

## **Section 802.12, Stats.**

### **802.12 Alternative dispute resolution. (1) DEFINITIONS.** In this section:

(a) “Binding arbitration” means a dispute resolution process that meets all of the following conditions:

1. A neutral 3rd person is given the authority to render a decision that is legally binding.
2. It is used only with the consent of all of the parties.
3. The parties present evidence and examine witnesses.
4. A contract or the neutral 3rd person determines the applicability of the rules of evidence.
5. The award is subject to judicial review under ss. 788.10 and 788.11.

(b) “Direct negotiation” means a dispute resolution process that involves an exchange of offers and counteroffers by the parties or a discussion of the strengths and weaknesses or the merits of the parties’ positions, without the use of a 3rd person.

(c) “Early neutral evaluation” means a dispute resolution process in which a neutral 3rd person evaluates brief written and oral presentations early in the litigation and provides an initial appraisal of the merits of the case with suggestions for conducting discovery and obtaining legal rulings to resolve the case as efficiently as possible. If all of the parties agree, the neutral 3rd person may assist in settlement negotiations.

(d) “Focus group” means a dispute resolution process in which a panel of citizens selected in a manner agreed upon by all of the parties receives abbreviated presentations from the parties, deliberates, renders an advisory opinion about how the dispute should be resolved and discusses the opinion with the parties.

(e) “Mediation” means a dispute resolution process in which a neutral 3rd person, who has no power to impose a decision if all of the parties do not agree to settle the case, helps the parties reach an agreement by focusing on the key issues in a case, exchanging information between the parties and exploring options for settlement.

(f) “Mini-trial” means a dispute resolution process that consists of presentations by the parties to a panel of persons selected and authorized by all of the parties to negotiate a settlement of the dispute that, after the presentations, considers the legal and factual issues and attempts to negotiate a settlement. Mini-trials may include a neutral advisor with relevant expertise to facilitate the process, who may express opinions on the issues.

(g) “Moderated settlement conference” means a dispute resolution process in which settlement conferences are conducted by one or more neutral 3rd persons who receive brief presentations by the parties in order to facilitate settlement negotiations and who may render an advisory opinion in aid of negotiation.

(h) “Nonbinding arbitration” means a dispute resolution process in which a neutral 3rd person is given the authority to render a nonbinding decision as a basis for subsequent negotiation between the parties after the parties present evidence and examine witnesses under the rules of evidence agreed to by the parties or determined by the neutral 3rd person.

(i) “Settlement alternative” means any of the following: binding arbitration, direct negotiation, early neutral evaluation, focus group, mediation, mini-trial, moderated settlement conference, nonbinding arbitration, summary jury trial.

(j) “Summary jury trial” means a dispute resolution process that meets all of the following conditions:

1. Attorneys make abbreviated presentations to a small jury selected from the regular jury list.

2. A judge presides over the summary jury trial and determines the applicability of the rules of evidence.

3. The parties may discuss the jury’s advisory verdict with the jury.

4. The jury’s assessment of the case may be used in subsequent negotiations.

(2) (a) A judge may, with or without a motion having been filed, upon determining that an action or proceeding is an appropriate one in which to invoke a settlement alternative, order the parties to select a settlement alternative as a means to attempt settlement. An order under this paragraph may include a requirement that the parties participate personally in the settlement alternative. Any party aggrieved by an order under this paragraph shall be afforded a hearing to show cause why the order should be vacated or modified. Unless all of the parties consent, an order under this paragraph shall not delay the setting of the trial date, discovery proceedings, trial or other matters addressed in the scheduling order or conference.

(b) The parties shall inform the judge of the settlement alternative they select and the person they select to provide the settlement alternative. If the parties cannot agree on a settlement alternative, the judge shall specify the least costly settlement alternative that the judge believes is likely to bring the parties together in settlement, except that unless all of the parties consent, the judge may not order the parties to attempt settlement through binding arbitration, nonbinding arbitration or summary jury trial or through more than one of the following: binding arbitration, early neutral evaluation, focus group, mediation, mini-trial, moderated settlement conference, nonbinding arbitration, summary jury trial.

(c) If the parties cannot agree on a person to provide the settlement alternative, the judge may appoint any person who the judge believes has the ability and skills necessary to bring the parties together in settlement.

(d) If the parties cannot agree regarding the payment of a provider of a settlement alternative, the judge shall direct that the parties pay the reasonable fees and expenses of the provider of the settlement alternative. The judge may order the parties to pay into an escrow account an amount estimated to be sufficient to pay the reasonable fees and expenses of the provider of the settlement alternative.

**(3) ACTIONS AFFECTING THE FAMILY.** In actions affecting the family under ch. 767, all of the following apply:

(a) All settlement alternatives are available except focus group, mini-trial and summary jury trial.

(b) If a guardian ad litem has been appointed, he or she shall be a party to any settlement alternative regarding custody, physical placement, visitation rights, support or other interests of the ward.

(c) If the parties agree to binding arbitration, the court shall, subject to ss. 788.10 and 788.11, confirm the arbitrator's award and incorporate the award into the judgment or postjudgment modification order with respect to all of the following:

1. Property division under s. 767.255.
2. Maintenance under s. 767.26.
3. Attorney fees under s. 767.262.
4. Postjudgment orders modifying maintenance under s. 767.32.

(d) The parties, including any guardian ad litem for their child, may agree to resolve any of the following issues through binding arbitration:

1. Custody and physical placement under s. 767.24, 767.458 (3), 767.51 (3) or 767.62 (4).
2. Visitation rights under s. 767.245.
3. Child support under s. 767.25, 767.458 (3), 767.51 or 767.62 (4).
4. Modification of subd. 1., 2. or 3. under s. 767.32 or 767.325.

(e) The court may not confirm the arbitrator's award under par. (d) and incorporate the award into the judgment or postjudgment modification order unless all of the following apply:

1. The arbitrator's award sets forth detailed findings of fact.
2. The arbitrator certifies that all applicable statutory requirements have been satisfied.
3. The court finds that custody and physical placement have been determined in the manner required under ss. 767.045, 767.11 and 767.24.
4. The court finds that visitation rights have been determined in the manner required under ss. 767.045, 767.11 and 767.245.
5. The court finds that child support has been determined in the manner required under s. 767.25 or 767.51.

**(4) ADMISSIBILITY.** Except for binding arbitration, all settlement alternatives are compromise negotiations for purposes of s. 904.08 and mediation for purposes of s. 904.085.