

Superior Court of California, County of Mariposa

Alternative Dispute Resolution (ADR) Information Guide

Adapted from the Administrative Office of the Courts' publication:
"Alternative Dispute Resolution, *Options for Resolving Your Dispute*"

ADR INFORMATION GUIDE

There Are Alternatives to Going to Trial

Did you know that 95 percent of all civil cases filed in court were resolved without going to trial? Many people use processes other than trial to resolve their disputes. These alternative processes, known as Alternative Dispute Resolution or ADR, are typically less formal and adversarial than trial, and many use a problem-solving approach to help the parties reach agreement. Because of these potential advantages, it is worth considering using ADR early in a lawsuit, or even before you file a lawsuit.

Potential Advantage of ADR

Here are some potential advantages of using ADR:

- 1) **Saves Time:** A dispute often can be settled or resolved much sooner with ADR.
- 2) **Saves Money:** When cases are resolved earlier through ADR, the parties may save some of the money they would have spent on attorney fees, court costs, and experts' fees.
- 3) **Increases Control Over the Process and the Outcome:** In ADR, parties typically play a greater role in shaping both the process and its outcome. In most ADR processes, parties have the opportunity to tell their side of the story as they do at trial. Some ADR processes, such as mediation, allow the parties to fashion creative resolutions that are not available in a trial. Other ADR Processes, such as arbitration, allow the parties to choose a qualified person or expert in a particular field to decide the dispute.
- 4) **Preserves Ongoing Relationships:** ADR can be a less adversarial way to resolve a dispute. For example, an experienced mediator can help the parties effectively communicate their needs and point of view to the other side. This can be an important advantage where the parties have a relationship to preserve such as in cases involving a business partner, family member or customer-vendor relationship.
- 5) **Increases Satisfaction:** In trial, there is typically a winner and a loser. The loser is not likely to be happy, and in some cases the winner may not be completely satisfied with the outcome. ADR can help the parties find win-win solutions and achieve their respective goals. This, along with other potential advantages of ADR, may increase the parties' overall satisfaction with both the dispute resolution process and the outcome.
- 6) **Fosters Attorney-Client Relationships:** Parties and Attorneys may also benefit from ADR by exploring their roles as problem-solvers and counselors rather than merely acting as adversaries. Quick, cost-effective, and satisfying resolutions are likely to produce happier parties and stronger relationships with their attorneys.

What Are the ADR Options?

The most commonly used ADR processes are Mediation, Arbitration, Neutral Case Evaluation, and Settlement Conferences. Each of these ADR processes is described below.

➤ Mediation

In mediation, an impartial person called a “mediator” helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can settle the dispute themselves. Mediation leaves control of the outcome with the parties.

Mediation may be particularly useful when parties have a relationship they want to preserve. So when family members, neighbors, or business partners have a dispute, mediation may be the ADR process to use. Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can listen to the parties and help them communicate in an effective and nondestructive manner.

➤ Arbitration

In arbitration, a neutral person called an “arbitrator” hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is typically less formal than a trial, and the rules of evidence may be relaxed.

Arbitration may be either “binding” or “non-binding.” Binding arbitration means that the parties waive their right to a trial and agree to accept the arbitrator’s decision as final. Generally, there is no right to appeal an arbitrator’s decision. Non-binding arbitration means that the parties are free to request a trial if they do not accept the arbitrator’s decision. Arbitrations may also be used to set maximum and minimum awards, known as high-low arbitrations. This allows the plaintiff to have a guaranteed minimum recovery and defendant to rely on a guaranteed absolute maximum exposure, regardless of how the arbitration unfolds.

Cases for Which Arbitration May be Appropriate: Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

➤ Neutral Case Evaluation

In Neutral Case Evaluation, each party gets a chance to present the case to a neutral person called an “evaluator.” The evaluator then gives an opinion on the strengths and weaknesses of each party’s evidence and arguments and about how the dispute could be resolved. The evaluator is often an expert in the subject matter of the dispute. Although the evaluator’s opinion is not binding, the parties typically use it as a base for trying to negotiate a resolution of the dispute. Even if not successful in resolving the case, Neutral Case Evaluation can lead to use of other ADR procedures, such as arbitration or mediation, especially when undertaken early in the litigation.

Cases for Which Neutral Case Evaluation May Be Appropriate:

Neutral Case Evaluation is appropriate for most cases, and may be most useful in cases that involve technical issues that require special expertise to resolve or in cases that the only significant issue is the amount of damages.

➤ **Settlement Conferences**

Settlement Conferences may be either mandatory or voluntary. In both types of Settlement Conferences, the parties and their attorneys meet with a judge or a neutral person called a “settlement officer” to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement Conferences are appropriate in any case where settlement is an option. Mandatory Settlement Conferences are often held close to the date a case is set for trial.

Serving the ADR Information Packet

The ADR Information Packet, which is provided to all plaintiffs initiating a lawsuit, consists of: 1) The ADR Information Guide, and 2) The ADR Stipulation Form. The Plaintiff must serve a copy of the ADR Packet on each defendant with the complaint. Cross-complainants must serve a copy of the ADR Packet on all new Cross-defendants with the cross-complaint.