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To Caucus or not...

Few topics in mediation practice have stirred such a variety of differing views, as has the use of private sessions or caucuses. Some promote its use in a ritualized way—convening these meetings at certain times in the mediation process. Some suggest that the entire mediation be conducted in an open, joint session. The VA approach encourages a thoughtful, intentional use of caucuses. The VA acknowledges its strategic value as well as the potential risks associated with convening these private sessions.

Definition:

Caucus is a private meeting between the mediator(s) and each party, separate from the other party, requested (generally by the mediators, but sometimes by one of the parties) for the purpose of having a confidential discussion. These discussions, generally lasting 5-15 minutes (though may last longer), are conducted strategically at various times throughout the mediation. There may be only one or a series of private sessions during the mediation session.

Purpose:

Mediators may suggest a private meeting in order to accomplish one or more of the following:

- Gather data and listen to the parties without

interruption from or being monitored by the other party;

- Explore possible solutions which parties might be self-conscious about discussing in the presence of the other party;
- Provide parties an opportunity to discuss their concerns about the mediation process or about the other party;
- Allow a “cooling off” period when tensions increase and are preventing parties from discussing substantive issues;
- Build agreements, incrementally;
- Educate parties about ways to improve communication;
- Encourage parties to listen thoughtfully to what others are saying; and
- Permit the mediator to be candid in commenting on the attitudes and behavior of the parties rather than “enforcing” ground rules in the joint session. (Allow a party to save face.)

Mediators may also call a private session for themselves. Among the possible reasons are to take the opportunity to reflect on the mediation, and to consider al-

ternative strategies and tactics.

Some Practical Hints:

Explain in the introduction phase that a mediator or party may request a private session (caucus);

Be patient. Don't rush to use private sessions;

Be balanced. Spend relatively “equal” time with all parties;

Encourage the parties to convey the information themselves in the joint session, if a decision is made by a party to disclose information discussed during caucus;

Ask the party at the end of each caucus if anything he/she said should not be shared with the other party; and

Make certain that the party not involved in the caucus has a separate, comfortable place to wait.

For additional information visit the **Workplace ADR Program website** at <http://www.va.gov/adr>.



Neutrals Certification Program (NCP) Updates

During the second quarter of FY11, the Workplace ADR Staff is continuing to roll out the Neutrals Certification Program (NCP), which came into effect on October 22, 2010, upon the publication of the ADR Neutrals Certification Handbook (VA Handbook 5978.2). In the last newsletter, it was stated that the NCP has replaced the Mediator Certification Program and has expanded the number of possible ADR certifications beyond Mediation to include Facilitation, Group Facilitation, and ADR Mentoring. The following is an update about other aspects of the NCP that are in the process of changing.

- The list of Certified Neutrals is being reformatted and updated. This list, currently available at <http://www1.va.gov/adr/docs/CertifiedMediatorList.pdf> but soon to be available at <http://www1.va.gov/adr/docs/CertifiedNeutralsList.pdf>, is the first stop for any ADR Coordinator searching for a Certified Neutral for a case. The list is being revised so that each neutral's certifications (Mediator, Facilitator, etc) is individually listed, and is being updated to exclude employees who are no longer part of the NCP or have left VA.
- ADR Coordinators who are selecting a neutral for a case in the ADRTracker system will soon see a revised interface to reflect the new types of certification. This will happen once a lengthy process of revising the system's internal database to match the NCP has been concluded.
- A system is now in place for sending reminder notifications when a neutral's certification has expired. (All certifications are valid for two years before expiring.) Everyone whose certification has recently expired is being contacted and encouraged to apply for recertification.
- The Workplace ADR Staff is working to ensure that all certified Mediators are able to meet his/her recertification requirements. In order to be eligible for recertification, and to keep his/her mediation skills and knowledge base sharp, mediators must take 20 hours of mediation training and carry out four mediations during the two-year period of certification. Since this is an increased requirement under the NCP, more opportunities will be provided for continued education in mediation and the Workplace ADR Staff is committed to helping mediators who have not yet met these requirements. Other ways are being explored in providing more mediation opportunities to certified mediators, to increase the number of co-mediations since these are the best opportunities to develop as a mediator.
- The use of LMS is being increased as a way to record ADR training that can count towards certification/recertification, including the NCP Quarterly Teleseminars (see article on page 3).



As the NCP roster grows, the possibilities of the program are growing as well. We welcome your questions, comments and feedback about this process: please contact Zeke Reich, NCP Coordinator, at zeke.reich@va.gov or (202) 461-0513.

MEDIATOR SPOTLIGHT

If you know of someone that is doing a stellar job as a mediator, please let us know!

Email the name, facility, and a short summary of what makes him/her a wonderful mediator. Send entries to workplaceadr@va.gov.

