



Office of Dispute Resolution

FY 2012 Performance Budget
Congressional Submission

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I. Overview for Office of Dispute Resolution

The major function of the Office of Dispute Resolution (ODR) is to promote and facilitate the effective and strategic use of alternative dispute resolution (ADR) to processes by the Department of Justice and throughout the Executive Branch of the Federal Government.

The Office of Dispute Resolution promotes and evaluates the use of ADR at the Department; facilitates the effective use of ADR in litigation and agency administrative disputes; represents the Attorney General in leadership of federal ADR; represents the Department leadership with foreign governments and the private sector.

Pursuant to reprogramming in June 1998, the Senior Counsel was moved from the Office of the Associate Attorney General and established as a separate office which reports to the Associate Attorney General. By Direction of Congress, operational funding is derived from the General Legal Activities appropriation.

II. Summary of Program Changes

Not applicable.

III. Appropriations Language and Analysis of Appropriations Language

Appropriations Language

Refer to the General Legal Activities Appropriation Exhibit.

Analysis of Appropriations Language

Refer to the General Legal Activities Appropriation Exhibit.

IV. Decision Unit Justification

A. Office of Dispute Resolution

<i>Office of Dispute Resolution</i>	Perm. Pos.	FTE	Amount
2010 Enacted with Rescissions	3	3	802
2010 Supplemental			
2010 Enacted w/Rescissions and Supplementals	3	3	802
2011 CR	3	3	802
Adjustments to Base and Technical Adjustments	-3	-3	-802
2012 Current Services	0	0	0
2012 Request	0	0	0
Total Change 2010-2012	-3	-3	-802

For FY 2012, all ODR resources and functions are proposed for transfer to the Office of Legal Policy in the General Administration appropriation. The transfer will provide ODR with an administrative support structure and leadership guidance to enable the Office to more effectively carry out its mission. The Office of Legal Policy is currently authorized for 27 positions, including 20 attorneys and 7 support positions.

1. Performance and Resource Tables

PERFORMANCE AND RESOURCES TABLE											
Decision Unit:											
WORKLOAD/ RESOURCES		Final Target		Estimate		Projected		Changes		Requested (Total)	
		FY 2010		FY 2010		FY 2011 CR		Current Services Adjustments and FY 2012 Program Changes		FY 2012 Request	
Workload											
Number of cases authorized for funding of professional neutrals		164		509		164		0		0	
Number of trainings to facilitate the effective use of ADR		10		10		10		0		0	
Total Costs and FTE (reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total)											
		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		3		3	802	3		3	-802	\$0	0
TYPE/ STRATEGIC OBJECTIVE	PERFORMANCE	802 FY 2010		FY 2010		802 FY 2011 CR		Current Services Adjustments and FY 2012 Program Changes		FY 2012 Request	
		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
Program Activity		3		1	407	1	410	-3	-802	0	0
Performance Measure			802								
Efficiency Measure											
OUTCOME		Percentage of cases resolved using voluntary ADR		60%		73.54%		78.60%		N/A	
		Percentage of cases resolved using court-ordered ADR		25%		42.43%		44%		N/A	

Program Activity Data Definition, Validation, Verification, and Limitations:

Workload Measures:

ODR funds and assists in the use of professional neutrals in appropriate Department civil cases. The success of the office is measured by the number of cases for which ODR (or the Executive Office for United States Attorneys pursuant to delegated authority from ODR) authorized funding of professional neutrals. The sources of data collection for tabulating the number of cases using ADR funding are the requests for funding authorization submitted by the components to ODR and the disposition of those requests by ODR, and the requests for funding from United States Attorney's offices which are authorized by the Executive Office for United States Attorneys pursuant to authority delegated by ODR. ODR and the Executive Office for United States Attorneys are responsible for tracking the requests for funding authorization which they receive and the disposition of those requests. Also, ODR and the Executive Office for United States Attorneys are responsible for ensuring compliance with their procedures for maintaining the integrity of their data collections systems.

