



POLICY STATEMENT

Policy Statement 1005

Policy Area: ADR

Effective Date: APR 5 2006

Approved: *Paul A. Quander, Jr.*

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ALTERNATIVE DISPUTE RESOLUTION PROGRAM

I. COVERAGE

The provisions of this Policy Statement apply to all Court Services and Offender Supervision Agency (“CSOSA”) and Pretrial Services Agency (“PSA”), (hereinafter collectively referred to as the “Agency”) staff who seek resolution to a workplace dispute. The provisions of this policy also apply to staff and applicants for employment with the Agency who believe that they have suffered discrimination in the workplace because of race, color, national origin, religion, sex, age, disability, or for retaliation for participating in the Equal Employment Opportunity (EEO) complaint process.

II. BACKGROUND

Section 3 of Public Law 101-552, as amended by the Administrative Dispute Resolution Act of 1996, (Public Law 104-320, 5 U.S.C §§ 571-584), required Federal agencies to promote the use of Alternative Dispute Resolution (ADR). The Equal Employment Opportunity Commission’s revised regulations at 29 C.F.R. § 1614.102 (b)(2) require agencies to “establish or make available an alternative dispute resolution program,” in conjunction with the processing of complaints of discrimination. This Policy Statement accordingly establishes policy, guidelines and specific procedures for the administration of and participation in the Agency’s ADR program.

The importance of resolving workplace disputes and conflicts as early and as quickly as possible cannot be overemphasized. ADR has proven to be an effective tool for resolving workplace disputes faster, more economically, and in a non-adversarial forum. The use of ADR encourages and facilitates early resolution of workplace disputes by the voluntary and “good faith” participation of management and aggrieved employees. ADR promotes principles and practices that facilitate open communication and improve working relationships. Using ADR to resolve workplace disputes demonstrates the Agency’s commitment to providing a confidential non-adversarial approach to problem solving, while promoting joint ownership of solutions.

III. POLICY

The Agency's ADR program provides an informal and speedy alternative to the traditional Equal Employment Opportunity process. Additionally, the ADR program will provide employees with an opportunity for a confidential and informal resolution of their concerns at the lowest possible level, while allowing the parties to participate actively in the settlement of their dispute. The ADR program will be organizationally located within the immediate Office of the Director, CSOSA.

Employee participation in ADR is strictly voluntary. Supervisors and managers, upon the request of the employee, are required to participate in good faith, in at least one mediation session. During the joint session, either party has the right to opt out of the mediation process for any reason and at any point prior to the parties reaching a final agreement. Under no circumstances will a party be forced to accept the other party's offer to resolve the dispute. Settlement is voluntary for all parties. If a settlement is reached, it will be binding on all parties and the civil or administrative dispute will be withdrawn. The settlement agreement will be enforced as long as the proposed settlement is lawful. If a settlement is not reached, the parties will be allowed to continue the pursuit of their civil or administrative remedy by filing a formal complaint.

Not all complaints are eligible for mediation. The ADR unit will evaluate the complaint to determine if it is appropriate for mediation. The factors considered include the nature of the case, the relationship of the parties, the complexity of the case, and the relief sought by the complainant. ADR is not appropriate for use in instances where:

- An active criminal/Office of Professional Responsibility (OPR) investigation is being conducted;
- The complaint alleges sexual harassment,
- Illegal drug use exists;
- Violence or threats of violence exist;
- The content of laws and regulations and agency policies are being challenged;
- The Department of Labor has jurisdiction over the issues in the case (e.g., denial of worker's compensation benefits);
- The Office of Personnel Management has jurisdiction over the issues in the case (e.g., approval of disability retirement); or
- Management determines that mediation would be inappropriate.

Finally, all parties involved in mediation are encouraged to participate in good faith. Abuse of the mediation process includes, but is not limited to bad faith negotiations, dishonesty, or not adhering to the provisions on confidentiality, and may be a reason to deny an employee use of the ADR program.

IV. AUTHORITIES, SUPERSEDURES, REFERENCES, AND ATTACHMENTS

A. Statutory Authority:

The Administrative Dispute Resolution Act of 1996, 5 U.S.C. § 571; the Civil Rights Act of 1991; the Equal Employment Opportunity Commission's regulations at 29 C.F.R., Part 1614.

