



Welcome to the
**Energy Bar
Association
Program**



Energy Bar Association's Mission Statement

EBA has approximately 2,600 member and promotes the professional excellence and ethical integrity of its members in the practice, administration, and development of energy laws, regulations and policies by providing:

- superior educational programming,
- networking opportunities, and
- information resources.



Please visit www.EBA-Net.org

Calendar of Events
for information on upcoming
seminars, programs and
conferences.





Mark Your Calendars

**2016 Annual Meeting &
Conference**

June 7-8, 2016

Washington, DC





Alternative Dispute Resolution Options at FERC for Parties to Reach Agreement in Energy Business, Environmental, and Heritage Disputes

Deborah M. Osborne*
Director, Dispute Resolution Division
Office of Administrative Law Judges and Dispute
Resolution
Federal Energy Regulatory Commission

March 2, 2016

*The views presented here are my own and do not necessarily represent the views of the FERC.

Introduction

Most days, we are just trying to keep up with the work we have to get done. When a conflict or full blown dispute emerges, it not only exacerbates whatever is already on our To Do list, it may *consume* us--our energy, identity, health, business, state-of-mind, resources, and the list goes on and on. The conflict may also *constrain* our relationships with one another as human beings, family, friends, people and especially those with whom we have the conflict. Conversely, being in harmony with the world, our resources, our work, and our personal and professional relationships, frees up our capacity to move on with what we do and hopefully live a good life.

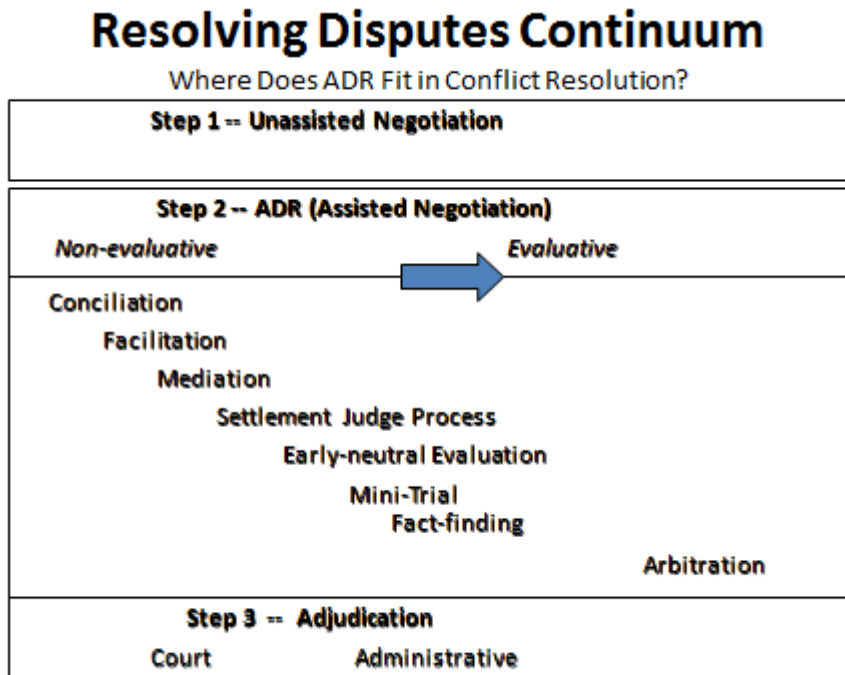
So what makes the difference between resolving a conflict amicably or in an adversarial manner? The *dispute resolution process choice* we make to resolve conflict can make *all* the difference in the world. Why?

That's what we're here to talk about.

Alternative Dispute Resolution (ADR) at FERC

Options for Resolving Conflict

- Where does Alternative Dispute Resolution Fit along the Dispute Continuum?



Federal Government Mandate for ADR

Administrative Dispute Resolution Act of 1996 (ADRA)
Public Law 104-320

Alternative means of dispute resolution:

“means any procedure that is used to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, fact finding, minitrials, arbitration, and use of ombuds, or any combination thereof”

Federal Energy Regulatory Commission's Regulations on ADR to Fulfill Federal Mandate

- ADR is voluntary: DRD specialist assists parties with understanding whether they will agree to ADR
- DRD staff approach Company Owners to agree to ADR and may approach business owners and other interested persons through their legal counsel in any filed proceeding
- Legal Counsel is usually present in ADR proceedings, but not necessary for an ADR process to be conducted (different in Settlement Judge processes)
- ADR proceedings are confidential

FERC's Rule 604

ADR Proceedings: <http://www.gpo.gov/fdsys/pkg/CFR-2011-title18-vol1/pdf/CFR-2011-title18-vol1-sec385-604.pdf>

[Title 18](#) → [Chapter I](#) → [Subchapter X](#) → [Part 385](#)

§385.604 Alternative means of dispute resolution (Rule 604).

(a) *Applicability.* (1) Participants may, subject to the limitations of paragraph (a)(2) of this section, use alternative means of dispute resolution to resolve all or part of any pending matter if the participants agree. The alternative means of dispute resolution authorized under subpart F of this part will be voluntary procedures that supplement rather than limit other available dispute resolution techniques.

(2) Except as provided in paragraph (a)(3) of this section, the decisional authority will not consent to use of an alternative dispute resolution proceeding if:

(i) A definitive or authoritative resolution of the matter is required for precedential value;

(ii) The matter involves or may bear upon significant questions of policy that require additional procedures before a final resolution may be made, and the proceeding would not likely serve to develop a recommended policy;

(iii) Maintaining established policies is of special importance;

(iv) The matter significantly affects persons or organizations who are not parties to the proceeding;

(v) A full public record of the proceeding is important, and a dispute resolution proceeding cannot provide a record; or

(vi) The Commission must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the Commission's fulfilling that requirement.

(3) If one or more of the factors outlined in paragraph (a)(2) of this section is present, alternative dispute resolution may nevertheless be used if the alternative dispute resolution proceeding can be structured to avoid the identified factor or if other concerns significantly outweigh the identified factor.

(4) A determination to use or not to use a dispute resolution proceeding under subpart F of this part is not subject to judicial review.

(5) Settlement agreements reached through the use of alternative dispute resolution pursuant to subpart F of this part will be subject to the provisions of Rule 602, unless the decisional authority, upon motion or otherwise, orders a different procedure.

