

Legal Aid Board – Family Law Conference 2012
Resolving Family Disputes – An Alternative
Approach to Litigation

Taking the non-litigation route

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ADR in Ireland in 2012

- What alternative routes are available?
- Why ADR?
- Where are we at?
- What changes are coming?
- Where do we want to get to?
- How do we get there?

What alternative routes are available?

- Voluntary, informal arrangements
- Lawyer-assisted agreements
- Collaborative law
- Mediation

Why ADR?

- Cheaper
- Faster
- Flexible, client-driven solutions
- Reduces damage to relationships
-and many others
- It's a no-brainer!!

Where are we at?

- No figures available for informal agreements or lawyer-assisted agreements
- Very low take-up of mediation/collaborative law – mediation at 5% or less?
- Lack of awareness of mediation/collaborative law
- Ineffective promotion of ADR options
- Little common ground between lawyers and mediators



How to Promote Collaboration Generally

– Acknowledging Perceptions











What changes are coming?

- The Mediation Bill
- The Legal Service Bill
- The Courts - Pilot Mediation projects & evolving attitude of Judges

The Mediation Bill – General Observations

- Need for regulation of mediators
- Need for transparency in mediator's training, qualifications & experience
- Mediator reporting to Court
- Involvement of third parties in mediation
- Involvement of children in mediation

The Mediation Bill

– Main Provisions for Lawyers

- Duty to provide information and advice on mediation (Head 4)
- Duty of barrister in relation to mediation (Head 5)
- Court inviting parties to consider mediation (Head 12)
- Staying court proceedings to facilitate mediation process (Head 15)
- Fees and costs (Head 16)
- Factors to be considered by court in awarding costs (Head 17)

The Courts - Pilot Mediation projects & evolving attitude of Judges

- Dolphin House project
- Proposed Dublin Circuit Court project
- Greater encouragement to use ADR/mediation
- Costs sanctions?
- Potential reputational damage to ADR/mediation?

Where do we want to get to?

- The destination is simple, the journey less so!
 - ADR as the default initial approach to dispute resolution
 - Targeted reduction in cases through the Courts

How do we get there?

- Understand the potential drivers of litigation - overcoming client resistance to ADR
- Compulsory 'MIAMs'?
- Compulsory mediation?
- Promotion and education about ADR
- Reform of Court procedures
- Lawyers conflict of interests?
- COSTS
- Collaborating with mediators

How to Promote Collaboration

Generally – Understanding Roles

- Lawyers - the 'process' not the 'product'
- Mediators - are lawyers a necessary evil?
- Both - can we create a better process working together?

Collaboration – A Minimalist Definition

- “Two persons or groups working together and getting to a point where they do not think the other is a complete idiot”

Promoting Collaboration in Mediating Disputes

Consider:

- What are the tasks involved in such cases?
- Who in the mediation process can best undertake these tasks?
- How do the requirements and constraints of the mediator and lawyer roles impact on the process?

Considering a Collaborative Approach

- Separating tasks/working as a team?
- Who controls the process?
- Contact between the mediator and lawyers – what is appropriate?
- Using the solicitor-client relationship to benefit the mediation process

Considering a Collaborative Approach (cont'd)

- Using other professional assistance – accountants, QFAs, actuaries etc. – joint appointments?
- Dealing with unhelpful, incorrect or conflicting legal advice/opinions
- Solicitors attending at mediation?

Conclusion

- Need to develop a co-ordinated and systematic approach to the promotion and use of ADR in family law disputes