

**ALTERNATIVE DISPUTE RESOLUTION NEUTRALS
CERTIFICATION HANDBOOK**

- 1. REASON FOR ISSUE:** This Handbook establishes procedures for VA Alternative Dispute Resolution (ADR) Neutrals Certification.
- 2. SUMMARY OF CONTENTS:** The Handbook contains policy and procedures for the certification, recertification and decertification of VA employees as ADR neutrals.
- 3. RESPONSIBLE OFFICE:** The Office of Resolution Management, Deputy Dispute Resolution Specialist for Workplace ADR and Deputy Assistant Secretary for Resolution Management (08).
- 4. RELATED DIRECTIVE:** VA Directive 5978 "Alternative Dispute Resolution."
- 5. RESCISSIONS:** None.

CERTIFIED BY:

**BY DIRECTION OF THE SECRETARY OF
VETERANS AFFAIRS:**

/s/
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Assistant Secretary for
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ALTERNATIVE DISPUTE RESOLUTION NEUTRALS CERTIFICATION HANDBOOK

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ALTERNATIVE DISPUTE RESOLUTION NEUTRALS CERTIFICATION HANDBOOK

1. PURPOSE. This Handbook modifies and establishes procedures for the Department of Veterans Affairs (VA or the Department) to certify, recertify, and decertify Alternative Dispute Resolution (ADR) Neutrals for workplace disputes between the Department and its employees or between employees.

2. SCOPE

- a. This Handbook applies to any VA employee certified, or wishing to become certified, as a neutral in workplace disputes within the Department.
- b. Any employee certified under this Handbook may serve as a neutral in any workplace dispute within the Department.
- c. The Department encourages employees who serve as neutrals in workplace disputes to become certified under this Handbook and to promote ADR as an efficient, cost effective means of resolving workplace disputes.
- d. Non-employees may not be certified or recertified, or retain certification, under this Handbook.

3. DEFINITIONS

- a. **Alternative Dispute Resolution.** Any process used to resolve disputes or issues in controversy between two or more parties. ADR includes, but is not limited to, conflict coaching, settlement negotiations involving third parties, conciliation, consensus building, facilitation, mediation, fact-finding, ombudsman, mini-trials, arbitration, or any combination thereof.
- b. **Certified Neutral.** A facilitator, mediator or mentor certified under this Handbook.
- c. **Complaint.** For this Handbook, a complaint is an oral or written statement alleging misconduct, including a breach of confidentiality, impartiality or other standard of conduct, by a neutral during ADR.
- d. **Co-mediation.** A mediation using two neutrals.
- e. **Confidentiality.** The obligation of a neutral in a dispute resolution proceeding not to disclose, except as authorized by statute, dispute resolution communications or communications provided in confidence.
- f. **Dispute Resolution Communication.** Any oral or written communication prepared for an ADR proceeding, including memoranda, notes, or work product of the neutral and/or parties, but excluding mediated agreements and other documents which are generally available outside the ADR process.

g. **Dispute Resolution Proceeding.** Any ADR process in which a neutral is appointed to help specified parties resolve an issue in controversy.

h. **Employee.** A person employed for compensation in the Department.

i. **Facilitation.** An informal form of ADR in which one or more specially trained neutrals assist two or more parties to resolve issues through more effective communication including sharing information, exchanging questions and answers, discussing decision making or other means agreed to by the parties.

j. **Facilitator.** A neutral who practices facilitation.

k. **Group Facilitation.** A facilitation that involves one or more groups having similar interests.

l. **Group Facilitator.** A neutral who practices group facilitation.

m. **In Confidence.** With respect to information, that the information is provided with the expressed intent of the source that it not be disclosed or is provided under circumstances that would create the reasonable expectation on behalf of the source that the information will not be disclosed.

n. **Mediation.** An ADR process in which one or more specially trained neutrals assist parties to a dispute to voluntarily find a mutually acceptable solution. Mediation is a confidential and non-adversarial process within the control of the parties, who alone determine the outcome. The neutral does not have authority to decide, or require the parties to resolve, any mediated dispute.

o. **Mediator.** A neutral who practices mediation.

p. **Mentor.** A neutral certified under this Handbook who provides support and skills-based assessments to other ADR neutrals. A mentor may provide recommendations for improvement and further training of applicants for certification or certified neutrals under this Handbook upon request of such neutrals, applicants or ADR Coordinators.

q. **Neutral.** An independent third party to a dispute who: (1) has no stake or interest in its outcome; and (2) functions specifically to aid the parties in resolving the dispute; but (3) has no authority to decide the dispute.

