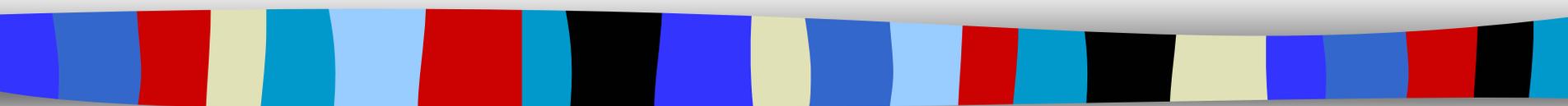
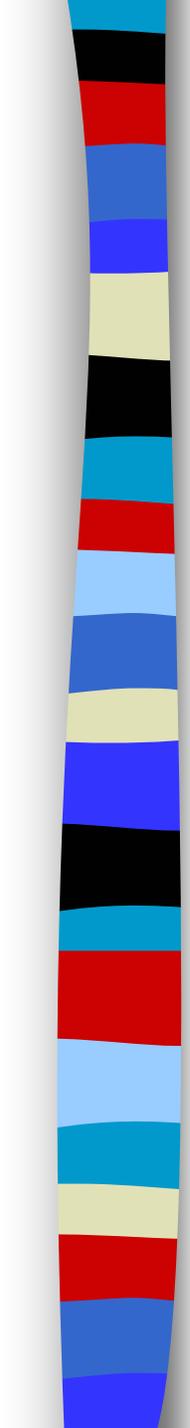


Alternative Dispute Resolution



A New Way to Manage Conflict

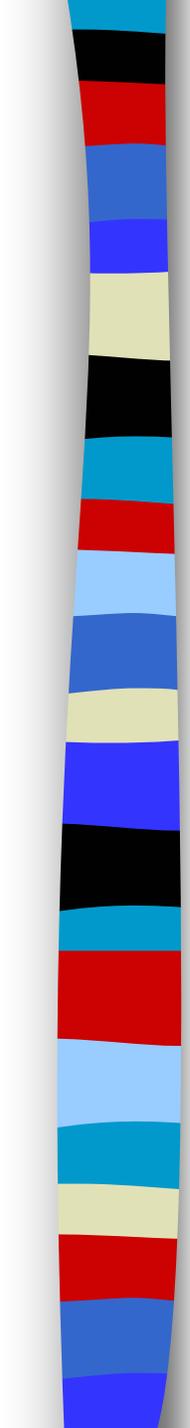
Phyllis Hanfling
Director,
Office of Dispute Resolution

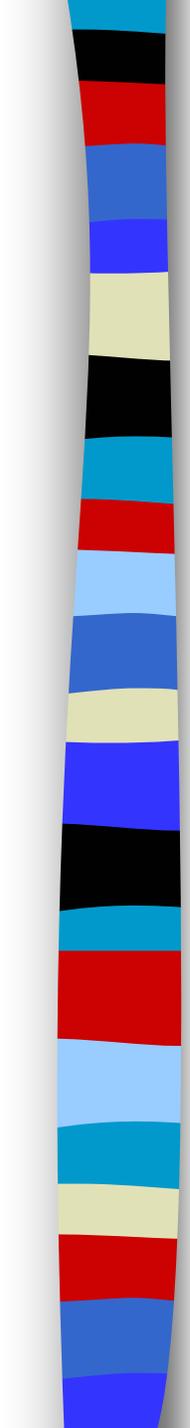


Approaches to Conflict/Disputes

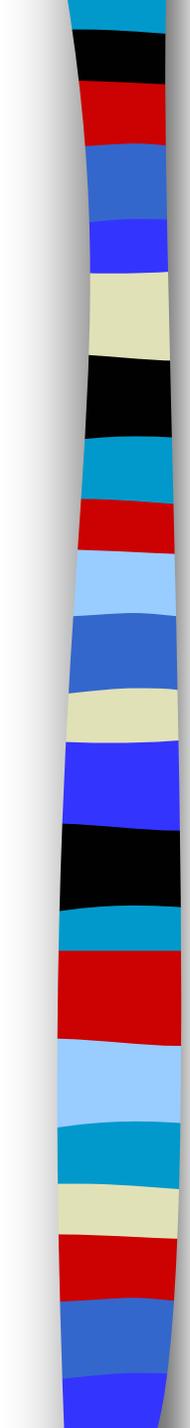
Avoidance	Negotiation	ADR	Litigation/Violence
		Assisted negotiation using a neutral third party e.g. MEDIATION	

NEGOTIATIONS FAILED

- 
- **Miscommunication/non-communication**
 - **Lack of information**
 - **Emotion**
 - **Poor negotiating skills**
 - **Timing**
 - **Lack of trust**
 - **Imbalance of power**
 - **Too busy (crisis management)**
 - **Personality conflict**
 - **Vindication**
 - **Multiple parties**
 - **Differing perceptions of strength of position**



Types of Recognition	Frequency with which supervisors say they give various types of recognition for good performance	Frequency with which subordinates say supervisors give various types of recognition for good performance
Give privileges	52%	14%
Gives more responsibility	48	10
Gives pat on the back	82	13
Gives sincere and thorough praise	80	14
Trains for better job	64	9
Gives more interesting work	51	5



What is ADR:

“Alternative” or “Appropriate”
Dispute Resolution

- Set of tools for resolving disputes
- Using neutral third party
- Alternative to litigation/violence

Where do you spend your money and resources?

