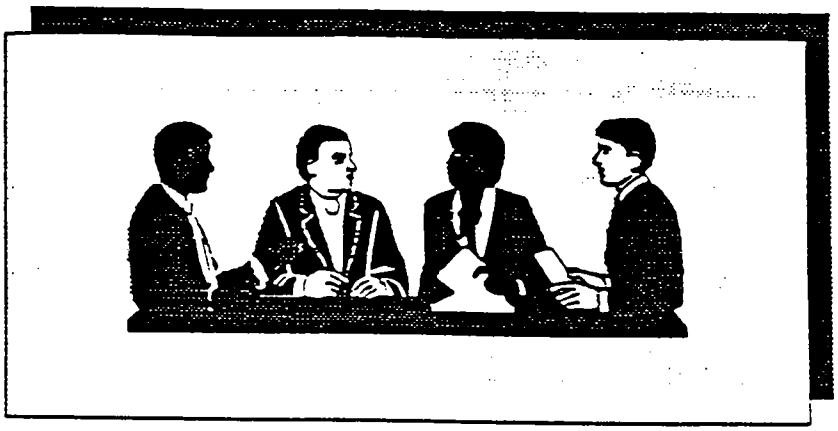
Dispute Systems Design
Pre-Design Organizational Checklist



Systems Design Work Group
Administrative Conference of the United States
Washington, DC
June 30, 1993

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I. Executive Summary

This document presents a checklist, prepared by the Systems Design Work Group, an Interagency Work Group under the auspices of the Administrative Conference of the United States. It is intended to guide dispute system designers in their efforts to design and implement effective alternative dispute resolution processes.

The term Alternative Dispute Resolution (ADR), describes any process designed to settle a dispute without litigation or administrative adjudication. ADR techniques, which vary widely in both complexity and expense, are used successfully by government agencies to resolve factual disputes. In appropriate cases, ADR can result in a settlement that fairly reflects the interests of the government and the other concerned parties. The Administrative Dispute Resolution Act of 1990 encourages Federal agencies to consider alternative resolution techniques.

- **Philosophy**

  There are several considerations relevant to the issues raised in the checklist. These considerations have been labeled design "Philosophy" and are included at one or more points in the checklist. These considerations include:

  ⇨ **Participation**

  Involve all parties affected by ADR to promote support of the program and buy-in.

  ⇨ **Openness to Feedback**

  Provide opportunities for everyone involved in the process to communicate input and reactions to proposals to enhance design and promote buy-in.

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⇨ Marketing

Buy-in accomplishes a large portion of marketing goals; plan a marketing strategy that focuses on selling change.

⇨ Rewards

Evaluate the existing reward system and explore new structures to arrive at a new system for the ADR program.

⇨ Incentives/Disincentives

Identify incentives that can be used advantageously and disincentives that need to be overcome.

- **Checklist**

The checklist covers some of the problems that will be encountered in designing a dispute resolution process. The checklist contains the following sections:

- ⇨ ADR: The Big Picture
- ⇨ Agency Assessment
- ⇨ ADR Plan or Strategy
- ⇨ Specific ADR Design
- ⇨ Implementation
- ⇨ Evaluation

The Work Group hopes that the checklist will be helpful in encouraging ADR. It will alert you to pertinent issues that should be addressed during the process of developing an effective ADR program.

II. Purpose and Philosophy

- **Introduction**

In recent years, a growing number of government agencies have embraced ADR and successfully used ADR techniques to resolve factual disputes. These agencies report that in appropriate cases ADR results in settlements that fairly reflect the interests of the government and the other concerned parties. The Administrative Dispute Resolution Act of 1990 encourages Federal agencies to consider alternative resolution techniques.

The term ADR describes any process designed to settle a dispute without litigation or administrative adjudication. ADR techniques range in complexity (and expense) from negotiations to mediation to binding arbitration, with an unlimited number of hybrid techniques in between. Innovative methods are being developed in response to growing interest in ADR.

