

## **Fiscal Year 2015 Overview**

**Funding:** \$2,274,607

Active cases: 612

New cases: 542

Closed cases: 423

**Impetus for Mediation:**

Voluntary: 144 (71% settled)

Court-ordered: 267 (58% settled)

### **Reported Benefits:**

**Cost Savings:** \$14,208,626

*This figure includes actual costs avoided due to settlement through ADR, including, for example: costs associated with further discovery and depositions; expert witness costs for depositions, exams, reports and trial testimony; trial exhibits; witness costs for trial attendance, etc.*

**Work Days Saved:** 20,686 (56 years)

*This figure includes full work days of attorneys and staff which were saved because of successful ADR and includes, for example: further discovery required for trial; preparing witnesses and exhibits for trial; trial motions, etc.*

**Months of litigation saved:** 2108 (175 years)

*This figure includes the amount of time the cases would have remained active on the court's docket if the cases had not been resolved through ADR.*

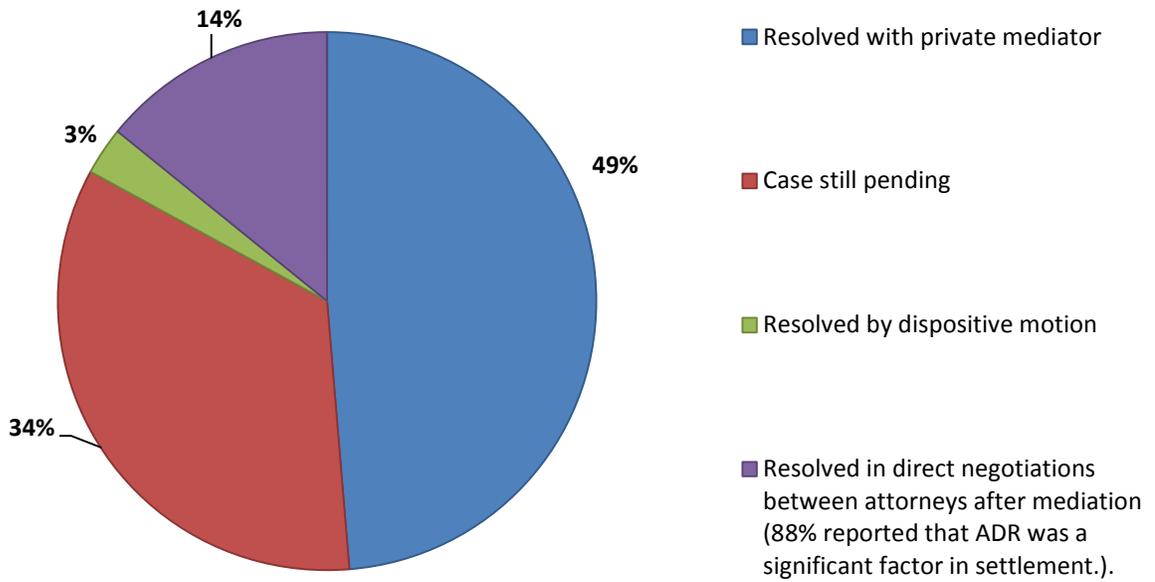
**Trial days saved:** 1927 (5 years)

*This figure includes the estimated length of a trial if the cases were not resolved through ADR.*

**Attorneys have also indicated the following additional benefits:**

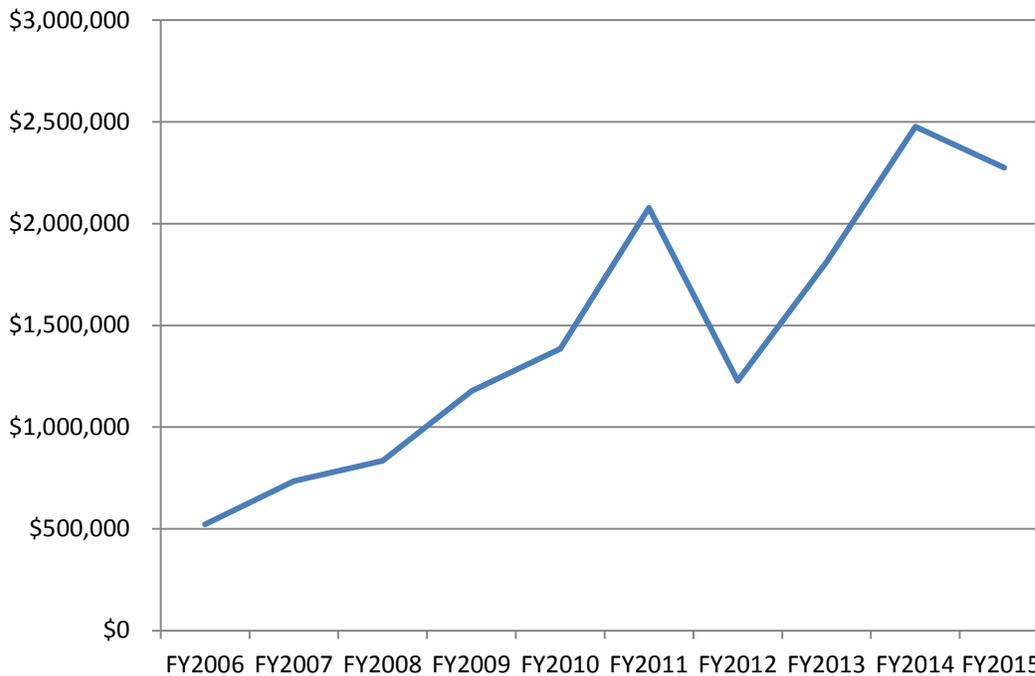
- Settlement was better than expected value at trial: 72% (settled cases)
- Reduced chances of an adverse precedent: 40% (settled cases)
- Made progress toward settlement: 30%
- Improved communication: 30%
- Improved understanding of issues: 29%
- Narrowed issues for trial: 16%
- Progress toward policy objectives: 10%
- Narrowed discovery issues: 7%

