

Alternative Dispute Resolution

ADR in the Minnesota State Court System

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What is ADR?

Alternative Dispute Resolution (ADR) is a process that involves a person, called a Neutral, who helps parties settle their dispute without going to court. Using an ADR process before parties commence (begin) a court action or soon after starting a legal action can mean a less formal, less expensive, and less time-consuming process than going to court. ADR methods may also provide parties more opportunity to be involved with solving their dispute, which in turn, provides greater satisfaction to the parties. There are a variety of methods that parties may choose to try. Even if parties are unable to reach a full agreement that settles their dispute, the use of ADR early in a case may help to narrow the areas of conflict to be decided by a judge.

Once a party has started a lawsuit, Minnesota court rules require parties to discuss the use of ADR and include this information on the civil cover sheet (non-family cases) / informational statement (family cases) that is 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 complete an ADR process and appoint a Neutral. This does not mean parties must settle their differences through ADR. They are required, however, to at least discuss their differences with a Neutral and attempt to resolve their differences prior to going to court.

Who Are The Neutrals?

When an ADR process is chosen, the parties should select a Neutral, who is an independent third person who has no benefit in the outcome of the dispute between the parties. The State Court Administrator's Office maintains two ADR Neutral Rosters, civil (non-family) and family. The Neutrals on these rosters are professionals with a wide variety of backgrounds, some, but not all of whom, are attorneys or other licensed professionals. Neutrals on the Rule 114 Family Roster providing family facilitative/hybrid services must attend 40 hours of training certified by the State Court Administrator's Office. Neutrals on the Rule 114 Civil Roster providing civil facilitative/hybrid services must attend 30 hours of training certified by the State Court Administrator's Office. There are different training requirements for Neutrals providing adjudicative and evaluative services. All Neutrals on the family roster have had 6 hours of training on domestic abuse issues. All Neutrals on the Rule 114 rosters must report a determined amount of continuing education (CE) on ADR subject matter every three years. Parties may also choose a Neutral who is not on the Rule 114 Roster. All Rule 114 Neutrals, also known as "Qualified Neutrals" and Neutrals who are appointed by the court are bound to the Rule 114 Code of Ethics.

Types of ADR Processes Used in Minnesota

Adjudicative Processes

- 1. Arbitration.** Each party and their attorneys, if any, present the dispute before a Neutral, called an arbitrator, or a panel of arbitrators, who decides the outcome of the dispute after listening to each side's arguments and consideration of the evidence. This process is similar to a trial but less formal. An arbitrator or a panel of arbitrators decides the outcome of the dispute rather than a judge or jury. Arbitration may be either "binding" or "non-binding" depending on the agreement of the parties.
 - **Binding Arbitration.** In binding arbitration, parties waive their right to a trial and agree to accept the arbitrator's decision as final.
 - **Non-Binding Arbitration.** In non-binding arbitration, parties may request a trial if they do not accept the arbitrator's decision.

This ADR process is best for cases where the parties want another person to decide the outcome, but would like to avoid the formality, time, and the expense of a trial. This process is ideal for complex matters where the parties want a decision-maker with particular training and experience in the subject matter of the dispute. This ADR process is not the best option for parties who would like to retain control of the outcome of the dispute.

- 2. Consensual Special Magistrate (CSM).** Each party presents their position to a Neutral in the same manner as a civil lawsuit is presented to a judge. This process is binding and parties have the right of appeal.
- 3. Summary Jury Trial.** Each party and their attorneys, if any, present a short 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 binding or non-binding advisory opinion regarding liability, damages, or both.

Evaluative Processes

- 1. Early Neutral Evaluation (ENE).** Parties or their attorneys present the dispute to one or more Neutrals, called an evaluator(s), experienced in the subject matter of the dispute. This occurs after the case is filed but before discovery is conducted (discovery is the formal process of gathering information relevant to the pending dispute, which may include written interrogatories, document production and depositions). 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 decide the case or issue presented. The parties, with or without the assistance of the Neutral, will discuss the Neutral's evaluation. If settlement does not result, the neutral may help narrow the dispute and suggest 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).** This ENE process involves financial issues in family law cases, such as child support.