4. RESPONSIBILITIES

a. Under Secretaries, Assistant Secretaries and Other Key Officials shall:

(1) Promote the use of ADR, particularly mediation, to efficiently and timely resolve workplace disputes at the lowest organizational level without disrupting the Department's primary mission of providing statutory benefits to our Nation's veteran beneficiaries and their families; and

- (2) Encourage VA neutrals to become certified under this Handbook.

b. Management Officials and First-Line Supervisors shall:

- (1) Consistent with VA program requirements, support and promote, through the use of administrative leave, training, travel support and other resources, employees to become certified or recertified neutrals under this Handbook;
- (2) Inform ADR Coordinators and the Deputy Dispute Resolution Specialist (DDRS) when the performance or conduct of a VA employee adversely affects their ability to serve as a certified neutral under this Handbook; and
- (3) When appropriate, approve applications for certification and recertification under this Handbook.

c. Deputy Dispute Resolution Specialist (DDRS) for Workplace ADR shall:

- (1) Establish policy for VA Neutrals certification, recertification and decertification;
- (2) Review and monitor the effectiveness of the VA ADR Neutrals Certification Program;
- (3) Certify, recertify and decertify all Neutrals; and
- (4) Provide opportunities for recognition of certified neutrals who contribute substantially to the success of the Workplace ADR Program.

d. ADR Coordinators shall:

- (1) Support and assist VA employees who wish to become VA certified neutrals;
- (2) Provide or direct VA employees interested in becoming mediators, facilitators and/or mentors to appropriate training or experience; and
- (3) Assist in promoting quality ADR services by monitoring the performance of ADR Neutrals, providing mentors where available, and offering feedback and evaluation when requested by the DDRS for Workplace ADR.

e. Employees, Neutrals and Certified Neutrals shall:

When serving as a mediator, facilitator or mentor in VA workplace disputes,

- (1) Be neutral, impartial, forthright, creative, professional, patient, flexible, empathic, non-judgmental, culturally aware and respectful;
- (2) Demonstrate active listening and problem-solving skills;

- (3) Comply with the Model Standards of Conduct set out in “A Guide for Federal Employee Mediators” (September 2005), reprinted at <http://www.adr.gov/fedemployeemediatorsguide.pdf>, including provisions regarding confidentiality;
- (4) Comply with Federal law, including 5 USC § 574 (Administrative Dispute Resolution Act of 1996 or “ADRA”) and 5 USC § 552a (Privacy Act), barring disclosure of dispute resolution communications and other confidential information. (For further guidance on confidentiality requirements of third party neutrals in Federal cases read “Confidentiality in Federal ADR Programs,” 65 FR 83085 (December 29, 2000)) reprinted at <http://www.adr.gov/pdf/confid.pdf> ;
- (5) Inform their ADR Coordinators and the DDRS of any matter, including any disciplinary or adverse action, affecting their status, or capacity to perform, as a certified neutral under this Handbook; and
- (6) Obtain approval from their supervisors and applicable ADR program coordinators before pursuing certification or recertification under this Handbook.

f. VA Unions shall, as consistent with collective bargaining agreements:

- (1) Be responsible for encouraging bargaining unit employees who are neutrals to become certified and recertified as neutrals under this Handbook;
- (2) Be responsible for providing ongoing feedback on the quality of neutrals used in VA workplace disputes; and
- (3) Be responsible for making recommendations for improving VA ADR services.

5. CERTIFICATION AND RECERTIFICATION: GENERAL

a. Any employee may voluntarily apply to the DDRS for certification or recertification under this Handbook using the appropriate application set out in the Appendix after obtaining approval of their supervisor and meeting training and experience requirements for the applicable certification.