## Disposition of Cases Closed in FY2015

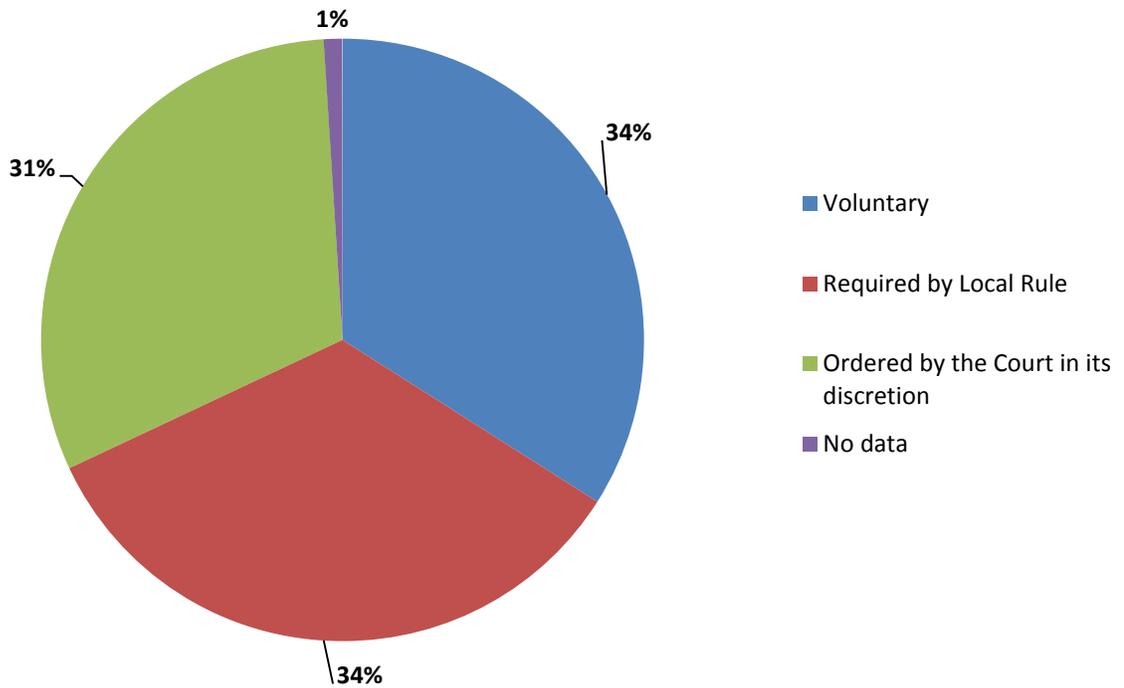


*Attorneys reported in 76% of all cases that ADR was a significant factor for resolution of some or all of the issues in dispute.*

