

Alternate Forms of Dispute Resolution

Alternative Dispute Resolution (“ADR”) refers to any method of settling disputes outside of the courtroom. **Deciding on one of the following alternative forms of dispute resolution might be less costly, less time consuming and provide a better solution for resolution of a dispute than litigation.** Litigation is a process whereby the parties in a contested matter rely on the court system and the judge to resolve their dispute. Litigation can come at a high financial, emotional and psychological cost, especially if it involves children.



Collaborative Practice is the process where the parties, their attorneys, and, in some cases mental health, financial and/or child specialists, work together in good faith and pledge to achieve a settlement out of court. In so doing, **all participants work on achieving an effective ongoing relationship and engage in joint problem solving while maintaining privacy, dignity and respect.** The process requires full disclosure and confidentiality. Unlike mediation, there is no impartial third party. Parties in the supportive environment of their team, feel safe to generate a variety of possible options for resolution of each issue. They agree that if their matter is not resolved in the collaborative process, the parties are required to obtain new counsel and other experts as necessary.

Independent Case Evaluation helps parties move closer to resolution when it appears they otherwise are unable to do so. It has all the same features of mediation with one exception. **Independent case evaluators can provide information based on their knowledge and expertise as to how they have seen judges and/or other parties resolve similar disputes** if the parties both agree for this information to be provided. Unlike the Collaborative Process, this method relies on the opinion and experience of only one individual, rather than an entire team of diverse professionals focused on assisting both parties.

Arbitration is a technique for resolving disputes where a **neutral third party makes a decision that is legally binding on both sides and enforceable by the Court.** The arbitrator is usually selected by mutual agreement of the parties. The arbitrator hears the evidence much like a judge does but in a more relaxed setting. In rare circumstances, the parties can agree that the arbitrator will first attempt to mediate a resolution and, if the parties cannot reach an agreement, the arbitrator will make the final decision. Unlike the Collaborative Process, arbitration is adversarial and binding if the parties are unable to reach an agreement; there is no option of going to Court and very limited reasons for appealing the arbitrator’s decision.

Mediation is the process of using an impartial third party mediator to explore settlement options and help parties reach their own resolutions.

- The mediator has no decision making authority;
- cannot advocate for either side;
- cannot give legal advice; nor
- weigh in on the fairness of any options for resolution.

Parties may participate in mediation without their attorneys present, or, if the parties agree, they may participate with counsel. If they elect to proceed without their attorney present, they are advised to have legal counsel review any agreements reached in mediation before they are finalized. In the process, the parties can meet together or the mediator can shuttle between parties in separate rooms. **Full disclosure and confidentiality are cornerstones of mediation.** For mediation to be effective, both parties must feel free to discuss all available options for resolution without the fear that disclosure of any facts could be used against them in any subsequent litigation if their matter is not resolved. Unlike the Collaborative Process, attorneys representing their clients in mediation are in an adversarial position, rather than working as a team to help parties reach a mutually satisfactory solution.

Divorce is a life event that ends a marriage but that need not destroy family bonds or relationships. If parties are predisposed to settlement, any one of these forms of alternative dispute resolution should be considered to help resolve your matter. Speak with a professional about which one is right for you.