

ADR IN COLORADO: A BRIEF HISTORICAL PERSPECTIVE

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When the Colorado legislature passed, and Governor Owens signed into law, the Revised Uniform Arbitration Act in 2004, it was just tinkering with a process that had been operational here for over 150 years. Colorado's early mining settlements had long ago adopted arbitration as a means of resolving disputes where no courts could be found. As rapidly as settlements sprang up, settlers formed mining districts complete with bylaws drafted by whatever literate miners were present, who generally copied from the bylaws of earlier mining districts in California or New Mexico that some had visited. Many of these mining district bylaws contained arbitration clauses, calling for dispute resolution by arbitration. Some were as simple as, "All disputes in reference [*sic*] to mining claims in this District to be settled by arbitration,"¹ while others were more detailed:

All disputes with regard to claims shall be settled by arbitration: The parties disputant each selecting an arbitrator, the two arbitrators thus selected, selecting the third, the decision of the arbitrators shall be deemed final.

Persons acting as arbitrators shall be entitled to a fee of \$5 per day which fee must be deposited by the parties . . .²

Even then, arbitrators recognized the need for payment up front. And, in 1876 arbitration was expressly sanctioned in Colorado's Constitution.³

But the miners were not the first to bring ADR to Colorado—that distinction goes to the Utes (or their predecessors), who utilized a restorative form of dispute resolution common among Native Americans for resolving intra-Tribal or intra-clan disputes. The Utes (both Southern and Northern, which collectively occupied for centuries the vast majority of what became Colorado) were organized in family units that focused on mending fences and restoring relationships within the group rather than on physical retribution and punishment. In Ute tribal society, when an offense was committed, the family of the victim looked to the family of the offender for redress. It was the responsibility of the elders of the offender's family to mete punishment and decide on a remedy—a form of ADR based entirely upon trust rather than on formal tribunals.⁴

The Spanish were the first Europeans to settle in Colorado, and treated Lt. Zebulon Pike to their own version of ADR. On July 15, 1806, Lt. Zebulon Pike and company traveled west from St. Louis to explore the southwest portion of the territory purchased three years earlier from France in the famous Louisiana Purchase, shortly after Lewis and Clark had taken their expedition northward to explore the Northwest Territories. A few weeks of travel brought Pike into Colorado territory where he "discovered" Pike's Peak, declaring that "no human being could have ascended [the peak]."⁵ He was thereupon captured by the Spanish, who had settled in the San Luis Valley decades earlier and who no doubt considered the peak to be just an extension of the Sangre de Cristo Mountains named nearly 90 years earlier by Spanish explorer, Antonio Valverde y Cosio. Zeb Pike's notes and records were confiscated by the Spanish Governor in

Sante Fe, and the following summer the Spanish sent Lt. Pike packing – one of the earliest forms of dispute resolution, banishment by order of the Territorial Governor.⁶

Other early forms of ADR in Colorado were not so forgiving. In 1859, gold prospector John Stuffle got into a dispute with his bother-in-law, Arthur Binegraff, while attempting to relieve him of ten dollars worth of gold dust, and killed Binegraff. The next day, with no formal court readily available, a people’s ADR committee was formed, found Stuffle guilty and hanged him the following day from a cottonwood tree on Cherry Creek.⁷ Dispute resolved. This form of dispute resolution was widely practiced in Colorado in the nineteenth and early twentieth centuries, with far more “alternative” hangings than court sanctioned ones.⁸

And you thought ADR was new to Colorado.

¹ Bylaws, Weaver Mining District (Recorder Arthur M. Henry 1863).

² Bylaws, Walker Quartz Mining District (Recorder V.C. Smith 1863).

³ Colorado Constitution, Article 18, Section 3.

⁴ Wilson Rockwell, *The Utes: A Forgotten People* 17 (Denver: Sage Books 1956).

⁵ Ubbelohde, Benson, Smith, *A Colorado History* 21 (Boulder: Pruett Pub., 7th Ed. 1995).

⁶ *Id.* at 22-23.

⁷ Stephen J. Leonard. *Lynching in Colorado 1859–1919 16-17* (Boulder: University Press of Colorado 2002).

⁸ *Id.* at 6.