B. Supersedures:

None

C. Procedural References:

Human Resources Directive 771.1, Conflict Resolution Procedure

D. Attachments:

Appendix A. ADR Terms and Core Principles

Appendix B. General Procedures

APPENDIX A.
ADR TERMS AND CORE PRINCIPLES

TERMS

- A. ***Agency Representative*** - A designated individual vested with authority to act on behalf of or represent the Agency.
- B. ***Alternative Dispute Resolution (ADR)*** - A wide range of problem-solving procedures, which use neutral third parties to resolve disputes. ADR procedures include, but are not limited to facilitation, mediation, fact finding, mini trials, use of an ombudsman, or any combination thereof.
- C. ***Bargaining Unit Employee*** - An employee included in an appropriate exclusive bargaining unit as determined by the Federal Labor Relations Authority (FLRA), for which a labor organization has been granted exclusive recognition.
- D. ***Conflict/Dispute*** - Workplace disputes or problems that may be resolved through traditional agency processes (e.g., EEO process, Union contract provisions, agency grievance procedures) or non-traditional processes, like ADR.
- E. ***Party*** – An individual who participates in the ADR proceeding.
- F. ***Good Faith*** - An effort by the party to honestly, sincerely, and fully discuss problems and matters in conflict, and to explore solutions to those problems or conflicts.
- G. ***Mediation*** - A voluntary, confidential process whereby a trained neutral third-party assists the parties in finding a mutually acceptable solution in a manner that is different from traditional litigation: for example, in a mediation the rules of evidence do not apply, no testimony is taken, and the mediator does not decide the dispute.
- H. ***Neutral*** - An individual who does not have a stake in the issues or the outcome of a dispute and who functions specifically to aid the parties in resolving it.
- I. ***Deciding Official*** - The designated Agency official vested with settlement authority to resolve the dispute.
- J. ***Settlement*** - A legally binding written agreement that is signed by all parties, and contains a mutually acceptable solution to the dispute.
- K. ***Legal Sufficiency*** - The nature of review conducted by the Office of the General Counsel to ensure that the contents of the settlement agreement are legal and enforceable.

- L. **Facilitation** - A voluntary, confidential, unstructured, and flexible process in which the parties are assisted by a third-party neutral (not necessarily a certified mediator) in interest-based negotiations toward a resolution.

CORE PRINCIPLES

A. **Voluntariness:**

1. **Employees.** An employee's participation in the ADR process is entirely of his/her free will. However, an employee who chooses to participate in the ADR process is expected to do so in good faith. The mediator has no authority to make decisions or force a resolution on the parties. Employees are never required to reach accept a resolution with which they do not agree, however, they are expected to make every effort to come to resolution.
2. **Managers (including Supervisors).** The Agency views it as a manager's responsibility to make every effort to resolve workplace disputes with his/her employees. Thus, if an employee or an applicant elects to use ADR to resolve a dispute, the appropriate management official is required to participate in the process and attempt to resolve the dispute in good faith. A manager's participation in ADR does not require that a settlement be reached, but simply that all reasonable efforts be made to reach some form of resolution.

- B. **Neutrality:** The Agency ADR program will rely on a neutral third-party (one who functions specifically to aid the parties in resolving the dispute) to facilitate resolution of the dispute. ADR proceedings are most successful where a neutral or impartial third-party, with no stake in the outcome of a dispute, allows the parties themselves to attempt to resolve their dispute. Neutrality helps to maintain the integrity and effectiveness of the ADR program. The facilitator's duty to the parties is to be neutral, honest, and to act in good faith.

- C. **Confidentiality:** Confidentiality is essential to the success of all ADR proceedings. All ADR processes will assure confidentiality consistent with the provisions in the Alternative Dispute Resolution Act. This will enable parties to ADR proceedings to be forthcoming and candid, without fear that their statements may later be used against them. Neutrals will not discuss confidential communications, comment on the merits of the case outside the ADR process, or make recommendations about the case. Neutrals will not reveal to Agency staff or management confidential communications disclosed during the mediation process.

- D. **Enforceability:** The integrity of the ADR process requires that once a settlement is reached and signed by both parties, it is binding on both the employee and the Agency. If a settlement is reached through an ADR proceeding, the agreement will be reduced to writing.

- E. **Flexibility:** Another hallmark of an effective ADR program is its ability to respond to the variety of situations encountered daily in the workplace. The Agency's ADR Program will

be flexible enough to meet the changing needs of the Agency and its workforce and adapt to changing circumstances that could not have been anticipated at the inception of the program.

