

Department of  
Veterans Affairs

VHA  
Mediation  
Handbook



DEVELOPED AND PUBLISHED BY:  
THE VETERANS HEALTH ADMINISTRATION  
ADR STEERING COMMITTEE

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# TABLE OF CONTENTS

<b>PURPOSE OF THE HANDBOOK</b>	<b>ii</b>
<b>CHAPTER 1</b>	<b>1</b>
Principles of Alternative Dispute Resolution	
<b>CHAPTER 2</b>	<b>5</b>
Mediation as a Form of ADR	
<b>CHAPTER 3</b>	<b>12</b>
Achieving Labor-Management Buy-in and Support	
<b>CHAPTER 4</b>	<b>16</b>
Designing a Mediation Program	
<b>CHAPTER 5</b>	<b>25</b>
Implementing and Evaluating Your Program	
<b>CHAPTER 6</b>	<b>33</b>
Conducting Training and Education	
<b>CHAPTER 7</b>	<b>39</b>
Sample Policies and Forms	
<b>APPENDIXES</b>	<b>79</b>

## PURPOSE OF THE HANDBOOK

The Department of Veterans Affairs is committed to resolving labor-management, discrimination, workplace, patient, and contract disputes at the earliest stages possible. Specifically, Goal #10 of the Department's FY 1998-2003 Strategic Plan states that the VA will:

“Conserve VA resources by increasing the use of Alternative Dispute Resolution Techniques to resolve disputes more quickly and at less cost.”

This handbook was developed by the Veterans Health Administration (VHA) ADR Steering Committee to provide VHA facilities with the tools needed to implement an ADR program by the end of FY 2000. This handbook represents a consolidation of “best practices” throughout VA, federal, and non-federal organizations, and reflects VHA's support of mediation as an effective and cost-efficient method for resolving conflicts in the workplace. While the handbook is geared toward facility mediation programs, many of the principles and materials contained herein are equally adaptable to Network programs.

The committee recognizes that ADR currently exists to varying degrees throughout VHA. Therefore, the handbook has been designed to provide both “start-up” guidance as well as information which may be helpful to existing programs.

The handbook is divided into seven chapters, with a number of related appendixes that provide additional references, samples, and guidance. The basic chapters provide a schematic of the key information you will need for immediate implementation. The appendixes provide more in-depth information on the topic and include useful reference material.

VA Directive 5978, Alternative Dispute Resolution, signed by the Honorable Togo D. West, Jr., Secretary of Veterans Affairs, provides Department of Veterans Affairs policy regarding implementation of the Administrative Dispute Resolution Act of 1996, as it relates to workplace conflicts. This document establishes a framework for

developing local ADR or mediation programs and is provided in this section for your reference.

The VHA ADR Steering Committee, whose members are also listed in this section, will continue to provide guidance and oversight to facilities as they implement ADR and mediation programs. ADR is a relatively new and rapidly evolving field. Therefore, additional resources and materials will be disseminated to the field as soon as they become available.



## ALTERNATIVE DISPUTE RESOLUTION

**1. REASON FOR ISSUE:** To provide policy within the Department of Veterans Affairs (VA) to implement the Administrative Dispute Resolution Act of 1996 and the Presidential Memorandum of May 1, 1998, on alternative dispute resolution (ADR), as they relate to workplace conflicts. To implement the recommendations as set forth in the Final Report and Recommendations of the VA/ADR Working Group Addressing a Department-wide Approach for Meeting Government-wide and Departmental Alternative Dispute Resolution (ADR) requirements.

**2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This directive sets forth the policies and assigns responsibilities; encourages and directs the appropriate use of ADR techniques to resolve disputes and issues in controversy within VA at the lowest organizational level; and establishes a framework for encouraging the expanded use of ADR within VA. This directive also:

- a. Contains policy statements regarding VA's use of ADR, particularly mediation, to help resolve workplace conflicts and disputes.
- b. Establishes and defines the roles of the VA-ADR Steering Committee, ADR Coordinators and ADR Liaisons.
- c. Sets forth responsibilities for implementing VA's ADR program.

**NOTE:** *Paragraph 5 of this directive contains definitions that are important to a full understanding of VA's ADR Program.*

- 3. RESPONSIBLE OFFICE:** Board of Contract Appeals (09), Chair.
- 4. RELATED HANDBOOK:** None.
- 5. RESCISSIONS:** None.

Togo D. West, Jr.  
Secretary of Veterans Affairs

**CERTIFIED BY:**  
Harold F. Gracey, Jr.  
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## ALTERNATIVE DISPUTE RESOLUTION

**1. PURPOSE.** This directive provides policy within the Department of Veterans Affairs (VA) to implement the Administrative Dispute Resolution Act of 1996 and the Presidential Memorandum of May 1, 1998, on Alternative Dispute Resolution (ADR), as they relate to workplace conflicts and disputes; establishes a framework for encouraging the expanded use of ADR, particularly mediation; establishes a VA-ADR Steering Committee; assigns responsibilities; and encourages and directs the appropriate use of ADR techniques to resolve conflicts within VA at the lowest organizational level.

### 2. POLICY

a. VA is committed to the appropriate use of ADR for resolving conflicts and disputes in a more timely, less costly and less adversarial manner than litigation or administrative adjudication. VA Administrations and staff offices should use ADR techniques as an alternative to litigation or formal administrative proceedings whenever appropriate. To promote the use of ADR in contracting and procurement matters, the Department issued VA Directive 7433.3 and VA Handbook 7433.3 on November 24, 1998. The purpose of VA Directive 5978 is to promote the use of ADR, particularly mediation, to help resolve workplace conflicts.

b. VA's Labor partners, at all levels within the Department, are a vital component to development, implementation and assessment of an overall effective VA ADR Program and are encouraged to participate in this endeavor. All ADR programs within the Department must be consistent with collective bargaining agreements. VA ADR programs shall be jointly designed and implemented in good faith with Labor, and include the use of mutually agreed-upon neutral third parties.

c. It is the policy of VA to encourage its employees to use mediation to help resolve workplace conflicts as early as feasible, to the maximum extent practicable, in an appropriate and cost-effective manner, and at the lowest organizational level. Control and responsibility for ADR program design, development, implementation and assessment rests primarily within the Administrations and staff offices that have day-to-day application for ADR.

d. VA recognizes that mediation programs can and do exist at various levels within the Department. Creativity and flexibility in program design, that adheres to core mediation principles and best practices, is encouraged. VA organizations and facilities should design and implement mediation programs that meet their



individual cultures, needs and resources. Various field facilities maintain “local” mediation programs or collaborate in a “shared” program, e.g., Columbia VAMC Mediation Program, VA Shared Service Center Mediation Program, Little Rock/North Little Rock Mediation Program, Wichita Medical and Regional Office Center ADR Program, and VA-Early Mediation Program (Headquarters and Washington, D.C., area facilities). Other VA facilities participate in interagency sharing programs, e.g., Kentucky Federal ADR Council, and Seattle Interagency ADR Consortium. Some regions sponsor “regional” programs, e.g., VISN 6 Mediation Program, and Florida-Puerto Rico Mediation Project. Administrations and staff offices have “organizational” programs, e.g., ORM Mediation Program, and VA ADR Program for Acquisition. The Department’s overall ADR program is referred to in this Directive as the “VA ADR Program.”

e. The decision to use mediation calls for informed judgment. Employees’ relationships, their interest in retaining control over the process, the need to move quickly, and the need for neutral involvement are factors to be weighed in deciding whether ADR is appropriate for a particular conflict.

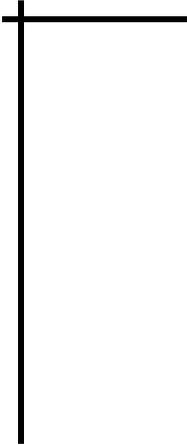
### 3. RESPONSIBILITIES

**a. The Chair of the Board of Contract Appeals.** The Chair of the Board of Contract Appeals, as VA’s Dispute Resolution Specialist (DRS), shall:

- (1) Promote the appropriate use of ADR throughout VA.
- (2) Chair the VA-ADR Steering Committee.
- (3) Coordinate resources made available through the VA-ADR Steering Committee.
- (4) Assist the VA-ADR Steering Committee in the design, development, implementation and assessment of the VA-ADR Program.
- (5) Monitor VA’s ADR effort and report annually to the Secretary and Deputy Secretary on VA’s ADR effort and the activities of the VA-ADR Steering Committee.

**b. Administration Heads, Assistant Secretaries, and Other Key Officials.** Administration Heads, Assistant Secretaries, and Other Key Officials, at both departmental and organizational levels, shall:

- (1) Establish ADR policies that facilitate the appropriate use of mediation to help resolve workplace conflicts.

- 
- (2) Implement appropriate ADR programs that make the option of mediation available to all VA employees.
  - (3) Designate an ADR Coordinator to have primary responsibility for implementing this Directive, developing the ADR program within the organizational element, and interfacing with ADR activities throughout the organization. This individual's position description should be appropriately modified to reflect these responsibilities.
  - (4) Ensure that the mediation option is available to all VA employees for all appropriate workplace conflicts.
  - (5) Ensure that informed decisions can be made by all VA employees on ADR and the mediation option, and that all VA employees have access to appropriate information and instruction that will provide a basic understanding of mediation and the program available at their facility.
  - (6) Encourage all VA employees to use conflict avoidance, early conflict resolution, mediation and other ADR techniques to help resolve workplace conflicts.
  - (7) Review existing approaches to conflict resolution; eliminate unnecessary barriers; and where feasible, foster increased use of conflict avoidance, early conflict resolution, mediation and other ADR techniques.
  - (8) Cooperate to the fullest extent at all levels within the Department with VA's Labor partners to design, implement and use ADR programs, particularly mediation programs.
  - (9) Establish an ADR network within the organizational element that is consistent with this Directive.
  - (10) Collect and analyze information in a standardized fashion to enable ADR programs to be monitored and assessed, in order to measure resource savings, timeliness and user satisfaction.
  - (11) Ensure that any databases, information systems, and instruments that are developed are consistent with Departmental ADR policy and procedures.
  - (12) Encourage the designation of ADR Liaisons throughout the organization.



(13) Support ADR efforts by providing resources for organizational ADR initiatives.

(14) To the extent consistent with the mission of the organization, as determined by the head of the organization, support the VA-ADR Steering Committee and other Department-wide ADR initiatives.

(15) Coordinate ADR policies and programs through the Dispute Resolution Specialist and VA-ADR Steering Committee.

(16) Collaborate with other organizational elements within VA on ADR efforts to effectuate a One-VA approach to ADR and to avoid unnecessary expenditures of effort, time and money.

(17) Participate in collaborative intra- and inter-agency ADR groups and make use of existing VA and Federal ADR resources to avoid unnecessary expenditure of time and money.

(18) Perform other activities geared at producing a high-quality, well-performing organizational ADR program.

**c. VA-ADR Steering Committee.** The VA-ADR Steering Committee shall:

(1) Determine appropriate plans of action to implement federal and Department-level ADR initiatives and assist in executing those plans.

(2) Coordinate and execute Department-level ADR initiatives.

(3) Provide resources to accomplish the Department's ADR initiatives.

(4) Share information and resources to accomplish the Department's ADR initiatives.

(5) Ensure that the ADR goals and strategies as set forth in the VA's Strategic Plan are met.

(6) Develop ADR databases and information systems, survey instruments, and other items to gather, monitor and evaluate Departmental ADR information and programs.

(7) Collect and analyze information in a standardized fashion to enable ADR programs to be monitored and assessed, in order to measure resource savings, timeliness and user satisfaction.



(8) Oversee, evaluate, and suggest improvement to VA ADR Program initiatives and activities.

(9) Perform activities geared at producing a high-quality, well-performing VA ADR Program.

#### 4. REFERENCES

- a. The Administrative Dispute Resolution Act of 1996 (ADRA), 5 U.S.C. §§ 571-584.
- b. Presidential Memorandum, May 1, 1998.
- c. VA FY 1998-2003 Strategic Plan, General Goal 10.
- d. VA National Partnership Agreement.
- e. 29 CFR 1614, 64 Fed. Reg. 37643-37661 (July 12, 1999).

#### 5. DEFINITIONS

**a. ADR Liaison.** An individual designated at a local or regional level VA facility to liaison with that organization's ADR Coordinator and other VA ADR program officials.

**b. Alternative Dispute Resolution (ADR).** A group of processes that use specially trained neutral persons, who are not associated with the controversy, to help individuals with a problem or dispute resolve issues in controversy. Forms of ADR include, but are not limited to, conciliation, facilitation, mediation, fact-finding, minitrials and arbitration, or any combination thereof.

**c. Mediation.** A form of ADR in which a specially trained neutral third party (mediator) assists individuals to find a mutually acceptable solution to their dispute. Mediation is a problem solving process; it is voluntary, unbiased, and confidential. VA employees using mediation must agree to participate and agree to any solution that is generated through the mediation. Mediation has comprehensive applicability for VA components seeking creative, mutually acceptable, and early resolution of conflicts, and is the preferred type of ADR for resolving VA workplace disputes.

**d. ADR Coordinator(s).** An individual designated in each Administration and staff office to have primary responsibility for implementing this Directive,

developing the ADR program within that organization, and interfacing with various ADR elements throughout the organization and Department. ADR Coordinators should have clearly defined goals, duties and responsibilities associated with ADR activities that should be identified, developed and contained in position descriptions. Among other things, their responsibilities shall include implementing this Directive, developing the ADR program within the organization they serve, and maintaining excellent relationships with Labor and Management.

