



DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Washington, D.C. 20420

November 9, 2004

VBA Letter 20-04-52

Director (00)
All VACO Services, Regional Offices and Centers

Subj: Veterans Benefits Administration's Alternative Dispute Resolution Policy

Purpose

This letter establishes Veterans Benefits Administration (VBA) policy regarding the use of alternative dispute resolution (ADR) methods to resolve Equal Employment Opportunity (EEO) issues. Appendix A outlines definitions, responsibilities, and procedures included in the mediation process. Regional Offices are encouraged to develop local ADR processes in collaboration with union officials to address the specific circumstances and needs of the station.

Background

EEO disputes must be conducted in accordance with Title 29, Code of Federal Regulations, (CFR) § 1614, and Equal Employment Opportunity Commission (EEOC) Management Directive 110. The Department of Veterans Affairs (VA) Directive 5978, Alternative Dispute Resolution (ADR), dated February 2000, sets forth VA's policy encouraging employees "to use mediation to help resolve workplace conflicts as early as feasible, to the maximum extent practicable, in an appropriate manner, and at the lowest organizational level." VBA letter 20-03-06 dated March 10, 2003, designated VBA's ADR Coordinators in the field and Central Office and outlined the responsibilities of ADR Coordinators. The letter also reiterated VBA's support for the use of ADR, specifically mediation, as a method for resolving workplace disputes upon election by the employee.

Policy

VBA's policy is to encourage all employees, to use mediation to help resolve workplace disputes irrespective of their positions, grade levels, or the stage of disputes. When an aggrieved individual has agreed to pursue resolution through mediation, management must participate in the process. Any exceptions to management participation in the mediation process must be approved by the Area Director at the Regional Office level, or the Program and Staff Directors for VA Central Office (VACO) elements. Mediation will be offered for all appropriate EEO related issues. Management's responsibilities

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during the mediation process and guidance in those rare instances when mediation may seem inappropriate are detailed in Appendix A, Section III (B, C and D).

Awareness Training

The Department of Veterans Affairs' strategic goal for ADR is to have 80% of VA employees trained in ADR in calendar year 2004. To meet this goal, the "Mediation Zone" videotape was sent to each Regional Office ADR Coordinator and furnished to VACO staff. All VBA employees are required to view the videotape by December 31, 2004. ADR Coordinators are responsible for certifying that all employees have completed this training via e-mail to VBA's Office of Diversity Management and Equal Employment Opportunity (DM&EEO), VAVBAWAS/CO/DM&EEO, by January 3, 2005.

Contact Information

If you have any questions regarding VBA's ADR Program, you may contact the VBA DM&EEO Staff via e-mail at the mailbox listed above. Additionally, you may contact the VBA ADR Coordinator, Mr. Johnny Logan, DM&EEO, by telephone on (202) 273-7042, or any member of the DM&EEO Staff at (202) 273-6617.

/s/

Daniel L. Cooper
Under Secretary for Benefits

Enclosures

Appendix A

Veterans Benefits Administration Alternative Dispute Resolution Program

I. Definitions

1. Alternative Dispute Resolution (ADR). ADR is a group of processes that specially trained neutral persons, who are not associated with the controversy, use to help individuals resolve disputes. Forms of ADR include, but are not limited to, conciliation, facilitation, mediation, fact-finding, mini-trials and arbitration, or any combination thereof.

2. Mediation. Mediation is an ADR process in which a skilled, impartial third party, called a mediator, assists the parties in reaching a mutually agreeable resolution to a dispute by facilitating better communication, identifying interests, and helping explore possible solutions.

II. Responsibilities

A. **Under Secretary for Benefits**. The Under Secretary for Benefits is responsible for:

1. Ensuring that all employees within the Administration have access to Alternative Dispute Resolution (ADR) and mediation as a method of resolving workplace disputes at the lowest level.

2. Urging Veterans Benefits Administration (VBA) managers and supervisors to support, participate in, and encourage early dispute resolutions through the ADR process.

B. **VBA ADR Steering Committee**. The VBA ADR Steering Committee, designated by the Under Secretary for Benefits, will oversee and evaluate VBA ADR initiatives and efforts. The committee will provide advice and guidance to the USB regarding VBA ADR policy and direction. Additionally, the committee will:

- Determine appropriate plans of actions to implement Federal and departmental level ADR initiatives and assist in executing those plans.
- Evaluate and suggest improvements to the ADR Program initiatives.
- Monitor ADR goals and strategies as set forth in the VA/VBA Strategic Plan to ensure goals are met.

