

ADR LAW NOTES



Legal Developments, Issues and Other Matters of Interest Concerning Alternative Dispute Resolution

DLA ADR Homepage at: www.dla.mil/adr

Defense Logistics Agency ADR Practice Group

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ADR AND E-DISCOVERY AMENDMENTS TO THE FEDERAL RULES OF CIVIL PROCEDURE

In recognition of the current widespread use of electronic information, several rules of the Federal Rules of Civil Procedure (FRCP) were amended to regulate e-discovery. Effective December 1, 2006, the amendments reflect, among other things, that during litigation, electronically stored information (ESI) is subject to initial disclosure; that parties need to discuss early-on, procedures to govern both the distribution process and format of ESI; that parties need to reach agreement on a process to deal with privileged documents that are inadvertently produced when distributing ESI; and that although ESI need not be produced if it is not reasonably accessible due to undue burdens and costs, a court may still require its production.

Collecting, processing, reviewing and distributing ESI can be time consuming and costly for litigants. One way to overcome the burdens of ESI could be through the use of mediation in lieu of litigation. For example, parties in mediation could agree to a limited exchange of ESI or no exchange at all. Parties who choose litigation could still use mediation as a means to resolve ESI issues required by the amendments. Other ADR techniques, such as the use of a neutral expert, could be used to determine proper ESI samplings or provide an opinion that a loss of electronically stored information was due to ordinary computer system operations and not an intentional deletion of relevant material. The bottom line: Consider ADR when addressing ESI issues.

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“MEDIATION: IT WORKS!” VIDEO

“Mediation: It Works!” is a new DLA seven minute video available for viewing on both the DLA intranet system and the public internet. The video is the product of a collaborative effort between DLA-DO, DLA-DES, and DLA-DG. If you are not familiar with mediation or would like more information about it, take a few minutes to watch the show. Use either <http://www.dla.mil/do/resolve/resolve.asp> and scroll down to “Alternative Dispute Resolution Video” or use <http://www.dsccl.dla.mil/offices/legal/adr/dlapubs.html> and scroll down to “Mediation Videos.” The video can be seen with or without captions. A DVD of the video is also available at your EEO and legal offices.

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DLA ADR ONE BOOK CHAPTER

The DLA ADR One Book Chapter has been finalized and authenticated. It establishes and implements ADR policies, processes, and procedures within DLA regarding the use of ADR techniques.

A principal focus of the ADR program is the early identification and resolution of conflicts, disputes, and other impediments that could hinder our support of America’s military. Resolving disputes at the earliest possible stage reduces the time, expense, delay, acrimony, and other adverse consequences of the dispute resolution process. Consequently, ADR is used to pre-empt the

development of litigation whenever possible. When litigation has already been initiated, ADR is used to reduce the length, contentiousness, and adverse impact of the full-blown litigation process.

For more information about ADR and DLA requirements when unassisted negotiation does not resolve a dispute, see the “Alternative Dispute Resolution Chapter” of the One Book at <https://today.dla.mil/onebook/> or consult your local DLA ADR Specialist in your legal office.

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