

New Law Authorizes ADR In All District Courts

Most Provisions Anticipated by Federal Courts

The Alternative Dispute Resolution Act of 1998 (P.L. 105-315) was signed into law by the President at the end of October. The new law requires district courts to have an ADR program, but how that program is structured is left up to the individual courts, and in fact, most courts already meet the new law's requirements.

Each district court is required to implement its own ADR program and to authorize the use of at least one form of ADR. Forms of ADR include but are not limited to mediation, early neutral evaluation, minitrial, and voluntary arbitration

The Judicial Conference has long supported the use of voluntary ADR by district courts. Recommendation 39 of the *Long Range Plan for the Federal Courts* encouraged district courts to "make available a variety of alternative dispute resolution techniques, procedures, and resources to assist in achieving a just, speedy, and inexpensive determination of civil litigation." In the district courts, the first mediation and arbitration programs date from the 1970s. According to a 1996 resource guide by the Federal Judicial Center and the CPR Institute for Dispute Resolution, mediation programs are the most common with arbitration as the second most frequently authorized ADR program. Nearly 80 district courts have authorized or established at least one court-wide ADR program. Almost all courts, even those with no formal ADR programs, frequently use district judge- or magistrate judge-hosted settlement conferences.

Each district court is required to adopt local rules requiring litigants in civil cases to consider the use of an ADR process and providing for the confidentiality of ADR processes.

Many local court rules already require attorneys to discuss ADR options with their clients. In the initial case management conference, attorneys may also be expected to help determine, with the judge, whether ADR would be effective in the case, and, if so, what type of ADR process. A number of courts provide brochures on ADR at filing to help parties learn about their options.

Districts may exclude cases or categories of cases that would not be appropriate for ADR.

The Act recognizes that there may be cases or types of cases that are not suitable for ADR. Districts have the flexibility to exclude these cases from the ADR process.

Each district is required to designate an employee or judicial officer to oversee its ADR program.

Nearly a dozen courts have ADR administrators or directors whose full-time responsibility is to manage and monitor the ADR programs, and others have assigned these duties to the clerk's office staff. In some courts, magistrate judges run successful ADR programs.

All districts, if they so desire, are now allowed to use voluntary arbitration as a form of ADR in cases where damages do not exceed \$150,000. Only those districts that were previously authorized to conduct mandatory arbitration are still permitted to do so.

The new Act permits all courts, if they so wish, to establish voluntary arbitration programs for cases where damages do not exceed \$150,000. However, mandatory arbitration programs are still limited to those courts that were previously authorized under the Judicial Improvements and Access to Justice Act of 1988, P.L. 100-72.