Let's SEE which facility has the finest mediators!!!



VA's Certified Neutrals learn about Difficult Conversations

On December 8, 2010, VA's Certified Neutrals had the opportunity to learn mediation techniques from leading experts in the ADR field—and participated in the continued integration of ADR training with VA's Learning Management System (LMS).

Every quarter, the Neutrals Certification Program (NCP) offers a live NCP Teleseminar exclusively to VA's Certified Neutrals. More than 50 Neutrals participated in the first Teleseminar of FY11, entitled *Difficult Mediations: Tools for Listening and Inquiry*. Doug Stone, the best-selling co-author of *Difficult Conversations: How to Discuss What Matters Most* (an ADR classic that has just been reprinted in an expanded Second Edition), and Debbie Goldstein, Managing Director of the Triad Consulting Group, offered stories and ideas based on their extensive experience as trainers and mediators.

The Teleseminar focused on some of the psychological processes that get us into conflict—and can help mediators bring people out of it. They examined the “internal voice” that we all have in the backs of our minds, noting that one of the mediator's jobs is to help parties become aware of and articulate what they are “thinking and feeling but not saying.” And they described the natural urge that we feel to understand events as “stories,” which can make us mistakenly infer that someone *intended* to hurt us based on the fact that their action had a hurtful *impact* on us.

This thought-provoking content was supplemented by innovations in the logistical set-up of the call. This was the first Teleseminar to be fully integrated with the LMS system for participant registration, event evaluation, and certification. Since all Certified Neutrals now need to fulfill a continuing education requirement in order to be eligible for recertification, integration with LMS will make it easier for Teleseminar participants to count their participation towards that requirement.

This integration also now means that once each Teleseminar is over, it becomes an LMS course accessible to all VA employees. These Teleseminar courses will become permanent resources for VA employees looking to improve their ADR skills.

We encourage you to look for these courses within LMS. Log in to LMS and search for the courses by name in the box in the upper-right hand corner of the screen marked “Search Catalog” (for reference, the previous two calls were called “Maintaining Neutrality” and “Mediating from the Heart”). An audio recording and a transcript are available for all three calls. If you are having trouble logging into LMS, or need any help accessing ADR content within LMS, contact Roy Ferguson, ADR Specialist, at Roy.Ferguson@va.gov or (202) 461-0203.

Since participation in the live Teleseminars is an exclusive opportunity for Certified Neutrals, we encourage you to gain the training and experience necessary to join the NCP. To find out more, please contact Zeke Reich, NCP Coordinator, at Zeke.Reich@va.gov or (202) 461-0513. We look forward to sharing new forms of ADR resources with you, and to finding newly integrated ways to do it!

Ask the Mediator

Question:

Employees are seeking mediation following the denial of a reasonable accommodation (RA) request. How can I assist them as a mediator?

Answer: Mediators can play helpful roles in RA cases, but should be mindful of the context in a particular case. Managers or employees may request mediation or facilitation after the denial of an RA request and before the employee pursues any formal remedies, such as an EEO complaint or administrative grievance. Mediation may also be offered as part of a formal remedial process. Management's decision not to grant the RA request remains a workplace issue which can be mediated under VA policy if both parties consent.

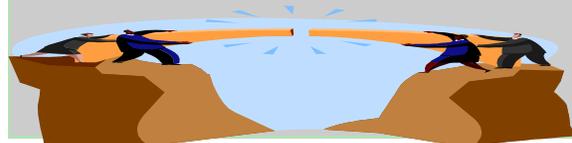
However, when mediators are used in such cases that are not in a formal process, the ADR coordinators and the mediators should be sure to remind employees that the use of mediation does not toll any time requirement that must be met to file a claim, complaint or grievance in another forum.

RA cases may also require follow-up or subsequent sessions even after the parties have reached a settlement agreement because medical conditions and employment circumstances can change over time causing a need to modify employee and agency obligations. VA officials must adapt to these changes. ADR Coordinators can play a key role in making ADR available to parties in RA cases with the goal of achieving early resolution.

Quarterly Quote:

~It is our attitude at the beginning of a difficult undertaking which, more than anything else, will determine its successful outcome.

William James



Upcoming Trainings

Basic Mediation Skills Training VAMC Hines, IL
(Jan 24-28) - Karen Civitate, Training Coordinator

Conflict Coaching VAMC Albuquerque, NM
(Feb 7-10) - Karen Civitate, Training Coordinator

Basic Mediation Skills Training VAMC Ann Arbor, MI
(Feb 7-11) - John Jones, Training Coordinator

Advanced Mediation Skills Training VAMC Albany, NY
(Mar 2-4) - John Jones, Training Coordinator

Basic Mediation Skills Training VAMC Albany, NY
(Mar 7-11) - John Jones, Training Coordinator



John H. Jones, ADR Specialist/Trainer, John.Jones1@va.gov, (910) 482-5083 or (910) 273-5338
Karen Civitate, ADR Specialist/Trainer, Karen.Civitate@va.gov, (310) 268-3586 or (310) 629-4727

ADR on TV?

