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Perspectives and Prospects for the Future



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The field of conflict resolution is in transition. With few exceptions, the head of every major national organization in the field has changed in the last year or two. Several organizations are in leadership transitions at the moment. To take the pulse of this change, we extended an invitation to the leaders of all of the major national conflict resolution organizations to provide our readers with their views on where the field has been and to give us their insights into the future. The result is a truly unique collection of perspectives and prospects for the conflict resolution profession.

As you will read, there are several recurring themes. Competency, professionalism and the need to collaborate in broadening the application of and resources for conflict resolution processes seem to be consistent concerns. Each leader, of course, brings his or her own approach to achieving this vision for the field. We hope that you enjoy reading this collection of columns.

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Federal ADR: Working Yourself Out of a Job



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Congress has shut down the Conference's role in encouraging and aiding federal agencies' use of consensus-based decisionmaking. Of these activities — including research, educational, clearinghouse, policy advice, and technical assistance — some may henceforth be performed elsewhere, but most will lapse.

Given the considerable distance many agencies recently have come in adopting alternative means of dispute resolution, and the ground still to be covered, is the Conference's demise significant? Though far from a good thing (at least in the eyes of this hardly disinterested observer), it does not signal a critical blow to federal

By the time this article appears, the Administrative Conference, whose dispute resolution program I have directed for 10 years, will have ceased operations. In September, Congressional appropriators eliminated the Conference's \$1.8 million budget, effective in October. In doing so,

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Foundation leaders share their views on the value of conflict resolution

Federal ADR

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ADR activity. While the Conference has provided significant leadership and assistance in this area over the last decade, the federal ADR "genie" is now indisputably "out-of-the-bottle" — in some substantive measure because of the Conference's effort. With new programs in place in dozens of agencies, activity is many times greater than in 1990 when the Administrative Dispute Resolution Act was enacted, much less in 1982 when the Conference first recommended that agencies seek to reach consensus on controversial decisions by using mediation and a then-untested process called negotiated rulemaking. Today, even the litigators at the Department of Justice have begun to match longstanding endorsements of ADR at the upper echelons with an ambitious new effort that could yield meaningful results on the ground and possibly give Justice a constructive leadership role in both executive branch and court dispute resolution. Federal ADR's recent "arrival" is further highlighted by the likely permanent reauthorization of the ADR Act.¹

As a result of ADR's growing use, the federal government collectively now possesses a wealth of experience and expertise in designing dispute resolution systems, training its personnel, and evaluating results. Agencies now have far greater opportunities than ever to learn from each other, to interact with dispute resolution professionals in court and state programs, and to "get smart" quickly as they explore new uses and put programs in place.

Thus, some might argue that the Conference, having played a role in stimulating these developments, was on its way toward working itself out of a job. However, I suggest that — with or without a federal agency like ACUS — many of the issues that the Conference sought to address will continue to need attention if most agencies are to develop, and keep, quality programs. Who (if anyone) will bring this attention to bear and how it will be accomplished, are matters worthy of greater thought than anyone, including the Congress, has given them so far. In particular, here are several areas meriting attention:

Systems Design — The importance of sound systems design is difficult to

overestimate. The federal government has produced some of the most thoughtful, sophisticated design work anywhere, but some agencies still fail to plan adequately, to involve affected persons in developing new systems, to begin with appropriate pilot projects, or to assess results in a meaningful way. Continued emphasis on preventing agencies from "just doing it" is critical. Moreover, much greater focus on developing and regularly using cost-effective evaluation methods will be needed.

Adequate Resources — Introducing new ways of decisionmaking is especially difficult in times of diminishing resources, such as most agencies now face. Congress has not increased the likelihood of successful implementation by providing agencies with the financial or personnel resources or technical support necessary to hire competent neutrals or create new programs likely to repay the initial investment many times over. Absent resources, many agencies have put programs in place on shoestring budgets and relied on volunteer neutrals who may not always be ideal dispute resolvers.

Cooperative Activities — The Administrative Conference has supported interagency working groups, brown bag lunch series, seminars, and other activities that brought together personnel from across the government to share information and develop mutually beneficial programs and materials. The gains from the resulting networks, formal and informal, have been considerable. Ideally, such activities should continue, and even be extended to permit similar interactions at the federal regional level, with state level dispute resolution organizations, and with groups representing persons who frequently find themselves in dispute with agencies. They should also be expanded by promoting sharing of trained neutrals among state and federal entities across the country in appropriate cases.

Applied Research — One of the Conference's most critical roles for decades has been conducting research leading to new on-the-ground applications of ADR methods and other improvements by government agencies and helping them deal with related practical, policy, and legal

issues. For instance, the Conference's 1982 research and recommendations on negotiated rulemaking made this process a reality at a time when no one had thought through how mediation processes could be adapted to large-scale government policy disputes. Similar research helped launch many agencies' use of ADR in handling contracting, Superfund enforcement, and public grievances. This applied research and policy advice should be continued somewhere in order to help government entities and those with whom they deal to identify useful processes and begin using them in informed ways in new areas.

Avoiding Dangers of Institutionalizing ADR — Finally, it would be naive to assume that increased ADR use does not have numerous potential pitfalls that could produce unfair results, be used in inapt situations, and lead to inappropriate

agency use of neutrals to further hidden agendas.

I am pleased that the Society of Professionals in Dispute Resolution's Environmental/Public Policy Sector is sponsoring a Critical Issues Committee to examine dangers of institutionalization of ADR;

this groups, and others inside and outside government, should examine agencies' activities periodically to ensure that consensus-based methods do not become misused or abused.

In conclusion, many significant issues remain to be dealt with if federal agencies are to make maximum beneficial use of innovative dispute resolution processes and fulfill their promise for addressing important public decisions collaboratively. The Administrative Conference is no longer in a position to help deal with these issues. What is important now is that agencies, with input from the dispute resolution community and other interested entities, remain engaged in developing new ideas and drawing on the best available practices.

¹ On September 8, Senator Grassley introduced S. 1224, which reflects changes in the Act recommended in the Administrative Conference's February 1995 report to Congress agency implementation of the ADR Act.

