



Paralegal Training Curriculum

Memo 2: SHAPE THE LAW

Alternative Dispute Resolution Mechanisms (ADR)

As a paralegal you need to know:

- The different ADR mechanisms and assess their appropriateness in various contexts.
- How to effectively apply them?
- What is your specific role in those different process?

STEP 1: UNDERSTAND ADR MECHANISMS

Definition: Alternative Dispute Resolution (ADR) refers to mechanisms such as mediation, negotiation, conciliation, and arbitration to resolve disputes without resorting to judicial litigation.

3 main techniques

- **Negotiation:** Dialogue to find a mutually acceptable solution.
- **Mediation:** Involves a neutral third party facilitating resolution.
- **Arbitration:** A third party imposes a decision, which may be binding or non-binding.

When to use ADR?

In armed conflict settings, peace-building, land/property disputes, family law, and resource conflicts. Also effective in contexts where formal justice institutions are weak, absent, or mistrusted.

STEP 2: BE A CONFLICT RESOLUTION PROFESSIONAL

Paralegal Roles in ADR mechanisms:

- **Facilitator of ADR Processes:** Paralegals act as intermediaries, helping communities access justice through informal systems when formal courts are inaccessible.
- **Connector:** Paralegals can bridge the gap between formal institutions and informal systems by working with elders and community leaders.
- **Mediator Assistant:** They can support mediators by documenting agreements, monitoring compliance, and ensuring fair participation of marginalized groups.
- **Community Educator:** Paralegals educate communities about ADR options, explaining how mediation, negotiation, and arbitration work and when to use each.
- **Reporter:** Paralegals can report patterns of disputes to NGOs and government bodies to advocate for broader structural solutions.

Balance benefits and limitations

- ADR outcomes may not always be enforceable without broader authority support.
- Power imbalances could lead to unfair resolutions.
- Risk of recurring disputes if the agreement is not clearly documented or monitored.
- Using local elders ensures community buy-in.
- Suggest follow-up actions, such as creating community agreements and referral mechanisms in case ADR fails.

Why?

Enhances accessibility, cultural relevance, and equitable outcomes.

Is faster and more flexible than judicial systems.

Aligns with informal or customary justice systems, strengthening legitimacy.

Reduces costs and ensures quicker resolutions.

Explore Key Responsibilities of a Conflict

Resolution Professional

- Conflict resolution professionals help opposing parties reach an agreement.
- Conflict resolution professionals are responsible for ensuring that the conflict resolution process is fair and equitable.
- They ensure that human rights principles are respected throughout the process.
- They help the parties clarify the issues between them.
- They don't make decisions about these issues (i.e., they don't decide who's right or wrong).



- **Build Trust:** Ensure community members trust your neutrality by showing respect for all parties and cultural practices.
- **Know the Context:** Understand the local power dynamics, customary laws, and existing dispute resolution practices.
- **Be Impartial:** Always remain neutral and avoid taking sides during ADR processes.
- **Be culturally sensitive:** Always respect local traditions and norms, especially when working with informal or customary justice systems.
- **Promote human rights:** Ensure that ADR processes respect basic human rights and do not perpetuate discrimination or violence.
- **Stay safe:** Working in conflict zones involves risks. Prioritize your safety and follow protocols established by your organization.
- **Know referral pathways:** Be aware of services or organizations (e.g., legal aid, psychosocial support) that can assist disputants if ADR fails or if further support is needed.

Limits for conflict resolution professional

An important skill of the conflict resolution professional is his/her ability to recognize cases that he/she feels capable of handling. It is unrealistic to expect the conflict resolution professional to solve every case that comes before him/her. There are many good reasons for a conflict resolution professional not to intervene, EVEN in cases that are legally within his or her competence.

A conflict resolution professional will withdraw from cases that they feel are too complex, too "big" or too "serious", or that he or she knows are beyond his or her competence.

► **Note:** Conflict resolution professional plays a complex role, combining many skills and abilities. Anyone can be a conflict resolution professional, provided they have certain qualities. In particular, they must:

- Have a good knowledge of human rights principles and the law
- Understand and be able to adhere to best practices in conflict resolution.

Explore Personal Qualities of the Conflict Resolution Professional

A conflict resolution professional should be respectful of and respected by all.

- Inspire confidence in the parties.
- Be able to communicate effectively (both in terms of language and communication skills).
- Adhere to good values (i.e., values that are respected by the community).
- Not be involved in a conflict of interest (i.e., should not be a family member of one of the opposing parties).
- Have mediation skills.
- Be motivated to find a solution.
- Know their role and limits in the process.

