

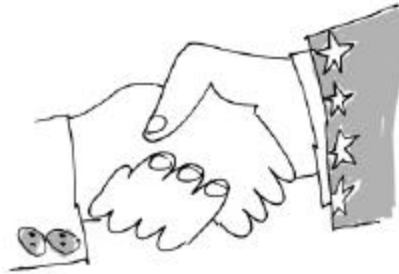
# Alternative Dispute Resolution Program

Federal Election Commission

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## Introduction

The Federal Election Commission (the Commission or FEC) established the Alternative Dispute Resolution Office (ADRO) to promote compliance with the federal election law by encouraging settlements outside the traditional enforcement or litigation processes.



By expanding the tools for resolving administrative complaints, referrals from the Reports Analysis Division (RAD) and Title 2 audit referrals, the program aims to:

- Resolve complaints and referrals faster;
- Reduce costs for you, the respondent; and
- Bring your case to a mutually satisfactory resolution--for both you and the Commission.

This brochure describes the program--its purpose, its benefits and how it works. For more detailed information, contact the Commission at 800/424-9530.

## What is ADR?

Alternative Dispute Resolution (ADR) is a series of constructive and efficient procedures for resolving disputes through the mutual consent of the parties involved. ADR encourages the parties to engage in negotiations that promptly lead to the resolution of their dispute.

## Why Use ADR?

When applied to violations of the Federal Election Campaign Act (FECA), ADR:

- Facilitates a faster resolution of disputes, because the parties begin communicating early in the process with a sincere commitment to reaching a settlement;
- Enables you to take an active part in shaping the settlement of your case; and
- Allows you to avoid the high costs and stress that may accompany traditional enforcement.

## **Do I Qualify for ADR?**

An initial review and evaluation process, conducted by the FEC's Office of General Counsel (OGC) and ADRO (which operates under the guidance of the Staff Director), will determine whether or not your case is appropriate for ADR. Your case will come to ADRO either by referral from OGC, RAD, or the Audit Division or through assignment by the Commissioners. ADRO will review the case and make a recommendation as to whether your case is suitable for ADR.

*It is important to understand that having your case processed under ADR is not a right.* ADR is an option extended only to appropriate cases. In order to have your case considered for processing in the ADR program, you must file a complete response to the complaint or referral and agree, in writing, to the terms for participation in ADR. The terms require that you agree to:

- Engage in the ADR process;
- Set aside the statute of limitations while the complaint or referral is pending in ADRO; and
- Participate in bilateral negotiations and, if necessary, mediation.

## **Kinds of Cases Resolved Through ADR**

Cases that have been resolved through the ADR process include the following:

- Unlawful contributions by banks, corporations or labor unions;
- Failure to report earmarked contributions;
- Exceeding contribution limits;
- Failure to provide a disclaimer on campaign materials; and
- Contributions made in the name of another.

Of course, qualification for ADR processing is determined on a case by case basis. The above list is only meant to provide a general indication of cases that have been dealt with in the past. The sorts of cases mentioned above may, in many instances, not be appropriate for ADR processing.

## **What Happens Once My Case Has Been Approved for ADR?**

If the Commission approves your case for ADR processing, ADRO will notify you and arrange to discuss mutually acceptable dates and times for engaging in bilateral negotiations and/or mediation.

### **Negotiations**

The first phase of the ADR process is bilateral negotiation. The bilateral negotiation phase involves direct negotiations between you (the respondent) and a representative from ADRO. Negotiations are often conducted on the phone with the ADR representative. Bilateral negotiation offers several benefits:

- The possibility for a speedy resolution of the complaint;
- The chance to fashion a settlement that is focused on correcting the activities that provoked the complaint or referral;

- The opportunity to shape terms of settlement that are mutually agreeable to you and the FEC; and
- The opportunity for both you and the ADR representative to clarify the disputed issues, should the case be brought to mediation at a later time.

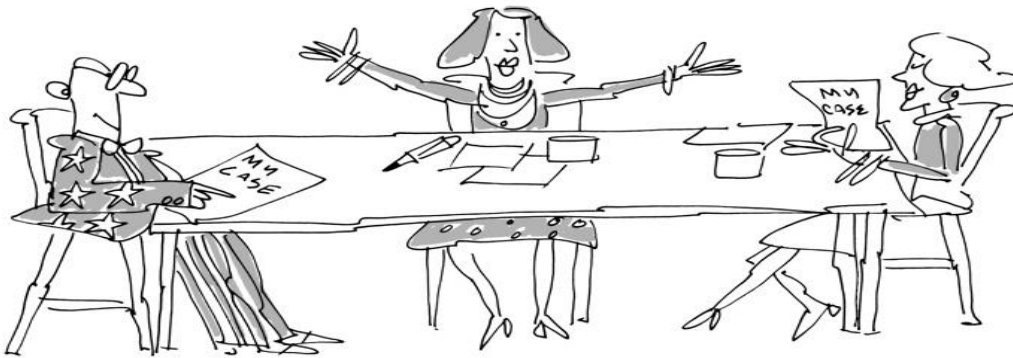
While the ADR representative will emphasize compliance with the Act during the negotiations, he or she will also recognize the importance of achieving a mutually agreeable resolution that is satisfactory to both you and the Commission.

