

# **ALTERNATIVE DISPUTE RESOLUTION**

## **ITS PLACE IN THE SPECTRUM OF CONFLICT RESOLUTION**



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## INTRODUCTION

Alternative Dispute Resolution (ADR) has become more and more prevalent in what used to be areas reserved for traditional litigation. Stemming from the Administrative Dispute Resolution Acts of 1990 and 1996,<sup>1</sup> federal agencies have introduced ADR processes into the spectrum of disputes in which they are involved, from settling contract and environmental disputes, to widespread use of ADR to resolve labor and employment-related disputes. Since 1999, the Equal Employment Opportunity Commission has mandated the availability of ADR as an option for resolving federal sector EEO complaints.<sup>2</sup> The Contract Disputes Act of 1978<sup>3</sup> encourages the use of ADR in government procurement disputes, and this policy is carried over into the Federal Acquisition Regulation.<sup>4</sup> Since 1998, all federal district courts are required to have ADR programs available as part of their civil litigation dockets.<sup>5</sup> In the environmental realm, there are many statutory and policy initiatives to promote collaborative problem-solving approaches to avoid and resolve environmental disputes.<sup>6</sup>

All DoD Components, including the Army, are required to have an ADR policy and program in effect, and to treat every dispute as a candidate for ADR.<sup>7</sup> The Army's ADR policy dates back to 1995, and was most recently reaffirmed by the Secretary of the Army in a June 22, 2007 policy memorandum. Army Materiel Command and the Army Corps of Engineers have each won awards from the Office of Federal Procurement Policy in OMB for outstanding ADR programs in federal contract disputes. Thus, ADR has been a vital tool in the resolution of Army disputes for many years.

When strategically applied, ADR has proven to be useful in reducing agency costs both in time and money, improving working relationships, and increasing the efficiency of problem solving programs. Used tactically, ADR techniques help parties overcome or avoid impasse; by helping the parties identify creative solutions to daunting problems, a neutral can help turn a difficult negotiation into a satisfying outcome. To be able to effectively employ this weapon, one must be familiar with the spectrum of ADR methods and techniques.

The Administrative Dispute Resolution Act defines alternative means of dispute resolution as "any procedure that is used to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, fact-finding, mini-trials, arbitration, and use of ombuds, or any combination thereof."<sup>8</sup> More commonly, ADR refers to a collection, or continuum, of relatively informal processes for resolving disputes in lieu of traditional litigation and other adjudicative processes.

All ADR processes are voluntary, meaning the parties to the dispute select the process and exercise self-determination as to its ultimate outcome. Just as important, ADR processes do not compete with litigation in a zero-sum game; rather, they complement litigation. In every dispute in which litigation is a possibility, a decision to first try ADR does not negate that possibility. The voluntary nature of ADR, coupled with the continuing availability of litigation and

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<sup>1</sup> Public Law 104-320, codified at 5 U.S.C. § 571, *et seq.*

<sup>2</sup> 29 C.F.R. § 1614.102(b)(2).

<sup>3</sup> 41 U.S.C. § 601, *et seq.*

<sup>4</sup> 48 C.F.R. Subpart 33.214.

<sup>5</sup> Alternative Dispute Resolution Act of 1998, 28 U.S.C. § 651, *et seq.*

<sup>6</sup> See OMB and CEQ Joint Memorandum on Environmental Conflict Resolution, available online at <http://www.adr.gov/pdf/ombceqjointstmt.pdf>.

<sup>7</sup> DoD Directive 5145.5, *Alternative Dispute Resolution* (April 22, 1996), ¶ 4

<sup>8</sup> 5 U.S.C. § 571(3).

other “traditional” dispute resolution processes and forums, assures the parties to a dispute the full spectrum of dispute resolution options.

As the table below illustrates, ADR processes occupy a wide middle ground between unassisted negotiations and adjudication in administrative and judicial forums. ADR processes are varied and flexible, responsive to the needs of the parties and the nature of the dispute. The “process assistance” techniques, such as facilitation and mediation, employ a trained third-party neutral to assist the parties in their negotiations. Parties are not obligated to reach a particular outcome, so this type of ADR is a non-binding process. The “outcome prediction” techniques use a third-party neutral, usually with subject-matter expertise, to review the parties’ positions and supporting arguments and predict the likely outcome if the dispute goes to litigation. The outcome may or may not be binding, depending on how the parties agreed to treat it. All ADR processes, even the binding ones, reserve to the parties a greater degree of control over the dispute and its disposition than traditional litigation. They also provide a forum for addressing and resolving issues that may be beyond the jurisdiction of administrative boards and the courts.