• Purpose

The Systems Design Work Group, an Interagency Work Group under the auspices of the Administrative Conference of the United States, prepared this document to assist system designers in their efforts to design and implement effective alternative dispute resolution processes. This checklist is intended to raise issues that usually need to be considered, but not all issues will apply in every agency situation. Also, it does not provide answers; this would be difficult at best and misleading at worst, since answers will vary from situation to situation. Rather, the checklist provides a framework to guide dispute system designers in the design process.

This initial section discusses several considerations that we have labeled design "Philosophy". These items may be included at one or more points in the checklists that follow. However, they are included here as philosophy because they are relevant in the consideration of, and action taken on, each of the issues raised in the checklist.

• Philosophy

⇨ Participation

Two hallmarks of the "Quality" movement in organizational effectiveness are the concepts of participatory management and customer involvement. Both concepts should also be hallmarks of your dispute systems design programs.

The application of participatory management to a dispute system design environment means you should involve agency employees at all levels who will be involved in implementing, administering, managing, and evaluating the program.

Customer involvement means you need to identify the "customers" of your proposed dispute resolution process and involve them in your design, implementation, and evaluation efforts. These could be internal customers, e.g., top agency management, counsel or program specialists, or external customers, e.g., disputants or representatives of the regulated community or contractors.

The level of involvement of these parties will vary, but it is critical that all of them be involved in the design process. The important thing to remember is that your goal should be to get them invested in the design and positioned to be proponents, not opponents, of your proposed system. You want to get their "buy-in" at every stage of design and implementation process, so that they consider the proposed process "ours" not "yours".

It is important to make participation in this process as risk-free as possible. With the many and varied interests you will involve in the process, conflict is not only possible, but likely. Some influential people may perceive that their interests are being threatened by the introduction of alternatives to traditional dispute resolution systems. Participants need to feel that they can involve themselves actively and cre-atively in the design process without risk. Remember, conflict is positive when it is managed and resolved in a positive way.

⇨ Openness to Feedback

A necessary adjunct to the participation philosophy is that systems designers should promote and be open to feedback throughout all phases of the design effort. Designers need to provide processes and opportunities for all participants to communicate their input and reactions to proposals. Consider what you receive and to the maximum extent possible tell the reactors how you handled their comments.

This openness to feedback not only enhances the design, but also sends a message that you are using a real participatory process and increases the likelihood of getting that all important buy-in from necessary parties. It will also get you off to a good start in a critical aspect of the design process evaluation - which needs to be considered at every step along the way.

⇨ Marketing

As with most new products or services, how your proposed dispute resolution process is marketed will be a key element in its ultimate success or failure. Marketing to many of your most important potential targets can be facilitated by following the participation and openness to feedback philosophies. If the result of using participatory processes and being open to feedback in the design process is the buy-in of those who will approve, administer and use the process, then a large portion of the marketing is already done.

However, there are likely to be broader audiences that need to be informed on the proposed process and consulted. Always keep these audiences and ways to meet their information needs in mind throughout process design and implementation. Never forget

that what you are doing is likely to be either a real or perceived change for many people, and people usually need to be sold on change. Include consideration of this need to get buy-in and to "sell" the proposal in each element of design and implementation.

⇨ Rewards

Success within the traditional dispute resolution process may not be success within an alternative dispute resolution process. During system design and implementation you should be aware of the impact that the agency's reward systems, both formal and informal, have on those involved in design and implementation and on users of the alternative system. In addition, it may be necessary to explore new reward structures that are more congruous with the ADR mission and that of the particular agency.

⇨ Incentives/Disincentives

Throughout the design and implementation process it will be helpful to identify the individual and institutional incentives and disincentives that are likely to influence the effort.

Incentives need to be identified so they can be used advantageously. You will need all the help you can get, so maximize existing incentives to pursue alternative processes. Potential existing incentives include: the ADR Act's encouragement, time and money savings, and improved relationships.

Disincentives also must be identified in order to develop strategies to overcome them. Potential existing disincentives include: reward system problems (discussed above), lack of start-up resources, and individuals invested in status quo.

III. ADR: The Big Picture

• Make Contacts

Ask the Administrative Conference of the United States (ACUS) and the Federal Mediation and Conciliation Service (FMCS) for copies of relevant publications, primers, advice and information on ADR working groups, roundtables and other training.