(b) *Definitions.* For the purposes of subpart F of this part:

(1) *Alternative means of dispute resolution* means any procedure that is used, in lieu of an adjudication, to resolve issues in controversy, including but not limited to, settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, or any combination thereof;

(2) *Award* means any decision by an arbitrator resolving the issues in controversy;

(3) *Dispute resolution communication* means any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, parties or non-party participant. A written agreement to enter into a dispute resolution proceeding, or a final written agreement or arbitral award reached as a result of a dispute resolution proceeding, is not a dispute resolution communication;

(4) *Dispute resolution proceeding* means any alternative means of dispute resolution that is used to resolve an issue in controversy in which a neutral may be appointed and specified parties participate;

(5) *In confidence* means information is provided:

(i) With the expressed intent of the source that it not be disclosed, or

(ii) Under circumstances that create a reasonable expectation on behalf of the source that the information will not be disclosed;

(6) *Issue in controversy* means an issue which is or is anticipated to be material to a decision in a proceeding before the Commission and which is the subject of disagreement between participants who would be substantially affected by the decision or between the Commission and any such participants;

(7) *Neutral* means an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy;

(8) *Participants* in a dispute resolution proceeding that is used to resolve an issue in controversy in a proceeding involving an application for a license or exemption to construct, operate, and maintain a hydroelectric project pursuant to the Federal Power Act or the Public Utility Regulatory Policies Act shall include such state and federal agencies and Indian tribes as have statutory roles or a direct interest in such hydroelectric proceedings.

(c) *Neutrals.* (1) A neutral may be a permanent or temporary officer or employee of the Federal Government (including an administrative law judge), or any other individual who is acceptable to the participants to a dispute resolution proceeding. A neutral must have no official, financial, or personal conflict of interest with respect to the issues in controversy, except that a neutral who is not a government employee may serve if the interest is fully disclosed in writing to all participants and all participants agree.

(2) A neutral serves at the will of the participants, unless otherwise provided.

(3) Neutrals may be selected from among the Commission's administrative law judges or other employees, from rosters kept by the Federal Mediation and Conciliation Service, the Administrative Conference of the United States, the American Arbitration Association, or from any other source.

(d) *Submission of proposal to use alternative means of dispute resolution.* (1) The participants may at any time submit a written proposal to use alternative means of dispute resolution to resolve all or part of any matter in controversy or anticipated to be in controversy before the Commission.

(2) For matters set for hearing under subpart E of this part, a proposal to use alternative means of dispute resolution must be filed with the presiding administrative law judge.

(3) For all other matters, a proposal to use alternative means of dispute resolution may be filed with the Secretary for consideration by the appropriate decisional authority.

(4) The appropriate decisional authority will issue an order, approving or denying, under the guidelines in Rule 604(a) (2) and (3), a proposal to use alternative means of dispute resolution. Denial of a proposal to use alternative dispute resolution will be in the form of an order and will identify the specific reasons for the denial. A proposal to use alternative dispute resolution is deemed approved unless an order denying approval is issued within 30 days after the proposal is filed.

(5) Any request to modify a previously-approved ADR proposal must follow the same procedure used for the initial approval.

(e) *Contents of proposal.* A proposal to use alternative means of dispute resolution must be in writing and include:

(1) A general identification of the issues in controversy intended to be resolved by the proposed alternative dispute resolution method,

(2) A description of the alternative dispute resolution method(s) to be used,

(3) The signatures of all participants or evidence otherwise indicating the consent of all participants; and

(4) A certificate of service pursuant to Rule 2010(h).

(f) *Monitoring the alternative dispute resolution proceeding.* The decisional authority may order reports on the status of the alternative dispute resolution proceeding at any time.

[Order 578, 60 FR 19506, Apr. 19, 1995, as amended by Order 602, 64 FR 17099, Apr. 8, 1999]

FERC's Rule 606

Confidentiality Rules - <http://www.gpo.gov/fdsys/pkg/CFR-2014-title18-vol1/pdf/CFR-2014-title18-vol1-sec385-606.pdf>

Title 18 → Chapter I → Subchapter X → Part 385

§385.606 Confidentiality in dispute resolution proceedings (Rule 606).

(a) Except as provided in paragraphs (d) and (e) of this section, a neutral in a dispute resolution proceeding shall not voluntarily disclose, or through discovery or compulsory process be required to disclose, any information concerning any dispute resolution communication or any communication provided in confidence to the neutral, unless:

(1) All participants in the dispute resolution proceeding and the neutral consent in writing;

(2) The dispute resolution communication has otherwise already been made public;

(3) The dispute resolution communication is required by statute to be made public, but a neutral should make the communication public only if no other person is reasonably available to disclose the communication; or

(4) A court determines that the testimony or disclosure is necessary to:

(i) Prevent a manifest injustice;

(ii) Help establish a violation of law; or

(iii) Prevent harm to the public health or safety of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of participants in future cases that their communications will remain confidential.

(b) A participant in a dispute resolution proceeding shall not voluntarily disclose, or through discovery or compulsory process be required to disclose, any information concerning any dispute resolution communication, unless:

(1) All participants to the dispute resolution proceeding consent in writing;

(2) The dispute resolution communication has otherwise already been made public;

(3) The dispute resolution communication is required by statute to be made public;

(4) A court determines that the testimony or disclosure is necessary to:

(i) Prevent a manifest injustice;

(ii) Help establish a violation of law; or

(iii) Prevent harm to the public health and safety of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of participants in future cases that their communications will remain confidential; or

(5) The dispute resolution communication is relevant to determining the existence or meaning of an agreement or award that resulted from the dispute resolution proceeding or to the enforcement of the agreement or award.

(c) Any dispute resolution communication that is disclosed in violation of paragraphs (a) or (b) of this section shall not be admissible in any proceeding.

(d)(1) The participants may agree to alternative confidential procedures for disclosures by a neutral. The participants must inform the neutral before the commencement of the dispute resolution proceeding of any modifications to the provisions of paragraph (a) of this section that will govern the confidentiality of the dispute resolution proceeding. If the participants do not so inform the neutral, paragraph (a) of this section shall apply.

(2) To qualify for the exemption established under paragraph (l) of this section, an alternative confidential procedure under this paragraph may not provide for less disclosure than confidential procedures otherwise provided under this rule.

(e) If a demand for disclosure, by way of discovery request or other legal process, is made upon a participant regarding a dispute resolution communication, the participant will make reasonable efforts to notify the neutral and the other participants of the demand. Any participant who receives the notice and within 15 calendar days does not offer to defend a refusal of the neutral to disclose the requested information waives any objection to the disclosure.

(f) Nothing in Rule 606 prevents the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a dispute resolution proceeding.

(g) Paragraphs (a) and (b) of this section do not preclude disclosure of information and data that are necessary to document an agreement reached or order issued pursuant to a dispute resolution proceeding.

(h) Paragraphs (a) and (b) of this section do not prevent the gathering of information for research and educational purposes, in cooperation with other agencies, governmental entities, or dispute resolution programs, so long as the participants and the specific issues in controversy are not identifiable.

(i) Paragraphs (a) and (b) of this section do not prevent use of a dispute resolution communication to resolve a dispute between the neutral in a dispute resolution proceeding and a participant in the proceeding, so long as the communication is disclosed only to the extent necessary to resolve the dispute.

(j) Nothing in this section precludes parties from seeking privileged treatment for documents under this chapter.

(k) Where disclosure is authorized by this section, nothing in this section precludes use of a protective agreement or protective orders.

(l) A dispute resolution communication that may not be disclosed under this rule shall also be exempt from disclosure under 5 U.S.C. 552(b)(3).