| UNASSISTED NEGOTIATIONS             | ALTERNATIVE DISPUTE RESOLUTION |                           |                                     | ADJUDICATION  |
|-------------------------------------|--------------------------------|---------------------------|-------------------------------------|---|
| Traditional Settlement Negotiations | <b>PROCESS ASSISTANCE</b>      | <b>OUTCOME PREDICTION</b> |                                     | Admin Boards (EEOC, MSPB, FLRA, BCAs)<br><br>Judicial Forums (Federal Courts) |
|                                     | Convening                      | Early Neutral Evaluation  | Binding Arbitration                 |   |
|                                     | Facilitation                   | Non-Binding Arbitration   | Summary Trial with Binding Decision |   |
|                                     | Mediation                      | Fact Finding              |                                     |   |
|                                     | Ombuds                         | Summary Jury Trial        |                                     |   |
| Mini-Trial Settlement Judge         |                                |                           |                                     |   |
| <b>NON-BINDING PROCESSES</b>        |                                |                           | <b>BINDING PROCESSES</b>            |   |



As noted in the chart, the degree of control, or self-determination, exercised by the parties over their dispute diminishes as the process moves from the left side (unassisted negotiations) to the right side (adjudication). While unassisted negotiations give the greatest control, they also introduce internal and external factors that often lead to failure to reach agreement: emotions, perceptions, lack of trust between the parties, overconfidence in the strength of their positions,

and aversion to risk all can contribute to impasse. Adjudication processes (i.e., litigation) give the parties much less control, but do provide a definitive outcome (even if the outcome is not to none's liking). ADR processes occupy the middle range between unassisted negotiations and adjudication, thereby giving the parties reasonable control over the process, while affording them mechanisms that make resolution of the dispute on acceptable terms more likely.

There are many different procedures and techniques that are grouped within the general moniker of ADR, but generally they all involve the selection by the parties of a neutral third party to help them resolve their dispute. Some of these techniques use a neutral to help facilitate the parties' efforts to resolve their dispute through negotiation. These techniques are called "process assistance," and include facilitation, mediation, and conciliation. These techniques typically use an interest-based negotiation or problem solving approach, which is quite effective in producing agreement. Other ADR techniques use the neutral not merely to facilitate negotiations but also to evaluate the parties' respective cases and predict the outcome should the dispute go to litigation. These techniques are called "outcome prediction," and include early neutral evaluation and nonbinding arbitration. Because outcome prediction requires an evaluation of the parties' likelihood of success should the matter go to trial, the neutral must also be a substantive expert in the subject matter of the dispute. Moreover, outcome prediction processes may be binding, as in the case of binding arbitration, or nonbinding, as in the case of early neutral evaluation. Binding outcome prediction does require the parties to give up some control over the process or the outcome, or both, but because they select the process and the decision-maker in the first instance, the parties still retain more control than they would have if the dispute goes to litigation.

The following discussion examines the three major divisions of the dispute resolution spectrum in greater detail, with special emphasis on the distinctions between the major ADR processes and techniques.

### **UNASSISTED NEGOTIATIONS**

Unassisted negotiations are the traditional one-on-one negotiations between parties (and their representatives, if they have them) commonly used to resolve disputes and avoid litigation. Because they do not employ a neutral third party, they are generally not considered to be ADR.<sup>9</sup> We mention unassisted negotiations here, however, to keep the reader mindful that a negotiation, while unassisted, remains a valuable and powerful method of settling disputes, particularly when the parties agree to use an interest-based negotiation approach, and has its place in the spectrum of dispute resolution. A sincere, serious attempt to directly negotiate a satisfactory solution is always advised before bringing in neutrals and designing ADR processes. The question is not whether to negotiate, but what quality those negotiations should have. If the parties are satisfied with both the process and the progress of their negotiations, there is no reason to employ a third party neutral.

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<sup>9</sup> The ADRA defines a "dispute resolution proceeding" as a process in which an alternative means of dispute resolution is used to resolve an issue in controversy in which a neutral is appointed and specified parties participate. 5 U.S.C. § 571(6). This definition is generally understood to require the participation of a third-party neutral for a proceeding to qualify as "ADR." One possible exception concerns contract disputes under the Contract Disputes Act, which seems to give the parties greater leeway to structure a dispute resolution process with or without a neutral. See 41 U.S.C. § 605(d).