Key Guidelines

The conflict resolution professional must adhere to the following principles when implementing the conflict resolution process:

Neutrality:

- Avoid discrimination based on ethnicity, culture, religion, gender, age, disability, or marital status.
- Do not accept gifts or money that could compromise impartiality.
- Refrain from displaying anger or bias, even in cases involving family or friends.
- Address conflicts of interest transparently, referring cases to others when impartiality cannot be guaranteed.

Non-critical approach:

- Base decisions solely on presented facts, avoiding personal judgments or biases.
- Do not pre-judge cases or impose personal beliefs on parties.

Calm and impassive communication:

- Practice active listening and avoid misinterpreting behavior.
- Maintain a steady, calm demeanor throughout the process.
- Allow parties time to think without applying pressure, and be prepared to pause or end sessions if necessary.

Respecting confidentiality:

- Protect the privacy of information shared in confidence and ensure it is not disclosed without consent.
- Mediation information must remain private unless the individual chooses to share it themselves.
- Limits to Confidentiality: Confidentiality may be breached if information reveals a direct threat to a person's life.

STEP 3: NEGOTIATION

Definition: Negotiation involves direct discussions between conflicting parties to resolve issues and reach a mutually acceptable outcome. It is often the preferred method for conflict resolution due to its simplicity and focus on compromise.

Most of us deal with one negotiation or another every day of our lives. Paralegals are often called upon to negotiate on behalf of their clients. **In negotiations, parties generally expect concessions.**

What does this mean?

- The parties must exchange information and make an effort to influence each other.
- As negotiations progress, each party proposes changes to the other's position and modifies its own.
- This back-and-forth and give-and-take is essential for reaching an agreement. If one party makes several proposals which are rejected, and the opposing party makes no alternative proposal, the former risks breaking off negotiations. Typically, parties won't want to concede too much if they don't feel that the people they're negotiating with are willing to compromise.
- The parties must strive to reach a solution that takes into account everyone's requirements and hopefully optimizes the outcome for each party.

Why are negotiations the "ideal" form of conflict resolution?

- It is the simplest and often the quickest way to settle a dispute.
- Chances are, the parties themselves know more about their problems and interests than anyone else. That's why the parties themselves need to be in the best position to tackle their problem and reach a compromise.
- In addition, negotiations allow the highest possible degree of emancipation and self-determination for the parties involved.
- An agreement or solution reached after negotiation is generally more satisfactory for the parties than when it is determined by a third party. This is why agreements reached through negotiation tend to last longer.



KEY MESSAGE

Negotiation should be the parties' first option for resolving their dispute, and only if this fails should they resort to other forms of conflict resolution.

Paralegal role in negotiation

Main roles

- **Negotiator/Advocate:** Paralegals may negotiate on behalf of vulnerable individuals or communities to secure their rights or access to services.
- **Advisor:** Provide advice to communities on how to approach negotiation with authorities or other stakeholders.

How to negotiate?

The main objective of a negotiator is to obtain the best possible settlement for himself, or for the person or group he represents. Find out facts and information about the other party before you start negotiating.

- Knowing what questions to ask.
- How to create the right atmosphere for successful negotiation - if you're too aggressive too early in the negotiation, it will create a very tense atmosphere.
- Know what to say to the other person or group - for example, you shouldn't give too much detail too early in the negotiation, as this gives the other person or group an advantage over you.
- Know when to make proposals to the other person or to the group.
- Control your attitude towards the other party - all kinds of different emotions, prejudices, values and cultures can affect your attitude towards the other party. This can make it harder for you to communicate properly with them.

Prepare for negotiation

- **Analyze background and context:** Every issue has its own context and history, which is important to know and recognize in a negotiation.
- **Examine the power and positions that the parties will have in the negotiation you are preparing.**

Know When to Walk Away: If negotiations are not progressing, consider alternative options such as mediation.



- **Be Well-Informed:** Know the facts of the case and the legal rights of the parties involved.
- **Define your objectives:** Determine your key points and what you want to achieve in the negotiation.
- **Be clear about your mandate:** As a paralegal, you will be representing a person or group in negotiations. You need to know what your mandate is with this person or group. In other words, you need to know exactly what they want and how willing they are to compromise.
- **Know the other party:** You need to have as much information as possible about the members of the party you're negotiating with. For example, you need to know their interests and needs in this area, their strengths, weaknesses, problems and pressures.
- **If needed, select a team:** It is generally preferable to have more than one person on a negotiating team.
- **Prepare your presentation:** Organize all the information you have gathered into a logical format so that it can be used during the negotiation.
- **Remain Calm and Composed:** Maintain a professional demeanor, even in tense situations.
- **Look for Win-Win Solutions:** Aim for agreements that benefit all parties.