[Order 578, 60 FR 19508, Apr. 19, 1995, as amended by Order 602, 64 FR 17099, Apr. 8, 1999; Order 769, 77 FR 65476, Oct. 29, 2012]

How ADR Works at FERC

FERC's Dispute Resolution Division (DRD)

A small unit of skilled practitioners within FERC devoted to Alternative Disputes Resolution (ADR) processes to resolve FERC-related energy disputes/conflicts (business/transactional and environmental).

- DRD Staff are non-decisional and non-advisory.
- DRD Staff function as third-party neutrals.
- DRD Staff's conversations with parties are confidential.
- DRD activities are exempt from ex parte rules.
- See ADRA, Section 4; 18 CFR 385.604.

Including FERC's DRD what are some of FERC's other Dispute Resolution choices?

- Dispute Resolution Division and ADR
- Landowner Helpline
- Settlement Judge Process
- Technical Conferences (as appropriate)
- Enforcement Hotline
- Trial Staff Settlement Procedures
- Hydro Alternative and Integrated Licensing Processes
- Collaborative Processes for Natural Gas Facility Applications

FERC's DRD Staff Major Functions:

DRD Provides Neutral Third-Party ADR Case Services for Energy and Related Environmental and Cultural Heritage Matters:

- Convening Session: Assess Parties' ADR Needs and Appropriate Process
- Conciliation
- Facilitation
- Mediation
- Early Neutral Evaluation (arrange for)
- Arbitration (arrange for)_____

DRD Staff Provides Training to Internal and External Audiences:

- Courses in Interest-Based and Advanced Negotiation Skills
- Customized Training in Conflict Prevention and ADR Skill Sets
- Temperament Training for Constructive Dialogue

Consultation Services to Internal Offices and External Entities:

- Dispute Resolution Design (e.g., for conflict prevention and resolution)
- Other ADR process mechanisms to fit the customer's needs

When is ADR with DRD Appropriate?

- Before filing a Complaint (Pre-filing):
- After filing a complaint:
- Complaint Rule has provisions for parties to address ADR. See 18 CFR 385.206

Essentially, an ADR process can begin at any time and be initiated by one or more parties or the Commission.

Why is ADR Useful?

- An ADR process can begin at any time.
- ADR can be a parallel process.
- ADR processes can be initiated for entire dispute or individual issues.
- Even if agreement is not reached, the process can narrow issues for another process.
- The settlement discussions and materials remain confidential.

Why Is the DRD a Good Resource?

Dispute Resolution Division:

- is independent, neutral, non-decisional (no ex parte concerns);
- is the primary resource for ADR questions in Commission. It should be viewed as an extension of your staff;
- can cut through procedural red tape; move quickly; can contact parties and help address a dispute at any point;
- abides by the Separation of Functions rule; and
- ensures that parties' communications with the neutral are privileged and confidential.

How do these Dispute Resolution Choices match up?

Courts	ADR
Decisions (win/lose)	Solutions (win/win)
Rulings	Resolutions
Appeals	Certainty
	Relationships
	Closure
	Agreement Durability
	Voluntary Compliance

FERC's Contact Information for DRD Staff and ADR:

- **Toll Free ADR HELPLINE 1-844-238-1560**
- **DRD e-mail: ferc.adr@ferc.gov**
- DRS may convene parties to assess the most suitable ADR process & neutral.

Demonstrated ADR Energy Case Success: Examples

FERC's e-Library: How to access recent case agreements:

- Click www.ferc.gov
- Click e-LIBRARY under Documents & Filings Tab (<http://www.ferc.gov/docs-filing/elibrary.asp>)
- Click General Search (<http://elibrary.ferc.gov/idmws/search/fercgensearch.asp>)
- Enter Docket No. and Date Range

Recently Filed Case Settlements with FERC that Reached Agreement Using DRD and ADR:

- Con Ed/Linden (TX14-1): The settlement was filed on May 11, 2015 and is available at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13872313>.

- MISO/South Fork: The settlement was filed on April 29, 2015 and is available at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13861849>
- Penobscot (HB131-08): The settlement was filed on October 28, 2014 and is available at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=1366983>
- NRG/Dynergy (EL02-60): The settlement was filed on April 27, 2012 and is available at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12966954>
- Great Lakes (RP13-1367): The settlement was filed on September 27, 2013 and is available at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13360102>
- Midla (CP14-125; RP14-638): The settlement was filed on December 11, 2014 and is available at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13708946>
- **NOTE:** We have had many case successes using ADR with Indian Tribes in business, environmental and heritage matters over the course of 16 years.

ADR Tools to Prevent and Resolve Conflict Including Interest-Based Negotiation (IBN) Techniques

Getting to Yes, Getting Past No and Getting Along:

- Face the problem together
- Use the IBN Model
- Create value
- Achieve Win/Wins's
- And use ADR when you cannot work it yourselves at the earliest stage if possible

- Resolve conflict in your best interests and use other means as appropriate
- Hopefully, move on....

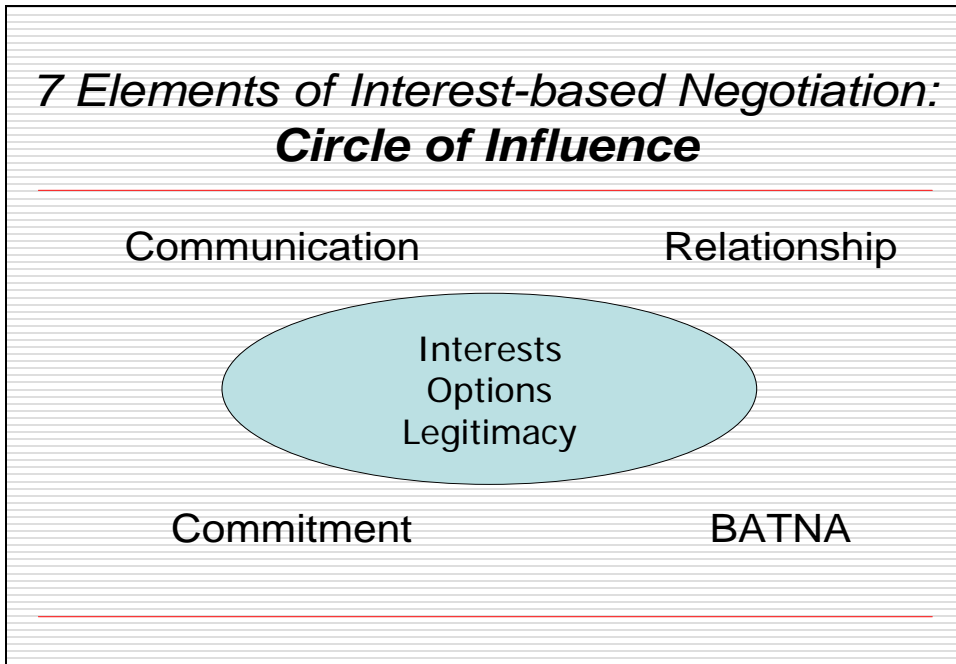
Seven Elements of Interest-Based Negotiation (IBN)*

The Interest-Based Negotiation Model is an alternative to traditional negotiation. The IBN model enhances the chances of overcoming *both* common and complex barriers that get you what you need in a negotiation. The IBN model consists of seven elements that when practiced and applied in a negotiation effectively encourages mutually acceptable agreements in every sort of conflict. This is done through equipping parties to:

- Separate the people from the problem
- Focus on interests not positions
- Work together to create options that will satisfy both parties

The Seven Elements of Interest-Based Negotiation:

- Communication
- Relationships
- Underlying interests
- Options
- Legitimacy
- Alternatives (BATNA/WATNA/PATNA)
 - Best Alternative to a Negotiated Agreement
 - Worst Alternative to a Negotiated Agreement
 - Possible Alternatives to a Negotiated Agreement
- Commitment



* Credit for the IBN model is given to Roger Fisher and William Ury's seminal work Getting to Yes: Negotiating Agreement Without Giving In, originally published in 1981 with several updated editions.

