

Resetting the Bar: Early Dispute Resolution (EDR)

DETAILED COURSE AGENDA (v4)

DAY 1 -- MORNING SESSION (8:30 – 12:30)

1. Introduction (8:30-8:45)

- a. Introduce speakers
- b. Tortoise and Hare
- c. Archimedes' Lever: confidence in forecasting, ethical obligation to clients, and why EDR will reset the bar for dispute resolution.

2. Overview (8:45-9:30)

a. **Resolutionary EDR** (8:45 – 8:55)

- i. Evolution of EDR
- ii. The 4 steps, protocols, uses, Harris County program
- iii. Nationwide rollout

b. **Fundamental Concepts (Pr.2)** (8:55-9:05)

- i. Necessary Conditions
- ii. Sufficient Knowledge
- iii. Risk-Adjusted Value
- iv. Informed Judgment
- v. EDR Agreement
- vi. EDR Neutral
- vii. Confidentiality
- viii. Questions

c. **Guiding Principles (Pr. 3)** (9:05-9:15)

- i. Permissive and Mandatory Withdrawal

- ii. Speed, Economy and Fairness
- iii. Client- Focused
- iv. Integrity

d. **Lawyer-Client and Lawyer-Lawyer Relationship (Pr.4) (9:15-9:25)**

- i. Informing clients of ADR options
- ii. Zealous representation
- iii. Soft skills

e. **EDR Facilitator Ethics (9:25-9:30)**

- i. Neutral withdrawal
- ii. Heightened sensitivity not to manipulate
- iii. Questions

f. **The Magic Circle**

Break (9:30 – 9:45)

3. **Review of Hypothetical** (9:45 – 9:50)

4. **Step 1—Initial Dispute Assessment (Pr. 5, 7)** (9:50 – 10:20)

- a. Material facts and defenses
- b. Core claims and defenses
- c. Sufficient Knowledge
- d. Expert needed for Sufficient Knowledge
 - i. Sufficient Knowledge Expert Report
 - ii. Joint Expert
- e. Apply to hypothetical

5. **Step 2—Information and Document Exchange (Pr. 6)** (10:20 – 11:10)

- a. How to draft
- b. How to construe
- c. Questioning witnesses
- d. Verification of Compliant Response

- e. Failure to make Compliant Response
- f. Application to hypo

6. Step 3 (Pr.8) (11:10 – 12:30)

- a. Importance of Risk analysis_(11:10 – 11:40)
 - i. Objectively quantify likely outcomes/avoid subjective word assessments
 - ii. Mitigate biased thinking
 - 1. Scout/Soldier mindsets
 - 2. Thinking fast and slow
 - 3. Framing effect
 - 4. Confirmation bias
 - 5. Anchoring
 - 6. Sunken-cost fallacy
 - iii. Client-informed judgment
 - iv. Principled negotiation v. Positional bargaining

- b. Required elements of Risk Analysis Evaluation (11:45 – 12:30)
 - i. Clarity/Informed Judgment
 - ii. The elements:
 - 1. Future costs
 - 2. Percent likelihood of prevailing
 - a. Judgment
 - b. Epistemic Humility
 - 3. Low-Middle-High damages
 - 4. Estimated Monetary Value (with examples and tree)
 - 5. BATNA-WATNA
 - 6. Leverage
 - 7. Interest-based
 - 8. Risk tolerance
 - iii. Client and shared valuations

LUNCH (12:30 – 1:30)

DAY 1 -- AFTERNOON SESSION (1:30 – 5:00)

7. Building Decision Trees (1:30 – 3:00)

a. Basics Concepts

- i. Key benefits
- ii. Clarity is the goal
- iii. Mechanics of building trees
- iv. Principled negotiation
 1. The 50% neutral tree
 2. Plaintiff and defendant trees
 3. Develop principled initial brackets
 4. Encourage principled negotiation moves

BREAK (3-3:15)

b. Advanced Concepts (3:15 – 4:45)

- i. Dependent (substantive v. procedural)
- ii. Independent claims
- iii. High/Medium/Low damages
- iv. Attorneys' fees
- v. Punitive damages
- vi. Counterclaims
- vii. Neutral ethics

c. Final Resolution (Pr. 9) (4:45 – 5:00)

- i. The sequence
- ii. Benefits of EDR absent resolution

DAY TWO (8:30-1:00)

1. **Review of Decision Tree Assignment** (8:30 -9:00)

2. **Hands-on EDR with Hypothetical** (9:00 – 12:30)
 - a. Neutral convinces lawyers to do EDR
 - b. Lawyers convince clients to do EDR

 - c. **Step One—Initial Assessment**
 - i. Core claims/defenses
 - ii. Information needed for Sufficient Knowledge?
 - iii. Expert needed for Sufficient Knowledge?
 - iv. Drafting Sufficient Information Requests

 - d. **Step Two—Sufficient Information**
 - i. Directions to client
 - ii. The smoking gun
 - iii. Witness Interview

 - e. **Step Three—Risk-Analysis Valuation**
 - i. The eight factors
 - ii. Client and Shared Valuations

 - f. **Step Four—Final Resolution**
 - i. Draft neutral tree for P and D
 - ii. Develop initial principled bracket
 - iii. Work with each party to make principled moves

 - g. The Secret Sauce

3. Building your EDR Practice

- a. Offer EDR to parties requesting mediation
- b. Offer to corporate counsel
- c. Settlement counsel
- d. Court programs
- e. AAA
- f. Marketing
- g. Banish Long Expensive Litigation

WELCOME TO HARE WORLD!