

A Glossary of Dispute Resolution & Conflict Management Terms and Definitions

<http://disputeresolution.ohio.gov/terms.htm#NZ>

Alternative (or Appropriate) Dispute Resolution (ADR) - Used narrowly to refer to a set of alternatives to litigation including mediation, arbitration, and summary jury trials. Used broadly it refers to all methods which resolve conflicts between parties by a means other than an adversarial or judicial process.

Arbitration - Process in which a neutral third party (arbitrator) hears arguments from disputants, then issues a decision. Whether court-annexed or private, this process tends to be more formal and judicial than other ADR processes, but less formal than a court procedure. Depending on the situation, an arbitrator's decision can be either binding by law or non-binding. The exact nature of the process and decision is usually prescribed before hand by court rule or a contract.

Assessment - An impartial analysis of a conflict situation conducted with an eye towards determining potential paths by which parties may reach a resolution of their conflict. This usually includes personally interviewing the parties, researching the history of the conflict, and attempting to find agreement as to the core issues around which the conflict has evolved. The assessment sometimes leads to the involvement of a facilitator, the design of a means by which the parties may work with each other directly, or a decision that there is an adversarial nature to the conflict that can't be dealt with appropriately by ADR techniques. In mediation, assessment refers to the process used to screen a case-- the intake phase of a mediation where a case is assessed regarding its appropriateness and/or readiness for mediation.

Binding - A legally enforceable decision or agreement resulting from a dispute resolution process.

Caucus - A private meeting or series of meetings that take place in concert with a dispute resolution process. Can include a meeting between the neutral third party and each of the interested parties separately. In large scale group processes, it can consist of an informal meeting of parties with similar interests. The caucus serves to give parties a chance to create new alternatives, clarify their proposals and interests, gather information, and/or allow for a "cool-down period."

Collaborative Problem Solving - Process by which people work together to define a problem, generate options, and identify objective criteria to reach a decision. It can, but doesn't necessarily, include the aid of a third party.

Co-mediation - Mediation process in which there are two mediators who simultaneously or jointly conduct the process. Used in cases where mediators with different areas of expertise would be useful, when there are multiple parties involved, and/or to model cooperation and gender/ethnicity balance. New mediators can benefit from co-mediating with experienced mediators.

Conciliation - This term has significantly different definitions depending upon the context. It refers to substantially different processes in federal and state statutes pertaining to the Equal Employment Opportunity Commission (EEOC), domestic relations court, and public employee collective bargaining procedures. In a broader social context it usually refers to steps taken by a third party to reduce the adversity and tension between groups in conflict, with the purpose of creating an environment where face-to-face negotiation is possible.

Conflict - A broad term regarding an interaction between people with differing interests which are perceived as incompatible. Derived from the Latin *conflictus*, meaning "to strike together." Conflict is often inevitable, but constructive outcomes from conflict are frequently possible. Conflicts

involving a definable number of parties are usually referred to as disputes, which differ substantially from large scale conflicts that arise between entire population groups, i.e. ethnic or national.

Conflict Management - A philosophy and set of skills designed to assist people in better understanding and dealing with conflict as it arises in all aspects of our lives.

Confidentiality - Provides that information shared during the course of a dispute resolution process is deemed private and is not to be revealed to anyone outside of the process. Typically, the expectations and the legal requirements regarding confidentiality are discussed before a process begins. See ORC 3217.023 For Ohio's mediation confidentiality statute.

Consensus - A method of seeking the resolution of a multiple-party conflict or dispute, relying upon equal participation of all parties. The end goal is to develop an agreement, usually without voting, that all of the participants can live with. Though the individual parties may find parts of the agreement more or less appealing, they all agree to fully support the end result. The suitability of using consensus in resolving a conflict is usually assessed in a preliminary process (see Assessment).

Convening - The bringing together of multiple parties with different interests in order to discuss and develop solutions to a conflict. A neutral must communicate the purpose, ground rules, and other details of such a meeting with each party.

Court-Connected (or Court Affiliated) - Describes dispute resolution programs operated, funded, and sponsored by a court.

Dispute Resolution (DR) - A broad range of processes by which parties in conflict can work towards a resolution. It most often refers to facilitation, mediation, and arbitration.