Interest-Based Negotiation: The Seven Elements

What does a negotiator need to know and understand to negotiate effectively?

Answer: The Seven Elements of Effective Negotiation.¹

Interest-based negotiation differs from conventional negotiation in that the negotiator focuses on interests in an effort to achieve a win/win outcome. The core of the Seven Elements of Effective Negotiation is the interest-based approach.

Using the Seven Elements can result in a productive agreement-seeking process with an outcome that has long-lasting results.

The Seven Elements are:

1. **Communication**
How the parties communicate with each other during the negotiation.

Message sent = Message received

¹ Getting to Yes, Roger Fisher and William Ury (1981).

2. **Relationship**
How the parties relate to each other during and after the negotiation.
3. **Interests Versus Positions**
Positions are things that we decide. Interests are the reasons behind our decisions.
4. **Options**
Options are potential solutions to meet the parties' interests.
5. **Legitimacy**
Objective standards and principles of fairness used to assist in assessing whether a negotiated outcome is fair.
6. **Alternatives (BATNA/WATNA)**
Consideration of alternatives to a negotiated agreement.
7. **Commitment**
Parties' willingness to participate in the process and adhere to the agreements they reach.

ADR Glossary

Alternative Dispute Resolution (or ADR). Any procedure emphasizing creativity and cooperation in place of adjudicative means of problem-solving. ADR typically involves a third party neutral and is used as an alternative to a hearing, trial, or other more formal procedure to resolve an issue in controversy. ADR includes but is not limited to, facilitation, mediation, fact-finding, minitrials, arbitration, or any combination.

Arbitration. An ADR process in which the disputing parties present their case to one or more neutrals ("arbitrators") who hear evidence and argument and render a decision or award on the merits (binding or non-binding). Arbitration differs from mediation and other ADR processes in which the neutral helps the disputing parties develop a solution on their own.

Conciliation. A problem-solving process in which a third party, called a conciliator, restores damaged relationships between disputing parties by bringing them together, clarifying perceptions, and pointing out misperceptions. The conciliator may or may not be totally neutral to the interests of the parties. This technique often is used prior to other ADR techniques, such as facilitation and mediation.

Conflict Coaching. In its simplest terms, a coach is a thinking partner, someone who can assist another in identifying and exploring options, support risk taking, and, if necessary, develop the skills necessary to move forward.

Early Neutral Evaluation. An ADR process in which the parties and their counsel present the factual and legal bases of their case to a neutral evaluator—often someone with relevant legal, substantive, or technical expertise or experience—who then offers a non-binding oral or written evaluation of the strengths and weaknesses of the parties’ cases. This evaluation can form the basis for settlement discussions facilitated by the neutral evaluator if the parties so choose.

Facilitation. An ADR process in which a neutral third party (a “facilitator”) assists a group in improving the flow of information in a meeting. The facilitator helps a group discuss issues constructively and, where needed, provide procedural direction to help them move through a problem-solving process to arrive at a jointly agreed-upon goal. Although facilitation techniques may be applied to decision-making meetings where a specific outcome is desired (e.g., resolution of a conflict or dispute), the neutral in a facilitation process (the “facilitator”) often plays a less active role than a mediator and does not typically become as involved in the substantive issues.

Fact-finding. An ADR process in which a neutral fact-finder receives information and arguments from the parties about the issues and facts in a controversy (and may conduct additional research to investigate the issues in dispute), and then submits a report with findings of fact and perhaps recommendations based on those findings.

Mediation. An ADR process in which a neutral third party (a “mediator”) with no decision-making authority seeks to assist the parties in voluntarily reaching an acceptable resolution of issues in controversy. While mediators differ in their methods of assisting disputing parties, the mediator typically enables the parties to initiate progress toward their own resolution by improving communication between parties and guiding parties in identifying interests and exploring possibilities for a mutually agreeable resolution.

Minitrial. A structured ADR process in which the parties seek to reframe issues in controversy from the context of litigation to the context of a business problem. Typically, attorneys for each party make summary presentations to a panel consisting of a neutral minitrial advisor and non-lawyer party representatives who possess settlement authority. The panel then attempts to negotiate a resolution of the issues in controversy.

Negotiated Rulemaking. A multi-party consensus process used as an alternative to the traditional notice-and-comment approach to issuing regulations, in which agency officials and affected private representatives meet under the guidance of a neutral to engage in negotiation and draft a proposed agency rule, policy, or standard. The public is then asked to comment on the resulting proposed rule. By encouraging participation by interested stakeholders, the process makes use of private parties' perspectives and expertise, and can help avoid subsequent litigation over the resulting rule.

Negotiation. A process in which disputants communicate their differences to one another through conference, discussion and compromise, in order to resolve them.

Neutral (or ADR Neutral). An individual who functions specifically to aid the parties in a DR proceeding to resolve an issue in controversy. Depending on his or her function at a given time, an ADR neutral may be an administrative/program neutral, a session neutral, or assessor (sometimes called a “convening neutral”):

- *An administrative neutral (or program neutral) typically conducts the day-to-day administration of an ADR program, including intake, assistance in identifying and obtaining session neutrals, record-keeping, establishing evaluation mechanisms, and offering parties aid and advice.*
- *A session neutral assists the parties during and between negotiation sessions in exploring options, identifying common interests, and resolving their dispute.*
- *An assessor (or “convening”) neutral (assessor or convenor) typically confers with potentially interested persons regarding a situation involving conflict to: identify the issues in controversy and all affected interests, determine whether direct negotiations would be suitable, educate parties about the ADR process, design the structure of an ADR process to address the conflict, and possibly bring the parties together to negotiate.*

Settlement Judge. An ADR process in which a judge—different from the presiding judge in the case—meets with the parties jointly and separately, acting as a mediator or neutral evaluator in a case pending before a tribunal.

