

Choices for Solving Legal Problems without a Court Hearing

FAMILY Family Division COURT
Superior Court of California, County of Santa Clara County

Alternate Dispute Resolution is a CHOICE in Family Law Cases

“Alternative Dispute Resolution” (ADR) is a term used for ways you can solve legal issues by agreement instead of problems without going to a formal Court hearing with a Judge. ~~Some choices are explained below. ADR can~~ may save you time *and* money. ~~With ADR you are likely to feel better about the legal process and how your case is settled. You can often solve Family Law issues such as child custody, visitation, support, and property division by agreement instead of by going to a Court hearing. Except for custody and visitation mediation, ADR services are voluntary and can only be a part of your case resolution plan if both parties agree. choose to use these services.~~

All Court-connected ADR providers that are a part of your case resolution plan have been trained to assess and handle cases that may have domestic violence issues. Ask about separate sessions if meeting separately from the other party will make you feel safer.

The following ADR processes are available through the Court at no cost to you:

TYPES OF RESOLUTION PROCESSES:

Custody/Visitation Parenting Plan (Custody/Visitation) Mediation-Free

~~California law says that if parents do not agree about custody and visitation issues, they must try to settle the issues by going to Mediation. Mediation is a way for parents to meet with someone who does not work for either side to try to agree about their children. Mediation can be done through the Court at Family Court Services at no cost, or through a private mediator you hire on your own. Mediation through Family Court Services in Santa Clara County is a confidential process—the mediator will not go to a Court hearing to tell the Judge what you or the other parent said in mediation. The mediator can help you and the other parent talk about and decide issues such as how much time the child will spend with each parent, how to best exchange the child, and other custody or visitation issues.~~

~~Orientation and Mediation may be scheduled by calling (408) 534-5760. Parties must attend Orientation prior to Mediation if they have never been to Mediation before. Orientation may be done online at <http://www.sccourt.org/court-divisions/family/fcs/fcs-orientation.shtml> or in person by calling (408) 534-5760 to schedule Orientation. Orientation is available in English and Spanish.~~

In California, if parents do not agree about custody and visitation issues, the law requires that they try to settle the issues by going to mediation. A skilled and trained Mediator can encourage parents to focus on and understand the needs of their children and assist them in developing a parenting plan that considers the best interest of the child and the needs of each family member. A parenting plan is an agreement between the parents that spells out the specific details of custody and visitation arrangements for their children. Mediation can be done through the Court with Family Court Services at no cost, or, through a private mediator you can hire on your own.

Mediations conducted by Family Court Services are completely confidential. What is discussed between the parents and the Mediator is not shared with anyone, including the Court. If you file a Request for Order asking the Court to make custody and visitation orders you will be ordered to mediation by the Court. But, you may also stipulate to attend custody mediation without filing a motion with the Court by submitting Local Form FM-1195. If you agree or are ordered to participate in mediation through Family Court Services, orientation and mediation may be scheduled by calling (408) 534-5760. Both parents will be required to attend online orientation schedule an in-person orientation appointment, prior to mediation. The link for the orientation may be found on the Court's website.

Family Court Settlement Officer Conference (SOC)-Free

The Court has a full-time Settlement Officer, whose job is to help parties settle their family law cases for free. The Family Court Settlement Officer also recruits experienced family law attorneys as volunteer settlement attorneys and volunteer certified judges to help parties reach agreement. The Settlement Office and experienced family law volunteer attorneys are neutrals and do not represent either party in this process. The SOC Settlement Officer Conference (SOC) focuses on resolving property and financial support issues such as real estate, retirement accounts, spousal and/or child support, bank accounts, and debts. The conference SOC works best when parties have given each other information in advance about their finances and how they think things should be settled. An SOC can be scheduled set at any time after the parties have exchanged you have served the Preliminary Declarations of Disclosure by calling (408) 534-5710 by sending an email to SOC@scscourt.org. Available dates and times are posted at on the Court's website.

Judicially Supervised Settlement Conference (JSSC)-Free

A JSSC is another type of settlement conference but it is heard by a Judicial Officer (a Judge or Court Commissioner). There are certain eligibility requirements which may be found in the Family Local Rules. The parties must both be represented. If a case is eligible for a JSSC, the parties' attorneys may apply using Local Family Form FM-1119 which can be found on the Court's website.