ODR provides trainings for Department or other federal attorneys on the effective use of ADR. The source of data collection for tabulating the number of trainings conducted is the records of ODR. ODR is responsible for tracking the trainings it conducts and is responsible for ensuring compliance with its procedures for maintaining the integrity of its data collection system.

Outcome Measures:

ODR measures the percentage of cases resolved through ADR in two distinct instances: *voluntary use* and *court-ordered use*.

For *voluntary use*, the primary source of data collection for tabulating the Department's use of ADR is component reporting. The primary source of case outcomes is attorney evaluations. Each litigating component is responsible for tracking attorney usage of ADR and forwarding this information to ODR. ODR gathers outcome information from attorneys. The individual components are responsible for ensuring compliance with their local procedures for maintaining the integrity of their data collection systems.

For *court-ordered use* ADR the primary source of data collection for tabulating the Department's use of ADR is component reporting. The primary source of case outcomes is attorney evaluations. Each litigating component is responsible for tracking attorney usage of ADR and forwarding this information to ODR. ODR gathers outcome information from attorneys. The individual components are responsible for ensuring compliance with their local procedures for maintaining the integrity of their data collection systems.

PERFORMANCE MEASURE TABLE

Decision Unit: Office of Dispute Resolution

Performance Report and Performance Plan Targets		FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010		FY 2011	FY 2012
		Actual	Target	Actual	Target	Target						
OUTCOME Measure	Percentage of cases resolved using court-ordered ADR	N/A	N/A	N/A	59%	60%	51%	42%	25%		25%	25%
OUTCOME Measure	Percentage of cases resolved using voluntary ADR	63%	60%	64%	79%	72%	79%	78%	60%		60%	60%

N/A = Data unavailable

* Denotes inclusion in the DOJ Annual Performance Plan

Performance, Resources, and Strategies

Strategic Goal II: Prevent Crime, Enforce Federal Laws, and Represent the Rights and Interests of the American People

Objective: Strategic Goal Two, Objective 2.7 - Vigorously enforce and represent the interests of the United States in all matters for which the Department has jurisdiction.

3.1 Workload Measure 1: Number of cases authorized for funding of professional neutrals

a. Performance Plan and Report for Outcomes

In support of its goal to promote the use of ADR at the Department, ODR funds the use of professional neutrals in appropriate Department cases. The areas and scope of ADR funding are necessarily broad in order to cover the wide variety of civil cases involving the United States, including:

- Civil Division use of ADR in aviation and admiralty defenses, medical malpractice, class action discrimination, workplace discrimination litigation, and some health care and consumer fraud enforcement;
- Tax Division civil litigation;
- A vast array of civil matters handled in United States Attorney's offices nationwide;
- The Community Misdemeanor Mediation Project within the Misdemeanor Section of the United States Attorneys' Office for the District of Columbia;
- Civil Rights Division cases involving housing, employment, education, and other types of discrimination claims;
- Environment and Natural Resources Division litigation in water rights disputes and Native American land disputes.

Discussion: The number of cases funded fluctuates from year to year because the number of civil lawsuits filed which involve the Federal Government fluctuates. Additionally, there are fluctuations which are more case specific such as the type of case, the particular District Court involved and whether it mandates mediation participation, the appropriateness of ADR for resolving the issues in individual cases as well as the willingness of DOJ clients and opposing counsel to settle a particular case.

FY 2006 Performance Actual: 485

FY 2007 Performance Actual: 505

FY 2008 Performance Actual: 522

FY 2009 Performance Actual: 528

FY 2010 Performance Actual: 509

FY 2011 Performance Target: 164

FY 2012 Performance Target: 164

b. Strategies to Accomplish Outcomes for 2011/2012:

ODR will continue aiming for a high number of cases authorized for funding of professional neutrals, but recognizes that despite fluctuations, use of ADR will continue to bring significant savings and benefits to the Department and the United States Government.

3.2 Workload Measure 2: Number of training sessions to facilitate the use of ADR

a. Performance Plan & Reported Outcomes

In support of its goal to facilitate the effective use of ADR in litigation and other agency disputes, ODR provides training and education for Department or other federal attorneys as needed on the effective use of ADR.

Discussion: The number of training sessions fluctuates from year to year. This is because the number of courses that Department components or federal agencies need and request depends on factors that vary, e.g., number of new attorneys hired who need training, number of subject-specific needs that arise in Department components and federal agencies because of caseload or particular types of cases being handled, and the ability of Department and ODR to dedicate time for training.

It is difficult to directly gauge the impact of training at the National Advocate Center as it relates to increased requests for use of ADR funds. There is no control, of course, over the variety of cases brought in each District. Obviously, not every case is appropriate for ADR. The purpose of the training is not only to help the attorneys apply relevant techniques in the ADR processes, but even more importantly, to identify and assess each case as to whether or not ADR might be helpful in advantageously settling the case for the government. However, it is clear that there has been a distinct increase in requests for funding during the same time that the training has been stepped up. For example, in FY 2007 ODR recorded a five (5) percent increase in funding by the end of the fiscal year.

FY 2006 Performance Actual: 2

FY 2007 Performance Actual: 5

FY 2008 Performance Actual: 8

FY 2009 Performance Actual: 1

FY 2010 Performance Target: 10

FY 2011 Performance Target: 10

FY 2012 Performance Target: 10

b. Strategies to Accomplish Outcomes

Strategies to Achieve FY 2011/2012 Goal: ODR will continue aiming for a high number of trainings, but recognizes that despite fluctuations, training in ADR will continue to promote its effective use in the Department and other federal agencies.

3.3 Outcome Measure 1: Percentage of cases resolved using voluntary ADR

a. Performance Plan & Reported Outcomes

In support of its goal to evaluate the use of ADR at the Department, ODR has evaluated the use, cost-effectiveness and results of ODR-funded ADR at the Department. In FY 2006, ODR developed two outcome measures: one measuring the percentage of cases resolved using *voluntary* ADR, and the other measuring the percentage of cases resolved using *court-ordered* ADR.

- In FY 2006, the percentage of cases resolved using *voluntary* ADR is 79%.
- In FY 2007, the percentage of cases resolved using *voluntary* ADR was 72%
- In FY 2008, the percentage of cases resolved using *voluntary* ADR was 79%
- In FY 2009, the percentage of cases resolved using *voluntary* ADR was 78%
- In FY 2010, the percentage of cases resolved using *voluntary* ADR was 74%

Discussion: The resolution rates fluctuate from year to year, and data cannot definitively explain the fluctuations because each case is factually unique and the resolution rate of ADR in Department cases depends on factors that are inherently unpredictable and uncontrollable, e.g. number and types of affirmative and defensive cases, number and types of cases ordered into ADR by the courts, appropriateness of individual cases for ADR, likelihood that individual cases may/may not be settled, and ability and willingness of DOJ clients and opposing counsel to settle a case. ODR's future targets are based on success in meeting past targets, but that is necessarily an imprecise and uncontrollable goal.

FY 2006 Performance Actual: 79%

FY 2007 Performance Actual: 72%

FY 2008 Performance Actual: 79%

FY 2009 Performance Actual: 78%

FY 2010 Performance Actual: 74%

FY 2011 Performance Target: 60%

FY 2012 Performance Target: 60%

The figures are based on evaluations by attorneys in individual cases that were funded by ODR. The data from the evaluations shows that DOJ continues to realize significant benefits in both time saved and money saved through use of ADR. For example, from FY 2006 to FY 2008, Department attorneys estimated a total savings of \$29,620,397 in litigation and/or discovery costs (See, Figure 6). In addition, Department attorneys reported an estimated 84,854 hours of attorney and staff time were saved through use of ADR processes, representing the work of approximately 41 full time positions.

In FY 2006, Department attorneys reported an estimated savings of \$23,231,647 in litigation and/or discovery costs through the use of ADR. In addition, Department attorneys reported an estimated 39,467 hours of attorney and staff time were saved by participating in ADR processes. Moreover, Department attorneys reported 611 months were saved in litigation and/or discovery time after participating in ADR processes. In FY 2007, Department attorneys reported an estimated savings of \$3,001,000 in litigation and discovery costs to the Department. In addition, Department attorneys reported an estimated 22,377 hours of staff time was saved by participating in ADR processes and Department attorneys reported that 429 months were saved in litigation and/or discovery time because they participated in ADR rather than litigation.

In FY 2008, Department attorneys reported an estimated savings of \$3,387,750 in litigation and discovery costs to the Department. In addition, Department attorneys reported an estimated 23,010 hours of staff time was saved by participating in ADR processes and Department attorneys reported that 661 months were saved in litigation and/or discovery time because they participated in ADR rather than litigation.

In FY 2009, Department attorneys reported an estimated savings of \$5,940,287 in litigation and discovery costs to the Department. In addition, Department attorneys reported an estimated 43,635 hours of staff time was saved by participating in ADR processes and Department attorneys reported that 849 months were saved in litigation and/or discovery time because they participated in ADR rather than litigation.

Settlement gives the Department and the United States Government significant savings in the costs and delay of litigation and discovery, as well as the monies paid to resolve the dispute. The saved resources can be used to handle other matters that cannot or should not settle. ADR allows the parties to negotiate a creative disposition that best serves their interests and which may go beyond the authority of a court to order. ADR fosters solutions that may substitute for the payment of money or reduce potential monetary exposure. Even where the case does not settle, ADR can be valuable in narrowing the issues, or helping the parties move closer to settlement (or facilitate a later settlement) by demonstrating good faith, improving the parties' relations, or making progress in the negotiations. ADR may be beneficial in resolving several related disputes in one global settlement, or in settling one dispute that can set parameters for the resolution of similar future disputes. ADR can contribute to effective case management by resolving discovery disputes or facilitating the informal exchange of critical information.

For example, regardless of whether the case was resolved or not Department attorneys who participated in ADR reported benefits of the process still reported benefits.

b. Strategies to Accomplish Outcomes

Strategies to Achieve FY 2011/2012 Goal: ODR will continue aiming for use and resolution rates that are high but recognizes that despite fluctuations, use of ADR will continue to bring significant savings and benefits to the Department and the United States Government.

ODR will continue its efforts to better evaluate use and results of ADR by obtaining more comprehensive reporting from the components. ODR joined in the Department case management project to focus on improving reporting. The new Department-wide Litigation Case Management System includes a centralized application and database for case management. In order to provide consistency and usability for all components,

ODR requested that the litigation architecture include tracking of dispute resolution. ODR will also explore the possibility of requiring the components that utilize ADR to report annually on the number of cases in which ADR was used and the total cost and resource savings realized through use of ADR.

ODR continues to find new and innovation ways to improve upon the collection of data from Department attorneys and Assistant United States Attorneys who participate in ADR processes. For example, in FY 2007, ODR revised an online ADR evaluation form that Department attorneys can complete for every case. The form is now fully automated which allows ODR to extract data quickly and more efficiently. This revision also creates mandatory fields which will encourage more detail in the responses submitted by Department attorneys.

ODR redesigned its internal Department web page that provides practical guidance-at-a-glance and resources for Department attorneys on the use and benefits of ADR. ODR anticipates that new and approved online resources will continue to promote the use of ADR within the Department and, thus, strives to keep these resources as fresh and technologically savvy while retaining their use-friendly appeal.

ODR continues to identify and develop better ways of storing and tracking ADR data. Beginning in FY 2007, ODR began to map data, build conversion tools, migrate data, and correct discrepancies into a system of data collection. By the end of FY 2008, ODR had developed, designed, and implemented a document storage and tracking database and, as a result, vastly improved its statistical analysis capabilities and resource management. In the past ODR tracked funding requests and data from evaluations in a static manner by using spreadsheets. In FY 2008, ODR completed the extraction of data from its ADR records and created a variety of field levels in an electronic database. ODR is now able to write reports, sort and sub sort data, and manage information in rapid and precise manner. This project continued in FY 2009 to require the effort and attention of existing government employees as well as the specialized expertise and supplemental labor of industry consultants and/or contractor resources to create and maintain a fully functioning data storage and tracking system. From FY 2010 and onward, the effort and attention of existing government employees will be required to maintain the data storage and tracking system and make upgrades and changes to the system, as needed.

3.4 Outcome Measure 2: Percentage of cases resolved using court-ordered ADR

a. Performance Plan & Reported Outcomes

In support of its goal to evaluate the use of ADR at the Department, ODR has evaluated the use, cost effectiveness and results of ODR funded ADR at the Department. ODR has two outcome measures: one measuring the percentage of cases resolved using *voluntary* ADR, and the other measuring the percentage of cases resolved using *court-ordered* ADR.

- In FY 2006, the percentage of cases resolved using court ordered ADR was 59%.
- In FY 2007, the percentage of cases resolved using court-ordered ADR was 60%.

- In FY 2008, the percentage of cases resolved using court-ordered ADR was 51%.
- In FY 2009, the percentage of cases resolved using court-ordered ADR was 42%.
- In FY 2010, the percentage of cases resolved using court-ordered ADR was 42%.

Discussion: The resolution rates fluctuate from year to year, and data cannot definitively explain the fluctuations. This is because the resolution rate of ADR in Department cases depends on factors that are inherently unpredictable and uncontrollable, e.g., number and types of affirmative and defensive litigation cases begun in the components, number and types of cases ordered into ADR by the courts, appropriateness of individual cases for ADR, likelihood that individual cases may/may not be settled, and ability and willingness of DOJ clients and opposing counsel to settle a case. ODR's future targets are based on success in meeting past targets, but that is necessarily an imprecise and uncontrollable goal.

The figures are based on manual records of attorney evaluations of ADR results in individual cases, submitted mostly in those cases in which attorneys procured the services of the neutral through payment from the ODR fund administered by ODR. These evaluations are a fragmentary picture of results in the Department and consequently the use and benefits of ADR are believed to be underreported.

Resolution of cases through ADR offers important benefits in the Department's enforcement and defensive litigation. Settlement gives the Department and the United States Government significant savings in the costs and delay of litigation and discovery, as well as the monies paid to resolve the dispute. The saved resources can be used to handle other matters that cannot or should not settle. ADR allows the parties to negotiate a creative disposition that best serves their interests and which may go beyond the jurisdiction of a court to order. ADR fosters solutions that may substitute for the payment of money or reduce potential monetary exposure. Even where the case does not settle, ADR can be valuable in narrowing the issues, or helping the parties move closer to settlement (or facilitate a later settlement) by demonstrating good faith, improving their relations, or making progress in the negotiations. ADR may be beneficial in resolving several related disputes in one global settlement, or in settling one dispute that can set parameters for the resolution of similar future disputes. ADR can contribute to effective case management by resolving discovery disputes or facilitating the informal exchange of critical information.

FY 2006 Performance Actual: 59%

FY 2007 Performance Actual: 60%

FY 2008 Performance Actual: 51%

FY 2009 Performance Actual: 42%

FY 2010 Performance Target: 25%

FY 2011 Performance Target: 25%

b. Strategies to Accomplish Outcomes

Strategies to Achieve FY 2010/2011 Goal: ODR will continue aiming for use and resolution

rates that are high but recognizes that despite fluctuations, use of ADR will continue to bring significant savings and benefits to the Department and the United States Government.

ODR will continue its efforts to better evaluate use and results of ADR by obtaining more comprehensive reporting from the components. ODR joined in the Department case management project to focus on improving reporting. The new Department-wide Litigation Case Management System includes a centralized application and database for case management, in order to provide consistency and usability for all components. ODR requested that the litigation architecture include tracking of dispute resolution. ODR will also explore the possibility of requiring the components that utilize ADR to report annually on the number of cases in which ADR was used and the total cost and resource savings realized through use of ADR.

ODR created a new online ADR evaluation form that Department attorneys can complete for every case in which ADR was used and, beginning in FY 2006, the attorneys have been able to submit the completed evaluation form electronically to ODR. ODR has also established an internal Department web page that provides practical guidance-at-a-glance for Department attorneys on the use and benefits of ADR. The ADR evaluation form is on the Department's internal web page.