

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. Under Minnesota law, parties in most civil cases must consider whether to use ADR to help resolve the dispute.

Rules 114 and 310 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 decide on the use of an ADR process or a Neutral, the court may order the parties to any number of ADR processes. 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 process in which a Neutral or panel renders an award after consideration of the evidence and presentation by each party or counsel. The award may be binding or non-binding, pursuant to the agreement of the parties.
- **Consensual Special Magistrate.** A process in which a Neutral decides issues after the parties have presented their positions in a similar manner as a civil lawsuit is presented to a judge. This process is binding, and parties have the right of appeal to the Minnesota Court of Appeals.

- **Summary Jury Trial.** A process in which a Neutral presides over the parties' abbreviated presentation of evidence and argument to a jury. The jury issues a verdict which may be binding or non-binding, according to the agreement of the parties. The number of jurors on the panel is six unless the parties agree otherwise. The panel may issue a binding or non-binding decision, regarding liability, damages, or both.

Evaluative Processes

- **Early Neutral Evaluation (ENE).** A process in which one or more Neutrals with experience in the subject matter of the dispute reviews information from the parties or their attorneys after the case is filed but before formal 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 may give an assessment of the strengths and weaknesses of a claim, case, or defense; an opinion of settlement value; and an opinion as to how the parties should expect the court to rule on the case or issue presented. The parties, with or without the assistance of the Neutrals, negotiate after hearing the Neutrals' evaluation. If settlement does not result, The Neutral(s) may help narrow the dispute and suggests guidelines for managing discovery.

ENE may be used in civil and family law cases. In family law cases, there are two types of ENE processes: Financial Early Neutral Evaluation (FENE) involves financial issues; Social Early Neutral Evaluation (SENE); involves custody and parenting time issues and is conducted by no fewer than a team of two Neutrals.

- **Non-Binding Advisory Opinion.** A process in which the parties and their counsel present their positions before one or more Neutral(s). The Neutral(s) then issue(s) a non-binding advisory opinion regarding liability, damages, or both.
- **Neutral Fact-Finding.** A process in which the parties present evidence and argument to a Neutral who analyzes a factual dispute and issues findings. The findings are non-binding unless the parties agree to be bound by them. Neutral fact finders selected by the parties for their expertise need not undergo training nor be included on the State Court Administrator's Rule 114 Roster.
- **Moderated Settlement Conference (MSC).** A process in which an experienced Neutral offers evaluative impressions to parties to assist in the settlement process in the later stages of family court matters.

Facilitative Processes

- **Mediation.** A process in which a Neutral facilitates communication and negotiation to promote voluntary decision making by the parties to the dispute.

Hybrid Processes

- **Mini-Trial.** A process in which each party and their counsel, if any, present positions, before a selected representative for each party, before a neutral third party, or both, to develop a basis for settlement negotiations. The Neutral 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 process in which a Neutral first mediates the parties' dispute and then, in the event of an impasse, serves as arbitrator of the dispute. The decision may be binding or non-binding, pursuant to the agreement of the parties.
 - **Arbitration-Mediation (Arb-Med).** A process in which the Neutral first serves as an arbitrator of the parties' dispute. Prior to issuing the decision, the Neutral will mediate. In the event of an impasse, the Neutral discloses the decision which may be binding or non-binding, pursuant to the agreements of the parties.
 - **Parenting Time Expediting.** A process in which a Neutral is appointed by the court pursuant to Minn. Stat. § 518.1751. The Parenting Time Expeditor (PTE) is limited to addressing parenting time disputes not addressed in court orders, interpreting court orders, and determining if violations of court orders occurred. The process is a hybrid of mediation/arbitration and begins with neutral facilitation of parenting time disputes. If parties are unable to agree, the PTE will make a decision, which is binding unless modified or vacated by the court.
- Parenting Consulting.** A process defined by agreement of the parties in which the Parenting Consultant (PC) incorporates neutral facilitation, coaching, and decision making. Terms of the process are defined by the agreement of the parties and incorporated into a court order.
- **Other.** Parties may create other ADR processes by means of a written agreement that define the role of the Neutral.

Who Are The Neutrals?

When an ADR process is chosen, the parties should select an independent third party, called a Neutral. The State Court Administrator's Office maintains rosters of Qualified Neutrals in several categories. There are two general rosters: Civil (non-family) and Family. Within each of the general rosters, filters may be used to select a roster that displays specific ADR processes or specific subject/experience matter categories. The Neutrals on these rosters are professionals with a wide variety of backgrounds, recognized as qualified practitioners, and have met the criteria for being listed as a Qualified Neutral on the Rule 114 Roster. Many Neutrals are attorneys or hold other various professional licenses. Neutrals providing family facilitative/hybrid services must attend a minimum of 40 hours of training and Neutrals providing civil facilitative/hybrid services must attend 30 hours of training. These trainings are all certified by the State Court Administrator's Office, ADR Program. There are different training requirements for Neutrals providing adjudicative services. All Neutrals on the family roster have had 6 hours of training on domestic abuse issues. There are additional training requirements for Neutrals providing family law hybrid and family law

evaluative/hybrid services. All Qualified Neutrals must report continuing education hours every three years.

Fees

The Neutral shall be paid according to the terms of the agreement with the parties, their attorney, or as ordered by the court. All fees of Neutral(s) for ADR services shall be fair and reasonable. 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 and Neutrals, 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 unless they agree otherwise. Parties should be sure to discuss fees and payments prior to entering into an ADR agreement.

Code of Ethics for Court-Annexed ADR Neutrals

The Minnesota Supreme Court has established a Code of Ethics applicable to all court-annexed ADR Neutrals. The Code of Ethics governs Neutrals appointed by the court to assist parties with their conflict, and Neutrals providing ADR services by agreement of the parties in any court-annexed ADR proceedings. 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.

Rule 114.13. B. Rules of the Minnesota ADR Ethics Board sets forth the procedure for submitting complaints against any individual or Community Dispute Resolution Program (CDRP) subject to Rules 114 or 310 of the General Rules of Practice of the District Courts. A complaint must be in writing, signed by the complainant, and submitted electronically or mailed to the ADR Ethics Board, ADR Program at the address below. The complaint shall 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 for Court-Annexed ADR Neutrals are available on the Minnesota Judicial Branch website at www.mncourts.gov under the topic of Alternative Dispute Resolution (ADR) / Mediation.

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