RECOMMENDED ADR PRACTICES

1. MEDIATION

(a) Parties should consider engaging in mediation at an earlier stage than required by the rules. Certain types of cases typically require little discovery. Very early mediation can be fruitful in such cases.

(b) Parties should consider engaging in limited-scope mediation focused on specific issues:

i. Even when there is little possibility of settling all issues in a dispute, or of settling issues before conducting discovery, the parties should consider mediating particular issues that might be resolved.

ii. In cases where discovery is likely to be extensive or contentious, the parties should consider mediating the scope and conduct of discovery.

(c) Parties and mediators should consider varying the format of mediation, depending on the needs of the case and disposition of the parties:

i. Conducting mediation as a series of sessions rather than a one-day event; or

ii. Using shuttle-style mediation, in which the mediator meets with the parties individually to identify areas of potential settlement before the parties' positions are entrenched.

(d) Mediators should consider pre-session meetings, in person or by phone:

i. With counsel; or

ii. With counsel and client.

2. PRIVATE ARBITRATION

(a) The arbitrator should identify the scope of arbitration with input from the parties.

(b) Parties should consider limiting or eliminating the length and number of depositions and the extent of expert discovery.

(c) Parties should consider voluntarily narrowing the scope of arbitration at outset. For example, selecting a single arbitrator; conducting focused single-issue arbitration; establishing specific limitations on relief.

(d) If not already contractually agreed among the parties, arbitrators should consider scheduling planning and coordinating meetings upon selection to set the terms and conditions of the arbitration process.

(e) An arbitration contract should address the following topics; if they are not, the arbitrator or panel should address them in early rulings:

i. Whether there is a challenge to arbitration;

ii. Whether arbitration should be global, addressing and resolving all issues, or whether its scope should be limited to one or more specific issues;

iii. What procedural rules will govern conduct and location of proceedings (for example, AAA, JAMS, JDR, or some other protocol);

iv. What limits will be placed on discovery, for example, lay-down discovery or e-discovery rules. Without some discovery limits, arbitration comes to resemble full-scale litigation;

v. The body of substantive law that will govern resolution of the dispute;

vi. Whether mediation is required either before arbitration or early in arbitration, and, if so, on what schedule;

vii. What interim relief, if any, will be available, whether injunctive or otherwise;

viii. Whether to allow expedited electronic exchange of briefs, submittals, and other documents;

ix. Whether to allow pre-hearing motions for summary judgment or partial summary judgment;

x. What timing should be required for the arbitration process: (1) mandate either to conduct or consider early mediation; (2) date(s) to commence and complete discovery; (3) date for final coordinating conference prior to hearing on the merits; (4) date to commence hearing on the merits; (5) duration of the hearing day, and possible imposition of time limits on presentation of evidence and argument; and

xi. Details concerning a final award: (1) time limit on the arbitrator or panel between completion of hearing and issuance of award; (2) form of award (basic, reasoned, or detailed findings and conclusions), including a specific statement if the parties do not want a compromise or "split the baby" award; (3) what permanent relief may be granted (legal or equitable); (4) whether to allow award of costs and fees; and (5) whether to allow judicial review.