Note: These definitions were compiled from the Energy ADR Forum Report Published October 2006; the United States Navy, DD Form 2815, May 2000; and the Report to the President, ADR in the Federal Government, April 2007

ADR Resources:

<http://www.ferc.gov/legal/adr.asp>

<http://www.ferc.gov/legal/adr/brochure.pdf>

www.adr.gov

Contact Information for FERC's ADR: Dispute Resolution Division

Deborah M. Osborne
Director, Dispute Resolution Division
Office of Administrative Law Judges and Dispute Resolution
Federal Energy Regulatory Commission
888 First St., N.E.
Room 11F-19
Washington, D.C. 20426
Tel: 202-502-8831 / Fax: 202-219-2730
Email: deborah.osborne@ferc.gov
<http://www.ferc.gov/legal/adr.asp>

DRD Support Specialist: Sara Klynsma 202-502-8259

What is Alternative Dispute Resolution (ADR)?

ADR encompasses a variety of dispute resolution methods, including:

- mediation
- facilitation
- early neutral evaluation

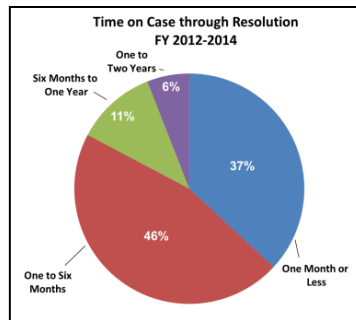
In ADR, a third party neutral guides the parties in identifying their interests and developing mutually acceptable solutions to their disputes.

In ADR, the parties make the decisions about the outcome of their dispute.

ADR processes are confidential and voluntary.



Time on Case through Resolution FY 2012-2014



ADR is an alternative to traditional litigation that can save the parties time and money, and result in party control over creative solutions and beneficial outcomes.



Take control of your case with ADR...



Dispute Resolution Division
Federal Energy Regulatory Commission
888 First Street, N.E., Washington D.C. 20426

Guiding all parties
to achieve
mutually satisfactory
solutions
to their disputes

Dispute
Resolution
Division



Federal Energy Regulatory Commission



Can DRD help me?

DRD has a proven track record in successfully mediating and facilitating complex multi-party disputes in a range of areas such as:

- electric, gas, and oil tariffs and rates
- gas certificates
- hydropower licensing
- environmental matters

DRD has guided parties to agreement in these types of disputes:

- contract disputes
- tariff and rate disputes
- interconnection agreements
- infrastructure disputes
- interagency cooperation
- cultural and natural resources

Why DRD?

The Dispute Resolution Division is a neutral unit within FERC that provides mediation, facilitation, and training for parties engaged in or affected by FERC-related disputes.

DRD is staffed full time by dispute resolution professionals who have extensive experience in all FERC-regulated energy sectors.

DRD services provide parties with the flexibility to craft their own solutions and are available to parties at any time at no charge.

In 2015, FERC dedicated a position for **Landowner Helpline** concerns. Toll Free: 1-877-337-2237 | Email: LandownerHelp@ferc.gov.

How do I access DRD?

Accessing our service is easy. Simply contact DRD about a potential ADR process. No formal filing is required.

Toll Free ADR Helpline:
1-844-238-1560

To contact a DRD staff member directly visit
DRD online: www.ferc.gov/legal/adr.asp

DRD e-mail: ferc.adr@ferc.gov

Cases:

What can DRD do?

DRD assists parties to identify an appropriate ADR process for their dispute.

DRD works with parties to identify interests and achieve a mutually satisfactory agreement.

Testimonial



Settlement between the parties would not likely been achieved without the mediation efforts of DRD. Ultimately, parties were able to settle - resulting in significant savings of both time and expense involved with a fully litigated Section 4 rate proceeding.

Training:

What can DRD do?

DRD fosters ADR understanding through training and education on ADR processes and techniques.

DRD develops customized training to fit your collaborative needs.

DRD guides entities on ADR to develop dispute resolution systems to resolve conflicts early.



Citations for Dispute Resolution Division and Alternative Dispute Resolution:

Federal Energy Regulatory Commission's Regulations, 18 Code of Federal Regulations

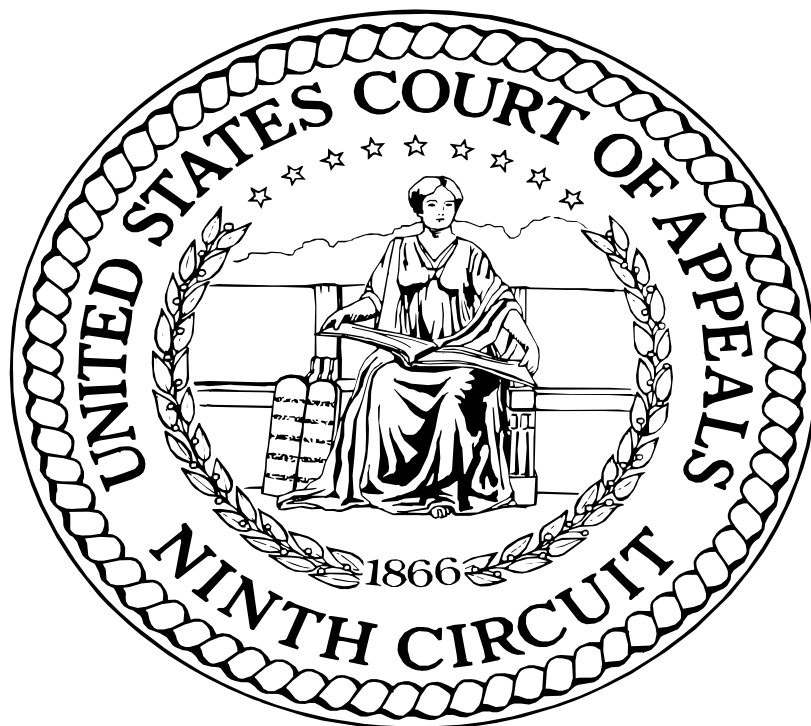
Helpline:

- §1b.21(g-h): Landowner Helpline*
- §2.55(c)(iii): Landowner Notification Letters Required to have Helpline Number
- §157.203(d)(1)(iii)(D): Blanket Certificate Landowner Notification must include Helpline Number
- §380.15(c)(iii): Sitting and Maintenance Landowner Notification must include Helpline Number

Dispute Resolution Division:

- §39.8(g)(1): Delegation to a Regional Entity treated like a complaint and required to contact DRD or explain why they didn't.
- §375.302(y): Delegation to Secretary to direct DRD staff to contact parties about ADR.
- §385.206(b)(9)(i-iii): Complaints required to include if complainant contacted DRD, whether ADR could resolve the dispute, and what ADR processes could be used.
- §385.604: Alternative Dispute Resolution rule.
- §385.606: Confidentiality in ADR rule
- §385.2201(c)(3): Off the record communications – Decisional staff does not include a neutral under rule 604.