- F. ***Early Intervention:*** Employees and managers are strongly encouraged to use the ADR process to resolve complaints at the earliest possible opportunity to eliminate the need for lengthy investigations and/or costly litigation. Resolution of workplace disputes should be attempted at the lowest possible level within each organization. Thus, employees are encouraged to attempt to resolve their concerns directly with the individual or individuals involved before proceeding to the next level.

- G. ***Training and Evaluation:*** Mandatory training will be provided for all employees and managers on the ADR process, their roles as decision makers in the mediation process, and the benefit of using ADR to mediate workplace disputes. In addition, individuals used as third-party neutrals must be skilled and competent in specific ADR processes. When targeted to the specific ADR program needs, training and education can be the key to these critical aspects of an ADR program. Training and an ongoing review and evaluation of the ADR program will be essential in order to determine whether the program has achieved its goals and how the program might be improved to be more efficient and achieve better results.

APPENDIX B. GENERAL PROCEDURES

A. REPRESENTATION

In general, representation is not required for mediation and either party may decide not to have a representative present during a mediation session. However, each party to mediation is entitled to have a representative present to assist him/her during the mediation process. Since the purpose of the mediation is to facilitate open and meaningful communication between the employee and the designated management official, the role of representatives in the mediation session is to encourage dialogue between the parties, and not to promote an adversarial process.

The **designated representative** may be a relative, friend, attorney, clergy, co-worker, or union representative. Legal representation is not necessary. However, if an employee elects to be represented by an attorney, management may elect to provide an Agency attorney. Because of confidentiality requirements and potential conflicts of interest, both the employee and the management representative must designate their representative in writing before the start of the ADR proceeding. If it is determined that a conflict of interest exists, the employee and/or the management representative must re-designate the representative.

B. TIME LIMITS

Equal Employment Opportunity (EEO) process. Employees with a dispute raising allegations of discrimination **must** contact an EEO Counselor or the ADR Program Office to seek informal counseling within 45 days of the occurrence or personnel action that led to the dispute in question. Where an agency has an established dispute resolution procedure and the individual agrees to participate in the procedure, the informal processing period shall be 90 days. This time frame must be met consistent with EEO regulations. If the dispute is not resolved in this period, the aggrieved must be advised of the right to file a formal complaint and that the process under 29 C.F.R. Part 1614 will continue. Similarly, if an individual enters into the ADR procedure after a formal complaint is filed, the time period for processing the complaint may be extended by agreement for not more than 90 days. If the dispute is not resolved, the complaint must be processed within the extended time period.

Merit System Protection Board (MSPB). An employee **must** file an appeal to MSPB no later than 30 days after the effective date, if any, of the action being appealed, or 30 days after the date of receipt of the agency's decision, whichever is later. Where an appellant and the agency mutually agree in writing to attempt to resolve their dispute through the ADR process prior to the timely filing of an appeal, however, the time limit for filing the appeal is extended by an additional 30 days for a total of 60 days. A response to an appeal must be filed within 20 days of the date of the Board's acknowledgment order.

C. PROCEDURES

Employees are encouraged to discuss matters of concern informally with their supervisors. However, if a problem cannot be resolved, the ADR process is available. Usually, the entire ADR process should take no more than 90 days from initial contact to completion.

1. Initial Intake

- An employee **must** contact the ADR Program Office to request mediation services.
- The employee will be advised that in order to begin the ADR process, he/she **must** complete and submit the *Request for ADR Services* Form (e-mails and faxes are acceptable).
- Upon receipt of the written request for mediation services, the ADR Administrator will contact the employee within five calendar days.
- During the initial intake, a concerted effort should be focused on identifying the issues involved in a complaint, including dates of occurrence, person(s) responsible, alleged harm, and remedies requested.
- The ADR Administrator will assess the information provided, make appropriate contacts for additional information, and determine if the dispute/issue is appropriate for mediation.
- If there are allegations of discrimination or issues that may have EEO implications, the ADR Administrator will refer the individual to the Office of Equal Employment Opportunity, Diversity and Special Programs Division (hereinafter referred to as the EEO Office). An EEO staff member or the EEO Counselor will notify the individual of his/her EEO rights and options under 29 C.F.R. Part 1614. The initial contact with the ADR Program Office within 45 days of the occurrence or personnel action being complained of will satisfy the filing time for EEO Counselor contact. The EEO Office will advise the employee in writing of the specific issues that will be accepted for mediation. Additionally, issues **must** be approved by the EEO Office. A copy of this letter will be provided to the ADR Program Office.
- If the dispute/issue is appropriate for mediation, notification will be provided to the employee. The mediation session generally will be scheduled **within 21 calendar days** of the request. All parties will be notified in writing of those attending the ADR session. Mediations will be scheduled during normal work hours.

