

What are the differences between Arbitration and Mediation?

The main difference between arbitration and mediation is that in an arbitration the arbitrator hears evidence and makes a decision. An arbitration is more like court because parties still provide testimony and give evidence similar to a trial but is usually less formal. In mediation, the process is a negotiation with the assistance of a neutral third party. The parties do not reach a solution unless all sides agree.

How do I use Arbitration or Mediation?

Usually an administrative agency is used for either arbitration or mediation. The agency helps the parties understand how to use these alternatives, aids in the selection of a mediator or arbitrator, and handles all details such as scheduling and fees. Administrative agencies may be run by the government, by charitable or business organizations, or be private businesses. Usually the agency will, at your request, contact everyone involved in the dispute to explain to them the benefits of using mediation or arbitration.

You can locate an administrative agency through a variety of sources. *The Yellow Pages*, under *Arbitration* or *Mediation*, will have a listing of such agencies. In addition, many counties have a dispute resolution center that will either provide such services or refer you to a more appropriate agency. And the Washington State Bar Association maintains a roster of administrative organizations.

As with any other professional service, before you hire an administrative agency you should check it out. How long has it been in existence? How much experience does it have with the type of dispute you are involved in? Can it provide references? Don't be afraid to ask questions.

How much does it cost?

Arbitration or mediation is usually less expensive than going to court. Some organizations provide services either without charge or on a sliding scale, while other organizations charge professional fees. The fees will depend on the organization used, the type of dispute, and background of the mediator or arbitrator.

This pamphlet was prepared as a public service by the Washington State Bar Association to inform citizens of their legal rights and obligations. It contains general information and is not intended to apply to any specific situation. If you need advice or have questions about the application of the law in a particular matter, you should consult a lawyer.

LAWYER REFERRAL SERVICE

If you need legal assistance and do not know an attorney, call a Lawyer Referral Service in these areas:

King County	(206) 623-2551
Lewis County	(206) 748-0430
Pierce County	(206) 383-3432
Snohomish County	(206) 339-0100
Spokane County	(509) 456-6032
Thurston County	(509) 923-4844

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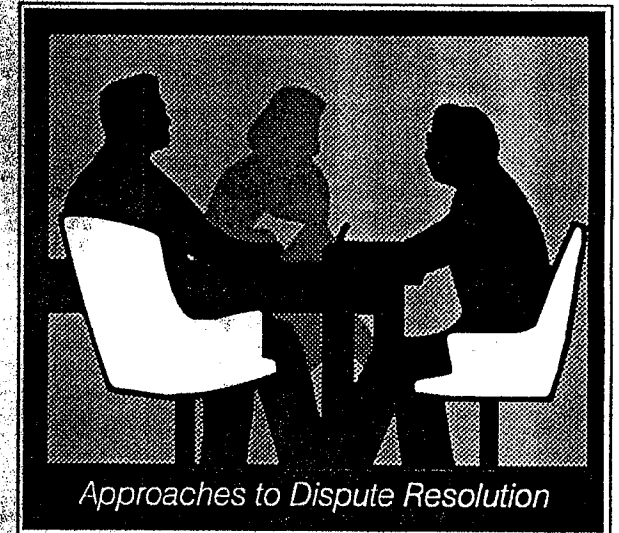
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Citizen Rights Series

What you should know about Alternatives to Court



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ALTERNATIVES TO COURT

Legal disputes can often be resolved without going to court. Typically, the alternatives are faster, less complex and less costly than the traditional court process, and they are often available even if a lawsuit has been filed.

Two of the most common alternatives are: 1) *Arbitration*, and 2) *Mediation*. In both cases, you may, but are not required to, have a lawyer represent you in the process. These alternatives have been used in such areas as:

- Family Law
- Personal Injury
- Consumer Complaints
- Business and Commercial Disputes
- Employment Law
- Landlord/Tenant Issues
- Minor, Non-Violent Criminal Complaints
- Collections
- Automobile Sales

Usually, everyone involved in a dispute must agree to use either mediation or arbitration, and the agency you work with may be able to help you to convince the other side to participate. Also, some contracts may have terms that require mediation or arbitration if there is a dispute. Many people believe that arbitration and mediation are more efficient than a trial and allow them to be more involved in the resolution process.

ARBITRATION

What is Arbitration?

In an arbitration, disputing parties take their argument to a neutral third party, the "arbitrator," for a binding decision. The arbitrator listens to witnesses and reviews documents before making a ruling. Under Washington Law RCW 7.04, the arbitrator's award is final and binding and may be enforced like a court judgment. There is generally no appeal from an arbitrator's award.

How does it work?

Usually, the parties agree to follow the Arbitration Rules of an agency. These rules define how an arbitrator will be selected, how the case will proceed, and what fees are involved. The parties also must sign a written *Contract to Arbitrate* that defines what the arbitrator is to decide, and select an arbitrator (arbitrators may be lawyers or nonlawyers, depending on the case). After that, an arbitration hearing is held, often in the arbitrator's office. Each side presents witnesses and other evidence, and is allowed to question the other side's witnesses. Then the arbitrator renders a decision. Most people find arbitration less costly, faster, and less stressful than a formal trial.

What about Mandatory Court Arbitration?

A different type of arbitration is available through the courts, where arbitration is sometimes *mandatory* to certain types of cases. The local courthouse can tell you if arbitration is mandatory in your case. In these kinds of cases, the arbitrator's award is not necessarily final and binding because a party that is dissatisfied has the right to request a new hearing before the court. But this new hearing will require extra expenses, and if the party who appeals doesn't do better at trial, that party is required to pay the other side's expenses as well. As a result, the arbitrator's decision is usually accepted by both parties.

MEDIATION

What is Mediation?

In a mediation, all the sides in a dispute meet with an impartial third person—the mediator—to attempt to negotiate a settlement. Quite often mediation is successful at helping parties reach an agreement.

How does it work?

Mediators are trained in helping parties work out a settlement agreement or compromise. Mediators do not issue orders, find fault, or make determinations. Instead, mediators help parties to reach a settlement by assisting with communications, obtaining relevant information, and developing options. Mediation agencies can often provide mediators with a background in the area of dispute (family law, business disputes, labor relations, etc.). Mediators often are lawyers, although nonlawyer mediators are commonly used for certain types of cases.

Mediation sessions are usually held outside the courthouse, often in the mediator's office. Although mediation procedures can vary, the parties usually first meet together with the mediator informally to explain their views of the dispute. Often the mediator will then meet with each party separately. The mediator discusses the dispute with them, and explores possible ways to resolve it. It is common for the mediator to go back and forth between sides a number of times. Most disputes will be resolved, and often the parties will then enter into a written *Settlement Agreement* which is a binding contract.

Many people report a higher degree of satisfaction with mediation than with court, because they can control the result and be part of the solution. And agreed-to settlements are much more likely to be voluntarily complied with by all sides. Under Washington law, everything said at a mediation session is confidential and cannot be used later if the dispute is not settled. Thus, you have little to lose by trying mediation.