

ALTERNATIVE DISPUTE RESOLUTION PROGRAM (MEDIATION)

Medical Center Policy 00-EEO-02

VA Health Care System
Birmingham, Alabama 35233

Signatory Authority:
Oladipo A. Kukoyi
Interim Health Care System Director

Responsible Owner:
The EEO Program Manager

Rescinded Document:
00-EEO-02, Alternative Dispute
Resolution Program (Mediation),
dated, September 8, 2017

Effective Date:
May 31, 2021

Recertification Date:
May 31, 2026

1. PURPOSE and POLICY:

a. This Medical Center Policy (MCP) defines policy, assigns responsibility, and outlines the process for resolving disputes within the Equal Employment Opportunity (EEO) forum through alternative dispute resolution.

b. To ensure a work environment that is conducive to the delivery of high-quality patient services, the Birmingham VA Health Care System (BVAHCS) is dedicated to utilizing a creative and impartial approach to the early resolution of disputes at the lowest possible level. Mediation, one of several forms of Alternative Dispute Resolution (ADR) will be utilized at the medical center and all community-based outpatient clinics (CBOC) operated by the BVAHCS. Although this policy is specific to disputes arising in the EEO forum, the same concepts should be considered and, where appropriate, utilized for early dispute intervention of non-EEO workplace disputes throughout the BVAHCS.

c. Mediation may be used to resolve workplace and employment disputes that include supervisor/employee, employee/employee, service/service, patient complaints, and other workplace differences.

d. Mediation may be used to resolve differences and demonstrates a commitment to a positive approach and joint ownership of concerns and solutions to workplace conflict.

e. Mediation allows parties to resolve their differences quickly, in a less formal and adversarial manner, with more efficient use of resources than traditional dispute resolution mechanisms.

f. BVAHCS mediators shall not be assigned to EEO disputes within the medical center, but may mediate non-EEO BVAHCS disputes in which there exists no conflict.

g. The Office of General Counsel shall be contacted whenever a question arises regarding the appropriateness of mediating a dispute and prior to the Interim Health Care System Director (HCSD) signing a settlement agreement to ensure the settlement agreement is in legal order.

h. Certain cases such as patient neglect; fraud, waste and abuse (FWA); sexual harassment; criminal acts; those at litigation or actively under investigation by other organizations such as MSPB, OSC, or OWAP; and where compensatory damages are involved, may not be appropriate for mediation. Suppose it is determined that a case is not suitable for mediation. In that case, the management or union official will notify the EEO Program Manager, who will inform all parties and, when applicable, complete the VA FORM 0889c.

i. Refer to Attachment A for ADR definitions and Attachment B for general question & answer information pertaining to the ADR Program.

2. **JUSTIFICATION:** This policy exists due to the following policy mandates in Veterans Administration (VA) Directive 5978 Alternative Dispute Resolution, dated February 23, 2000.

3. **ACTION:**

a. Responsibility:

(1) The HCSD is responsible for approving, establishing, and maintaining a mediation program at the medical center, and providing adequate financial and other resources to support the ADR Program. All settlement agreements that arise out of mediation will be submitted to the HCSD for final approval. Final approval may not be delegated except in the long-term absence of the HCSD and only then delegated to the Associate Director.

(2) The Medical Center ADR Program Coordinator is responsible for the overall administration of the medical center's ADR program to include:

(a) Acting as the Office of Resolution Management Diversity and Inclusion (ORMDI) and medical center employee initial point of contact for all ADR scheduling and issues including questions related to the Veterans Health Administration (VHA) ADR process.

(b) Coordinating mediation, scheduling the mediation session, and requesting mediator(s) from the Office of Resolution Management Diversity and Inclusion (ORMDI) ADR Coordinator or Veterans Integrated Service Network (VISN) ADR Coordinator.

(c) Ensuring the accurate completion of all ADR related documents to include the Agreement to Mediate Form and timely update of the VACO ADR case tracking system.

