



## PROMOTING THE BROADER APPROPRIATE USE OF ALTERNATIVE DISPUTE RESOLUTION TECHNIQUES

**Approval Date:** April 6, 1995  
**Approved By:** JANET RENO  
Attorney General  
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**Initiated By:** Office of the Associate Attorney  
General

1. **PURPOSE.** The purpose of this order is to promote the broader use of alternative dispute resolution (ADR) in appropriate cases to improve access to justice for all citizens and to lead to more effective resolution of disputes involving the government.
2. **SCOPE.** The provisions of this order shall apply to all Departmental litigating divisions and to all U.S. Attorneys. This order is applicable to civil matters only. It is not intended to affect criminal matters, including enforcement of criminal fines or judgments of forfeiture.
3. **MODIFICATION.** This order expands upon but does not otherwise modify the Department of Justice's Memorandum of Guidance on Implementation of the Litigation Reforms of Executive Order No. 12778, notice of which was published at 58 Fed. Reg. 6015-03.
4. **AUTHORITY.** In addition to the general authority conferred upon the Attorney General by law, specific authority to provide ADR guidance is provided by section 3 of the Administrative Dispute Resolution Act of 1990, Pub. Law 101-552, 104 Stat. 2736-37.
5. **DEFINITION.** As used in this order, "formal ADR techniques" include, but are not limited to, arbitration, mediation, early neutral evaluation, neutral expert evaluation, mini-trials and summary jury trials.
6. **CREATION OF POSITION OF SENIOR COUNSEL FOR ALTERNATIVE DISPUTE RESOLUTION.** There shall be created within the Department of Justice, the position of "Senior Counsel for Alternative Dispute Resolution." The Associate Attorney General shall designate a career employee of the Department of Justice at the Senior Executive Service level to fill this position. The Senior Counsel shall develop policy on, and promote aspects of ADR, and in furtherance of that goal shall:
  - a. Assist senior management in developing policies for the use of ADR, including revising the Department Guidance on the Use of Alternative Dispute Resolution for Litigation in the Federal Courts.

- b. Assist with the design and execution of ADR-related training, recordkeeping, program evaluation and reporting functions.
  - c. Provide advice and assistance to Department supervisors and employees on selecting appropriate cases for using ADR and on the application of particular ADR techniques.
  - d. Report regularly to the Attorney General, through the Associate Attorney General, on the status of the Department's ADR activities.
  - e. Represent the Department in government-wide ADR activities, including programs and projects with the Administrative Conference of the United States, the Office of Management and Budget, the National Performance Review, and the federal courts.
  - f. Advise senior management on legislation, rulemaking, and other policy matters relating to ADR.
  - g. Serve as the Dispute Resolution Specialist for the Department of Justice as defined in Section 3(b) of the Administrative Dispute Resolution Act, 104 Stat. at 2737.
  - h. Perform such other duties and functions related to the promotion of ADR as may be assigned by the Attorney General, the Deputy Attorney General and the Associate Attorney General.
7. **COMPONENT ADR GUIDANCE.** By September 11, 1995, each litigating division and the Executive Office for United States Attorneys acting on behalf of the United States Attorneys shall provide its attorneys with ADR guidance containing the following provisions:
- a. A policy statement by the head of the component indicating that attorneys are expected to use ADR in appropriate cases as an alternative to litigation and are to cooperate with court-annexed or court-sponsored ADR programs and with efforts to develop and evaluate such programs.
  - b. A set of criteria to be used in identifying specific cases appropriate for resolution through settlement negotiations or the use of a formal ADR technique. The component guidance should also identify ADR methods most suitable to resolving certain categories of cases, and criteria for the selection of ADR providers.
  - c. A requirement that any attorneys whose practices are substantially civil attend a comprehensive basic training program in negotiation and ADR and that all experienced attorneys handling civil matters be required to participate in periodic supplemental ADR training. The content and nature of such training shall be determined by the Senior Counsel for Alternative Dispute Resolution in consultation with the Department's training components.
  - d. A complete explanation of the internal procedures attorneys should follow in obtaining authorization and funding for the use of formal ADR techniques.
8. **FURTHER RESPONSIBILITIES OF PERFORMING COMPONENTS.**
- a. The components subject to this order shall coordinate with the Senior Counsel for

Alternative Dispute Resolution the development of the ADR guidance, as well as their performance of related recordkeeping, program evaluation and reporting functions.

- b. The components subject to this order shall review their ADR guidance at least annually and, in conjunction with the Senior Counsel for Alternative Dispute Resolution, shall make any necessary changes.
  - c. The components subject to this order, in consultation with the Senior Counsel for ADR, shall designate a person or persons with primary responsibility for coordinating the component's ADR efforts so that a network of individuals with ADR expertise is established throughout the Department. This network shall assist the Senior Counsel for ADR in developing and implementing Department ADR policies.
  - d. The components subject to this order shall maintain statistics regarding its use of ADR and report those statistics annually to the Associate Attorney General. These statistics should demonstrate both the component's compliance with this order and the full extent of its overall use of informal and formal ADR techniques.
9. **NO PRIVATE RIGHTS CREATED.** This order is intended only to improve the internal management of the Justice Department in resolving disputes and conducting litigation. This order shall not be construed as creating any right or benefit, substantive or procedural, enforceable at law or in equity, by a party against the United States, its agencies, its officers, or any other person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, the Justice Department, its officers, or any other person with this order. Nothing in this order shall be construed to obligate the United States to offer funds to settle any case, accept a particular settlement or resolution of a dispute, to alter its standards for accepting settlements, to submit to binding arbitration or to alter any existing delegation of settlement or litigating authority.
10. **FURTHER GUIDANCE.** The Associate Attorney General shall have the authority to issue further guidance regarding the scope of this order, consistent with the purposes of this order.

/s/JANET RENO  
Attorney General