

ADR PROCESSES AND COURT PROGRAMS

Arbitration: The arbitration process is one of the oldest institutionalized ADR processes in the United States. The US Arbitration Act, Title 9, was enacted in 1925. The process is a relatively simple one. Each party to a dispute (under relaxed rules of evidence) presents proof (written, demonstrative or oral) to the decision-maker – the arbitrator. A panel of three arbitrators is used if the case involves substantial sums or is complex.

Arbitration decisions may be binding or non-binding (advisory), and the decision can include punitive damages. When the arbitration is binding, there are very few grounds for overturning the award. A mistake of fact or law by the arbitrator does not constitute grounds to set aside the award. A court will only vacate an arbitrator's decision if the award was procured by corruption or fraud, the rights of the parties were prejudiced, or the arbitrator exceeded the power granted by contract or statute. Supporters of arbitration opine that the finality aspect of binding arbitration is one of its advantages.

Absent confirmation of an award, an arbitration decision in California has the same legal force as a contract. Arbitration is used to resolve all types of disputes, and is a frequently used process for resolving real estate and construction issues.

Members of the court's Arbitration Panel are licensed attorneys with at least 5 years of experience.

Mediation: Mediation is a facilitated negotiation. Mediation comes from the Latin *medius*, or middle, and the process is advantageous in that a neutral third party, the mediator, can help create a more productive environment for negotiation. Often, parties who could not settle on their own come to a resolution because the mediator, uninvolved emotionally, manages the process. A skilled mediator knows how to promote communication and how to break impasse.

According to Jay Folberg, Dean of the University of San Francisco School of Law, and co-author Alison Taylor, in their book, *The Mediation Process*, "Mediation is a process that emphasizes the participants' own responsibility for making decisions that affect their lives. It is therefore a self-empowering process."

Mediation is ideal for cases where there is poor communication, high emotion or a diverse constituency. This process is used extensively in family matters, and is mandated by the California Family Code in custody or visitation disputes. It is popular in contract, tort and environmental cases, and is now being used for intellectual property disputes.

Members of the court's Mediation Panel are trained and experienced with a minimum of 40 hours of training and actual mediation experience. The panel is open to attorneys and non-attorneys.

Early Neutral Evaluation: This process was created by Magistrate Wayne Brazil, USDC, ND California. Its purposes are to focus counsel and involve the client. An ENE session is hosted by a neutral; an attorney, who has experience in the subject matter of the suit and enjoys a good reputation.

The parties' attorneys present a summary of the case, after which the neutral writes an evaluation (which is often a view of the facts and law different from that of the parties), and then settlement discussions are encouraged by the neutral. Because ENE occurs early in the litigation process, it often consumes the least amount of resources of the court-connected ADR processes.

The court's neutral evaluation program is called HENCE: Helpful Early Neutral Case Evaluation. The program was started July 1, 2009. All Solano court neutral evaluators are attorneys with at least 10 years of experience.

Settlement Conference: The settlement conference is a process, scheduled by the judge, who may require the attendance of the clients (with full authority to settle) as well as counsel. In an ABA-sponsored study, 85% of those lawyers responding agreed that the judge's involvement in settlement discussions significantly increases the prospects for settlement.

Proponents of the settlement conference argue that a judge, with analytical skills sharpened by the responsibility to make rational decisions, makes a valuable contribution to the settlement dynamic, because the judge creates an expectation of decision-making (which can help the parties and counsel overcome their reticence to be realistic in the evaluation of their respective cases.)

Small Claims Mediation: The Small Claims Mediation Program uses the same mediation process described above; however, the program is only for cases that are filed in Small Claims Court and with a value of \$7,500 or less. A person may not file more than two claims per year that are over \$5000. Typically Small Claims mediations involve neighbor-to-neighbor, landlord/tenant and consumer claims. All mediators are volunteers in this program.

All members of the Small Claims Mediation Program have received a minimum of 25-hours of training, which meets or exceeds the California Dispute Resolution Act, DRPA, requirements.