(d) Drafting and/or reviewing potential settlement agreements for correctness, clarity, and ability to enforce prior to submission to the Office of General Counsel for final review.

(e) Uploading executed settlement agreements into the VACO ADR tracker.

(f) Managing the medical center list of VA certified ADR mediators to include recommending additional training for new mediators and removal of mediators from the active mediation roster.

(3) All employees are encouraged to consider mediation as an alternate form of resolution for disagreements and disputes that arise in the workplace, and remain informed about mediation and the mediation process through training, handouts, brochures, staff meetings, etc. Awareness of the VHA ADR program shall be a part of new employee orientation and refresher training.

(5) Medical center staff participating in mediation are responsible for adhering to the following mediation ground rules:

(a) The mediator(s) control the process, participants and their representatives will yield to the mediator's control.

(b) Participants will act in good faith and commit themselves fully to the process.

(c) Any communication during the mediation will be made in such a manner as to avoid being offensive or defamatory. Cursing and name-calling will not be permitted.

(d) The parties agree that all communication at mediation will be and indefinitely remain confidential.

(e) The parties agree that any resolution agreement will be reduced to writing and signed by all parties. Upon final approval by the HCSD, the written settlement agreement will be binding on both parties.

(f) After completion of mediation, parties to the mediation agree to complete a mediation survey and forward the completed survey to the ADR Program Coordinator within five (5) business days.

b. Procedure:

(1) Requests for Mediation: Either party to a dispute may request mediation. Mediation requests may be initiated by calling the Medical Center ADR Program Coordinator or (ORMDI).

(2) Acceptance of a Mediation Request: A request for mediation can be made and accepted at any time with the understanding that if a complainant requests mediation, management is obligated by VHA policy (with some exceptions, see 2.f.) to mediate the dispute in good faith. ORMDI / Medical Center ADR Program Coordinator will attempt to obtain written commitment from both parties to mediation within 10-business days of the initial request to mediate.

(3) Assignment of Mediator(s): ORMDI / the VISN 7 ADR Program Coordinator shall assign mediators upon request from the Medical Center ADR Program Coordinator and receipt of proposed mediation location, date and start time.

(4) Signing the Agreement to Mediate: The parties and all persons participating in the mediation must sign an agreement to participate in mediation (Attachment C), prior to the mediation. The document sets forth the requirements for both parties entering into mediation in good faith to resolve their differences.

(5) Procedures After the Agreement to Mediate: The mediation will be scheduled as early as possible, the goal being within 30-calendar days after notification of a completed agreement to mediate. The Medical Center ADR Program Coordinator will reconfirm participant attendance at the mediation one (1) to two (2) workdays in advance of the mediation. The mediation information sheet (Attachment B) will be used to brief the parties regarding the mediation process.

(6) Conducting the Mediation Process: Attorneys, advocates, union and/or other representatives from either or both parties may be present as passive participants in the mediation. Unlike formal litigation, attorneys, advocates, union and/or other representatives typically take a passive role in the mediation session. Attorneys, advocates, union and/or other representatives participating in the mediation process shall be bound by the same rules and agreements as the disputants. A settlement agreement (Attachment D) shall be prepared at the request of the disputing individuals if an agreement is reached. At the conclusion of the mediation, the mediator(s) shall collect from all participants and destroy all notes and documentation presented at and drafted during the mediation.

(7) Evaluating the Mediation Process: All participant evaluations will be asked to complete a user satisfaction sheet (Attachment E) and send the evaluation to the Medical Center ADR Program Coordinator for collating, analysis, and inclusion into the ADR Tracker database.

