

Debunking Myths About Alternative Dispute Resolution

MYTH

FACT

1 YOU MUST BE GETTING ALONG WITH YOUR SIGNIFICANT OTHER IN ORDER TO USE ADR.

Families who choose ADR are going through the same turmoil as families who choose an adversarial route, but they are hoping for a more gentle way to restructure their family. ADR professionals are trained to help high conflict people communicate more effectively.

2 YOU HAVE TO AGREE ON EVERYTHING IN ORDER TO USE ADR.

You must only agree that you both are committed to resolving your dispute. Even once the mediation process has begun, it is not necessary to reach agreement on ALL issues but you CAN reach an agreement on MOST issues and narrow the focus of any litigation.

3 MEDIATION, CO-PARENTING COUNSELING, & PARENT COORDINATION ARE THERAPY.

While your ADR professional may have a counseling background, no form of ADR is therapy. ADR is not about reconciliation, but it does factor in the emotions of separation. Furthermore, participating in ADR sets a healthy foundation for your future co-parenting relationship by helping you work together as parents to make decisions concerning your family.

4 ADR MEANS YOU WILL HAVE TO SETTLE FOR LESS.

ADR does not equal “giving in” but it does mean finding solutions that work for both parties. ADR means being prepared to make concessions in order to get what you have identified as most important to you. People rarely leave court getting everything they’ve asked for, but they have lost literal and emotional capital along the way.

5 ADR PROFESSIONALS MAKES ALL OF THE DECISIONS.

Other than in arbitration, the parties are the primary decision-makers when using ADR. Professionals facilitate the process to help parties reach an agreement.

6 ADR ALLOWS ONE PERSON TO DOMINATE THE OTHER.

There are multiple ADR options available and each address power imbalances in different degrees. In an option where there is no direct legal representation, such as mediation, co-parenting counseling, or parent coordination, a pre-screening ensures that a family is suited and that nobody is put in a dangerous situation. Trained professionals pay close attention to the power balance between parties and use specific techniques to address any imbalance.

7 MEDIATION DOESN'T WORK

Couples who mediate are more likely to be satisfied with the process and the results, to spend less money, and to be through the process faster than couples who litigate. Most importantly, mediated agreements last longer than orders made as a result of court battles meaning couples who mediate are less likely to go back to court later.

Mediation and Collaborative Practice November 13, 2019

Wendy F. Habelow, Ph.D. and Deborah Noonan, Esq.

What is Collaborative Divorce?

Collaborative Divorce is an alternative to the adversarial divorce process. It is a team approach that resolves disputes without going to court. The Collaborative Team is comprised of a lawyer for each partner, a neutral behavioral health professional and a neutral financial professional, all of whom have been trained in Mediation and the Collaborative Process. The aim of Collaborative Divorce is to focus on the children and partners' best interests and to design constructive solutions that will safeguard the well-being of all family members.

What is Mediation?

Mediation also is an alternative to the adversarial divorce process. It is a cooperative problem-solving process where the partners meet with a neutral mediator who assists them to address and resolve the issues of asset division, support and child-related issues such as the parenting schedule. Behavioral health and financial professionals, acting as neutrals often participate as expert resources in the areas of child development, interpersonal functioning and asset management. Partners are encouraged to retain their own review attorneys who provide individual guidance.

Myths about Divorce Mediation and Collaborative Divorce

Collaborative Divorce's use of multiple professionals makes the process as expensive if not more expensive than a traditional litigated divorce

Women do better in litigation than in Mediation or Collaborative processes

Substance abuse, mental illness and domestic violence automatically require a litigated divorce

Partners are unrepresented in Mediation

Behavioral health professionals are only needed to work on the parenting schedule and have no place in the financial discussions or processes without minor children

Collaborative Divorce and Mediation do not get partners the 'best' financial outcome

Partners are too stressed, not strong or smart enough for Mediation or Collaborative Divorce

Partners who do not have children or whose children are adults do not need Mediation or the Collaborative Process

Mediation and Collaborative Divorce are good only for married partners

Contraindications to Mediation or Collaborative Divorce

Unwillingness and/or inability to participate in a transparent, team process

Unwillingness to stay out of court

Curling?

