

ADR:
Alternative Dispute Resolution

Here Are Some Other Ways



to Resolve a Civil Dispute

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

INTRODUCTION

Why is this ADR information package important?

Effective July 1, 2001, all plaintiffs filing general civil cases in the Mono County Superior Court must comply with California Rules of Court §1590.

Rule 1590 is explained in this ADR information package, which includes:

- A definition of ADR and cases to which the rule applies
- Requirements of each party
- Advantages and Disadvantages of ADR
- Types of ADR processes appropriate for your case
- Contact information

What is ADR?

Sometimes referred to as Appropriate Dispute Resolution (but most often referred to as Alternative Dispute Resolution), ADR is defined by California Rules of Court 1580 as:

a process, other than formal litigation, in which a neutral person or persons resolve a dispute or assist parties in resolving their dispute.

Neutrals are trained and impartial persons usually chosen by the disputing parties or by the court.

The most common forms of ADR include: mediation, arbitration and case evaluation. ADR is not new. ADR is available in many communities, through dispute resolution programs and private neutrals.

What is a general civil case?

As defined by Rule 1580: all limited and unlimited civil cases

EXCEPT:

- Probate
- Guardianship, conservatorship, family law
- Juvenile court proceedings
- Small claims proceedings
- Other civil petitions as defined by the Judicial Branch Statistical Information System Data Collection Standards.

What is required of each party?

Plaintiffs

Shall serve a copy of this ADR information package on each defendant along with the complaint in all general civil cases.

Defendants

Cross-complainants shall serve a copy of this ADR information package on any new parties to the action along with the cross-complaint.

Both Parties

Must decide whether to participate in an ADR process, preferably before the first case management conference.

- If both parties DO agree to use an ADR process, they must complete an ADR Stipulation Form (see attached) and file it with the Court.

Advantages of ADR

- **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 confidential.**
By signing a confidential settlement agreement, both sides can be assured that the negotiations and specific details of the dispute will remain confidential.
- **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.**
- **Discovery.** There is generally 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.
- **Fees.** The neutral may charge a fee for his or her services.
- **Statute of Limitations.** 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.
- **If ADR does not resolve the dispute, the parties may have to put time and money into both ADR and a lawsuit.**
- **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.**

WHICH FORM OF ADR IS MOST APPROPRIATE FOR YOU?

Three common forms of voluntary ADR most often found in California state courts:

➤ **Mediation.**

To help the parties preserve an ongoing business or personal relationship. A neutral assists the parties in reaching a mutually acceptable resolution of their dispute. The mediator does not decide how the dispute is to be resolved; the parties do. Very successful in family disputes, particularly with child custody and visitation.

➤ **Arbitration**

To resolve a dispute privately, quickly, economically, and more informally. A neutral reviews evidence, hears arguments, and makes a decision (award) to resolve the dispute. Two kinds of arbitration in California: private arbitration (normally, binding) and judicial arbitration (not binding). Best for cases where the parties want a decision without the expense of trial and the parties have no prior relationship.

➤ **Case Evaluation**

To dispel unrealistic expectations, especially regarding damages, which have stalled settlement negotiations; to narrow issues. A neutral gives an opinion on the strengths and weaknesses of each party's evidence and arguments to help the parties prepare to resolve the dispute. Best when only issue is what the case is worth, or when technical or scientific questions need to be worked out.

Other forms of voluntary ADR available¹:

- **Facilitation-** To promote staff cohesion in a business or other association.
- **Partnering-** To manage a major enterprise involving many parties
- **Ombudsperson-** To respond to a grievance by an employee, student, client, etc.
- **Negotiation-** Most common, used for almost every dispute.
- **Conciliation-** To help parties resolve a marital or labor dispute.
- **Confidential listening-** To aid where parties are reluctant to disclose positions.
- **Mini-trial-** To resolve a complex dispute where an ongoing relationship exists.
- **Summary jury trial-** To aid in settlement where lengthy jury trial is anticipated.
- **Settlement conference-** To settle monetary claims without equitable issues.
- **Neutral fact-finding-** To settle action hinging on issue of fact for expert.
- **Mediation and binding arbitration ("Med-Arb")-** If mediation fails, mediator becomes arbitrator and renders a binding decision.
- **Binding arbitration and mediation ("Arb-Med")-** Neutral seals a decision, then parties mediate. If no settlement reached then sealed decision is binding.
- **Reference to special/general referee-** To resolve factual questions quickly.
- **Reference to private judge-** To resolve more quickly than court adjudication.

¹ California Judges Benchbook: Civil Proceedings Before Trial. California Center for Judicial Education and Research p.110 §3.20 (1995).

When court adjudication is most appropriate or mandatory²:

- A party seeks equitable relief.
- A party wants a legal precedent established as a guide to future conduct, or wants to advocate moral principles.
- A party wants a judge to render a decision that resolves a dispute.
- A party wants an opportunity to appeal the decision.
- The parties have unequal bargaining powers.
- A party regards it as a test case and seeks a judgment that interprets the law, e.g. a new statute, and provides guidance for future conduct.
- Types of mandatory ADR:
 - Judicial arbitration
 - Mediation
 - Settlement-conference
 - Reference to special referee or master

² California Judges Benchbook: Civil Proceedings Before Trial. California Center for Judicial Education and Research. p.65 §3.63H (Update 2000).

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, at 1-800-952-5210
- Refer to the following internet links for additional general ADR information:
 - American Arbitration Association
www.adr.org
 - Association for Conflict Resolution
www.acresolution.org
 - Society of Professionals in Dispute Resolution
www.spidr.org
 - California Courts Online Self-Help Center
www.courtinfo.ca.gov/selfhelp
- See accompanying list of locally available neutrals.

*There will likely be a charge for service provided by private arbitrators and mediators.

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 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.

LIST OF ADR NEUTRALS
(Not for Family Court Services)

Name	Company	Phone Number	Address
Ms. Mary Meinhard	Attorney/Mediator	760-648-1115 Fax 648-1125	P.O. Box 704 June Lake, CA 93529

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONO

vs.

Plaintiff,

Case No. _____

Defendant

STIPULATION TO USE FOR
ALTERNATIVE DISPUTE RESOLUTION
PROCESS

The parties and their attorneys stipulate that the claims in this action shall be submitted to the following alternative dispute resolution process:

- Private Mediation
- Neutral Evaluation
- Mini-Trial
- Summary Jury Trial
- Settlement Conference With Private Neutral
- Reference to Private Judge
- Other (specify): _____
- Neutral Fact-Finding
- Nonbinding Arbitration
- Binding Arbitration
- Reference to General Referee

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It is also stipulated that (*specify, e.g.* who shall serve as mediator or other neutral, deadlines for selection of neutral and for completion of ADR process, suspension or limitation of discovery, etc.) _____

Date: _____

Date: _____

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

IT IS SO ORDERED.

It is also ordered that: _____

Date: _____

Judge