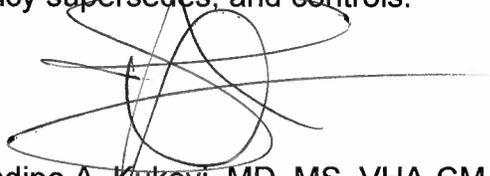
4. REFERENCES:

Directive 5978 Alternative Dispute Resolution, dated February 23, 2000

Administrative Dispute Resolution Act of 1996, 5 U.S.C. Section 572.
Article 6 of the 2011 DVA/AFGE National Master Agreement.
Executive Order No. 13062, 62 FR 51755, 1997 WL 610757 (President).
Title 29, Code of Federal Regulations, Sub-part 1614.

5. **REVIEW:** This MCP must be reviewed at minimum at recertification and including when there is a change to VA Directive 5978 Alternative Dispute Resolution, dated February 23, 2000.

6. **RECERTIFICATION:** This MCP is scheduled for recertification on or before the last working day of May 2026. This MCP will continue to serve as local policy until it is recertified or rescinded. In the event of contradiction with national policy, the national policy supersedes, and controls.



Oladipo A. Kukoyi, MD, MS, VHA-CM
Interim Health Care System Director

Attachments:

- Attachment A: Alternative Dispute Resolutions Terms and Definitions
- Attachment B: Mediation Information Sheet
- Attachment C: Agreement to Mediate Example Letter
- Attachment D: Settlement Agreement
- Attachment E: VA ADR Tracker Mediation User Satisfaction Questionnaire

ALTERNATIVE DISPUTE RESOLUTION TERMS AND DEFINITIONS

(1) The Alternative Dispute Resolution (ADR) Program Coordinator is a BVAMC staff member, generally the EEO Program Manager, responsible for the overall coordination, administration and reporting of the center's ADR program.

(2) Co-Mediators are mediators who work together to mediate a particular dispute.

(3) The Complainant is the individual who is alleging that something adverse has happened. The complainant is responsible for entering into mediation in good faith.

(4) The Management Representative (who is not a disputant) is the individual from management who has the option to attend the mediation session to represent the VA. The management representative is responsible for participating in the mediation process in good faith.

(5) Mediation is a process whereby a neutral third party called a mediator(s), acts to encourage and facilitate the resolution of a dispute between two or more parties. The process is voluntary for the complainant and confidential. It is a mutually agreed upon unbiased, informal, and confidential process with the objective of guiding the disputing parties toward reach a mutually acceptable resolution to their dispute. In mediation, mediators are not authorized to make decisions or force a decision on any party to the dispute.

(6) Mediation Sessions are confidential, and the parties agree that if the matter is not settled, the mediator(s) cannot be used by either party as witnesses in future litigation or any other process used to settle the issues of the dispute. A mediation session is a structured process that enables the parties to exchange information, listen to one another's position and jointly consider various options that are mutually advantageous to both parties. Parties in mediation should agree that they are not aware of any conflicts with and are, therefore, willing to use the appointed Mediators.

(7) A Mediator is an impartial third party who assists the parties in working toward a compromise agreement. The mediator's role includes but is not limited to assisting the parties to identify issues, fostering joint problem solving, and exploring settlement opportunities. The mediator is not a decision-maker and does not have the power to force a decision on either party. Mediators shall not provide counseling, therapy, or legal advice to either party during the mediation process. They are generally

ORMDI and BVAHCS employees who have received special training in conflict resolution techniques that help disputing parties resolve their problem. Mediators are neutral individuals who have no relationship to either party and no personal interest in the outcome of the dispute they are mediating.

MEDIATION INFORMATION SHEET
Department of Veterans Affairs
Birmingham VA Medical Center Mediation Program

What is the Birmingham VA Health Care System (BVAHCS) Mediation Program?

The mediation program was created to actively support local mediation to resolve differences. Using mediation demonstrates a commitment to a positive approach and joint ownership of concerns and solutions. It offers mediation as an alternative to resolve problems and disputes before the parties get involved in a more formal process and can be used any time both parties are willing to use it.

What is Mediation?

