

## **Hear it From the Judge**

*Judge Randall J. Slieter*

*8th Judicial District Judge*

*Olivia, MN*

### **What is an “Out of Court Settlement”?**

When we think of the “judge” or the “court” we appropriately believe that legal disputes are resolved inside the courtroom of our local courthouse. We also appropriately understand that the judge (or, in some cases, the jury) will decide the legal dispute after the attorneys present evidence and arguments to the Judge. However, we have also heard the phrase “Out of Court Settlement” and we may not understand how this process works and who is involved. The formal phrase for the process of such settlements is Alternative Dispute Resolution or, ADR.

The phrase does mean literally what its words imply. That is, the idea of ADR is to find an alternative method of resolving disputes than to have them heard in the courtroom and decided by either a judge or jury. When one considers there are approximately 1.9 million cases filed within our Minnesota Judicial Branch annually, it becomes obvious that these cases cannot all be resolved within the courtroom. There are also an unknown number of cases that are not filed with the court and which are resolved through some form of ADR. What are the forms of ADR that one might typically observe?

The most common methods of ADR are mediation, arbitration, or a variation which involves a combination of both these methods. Mediation involves a forum in which a neutral third party facilitates communication between the parties to promote settlement. Typically, the parties or their attorney will select this neutral party and this neutral party is either trained in mediation or has experience resolving disputes, or a combination of both. The key distinguishing aspect of mediation from arbitration is that the mediator may not impose her or his own judgment on the issues – that is left to the parties.

Arbitration is a forum in which a neutral third party renders a decision on the case after presiding over an adversarial hearing at which both parties, as well as their attorneys, may submit evidence and arguments to the arbitrator. This proceeding is typically a much shorter and more informal proceeding than if the matter was heard by the judge. The parties must decide whether to allow this arbitration process to be a binding or a non binding recommendation.

The combination of mediation and arbitration means that the parties first attempt to mediate their disputes and, if that is unsuccessful, proceed to arbitration.

What are the benefits of ADR to the parties? Perhaps the most immediate benefit to the parties of ADR is a resolution of their case in a shorter time frame than if it was to be heard in court and with less expense. It is generally presumed that the earlier a case is resolved; the less

costly to the parties the case will be. Further, it is generally considered to be beneficial for the parties to be able to have direct input on the terms of the settlement rather than to have the judge impose the terms. This is especially true in family matters involving minor children.

Many cases are resolved before they are filed with the court. However, what happens to cases once they are filed in terms of ADR? Rules of court require the parties to inform the court which form of ADR they intend to attempt in the case (if such ADR has not been previously attempted). It is the practice of the judge, therefore, to encourage such ADR and to allow sufficient time for the parties to complete the ADR process before having the matter formally heard in the courtroom.

The judges and attorneys throughout the Minnesota legal system encourage and support the various methods of ADR as a means of resolving disputes. The very purpose of the legal system is to assist citizens in resolving their disputes. Certainly ADR is one key aspect which may result in an "Out of Court Settlement".