

MOST COMMON COURT ALTERNATIVE DISPUTE RESOLUTION (ADR) PROCESSES

Process	Brief Process Description	Comparison to Other Processes	Things to Think About
Mediation	A neutral person facilitates communication between disputants to assist them in reaching a mutually acceptable agreement. (Cal. Evid. Code, § 1115.)	<p>Comparison to Settlement Conference and Neutral Evaluation</p> <ul style="list-style-type: none"> • Least formal – most different from litigation • Greater party participation and self-determination • Confidential (Evid. Code § 1115 et seq.) • Flexibility of process and outcome 	<ul style="list-style-type: none"> • Direct participation by parties • High degree of “voice” for parties • High participant satisfaction • Uses minimal judicial resources • Requires “process training” for neutrals • Process may take longer than settlement conference • Subject to Cal. Rules of Court, rule 3.850 et seq.
Settlement Conference	The litigants or their attorneys meet with a neutral person to discuss settlement.	<p>Comparison to Mediation</p> <ul style="list-style-type: none"> • Settlement officer may be judicial officer • Parties less likely to participate directly in settlement conference • Settlement officer more likely to express opinion of case value • Settlement officer more likely to take an active role in guiding, and sometimes pressuring, the parties toward a resolution • Settlement conferences are not confidential under Evidence Code § 1115 et seq. 	<ul style="list-style-type: none"> • Typically takes less time than mediation • Neutrals need less “process training” • Typically less active participation by parties and less “voice” • Less likely to address extra-legal issues and solutions • If judicial officer conducts, may require more judicial resources • Judicial officer may be able to place agreement on the record
Neutral Evaluation	A neutral person considers presentations by the attorneys and provides an evaluation of the case. The neutral may also facilitate settlement discussions or help the parties reach agreement on substantive or procedural matters.	<p>Comparison to Mediation and Settlement Conferences</p> <ul style="list-style-type: none"> • Evaluator generally not judicial officer; may be selected for substantive expertise • Evaluator only facilitates settlement discussions if requested by parties • Evaluator may help develop case management plan • ENE is not specifically covered by confidentiality under Evidence Code § 1115 et seq. 	<ul style="list-style-type: none"> • Parties or their attorneys may ask for mediation but really want evaluation of case • Parties and attorneys are less familiar with ENE, may require more education • Typically less active participation by parties and less “voice” than in mediation • Less likely to address extra-legal issues and solutions than mediation

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<p>Judicial Arbitration</p>	<p>A neutral third party reviews evidence, hears arguments, and renders a decision (an award) that is entered as a judgment if no party files a request for a trial de novo within 30 days.</p>	<p>Comparison to Mediation, Settlement Conferences & Neutral Evaluation</p> <ul style="list-style-type: none"> • Arbitrator must be a retired judge or commissioner or a member of the State Bar unless parties agree on someone else. • Procedure is more formal and adversarial and less flexible than mediation, settlement conference, or neutral evaluation. (Detailed procedures for are prescribed by the Code of Civil Procedure and the California Rules of Court.) • Nonexempt unlimited civil cases in which the amount in controversy is \$50,000 or less must be submitted to judicial arbitration. Other cases may be submitted upon the plaintiff’s election and agreement to limit the award to \$50,000 or upon the parties’ stipulation. • Results in a (non-binding) decision by the arbitrator, rather than a decision by agreement of the parties. • If case goes to trial and the person who requested a trial de novo does not obtain a more favorable judgment, that party must pay the costs of the arbitration, and certain of the other party’s litigation costs. • Communications in judicial arbitration are not confidential, but reference to the arbitration or the award during a subsequent trial is grounds for a new trial. 	<ul style="list-style-type: none"> • Trial courts with 18 or more judges are required to have judicial arbitration programs; other courts may elect to do so. • Less of a contrast with traditional litigation than mediation, settlement conference, or neutral evaluation. • Neutrals need less “process training” • Less active participation by parties and less “voice” • Less likely to address extra-legal issues and solutions than other processes • A trial de novo is typically requested in a high percentage of cases submitted to judicial arbitration, although most do not ultimately go to trial. • The arbitration process and award may promote or result in settlement even when a trial de novo is requested. • In recent years, mediation has generally become a more favored court ADR program.