Mediation is an informal way for complainants to resolve disputes with a fellow employee, manager, or colleague. In mediation, a neutral person called a mediator helps two or more persons explore ways to resolve their differences and reach an agreement that best addresses their interests. In mediation, all parties must be willing to work out the problem among themselves. Mediation, unlike arbitration or court proceedings, does not focus on who is right or who is wrong. The mediator has no power to make the decision for the parties or tell the parties what they should do. It is the parties themselves who decide what is important to each of them and make decisions based on those factors. A mediator helps the parties become the decision-makers by understanding and listening to each other and by working together to identify common ground upon which to create options and solutions that meet their concerns. VHA mediations may utilize co-mediators.

Why should I use the Mediation Program?

Mediation is faster, less formal, and much less expensive in both time and resources for all parties involved. Neither party gives up any rights when using the program. Mediation is only one more way to resolve disputes and has been used successfully by other federal agencies.

Mediation is a type of problem-solving process that helps individuals to:

- a. Communicate with each other focusing on resolution, not on who is right or wrong.

b. Tailor their own mutually satisfactory resolution instead of taking the problem to a judge, arbitrator, or outside decision-maker whose ruling may be unsatisfactory to one or both parties.

What is the role of the Union in the Mediation Program?

The union is responsible for facilitating mediation awareness within the medical center's bargaining unit employees and encouraging the use of mediation among union stewards and employees. The union may as desired, attend mediation involving bargaining unit employee as a representative or observer.

When can I Use Mediation?

The mediation program can be used to resolve a variety of differences, including grievances, EEO discrimination complaints, employee/employee, supervisor/employee, service/service, patient complaints, and other work-place differences.

How do I begin the Mediation process?

The mediation process is initiated by contacting the ADR Program Coordinator / the EEO Program Manager. You may also contact the Office of Resolution Management at 888-737-3361 if the dispute is an EEO complaint.

How does the Mediation Program work?

a. Requests for Mediation: Either party to a dispute may request mediation. Mediation requests may be initiated by contacting the ADR Program Coordinator. Prior to processing the request, the ADR Program Coordinator should ensure that both parties are willing to participate in mediation.

b. Ground Rules for Mediation: Upon being contacted about a dispute or potential mediation, the ADR program coordinator, shall apprise the complainant / disputant of their rights and give that individual a copy of the mediation memorandum attached with the agreement to mediate and maintain confidentiality notice (Attachment C).

c. Acceptance of a Mediation Request: A request for mediation can be made and accepted at any time, with the understanding that both disputants must agree to mediate their dispute. Submission of a dispute to mediation procedures may require the parties agree to the extension of time periods in other proceedings, which will be made without loss of rights. However, there are some statutory time frames that must be followed to preserve a complainant's rights to go forward in the traditional procedures. Statutory time frames are time limitations that must be followed; otherwise, the employee loses his/her rights to use that process. While some time frames are mandatory, there are some EEO and grievance procedures, which have provisions, with agreement of the parties, to permit time periods to be extended without loss of rights for disputants. It is up to the parties to ensure compliance with statutory time frames. The

ADR program coordinator goal is to commit all parties accept or reject the mediation request within 15-business days of the initial request to mediate.

d. Assignment of Mediator(s): The ORMDI / VISN-7 ADR Program Coordinator assigns mediators based upon availability.

e. Signing the Agreement to Mediate: The parties and all persons participating in the mediation must sign an agreement to mediate prior to the mediation. The document will set forth the requirements for both parties entering into mediation in good faith to resolve their differences.

f. Procedures after the Agreement to Mediate: The ADR Program Coordinator is responsible for scheduling the mediation session. The mediation session will be scheduled as early as possible after receipt of the assignment. Within 1-2 workdays prior to the date scheduled for mediation, the ADR Program Coordinator will confirm the time, date, and place for the mediation with the participating parties (disputants and mediator(s)).

g. Concluding the Mediation Process: At the conclusion of the mediation process, a settlement agreement (Attachment D) may be prepared at the request of the disputants if an agreement is reached. All notes and documentation concerning the mediation shall be collected by the mediator(s) and destroyed.

h. Evaluating the Mediation Process: At the conclusion of the mediation, the parties are requested to complete a user satisfaction survey (Attachment F).