## **ADR - ASSISTED NEGOTIATIONS**

All ADR methods can be thought of as “assisted” negotiations. The type of assistance, however, can vary considerably. In the table, the significant distinction is whether the neutral is providing “process assistance” or “outcome prediction.” It is important to understand your problem well enough to know which type of assistance is really needed to solve it, but it is important to also keep in mind that ADR is a very flexible tool, and sometimes the line between process assistance and outcome prediction is blurred. For example, the parties may want a mediator to not only facilitate their negotiations, but to evaluate the strengths of their positions as well. Some mediations, particularly in workplace disputes, may also involve a deeper examination of the dynamics of the workplace, or the relationship between the parties, that go beyond the basic facts of the instant dispute. Each of these scenarios can play out in mediation, depending on what the parties want to do. As we discuss each of these methods of ADR, you should be able to see how the methods offer certain attributes, the application of which can be more appropriate to certain problems than to others. Regardless of the technique employed, assisted negotiations do not bind the parties to a particular outcome unless they expressly agree to it.

### **1. PROCESS ASSISTANCE**

There are some types of disputes where the inability to settle has little to do with the facts or the law, and where a neutral’s opinions on the merits would add little value to the already on-going negotiations. These are the cases where the parties cannot communicate, or are polarized, or do not trust each other, or feel that compromise is defeat. In these cases, developing a mutually satisfactory solution requires getting the parties to think beyond their positions or demands, focus instead on their interests, and generate options to satisfy those interests. The problem is, they cannot get there on their own. These are the types of cases where process assistance is most valuable.

#### **a. Mediation**

Mediation is undoubtedly the most popular and familiar form of process assistance. It is a process in which a specially trained third party neutral helps the parties to come up with their own solutions to resolve their dispute. Depending on the type of dispute and the wishes of the parties (who maintain significant control over the type of mediation to employ), the mediator may or may not be an expert in the matters giving rise to the dispute. If the purpose of the mediator is to facilitate resolution by encouraging party-to-party communication, for example, subject-matter expertise may be unnecessary. If the parties want the mediator to evaluate their respective positions or demands in addition to facilitating the search for solutions, subject-matter expertise becomes a critical requirement. Other forms of mediation may focus less on the specific issues at hand, to examine the overall environment or relationship between the parties, in an effort to transform that environment or relationship. This form of mediation, known as transformative mediation, is frequently used in workplace disputes or other disputes in which the relationship between the disputants is important. Depending on the skills of the mediator, it is possible to combine the facilitative, evaluative, and transformative modes of mediation into one proceeding, if by doing so the parties can move toward resolution, and if the parties agree to such an approach.

As the above discussion suggests, the parties maintain significant control over the mediation process, and total control over the outcome—whether there is a settlement, and if so, on what terms. This extremely adaptable process can allow the parties the opportunity to address

underlying problems that go beyond the dispute at hand. Creativity in designing solutions, especially to the extent that hidden problems are solved, can result in a high rate of compliance with the settlement agreement. The process is entirely voluntary, takes much less time, and is almost always much less expensive than arbitration. Regardless of the mediation method used, the mediator has no power to impose settlement on the parties; but the value added by the neutral is to get the parties over the barriers they may have developed in their unassisted attempts at negotiation. The mediator does this by allowing the parties to discuss the problems and clarify their issues, vent their emotions, and solve problems together. A key tool for the mediator is the private caucus, which provides each side an opportunity (or several) to meet privately with the mediator to discuss issues and solutions in confidence. Mediation is particularly well suited for those cases in which emotions are driving the differences, and cases where facilitating the relationship between the parties is important. For that reason, mediation is the technique of choice in workplace disputes.

### **b. Facilitation**

Facilitation is an informal, generally unstructured process that varies according to its purpose. The lack of structure is what makes facilitation highly adaptable to the circumstances requiring it. If the purpose of facilitation is to help a group reach consensus on an issue or to achieve an objective, it keeps the discussion on track and moving forward, with the facilitator not unlike a traffic cop, keeping the lanes of communication open and moving in the right directions. If the purpose is to resolve or manage internal organizational conflicts, it helps the organization personnel, including its leadership, to work together to identify and resolve sources of conflict before they become the bases for complaints. The facilitator in this scenario may act more as a team builder to empower the participants. Finally, if the purpose is to resolve a specific dispute between discrete parties, facilitation may look much like mediation, only less structured and usually without private caucuses. Regardless of scenario, facilitation is used to help people use communication to achieve a goal, whether that goal is to complete a project, or improve the working environment, or to settle a specific dispute. Because the skills needed for successful facilitation are basically the same as those needed for a successful mediation, we find that trained and experienced mediators also make good facilitators, especially in the realm of dispute resolution.

