

APPENDIX H PROCEDURE FOR ALTERNATIVE DISPUTE RESOLUTION

1. General. The United States Court of Federal Claims recognizes a variety of voluntary, non-binding alternative dispute resolution (ADR) tools for use in appropriate cases. ADR techniques include but are not limited to mediation, mini-trials, early neutral evaluation, and non-binding arbitration. These processes may be conducted either by a settlement judge or a third-party neutral.

2. Terms.

(a) Settlement Judge. A judge of the court, other than the assigned judge. Appointment of a settlement judge permits the parties to engage in a frank, in-depth discussion of the strengths and weaknesses of each party's case before a judicial officer without the inhibitions that might exist before the assigned judge. A settlement judge may act both as a mediator and as a neutral evaluator. This process should be employed early enough in the litigation to avoid needless expense and delay. Use of a settlement judge permits the parties to gain the benefit of a judicial perspective without jeopardizing their ability to gain a resolution of their case by the assigned judge should settlement efforts fail.

(b) Assigned Judge. The judge regularly assigned to the case.

(c) Third-Party Neutrals. In consultation with the bar, the court will maintain a list of qualified individuals who have indicated their willingness and demonstrated their ability to serve as neutral evaluators and mediators. Parties may select a third-party neutral who is not on the court's list.

(d) Mediation. A flexible and voluntary dispute-resolution procedure in which a settlement judge or a third-party neutral, acting as the mediator, facilitates negotiations to reach a mutually agreeable resolution. The mediation process involves

one or more sessions in which counsel, litigants, and the mediator participate and may continue over a period of time. The mediator can help the parties improve communication, clarify interests, and probe the strengths and weaknesses of their own and their opponents' positions. The mediator can also identify areas of agreement and help generate options that lead to settlement.

(e) Early Neutral Evaluation. Using the services of a third-party neutral or a settlement judge knowledgeable in the subject matter of the litigation to assess the strengths and weaknesses of the parties' positions. In this manner, the parties may gain a more realistic view of their prospects for success, thus narrowing the issues and facilitating settlement.

(f) Mini-Trials. A flexible, abbreviated procedure in which the parties present their case, or a portion of it, to a third-party neutral or a settlement judge.

3. Procedures. RCFC 16 and Appendix A, paragraphs 3(f) and 4(i), set out the parties' obligations with respect to consideration of ADR. At any point in the litigation, however, the parties may notify the court of their desire to pursue ADR. There is no single format for ADR. Any procedures agreed to by the parties and adopted by the settlement judge or third-party neutral may be used. Certain basic ground rules will be observed, however, as follows:

(a) ADR is voluntary. A party's good-faith determination that ADR is not appropriate in a particular case should be respected by other parties and by the court.

(b) When the parties have indicated their agreement to ADR to the assigned judge, the assigned judge, if in agreement, will forward the request to the clerk of the court for assignment to a settlement judge or a third-party neutral as selected by the parties.

(c) In the event the parties agree to use

ADR, the settlement judge or third-party neutral and the parties will develop procedures appropriate to that case. The settlement judge or third-party neutral and the parties will develop a written statement, to be executed by the settlement judge or neutral, outlining the terms of the settlement process, including an indication of assent to confidentiality by all parties. Neither this statement nor any other materials developed for use solely within the ADR process will be filed with the court.

(d) There will be no transcript of any ADR proceeding. All ADR proceedings, including documents generated solely for the proceedings and communications within the scope of the proceedings, are confidential and will not be provided to a judge of the court who is not the settlement judge in the dispute. Information that is otherwise discoverable or admissible does not lose that characteristic merely because of its use in the ADR proceedings.

(e) Participation in ADR constitutes agreement by the parties not to subpoena or seek in any way the testimony of the settlement judge in any subsequent proceeding.

(f) During the ADR process, the matter will remain on the docket of the assigned judge. At the conclusion of the ADR process, the settlement judge or the third-party neutral will notify the assigned judge and the clerk of the court only of the outcome, i.e., whether the matter has been settled.

Rules Committee Note
2002 Revision

Appendix H formerly appeared as General Order No. 13, dated April 15, 1987, and later amended through Amended General Order No. 13, dated November 8, 1996. The adoption of the ADR process as an appendix to the rules reflects the court's recognition of the increasing usefulness of ADR procedures in the resolution of claims against the United States.