Mediation

Mediation is a way to reach an agreement with the help of a person who is specially trained to help resolve disagreements. The mediator can help the parties talk with each other clearly and options for settlement. Mediators are usually attorneys hired by the parties, but they are not the attorney for either side. A mediator can help resolve one issue or the entire case. Mediation is private and confidential. Anything that is said or written in the mediation process is confidential. The mediator may not talk about the case to the Court or anyone else unless the parties both agree. Agreements reached in mediation can become Court orders if both parties agree. Visit the Court's website for a list of Family ADR providers: http://www.sescourt.org/court_divisions/family/adr/family_adr_search.asp

Personal Property Arbitration Family Court Property Division Hearings (PDH)-Free

A volunteer attorney will act as Temporary Judge/arbitrator and will decide how to divide your personal property, such as cars and furniture. Both parties must agree to the arbitration in writing and the arbitrator's decision is binding and cannot be appealed, or it must be ordered by the Court. The arbitrator will issue writes up a decision after each side presents his or her case. These arbitrations are held at the Family Court and may be scheduled by calling (408) 534-5710 sending an email to SOC@scscourt.org. Available dates and times are posted at on the Court's website at

https://www.sccourt.org/court_divisions/family/adr/family_adr_home.shtml.

Young Children's Settlement Team-Free

If you have a child aged 5 or under and have custody or visitation disputes, you may ask the judicial officer assigned to your case to participate in the Young Children's Settlement Team Project. This confidential process brings together a team of volunteer mental health professionals and volunteer attorneys who work with the parties at the courthouse to attempt to resolve any custody or visitation issues. If agreements are reached, they are reviewed by the parties and counsel, as well as the Court.

Agreement Appointment at Self Help Center (SHC)-Free

If both parties to an existing family law case are self represented, they can make an appointment at the SHC to discuss agreement options on the issues in their case. Both parties must be willing to go through this process. Staff at SHC cannot help parties with property division issues nor child support issues if the Department of Child Support Services (DCSS) is enforcing support in the case. To ask for an agreement appointment with SHC, the parties may call 408-882-2926, or send an email to shcappointments@sccourt.org.

Collaborative Law

~~In the collaborative practice process, each party has a private attorney and each makes a commitment to resolve any disagreements without going to court. The parties and their attorneys have a series of private meetings to create solutions based on the needs of the parties. All parties and their attorneys agree that if the parties cannot settle their case and/or if either party chooses to withdraw from the process and go to court, the collaborative attorneys cannot represent these parties in court.~~

~~Visit the Court's website for a list of Family ADR and Collaborative Law providers:~~

~~http://www.sccourt.org/court_divisions/family/adr/family_adr_search.asp~~

~~You may also contact the Santa Clara County Bar Association at (408-287-2557 or www.sccba.com) and ask for names of attorneys from the Collaborative Law panel.~~

Arbitration and Private Judging

~~An arbitrator, usually an attorney hired by the parties, makes a decision after the hearing information is presented by both parties. The arbitrator prepares a written decision which is sent to both parties and the Court. The parties decide ahead of time whether the arbitration is binding or not. "Binding" means that the arbitrator's decision will be final. "Non-binding" means that the parties do not have to follow the arbitrator's decision.~~

~~Private judging, like arbitration, involves choosing a person, usually an attorney, to act as either a settlement or trial judge or both. The decision of the private judge is filed with the Court as a Court order. If you want to consider private judging, both sides must agree on the private judge. Please be sure that you are clear on the experience and qualifications of the provider as well as the costs and services that he or she will provide.~~

Young Children's Settlement Team-Free

~~If you have a child aged 5 or under and have custody or visitation disputes, you may request to participate in the Young Children's Settlement Team Project. This brings together a team of volunteer mental health professionals and volunteer attorneys who work with the parties at the courthouse to attempt to resolve any custody or visitation issues. The process is confidential. If agreements are~~

reached, they are reviewed by the parties and counsel, as well as the Court. If there are still issues left, a JCC is held with the All Purpose Judge.

The Court does not think any form of ADR or any ADR provider is better than another and does not guarantee how your case will work out