



Introduction to  
***The DON ADR Program***



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You may write to:

Department of the Navy ADR Program  
Deputy Dispute Resolution Specialist  
1000 Navy Pentagon  
Washington, DC 20374

or send an e-mail to:

[adr@mail.navy.mil](mailto:adr@mail.navy.mil)

Please visit the DON ADR Website at <http://adr.navy.mil/>



Introduction to  
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## About the Cover: ADR In Surprising Places

ADR (Alternative Dispute Resolution) affects many fields of Navy and Marine Corps activity. The photographs on the cover of this pamphlet depict some of the many programs or commands that have used ADR to further their mission. The Washington Navy Yard, shown from the air, used ADR to resolve several environmental matters affecting the Anacostia River watershed. The P-3 Program used ADR to reduce a \$25 million claim to \$4 million, and avoided substantial litigation costs. At the National Naval Medical Center, surgeons and patients now use the services of an organizational ombudsman to resolve healthcare concerns.

In these circumstances, and many more, the Department of the Navy (DON) uses ADR to resolve controversies faster, cheaper and without litigation. In fact, the Office of Personnel Management honored the DON by presenting it with the **2002 Director's Award for Outstanding ADR Programs**, and recognized the program as a "first rate example" that delivers "better and more cost effective services to the American people."



2002 OPM Director's Award for Outstanding ADR Programs

You are invited to read further, and learn how the DON ADR Program can help your program, activity or command achieve similar results.

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## **Welcome to the DON ADR Program**

Thank you for your interest in the Department of the Navy's Alternative Dispute Resolution Program ("DON ADR Program"). This pamphlet will give you some helpful information regarding the program and ADR in general.

The DON ADR Program is designed to fulfill the Secretary of the Navy's ADR policy stated in SECNAV Instruction 5800.13, "Alternative Dispute Resolution (ADR)," 11 December 1996. The Instruction implements several statutes and policies enacted by both Republican and Democratic administrations. The Instruction also sets forth the basic policy that ADR shall be used as much as possible so that commands devote their personnel and funds to their mission instead of expensive and prolonged litigation.

## **What is "ADR?"**

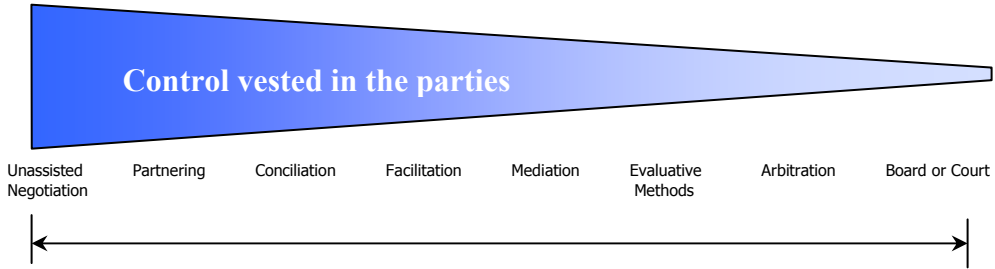
The DON officially defines alternative dispute resolution as:

*Any procedure which is used in lieu of a formal process or litigation to resolve conflicts and issues in controversy, including but not limited to, partnering, conciliation, facilitation, mediation, ombudsmanship, fact finding, mini-trials, neutral evaluation and arbitration or any combination thereof.*

The definition contains many terms of art. For example, "a formal process or litigation" generally refers to administrative or judicial forms of adversarial adjudication in a rights based system. In its simplest terms, this means a judge conclusively stating who is right and who is wrong. ADR, on the other hand, uses processes that avoid judges and return decision making to the parties in dispute. It often removes the "right v. wrong" analysis in favor of "interest based negotiation."

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The methods listed in the definition range between purely party-controlled methods to more litigation-like methods. These are often depicted as a spectrum:



Methods farther to the right vest more control in a "neutral" having a variety of titles depending on the proceeding: Conciliator, Facilitator, Mediator, Arbitrator, Judge, etc. The same spectrum applies even within each method. For example, mediations often are characterized as "facilitative" or "evaluative." A facilitative mediator focuses the parties' attention strictly on their interests, while an "evaluative" mediator might give non-binding factual or legal evaluations of parties' positions so they can weigh the costs and benefits of a negotiated settlement.

