

Some Options For Resolving Your Dispute

There Are Alternatives to Going to Trial

Did you know that 95 percent of all civil cases filed in court are resolved without going to trial? Many people use processes other than trial to resolve their disputes. These alternative processes, collectively 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.

Advantages of ADR

Here are some potential advantages of using ADR:

- **Save Time.** A dispute often can be settled or decided much sooner with ADR; often in a matter of months, even weeks, while bringing a lawsuit to trial can take a year or longer.
- **Save 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 expert's fees.
- **Increase Control Over the Process and the Outcome.** In ADR, parties typically play a greater role in shaping both the process used to resolve the dispute, and its outcome. In most ADR processes, parties have more opportunity to tell their side of the story than 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 an expert in a particular field to decide the dispute.
- **Preserve Relationships.** ADR can be a less adversarial and less hostile 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.
- **Increase Satisfaction.** In a trial, there is typically a winner and a loser. The loser is not likely to be happy, and even the winner may not be completely satisfied with the outcome. ADR can help the parties find win-win solutions and achieve their real goals. This, along with all of ADR's

other potential advantages, may increase the parties' overall satisfaction with both the dispute resolution process and the outcome.

- ***Improve Attorney-Client Relationships.*** Attorneys may also benefit from ADR by being seen as problem-solvers rather than as combatants. Quick, cost-effective, and satisfying resolutions are likely to produce happier clients and thus generate repeat business from clients and referrals of their friends and associates.

Because of these potential advantages, it is worth considering using ADR early in a lawsuit or even before you file a lawsuit.

What Are the Most Common ADR Options?

The most commonly-used ADR processes are mediation, arbitration, neutral evaluation, and settlement conferences.

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 try to settle the dispute themselves. Mediation leaves control of the outcome of with the parties.

Cases Which May be Appropriate for Mediation: 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 hear the parties out and help them communicate with each other in an effective and nondestructive manner.

Cases Which May Not Be Appropriate for Mediation: Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

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 less formal than a trial, and the rules of evidence are often relaxed.

Arbitration may either be "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 the 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.

Cases Which May be Appropriate for Arbitration: 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 the training or experience in the subject matter of the dispute.

Cases Which May Not Be Appropriate for Arbitration: If parties want to retain control over how their dispute is resolved, then arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator's award, even if the evidence or the law does not support it. Even in nonbonding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

Neutral Evaluation

In Neutral 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 basis for trying to negotiate a resolution of the dispute.

Cases Which May be Appropriate for Neutral Evaluation: Neutral Evaluation may be most appropriate for cases in which there are technical issues that require special expertise to resolve or the only significant issue in the case is the amount of damages.

Cases Which May Not be Appropriate for Neutral Evaluation: Neutral Evaluation may not be appropriate when there are significant personal or emotional barriers to resolving the dispute.

Settlement Conferences

Settlement conferences may either be mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or 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.

ADR Services in Santa Barbara County

**CADRe Program [Court-Administered Dispute Resolution]
Santa Barbara Superior Court
1100 Anacapa Street
Santa Barbara, CA 93101
Ph: 805-882-4661
Fax: 805-882-4613**

**312-C East Cook Street
Santa Maria, CA 93454
Ph: 805-614-6555
Fax: 805-614-6616**

**E-mail: cadre@sbcourts.org
Web: www.sbcadre.org**

* * *

Community Mediation Program of Santa Barbara County
330 East Carrillo Street
Santa Barbara, CA 93101
Ph: 805/963-6765
Fax: 805/963-8165

120 East Jones Street, Suite 133
Santa Maria, CA 93454

Ph: 805/349-8943