

Understanding ADR

DOT Center for Alternative Dispute Resolution

Fern Feil Kaufman

9/26/2012

What is Alternative Dispute Resolution?

- Process that provide alternatives to traditional mechanisms
- Do not take the place of traditional processes
- They provide alternatives to parties ready, willing, and able to try them
- Involve introducing a neutral to help the parties resolve their dispute

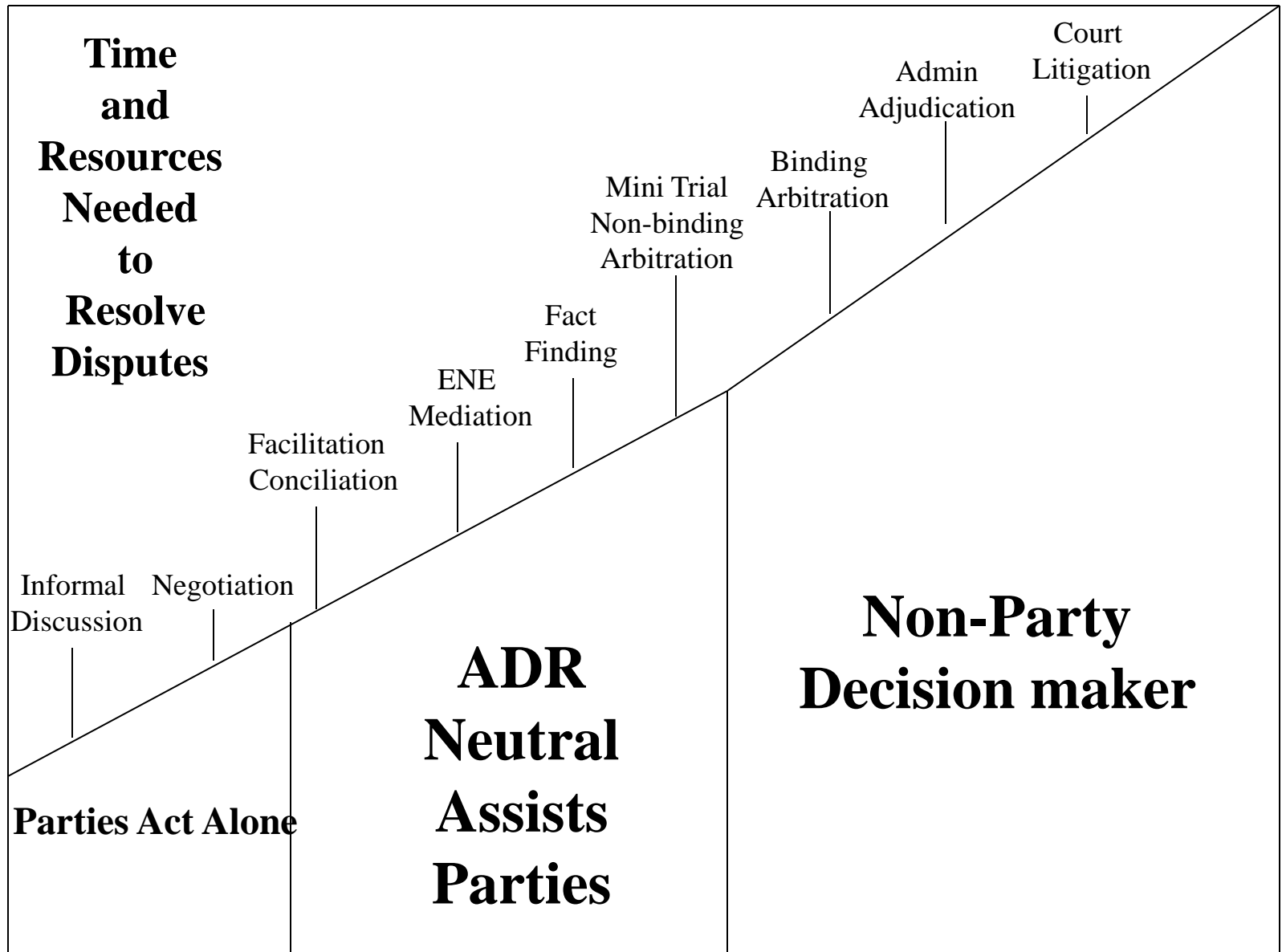
Principles of Interest-Based Negotiation

- Focus on the Issue
- Explore all Interests Underlying the Issue
- Be Open to Possibilities and Opportunities
- Satisfy Others' Interest as well as Your Own
- Draft a Solution Which Addresses All Interests

Positions vs. Interests

- Positions are:
 - What a person wants
 - Interests are:
 - Why a person wants a certain thing

Dispute Resolution Processes



Burning Sailboat

- Sammy(ie)



Lesly(ie)



FIRE!!!!!!!!!!!!!!



Dynamics: Court v. Mediation

- Communication flow
- Issues
- Facts
- Outcome

Mediation

- Facilitated negotiation
- Third-party not a decision-maker
- Third-party offers no opinion

Goal of Mediation

- Vent and diffuse feelings
- Clear up misunderstandings
- Determine underlying interests or concerns
- Find areas of agreement
- Incorporate those areas into solutions devised by the parties themselves

Role of the Mediator

- Facilitates discussions
- Opens channels of communication
- Translates information
- Distinguishes positions from interests
- Assists in creating options
- Provides a reality check

A Mediator Is

- Process Expert
- Neutral
- Confidant
- Cheerleader
- Agent of Reality

What a Mediator is Not!

- An Advocate or Lawyer
- A Judge or Decision Maker
- A Counselor
- A Reporter
- An Enforcer

Why Use ADR

- Faster
- Less Costly
- Easier, less formality
- Less confrontational overall
- More creative solutions
- Parties retain control of outcome
- Participant satisfaction increased
- Less likely to damage on-going relationships
- Little to lose by attempting ADR

Contact Information

- Fern Feil Kaufman, Director, DOT Center for Alternative Dispute Resolution
- Fern.Kaufman@DOT.gov
 - (202) 366-8067