



When Alternative Dispute Resolution Works Best by Jodi Wyman

Although the various forms of Alternative Dispute Resolution in family law are most often the best way to settle a case, it does not always work. ADR is always worth a try, but sometimes it unfortunately does not lead to settlement.

There seem to be a number of common factors as to when a case might settle out of court and when it will not.

There are numerous books on the topic of negotiating and resolving disputes, and many experts in the area. There is definitely a lot of psychology involved in the process and anyone facilitating settlements should have some knowledge in that area.

In family law often it seems the best time to get couples into ADR is right away, very soon after separation. The emotions may be raw and discussion can initially be heated but otherwise it can be the best time because people are not yet entrenched in their positions. For example they may be more inclined to

try shared custody when they were only recently living together, as opposed to after a year of no communication. If they are negotiating before they have had a firm stance on an issue for a long time, it does not seem so hard to compromise.

As well, if the couple discuss the case and a settlement before they have spent a year sending nasty letters back and forth, filing court documents full of dirty laundry and paying a great deal of money on legal fees, there is clearly a much better chance that they will work cooperatively and civilly to resolve the case.

On the other hand, sometimes the best time to settle the case is after the couple have been in court for a while. Unfortunately the experience can be dissatisfying in that it is expensive and stressful and does not always give the spouses exactly what they want. After a while they may realize that there has to be a better way, and are willing to try ADR.

One other key factor as to when ADR works is the facilitator. Whether a lawyer, Judge, professional mediator or any other facilitator, they have to believe in the process and be skilled at conflict resolution. Both spouses have to have a level of comfort with the person. If the facilitators are the lawyers, such as in Collaborative Family Law, both lawyers have to have the proper training and be willing to work collaboratively and cooperatively to get to a settlement. If both lawyers will do that, the chances of success are far greater.

To achieve good results from ADR in family law, the spouses have to be able to see past their hurt and anger to negotiate rationally. This can be a very difficult, if impossible thing to do. In some cases, even after a long cooling off period, it is still not possible.

There should also be a reasonably level playing field between the clients. Cases with a history of domestic violence,

extreme emotional abuse or mental health issues should be referred to ADR very cautiously. Using lawyers or Judges as mediators can help with this, but not always.

There are many different dynamics to every family law case, and there are a number of forms of ADR. Often to settle the case it is just a matter of finding the right form for the particular case.