



Superior Court of California, County of Tuolumne

Alternative Dispute Resolution (ADR) Information Packet

The person who files a civil lawsuit (plaintiff), must include this ADR Information Packet with the complaint when serving the defendant. Cross-complainants must serve the ADR Information Packet on any new parties named to the action. (Ca. Rules of Court, Rule 3.221.)

The Court **strongly encourages** parties to use some form of ADR before proceeding to trial. You may choose ADR by the following methods:

- File a STIPULATION TO PARTICIPATE IN MEDIATION;
- Indicate your preference to participate in ADR at your case management conference; or
- Arrange for ADR services at any time by using either the Court's Panel of Mediators, or a private mediator of your own choosing.

For more information, contact the Superior Court of California, County of Tuolumne, Self Help clerk at 209-533-6565.

AVAILABLE ADR SERVICES

Small Claims Cases	The court offers mediation services at the day of trial. Mediation prior to filing the case, or prior to trial, can be arranged by contacting the Self Help office at the court.
Civil Cases	Parties may stipulate to mediation at any time, or the court may refer a case to mediation at or after the case management conference.

The Court maintains a panel of trained mediators to assist parties. Panelists are not court employees. Therefore, the services, style, and expertise will vary by individual provider.

INTRODUCTION

Alternative Dispute Resolution (ADR) is an increasingly popular option that allows people to resolve disputes outside of court in a cooperative manner. ADR can be faster, cheaper, and less stressful than going to court. Most importantly, the use of ADR can provide greater satisfaction with the way disputes are resolved.

ADVANTAGES & DISADVANTAGES OF ADR

Advantages:

Often quicker than going to trial.	A dispute may be resolved in a matter of days or weeks instead of months or years.
Often less expensive.	Saves litigants court costs, attorney's fees, and expert fees.
Permits more participation and empowerment.	Allows parties the opportunity to tell their side of the story, and have more control over the outcome.
Allows for flexibility.	Choice of ADR processes, and resolution of the dispute.
Fosters cooperation.	Allows parties to work together with the neutral to resolve the dispute, and mutually agree to a remedy.
Often less stressful than litigation.	Most participants have reported a high degree of satisfaction with the ADR process.

Because of these advantages, many parties choose ADR to resolve disputes instead of filing a lawsuit. Even after a lawsuit has been filed, the Court can refer the dispute to a neutral before the lawsuit becomes costly. ADR has been used to resolve disputes even after trial, when the result is appealed.

Disadvantages:

ADR may not be suitable for every dispute.
If the ADR process is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court.
ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute.
The neutral may charge a fee for his or her services. If the dispute is not resolved through ADR, the parties may then have to face the usual and traditional costs, such as attorney's fees and/or expert fees.
Lawsuits must be brought within specified periods of time, known as the "statute of limitations." Parties must be careful not to let a statute run while a dispute is in an ADR process.
The parties must continue to proceed within the court's delay reduction guidelines.

DISPUTES

ADR techniques have been used successfully in a variety of disputes involving individuals, small and large businesses, government, and the general public. Various types of ADR processes are available depending on the nature of the dispute. Many types of conflict often lend themselves to an alternative and informal method of dispute resolution. Some examples of disputes often settled by ADR include, **but are not limited to:**

Business	Contracts, partnerships, contractor/owner disputes
Property	Property transfers, boundaries, easements
Family	Divorce, separation, property, custody, visitation, support issues
Consumer/Collection	Repairs, services, warranties, debts, merchant/customer disagreements
Employment	Contracts, terminations
Landlord/Tenant Disputes	Evictions, rent, repairs, security deposits
Personal Injury/Property Damage/Wrongful Death	Accidents, coverage, liability
Interpersonal	Relationship conflicts, parent/teen or parent/teacher disagreements
Neighborhood Disputes	Noise, pets, fences, trees, children, cleanliness, parking, homeowner associations
Community Concerns	Conflicts within or between groups and organizations, public policy controversies
Criminal	Victims or perpetrators of certain crimes, such as vandalism, seeking restitution to avoid prosecution

PROCESSES

The most common forms of ADR are mediation and arbitration. In most ADR processes, a trained, impartial person decides, or helps the parties reach resolution of, their dispute together. These persons are neutrals who are normally chosen by the disputing parties or by the Court. Neutrals can often assist parties in resolving disputes without having to go to court or trial. Below is a description of commonly used processes.

Mediation:

In mediation, the mediator (a neutral) assists the parties in reaching a mutually acceptable resolution of their dispute. Unlike lawsuits or some other types of ADR, the mediator **does not** decide how the dispute is to be resolved; the parties do. It is a cooperative process in which the parties work together toward a resolution that tries to meet everyone's interests, instead of working against each other.

Mediation often leads to better communication between the parties and lasting resolutions. It is particularly effective when parties have a continuing relationship, such as neighbors or businesses. It is also very effective where personal feelings are getting in the way of a resolution.

Mediation normally gives the parties a chance to express their concerns in a voluntary, confidential process while working toward a resolution. The mediation process is commonly used for most civil case types, and can provide the greatest level of flexibility for parties.

Arbitration:

In arbitration, the arbitrator (a neutral), reviews evidence, hears arguments, and **makes a decision** (award) to resolve the dispute. This is very different from mediation, whereby the mediator helps the parties reach their own resolution. Arbitration is normally more informal, quicker, and less expensive than a lawsuit. In a matter of hours, an arbitrator often can hear a

case that otherwise may take a week in court to litigate. This is because the evidence can be submitted by documents rather than by testimony. There are two types of arbitration:

Binding arbitration	Usually conducted by a private arbitrator, this process takes place outside of court. “Binding” means the arbitrator’s decision (award) is final, and there will not be a trial or an opportunity to appeal the decision.
Non-binding arbitration	May be ordered through the court (Judicial Arbitration), or conducted privately. In this process, the arbitrator’s decision is “not binding.” This means that if a party is not satisfied with the decision of the arbitrator, they can file a request for trial with the court within a specified time. However, depending on the process, if that party does not receive a more favorable result at trial, they may have to pay a penalty.

AGREEMENTS

Agreements reached through ADR are normally written and may become binding contracts that can be enforced by the court, if the parties agree. Parties may chose to seek the advice of an attorney as to legal rights, and other matters relating to the dispute, before finalizing any agreement.

CONFIDENTIALITY

In general, ADR processes are confidential, but each process has its limitations.

Mediation provides the opportunity to talk openly and explore the full range of ideas for resolving a conflict. To encourage this, the information prepared for or discussed in the mediation cannot be used as evidence in court, and the mediator cannot be forced to testify about what happened, or what was said in the mediation. The mediator will only report to the court on whether or not an agreement was reached.

NEUTRAL SELECTION

The selection of a neutral is an important decision. Please note that currently there is no legal requirement that the neutral be licensed or hold any particular certificate. However, some programs have established qualification requirements for neutrals.