* Note: **Effective 30 days from publication in the FEDERAL REGISTER** revisions to the Landowner Helpline Rule will be in effect. Click link for FERC Order No. 821, issued January 21, 2016 <http://www.ferc.gov/whats-new/comm-meet/2016/012116/M-1.pdf>



Mediation in the Ninth Circuit Court of Appeals

www.ca9.uscourts.gov/mediation

MEDIATION
in the
UNITED STATES COURT OF APPEALS for the NINTH CIRCUIT

A Message From The Chief Judge

For over twenty five years, the Ninth Circuit Court of Appeals has operated a court mediation and settlement program. During that time, experienced and skilled circuit mediators have worked cooperatively with attorneys and their clients to resolve a variety of disputes. The disputes mediated range from the most basic contract and tort actions to the most complex cases involving important issues of public policy. The mediators have even successfully resolved death penalty cases. No case is too big or too small for mediation in the court's program.

The court offers this service, at no cost, because it helps resolve disputes quickly and efficiently and can often provide a more satisfactory result than can be achieved through continued litigation. Each year the mediation program facilitates the resolution of hundreds of appeals.

The judges of the Ninth Circuit are extremely proud of the professional work of the eight circuit mediators, all of whom are full-time employees of the court. They are highly experienced and qualified attorneys from a variety of practices and have extensive training and experience in negotiation, appellate mediation, and Ninth Circuit practice and procedure.

Although the mediators are court employees, they are well shielded from the rest of the court's operations. The court has enacted strict confidentiality rules and practices; all who participate in one of the court's mediations may be assured that what goes on in mediation stays in mediation.

Experience has shown that counsel and litigants will find professional, efficient and effective mediation services from the court's highly regarded Circuit Mediation Office.

Sidney R. Thomas, Chief Judge

MEDIATION IN THE NINTH CIRCUIT

The court established the Ninth Circuit Mediation Program pursuant to Federal Rule of Appellate Procedure 33 and Circuit Rule 33-1 to facilitate settlement of cases on appeal.

A. How Cases Are Included in the Program

Almost all civil cases in which the parties are represented by counsel are eligible for the Circuit Mediation Program. Cases come to the program in a variety of ways. The primary mode is initiated by the court and is called the Settlement Assessment Conference. On occasion, cases are referred by panels of judges or by the Appellate Commissioner. Additionally, counsel may request that an appeal be included in the program.

1. The Settlement Assessment Conference

The mediators look to a document called the Mediation Questionnaire to help determine whether a case might be an appropriate candidate for inclusion in the mediation program. The Mediation Questionnaire is filed in the Ninth Circuit within 7 days of the docketing of an appeal or a petition for review. See Ninth Circuit Rules 3-4 and 15-2 for a description of cases excluded from the program. A fillable version of the Mediation Questionnaire is available on this court's website, www.ca9.uscourts.gov, under *Forms*.

Following a review of the Mediation Questionnaire, the court will, in most cases, order counsel to participate in a telephone conference with a circuit mediator to exchange information about the case, discuss the options the mediation program offers, and look at whether the case might benefit from inclusion in the mediation program. The initial assessment conference typically lasts between 30 minutes and an hour and includes a discussion of the case's litigation and settlement history. At the conclusion of the call, counsel and the mediator will decide whether further discussion would be fruitful. If it is agreed that that further settlement discussions are not warranted, then the mediator will discuss with counsel any procedural or case management issues that may require attention, such as moving the briefing scheduling, consolidating cases, etc. As long as counsel are in agreement, the mediator will enter an order memorializing the agreements and not selecting the appeal for the Mediation Program. Additional follow up telephone calls may be necessary before a consensus is reached about whether a case will be included in the mediation program.

If there is a consensus to proceed to mediation, the appeal will be selected for inclusion in the Mediation Program. See Section C, The Mediation Process, below.

2. Panel Referrals

Approximately ten percent of the mediation program's cases come from referrals from panels of judges and from the Appellate Commissioner. Judges usually refer cases after oral argument, but before they submit the matter for decision. Sometimes the panel will inquire

whether counsel believe such a referral would be beneficial; at other times the panel will simply refer the case. The Appellate Commissioner typically refers attorneys fees matters. Once a case has been referred, the assessment process generally follows the same process described above.

3. Requests From Counsel

Counsel are invited to contact the Chief Circuit Mediator if they would like to have an appeal included in the program. The request may be made confidentially, if so requested. Once a request has been received, the assessment follows the same process described above.

B. What Makes A Case A Good Candidate for Appellate Mediation?

In determining whether a particular case is appropriate for mediation, counsel, the parties, and the mediator will consider many factors, including the following:

- the parties' interest in participation;
- the certainty, or the possibility, that a Ninth Circuit decision will not end the dispute;
- a desire to make or avoid legal precedent;
- the existence of other appeals that raise the same legal issue;
- the desire to preserve a business or personal relationship;
- the existence of non-monetary issues;
- the possibility that a creative resolution might provide better relief than a court could fashion;
- a history of strong feelings that may have prevented effective negotiations;
- the possibility that one or all parties could benefit from a fresh look at the dispute;
- a desire to open and improve communications between or among the parties;
- the possibility that settlement efforts include more than the issue on appeal (e.g. interlocutory appeals or cases in which portions have been remanded to state court).

The program is not necessarily limited to the case that is on appeal in the Ninth Circuit as long as all parties are in agreement; the discussions may include additional parties and related cases in other courts, as well as issues that are not part of any litigation.

C. The Mediation Process

In each case selected for inclusion in the mediation program, the mediator will work with counsel to construct an effective, cost-sensitive settlement process. After the initial conference, the mediator may conduct follow-up conferences with counsel and the parties, in separate or joint sessions. These follow-up sessions may be held in-person or on the telephone. In-person

mediations may be held at the court or, in appropriate cases, in other locations. Please see “The In-Person Mediation” section below for more information regarding in-person mediations.

Working with the mediator, the parties will determine what issues will be discussed in the mediation and how those discussions will proceed. In some cases, the focus of the mediation will be on the legal issues and possible outcomes of the appellate process. In other cases, it may be on rebuilding relationships or joint problem solving. Sometimes the mediator will facilitate direct discussions between the parties; at others he or she will act as an intermediary, shuttling back and forth between them. The mediator will try to resolve these various process issues in a manner that best serves the interests of the mediation participants.

No matter what the content of the discussions, the mediator will facilitate negotiations among the parties to help them devise a mutually acceptable resolution of their dispute. The mediator will ask questions, reframe problems, facilitate communications, assist the parties to understand each other and help identify creative solutions. The mediator will not take sides, render decisions, offer legal advice or reveal confidences.

Settlement occurs when the parties find a resolution that is preferable to continued litigation. Factors that frequently favor settlement over litigation include speed, cost, certainty, control, creativity and flexibility.