- The employee/management will be responsible for submitting a *Designation of Representative* Form (if either elects to have representation) to the ADR Program Office within seven calendar days before the scheduled mediation session.
- If the dispute is determined not to meet the guidelines of the Agency's ADR Program or found inappropriate for ADR, the employee will be notified of the reason why a referral for ADR services was not made. **Note: If the dispute was referred to the ADR Program from the EEO Office, a copy of the employee notification that the case was inappropriate for ADR will be provided to the EEO Office. The EEO Office will notify the individual of the right to file a formal complaint.**

2. Mediation

- The parties will meet with an impartial, neutral third-party who will facilitate the discussion and the resolution of the dispute.
- The mediation begins a joint session attended by the mediator, employee, responding management official, and the designated representatives.
- During the joint session, the parties are advised of the mediation process, confidentiality of the process, and the role of the mediator. The mediator will answer any questions either party may have.
- All parties to mediation must sign an "*Agreement to Mediate*" outlining the terms under which the parties are agreeing to participate in the mediation. The agreement includes the following:
 - The parties agree to discuss the issues and attempt to reach an amicable resolution. The parties understand that settlement during mediation is voluntary.
 - The parties understand that the mediator has no power to decide the terms of the resolution or who is right or wrong. Rather, the mediator will attempt to assist the participants in reaching their own resolution by facilitating the discussion.
 - The parties understand that the mediator will not act as an advocate or attorney for either party and will not provide legal advice and/or counsel.
 - The parties agree to extend any applicable time frames.
 - The parties agree to negotiate in good faith.
 - The parties agree not to subpoena the mediator or any observer to testify in any forum as to the issues discussed by the parties in the mediation.

- The mediator and all observers agree not to testify voluntarily on behalf of either party and will not report anything said during this mediation unless one of the participants makes a genuine threat of physical harm or reveals information related to criminal activity, fraud, waste, or abuse of government property, sexual harassment, or child or elder abuse.
- The parties understand that any document or notes prepared for or during mediation (such as case summaries presented to the mediator or notes taken by the mediator and the parties) are for settlement purposes only and will be given to the mediator at the conclusion of the mediation session for destruction.
- The parties understand that the mediation session will not be recorded by anyone (either video or audio) and no transcript of the session will be produced.
- The parties understand that no participant will be bound by anything said or done in mediation unless and until there is a signed written settlement agreement.
- The parties agree to discuss and define the matter to be mediated.
- Each of the parties will have an opportunity to explain his/her position on the dispute or matters of concern. The mediator encourages both parties to talk openly and candidly, voice all of their concerns, and to listen to the other party's concerns in order to reach the best possible resolution. Additionally, the mediator might meet with each party separately to discuss the problem and help each party find a solution.
- If no settlement agreement is reached, the ADR Administrator will provide written notification to the employee of his/her right to continue through the established complaint, grievance, and/or appeal systems, provided established time frames in the respective system, have otherwise been met.

3. Resolution/Settlement/Withdrawal

- If a settlement agreement is reached, the agreement will be given to the ADR Administrator for compliance review.
- The ADR Administrator will confer with the EEO Office regarding settlement of cases involving EEO matters prior to the finalization of agreements to ensure that the appropriate language is included in the agreement.
- Written agreements reached will be signed during the mediation; however, settlement agreements under the ADR program may not violate any laws or be inconsistent or in conflict with the terms of any collective bargaining agreement.

- The ADR Administrator will coordinate with OGC for the legal sufficiency review of the settlement agreement. Before the conclusion of the mediation, OGC will conduct a legal sufficiency review and prepare a written certification of the settlement agreement (see attached form). In circumstances where OGC is unable to conduct a legal sufficiency review on the day of the scheduled mediation, OGC will be given an additional 48 hours to conduct the review. Additionally, OGC will be given 24-hour notification before all scheduled mediations.
- Upon OGC's certification of legal sufficiency, the ADR Administrator will facilitate implementation of the settlement agreement with other functional areas within the organization.
- The employee may opt to withdraw the ADR matter if it is (1) resolved before mediation, (2) resolved because of participation in mediation although no settlement agreement was signed, or (3) because after consideration he/she elects not to proceed further. Under these circumstances, the file will be closed.
- In the event of a breach of the settlement agreement, the parties may elect to (1) re-negotiate the matter, (2) apply sanctions (i.e., implementation of the original agreement by higher-level authority), or (3) a return to the status quo. For breaches of agreements involving EEO matters, the procedures set forth in the settlement agreement and in EEOC regulations will control.

