



Alternative Dispute Resolution Information

ADR

The plaintiff/petitioner must include a copy of this notice with the complaint when serving the defendant/respondent. Cross complainants must serve a copy of this notice on any new parties named to the action. [Civil only]

What is ADR? Alternative Dispute Resolution [ADR] is the term used to describe all of the other options available for settling a dispute which once had to be settled in court. ADR processes, such as arbitration, mediation, neutral evaluation, and settlement conference are less formal than a court process and provide opportunities for parties to reach an agreement using a problem-solving approach.

Resource To learn more about the types and benefits of ADR, and whether it may be appropriate for your case, please access the California Courts website at <http://www.courts.ca.gov/programs-adr.htm>.

This site also contains the Judicial Council forms applicable to ADR.

*You
Don't
Have to
Sue*

Here Are Some Other Ways



to Resolve a Civil Dispute

Presented by the
Judicial Council of California
and the
State Bar of California

Introduction

Did you know that most civil lawsuits settle without a trial?

And did you know that there are a number of ways to resolve civil disputes without having to sue somebody?

These alternatives to a lawsuit are known as alternative dispute resolution (ADR). The most common forms of ADR are mediation, arbitration, and case evaluation. There are a number of other kinds of ADR as well.

In ADR, trained, impartial persons decide disputes or help parties decide disputes themselves. These persons are called neutrals. For example, in mediation, the neutral is the mediator. Neutrals normally are chosen by the disputing parties or by the court. Neutrals can help parties resolve disputes without having to go to court.

ADR is not new. ADR is available in many communities, through dispute resolution programs and private neutrals.

Advantages of ADR

ADR can have a number of advantages over a lawsuit.

- **ADR can be speedier.** A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- **ADR can save money.** Court costs, attorneys fees, and expert fees can be saved.
- **ADR can permit more participation.** The parties may have more chances to tell their side of the story than in court and may have more control over the outcome.

- **ADR can be flexible.** The parties can choose the ADR process that is best for them. For example, in mediation the parties may decide how to resolve their dispute.
- **ADR can be cooperative.** This means that the parties having a dispute may work together with the neutral to resolve the dispute and agree to a remedy that makes sense to them, rather than work against each other.
- **ADR can reduce stress.** There are fewer, if any, court appearances. And because ADR can be speedier, and save money, and because the parties are normally cooperative, ADR is easier on the nerves. The parties don't have a lawsuit hanging over their heads for years.
- **ADR can be more satisfying.** For all the above reasons, many people have reported a high degree of satisfaction with ADR.

Because of these advantages, many parties choose ADR to resolve a dispute, instead of filing a lawsuit. Even when a lawsuit has been filed, the court can refer the dispute to a neutral before the parties' positions harden and the lawsuit becomes costly. ADR has been used to resolve disputes even after a trial, when the result is appealed.

Disadvantages of ADR

ADR may not be suitable for every dispute.

- If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court.
- There generally is less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be

effective if it takes place before the parties have sufficient information to resolve the dispute.

- The neutral may charge a fee for his or her services.
- If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a lawsuit.
- Lawsuits must be brought within specified periods of time, known as statutes of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in an ADR process.

Three Common Types of ADR

This pamphlet describes the forms of ADR most often found in the California state courts and discusses when each may be right for a dispute.

• MEDIATION

In mediation, a neutral (the mediator) assists the parties in reaching a mutually acceptable resolution of their dispute. Unlike lawsuits or some other types of ADR, the mediator does not decide how the dispute is to be resolved. The parties do.

Mediation is a cooperative process, in which the parties work together toward a resolution that tries to meet everyone's interests, instead of working against each other, where at least one party loses. Mediation normally leads to better relations between the parties and to resolutions that hold up. For example, mediation has been very successful in family disputes, particularly with child custody and visitation.

Mediation is particularly effective when the parties have a continuing relationship, like neighbors or business people. Media-

tion also is very effective where personal feelings are getting in the way of a resolution. This is because mediation normally gives the parties a chance to let out their feelings and find out how each other sees things.