Who is involved in the Mediation Process?

a. Complainant/Disputant: Any employee or applicant for employment who alleges that something adverse has happened or has a problem that he/she would like to bring to mediation can participate in the program.

b. Union: If a bargaining unit employee is a party to the mediation, union officials can serve in a variety of roles: resources, formal or informal representative, party to the dispute, observer, etc.

c. Management Participant: The management official who is authorized to discuss and execute settlement agreements on behalf of the department.

d. Mediator: A fair, neutral, and impartial third party, trained and skilled in conflict resolution techniques, who has been approved to participate in the mediation program.

e. Representatives: Each person may choose a representative to attend the mediation session. The representative may be a friend, co-worker, union representative, supervisor, relative, or attorney.

f. Other Team Members: Generally, only the mediator(s), the aggrieved person, the union, and the management participant (and respective representatives, if desired) are present in the room where mediation takes place. Behind the scenes, there may be a person/person who may be consulted regarding regulatory requirements.

g. Attorneys: Parties may use attorneys in the process. The role the attorney will play in the process should be discussed with the mediator prior to the beginning of the mediation session.

h. The Office of General Counsel will review all proposed EEO settlement agreement drafts for legal correctness prior to the parties signing the settlement agreement.

Are Mediation sessions confidential?

As a general rule yes but there are exceptions. The mediators will work to protect the confidentiality of the parties and the mediation process. The mediation session and all materials disclosed during the mediation are confidential as a general rule in that both parties must agree to confidentiality. Mediators usually cannot be compelled to testify concerning the mediation discussions. During private sessions, mediators will not disclose to the other party anything that one of the parties has shared with them in confidence. Of course, if the case is not settled and goes to formal litigation, each party could use the court process to obtain documents that would normally be obtained through the litigation process or under the Freedom of Information Act.

Will an aggrieved party's rights to pursue court and administrative action be affected if he or she decides to mediate the issue?

No. If unresolved issues remain at the end of the mediation, the complainant may continue processing them through the formal complaint process.

How can you obtain further information about the Mediation Program?

For more information contact the BVAHCS ADR Program Coordinator.



Office of Resolution Management

Department of Veterans Affairs

AGREEMENT TO MEDIATE AND MAINTAIN CONFIDENTIALITY

Aggrieved Party: _____
Case: #200I-0521-2021123456

This is an agreement by the parties identified below to participate in mediation and adhere to the confidentiality provisions applicable to the mediation process as described in the Administrative Dispute Resolution Act of 1996, 5 U.S.C. – 574 (ADRA).

1. The parties understand that mediation is being used to discuss, and potentially resolve issues that have arisen in the workplace and are the subject of the above-referenced EEO complaint. The parties understand that the mediator's role is to facilitate communication among the parties and assist them in exploring options for resolving the dispute. The mediator(s) does not make decisions for the parties, render a determination on the merit of the issue(s) raised, or act as an advocate for either party. Should either party designate an individual to serve as their representative, providing advice and counseling during the process, such information will be shared with all parties in advance of the session.
2. Mediation sessions are not recorded or transcribed. All notes taken by the mediator(s) are destroyed at the completion of the mediation process. The parties agree not to subpoena the mediator(s) or compel the mediator(s) to produce documents provided by a party in a pending of future administrative or judicial procedure. Also, the mediator(s) will not voluntarily testify on behalf of a party in any pending or future administrative or judicial proceeding.
3. The parties understand that any oral statement, or any written communication prepared specifically for the mediation, which is provided only to the mediator(s) in confidence will be kept confidential by the mediator(s) with the exception of information concerning fraud, waste, abuse criminal activity, sexual harassment, or threats of imminent harm. The parties also understand that oral and written communications shared with all parties are not protected and may be disclosed and matters that are admissible in a court of law or other administrative process continue to be admissible even though brought up in the mediation process. The parties understand that they have the option of contracting to increase their own confidentiality obligations by initialing the **statement in the box below**.
4. Although communications made in the presence of all parties and written materials shared with all parties may be disclosed, no party shall be bound by anything said or done during the

mediation process unless a written agreement is reached and executed by all necessary parties.

