

# **CHOICES FOR SOLVING LEGAL PROBLEMS WITHOUT A COURT HEARING**

## **Family Court**

### **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. There are also other options. 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 will also have more participation in the decision making process.

You can often solve Family Law issues such as child custody, visitation, support, and division of property by agreement instead of by going to a Court hearing.

### **TYPES OF RESOLUTION PROCESSES**

#### **Parenting Mediation - Free through Family Court Services, or Fee Based**

California law says that if parents do not agree upon custody and visitation issues, they must try to settle the issues by going to mediation before a Court is allowed to hold a hearing on those issues. Local rule requires participation in good faith in the process. 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, or through a mediator you hire on your own. Each party must attend a mediation orientation session before the mediation appointment or if it has been a long time since the prior orientation.

You can get information about Orientation and schedule Mediation appointments by calling Family Court Services at (530) 477-3914. Private mediators are also available.

#### **Mediation of Other Issues - Free through Family Law Facilitator, or Fee Based**

Mediation is not necessarily limited to parenting issues. 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 do not represent either party. The mediator is a neutral, and will not advise one party or the other about rights. A mediator can help solve one issue or the whole case. Unlike the litigation process, 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 to anyone else unless the parties and the mediator agree. Agreements reached in mediation can become court orders if both parties agree. Mediation may be available through the office of the Family Court Facilitator (530) 470-2567 or the parties can select a privately retained mediator.

## **Collaborative Practice, Fee Based**

In the collaborative practice process, each party has a private attorney and each makes a commitment to resolve all of their disagreements without going to court. The parties and their attorneys have a series of confidential meetings to create solutions based on the needs of the parties. All parties and their attorneys agree at the beginning of the process 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.

You can get a list of the members of the Nevada County Collaborative Divorce Practice Group on the web at [www.nevadacountycollaborative.com](http://www.nevadacountycollaborative.com), find other collaborative law attorneys through the International Academy of Collaborative Professionals at [www.collaborativepractice.com](http://www.collaborativepractice.com) or through other referrals.

## **Supervised Settlement Conference, Fee Based, Reduced Rate**

If the matter is set for trial, the parties will be ordered to participate in a supervised settlement conference in advance of the trial in most cases. An attorney with family law experience will be chosen from the list of the attorneys who have volunteered to assist with this program to meet with the parties and their attorneys (if any) to evaluate settlement possibilities. These attorneys have chosen to provide this service at a significantly reduced hourly rate, which is normally paid equally by the parties at the time of the conference. The parties may also request an early supervised settlement conference and opt into this procedure. While settlement negotiations are generally not admissible in evidence, there are some situations in which a settlement conference attorney can be asked to testify or provide a statement about the settlement negotiations. The Court maintains a list of the attorneys who have agreed to act as settlement conference supervisors. You can get the list of the participating attorneys from the Court when your case is set for trial, or by request.

## **Arbitration, Fee Based**

Although arbitration is not required in most family law matters, the parties are free to agree to submit any or all of their issues to an arbitrator. The arbitrator will evaluate the evidence, and render an award based on the facts and law. This is similar to a hearing or trial in Court but generally provides more flexibility in scheduling, may be able to be scheduled more rapidly, gives the parties the ability to select the arbitrator and can provide more privacy and confidentiality. Whether the arbitration award is binding or advisory is up to the agreement of the parties before the arbitration. The parties select an arbitrator and define the scope of the issues to be submitted.

***You have a right to have access to the Court under California law. ADR is available, but is not required (except Parenting Mediation, in cases in which the parties need assistance reaching an agreement).***

***The Court does not recommend any form of ADR over another. The Court cannot guarantee how your case will work out. Some parties and cases are better suited for one or another type of ADR. In unusual cases, no form of ADR is appropriate to the parties or the issues. You should discuss your options with the attorney of your choice.***