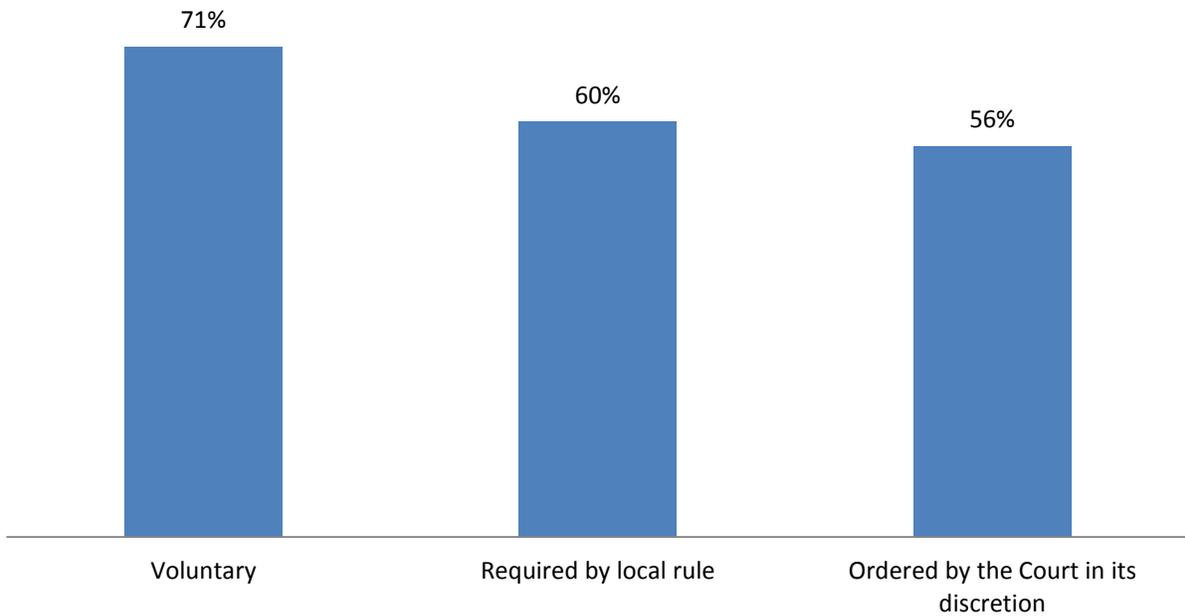
## Total ADR Funding by Fiscal Year



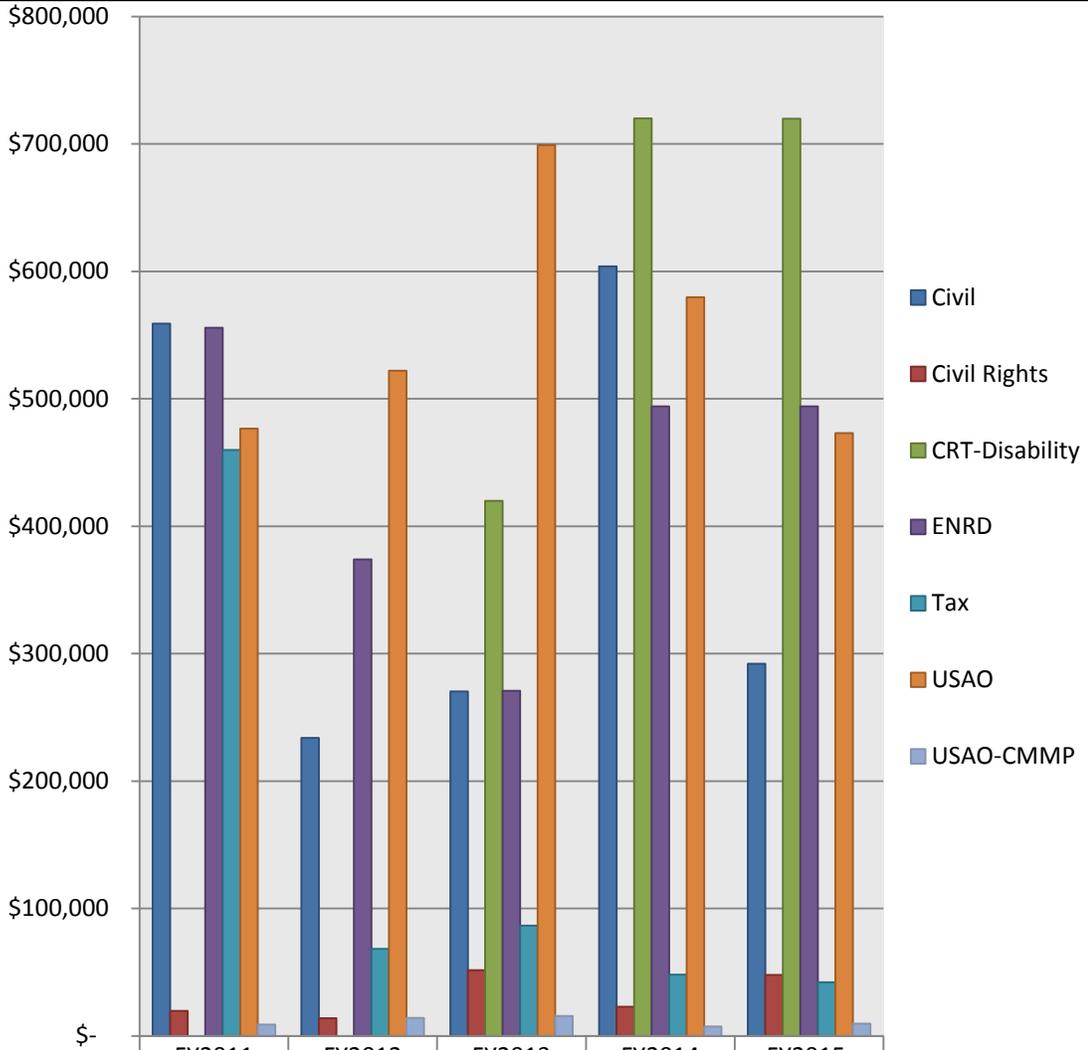
## Impetus for Mediation



## Percent of resolutions by impetus for Mediation

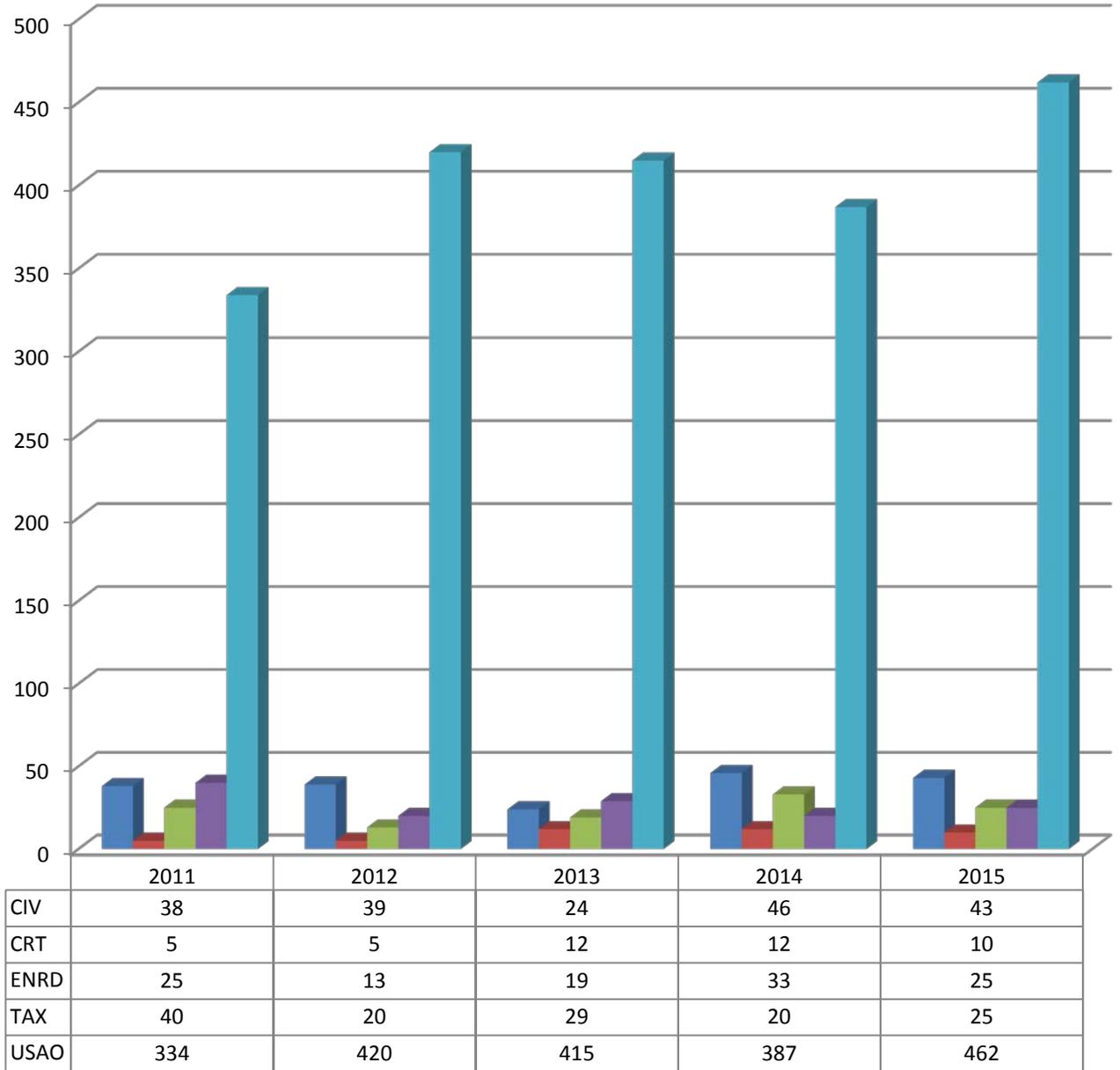


## DR Funding By Component FY2011-FY2015



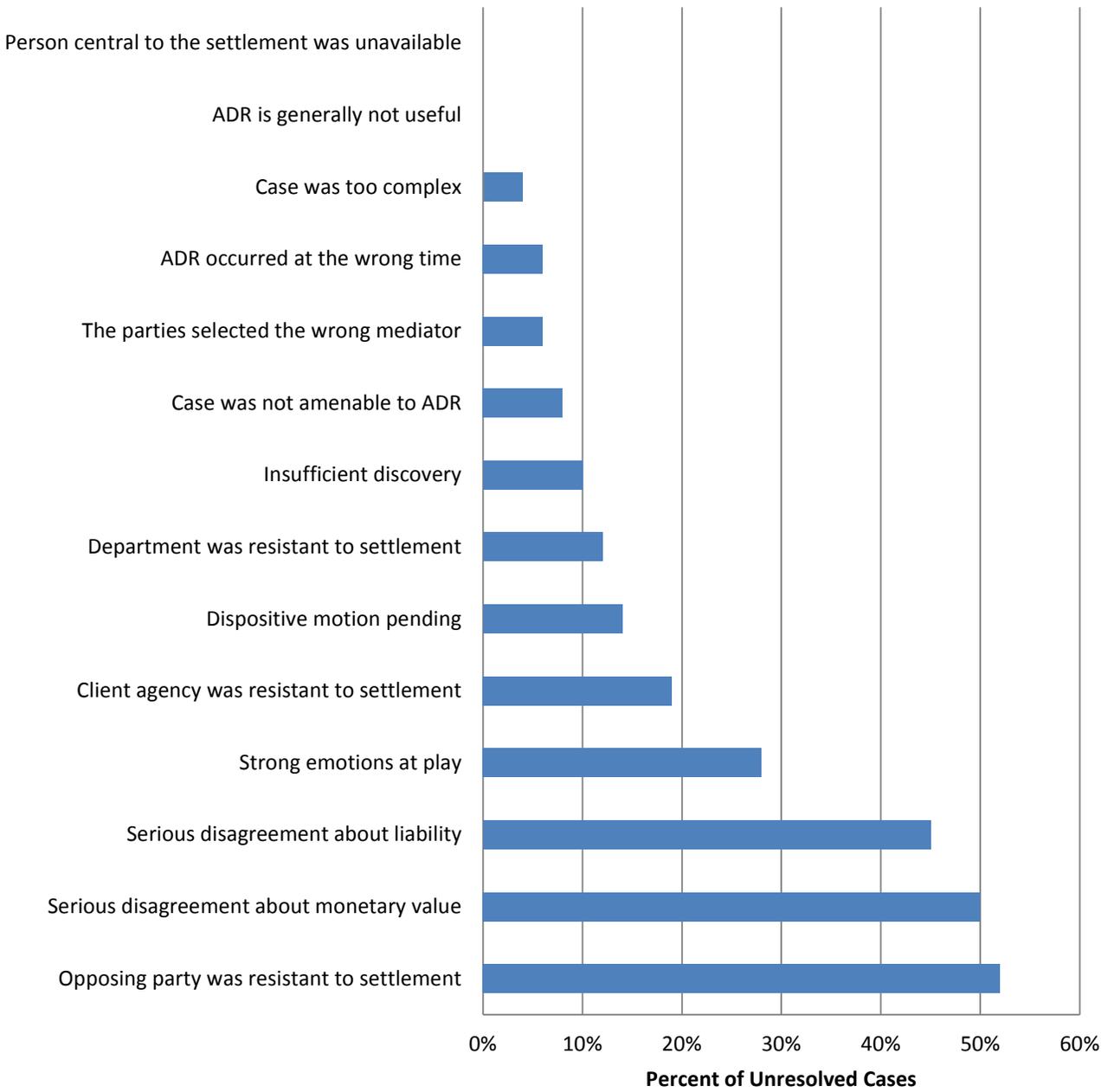
	FY2011	FY2012	FY2013	FY2014	FY2015
Civil	\$558,952	\$233,980	\$270,310	\$603,983	\$292,121
Civil Rights	\$19,580	\$13,785	\$51,698	\$22,944	\$47,944
CRT-Disability			\$420,000	\$720,000	\$719,934
ENRD	\$555,659	\$373,965	\$270,938	\$494,011	\$494,009
Tax	\$459,844	\$68,446	\$86,515	\$48,203	\$42,011
USAO	\$476,519	\$522,171	\$699,153	\$579,715	\$473,008
USAO-CMMP	\$9,000	\$14,250	\$15,750	\$7,500	\$9,750

## Number of Cases By Component for FY2011-FY2015



■ CIV 
 ■ CRT 
 ■ ENRD 
 ■ TAX 
 ■ USAO

## Reasons Cases Did Not Settle



## **Civil Division: Fiscal Year 2015 Overview**

**Funding:** \$292,121

Active cases: 47

New cases: 46

Closed cases: 40

Civil Fraud: 7

Aviation & Admiralty: 16

Consumer Protection: 1

Constitutional Torts: 15

FTCA: 1

Impetus for Mediation:

