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