



# ADR Newsletter

DEPARTMENT OF VETERANS AFFAIRS (VA)  
OFFICE OF RESOLUTION MANAGEMENT (ORM)

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B.J. Ocker -Editor

## ORM OFFERS PRE-MEDIATION TRAINING

**Nigel Collie, Public Affairs Officer, ORM**

In an effort to improve the outcome of mediations related to EEO complaints, ORM will be offering two different training presentations to prepare participants for their upcoming mediation sessions. The presentations, one designed specifically for managers and one for employees, describe the mediation process, the parties involved and their role in the mediation, and the benefits of mediation. The training also provides a pre-mediation checklist and worksheets to facilitate preparation for the session. The training for managers was rolled out in mid-June; we expect the employee training to become available in mid-July.

Mediation participants have commented that in some instances, participants do not come to mediations prepared, leading to some difficulty in reaching a successful outcome. Research in the mediation field supports this observation. Without appropriate preparation, participants are frequently ill-prepared to come together and find solutions to bring closure to EEO complaints at the lowest level. Mediators have described sessions in which the participants exhibited positional and argumentative behaviors. In these sessions, managers often did not see the point of even engaging in mediations, seeing it as a waste of time or nothing to mediate because their action was not based on discrimination. This approach makes reaching a successful conclusion very difficult.

The objective of the training is to change this perspective. The training is intended to help both parties understand that resolving the dispute early is in the interests of everyone, and to prepare them to seek mutually beneficial solutions. Ideally, participants will come to the mediation table ready to engage in creative deliberations, and to do what is necessary to bring closure to the EEO complaint.

To determine its effectiveness, ORM will be monitoring the results of this training. The outcomes of the mediation sessions where the participants viewed the training will be compared to the average informal EEO resolution rate. We expect to find a strong correlation between positive outcomes and proper preparation. We intend to move the training to the TMS system, where it can be assigned to other participants.

## What are the roles of Labor Unions during ADR?

B.J. Ocker, ADR Specialist, ORM

The labor union's and more specifically union representative's role during an Alternative Dispute Resolution (ADR) session is an important topic for discussion. Some of the questions that often arise include the following:

- \* Does a union have the right to be at an ADR session?
- \* Does the union need to be notified of scheduled ADR sessions?
- \* Can the parties request that the union be excluded from an ADR session?
- \* What role does a union representative have during an ADR session?

It is helpful to define some other elements before answering these questions.

5 U.S.C. § 7114(a)(1), defines the right of collective bargaining for exclusive representatives. Exclusive representation of a specific work unit of employees, or bargaining unit employees (BUE) provides labor unions with certain rights. If an employee who is part of a bargaining unit is a party identified in ADR, there are requirements under the collective bargaining agreement (CBA). As an example, the CBA between the American Federation of Government Employees (AFGE) and the VA explains the rights afforded to the union in Article 6, Alternative Dispute Resolution. Here are some highlights of this Article of the CBA:

- \* The Department and the Union are committed to the use of ADR problem-solving methods to foster a good labor-management relationship.
- \* Employees may utilize the ADR process to resolve individual concerns with the mutual consent of the Union and the Department.
- \* Once an employee elects to use an ADR process, the Union has a right to participate in that process. This right is in addition to an employee's right to Union representation.

In the AFGE CBA the definition of "employee" can be found in Article 1 as part of the exclusive representation. In other words, "Employee" refers to a BUE who is part of a bargaining unit for that union. If any party in the dispute falls under the definition of a BUE, the requirements under Article 6 of the CBA must be followed. The union is to be notified of the ADR session, and is permitted to be present regardless of whether a BUE has requested the union to serve as a representative. There are no contractual requirements for the union to be present during an ADR session that does not involve a bargaining unit employee.

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Union representatives can have varying roles during an ADR session. It is possible to have more than one union representative present during an ADR session. One example would be during a workplace dispute involving two bargaining unit employees; each party may have elected to bring a representative with them to the session.

Union officials may also be present during an ADR session simply to monitor the ADR process to protect the rights of their bargaining unit. In this example, a BUE is involved in the mediation; however, he or she did not elect to have the union as a representative. In this role, the union is present to ensure that any agreement would not conflict with the CBA.

The important lesson to take away from this discussion is to fully understand who is in the ADR room and to ask what role he or she will be serving in during the session. Whenever possible, it is beneficial for the neutral to know when the union will be present in advance of the ADR session. During the introductions when starting the ADR session, the neutral can ask each individual what role they have in the session. This will allow the neutral an opportunity to resolve any questions or concerns regarding the individuals present.



**VALU**  
VA LEARNING UNIVERSITY



**Talent  
Management  
System**

## Looking for ADR resources?

The Department of Veterans Affairs VA Learning University (VALU) and the VA Talent Management System (TMS) has several offerings for VA employees seeking continuing education. Many of the courses are available online. As an example, entering a search for “alternative dispute resolution” provided 25 course options.

For more information, please go to <http://www.valu.va.gov/Home/Index> or log in to your TMS account. Need assistance? You can request help with your TMS account by sending a message to: [vatmshelp@va.gov](mailto:vatmshelp@va.gov)

## ***What Would You Do?***

~B.J. Ocker, ADR Specialist

No matter how many times or types of disputes a mediator may have been involved with, it is common to be surprised with something new! In this section of the newsletter, I will share a scenario for your review. After reading the example, reflect on how you would handle it.

You may send an e-mail with your response to [William.Ocker@va.gov](mailto:William.Ocker@va.gov). I will collect answers from the readers and share them in the next issue.

