Hello, I’m Joe Riojas, VA’s Chief of Staff, and I’d like to talk to you about VA’s Alternative Dispute Resolution Program ADR.

Our department exists to serve Veterans to provide them the highest quality care and the most timely benefits possible. Achieving these goals begins with each of us with our ability and willingness to advocate for those we serve.

A work environment and climate of professionalism and consideration for others is the foundation of our ability to best serve as Veterans’ advocates. How we treat each other is important. We want to work in an environment that is as free as possible of chronic workplace disputes and hostilities, which can degrade the quality of care Veterans receive.

Unfortunately, some conflicts may lead to protracted disagreements. Our challenge is to learn to transform disagreements into manageable differences to immediately and decisively address disagreements that impede our mission.

Traditionally, employees have used formal avenues to address conflict through

processes such as EEO complaints, grievances, and courts. Those approaches are still available, but they consume large amounts of limited resources, time, money, and energy and they take these resources away from our clients the Veterans we serve.

VA’s ADR Program, administered by the office of resolution management, can help us avoid unnecessary consumption of resources, and better maintain workplace harmony, by resolving disputes at the earliest possible opportunity. The ADR Program embraces VA’s core values Integrity, Commitment, Advocacy, Respect, and Excellence “I CARE” by resolving conflicts before they begin to interfere with our mission of serving Veterans. Its methods promote respect, safety, and transparency to help mend broken relationships and resolve difficult circumstances.

ADR is a tool that can enable us to transform VA in order to best meet the current and future needs of our Veterans. I fully support ADR and encourage you to choose this resource first to respond to conflict whenever possible. Thank you.

Jerry: Charlotte.

Charlotte: Yes, Jerry?

Jerry: I can’t believe this place. I have been killing myself at this job for the last ten years. I’m the one who has been picking up the slack and basically keeping this office running smoothly. So, now there’s a chance for me to get ahead, to get rewarded for my hard work and what do I hear everybody around here saying? I hear them saying that Amy is your choice for that new opening. What’s going on? Why am I being given this kind of treatment?

Male Moderator: Meet Jerry Smith and Charlotte Travis, two VA Employees; one a supervisor, the other a staff member. A position has just opened up in their department. Jerry feels he deserves it. But Charlotte, his boss, feels otherwise.

Charlotte: Jerry, I never promised you that position, or any other promotion for that matter. You know I have to fit the person I think is most qualified. I’m obligated to do what I think is the best for this department. In my opinion, Amy is the best choice for the job.

Jerry: Amy? She’s only been here three years. I’m the one who taught her everything she knows about this office. How can you sit there and tell me she deserves this promotion more than I do? I’ll tell you, I am tired of everybody around here giving me the short end of the stick. They use me to teach them what I know and they come to me to bail them out when they run into some kind of trouble. Now when it’s my turn to get something back I get treated like garbage. It’s just not right. And I’m not going to let you get away with this. I’ve got some rights and I’m going to check them out. You just wait. You’ll be hearing from my lawyer.

Male Moderator: So, how should they resolve their differences? Well, they’re about to find out when they enter the Mediation Zone.

So consider this: Jerry and Charlotte have both agreed to try resolving their dispute through mediation. Let’s see how the process works and how it encourages solutions that satisfy both of them.

Female Moderator: For all parties involved in a problem, mediation provides a framework for productive, open and honest discussions with one another. In fact, mediation encourages this. That’s so each person can try to better understand where the other is coming from. Sometimes parties can reach agreement on all of the issues they’re having problems with. Sometimes they can only resolve a portion of them; where they can tailor the problem down to what the real issue is. Sometimes they can’t work out a solution. When that happens, their differences can still be resolved through more formal litigation processes. With mediation, parties in a dispute use the services of neutral mediators. These mediators help them communicate and negotiate a solution that satisfies them both. It’s a process that focuses on helping the parties listen to each other so they can try to understand the other’s point of view instead of just listening for the sake of responding, or to have an answer for what the other person is saying. Watch how mediation works.

Mel: Well to begin, I’d like to welcome you to mediation. My name is Mel Evans and this is my co-mediator, Sue Reynolds.