Voluntary: 23

(96% settled)

Court-Ordered: 12

(83% settled)

### **Reported Benefits:**

Total Cost Savings: \$2,598,826

Days of work saved: 2303 days (6.3 years)

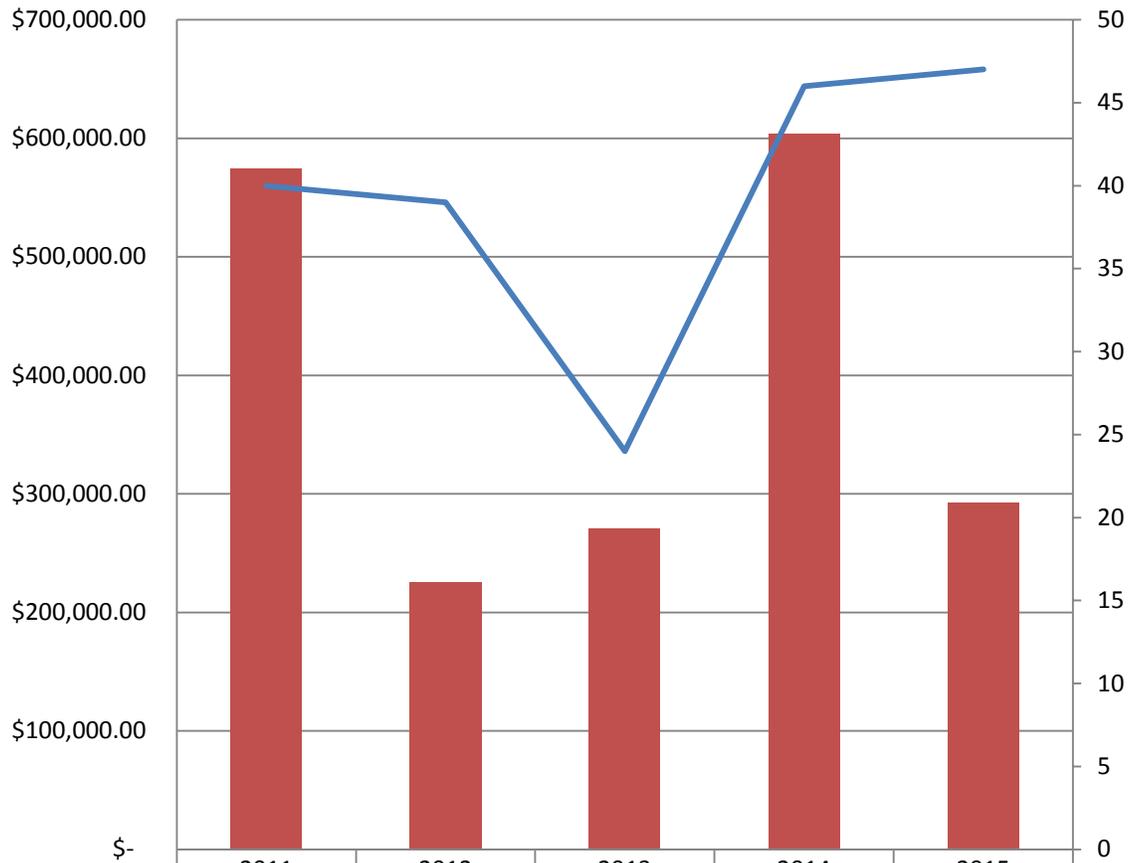
Months on court docket saved: 353 months (29 years)

Trial days saved: 171 days (about ½ a year)

Attorneys have also indicated the following additional benefits:

- Reduced chances of an adverse settlement: 52% (settled cases)
- Settlement was better than expected value at trial: 70% (settled cases)
- Improved communication: 31%
- Improved understanding of issues: 26%
- Made progress toward settlement: 20%
- Narrowed issues for trial: 11%
- Narrowed discovery issues: 3%
- Progress toward policy objectives: 3%

## Civil Division Funding History FY2011-2015



Amount of Funding	\$574,090.00	\$225,335.00	\$270,310.00	\$603,983.00	\$292,121.00
# of Cases	40	39	24	46	47

## Civil Rights Division: Fiscal Year 2015 Overview

**Funding:** \$47,944

Active cases: 11

New cases: 10

Closed cases: 6

Employment: 2

Housing: 3

Disability Rights: 1

Impetus for Mediation:

Voluntary: 4

(75% settled)

Court-Ordered: 2

(50% settled)

### **Reported Benefits:**

Total Cost Savings: \$240,000

Days of work saved: 1690 days (4.6 years)