Dispute System Design - A studied approach or procedural framework that analyzes the means by which disputes are handled within an organization. Appropriate dispute resolution processes are then instituted to handle the specific types of issues that arise in an organization.

Early Neutral Evaluation (ENE) - An assessment (see Assessment) of a dispute, usually conducted at the beginning of a court-connected ADR process. Developed in the federal district court in the Northern District of California. ENE helps parties and their legal counsel to determine the strengths and weaknesses of their case through neutral analysis. Designed to be used prior to significant discovery.

Facilitator - A person competent in the use of dispute resolution who provides a neutral's services to groups (usually more than two) involved in a dispute or conflict. The facilitator provides procedural assistance to the parties, enhancing information exchange and working with the parties to develop and evaluate possible agreements that could lead to a resolution.

Facilitation - A collaborative process involving the use of a neutral third party (facilitator) to design and oversee a group process. Facilitation is used to help a group reach a goal or complete a task to the mutual satisfaction of participants. Often used when there are many interested parties or stakeholders, as opposed to mediation which tends to focus on a single issue dispute between two parties. (see Facilitator)

Fact-finding - Usually used in relation to negotiation, mediation, or arbitration of complex disputes. This is a process by which facts relevant to a dispute are determined. These can be

ascertained by a neutral fact-finder, a joint fact-finding effort involving the cooperation of disputing parties, reliance upon the data of independent sources, or a mixture of these. More narrowly defined, fact-finding is an independent process in which a neutral third-party investigates a dispute and issues a report establishing the relevant facts. The report may be used as a basis for settlement.

Mediation - Process in which a third party neutral facilitates communications and negotiations among parties to find a mutually acceptable resolution of a dispute. Although often considered a facilitative process, in some forms of mediation, the third party neutral may engage in evaluative tasks, such as helping parties assess likely outcomes and exploring the strengths and weaknesses of the arguments presented.

Mediation-Arbitration (Med-Arb) - A hybrid of mediation and arbitration (see definitions) that relies on a neutral who functions both as a mediator and an arbitrator. The process usually consists of framing the issues for both parties, sharing information, mediating those points where agreement can be reached, and finally the arbitrator making a decision on points where the parties cannot reach agreement.

Mini Trial - A non-binding procedure that expedites settlement by offering a realistic look at the possible outcome of full-fledged litigation. A neutral oversees an abbreviated process similar to a potential trial, including briefs, exhibits, and summery hearings. After the process, which usually lasts less than a week, the neutral may sometimes offer an advisory opinion about the likely outcome of such a case. The parties then return to negotiations with a realistic understanding of the possible outcomes should negotiations fail.

Negotiation - Process where parties directly exchange ideas, views, promises, and problems surrounding a dispute. Positional bargaining tends to focus on demands, and counter-demands of disputing parties, sometimes leading to a bargaining process where parties trade concessions and demands. Interest-based negotiations focus on the interests underlying one's position on an issue. The parties explore their needs, concerns, and eventually work on developing mutually acceptable solutions that meet as many of the disputants' interests as possible.

Negotiated Rulemaking (Reg-Neg) - A facilitated consensus process by which government agencies draft a regulation in cooperation with a group representing all interested parties. A successful reg-neg leads to a proposed rule that all parties can live with and support. The agency still retains authority over promulgation of the rule as it passes through the legal requirements regarding public participation.

Ombudsman, Ombuds, Ombudsperson - A third party neutral that researches complaints and suggests or implements solutions on behalf of a recognized authority. Most often on behalf of a single organization.

Policy Dialogue - Informal discussion of public policy issues incorporating many different interested parties. This process usually clarifies key issues, and increases understanding between groups that are often publicly opposed to one another. Not to be confused with a formalized process used to decide policy (see Negotiated Rulemaking).

Reconciliation - Though not a formalized term, it describes steps taken to heal or improve relationships that have been damaged by a conflict.

Settlement Week - A court and bar sponsored mediation awareness program in which volunteer mediators assist litigants and attorneys in exploring ADR opportunities for settling civil cases. Many courts in Ohio hold settlement weeks.

Summary Jury Trial - (see Mini Trial)

Third Party (Neutral) - A term used to describe an impartial person, group, or organization that assists disputing parties in reaching a resolution. Mediators, arbitrators, facilitators, and conciliators are all considered third party neutrals.