PREVENTION

EARLY INTERVENTION

POLICY
DIALOGUES

CONTRACT
LANGUAGE

REGS
NEGS

EARLY
NEUTRAL
EVALUATION

MINI-TRIAL

DPO

OMBUDS

TRAINING

MEDIATION

PARTNERING

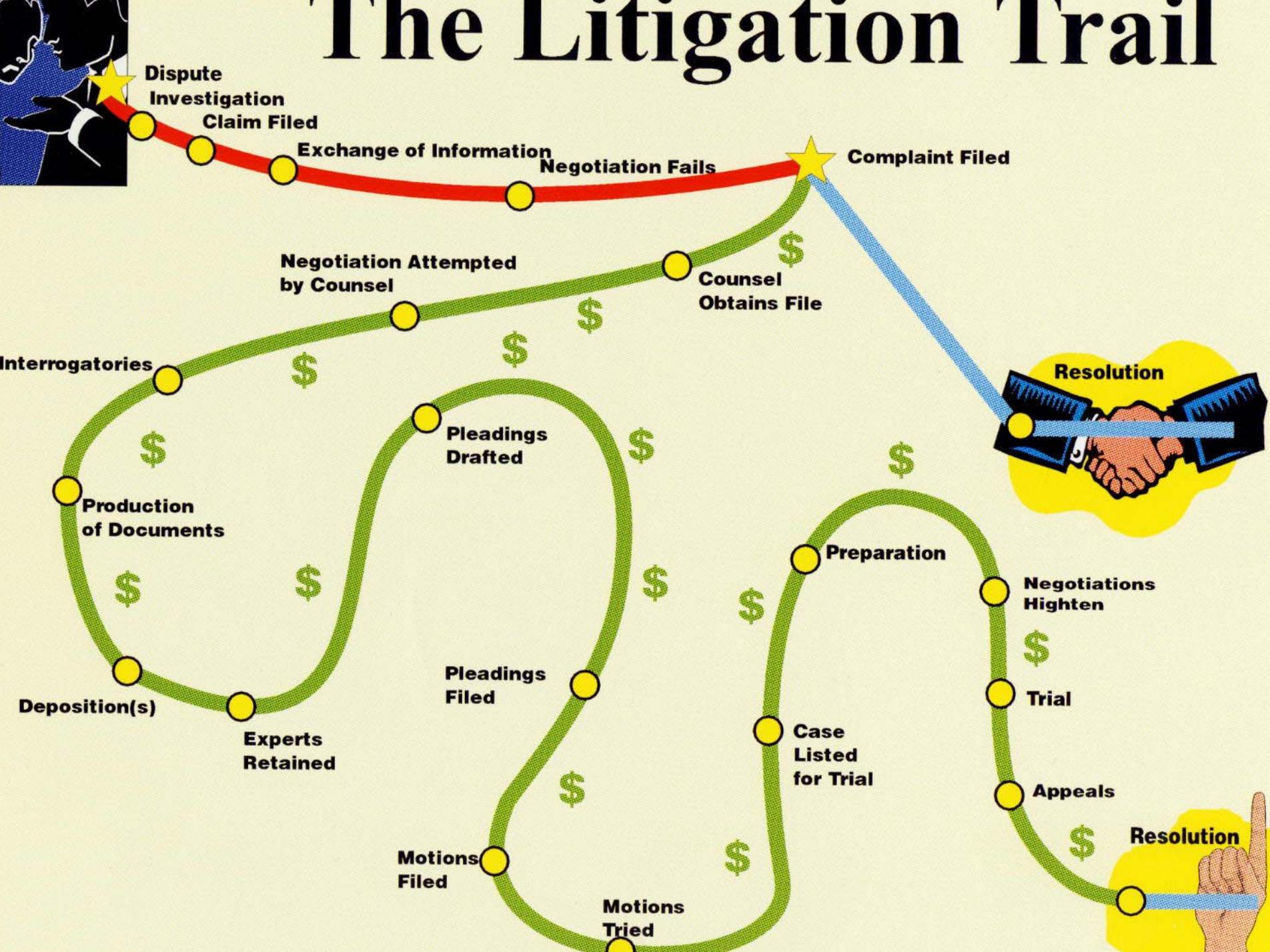
STANDIING
NEUTRALS

DISPUTE
SYSTEMS
DESIGN

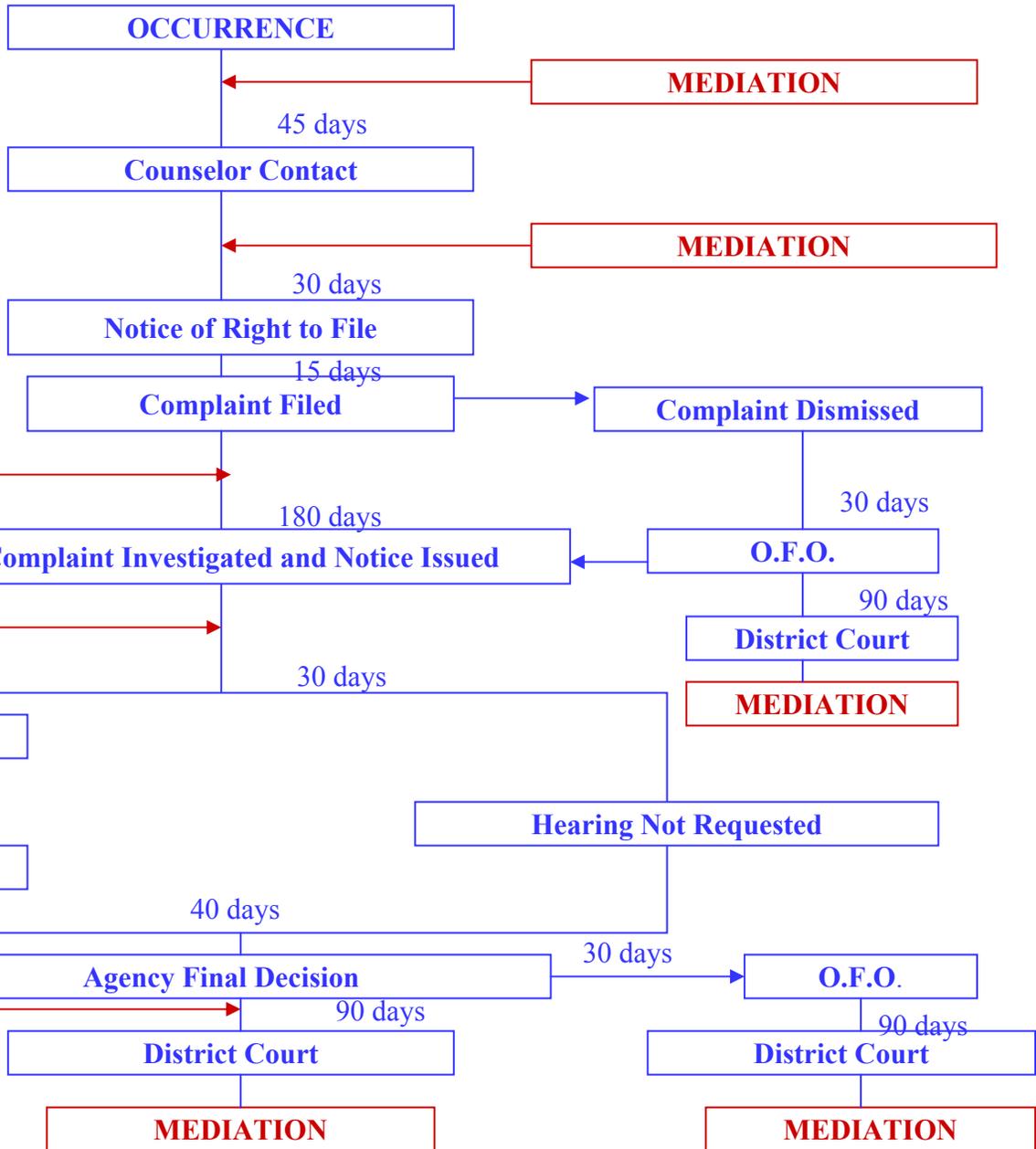
LITIGATION

DISCOVERY

The Litigation Trail



**EEOC COMPLAINT PROCESS
(29 CFR 1614)**



MEDIATION

MEDIATION

MEDIATION

MEDIATION

Hearing Requested

MEDIATION

Recommended Decision

Hearing Not Requested

Agency Final Decision

District Court

MEDIATION

O.F.O.

District Court

MEDIATION

MEDIATION

O.F.O.

District Court