Further definition of each ADR method listed above is beyond the scope of this pamphlet. Suffice it to say that for any given dispute, ADR offers the parties the chance to control their own destiny. The method selected depends on the interests of each party and the degree of control over the outcome that they need or want.

**Why Use ADR?**

The three best reasons to use ADR are: 1) it increases the parties' control over the result, 2) it reduces the cost of resolution, and 3) it works.

As mentioned in the preceding section, ADR offers the parties to a dispute control over the outcome. Business executives – whether in

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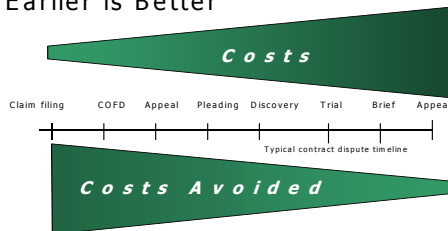
government service or private industry - usually favor control over outcomes regardless of subject matter. Business leaders recognize that courts may only do so much: courts impose decisions after receiving filtered facts through complex procedural mechanisms. When the disputants retain control, resolution becomes a type of business decision that most people understand, and they can creatively resolve the problem. Sometimes, simple discussions can alleviate misunderstandings and end the conflict. Barter can be used in lieu of cash. Payments or deadlines can be extended. Even simple apologies can put a matter to rest without so much as a notation on the corporate annual report.

The second major reason to use ADR is cost. While the costs naturally depend on the complexity of the dispute, generally speaking ADR techniques are far less costly than the formal adversarial processes. Such savings result from:

- Faster resolution means less interest or time related expenses;
- Informal methods can eliminate or reduce costly discovery;
- Better interest-based relationships (business or others) improve productivity and morale.

The savings are not theoretical. For example, the Air Force reports that by using ADR, it avoided nearly \$2 million in staff time and interest expenses in 38 procurement disputes during CY00.

Earlier is Better

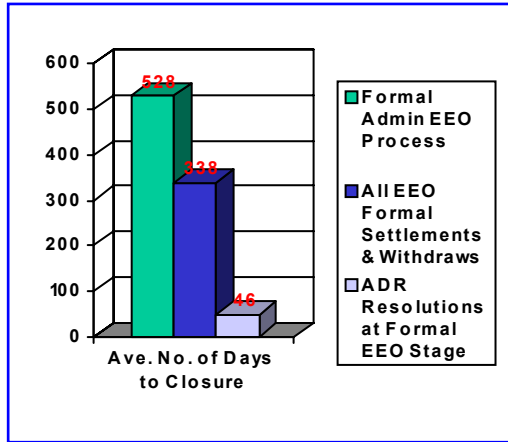


Both litigation and ADR transfer essential information for resolution, but formal litigation methods tend to cost more over time. As a result, parties avoid more transaction costs if they use ADR early in a dispute.



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In the workplace arena, the General Accounting Office reported that 84% of disputants found the use of mediation to be "good or excellent." Most likely, disputants were pleased with the speed ADR offers. For example, in FY02, formal EEO matters involving the DON averaged 46 days if the parties used ADR,<sup>1</sup> but the overall average for the full administrative process was 528 days.



Finally, and most importantly, ADR works. In FY01, the Department of the Navy used ADR methods in 1840 matters, and achieved **a resolution rate of 88%**. Even in cases where ADR does not resolve a matter, it can eliminate some issues, improve communication and help identify the real issues in controversy. Still not convinced? The appendices contain "ADR Success Stories" illustrating the use of ADR in the DON.

**Is ADR Appropriate in Every Case?**

Just as different types of ADR might be more appropriate for different disputes, sometimes litigation is the preferred method of conflict resolution. If the DON needs a precedential decision or the issue involves a very significant policy, ADR might not be appropriate. Likewise, if the rights of third parties cannot be addressed by using ADR or if full public participation is important, than other methods probably should be used. But most controversies do not involve lofty issues of public policy, and regardless of the subject matter, every issue in controversy is a potential candidate for ADR.

<sup>1</sup> Notably, if used at the informal stage, ADR reduces the average complaint time to a remarkable 23 days.

## **The DON ADR Program's Mission**

The DON ADR Program helps Navy and Marine Corps activities use alternatives to litigation or formal administrative procedures to the maximum extent practical.

**Policy Coordination** The DON ADR Program, through the Navy Dispute Resolution Specialist, is responsible for overall ADR policy and initiatives within DON. The DON ADR Program reviews local and department-wide policy statements and implementing instructions to ensure compliance with law and executive policies.

