

Alaska Court System Early Resolution Project

Early intervention is an effective component of settlement in family law cases. Therefore, the Alaska Court System created the Early Resolution Project (ERP). In ERP, newly filed divorce and custody cases involving two self-represented litigants are screened by reviewing the contested issues and the likelihood of settling any or all issues. Once selected for ERP, the court schedules six to eight cases at the same time during a regularly scheduled afternoon hearing block. ERP occurs currently in three of the state's largest volume courts - Anchorage, Palmer and Juneau - and the Fairbanks court will be starting ERP in the spring of 2013.

Volunteer attorneys are available at the hearing to provide unbundled legal services. In other words, the attorneys provide advice to their client for the ERP hearing only and negotiate with the opposing party's volunteer attorney to see if any agreements can be reached. Court mediators are also used to assist the litigants. The Alaska Legal Services Corporation Pro Bono Program handles the volunteer attorney coordination, training and recruitment. The Alaska Attorney General supports the involvement of Assistant Attorneys General in this project. The court Child Custody Visitation Mediation Program provides court mediators for ERP. A few cases do not receive either attorneys or mediators if there are no disputed issues or relatively few or simple issues to be decided. In those cases, the ERP judge acts as a settlement judge at the hearing.

If the parties reach an agreement, it is memorialized on the record by the ERP settlement judge. Appropriate orders, including a child support order, are issued at the hearing's conclusion; final paperwork is distributed to the parties while they are still in the courtroom.

There are two ERP hearings per month in Anchorage and once per month in Palmer and Juneau. The Early Resolution Project has proven to be an effective settlement tool in 80% of the over 428 family law cases assigned to the project. Over 50% of the eligible cases have gone through ERP. Significantly, there has been a 98% appearance rate by the parties. Volunteer attorney participation has been impressive, with volunteers continuing to regularly appear three years since the program began.

Screening considerations

The screening considers the type of issues to be resolved, the complexity of the issues, the domestic violence and criminal case history and whether there are present or past allegations of domestic violence between the parties. Likely case candidates include:

- The parties appear to agree (complaint and answer matches).
- If the parties do not agree on all issues, but the disagreements are relatively simple and a workable solution seems obvious, the case will be accepted into ERP (e.g. legal custody, uncomplicated physical custody issues, few/low value assets/debts).
- The parties agree on the custody and visitation arrangement but the obligor for child support does not want to pay very much; basically the question is how much the child support amount will be.
- Minor property issues (e.g. division of household items, car loan, credit card debt, medical bills, uncontested allocation of marital home and retirement accounts).

Cases that are likely to be screened out as not appropriate include:

- Both parties cannot appear in person and need to be telephonic.
- Current and serious domestic violence, especially if there are minor children.
- Extensive criminal case history.
- Pending Child In Need Of Aid case.
- Unaddressed serious drug or alcohol abuse allegations.
- Unaddressed serious mental health allegations.
- Issues requiring evidentiary findings (e.g. paternity disestablishment).
- Parties have complicated financial situations (e.g. own a business that needs to be divided, very long marriage with substantial assets).

Benefits to volunteer lawyers, litigants and the court

The benefits of ERP are numerous from the perspectives of the litigants, the court and the volunteer attorneys. The benefits to the litigants include:

- Parties have access to early resolution, with assistance from volunteer attorney, mediator or settlement judge
- Parties get the reality-check conversation when working with attorney or settlement judge
- Interim or final child support orders are issued so the unresolved support is not left “brewing”
- Private consult with an attorney can unveil issues such as coercion, or hidden legal issues that parties do not think are relevant - pregnant by someone else, disclosure of all property, retirement, tax and medical benefit issues
- Parties get a mini-legal diagnosis and can make an informed choice of whether hiring an attorney for further assistance would make a difference in their case
- All of the above helps triage the case to the proper resolution method
- Consults with attorneys include enforcement analysis, resulting in orders crafted to avoid obvious enforcement pitfalls
- Parties get advice on post-judgment issues, most importantly child support modifications, which hopefully will reduce the number of preclusion requests or unwieldy arrearage matters down the road

From the court’s perspective, the benefits include:

- Parties get some legal advice or go through mediation which provides satisfaction and confidence in settlement outcomes
- Early resolution of cases frees judicial resources for more complex cases
- Reduced administrative time as file is handled fewer times
- Accurate child support orders issued at hearing
- Final documents fully completed at hearing and service perfected in person eliminating the need to mail orders
- Attorney assistance eliminates tension on court’s neutrality

Hallmarks of this project from the perspective of the volunteer attorney include:

- Immediate gratification – attorneys work as real time problem solvers

- Collegial experience – attorneys report that participation in ERP has resulted in more collegial relations in non-ERP cases
- Training and experience in providing unbundled services
- Discrete opt-in pro bono obligation – responsibilities last only as long as the hearing
- No preparation or follow-up required
- Regular scheduling – calendars run routinely on the same days in a month
- Opportunity to make a significant contribution to access to justice

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