Complaint Dismissed

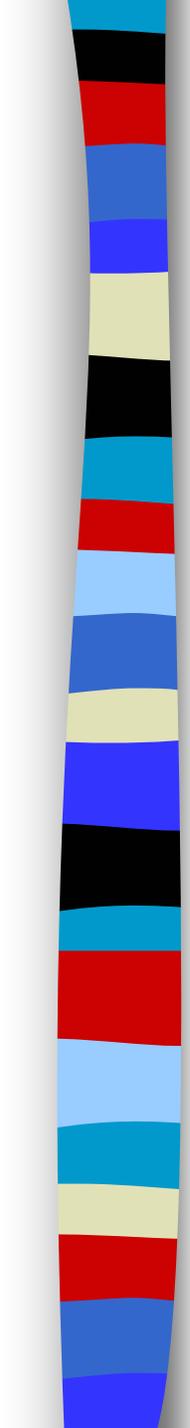
OCCURRENCE

Counselor Contact

Notice of Right to File

Complaint Filed

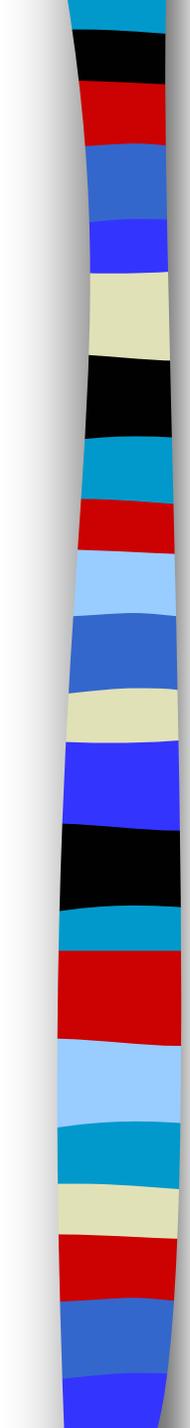
Complaint Investigated and Notice Issued



What is Mediation?

- Voluntary, confidential, informal
- A mediator will: help resolve disputes
- A mediator will not: judge, make decisions, force agreement
- The parties will: work together to satisfy interests

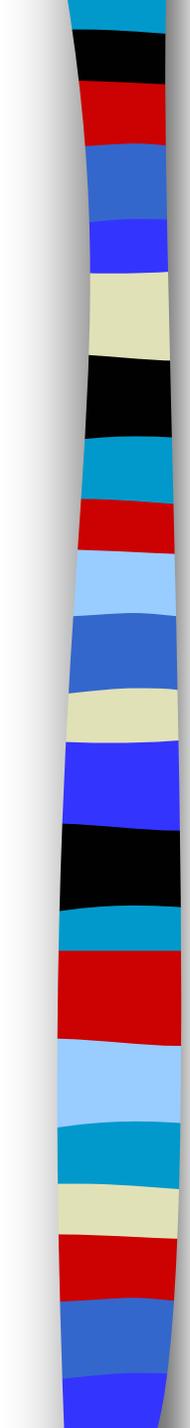
MINDSET: How can we work together to solve this problem vs. how can we beat them?



a trained, experienced

Role of \wedge Mediator:

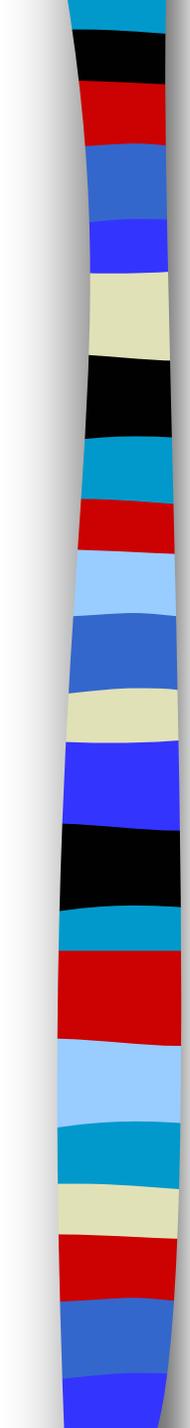
- Listens, interprets, translates
- Creates trust
- Defuses hostility
- Identifies interests
- Suggests options



a trained, experienced

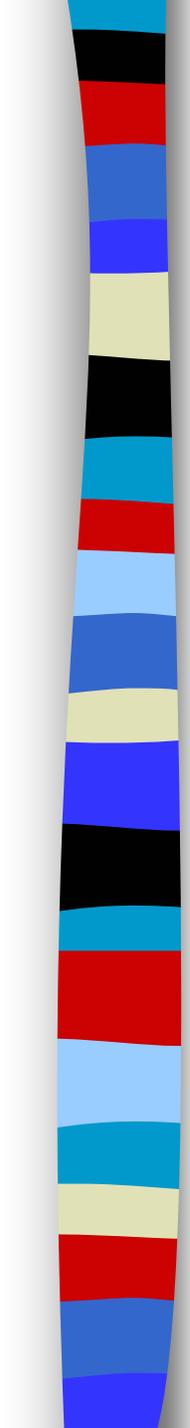
Role of \wedge Mediator:

- Floats trial balloons
- Becomes “agent of reality”
(BATNA/WATNA)
- Guides negotiations
- Encourages, persuades



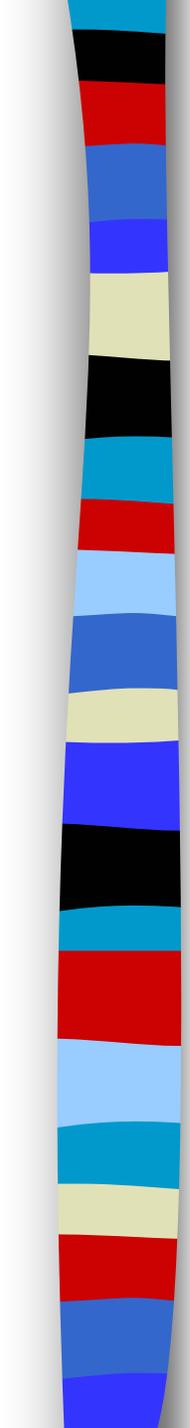
Advantages of Mediation

- Saves time, money, resources
- Provides less intimidating “day in court”
- Protects ongoing relationships
- Offers opportunity to vent
- Clears up misunderstandings



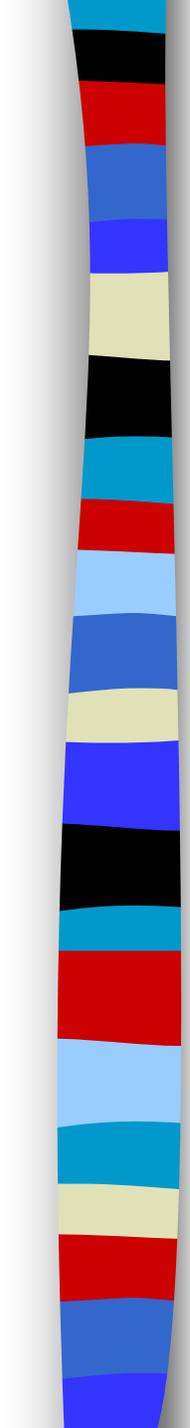
Advantages of Mediation

- Allows parties to retain control
- Creates “win-win” solutions
- Assures high rate of compliance
- Privacy
- Future focused



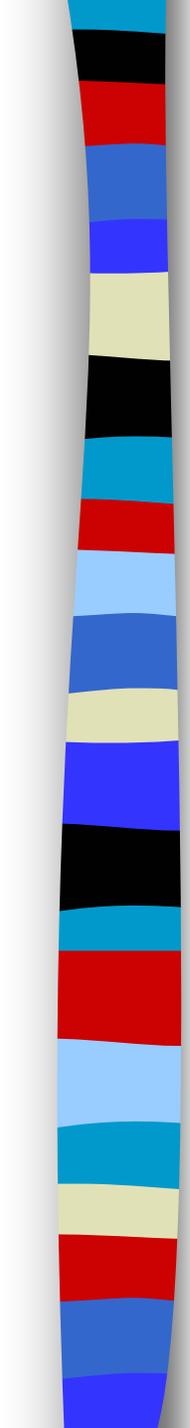
Stages of Mediation

- Convening
- Orientation to process
- Gathering Information
- Identifying interests



Stages of Mediation

- Generating options
- Selecting options
- Reaching consensus
- Drafting agreement



When is Mediation Appropriate?

No

Absent Parties

Need Precedent

Want Publicity

Nothing to Give

Other Alternatives Better

Policy Issues

Cases of Fraud

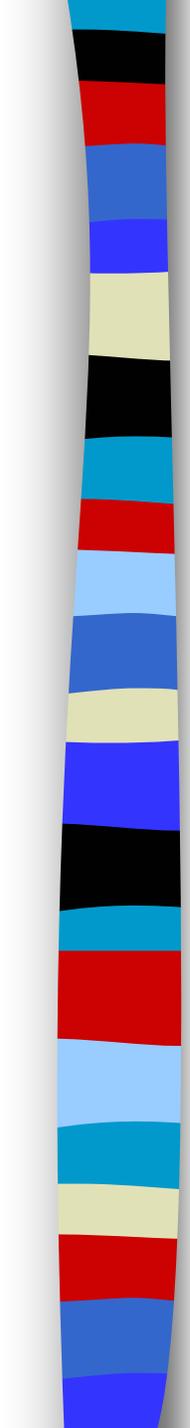
Yes, even if

Many Parties

Many Dollars

Far Apart

Very Hostile



When is Mediation Appropriate?