According to attorney and mediator *Chip Rose* the sport of curling involves the sweeper clearing the stone's path of ice so the stone can travel a straighter path and a longer distance toward its goal. The role of the neutral mediator and the roles of the attorneys, behavioral health and financial professionals in a Collaborative Divorce are like that of the sweeper – clearing the way for the divorcing partners and helping them choose the path that will lead to their best outcome.

Jennifer Luise Champagne, MA, LPC and Brendan Holt, Esquire

Co-Parenting Counseling vs. Parenting Coordination

Understanding the fundamental differences and benefits

Finding the right fit for the right family

Helping the clients understand and engage in the ideal process

Co-Parenting Counseling is....

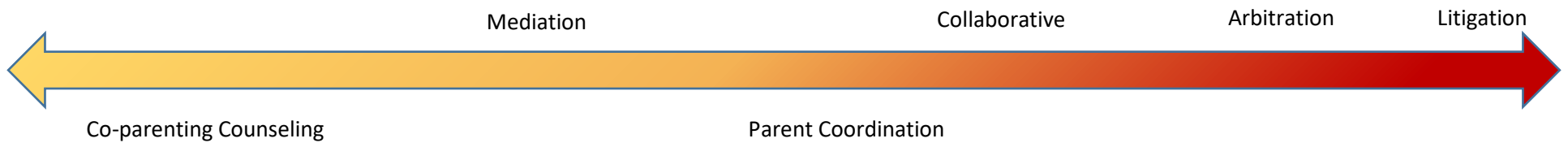
- Pre or Post dissolution
- Mental health professional combines mediation with skill building and conflict resolution approaches
- A focus on communication skills to resolve conflicts together
- Helping parents work together on parenting disputes
- Approached with the lens of healthy co-parenting
- Appropriate for parents who are receptive to education
- Clients are responsible for individual decisions and outcomes
- Clients are helped to balance autonomy and consistency between homes

Think of it as.... Rebuilding, redefining, continuity, peace and resolution

Parenting Coordination is....

- Post dissolution
- Mental health professional or attorney facilitates resolution of parental disagreements
- Manages the case and the conflict
- Used to effectuate disputed aspects of the parenting plan for parents with demonstrated difficulties with the parenting plan
- Appropriate for parents for whom even the simplest decisions require intervention
- For parents with serious communication issues
- Geared towards matters that are Incredibly high conflict
- Intended to reduce reliance on repeated litigation to effectuate parenting plan
- Where the scope of PC's authority and decision making is defined by parameters (arbitrator)

Think of it as... Stabilization, containment, timely resolution, and improved functioning



Co-Parenting Counseling and Parent Coordination are two interventions that can be utilized both during the divorce or custody proceedings as well as after a decision is made.

Co-Parenting Counseling

Description:	Co-parenting counseling is NOT couples counseling but is facilitated by a trained mental health professional. Co-parenting counseling focuses on building the skills needed to transform parents' communication so they can learn to more effectively address child-related issues without conflict. It can also be used to address child-related concerns that are inappropriate for the court system. It is an ongoing process that can begin while a family is in court but is often-times most useful once the court process is complete.
Indicated for:	Co-parenting counseling is effective for parents who are open to input, even though they may be experiencing moderate conflict. Parents must have the ability to respond to coaching and direction, even if it takes some time, and they must view co-parenting counseling as a resource for their family and not as a potential source of new "ammunition" for a court case. Co-parenting counseling will be helpful for parents who share the same goals but cannot overcome poor communication to reach those goals. A co-parenting counselor can help parents work out the details of a parenting plan and can be a resource as parenting plans need to evolve over time.
Not Indicated for:	Co-parenting counseling is less effective for parents who have been involved in extensive pre or post judgment litigation, which may indicate that they have "dug in" on their positions related to parenting and are unwilling to accept direction or compromise. Families that have "extreme" experiences will not likely be suitable for co-parenting counseling. This may mean domestic violence, power imbalances, a child who is distanced from a parent, severe psycho-pathology in a parent, or multiple failed attempts at professionally-guided co-parenting.
Pros:	<ul style="list-style-type: none"> ● Generally confidential as the counselor does not act as a court witness other than to confirm attendance. ● Helps parents decrease conflict and build skills for communication and decision-making, even when they don't agree. ● Changes the family system to help prevent child maladjustment. ● Decreases inappropriate and excessive use of the legal system. ● Cost-effective ● Available as often as needed and at mutually agreeable times.
Cons:	<ul style="list-style-type: none"> ● There is no real downside to attempting co-parenting counseling. There are no legal ramifications for unsuccessful co-parenting counseling.

