

# What You Need to Know about Dispute Resolution: The Guide to Dispute Resolution Processes

## ***What Is Dispute Resolution?***

Dispute resolution is a term that refers to a number of processes that can be used to resolve a conflict, dispute or claim. Dispute resolution may also be referred to as alternative dispute resolution, appropriate dispute resolution, or ADR for short. Dispute resolution processes are alternatives to having a court (state or federal judge or jury) decide the dispute in a trial or other institutions decide the resolution of the case or contract. Dispute resolution processes can be used to resolve any type of dispute including family, neighborhood, employment, business, housing, personal injury, consumer, and environmental disputes. In addition, the United States Federal Government utilizes dispute resolution processes to assist government employees and private citizens resolve complaints and disputes in many areas including workplace, employment, and contracting matters.

## **◆ *Why Use Dispute Resolution?***

Dispute resolution processes have several advantages. For instance, many dispute resolution processes are cheaper and faster than the traditional legal process. Certain processes can provide the parties involved with greater participation in reaching a solution, as well as more control over the outcome of the dispute. In addition, dispute resolution processes are less formal and have more flexible rules than the trial court.

## **◆ *What Are the Different Types of Dispute Resolution Processes?***

Dispute resolution takes a number of different forms. Here are brief descriptions of the most common dispute resolution processes:

### **Arbitration**

Arbitration is a private process where disputing parties agree that one or several individuals can make a decision about the dispute after receiving evidence and hearing arguments. Arbitration is different from mediation because the neutral arbitrator has the authority to make a decision about the dispute. The arbitration process is similar to a trial in that the parties make opening statements and present

evidence to the arbitrator. Compared to traditional trials, arbitration can usually be completed more quickly and is less formal. For example, often the parties do not have to follow state or federal rules of evidence and, in some cases, the arbitrator is not required to apply the governing law. After the hearing, the arbitrator issues an award. Some awards simply announce the decision (a "bare bones" award), and others give reasons (a "reasoned" award). The arbitration process may be either binding or non-binding. When arbitration is binding, the decision is final, can be enforced by a court, and can only be appealed on very narrow grounds. When arbitration is non-binding, the arbitrator's award is advisory and can be final only if accepted by the parties.

### **Case Evaluation**

Case evaluation is a non-binding process in which parties to a dispute present the facts and the issues to be determined to an experienced neutral case evaluator. The case evaluator advises the parties on the strengths and weaknesses of their respective positions, and assesses how the dispute is likely to be decided by a jury or other adjudicator. The parties may then use this feedback to help reach a mutually agreeable resolution.

### **Early Neutral Evaluation**

Early neutral evaluation is a process that may take place soon after a case has been filed in court. The case is referred to an expert, usually an attorney, who is asked to provide a balanced and unbiased evaluation of the dispute. The parties either submit written comments or meet in person with the expert. The expert identifies each side's strengths and weaknesses and provides an evaluation of the likely outcome of a trial. This evaluation can assist the parties in assessing their case and may propel them towards a settlement.

### **Facilitation**

Facilitation is a process in which a trained individual assists a group of two or more people to discuss issues to be addressed by the group. This may include assistance in defining and analyzing issues, developing alternatives and executing the agreed upon solutions. A facilitator can help to enhance communication, consensus building and decision making among individuals in a variety of settings, including community, corporate, educational and family groups.

### **Family Group Conference**

Family Group Conference is a meeting between members of a family and members of their extended kinship group. At this meeting, the family becomes involved in making a plan to stop the abuse or other ill-treatment between its members. Family

Group Conferencing involves family and friends in resolving the abuse rather than leaving the decision-making entirely in the hands of the legal authorities and service providers. All participants are given a great deal of preparation, support and protection so that all family members can be both safe and informed in having a say in the decision-making.

### **Mediation**

Mediation is a private process where a neutral third person called a mediator helps the parties discuss and try to resolve the dispute. The parties have the opportunity to describe the issues, discuss their interests, understandings, and feelings; provide each other with information and explore ideas for the resolution of the dispute. While courts can mandate that certain cases go to mediation, the process remains "voluntary" in that the parties are not required to come to agreement. The mediator does not have the power to make a decision for the parties, but can help the parties find a resolution that is mutually acceptable. The only people who can resolve the dispute in mediation are the parties themselves. There are a number of different ways that a mediation can proceed. Most mediations start with the parties together in a joint session. The mediator will describe how the process works, will explain the mediator's role and will help establish ground rules and an agenda for the session. Generally, parties then make opening statements. Some mediators conduct the entire process in a joint session. However, other mediators will move to separate sessions, shuttling back and forth between the parties. If the parties reach an agreement, the mediator may help reduce the agreement to a written contract, which may be enforceable in court.