**All Issues in Controversy** Every conflict and issue in controversy, regardless of the subject matter, is a potential candidate for ADR. The DON ADR Program assists activities to identify issues in controversy that might be resolved more quickly, with less expense, and at lower organizational levels by using ADR.

**Identify or Create Alternative Processes** Where existing forms of ADR do not exist or are inadequate, the ADR Program helps activities create their own ADR processes. To assure that activity personnel use alternative processes, the DON ADR Program encourages active participation of activities and working groups in designing local ADR processes. Assistance can be in the form of training, seed funding for programs, marketing and advice.

**Promote ADR Awareness** Through the ADR Working Group, training, and media, the DON ADR Program promotes ADR awareness throughout the DON so that activities use ADR to the maximum extent possible.

**Interagency Liaison** The DON ADR Program is the point of contact for the DON on ADR matters. It serves as the liaison with other federal agencies to coordinate and share ADR information.

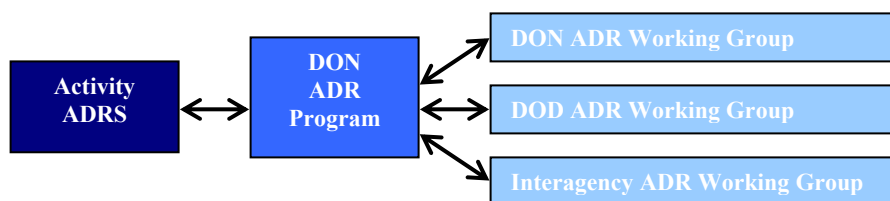
## **Program History and Organization**

ADR is not new to the Navy. In 1986, Secretary John Lehman established the DON ADR Program, focusing on the use of ADR within the acquisition community. SECNAV Instruction 5800.13, "Alternative Dispute Resolution (ADR)," 11 December 1996, expanded the use of ADR to "every issue in controversy," and sets forth the organization of the program.

**The DRS and the DDRS** The Office of the General Counsel for the DON sponsors the program. The Principal Deputy General Counsel serves as the "Dispute Resolution Specialist" (DRS), a title and function required by the Administrative Disputes Act of 1990, as amended in 1996. The DRS is responsible for the overall ADR policy and initiatives within the Department of the Navy. He oversees the Deputy Dispute Resolution Specialist (DDRS), who in turn is responsible for the day-to-day coordinating of ADR within the Department of the Navy and leads the program staff.

**The DON ADR Working Group** The DDRS also chairs the Department's ADR Working Group. The ADR Working Group facilitates the sharing of ADR information throughout the DON and promotes ADR awareness and use. The group helps develop ADR programs and evaluates implementation of ADR within the DON.

**Activity Dispute Resolutions Specialists (ADRS)** ADRSs help Echelon I and II activities tap the network of ADR resources within the Federal Government. An activity may employ its ADRS on a full time basis or



assign the position as a collateral duty. Activities may enter into agreements with another part of the DON to share the services of an ADRS. Each ADRS serves as the primary point of contact between the DON ADR Program and an individual activity. Within the activity, the ADRS advocates and promotes the use of ADR in all appropriate controversies facing the activity. The ADRS assists the command in securing necessary resources to successfully use ADR.

## **ADR Initiatives Within the DON**

As the cover to this pamphlet shows, the DON has used ADR in a wide variety of disputes. While this pamphlet is not intended to list all areas that the program can serve the DON and its activities, the following bullets give an idea of the program's work and potential topics for new ADR initiatives.

### General Initiatives

- Catalogue of Disputes – Identify all DON related disputes & the appropriate ADR methods
- Develop DON arbitration guidelines
- Develop manuals applicable to the DON
- Ensure echelon I and II level guidance
- Advertising to promote ADR awareness
- Web-based ADR news & resources – <http://adr.navy.mil>
- DON ADR conferences
- Direct training program
- Training clearing house for contracted training
- Program evaluation and metrics

### Assisting Service Members & Dependents

- Support ombudsman at medical facilities
- Community relations using ADR methods when appropriate
- Assist Legal Services Offices in developing ADR options

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### Environmental Disputes

- Administer an interagency agreement with the US Institute for Environmental Conflict Resolution
- Work with DON environmental training resources like Civil Engineering Corps Officer School (CECOS)
- Work with ADR counterparts at the EPA to expand the use of partnering and other methods of conflict resolution.