**e. VA FY 1998-2003 Strategic Plan, General Goal 10.** Requires VA to conserve resources by increasing the use of ADR techniques. It also requires that VA organizations promote and facilitate the use of ADR techniques to resolve disputes (e.g. Labor-Management, discrimination, personnel and contract) more quickly and at less cost.

**f. VA-ADR Steering Committee.** A group of individuals, consisting of representatives of VA Administrations and staff offices that have applications for ADR, as well as Labor. Members of the VA-ADR Steering Committee and their designees are primarily responsible for advocating and facilitating ADR and mediation use throughout the Department; facilitating the exchange of ADR information and resources among various VA components; and coordinating, implementing and assessing Department-wide ADR initiatives.

**g. VA Dispute Resolution Specialist (DRS).** Appointed pursuant to the ADRA, the Department's DRS is responsible for promoting the appropriate application of ADR processes within VA. The Chair of the Board of Contract Appeals is the Department's DRS.

## VHA ADR STEERING COMMITTEE MEMBERS

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# CHAPTER 1

## PRINCIPLES OF ALTERNATIVE DISPUTE RESOLUTION

The term Alternative Dispute Resolution (ADR) refers to a variety of techniques for resolving disputes without using litigation or traditional administrative processes. ADR has been defined as “any alternative to full-scale litigation,” and is characterized by “a creative frame of mind that says there ought to be a better way to dispose of this dispute.” Principles common to all forms of ADR include:

- Utilizing joint problem-solving techniques that present options to resolving conflict.
- Utilizing a neutral third party to assist the parties in resolving the dispute.
- Developing creative solutions to resolve disputes that may be unavailable in traditional dispute processes.
- Developing resolutions tailored to meet the respective needs of the parties.
- Ensuring use of a non-coercive, flexible, and voluntary structure.

Not every dispute is suitable for settlement through one of the ADR processes and for this reason ADR should be thought of as a supplement to, not a replacement for, traditional adjudicative dispute methods. While VA has focused primarily on mediation as the form of ADR most applicable to workplace disputes, some federal agencies have piloted and instituted programs that take advantage of other forms of ADR. There are no clear rules on when to use ADR, or which ADR method is the best in a given situation. Frequently, a combination of several ADR processes will work to help resolve the dispute.

Set forth below are some of the distinctions and relationships among the various types of ADR methods. These processes start with the ones in which the parties maintain the most control over the process and results, e.g., facilitation and meditation, and move towards those

processes where the control and decision-making is turned over to a neutral third party, e.g., arbitration.

## ADR CONTINUUM—TYPES OF ADR

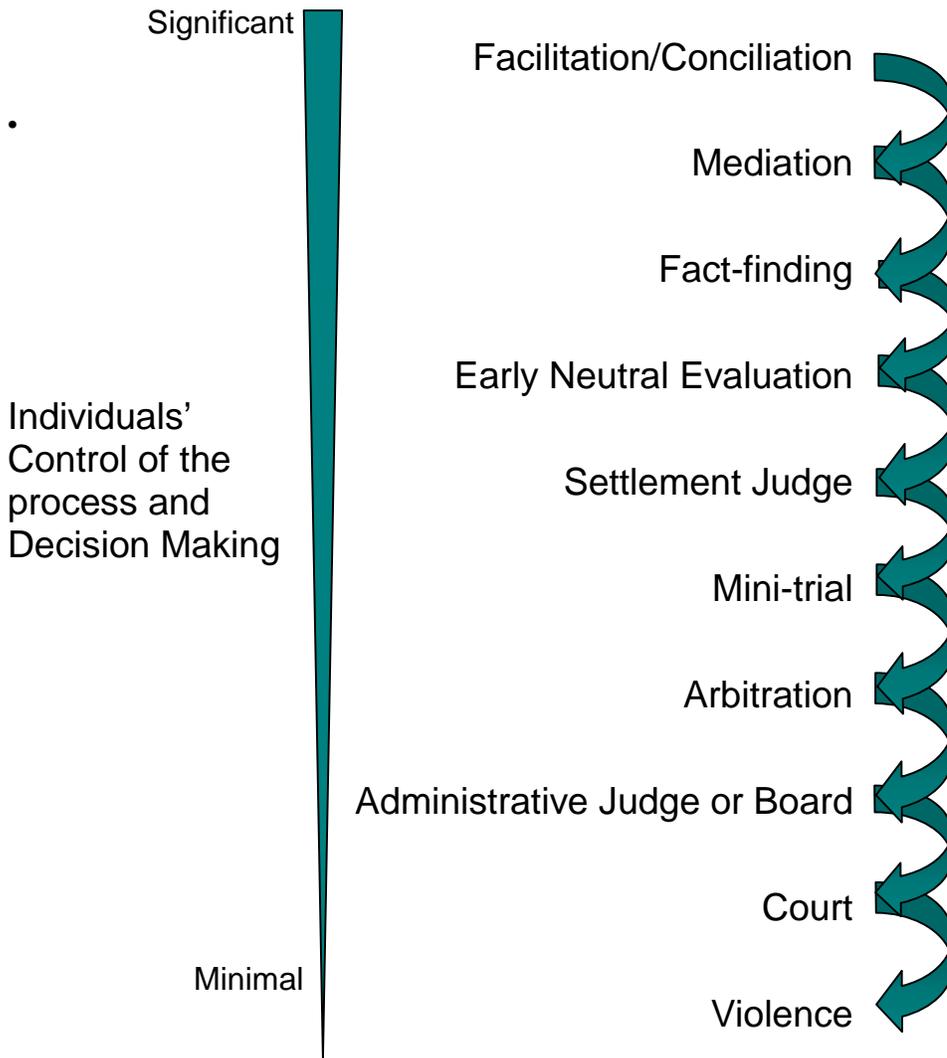


Figure 1.1

Note that the ability of the disputing parties to control the decision decreases and the ability of the “neutral” to control the decision

increases, as one progresses down the continuum toward more traditional forms of conflict resolution.



**Helpful Hint:** The best ADR method is the one that works, and every method works best when intervention is at an earlier stage of conflict.

## Lessons Learned for “Principles of ADR”

### Key Principles

- ADR gives the parties more control in developing a resolution.
- ADR relies on the creativity of the two parties to devise alternative solutions.
- Parties must work to identify common interest and needs.

### Best Practices

- ⊕ Give conflict resolution skills training to all employees in the workplace.
- ⊕ Provide preventative conflict resolution training in order to prevent disputes from escalating.
- ⊕ Encourage people to deal with conflict – It’s okay to raise issues.
- ⊕ All employees should receive training in interest-based problem solving (IBPS).
- ⊕ A facility utilized their Violence in the Workplace Committee to deal with many issues, such as training on domestic abuse, stalking, and diffusing hostility.

## Additional Material and References

*Appendix A:* An overview of conflict in the workplace and a discussion of interest-based problem solving.

*Appendix B:* A more detailed description of each of the types of ADR.

*Appendix C:* An overview of ADR statutes, policies, directives, and initiatives.

*Appendix Q:* Index of material available on the VA's ADR website.  
The address for this website is  
<http://vaww.va.gov/adr/adrindex.htm>.

*Appendix R:* A list of various government and non-government ADR websites.

A power point presentation slide show can be accessed via the VA's ADR web site at <http://vaww.gov/adr/slides.htm> and on the Internet at <http://www.va.gov/adr/slides.htm> and downloaded for training use.

# CHAPTER 2

## MEDIATION AS A FORM OF ADR

Mediation is a process that can be used to resolve problems between individuals or groups. In this process, an impartial person, referred to as a neutral or mediator, helps facilitate communication between disagreeing parties. During a private and confidential meeting, the mediator helps the parties discuss their disagreement, identify the real issues, and explore options to create a voluntary, mutually agreeable solution.

### **Mediation is recommended when:**

- The dispute needs to be resolved quickly.
- The parties want to preserve their working relationship.
- There is need for confidentiality or privacy.
- The parties want to terminate their relationship in the least adversarial way.
- Multiple issues are involved.
- There is a need to save money.
- Parties are interested in retaining control of the outcome.

As mentioned, mediation is a form of dispute resolution that encourages the people involved to talk with each other and resolve their differences themselves. The mediator helps the parties communicate, but has no independent decision-making authority. Mediation is one of the least expensive and least intrusive techniques available for dispute resolution. However, mediation may not be appropriate for every situation. In fact, mediation may not be appropriate when:

- issues of law or public policy are concerned.
- either party is unwilling or unable to work toward a settlement, or
- the timing of the case for whatever reason, is not ideal for effective mediation.

Among the benefits of mediation are the ability to develop solutions outside the parameters of conventional administrative or judicial remedies, and the avoidance of antagonism that can arise from extended litigation/disputes (this is particularly important where the disputing parties have or will have an ongoing relationship).

## The Role of the Mediator

The mediator provides a structured process, called a mediation session, which helps the parties to exchange information, listen to each other's positions, and jointly consider various options that are mutually advantageous. A good mediator should focus on guiding the mediation process along and staying focused.

### A mediator is a....

communicator, empathizer, equalizer, referee, intermediary, traffic cop, spark plug, lightning rod, catalyst, translator, and/or agent of reality. The mediator "defuses" the emotions of the parties and leads the parties to more productive discussions. The mediator can also help parties explore creative solutions to problems. However, it is the parties themselves who agree upon the compromise and it is the parties who make the decision on whether to settle a matter.

### A mediator is *NOT* a...

judge, advocate, or representative. While employees such as attorneys, counselors, psychologists, psychiatrists or therapists may serve as mediators, they serve *not* in their professional roles, but in the role of a neutral party. The mediator does not have the power to force a decision on either party, and does not typically offer an opinion on who is right or wrong.

## The Mediation Session

There is *no set format for a VA mediation session*. One of the most appealing things about mediation is that the mediator and the parties can adopt whatever structure they think will best resolve their dispute. In conducting mediation sessions, mediators follow a variety of

models or procedures, depending on their styles, preferences and who trained them.

The mediation “best method” may evolve and change with each dispute since one is faced with variations in facts, personalities, circumstances, beliefs, personal histories, and the multitude of other factors that make us unique. The important thing to remember is that the process is flexible and inclusive, everyone involved should be given the opportunity to express themselves. Listed below are some basic elements to most VA mediations (refer to Appendix F for additional information regarding each of these stages of mediation):

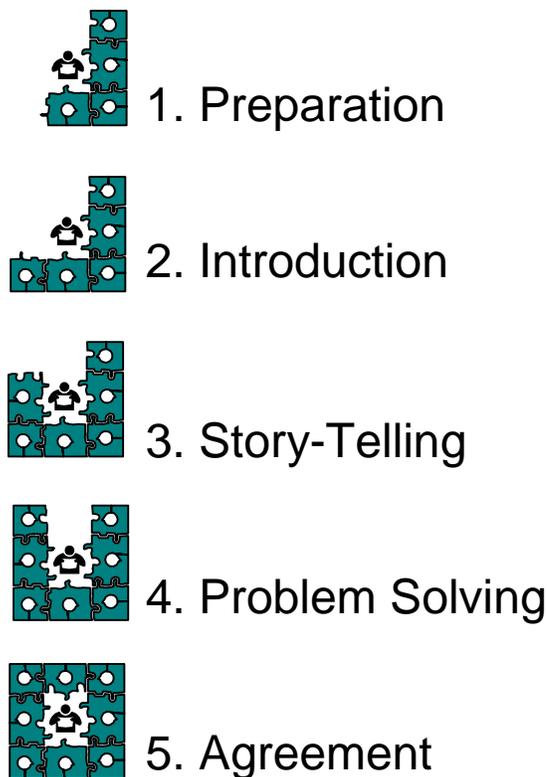


Figure 2.1

- Most mediation sessions begin with an introduction by the mediator and a brief statement about what to expect in the mediation process.
- Each party introduces him or herself in order to put the parties at ease and to build trust in the mediator and the process.

- Each party is given the chance to make a brief oral presentation on his/her position, or on how they see the problem, in the presence of the other party.
- The parties are encouraged to speak their minds and each is given the chance to hear the other side's position in an unfiltered form.
- After the opening statements, some mediators will begin a joint session. Other mediators will meet privately with each side in what is called a caucus.
- In the caucus, the mediator explores, in a confidential setting, the interests, objectives and real positions of the parties in an effort to find the heart of the dispute. The mediator will be very careful about what he or she reveals to the other side to make sure no confidences are breached. Through a series of caucuses, a negotiating process can occur with the mediator acting as the broker or emissary between the parties.
- When appropriate, the mediator may bring the parties together to negotiate among themselves. If all goes well, with trust and small successes occurring, the momentum builds towards a settlement.
- At the conclusion of a mediation, the goal of a mediator will be to have the parties sign a memorandum or settlement agreement setting forth the essential terms of the settlement. The settlement agreement is a binding contract stating what the parties have agreed to. Sometimes the parties will agree that a written settlement agreement is unnecessary, and that is also acceptable.

## Determining the Participants for a Mediation Session

One of the reasons why disputes are often difficult to settle is that the key parties stop communicating effectively. The mediation session allows for direct exchange between the parties, and it is therefore essential that all key decision-makers be present at the mediation. During the mediation session, participants may include:

- The **aggrieved party or complainant**, or the individual to whom something adverse has happened or is about to happen.

- The **management representative** is the individual who has the authority to represent VA management. The management representative is usually familiar with the facts. The management representative attending the mediation session is often at least one step above the immediate supervisor responsible for the event in dispute. Hence, the individual representing management is not directly involved in the dispute, but still has an incentive to help resolve it.
- The **supervisor** of the aggrieved individual may also attend, but not in every case. Supervisors may bring additional management participants to the mediation to advise the management representative on the facts as they see them. Care should be taken not to overwhelm the aggrieved employee at the table with too many persons from management.
- **Union representatives** have the right to attend a mediation session that involves a bargaining unit employee.
- **Representatives and/or advocates** for the parties may also attend, if the parties decide to invite them. Unlike litigation, the representatives play a secondary role. The actual parties to the mediation are expected to participate fully.



