

Arbitration and Mediation in Family Law Cases - Comparison Chart

Arbitration

Mediation

Controlling law:

MCL 600.5071

- Parties to an action for divorce, annulment, separate maintenance, child support, custody, or parenting time, or to a postjudgment proceeding related to such an action, may stipulate to binding arbitration by a signed agreement that specifically provides for an award with respect to one or more of the following issues:
 - real and personal property
 - child custody
 - child support, subject to the restrictions and requirements in other law and court rule as provided in this act
 - parenting time
 - spousal support
 - costs, expenses, and attorney fees
 - enforceability of prenuptial and postnuptial agreements
 - allocation of the parties' responsibility for debt as between the parties
 - other contested domestic relations matters

MCR 2.410

- All civil cases are subject to alternative dispute resolution (ADR) processes unless otherwise provided by statute or court rule.
- MCR 2.410(C) states that, at any time, after consultation with the parties, the court may order that a case be submitted to an appropriate ADR process.

MCR 2.411

- This rule applies to cases that the court refers to mediation as provided in MCR 2.410.

Arbitration and Mediation in Family Law Cases - Comparison Chart

Arbitration

Mediation

What is it?

Arbitration is a process in which a dispute is submitted, by agreement of the parties, to one or more arbitrators, who make a binding decision on the dispute.

Mediation is a process in which a neutral third party facilitates communication between parties, assists in identifying issues, and helps explore solutions to promote a mutually acceptable settlement. A mediator has *no authoritative decision-making power*. MCR 2.411(A)(2).

Who can participate?

Arbitration may be heard by a single arbitrator or by a panel of three arbitrators. The court must appoint an arbitrator agreed to by the parties if the arbitrator is qualified under MCL 600.5070 (2) and consents to the appointment.

The parties may stipulate to the selection of a mediator. A mediator selected by agreement of the parties need not meet the qualifications in MCR 2.411(F). MCR 2.411(B)(1).

If the order referring the case to mediator does not specify a mediator, the order must set the date by which the parties are to have conferred on the selection of a mediator. MCR 2.411 (B)(2). If the parties do not advise the ADR clerk of the mediator agreed on by that date, the court must appoint one as provided in MCR 2.411(B)(3).

- The court may not appoint an arbitrator under MCL 600.5070 et seq. unless the individual meets all the following qualifications:
 - is an attorney in good standing with the State Bar of Michigan
 - has practiced as an attorney for not less than five years before the appointment and has demonstrated expertise in the area of domestic relations law
 - has received training in the dynamics of domestic violence and in handling domestic relations matters that have a history of domestic violence

MCL 600.5073(2).

Arbitration and Mediation in Family Law Cases - Comparison Chart

Arbitration

Mediation

What is the procedure?

As soon as practicable after the appointment of the arbitrator, the parties and attorneys must meet with the arbitrator to consider all of the following:

- scope of the issues submitted
- date, time, and place of the hearing
- witnesses
- schedule for exchange of expert reports or summary of expert testimony
- exhibits, documents, or other information each party considers applicable and material to the case and a schedule for production or exchange of that information.

MCL 600.5076.

- The arbitrator must issue the written award on each issue within 60 days after either the end of the hearing or, if requested by the arbitrator, after receipt of proposed findings of fact and conclusions of law.
- An arbitrator under this chapter retains jurisdiction to correct errors or omissions in an award until the court confirms the award. Within 14 days after the award is issued, a party to the arbitration may file a motion to correct errors or omissions. The other party may respond within 14 days after the motion is filed. The arbitrator must issue a decision on the motion within 14 days after receipt of a response or, if a response is not filed, within 14 days after the response period expires. MCL 600.5078.

Although not required by authority, practitioners typically submit a brief that outlines their perspective on the issues at bar in advance of the mediation. This serves as a tool that allows the mediator to organize an effective approach to resolving the issues.

The mediator must meet with counsel and the parties, explain the mediation process, and then proceed with the process. The mediator must discuss with the parties and counsel, if any, the facts and issues involved. The mediation will continue until a settlement is reached, the mediator determines that a settlement is not likely to be reached, the end of the first mediation session, or a time agreed to by the parties. Additional sessions may be held as long as it appears that the process may result in settlement of a case. MCR 2.411(C)(2).

The mediator must advise the court of the completion of mediation within seven days after completion, stating only the date of completion, who participated, whether settlement was reached, and whether further ADR proceedings are contemplated. MCR 2.411(C)(3).

Arbitration and Mediation in Family Law Cases - Comparison Chart

Arbitration

Mediation

Is the procedure confidential?

Except as provided by MCL 600.5077, court rule, or other arbitration agreement, a record may not be made of an arbitration hearing. An arbitrator may make a record to be used only by the arbitrator to aid in reaching the decision.

A record must be made of the portion of a hearing that concerns child support, custody, or parenting time in the same manner required by the Michigan Court Rules for the record of a witness's testimony in a deposition.

MCL 600.5077

Confidentiality in the mediation process is governed by MCR 2.412.

Mediation communications are confidential. They are not subject to discovery, are not admissible in a proceeding, and may not be disclosed to anyone other than mediation participants except as provided in MCR 2.412(D), MCR 2.412(C).

Is the award enforceable?

The circuit court must enforce an arbitrator's award or other order issued under the Revised Judicature Act in the same manner as an order issued by the circuit court. A party may make a motion to the circuit court to enforce an arbitrator's award or order. MCL 600.5079(1).

An appeal from an arbitration award that the circuit court confirms, vacated, modifies, or corrects must be taken in the same manner as from an order or judgment in other civil actions. MCL 600.5082.

Mediation agreements are binding and enforceable once executed by the parties involved.

If the case is settled through mediation, within 21 days the attorneys must prepare and submit to the court the appropriate documents to conclude the case. MCR 2.411(C)(4).

This chart was originally published by the Institute of Continuing Legal Education Partnership, available at www.icle.org.