Key Phases of Negotiation

- **GET PREPARED:** Gather facts, define objectives, and understand the interests of both sides.
- **PARTIES MEET - Discussion:** The parties meet and acknowledge the existence of a problem. Each party states the reason (as perceived) for the negotiation.
- **EXPLORING PROBLEMS:** Negotiation moves on to questions, and the parties say what their needs and interests are. During which the parties ask many questions and identify common ground. Facilitate open dialogue and clarify misunderstandings.
- **NEGOTIATION PHASE:** The parties move on to the negotiation phase, where they begin to look for possible solutions or options for resolving the problem. During this phase, the parties may even begin to draw closer together and feel that they are working together to solve a common problem. Negotiation does not always require the parties to be aggressive towards each other. For a negotiation to reach an agreement, one party must show that it is willing to "move" or compromise. Explore options and propose compromises.
- **CONCLUDING THE AGREEMENT:** The parties reach an agreement. At this point, you may need to present the agreement to the person or group on whose behalf you are negotiating. If the agreement is within the scope of your mandate, you can then enter into a final agreement. Summarize agreements and ensure clear next steps are agreed upon.
- **REPORT TO THE GROUP:** You should always report back to the person or group you were representing to tell them what the outcome of the negotiation was.
- **PUT THE AGREEMENT INTO PRACTICE:** Once you've reached an agreement with the other party, ensure it is implemented

STEP 4: MEDIATION

Definition: Mediation is a voluntary conflict resolution process where a neutral third party assists disputants in reaching a mutually acceptable solution. It is less adversarial than formal court proceedings and focuses on problem-solving.

Four Essential Characteristics:

- **Process-Oriented:** Steps include identifying issues, exploring options, and reaching agreements.
- **Voluntary Participation:** Ensures parties' commitment to the outcome.
- **Neutral Third Party:** Mediator facilitates communication but does not impose decisions.
- **Mutual Agreement:** Outcomes are collaboratively determined by the parties.

Paralegal role in mediation

As a neutral third party, paralegals guide disputants through a structured process to reach a mutually acceptable solution. The mediator can help de-escalate tensions by encouraging open dialogue and active listening.

The third party, or conflict resolution professional, is responsible for:

- Facilitate communication between parties,
- Help opposing parties focus on the real issues in the conflict, and
- Help parties find common ground, negotiate fairly, and hopefully reach an agreement.

Simply put, a mediator/conciliator is a negotiation expert who helps parties negotiate an agreement that meets their respective needs.

Conflict of interest?

- If you think there is a conflict of interest, you should inform the parties immediately and let them decide whether they want to choose another dispute resolution professional or take the matter to a different level.
- If the conflict of interest is serious (the dispute resolution professional has a substantial interest in the outcome of the case or is related to one of the parties), the professional should

- Inform the parties immediately
- AND**
- Do not accept the case.

Scope of Mediation

- Mediators cannot impose agreements; their role is to facilitate constructive discussions.
- Paralegals should mediate civil matters only.
- Mediation is not suitable for cases involving intimate partner violence, sexual violence, or other serious crimes.
- Mediation is inappropriate for disputes that purely involve legal interpretation.

Conditions for Effective Mediation

- Both parties must enter the process voluntarily.
- Equal power dynamics between parties are essential for fairness.

Key skills of a mediator

- **Legal knowledge:** relevant local and national laws, relevant rights, and the legal framework for mediation (should one exist).
- **Mediation knowledge and skills:** understanding of the mediation process and principles and techniques for mediation.
- **Communication skills:** ability to explain the mediation process, ability to explain laws and legal concepts in a manner which parties can understand, and active listening skills.
- **Empathy:** the ability to build trust with parties involved and view situations from their frame of reference.
- **Conflict resolution skills:** the ability to identify the interests and needs of the parties involved; the ability to facilitate solutions that are mutually agreeable.



Risks in Mediation:

- Forcing victims into proximity with perpetrators can cause harm.
- Coercion into unsuitable agreements undermines the process.

Focus on Interests vs. Positions:

- Positions may appear conflicting, but underlying interests can often align.
- Mediators should uncover and address the parties' true interests rather than focusing solely on stated positions.

Fundamental principles of conflict resolution

- **Non-Discrimination:** Every individual is treated equally, regardless of status.
- **Right to Be Heard:** Both parties must have equal opportunities to voice their concerns.
- **Transparency:** Ensure clarity in processes and decisions.
- **Safety:** Create a secure setting for open dialogue.
- **Free Choice:** Participation should be voluntary and informed.
- **Voluntary Participation:** Parties must willingly engage.
- **Open Communication:** Foster dialogue to encourage mutual understanding.
- **Good Faith:** Both sides must work sincerely toward equitable solutions.



