

Answering your questions about alternative dispute resolution

Disputes can arise in any area of our lives, in the workplace, in the neighborhood, in school, in business, and in families. Some of those disputes escalate to the point at which one side or the other looks to the court system for resolution, by starting a lawsuit.

In recent years, professionals from a variety of backgrounds have collaborated to develop processes for resolving disputes outside of the court system. These processes are known collectively as “alternative dispute resolution,” or simply “ADR.”

The most commonly used ADR processes are arbitration and mediation. There are, however, other forms of ADR, including early neutral evaluation, moderated settlement conferences, focus groups, summary jury trials, mini-trials, and direct negotiation.

In the right situation, any of these ADR processes can be effective in resolving disputes, and they generally can do so faster and less expensively than if the dispute were processed in the court system.

Your attorney can help you select the ADR process that is best suited to your situation.

What are the benefits of ADR?

The principal benefits of ADR are that it:

- saves time;
- saves legal expenses;
- provides the parties an opportunity for greater control over the dispute resolution process;
- allows parties to resolve their conflict in a more creative way than might be possible if it were left to a decision by a judge or jury;
- gives the parties greater privacy in resolving their dispute than is afforded in a public courtroom;
- reduces the emotional toll a lawsuit can take on everyone concerned; and
- can permit valued relationships among the parties to be preserved.

When is it appropriate to use ADR?

ADR can be effective at almost any point in the life of a dispute, including:

- when a dispute first arises, even before a lawsuit has been filed;
- at any point during the course of a lawsuit;
- after a trial has taken place and a decision has been rendered; or
- during or after an appeal.

In Wisconsin, if you are already involved in a civil lawsuit, the judge in your case may raise the subject of ADR. In some counties, for example, parties in all small claims cases are given the opportunity to participate in ADR at no charge, with trained mediators provided by court-related conflict resolution centers. The judge has the power under section 802.12(2)(a) of the Wisconsin Statutes to order the parties in any kind of civil lawsuit in Wisconsin to participate in certain forms of ADR. In that circumstance, the par-

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ties may still have an opportunity to select the form of ADR and the ADR service provider. The judge will step in to order the parties to participate in certain forms of ADR only if they cannot agree among themselves on an ADR method.

What are the ADR processes?

Arbitration: This is the dispute resolution process most closely related to a lawsuit. In arbitration, a neutral decisionmaker, known as an “arbitrator,” is selected by the parties or by a neutral ADR service provider. Sometimes arbitration takes place with a panel of three arbitrators, rather than a single arbitrator. Evidence is presented to the arbitrator(s) at a formal hearing similar to the presentation of evidence in a lawsuit, although the rules that apply in court are somewhat relaxed. Parties in arbitration may be represented by lawyers, who present evidence and legal arguments to the arbitrator(s) on behalf of their clients. The arbitrator(s) then make a decision, most often called an “award.” An arbitration award generally is a final decision, subject only to limited review by a court as allowed by law.

Mediation: In mediation, the parties to a dispute meet in a “mediation session” to discuss ways to resolve their dispute, assisted by an impartial third party called a “mediator.” The mediator listens to each party’s side of the dispute and then helps them to communicate with each other to identify the issues that need to be decided and to reach a settlement that is satisfactory to each of them. Mediation is a confidential process. Statements made during a mediation session generally are not allowed to be revealed in any later court proceeding between the parties.

Although participating in mediation is voluntary, if a settlement results, it becomes binding on all parties. Mediators are expected to be impartial and should neither advise the parties, who often are represented by their own lawyers, nor make any decision for them.

Individuals who serve as mediators may or may not be lawyers, but may be specially trained to provide assistance in resolving disputes. Mediation is an informal ADR process. It can be structured to meet the needs of a specific dispute.

Early neutral evaluation usually occurs in the early stages of a lawsuit. Lawyers and their clients meet with a neutral third party to present summaries of their respective cases. The third party "evaluator" asks questions and assesses each side's position and the likely outcome of the case in court. To encourage negotiation and settlement, the evaluator also may identify areas of common ground, help each side understand the case from the other's perspective, and offer to facilitate settlement discussions. Early neutral evaluation sessions are confidential, and the evaluator's recommendations are nonbinding. Even if this process does not result in a settlement, it may serve to narrow the issues in dispute and to give the parties a more realistic view of their prospects in the event of a trial.

The **moderated settlement conference** is closely related to mediation and early neutral evaluation. In this method, one or more neutral third parties receive information concerning each side of a dispute and discuss it with the parties, often providing some evaluation of the likely effects of that information on a judge or jury. Attorneys and their clients participate together in a moderated settlement conference.

Three ADR processes used less frequently are the **focus group**, the **summary jury trial**, and the **mini-trial**. A **focus group** is a panel of individuals selected by the parties to hear abbreviated presentations of each case and to give an advisory opinion as to how the dispute could be resolved. A **summary jury trial** is an advisory (nonbinding) trial, in which a jury, with a judge presiding, hears a summary of evidence from the parties, and renders an advisory verdict which is then discussed with the parties and their lawyers. The parties may choose to accept or decline the advisory verdict. In a **mini-trial**, a summary of each party's case is presented to a panel representing all sides of the dispute that the parties select and authorize to negotiate a settlement of the dispute after hearing the presentations. A neutral third party may be involved to facilitate the panel's settlement negotiations.

Direct negotiation is a process involving an exchange of offers and counteroffers by the parties, without the assistance of an impartial third party. Negotiations may be conducted directly between the parties, but usually also include their lawyers.

How much will ADR cost?

The amount you pay for ADR services will vary depending on the nature of the dispute and the time required by the neutral third party who is hired to provide the service. The professional services of a neutral third party most frequently are charged on an hourly basis, with the cost shared equally among the parties to the dispute. No matter what method of ADR is selected, significant cost savings should result.

How do I select the appropriate ADR process for my case?

Generally, the best way to start is to ask your attorney. He or she knows your situation and should be able to recommend the most suitable ADR process for you.

How do I select an ADR practitioner for my case?

Once again, the place to start is with your attorney. If you don't have an attorney, you might contact any of these organizations for information about ADR services:

- State Bar of Wisconsin's Lawyer Referral and Information Service, (608) 257-4666 or (800) 362-9082
- State Bar of Wisconsin's Alternative Dispute Resolution Section, www.wisbar.org/sections/adr
- State Bar of Wisconsin's Fee Arbitration Program, (608) 250-6185.
- Wisconsin Association of Mediators, (608) 277-1771
- American Arbitration Association, (800) 671-2678
- Association for Conflict Resolution, (202) 667-9700; www.acresolution.org
- CPR Institute for Dispute Resolution, (212) 949-6490; www.cpradr.org

In addition, some Wisconsin counties have nonprofit conflict resolution centers associated with the court system. Contact the courthouse in your county to determine if such a service is available in your area. ◀

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