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Tina Dean-Editor

## PRE-MEDIATION PHASE

By Tina Dean

Although many mediators do not play a significant role in the Pre-Mediation stage of the process, it is one of the most important stages. Preparation before a mediation session can be the key to a successful session. This is the time in the process when the ADR program manager contacts the parties about mediation and has the opportunity to make sure they are well-prepared and know what to expect. Pre-mediation steps that can improve the process and outcome for both the parties and mediators include:

1. Prepare each party by briefing them on the mediation process; provide the mediation brochure and recommend watching the Mediation Zone or 3 Pigs videos found on the Workplace ADR Program website ([vaww1.va.gov/adr/training](http://vaww1.va.gov/adr/training)).
2. Talk with parties about who else may be needed for the session, technical experts, representatives, someone with settlement authority, etc.
3. Ask each party if they have a representative who

will be attending mediation with them. Explain the role of the representative.

4. Notify the Union if any of the parties involved is covered by the Bargaining unit. Let them know that mediation is being scheduled and that they will be notified when and where the session will be held.
5. Determine dates and times the parties are available to mediate-preferably get 2 or 3 options that work for each party and their representatives (if applicable).
6. Identify co-mediators who are available for one of the dates and times the parties have provided.
7. Identify a location for the mediation session. Considerations should include-not in the work area of the parties, availability of break-out room or other needs of the parties.
8. Finalize scheduling and notify all parties. ADR Tracker has e-mail notification messages that are excellent for this purpose. Make sure the Union is notified, especially when



not serving as a representative to a party.

9. Provide appropriate paperwork such as, agreement to mediate and confidentiality form; mediator/neutral assessment form; participant/representative assessment forms, and the appropriate settlement agreement template. (Make sure the correct case number is on the agreement.)

Mediators may want to check with the ADR program manager at the facility where they mediate to determine what happens locally. When parties come to mediation prepared for what to expect the job of the mediators is easier and parties are better able to use the process to their benefit.

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

# *The In's and Out's of an impasse*

*A. Wilkins*

t	t	r	m	e	t	a	e	a	o	s	p	t	o	t	n	e
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y	m	i	e	r	t	a	u	t	g	g	c	n	u	s	d	t
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v	n	o	t	r	e	s	t	a	t	e	a	i	f	h	f	c
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accomplishments  
catalyst  
communication  
effects  
giving up  
mentally  
praise  
stalemate  
time

agreement  
caucusing  
deadlock  
fear  
impasse  
parties  
restate  
stuck  
value

brainstorming  
commonality  
discussion  
future  
mediators  
position  
role reversal  
thinking  
worth

# ASK THE MEDIATOR

????????????????????

**Dear Mediator**-In a recent mediation session the party stated that the manager in the session had sent him an e-mail which said that an HR staff member told her that she could not talk with him because he had filed an EEO complaint. He stated that he felt that she was retaliating against him for filing a complaint. What do you think?

**Answer**-As a mediator, it is not your role to tell the party what you think and whether or not any specific behavior is retaliation. You could encourage the parties to communicate directly about the concern and clarify what was stated. If the matter does not resolve through mediation, the individual could raise the issue with the EEO counselor assigned to the EEO complaint.

**Dear Mediator**-The parties were able to resolve some, but not all of there issues in mediation. Is there a policy about partial settlement agreements?

**Answer**- VA policy allows the parties based on mutual agreement to enter into partial settlement agreements. Partial agreements can be considered and may create additional questions that the parties must consider when the matter being mediated is in some forum, like EEO, Merit Systems Protection Board, grievance, etc. The standard language of most settlement agreements includes language that all pending complaints are withdrawn. With a partial agreement the parties must decide what, if any formal actions they are willing to withdraw and what they are willing to agree to if the party does not withdraw a complaint.



# TRUST

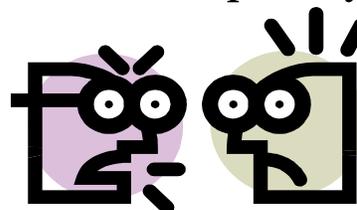
Underlying most conflicts that present in ADR is damaged trust. Trust can be a challenging concept for the ADR professional to deal with because damaged trust in a relationship is not easily fixed. A study by B.L. Simmons, et. Al. in the Journal of Organizational Behavior (2009) found that when there is trust in the workplace employees have higher satisfaction and improved job performance. Conversely, when there is a lack of trust, both satisfaction and performance are impacted. Fixing a culture that has developed distrust can be a long term commitment for the ADR professional. The level of intervention and the methods will likely depend on the level of distrust that has developed. Often requests for ADR come when a change in leadership or management occurs and the damage of mistrust is identified by the new player.

One recurring area where mistrust develops is in the decision making process of the organization. When employees feel that decision making is unethical, poorly communicated or unclear trust issues arise. This also creates a rich opportunity in mediation, facilitation, conflict coaching or other ADR process to work with parties. Establishing clear and known processes for decision making is one avenue towards trust building. Allowing parties with mistrust an opportunity to have input into how future decisions will be made and how they will be notified creates opportunities to rebuild the damaged trust.