**Helpful Hint:** “Successful” mediation results in a “win-win” situation that promotes future successes and positive interactions.

## Lessons Learned for “Establishing an ADR Program”

### Key Principles:

- All mediators must be perceived as fair and neutral in order for your program to be successful.
- Select mediators who represent all levels of the organization.
- Select and train more mediators than you think you will need, but not so many that they will not have the opportunity to practice their new mediator skills.
- Provide mentoring opportunities for new mediators.
- Participation must be completely voluntary by all parties.



## Best Practices:

- “Both bargaining unit and non-bargaining unit employees were selected as mediators. Disputes between supervisory officials might best be mediated by a non-bargaining unit mediator.”
- “Mediators were selected using merit promotion procedures. KSAOs were developed, opportunities to become mediators were posted, and a management-labor selection panel mutually selected mediators through a rating and ranking process.”
- “The Medical Center’s Violence in the Workplace Committee was utilized to obtain lists of volunteers to be mediators and to screen for acceptability. The names were then provided to the Partnership Council for final selection.”
- “The facility selected approximately 25% more mediators than they expected to utilize because some employees will decline to participate after they receive training or actually complete some mediation sessions. Others will find that they do not have the available time that they thought they had to serve as a mediator.”
- “General education or training was provided to potential mediator selectees prior to the selection process to ensure that the final selectees were fully aware of the responsibilities and expectations of their role.”
- “The mediators established a network to discuss among themselves general issues, concerns, successes, problems, and creative approaches to dealing with such issues. This served as a valuable “in-house” training resource.”
- Develop an oversight group to monitor effectiveness, and satisfaction with mediator services.
- “The Medical Center currently provides two mediators to share with the City Justice Court, who in turn provides two mediators to the medical center. This allows for the facility to use outside mediators while minimizing their costs. They also receive free training through this arrangement.”
- “Mediators evaluated themselves in addition to being evaluated by the participants.”
- “Co-mediators were used wherever possible.”

- ⌚ “Mediators must be properly prepared.”
- ⌚ “Mediators were assigned on a rotating basis unless there were other issues or concerns, i.e., personal relationships with the parties, conflict of interest, etc.”
- ⌚ “Ensure that any group mediations are the appropriate size and are given the appropriate number of mediators.”

## **Additional Material and References**

*Appendix D: Guidance for Determining When Mediation is Appropriate.*

*Appendix E: Common Questions and Answers about Mediation.*

*Appendix F: An Overview of the Mediation Process.*

*Appendix G: Core Principles for Federal ADR/Mediation.*

## CHAPTER 3

### ACHIEVING LABOR-MANAGEMENT BUY-IN AND SUPPORT

The most effective and well-used mediation programs are the ones designed and developed through “partnership” between labor and management. It is important that the union be actively involved at all stages of program design, implementation and evaluation. There is no “right” or exact formula for setting up a mediation program. VA recognizes and encourages flexibility and creativity in program design and encourages adherence to core mediation principles and best practices. VA Directive 5978, Alternative Dispute Resolution, states the following:

“VA’s Labor partners, at all levels within the VA, are a vital component to development, implementation and assessment of an overall effective VA-ADR Program, and are encouraged to participate in this endeavor. All VA ADR programs must be consistent with collective bargaining agreements. VA ADR programs shall be jointly designed and implemented in good faith with Labor, and include the use of mutually agreed-upon neutral third parties.”

A successful mediation program is owned by all employees at a facility, and needs to work to the benefit of all. Mediation awareness training is critical to gaining employee understanding of the ADR process. It is suggested that general awareness training be conducted prior to implementation of an ADR program in order to maximize employee acceptance.

The key component for success is “TRUST”. The individuals selected to represent and administer the ADR/mediation program must have the trust and respect of both labor and management. Regardless of the structure of your ADR/mediation program, it is important to develop a system that fits into your culture and available resources in a manner that works for your facility.

The following core principles have been developed to assist facilities in developing successful ADR/mediation programs.

## Core Principles to Accomplishing Employee “Buy-in” for the ADR Program

- Must establish “trust” by all parties involved in the process.
- Must be perceived as fair and confidential.
- Must have joint labor-management decision-making throughout the entire process.
- Must have joint labor-management development of ADR agreement/policy.
- Must involve users in the design process.
- Must present a united labor-management front to all employees regarding the ADR process.
- Must conduct joint labor-management leadership training.
- Upper management and labor leadership should be present at all mediation awareness training sessions (i.e., open training sessions, introduction of trainers, welcoming remarks, etc.).
- Must effectively address all concerns or issues raised by users (i.e., through Partnership Council, ADR Coordinator or Council, etc.).
- Must select program representatives and mediators through joint labor-management processes.
- Must provide for ongoing evaluation, feedback, and improvement.



**Helpful Hint:** “Buy-in” and trust start at the *beginning* of the process.

## Lessons Learned For Achieving “Labor-Management Buy-in”

### Key Principles:

- Management and labor leaders must be mutually committed to success
- Involve your labor partners at the beginning of the program as full participants in design and evaluation.
- Design a program that meets the unique needs of your employees and managers.
- Program must be perceived as fair and neutral by all employees.

### Best Practices:

- 🕒 Provide training to all parties early on before they begin to design and develop the mediation program.
- 🕒 Gather input from all levels of staff in the design and development phase.
- 🕒 Ensure the individuals selected to administer the program are respected and trusted by both labor and management.
- 🕒 The facility’s partnership council should play an active role in designing and evaluating the mediation program.
- 🕒 Management and labor leaders must be highly visible in the training and marketing activities and provide joint support to the program.
- 🕒 Problems encountered in the daily administration of the program are resolved by a jointly appointed labor-management group.
- 🕒 Mediators should be jointly agreed upon by both labor and management or selected using a method developed through partnership efforts.
- 🕒 Listen to the union’s ideas of what they think will work, and what won’t work.
- 🕒 Like anything else, there has to be give and take on a variety of issues during the design process.

## Additional Material and References

*Appendix H*-- Statement from the VA National Partnership Council Supporting ADR.

*Appendix I*: – Sample Labor-Management Memorandum of Understanding.

*Appendix J*: – Sample Labor-Management ADR Agreement.

Additional information regarding labor-management “pre-decisional involvement” can be accessed via the VA’s ADR web site at <http://vaww.gov/adr/index.htm> and on the Internet at <http://www.va.gov/adr/index.htm>.

# CHAPTER 4

## DESIGNING A MEDIATION PROGRAM

Mediation program design begins with an analysis of why such a program is desirable in a particular environment.

However, program design does not need to begin from scratch. There are a number of programs already in existence that can be adapted to one's own local facility, depending on the facility's culture, needs, and available resources. Sample VHA Facility mediation programs can be found in Chapter 7 and in Appendix S.

First, consider your facility's unique characteristics and determine:

- What types of conflicts occur most frequently?
- Who is typically involved in the conflict?
- What are the current resolution methods?
- How much time is currently involved in conflict resolution using existing methods?
- How many conflicts occur in the period of a year?
- In terms of staff, time, and other resources, what is the cost of these conflicts?
- Can the facility invest the financial resources necessary to implement a new program?

**Identify your facility's stakeholders:**

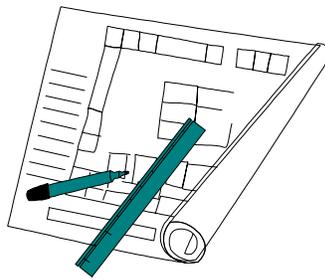
- Employees
- Management
- Supervisors
- Labor Unions
- Patients

- Families
- Service organizations
- Vendors

### Consider the benefits of a mediation program

- Quicker resolution
- Conservation of resources
- Early intervention
- Improved morale, productivity and work efficiency through greater employee involvement and satisfaction
- Reduced EEO complaints, grievances, and unfair labor practices
- Provides a forum for parties to meet face to face to express their concerns and open lines of communication
- Less adversarial
- Agreement is designed by the involved parties
- Improves the image of the agency
- Program neutrality with confidentiality

Once the decision has been made by top management to support the implementation of a mediation program in the facility...



*Let the program design begin ...*

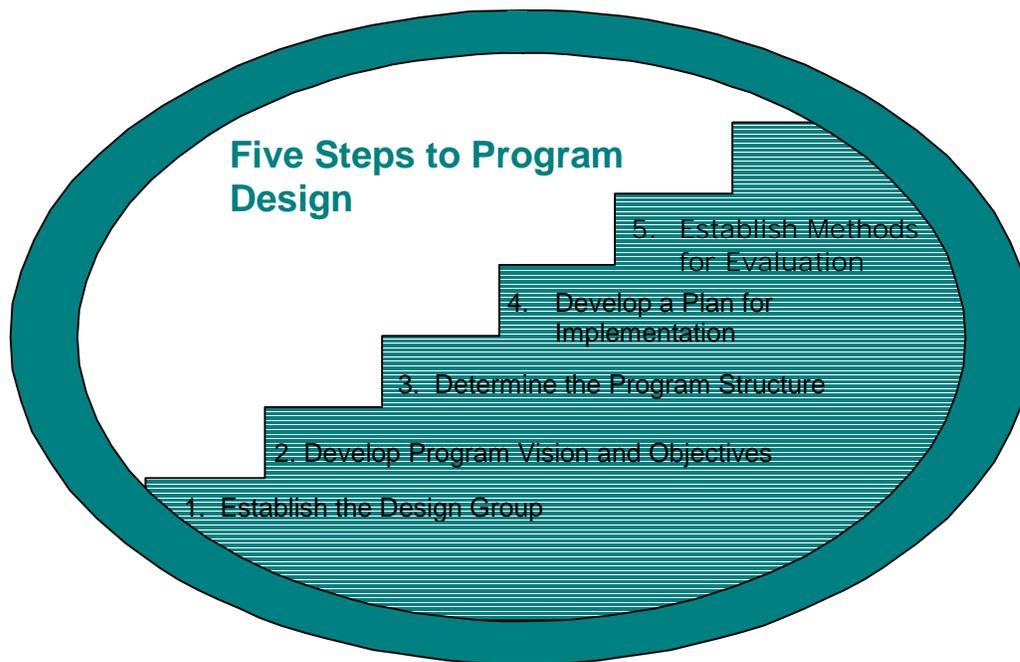


Figure 4.1

## Step One Establishment of the Design Group

The establishment of the facility's ADR/Mediation Committee or Working Group should be the first step. This group should have the type of representation that will ensure buy-in for the program from all stakeholders. It is recommended that the group be limited to 10-12 members.

### Suggested Working Group Members:

- Top management (Director or his/her designee)
- Labor (President or his/her designee)
- Members of Partnership Council

- Service Line Chiefs (Clinical and Administrative)
- Mid-Level Management
- EEO Program Manager
- Employees (General Schedule, Wage Grade and patient care)
- Human Resources
- Regional Counsel Staff
- Employee Representatives
- Patient Representatives
- Other Key Change – Makers at the Facility

## Step Two

### Developing Program Vision and Objectives

The committee or working group may want to begin by developing a memorandum of understanding, which will be signed by all interested parties. This memorandum will establish the program's parameters and address issues such as:

- What is the primary purpose of the program?
- What kinds of conflicts will or will not be mediated?
- Who are our customers and what are their expectations?
- Who are the key players and what are their rules?

## Step Three

### Determine Program Structure

The ADR/Mediation Working Group should work within the agreed upon objectives and overall program vision to define the specific components and structure of the program.

- Decide whether to adapt an already existing program or to design a unique program.
- Identify the source of financial resources that will be needed in order to implement the program.
- Design simple administrative procedures – keep process streamlined.
- Identify a program coordinator, and/or establish a mediation center.
- Establish mediation criteria.
- Determine when and how mediation will be offered to employees.
- Determine how mediation requests will be accepted and processed.
- Determine who will serve as mediators and how will they be selected.
- Identify training needs for employees, managers, supervisors, union officials, and mediators.
- Determine needs for awareness training, and training in conflict prevention and resolution principles.
- Develop policies and procedures for program implementation.
- Identify officials responsible for implementation.
- What steps will an individual need to follow to access the program?
- Where will the employee go for mediation information?
- Who will contact the parties who are to mediate and if they will mediate?
- Who will contact the Union?
- Who will appoint mediators?

**Steps 4 and 5 (implementing and evaluating your program) are discussed in-depth in Chapter 5.**



*Beware* of these common problems in designing your program. It is more than likely you may encounter such roadblocks in the implementation of your mediation program:

- Middle management hierarchical control problems
- Resistance to “compromise”; “we’re here to litigate”
- Power issues, loss of control
- Clients already have a settlement process and don’t see the advantage to mediating
- Job security, status quo; “I have my job and I don’t want to see it change”
- Resistance to mediation process because of perception it forces a settlement
- Satisfaction with existing process
- Perception that mediation will consume more of the facility’s resources
- Seen as a redundant program
- No direction from top management
- Lack of understanding about mediation
- Fear of obtaining a reputation of “caving in”



**Helpful Hint:** The hard work involved in the preparation and planning phase *is* worth the effort. Shortcuts early on could result in disastrous long term outcomes.

### Key Principles:

- Facilities must be willing to commit resources.
- Conflicts should be identified and addressed as early as possible.
- Management and Labor leaders must be mutually committed to success.