- (1) Training required for any certification under this Handbook shall be provided, or approved, by the DDRS or designee.
- (2) Experience obtained outside VA may meet requirements of this Handbook when approved by the DDRS or designee.

b. Each application shall include:

- (1) Approval by the applicant’s supervisor and ADR Coordinator of the employee’s request for certification;
- (2) Affirmation that the applicant meets the training and experience requirements of this Handbook for the applicable certification or recertification;

- (3) Affirmation that the employee is not subject to, or involved in, an adverse action or any other matter that would negatively affect the Department or applicant's service as a Certified Neutral;
- (4) Affirmation by the applicant's ADR Coordinator that the applicant is in good standing in the primary ADR program at the VA facility or staff office in which the applicant serves or would serve as a Certified Neutral; and
- (5) Accompanying documentation to support the above affirmations, where necessary.

c. Each application for recertification shall be submitted no later than 30 days prior to the expiration of the current certification.

d. The DDRS, or designee, shall review and approve or disapprove such applications and may request additional information to complete the application and certification process. Applications shall not be approved until all requested documents have been received and reviewed.

e. Any certification or recertification under this Handbook shall be for 24 months.

f. The DDRS', or designee's, decision on any application for certification or recertification shall be final.

g. This Handbook does not bestow any rights upon any employee in addition to those already bestowed by law, regulation or policy.

6. CERTIFICATION AND RECERTIFICATION: VA MEDIATOR

a. **Certification:** To apply for certification as a VA Mediator, an employee must have completed the following requirements within 24 months prior to the application:

Step 1: Before Steps 2-3 below, complete at least 32 hours of basic mediation skills training. Such training should include the following:

- (1) Introduction to conflict,
- (2) Overview of ADR,
- (3) Principles and practices of mediation, including neutrality and confidentiality,
- (4) Stages of the mediation process,
- (5) Creative problem-solving,
- (6) Communications (listening and questioning) skills,
- (7) Handling bias,
- (8) Settlement agreement writing,

- (9) Standards of Conduct for Mediators,
- (10) Related role-plays, and
- (11) At least 3 hours training in Equal Employment Opportunity (EEO) law and practice, including:
 - (a) EEO complaint processing for Federal employees,
 - (b) Bases and theories of unlawful discrimination by race, color, sex, national origin, religion, age and physical or mental disability,
 - (c) Theories of reprisal and retaliation under EEO law and policy,
 - (d) Remedies, costs and attorneys fees available under EEO law and regulation; and
 - (e) Requirements and prohibitions in settlement agreements for EEO claims.

Step 2: Within 24 months after completing Step 1 training, co-mediate or mediate 4 workplace disputes and receive positive evaluations. At least 2 cases must have been EEO cases, and all should be co-mediated with a Certified Neutral.

Step 3: Within 24 months of completion of Steps 1 and 2, submit an application for certification as a VA Certified Mediator under Paragraph 5.

b. **Recertification:** To apply for recertification as a VA Mediator, an employee must have completed the following requirements within 24 months prior to the application:

Step 1: Complete at least 20 hours of mediator or related skills training in the areas described above in Paragraph a, Step 1.

Step 2: Co-mediate or mediate 4 workplace disputes and receive positive evaluations. At least 2 cases must have been EEO cases, and all should be co-mediated with a Certified Neutral.

Step 3: Following completion of Steps 1 and 2, submit an application for recertification as a VA Certified Mediator under Paragraph 5.

7. CERTIFICATION AND RECERTIFICATION: VA FACILITATOR

a. **Certification:** To apply for certification as a VA Facilitator, an employee must have completed the following requirements within 24 months prior to the application:

Step 1: Before Steps 2-4 below, obtain at least 24 hours of basic facilitation skills training. Such training must include:

- (1) Introduction to conflict,

- (2) Overview of the principles and practices of facilitation including neutrality and confidentiality,
- (3) Individual and group communications skills,
- (4) Effective listening and questioning skills,
- (5) Creative problem-solving,
- (6) Negotiation and negotiated agreement writing,
- (7) Standards of Conduct for ADR Neutrals, and
- (8) Related role-plays.