### Acquisition Protests and Disputes

- Procurement planning - preventive measures
  - Contracting Officer Courses
  - Partnering – Contractor/Navy Commitment Statements
  - Contract Clauses
- Award: ADR for bid protests
- Administration: CDA claims
  - Training
  - Standardized Agreements and ADR Documentation
  - Work with Competition Advocates under NAPS § 5216.505
  - Ombudsman for other matters
- ADR in grants, private party work, and other non-FAR contracts.

### Workplace – Civilian Personnel

- Ensure continued certification and mediator alignment for the 180 mediators in the Navy Certified Mediator Program
- Refine Mediator Qualifications
- Establish a Convening Process
- Evaluation and metrics for workplace mediation

## **Closing – Let ADR Work for You**

ADR can make sense for many conflicts. It saves money and leads to faster, party-approved resolutions. No matter if you are a contracting officer, an employee or dependent with a problem, an environmental resource manager, or even a private citizen in dispute with the DON, please consider whether ADR can resolve your conflict(s) more quickly and with less expense than formal litigation. With the DON's 88 percent resolution rate, the odds are in your favor!

If you need additional information please visit the program's website at <http://adr.navy.mil>. The website offers detailed information regarding ADR as used by the DON and other federal agencies. If you need a workplace mediation – whether you are a manager or employee – simply click on the ["I Need a Mediator!"](#) link. If you still need more information, or wonder how the DON ADR Program can help your Navy or Marine Corps organization, please consult the ADRS within your chain of command or you may e-mail the program at [adr@mail.navy.mil](mailto:adr@mail.navy.mil).

**APPENDICES**

**Department of the Navy  
ADR Success Stories**

## **Appendix A**

### **Success Story – The P-3 Litigation**

Two of the key benefits of ADR are its flexibility and the control it gives to the disputants. One ADR that demonstrates these attributes is the resolution of a \$25 million final price determination claim filed by Lockheed against the Navy's P-3 program



The parties tailored an ADR process to suit their needs. Some key, cost saving features included limited discovery that lasted only 30 days, and using internal senior officials as the presiding panel. The panel members were sufficiently senior in their organizations that they did not have personal interests in the dispute. The panel then convened a mini-trial that allowed the attorneys and select personnel from both parties to present their best case. Upon hearing the facts and views of both sides, the panel negotiated a settlement.

The panel did not reach agreement on all issues, but it achieved remarkable results:

- ADR reduced litigation costs and time for both parties;
- Lockheed dropped \$21 million of the claimed amount;
- The remaining issues were tried by the ASBCA in only two days.

Thus, ADR can save time, resources and money, while narrowing issues for more economical resolution the traditional forums.

#### **The DON ADR Program Can Help Your Command:**

The DON ADR Program can custom-tailor an ADR procedure for any dispute facing your Navy or Marine Corps organization.



## **Appendix B**

### **Success Story – Protecting the Anacostia Watershed**

As a seafaring agency, the DON is concerned about the health of the waterways and communities near its installations. One water quality dispute involved storm water draining into the Anacostia River from the Washington Navy Yard (WNY).



Both the Navy and the Anacostia Watershed Society (AWS) appealed a storm water permit issued by the Environmental Protection Agency (EPA). At issue were effluents limits, monitoring parameters, and study requirements. As a certifying "state," the District of Columbia (DC) also had an interest. Through the DON ADR Program, the four parties used the services of the U.S. Institute for Environmental Conflict Resolution (a small federal agency), to convene a mediation. From start to finish, the process *lasted only 5 months*.

The mediation produced an environmentally protective permit that met the parties' varied interests. For the Navy, it reduced monitoring requirements and eliminated certain effluent limits, resulting in a significant savings for the DON over the five-year permit period. For the EPA, DC and the AWS, the new permit recognized the need to monitor water quality and impose limits on sites in the Anacostia watershed. The Navy's ADR team, including RADM Christopher Weaver, Commandant of the Naval District Washington, believed that the case positively demonstrates the possibilities of cooperative environmental conflict resolution.

#### **The DON ADR Program Can Help Your Command**

Can other federal agencies help you in your dispute? The DON ADR Program is the point of contact for ADR information and resources!