- Involve stakeholders as early as possible.
- Gather input from all levels of staff in the design and development phase.
- Labor organizations must be full participants in design and evaluation.
- Design a program that is right for your particular facility.
- Establish written policies and procedures.
- Define roles.
- Designate a program coordinator.
- The working group must be empowered by top management.
- Keep your program simple and flexible.
- Don't be afraid to make changes.
- Establish mechanisms for continual feedback of your program's strengths and weaknesses.

### Best Practices:

- 🗨 “An analysis and study of ongoing disputes provided valuable data in the design stage.”
- 🗨 “Individuals and organizations who had roles in the traditional dispute processes were utilized in new roles to avoid a fear of loss of power or feelings of loss of control.”
- 🗨 “Utilizing the local Partnership process was key to the design and overall success of the mediation program and ensured that all partners had a continuing voice in the process, even after the initial implementation stage.”
- 🗨 “The initial design group evolved into an “advisory” group to assist in implementation and evaluation, and to provide other types of oversight.”
- 🗨 “The program design phase was much more successful when the working group was provided training regarding principles of ADR and Mediation *prior* to developing the local program.”
- 🗨 “Facility incorporated the Patient Representative Program into all phases of the ADR program design and development.”

- ⌚ “When establishing your standards for evaluation, don’t measure your success only by the number of disputes that are resolved. Consider other issues such as partial resolutions, changes in the types of disputes, improved relationships, improved morale, reduction of repeat disputes, and stakeholder satisfaction.”
- ⌚ “Marketing your program is a continuous, ongoing effort. You can’t stop after the initial awareness training is complete.”
- ⌚ “Marketing and promotion should be a joint effort between labor and management. Postings on bulletin boards, regular newsletter articles, and reminders at staff meetings all contributed to continued interest in the program.”
- ⌚ “The program’s initial successes were most important! Pick your mediators and initial mediation cases carefully. Start with disputes that are highly conducive to resolution through mediation.”
- ⌚ “Awareness training must be provided to all employees at a time when your program is ready for implementation.”
- ⌚ “Make sure you are properly prepared to respond promptly and appropriately to mediation requests before you “open your door” for business. You never get a second chance to make a first impression!”

## Additional Material and References

*Appendix K:* Key Players and Suggested Roles

*Appendix L:* Using Employees as Mediators

*Appendix M:* Options for Obtaining Mediators

*Appendix N:* VA’s Office of General Counsel – An ADR Resource

*Appendix Q:* Material available on the VA’s ADR Web Site. The address for this web site on the Intranet is:  
<http://vaww.va.gov/adr/adrindex.htm>.

*Appendix R:* A list of various government and non-government ADR web sites.

*Appendix S: Samples of Various VA Facilities' Policies, Forms, and Brochures.*

Refer to Chapter 7 for a generic sample ADR policy and related forms.

# CHAPTER 5

## IMPLEMENTING AND EVALUATING YOUR PROGRAM

### Steps to Program Implementation

Once the basic components and structure of your program have been outlined, attention should be paid to three critical items before proceeding with implementation and evaluation. These are:

Acceptance and “buy-in” by labor partners

Support from management

Awareness and acceptance by employees

When addressing these objectives, the Working Group will also need to develop a way to put the program into place and begin implementation. Some things to consider include:

- Determining how you will involve stakeholders in the implementation process.
- Identifying potential financial responsibilities and expenses.
- Identifying potential funding resources.
- Developing a plan for marketing and promoting.
- Identifying all training needs and coordinating training with the various stages of your implementation process.

- Developing overall plan of action and milestones
- Providing mechanisms to encourage employees to utilize mediation as a form of dispute resolution, i.e., posters, publicity, advocacy.
- Identifying individuals or organizations responsible for specific implementation tasks. This includes groups/individuals who will:
  - Develop procedures, SOPs, etc.
  - Distribute necessary information
  - Select mediators
  - Provide training
  - Receive and approve requests for mediation
  - Schedule mediators and mediation sessions
  - Develop mediation agreements
  - Maintain records
  - Compile reports or statistics

## Steps to Program Evaluation

Before you can determine **“how”** you will evaluate or measure your program, you must determine **“what”** it is that you want to measure.

To answer this question, your ADR/mediation working group should refer to the questions they asked when designing the program, such as:

- What are the objectives or what is the overall purpose of our program?
- What are our specific program goals?
- Who are our customers and what are their expectations?

The answers to these questions will determine **“how”** you evaluate your program and what standards or measurements you will use. For example, if your objective is to decrease the number of formal disputes, then you may want to measure changes in the total number of disputes and changes in the number of formal disputes.

However, if your primary goal is to reduce the number of total disputes and increase employee morale, then you will also need to develop mechanisms for determining employee satisfaction and tracking changes in this level of satisfaction.

Finally, the Working Group should determine what measurements will reflect the particular objectives of your program. These may include measurements that reflect changes in...

- number of total disputes
- number of formal disputes
- types of disputes
- number of disputes which are resolved
- number of group disputes
- number or types of disciplinary actions
- time required to resolve disputes
- number of repeat disputes
- total time, resources, and related costs required to resolve disputes
- employee perceptions and attitudes
- employee morale
- percent of total workforce that uses/requests mediation
- employee awareness
- management perceptions and attitudes
- management support
- overall attendance
- stakeholder satisfaction
- patient complaints
- worker compensation claims
- impact on quality of care

As you can see, there are many things that can be measured. Therefore, it is important that you tie your “measurements” back to your original objectives. Otherwise, the most comprehensive of

evaluation programs may never tell you exactly what it is that you really want to know!

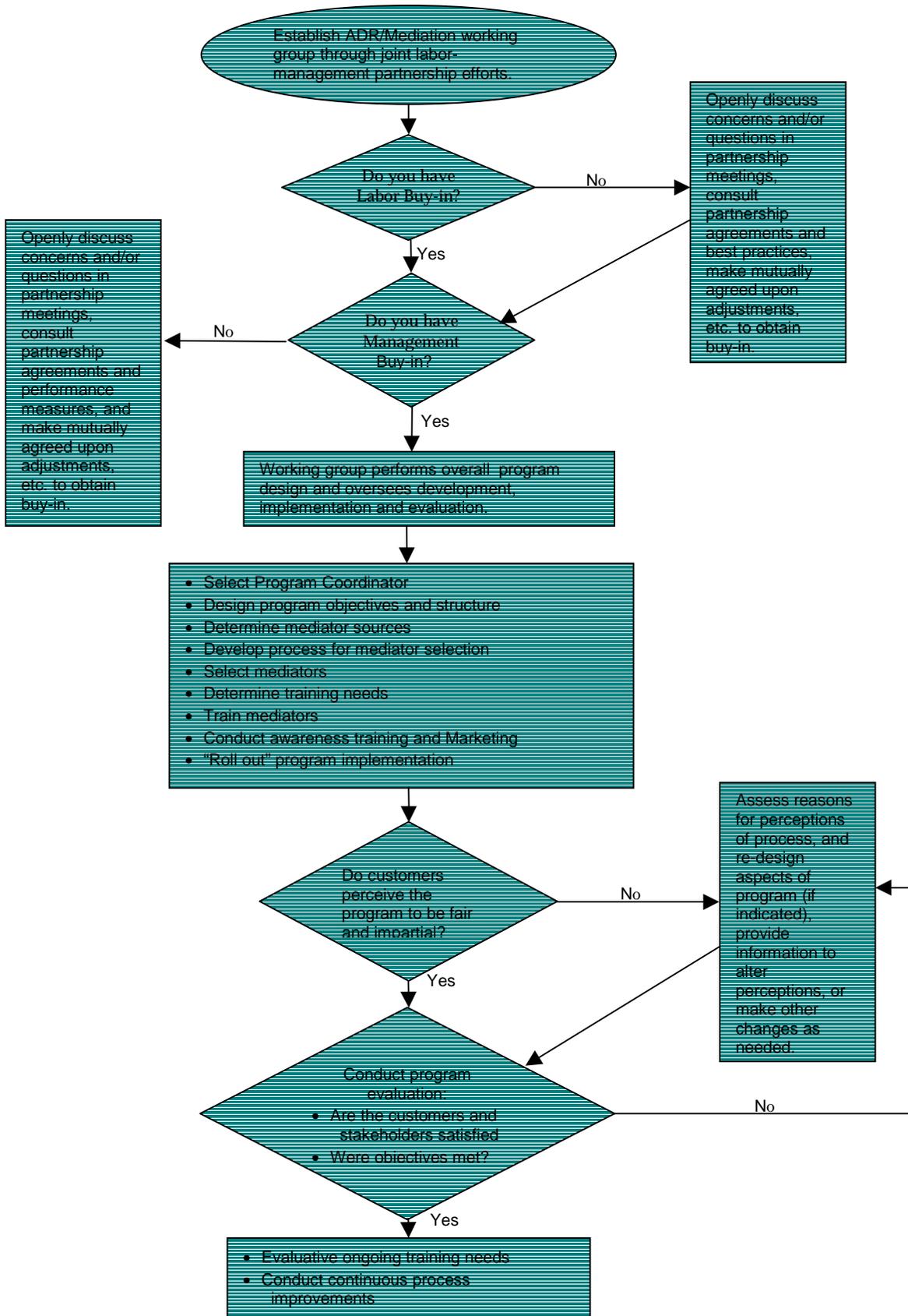
As you identify your specific measurements, here are some suggestions:

- Determine what types of data will be needed to evaluate your measurements for success.
- Determine how you can quantify your data.
- Develop standardized report formats and contents.
- Develop data capture forms.
- Ensure mechanism for maintaining appropriate confidentiality.
- Identify methods for assessing user satisfaction.
- Identify group of individuals responsible for program oversight, i.e., ADR Working Group, Partnership Council, etc.
- Determine how often the program will be reviewed.
- Consider establishing an evaluation team.
- Pilot the program for a period of six months, evaluating it, and revising it, if necessary.



**Helpful Hint:** Successful ADR is not a one-time commitment, regardless of the intensity of the initial effort. A sustained and energized approach is needed by both labor and management.

The following Flow chart provides a visual representation of the steps discussed in Chapter 1, 2, 3, 4, and 5.



## Lessons Learned For “Evaluating and Implementing Your Program”

### Key Principles:

- All successful programs require commitment and nurturing.
- Senior management must be willing to provide the required support and resources
- All levels of supervisors, managers, and labor representatives must motivate and encourage employees to consider mediation as an option.
- Emphasize and develop continuous improvement principles. Develop mechanisms which focus on receiving, evaluating and implementing suggestions at all stages of program implementation.
- Don’t be afraid to hear criticisms of and suggestions for the program. The fact that employees actively participate in making the program meet their needs can be an asset and show that they value the program.

### Best Practices:

- 🗣️ “Mediation is a very dynamic process that is difficult to describe without actually experiencing it. Facilities should not attempt to design, implement or evaluate a mediation program without a design group that is knowledgeable and experienced in ADR/mediation.”
- 🗣️ “The most effective and well-used mediation programs are the ones designed, developed and evaluated in partnership between labor and management.”
- 🗣️ “It is important to remember there is no “right” or “exact formula” for creating a successful mediation program. Programs which are flexible and creative while adhering to the core mediation principles have been most successful.”
- 🗣️ “Publicize the success of your mediation program on a regular and recurring basis. While facilities must be careful to maintain confidentiality, there are many ways in which “successes” can be publicized. This recognition can also develop pride in those that have participated.”

- ⌚ “Design a marketing plan to inform clients, customers, business partners and employees about the mediation program with sufficient detail so that they will be interested and want to use it.”
- ⌚ “Pick your mediators wisely. They need to be objective and be able to relate to all walks of life.”
- ⌚ “Develop sufficient and effective written guidance such as policy statements, SOPs, handbooks, brochures, etc. Make sure your materials are user friendly.”
- ⌚ “Keep your awareness training simple and straight forward. Don’t use canned training programs for your “awareness” training for your employees. Design your training for the different types of users, i.e., individual participants, supervisory officials, etc.”
- ⌚ “Incorporate “effective use of alternative dispute resolution” into the performance standards for supervisors and managers,” and set standards for measuring their effective use.
- ⌚ “Recognize contributors to the mediation program.”
- ⌚ “Establish “mediation champions”. Identify key individuals in labor and management who will be responsible for advocating the mediation program and acting as champions for. These “champions” need not be involved in the daily operations and administration of the mediation program, but should play a visible role in training, marketing, and encouraging and consulting with the oversight group.”
- ⌚ Trained mediators have monthly meetings which help to keep them focused and provides a forum for practice sessions.

## Additional Material and References

*Appendix Q*—Index of material available on the VA’s ADR web site.

The address for this web side is

<http://vaww.va.gov/adr/adrindex.htm>.

*Appendix R*—Provides a list of various government and non-government ADR web sites.

*Appendix S*—Provides sample VA Facilities’ policies, forms, and brochures.

Refer to Chapter 7 for a sample generic ADR policy and related forms.



# CHAPTER 6

## CONDUCTING TRAINING AND EDUCATION

Conducting high quality training and education is an essential step to attaining success in any ADR or mediation program. It is also important that each facility assess their specific and unique training needs and develop a training plan customized to the level of awareness, skills, and experiences of their program administrators, mediators, customers, and stakeholders.

While general “awareness” or overview training can be provided by knowledgeable “in-house” staff or staff from other nearby VA facilities, it is absolutely essential that “mediator skills” training for mediators and program administrators be conducted by qualified trainers.

NOTE: Obtaining appropriate, good quality training is one of the most challenging aspects of mediation program implementation, particularly since there are several variable aspects to training and its availability. Training varies as to type (i.e., awareness, mediator skills, user, advocate) and form (i.e., practical techniques, theoretical), and it is important that when you buy training you know what you are getting. For assistance and more detailed information about training opportunities for your facility (VA, Federal and private), VA/ADR training initiatives, and assessments on the quality of particular trainers, contact the ADR attorney in your area or the Deputy Dispute Resolution Specialist.