Mediation may not be a good idea when one party is unwilling to discuss a resolution or when one party has been a victim of the other or cannot have enough bargaining power in the mediation. However, mediation can be successful for victims seeking restitution from offenders. A mediator can meet with the parties separately when there has been violence between them.

• **ARBITRATION**

In arbitration, a neutral (the arbitrator) reviews evidence, hears arguments, and makes a decision (award) to resolve the dispute. This is very different from mediation, where the mediator helps the parties reach their own resolution. Arbitration normally is more informal and much speedier and less expensive than a lawsuit. Because of the large number of cases awaiting trial in many courts, a dispute normally can be heard much more quickly by an arbitrator than by a judge. Often a case that may take a week to try in court can be heard by an arbitrator in a matter of hours, because evidence can be submitted by documents (like medical reports and bills and business records), rather than by testimony.

There are two kinds of arbitration in California. Private arbitration, by agreement of the parties involved in the dispute, takes place outside of the courts and, normally, is binding. In most cases "binding" means that the arbitrator's decision (award) is final and there will not be a trial or an appeal of that decision. By contrast, a decision by an arbitrator in a case referred by the courts, known as "judicial arbitration," is not binding, unless the parties agree to be bound. A party who does not like the award may file a request for trial with the court within a specified time. However, if that party does not do better in the trial than in arbitration, he or she may have to pay a penalty.

Arbitration is best for cases where the parties want a decision without the expense of a trial. Arbitration may be better than mediation when the parties have no relationship except for the dispute.

Arbitration may not be a good idea when the parties want to resolve their dispute by themselves, or with the aid of a neutral.

- **CASE EVALUATION**

In case evaluation, a neutral (the evaluator) gives an opinion on the strengths and weaknesses of each party's evidence and arguments, and makes an evaluation of the case. Each party gets a chance to present the case and hear the other side. This may lead to a settlement, or at least help the parties prepare to resolve the dispute later on.

Case evaluation, like mediation, can come early in the dispute and save time and money.

Case evaluation is most effective when someone has an unrealistic view of the dispute or when the only real issue is what the case is worth, or when there are technical or scientific questions to be worked out.

Case evaluation may not be a good idea when it is too soon to tell what the case is worth or when the dispute is about something besides money, like a neighbor playing loud music late at night.

Additional Information

There are several other types of ADR beside mediation, arbitration, and case evaluation. Some of these are conciliation, settlement conferences, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR types. The important thing is to try to find the type or types of ADR that are

most likely to resolve your dispute.

The selection of a neutral is an important decision. There is no legal requirement that the neutral be licensed or hold any particular certificate. However, some programs have established qualification requirements for neutrals. You may wish to inquire about the qualifications of any neutral you are considering.

Agreements reached through ADR normally are put in writing by the neutral and, if the parties wish, may become binding contracts that can be enforced by a judge.

You may wish to seek the advice of an attorney as to your legal rights and other matters relating to the dispute.

Whom Do You Call?

To locate a dispute resolution program or neutral in your community:

- Contact the **California Department of Consumer Affairs, Consumer Information Center, toll free, 1-800-952-5210,** or
- Contact the **local bar association,** or
- Look in the **Yellow Pages** under "Arbitrators" or "Mediators."

There may be a charge for services provided by private arbitrators and mediators.

NAME OF COURT: _____

ADR Information Form

This form should be filled out and returned,
within 10 days of the resolution of the dispute, to:



1. Case name: _____ No. _____

2. Type of civil case: PI/PD-Auto PI/PD-Other Contract Other (specify): _____

3. Date complaint filed _____ Date case resolved _____

4. Date of ADR conference _____ 5. Number of parties _____

6. Amount in controversy \$0-\$25,000 \$25,000-\$50,000 \$50,000-\$100,000 over \$100,000 (specify): _____

7. Plaintiff's Attorney Cross Complainant's Attorney 8. Defendant's Attorney Cross Defendant's Attorney

NAME

ADDRESS

()

TELEPHONE NUMBER

NAME

ADDRESS

()

TELEPHONE NUMBER

9. Please indicate your relationship to the case:

Plaintiff Plaintiff's attorney Defendant Defendant's attorney
 3rd party defendant 3rd party defendant's attorney Other (specify): _____

10. Dispute resolution process:

Mediation Arbitration Neutral case evaluation Other (specify): _____

11. How was case resolved?

a. As a direct result of the ADR process.
b. As an indirect result of the ADR process. c. Resolution was unrelated to ADR process.