Parent Coordination

Description:	Although both mental health and legal professionals can be trained in the area of parent coordination, it is neither counseling nor legal representation. Skill building and guidance are an integral part of parent coordination however, it is more issue-driven than co-parenting counseling. It is a child-focused process in which a neutral third-party professional assists high conflict parents with
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	<p>implementing their parenting plan, facilitating the resolution of their disputes in a timely manner, and educating parents about children’s needs. It provides some structures and protocols for families who may still be in turmoil.</p> <p>Like co-parenting counseling, parent coordination can be put into place at any point in the process but is often times most effective once the court process is complete as a continued tool to strengthen co-parenting and as an alternative to returning to court if disputes arise. Unlike most other forms of alternative dispute resolution, parent coordinators are in some circumstances, granted authority by the court to make a decision on an issue when parents are at an impasse.</p>
Indicated for:	Parent coordination is effective for parents with serious communication issues or patterns for whom mediation may not be a reasonable option. These parents have a demonstrated inability to manage their parenting plan without conflict and are unable to make the simplest decisions without intervention. Regardless of the level of conflict, parents who participate in parent coordination must be relatively reasonable, willing to learn on some level, and agreeable to abiding by a parent coordinator’s decision when applicable.
Not indicated for:	Parent coordination is not recommended for high-conflict families who will not abide by the decisions of a parent coordinator, parents whose conflict has not shown some improvement over time, parents who only place blame and have no personal accountability.
Pros:	<ul style="list-style-type: none"> ● Not confidential: A parenting coordinator will report to attorneys involved in the court case as well as the court as necessary. ● Collaboration with all professionals involved with the family. ● Available as often as needed and at mutually agreeable times. ● Less time in a courtroom and faster decision-making. A parenting coordinator may monitor that parents are complying with their parenting agreement and even make individual decisions based on what the court allows. ● Opportunity to improve communication and reduce stress on the family. ● Stabilized family dynamic, minimized conflict, and reduced litigation.
Cons:	<ul style="list-style-type: none"> ● Not confidential: A parenting coordinator will report to attorneys involved in the court case as well as the court as necessary. ● If the parenting coordinator's purpose or use is not limited, either parent can run up the equally shared costs, thereby inducing the other parent to “give in.”

Collaborative Divorce, Mediation, and Arbitration are options that are available to resolve divorce or custody actions.

Collaborative Divorce

Description:	A legal process enabling couples who have decided to separate or end their marriage to work with their lawyers and other professionals in order to avoid the uncertain outcome of court and to achieve a settlement that best meets the specific needs of both parties and their children without the underlying threat of litigation. The voluntary process is initiated when the couple signs a participation agreement binding each other to the process and disqualifying their respective lawyers from representing either one in any future family-related litigation. Collaborative divorce has the benefit of including other professionals in the process. A mental health professional acting as a divorce coach is an integral part of the process, helping parents overcome emotional obstacles and impasses. Financial professionals may be brought on as part of the team if a family’s financial holdings are particularly intricate. Collaborative Divorce is a pre-judgment alternative to litigation but is not available as a family support once the proceedings are complete.
Indicated for:	Collaborative divorce is appropriate for parents who want to have legal representation, advocacy, and advice throughout the process but who share the goal of reaching a settlement. Parents must have the ability to compromise or to consider legal counsel in support of compromise in certain areas. Collaborative Divorce is a good alternative to mediation if a case is particularly problematic or if there are concerns with one or both parents being aggressive or uncooperative.