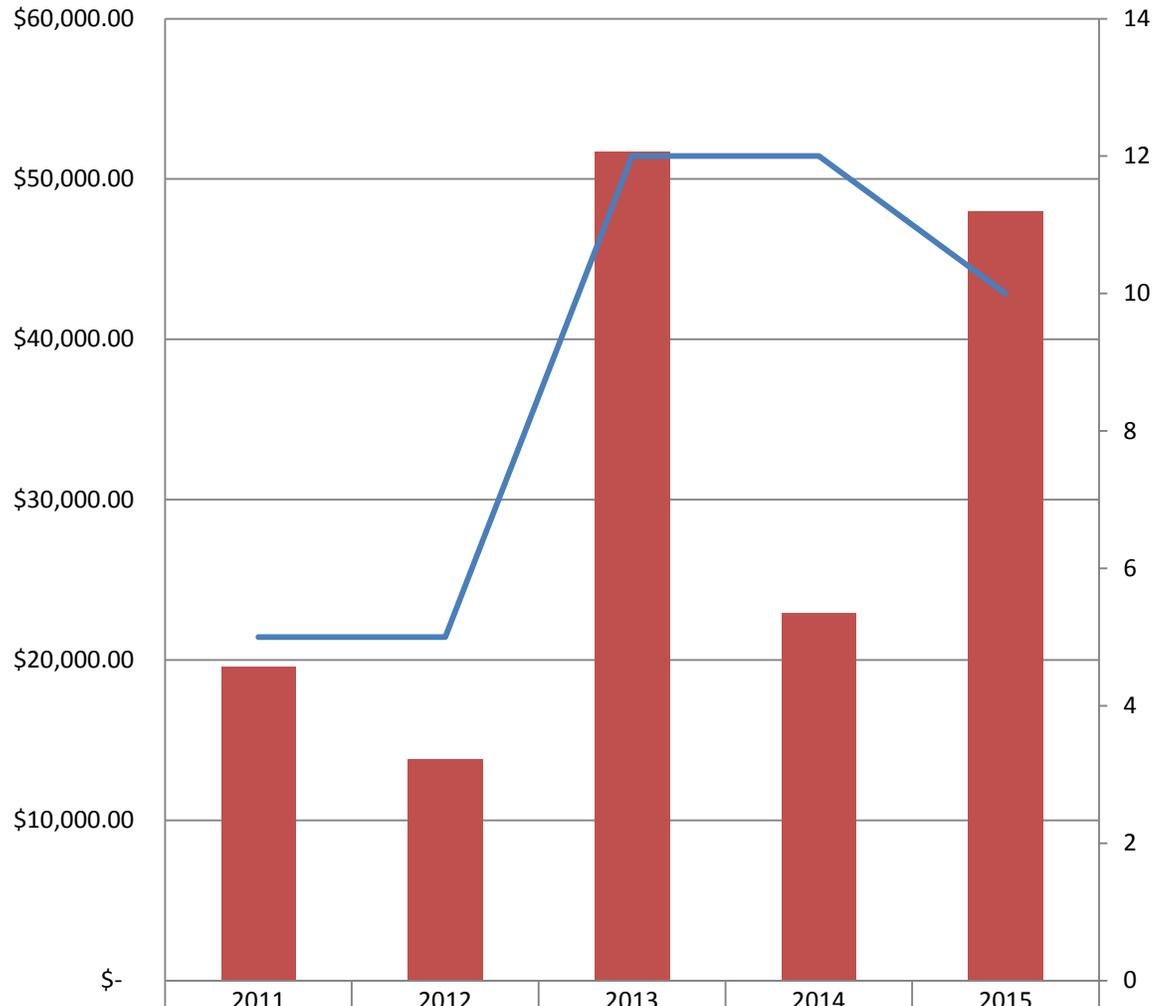
Months on court docket saved: 40 months (3.3 years)

Trial days saved: 93 days (about 1/4 a year)

Attorneys have also indicated the following additional benefits:

- Improved understanding of issues: 87%
- Progress toward policy objectives: 67%
- Improved communication: 67%
- Made progress toward settlement: 67%
- Reduced chances of an adverse settlement: 50% (settled cases)
- Settlement was better than expected value at trial: 50% (settled cases)
- Narrowed issues for trial: 17%
- Narrowed discovery issues: 17%

## Civil Rights Division Funding History FY2011- 2015



Amount of Funding	\$19,580.00	\$13,785.00	\$51,698.00	\$22,944.00	\$47,944.00
# of Cases	5	5	12	12	10

## **Environment and Natural Resources Division:** **Fiscal Year 2015 Overview**

**Funding:** \$494,009  
Active cases: 26  
New cases: 15

**Closed cases:** 7  
EDS: 3  
NRS: 3  
IRS: 1

**Impetus for Mediation:**  
Voluntary: 3  
(--% settled)  
Court-Ordered: 4  
(50% settled)

### **Reported Benefits:**

Total Cost Savings: \$2,008,000

Days of work saved: 1234 days (3.3 years)

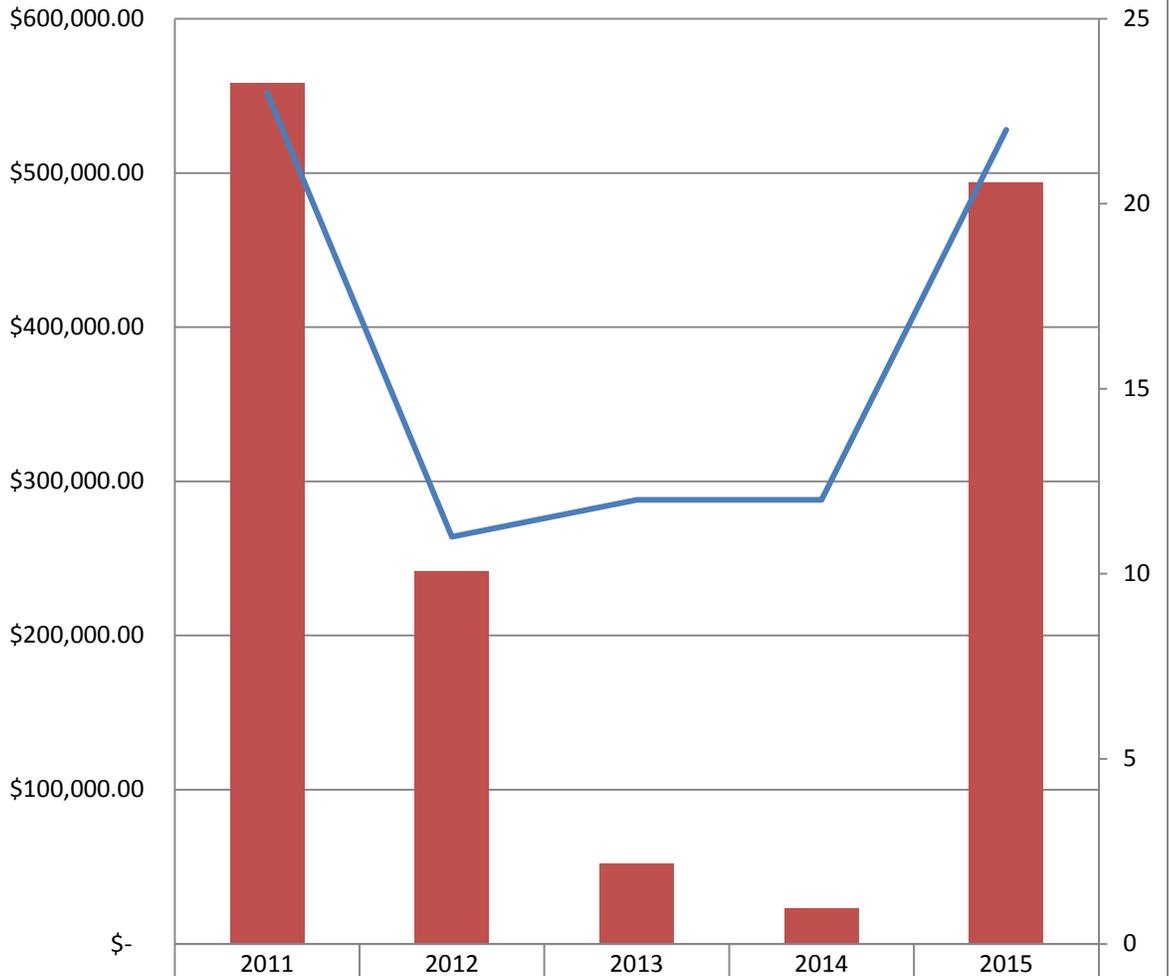
Months on court docket saved: 123 months (10 years)