12. Check the closest dollar amount that you estimate you saved (attorneys fees, expert witness fees, and other costs) by using this dispute resolution process compared to resolving this case through litigation, whether by settlement or trial.

\$0 \$250 \$500 \$750 \$1,000 more than \$1,000 (specify): \$ _____

13. If the dispute resolution process caused a net increase in your costs in this case, check the closest dollar amount of the additional cost:

\$0 \$250 \$500 \$750 \$1,000 more than \$1,000 (specify): \$ _____

14. Check the closest number of court days that you estimate the court saved (motions, hearings, conferences, trial, etc.) as a result of this case being referred to this dispute resolution process:

0 1 day more than 1 day (specify): _____

15. If the dispute resolution process caused a net increase in court time for this case, check the closest number of additional court days:

0 1 day more than 1 day (specify): _____

16. Would you be willing to consider using this dispute resolution process again? Yes No

**GUIDE TO NAPA SUPERIOR COURT
CIVIL CASE MANAGEMENT
AND ATTACHED ALTERNATIVE DISPUTE RESOLUTION PACKET**

FILING OF COMPLAINT	CASE MANAGEMENT CONFERENCE (formerly Trial Setting Conference) is set upon the filing of the Complaint, 160 days from filing of Complaint. Notice is in form of stamp on face of complaint. ADR Packet Distributed
PROOF OF SERVICE	DUE 60 DAYS FROM FILING OF COMPLAINT
PROOF OF SERVICE TO AMENDED COMPLAINT (if new party added)	DUE 30 DAYS FROM FILING OF AMENDED COMPLAINT
PROOF OF SERVICE TO CROSS-COMPLAINT (if new defendant added)	DUE 30 DAYS FROM FILING OF CROSS-COMPLAINT
PROOF OF SERVICE TO CROSS-COMPLAINT (if no new parties added)	DUE SAME DAY AS FILING OF CROSS-COMPLAINT
ANSWER/DEMURRER (responsive pleadings)	DUE NO LATER THAN 45 DAYS FROM FILING OF PROOF OF SERVICE (30 days + 15 days if stipulated)
DEFAULT	DUE NO LATER THAN 55 DAYS FROM FILING OF PROOF OF SERVICE (30 + 15 + 10 DAYS)
DEFAULT JUDGMENT	DUE 45 DAYS FROM FILING OF DEFAULT
CASE MANAGEMENT CONFERENCE STATEMENT Normally Settlement Conference, Trial Management Conference (formerly Trial Setting Conference), and Trial set @ Case Management Conference)	DUE 15 DAYS PRIOR TO Case Management Conference (Judicial Council form CM-110) (Note: Trial Setting Conference Memorandum is no longer accepted for filing- see new State Rules)
UNINSURED MOTORIST CLAIMS	Application and order to be filed designating case a "UM" case, matter is removed from the court's control and an OSC re Delay Reduction Status is scheduled not sooner than 180 days of designation
STRUCTURED SETTLEMENT	Structured or Conditional Settlements. Notice of Conditional Settlement must be submitted to the Court in the form of a Notice of Conditional Settlement and Order for Dismissal. The Court shall dismiss the case, without prejudice, pursuant to the terms of the stipulated agreement. Upon noticed motion and showing of good cause and default in the performance of the settlement, the Court will reserve jurisdiction to set aside the dismissal and order entry of judgment.
BANKRUPTCY OTHER REMOVALS, such as to Federal Court, Coordination Proceedings, First District Court of Appeal (either in instant or related case)	Notification is received, together with bankruptcy petition and stay, matter is removed from the court's control and an OSC re Delay Reduction Status is scheduled within 6 months
BINDING ARBITRATION	Normally stipulation and order is received or issue is resolved in open court, matter is removed from the court's control and an OSC re Delay Reduction Status is scheduled within 6 months