At the conclusion of the negotiations, you will be provided with an agreement that incorporates the terms of the settlement. You will be requested to sign the agreement which will then be submitted to the Commission for approval.

If you and the ADR representative are unable to reach a settlement during bilateral negotiations, then your case will proceed by mutual agreement to mediation. In the event that both sides do not agree on proceeding to mediation, the case is returned to OGC for traditional enforcement processing.

## **Mediation**

In mediation, an impartial individual (the "mediator") facilitates negotiations that help you and the ADR representative shape a mutually acceptable resolution of the dispute.



### ***Who will choose the mediator?***

As the respondent, you will select a mediator from a list of three names submitted to you by the ADR Office. If you do not find a satisfactory mediator on the list, then the ADR Office will send you a second (final) list of three names. All of the mediators in the ADR program are senior, experienced, neutral professionals from the private sector, and have no ties to the Federal government.

### ***How should I prepare my case for mediation?***

During the bilateral negotiations you will have already completed much of the work needed to prepare for mediation. Before the mediation sessions begin, you and the ADR representative will each give the mediator a written synopsis of the case. In order to expedite the process and to keep costs low, ADRO will not require or recommend formal briefs for mediation.

***The Mediation Session.***

You and the ADR representative will first select the location of the mediation session (it does not have to be in Washington, DC). During the course of the mediation session, which generally will last one day, the mediator will meet with you (or your representative) and the Commission’s ADR representative both jointly and separately as needed. Information disclosed during the mediation will remain strictly confidential. The information you discuss in "caucus" sessions (closed meetings between you and the mediator) cannot be shared with the other party (i.e., the ADR representative) unless you give the mediator express permission to do so. Furthermore, any information you provide during mediation cannot be used in a later enforcement proceeding.

***What about the costs of mediation?***

During the initial years of the ADR program, the Commission will pay the mediator’s fee and travel costs, if any, unless you prefer to split these costs with ADRO. The mediation costs covered by the FEC will not include the costs you or your representative incur, such as your lodging or transportation costs.

**Settlement**

A settlement reached in negotiation or mediation, neither of which necessarily requires an admission of guilt on your part, will be submitted to the Commission for its approval. All approved settlements will be a matter of public record, and will be accompanied by a statement that the settlement was negotiated through ADR and cannot serve as a precedent for the settlement of other cases. Once a settlement is approved, the matter is definitively concluded and the case is closed before the FEC.



**What If We Don’t Reach a Settlement?**

In the event that no settlement is reached, your case will be returned to OGC for the usual processing of complaints and referrals. At this point, the statute of limitations will begin to run again.

## How Long Does It Take to Handle a Case under ADR?

The Commission's goal is to have the ADR program resolve complaints and audit and reporting referrals quickly through direct or mediated negotiations between you and ADRO. The speed with which each case is settled will depend upon:

- Your willingness to engage and cooperate in the ADR process;
- The complexity of the case in question; and
- The size of the Commission's case load.

Taking into account these variables, it is expected that complaints will be processed, on average, within five months following ADRO's receipt of the complaint or audit referral.

JAN	FEB	MAR
APR	MAY	JUNE
JULY	AUG	SEPT
OCT	NOV	DEC

## Can I Opt Out of ADR?

If you have been advised that your case has been assigned to ADR but determine that you do not want to avail yourself of the option, you should inform ADRO. Your case will then be sent to OGC for processing in the traditional enforcement program. If your case originated as an audit or reporting referral, opting out of ADR will likely result in increased scrutiny of your committee's activities during the next election cycle.

## Summary of the Stages of the ADR Process

- 1) Beginning the ADR Process.
  - A) Complaint filed, RAD matter or audit referred
  - B) Suitability for ADR determined by OGC and ADR office.
  - C) Acceptance of terms for participating in ADR approved by Commission.
  - D) You are advised of case assignment to ADRO.
  - E) You decide whether to participate in ADR program.
- 2) Bilateral Negotiations.  
If no agreement reached in bilateral negotiations, then mediation begins.
- 3) Mediation.
  - A) Selection of mediator.
  - B) Preparation of case.
  - C) Mediation session begins.
- 4) Conclusion:  
Agreement is forwarded to the Commission for its approval or case is returned to OGC.

# ADR Flow Chart

