

## ADR LAW NOTES



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

DLA ADR Homepage at:

<http://www.landandmaritime.dla.mil/offices/legal/adr/default.asp>

or

[www.dla.mil/adr](http://www.dla.mil/adr)

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#### DLA MEDIATOR LIST EXPANDS

Twenty-two DLA associates attended a four day mediator training course in Columbus, Ohio on October 23-26, 2012. Participants came from as far away as Yokosuka, Japan and as close as Columbus, Ohio to have the opportunity to be added to the list of DLA collateral duty mediators. Mediation, one of many ADR processes, is the favored ADR process of DLA. It can resolve conflicts in less than a day that otherwise could take years to resolve.

#### EVEN THE NFL USES MEDIATION

In 1992, a jury found the NFL in violation of the Sherman Antitrust Act. Eventually, after football players brought another court action, the parties settled and entered into an agreement in 1993. The agreement was amended and extended several times. In 2010, the agreement ended and again, players brought another class action suit. The Court ordered the parties to participate in mediation. The mediation conference was successful. Nevertheless, in 2012, the players went to court again to reopen a matter. On December 31, 2012, the Court denied the players' request. White v. NFL, 2012 U.S. Dist. LEXIS 183167

#### EVEN IKEA USES MEDIATION

During January 2008, Mr. X started working for IKEA as a warehouse worker. Throughout 2008 and 2009, Mr. X committed numerous incidents of

inappropriate conduct. As a consequence, Mr. X

received disciplinary action. Thereafter, Mr. X filed an EEO complaint. A mediation was scheduled to address the dispute. Prior to the mediation, Mr. X committed another act of inappropriate behavior. Management determined Mr. X should be fired. However, management postponed the termination in order to participate in the mediation. A settlement was reached during the mediation. The settlement agreement included wording that Mr. X released any prior claims he may have had and that the agreement superseded any prior understanding. Thereafter, Mr. X asserted in a court filing that IKEA violated the agreement by, among other things, not providing him a benefit that was not listed in the agreement. IKEA asked the Court to dismiss Mr. X's complaint. The Court agreed with IKEA and dismissed Mr. X's complaint. Hayes v. IKEA Distribution, 2012 U.S. Dist. LEXIS 182370

#### MEDIATION IS NOT MONOLITHIC

Mediation is one of numerous ADR techniques. Each of the techniques was developed to minimize the cost, time and emotional stress that accompany litigation. Over the years, mediation also developed into various styles. Two of the styles include facilitative and evaluative. During mediation sessions, evaluative mediators provide opinions regarding the conflict that brought the parties to the table. They often advise the parties as to the merits of each of their positions. Facilitative mediators help the parties discuss their dispute, and oftentimes ask piercing questions. They might even play "devil's advocate." However, they do not offer their opinions regarding the merits of the case. DLA collateral duty mediators are facilitative mediators. Although they control the process, they do not offer their opinions because if they do, the parties

might perceive them as not neutral.

**ADR SPECIALISTS ARE IN THE LEGAL  
OFFICES**

As a reminder, DLA ADR Specialists are located in each of the legal field activities. The ADR Specialists arrange for ADR processes, provide ADR trainings, and are the ADR experts and points of contact in the field. Do not hesitate to contact them for ADR information.

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