

Why and How Corporations Use PEDR

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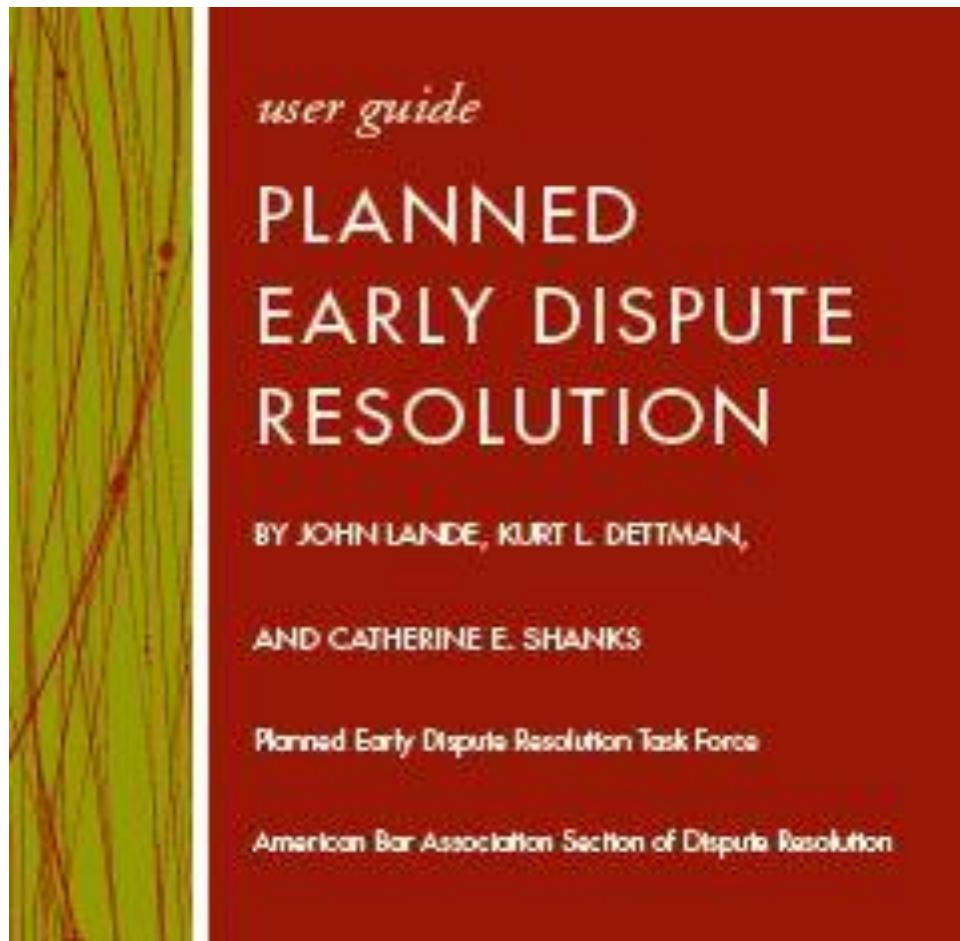
**University of St. Thomas School of Law
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Justice, Accountability and Impact**

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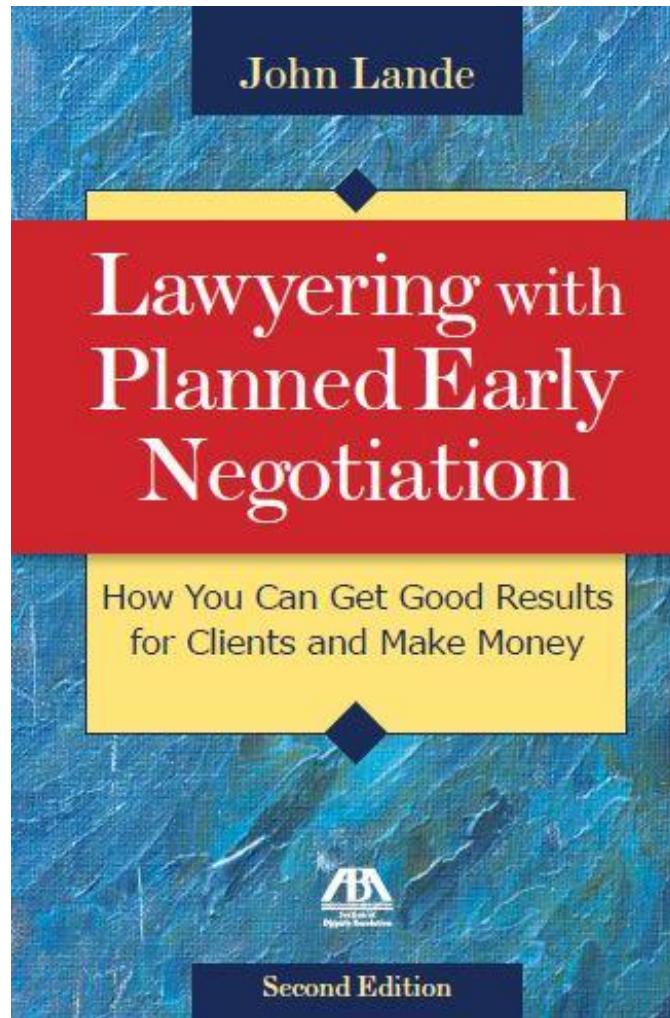
Collaborative Research Project

- Working with Peter Benner, Connecticut attorney and mediator
- Collaboration grows out of “conversation” on Indisputably

Builds on ABA DR Section PEDR User Guide



And My Book



Questions

- Since most corporations don't seem to use planned early dispute resolution (PEDR) systems, why do some corporations use them?
- Who initiated the systems?
- How do they work?

Preliminary Analysis

- Snowball sample of inside counsel in companies using PEDR
- We conducted 12 interviews and plan to do about 15-20 in total
- Obviously, this isn't a representative sample
- But it does provide valuable insights to answer our questions and develop recommendations

What is PEDR, Anyway?

General approach for strategically handling matters early, which includes some or all of the following:

- Regular and strategic use of ADR clauses
- **Early case assessment** and periodic review
- Inside counsel designated as “ADR counsel”
- Training of inside counsel and/or business people
- Written materials about PEDR
- Alternative fee arrangements for outside counsel
- Systematic use of mediation or other ADR processes
- Culture change

Why PEDR?

- Usually, individual inside counsel believe in it and just do it, evolving process over time
 - Some use an intentional DSD process
- Business leaders support or acquiesce
- Business motivations are to:
 - Save time and money, or
 - Achieve other business goals, or
 - Do both

Business Motivations

- Resolve disputes without litigation
- Fair outcomes
- Improve results
- Avoid repeating bad results in court or arbitration
- Better manage litigation
- Maintain business relationships
- Maintain good reputation
- Be consistent with corporate philosophy, eg, creating value, innovation, cooperation, or efficiency

So Why Not PEDR?

Subjects speculated why companies and lawyers don't use PEDR:

- Resistance to change
- Adversarial mindset
- Feels risky – eg, invite lawsuits, create perception of weakness, internal criticism, could harm career
- Lack of data to demonstrate benefits

Survival of PEDR

- As long as PEDR is not the norm for business DR, the survival of PEDR programs in particular businesses generally will depend on the commitment of the general counsel (or other key figures) at any given time
- If PEDR becomes more routine and is institutionalized in particular businesses, it will be harder to uproot existing PEDR programs