- **Prepare Thoroughly:** Gather information about the dispute before starting the mediation process.
- **Set Ground Rules:** Ensure both parties agree to respectful communication and confidentiality.
- **Encourage Communication:** Ask open-ended questions to help disputants express their views and concerns.
- **Focus on Interests, Not Positions:** Help parties focus on their underlying needs rather than rigid demands.

Prepare for mediation

- **Analyze background and context:** Every issue has its own context and history, which is important to know and recognize in a negotiation.
- **Examine the power and positions** that the parties will have in the negotiation you are preparing.

Key Information to Share Before Sessions

- **Voluntary Participation:** Parties must willingly engage and can choose alternative legal routes if desired.
- **Process Strengths and Weaknesses:** Highlight benefits and limitations of mediation.
- **Alternative Options:** Arbitration and court judgments remain viable alternatives.
- **Mediator's Role:** Facilitate discussions, not impose decisions.

Venue and Participant Considerations

Venue Selection:

- Choose a neutral location that avoids favoring one party.
- Arrange seating to foster balance and equal status.

Participant Selection:

- **Top-Level Leaders:** Bring authority but may face public scrutiny.
- **Mid-Level Leaders:** Offer flexibility and grassroots connections.
- **Marginalized Groups:** Include representatives of civil society, women, and minorities

Mediation Options

- Joint Mediation: Both parties engage in direct discussions.
- Shuttle Mediation: Mediator communicates separately with each party.

➤ **Advantages:** Reduces emotional tension, ensures safe space for vulnerable parties.

➤ **Disadvantages:** May reduce trust-building and omit key details.

Key Steps during a Mediation

Preliminary Declaration by the Mediator: Introduce themselves, outline the mediation process, and set ground rules (e.g., confidentiality, respect).

Preliminary Statements by Parties:

- Allow each party to present their perspective without interruption.
- Clarify key issues and establish understanding.

Power Dynamics in Conflict Resolution

Key Principles:

- **Impartiality:** Ensure equal speaking opportunities for all parties involved.
- **Safe Environments:** Create emotional and physical safety for open discussions.
- **Awareness of Imbalances:** Use alternative methods (e.g., arbitration) if power dynamics obstruct resolution.

Impact of Power: Power dynamics significantly influence negotiation outcomes. Strategies and advice can inadvertently shift power balances; professionals must remain mindful.

Spheres of Power: financial, political, spiritual, and social.

Characteristics Influencing Power: Gender, Age, Socioeconomic Status, Ethnicity and Citizenship: Marginalized groups may face institutional barriers.

Factors Influencing Power Dynamics: Social Distinctions, Institutional Influence, Ideological Frameworks

Clarification and Problem Examination:

- Summarize core issues and shift focus from positions (what) to interests (why).
- Use techniques like open-ended questions, reflective listening, and emotion management.

Negotiation Phase:

- Identify shared interests, brainstorm solutions, and evaluate feasibility of proposed outcomes.
- Encourage compromise to achieve a "win-win" resolution.

Agreement Development: Ensure terms are clear, legal, and culturally acceptable while avoiding discrimination.

Drafting and Finalizing the Agreement:

- Draft the agreement in a mutually understood language.
- Obtain signatures and discuss follow-up mechanisms to monitor compliance.

Final Steps

- Explain follow-up actions and implementation plans.
- Gather feedback on the mediation process.
- Assign trusted community or family members to assist with implementation if necessary.

STEP 5: ARBITRATION

Definition: Arbitration is a formal dispute resolution process where a neutral arbitrator hears the case and makes a binding decision. Arbitration involves a neutral third party who hears the evidence and arguments of disputants and makes a binding decision.

Because a third party "rules" on the case (rather than supporting the process in which the opposing parties seek to reach agreement), arbitration is a more formal type of dispute resolution.

The procedure before an arbitrator is similar to that before a court

- The parties may make opening statements,
- Present documents and
- Examining witnesses (under oath)
- Parties can produce evidence and plead their case
- Finally, an arbitrator or panel of arbitrators issues a binding decision at the end of the hearing.

Advantages of arbitration

- **Efficiency:** Resolves disputes faster than litigation.
- **Confidentiality:** Proceedings and outcomes remain private.
- **Expertise:** Arbitrators with specific expertise ensure informed decisions.

Limitations of arbitration

- **Costs:** Can be expensive, depending on the arbitrator's fees.
- **Limited Appeal:** Binding decisions reduce the opportunity for review.

