

Pilot Program on the Use of Alternative Dispute Resolution in the Allegation and Enforcement Programs

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Overview

- Background
- The Pilot Program
- Statistics
- Evaluation Considerations
- Moving Forward

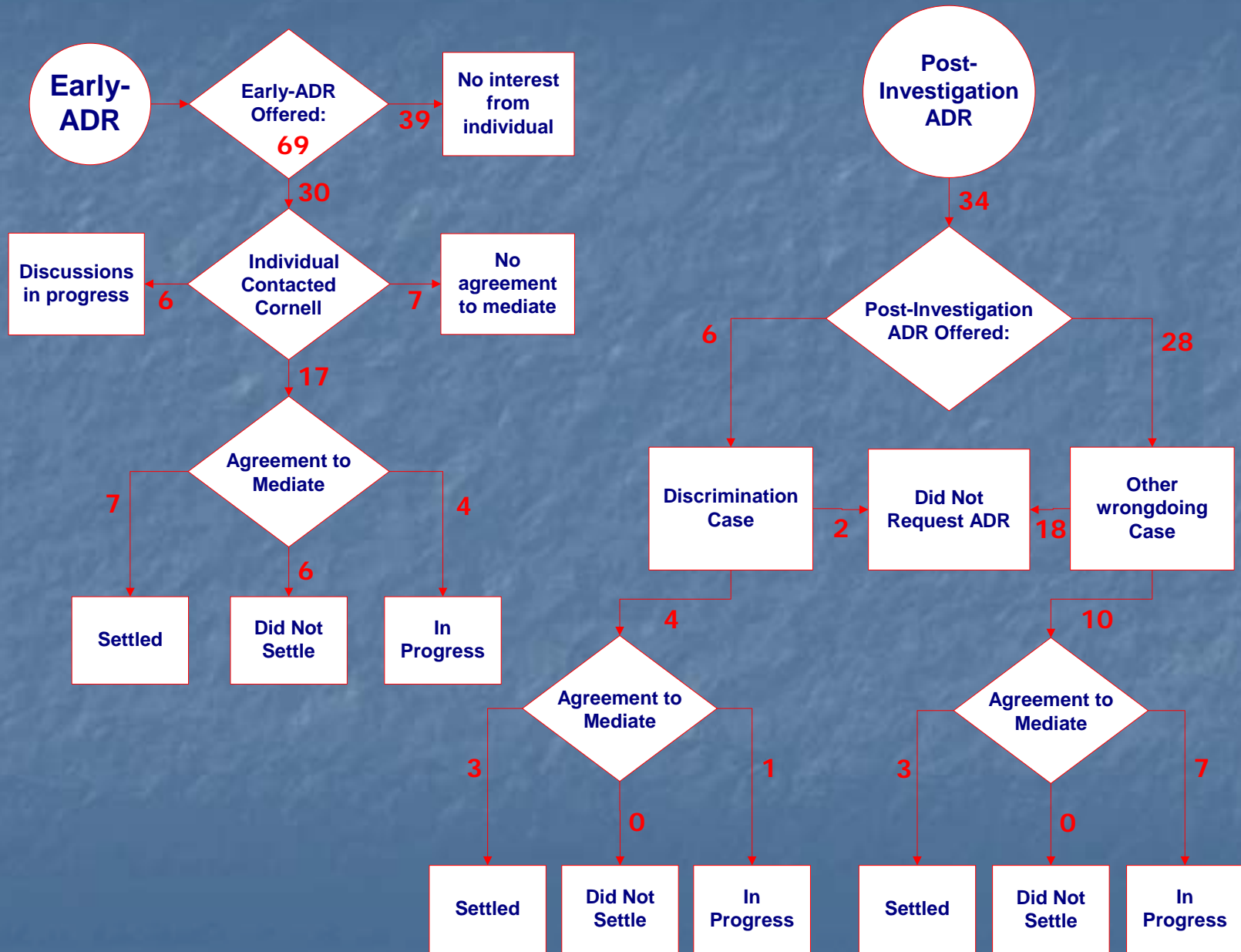
Background

- Significant initial review effort by the staff
- Staff proposed development of a program in SECY-03-0115 dated September 4, 2003
- Staff proposed the pilot program in SECY-04-0044, dated March 12, 2004
- Initial offer in September 2004.

The Pilot Program

- Cornell
 - Program Administrator
 - Intended to:
 - bring unbiased source of information to parties
 - provide skilled mediators
- Early-ADR
 - ADR between licensee/contractor and individual after a *prima facie* case of discrimination has been alleged
 - Unique in ADR due to being before any investigation/litigation process
- Post-investigation
 - ADR between a licensee/contractor and the NRC after an investigation has been completed.
 - Unique relationship between regulator and licensee that typically will remain in place after the mediation
 - Individuals
 - Not originally explicitly captured in scope
 - Potential to provide additional option to individuals, particularly in NOV (vice Order) cases where no hearing rights exist otherwise

Statistics



Evaluation Considerations

- Consider the proposed “criteria”
 - Program effectiveness
 - Were settlement agreements sufficient to meet the goals associated with the allegation and enforcement program goals (*e.g.* minimize potential work environment issues that can result from an investigation and litigation and encourage prompt identification and corrective action while maintaining a measure of deterrence) ?
 - Did the pilot program maintain safety?
 - Given the programmatic differences, were settlement rates, both Early and post-investigation, consistent with typical ADR programs?
 - Was the use of a third party program administrator beneficial, particularly in the area of providing an unbiased source of information and support? Were the mediators effective?
 - Was the program effective as a whole?

Evaluation

(con't)

- Program efficiency
 - Did the program produce timely results?
 - Early-ADR
 - Post-investigation ADR
 - Was the program cost efficient?
 - Did cost of the program exceed the estimated savings?
 - Was the mediator's fee reasonable for the parties?
 - For licensees as a party, was the cost of either Early-ADR or post-investigation ADR (including settlement terms) acceptable in terms of meeting your interests?

Evaluation

(con't)

■ Program satisfaction

- Did the parties perceive the process as fair? Were the mediators and the program administrator fair and helpful?
- Was the program useful? Did it serve all of the parties interests? Generically, why did some parties not accept ADR when offered?
- In general, were the outcomes satisfactory to the parties, meeting their needs, if not their wants?
- What is the public perception of the program? Do publicly available confirmatory orders and press releases serve sufficient notice of agency enforcement action?
- After participation in at least one mediation in this program, whether or not it settled, would the parties attempt mediation again?

Other Lessons Learned

- Lessons Learned and other comments
 - Funding: Early ADR, Individuals post-investigation
 - Information: were brochures helpful?
 - Settlement reviews by NRC
 - How best to submit and be notified of acceptability?
 - Scope challenges: Security (SGI, Confidential)
 - Licensee sponsored programs: Lessons learned?
- Written comments until October 31, 2005

Cornell Comments

- Rocco Scanza, Director, Institute on Conflict Resolution, New York State School of Labor Relations

Moving Forward

- Assuming staff recommends and the Commission approves the continued use of ADR, what improvements or changes should be implemented?
 - Licensee's pay ½ mediator fee for Early ADR?
 - Increased timeliness requirements?
 - Expand to traditional enforcement?
 - Only offer ADR for escalated enforcement?
 - Exclude security cases?