Sue: Hi. I’ll be helping Mel with this mediation. Would you go ahead and introduce yourselves.

Jerry: Sure. My name is Jerry Smith. This is my union rep, Roberto Perez.

Charlotte: My name is Charlotte Travis. I’m Jerry’s supervisor.

Mel: Pleased to meet you. During this mediation, Sue and I would appreciate if you would call us by our first names. Would it be all right to use your first names?

Charlotte: Yes.

Jerry: Fine.

Roberto: Sure.

Mel: Have any of you been to mediation before?

Charlotte: No.

Jerry: I haven’t.

Roberto: I haven’t either.

Mel: Well, not every mediation is the same, but they follow similar principles. It might be helpful if Sue and I explain what you can expect in mediation and how it will work here. Sue?

Sue: Okay. Let’s begin by describing the mediation process. One of our goals in this mediation is to help the two of you determine the best solution to your problems rather than having someone else do it for you. Mediation is a problem solving process. It’s a chance for both of you to resolve your disputes on your own with our help as mediators. Mediation is a way for you to talk about what brings you here. It’s also a way of working together to come up with an understanding; one that’s acceptable for both of you. You may be able to resolve this problem; you may not. Or, you might be able to solve only part of it. That’s up to the two of you. Here’s the point. It’s your decision to reach an agreement or not to reach an agreement. Mel and I are here as mediators not judges or lawyers. We’re not going to force you to do anything you don’t want to do. Other outcomes are also possible in mediation that might be helpful to you. They include having a better understanding of each other, of your situation, and of your choices for the future.

Mel: Our role as mediators is to promote communication so you can listen and talk with one another. We’re here to help each of you understand your options and possibly to help you to gain a better understanding of each other’s point of view. We’re also here to help you explore different ways of solving your problem and we encourage you to be creative in thinking about possible solutions. We’re not here to make any decisions for you. And we won’t be telling you what to do. Our only expectations are that you treat each other with respect, that you mediate in good faith, and that you really try to listen to one another. Any questions up to this point?

Jerry: Yes. During mediation can my union representative speak on my behalf?

Mel: Mediation welcomes the participation of everyone who is involved in the process as long as that is done in the interest or betterment of the understanding or in finding a resolution. This kind of participation includes union representatives or other types of representatives, lawyers, and advocates. But in particular, mediation is designed to give those who are personally involved in the problem a chance to tell their story. They can do that in their own words. They can express their feelings and they can work together to find mutually satisfying solutions. In most cases, we find that it works better if they learn to work out their solutions together with their representatives’ guidance and input. We’d like you to tell your story. We want to hear your point of view. And then we’ll give your representative a chance to clarify anything he thinks is important. If you feel you need to consult with him, just ask and we’ll take a break. And the same goes for attorneys and other representatives. We want to give everyone a chance to say what they need to say. That’s important to us as mediators. Are all of you comfortable with that approach?

Charlotte: Sure. But will the decisions that come out of the mediation be binding?

Mel: Normally agreements that are reached through mediation are put in writing and signed by the parties involved. This resulting document is as binding as any other formal settlement agreement. But for the agreement to be binding it has to be put in writing. That’s what you’re acknowledging in the agreement to mediate. Unless the parties agree otherwise, settlements that are reached through mediation usually don’t set a precedent. This means they can’t apply to another case. Your labor contract might also address that point.

Roberto: I’d like to say something about that. Our master agreement provides that written agreements that are reached by the parties through mediation are binding. That’s provided they don’t conflict with any collective bargaining agreements between labor and management. However, unless labor and management specifically agree otherwise, agreements that come out of mediation are not precedential. That means they don’t apply to, or become a rule for, anyone besides the parties to the agreement.

Sue: Okay. How about if we move forward? Keep in mind that mediation is voluntary. You can leave at any time if you don’t feel that this is productive. But if you consider doing that, we just ask that you try talking it out before leaving. Hopefully that will offer a chance to work it through. Another important point about mediation is that it’s confidential. That means we won’t talk about what was said here today with anyone outside this room. We also can’t be subpoenaed to testify at any hearing if you are not able to settle the matter. Everything you tell us is in strict confidence. It stays that way with us mediators. Documents that are prepared for the mediation session are also confidential. There are only two exceptions to this. The first exception is where there’s a threat of physical harm. The other is if a notice of some type of criminal activity arises during the mediation. In those cases we’ll stop the mediation session immediately.

