

sionals also trained in the Collaborative Practice model and in mediation, such as mental health and financial professionals. It is a voluntary process in which the parties are fully informed about the law but use their own standards of reasonableness and self-determination to reach resolution thereby eliminating the need for the court to make the decisions. All of the professionals serve as advisors under Limited Scope Representation Agreement<sup>1</sup> not to engage in litigation, if the parties decide they wish to litigate. Similar to mediation sessions, the goal of the joint party/professional sessions is to bring about a written agreement between the parties that resolves some or all of the various issues needing to be addressed. To commence the Collaborative Practice process, the parties and all of the professionals involved sign what is known as a “Collaborative Participation Agreement.” This document spells out the roles, duties, and goals for the parties, the professionals and the process. By signing the Participation Agreement, each of the participants makes a pledge to full disclosure, fair dealing, and remaining future-focused on workable outcomes. When a final, agreeable resolution is reached, it is reduced to a written settlement agreement by the collaborative attorneys. Thereafter, the parties and the attorneys go to court one time to have the settlement approved by a judge.

### Private Judge

This is a process by which parties to a dispute agree to have their case heard privately by an individual who both parties have selected to act as a private judge. A private judge is an individual who is respected for his/her impartiality, intellect, and understanding of the subject matter involved in the dispute. As a neutral third party, the private judge acts to facilitate a mutually acceptable resolution between the parties. The decision of the private judge may be binding depending on the agreement of the parties.

### Pre-trial Settlement Conference

The pre-trial settlement conference is a technique used by judges for the purpose of exploring and encouraging the settlement of lawsuits before they reach trial. Parties and their attorneys are typically summoned to a pre-trial settlement conference by a judge, who will then act as a neutral third party to assist the parties to better understand, appreciate, and evaluate the strengths and weaknesses of each party’s case in an effort to facilitate a mutually-acceptable settlement.

### FOR MORE INFORMATION ON ADR:

Persons interested in learning more about ADR in Illinois can obtain information:

- *County and local bar associations.* You can find these associations in a local telephone directory.
- *Your attorney.* If you are represented by an attorney, he or she may be able to recommend ADR resources.
- *Circuit Courts.* Most circuit courts have a list of certified child custody mediators and also maintain lists of individuals certified in dispute resolution for civil disputes.

<sup>1</sup> For more information refer to ISBA Consumer Legal Guide Publication “A New Way to Get Legal Help: Limited Scope Representation

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This pamphlet is prepared and published by the Illinois State Bar Association as a public service. Every effort has been made to provide accurate information at the time of publication.

For the most current information, please consult your lawyer. If you need a lawyer and do not have one, call Illinois Lawyer Finder at (800) 922-8757 or online [www.IllinoisLawyerFinder.com](http://www.IllinoisLawyerFinder.com)

### Pamphlets Available

- Adoption
- Advice to Newly Marrieds
- Alternative Dispute Resolution
- Auto Accidents
- Auto Insurance
- Bankruptcy
- Being a Guardian
- Buying a Car
- Buying a Home
- Buying on Time
- Divorce
- Estate Planning
- Gender Transitioning
- General Practitioner
- Health Care Privacy
- Healthcare Decisions
- Hiring a Lawyer
- Illinois Traffic Courts
- Jury Duty
- Landlord-Tenant
- Law-related Careers
- Limited Scope Representation
- Living Trusts
- Patients’ Rights
- Rights of LGBT
- Selling a Home
- Serving as a Guardian for an Adult with Disabilities
- Starting a Business
- Your Rights if Arrested

For more information on legal issues or to obtain single copies of each of the pamphlets listed above (free to individuals), please visit [www.ISBAlawyers.com](http://www.ISBAlawyers.com)

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## Consumer Legal Guide



# Your Guide to Alternative Dispute Resolution (ADR)

Methods for settling disputes  
without going to court



ILLINOIS STATE  
BAR ASSOCIATION

## ASK A LAWYER

## WHAT IS ALTERNATIVE DISPUTE RESOLUTION?

Alternative dispute resolution (commonly called ADR) refers to various methods used to resolve legal disputes outside of a formal court proceeding.

Generally, these methods are less time consuming and are more cost effective than litigating in court, making them attractive to a variety of individuals and entities involved in legal disputes.

*Methods include:*

- *Mediation*
- *Arbitration*
- *Collaborative Law*
- *Pre-trial Settlement Conference*

**The two most common methods of ADR used in Illinois are Mediation and Arbitration.**

## WHAT IS MEDIATION?

Mediation is a confidential process in which an impartial third party called a mediator acts to facilitate the communication and negotiation between parties in order to bring about a resolution to their dispute. Mediation is an informal, non-adversarial, and non-binding process aimed at helping the parties reach a mutually acceptable agreement on all or part of their dispute.

