



Out-of-court Dispute Resolution Options

Mediation - Mediation is a process for resolving disputes with a neutral and impartial mediator. The mediator helps open and improve dialogue between two individuals in hopes of finding an acceptable resolution for everyone involved.

Mediation is a flexible process that maximizes privacy, cost-efficiency and timeliness. A mediator can help with communication and providing information about your options, but the mediator doesn't represent either of you. It is recommended that both parties obtain individual legal advice throughout the mediation. Having individual legal advice ensures that your decisions are informed, while the mediation process still allows you to speak with your own voice. Mediation can be difficult if one side has more power than the other, and including counsel in the meetings or having separate meetings can help address power imbalances.

Conciliation - Conciliation is similar to mediation but with some significant differences. It is similar because the two parties are working with a neutral person who is attempting to help them reach an agreement. It is different because the conciliator will provide an evaluation and usually attorneys are present for conciliation. Sometimes conciliation is referred to as evaluative mediation, because the conciliator usually is asked to provide an evaluation or opinion on the case. Finally, when conciliators are appointed by the court they will often report back to the court, while mediation is fully confidential and privileged.

Facilitated Attorney Negotiation & Settlement Conference - Negotiation between attorneys on your behalf is a process that emphasizes privacy and the importance of your position, but can often minimize communication and control because your views and positions are translated through other people. A facilitator, such as a trained mediator, can help guide these negotiations. Depending on the complexity of the issues in a case, this can include meetings with both attorneys and the parties, which may include the mediator for some or all of the meetings. In this option, the attorneys are typically only involved on the issues that the parties cannot resolve on their own. Since attorneys are not usually trained in mental health or financial planning, if there are complex emotional or financial issues, the parties must handle those issues themselves or hire additional professionals.

Arbitration - Arbitration is a process that gives control over to a neutral individual, similar to a judge in court. The advantages of arbitration over litigation are that you have a little more control, because you can pick your arbitrator and design the process of arbitration to fit your case's needs. Therefore, arbitration is often faster, less formal, and cheaper than awaiting a trial before a judge. However, the biggest problems with litigation still exist in arbitration: lack of self-determination and lack of communication.

Collaborative Law - Collaboration, also known as Collaborative Law, is a form of dispute resolution where both parties in a dispute have their own attorney, but those attorneys agree not to go to Court. The goal of the Collaborative process is to reach agreements through negotiation and to avoid the expensive and emotional experience of Court. Collaborative law is a structured process that maximizes privacy, control, and cost-efficiency. You both work with your own individual collaboratively-trained attorney and neutral experts in the process ensure that communication improves and that you obtain all the information needed to make informed decisions. A Collaborative Coach/Facilitator helps parties communicate better, recognize their emotional triggers in the process, and fosters a team approach to problem solving. A Financial Neutral or other financial neutral expert helps parties collect, summarize and evaluate financial options so that any legal decisions reflect your financial goals with accurate information. Because you both have an attorney present, the opportunity for advice and information is equalized.

Hybrid Options - Just like a dispute may have many different potential solutions, one process may not always fit perfectly. A Conflict Assessment & Resolution professional can help you determine the best fit or whether a hybrid option might work best. For example, a mediator or conciliator is sometimes brought in to assist with settling specific issues in a litigation case. Similarly, attorneys in a negotiation will often agree to some of the collaborative principles even if they're not participating in a fully collaborative case. Using even one of these tools can improve the negotiation process by reducing conflict and finding solutions more efficiently.

The Collaborative Value Checklist:

- Non-Adversarial
- Interest-Based Negotiation
- Identifying Goals
- Seeking Solutions that are Mutually Advantageous
- Active Client Participation in Joint Problem Solving
- Hiring Neutral Experts
- Transparency of Neutrals
- Transparency of Information: Sharing Relevant Information Voluntarily
- Structured Decision-Making Process
- Disqualification Clause: Focused Representation as Settlement Counsel Only

Checklist from the article *Improving Negotiations using Collaborative Values: A Checklist of Tools* by Beth Aarons, JD, MSW, Jody Comins, MSW, and Justin Kelsey, JD - published in the July/August 2018 Issue of the ABA Just Resolutions Newsletter, and available online at <https://blog.skylarklaw.com/2018/05/improving-negotiations-using.html>

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