General guidance is provided below as to the types of training which should be considered for each group of employees.

**Top management, labor leaders and the ADR/mediation working group** should receive training that:

- Provides an introduction to ADR and mediation.
- Outlines the advantages of using mediation to resolve disputes.

- Compares mediation to other forms of conflict resolution.
- Provides an overview of other types of mediation programs in existence.

**Mediators** should receive training that provides practical skills which enable them to mediate. This initial training can range from 24-40 hours in duration and should include:

- Provides a detailed discussion of conflict in the workplace.
- Provides a detailed discussion of interest-based problem solving.
- Provides a detailed discussion of the mediation process.
- Provides a detailed discussion of communication skills.
- Provides a detailed discussion of ethics and standards for mediators.
- Provides abundant opportunity for role playing of mediation scenarios.

**Labor representatives** should receive training that:

- Provides an overview of mediation.
- Provides an overview of interest-based problem solving.
- Demonstrates how mediation works, in contrast to other methods of dispute resolution.
- Discusses the types of disputes appropriate for mediation.
- Demonstrates how their role as a representative fits into the mediation process.

**Mid-level management and supervisors** will need training that:

- Provides a general overview of conflict and the need to resolve disputes as early as possible.
- Provides a general overview of mediation.

- Provides an overview of interest-based problem solving.
- Demonstrates the benefits of mediation in terms of employee morale and cost savings to the facility.
- Outlines the role of management in the support and success of the program.
- Discusses their role as a participant in the mediation process.

**Employees will need training that:**

- Explains the dynamics of conflict and the need to resolve disputes as early as possible.
- Provides a general overview of interest-based problem solving.
- Provides a general overview of mediation and when it is an appropriate method to resolve disputes.
- Compares the mediation process to other forms of conflict resolution.
- Reviews the medical center's ADR policy and its program as well as its commitment to the mediation program.
- Explains the procedure for requesting mediation.
- Explains the interface between employees, their formal rights, and the mediation process.

**A successful training program requires that:**

- Training needs are thoroughly identified.
- Training content and trainers are selected through a joint labor-management process.
- Trainers are familiar with local needs and culture.
- Training content is customized and matched to the audience.
- Employees are given the time and support to attend the training.

- Training is made available to all employees on all tours.
- Training is evaluated for effectiveness and changed as necessary.



**Helpful Hint:** Substantial amounts of time set aside for comprehensive ADR training will eventually save everyone an incalculable amount of time later on.

## Lessons Learned for “Education” and Training

### Key Principles

- Awareness training is critical to program acceptance and success.
- Awareness training should be completed in advance of or at the outset of program implementation.
- Ensure your training meets the “expectations” of your audience.
- Thoroughly evaluate your training and provide feedback in order to effectively develop additional and ongoing training.
- Provide ample time for success stories, questions and answers.

### Best Practices:

- 🗨 “Ensure that all training offers enough variety in the methodology to make it entertaining, yet informative. Use videos, role-play, and group work activities. Make training interactive, where the audience participates.”
- 🗨 “During training, demonstrate how other facilities with active programs have saved money and have improved employee relations. Get examples from other facilities and tell your audience about these success stories.”

- ⓘ “A member of management (possibly jointly with labor partners) should be visible at each training session, specifically providing the opening remarks. Their presence will endorse the program and demonstrate their support of it. If management’s physical presence is impossible, have a member of the top management team make a video of their opening remarks. This video can be shown after instructor introductions are made and the purpose of the training has been discussed.”
- ⓘ “At the conclusion of each training session, obtain the participants’ input with respect to their views of the program and their take on its success.”
- ⓘ “Provide training sessions for all tours and at all satellite sites. In the spirit of One-VA, share training with VBA and NCA, if at all possible.”
- ⓘ “Videotape training sessions and make these videos available in the library in case an employee wants to review what was said or missed the initial training.”
- ⓘ “Discuss your mediation program in new employee orientation.”
- ⓘ “Include your patient representatives in your training sessions for mediators.”
- ⓘ “When offering *mediator* training, get opinions from other facilities as to where the best trainers are. Trainers should be enthusiastic, entertaining, energetic, and possess excellent oral communications skills. Remember that this training is usually at least three days in duration. Boring trainers can issue the deathblow to any training session by chasing away trainees or by allowing the trainees to be easily distracted.”
- ⓘ “Ensure that enough dollars are available for training. Education and training are the heart and soul of any mediation program.”
- ⓘ “Ensure that the training facility is comfortable and pleasant to be in. If at all possible offer refreshments.”
- ⓘ “Evaluate each training session. Use the feedback provided to make changes that will improve future training session”.
- ⓘ “Keep awareness training to a minimum of one hour and a maximum of two hours.

- ⌚ Awareness training should address how and why conflict exists in the workplace, the negative impact of conflict on the mission of the medical center, and why successful management of conflict leads to a better workplace.”
- ⌚ “Check out the reputations of your trainers. There are a great number of ADR and mediation trainers who want VA business. They range from talking heads, who stress the theories of conflict resolution, to trainers that provide a practical approach to mediation. Your training should have some nexus to workplace disputes.”
- ⌚ “Try to get a trainer with some familiarity with Federal workplace issues who can take a practical, skills-based approach to mediator skills training.”
- ⌚ The VA ADR attorney is a good source for setting up training and checking out potential companies that want to provide training. Before committing your resources, make sure you get an agenda and see the materials they intend to use.

## Additional Material and References

*Appendix N*—VA’s Office of General Counsel - An ADR Resource

*Appendix O*—Sample training evaluation forms

*Appendix P*—ADR training and information resources

*Appendix Q*—List of training material available on the VA’s ADR web site. The address for the web site is <http://vaww.va.gov/adr/adrindex.htm>.

*Appendix R*—Other ADR resource web sites

Power Point presentation slides can be accessed and downloaded for training use via the VA’s ADR web site at <http://vaww.gov/adr/slide.htm>.

# CHAPTER 7

## SAMPLE POLICIES AND FORMS

This chapter contains a sample program policy statement and relevant forms which can be copied, amended, and used by any VHA, VISN or field facility to develop and implement a mediation program.

These sample documents are generic in nature and represent a compilation of successful policies and practices throughout the VA and VHA. No one particular format or content is recommended for all facilities. Rather, you should assess your facility's unique needs and develop a policy and program that is right for you.

In addition, the appendices listed below contain other sample policies, forms, agreements, handouts, and brochures from various VHA facilities. Again, these are provided to reflect the variety of formats currently being used within VHA and do not represent any particular preference or endorsement by VHA.

### **Additional Material and References:**

*Appendix E:* Common Questions and Answers about Mediation.

*Appendix G:* Core Principles to Federal ADR/Mediation Programs.

*Appendix O:* Sample Training Evaluation Forms

*Appendix Q:* Index of material available on the VA's ADR web site at <http://vaww.va.gov/adr/adrintex.htm>.

*Appendix S:* Sample VHA Facilities' Policies, Forms and Brochures.

# [VA FACILITY] MEDIATION PROGRAM<sup>1</sup>

## POLICY STATEMENT.<sup>2</sup>

To assure a work environment that is conducive to the delivery of high quality patient services, [VA Facility] is dedicated to finding creative, acceptable and early resolution of disputes. Therefore, the use of mediation as an alternative means of resolving disputes is hereby endorsed and encouraged by the leadership of the facility.

To facilitate this policy and actively support the use of mediation, the facility leadership is establishing the [VA Facility] Mediation Program<sup>3</sup> that sets forth guidelines and responsibilities and to encourage employees throughout the facility to use mediation. This program will be available to all facility employees.

## PURPOSE.<sup>4</sup>

The [VA Facility] Mediation Program was created to actively support using mediation to resolve workplace disputes at the [VA Facility]. Using mediation demonstrates a commitment to a positive approach and joint ownership of concerns and solutions. Mediation is an alternative way to resolve problems and disputes before individuals get involved in more formal processes. Mediation can be used anytime during the life of the dispute provided all the individuals that are involved in a problem are willing to use it.

The purpose of the [VA Facility] Mediation Program is to provide the tools needed by [VA Facility] employees to resolve disputes in a non-adversarial way. Mediation is not intended to take away any rights that employees or management may have.

The benefits of the [VA Facility] Mediation Program include:

- Time savings, this program may be used to more quickly address and help resolve any workplace dispute, e.g., discrimination complaints, grievances, MSPB appeals, and other informal workplace disputes.

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1 The language contained in this document is optional and simply meant to provide a possible framework for a VA facility mediation program. It is anticipated that VA facilities may modify the sections and language to meet their individual needs. The sample program is structured using a co-mediation model because this is the most often used model for VA facility mediation programs.

2 Addresses the facility's commitment to using mediation.

3 Alternatively insert a name for the mediation program.

4 Addresses the facility's reasons and objectives for developing the mediation program.

- Resolutions are mutually agreed to, no individual participating in the mediation will have a resolution or settlement imposed on them by a third party.
- More harmonious relationships, because the individuals involved in a dispute have worked together to craft a resolution that is mutually agreeable to all involved.
- Resource savings, because problems are more quickly addressed, less staff time is used, and fewer destructive work relationships occur.

The primary objective of the [VA Facility] Mediation Program is to use mediation to promote principles and practices that will facilitate communication and working relationships. The mediation process allows parties with problems to resolve their differences quickly, less formally, in a less adversarial manner, and with more efficient use of resources than traditional dispute mechanisms (i.e., administrative judges and litigation). Mediation is a problem solving process; it is voluntary, confidential, non-coercive, mutually agreed upon, and unbiased.

#### **SCOPE.<sup>5</sup>**

Mediation can be used at [VA Facility] to resolve a variety of problems common to the workplace including grievances, discrimination complaints, employee/employee, supervisor/employee, service/service, and other workplace differences. Mediation is voluntary and both parties must be willing to use it. Mediation does not suspend statutory deadlines.

Mediation may be used where the individuals involved desire:

- An earlier resolution.
- A quicker, less formal process.
- A creative, equitable and/or win-win resolution.
- A mutually acceptable resolution.
- A resolution in which they have more control over the decision making process than is allowed by traditional processes, i.e., the formal complaint or step 3 grievance processes.

Mediation is voluntary and all individuals involved must be willing to use it. In the event an aggrieved individual alleging discrimination agrees to participate in mediation, the aggrieved individual still must abide by appropriate EEO statutory deadlines. In order to preserve his or her statutory rights to file an EEO complaint, an aggrieved individual must contact an ORM EEO Counselor within forty-five (45) days of the matter alleged to be discriminatory or, in the case of

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<sup>5</sup> Addresses how the facility intends to use the mediation program, and can be tailored to state the types of matters that may be mediated.

personnel action, within forty-five (45) days of the effective date of the action. 29 C.F.R. 1614.105(a)(1).

Referrals to the [VA Facility] Mediation Program may come from a variety of VA employees sources, including, but not limited to:

- Aggrieved persons.
- Complainants.
- Grievants.
- Employee Assistance Program (EAP) counselors.
- EEO counselors.
- Supervisors.
- Managers.
- Union officials.
- HR specialists.
- ADR coordinators or liaisons.

## **BACKGROUND.<sup>6</sup>**

The *Administrative Dispute Resolution Act of 1996*, 5 U.S.C. §§ 571-584, encourages the use of alternative dispute resolution (ADR) methods to resolve controversies relating to workplace disputes. ADR is a term used to describe a variety of problem-solving processes that present options in lieu of adjudicative or adversarial methods of resolving conflict. These options usually involve the use of a neutral third party and often result in creative solutions to disputes that might be unavailable in traditional dispute resolution forums. They encourage negotiations that focus on parties' real interests, rather than on their positions or demands, thereby enabling parties to address the real concerns underlying the conflict. By emphasizing problem solving as opposed to gearing up for protracted legal battles, these approaches may consume fewer resources in time management and finances.

Mediation is a form of ADR that has particular applicability to workplace disputes and has been endorsed by VA leadership through VA Directive 5978 . Under the Directive, Administration Heads, Assistant Secretaries, and Other Key Officials are responsible for insuring that the option of mediation is available to all VA

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<sup>6</sup> Addresses applicable law, regulations, federal and VA policy that form the bases of the mediation program.

employees for all workplace disputes, and that each VA employee is provided a basic understanding of mediation and the program available at their facility, so that they can make informed decisions about the mediation option.

The Equal Employment Opportunity Commission (EEOC) has recently amended its regulations (29 C.F.R. § 1614) to encourage ADR. In part, the new regulations require each federal agency to establish or make available an ADR program for both the pre-complaint and formal complaint process, and for EEO counselors to offer aggrieved persons who contact them the choice between using ADR processes or traditional EEO counseling processes. In VA, mediation can be used to help resolve disputes, including but not limited to, those involving discrimination, grievances, workplace issues between employees, between employee and supervisor, and between services, negligence, personal injury, contract, construction, and patient complaints. Mediation is voluntary and both individuals involved must be willing to use it.

#### **GOALS.7**

- The [VA Facility] will reduce the number of EEO complaints filed at the facility.
- The [VA Facility] will reduce the number of step 3 grievances filed at the facility.
- Communication between employees at the [VA Facility] will be enhanced.
- The mediation option is available for every employee at the [VA Facility] for every workplace dispute.
- Each employee at the [VA Facility] has sufficient information to make an informed decision as to the mediation option.
- Each employee at the [VA Facility] shall receive training on mediation awareness and conflict resolution.
- [VA Facility] leadership shall serve as champions of the mediation program and encourage the understanding and use of mediation to resolve workplace disputes.

