

September 8, 2003

COMMISSION VOTING RECORD

DECISION ITEM:      SECY-03-0115

TITLE:                    ALTERNATIVE DISPUTE RESOLUTION REVIEW  
TEAM (ART) PILOT PROGRAM  
RECOMMENDATIONS FOR USING ALTERNATIVE  
DISPUTE RESOLUTION (ADR) TECHNIQUES IN  
THE HANDLING OF DISCRIMINATION AND OTHER  
EXTERNAL WRONGDOING ISSUES

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of September 8, 2003.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

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Annette L. Vietti-Cook  
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc:      Chairman Diaz  
         Commissioner McGaffigan  
         Commissioner Merrifield  
         OGC  
         EDO  
         PDR

## VOTING SUMMARY - SECY-03-0115

### RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DIAZ	X				X	7/30/03
COMR. McGAFFIGAN	X				X	8/27/03
COMR. MERRIFIELD	X				X	8/14/03

### COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on September 8, 2003.

## Commissioner Comments on SECY-03-0115

### Chairman Diaz

I approve the staff's recommendation that it develop and implement a pilot program to evaluate the use of Alternative Dispute Resolution (ADR) in handling allegations or findings of discrimination and other wrongdoing. I note that, if the Commission approves the recommendation, the staff intends to solicit public comment on proposed procedures for the pilot program prior to its implementation. The promise of greater use of voluntary alternative dispute resolution processes is substantial: as the Alternative Dispute Resolution Review Team Report notes, Federal agency experience has demonstrated the potential for "more timely and more economical resolution of issues, more effective outcomes, and improved relationships."

### Commissioner McGaffigan

I join with the Chairman and Commissioner Merrifield in supporting the staff's recommendation to implement a pilot program involving alternate dispute resolution (ADR). I agree with Commissioner Merrifield that the proposal in SECY-03-0115 does not go far enough to provide the Commission sufficient bases to determine the viability of ADR within the NRC's regulatory environment. In particular, our external stakeholders have consistently asserted that early involvement of the Office of Investigations (OI) in a case can be premature and can lock individuals into positions, while the use of ADR might produce more flexibility and compromise. Thus the availability of ADR early in the process, in lieu of an investigation and regardless of the potential case significance, would appear to be desirable to test ADR properly. In addition, the pre-screening process proposed by the staff, would not appear to be necessary for an effective pilot of ADR and the pre-screening process would also reduce anticipated cost savings.

The staff should develop the necessary guidance to implement the pilot program, modified as described above, with public comment and participation, as suggested by the Alternative Dispute Resolution Review Team.

### Commissioner Merrifield

I have been a strong advocate of using Alternative Dispute Resolution (ADR) in general and in cases of alleged intimidation and harassment in particular. Thus, I approve the staff's recommendation in SECY-03-0115 to initiate an ADR pilot program. However, I do not believe the staff's pilot program goes far enough for the agency to determine if ADR is feasible or desirable. I am particularly concerned with the staff's proposal to limit the use of early ADR for only allegations of "low significance." This proposal will not adequately determine if the benefits suggested by stakeholders of using ADR, including providing the whistleblower a substantially greater role in addressing issues of harassment and intimidation, and eliminating costly and time consuming investigations, are attainable. In fact, I believe that the staff's proposed pilot could be set up to fail. I recommend a pilot program that offers the use of ADR early in the process, in lieu of an investigation, regardless of the significance of the case. This is only a pilot program, so it is the perfect opportunity to test ADR and assess whether it encourages whistleblowers to speak up and consequently enhances safety at licensed facilities as suggested by those in favor of ADR.

Similarly, the pre-screening process for use of early ADR seems to be too restrictive. It contemplates a meeting of the Allegations Review Board and an Office of Investigation interview of the alleged. This process may be costly and does not seem to be necessary, especially if ADR is available for any allegation, even where the allegation is not of low significance. One of the benefits of using ADR is to encourage early and open discussion between the licensee and the alleged. An NRC pre-screening process will inevitably lead to delay in these conversations. Therefore, I believe that a screening process is unnecessary and any internal handling of the allegation beyond determining whether the alleged is aware of and wishes to use a licensee's ADR program would seem to take away from the benefits of ADR.

The staff should keep to the schedule of developing the additional guidance for implementing the pilot program, with public comment and participation, in 6 months from the date of Commission approval, as suggested by the Alternative Dispute Resolution Review Team (ART). The staff should consider using ADR experts from within and outside the agency to facilitate development of the implementing guidance and the pilot program.