ADR: Faster, Cheaper, Better—and Not Just for EEO Complaints

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My concern is that they miss a few opportunities to cement their argument. Admittedly, the Equal Employment Opportunity Commission (EEOC) data tables are a place to seek public data, and the field is full of anecdotes and woefully short of data and measurement tools. There are, however, some very impressive data tables provided annually by the U.S. Department of Justice on cost savings when ADR is used to reduce litigation (see http://www.justice.gov/olp/adr/doj-statistics.htm). The Federal Executive Board also produces an annual report each year on agency savings attributable to workplace use of ADR (http://www.feb.gov/report.asp; see also http://www.mediate.com/articles/airforceadr.cfm#). Even the president’s report of 2007, which the authors cite, discusses agency cost savings, not only for the workplace but also in procurement and other areas as well (see http://www.adr.gov/pdf/iadrsc_press_report_final.pdf). If one wants to assert that use of ADR is not only faster and cheaper, but also better than other means of adjudication, it is wise to mention the intangible benefits as well and what and how agencies might be trying to track them. Some are trying to account for health, goodwill, and well-being in operations.

The Office of Equal Rights, though certainly a vibrant office in any federal agency, has to be a small part of the conflicts that a state, local, and tribal government might be dealing with on a daily basis. In order to...
Additionally, ADR should be advanced for resolving issues regarding government-to-government work, such as a state working with the federal, tribal, and local governments and other states.\textsuperscript{4} Even workplace issues obviously go far beyond the basic discrimination complaint. Employees may be unhappy with their treatment, performance ratings, raises, evaluations, promotions, office space, assignments, and coworkers. So although the EEOC has hard data, if one is going to rely on a very small part of the dispute resolution landscape, one must describe the strong extrapolation link between EEOC mediations and all of the other exciting places to use ADR.

Finally, mediation in the workplace provides helpful data for convincing public administrators of the critical fiscal need to utilize ADR more. The authors, however, will want to note two significant trends: (1) the declining use of mediation in the federal government and (2) the growing number different venues in which to bring workplace concerns. As I mention in McKinney and Bagnell’s second edition of \textit{Readings and Case Studies in Mediation} (2012), the use of mediation as the primary tool of resolution in the federal workplace is declining markedly. One reason for this is the fear of retaliation. Conflict coaching is rapidly taking its place as an effective tool of resolution and empowerment.\textsuperscript{5} ADR offices are providing more of a systems approach, offering support such as organizational development, trainings, interventions, climate assessments, and facilitations. The other significant trend is the growing number of places in which to bring concerns in the workplace. Many agencies are starting new dispute resolution avenues such as an ombuds office. It is conceivable that an employee could choose from an EEO office, the ADR office, the union, the use of the human resources administrative grievance process, the ombuds office, and others. With so many other places to find resolution, the EEO statistics tell a fraction of the story. These two trends charge us with finding a more comprehensive way to measure ADR’s benefits and thereby to assert that ADR is faster, cheaper, and better.

Notes
1. It is not clear how the EEOC can use raw data tables without discussing the relative increase or decrease of the overall federal workforce (i.e., doing a per capita analysis of the numbers). The EEOC indicates changes in processing times and backlogs, additionally, without a concomitant look at the complexity of new cases or whether the workforce handling the caseload remained constant.
2. The Office of the Ombudsman within the Office of Inspector General for the U.S. Department of Defense has an intake form that asks the visitor to describe the impact of the conflict regarding turnover, absenteeism, missed work deadlines, reduction in productivity, medical visits, increased medication, loss of sleep, and so on. Upon intake, employees identify whether and in what way the conflict has affected the component and/or agency mission with specific examples (see the office’s annual reports at http://www.dodig.mil/ombudsman/annualReports.html).
3. The EEOC and Administrative Dispute Resolution Act are separate authorities in the federal government, and often the EEO office and the ADR office are not comingled.
4. A good example would be the giving and receiving of grants and assistance.
5. Obviously, such a tool is inappropriate in cases in which precedent is needed.

Reference