The Associate Deputy Under Secretary for Management will chair the VBA Steering Committee with membership to include representatives from VBA Central Office, field facilities, and labor representatives.

C. VBA ADR Coordinator (VACO). The VBA ADR Coordinator reports to the EEO Program Manager in VACO and is responsible for the coordination of the overall VBA ADR program by implementing departmental policies and directives regarding ADR. Specifically, the VBA ADR Coordinator is to accomplish the following.

1. Provide advice and guidance to the ADUS for Management, Chair of the VBA Steering Committee, who represents the Under Secretary for Benefits on all matters relating to ADR at both the VBA and the departmental level.
2. Serve on the VA ADR Working Group established pursuant to VA Directive 5978; and on the VBA ADR Steering Committee; serve as liaison between the VBA Steering Committee and the Administration; and work collaboratively with intra- and interagency ADR groups to coordinate and optimize the use of Federal ADR resources.
3. Provide assistance to regional offices to design and implement ADR mediation programs to provide all employees' access to ADR mediation services; and design and coordinate the Central Office ADR mediation programs. Programs will comply with the objectives of VA's Office of Resolution Management (ORM) ADR Plan. The ORM ADR plan is located at <http://vaww.va.gov/orm/adr.htm>.
4. Maintain an inventory of current ADR mediation programs within VBA.
5. Work with regional offices to ensure accurate records are maintained consistent with departmental ADR policy.
6. Ensure data relating to completed mediations is properly tracked and entered into the VA ADR Web Based Tracking System (ADR WBTS).
7. Serve as an information resource regarding ADR and mediation for both the field and VACO.
8. Stay current on new regulations to determine necessary actions within VBA.
9. Coordinate ADR training for all employees and labor representatives and assist in developing trained and qualified mediators.
10. Upon request, initiate action to assign mediators to represent ADR parties located in VACO fairly and equitably.

D. Field and Central Office Directors. Field Directors are responsible for establishing and supporting ADR mediation programs in their offices that ensure mediation is available to all employees for resolution of workplace disputes. The program should reflect individual cultures and meet regional office needs, ensuring to the maximum extent practicable, that labor representatives participate in the joint development and design of regional office programs that are consistent with collective bargaining agreements. Similarly, VACO Directors are responsible for ensuring effective management and implementation of the VA Central Office mediation program designed by VBA's Office of Diversity Management and Equal Employment Opportunity (DM&EEO).

Additional responsibilities are as follows:

1. Encourage all managers, supervisors, and employees to use ADR mediation to resolve workplace conflict at the earliest stage possible.
2. Provide all employees access to ADR mediation services.
3. Ensure the ADR mediation program is coordinated in a fair and neutral manner.
4. Approve, as appropriate, the settlement agreements arrived at through ADR mediation.
5. Regional Office Directors should allocate adequate resources to the development, maintenance, and on-going evaluation of local ADR mediation programs. Resources for the Central Office program will be provided through the VBA Office of DM&EEO.

E. Regional Office ADR Coordinator(s). Regional Office ADR Coordinators have administrative responsibility for the ADR program and will report to the Regional Office Director on its design, implementation and operation. The ADR Coordinator will provide impartial advice to employees and their representatives and will supply unbiased guidance to supervisors and management/union officials on how to effectively utilize the ADR process for successful results.

Regional Office ADR Coordinator(s) may, as appropriate, be assigned the following responsibilities:

1. Promote the use of ADR mediation as an effective alternative to resolving workplace disputes and provide education and awareness to facility employees regarding the facility's ADR mediation program, the types of disputes appropriate for ADR mediation, and the procedures for requesting ADR mediation.
2. Upon request, initiate action in regional offices to assign mediators to represent ADR parties fairly and equitably.
3. Work in collaboration with labor representatives, Equal Employment Opportunity (EEO) program officials, Regional Counsels, and other interested parties to promote positive working relationships.
4. Ensure the administration of an effective program, which meets the needs of the regional office and its stakeholders and is compliant with applicable regulations and collective bargaining agreements.
5. Work in collaboration with station EEO Program Manager to implement station ADR mediation programs, which comply with the objectives of the VA's ORM ADR Plan. The ORM ADR plan is located at <http://vaww.va.gov/orm/adr.htm>.

6. Identify and analyze the full range of ADR issues, cases, policies, programs, procedures, and regulations to determine areas needing improvement. Develop, justify, coordinate, and implement proposals for change.

7. Maintain accurate records of regional office mediations being conducted, and ensure that data relating to completed mediations are properly tracked and entered into the VA ADR Web Based Tracking System (ADR WBTS).

