

Alternative Dispute Resolution

ADR in the Minnesota State Court System

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What is ADR?

Since the early 1980's, alternative methods have been developed to help people resolve legal problems, without resorting to litigation. These techniques, known as alternative dispute resolution (ADR), involve an independent third person (a neutral) who tries to help resolve or narrow the areas of conflict. The use of ADR early in a case can result in the more efficient, cost-effective resolution of disputes with greater satisfaction to the parties.

A great majority of the civil cases, including marital dissolutions, filed in Minnesota State courts are settled without a trial. Yet, most cases do not settle until after the parties and courts have spent a lot of time, money, and emotional energy, and the taxpaying public has borne a great deal of expense.

Minnesota courts recognize the effectiveness of ADR as a tool for settling conflicts. In response, the Minnesota Judicial Branch publishes ADR information that can be found on the Minnesota Judicial Branch web page under the topic of Alternative Dispute Resolution (ADR) / Mediation. The parties must consider whether to use ADR to help resolve the dispute.

Rule 114 of the Minnesota General Rules of Practice describes the procedures for deciding whether to use ADR. Parties are required to discuss the use of ADR and address this issue in the civil cover sheet (non-family cases) / informational statement (family cases) filed with the court. If the parties are unable to make a decision on the use of an ADR process or a neutral, the court may order the parties to any number of ADR alternatives. This does not mean parties are required to settle their differences through ADR. They are required, however, to at least discuss their differences with the neutral and attempt to resolve their differences prior to a trial.

Types of ADR

Adjudicative Processes

- **Arbitration.** A forum in which each party and its counsel present its position before a neutral third party, who renders a specific award. If the parties stipulate in advance, the award is binding and is enforceable in the same manner as any contractual obligation. If the parties do not stipulate that the award is binding, the award is not binding and a party may request a trial.
- **Consensual Special Magistrate.** A forum in which a dispute is presented to a neutral third party in the same manner as a civil lawsuit is presented to a judge. This process is binding and includes the right of appeal.
- **Summary Jury Trial.** A forum in which each party and their counsel present a summary of their position before a panel of jurors. The number of jurors on the panel is six unless the parties

agree otherwise. The panel may issue a non-binding advisory opinion regarding liability, damages, or both.

Evaluative Processes

- **Early Neutral Evaluation (ENE).** A forum in which attorneys present the core of the dispute to a neutral evaluator in the presence of the parties. This occurs after the case is filed but before Discovery (the formal process of gathering information relevant to the pending litigation, which may include written interrogatories, document production and depositions) is conducted. The neutral then gives a candid assessment of the strengths and weaknesses of the case. If settlement does not result, the neutral helps narrow the dispute and suggests guidelines for managing discovery.
- **Non-Binding Advisory Opinion.** A forum in which the parties and their counsel present their position before one or more neutrals(s). The neutral(s) then issue(s) a non-binding advisory opinion regarding liability, damages or both.
- **Neutral Fact-Finding.** A forum in which a neutral investigates and analyzes a factual dispute and issues findings that are non-binding unless the parties agree to be bound by them.

Facilitative Processes

- **Mediation.** A forum in which a neutral third party facilitates communication between parties to promote settlement. A mediator may not impose his or her own judgment on the issues for that of the parties.

Hybrid Processes

- **Mini-Trial.** A forum in which each party and their counsel present their positions, either before a selected representative for each party, before a neutral third party, or both to define the issues and develop a basis for settlement negotiations. A neutral third party may issue an advisory opinion regarding the merits of the case. The advisory opinion is not binding unless the parties agree that it is binding and enter into a written settlement agreement.
- **Mediation-Arbitration (Med-Arb).** A hybrid of mediation and arbitration in which the parties initially mediate their disputes; but if they reach impasse, they arbitrate the deadlocked issues.
- **Other.** Parties may by agreement create an ADR process. They shall explain their process in the Civil Cover Sheet / Informational Statement.

Who Are The Neutrals?

When an ADR process is chosen, the parties should select an independent third party, called a neutral, from the ADR Neutrals Roster. The State Court Administrator's Office maintains two ADR Neutrals Rosters, civil (non-family) and family. The neutrals on these rosters are professionals with a wide variety of backgrounds, some, but not all of whom, are attorneys. Neutrals providing family facilitative/hybrid services must attend 40 hours of training certified by the State Court Administrator's Office. Neutrals providing civil facilitative/hybrid services must attend 30 hours of training certified by the State Court Administrator's Office. There are different training requirements

for neutrals providing adjudicative and evaluative services. All neutrals on the family roster have had 6 hours of training on domestic abuse issues.

Fees

Parties are responsible for paying the neutral for their services. Typically, fees are based on an hourly rate established by the neutral. ADR services provided by some organizations have established a sliding fee scale based on the parties' incomes. It is assumed that the parties will split the cost of the ADR process equally. Parties may, however, agree on a different allocation. Parties should be sure to discuss fees and payments prior to entering into an ADR agreement.

Code of Ethics

The Minnesota Supreme Court has established a Code of Ethics applicable to all Rule 114 Qualified Neutrals or neutrals who have been appointed by the court to assist parties with their conflict. The code sets forth rules for ethical conduct to guide neutrals in their practices, to inform and protect consumers of ADR services, and to ensure the integrity of the various ADR processes.

The ADR Ethics Board has established a procedure for handling complaints alleging that neutrals have failed to comply with the Code of Ethics. A complaint must be in writing, signed by the complainant, and mailed or delivered to the State Court Administrator's Office, ADR Program at the address below. The complaint must identify the neutral and make a short and plain statement of the conduct forming the basis of the complaint.

Information regarding the complaint procedure and the Code of Ethics are available on the Minnesota Judicial Branch website at www.mncourts.gov under the topic of Alternative Dispute Resolution (ADR) / Mediation.

ADR Program
135-D Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155-1500
Phone: (651) 297-7590
Email: adr@courts.state.mn.us