### **Mini-Trial**

A mini-trial is a private, consensual process where the attorneys for each party make a brief presentation of the case as if at a trial. The presentations are observed by a neutral advisor and by representatives (usually high-level business executives) from each side who have authority to settle the dispute. At the end of the presentations, the representatives attempt to settle the dispute. If the representatives fail to settle the dispute, the neutral advisor, at the request of the parties, may serve as a mediator or may issue a non-binding opinion as to the likely outcome in court.

### **Multi-Door Program**

The name "Multi-Door" comes from the multi-door courthouse concept, which envisions one courthouse with multiple dispute resolution doors or programs. Cases are referred through the appropriate door for resolution. The goals of a multi-door approach are to provide citizens with easy access to justice, reduce delay, and

provide links to related services, making more options available through which disputes can be resolved.

### **Negotiation**

Negotiation is a voluntary and usually informal process in which parties identify issues of concern, explore options for the resolution of the issues, and search for a mutually acceptable agreement to resolve the issues raised. The disputing parties may be represented by attorneys in negotiation. Negotiation is different from mediation in that there is no neutral individual to assist the parties negotiate.

### **Neutral Fact-Finding**

Neutral fact-finding is a process where a neutral third party, selected either by the disputing parties or by the court, investigates an issue and reports or testifies in court. The neutral fact-finding process is particularly useful for resolving complex scientific and factual disputes.

### **Ombuds**

An ombuds is a third party selected by an institution—for example, a university, hospital or governmental agency—to investigate complaints by employees, clients or constituents. The ombuds works within the institution to investigate the complaints independently and impartially. The process is voluntary, private and non-binding.

### **Parenting coordination**

Parent coordination is a child-focused alternative dispute resolution process in which a mental health or legal professional with mediation training and experience assists high conflict parents to implement their parenting plan by facilitating the resolution of their disputes in a timely manner, educating parents about children's needs, and with prior approval of the parties and/or the court, making decisions within the scope of the court order or appointment contract.

### **Pro Tem Trial**

Pro Tem trials are similar to other civil trials, but the parties choose their own trial date and the court appoints an attorney to serve as a temporary (Pro Tem) judge for the trial. The pro tem judge has all the same powers of a regular judge, and will make a decision based on the evidence and arguments presented during the trial. Each side in a pro tem trial must follow the same rules and legal procedures as parties who have a trial in the courthouse. There is no option for a jury trial. The parties must provide their own court reporter. Depending on court rules, the decision of the Pro Tem judge may be appealable in the public courts.

### **Private Judging**

Private judging is a process where the disputing parties agree to retain a neutral person as a private judge. The private judge, who is often a former judge with expertise in the area of the dispute, hears the case and makes a decision in a manner similar to a judge. Depending on court rules, the decision of the private judge may be appealable in the public courts.

### **Settlement Conferences**

A settlement conference is a meeting in which a judge or magistrate assigned to the case presides over the process. The purpose of the settlement conference is to try to settle a case before the hearing or trial. Settlement conferencing is similar to mediation in that a third party neutral assists the parties in exploring settlement options. Settlement conferences are different from mediation in that settlement conferences are usually shorter and typically have fewer roles for participation of the parties or for consideration of nonlegal interests.

### **Special Master**

The role of the special master (who is frequently, but not necessarily, an attorney) is to supervise those falling under the order of the court to make sure that the court order is being followed, and to report on the activities of the entity being supervised in a timely matter to the judge or the judge's designated representatives. Special masters often accompany peace officers in searches for documentary evidence in the possession of or under the control of attorneys, physicians, psychotherapists and clergy.

### **Summary Jury Trial**

In summary jury trials, attorneys for each party make abbreviated case presentations to a mock six member jury (drawn from a pool of real jurors), the party representatives and a presiding judge or magistrate. The mock jury renders an advisory verdict. The verdict is frequently helpful in getting a settlement, particularly where one of the parties has an unrealistic assessment of their case.

#### ***◆ If I Participate in Dispute Resolution, Can I Later File a Lawsuit?***

In most instances, dispute resolution processes do not preclude parties from later pursuing their case in court if they fail to reach a resolution. Parties can use dispute resolution before, or even after, they have filed a case in court. However, binding arbitration is final and prevents a party from bringing a court action.

