

## NAVIGATING DIVORCE AFTER DOMESTIC VIOLENCE: THE BENEFITS OF ADR

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Navigating the complexities of divorce is challenging in any circumstance, but for survivors of domestic violence, the process of legal separation can be particularly intimidating. Most people think of domestic violence as the act of physical abuse, however, domestic violence can be described as any action or pattern that affects a spouse's health and safety.<sup>1</sup> It is estimated that one out of every five marriages, or 20% of marriages in the US involve domestic violence.<sup>2</sup> It can be very hard for individuals who are victims of domestic abuse to want to get divorced. There is often fear that the abusing spouse will retaliate, and the victims believe that enduring the trauma and avoiding conflict is easier than seeking a divorce.<sup>3</sup> Even when these victims make it to court, many survivors face the agonizing prospect of reliving traumatic experiences in the courtroom.<sup>4</sup>

Rather than going to court, there is an alternative path towards resolution that can be better suited for domestic abuse divorce proceedings, and that is Alternative Dispute Resolution ("ADR"). ADR are alternative methods of settling cases without a trial or judge deciding what happens, including mediation, arbitration, and negotiation.<sup>5</sup> ADR can be less stressful and less expensive than court, and can be especially beneficial for victims, in that it gives them the

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<sup>1</sup> *Domestic Violence & Its Legal Impact on Divorce*, JUSTIA (Sept. 2023), <https://www.justia.com/family/divorce/special-circumstances-in-divorce/domestic-violence-victims-rights-and-information/domestic-violence-and-divorce/> [https://perma.cc/5QQA-B3RK].

<sup>2</sup> Joanne P. Monagan, Esq., *How Often Does Divorce Involve Domestic Violence?*, O'BRIEN MONAGAN L. FIRM (Mar. 17, 2021), <https://www.obmlaw.com/blog/2021/03/how-often-does-divorce-involve-domestic-violence> [https://perma.cc/4V6S-HRLD].

<sup>3</sup> *Why Divorce is Harder for Domestic Abuse Victims*, E. GORDON PETERS, JR., ATT'Y L. (Mar. 6, 2019), <https://www.egpeterslaw.com/blog/why-abused-women-fear-divorce/> [https://perma.cc/V778-RK5G].

<sup>4</sup> Tasha McAbee, *Trauma by Trial*, PUB. HEALTH POST (Mar. 2, 2021), <https://www.publichealthpost.org/research/trauma-by-trial/> [https://perma.cc/8K6Q-F8B6].

<sup>5</sup> *What is Alternative Dispute Resolution (ADR)?*, N.Y. CRIME VICTIMS LEGAL HELP (Mar. 7, 2023), [https://crimevictimshelpny.org/rights/victims/item.10635-Alternative\\_Dispute\\_Resolution\\_and\\_Mediation#:~:text=ADR%20is%20usually%20less%20stressful,than%20the%20traditional%20court%20process](https://crimevictimshelpny.org/rights/victims/item.10635-Alternative_Dispute_Resolution_and_Mediation#:~:text=ADR%20is%20usually%20less%20stressful,than%20the%20traditional%20court%20process) [https://perma.cc/D82U-GY46].

chance to share their feelings and be more fully heard than they are during the traditional court process.<sup>6</sup> The main issue people have with using ADR for domestic violence proceedings is that the methods ADR uses are typically not optimal when there is a power imbalance between the parties, which there usually is in the case of domestic violence.<sup>7</sup> That is why ADR will be useful to the extent that the power imbalance is as limited as possible and with the help of a neutral third party.

Arbitration would be the best form of ADR to use in a domestic violence proceeding.<sup>8</sup> Arbitration is better for parties that have a problematic power dynamic, history of domestic violence, or an inability to communicate.<sup>9</sup> Arbitration is the most similar to court but is completely private and confidential.<sup>10</sup> The confidentiality of arbitration, as opposed to court, can give victims the opportunity to share their experiences, concerns, and vulnerabilities without the fear of judgment or anticipated stigmatization from the community or public.<sup>11</sup> The parties will present their cases during an informal proceeding with a neutral third party of their choice.<sup>12</sup> The ability to choose a neutral third party who is sensitive to the dynamics of domestic violence can foster a sense of safety and reassurance to the victims throughout the arbitration process that the decision maker will be impartial and fair.<sup>13</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> *Alternative Dispute Resolution in Cases with Domestic Violence: Issues to Consider*, VOGEL (May 25, 2020), <https://vogellawyers.com/alternative-dispute-resolution-in-cases-with-domestic-violence-issues-to-consider/#:~:text=As%20opposed%20to%20a%20Trial,abuser%20in%20the%20court%20room> [https://perma.cc/3ZYF-4EPL].

