

Attorney General Eric H. Holder, Jr.
Federal Alternative Dispute Resolution Programs
7th Floor Conference Room 7411
Monday March 19, 2012

Thank you, Chairman [Paul] Verkuil, for your kind words, and for the outstanding work that you and your colleagues at the Administrative Conference of the United States are leading. It's a pleasure to join you in welcoming so many colleagues and critical partners to the Department of Justice for today's Symposium on Federal Alternative Dispute Resolution Programs.

ACUS and the Department of Justice each have a long history of promoting alternative dispute resolution. So it's a special privilege to join forces once again – and to embrace this unique opportunity not only to showcase the success of federal ADR programs in recent years, but also to renew our joint commitment to dispute resolution and establish a path forward.

Three decades ago, ACUS emerged as an early champion of alternative dispute resolution and recognized its potential to reduce costs, to save time, and to promote collaborative problem solving across all levels of government. After eight years of determined advocacy, Congress passed the Negotiated Rulemaking Act and the Administrative Dispute Resolution Act of 1990. These important measures encouraged agencies to change the methods they used to negotiate rules and address disputes. And ACUS worked diligently alongside dozens of other agencies to make sure the legislation was faithfully implemented.

In 1995, two years before I was sworn in as Deputy Attorney General, the Department of Justice took up the mantle of ADR – which my predecessor, and former boss – Attorney General Janet Reno liked to describe as “Appropriate” Dispute Resolution. By convening the Interagency ADR Working Group – and establishing the Office of Dispute Resolution –

Attorney General Reno recognized ADR's ability to achieve effective and lasting results. And she highlighted its potential to expand access to justice for all Americans.

At the same time, she noted, "that promoting the use of dispute resolution does not sanction any greater degree of tolerance for unlawful or improper conduct." She was right. And more than a decade later, I'm proud that our ADR efforts remain true to this foundation. Today, federal agencies are continuing to build upon Attorney General Reno's goal of creating a more effective and efficient way to resolve public disputes involving the government.

That's certainly the case at the Justice Department, where we are making good on this Administration's commitment to using ADR to help find lasting, common-sense solutions to even the most complex problems. Over the last three years, ADR has served as a vital part of the Department's litigation strategy. It has provided a framework for resolving a wide range of disputes through mediation – involving constitutional rights, tribal boundary challenges, and even the False Claims, Clean Water, and Fair Housing Acts. And it has proven to be an important, and often cost-saving, tool for the communities we serve.

For example, in 2010, we reached historic settlements with two correctional facilities in New York where prisoners were routinely denied access to adequate mental health care, a clean and safe environment, and properly trained staff. After two successful mediations, these facilities agreed to provide mental health screenings, offer clinically appropriate treatments, extend counseling services to victims of sexual abuse, and investigate allegations of violence. These settlements demonstrate the power of mediation in finding workable solutions to ensure that constitutional rights are upheld. And they are only the beginning.

The Department has also played an essential role in facilitating government-to-government agreements without protracted – and expensive – litigation. Two and a half years

ago, the Department reached a sweeping agreement between the Saginaw Chippewa Indian Tribe, the United States, and the State of Michigan over jurisdictional boundaries. ADR provided a path forward for resolving longstanding disputes concerning the Indian Child Welfare Act, taxation, regulation, land use, revenue sharing and law enforcement jurisdiction.

And, although we've only recently begun to pursue mediation in False Claims Act cases, these efforts have already yielded dramatic results. Last year, we recovered more than \$60 million from Accenture after allegations of kickbacks and bid rigging. In a separate case, we negotiated a settlement of more than \$420 million with leading pharmaceutical manufacturers. Both cases are powerful reminders of mediation's potential to recover precious taxpayer dollars.

But large settlements are far from the only reason why ADR makes good economic sense in these challenging times. Since the beginning of this Administration – across every level of government – many have been asked to confront growing demands with increasingly limited budgets – making cost-effective strategies like ADR more important than ever. In fact, the Justice Department invests approximately \$1.5 million in private mediation fees annually. These fees yield an average savings of \$6 million in litigation and discovery expenses – not to mention 11,000 days of attorney and staff time.

Even outside the context of formal litigation, we have a history of finding value in ADR – and, in some cases, developing issue-specific mediation programs. Our Community Relations Service – or CRS – regularly partners with state and local officials to help resolve community tension and address allegations of discrimination. Through the Americans with Disabilities Act Mediation Program, we've been able to resolve more than 75 percent of the 1,200 ADA complaints that have been referred to mediation since the Administration began. And, in response to the recent foreclosure crisis, our Access to Justice Initiative – along with a number of

other federal partners – has worked diligently to strengthen foreclosure mediation, engage with experts to make these programs more effective, and provide homeowners with the chance to avoid foreclosure.

I could go on and on. But today’s symposium is about more than just sharing success stories and measuring the considerable progress we’ve made. It’s also an important opportunity to renew our commitment to strengthen ADR programs across the federal government; to develop new resources and expand the practical use of ADR in government agencies; and to improve our collective ability to resolve disputes effectively, equitably, and efficiently.

The responsibility of continuing this progress – and building on the accomplishments of so many experts, agency leaders, and ADR specialists throughout the federal government – rests with each person in this room. While we all can be proud of the track record that’s already been established, this is no time to be satisfied – and we cannot become complacent.

So – today – I urge you to seize this opportunity to share insights, expertise, and knowledge with one another. I want you to know that my colleagues and I are proud to count you as partners, and stand ready to support ACUS and the Interagency ADR Working Group in any way possible. And I look forward to all that we will – and must – accomplish together.