Does anybody have any questions or concerns at this point?

Jerry: No. But what about taking breaks?

Mel: That’s a good question. If anyone feels the need to take a break for coffee, or for the restroom, or to have some quiet time to calm down, to think, or talk to your representative, just let one of us know. In fact, Sue and I will periodically want to take a break to talk over ideas that we have to help the mediation. Any other questions?

Jerry: No.

Charlotte: Not at this point.

Roberto: No. I don’t.

Sue: All right. Let’s get started. Now, we usually begin by asking each of you to take a turn explaining why you’re here and how you see the situation. We’ll ask that one of you start this discussion and while that person is talking the other agrees not to interrupt. The reason for this is that, as mediators, Mel and I are hearing your explanations for the first time. We can easily get confused at this initial stage if there are interruptions and back and forth discussions. We’ve given each of you some paper and a pen. When you hear something that you want to address, just write yourself a note. We promise to give you time to fully discuss each of your concerns. But for our sake, please try not interrupting each other. Also, we may ask each of you some questions. That’s so Mel and I can clarify and more fully understand what your problem is. Is that agreeable to everyone?

Roberto: Sure. That sounds reasonable.

Jerry: It’s okay with me.

Charlotte: Same here.

Mel: Each of you will have a chance to explain how you see the situation. After you’ve each had a chance to tell your story, we’ll begin transitioning from the past to the present and then to the future. During that phase, we’ll begin to learn about what is important to each of you. We’ll help you identify your issues and interests. We’ll help you develop a list of the issues and interests that you may want to talk about and address during the mediation.

Sue: After that, we’ll probably take some time to meet privately with each party and their representatives. These sessions are called private caucuses. During these caucuses, we ask that you share any issues or concerns that you have with us; ones that you might not be comfortable talking about in front of the other party. We need to hear these things so that we can help you come up with an effective solution to the problem. Anything you tell us in a private caucus that you want us to keep private and confidential will be kept that way. We won’t share that in the open session unless you give us permission to do so.

Female Moderator: Before mediation, or at the start of mediation, each party is given an Agreement to Mediate for review. It contains points like those that our mediators, Mel and Sue, just explained to both parties. These are the rules that everyone participating in the mediation agrees to follow. They are given an opportunity to read it through together. After everyone who needs to be present signs it, the mediation can proceed.

Mediation provides a structured and safe process; one that enables both parties to exchange information, emotions, and talk about what brings them to the session. It also allows them to jointly consider options that may satisfy their important needs. And during mediation parties are asked to listen actively to each other; to vent but also to avoid arguing back and forth, to focus on the problem, and to help find solutions that satisfy each other’s needs. While the mediator controls the mediation process, it’s the parties themselves who control the results. Representatives are welcome and invited to participate, but they generally take more of a back seat than in traditional litigation. An Agreement to Mediate is a contract that lays out the ground rules the parties agree to follow during the mediation session.

Mediators are neutral and have no stake in the outcome of the dispute. Their neutrality is demonstrated by the balanced approach they take throughout the process. It’s also shown by the relationship that the mediators try to create with all parties; a relationship that is based on trust. If a mediator should become biased or prejudiced, losing his or her neutrality or impartiality, the mediation should be stopped. Also, the mediator’s role isn’t to make decisions for the parties or to decide who’s right and who’s wrong. Rather, mediators are there to help the parties listen to each other; to help the parties understand what the other needs and to help them identify the issues and interests that are important for resolving a conflict. And remember, the resolution needs to satisfy all of the parties in the mediation.

Sue: Generally I ask the person who brings the issue to the table to go first. Is that okay with all of you?

Charlotte: Yeah, that’s fine with me.

Roberto: Sure.

