

# BEST PRACTICES FOR EFFICIENT AND COST-EFFECTIVE RESOLUTION OF CIVIL LITIGATION



The City Bar proposes these best practices as guidance for participants pursuing the resolution of civil disputes in New York. The best practices are not intended to replace existing court or bar standards but are, instead, consistent with those standards.

1. Recognizing that efficient resolution of a matter may not require taking all the steps in the formal litigation process, the courts, parties and counsel should from the outset work to keep the cost and time of resolving disputes, whether by settlement or by decision, proportionate to the nature and scale of the matters at issue, and to avoid unnecessary cost and delay.
2. Parties and counsel should, early in the litigation process (if possible before a complaint is filed), objectively evaluate the merits of all parties' positions and the likely course and cost of litigation, so that they can manage their disputes efficiently and, when appropriate, sensibly pursue settlement.
3. Counsel should consider themselves professionally responsible for crafting, discussing with clients and pursuing with adversaries and courts approaches to disputes that offer the best prospects for efficient and affordable resolution.
4. Parties should not regard litigation as primarily a contest left to counsel with instructions to pursue victory, but should instead remain actively involved, treating civil disputes as a form of risk or opportunity to be evaluated and managed to achieve an appropriate and affordable result.
5. Beginning early in a litigation and continuing thereafter, courts should, where practical, proactively manage the dispute to promote a fair, efficient and affordable decision or settlement.
6. Courts should adopt rules and practices that feature inquiry of counsel and other oversight of the litigation process to foster achievement of effective settlements or decisions at a cost and in a time frame proportionate to the nature and scale of the dispute.
7. Courts should support – and in appropriate circumstances mandate – mediation as a vehicle for promoting more efficient case management and less expensive and faster resolution.
8. Courts should discourage and Counsel should avoid claims, defenses, motions, requests for discovery, appeals of non-dispositive decisions and other litigation steps or strategies that unnecessarily delay proceedings and burden parties.
9. Judges should decide dispositive motions as early as practicable, and decide as much of a motion as possible when they are not able to resolve the dispute entirely.
10. If the parties choose arbitration or another ADR method as a mechanism for dispute resolution, they should take advantage of the potential for efficiency that such a process can offer when compared with formal court-directed litigation.