## **Appendix C**

### **Success Story - Bethesda's Ombudsman/Mediator**

The DON ADR Program does not administer specific ADR processes. But one of its missions is to "Identify or Create Alternative Processes." Where existing forms of ADR do not exist or are inadequate, the ADR Program helps activities create their own ADR processes. To assure that activity personnel use alternative processes, the DoN ADR Program encourages active participation of activities and working groups in designing local ADR processes. Assistance can be in the form of training, seed funding for programs, marketing and advice.



The Organizational Ombudsman/Mediator at the National Naval Medical Center (NNMC) serves as a model for developing a successful local ADR program. The local ombudsman/mediator is a Navy Certified Mediator, is trained in the organizational ombudsman model and certified to conduct disability mediations as well as healthcare negotiation and medical malpractice issues. The DON ADR Program assisted NNMC by funding much of her training. NNMC, on the other hand, administers the office and funded the design, operation, and implementation. The ombudsman/mediator created this program and through the participation of interested communities within the command (medical, legal, patient safety/risk management, administration) won the unqualified support of the hospital staff. The unique feature of this program is its internal neutral who helps resolve healthcare disputes prior to claims being filed.

#### **The DON ADR Program Can Help Your Command**

Does your command have a unique ADR need? The DON ADR Program can help you identify resources and launch a successful local program.

## **Appendix D**

### **Success Story**

#### **The DON Workplace Mediation Program**

The DON ADR Program assists major organizational elements of the DON – like the Office of Civilian Human Resources (OCHR) – in fulfilling their mission. It is a winning combination: In January of 2003, the Office of Personnel Management honored the Department of the Navy's (DON) Workplace ADR Program by presenting it with the Director's Award for Outstanding ADR Programs.



2002 OPM Director's Award

In order to save administrative costs, the DON primarily uses its own employees as mediators on a collateral basis. They receive a sequential training program consisting of four tiers lasting at least sixty hours before receiving certification to handle workplace disputes and civilian personnel matters for the DON. The goal is to have one certified mediator for every 1,000 civilian employees, distributed in proportion to the general civilian population. At the time of this publication, there are about 80 certified mediators actively helping employees and managers mediate workplace disputes, EEO complaints and grievances. Mediators are available to all DON activities wherever there are civilian employees.

The DON ADR Program works with OCHR's DON Workplace ADR Program Manager to train, support and gather metrics for the DON's Certified Mediator Program. Overall, the DON's resolution rate in workplace disputes (EEO, employee relations, etc.) is an impressive 88%.

#### **The DON ADR Program Can Help Your Command**

Does your command have big ideas for dispute resolution within the entire Department of the Navy? The DON ADR Program can help!

## **Appendix E**

### **Success Story?**

#### **Did Litigation Work in this Case?**

On its face, the Navy won its case against Kirk Brothers Mechanical Contractors, Inc. The Government successfully defended its termination for default, and Kirk Brothers only recovered \$1,017 on its \$4.4 million claim. But it was quite a battle, as the Armed Services Board of Contract Appeals (ASBCA) majority opinion recites,

*These appeals arise under a contract for construction of a [test chamber] at the Naval Air Propulsion Center (NAPC). These appeals involve numerous claims for price adjustment and the default termination of the contract. Having considered the testimony of 37 witnesses over 53 days of hearing, more than 8,000 pages of documentary evidence, and more than 1,000 pages of post-hearing briefs, ...*

The ASBCA decision overturned the default termination, but did not award significant damages. This result did not satisfy either party. The Navy appealed to uphold its termination for default. Kirk Brothers appealed the damage award. The Navy won the appeal on purely legal grounds.

Ultimately, Kirk Brothers ceased doing business, and the Navy never reprocured the test chamber in question. The facility was closed in an early round of base realignment and closure (BRAC). Considering the expense and the outcome, did the Navy really win? Might ADR have helped in this scenario? Does it matter that 50 decisions cite the case as precedent supporting the Government?

#### **The DON ADR Program Can Help Your Command**

Not sure if ADR is appropriate for a particular dispute? The DON ADR Program can help you assess the possibilities.

***Do you need a certified mediator for your workplace dispute?  
Go to "I Need a Mediator!" at <http://ADR.Navy.Mil>.***

You may write to:

Department of the Navy ADR Program  
Deputy Dispute Resolution Specialist  
1000 Navy Pentagon  
Washington, DC 20374

or send an e-mail to:

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