### **c. Conciliation**

Conciliation is a process by which the neutral calls for the assembly of the parties to a dispute, as well as others who may have a stake or an insight into a potential resolution. After discussion of the problems, the neutral builds a common commitment for action by creating an environment in which all are encouraged to express thoughts and propose solutions. From this in-depth exploration, common goals are identified and the parties then brainstorm alternatives together. Fostering participation, and assisting parties to find the common ground by guiding the parties' self-interest toward a general interest, increases the likelihood of buy-in to the ultimate decision by all concerned. Often a new procedure or manner of conducting business is the result of the conciliation process.

## **2. OUTCOME PREDICTION**

In outcome prediction assisted negotiations, the neutral provides the parties with an opinion on the outcome of the case. The opinion is non-binding, although there are procedures as discussed below in which the parties may agree to treat the opinion as binding. In non-binding

outcome prediction processes, the parties either continue to negotiate or prepare their cases for litigation. If negotiations continue, the neutral can remain part of the negotiation to help develop a solution (often acting in a facilitative role), or not. In binding processes, the parties agree in advance to be bound by the neutral's opinion/decision. The methods discussed in this section focus more on the facts and or legal issues in the dispute as opposed to the relationship between the parties (the cornerstone concern in the "process" model).

### **a. Arbitration**

Arbitration is the oldest and best-known ADR process. It was the first alternative to traditional litigation, dating back to the early 20<sup>th</sup> century,<sup>10</sup> and is regularly utilized by the Army and other agencies to resolve disputes, especially employee grievances. The decision of the arbitrator (or panel of arbitrators) can be either binding or non-binding. As the term implies, a binding decision represents a legal obligation that cannot be rejected (although there may be avenues of appeal). This feature makes binding arbitration an attractive option in commercial disputes, because it is relatively fast, inexpensive, and results in a binding decision (or award) that generally cannot be overturned except on very narrow and limited grounds. On the other hand, this same feature makes binding arbitration problematic for government ADR practice and policy, because government agencies generally cannot agree to private adjudication procedures that may bind them prospectively. Accordingly, the Administrative Dispute Resolution Act requires agencies, through their heads, to consult with the Attorney General and issue guidelines for the use of binding arbitration before it can be used.<sup>11</sup> To date, the Army has not issued such guidelines, nor have the vast majority of other federal agencies. Therefore, outside of grievance arbitration under the Federal Sector Labor-Management Relations Statute,<sup>12</sup> binding arbitration is not authorized for use in resolving disputes to which the Army is a party. Non-binding arbitration, and other binding procedures under the auspices of a court or board with proper jurisdiction,<sup>13</sup> may be used.

Arbitration closely resembles litigation in appearance (opening statements, witnesses, documents, arguments, etc.) and in procedure (there are prescribed guidelines for the arbitration, and the arbitrator has some authority to move the case along). Finally while the parties can limit the arbitrator's role somewhat (explained below) and introduce some flexibility into the process, the arbitrator's (or panel of arbitrators') role is to apply the law to the facts as found. Arbitration awards are enforceable under the Federal Arbitration Act, and generally will not be vacated or modified except in the limited circumstances specified in the statute.<sup>14</sup> Similarly, challenges to arbitration awards in employee grievances appealable under the Federal System Labor-Management Relations Statute are subject to the limited standard of review afforded to private-sector labor arbitration awards.<sup>15</sup>

Arbitration is more attractive in those cases in which the parties want the decision to a dispute relatively quickly (or they would otherwise be satisfied with litigation), or where there is very little likelihood of a negotiated agreement between the parties (with or without the assistance of a third party neutral), but both sides wish to avoid litigation. Arbitration can also be particularly well

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<sup>10</sup> The first ADR statute, the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*, was enacted in 1925.

<sup>11</sup> 5 U.S.C. § 575(c).

<sup>12</sup> 5 U.S.C. § 7121(b)(1)(C)(iii).