- **Social Early Neutral Evaluation (SENE).** This ENE process involves custody and parenting time issues in family law cases and is conducted by a team of no fewer than two neutrals unless agreed otherwise by the parties.
2. **Non-Binding Advisory Opinion.** The parties and their attorneys, if any, present their position before one or more Neutral(s). The Neutral(s) then issues a non-binding advisory opinion regarding liability, damages or both.
 3. **Neutral Fact-Finding.** A Neutral investigates and analyzes a factual dispute and makes written findings that are non-binding unless the parties agree to be bound by them.
 4. **Moderated Settlement Conference (MSC).** The parties and their attorneys, if any, present their side of the dispute to an experienced Neutral (moderator) who then offers an opinion on the strength and weaknesses of both sides of the case. This process is used when a family case does not settle at the pretrial hearing and may help parties to settle before trial.

Facilitative Process (Mediation)

1. **Mediation.** A Neutral, called a mediator, helps parties to communicate with each other and explore options that may bring about an agreement on their own that is acceptable to both parties. If both parties are not able to come to an acceptable agreement, they are free to take the dispute to court and have a judge make a decision. A mediator does not decide the dispute, and may not impose his or her own judgment on the issues for that of the parties.

Hybrid Processes

1. **Mini-Trial.** Each party and their attorneys, if any, present their positions, either before a selected representative for each party, before a neutral, or both to define the issues and develop a basis for settlement negotiations. A Neutral may issue an advisory opinion regarding the merits of the case. The opinion is not binding unless the parties agree that it is binding and enter into a written settlement agreement.
2. **Mediation-Arbitration (Med-Arb).** A Neutral will first help the parties to communicate with each other (mediate) to try and reach a settlement. If a settlement of the dispute is not reached, the Neutral then issues a decision or award based on the evidence and presentation by each party. The decision may be binding or non-binding as decided by agreement of the parties.
3. **Arbitration-Mediation (Arb-Med).** The Neutral will first listen to each party present their position and evidence, and after consideration of the evidence and presentation by each party, will reach a decision. Before giving the written decision to the parties, the Neutral will help the parties with options to solve their dispute on their own terms. If no agreement is reached, the Neutral will provide the written decision to the parties, which may be binding or non-binding as decided by agreement of the parties.
4. **Parenting Time Expediting.** A Neutral, called a Parenting Time Expeditor (PTE), is appointed by the court and provides limited services in helping parties settle parenting time disputes not addressed in court orders, interpreting parenting time provisions in court orders, and determining if violations of parenting time provisions occurred. The process is a mix of mediation/arbitration and begins with mediation 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.

5. **Parenting Consulting.** The Neutral, called a Parenting Consultant (PC), helps parties to settle their parenting time disputes and other major decisions regarding their children that occur after the parties are divorced. A PC may use mediation, coaching, and decision making techniques that are defined by the agreement of the parties and incorporated into a court order. Decisions made by a PC are binding unless vacated or modified by the court.
6. **Other.** Parties may by agreement create an ADR process. They shall explain their process in the Civil Cover Sheet / Informational Statement.

Fees

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.

Code of Ethics

All Neutrals who are on the Rule 114 roster and Neutrals who are appointed by the court to assist parties with their conflict must comply with the Code of Ethics. 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.

The ADR Ethics Board has established a procedure for handling complaints alleging that Neutrals have failed to comply with the Code of Ethics. A complaint must be in writing, signed by the complainant, and mailed or delivered to the State Court Administrator's Office, ADR Program at the address below. The complaint must 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 are available on the Minnesota Judicial Branch website at www.mncourts.gov under the help topic of Alternative Dispute Resolution (ADR) / Mediation.

ADR Program
135-D Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155-1500
Phone: (651) 297-7590
Email: adr@courts.state.mn.us