Especially If:

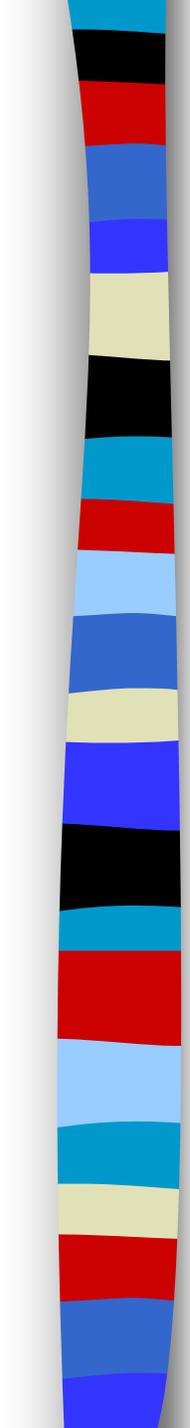
Unique remedies

Ongoing relationships

Bad public relations

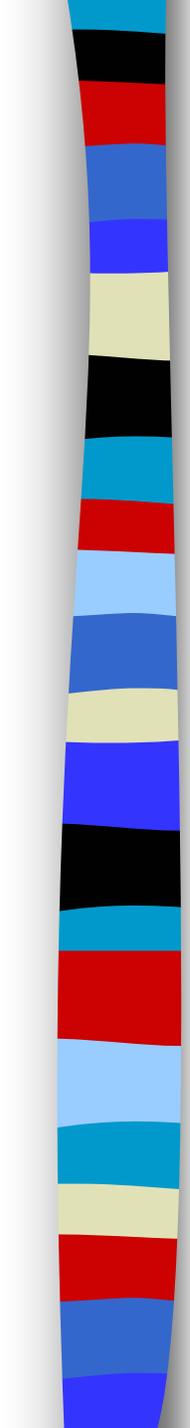
Bad judge

Need for confidentiality



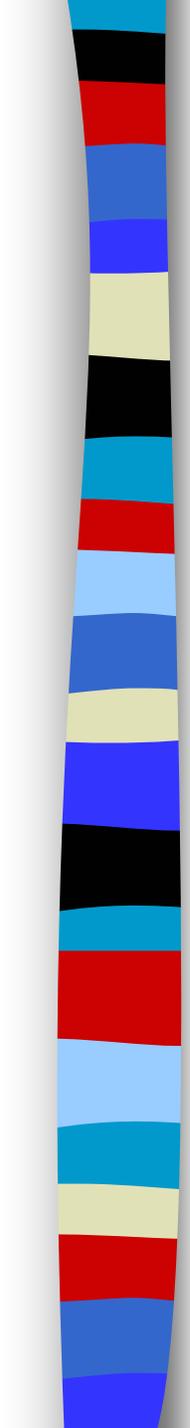
Mediation:

- Transcripts No
- Briefs No
- Written Decisions No
- Pre-mediation Submission Perhaps
- Ex Parte Conversations Yes
- Creative Thinking Required Yes



Mediation:

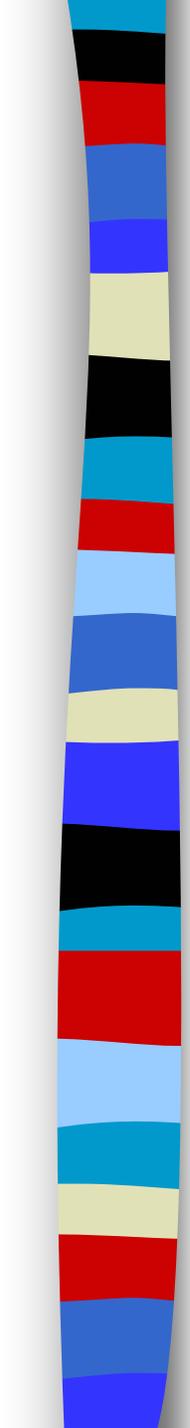
- Rules of Evidence No
- Testimony No
- Sworn Witnesses No
- Depositions No



CONVENING

WHAT IS IT?

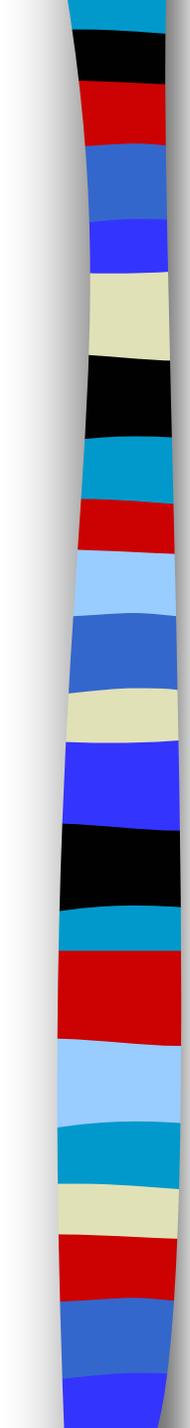
GETTING THE PARTIES AND THE
MEDIATOR TO THE TABLE



CONVENING

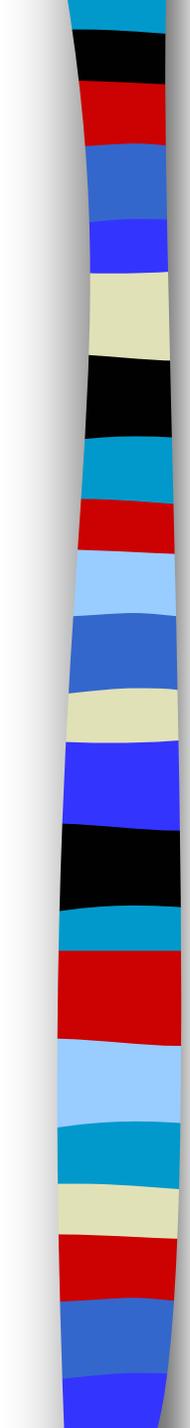
WHO DOES IT?