Fairly Legal is an upcoming legal drama from the USA Network and is set to premiere on January 20, 2011. The series follows Kate Reed a successful lawyer who, after the death of her father, decides to change her career and become **a mediator**.

Episode 1: In an introduction to the brand-new series, Kate Reed quits her job as a lawyer and becomes a mediator, someone who solves peoples' problems, outside of court.

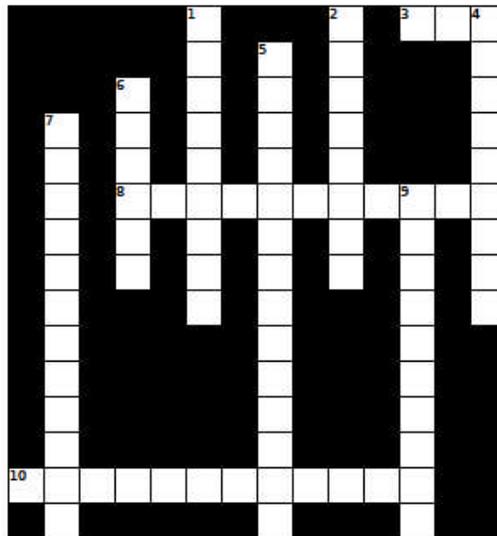
"Pilot" airs on January 20, 2011 at 10:00 PM EST. Rerun at 1:15 AM EST on January 21, 2011.

Episode 2: "Priceless" airs on January 27, 2011 at 10:00 PM EST. Rerun at 1:00 AM EST on January 28, 2011.

Tune in then share your thoughts about the show with us. We will publish your viewpoints in the next issue!

Alternative Dispute Resolution

A. Wilkins



- Across**
- 3 Office within VA that processes EEO complaints.
 - 8 An individual who has filed a formal EEO complaint.
 - 10 Another word for DO NOT DISCLOSE INFORMATION, keep...

- Down**
- 1 A written document describing the action(s) that will take place.
 - 2 An issue that causes two parties to have a disagreement.
 - 4 An ADR Process that is used to resolve problems.
 - 5 During this stage the parties, jointly or separately explore or build interest
 - 6 A private conversation held separately with the mediators.
 - 7 The mediation session begins with this.
 - 9 Readily available,



Workplace ADR Program

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The Workplace ADR Program solicits articles for VA's quarterly ADR newsletter. The purposes of the newsletter are to communicate information relating to the use of ADR in workplace disputes, and to serve as a resource for those interested in learning more about ADR and its application within VA. We invite you to submit ideas and articles for the newsletter through your respective administrations: VHA to Roberto Rojo (10A2E), VBA to Johnny Logan (20M42), NCA to Nicole Maldon (40A), VACO staff offices to your VACO ADR Liaison, and labor organizations to your ADR Council Representative. We are looking for ideas and articles on ADR-related topics, noteworthy activities, initiatives, accomplishments, best practices, or other items designed to educate and inform VA employees and managers on ADR and its benefits in addressing workplace disputes. We hope the VA community will find the newsletters a useful resource for obtaining interesting and helpful information representing ADR activity throughout VA. For more information, visit our website.

**Mediation: A Solution to
Workplace Disputes**

ADVANCE

TRANSFORMING POTENTIAL INTO PERFORMANCE

ADVANCE is a VA-wide initiative to invest in people development, workforce engagement and talent management for the improved delivery of healthcare, benefits and other services to Veterans and their families. It is led by the Office of Human Resources and Administration (HR&A).

ADVANCE is an exciting new direction for the Department, for Veteran's services and for your career. ADVANCE is an unprecedented, long-term investment in the professional and personal growth of each and every VA employee nationwide. It will provide you and other VA employees, the tools, training and support necessary to advance your career and improve services to Veterans and their families.

Visit the website at: <http://vaww.va.gov/ADVANCE/index.html>

Peaceful Conflict Resolution

Respect the right to disagree

Express your concerns

Share common goals and interests

Open yourself to different points of view

Listen carefully to all proposals

Understand the major issues involved

Think about possible consequences

Imagine several possible alternative solutions

Offer some reasonable compromise

Negotiate mutually fair cooperative agreements

Crossword Puzzle Answers

Across: 3. ORM 8. Complainant 10. Confidential

Down: 1. Agreement 2. Conflict 4. Mediation
5. Problem Solving 6. Caucus 7. Introduction
9. Accessible