

VI. Alternative Dispute Resolution

On April 6, 1995, the Attorney General signed an order promoting broader use of Alternative Dispute Resolution in civil cases as a tool for resolving disputes between the government and its citizens in as prompt, efficient, and inexpensive a manner as possible. As used here, Alternative Dispute Resolution (ADR) is any non-binding dispute resolution process facilitated by a third-party neutral. ADR methods include, but are not limited to, arbitration, mediation, early neutral evaluation, and neutral expert evaluation.⁵⁹ ADR may be conducted pursuant to the agreement of the litigants, or it may be court-mandated.

The Tax Division always has had, and continues to have, a policy of settling cases, where appropriate, as early in the litigation as reasonably possible. To further this policy, in cases where the attorney assigned to the case in consultation with his or her reviewer, believes that ADR may be appropriate, he or she should consider using an independent third-party neutral through a court-sponsored program, from another government agency, or from outside of the government. Where court-sponsored and/or court-annexed ADR programs are available, Division attorneys are expected to utilize and participate fully in such programs in all appropriate cases.

ADR is not a substitute for traditional negotiation, but rather provides attorneys with additional tools to facilitate settlement of cases on an appropriate basis at the earliest stage at which such a settlement reasonably can be reached.

Attached as Exhibit 40 is a statement setting out Tax Division Case Selection Criteria for Alternative Dispute Resolution. Note that many of the factors favoring and disfavoring ADR are the same factors favoring or disfavoring traditional settlement. However, there are additional factors favoring ADR as opposed to traditional settlement, either as a means to reach any settlement or as a means to reach settlement more quickly than is anticipatable using traditional settlement methods.

Bear in mind that a settlement is a settlement, whether or not achieved through ADR. Accordingly, the same jurisdictional lines

⁵⁹ Although mini-trials or summary jury trials are ADR procedures, they would only be utilized if they were likely to avoid lengthy trials, and civil tax trials are very rarely lengthy. Accordingly, it would be a most unusual case where mini-trials or summary jury trials would be utilized in Tax Division cases.

for approving settlement are applicable, and the IRS recommendation must be obtained in Standard cases, whether the settlement is reached through traditional negotiation or ADR.

Before engaging in ADR (other than ADR imposed by the Court) the Trial Attorney must obtain from the taxpayer a Consent to Disclosure pursuant to I.R.C. § 6103 as a condition of the government's agreement to participate in such ADR. In the absence of such a Consent, the government would not be able to make a full factual disclosure to the third-party neutral, which would substantially undermine the utility of the ADR process.