Step 2: Before Steps 3-4 below, obtain 3 hours of training in EEO law and practice as described in Paragraph 6 a, Step 1.

Step 3: Within 24 months after completing Steps 1 and 2, facilitate or co-facilitate 8 workplace disputes and receive positive evaluations. At least 4 cases must have been EEO cases, and all should be co-facilitated with a Certified Neutral.

Step 4: Following completion of Step 3 facilitations, submit an application for certification as a VA Certified Facilitator under Paragraph 5.

b. Recertification: To apply for recertification as a VA Facilitator, an employee must have completed the following requirements within 24 months prior to the application:

Step 1: Complete at least 16 hours of facilitation skills or related training in the areas described above in Paragraph a, Step 1.

Step 2: Facilitate or co-facilitate 8 workplace disputes and receive positive evaluations. At least 4 cases must have been EEO cases, and all should be co-facilitated with a Certified Neutral.

Step 3: Following completion of Steps 1 and 2, submit an application for recertification as a VA Facilitator under Paragraph 5.

8. CERTIFICATION AND RECERTIFICATION: VA GROUP FACILITATOR

a. Certification: To apply for certification as a VA Group Facilitator, an employee must have completed the following requirements within 24 months prior to the application:

Step 1: Before Steps 2-4 below, complete at least 32 hours of group facilitation skills training. Such training should include the following:

- (1) Introduction to group conflict,

(2) Overview of the principles and practices of group facilitation, including neutrality and confidentiality,

(3) Stages of group formation and development,

(4) Techniques for identifying and assessing group conflict,

(5) Designing and managing group conflict interventions, and

(6) Skills and methods for intervening in group conflict.

Step 2: Before Steps 3-4 below, obtain 3 hours of training in EEO law and practice as described in Paragraph 6 a, Step 1.

Step 3: Within 24 months after completing Steps 1 and 2, facilitate or co-facilitate 3 workplace group facilitations and receive positive evaluations. At least 1 case must have been an EEO related case, and all should be co-facilitated with a Certified Neutral.

Step 4: Following completion of Steps 1-3, submit an application for certification as a VA Group Facilitator under Paragraph 5.

b. **Recertification:** To apply for recertification as a VA Group Facilitator, an employee must have completed the following requirements within 24 months prior to the application:

Step 1: Complete at least 16 hours of training in group facilitation skills or related training in the areas described in Paragraph a, Step 1.

Step 2: Facilitate or co-facilitate 3 workplace group facilitations and receive positive evaluations. At least 1 case must have been an EEO related case, and all should be co-facilitated with a Certified Neutral.

Step 3: Following completion of Steps 1 and 2, submit an application for recertification as a VA Group Facilitator under Paragraph 5.

9. CERTIFICATION AND RECERTIFICATION: VA MENTOR

a. **Certification:** To apply for certification as a VA Certified Mentor, an employee must have completed the following requirements within 24 months prior to the application:

Step 1: Obtain and maintain certification as a VA mediator, facilitator or group facilitator under this Handbook.

Step 2: Complete 16 hours of mentoring curriculum in:

(1) Defining mentoring; formal and informal;

(2) Identifying business objectives of mentoring;

- (3) Identifying and applying models of mentoring;
- (4) Identifying the characteristics and attitudes of effective mentoring;
- (5) Effective communications in mentoring;
- (6) Providing effective feedback in mentoring;
- (7) Designing effective mentoring programs; and
- (8) Related role-plays.

Step 3: Mediate or facilitate at least 12 workplace disputes and receive positive evaluations. At least 6 cases must have been EEO cases.

Step 4: Submit an application for certification as a VA Certified Mentor under Paragraph 5.

b. **Recertification:** To apply for recertification as a VA Certified Mentor, an employee must have completed the following requirements within 24 months prior to the application:

Step 1: Maintain certification as a Certified Neutral under this Handbook.

Step 2: Complete 16 hours of mentoring skills training in the areas described in Paragraph a, Step 2 or related ADR skills.

Step 3: Submit an application for recertification as a VA Mentor as provided under Paragraph 5.

