

Divorce in New Jersey – ESP, Mediation and Arbitration

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Alternative dispute procedures can be very effective in settling your case before trial, which should be every divorce litigant's goal.

Trials take a very long time to be scheduled, are often not completed in consecutive days, usually require several days of testimony over several months, are typically extremely expensive, and are almost always used to further polarize the parties.

Given that only two percent of all divorce cases are actually decided by trial, every litigant must ask themselves why their case is so different from the rest that it *should* be included within the two percent of cases that go to trial. There are a variety of alternatives that can be utilized to aid in settlement negotiations or pretrial settlement of a case.

In New Jersey, the court mandates the attendance of the Matrimonial Early Settlement Panel (MESP). Matrimonial Early Settlement Panels exist in every County and are free to the litigants. The panels are staffed by two experienced divorce attorneys who volunteer their time for this purpose. The parties, through their attorneys, provide written submissions to the panelists, who then make recommendations as to the proper disposition of the case.

If a case does not settle after going to MESP, several counties in New Jersey have Mandatory Economic Mediation, where you must meet with a court-approved mediator to further attempt to settle your case.

In addition to the court-mandated Matrimonial Early Settlement Panel proceedings and Mandatory Economic Mediation, the parties themselves always have the right to access private mediation or arbitration.

In private mediation, the parties and their attorneys will mutually agree upon an experienced mediator, who then meets with them in an effort to mediate a settlement of the issues which are in dispute. The mediator does not make a decision and, in most instances, does not even render a recommendation. The mediator's function is, generally, to stimulate discussion between the parties and to assist them in coming to a mutually agreed upon settlement.

Arbitration, on the other hand, is a decision-making and binding proceeding. There are a number of experienced divorce attorneys and retired Judges who are willing to serve as arbitrators. The parties and their attorneys generally enter into an Arbitration Agreement, which will define the nature and scope of the arbitration. The parties may agree that the arbitration will be conducted on a very formal, Court-like basis or in a very informal proceeding. With very limited exceptions, the arbitrator's decision is then binding.

In every case, you, as the client, should understand these alternatives and should review and discuss them with your attorney. Depending upon the facts and issues in your case, one or the other of these alternatives may be a very desirable alternative.

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