

CDRC GUARDS YOUR BACK

You have a busy, successful practice that may include a full-time or part-time arbitration and mediation business.

Now that ADR is a mainstream part of California's life, there are many who wish to restrict it, tax it, or even abolish it. No one took ADR seriously until it affected other deep pockets and special interests. Now there are many who are threatened by its popularity, growing use, and effectiveness.

Since the mid-1990s, CDRC has been there for you: advocating, informing, and negotiating with policy makers to protect your ADR practice.

In the back rooms of Sacramento, CDRC is your watch dog:

- CDRC **monitors** all legislation affecting arbitration, mediation, and collaborative law.
- CDRC **analyzes** legislation that affects your professional practice
- CDRC **negotiates** with law makers for changes to legislation that would limit, restrict, or impair your ability to make a living as an ADR professional.

In short, CDRC effectively fights against the various threats and utilizes the opportunities presented by the ever-changing political winds in Sacramento.

Here's an example from last year that threatened to compromise ADR in California:

Assemblymember Jim Beall introduced AB2475 to amend the Family Code and eliminate

immunity for Family Court Mediators.

Mr. Beall was sincerely interested in assisting a constituent who was upset with a court appointed child psychologist in a child custody dispute. These psychologists were erroneously dubbed "mediators" by statute and have the same immunity as regular mediators. But the legislator and his staff did not understand the difference.

They were willing to amend the bill but the amendments were not satisfactory and CDRC was a major factor in keeping the bill from getting out of committee.

In California courts, CDRC is your advocate:

- CDRC **monitors** important appellate cases involving ADR.
- CDRC **files** amicus curiae briefs on behalf of you to inform the courts about ADR professional concerns.
- CDRC **works** with the Administrative Office of the Courts on issues affecting ADR.
- CDRC **tracks** California State Bar proposals regarding attorneys who are mediators and arbitrators. Often, the State Bar has not taken a benign position towards your profession.

In Sum, CDRC weighs in when it counts, in order to enable the effective use of ADR, as well as to protect the integrity of the ADR process.

Here are two examples of CDRC action to protect ADR in the California courts:

The California Supreme Court in 2004 issued its opinion in *Rojas v. Superior Court* (2004) 33 Cal.4th 407 regarding mediator confidentiality. The case was decided with the aid of the CDRC Amicus Curiae brief urging the position eventually taken by the Court.

After the decision, there were calls for the Consumer Attorneys of California to draft legislation to overturn *Rojas* and weaken the mediation confidentiality statute. CDRC met with the CAOC to ensure that no such legislative action would be forthcoming.

CDRC has filed friend of the court briefs in most of the significant ADR cases coming before the California Supreme Court. In all cases, the Court's decisions have agreed with CDRC.

The State Bar Rules Revision Commission in 2007 proposed giving the State Bar jurisdiction to discipline mediators and arbitrators. In addition to their other faults, the draft rules transmuted aspirational standards in court-related mediation programs and arbitrator ethics standards for contractual arbitrations into disciplinary tools.

CDRC and its organizational allies were able to thwart this ill-advised proposal.

In Washington, CDRC is your vigilant guard:

- CDRC ***watches*** Congress for new bills that effect ADR and your related interests.
- CDRC ***tracks*** Federal cases that touch ADR, and CDRC.
- CDRC ***understands*** that ADR is more controversial and unsettled outside California, and potentially Federal issues that are raised may drastically effect ADR within California.

In brief, to protect ADR providers and consumers, CDRC guards against dangers from outside California that may threaten the use or integrity of ADR in California.

Here are 3 Federal bills CDRC recently opposed:

For example, in 2009, CDRC followed with interest and concern three bills introduced in Congress: the Arbitration Fairness Act of 2009, the Fairness in Nursing Home Arbitration Act of 2009, and the Consumer Fairness Act of 2009. These bills, if enacted, would have invalidated any pre-dispute arbitration clause in employment, consumer, franchise, and nursing home agreements.

CDRC's Dispute Resolution Principles provide that arbitration should be voluntary. Unless a pre-dispute agreement is entered into voluntarily, the arbitration clause should not be binding. Thus, CDRC supported the legislation to the extent that it prohibited one-sided or compulsory arbitration agreements.

CDRC opposed an absolute ban on pre-dispute arbitration clauses because it would diminish access to justice for the very class sought to be protected by the legislation. CDRC also suggested that Congress consider adding a ban on class action waivers in arbitration.

These bills did not pass Congress, but may be reintroduced in one form or another.

We urge you to join us. Not only guard the integrity of ADR, but also protect your ability to receive adequate compensation or DRPA funding for the ADR related work that you do.

Here are two easy steps for you:

To get started, become a member of CDRC. Or send a donation to CDRC. CDRC is fully funded by memberships and donations.