Jerry: That’s all right. I guess that means I start things off. Well, Charlotte told me that I’d be considered for a promotion if I just worked hard and played by the rules. Now it’s the same old story of not being qualified for the job. Let me tell you. I’ve worked here for ten years. I know my job. I know what to do and I can run this place if somebody would just let me. I’ve earned that promotion and I think she’s just putting me off, using me.

Sue: Jerry, I hear you saying that you are a good employee but that you haven’t been recognized for your ability and you seem pretty upset about that. Could you tell me more?

Jerry: Exactly. I’ve been a high performer for years. But nobody has ever complimented me on the work I do. And I work hard. I really care about this place. I’m the best employee they have got but nobody is taking care of me. So I have to start watching out for myself. I’m not taking this anymore.

Female Moderator: After both parties complete the storytelling phase, they move into the problem solving phase. That’s when they actually start talking with each other.

Charlotte: Jerry, I definitely think you are a good employee. And you received a highly satisfactory rating last year. Not too many of those were given out. But I can’t go around all day patting everybody on the back and promoting them whenever a vacancy opens. I’ve got to make decisions that are in the best interest of the department.

Mel: The goal of mediation is to find a solution to the dispute; one that is acceptable to each of you. So let’s look at this situation to figure out what’s really important to the two of you. Sue, would you help me by writing down some of Jerry and Charlotte’s issues and interests on the flip chart?

Sue: Sure.

Mel: While Sue is getting ready, why don’t you start thinking about what your issues are?

Jerry: Communication. That’s a big one for me.

Mel: Good. And Charlotte, how about you?

Charlotte: I agree that communication is an issue. And I’d also like to work on setting expectations on both of our parts, realistic ones.

Jerry: How about trust?

Mel: Trust. That’s another good one. Charlotte?

Charlotte: Training.

Mel: Training. Excellent, excellent! Just a few more.

Jerry: I think respect is very important.

Mel: I agree. Respect is another good one. Do we have one more that we can throw out?

Charlotte: Recognition.

Mel: Recognition. Very, very good. We’ve got something that we can start working on.

Female Moderator: The mediators take time to outline real issues and interests that concern each party. The goal is to help identify common interests and issues. This list-building process helps the parties move from the past, to the present, and toward the future. It labels, defines, and prioritizes issues which sets parameters for the mediation. This technique moves and orders the mediation process into manageable pieces. It helps each of the parties own the dispute and its resolution. This process also becomes a building block for further agreement. As the parties work together on the list they may find they have certain interests in common; things they both want to see come out of this session.

Mel: Jerry, I hear you saying that you need recognition for your work and that you feel you deserve a promotion. Based on what you say and what Charlotte said, I get the sense that you’re a good worker; that you care about your job and the agency. Is that fair?

Jerry: That’s fair.

Mel: And I heard Charlotte say that she thinks you’ve been rewarded. She said you got a highly satisfactory rating last year. I also hear her stating that when considering promotions she needs to do what is best for the department. Let me ask something. Can either of you see any interest that both of you have in common in this situation?

Charlotte: Well, I guess that both of us realize that Jerry is a good worker.

Female Moderator: Mediators help in identifying the issues and interests that are the real basis of the conflict. Often parties hear common interests without realizing it until they’re encouraged to listen to understand instead of listening to respond. When interests are revealed, those in the mediation can move away from position-based negotiation such as who’s right and who’s wrong. Instead, during mediation, they approach the problem by discussing what is really important to them. That’s accomplished by using interest-based problem solving techniques. Mediation is a dynamic process. The value of mediation isn’t so much the outcome as it is the emotional investment in getting there. Each person often wants to settle the dispute. They want to go on with their lives. They want validation for their actions; actions that have brought them to this point. Through the mediation process each party can achieve a sense of being heard by the other; of success and satisfaction and finding a solution to their problem and a fulfillment in dealing effectively in an emotionally charged situation.

Ordinarily the mediation process advances through a series of phases or steps. These include the preparation phase, the introduction phase, the storytelling phase, the problem solving phase, and the agreement phase.

In the preparation phase, mediators usually make initial contact with each of the parties. They answer questions, calm anxieties, and clarify expectations. The mediators use this phase to begin building trust between themselves and the parties and to establish professional credibility. This is also the time to distribute the Agreement to Mediate.