WHEN IS IT DONE?



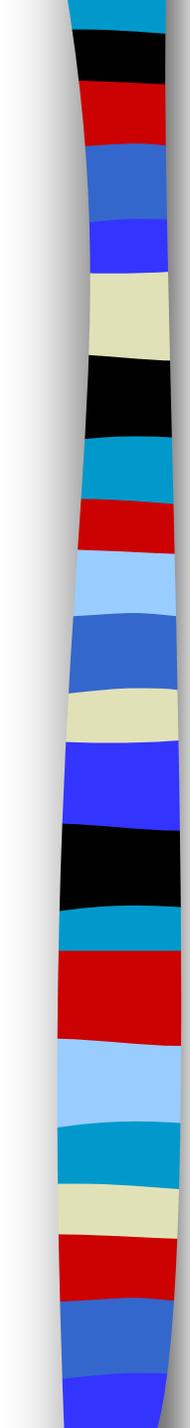
Convening

- Identify the necessary participants
- Determine whether they want to participate
- Evaluate whether the process has a chance of succeeding
- Insure a mutual understanding of the process and hoped for outcomes



First Contact Made

- Proposed by party or attorney of party
- Requested by court
- Required or encouraged by a government program
- Required by contract or legislation



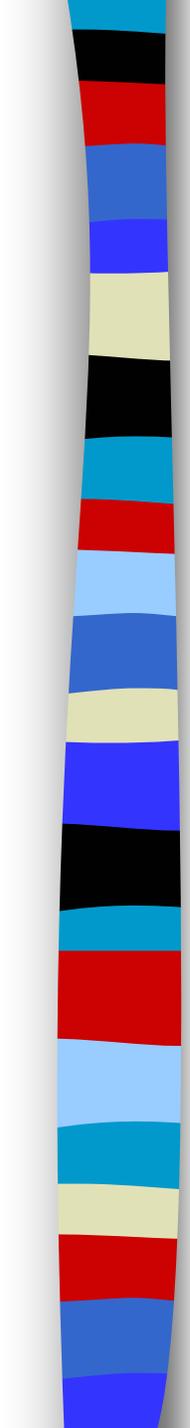
Identify Other Participants

A. Agency needs to consider who:

- Is the decision maker?
- Has good negotiating skills?
- Has positive personality/attitude?
- Knows facts?

B. Does a specialist need to be available, e.g.

- Policy maker
- Attorney
- Administrative officer
- Personnelist
- ADA expert

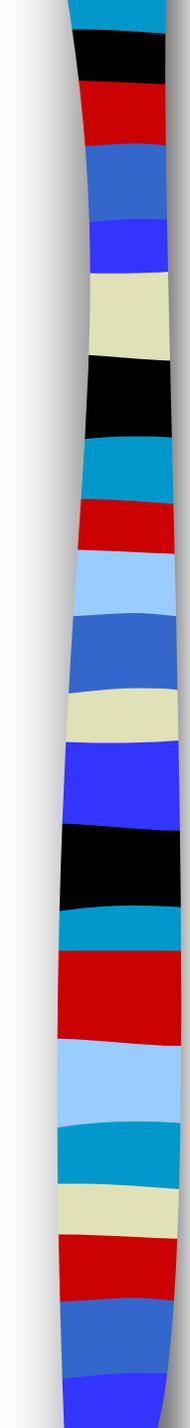


Identify Other Participants

C. Complainant may bring:

family member, co-worker, friend, attorney,
union steward

D. Who else has an interest?



Convince Other Participants

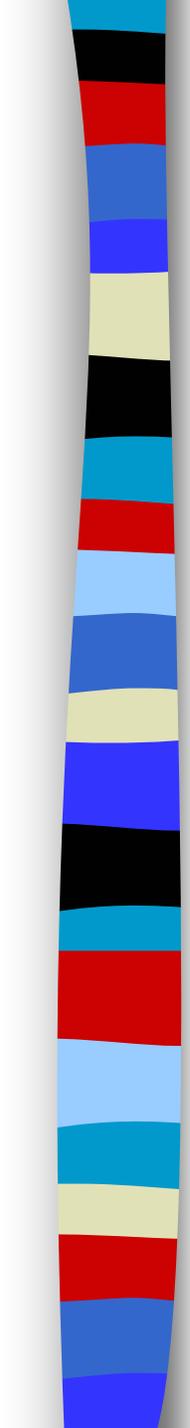
Respond to reasons they may have why case should not be mediated:

“I don’t want to appear weak.”

“We have a strong case and will win in court. Why should I settle?”

“There is too much hostility between us -- we can’t even be in the same room.”

“Their demand is outrageous. I can’t come near it.”



“I don’t have time for this now.”

“They have never been honest. I don’t trust them.”

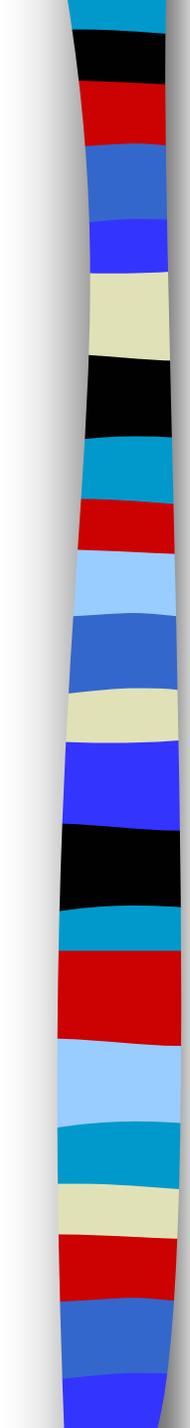
“We expect a favorable ruling on our motion for summary judgement.”

