

We Need to Re-invigorate Federal Administrative ADR
Theory-of-Change Symposium
indisputably.org/2019/11/theory-of-change-symposium-part-3/
November 12, 2019



[Scott Maravilla](#) recommends increased professional development of ADR practitioners and use of new technologies for conflict resolution in the federal government. He is an administrative judge with the federal Office of Dispute Resolution for Acquisition. The views presented here are solely his own and do not represent the views of his agency or any other organization.

The federal government has actively used and promoted ADR since the 1990s. There has been an increase in the number of retirements from federal service, including many ADR experts. The federal government should address this loss of expertise by hiring replacements, mentoring ADR professionals, and adopting new technologies for dispute resolution.

History and Success of ADR at the Federal Level

The 1990s witnessed a renaissance in ADR at the federal level. In 1996, Congress enacted the Administrative Dispute Resolution Act (ADRA). Its salient features include:

- Authorizing use of ADR in administrative actions;
- Establishing guidelines for who may serve as a neutral;
- Insuring confidentiality of proceedings; and
- Authorizing the use of binding arbitration.

Two years after ADRA's passage, President Bill Clinton established the Interagency ADR Working Group ("Working Group") to encourage and coordinate the use of ADR across the government. Headed by the attorney general, it was composed of dispute resolution specialists in federal agencies. The Working Group addressed workplace conflicts, public procurement, enforcement, and general litigation.

The federal government rode a nearly twenty-year wave of enthusiasm to increase the use of ADR techniques. The Working Group's 2016 *Report on Significant Developments in Federal ADR* described great success in use of ADR throughout the federal government in resolving administrative-level litigation inside and outside the government. Federal agency ADR includes early intervention in disputes, greater deployment of ombuds, and increased use of new technologies. This is the result of the endeavors of a founding generation of practitioners, agency representatives, and administrative judges. The full text of the report and other valuable ADR resources are available on the [Working Group website](#).

Reduction in Support for ADR

With great success comes the challenge of maintaining it. In 2018, the number of federal employees who retired increased by 12,000 compared with the previous year, including many ADR experts. Federal agencies will have to find suitable replacements who may or may not have the same level of energy for promoting ADR.

The American Bar Association, which has been a major proponent of ADR in the federal government, has witnessed a decline in membership. Its general budget consequently decreased by 22 percent between 2014 and 2018, which also reduces support for ADR in various sections and specialty practice groups.

These reductions may contribute to a perception that we can take ADR for granted and don't need to promote it any more. As a result, it may become less effective. However, ADR practitioners and other stakeholders still need to be educated on how to negotiate and use ADR processes effectively.

Recruiting and Developing ADR Professionals

To address the problems described above, we need to recruit new ADR professionals in the federal government and provide the professional development for them to be effective. They need specialized training and continuing education such as programs focused on practical advice for negotiators and mediators. For example, the Judicial Division of the Board of Contract Appeals Bar Association held an "Ask the ADR Gurus" program that was well received.

Using New Technologies

ADR is changing with the development of new technologies. Federal government ADR should evolve to keep pace with these developments. The Working Group should establish a task force to study and promote using new technologies in ADR. For example, low-cost video teleconferencing technologies can increase the quality of communication compared with processes conducted by telephone, which do not provide valuable information of body language and facial expressions. Using new technologies in ADR can encourage a new generation of tech-savvy ADR practitioners to enthusiastically maintain its prominence in our legal system.