

Types of Conflict Resolutions (also known as Alternate Dispute Resolution (ADR) in the State of Tennessee

1. **Arbitration** is a form of ADR using a third person (Arbitrator) to resolve the case through a “trial”. The process is private, proceeds in a timely fashion with a hearing, witness and expert testimony, presentation of material evidence, and after the evidence is presented, the Arbitrator makes an award. Arbitration is a self-determinative method to resolve the dispute as the parties agree upon the Arbitrator, craft an Arbitration Agreement that carves out the issues to be addressed, and place the date when the Arbitrator’s award would be completed. Each party must be represented by an attorney through this process. In TN, the child custody and support issues cannot be submitted to an Arbitrator for binding arbitration, however the other financial issues of a divorce at issue can be submitted to an Arbitrator for binding results, if agreed upon, that are subject to a court’s review.

2. **Mediation** is a form of ADR where the parties decide how the case is resolved. The parties choose a neutral third party (Mediator) who is trained in mediating cases. The parties with their attorneys and with the help of the mediator make offers and counter-offers throughout the mediation session. If the parties reach a negotiated settlement that resolves the case, the negotiated settlement can be enforced if in writing and signed by the parties.

3. **Collaborative Family Law** is a voluntary, contractually based ADR form for parties who want to use lawyers and other professionals to collaboratively resolve their divorce issues. The rules are set forth in a collaborative law participation agreement in which the parties designate their collaborative lawyers, professionals and agree not to seek judicial resolution of their dispute. The goal is to resolve the case with the assistance of a team of trained professionals, sign the agreement and have it submitted and approved by the court.

Arbitration is not like a trial. In Arbitration, the parties have a private forum to “tell their story” in their private homes or their lawyer’s office and provide their financial documents to the Arbitrator, rather than at trial, where the parties testify in a public courtroom where the media can be present and the parties’ financial documents are filed with the court.

Arbitration also can be less expensive and time consuming than a trial. In Arbitration, the arbitrator can hear limited issues in dispute in a faster more stream-lined fashion, than a judge who often times has a backlog of cases. Arbitration can move a case faster

than proceeding in court with the added benefit of the hearings being confidential and closed to the public. Unlike a court trial, the public and media are not able to listen in at an arbitration hearing.

Arbitration is different from Mediation. Arbitrator holds a private hearing where the parties have a right to testify, present material evidence and to cross-examine witnesses. An Arbitrator makes an award after a hearing that is either binding or non-binding depending on the contract between the parties. Mediation is a private session where the parties with the help of a third person neutral (mediator) try to settle the differences between the parties. The parties do not testify but do contribute to the process in an informal setting. At the end of the day, the parties in mediation may leave without a resolution. While in Arbitration, at the end of the hearing, the Arbitrator will make an award, subject to the confirmation of the judge.

Collaborative Family Law is different than Mediation. In Collaborative Family Law, the parties and their collaboratively trained attorneys can use professional neutrals, such as a therapist or financial planner, to help resolve their case outside of court. The parties have several meetings with the professionals to reach an agreement, and if they are unsuccessful, the parties may decide to use a mediator. At the end of the collaborative family law case, if the parties do not reach a resolution, then the parties must hire new attorneys and new professionals to proceed to a trial before a judge which is a lengthy, expensive and time consuming process.