During the introduction phase they begin the actual mediation session by making introductions. They explain the ground rules and offer an overview of the mediation process. By doing this, each participant gains a common understanding of what to expect. They begin by setting a positive tone and continue the trust building process that’s key to a successful mediation. It’s during this part of the mediation when all parties agree that their discussions are private communications, meaning they won’t go outside the room. If the case goes to litigation, mediators can’t be forced to testify about what was said during the mediation. Mediation is considered to be similar to a settlement conference and it enjoys the same legal protections and immunities that settlement conferences have.

Following this introduction, the mediator proceeds to the storytelling phase. That’s when each person is given a chance to describe the situation from his or her perspective. It’s also the time when the parties can bring out what’s important to them. Representatives also help by adding information a person may have forgotten. The mediators help the parties further define the issues in joint session and in private meetings that each party may have with the mediators. They listen carefully, they question, and they probe for clarification.

Next is the problem solving phase. During this phase the mediators help the parties define key issues, identify common interests, negotiate effectively with each other, and focus on their interests, not their positions. Both persons are encouraged to explore creative solutions to their problem and to work through road blocks that typically occur in any negotiation.

At any point during mediation, one of the parties may find it helpful to talk privately with the mediator or the mediator might suggest doing that so certain issues and ideas can be discussed. These are ones that they don’t feel comfortable talking about in the joint session with the other side present. In these private caucuses, parties can brainstorm and bounce ideas off of the mediator. If the mediator has a private caucus with one party, he or she will usually also meet privately with the other party. This demonstrates balance and evenhandedness. Using private caucuses also helps the mediator discover hidden, underlying issues. Sometimes these are the actual root cause of the problem. If there are other issues, a private caucus is usually the place they’ll initially come out.

Sue: Charlotte, we’re in a private caucus now. Anything you say here we’ll keep private if that’s what you want. I’m wondering if there’s anything you want to add that you didn’t want to say in front of Jerry. Any idea you’d like to talk about?

Charlotte: Yes. I feel I need to say that Jerry is a good employee. He’s one of my best and I don’t like seeing him as angry as he’s been. But Jerry is a loner. He just gets to work and doesn’t interact with any of his co-workers so he hasn’t developed the kind of people skills he needs. Those promotions are all in a management track and he just isn’t there yet. Maybe I have to work with him more. Maybe there’s some training that could help, but right now he is not ready for that job.

Sue: Anything else Charlotte?

Charlotte: Well, I do have some money in my budget for management training that I might be willing to tap for Jerry and to help resolve this situation. But I don’t want to be the one to suggest that or let Jerry know that it’s a possibility just now. I’d like you to keep that offer between us until we see how this goes.

Mel: Okay. We’ll keep that confidential until you feel comfortable discussing that possibility. Maybe we can talk later about whether you might put that on the table as an offer or whether you prefer that one of us mediators present it and explore it as an option.

Charlotte: Thank you.

Female Moderator: During the agreement phase, the mediators help the parties identify areas of agreement. They help by first getting the parties to agree on general principles and then move toward agreeing on details. They help prepare a written settlement agreement that reflects the parties’ agreements. And finally they see that settlement agreement through to signature by the appropriate person.

Although we’ve been talking about specific phases in the mediation process, you should realize there’s no one way or one set of procedures that apply to every mediation. That’s left for the mediators to decide after considering factors that affect each situation.

Even though a mediator has specialized skills and training, each one also has his own personal style. Mediation is more of an art form than a science. And everyone, the mediators and the participants, bring different human characteristics to the process.

Male Moderator: So mediation worked for Jerry and Charlotte. As you’ve seen, in the Mediation Zone the goal is to reach an understanding; an agreement that resolves their problem satisfactorily for both of them. Mediation is an opportunity to listen, to share, and to learn from each other in a confidential and safe setting. The Mediation Zone: it can be a very effective method for resolving disputes.

For additional information about mediation, please contact your facility’s ADR coordinator or ORM counselor or visit VA’s ADR Mediation website <http://vaww.va.gov/adr> .

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