<sup>13</sup> *E.g.*, the Summary Trial with Binding Decision procedure sanctioned by the Armed Services Board of Contract Appeals, discussed *infra* pp. 7-8, is a permissible ADR procedure.

<sup>14</sup> 9 U.S.C. § 10 (vacation of arbitration awards) and § 11 (correction or modification of awards).

<sup>15</sup> 5 U.S.C. § 7122(a); *see also*, 5 U.S.C. § 7123(a)(1) (limiting judicial review of arbitration awards).

suited for those cases where either or both parties would negotiate an agreement, but are concerned whether the result will withstand scrutiny (both internal and external).

Although parties give up more control in binding arbitration than they do in other ADR processes, they can still wield some control over the process and its outcome by limiting the parameters of the arbitrator's decision. For example, parties define the scope of the arbitrator's authority by dictating the issue to be resolved. They can also limit the award possibilities. Two examples of this are "high-low" and "final offer" arbitration (also known as baseball arbitration). In high-low arbitration the parties agree in advance that an acceptable award will be in the range between the parties' last best offers. The arbitrator is advised of the agreement, but not the range of an acceptable award. If the award falls outside the range, it is adjusted either upward or downward, as appropriate. This gives parties the incentive to lower their risk by narrowing the range in their negotiations leading up to arbitration. In final offer arbitration, the arbitrator is aware of each party's last best offer, and is limited to awarding one of these two amounts based on the merits of each case. This type of arbitration is used in salary disputes between baseball players and teams, hence the vernacular, baseball arbitration. Again, this approach gives the parties an incentive to lower their risk by narrowing the difference between the final offer and final demand in their pre-arbitration negotiations. These types of arbitration are less useful when issues other than money are in controversy. Therefore, they are generally not amenable to workplace and other disputes that typically involve non-monetary issues.

#### **b. Summary Jury Trial**

A summary jury trial is a forum where the parties present an extremely abbreviated case (generally, a recitation of the facts, short arguments, and clear instructions from the bench) to a mock jury that then deliberates and announces its "verdict." The "verdict" is not official, of course, but the parties and their counsel get an opportunity to see how well or how poorly their case would play out in court. Will that intricate legal point be understood? Will the jury be unpersuaded because of witness credibility problems? If the parties resume negotiations, they are more educated about the strengths and weaknesses of their cases and can be more flexible and more effective negotiating a settlement. If negotiations fail, they know where they have more work to do. Considerable effort goes into preparing and executing a summary jury trial, so this tool should be reserved for those cases where it is important to see how the case would likely be decided if it went to a jury.

#### **c. Early Neutral Evaluation (ENE)**

In this process the parties present their respective cases to a third party neutral with subject-matter expertise over the issues in dispute. The neutral assesses the strengths and weaknesses of each party's case, and provides an opinion of the likely outcome if the dispute goes to litigation. The parties are then free to take this information and reanalyze how they might choose to resolve the case. Early neutral evaluation is appropriate when the parties have unrealistic expectations about the case, or could benefit from narrowing the issue, or are just uncertain about the case value. This tool is especially appropriate for those cases where legal theories are complex or fact-intensive. The key is in selecting a mutually agreeable neutral whose opinion will be valued and respected by both parties. ENE shares similarities with evaluative mediation, except the neutral's role is more limited to providing the parties the case evaluation, after which the neutral's involvement in the case ends. The Government Accountability Office (GAO) uses a type of neutral evaluation to promote resolution of contract bid and award protests.

#### **d. Fact-Finding**

This ADR tool is similar to early neutral evaluation, but here, the parties only need an opinion on the facts. It is well suited for those cases where liability is clear, but the question is quantum; or where the quantum is clear, but the parties are uncertain about who is responsible. The parties present their information to the neutral, who determines the facts underlying the dispute and gives a rationale for those findings. The parties, having agreed to accept the facts as found, use them as the bases for further negotiations on the issues in controversy. Typically, accepting the facts as found applies only to the continuing negotiations; parties are not bound to the facts as found if the case proceeds to litigation, unless they expressly agree to be so bound.

