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CLEARING THE DOCKET: ALTERNATIVE DISPUTE RESOLUTION UNDER THE AMERICANS WITH DISABILITIES ACT

JANET M. SPENCER*

Those of you who have been here this morning have learned that the ADA is a wonderful source of potential disputes. You can have disputes about the nature of the disability, whether or not a condition qualifies as a disability,¹ and if so, whether it is of a kind that interferes with an employee's work and which can be corrected by reasonable accommodation provided by an employer.² We can also have disputes about what constitutes a reasonable accommodation and whether the accommodation places too great a burden on the employer.³ While we have an Act that is so ripe with the potential for these kinds of disputes, we also have a Congressional policy that favors resolution through Alternative Dispute Resolution (“ADR”).⁴

Other factors besides Congressional policy, however, also militate in favor of using ADR to resolve disputes. Most frequently,

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⁴ See 42 U.S.C. § 12212 (Supp. V 1993). Section 12212 provides:

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under this Act.

Id.
the individuals who seek accommodation are already in the work force. In this case, the employer may want to retain such an em-
ployee. Thus, ADR offers an opportunity to find a mutually agree-
able and acceptable way to allow that employer to do so.

Additionally, a provision in the Civil Rights Act of 1991⁵ sug-
gests that it is in the employer's self interest to try and resolve
disputes over reasonable accommodation, in good faith with the
employee, to avoid liability for punitive damages. Although our
speaker this morning denigrated the $300,000 cap on punitive
damages,⁶ my father always used to say, "if you saw it lying in the
street, you'd pick it up." I daresay that would be the case here.
Thus, there are numerous reasons to think favorably about ADR.

of damages where covered entity demonstrates good faith efforts at resolution of conflict).
⁶ Kipp Watson, Healing the Sick Institutions, 10 St. John's J. Legal Comment. 521, 524