

What in the World is ADR?

*Clue: It could keep you out of court

*Appropriate Dispute Resolution

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Choosing an Appropriate Process

When you have a dispute with someone that you can't settle personally, you don't HAVE to go to court.

There may be an easier way. In fact, you might want to look at quite a few options. Lawyers call these options "Appropriate Dispute Resolution," and they use that phrase to describe many problem-solving methods. The most well-known techniques are negotiation, mediation and arbitration.

Some advantages to ADR: It may be quicker and less costly than court; you may have a greater opportunity to personally influence the outcome of the dispute; it is confidential and often the parties are able to maintain an ongoing relationship.

Some disadvantages to ADR methods: If you end up going to court, you may have spent additional money on ADR beforehand; most ADR methods do not create legal precedents; trial strategies may be revealed in ADR sessions (again, this only matters if you do end up in court).

Negotiation

You don't need a lawyer for this ? you can just call up the other party and try to settle your differences. You can also ask a lawyer or other representative to do this for you. Negotiation works best when one party isn't in a position of control and when both parties are willing to talk and to compromise. The mutually agreed upon result is likely to best meet everyone's needs.

Mediation

In a mediation, a neutral and impartial third party trained in mediation skills will help the disputing parties negotiate and arrive at a resolution that's agreeable to them. This is done in an informal setting with no formal rules to follow. The neutral third party doesn't decide the outcome ? that is up to the disputing parties. The mediator assists in communication between them, helping them to clarify issues, identify their interests, and create options that meet their needs.

Mediation is especially valuable in situations where a continuing relationship between the parties is necessary or desirable. For instance, it could be useful in divorce and child custody disputes, business disputes, neighborhood and community conflicts, and landlord-tenant disagreements. In mediation, people find ways to solve their problems themselves, and this may help them cope with future disputes.

Mediation may not be effective when 1) one party is unable to negotiate because of substance abuse, psychological impairment, physical or emotional abuse by the other party or ignorance or 2) one side is interested only in revenge.

When both parties agree on a solution, the agreement may be put in writing by the parties, the mediator or a lawyer. If the parties are unable to reach a mutually satisfactory solution in mediation, they still have the option of taking their dispute to court.

Settlement Conference

A settlement conference is a process in which a neutral third party trained in the law listens to the arguments of the parties and offers his or her opinion on the case. A settlement conference can be held in front of a judge (who won't preside at any later trial) or may be done outside the court system. The difference between this and mediation is mostly style ? a mediator would help parties bargain with each other; in a settlement conference the third party would help the disputants analyze the issues and evaluate their positions in their case. The opinion they get often helps them resolve the issues before trial. Settlement conferences can be used in simple or complex cases and can be combined with mediation.

Med-ARB

This is a combination of mediation and arbitration. It works best when participants have about equal bargaining experience. It can be used when a negotiated but quick settlement is needed.

A neutral and impartial third party serves as both mediator and arbitrator. The third party tries to facilitate communication between the parties as in mediation. If this fails, testimony is given by the parties and the neutral third party then issues a binding decision.

In situations where the parties have an ongoing relationship, such as family or labor disputes, this method can help the parties preserve their relationship by promoting voluntary communication and settlement, with arbitration only being used to decide those issues upon which the parties cannot agree.

Arbitration

Arbitration is less formal than a court hearing. In an arbitration, the parties agree to let an impartial arbitrator or panel of arbitrators hear evidence and decide the outcome of their dispute.

It's often used when a situation requires that an impartial third person decide a dispute quickly and conclusively for the parties. Often, you can get an arbitrator with specialized knowledge of complicated issues. Arbitration might be used to interpret contract rights, settle insurance claims or resolve business disputes.

In an arbitration, the parties present testimony or supporting documents. They may use attorneys if they wish. They must agree beforehand to abide by what the arbitrators decide. There is only a limited right to court review from an arbitrator's decision, which can be enforced by either party in court.

Early Neutral Evaluation

In ENE, an evaluator is appointed by the court or chosen by the parties. The evaluator usually has substantial experience in cases similar to the parties' case. In an evaluation session, the evaluator will meet with the parties and their attorneys and help them to simplify the case, for example, by discarding issues not worth pursuing and agreeing upon pretrial procedures. If desired, the evaluator can try to help the parties reach settlement.

The method is confidential, non-binding and is done early in the lawsuit. It is usually used in large, complex cases.

Mini-Trial

A mini-trial, which is often used to resolve complex litigation, combines elements of other ADR methods.

In a mini-trial, lawyers from each side present an abbreviated version of their cases to a panel made up of a representative from each side and a neutral member. After hearing the presentation, the party officials conduct settlement negotiations, helped by the neutral panel member.

In a mini-trial, both sides get to see the strengths and weaknesses of their cases. It's non-binding and the goal is to help settlement negotiations between top officials of the parties.

This method is especially helpful in large cases where negotiations are stalled and participants need to see for themselves the strengths and weaknesses of their cases.

Summary Jury Trial

This is the only ADR method where a case is presented to a jury. The goal is to show both parties what a typical jury would decide, hoping that this will help them settle. It is used in complex cases.

This method can be voluntary, but usually happens as a result of a motion by one or all litigants or by the court.

When the court orders this, parties select six jurors from a panel of 10 to 12. After brief questioning, the jurors are ready, but they may not be told this isn't a "real" trial. They hear and consider brief presentations of the evidence and closing arguments and render a verdict. Using the verdict, parties can assess their cases and use the information for settlement negotiations.

Your Day in Court

We want to make it clear that having "your day in court" may be the right solution for your difficulty. That's a decision you need to make after a discussion with your attorney.

Discuss the above option with your attorney. Each has certain advantages but also presents some risk.

In Conclusion

We hope this pamphlet has helped you see the many options you have when you are involved in a dispute. Your attorney will be glad to answer any questions about the process of going to court.

A free directory of ADR professionals is available through the Colorado Bar Association, (303) 860-1115.

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