

CONFLICT RESOLUTION TERMS AND PROCESSES

ALTERNATIVE DISPUTE RESOLUTION (ADR) - Generally, alternative dispute resolution (ADR) refers to any process or collection of processes established to resolve disputes without trial or violence. The term “ADR” is often used to refer to a broad category of “ADR processes” such as negotiation, conciliation, mediation, settlement conferences, arbitration, consensus building and community conferencing. In addition, ADR includes conflict management and prevention systems, such as an ombuds office, which can help people decide what dispute resolution process they want to use. Often, one or more ADR processes may be appropriate for resolving certain kinds of disputes. Generally, ADR is not appropriate if someone wants to prosecute serious crime, create a legal precedent or air an issue publicly.

ARBITRATION - a process in which (1) the people in a dispute appear before one or more impartial arbitrators and present evidence and arguments supporting their respective positions, and (2) the arbitrators render a decision in the form of an “arbitration award.” Arbitration is generally “binding” which means that the participants must abide by the arbitrator’s decision, however, the participants can agree prior to the hearing that the decision will be “non-binding.” Binding arbitration is more binding than the judgement of a court because binding arbitration is generally not appealable. Courts can only order arbitration at the request of all parties.

COMMUNITY CONFERENCING - a multi-party process in which all of the people affected by a behavior or a conflict that has caused them harm are convened for a meeting to have a conversation about that situation. The goal of the conference is to create an agreement which will repair the harm. During the conference, all participants have an opportunity to discuss what happened, how they were personally affected, and how the harm can best be repaired. This process may be used in conflicts involving large numbers of people and is often used as an alternative to juvenile court.

CONSENSUS BUILDING - a process generally used to prevent or resolve disputes and/or to facilitate decision making, often within a multi-party dispute, group process or public policy making process. In consensus building processes, one or more neutral facilitators may identify and convene all stakeholders or their representatives, and use techniques to build trust, open communication, and enable all parties to develop options and determine mutually acceptable solutions. Consensus building resembles mediation because the process is about people making their own decisions, opening lines of communication, and developing agreements that everyone can support. Consensus building differs from mediation because it usually involves a larger group of people and is generally used to prevent or resolve disputes about public policy or other complex issues involving several parties, and may involve active facilitator engagement with one or more parties in between formal sessions.

MEDIATION - a process in which the people in a dispute work with one or more impartial mediators who, without providing legal advice, assist the parties in reaching their own voluntary agreement for the resolution of the dispute or issues in the dispute. A mediator may help the parties identify issues and options, assist the parties and possibly their attorneys in exploring the needs underlying their respective positions, and, upon request, record points of agreement reached by the parties. Mediation helps people speak for themselves, and if possible, rebuild their relationships and find lasting solutions to their disputes.

NEGOTIATION - a process where two or more people confer on a matter in an attempt to reach an agreement about a particular issue or issues. In “interest-based” negotiations, the participants work to understand each others needs and reach an agreement that, to the degree possible, meets the interests of all.

NEUTRAL CASE EVALUATION - a process in which (1) people in a dispute appear before an impartial person and present in summary fashion the evidence and arguments supporting their respective positions, and (2) the impartial person renders an evaluation of their positions and an opinion as to the likely outcome of the dispute or issues in the dispute if the action were tried. The neutral person usually has substantial knowledge or experience with issues involved in the dispute. This person’s opinion about how the court might decide the dispute helps people determine appropriate out-of-court settlements.

OMBUDS OFFICES - provide a confidential, neutral and informal process for people in conflict. The ombudsperson may provide advice about resolving the conflict and may help arrange for the people in conflict to use any of the above-mentioned ADR services. The ombuds usually reports to the highest ranking official in an organization, provides statistical data on service delivery and makes recommendations for systemic changes aimed at preventing and managing conflict.

SETTLEMENT CONFERENCE - a conference at which the people in a dispute in court and/or their attorneys, appear before an impartial person in an attempt to resolve the dispute or issues in the dispute by agreement or by means other than trial. A settlement conference may include neutral case evaluation and neutral fact-finding, and the impartial person may recommend the terms of an agreement. The settlement conference facilitator is usually a judge or experienced lawyer who can give informed opinions about how the court might decide the case, discuss how similar cases have been settled, provide advice and suggest agreements.