

## ALTERNATIVE DISPUTE RESOLUTION IN THE U.S. DISTRICT COURTS

### **A variety of procedural choices**

Alternative dispute resolution (ADR) mechanisms can be public (initiated by and involving the court) or private (initiated and controlled by the parties). Some of the public ADR mechanisms used in civil disputes in U.S. federal district (trial-level) courts include

- *court-annexed mediation*, where a neutral third party facilitates discussion between the parties to resolve the case
- *court-annexed arbitration*, where a neutral third party hears presentations by the parties' lawyers and issues a nonbinding written decision
- *early neutral evaluation (ENE)*, where a neutral third party hears presentations by the parties' lawyers and evaluates the strengths and weaknesses of their claims and defenses
- *summary jury or summary bench trial*, where the lawyers present their case in summary form to a jury or a judge and the decision maker issues an advisory decision
- *settlement week*, where a court sets aside hearings for a week and allows parties who are ready for trial to use the courtrooms to mediate disputes with the help of experienced mediators
- *special masters*, where a judge appoints an experienced lawyer, academic, former trial judge, or magistrate judge to mediate a dispute under Rule 53 of the Federal Rules of Civil Procedure

In addition to these ADR procedures, many judges conduct settlement conferences under the authority of Rule 16 of the Federal Rules of Civil Procedure. Mediation and judge-hosted settlement conferences are the most commonly used methods for assisting parties with settlement negotiations.

### **ADR authority**

The Alternative Dispute Resolution Act of 1998 requires every federal district court to implement an ADR program that offers at least one form of ADR to parties in civil cases. The Act authorizes the courts to require cases to participate in ADR but limits this authority to media-

tion and ENE. The Act also gives the courts authority to decide which ADR mechanism(s) to provide, types of cases to refer to ADR, and the qualifications and compensation of ADR neutrals. Consequently, ADR programs vary considerably from court to court.

### **Providers and fees in court-annexed ADR**

In some courts, judges serve as mediators, although many judges prefer not to conduct mediations in their own cases because the disputes may proceed to trial. To avoid conflict between their mediator and trial roles, judges may refer cases to a colleague for mediation.

In other courts, an entity or individual—often a lawyer—provides skilled, neutral assistance in resolving disputes. Many of these courts have established panels of outside neutrals who must meet specified training requirements. Some courts require the parties to compensate neutrals; others require panel neutrals to serve without compensation.

### **Referrals**

Some courts require all civil cases to attempt some form of ADR before trial. The parties are not required to reach binding resolution, however. If they fail to reach an agreement, the dispute continues through the regular litigation process.

Some courts refer only certain disputes to ADR, based on the parties' willingness to use ADR voluntarily or on the determination of the judge or the court's ADR administrator that a particular dispute is appropriate for ADR. Parties may also engage in private forms of ADR at any time before judgment.

### **Benefits of ADR**

ADR has several advantages.

- Courts can decrease case backlogs, ensuring efficient use of judicial resources.
- Parties can obtain speedy resolution of their disputes, often in a less formal setting than court. ADR can also provide procedures and outcomes that are more closely tailored to the parties' individual needs.
- Parties are often more satisfied with the outcomes and processes available in ADR than in litigation.
- Lawyers diversify their skills by acting either as counsel in ADR processes or as ADR neutrals. Lawyers using ADR can

also provide clients with dispute resolution services that are more appropriate to the types of issues at stake.

## **Enforcement**

Court-annexed ADR decisions and agreements are nonbinding in every form of ADR, unless the parties agree to make the outcome binding. In that case, their signatures on the agreement create a contract that is enforceable in the same way as any other contract.

## **Factors for a successful court-annexed ADR program**

An ADR program must have a reliable method for referring cases to ADR, whether through the judge talking with the parties, a staff person screening cases for eligibility, or some other method that ensures cases go to ADR. A program without cases will not inspire confidence.

An ADR program needs supporters respected in the legal community, such as prominent judges, to champion the program and promote its use. An ADR program further needs a qualified person in the court to manage and oversee it. ADR neutrals, if called for, must likewise be well-trained and respected—parties will not use ADR if they do not trust neutrals or the process.

ADR processes should be designed with empirically identified “best practices” in mind. Experience suggests, for example, that ADR works best when a party with decision-making authority attends the procedure. Courts should therefore indicate whether and to what extent parties (as opposed to their lawyers or representatives) must attend ADR sessions. In addition, the rules for the ADR process—particularly the rules that define the process and describe case selection, neutral selection, compensation, timing, and how to file a settlement—should be readily accessible to parties who file in the court and who are referred to ADR.

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### *Further Resources*

*A report by the Federal Judicial Center provides a brief history of alternative dispute resolution (ADR) in the federal district courts, discussing the statutes that prompted ADR initiatives and noting policy guidance and support to assist courts in establishing ADR programs. The report also includes a summary of ADR procedures authorized in the district courts as of late 2011. See [http://www.fjc.gov/public/pdf.nsf/lookup/adr2011.pdf/\\$file/adr2011.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/adr2011.pdf/$file/adr2011.pdf)*

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*A resource directory of all state mediation and ADR programs has been compiled by the Center for Appropriate Dispute Resolution in Special Education (CADRE). See [www.directionservice.org/cadre/pdf/State%20ADR-Mediation%20Directory.pdf](http://www.directionservice.org/cadre/pdf/State%20ADR-Mediation%20Directory.pdf). Information on the use of ADR by the U.S. federal government is available through the U.S. Department of Justice at [www.justice.gov/olp/adr/doj-statistics.htm](http://www.justice.gov/olp/adr/doj-statistics.htm). A compendium of U.S. federal district court rules on ADR is also available through the U.S. Department of Justice ([www.justice.gov](http://www.justice.gov)).*

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