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7 Addresses what the facility hopes to accomplish through the mediation program and sets forth the desired outcomes. The goals provided in this document are only a few samples of possible goals. In listing goals, attention should be paid as to how to measure whether the listed goals have been met.

- The [VA Facility] will use trained and qualified VA personnel as its mediators.
- The [VA Facility] will establish standards of the mediation, collect data, and conduct evaluations to measure the effectiveness and to make appropriate improvement to the program.

#### **DEFINITIONS, ROLES AND RESPONSIBILITIES.<sup>8</sup>**

*Mediation* is a type of ADR process in which a specially trained neutral third party, called a mediator, helps the disputants to find a mutually acceptable solution to their dispute. It is a voluntary, confidential, informal, private, non-adjudicative and non-adversarial process. During mediation, the parties, with the assistance of a mediator or mediators, exchange information, listen to each other's positions, and jointly consider various options to find solutions to their problem(s) that are mutually acceptable to both of them.

*Aggrieved Individual* is the individual who alleges that an improper action was taken against him or her. The aggrieved individual may bring additional participants to the mediation to provide assistance and advice during the mediation. The aggrieved individual is responsible for entering into mediation in good faith. See also the topic Attorneys, Advocates or Representatives addressed below. The aggrieved individual is responsible for ensuring that s/he meets all applicable deadlines in order to preserve and rights they may have.

*Management Representative* is the individual from management who has the authority to bind and represent management at the mediation session. The management representative may bring additional management participants to the mediation to provide assistance and advice. The official alleged to have unlawfully discriminated against an aggrieved individual/complainant, referred to as the Responsible Management Official (RMO), may or may not be the management representative. Mediation is voluntary, and the management representative is responsible for entering into and participating in mediation in good faith. See also the topic Attorneys, Advocates or Representatives addressed below.

*Union Representatives* have the right to participate in all stages of the mediation process where a bargaining unit employee is involved. Union representatives are essential to encouraging the appropriate use of mediation among union stewards

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<sup>8</sup> Addresses various terms used in the program and provides common definitions for the terms used. Describes the roles and responsibilities of key players in the program. The definitions set forth in this sample are extensive and program drafters are encouraged to edit the definitions to meet their individual program needs.

and employees. If requested, a union representative may also participate as a party representative. Union representatives participating in mediation are responsible for entering the process in good faith.

*Attorneys, Advocates and Other Representatives* from either or both parties may be present and participate in the mediation, although they are not required. Unlike litigation, except for unusual circumstances, these individuals typically take a "back seat" in the mediation session. Attorneys, advocates and other representatives are responsible for understanding the mediation process, as well as entering into the mediation and participating in good faith.

*Mediators* are specially trained, neutral individuals whose responsibilities include, but are not limited to assisting the parties to identify issues, fostering joint problem solving, and exploring settlement opportunities. Mediators shall not provide counseling, therapy or legal advice to either party during the mediation process. If, however, a mediator believes that either party does not understand how an agreement may adversely affect legal rights or obligations, then the mediator should bring this issue to the attention of all parties involved. Mediators selected at the [VA Facility] should generally be mutually acceptable to both labor and management. Mediators should be mutually agreeable to the parties, and should possess the following qualities: a reputation for confidentiality, fairness, patience, honesty, trustworthiness, credibility, and respect. Mediators must be active listeners, good communicators, open minded, creative, empathetic, unbiased, non-judgmental, professional in demeanor, problem solvers, and have the ability to remain neutral. Mediators are not authorized to make decisions for the parties and do not have the power to force a decision on either party; it is the parties who decide whether or not to settle a matter. Mediators are generally VA employees who have volunteered to serve as mediators, and who have received special training in mediator skills, conflict resolution techniques, and other ways to help disputing parties resolve their problems. Mediators should not be assigned to mediate disputes in their own service. Service as a mediator shall be voluntary and on a collateral duty basis. Mediators will not discuss private conversations with the other party or with other persons who are not participating in the mediation. Mediation sessions are confidential and the parties agree that, if the matter is not settled, the mediator can not be used by either party as a witness in future litigation. Mediators are neutral individuals, have no relationship to either party, and have no personal interest in the outcome of the dispute that they are mediating. Mediators who suspect a possible conflict of interest will make full disclosure to the parties. Each party in mediation should be willing to use the mediator. Any party can object to a particular mediator for no reason given and another mediator will be appointed to the matter. See also Mediator Qualifications and Ethical Principles sections addressed below.

*Co-mediators* are mediators who work together to mediate a particular dispute.

Co-mediation is the preferred process in most VA mediation programs. Co-mediation is an effective way to give their mediators more opportunity to mediate or provide more comprehensive coverage during the mediation session and is also a training tool for less experienced mediators. The VA co-mediation model generally uses more experienced mediators to train or mentor less experienced mediators. In order to co-mediate, an individual must have received a minimum of twenty-four (24) hours of mediator skills training.

*Parties* to a mediation session include the aggrieved individual, the management representative and, in some instances, the union representative. Other individuals may participate in the mediation if the parties agree.

*ORM EEO Counselors and ORM ADR Liaisons* are located in each of the 12 ORM Field Offices and will be responsible for explaining and offering mediation to aggrieved individuals who contact ORM. Their responsibilities include interfacing with [VA Facility] EEO and Affirmative Employment Program Specialists and the [VA Facility] Mediation Program Administrator, and to locate mediators who are mutually satisfactory to the parties when an aggrieved individual contacts an ORM Counselor seeking mediation. ORM EEO counselors are primarily responsible for ensuring that all discrimination matters are adequately and timely processed through the appropriate ORM Field Office, whether they are dealt with using mediation or traditional EEO dispute resolution mechanisms (counseling and complaints).

*[VA Facility] Mediation Program Administrator*<sup>9</sup> is the individual at the [VA Facility] who has been designated to administer and facilitate the easy use of the [VA Facility's] Mediation Program.<sup>10</sup> Because an effective mediation program requires input and collaboration across several VA organizational lines, the [VA Facility] Mediation Program Administrator must be capable of maintaining excellent working relationships with local labor and management, ORM and other VA mediation programs. The [VA Facility] Mediation Program Administrator is responsible for interfacing with the aggrieved individual, management representative, and when appropriate, the union representative, the [VA Facility] EEO and Affirmative Employment Program Specialist, the ORM EEO Counselor and/or the ORM ADR Liaison to locate mediators who are mutually satisfactory to the parties, and to process mediation requests in a timely and efficient manner. The [VA Facility] Mediation Administrator also serves as a resource for information; interacts with other facilities' and organizations' mediation programs; coordinates and assists in locating and assigning mediators; obtains mediators from outside the [VA Facility]; monitors mediations for satisfaction,

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<sup>9</sup> In some VA mediation programs referred to as the Program Coordinator or Program Manager.

<sup>10</sup> The facility's mediation program typically defines the scope of this individual's duties and responsibilities; these can vary depending on the program.

quality and timeliness; maintains appropriate information and documentation on the [VA Facility] Mediation Program; facilitates the signing and maintaining of records related to the use of the program, reports on a periodic basis to the [VA Facility] Mediation Working Group on matters of importance to the program.

*[VA Facility] Mediation Working Group<sup>11</sup>* is made up of individuals from various offices at the [VA Facility] including Labor. The [VA Facility] Mediation Program Administrator typically chairs the Working Group. The local union president(s) and/or their designees are also members of the Working Group. The Working Group will meet periodically to discuss and assess the [VA Facility] Mediation Program, suggest improvements and implement needed changes to the program. The Working Group is the entity primarily responsible for making and implementing decisions with regard to the successful operation of the [VA Facility] Mediation Program. Members of the Working Group are responsible for selecting individuals who will receive mediator skills training and serve as mediators in the [VA Facility] Mediation Program. The Working Group shall ensure that the individuals selected represent a cross section of the employees at the [VA Facility], and is responsible for monitoring the quality of the mediation services rendered by those mediators.

*[VA Facility] EEO and Affirmative Employment Program Specialist* is the individual appointed at the [VA Facility] to administer that facility's EEO and Affirmative Employment Program (minus complaint processing which is administered by ORM). In addition, they may be responsible for assisting in the development, coordination, and implementation of the [VA Facility's] Mediation Program in accordance with the local partnership agreement. Their responsibilities may include, but are not limited to, interfacing with the local ORM Field Office and ORM EEO Counselors, mediating, assisting in settlement negotiations, providing technical advice, as well as initiating other creative solutions for resolving disputes.

*[VA Facility] managers and employees* should support the [VA Facility] Mediation Program by using the program themselves. All [VA Facility] managers and employees are responsible for understanding the mediation process, as well as entering into and participating in mediation in good faith.

*Rights Fact Sheet<sup>12</sup>* is a document that provides general information about mediation, the [VA Facility] Mediation Program, and the respective rights of the parties. The [VA Facility] Mediation Program Administrator should distribute the

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<sup>11</sup> In some VA mediation programs referred to as Steering Committee or Council.

<sup>12</sup> This sample program contains a sample rights fact sheet containing the basic information needed in a rights fact sheet and that can be tailored to the individual VA facility mediation program. A copy of a sample Rights Fact Sheet is attached and should be edited to add the specific procedures that are applicable to the [VA Facility] Mediation Program.

sheet to the parties immediately upon being contacted about potential mediation.

*Agreement to Mediate*<sup>13</sup> is a document that is signed prior to the start of the actual mediation session, by all individuals who will be present and/or will participate in the mediation. Signing the agreement to mediate acknowledges the parties' agreement to honor the principles of mediation and to conduct themselves in a manner that supports the mediation process.

*Settlement Agreement* is the document that memorializes the agreement of the parties if they are able to reach settlement as a result of the mediation session. No party is bound by anything said or done at the mediation unless all necessary parties execute a written settlement agreement. The signed settlement agreement shall be legally binding to all parties to the agreement.

## THE [VA FACILITY] MEDIATION PROCESS.<sup>14</sup>

- *Questions about mediation.*

Questions about mediation should be addressed to a representative of the union or the [VA Facility] Mediation Program Administrator. Also, for general information about mediation, the VA maintains a very informative web site located on the Intranet at <http://vaww.va.gov/adr/index.htm> and on the Internet at <http://www.va.gov/adr/index.htm>.

- *Rights Fact Sheet(s).*<sup>15</sup>

At the first contact with an employee potentially interested in mediation, the [VA Facility] Mediation Program Administrator shall apprise the aggrieved individual of his or her rights and give that individual all appropriate Rights Facts Sheet(s), *i.e.*, the [VA Facility] Mediation Program Rights Fact Sheet and/or ORM Mediation Program Rights Fact Sheet. A copy of a sample Rights Fact Sheet is attached and should be edited to add the specific procedures that are applicable to the [VA Facility] Mediation Program.

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<sup>13</sup> Also sometimes referred to as an agreement to participate in mediation, this is a document that all persons participating in the mediation must sign before beginning the mediation session. It can be signed before or at the mediation session, but legally, to preserve confidentiality rights, it should be signed before a mediator receives any confidential information. The agreement to mediate sets forth the terms under which the mediation is being conducted and the rules that the participants agree to follow during and after the mediation session. It typically describes the scope of what is being mediated, the respective roles of the participants, and addresses aspects of confidentiality. A sample agreement to mediate is attached.

<sup>14</sup> Addresses procedures or steps from start to finish, that individuals who use the mediation program can expect to follow to obtain the services of a mediator.

<sup>15</sup> This sample program contains a sample rights fact sheet containing the basic information needed in a rights fact sheet and that can be tailored to the individual VA facility mediation program.

- *Requesting mediation.*

Any party to a dispute may request mediation. Mediation requests may be initiated by directly contacting the [VA Facility] Mediation Program Administrator. Management, union officials and other locally determined designees may also be contacted regarding a request to mediate, but the individuals should take steps to refer the matter as quickly as possible to the [VA Facility] Mediation Program Administrator for processing.

Each phase of the mediation process, from the initial mediation request through the signing of applicable agreements, should be conducted as expeditiously as feasible. The use of appropriate means of electronic transmittal with receipt confirmation is encouraged.

Requests for mediation should be made as early as feasible, once it becomes clear that the involved individuals will not be able to resolve the matter on their own. In no event should an aggrieved individual allow a statutory deadline to pass pending a question or decision, a request for mediation, or completion of a mediation session.

Requesting mediation and actually engaging in a mediation session do not suspend statutory deadlines.

Mediation requests in matters involving discrimination should be handled with particular attention to preserve statutory time frames. In order to preserve his or her statutory rights to file an EEO complaint, an aggrieved individual must contact an ORM EEO Counselor within forty-five (45) days of the matter alleged to be discriminatory or, in the case of personnel action, within forty-five (45) days of the effective date of the action. 29 C.F.R. 1614.105(a)(1). Contacting or meeting with the [VA Facility] Mediation Program Administrator or the local [VA Facility] EEO and Affirmative Employment Program Specialist does not meet the requirement to contact an ORM EEO Counselor for purposes of meeting the forty-five (45) day statutory deadline.

In some instances, an aggrieved individual who is seeking mediation from the [VA Facility] Mediation Program will contact an ORM EEO Counselor and will be offered mediation through the ORM Mediation. In the event this happens, it will be the [VA Facility] Mediation Program Administrator's responsibility to work with the ORM EEO Counselor and/or the ORM ADR Liaison to coordinate the mediation effort.

- *Extensions of time.*

Submission of a dispute to mediation may require that the parties agree to the extension of time periods in other proceedings. Extensions shall be made without the disputants' loss of rights. Steps should be taken to ensure that appropriate statutory timeframes are met, and no rights are inadvertently waived. The involved individuals are encouraged to work together to schedule the mediation.