5. If an agreement is reached, it shall be reduced to writing and when signed and approved by the appropriate authorities for all parties, the document shall be legally binding upon the parties to the agreement.

Expanded Confidentiality Statement

_____/_____ In addition to the confidentiality described above, we further agree that oral communications made with all parties present or otherwise confidential documents a party makes available to all parties will be confidential in this mediation. We also understand that despite this agreement for additional confidentiality, outside parties may still have access under the Freedom of Information Act to documents which a party makes available to all other parties and that a party's failure to comply with any confidentiality obligations beyond the protections of ADRA may not be enforceable.

BY SIGNATURE BELOW, I ACKNOWLEDGE THAT I HAVE READ, UNDERSTAND, AND AGREE TO THE PROVISIONS OF THIS AGREEMENT.

(Complainant)

(Date)

(Complainant Representative)

(Date)

(Management Official)

(Date)

(Management Official's Representative)

(Date)

(Union Representative)

(Date)

SAMPLE SETTLEMENT AGREEMENT
(Complainant's Name) EEO Case No. 2001-0521-2021123456

This Settlement Agreement ("Agreement") is entered into by and between _____ ("Aggrieved Person/Complainant") and the Department of Veterans Affairs ("Agency"), collectively referred to as the "Parties." For and in consideration of the promises and covenants herein contained, the Parties hereby agree that:

WHEREAS, the Parties to this Agreement wish to fully and finally resolve and settle all claims between them arising out of all claims, complaints, and actions Aggrieved Person/Complainant has or may have against the Agency, including, but not limited to, claims under Title VII of the Civil Rights Act, as amended, claims of emotional distress, or physical injuries that allegedly arose from emotional stress, and any other federal or state claim, including both civil or criminal claims.

1. Aggrieved Person/Complainant obligations:

a. Withdrawal and Waiver: In consideration of the settlement terms referenced in Paragraph 2 and any other covenant made by the Agency in this Agreement, Aggrieved Person/Complainant hereby voluntarily withdraws any and all pending informal and formal EEO complaints, any appeals to the Merit Systems Protection Board, any complaints before the Office of Special Counsel, any grievances, whether formal or informal, any court actions, and all other claims arising under any federal, state, or local law, regulation, or ordinance, against the Agency, its past and present administrators or employees, in their personal or official capacities, in any stage of processing in their entirety, including, but not limited to, EEO Case No: 2001-0521-2021123456.

b. Except as provided for in this Agreement and in exchange for the terms provided, Aggrieved Person/Complainant hereby settles, waives, withdraws, and forever discharges the Agency, its past and present administrators or employees, in their personal or official capacities, from any and all complaints, claims, grievances, appeals, expenses, and damages of any kind, which are or may be asserted by the Aggrieved Person/Complainant or on the Aggrieved Person/Complainant's behalf, based on any event occurring before the Aggrieved Person/Complainant's execution of this Agreement.

c. (Delineate additional obligations of the Aggrieved Person / Complainant – be timeframe specific where applicable).

d. (Delineate additional obligations of the Aggrieved Person / Complainant).

