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THE CIVIL LAWYER
By Debra and William Crawford

Alternate Dispute Resolution Methods

With the holiday season upon us and sounds of *Peace on Earth* and *Joy to the World* floating through the air, let's think about some alternative methods of resolving lawsuits. Instead of the "scorched earth" method of trial by judge and/or jury, there are gentler methods available for dispute resolution. These are called alternative dispute resolution (ADR) and they substitute the processes of arbitration and/or mediation for traditional litigation.

Arbitration is like a miniature trial where an "arbitrator" – usually a retired judge or practicing lawyer – decides the outcome of the case typically based upon written statements of witnesses and the testimony of the parties. In a binding arbitration, the decision of the arbitrator becomes the judgment of the court. In a non-binding arbitration, either party can ask for a new trial (trial de novo) within the time prescribed by law. However, if they fail to do so within that time, the decision of the arbitrator becomes the judgment of the court. The cost of arbitrating a case is less than taking the case to court, but the arbitrator makes the decision – not the parties. This leads us to an even more cooperative method of dispute resolution: mediation.

Mediation is where a "mediator" – who may be a retired judge, lawyer, psychologist, or other professional mediator – meets with the parties in order to help them reach a mutual agreement regarding the outcome of the case. The goal of mediation is for the parties to reach an agreement which is satisfactory to them. Mediation can last one session or can go on for

many sessions in a complicated matter. If there is a factual dispute the parties cannot resolve without outside expertise, they can agree to hire a neutral expert to make a determination, such as a business valuation, in order to facilitate settlement. A skilled mediator can help parties negotiate innovative and satisfactory results. Mediation can be accomplished without the parties directly speaking to each other with all contact done by the mediator if necessary. If an agreement is reached in mediation, it can become a court order or be confidential at the agreement of the parties.

We wish you a peaceful end to any disputes especially during this holiday season.

Please e-mail questions or future column ideas to Debra@Divorce-123.com. This column is intended to be informative and thought provoking and is not to be relied upon as legal advice.

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