  $(300 * 3 * 2)$ ) is \$2,300.  
 13. See <https://bit.ly/34H03fg> (definition 1 c).



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