Choosing arbitration as a dispute resolution process

Arbitration is an adversarial dispute resolution procedure.

- There is a winner and a loser; one who is deemed to be "right" and the other deemed to be "wrong".
- Parties typically hope their interests will be served
- Arbitration is not the best dispute resolution mechanism when:

Conflict can be resolved through negotiation or mediation.

The parties have a personal or professional relationship that must be preserved.

Despite obvious similarities, there are still differences between arbitration and the formal system.

Arbitrators should always keep in mind that a MAJOR difference between arbitration and the formal court system is that the dispute resolution professional (arbitrator) **derives his or her authority solely from the parties** and not from any formal mandate. In the case of arbitration, the parties typically have the right to determine the location of the process, and may choose to conduct the arbitration in private.

The dispute resolution professional may strongly recommend arbitration in cases **where there is a significant imbalance of power between the two opposing parties.**

Paralegal Role

- **Arbitration Support:** While paralegals may not serve as arbitrators, they can assist communities by preparing evidence and ensuring procedural fairness.
- **Legal Advisor:** Guide parties on the implications of binding arbitration decisions and help them understand their rights.

Key Steps of the Arbitration Process

Preliminary Declaration by the Arbitrator: The arbitrator sets the stage by explaining the arbitration process and defining roles.

Key components:

- Emphasize the binding nature of arbitration and the finality of the decision.
- Clarify the scope of arbitration and the rules that will govern the process.
- Establish expectations for the conduct of the parties during the proceedings.

How to communicate:

- Use clear and formal language to convey authority and neutrality.
- Explain the timeline for the arbitration process, including deadlines for evidence submission and hearings.

Presentation of Cases: Each party presents its arguments, evidence, and witnesses to support its position.

Process overview:

➤ **Opening Statements:** Both parties outline their claims and objectives.

➤ **Evidence Submission:** Documents, testimonies, and other relevant materials are presented.

➤ **Cross-Examination:** Parties may question each other's witnesses to challenge evidence or clarify details.

Arbitrator's role: Ensure that the proceedings remain focused and respectful. Ask clarifying questions to understand the nuances of each argument.

➤ **Deliberation:** The arbitrator reviews all evidence, evaluates the arguments, and determines the outcome.

Steps in deliberation:

- Assess the credibility of evidence and witnesses.
- Analyze the legal and factual aspects of the dispute.
- Consider the implications of the decision on all parties.

Arbitrator's objective:

Ensure the decision aligns with the terms of the arbitration agreement and applicable laws.

➤ **Issuing the decision:** The arbitrator announces the final decision, known as the arbitration award.

Content of the award:

- Clearly state the decision and the rationale behind it.
- Specify the obligations of each party and the timeline for implementation.
- Include remedies or compensation, if applicable.

Presentation:

- Provide the decision in writing to both parties.
- Ensure the language is precise to avoid ambiguity.

➤ **Enforcement:** Arbitration awards may require additional steps to ensure compliance.

Steps for Enforcement:

- Parties voluntarily implement the decision if possible.
- Seek court enforcement if a party fails to comply.
- Address any legal challenges to the arbitration award.

An hybrid system in specific situation? The “Med- Arb” system

Med-Arb combines mediation and arbitration into a single process. Parties first attempt to resolve their conflict through mediation, focusing on collaboration and harmony. If no agreement is reached, the process transitions to arbitration, where a binding decision is made by the mediator (or a separate arbitrator).

Key Features:

- **Dual Process:** Starts with mediation for voluntary agreement and transitions to arbitration for a final decision if needed.
- **Binding Outcome:** Ensures a resolution, whether through mutual agreement or arbitration.
- **Continuity:** The same neutral party often acts as both mediator and arbitrator, though a separate arbitrator can be appointed.

Best Use Cases: Med-Arb is ideal for contexts where relationships matter but a binding resolution is necessary if collaboration fails.

- **Workplace Disputes:** Maintaining harmony while ensuring resolution.
- **Family or Community Conflicts:** Focusing on relationships while guaranteeing outcomes.
- **Complex Commercial Disputes:** Balancing collaboration and finality.

Advantages:

- **Efficiency:** Saves time and costs compared to separate processes.
- **Relationship Preservation:** Encourages collaboration before moving to arbitration.
- **Certainty:** Guarantees a resolution, avoiding prolonged disputes.

Challenges:

- **Risk of Bias:** A mediator who transitions to arbitration may be influenced by earlier discussions.
- **Pressure to Settle:** Parties may feel compelled to agree during mediation to avoid arbitration.
- **Confidentiality Issues:** Information shared in mediation may impact arbitration outcomes.