Decision making rests with the parties, not with the mediator. The mediator will not render or impose on the parties an opinion or decision, nor will he or she make a finding of fault or liability. Rather, the mediator will help guide the issues of the dispute and will help the parties explore settlement alternatives, help define mutual interests, and reassess their goals.

Illinois has adopted the Uniform Mediation Act which can be found at 710 ILCS 35/1 *et seq.*

### Who are the mediators?

A mediator is a neutral third party who is selected by the disputing parties. The mediator

may be an attorney, retired judge, or other individual with specific experience or training in a particular professional field. Some court systems have mediators who are certified in a particular type of law.

### How do I choose a mediator?

In selecting a mediator, consideration should be given to the mediator's reputation, experience, training, areas of expertise or concentration and certifications. A mediator should also be impartial and free of any bias.

### Why choose mediation over court litigation?

Mediation is a problem solving technique that allows parties to work together in a confidential manner to form their own mutually acceptable resolution to their dispute. Sometimes for reasons of expense or the need to preserve a business or personal relationship between the parties, it may be important to resolve a dispute in a non-adversarial manner or more expeditiously than is permitted by court calendars. Furthermore, mediation may be required for some disputes under certain circumstances. For example, disputes stemming from a contract that contains a mandatory mediation clause typically require the disputing parties to first engage in mediation before they can seek any other dispute resolution method such as arbitration or litigation in court. Additionally, a court will typically order mediation in a custody proceeding, for instance, to assist the parties in developing an agreeable parenting plan.

The mediation process is typically comprised of one or more sessions attended by the disputing parties and the mediator. Because these sessions are confidential and non-binding, the parties can still proceed to arbitration or litigation with their full rights if the dispute is not resolved during mediation. Attendance by a parties' attorney is permitted, but is not mandatory and can be waived.

## WHAT IS ARBITRATION?

Arbitration is a process in which an arbitrator or arbitration panel considers the facts and arguments presented by the parties to a dispute submitted for arbitration and renders an enforceable decision in favor of one party and against the other. The purpose of arbitration is to obtain a final disposition of the issue(s) in dispute by the parties in a manner which is designed to be easier, quicker, and less expensive than by litigation in court. Even though arbitration is less formal than a court trial, there are still procedures that must be followed. The decision resulting from arbitration is usually binding and the right to appeal the decision of the arbitrator or panel of arbitrators is typically very limited.

Illinois has adopted the Uniform Arbitration Act which can be found at 710 ILCS 5/1 *et seq.*

### Who are the arbitrators?

Arbitrators are often lawyers, but can be any individual who is deemed by the parties to be capable of understanding the terminology, practices, and customs and usages of trade involved in the dispute being arbitrated. In many cases, arbitrators are required to meet specific criteria and must undergo special training in order to be certified to act as an arbitrator. Unless specified in a contract or written agreement, you and your attorney usually will have input as to the selection of the arbitrator.

### How do I choose an arbitrator?

In selecting an arbitrator, consideration should be given to the arbitrator's reputation, experience, training, areas of expertise or concentration, and any certifications the arbitrator may hold. An arbitrator should also be impartial and free of any bias.

## Why choose arbitration over court litigation?

While arbitration is similar to litigation in court in many respects, there are still important distinctions between the two. There is no judge or jury in arbitration, for example, and the arbitration hearing is conducted privately and is less formal than a trial, which allows the presentation to be streamlined. Thus, the procedure can be simpler, faster, and less expensive than courtroom litigation. Additionally, arbitration may provide the parties with greater confidentiality. The final decision of the arbitrator or panel of arbitrators may or may not preclude you from further litigation.

## DO I STILL NEED A LAWYER?

Mediators and arbitrators do not provide legal advice and do not act as a lawyer for any party. A party to any method of ADR should consider retaining the services of a lawyer in order to obtain the necessary legal advice to understand the full nature, scope, and potential consequences of the dispute in which they are involved.

A lawyer can also assist a party to a dispute in choosing the most appropriate ADR method. Lawyers often understand the procedure and preparation necessary to mediate or arbitrate a dispute, and thus you may benefit by obtaining legal counsel to help guide and represent you through any ADR process.

## OTHER FORMS OF ADR

### Collaborative Law (also known as Collaborative Practice)

Collaborative law is a process used primarily in family law matters and in cases when the parties' relationship must continue after the legal dispute has been resolved. The process involves a series of joint meetings between both parties and their respective collaborative attorneys. The process often includes other profes-