10. WAIVERS AND EXTENSIONS

a. The DDRS, or designee, may waive or extend, for good cause shown, any requirement under this Handbook.

b. Any request for a waiver or extension shall:

- (1) Identify the specific requirement for which the applicant is seeking a waiver or extension;
- (2) Provide such information as necessary to allow the DDRS to make a determination that good cause exists to grant such waiver or extension, including:
 - (a) A description of the alternatives, if any, which the applicant proposes to the requirement being waived or extended; including the date, if any, for completion of such alternative requirement(s);
 - (b) Recommendation from the applicable ADR Coordinator regarding whether the waiver or extension should be granted in whole or part and such alternatives, if any, approved; and
 - (c) Any other information relevant to the decision to grant or deny the waiver or extension.

c. The DDRS, or designee, shall notify the applicant and the ADR Coordinator concerning whether the request for waiver or extension has been denied, granted or modified within 10 calendar days of receipt of the request for waiver or extension.

11. ROSTER OF CERTIFIED NEUTRALS

a. The DDRS shall maintain and circulate a “Roster of Certified Neutrals” (hereinafter the “Roster”).

b. The Roster shall provide the following information concerning each certified neutral:

(1) Name, VA organization, email address, telephone number and certification type; and

(2) Date of the earliest uninterrupted certification as a Certified Neutral.

c. The DDRS shall publish the Roster within VA, at such sites as may be deemed appropriate and at <http://www1.va.gov/adr>.

d. Within ten calendar days of expiration of any certification, Certified Neutrals shall be removed from the Roster unless recertified under this Handbook.

12. DECERTIFICATION

a. A complaint against a Certified Neutral should be in writing and provide sufficient facts to allow the DDRS, or designee, to investigate the circumstances giving rise to the complaint.

b. Within 5 calendar days of receipt of a complaint, the DDRS, or designee, shall acknowledge the complaint, if deemed warranted, and provide the Certified Neutral who is subject to the complaint, and the Certified Neutral’s applicable ADR Coordinator, the following:

(1) Actual written notice of the allegations of the complaint;

(2) Within 10 calendar days of such written notice, an opportunity to respond to the DDRS or designee(s), either orally or in writing to such notice; and

(3) Within 20 calendar days of such response, a written decision concerning the complaint.

c. The DDRS may decertify any VA Certified Neutral for good cause. Good cause shall include, but not be limited to:

(1) Failure to maintain confidentiality of dispute resolution communications;

(2) Failure to maintain neutrality in dispute resolution proceedings;

(3) Failure to maintain current employment with the Department;

(4) Failure to maintain good standing within the ADR program in which the employee primarily provides ADR services; or

(5) Any other breach of the “Model Standards of Conduct for Mediators” or misconduct.

d. The DDRS’ decision concerning the complaint may include decertification, conditional decertification, or other conditions concerning the Certified Neutral as deemed appropriate by the DDRS.

e. A DDRS decision to decertify, conditionally decertify, or establish other conditions upon a Neutral’s certification under this Handbook shall be final.

13. PREVIOUSLY CERTIFIED MEDIATORS

a. VA employees certified as mediators under the “VA Mediator Certification Program” (the “Program”) shall be listed on the VA’s Roster of Certified Neutrals under Paragraph 11 until that certification lapses.

b. Employees certified under the Program shall be recertified only upon meeting the requirements under this Handbook.

14. REFERENCES

a. The Administrative Dispute Resolution Act of 1996, as amended, codified at, 5 U.S.C. §§ 571 to 584.

b. Presidential Memorandum of May 1, 1998 directing each federal agency to take steps to “promote greater use of mediation, arbitration, early neutral evaluation, agency ombudsman, and other alternative dispute resolution techniques” at www.npr.gov/direct/memos/dispute.html.

c. Memorandum to the Deputy Secretary from General Counsel dated June 26, 2006, entitled “Recommendation on Reassignment of VA’s Dispute Resolution Specialist (DRS) Function” approved July 14, 2006.

15. VA MEDIATOR CERTIFICATION PROGRAM

This VA Handbook rescinds the VA Mediator Certification Program (Undated) under which VA mediators are currently certified.