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Assessment Protocols (for Determining Suitability of Conflict for Alternative Dispute Resolution and Parties' Interest in It)

Is a particular dispute appropriate for resolution by mediation or some other alternative dispute resolution process? Are all parties in a dispute interested in using alternative dispute resolution? One cost-effective way to find out is through an assessment process.

The Institute for Local Government offers dispute assessment services as part of its efforts to encourage local agencies to consider alternative dispute resolution for inter-agency disputes. Such assessments are offered on a fee basis.

Assessment Goals

The specific objectives of an assessment are to:

- Identify the agency stakeholders and appropriate contacts
- Identify the key issues and interests in dispute
- Understand the essential history and dynamics of the conflict and the factors that may advance or present obstacles to use of alternative dispute resolution.
- Determine the feasibility of proceeding with alternative dispute resolution
- Suggest what kind of alternative dispute resolution process would be most appropriate.

This kind of assessment is most helpful if performed in the early stages of a dispute before litigation or other rights-based processes begin.

Assessment Process Overview

This assessment process envisions three phases:

1. **Phase One: Is The Dispute Is Appropriate For Alternative Dispute Resolution?**
Phase One might involve one or both parties to the dispute.

2. **Phase Two: The Actual Conflict Assessment.** Phase Two must involve both parties to the dispute.
3. **Phase Three: Reaching an Agreement to Use Alternative Dispute Resolution**

The process may conclude at the end of any phase if the agency(ies) decide not to proceed further with preparations to engage in alternative dispute resolution.

Phase One: Is Alternative Dispute Resolution Appropriate for the Dispute?

Step One: Initial Contact. Typically a local official interested in exploring the potential for the use of alternative dispute resolution will contact ILG. From time to time, ILG may initiate contact in situations where alternative dispute resolution techniques for working through inter-agency disputes appear helpful.

The ILG assessor will confer, by telephone or in person, with the initiating local official or officials (or the first official contacted if the conversation is ILG-initiated).

The assessor will learn about the underlying bases for the dispute and the agency's interests. He or she will also determine whether there are other key individuals (from the same local agency) who should be interviewed. A key issue to be determined is whether the conversation will be confidential.

The assessor will explain the potential advantages and disadvantages of using alternative dispute resolution.

<p style="text-align: center;">Phase One/Step One: Key Questions</p> <p>√ What is the dispute about?</p> <p>√ Will conversations be confidential?</p> <p>√ Who should be interviewed?</p>
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**Phase One/Step Two:
Key Questions**

- √ What is the nature of the dispute?
- √ How long has it been going on?
- √ What other people or public agencies are interested in the dispute?
- √ What are the history and dynamics of the dispute conflict? Are there dynamics suggest alternative dispute resolution techniques will be more or less successful?
- √ What will be the likely result if the conflict is not resolved amicably?
- √ Have any other resolution-seeking steps (for example, litigation) already taken place or are already in progress that have their own decision points or deadlines? Are there other relevant milestones or deadlines relating to the issues in dispute that might impact the use of alternative dispute resolution?
- √ Is the issue in dispute of sufficient concern and priority for the initiating agency (or the first agency contacted) to consider alternative dispute resolution?

Step Two: Understanding the Dispute. As appropriate to the dispute in question, the assessor should explore the questions at left with key representatives of the initiating agency (or first agency contacted if ILG initiated). In having these conversations, the assessor will be mindful of public agency open meeting requirements relating to serial conversations among a quorum of a decision-making body.

Step Three: Determining Appropriateness for Alternative Dispute Resolution.

- If the assessor thinks the dispute is appropriate for alternative dispute resolution, the assessor proceeds to Step Four.
- If the assessor does not think the dispute is appropriate for alternative dispute resolution, the assessor provides a written or oral explanation of his or her conclusion to the initiating agency (or agencies).

Step Four: Agency Readiness for Alternative Dispute Resolution. Assessor explores readiness of the initiating agency (or parties) to seriously consider (not necessarily commit to) use of

alternative dispute resolution. In addition the assessor would provide the initiating agency with a more extensive description of alternative dispute resolutions options and their benefits.

