

Choices for Solving Legal Problems without a Court Hearing

FAMILY COURT
Superior Court of California, County of Santa Clara

Alternate Dispute Resolution is a CHOICE in Family Law Cases

“Alternative Dispute Resolution” (ADR) is a term used for ways you can solve problems without going to a formal Court hearing with a Judge. Some choices are explained below. ADR can save you time **and** money. With ADR you are likely to feel better about the legal process and how your case is settled. You can often solve Family Law issues such as child custody, visitation, support, and property division by agreement instead of by going to a Court hearing.

Except for custody and visitation mediation, ADR services are voluntary and can only be a part of your case resolution plan if both parties choose to use these services.

All court-connected ADR providers that are a part of your case resolution plan have been trained to assess and handle cases that may have domestic violence issues. Ask about separate sessions if meeting separately from the other party will make you feel safer.

TYPES OF RESOLUTION PROCESSES:

Custody/Visitation Mediation – Free

California law says that if parents do not agree about custody and visitation issues, they must try to settle the issues by going to Mediation. Mediation is a way for parents to meet with someone who does not work for either side to try to agree about their children. Mediation can be done through the Court at Family Court Services free or through a mediator you hire on your own. Mediation through Family Court Services is a confidential process - the mediator will not go to a Court hearing to tell the Judge what you or the other parent said in mediation. The mediator can help you and the other parent talk about and decide issues such as how much time the child will spend with each parent, how to best exchange the child, and other custody or visitation issues.

Parties must attend Orientation before Mediation if they have never been to Mediation before. Orientation and Mediation may be scheduled by calling **(408) 534-5760**.

Personal Property Arbitration – Free

A volunteer attorney will decide how to divide your **personal property**, such as cars and furniture. Both parties must agree to the arbitration or it must be ordered by the Court. The arbitrator writes up a decision after each side presents his or her case. The arbitrations are held at the Family Court and may be scheduled by calling **(408) 534-5710**.

Early Neutral Evaluation (ENE) - Free

A volunteer attorney will meet with parties who do not have their own attorneys. The attorney will help them identify and understand what **property issues** they have and what court processes can help them. The attorney is not either party's attorney. This process is done by agreement only. You can ask for an ENE at your Case Status Conference. A Case Status Conference may be scheduled by calling **(408) 534-5710**.

ALTERNATE DISPUTE RESOLUTION OPTIONS
(Family Law)

Settlement Officer Conference (SOC) - Free

The Court has a full-time Settlement Officer, whose job is to help parties settle their family law cases free. The SOC focuses on solving **property and support issues**. The conference works best when parties have given each other information in advance about their finances and how they think things should be settled. An SOC can be set at any time after you have served the Preliminary Declarations of Disclosure by calling **(408) 534-5710**.

Mediation

Mediation is a way to reach an agreement with the help of a person who is specially trained to help resolve disagreements. The mediator can help the parties talk with each other clearly and think about options for settlement. Mediators are usually attorneys hired by the parties but they are not the attorney for either party. A mediator can help solve one issue or the whole case. Mediation is private and confidential. Anything that is said or written in the mediation process by the parties is confidential. The mediator may not talk about the case to the Court or anyone else unless the parties agree. Agreements reached in mediation can become court orders if both parties agree.

Visit the Court website for a list of Family ADR providers:

http://www.sccourt.org/court_divisions/family/adr/family_adr_search.asp

Collaborative Law

In the collaborative law process, each party has a private attorney and each makes a commitment to resolve any disagreements without going to court. The parties and their attorneys have a series of private meetings to create solutions based on the needs of the parties. All parties and their attorneys agree that if the parties cannot settle their case and/or if either party chooses to withdraw from the process and go to court, the collaborative attorneys cannot represent these parties in court. If you are interested in this approach, contact the Santa Clara County Bar Association ((408) 287-2557 or www.sccba.com) and ask for names of attorneys from the Collaborative Law panel.

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Arbitration and Private Judging

An arbitrator, usually an attorney hired by the parties, makes a decision after hearing information presented by both parties. The arbitrator prepares a written decision which is sent to both parties and the Court. The parties decide ahead of time whether the arbitration is binding or not. "Binding" means that the arbitrator's decision will be final. "Non-binding" means that the parties do not have to follow the arbitrator's decision.

Private judging, like arbitration, involves choosing a person, usually an attorney, to act as either a settlement or trial judge or both. The decision of the private judge is filed with the Court as a Court order. If you want to consider private judging, both sides must agree on the private judge: be sure that you are clear on the experience and qualifications of the provider as well as the costs and services that he or she will provide.

The Court does not think any form of ADR or any ADR provider is better than another and does not guarantee how your case will work out.

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