Trial days saved: 49 days

Attorneys have also indicated the following additional benefits:

- Improved communication: 71%
- Made progress toward settlement: 71%
- Reduced chances of an adverse settlement: 50% (settled cases)
- Settlement was better than expected value at trial: 50% (settled cases)
- Improved understanding of issues: 43%
- Progress toward policy objectives: 43%
- Narrowed discovery issues: 0%

## ENRD Funding History FY2011-2015



Amount of Funding	\$557,821.00	\$241,845.00	\$51,698.00	\$22,944.00	\$494,009.00
# of Cases	23	11	12	12	22

## **Tax Division: Fiscal Year 2015 Overview**

**Funding:** \$42,011

Active cases: 26

New cases: 24

**Closed cases: 16**

CD: 2

ED: 1

SD: 10

SWD: 2

**Impetus for Mediation:**

Voluntary: 2

(50% settled)

Court-Ordered: 14

(36% settled)

### **Reported Benefits:**

Cost Savings: \$28,000

Days of work saved: 134 days

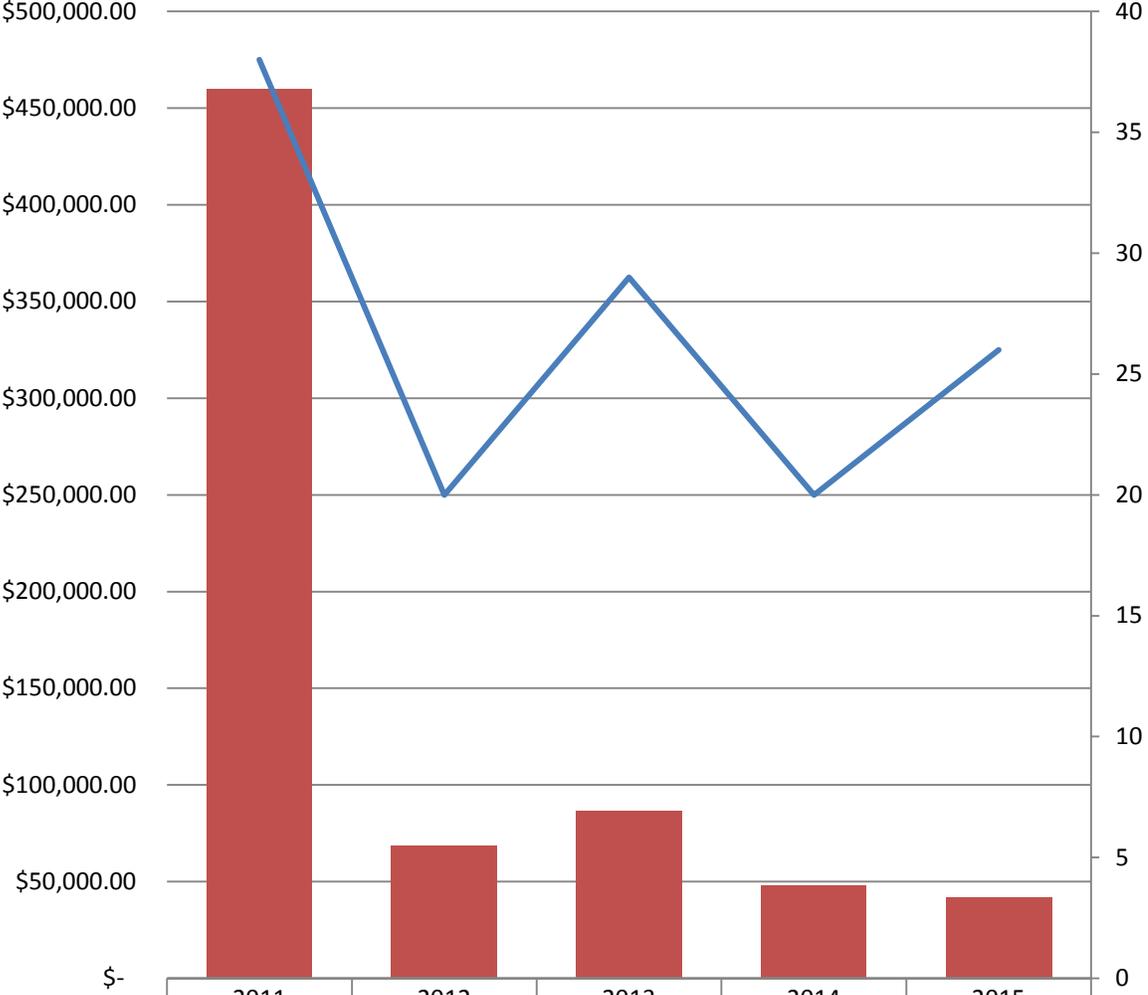
Months on court docket saved: 32 months

Trial days saved: 89 days

Attorneys have also indicated the following additional benefits:

- Reduced chances of an adverse settlement: 33% (settled cases)
- Settlement was better than expected value at trial: 33% (settled cases)
- Improved communication: 31%
- Improved understanding of issues: 25%
- Made progress toward settlement: 13%
- Narrowed issues for trial: 6%
- Progress toward policy objectives: 6%

# Tax Funding History FY2011-2015



	2011	2012	2013	2014	2015
Amount of Funding	\$459,843.00	\$68,446.00	\$86,514.00	\$48,202.00	\$42,011.00
# of Cases	38	20	29	20	26

## **U.S. Attorney's Offices: Fiscal Year 2015 Overview**

**Funding:** \$473,088

Active cases: 500

New cases: 433

Closed cases: 352

**Impetus for Mediation:**

Voluntary: 106

(72% settled)

Court-Ordered: 243

(58% settled)

### **Reported Benefits:**

Total Cost Savings: \$9,333,800

Days of work saved: 15,325 days (42 years)

Months on court docket saved: 1560 months (130 years)

Trial days saved: 1508 days (4 years)

Attorneys have also indicated the following additional benefits:

- Improved communication: 31%
- Improved understanding of issues: 25%
- Reduced chances of an adverse settlement: 19%
- Settlement was better than expected value at trial: 16%
- Made progress toward settlement: 13%
- Progress toward policy objectives: 6%
- Narrowed issues for trial: 6%

## ADR in the U.S. Attorney's Offices

		<i>FY 2006-2014</i>		<i>FY2015</i>
<b>District</b>		<b>Number of Funded Cases</b>		<b>Number of Funded Cases</b>
AK	Alaska	6		0
ALM	Alabama Middle	0		0
ALN	Alabama Northern	18		2
ALS	Alabama Southern	3		0
ARE	Arkansas Eastern	4		1
ARW	Arkansas Western	1		0
AZ	Arizona	109		9
CAC	California Central	114		15
CAE	California Eastern	52		7
CAN	California Northern	119		14
CAS	California Southern	20		3
CO	Colorado	29		4
CT	Connecticut	3		0
DC	District of Columbia	81		5
DE	Delaware	0		0
FLM	Florida Middle	524		62
FLN	Florida Northern	152		21
FLS	Florida Southern	331		17
GAM	Georgia Middle	18		0
GAN	Georgia Northern	43		2
GAS	Georgia Southern	3		0
GU	Guam	0		0
HI	Hawaii	24		4
IAN	Iowa Northern	4		0
IAS	Iowa Southern	8		1
ID	Idaho	9		4
ILC	Illinois Central	0		0
ILN	Illinois Northern	4		1
ILS	Illinois Southern	0		0

		<b>FY 2006-2014</b>	<b>FY2015</b>
INN	Indiana Northern	4	1
INS	Indiana Southern	1	0
KS	Kansas	39	1
KYE	Kentucky Eastern	2	0
KYW	Kentucky Western	4	0
LAE	Louisiana Eastern	0	0
LAM	Louisiana Middle	2	1
LAW	Louisiana Western	46	2
MA	Massachusetts	3	0
MD	Maryland	0	0
ME	Maine	4	0
MIE	Michigan Eastern	35	6
MIW	Michigan Western	43	3
MN	Minnesota	11	2
MOE	Missouri Eastern	80	5
MOW	Missouri Western	69	6
MSN	Mississippi Northern	0	0
MSS	Mississippi Southern	5	0
MT	Montana	22	2
NCE	North Carolina Eastern	17	7
NCM	North Carolina Middle	17	1
NCW	North Carolina Western	42	1
ND	North Dakota	0	0
NE	Nebraska	22	2
NH	New Hampshire	8	0
NJ	New Jersey	19	8
NM	New Mexico	18	0
NV	Nevada	13	0
NYE	New York Eastern	21	32
NYN	New York Northern	3	5
NYS	New York Southern	3	1
NYW	New York Western	169	35
OHN	Ohio Northern	9	5

		<b>FY 2006-2014</b>	<b>FY2015</b>
OHS	Ohio Southern	4	0
OKE	Oklahoma Eastern	0	0
OKN	Oklahoma Northern	0	0
OKW	Oklahoma Western	5	1
OR	Oregon	3	3
PAE	Pennsylvania Eastern	2	1
PAM	Pennsylvania Middle	0	0
PAW	Pennsylvania Western	213	10
PR	Puerto Rico	1	0
RI	Rhode Island	0	0
SC	South Carolina	126	19
SD	South Dakota	0	0
TNE	Tennessee Eastern	16	1
TNM	Tennessee Middle	6	0
TNW	Tennessee Western	33	12
TXE	Texas Eastern	12	1
TXN	Texas Northern	72	10
TXS	Texas Southern	83	7
TXW	Texas Western	152	20
UT	Utah	5	1
VAE	Virginia Eastern	1	0
VAW	Virginia Western	0	0
VI	Virgin Islands	20	4
VT	Vermont	14	2
WAE	Washington Eastern	20	6
WAW	Washington Western	154	13
WIE	Wisconsin Eastern	3	1
WIW	Wisconsin Western	2	0
WVN	West Virginia Northern	24	2
WVS	West Virginia Southern	17	0
WY	Wyoming	7	0



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

**Approval Date:** April 6, 1995  
**Approved By:** JANET RENO  
Attorney General  
**Distribution:** OBD/H-1; OBD/F-2; SPL-23  
**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

**Attorney General Eric H. Holder, Jr.**  
**Federal Alternative Dispute Resolution Programs**  
**7<sup>th</sup> 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.