Conciliation

"Conciliation is a less frequently used form of ADR, and can be described as similar to mediation. The Conciliator's role is to guide the parties to a settlement."

Conciliation is another dispute resolution process that involves building a positive relationship between the parties of dispute, however, it is fundamentally different than mediation and arbitration in several respects.

Conciliation is a method employed in civil law countries, like Italy, and is a more common concept there than is mediation.

The "conciliator" is an impartial person that assists the parties by driving their negotiations and directing them towards a satisfactory agreement. It is unlike arbitration in that conciliation is a much less adversarial proceeding; it seeks to identify a right that has been violated and searches to find the optimal solution.

Conciliation tries to individualize the optimal solution and direct parties towards a satisfactory common agreement. Although this sounds strikingly similar to mediation, there are important differences between the two methods of dispute resolution.

In conciliation, the conciliator plays a relatively direct role in the actual resolution of a dispute and even advises the parties on certain solutions by making proposals for settlement. In conciliation, the neutral is usually seen as an authority figure who is responsible for the figuring out the best solution for the parties. The conciliator, not the parties, often develops and proposes the terms of settlement. The parties come to the conciliator seeking guidance and the parties make decisions about proposals made by conciliators. In this regard, the role of a conciliator is distinct from the role of a mediator. The mediator at all times maintains his or her neutrality and impartiality. A mediator does not focus only on traditional notions of fault and a mediator does not assume sole responsibility for generating solutions. Instead, a mediator works together with the parties as a partner to assist them in finding the best solution to further their interests. A mediator's priority is to facilitate the parties' own discussion and representation of their own interests, and guide them to their own suitable solution- a good common solution that is fair, durable, and workable. The parties play an active role in mediation, identifying interests, suggesting possible

solutions, and making decisions concerning proposals made by other parties. The parties come to mediator seeking help in finding their own best solution.

Also the role of the attorneys is different in mediation. Attorneys are more active in mediation in generating and developing innovative solutions for settlement. In conciliation, they generally offer advice and guidance to clients about proposals made by conciliators.

Conciliation and mediation both look to maintain an existing business relationship and to rekindle a lost balance of power between two parties. These concepts are sometimes used as synonyms, but they do indeed vary substantially in their procedures. In mediation, the mediator controls the process through different and specific stages: introduction, joint session, caucus, and agreement, while the parties control the outcome. By contrast, in conciliation the conciliator may not follow a structured process, instead administering the conciliation process as a traditional negotiation, which may take different forms depending on the case.

Conciliation is used almost preventively, as soon as a dispute or misunderstanding surfaces: a conciliator pushes to stop a substantial conflict from developing. Mediation is closer to arbitration in the respect that it "intervenes" in a substantial dispute that has already surfaced that is very difficult to resolve without "professional" assistance. The parties approach mediation as an alternative method to resolve their dispute, due to the fact that they both recognize that the conflict has grown potentially serious enough for litigation. Mediation may be used, however, any time after the emergence of a dispute, including the early stages.