

WHAT IS ADR?

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, courts and taxpayers have spent a lot of time and money.

Since the early 1980's, alternative methods have been developed to help people resolve legal problems fairly, less expensively, and earlier. These techniques, known as alternative dispute resolution (ADR), involve an independent third person or 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.

Minnesota courts recognize the effectiveness of ADR as a tool for settling conflicts. In response, the courts provide parties and their attorneys, if represented, with ADR information when they file a civil case. 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. The Rule mandates the court provide parties with information on ADR. Parties are required to discuss the use of ADR and address this issue in the information statement 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 trial.

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ALTERNATIVE DISPUTE RESOLUTION IN MINNESOTA



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WHAT ARE THE ADR PROCESSES?

Adjudicative Processes:

•**Arbitration:** A forum in which each party and their counsel present their 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 request for a trial de novo may be made.

•**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.

•**Moderated Settlement Conference:** A forum in which each party and their counsel present their position before a panel of neutral third parties. The panel may issue a non-binding advisory opinion regarding liability, damages or both.

•**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.

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.

Evaluative Processes:

•**Early Neutral Evaluation:** 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 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.

•**Neutral Fact Finding:** A forum in which a dispute, frequently one involving complex or technical issues, is investigated and analyzed by an agreed-upon neutral who issues findings and a non-binding report or recommendation.

Hybrid Processes:

•**Mini-trial:** A forum in which each party and their counsel present their opinion, either before a selected representative for each party, before a neutral third party, or both, to define the issues and develop a basis for realistic 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:** 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 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 Office of Supreme Court Continuing Education maintains two ADR Neutrals Rosters: civil (non-family) and family. The neutrals on these rosters are professionals with a wide variety of backgrounds. Neutrals on a facilitative/hybrid panel are required to complete 40 hours of training prior to serving in family law matters. Those on the civil non-family panel must attend 30 hours of training. There are additional training requirements for neutrals on the adjudicative and evaluative panels. All neutrals on the family law roster have had six hours of training on domestic abuse issues.

What Does ADR Cost?

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.