“We need more discovery..”

“A mediator will make us compromise by cutting the demand in half.”

DO IT NOW OR DO IT LATER!

Review Alternatives

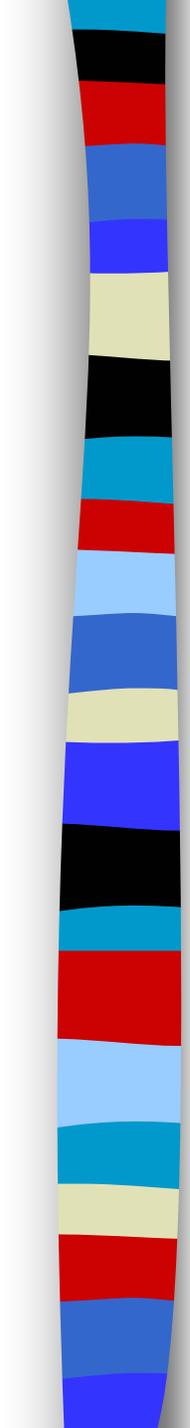


Is It Mediatable?

Anticipated events that might impact the case --
RIF, reorganization, change in leadership, new
administration

Ongoing working relationship between parties

Personal issues -- illness, retirement, financial
problems, family problems, relocation,
emotional stress



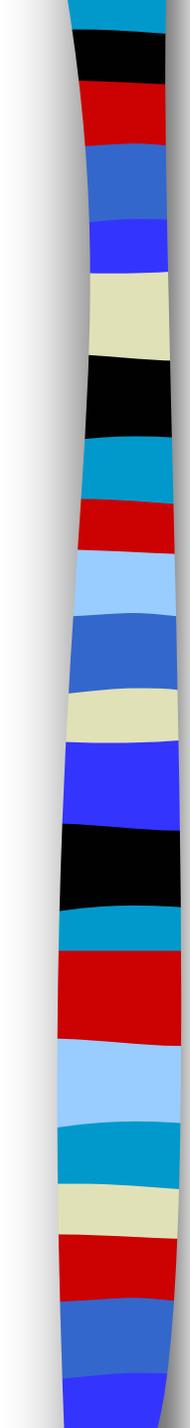
Is It Mediatable?

Relationship with representative, if any

External -- press, community relations,
Congressional

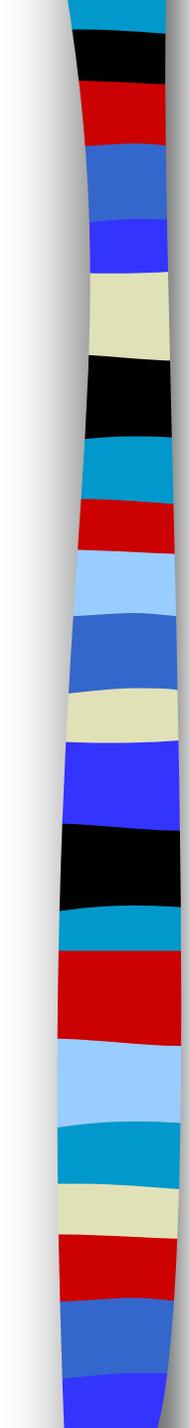
Revisit mediation if it does not make sense
now

Major reason not to mediate -- necessary
parties are unavailable



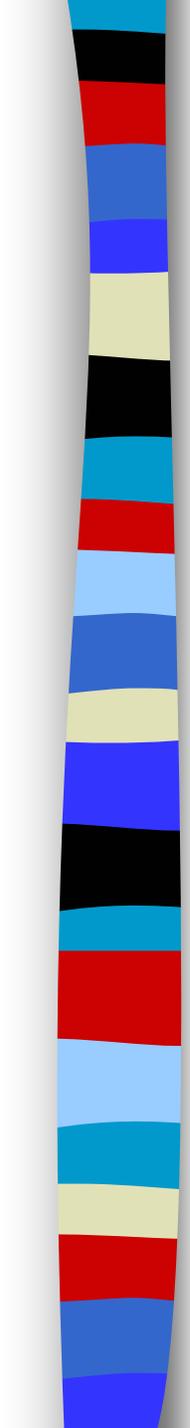
Program Prepares Parties

- Individual coaching
- Videos
- Written materials



How Do Parties Prepare?

- A. Written Statement?
- B. Introductory Statement
 - Chronological, brief
- C. Strategy
 - Interests (own, others)
 - Options
 - Constraints
 - Alternatives (litigation risk)
- D. Talk to Mediator
- E. Be sure of the process you are getting.



