



## Alternative Dispute Resolution Program Guidelines

### Mediation and Arbitration

#### Introduction

The Monroe County Bar Association (MCBA) offers Alternative Dispute Resolution (ADR) to attorneys, businesses, families, and other members of the community. The program was developed by the MCBA ADR Committee with the participation and support of the Monroe County Judiciary. The ADR program offers two alternatives: mediation and arbitration. The just, speedy, and inexpensive resolution of disputes is in everyone's interest. The Monroe County Court of Common Pleas, MCBA and its ADR Committee welcome your participation in the program.

#### Mediation

Mediation is a process in which a neutral or impartial third person acts to encourage and facilitate the resolution of a dispute without dictating or deciding what the resolution should be. It is an informal process conducted in a series of meetings intended to help people with disputes reach their own solutions, which are then written up into a binding agreement signed by all parties to the dispute. The mediator's role is to reduce obstacles to communication, assist in the identification of issues and exploration of alternatives, and otherwise facilitate a voluntary agreement. The ultimate decision-making always rests solely with the parties.

#### Arbitration

Arbitration is similar to a trial in many respects except that the parties pick the judge and the hearings happen with much less formality. It can be held wherever and whenever is most convenient for the parties and their witnesses. The outcome of arbitration is a binding decision by the arbitrator, which can be filed with the court if that's what the parties want. Normally, arbitration is conducted under the rules established by the law and normally the grounds for appeal are very few.

#### How the Program Works

The ADR program has a list of Monroe County Bar Association attorneys who are qualified and willing to serve as mediators and arbitrators. Those listed have met the qualifications established by the MCBA ADR committee and have agreed to abide by the ADR program's rules. Anyone interested in using mediation or arbitration should contact MCBA for information including:

- The profiles of the attorneys who are available to serve as mediators and arbitrators. Each profile includes a description of the attorney's training, any areas of particular knowledge or experience specialization.
- Instructions on how to select a mediator or arbitrator.
- The costs to be paid by the parties.
- Basic Form Agreements (to Mediate or to Arbitrate), which can be modified as appropriate to the dispute.

#### Why Mediate?

Mediation is different from other dispute resolution processes offered through the court system. In determining whether your dispute is appropriate for mediation, consider the following characteristics of the process:

- The mediation process is informal, private and confidential.
- In mediation, parties have the opportunity to talk about all of their concerns.
- Mediated agreements can address all issues that are important to the parties.
- Agreements are as flexible and creative as the parties wish them to be.
- Mediation is often faster, less expensive, and less adversarial than traditional litigation.
- Mediation is especially suitable when there is an ongoing business, personal, or familial relationship between the parties.

#### Why Arbitrate?

Arbitration is a private judicial process that has been in use for over 100 years. It is different from the court system in the following ways:

- Arbitration is usually based on a contractual agreement that says the parties will have their dispute decide privately and outside of court.
- The goal of arbitration is the prompt and final resolution of disputes in a private setting, while trials always occur in public.
- Arbitration is designed to minimize procedural and trial preparation costs.
- Arbitration allows the parties to select the judge for their dispute who has experience or expertise in the subject-matter of the dispute.
- Arbitration awards are subject to appeal on only the narrowest of grounds.

## Fees

MCBA and the mediators and arbitrators have agreed to the following costs and fees. Unless the parties agree otherwise, the fees are divided and paid evenly by all of the parties:

- The initial cost to the people involved in the dispute is \$950.00. This cost, paid to MCBA, includes the \$50.00 space rental (two (2) rooms for up to four (4) hours), \$100.00 administrative fee, and \$800.00 fee to be paid to the mediator or arbitrator. **Please note:** *the initial cost quote above is based on mediation or arbitration occurring during MCBA standard business hours (Monday – Friday, 9:00 AM – 4:45 PM). Mediation or arbitration occurring outside of standard MCBA business hours will incur additional fees.*
- For its fee, MCBA agrees to facilitate the selection and scheduling of the mediation or arbitration process.
- The fee for the mediator or arbitrator covers preparation time and up to two hours of a mediation or arbitration session.
- All mediators and arbitrators shall provide the parties with information on their fees and any additional costs that may be incurred if more than two hours is needed to resolve the matter.

## Common Questions

### Does MCBA ADR program replace mandatory arbitration as required by the Monroe County Court?

No. Mandatory arbitration under local law and state rules is based on the amount sued for and remains in effect. The MCBA arbitration program provides a court-approved and bar-monitored program for situations where there is a private agreement or contract for ADR and it does not require that a lawsuit has been filed; however, if it is used, the MCBA program could eliminate the need for the filing of a lawsuit and judicial arbitration.

### Is this program a better way to resolve disputes?

Not necessarily. Not every dispute can or should go to ADR. For example, the ADR committee has determined that in cases where there are allegations of physical abuse or domestic violence, the parties should not be asked to try and resolve their problems through the MCBA program. This program is simply meant to provide an alternative to traditional litigation for those who choose to use it.

### Can parties in a lawsuit agree to use the ADR program even if litigation has started?

Absolutely. The mediation and arbitration program can be accessed at any time during the litigation process. In fact, private ADR is often best when it follows a period of “discovery” that is allowed under the court’s Rules of Procedure.

# MONROE COUNTY BAR ASSOCIATION ALTERNATIVE DISPUTE RESOLUTION PROGRAM

Applications are available at

[www.monroebar.org](http://www.monroebar.org)

or

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**THIS IS NOT A FREE SERVICE**

**\*Restrictions May Apply\***

**This brochure provides information and is not intended to provide legal advice. You should contact a lawyer or the MCBA to obtain more information or guidance. All parties participating in mediation or arbitration in the MCBA Alternative Dispute Resolution (ADR) program are required to read the Agreement to Mediate or Agreement to Arbitrate forms and indicate their willingness to abide by timelines, rules, and behavior described within.**