- *Accepting the mediation request.*

Prior to processing the mediation request, the [VA Facility] Mediation Program Administrator is responsible for ensuring that all parties to a mediation, e.g., aggrieved individual, management and union officials, are willing to participate in the mediation. To move forward on a mediation request involving an employee in a bargaining unit, labor must agree that mediation is appropriate for this matter.

If the [VA Facility] Mediation Program Administrator is contacted by an aggrieved individual alleging discrimination or reprisal, the [VA Facility] Mediation Program Administrator will immediately advise the aggrieved individual of his or her rights, provide a copy of the Rights Fact Sheet, and make clear to the aggrieved individual that s/he must contact an EEO Counselor within forty-five (45) days of the matter alleged to be discriminatory to preserve his/her statutory right to file an EEO complaint. On that same day the [VA Facility] Mediation Program Administrator will also notify an appropriate ORM Counselor or Field Office ADR Liaison that the [VA Facility] Mediation Program was contacted regarding a mediation request. The ORM Counselor or ADR Liaison will be responsible for monitoring the matter to insure that statutory timeframes are not inadvertently missed. Upon this notification the [VA Facility] Mediation Program retains responsibility for processing the mediation request unless agreed to otherwise with ORM. In any event, the [VA Facility] and ORM shall take steps to coordinate the appropriate exchange of information relating to processing the mediation request.

An aggrieved individual's meeting with the [VA Facility] Mediation Program Administrator will not serve as the meeting with the ORM EEO Counselor and meet the forty-five (45) day deadline to contact an ORM EEO counselor.

Certain cases may not be appropriate for mediation. If such a determination is made, the management or union official will notify the [VA Facility] Mediation Program Administrator, who will be responsible for maintaining appropriate information on cases in which mediation was requested but refused by one or more of the involved parties. Removal for cause (i.e., felonies and drugs) and patient abuse may not be appropriate for mediation, but will be dealt with on a case by case basis. A request for mediation can be made and accepted at anytime, with the understanding that all parties to a dispute must agree to mediate their dispute.

If mediation is determined to be appropriate by the parties, the [VA Facility] Mediation Program Administrator will notify the parties that the matter has been accepted for mediation.

- *Assigning co-mediators.*

Once the matter has been accepted for mediation, the [VA Facility] Mediation Program Administrator will proceed to assign co-mediators, notify the parties of the assignment and names of co-mediators, secure a location for the mediation and perform other administrative duties as required by the [VA Facility] Mediation Program. Assignment of co-mediators will typically be made by the Program Administrator within (#) working days.

Co-mediators (or a single mediator) will be assigned on an as available rotational basis. In the event any party to a mediation objects to a co-mediator that was assigned in a particular matter, they may reject the co-mediator(s) for no reason given, and another will be assigned. Co-mediators should discuss any actual or perceived bias they may have regarding the matter to which they are assigned with the [VA Facility] Mediation Program Administrator. It is expected that [VA Facility] Mediation Program will support the training of an adequate number of mediators to ensure that co-mediators are not overburdened with cases.

- *Signing the agreement to mediate.*

Prior to beginning the mediation session, all individuals present and/or participating in the mediation session will be required to sign an agreement to mediate, setting forth the terms they agree to follow during and after the mediation session. This document will set forth the requirements for the individuals participating in the mediation.

- *Scheduling and conducting the mediation session.*

The responsibility for scheduling and conducting the mediation session rests with the co-mediators. The assigned co-mediators should, as quickly as feasible, schedule the mediation session with the parties and other individuals necessary to the mediation session. The co-mediators should also notify the [VA Facility] Mediation Program Administrator of the scheduled mediation session. Co-mediators may look to the [VA Facility] Mediation Program Administrator for assistance in administrative matters.

Prior to beginning the mediation session, the co-mediators should ensure that the agreement to mediate is fully executed by all individuals present and/or participating in the mediation session.

- *Concluding the mediation process.*

At the conclusion of the mediation session, if a settlement has been reached, the co-mediators draft a settlement agreement and ensure its execution by the parties. The signed settlement agreement is transmitted to the [VA Facility] Mediation Program Administrator who will in turn forward the agreement to appropriate personnel within the facility and/or the ORM EEO Counselor.

If a settlement is not reached, the aggrieved individual does not lose his/her rights to continue processing the matter under the traditional dispute resolution processes, provided they have taken steps to properly preserve their statutory rights.

Participants are asked to complete an evaluation at the conclusion of mediation in order to monitor satisfaction and quality, and to suggest improvements to the program. The co-mediators (or the [VA Facility] Mediation Program Administrator) will distribute and collect user satisfaction surveys<sup>16</sup> and any other appropriate documentation.

- *Making appropriate notifications and keeping documentation.*

The [VA Facility] Mediation Program is responsible for making appropriate notifications and maintaining documentation relating to the functioning and evaluation of the [VA Facility] Mediation Program Administrator), e.g., agreements to mediate, user satisfaction surveys, and appropriate settlement agreements.

In matters involving ORM and the ORM Mediation Program, the [VA Facility] Mediation Program Administrator should forward to the ORM EEO Counselor or ORM ADR Liaison all forms and documents that are required by the ORM Mediation Program.

#### **APPLICABLE TIME REQUIREMENTS.<sup>17</sup>**

*Statutory (mandatory) EEO deadlines.*

- 45 days -- The aggrieved individual must contact an ORM EEO Counselor

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<sup>16</sup> The user satisfaction survey is a form that is to assess user satisfaction and measure program effectiveness so as to make appropriate program improvements. Individuals that participate in mediation are generally requested to anonymously and voluntarily complete the survey.

<sup>17</sup> Addresses key statutory deadlines and other guidelines relating to the processing of mediation requests.

within forty-five (45) days of the matter alleged to be discriminatory or, in the case of personnel action, within forty-five (45) days of the effective date of the action. 29 C.F.R. 1614.105(a)(1)<sup>18</sup>.

An aggrieved individual's meeting with the [VA Facility] Mediation Program Administrator does not meet the requirement to contact an ORM EEO Counselor for purposes of meeting this statutory deadline. Requesting mediation or participating in a mediation session does not suspend statutory deadlines. The aggrieved individual may miss the statutory deadline and may lose the right to bring an EEO complaint if an ORM EEO Counselor is not contacted within the forty-five (45) day time frame required by statute.

- 30 days -- The ORM EEO Counselor will issue a Notice of Final Interview unless mediation is requested or an extension is otherwise granted.
- 60 days -- If the aggrieved individual agrees to participate in mediation under the ORM Mediation Program, the pre-complaint processing period shall be extended up to a total of ninety (90) days (30+60 days). If the matter has not been resolved before the 90<sup>th</sup> day, the notice of right to file a formal complaint shall be issued. See 29 C.F.R. § 1614.105(f). The mediation will normally be conducted and completed during the 90-day period. Depending on the ORM Field Office policy, the ORM EEO Counselor or the ORM ADR Liaison is responsible for executing applicable forms.

If an aggrieved individual alleging discrimination or reprisal agrees to participate in mediation under the ORM Mediation Program and/or [VA Facility] Mediation Program, the pre-complaint processing period shall be extended up to a total of ninety (90) days. 29 C.F.R. § 1614.105(f).

*Union grievance time requirements.*

- For an aggrieved individual alleging a union grievance, a union official should be contacted as early as possible after the involved individual realizes s/he will not be able to resolve the matter on their own. Mediation methods may be used at any time during the grievance process, though they have the most applicability for and after the step 3 grievance. When using mediation to resolve a grievance, contractual time frames will be stayed by mutual agreement of the parties. Statutory time frames cannot be stayed, and the grievant must continue to comply with all statutory deadlines.

*Other [VA Facility] Mediation Program timeframes.<sup>19</sup>*

<sup>18</sup> This deadline is statutory and therefore mandatory.

<sup>19</sup> Suggested guidance only, this can be tailored to the individual [VA Facility] Mediation Program. For individuals requesting

- 45 days -- If the matter involves a potential allegation of discrimination and the aggrieved individual wishes to preserve his or her rights to ultimately process matters that cannot be resolved through the [VA Facility] Mediation Program via the EEO complaints processing system [ORM], the aggrieved individual must take steps to contact an ORM EEO Counselor within forty-five (45) days of the matter alleged to be discriminatory or, in the case of personnel action, within forty-five (45) days of the effective date of the action. 29 C.F.R. 1614.105(a)(1). An aggrieved individual's meeting with the [VA Facility] Mediation Program Administrator does not meet the requirement to contact an ORM EEO Counselor for purposes of meeting this statutory deadline. Requesting mediation or participating in a mediation session does not suspend statutory deadlines. The aggrieved individual may miss the statutory deadline and may lose the right to bring an EEO complaint if an ORM EEO Counselor is not contacted within the forty-five (45) day time frame required by statute.
- For management, union officials and other locally determined designees who are asked about mediation to refer the matter to the [VA Facility] Mediation Program Administrator:  
Within 2 business days after contact.<sup>20</sup>
- For the [VA Facility] Mediation Program Administrator, in matters involving discrimination and/or reprisal, to notify an ORM Counselor or ORM Field Office ADR Liaison that mediation has been requested:  
Same day as the [VA Facility] Mediation Program Administrator receives the contact or referral.
- For the [VA Facility] Mediation Program Administrator to ensure that all appropriate parties to a mediation, e.g., aggrieved individual, management and union officials, are willing to participate in the mediation:  
Within 3 business days of contact or referral.
- For the [VA Facility] Mediation Program Administrator to contact and assign mediators:  
Within 2 business days of determining the appropriate parties are willing to mediate.
- For the co-mediators to schedule the mediation session with all appropriate persons and notify the [VA Facility] Mediation Program Administrator of the

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mediation, all applicable statutory time requirements take precedence to any timeframes set forth by a facility mediation program.

<sup>20</sup> The timeframes set forth in this section are approximate suggested timeframes based on a sampling of VA mediation programs, and should be tailored to meet the constraints of individual facilities.

scheduled mediation session:

Within 5 business days of receiving the assignment, but always prior to the lapse of applicable statutory deadlines.

- For the co-mediators to conduct and conclude the mediation session:  
Within 5 business days after scheduling the mediation session, but always prior to the lapse of applicable statutory deadlines.
- Mediations referred to the [VA Facility] Mediation Program should be completed:  
Within 15 working days of the contact or referral.<sup>21</sup>
- For co-mediators to draft and have the parties to sign a settlement agreement:  
At the conclusion of the mediation session.<sup>22</sup>
- For co-mediators<sup>23</sup> to distribute the user satisfaction survey:  
At the conclusion of the mediation session.
- For the parties to complete and submit user satisfaction surveys:  
Within 3 business days of the receipt of the survey.

#### **PROGRAM EVALUATION.**<sup>24</sup>

At the conclusion of the mediation, all participants [including mediators], will complete short evaluation forms that will be forwarded to the [VA Facility] Mediation Program Administrator. When appropriate, the [VA Facility] Mediation Program Administrator will forward copies of the completed evaluation forms to the ORM ADR Liaison. The forms are designed to provide statistical data and to help the Program Administrator assess strengths and weaknesses of the process and to provide quality control. As needed, the Program Administrator will provide appropriate feedback to participants and mediators. The Program Administrator will also produce an annual report evaluating the [VA Facility] Mediation Program for the [VA Facility] Mediation Program Working Group, and the [VA Facility] Director.

#### **MEDIATOR QUALIFICATIONS.**<sup>25</sup>

<sup>21</sup> This is a timeframe set forth by ORM's Mediation Program. As a general rule, most VA mediations should be completed within 15 working days of a mediation program administrator receiving a referral.

<sup>22</sup> Where this cannot occur, the agreement should generally be drafted and signed within 3 business days after completion of the session.

<sup>23</sup> Or the [VA Facility] Mediation Program Administrator.

<sup>24</sup> Addresses how the facility's program will be evaluated and measured.

The [VA Facility] Mediation Program employee mediators providing mediator services under the program must meet the following minimum requirements:

- The mediator has successfully completed a 24 hour mediation skills course;
- The mediator has co-mediated at least three cases with a qualified neutral or has mediated five cases independently and received positive evaluations from a qualified trainer/evaluator and/or participants; and
- The mediator must be in good standing in the primary programs under which (s)he provides mediator services.
- The mediator must be familiar with appropriate EEO law and policy.

Co-mediators participating in the [VA Facility] Mediation Program are encouraged to have completed the minimum training requirements listed above and to have been mentored by experienced mediators.

### **ETHICAL PRINCIPLES.<sup>26</sup>**

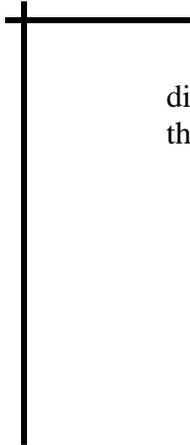
The [VA Facility] Mediation Program adheres to core mediation principles and its employee mediators follow professional guidelines for the practice of mediation. In addition to having personal principles and values that assist the mediator to act with integrity, mediators under the [VA Facility] Mediation Program are expected to:

- Maintain the confidential setting of the mediation process.
- Not coerce parties into a settlement; the decision to settle should remain with the parties in consultation with their counsel.
- Give no legal advice or counsel to either party.
- Be impartial and not let bias for or against either side affect the conduct of the mediation.
- Disclose acquaintances and past relationships to the parties before mediation commences and as soon as the relevance of the acquaintanceship or relationship is known.
- Facilitate parties' communications to the extent they will allow, but do no harm to any party or a party's litigation position.
- Not act as judges or as arbitrators of the fairness of a particular settlement, provided the settlement satisfies both parties and each party is represented by counsel. Where one or both parties are not represented by counsel, and a mediator suspects a possible illegality in the settlement, the mediator should

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<sup>25</sup> Addresses the qualifications that mediators operating under the facility program are required to possess.