D. The In-Person Mediation

When all counsel and the mediator are in agreement, the mediator will schedule an in-person mediation. It may be held at the court or, in appropriate cases, in other locations. In planning the mediation, counsel should expect to address many of the following questions:

- Who is the appropriate decision maker on your side?
- Who might be the appropriate decision maker on the other side(s)?
- If your side is a governmental entity, who is the person most likely to be able to “sell” a negotiated solution to the appropriate decision-making body?
- Are there any non-parties whose presence at the mediation is necessary to effectuate a resolution? For example: insurance carriers, lien-holders, spouses, etc.
- What information do you need to make the mediation productive?
- What information might the other side need to make the mediation productive?
- What does the mediator need to know to prepare? What’s the best way to get the mediator prepared?
- Does your client have any particular sensitivities of which the mediator should be aware?
- Is there any related litigation that should be included?
- What venue is most convenient to the greatest number of participants?

- Do you or your client have any calendar limitations? For example, scheduled vacations, long trials, etc.
- Does any participant have health or mobility issues that might need to be accommodated?

E. Preparing for Mediation

The most effective and efficient mediations are those in which counsel and their clients are fully prepared. Full preparation means understanding the case on a number of different levels. First, counsel will want to make sure they know the standard of review on appeal, understand the relevant law and facts, and have a good sense of both how the appeal fits into their client's litigation strategy and how the litigation itself serves the client's larger goals.

In addition, the following questions may be helpful to counsel and their clients in preparing for mediation:

1. Mediation works best when all participants know what really matters to them. What are the key needs and interests of yours that, if satisfied, would allow you to resolve this matter? Key needs or interests could be for example: certainty, closure, economic security, avoidance of legal precedent, avoidance of future litigation, fairness, respect, understanding, institutional change, etc.
2. Try to identify the key interests of the other parties to the dispute.
3. Assuming anything is possible, what would you like to talk about at the mediation? What do you think the other parties would want to discuss?
4. What could you find out at mediation that might help you understand the actions and choices of the other parties in this matter?
5. What is the emotional tenor of this dispute? How might you best deal with your own emotions? How might the mediator help you do this?
6. Consider what will happen if you win the appeal. Consider what will happen if you lose the appeal. Will the appeal end the litigation? Might you or another party file bankruptcy? How much will it cost to pursue the appeal and subsequent proceedings, if any?
7. What practical concerns inform your thoughts about how to resolve this matter? Practical concerns might include tax consequences, precedential implications, satisfaction of lienholders, cash flow issues and attorney compensation.
8. What other concerns might be relevant to your thinking about how to resolve this case? For example, are there issues of principle for you or the other parties to the dispute?

9. What would it feel like to have the case proceed without a negotiated resolution? And end favorably to you? Unfavorably?
10. Will ending the litigation resolve the entire dispute? Might you have further contact with other parties to this matter? Do you have common business or personal associations?
11. Can you imagine a resolution (or resolutions) that would meet the needs and interests of all parties to the dispute? What would it feel like to have the dispute settled in a manner that was satisfactory to all parties? Are there other people to whom you'd want to be able to explain your decision to settle this matter?

CONFIDENTIALITY

The Court exercises great care to ensure the confidentiality of the settlement process. Circuit Rule 33-1 provides as follows:

Confidentiality. To encourage efficient and frank settlement discussions, the Court establishes the following rules to achieve strict confidentiality of the mediation process.

- (1) The Circuit Mediators will not disclose mediation related communications to the judges or court staff outside the mediation unit.
- (2) Documents, e-mail and other correspondence sent only to the Circuit Mediators or to the mediation unit are maintained separately from the court's electronic filing and case management system and are not made part of the public docket.
- (3) Should a Circuit Mediator confer separately with any participant in a mediation, those discussions will be maintained in confidence from the other participants in the settlement discussions to the extent that that participant so requests.
- (4) Any person, including a Circuit Mediator, who participates in the Circuit Mediation Program must maintain the confidentiality of the settlement process. The confidentiality provisions that follow apply to any communication made at any time in the Ninth Circuit mediation process, including all telephone conferences. Any written or oral communication made by a Circuit Mediator, any party, attorney, or other participant in the settlement discussions:
 - (A) except as provided in (B), may not be used for any purpose except with the agreement of all parties and the Circuit Mediator; and
 - (B) may not be disclosed to anyone who is not a participant in the mediation except

- (i) disclosure may be made to a client or client representative, an attorney or co-counsel, an insurance representative, or an accountant or other agent of a participant on a need-to-know basis, but only upon receiving assurance from the recipient that the information will be kept confidential;
 - (ii) disclosure may be made in the context of a subsequent confidential mediation or settlement conference with the agreement of all parties. Consent of the Circuit Mediator is not required.
- (5) Written settlement agreements are not confidential except as agreed by the parties.
- (6) This rule does not prohibit disclosures that are otherwise required by law.

FREQUENTLY ASKED QUESTIONS

1. What is an assessment conference?

After reviewing the Mediation Questionnaire, the mediators select cases for a telephonic Settlement Assessment Conference, the purpose of which is to engage counsel in a discussion about whether the case might benefit from settlement efforts. The conference includes a discussion of the case's history, counsel's views on whether mediation would be appropriate, and the mediator's explanation of possible settlement procedures. At the conference (or sometimes at a subsequent follow-up conferences), counsel and the mediator will decide whether to include the case in the mediation program.

2. Who is expected to participate in an assessment conference?

The court expects that all counsel intending to file briefs in the case participate in the conference. If more than one attorney is representing a party, then the attorney with the most direct relationship with the client should participate. Co-counsel and other attorneys in the principal counsel's firm may attend if counsel believes their presence would be beneficial. Clients are not expected to participate in the initial assessment conference.

3. Is attendance at the assessment conference mandatory?

Yes. Attendance at the initial assessment conference is ordered by the court and is mandatory.

4. What if counsel is not available for the Assessment Conference as scheduled?

The mediation program will reschedule the initial Assessment Conference if counsel has a pre-existing obligation. Counsel should contact the mediation office by telephone [415-355-7900] or fax [415-355-8566] to request that the case be rescheduled. Ideally, counsel will have contacted opposing counsel first, and will include with the request a list of alternate dates and times available to all counsel.

5. Who initiates the call?

The mediator will initiate the call to all counsel listed in the court's order setting up the conference. If the order contains incorrect information, it is important that counsel correct this information in advance of the initial call.

6. Do clients participate in the assessment and other telephone conferences?

Clients are discouraged from participating in the initial assessment conference call. Depending upon the case, clients may participate in subsequent phone conferences, and will

always participate in in-person sessions, but the initial assessment conference is intended for counsel only

7. How long will the conference last?

The initial assessment conference typically lasts from 30 to 60 minutes. Subsequent telephone conferences can vary in length, depending upon the nature and scope of the discussions.

8. Does a mediation statement need to be submitted?

No mediation statement is required for the initial assessment conference. If the case progresses further in the mediation process, the mediator may request that counsel submit mediation statements.

9. What does the mediator know about the appeal and what documents are available to the mediator before the assessment conference takes place?

Prior to holding the assessment conference, the mediator will have reviewed the Mediation Questionnaire filed by the appellant, the Ninth Circuit docket, and the lower court order from which the appeal stems. Sometimes the Mediation Questionnaire and the order appealed from contain a great deal of information, other times they contain very little. In all instances the mediator will give counsel the opportunity to explain their view of the case.