- Contact ADR personnel at other federal agencies, particularly those with similar missions. ACUS can provide lists of Dispute Resolution Specialists and of persons involved in various working groups.

- Contact professional organizations (national and local) to see what they have to offer.

- Contact private trainers/service providers to see what assistance and training they can provide.

- Contact professional organizations for available information. ACUS can provide you with a list of organizations.

• **Educate Yourself**

Check magazines, journals, books, etc. that may be helpful. ACUS can provide you with a bibliography on dispute systems design to get you started.

Familiarize yourself with:

- The ACUS Roster of Neutrals; and

- ADR techniques.

IV. Agency Assessment - Dispute Resolution Assessment

• **Disputes in Your Agency**

Think about the different kinds of disputes within your agency.

⇨ **Consider**

The general nature of the disputes and the parties thereto;

- Why the disputes occur; and

- The frequency of the disputes.

• **Current Procedures**

Analyze the present system of dispute resolution.

⇨ **Determine**

- How and with whom the disputes arise;

- Who has authority to resolve disputes;

- Whether negotiation occurs; and -
- Whether some form of ADR is already in use.

• Review Agency Results

Look at the existing system for resolving disputes.

⇨ Analyze

- Decision documents that established the current system. Determine the reasons for deciding disputes that way;
- Any written guidelines (including law and regulations); and
- The time it takes to resolve disputes.

• Cost Concerns

It is important to identify the resources and costs required to resolve disputes.

⇨ Summarize

- The total costs of resolving disputes now (including contract dollars, personnel time, management effort, employee moral, and customer satisfaction); and
- Who pays the costs (for example: whether litigation affects the budget; does this increase your agency's costs or does it shift costs to another organization).

• Evaluation of the Program

Review any feedback from your customers about the current process.

⇨ Find Out

- Customer satisfaction--and any problems with the current procedures;
- Changes recommended, and why;

- Available data;
- Definition of "success"; and
- Measurement, rating and "reward" systems.

Agency Assessment - Organizational Assessment

The mission of your agency and its structure needs to be examined.

- **Management Considerations**

  ⇨ **Determine**

  - ADR goals;
  - Necessary approval--you may need a "blessing" to begin this project;
  - The ultimate authority to authorize the changes; and
  - The key advisers and mid-level managers who report to the decision maker.

  In this regard, note the people who can open lines of communication to them (or their staffs). You may need to consult with them, either by briefings or asking them for input.

- **Agency Authority**

  The most important aspect of your proposal is to focus on your agency's mission.

  ⇨ **Points To Consider Include**

  - ADR achieving the agency's goals;
  - Contact agencies with similar missions--are they using ADR;
  - Authority to use ADR--check executive orders; and
  - Statutory concerns, especially any limitations on using ADR (any internal rules).

- **Agency Culture**

Look at barriers and expected changes. Consider your agency's predominant attitudes, practices, and beliefs regarding the following:

⇨ **Conflict Management**

Who has a "say" in how conflict is managed? (Example: Is top management discretion retained on all types of disputes to ensure "control"?)

⇨ **Definition Of Success**

Much of an organization's cultural definition of "success" is transmitted through symbolic and informal communication mechanisms, for example, "war stories". Have you considered the use of such devices to further organizational perception of "fit" and appropriateness of work in the ADR arena with existing attitudes, practices and beliefs.

For example, "doing more with less". If this is a driving force in your organization, have you considered illustrating the current costs of conflict in resource terms and providing managers, supervisors, etc. with the opportunity to comment on alternative strategies?

⇨ **Response To Change**

What would be the typical response to a call for change in procedure and technique? (Example: Wow! What a great opportunity for learning new skills and for improving work force morale.)

Answers to these questions (organizational attitudes regarding conflict management, participatory processes and change) will provide clues on how best to introduce alternative dispute resolution practices successfully.

V. ADR Plan or Strategy

- **Making An ADR Proposal**

A fundamental approach is to develop an ADR proposal for management to consider.

- Use ADR experts from outside the agency to educate agency decision-makers about ADR;

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- Identify what part of the organization will consider the proposal;
- Consider staffing to involve in producing the proposal; and
- Discuss the impact ADR will have; "pros and cons".
- Identify clearance for using new ADR procedures--OMB or any outside agency.

