

ESP, Master's Hearings, Mediation and Arbitration

Podcast # 7 of 10

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Every divorce attorney is ethically required to discuss alternative dispute procedures with their client.

They are required to do so because trials take a very long time to be scheduled, trials are often not completed in consecutive days and require several days of testimony extended over several months, trials are extremely expensive and trials almost always 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 that it should be in 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, there is ESP. That does not stand for extra sensory perception; it stands for Early Settlement Panel. Early Settlement Panels exist in every County, they are free to the litigants and they are staffed by two volunteer, unpaid, experienced divorce attorneys. The parties through their attorney provide written submissions to the panelists, who then sit as mediators who make recommendations as to the proper disposition of the case.

In Pennsylvania, there are Masters. A Master is employed by the Court system and, as with the ESP Panelists in New Jersey, there is no charge to the litigants for the Master's services. The Master functions very similarly to the Early Settlement Panelist in that written submissions are made, the Master reviews the submissions and the Master then conducts an informal hearing with the parties and/or their attorneys. At the conclusion of that hearing, the Master will make recommendations as to the disposition of the case.

In addition to the Court provided Early Settlement Panel proceedings and/or the Master's Hearing, 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

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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 their attorney and to assist all in coming to a mutually agreed upon agreement.

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.



Robert J. Durst II is Chair of the Divorce Group of Stark & Stark and is certified by the New Jersey Supreme Court as a Matrimonial Attorney and by the National Board of Trial Advocacy as a Civil Trial Attorney.

Mr. Durst is a frequent lecturer on Family Law topics, was a Co-Founder of the New Jersey Summer Family Law Institute and is currently the Co Director of the American Trial Lawyers annual Boardwalk Seminar on Family Law. His leading lectures include a nationally known presentation on the distribution of stock options, the use and distribution of life insurance, and an original series on evidence in divorce cases.