Basic Overview of ADR

Workplace Dispute Resolution Section
February 2, 1999
<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
<th>Participants</th>
</tr>
</thead>
<tbody>
<tr>
<td>9:00 - 9:10</td>
<td>Introduction and Overview of Session</td>
<td>Martha McClellan, FDIC</td>
</tr>
<tr>
<td>9:10 - 10:30</td>
<td>Introduction to ADR</td>
<td>Dorethea Taylor-Kennedy, NIH-ORS</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Charlotte Kaplow, FDIC</td>
</tr>
<tr>
<td>10:30 - 10:40</td>
<td>Break</td>
<td></td>
</tr>
<tr>
<td>10:40 - 11:50</td>
<td>Choosing And Using an ADR Method</td>
<td>Dorthea Taylor-Kennedy, NIH-ORS</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Delores Crawford, GAO</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sheila Wolcott/Linda Washington, BEP</td>
</tr>
<tr>
<td>11:50 - 12:00</td>
<td>Wrap-Up</td>
<td></td>
</tr>
</tbody>
</table>
I. Definition of ADR  

A. What ADR is  
B. What ADR is not  
C. Two basic kinds of ADR  
D. Advantages of ADR  
E. Primary Dispute Resolution Process -- Adjudication
BASIC OVERVIEW OF ADR

COURSE OUTLINE

II. ADR Models

A. Three Primary ADR Processes

1. Negotiation
2. Mediation
3. Arbitration

B. Eight hybrid processes

C. Spectrum of ADR procedures
III. Choosing an ADR Method

A. Is ADR Appropriate?

1. General presumption that it is
2. Circumstances when it may not be

B. If ADR is Appropriate, How Do You Choose an ADR Method?

1. Issues to consider
2. Using the spectrum approach
3. What type of ADR is appropriate?
4. Client objectives -- overcoming impediments
What is ADR?

- All forms of dispute resolution other than court adjudication

- “Appropriate Dispute Resolution”
What ADR is NOT...

- Appropriate for every dispute
- The solution to all disputes or conflicts
Two kinds of ADR

- Interest-based
- Rights-based
Advantages of ADR

- Reduces cost of dispute resolution
- Reduces length of time for dispute resolution
Advantages of ADR (continued)

- Reduces court congestion; may reduce court filings and dockets
- Increases involvement of participants
- Increases level of compliance
Disadvantages to Primary Dispute Resolution Process (Adjudication)

- Imposed by third-party decision maker
- Involuntary
- Binding
Disadvantages to Primary Dispute Resolution Process (Adjudication)

- Formalized and structured
- Public (no confidentiality)
Three Primary Alternative Dispute Resolution Processes

- Negotiation
- Mediation
- Arbitration
Negotiation Characteristics

- Voluntary, private
- If agreement, enforceable as a contact
- No third-party facilitator
- Informal
- No limits on presentation of arguments
- Seeks mutually acceptable agreement
Mediation Characteristics

- Voluntary
- If agreement, enforceable as a contract
- Party-selected neutral
- Unbounded presentation of evidence
- Seeks mutually acceptable agreement
- Private
- Narrow issues for trial
Two types of mediation

- Rights-based mediation
  (Outcome prediction)

- Interests-based mediation
  (Facilitated negotiation)
Arbitration Characteristics

- Voluntary
- If binding, only subject to limited review
- Party-selected third-party decisionmaker
- Less formal, procedurally
- Present proofs and arguments
- Sometimes principled decision
- Private
Three Types of Arbitration

1. Voluntary, Binding
2. Voluntary, Non-binding
3. Compulsory, Non-binding
Eight Hybrid ADR Models

- Mediation-Arbitration
- Private Judging
- Neutral Expert Fact-Finding
- Early Neutral Evaluation
- Mini-trial
- Summary Jury Trial
- Ombudsman
- Negotiated Rule-making
ADR SPECTRUM

Facilitated ADR
Negotiated ADR
Preventive ADR
Fact-Finding ADR
Advisory ADR
Imposed ADR
ADR Spectrum

- Preventive ADR
- Negotiated ADR
- Facilitated ADR
- Fact-Finding ADR
- Advisory ADR
- Imposed ADR
Six Types of ADR

PREVENTIVE | NEGOTIATED | FACILITATED
---|---|---

- Partnering
- ADR Clauses
- Negotiated Rule-Making
- Joint Problem Solving
- Principled
- Positional
- Problem Solving
- Conciliation
- Mediation
### Six Types of ADR (Continued)

<table>
<thead>
<tr>
<th>FACT FINDING</th>
<th>ADVISORY</th>
<th>BINDING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Neutral</td>
<td>Neutral</td>
<td>Binding</td>
</tr>
<tr>
<td>Expert Fact Finding</td>
<td>Evaluation</td>
<td>Arbitration</td>
</tr>
<tr>
<td>Masters,</td>
<td>Private Judging</td>
<td></td>
</tr>
<tr>
<td>Magistrates</td>
<td>Summary Jury</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Trials</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mini-Trials</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Non-Binding Arbitration</td>
<td></td>
</tr>
</tbody>
</table>
ADR May Not Be Appropriate
When There Is . . .

- A need for precedent
- A significant issue of Government policy
- A need to establish uniform policy
- An absent third party who may be adversely affected
ADR May Not Be Appropriate When There Is . . . (continued)

- A need for a full public record
- A need for continuing jurisdiction
- Another disputant who is not committed to the good faith use of ADR
- Tax, judicial foreclosure, or insurance defense issues
Principle of Subsidiarity

- Resolve the matter at the lowest possible level of organization
- Start with the most interest-based procedure possible
Designing Your Own Hybrid

- Tailor the process to the problem
- Use a tiered approach
- Bifurcate the issues/use different methods
- Identify an enforcement method for follow-up