• Impact of ADR

Your proposal must take into account:

- "Gain and loss" of power--who are the winners and losers in the agency;

For example, will your enforcement, legal, or operations components gain or lose power? How will they react?

- Impact on the agency's enforcement programs; and
- Reaction of Congress or outside groups to perceived reduction of enforcement representatives or efforts.

• Feedback

Feedback is a key element of any ADR program.

- Review any existing feedback systems;
- List the factors to gauge success--does the existing system accurately assess what needs to be measured or does it need to be revised; and
- Determine the parties who need to provide feedback.

• Buy-in Considerations

You will need to consult with your customers to discuss whether the systems design will meet their needs.

⇨ Take Into Account

- Who will support ADR, and who may resist it;
- Whose interests will be affected; and
- The timing of your proposal.

Plan to receive tentative buy-in from the necessary parties before you develop your final proposal.

• Participants

Once you have received approval to work on an ADR proposal, interact as much as possible with the various participants throughout the design, implementation, and evaluation stages.

Think about the different participants involved with and affected by the ADR system, including: management; line personnel and program staff; legal personnel; resource allocators, both within and outside the organization; and end-users, within and outside the organization.

⇨ Determine

How you will:

- Communicate your proposal and goals to them;
- Get their feedback; and
- Get their buy-in and approval.

• Goals And Proposals

Analyze the goals of your ADR proposal in light of the needs and dynamics of your organization. Determine whether there is consensus about the goals of the program.

⇨ Determine

- The substance of your proposal;
- Who the proposal is geared to (the organization as a whole, a specific section, or a specific division);

- Who should be the author or "sponsor" of the proposal, consider whether you want the proposal to come from a specific office, individual or division;

- How the proposal will be announced once it is approved; and

- How findings made as a result of evaluation might be converted into ADR program changes.

• Marketing

Develop a marketing strategy that will effectively sell your ADR proposal.

⇨ Determine

- What data will be needed to market the "success" and benefits of ADR;

- Who or what organization will support the ADR effort;

- Who can be your ADR "champion" to promote the proposal once it is made (note: you may want to work with an ADR expert from an agency with goals similar to yours); and

- How much of and at what time the vision should be communicated, consider whether you plan to sell a pilot project or a complete ADR system.

• Training

Develop a training program to enhance your ADR proposal.

⇨ Determine:

- Who should be trained;

- What are the training needs of: executives, program staff, general counsel, and potential neutrals;

- Which part of the organization should have responsibility for training aspects of the ADR program;

- What training programs are already in place that may meet training needs; and

- To the extent existing programs do not meet identified training needs, assess the potential resources for developing and delivering new programs.

VI. Specific ADR Design

• Education And Marketing Plan

An ADR design plan should contain education and marketing strategies.

⇨ Consider

- Who are the target groups for your marketing strategy (e.g., agency personnel, outside constituencies, potential customers);

- Whether to market large or small audiences;

- What information dissemination methods already exist in your organization and whether new ones need to be created for your ADR program;

- Who in the organization should be responsible for sending information about ADR;

- Involving skeptics in your education and marketing efforts;

- General awareness training; and

- Specific training needs, including skills training.

• Decision Making

- An ADR advisory group can be used to make design decisions. Among the questions that the group could consider are:

  - How to initiate the proposal;

  - The usefulness of having an ADR study group and/or working group;

- Ways to implement the communication, education and buy-in phases;
- The staff that will be involved in the ADR process--as well as what other resources will be needed;
- Whether a new organization should be established to support ADR;
- The "pros and cons" of using inside neutrals vs. outside contractors -- the use of co-mediators;
- Budget and resource considerations; and
- Guidelines for persons who use the system.

• **Pilot Projects**

Pilot projects allow you to test your design and evaluate results.

⇨ **Consider**

- Having a time-limited pilot or experimental period built into the ADR proposal;
- Possible criteria for selection of pilot cases;
- Method of evaluating any pilot; and
- How the evaluation will be used.

VII. Implementation

• **Training**

Conduct specialized training for targeted groups with an interest in the success or failure of ADR.

- Identify the training needs of the various target audiences:

  ✓ executives
  ✓ program staff and managers

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