### **Please consider the following scenario:**

(Contributed by Greg Burke, ORM Ombudsman)

You have been in a mediation session for three hours in the morning and are to resume it in the afternoon. Jake, the employee/complainant, and Amir, his VAMC supervisor, have been able to agree on several remedies sought by Jake in his EEO complaint: office assignment, CWS schedule, restoration of 40 of 120 requested hours of sick leave and 20 of a requested 150 hours of annual leave over a three-year period. You are confident that the last requested remedy— promotion to GS-11 from GS-9, up the career ladder--- can be resolved in the afternoon.

Before the afternoon session, Amir asks to speak with you; Jake has no objection. Amir tells you that he just received a call from the Inspector General's (IG) office telling him that he is the subject of an anonymous complaint of racial discrimination, abuse of authority, and illegal payments; he must agree to an interview and provide requested documents. Amir tells you he is certain that Jake, and the other white employees in his service, called the IG's office. He tells you he is not going to settle anything with Jake until the IG's investigation is complete and he is vindicated.

When you return to the mediation, Amir announces that he has reconsidered the items already discussed and thinks he has conceded too much. Amir tells Jake he does not think his VAMC Director would agree to the proposed items and definitely not any promotion. Jake insists they have a partial deal and is becoming very heated over Amir's renegeing. He tells Amir: "The Director ain't no camel jockey, he'll keep the deal."

### **What would you do?**

#### **Responses to the Spring 2013 newsletter scenario:**

All those that responded shared similar approaches. Each would meet with the parties in joint session or in caucus to discuss if the mediation could continue. If not, the mediator would try to confirm another date and time to continue before the ending the session.

Thank you for sharing your comments!

## “Keys to Successful Mediations”

### **1<sup>st</sup> Key: Look to the future.**

The law and courts usually look back to see who was right and who was wrong. By contrast, mediation looks forward to the future. In mediation, the important question for you and the other party is: ***How can we work out a solution that will benefit both of us?*** To find that solution, at some point in your mediation you and the other party will need to let go of the wrongs and hurts of the past and focus instead on the future.

### **2<sup>nd</sup> Key: Focus on your needs, not your wants.**

In mediation you have the opportunity to *satisfy* not only your wants, but also your *underlying needs or interests*, such as emotional and economic security, respect and self-esteem, recognition, vindication and protecting your reputation. Fortunately, meeting your needs is often easier to do than satisfying your wants or your technical legal rights.

### **3<sup>rd</sup> Key: Focus on your needs, not your legal rights.**

While the law, regulation, contract, or directive may appear to be, or actually be, in your favor over the other party, you may need to *search for an acceptable resolution* rather than continuously emphasizing your legal right. In many workplace mediations, it is not so much who has the legal right to do something, but the impact that exercising that right has on the other party. For instance, one party may have the authority to take or direct a specific action, yet may find that resolution of the resulting disharmony is of greater importance to the unit's productivity. In this kind of situation it is important to examine what you really need rather than insist on that to which you are legally entitled.

### **4<sup>th</sup> Key: Be prepared to share responsibility.**

There are few disputes where one side is completely right and the other side is completely wrong. Even if the other party is mostly wrong, if you can *own up to your small part of the problem*, you will make it possible for the other side to make important concessions to reach resolution. If you can go even farther, and accept the other side's view of where *you* went wrong, this can do a lot to move the mediation ahead. If you refuse to take any responsibility, however, the other side may feel compelled to remain entrenched in its starting position.

### **5<sup>th</sup> Key: Preserve needed relationships.**

Mediation gives you the chance to deal with your dispute while still maintaining a civil relationship with the other party. So if your dispute involves a person with whom you want to-or need to- maintain a relationship, take advantage of the reasonably pleasant atmosphere of mediation to *solve your immediate dispute without destroying the relationship*. That means speaking respectfully and politely to the other person, and accommodating the other parties needs as far as possible.

### **6<sup>th</sup> Key: Be flexible.**

To really take advantage of the freedom from technical rules found in mediation, *you yourself must be flexible*. Recognize that from the minute your session starts, you won't know exactly where the discussion will go, what offers may be made or what hidden issues will emerge. If you have prepared adequately so that you know your goals, you should feel secure enough to *consider any novel idea and creative solution* proposed by the other side or by the mediator.

Adapted from: **How to Mediate Your Dispute**, Peter Lovenheim



## Workplace ADR Program

### Department of Veterans Affairs

810 Vermont Avenue, NW (08)

Washington, DC 20420

Phone: 202-461-0280

Fax: 202-461-4145

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

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

### **Mediation:**

### ***A Solution to Workplace Disputes***

The Workplace ADR Program solicits articles for VA's quarterly ADR newsletter. The purposes of the newsletter are to communicate information relating to the use of ADR in workplace disputes, and to serve as a resource for those interested in learning more about ADR and its application within VA.

We invite you to submit ideas and articles for the newsletter through your respective administrations:

VHA to Sherron Jernigan (10A2E),

VBA to Johnny Logan (20M42),

NCA to Nicole Maldon (40A),

VACO staff offices to your VACO ADR Liaison,

Labor organizations to your ADR Council

Representative.

We are looking for ideas and articles on ADR related topics, noteworthy activities, initiatives, accomplishments, best practices, or other items designed to educate and inform VA employees and managers on ADR and its benefits in addressing workplace disputes. We hope the VA community will find the newsletters a useful resource for obtaining interesting and helpful information representing ADR activity throughout VA.

For more information, visit our website:

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



## Core Values "ICARE"

**I**ntegrity

**C**ommitment

**A**dvocacy

**R**espect

**E**xcellence