D. EVALUATION

An evaluation component is essential to any ADR program in order to determine whether the program has achieved its goals, how the program might be improved to be more efficient, and to achieve better results. At a minimum, evaluations should capture and analyze ADR usage, amount of time saved, cost avoidance, customer satisfaction, improved relationships, and other indicators in line with the Agency's strategic goals and objectives.

At the conclusion of each mediation session, all participants will be required to evaluate their experience with the mediation process and the mediator. This information will be used to assist the Agency in effectively evaluating the program. The Agency will monitor and maintain a record of ADR activity for annual reporting to the Equal Employment Opportunity Commission.

ADR Request Form

Your Information

Name: _____ Date: _____

Working Title: _____ Work Phone: _____

Mailing Address: _____

E-mail: _____

Working Relationship to the Other Person/Other

- Supervises other person
- Supervised by other person
- Does not supervise the other person directly, but is in the other person's chain of command
- Is not supervised by the other person, but the other person is in this employee's chain of command
- Co-worker/Other

Other Person

Name: _____

Working Title: _____ Work Phone: _____

Relationship to you: _____

Incident

Date of Incident: _____

Describe Incident: _____

Requester's Role

- Self
- Supervisor
- Co-worker
- Agency Personnel Administrator
- Other : _____ Specify: _____

Timing of Request

- As early intervention
- In addition to the grievance / appeal board process
- After the conclusion of grievance process

Return form to: Sheila Stokes, ADR Program Manager
601 Indiana Avenue, NW, Suite 512 Washington, DC 20004-2902
Voice: (202) 442-1712 Fax: (202) 442-1962

**COURT SERVICES AND OFFENDER SUPERVISION AGENCY
PRETRIAL SERVICES AGENCY
ALTERNATIVE DISPUTE RESOLUTION PROGRAM**

AGREEMENT TO MEDIATE

The parties agree to engage in mediation and request the assistance of a certified mediator in resolving a disputed matter. The parties understand that the mediator has no authority to make decisions on issues raised nor act as an advocate or representative for any party.

The parties understand that they have a right to have a representative present to assist them during the mediation process. The parties also understand that the purpose of mediation is to facilitate open and meaningful communication between the employee and the designated management official, thus, the role of representatives in the mediation session is to encourage dialogue between the parties, not promote an adversarial process. Representation is not required for mediation and the parties understand that they also may decide not to have a representative present during the mediation session. If any party elects to bring a representative, the party must notify the ADR Program Office within two weeks of the scheduled mediation.

Mediation is a confidential process. All documents submitted to the mediator and statements made during the mediation are for settlement purposes only. The parties agree not to subpoena the mediator or any documents prepared or submitted to the mediator for use in any subsequent proceeding. The mediator will not testify or serve as a witness on behalf of any party or submit any type of report on the substance of the mediation. Confidentiality will not extend to threats of physical harm or criminal activity.

No party shall be bound by anything said or done at the mediation, nor may any notes taken by any party during the mediation be entered as evidence in any subsequent proceeding, unless a written agreement is reached and signed by all necessary parties. The parties and the mediator may withdraw from mediation at any time. Prior to withdrawing from mediation, the parties and the mediator must agree to discuss the reasons for withdrawing from mediation. If a resolution is reached, the agreement shall be reduced to writing and, when signed and approved by the appropriate authorities for all parties, shall be binding upon all parties to the agreement.

By signature, we acknowledge that we have read, understand, and agree to the Agreement to Mediate.

_____ Party (Employee/Applicant)(Print name)	_____ Signature	_____ Date
_____ Party's (Employee/Applicant's) Representative (Print name)	_____ Signature	_____ Date
_____ Party (Management) (Print name)	_____ Signature	_____ Date
_____ Party's (Management) Representative (Print name)	_____ Signature	_____ Date
_____ Mediator (Print name)	_____ Signature	_____ Date



**Court Services and Offender Supervision Agency
for the District of Columbia**

**Proposed ADR Settlement Agreement
Legal Sufficiency Determination**

Parties to the proposed settlement agreement:	
Date submitted for review:	
<input type="checkbox"/> The Office of the General Counsel certifies that this proposed settlement agreement is legally sufficient.	
<input type="checkbox"/> The Office of the General Counsel has determined that this proposed settlement agreement is not legally sufficient for the reason(s) provided below.	
OGC Attorney/Reviewer:	Date: