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Ashcroft sends signal of support for ADR in Justice Dept.

In his first public comments on the issue, U.S. Attorney General John Ashcroft signaled his support for the Justice Department's longstanding commitment to the use of alternative dispute resolution options.

"Justice can be achieved through consensus as well as litigation," Ashcroft told graduating students at the University of Missouri-Columbia School of Law in May.

Ashcroft said the U.S. Justice Department had used ADR to settle 3,000 cases thus far in 2002, up from 550 cases in 1995.

"As officers of the court, lawyers have a responsibility to their clients, but this responsibility must always be carried out within the context of justice. To that end, adversarial justice and consensus justice are mutually reinforcing concepts," Ashcroft said. "Behind every successful mediation of a dispute is the prospect of aggressive litigation. And behind all successful litigation must be the opportunity for citizens to work together to reach a mutually beneficial outcome."

His predecessor, Janet Reno, began the "Appropriate Dispute Resolution" program in 1995, and strongly supported dispute resolution throughout her tenure as attorney general.

ABA OK's negotiation ethics standards, UPL

The ABA House of Delegates has approved ethical guidelines for settlement negotiations, as well as rules to protect lawyers from being prosecuted for unauthorized practice of law allegations for participating in an ADR proceeding outside of their jurisdiction of licensure.

The "Ethical Guidelines" approved by the House were drafted by the ABA Section of Litigation, and endorsed by the ABA Section of Dispute Resolution. Among other things, they stress that lawyers should discuss ADR options with their clients, but do not draft ethical rules specifically for those processes.

The effect of the new guidelines is unclear because they were not offered as a proposed amendment to current ethics rules, or as a substitute for current law or

rules, to provide a basis for liability or disciplinary action.

The new UPL rule, on the other hand, specifically amends Model Rule 5.5, which provides that a lawyer "shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction or assist another in doing so."

The new rule carves out an exception to Rule 5.5 that permits lawyers to practice temporarily in a jurisdiction in which the lawyer is not licensed if the legal services are "reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission."

AAA say it will stop administering predispute health care arbitration cases

The American Arbitration Association says it will not accept any more cases involving individual patients without a post-dispute agreement to arbitrate, but that change will not be effective until Jan. 1, 2003.

AAA said "there will be no change in the administration of cases in the health care area where businesses, providers, health care companies, or other entities are involved on both sides of the dispute."

However, the association also said that it "will continue to administer pre-dispute agreements to arbitrate in all areas outside of the health care field, as long as there are appropriate due process safeguards as defined by the courts."

Florida considers curbs on mediation of domestic violence cases

The Florida Supreme Court is considering a new rule that would limit the use of mediations in cases involving allegations of domestic violence.

The new rule being considered would limit the use of mediation in such cases to "ancillary issues" that are raised as part of an injunction issued in a domestic violence case. Mediators would not be used to determine compliance with injunctions, but would instead help parties resolve property or visitation disputes.

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