

trustmediation

~ not-for-profit dispute resolution ~

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Solicitors' Code of Conduct 2007

Rule 2, Solicitors' Code of Conduct 2007

2.02 Client care

(1) You must:

- (a) identify clearly the client's objectives in relation to the work to be done for the client;
- (b) give the client a clear explanation of the issues involved and the options available to the client;

www.sra.org.uk/code-of-conduct/195.article#r2-02

Guidance on the new conduct rules includes the following:

Guidance to rule 2 – Client relations

When considering the options available to the client (2.02(1)(b)), if the matter relates to a dispute between your client and a third party, you should discuss whether mediation or some other alternative dispute resolution (ADR) procedure may be more appropriate than litigation, arbitration or other formal processes. There may be costs sanctions if a party refuses ADR - see *Halsey v Milton Keynes NHS Trust and Steel and Joy* [2004] EWCA (Civ) 576. More information may be obtained from the Law Society's Practice Advice Service.

www.sra.org.uk/code-of-conduct/195.article

Practice advice issued jointly on 22 April 2005 by the Law Society's civil litigation committee and its alternative dispute resolution committee.

This practice advice relates to the giving of information on mediation and other alternative dispute resolution (ADR) options to clients before, and during, the process of resolving any disputes between the client and third parties. The principle of why this advice and information should be given is to be found in the dicta of Lord Justice Dyson in the case of *Halsey v Milton Keynes NHS Trust and Steel v Joy* [2004] EWCA 576: 'All members of the legal profession should now routinely consider with their clients whether their disputes are suitable for ADR.'

Solicitors should note that the court has a duty to encourage parties to co-operate with each other in the conduct of the proceedings—Civil Procedure Rules 1998 (CPR), r.1.4(a)—and to likewise encourage parties to use mediation or some other alternative dispute resolution technique in appropriate cases—CPR r.1.4(d). Where the parties cannot agree to use mediation or another ADR process, the obligation is on the party wishing to use mediation or another process to say why it is appropriate in the circumstances. Section 2 of the guidance summarises the factors to consider in ascertaining whether a case is suitable for ADR.

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The term ADR means both mediation and any other alternative to formal litigation or arbitration that might be an appropriate alternative means of resolving the dispute in the particular circumstances of the case. This might include expert evaluation, early neutral evaluation or conciliation, as well as mediation.

This practice advice applies to advice and information at the appropriate time, which may be at the commencement of a dispute within the initial advice, or at any later stage of the dispute. Practitioners should keep these options under review throughout the course of the matter. Solicitors should:

In appropriate cases, and at appropriate times, explain to clients whether there are ADR techniques that might be used other than litigation, arbitration or other formal processes; what those alternative processes involve, and whether they are suitable in the circumstances; and

Keep the suitability of mediation or other ADR techniques under review during the case and advise clients accordingly.

In assessing whether a case is suitable for mediation or some other form of ADR, the solicitor should have in mind:

- The nature of the dispute;
- The merits of the case;
- The extent to which other settlement methods have been attempted;
- Whether the costs of the ADR process would be disproportionately high;
- Whether any delay in setting up and attending the ADR process would have been prejudicial to the client; and
- Whether the ADR process had a reasonable prospect of success.

Solicitors should be aware that failure to provide information and advice at the appropriate stage may have costs or other consequences.”