

Resolving Custody, Parenting Time, and Support Disputes Without a Trial

**A Guide to Alternative Dispute Resolution
in Family Court**

More Ways To Resolve Disputes

Alternative Dispute Resolution (ADR) is a term used to describe a number of processes through which parents can resolve differences over child custody, parenting time, or support issues with the help of a neutral third party. The “A” in ADR also means “appropriate,” and courts try to help parents identify the most appropriate process through which their differences can be resolved. The three most common forms of ADR available in Michigan courts are:

MEDIATION

In mediation, parents work together to resolve all or part of their dispute with the help of a trained, neutral mediator. The mediator may be a Friend of the Court employee, a volunteer from the local community dispute resolution center, a person the court appoints, or a person the parents choose from a list of mediators provided by the court.

Mediators do not make any recommendations to the court, and do not recommend solutions to the parties’ dispute unless the parents ask them to. Some courts require parents to try mediation before they come before a judge or referee. If there is a personal protection order in effect or if the parties are involved in a child abuse or neglect case, the court must hold a hearing before ordering parties to try mediation.

CONCILIATION AND JOINT MEETINGS

These two processes are essentially the same: both involve meeting with Friend of the Court staff to resolve differences in custody, parenting time, or support matters. Conciliation, which in some jurisdictions may be called an early intervention conference, typically takes place before the divorce is finalized; joint meetings typically occur after a judgment of divorce has entered and the parties have differences over compliance with the custody, parenting time, or support terms of their judgment.

In both processes, parties are encouraged to reach their own resolution of issues. If the parents do not reach an agreement, however, the Friend of the Court staff member may recommend terms that a judge would include in a court order. Also, because the Friend of the Court staff member may share statements made by the parties with the judge, these processes are not as confidential as mediation.

Why Use ADR?

Mediation, conciliation, and joint meetings have many benefits for parents and children:

PARENTS CONTROL THE RESULT

Parents know best what their children need and what works best for them. Finding a solution together avoids having a solution imposed by the court, which may be neither party’s preference.

SAVE TIME AND MONEY

If parents can reach an agreement, the costs and time associated with attending court hearings can be avoided.

REDUCE FUTURE CONFLICT

After a court order is signed, parents will likely have continued contact with each other as they raise their children. ADR processes are almost always less stressful than court hearings for

both parents and their children, and can set a positive course for future interactions between the parents.

Is ADR Confidential?

All forms of ADR are more private than court hearings that are open to the public. Statements made during mediation are usually confidential; however, some mediators may have a legal duty to report child abuse or neglect. They may also report criminal activity or threats of harm against others. Unlike mediation, statements made in conciliation and joint meetings are generally NOT confidential and may be shared with the judge and the other parent or that parent's attorney.

If you are concerned about the confidentiality of an ADR process, discuss your concern with the person assisting you in the ADR process before beginning the process.

Do You Have Concerns About Discussing Your Differences With The Other Parent?

The ADR processes described in this brochure all involve parents meeting together to discuss options for resolving their current differences. For these processes to be effective, parents need to be able to listen to each other, express their and their children's needs and concerns, and focus on reaching the best outcomes for their children. Also, all parties must feel safe and be able to negotiate on their own behalf (with an attorney or advocate if desired). If you have concerns about meeting with the other parent or negotiating with the other parent, consider these questions:

- Am I afraid the other parent will assault, threaten, or harass me before or after the meeting, or if we are in the same room?
- Am I afraid to disagree with the other parent, or say what my children or I need in front of him/her?
- Is there a court order that protects me and/or my children from the other parent, like a Personal Protection Order or a no-contact order in a criminal case? Has the other parent violated this order?
- Has there ever been a child abuse or neglect case involving the other parent? Am I afraid of what may happen to my children if I say the wrong thing in front of the other parent?

If you answered "yes" to any of these questions, ADR may not be right for you. If you still want to try (or if the court insists that you try), ask your attorney or the person assisting you in the ADR process:

- Can I meet at a separate time or place from the other parent? Can other safety arrangements be made?
- Can my attorney or another support person come with me to the ADR meeting and speak for me, if needed?
- Is the person responsible for the meeting trained to handle situations like mine?

- Can we end the meeting if I don't feel safe?

What If I Don't Think That ADR Is Right For My Case?

- Before the first meeting, explain your concerns to your attorney, if you have one, and to the court or ADR provider.
- Tell the court or ADR provider about any court orders that protect you or your children from the other party. These might include a Personal Protection Order, a no-contact order in a criminal case, or an order issued to protect a child from the other parent.
- Tell the court or ADR provider about any other cases that you or the other parent may have been involved in, such as criminal cases or child protection cases.

Asking The Court To Remove Your Case from ADR

A court may require you to attend an ADR session. However, you or your attorney can request that your case be removed from ADR by filing a request (called a motion) with the court. This motion must be served on the other parent or his/her attorney. The court may remove your case from ADR for good cause, including:

- There is reason to think your health or safety would be endangered by participating in ADR.
- There has been domestic abuse and you will not have a lawyer with you during the ADR session(s).
- The case involves child abuse or neglect.
- You cannot negotiate for yourself and will not have a lawyer or advocate present during ADR meeting(s).
- There is a Personal Protection Order or other court order that protects you from the other parent.

Where Can I Go For Help?

To contact the [Court] Friend of the Court Office:

For help finding an attorney:

- Visit www.michiganlegalaid.org
- Call the State Bar's Lawyer Referral Service at 800-968-0738 from 9 AM to 5 PM Monday through Friday, or visit: www.michbar.org/programs/lawyerreferral.cfm

To locate an agency addressing domestic violence issues in your county:

- Visit www.michigan.gov/domesticviolence (click on "Michigan's Resource Directory").

- Call the National Domestic Violence Hotline at 1-800-799-SAFE (1-800-799-7233), 1-800-787-3224 (TTY)

To find help in changing abusive behavior toward a present or former partner or spouse:

- Call the Batterer Intervention Services Coalition of Michigan at 517-482-3933 or visit online at www.biscmi.org

Additional Services

Some courts offer additional services through the federal “State Access and Visitation Program Grant.” These services include supervised parenting time and neutral drop-off and exchange of children.

The neutral drop-off and exchange program involves the services of a neutral party who is present during the transfer of children at a neutral and safe location.

This grant also permits some courts to offer free or low-cost mediation of parenting time and custody disputes where a noncustodial parent has filed a complaint against the custodial parent (for example, in alleging that his/her court-ordered parenting time was denied). In courts where this service is available, the Friend of the Court may direct that parties participate in mediation to see if the issues leading to the denied parenting time can be resolved without a hearing.

The mediation services are provided through Michigan’s network of Community Dispute Resolution Program centers. If you believe that you have been denied parenting time and would like to learn more about mediation, in addition to discussing your options with the Friend of the Court, you can also directly contact a mediation center. To find the center nearest you, call 1-800-8RESOLVE (1-800-873-7658), or visit: <http://courts.mi.gov/scao/dispute/index.htm>.

The access and visitation program expenses for 2009-10 totaled \$315,353. Federal funding contributed \$283,818 or 90 percent of the program expenses and the remaining balance of \$31,535 or 10 percent was financed by nongovernmental sources.