2. Agency Obligations:

As due consideration for the Parties' mutual undertakings and obligation(s) provided for in this Agreement, including but not limited to Aggrieved Person/Complainant's immediate dismissal of all complaints discussed heretofore, the Agency hereby agree to the following:

- a. (Delineate the Agency's obligations – be timeframe specific where applicable)
- b. (Delineate the Agency's obligations)
- c. (Delineate the Agency's obligations)

3. Enforcement:

If the Aggrieved Person/Complainant believes that the Agency has breached this Agreement, he/she must notify the Deputy Assistant Secretary for Resolution Management (ORM) in writing, within 30 calendar days after the date of the alleged breach. If ORM determines a breach has occurred, the Aggrieved Person/Complainant may elect to have this Agreement implemented, or to have any waived or withdrawn complaint(s) or other actions reinstated and processed from the point in the process where processing ceased. Pursuant to 29 CFR §1614.504, the Aggrieved Person/Complainant may appeal to the Equal Employment Opportunity Commission (EEOC) if he or she believes that the Agency has either not fully implemented this Agreement or has improperly failed to reinstate his or her complaint.

4. Further Understandings:

- a. This Agreement does not constitute and shall not be construed as an admission of guilt, liability, wrongdoing, or violation of any federal or state statute or regulation by the Agency or the Aggrieved Person/Complainant and is entered into solely to resolve the subject matter of this Agreement. This Agreement and any provided settlement hereunder are made solely in consideration of the covenants made herein and to avoid further cost and expense associated with the allegations and claims made by the Complainant.
- b. This Agreement constitutes the entire understanding between the Parties and fully supersedes any and all prior agreements or understandings pertaining to the subject matter. No other oral or written terms or commitments exist between the Parties.
- c. This Agreement addresses unique circumstances and shall not serve as precedent or past practice for resolving any other matter involving the Agency.

d. If applicable, the Aggrieved Person/Complainant acknowledges that it is a separate entity, the Defense Finance and Accounting Services (DFAS), that administers payments and restores leave. The Agency exercises no control over, nor is the principle of, DFAS. The Agency will make all reasonable efforts within seven (7) calendar days of the date on which the Employee executed this Agreement to submit to DFAS any paperwork necessary to process an administrative restoration of leave; however, the Agency makes no representation concerning when DFAS will complete agreed upon payments or leave restoration, if any.

e. The Aggrieved Person/Complainant shall be solely responsible for the payment of attorney fees and costs, if any, related to prosecution of discrimination complaints and other actions against the Agency referenced in paragraph 1.

f. The Aggrieved Person/Complainant shall be solely responsible for the payment of all taxes, if any, attributable to this Agreement. The Agency makes no representations concerning the tax consequences of this Agreement.

g. This Agreement shall be made a part of the record of the Aggrieved Person/Complainant's above-referenced discrimination complaint(s) and remains enforceable under the jurisdiction of the EEOC following dismissal of this case.

h. If a binding determination is made that any term(s) of this Agreement is/are unenforceable, such unenforceability shall not affect any other provisions of this Agreement, and the remaining terms of this Agreement shall, unless prohibited by law, remain effective as if such unenforceable provision(s) was/were never contained herein.

i. This Agreement may not be amended or modified except by a writing signed by all Parties. Further, the Parties agree and acknowledge no presumption or conclusion of any kind shall be drawn against the drafter(s) of this Agreement. The Parties also agree and acknowledge that both the Complainant and the Agency contributed to the final version of this Agreement through comments and negotiations.

j. The Aggrieved Person/Complainant enters into this Agreement voluntarily without duress or coercion. The Aggrieved Person/Complainant fully understands all the terms of this Agreement and is aware of the right to consult an attorney. Further, the Aggrieved Person/Complainant has not waived any rights or claims that may arise after this Agreement is executed or that the Aggrieved Person/Complainant is otherwise entitled.

