

Working Through Family Issues with Alternative Dispute Resolution, Part I – Mediation and Settlement Conferences

By Scott David Stewart

We use several different forms of Alternative Dispute Resolution (ADR) to try to resolve issues in family law cases prior to trial. When family matters are settled without the necessity of a trial, the parties typically save money and wear and tear on their emotions. Although resolving every issue before a trial is not always possible, many issues can be addressed successfully in advance, removing those matters from the trial agenda.

Here are four forms of motions used in Arizona to request ADR:

1. *Motion for Mediation.*
2. *Motion for ADR Settlement Conference.*
3. *Motion for Parenting Conference.*
4. *Motion for Custody Evaluation.*

MOTION FOR MEDIATION

Mediation is a confidential ADR process. The parties' attorneys don't attend the mediation; in fact what is discussed during the session is not divulged to anyone, not even to the judge. Any agreement reached is documented by the mediator, who then forwards the agreement to the judge to sign as an order.

Arizona's Program.

Here's how to make use the family court's mediation program, available at nominal cost to the parties. A *Motion for Mediation* is filed requesting that the court order a conference with a mediator over child custody and access issues. Ideally, this ADR process will result in agreement on some, or all, child custody issues in contention. Whenever possible, the mediator assists the parents in reaching agreements that benefit them both and their children – a win-win situation. Because it takes about two months to schedule the mediation through family court conciliation services, it's a good idea to file the motion early to set the appointment and avoid unnecessary delays.

Private Mediation.

The parties may choose to hire a private mediator, which usually saves time compared to the two-month wait on the court's program. The private mediator also assists the parties in reaching agreements, even on issues that might seem non-negotiable. With private mediation, any issue can be presented for mediation, from property distribution to the child's daycare provider. That really sets private mediation apart from the court's mediation program which is focused only on parenting issues. Private mediators generally charge by the hour -- expect to pay \$250 an hour or more for this professional service.

For a good example of how helpful mediation really can be, take a look at our blog about an Arizona couple who used mediation to [avoid an ugly divorce](#).

MOTION FOR ADR SETTLEMENT CONFERENCE

When parties don't reach agreement on financial matters, then they may use private mediation to attempt settlement on those issues. A party might also consider filing a *Motion for ADR*

Settlement Conference. As a quick note, when child custody issues are still remaining in the case, we usually recommend private mediation. But it is possible to combine custody issues with the financial issues presented in the ADR settlement conference.

Not Binding.

A commissioner or judge pro tem is appointed to oversee the settlement conference. He or she gives an opinion on the likelihood of each party's success, given their respective positions on the issues. (The judge assigned to the case isn't involved in the settlement conference.) The commissioner's or judge pro tem's opinion isn't binding, but it is a powerful recommendation. Needless to say, this straightforward advice is sometimes a "wake up" call as to the legal merits of each party's position on the issues.

Breaking Through.

The ADR settlement conference may be the last opportunity the parties have to attempt settlement before trial. The conference is very useful in resolving cases. It gives everyone a fresh look at the legal issues in the case through the learned eyes of the commissioner or judge pro tem. In our practice, we've seen this lead to breakthroughs in negotiations between the parties.

ADR settlement conferences have been used successfully in settling many family law cases. When settlement results, the parties enter into a binding agreement. After that, only the consent decree and supporting pleadings need to be submitted. There are some expenses involved with these ADR conferences, as the attorneys must prepare their *settlement memorandums* and also appear at the conference. When compared to a trial, though, the settlement conference is usually quite cost-effective.

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