



Basic Overview of ADR

Workplace Dispute Resolution Section
February 2, 1999

AGENDA

9:00 - 9:10

Introduction and Overview of Session
Martha McClellan, FDIC

9:10 - 10:30

Introduction to ADR
Dorethea Taylor-Kennedy, NIH-ORS
Charlotte Kaplow, FDIC

10:30 - 10:40

Break

10:40 - 11:50

Choosing And Using an ADR Method
Panel Members:
Dorthea Taylor-Kennedy, NIH-ORS
Delores Crawford, GAO
Sheila Wolcott/Linda Washington, BEP

11:50 - 12:00

Wrap-Up



BASIC OVERVIEW OF ADR COURSE OUTLINE

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

BASIC OVERVIEW OF ADR

COURSE OUTLINE (Continued)

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 contract
- 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

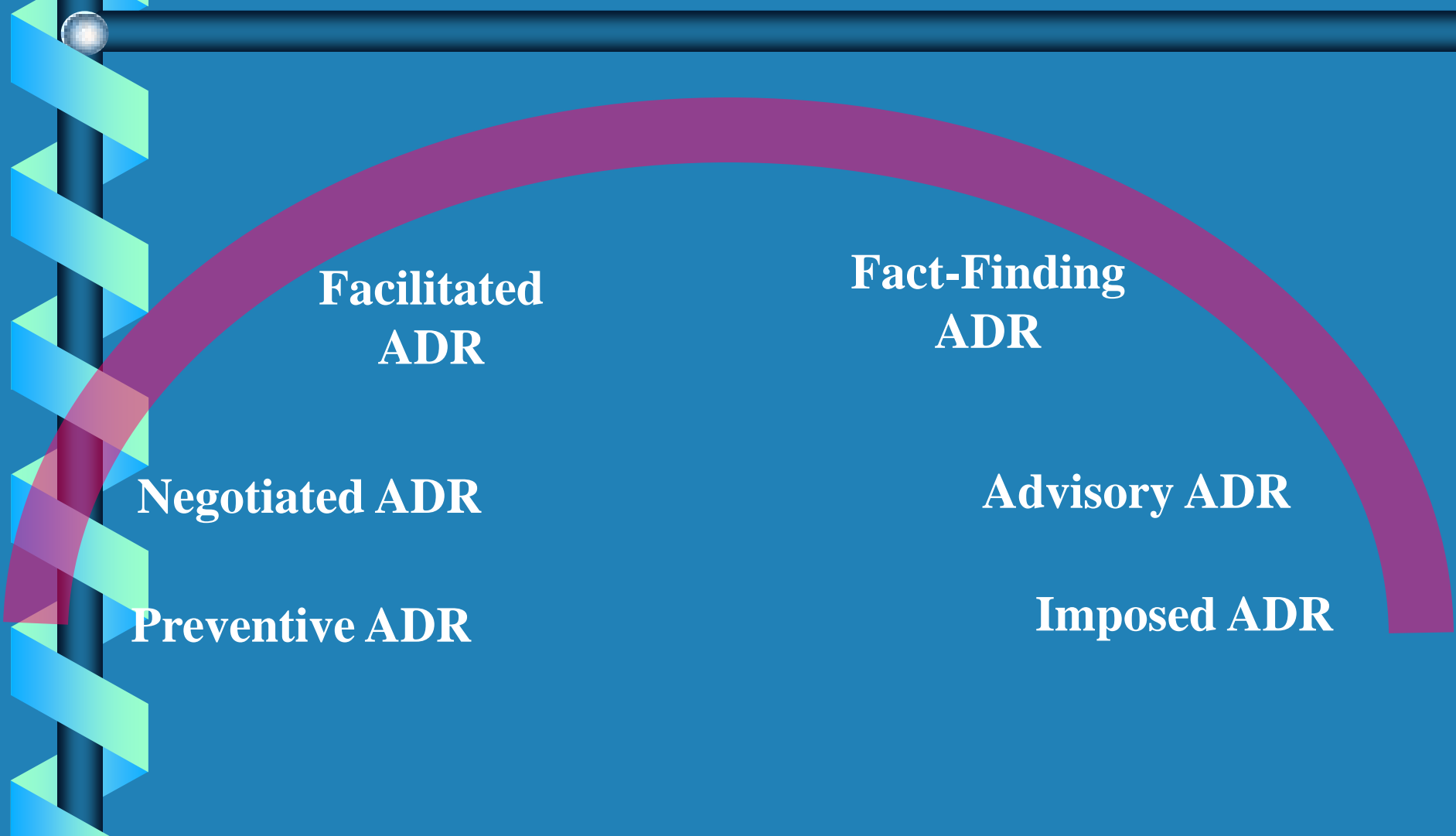
1. Voluntary, Binding
2. Voluntary, Non-binding
3. Compulsory, Non-binding



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





ADR Spectrum

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

Six Types of ADR

PREVENTIVE

- Partnering
- ADR Clauses
- Negotiated Rule-Making
- Joint Problem Solving

NEGOTIATED

- Principled
- Positional
- Problem Solving

FACILITATED

- Conciliation
- Mediation

Six Types of ADR (Continued)

FACT FINDING

- Neutral
- Expert Fact Finding
- Masters,
- Magistrates

ADVISORY

Neutral
Evaluation
Private Judging
Summary Jury
Trials
Mini-Trials
Non-Binding Arbitration

BINDING

Binding
Arbitration



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