5. Solely as to any claim of discrimination based on age, 40 years or older, the Parties agree that this Agreement complies with the requirements of the Age Discrimination in Employment Act and the Older Workers Benefit Protection Act. In particular, The Aggrieved Person/Complainant is hereby advised of the following:

- a. The Aggrieved Person/Complainant is advised to consult with an attorney before signing and delivering this Agreement. However, the decision whether to consult with an attorney rests with the Aggrieved Person/Complainant.
- b. The Aggrieved Person/Complainant is advised to read the entire Agreement and to seek clarification of any provision(s) (s)he does not fully understand before signing this Agreement.
- c. The Aggrieved Person/Complainant is advised that (s)he has not waived any rights or claims that may arise after the date of the Agreement.
- d. The Aggrieved Person/Complainant is advised that (s)he has not waived any rights or claims to benefit to which (s)he is entitled.
- e. The Aggrieved Person/Complainant is advised that (s)he has twenty-one (21) days from the date of receipt of this Agreement to consider its terms. Should Complainant sign this Agreement before the twenty-first (21st) day, Complainant's decision to accept a shortening of this period must be knowing and voluntary and must not be induced by the Agency or by anyone else through fraud, misrepresentation and/or a threat to withdraw or alter the terms of this Agreement.
- f. The Aggrieved Person/Complainant is advised that (s)he has seven (7) days from the date that all Parties have signed this Agreement to revoke this Agreement. Complainant may revoke this Agreement by delivering written notice of revocation to the Agency's representative at the following address:

Department of Veterans Affairs
Office of General Counsel
ATTN: (Attorney's name)
Street Address
City, State, Zip Code

Telephone:
Fax number:
Email address:

- g. The Aggrieved Person/Complainant's relinquishment of these claims and rights is specifically conditioned upon the Agency's performance of the actions set forth herein.

This agreement shall be effective upon the last required signature identified below or, in the case of a claim of age discrimination, upon expiration of the 7-day revocation period.

FOR THE AGGRIEVED PERSON/COMPLAINANT:

Aggrieved Person/Complainant's Name

Date

Representative's Name (if any)

Date

FOR THE DEPARTMENT:

Authorized Agency Official's Name

Date

REQUIRED LEGAL SUFFICIENCY REVIEW BY AGENCY COUNSEL:

OGC Official's Name

Date

Agency EEO Case Number: 200I-0521-_____

My participated in the mediation process as:

- Complainant
- Management Official
- Union Representative
- Attorney
- Other

During the current or prior fiscal year, I participated in ADR awareness training.		<input type="checkbox"/> Yes	<input type="checkbox"/> No			
My experience with the mediation process:		5 Strongly Agree	4 Agree	3 Neutral	2 Disagree	1 Strongly Disagree
1	I received sufficient information to understand the process prior to the session.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	The right parties were at the table.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	The mediation environment (location, room temperature, seating) was comfortable.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4	I am satisfied with the timing of the mediation (the time it took to get arranged and initiated, and how long to complete the mediation).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	The mediator explained the mediation process before we started.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	The mediator explained any conflicts or potential conflicts of interest.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7	The mediator was professional.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8	The mediator did not show favor to either side.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9	The mediator honored any requests I made for confidentiality during mediation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10	The mediator avoided offering a legal opinion in this case.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11	The mediator allowed me to bring out all the relevant issues.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

12	The mediator helped us to generate realistic options.	<input type="checkbox"/>				
13	The mediator helped the parties work through issues and move toward closure.	<input type="checkbox"/>				
14	I would recommend this mediator to others for mediation.	<input type="checkbox"/>				
15	The outcome was the best for my situation (even if no resolution is reached).	<input type="checkbox"/>				
16	I would recommend mediation to others.	<input type="checkbox"/>				
17	Overall, I am satisfied with the mediation process.	<input type="checkbox"/>				
18	Mediation helped me to be better aware of the other party's concerns.	<input type="checkbox"/>				
19	Mediation helped the other party to be better aware of my concerns.	<input type="checkbox"/>				
20	This mediation will improve working relationships in my workplace.	<input type="checkbox"/>				
21	Comments					

Thank you for taking the time to complete this questionnaire. Please return this questionnaire to the medical center ADR Program Coordinator at mail code (00/EEO) or via OUTLOOK rick.defilippo@va.gov within 5-business days after the mediation.