#### ***◆ Do I Need an Attorney to Participate in Dispute Resolution?***

In many processes, you are not required to have an attorney to participate. In cases where the court or judge has referred the case to a dispute resolution process, attorneys often participate. The role of an attorney in a dispute resolution process

varies depending upon the nature of the dispute and the type of dispute resolution process. In many dispute resolution processes, attorneys accompany their clients and participate either as counselors or as advocates.

- ***Who Uses Dispute Resolution?***

The American Bar Association Section of Dispute Resolution has developed a clearinghouse of contact information in order to track the growth of court ADR and provide basic details to court personnel, members of the public and practicing attorneys regarding the specific programs available in various jurisdictions.

The clearinghouse includes information about the type of cases handled by each program, the ADR processes offered, as well as statutory authorizations and relevant rules.

The catalog has a listing of ADR points of contact, with phone numbers and e-mail addresses (where available), at a variety of court levels. In addition, each listing has a brief synopsis of the type(s) of ADR program the court manages and its scope.

In all, 227 programs are included in the database. Of those 227 programs, 149 are federal district court programs, 13 are federal appellate programs and the remaining 65 are state court programs. We assigned the 65 state court programs to different categories, depending upon the mission, location, and authority of the program. The 65 programs were divided into the following categories:

- Centrally administered state court ADR program (not located in the AOC): (23 programs)
- Dispute Resolution program within the state administrative office of the courts (AOC): (14 programs)
- Locally administered court programs: (10 programs)
- State-wide office of dispute resolution (7 programs)
- Other state: (4 programs)
- Program based in a state bar association: (2 programs)
- State appellate court program: (2 programs)

- Program based in a university: (1 program)

The clearinghouse includes information about the type of processes offered by each program:

- 23 programs reported that they offer Early Neutral Evaluation (15 federal district court programs and eight state court programs)
- 88 programs reported that they offer mediation
  - 59 programs reported that they offer mediation (not specified as voluntary or mandatory) (4 federal appellate courts, 22 federal district courts, 31 state court programs)
  - 20 programs reported that they offer voluntary mediation (3 federal district courts, 17 state court programs)
  - 9 programs reported that they offer mandatory Mediation (1 federal district court, 8 state court appellate programs)
- 48 programs reported that they offer arbitration
  - 25 programs did not specify whether their program is voluntary or mandatory (5 federal district courts and 27 state court programs)
  - 3 state court programs include mandatory arbitration
  - 20 programs offer voluntary arbitration (3 federal district, 17 state court programs)
- 30 programs offer settlement conferences (17 federal district; one federal appellate, 12 state programs)
- 10 programs (2 federal district and 8 state programs) offer summary jury trials
- 6 federal district courts offer summary bench trials
- 6 courts offer non-binding arbitration (3 federal district, 3 state court)
- 5 courts offer mini-trials (3 federal district, 2 state)
- 3 state programs offer facilitation
- 2 programs (1 federal district and one state) offer med-arb
- 1 state court program reported offering pro tem trials
- 2 state court programs reported offering Parenting coordination

- 2 state court programs reported offering family group conferencing
- 2 state court programs offer special masters
- 2 state court programs reported having a multi-door program
- 1 state court program offers case management

**For more information:**

ABA Section of Dispute Resolution

<http://www.abanet.org/dispute>

Mediation Information and Resource  
Center

<http://www.mediate.com>

American Arbitration Association

<http://www.adr.org>

National Arbitration Forum

<http://www.arbitration-forum.com>

Association of Family and Conciliation  
Courts

<http://www.afccnet.org>

National Association for Community  
Mediation

<http://www.nafcm.org>

Association for Conflict Resolution

<http://www.acresolution.org>

Network of Communities for  
Peacemaking and Conflict Resolution

<http://www.apeace maker.net>

Center for Analysis of ADR Systems

<http://www.caadr.org>

Policy Consensus Initiative

<http://www.policyconsensus.org>

Conflict Resolution and Information  
Network

<http://www.CRInfo.org>

U.S. Department of Justice Office of  
Dispute Resolution

<http://www.usdoj.gov/odr>

CPR Institute for Dispute Resolution

<http://www.cpradr.org>

Victim Offender Mediation Association

<http://www.voma.org/>

JAMS

<http://www.jamsadr.org>

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