8. Serve as a resource of information regarding ADR and mediation in the regional office; assist in developing trained and qualified mediators; and coordinate local training efforts to include annual awareness training for all employees, managers, supervisors, and labor representatives.

9. Serve as liaison between the Regional Office and VBA Central Office in connection with ADR and mediation.

F. Mediators. Mediators must adhere to the core ADR mediation principles and follow professional guidelines for the practice of mediation. Mediators must complete a minimum of 24 hours of mediation skills training; have a general understanding of the traditional dispute process and the applicable statutory timeframes; and disclose all possible conflicts of interest to the parties. All mediators must possess the ability to remain neutral, protect the confidentiality of the mediation process, and ensure the parties participate voluntarily and make informed choices.

As a general rule, whenever appropriate and available, ADR Coordinators will encourage parties to use mediators from the Medical Center or VISN level. If parties are unwilling to work with either of these sources, other options for obtaining a mediator agreeable to both parties will be considered. These sources may include:

www.os.hhs.gov/dab/sn (Health and Human Services Sharing Neutrals)

www.feb.gov (Federal Executive Boards)

www.va.gov/orm/adr.htm (VA Certified Mediators from the Office of Resolution Management)

G. Labor Representatives. Labor representatives are encouraged to support the appropriate use of mediation and various other ADR processes as effective alternatives to resolving workplace disputes. VBA recognizes that at certain regional offices the exclusive representative of employees covered by collective bargaining agreements may elect not to participate or allow their members to participate in the local ADR program. For bargaining unit employees, any settlement reached using ADR must comply with the appropriate collective bargaining agreement.

III. Mediation Process

A. Upon verbal or written notification to the appropriate Regional Office EEO Program Manager/ADR Coordinator or VACO ADR Coordinator that an aggrieved individual wishes mediation in an EEO-related issue, a mediation session must be scheduled. Management is obligated to participate and is strongly encouraged to make every effort to complete the process as early as possible.

B. In rare instances, indicators exist that may make the matter inappropriate for mediation. When the following indicators are present, the Regional Office or VA Central Office EEO Program Manager must conduct a case-by-case analysis to determine if the matter is appropriate for mediation:

1. An indication that fraud, waste or abuse has been committed.
2. An allegation of sustained, continuing sexual harassment.
3. A removal for cause, e.g., removal based upon the commission of a felony.

C. If it is decided that mediation is inappropriate, a “Notice of Refusal to Mediate”, (Appendix B), must be completed and submitted to the ADR Coordinator to be routed for approval through the appropriate channels as indicated on the enclosed form within five working days following the refusal to mediate.

D. Regional Office Directors cannot refuse to mediate without approval from their respective Area Office Director. VA Central Office supervisors cannot refuse to mediate without approval from their respective Program/Staff Office Directors.

E. ADR coordinators are responsible for coordinating with appropriate individuals to ensure that data relating to mediations conducted pursuant to this VBA Letter is properly entered into the VA ADR Web Based Tracking System.

IV. References

1. Administrative Dispute Resolution Act of 1996.
2. Title 5 United States Code (U.S.C.) §§ 571-584.
3. VA Directive 5978, Alternative Dispute Resolution (February 12, 2002).
4. Equal Employment Opportunity Commission (EEOC) 29 CFR § 1614.
5. EEOC Management Directive 110.
6. Applicable national and local collective bargaining agreements.

APPENDIX B

**NOTICE OF REFUSAL TO MEDIATE
FOR
EEO RELATED ISSUES**

This notice indicates that _____
(Name of Manager/Supervisor/Key Staff Official)

declined to enter into Mediation for an EEO related issue on _____.
(Date)

The above named individual has been advised of VBA’s policy to offer mediation for all appropriate EEO related issues regardless of the stage of the complaint process. The individual has also been advised that EEO related issues are to be reviewed on a case-by-case basis to determine appropriateness for mediation. Further, the individual has been informed that when an aggrieved employee has agreed to pursue resolution through mediation, management must participate in the process.

Please provide a written explanation for refusal to mediate in the space below. This form must be completed and routed through the Regional Office Director and other appropriate channels for approval and faxed at 202-275-3250 to the Office of Diversity Management and Equal Opportunity (20M2), 810 Vermont Ave., N.W., Washington, DC 20402, within five working days following the refusal.

Office location: _____

Submitted
by: _____
EEO Program Manager/ADR Coordinator Date

Approved
by: _____
Regional Office Director/VACO Supervisor Date

Approved
by: _____
Area Office Director (Regional Offices)/VACO Program/Staff Office Director Date

Received
by: _____
Office of Diversity Management and Equal Opportunity (20M2) Date