Not Indicated For:	Collaborative divorce is not an appropriate option for families where one or both parent wants to “win” and cannot be brought to compromise, regardless of legal counsel. Parents who want to “prove” that they are right are also not a good fit.
Pros:	<ul style="list-style-type: none"> ● Commitment by both parents to figuring out a settlement. ● Divorce coach helps preserve or promote the emotional health of the family. ● Financial professional acting as a neutral allows for a trustworthy proposal. ● Agreement can be partial with certain issues left for litigation. ● Better chance of healthy outcomes long-term.
Cons:	<ul style="list-style-type: none"> ● Can be costly with multiple professionals involved. ● If attempts to reach a settlement fail, then must start the process over with new attorneys. ● Requires time and effort by the parties who must participate in multiple meetings and provide all necessary documentation.
Mediation	
Description:	A process in which an impartial third party facilitates the resolution of family disputes but where the parties direct the mediation by identifying issues that need to be resolved. Mediation allows parents to make decisions for their family while being guided by a neutral party trained to facilitate discussions that result in agreement, thereby preventing unilateral decisions by a court. Family mediators are trained in understanding the needs of children and can guide parents in creating appropriate and long-lasting parenting plans. Studies show that agreements reached in mediation are more likely to last than decisions made by a court and parents who utilize mediation are more likely to be able to resolve any future issues through similar means because their co-parenting relationship was preserved.
Indicated for:	Mediation is suitable for people who share the goal of reaching a resolution and who are willing to compromise. Participants must be able to identify and express what they want, even if things are not always civil, and must be able to act in good faith.
Not Indicated for:	Mediation may not be suitable for people who cannot articulate their priorities. Relationships where extreme power imbalances exist may not be suitable for mediation, although a well-trained mediator can overcome some level of power imbalance. Parties who want to “prove” their side or believe a mediator will support their position are not good candidates for mediation.
Pros:	<ul style="list-style-type: none"> ● EFFECTIVE: Agreements reached in mediation are more likely to be upheld once the process is over. ● Avoid court & take control of family’s future ● Working together builds a positive foundation for future co-parenting ● Less hostile and less confrontational ● Affordable ● Can include more non-traditional remedies
Cons:	<ul style="list-style-type: none"> ● No legal representation “in the room” ● Preparation can be time consuming: parties must gather all relevant documents and must attend all necessary sessions.

Arbitration	
Description:	Arbitration is the option closest to litigation, although it does provide for many of the benefits of other ADR practices. Parties agree to allow a neutral third-party to hear their evidence and decide the outcome of their disagreement. Parties have the freedom to choose their arbitrator, to define the specific issues to be submitted, and to decide if the arbitration will be binding and final or non-binding.
Indicated For:	Arbitration is suitable for families who want to avoid the pitfalls of court but where one or both parties are not willing or able to compromise or one or both parties desire privacy from the public,
Pros:	<ul style="list-style-type: none"> ● Private: Materials are given to the arbitrator and not filed with the court. Hearings take place in private. ● Less formal and more expedient than court proceedings. ● Less costly. ● Flexible: Parties choose their arbitrator and the issues to be submitted.
Cons:	<ul style="list-style-type: none"> ● Adversarial ● Limited right to appeal
Court Annexed	
Description:	<p>Multiple ADR options are available through Connecticut's Superior Courts.</p> <p>Family Services Offices offer dispute resolution options to families with unresolved custody issues. With a screening, a family may qualify for mediation, negotiation, conflict resolution conferences or intensive case management (akin to co-parenting coordination), These services are provided by trained court personnel.</p> <p>Outside of Family Services, parties may take advantage of Special Masters who are volunteer attorneys who offer dispute resolution services to families with unresolved financial issues. Parties can bring their financial information and their proposed orders to these volunteers at a scheduled time and the volunteers, who are highly experienced in the family court arena, will review the information and the proposals and make a recommendation to the parties about an order that would likely result if a trial were to be conducted. In some cases, parties may be eligible to participate in Judicial mediation.</p>
Pros:	<ul style="list-style-type: none"> ● All of the benefits of ADR at no cost to parties
Cons:	<ul style="list-style-type: none"> ● Services are in high demand and often have long wait times ● Scheduled by the court, so less flexible than private options