FAMILY COURT OF THE STATE OF DELAWARE

ALTERNATIVE DISPUTE RESOLUTION

What is Alternative Dispute Resolution?

Alternative dispute resolution is a means of resolving a case by means other than a formal trial.

How do I request Alternative Dispute Resolution?

In any type of civil case, either party may request that the Court order ADR. This request must be made by filing a Motion for Alternative Dispute Resolution (Form #99), along with a Notice of Motion and a Form of Order. All three documents are contained in this packet.

The Court may also order that the parties participate in ADR even if neither party requests it.

When does Alternative Dispute Resolution take place?

ADR will occur after the parties have gone through the mandatory court mediation process, but before proceeding to a trial.

What will happen after I request ADR?

If your request is granted, the Court will issue a scheduling order that establishes or limits the time for you to complete ADR.

How does ADR work?

The format of ADR can be agreed upon by the two parties. These formats may include (but are not limited to):

Arbitration: a process where a neutral person hears both sides of a case and makes a fair decision based on the facts and law. If the parties state in writing that the decision shall be binding, the Court will remove this case from its docket. There exist two forms of arbitration:

> Binding: the suggestion of the ADR Practitioner must be followed.
>
> Non-Binding: the parties may or may not follow the suggestion of the ADR Practitioner and have the option of proceeding to a hearing before the Court.

Mediation: a process by which a mediator helps the parties reach an agreement. (Please note! Mediation, as it is referred to here, is not the same as the mandatory mediation provided by Family Court).

Neutral Case Assessment: a process by which an experienced neutral person provides an evaluation of the case to the parties to help them in reaching an agreement.

If the parties cannot agree, then the format will be mediation.

How do we select an ADR Practitioner?

The parties may agree to select any person to act as an ADR Practitioner. If the parties cannot agree, the Judge will appoint an ADR Practitioner.

What if we cannot agree on an ADR Practitioner?

If both parties cannot agree on an ADR Practitioner, they must file a motion with the Court within thirty (30) days of the date of the Scheduling Order requesting that the Court appoint an ADR Practitioner for the parties. This should be done by filing the Motion to Appoint an Alternative Dispute Resolution Practitioner (Form #98), also included in this packet. ***Both parties must complete and sign this form together.***

Who pays for the ADR Practitioner?

The parties pay the ADR Practitioner in accordance with the amount of fees established by the ADR Practitioner and agreed to by the parties or order by the Court. If a party fails to comply, the Court may order sanctions, which may include dismissal of the case.

What happens if ADR is not successful?

If not successful, the case will proceed to trial, which will be scheduled by the judge's office. If the ADR format selected was binding, this is not an option and the recommendation of the ADR Practitioner must be followed.

Can I call the ADR Practitioner as a witness at my hearing?

No. The ADR Practitioner may not be called as a witness in any aspect of litigation. Nothing said by the parties during ADR may be used against them in any court. All ADR Practitioners remain bound by the confidentiality agreement signed by the parties and the ADR Practitioner.

What happens if ADR is successful?

If successful, you or the ADR Practitioner will submit a written agreement to the Court. The Court will review your agreement and, if acceptable, sign it and make it a formal Court Order. This Order must then be followed as would any Court Order.

Related Forms:

Form 99P – Motion and Order for Alternative Dispute Resolution

Form 98P – Motion and Order for Appointment of an Alternative Dispute Resolution Practitioner

All forms can be found on the Family Court Website.

Family Court Contact Information

New Castle County	Kent County	Sussex County
500 NORTH KING STREET WILMINGTON, DE 19801 (302) 255-0300	445 SOUTH GOVERNORS AVENUE DOVER, DE 19904 (302) 672-1000	100 EAST MARKET STREET GEORGETOWN, DE 19947 (302) 855-7400

For more information, visit the Family Court webpage or scan the QR code.