#### **e. Summary Trial with Binding Decision**

This is a procedure unique to the Armed Services Board of Contract Appeals to expedite disposition of government contract claims. The Board describes it as follows: A summary trial with binding decision is a procedure whereby the scheduling of the appeal is expedited and the parties try their appeal informally before an administrative judge or panel of judges. A summary, “bench” decision generally will be issued upon conclusion of the trial or a summary written decision will be issued no later than ten days following the later of conclusion of the trial or receipt of a trial transcript. The parties must agree that its decisions, rulings, and orders by the Board under this method shall be final, conclusive, not appealable, and may not be set aside, except for fraud. All such decisions, rulings, and orders will have no precedential value. The length of trial and the extent to which scheduling of the appeal is expedited will be tailored to the needs of each particular appeal. Pretrial, trial, and post-trial procedures and rules applicable to appeals generally will be modified or eliminated to expedite resolution of the appeal.<sup>16</sup>

### **3. HYBRID: PROCESS ASSISTANCE/OUTCOME PREDICTION**

As stated earlier, an advantage of ADR is its flexibility. The parties are free to design a process and modify it accordingly to meet their needs. On occasion, the parties to a mediation might request an assessment of their positions by a neutral who is a subject matter expert. A neutral hired to provide an early neutral evaluation might be able to see that the parties need more than just “the answer,” and might assist the parties in subsequent negotiations. In these examples, the neutral’s contribution crosses over from process assistance to outcome prediction, and from outcome prediction to process assistance, respectively. There are, however, ADR procedures which, by design, provide for both process and outcome assistance.

#### **a. Mini-Trial**

A mini-trial is a process that combines an abbreviated trial presented to senior executives of both parties, typically with a third party neutral moderating the presentations. Following presentation of the parties’ cases, the principals begin negotiating the issues. The neutral mediates or provides evaluative assistance in accordance with the agreement of the parties. This tool is well suited for those disputes that are complex, but early resolution is desired.

The advantage of this process is that the principals are brought into the case early on, getting an opportunity to hear both sides of the issue and attempting to resolve the dispute before large investments of time and money are spent on litigation. Senior level decision-makers must be

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<sup>16</sup> The ASBCA’s ADR guidance can be found on its website at <http://docs.law.gwu.edu/asbca/adr.htm>.

willing to devote significant amounts of time to this process, because *they* will be hearing the cases of both sides and engaging in the negotiations. On the other hand, these cases do take considerable effort to prepare, and the speed with in which this model operates is not without costs. This tool is best reserved for high-visibility, high-value, complex cases.

### **b. Settlement Judge**

Settlement judges are commonly used to expeditiously resolve a wide range of disputes, from contract claims before the ASBCA to EEO complaints. The court or board with jurisdiction over the dispute<sup>17</sup> assigns a magistrate or judge to assist the parties' negotiations and to render opinions as to facts, law, or even the ultimate outcome. If the parties fail to settle, another judge is assigned to try the case, and the settlement judge is barred from further involvement in that case. Often the position of the settlement judge as an adjudicator of cases similar to the one being negotiated, as well as the perception of professional neutrality, gives the settlement judge a great amount of credibility with the parties.

## **ADJUDICATION**

Adjudication is a process familiar to attorneys as it represents the traditional forums for litigation such as administrative boards and state and federal courts. The judge or other presiding official will decide the outcome for the parties by applying the law to the facts. Remedies are limited according to how the case is filed and the jurisdiction of the court or board. Rules of procedure and evidence control what gets before the decision-maker. The process is adversarial. There is nothing "wrong" with any of this; sometimes litigation *is* the most appropriate method for achieving resolution, especially when the case presents an issue of first impression or otherwise requires a decision to guide future cases. On the other hand, when there is great uncertainty in how the case will turn out, when we would like a solution earlier or different than what the court system can offer, or when we would rather have a less adversarial method for getting to the solution, there are alternatives.

## **CONCLUSION**

The Army uses a broad array of ADR techniques in almost all areas of practice. Selectively choosing the technique best suited for the dispute, the parties involved, and the environment in which the dispute exists, makes ADR an exceedingly smart and valuable tool for the Army attorney as problem-solver for his or her client. Many of the ADR tools discussed above are readily available for use at the installation level. If you have questions about what ADR tools may be best suited to your dispute or what resources are available to you at the base level, contact the ADR Program Office in the Army General Counsel's Office by email at [ogcadr@us.army.mil](mailto:ogcadr@us.army.mil), or consult the Army ADR website at [www.adr.army.mil](http://www.adr.army.mil).

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<sup>17</sup> The U.S. Court of Federal Claims has recently launched a pilot in which docketed appeals are assigned to both a hearing judge and a separate ADR judge simultaneously, and the parties are encouraged to attempt settlement through the ADR judge before pursuing litigation.