

Alternative Ways to Resolve Disputes

Mediation and arbitration in South Carolina

WHAT IS ALTERNATIVE DISPUTE RESOLUTION (ADR)?

You don't have to go to court to solve a problem with an insurance company, a business, your employer or your neighbor. Even if you are getting divorced, you may be able to use arbitration or mediation to settle all or some of your case. ADR is a term used to describe arbitration, mediation and other ways of discussing and resolving disputes outside the courts.

ADR has become popular because: it can reduce costs, time and stress for all parties; it can help people resolve their own differences without a judge or jury doing it for them; it can preserve business and personal relationships hurt by lawsuits; and the process typically takes place in a private setting versus a public courtroom.

WHAT IS MEDIATION?

In mediation, conflicting parties meet informally with a trained, impartial mediator without going to court. The mediator helps the opposing parties reach a voluntary settlement that works for both sides. The mediator does not make decisions and does not require a party to accept a particular settlement, so the parties maintain control of the outcome. If an agreement cannot be reached, the parties may proceed to court. However, comments made by the parties or their representatives during the mediation may not be used in court.

In mediation, all decisions are made by the parties themselves. Most issues can be mediated—personal injury, employment, family, probate, business and neighborhood disputes. The mediation

process varies in length depending on the type of problem and the willingness of the parties to reach a resolution.

WHAT IS ARBITRATION?

In arbitration, a qualified neutral person (the “arbitrator”) makes a decision for the parties. The arbitrator’s decision can be binding (final) or nonbinding (not final). Both civil and family issues can be arbitrated.

HOW DO ATTORNEYS WORK WITH ARBITRATORS AND MEDIATORS?

Arbitrators and mediators are neutral and will not give legal advice. In simple cases, you may be able to use arbitration or mediation without an attorney. More often you will need an attorney who will help you prepare your case and will participate in the arbitration or mediation. Attorneys take sides; mediators and arbitrators do not.

In civil cases, attorneys generally are present with clients in mediation for one or two meetings. In family mediation, parties usually meet with the mediator with or without attorneys in several “conferences” or meetings. ADR is rarely used in criminal cases.

HOW IS ADR USED IN SOUTH CAROLINA?

Most arbitration and mediation in South Carolina is voluntary. Clients and attorneys select a neutral arbitrator or mediator for each case. Some business and insurance contracts provide for arbitration or mediation of disputes.

Pilot programs in several counties require most civil cases and family court cases to be mediated before a trial will be scheduled. All issues with few exceptions must be mediated in these counties. It is anticipated that other counties will be added to the pilot programs. Rules established by the Supreme Court set out guidelines for how mediation works in circuit and family courts.

WHAT IS THE COST OF ADR?

Fees for arbitration and mediation services are usually divided between the parties and, like other professional fees, are usually charged on an hourly basis and set by agreement with the parties. Some pilot program fees are set by court rules. Some arbitrators and mediators offer services for a reduced fee to low income people. Do not be embarrassed to ask up front what the fees and cost might be.

HOW DO I SELECT AN ARBITRATOR OR MEDIATOR?

Many arbitrators have received training through the South Carolina Bar or the American Arbitration Association. Also, many mediators have completed an approved 40-hour training course in civil or family mediation from these or other organizations.

Just as you would do when choosing a lawyer or any other professional service provider, you should ask about training and experience. Your lawyer may be able to recommend an arbitrator or a mediator. Contact the following organization for lists of arbitrators and mediators and other useful information.

South Carolina Commission on Alternative Dispute Resolution South Carolina Board of Arbitrator and Mediator Certification South Carolina Bar

P.O. Box 608

Columbia, SC 29202

Phone: (803) 799-4015

Fax: (803) 799-5290

www.scbar.org/adr