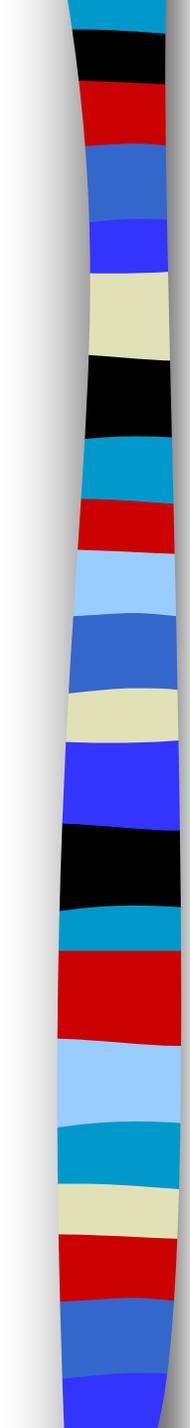
Select the Mediator

In-house v. external

Know personalities, styles, personal attributes

Inform the Mediator

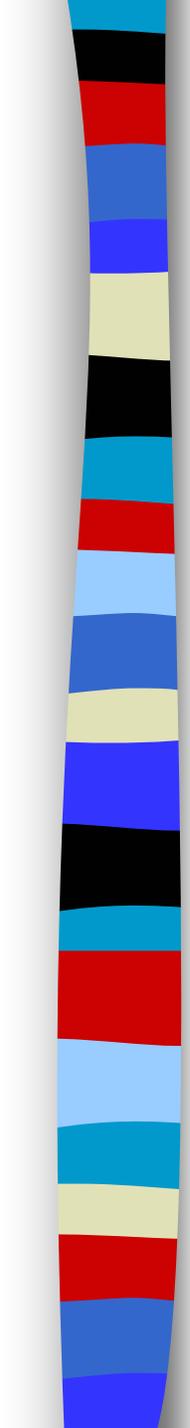
- ▶ about parties
- ▶ personalities
- ▶ dynamics of organization
- ▶ outside pressures
- ▶ constraints (time, money, reorganizations)



Confirm and Schedule

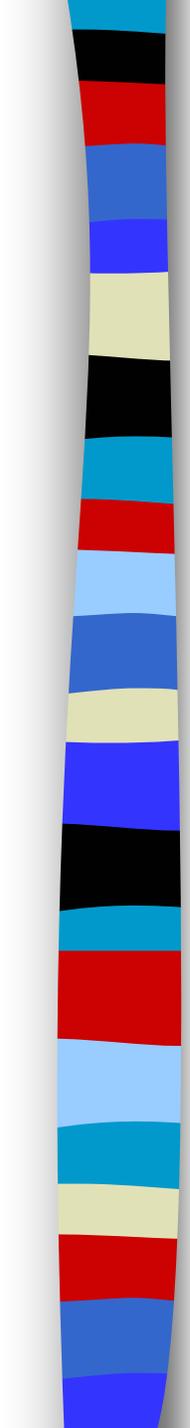
First Session

- Notify all participants
- Comfortable space
- Mediator takes over



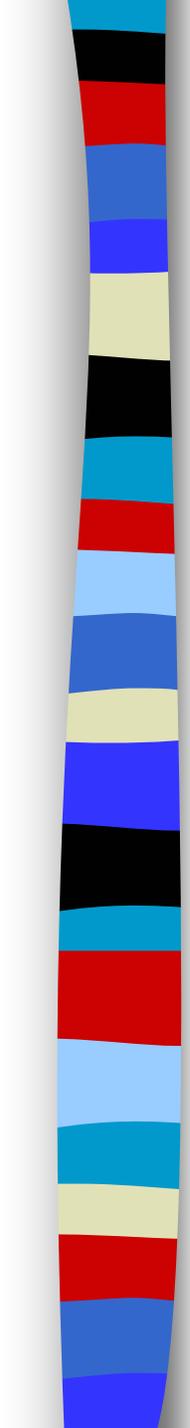
Agreement to Mediate

- Signed by all in attendance
- Filed by office
- Confidentiality



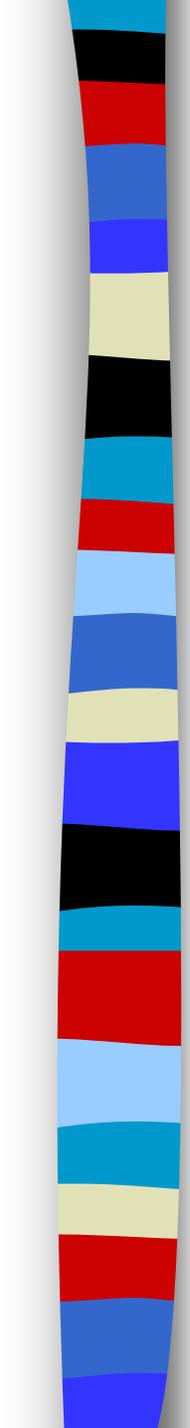
Follow Through

- Observe
- Tie up loose ends -- return phone calls
- Get agreement signed
- Get agreement implemented



Settlement Agreements

- ◆ Specific
- ◆ Unambiguous
- ◆ Self-executing
- ◆ Address all issues
- ◆ Use parties' language
- ◆ Achievable



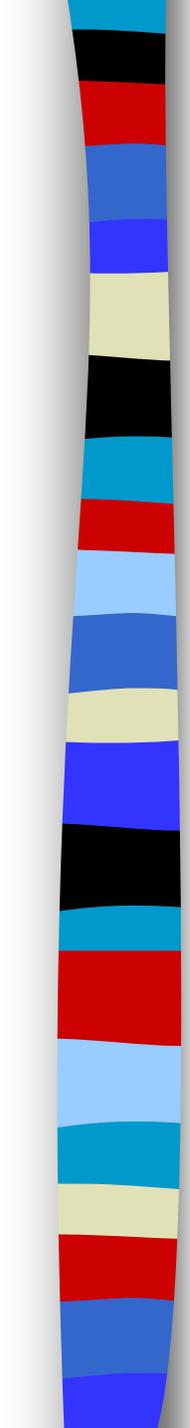
Arbitration

RIGHTS BASED.....FINDING OF FAULT

- Arbitrator manages process
- Arbitrator issues award
- Principals prepared as witnesses
- Case presented by attorney
- Rules of evidence relaxed
- Ground rules negotiated by attorneys
- No ex parte conversations

Integrated Conflict Management System





How We Can Help You . . .

- Advise on: appropriate use of ADR
type of ADR
preparing for ADR
- Assist in: finding neutrals/trainers
getting parties to table
designing ADR systems
- Provide: moral support
education/training/materials
- Call: Phyllis Hanfling
(202) 586-6972
- E-mail: phyllis.hanfling.@hq.doe.gov