<sup>8</sup> *Id.*

<sup>9</sup> *Arbitration vs. Mediation in Family Law*, ATLANTA DIVORCE L. GRP. (Dec. 11, 2023), <https://atlantadivorcelawgroup.com/blog/arbitration-vs-mediation-in-family-law/#:~:text=Parties%20with%20a%20problematic%20power,still%20completely%20private%20and%20confidential> [https://perma.cc/Q293-QDNJ].

<sup>10</sup> *Id.*

<sup>11</sup> Nicole M. Overstreet & Diane M. Quinn, *The Intimate Partner Violence Stigmatization Model and Barriers to Help-Seeking*, NAT'L LIBR. MED. (Feb. 4, 2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3601798/> [https://perma.cc/P5UD-RQAK].

<sup>12</sup> *The Basics of Arbitration*, MCCAMMON GRP., <https://www.mccammongroup.com/services/arbitration/basics-arbitration/#:~:text=Arbitration%20is%20a%20process%20in,a%20non%2Dbinding%20basis> [https://perma.cc/VTK5-YVHH] (last visited Mar. 2, 2024).

<sup>13</sup> Emily Holland, *The Ins and Outs of Third-Party Arbitration*, ADR TIMES (Sept. 15, 2020), <https://www.adrtimes.com/third-party-arbitration/> [https://perma.cc/F63X-JAPG].

Arbitration is also much quicker from initiation to conclusion than litigation is.<sup>14</sup> One of the reasons why arbitration is quicker is that the right to appeal is limited, which means the dispute is essentially resolved for good once the arbitrator makes their ruling.<sup>15</sup> For victims of domestic abuse, the idea of a prolonged legal battle can cause increased stress and uncertainty. By opting for arbitration, parties can bypass lengthy court backlog and expedite the resolution of their divorce after they agree on an arbitrator.<sup>16</sup> The arbitrator will listen to both sides, look at evidence provided, and then decide the award, or outcome.<sup>17</sup>

The journey of divorce for survivors of domestic violence is filled with challenges that extend far beyond the confines of physical abuse. The prevalence of domestic abuse underscores the urgent need for alternative approaches to divorce proceedings that will prioritize the safety, well-being, and autonomy of survivors. ADR, particularly arbitration, emerges as a beacon of hope, offering survivors a confidential, impartial, and expedited path towards resolution. However, for this to be done, it needs to be ensured that the power imbalance between the parties is limited as much as possible, which can be done with the help of the neutral arbitrator.

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<sup>14</sup> Linda J. Ravidin, *Arbitration in Family Law Matters: Has Its Time Come?*, PASTERNAK & FIDIS (May 25, 2016), <https://pasternakfidis.com/arbitration-family-law-matters-time-come/> [<https://perma.cc/5JL5-CKA6>].

<sup>15</sup> *Id.*

<sup>16</sup> John B. D'Alessandro, *Arbitration of a Divorce Has Pros and Cons*, L. OFF. JOHN B. D'ALESSANDRO (Oct. 23, 2017), <https://www.jbdalessandro.com/arbitration-of-a-divorce-has-pros-and-cons/> [<https://perma.cc/QSE7-Z58Q>].

<sup>17</sup> *What Happens After the Arbitrator Issues an Award*, AM. ARB. ASS'N, [https://www.adr.org/sites/default/files/document\\_repository/AAA229-After\\_Award\\_Issued.pdf](https://www.adr.org/sites/default/files/document_repository/AAA229-After_Award_Issued.pdf) [<https://perma.cc/T774-UZKN>] (last visited Mar. 2, 2024).