

International Meeting for Mediation – ADRPO

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Athens, Greece

Mediation in US Federal
Agencies and US Federal Courts

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I. THREE INITIAL QUESTIONS

Q: Why compare the ADR legal systems of different countries?

A: Because comparative legal analysis is one of the best tools in international law in improving a legal system toward “rule of law” – which has efficiency as one of its hallmarks. Because “justice delayed is justice denied”.

Q: Why discuss the US Department of Labor EEOC Mediation Program and the Federal Court Magistrate Judge Mediation program in my presentation?

A: Because the EEOC mediation program has 70% settlement rate and the Federal Judge Magistrate Mediation program has a settlement rate in excess of 40%.

Q: Why discuss the US vs Greece Civil Procedure and Greek Court Systems in the context of ADR procedures and solutions?

A: Because Mediation can best be understood and implemented in that context.

II. HOW MEDIATION AND ADR IN GENERAL GAINED MOMENTUM IN THE US

- The Civil Justice Reform Act of 1990 (The “Biden” Act). (Implemented “case management procedures to include early court-annexed mediation”.)
- Administrative Dispute Resolution Act of 1996 (ADRA) gave administrative agencies the authority to utilize ADR methods to resolve claims.
- The ADR Act of 1998. (Requires all federal trial courts to implement ADR programs for litigants and to mandate participation.)

Keys:

- Support by bench and bar
- Properly trained neutrals
- Program adequately administered by the Courts
- Early neutral evaluation
- Can greatly reduce backlog

Effect of above was great reduction of backlog in federal court systems in the United States since the implementation of the above. Currently only 4% of Federal Civil cases go to trial.

Therefore, the question is: What were these ADR implementations and why were they so successful? After all, we are talking about one of the most litigious nations on Earth, with 300,000 million people and 800,000 lawyers. We are also talking about jury trials in almost all civil matters as a matter of right.

III. Mediation in Federal Court Litigation

- Filing of Complaint
- Pleading. Short Plain Statement. No Proofs.
- Rules 7,8,9 FRCP. Rule 11. Good Faith Basis or Sanctions



Judge Assigned



Judge Schedules Rule 16 Conference within 30-50 days of filing of Complaint



Shortly before Rule 16 Conference Parties must confer and file jointly proposed Scheduling Rule 16 Memorandum [Ex. Discovery (depositions/interrogatories) 120 days from Conference; Self-executing Disclosures 10 days from Conference; Rule 56 Summary Judgement 45 days from end of discovery deadline; expert reports 30 days from discovery deadline; trial jury pool date].



Rule 16 Conference



Entry of Formal Scheduling Order



Referral of case to Magistrate Judge for Settlement Conference (In EDPa, nearly 100% of filed cases referred to mediation).



Proof of Service filed < 90 days or dismissal (but Defendant is required to waive formal service or suffer costs). (Rule 4).



Answer/Counterclaims and/or joinder/30 days or Motion to Dismiss 12 (b)(6) within 21 days



14 days to answer



Motion denied



Motion granted
Dismiss Case

Federal Judge Order to Magistrate Judge for settlement conference (mediation):

- Can take place pre-discovery and/or post discovery; and/or after one witness deposition;
- Judge can order more than one settlement conference/mediation with the Magistrate Judge.



Magistrate Judge contacts Parties and sets up settlement conference in Federal Court House = Issues Order



Parties must appear with trial/Counsel and Party having actual settlement authority



Magistrate Judge Order requires parties to submit, in advance, written Memorandum limited to 3-5 pages: summary of case; damages; and demand from Plaintiff



Settlement Conference Day. Caucus Methodology; Confidentiality; Ex Parte Communication Consent.



Settlement



Case over



Impasse



Case returns to Rule 16 schedule and to assigned Judge who is notified of no settlement. In most cases the scheduling deadlines are running.

- NOTE: All of the above is put into motion by impetus of the Court generally within the first 3 months of filing the Complaint.

IV. Federal Agency/Department of Labor/EEOC Mediation Program

- All employment discrimination or harassment cases in the private and many public (non-federal agency) sectors must be filed with the EEOC which will investigate, resolve prosecute or issue a right to sue. Cannot proceed to court before this.



- Charge of violation must be filed with relevant Agency (ex: EEOC) within 300 days of event. (Employment termination etc...)



- EEOC asks parties if they wish to be referred to Mediation Unit before Investigation Unit begins investigation. If both parties agree, investigation is frozen until Mediation Unit advises.



- Mediation Date Set. Mediation Order issued. Neutral Mediator assigned. No cost. Parties and Lawyers must attend. Mediator is neutral and trained in the field (of human recourses, labor law etc...). Mediator provided written Charge of violation only.



- Parties sign: Agreement to Mediate and Confidentiality Agreements.



- Each Party gives brief statement. Caucuses. Settlement Agreement or Impasse.

- Note: This usually happens within 3-4 months of the administrative Charge filing.

V. Conclusion

The US Administrative Law and Federal Court Civil Procedure system is designed to incorporate mediation effectively utilizing federally appointed Mediators and Federal Magistrate Judges. Since specific legislation in the 1990's made ADR a mandatory and integrated part of the federal administrative and court dispute resolution process, efficiency has been increased and backlogs have been significantly reduced.

VI. Discussion

- 1. What are the impediments to the utilization of mediation in reducing civil court and administrative docket backlogs in Greece?**
- 2. Do the amendments to the Greek Code of Civil Procedure 4335/2015 (effective 2016) provide a greater opportunity or impetus for mediation and/or what changes are needed to the Greek Court system and Civil Procedure system to better incorporate mediation so as to reduce backlogs and delays?**
- 3. Are there other impediments to mediation in Greece?**
- 4. Could Greece adopt broad Civil Justice reform legislation mandating and implementing ADR effectively as was done in the US in the 1990's?**