<sup>26</sup> Addresses the ethical standards that mediators are expected to comply with if they are acting as mediators under the facility's program.



discuss with the parties the desirability of the parties obtaining legal review of the settlement.

# DRAFT FORMS

*Attachment A. **Rights Fact Sheet***

*Attachment B. **Mediation Request/Consent Form***

*Attachment C. **Agreement to Mediate**.* This is the form which all persons participating in the mediation must sign before beginning the mediation session. It can be done at or before the first mediation session. This is the form that sets forth all the terms under which the mediation is being conducted, and under which the parties are participating. It binds all parties to confidentiality and states that all rights the parties have without the mediation are preserved. Technically, it should be signed before the mediator receives any confidential information.

*Attachment D. **User Satisfaction Survey**.* This form is used to assess the Mediation Program and to make improvements. Persons who have participated in the Program are requested to anonymously and voluntarily complete the questionnaire.

DEPARTMENT OF VETERANS AFFAIRS  
[VA FACILITY] MEDIATION PROGRAM

RIGHTS FACT SHEET

***What is mediation?*** In mediation, a neutral third party called a mediator, helps individuals who are having problems to find solution(s) to their dispute(s). The mediation process is informal, voluntary, and confidential. Mediators are specially trained to help participants to exchange information, listen to each other, and look for creative solutions to the problem that will work for all involved. Mediators do not make decisions for the participants, decide who is right or wrong, or force settlements on a party. In mediation, it is up to the disputing parties (the persons who are directly involved in the problem) to decide whether or not they can reach an agreement.

***How is my confidentiality protected?*** All persons participating in a mediation session are required to sign an agreement to mediate that sets forth the rules they agree to follow during and after the mediation session. Typically, VA agreements to mediate contain provisions that provide that statements made during the mediation are for settlement purposes only and that no party shall be bound by anything said or done at the mediation unless a written settlement is reached and executed by all necessary parties. They also agree not to subpoena or request the mediator to serve as a witness, and the mediator agrees that s/he will not voluntarily testify on behalf of any party or submit any type of report in connection with this mediation. While the discussions that are held during the mediation remain confidential, under law, agreements to mediate and settlement agreements are not fully protected from further disclosure and can be released to other individuals who have a “need to know.”

***How do I preserve my rights to continue my formal equal employment opportunity (EEO) complaint?*** Mediation requests in matters involving discrimination should be handled with particular attention to preserve statutory time frames. In order to preserve his or her statutory rights to file an EEO complaint, an aggrieved individual *must* contact an ORM EEO Counselor within forty-five (45) days of the matter alleged to be discriminatory or, in the case of personnel action, within forty-five (45) days of the effective date of the action. 29 C.F.R. 1614.105(a)(1). Contacting the Mediation Program Administrator and/or EEO and Affirmative Employment Program Specialist at the facility does not meet the forty-five (45) day statutory requirement. Once the ORM Counselor has been contacted, the forty-five (45) day statutory deadline is met (or not met) and the clock is tolled. The Mediation Program Administrator and/or EEO and Affirmative Employment Program Specialist will be responsible for working with the ORM Counselor to ensure that various details are worked out and the mediation is smoothly and timely processed.



***How do I preserve my rights to continue my formal grievance?*** Mediation methods may be used prior to or during a grievance, arbitration and/or statutory appeal. In the use of the mediation processes, contractual time frames will be stayed by mutual agreement. Statutory time frames cannot be stayed, and the grievant must continue to comply with all statutory deadlines.

***How do I find out more about deadlines?*** Contact the [VA Facility] Mediation Program Administrator, the [VA Facility] EEO and Affirmative Employment Program Specialist, an ORM EEO Counselor or a union representative. Some deadlines are set by law, and others are set by contract, regulation and/or policy. Deadlines that are set by law cannot be extended even if both parties are willing. It is up to the aggrieved individual to make sure all of the statutory deadlines are met or an acceptable agreement is signed extending the deadlines. Remember; it is the responsibility of the aggrieved individual to make sure they meet all necessary deadlines.

***How do I request mediation?*** Either party may request mediation. Mediation requests may be initiated by contacting the [VA Facility] Mediation Program Administrator.

***Can union members use mediation, and what role does the union play in the mediation session?*** Any bargaining unit employee can use mediation, provided management and the union agree. The union is the exclusive representative of its members, as well as all facility employees covered by the bargaining unit. Based on its status of exclusive representative, the union has the right to be present and participate in all mediation sessions (and any other formal meetings), involving members of the bargaining unit (whether or not that employee is a union member). Additionally, if requested by an aggrieved individual, the union may also serve as the aggrieved individual's representative during a mediation session.

***What happens after the mediation?*** If the parties are able to reach an agreement through mediation, the co-mediators typically draft a written settlement agreement that is then signed by the parties. Written settlement agreements reached through mediation are just as binding as any other settlement agreements. However, if no solution is reached by the parties and they are not able to settle their dispute, the aggrieved individual resumes the right to continue through traditional dispute resolution processes (EEO complaint or grievance), provided they have taken steps to preserve their rights to that process.

***Do settlements arrived at in mediation set precedent for future EEO or labor/management matters?*** While signed settlement agreements bind the parties who signed the agreement, resolutions reached in mediation and the settlement agreements reflecting these agreement cannot typically be used as precedent for

future matters involving new parties.

***Where can I go to get more information on mediation?*** Questions about mediation can be addressed to a [VA Facility] Mediation Program Administrator, the [VA Facility] EEO and Affirmative Employment Program Specialist, an ORM EEO Counselor or a union representative. Also, for general information about mediation, the VA maintains a very informative web site located on the Intranet at <http://vaww.va.gov/adr/index.htm> and on the Internet at <http://www.va.gov/adr/index.htm>.

**DEPARTMENT OF VETERANS AFFAIRS  
[VA FACILITY] MEDIATION PROGRAM**

**Agreement to Mediate**

1. I understand that this is an agreement by the parties to attempt to resolve the following issues, by submitting these issues to mediation:

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2. I understand that mediation is a dispute resolution process that is non-adversarial in nature and seeks to find solution to the problem. The mediation process does not declare winners or losers. The main focus is to seek a resolution that is informal, quick and minimizes the harm to either party.

3. I understand that the mediator (co-mediators) is not involved in the immediate occurrence and is committed to treating this matter in a fair and unbiased way. The mediator's role is to facilitate and help the parties reach for themselves a mutually satisfactory resolution to the problem. The decision-making power rests with the parties, not the mediator(s). If the parties cannot agree on a resolution, the mediator(s) will NOT impose a resolution nor will s/he offer judgment as to which party, if any, is at fault. In certain circumstances, co-mediators will be assigned to the matter.

4. I understand that the mediator has no authority to make decisions or act as a judge or arbitrator. The mediator will not act as an advocate or attorney for any party. To the extent either the complainant or the agency wishes to have a representative or legal counsel to consult with or assist them at any stage in the mediation, the party is responsible for taking steps to obtain such a person.

5. I understand that mediation is a confidential process. Any documents submitted to the Mediator and statements made during the mediation are for settlement purposes only. I agree not to subpoena or request the Mediator to serve as a witness, or request or use as evidence any materials prepared by the Mediator for the mediation, with the exception of a settlement document signed by the parties. In no event will the Mediator voluntarily testify on behalf of any party or submit any type of report in connection with this mediation. However, I understand that matters that are admissible in a court of law or other administrative process continue to be admissible even though brought up in a mediation session.

6. I understand that no party shall be bound by anything said or done at the mediation unless a written settlement is reached and executed by all necessary parties. If a settlement is reached, the Mediator shall reduce the agreement to writing and, when signed and approved by the appropriate authorities for all the parties, the settlement document shall be legally binding upon all parties to the agreement.

7. In electing to use mediation, I understand that no statutory deadlines are waived, and that all statutory deadlines must be adhered to.

8. The aggrieved party's **RIGHTS** to pursue informal or formal processes are not waived and

will be protected during the mediation process. At the same time, the aggrieved party's **RESPONSIBILITIES** to comply with all requirements of any administrative or court process, e.g., time limits, points of contact, **ARE NOT WAIVED**, and must be adhered to.

9. I understand that in the event the mediation is terminated for any reason, the aggrieved party may continue to pursue an informal or formal resolution of the matter as s/he sees fit.

10. No admission of guilt or wrongdoing by either party is implied, and none should be inferred, by participation in this process.

11. I will sincerely attempt to resolve this matter, agree to cooperate with the Mediator assigned to this matter, and give serious consideration to all suggestions made in regard to developing a realistic solution to the problem. I will conduct myself in a courteous and non-hostile manner, use appropriate language, and to allow the Mediator to interrupt the process if the Mediator feels a caucus or break is needed to facilitate the mediation process.

12. The Mediator agrees to notify the parties, their representatives and the appropriate management official of the status and results of the mediation process within one working day of termination of the process, including settlements, withdrawal from, or unsuccessful conclusion of the process.

**BY SIGNATURE BELOW, I ACKNOWLEDGE THAT I HAVE READ, UNDERSTAND AND AGREE TO THIS AGREEMENT TO PARTICIPATE IN MEDIATION:**

\_\_\_\_\_  
**AGGRIEVED INDIVIDUAL** **DATE**

\_\_\_\_\_  
**UNION REPRESENTATIVE** **DATE**

\_\_\_\_\_  
**MANAGEMENT REPRESENTATIVE** **DATE**

\_\_\_\_\_  
**PARTICIPANT** **DATE**

\_\_\_\_\_  
**PARTICIPANT** **DATE**

\_\_\_\_\_  
**PARTICIPANT** **DATE**

\_\_\_\_\_  
**MEDIATOR** **DATE**

\_\_\_\_\_  
**MEDIATOR** **DATE**



DEPARTMENT OF VETERANS AFFAIRS  
[VA FACILITY] MEDIATION PROGRAM

## USER SATISFACTION SURVEY

To find ways to assess and improve the [VA Facility] Mediation Program, persons who have participated in the Program are requested to complete this questionnaire. Your assistance is voluntary, but will help us with making the necessary improvements! Please return the questionnaire to one of the mediators or the [VA Facility] Mediation Program Administrator.

1. Type(s) of issues mediated, and where the matter was in dispute process when mediation was requested (check as many as appropriate):

- |                          |                                    |                          |                      |
|--------------------------|------------------------------------|--------------------------|----------------------|
| <input type="checkbox"/> | Discrimination                     | <input type="checkbox"/> | Pre-formal action    |
| <input type="checkbox"/> | Reprisal                           | <input type="checkbox"/> | EEO Counseling       |
| <input type="checkbox"/> | Conduct-related adverse action     | <input type="checkbox"/> | Formal EEO complaint |
| <input type="checkbox"/> | Harassment                         | <input type="checkbox"/> | Grievance            |
| <input type="checkbox"/> | Performance-related adverse action | <input type="checkbox"/> | MSPB                 |
| <input type="checkbox"/> | Non-selection                      | <input type="checkbox"/> | FLRA                 |
| <input type="checkbox"/> | Non-promotion                      |                          |                      |
| <input type="checkbox"/> | Other (please describe): _____     |                          |                      |
- 

2. Describe the type of settlement that resulted from the mediation process.

- Complete agreement/settlement
- Partial agreement/settlement
- No agreement/settlement
- Cancelled
- Settlement prior to mediation
- Other (please explain): \_\_\_\_\_

3. Please describe any other impacts or benefits that you felt resulted from the mediation process. Examples might include relationships repaired, communication enhanced, office productivity enhanced, money saved, etc.

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4. Were you satisfied with the process?

- Yes
- No

Please provide any comments: \_\_\_\_\_

5. Would you use mediation again?

Yes

No

Please provide any comments: \_\_\_\_\_

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6. Is there anything that you think should be done to improve the [VA Facility] Mediation Program?

Yes

No

Please provide any comments: \_\_\_\_\_

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7. Please rate the following items on a scale of 1 to 5 by circling the number that represents your choice:

1 = strongly disagree  
2 = somewhat disagree  
3 = neither agree or disagree  
4 = somewhat agree  
5 = strongly agree  
N = don't know or are unable to determine

a. The mediation process was impartial.	1	2	3	4	5	N
b. The right parties were at the table.	1	2	3	4	5	N
c. Both sides negotiated in good faith.	1	2	3	4	5	N
d. Mediation was appropriate for this matter.	1	2	3	4	5	N
e. You were able to fully present your case.	1	2	3	4	5	N
f. The mediator helped create a positive atmosphere.	1	2	3	4	5	N
g. The mediator helped create realistic options for settling the matter.	1	2	3	4	5	N
h. The mediator was impartial.	1	2	3	4	5	N
i. The mediator participated the right amount.	1	2	3	4	5	N
j. The mediator listened well.	1	2	3	4	5	N

k. The mediator helped clarify the key issues of the parties.	1	2	3	4	5	N
l. The mediator explained the process well.	1	2	3	4	5	N
m. The mediator was fair.	1	2	3	4	5	N
n. The mediator was effective.	1	2	3	4	5	N

8. If this was a co-mediation, was it beneficial to have two mediators?

- Yes
- No

Please provide any comments: \_\_\_\_\_

9. How long did the mediation session take? \_\_\_\_\_ hours.

10. Please provide any other comments: \_\_\_\_\_

Thank you for taking the time to complete this questionnaire. Please return it to one of the mediators or the [VA Facility] Mediation Program Administrator.