At this point, one of two things would likely occur:

1. **Move to Phase Two.** The initiating agency (or agencies) is (are) willing to have assessor contact the other agency(ies) to the dispute to discuss using alternative dispute resolution to resolve the dispute.
2. **Conclude Assessment.** The initiating agency (or agencies) is (are) not willing to proceed. ILG provides either an oral or written assessment to initiating agency(ies) with findings and likely appropriateness for ADR and terminate assessment. This may include recommended specific process options.

Phase Two: Assessing the Interest of the Second Agency

The purposes of Phase Two are to contact the party with whom the initiating party(ies) has(have) a dispute and to determine whether these additional parties are interested in considering alternative dispute resolution.

Step One: Explore Interest in Alternative Dispute Resolution. The assessor contacts the second agency and explains what has happened in Phase One and asks whether the second party is interested in understanding more about ADR and conflict assessments.

Step Two: Understanding the Dispute from Other Party's(ies') Perspective. If the second agency is interested in moving forward, the assessor would interview an appropriate official (or officials) from the second agency, as well as appropriate senior leaders representing any other primary and essential stakeholders. The interview will address similar topics as in the first agency interviews. See questions in sidebar at right.

Step Three: Assessor explores readiness of second agency (or agencies) to seriously consider (*not necessarily commit to*) use of ADR. Assessor provides a fuller explanation of the ADR processes and alternatives. Next steps would typically include one of the following:

1. If second agency is interested (along with first agency) in exploring alternative dispute resolution options, assessor drafts full assessment report and shares with all parties. If assessor's report **does** suggest appropriateness and readiness for alternative dispute resolution, then assessment moves to Phase Three below;
2. If second agency is interested (along with first agency) in exploring alternative dispute resolution options, assessor drafts full assessment report and shares with all parties. If the report concludes that alternative dispute resolution **should not** be pursued (either because one or more parties is not ready for it or the nature of the dispute is not suitable for it), ILG

Phase Two/Step Two: Key Questions

- √ What are the second agency's dispute-related issues and interests?
- √ Does the second party believe there are other local agency or organization stakeholders not already identified?
- √ What does the second party view as (essential) history and dynamics of the conflict and the factors that may advance or present obstacles to use of ADR options?
- √ What is the likely prognosis, at present, for the dispute and its underlying issues? What will be the likely result if the problem is not resolved?
- √ Is the issue in dispute of sufficient concern and priority for the second agency to consider an alternative dispute resolution option?
- √ Are any other resolution-seeking steps (for example, litigation) that already have taken place or are already in progress that have their own decision points or deadlines? Are there other relevant milestones or deadlines relating to the issues in dispute that impact the use of ADR options?

concludes its involvement (parties may continue to explore alternative dispute resolution on their own of course);

3. If second agency is not sufficiently interested (or ready) to pursue alternative dispute resolution options, assessor provides either an oral or written assessment to all parties indicating findings and appropriateness for alternative dispute resolution and concludes assessment. This may include recommended specific process options.

Phase Three begins with ILG's involvement if the all parties are interested and the ILG assessor has concluded that alternative dispute resolution is both appropriate and the parties are ready.

Phase Three: Reaching an Agreement to Use Alternative Dispute Resolution

In this phase, the assessor further explores the parties' joint readiness to move forward and reach an agreement to use alternative dispute resolution and the appropriate alternative dispute resolution approach.

Step One: Assuring All the Proper People Are Involved in the Conversation. Assessor should ensure that all relevant individuals--elected and appointed--from participating agencies are included in the consultations in this phase.

Step Two: Agreeing to Approach to Alternative Dispute Resolution. Assessor consults with appropriate representatives of participating local agency parties (and any other identified key stakeholders) to determine:

1. Agreed upon ground rules, process expectations and communication protocols for the remaining assessment discussions
2. Present or potential obstacles to proceeding with an alternative dispute resolution option and strategies to address them
3. The specific alternative dispute resolution approach to be used
4. How alternative dispute resolution provider candidates will be identified and/or selected (as appropriate)
5. Additional data or information required for making decision to go forward
6. Resources required for the alternative dispute resolution process (for example) and the plans to secure them
7. A process for securing each local agency's commitment to participate

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Step Three: Decision to Pursue Alternative Dispute Resolution. Agencies make a decision to pursue - or not to pursue –alternative dispute resolution.

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