10. Who are the mediators?

The mediators are all experienced attorneys who come from a variety of backgrounds. All are highly trained in mediation and negotiation. The mediators are employees of the court and have been mediating for the court for from eight to twenty years. See “The Ninth Circuit Mediators,” below.

11. Are mediators assigned a particular appeal according to its subject matter?

No. Appeals and petitions for review are assigned to all the mediators randomly, regardless of subject matter, with two small exceptions. All petitions for review related to the Bonneville Power Administration are assigned to Chris Goelz, and all petitions for review related to certain decisions of the Federal Energy Regulatory Commission are assigned to Lisa Evans.

12. Can the parties select a mediator from the program?

No, cases are assigned to the individual mediators in a random fashion. A mediator will, however, handle all related cases. In the event that related matters have been overlooked, requests to send them to the mediator with the earliest appeal are encouraged. Please note that

Chris Goelz, who is based in our Seattle office, handles all cases originating in the state of Washington. The remaining cases are divided randomly among the other eight mediators, all of whom are located in the San Francisco office.

13. What if the parties wish to hire a private mediator?

If parties wish to hire a private mediator, the circuit mediator will manage the appeal (including adjustment of the briefing schedule) to accommodate the private mediation. The Ninth Circuit does not refer cases to private mediators, nor does it use a panel of private volunteer mediators

14. Can the mediators move or vacate the briefing schedule?

Yes, the mediators can vacate or extend the briefing schedule, but will do so only if all counsel are in agreement. If counsel cannot agree, a motion must be filed.

15. Does involvement of an appeal in the mediation program slow down the disposition of the appeal?

No. Typically if a case is mediated, the mediator (with the agreement of counsel) will vacate the briefing schedule. If the case does not settle, the mediator will establish a new briefing schedule. Doing so does not delay disposition of the appeal, as the court schedules oral argument based on the date the Notice of Appeal is filed, not on the dates the briefs are filed. In most cases, oral argument is scheduled later than 12 months after the filing of a notice of appeal, which usually allows enough time to mediate without delaying disposition of the case.

16. If an appeal is in the program, will the mediation take place in person? If so, where will it occur?

Each case is unique. One of the mediator's tasks is to make sure that the mediation process meets the needs of all participants, to the greatest extent possible. Thus, in one case the mediator will schedule multiple conferences over the telephone, while in another he or she will hold an in-person mediation. When an in-person mediation is scheduled, the mediator will make every effort to hold the session in a venue that is as convenient as possible for the greatest number of participants. Mediators will travel to locations throughout the Ninth Circuit when warranted.

17. Is there a cost to my client of participating in the mediation program?

No. The mediation program is a service of the court and is provided free of charge.

18. Does the mediation office take pro se cases, i.e. cases where at least one party is not represented by counsel?

No. The Ninth Circuit Rules exempt pro se cases from participation in the program. (See Rules.) The court, with the assistance of its Rules Committee, has made a policy decision to exclude unrepresented parties from participation in the mediation program.

19. Can I request that my case be included in the mediation program?

Yes. In any counseled case, counsel may send a request to be included in the program to the Chief Circuit Mediator. Such requests will be held confidential if counsel so requests.

20. How does appellate mediation differ from mediation at the District Court level?

Mediation at the appellate level is not particularly different from mediation at the District Court level. In both instances mediators help parties to explore their interests, think creatively, and develop solutions. The difference is that on appeal, a judge, jury or administrative agency has rendered an appealable decision. Sometimes that decision resolves all of the substantive issues in the case, and sometimes it resolves only some of them (e.g., appeals from preliminary injunctions or decisions about qualified immunity). Either way, the decision, and what is likely to happen to it on appeal, become part of the risk analysis the mediator uses to help the parties negotiate. That said, some cases lend themselves to appellate mediation better than others. See “What Makes a Case a Good Candidate for Appellate Mediation?”, above.

21. Now that the court is using electronic filing, how is the confidentiality of mediation materials maintained?

Any document electronically filed with the court’s clerk’s office is not confidential and will appear on the court’s electronic docket. The mediators can cause the clerk to remove mistakenly filed confidential documents after the fact, but counsel should exercise care in the first instance to avoid the filing of confidential documents with the court. All messages, correspondence and documents sent to the Mediation Program’s e-mail address or sent to the individual mediators’ e-mail addresses are maintained separately from the court’s electronic filing and case management system and are confidential.

THE NINTH CIRCUIT MEDIATORS

The Ninth Circuit Mediation Program is staffed by a chief circuit mediator and seven circuit mediators who all work exclusively for the court of appeals. Seven are resident in the court's San Francisco headquarters; one is resident in the court's Seattle office. The mediators are all licensed attorneys who have an average of twenty-five years of combined private-law and mediation practice. They are all experienced and highly trained in appellate mediation, negotiation, and Ninth Circuit practice and procedure.

Claudia L. Bernard
Chief Circuit Mediator
415-355-7908
Claudia_Bernard@ca9.uscourts.gov

Roxane Ashe
Circuit Mediator
415-355-7911
Roxane_Ashe@ca9.uscourts.gov

Ann Julius
Circuit Mediator
415-355-7906
Ann_Julius@ca9.uscourts.gov

Margaret Corrigan
Circuit Mediator
415-355-7905
Margaret_Corrigan@ca9.uscourts.gov

Stephen Liacouras
Circuit Mediator
415-355-7915
Stephen_Liacouras@ca9.uscourts.gov

Chris Goelz
Circuit Mediator
206-224-2323
Chris_Goelz@ca9.uscourts.gov

Peter Sherwood
Circuit Mediator
415-355-7909
Peter_Sherwood@ca9.uscourts.gov

Lisa Jaye
Circuit Mediator
415-355-7910
Lisa_Jaye@ca9.uscourts.gov

FOR MORE INFORMATION

If you would like more information regarding the Circuit Mediation Program please contact us via email, telephone or letter:

E-mail Address:

ca09_mediation@ca9.uscourts.gov

Circuit Mediation Office
U.S. Court of Appeals
for the Ninth Circuit
James R. Browning Courthouse
95 Seventh Street
P.O. Box 193939
San Francisco, California
94119-3939

Hours:

Office hours are 8:30 a.m. to 5:00 p.m.
Monday through Friday, excluding federal holidays.

RELEVANT RULES AND FORMS

The following are available on the Ninth Circuit Mediation Office website, www.ca9.uscourts.gov/mediation:

- Circuit Rule 3-4: Mediation Questionnaire
- Circuit Rule 15-2: Mediation Questionnaire in Agency Cases
- Federal Rule of Appellate Procedure 33: Appeal Conferences
- Circuit Rule 33-1: Settlement Programs – Appeal Conferences
- Mediation Questionnaire
- Sample Motion to Dismiss
- Sample Stipulated Motion to Dismiss
- Sample Stipulated Motion to Dismiss Without Prejudice
- Sample Order to Dismiss Without Prejudice
- Sample Scheduling Order