Trust in the workplace is crucial to good performance and engaged employees. When breakdowns occur and the ADR professional is called in, determining the level of trust in the organization is a good place to start.

## Quarterly Quote:

~Trust is earned a penny at a time... but spent by the dollar.



Unknown

# ADR on TV

Were you one of the 3.2 million viewers who watched Fairly Legal, on the USA Network last season? The show about a mediator in San Francisco premiered last January. The second season of the show is expected to return in January 2012.

Major changes have been announced for the new season. Although Kate (the lead character and mediator) is still a mediator, the focus of the show is going to be conflict resolution and not just the “M word”.

Last season started out with Kate mediating a bar robbery by getting the robber to accept a case of beer instead of money. This type of conflict resolution is expected to be at the core of the new season. Stay tuned to this column for an update on the changes and what this viewer thinks.



# The 2011 Secretary's ADR Excellence Awards

On October 21<sup>st</sup> the recipients of the Secretary's Alternative Dispute Resolution Excellence Awards will be presented in the following categories:

A- Individual Effort by an Employee: **Sandra Simmons**, VISN 4 Lead ADR Manager, VAMC Coatesville, PA.

B- Individual Effort by a Manager: **Adam Walmus**, Director, VAMC, Houston, TX.

C- Workplace ADR Program Recognition: **VA Medical Center, Marion, IL.**

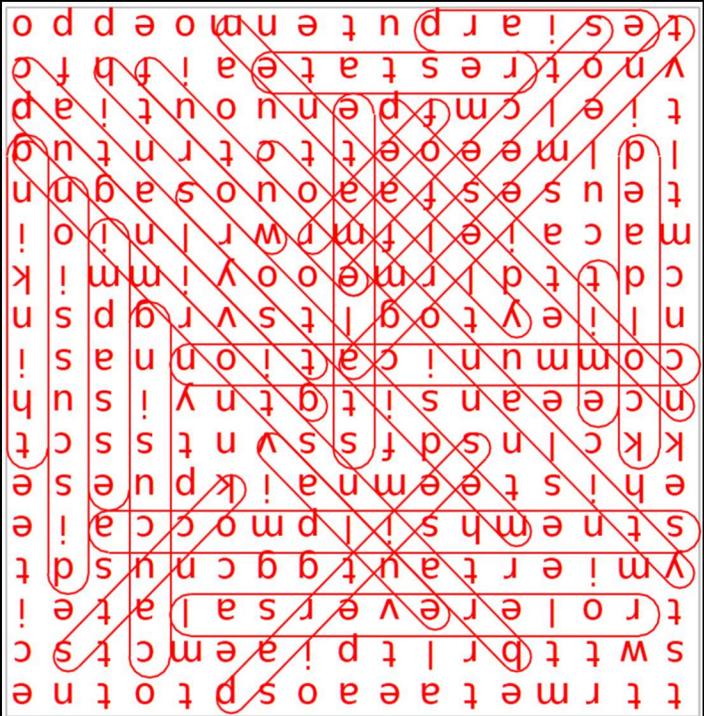
Congratulations to the Winners.



# New Directive

On August 31, 2011 VA Directive 5978 on Alternative Dispute Resolution was issued. It replaces the prior Directive from 2000 with the same number. Some of the key changes include revising the policy for use and promotion of ADR in the VA. It also establishes the VA ADR Council and ADR data tracking requirements. To see the updated Directive go to-

<http://vaww1.va.gov/adr/Directive5978.asp>





# CONFLICT RESOLUTION DAY

## An Annual International Celebration

EVERY THIRD THURSDAY IN OCTOBER • Sponsored by the Association for Conflict Resolution

[www.ACRnet.org/crday](http://www.ACRnet.org/crday)

## Upcoming Trainings

Please check the ADR Training Calendar at <http://vaww1.va.gov/adr/ADRCalendar.asp>

Workplace ADR Staff can provide your facility with mediation and facilitation skills trainings and/or departmental conflict assessments. Please contact us at 202-461-0280, or email us [Workplaceadr@va.gov](mailto:Workplaceadr@va.gov) to get more information!

**John H. Jones, ADR Specialist/Trainer,**  
[John.Jones1@va.gov](mailto:John.Jones1@va.gov), (910) 482-5083 or (910) 273-5338

**Karen Civitate, ADR Specialist/Trainer,**  
[Karen.Civitate@va.gov](mailto:Karen.Civitate@va.gov), (310) 268-3586 or (310) 629-4727



Advanced Mediation Class, Clovis, CA-10/2011



Basic Mediation Skills Class, Clovis, CA-9/2011



## Workplace ADR Program

### Department of Veterans Affairs

810 Vermont Avenue, NW (08)

Washington, DC 20420

**Phone:** 202-461-0280

**Fax:** 202-461-4145

**E-mail:** [WorkplaceADR@va.gov](mailto:WorkplaceADR@va.gov)

**Visit our website at:**

<http://www.va.gov/adr>

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 Sherron McHellen (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.



Advanced Mediation Class in Kansas City, MO-6/2011

Conflict Coaching Class in Iron Mountain, MI-7/2011