

**RIC 2006
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Billie Pirner Garde, Esq.
Clifford & Garde
Washington, D.C.
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Perspective on Early and Post-Investigation ADR

What works, what doesn't, and why?

ADR – Still a work in progress...



What works in early-ADR...

- If there has been sufficient discovery for the parties to understand strengths and weaknesses of case;
- If technical concerns are being addressed by NRC regardless of outcome of ADR;
- If senior management is engaged;
- If the mediator has good understanding of the law.

What works in post-investigation ADR?

- ❑ When parties have a mutual understanding of the facts and findings;
- ❑ When parties are willing to compromise, i.e., agree to disagree on disputed facts;
- ❑ When there is an appreciation and respect of the interests of both parties, and a willingness to work towards a goal that meets those interests.

What doesn't work....

- Post-investigation ADR without details of OI report. OI summary is not enough to support ADR resolution;
- If mediator is not familiar with the NRC processes or issues impacting the parties;
- If ADR is undertaken without sufficient time to complete difficult negotiations;
- Location, logistics, and lawyers.

Why?

- ❑ NRC processes are unique and hard to analogize to other forums:
 - ❑ Failure to disclose OI information;
 - ❑ Failure to disclose basis of prima facie determination.
- ❑ Objectives and limitations of the ADR process are not fully understood;
- ❑ NRC not sufficiently engaged in the discrimination ADR cases to protect public interest.

Suggestions For Improvements

- ❑ Better explanation provided **by the NRC** about what ADR is, what the benefits are, what ADR will address and what it won't, what is being given up and what happens if ADR isn't successful. (Need an agency representative able to discuss process in more detail);
- ❑ The lack of the OI report being available to the accused in post-investigation ADR is still fundamentally unfair, and undermines the ability to reach meaningful resolution on issues in dispute;

Suggestions For Improvements

- ❑ Early-ADR in discrimination cases still doesn't have sufficient NRC staff visibility to employee:
 - ❑ What is being done about the technical issues raised;
 - ❑ What is being done to mitigate any 'chilling effect' from events at issue.
- ❑ Discrimination ADR needs active involvement of senior managers, interfacing directly to employee to address SCWE and technical issues and commitment to resolve problems critical for full, fair and final resolution.

This is not normal ADR...

- ❑ NRC regulatory actions must be transparent – confidentiality is normally a driver for ADR;
- ❑ There can not be any compromise on allegations of safety issues or “chilling effect” and mediation anticipates finality;
- ❑ NRC’s failure to disclose OI reports, or disclosure of inaccurate information, undermines confidence that ADR is right.

Full, Fair, and Final Resolution

