



UNITED STATES MARINE CORPS
MARINE CORPS BASE
QUANTICO, VIRGINIA 22134-5001

MCBO 5800.6
CHRO-Q
12 Sep 00

MARINE CORPS BASE ORDER 5800.6

From: Commanding General
To: Distribution List

Subj: ALTERNATE DISPUTE RESOLUTION (ADR) PROGRAM

Ref: (a) 29 CFR 1614
(b) DoDD 5145.5
(c) SECNAVINST 5800.13

Encl: (1) HRSCEINST 5800.1

1. Purpose. To provide guidance under the provisions of references (a) through (c), adopt the procedures outlined in enclosure (1), and provide additional guidance unique to MCCDC/MCB.

2. Applicability. This Order applies to all appropriated and nonappropriated fund (NAF) civilian employees, and military supervisors of civilian employees serviced by the Civilian Human Resources Office-Quantico (CHRO-Q) Detachment, HQMC, NAF Personnel Office and all tenant activities/commands holding service support agreements with CHRO-Q for civilian personnel and Equal Employment Opportunity (EEO) administration hereafter referred to as the "serviced commands." Where this Order is in conflict with approved negotiated collective bargaining agreements, the provisions of the agreement will take precedence for the activities/commands covered, unless changes are required by law or by order of appropriate authorities.

3. Policy. To ensure civilian employees are afforded the opportunity to resolve informal complaints of discrimination through alternative methods in lieu of the traditional counseling process outlined in reference (a).

4. Action

a. Civilian employees who initiate contact with the EEO Office regarding an informal complaint of discrimination (hereinafter disputants) will be afforded the opportunity to elect an ADR process per the methods and procedures outlined in enclosure (1).

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b. Upon notification by the disputant that he/she wishes to enter into an ADR, the EEO Office will obtain Command agreement.

c. If the disputant is a bargaining unit employee, they will be notified that the American Federation of Government Employees (AFGE) Local 1786 has the right to be represented at the ADR session.

d. Upon agreement of the disputant to have the AFGE Local 1786 present, the EEO Office will afford the AFGE Local 1786 the opportunity to be represented during the ADR session. The Union representative, in his/her role as a party to the ADR session, will participate as an observer and will be required to agree to and sign the confidentiality agreement contained in enclosure (1).


E. CAVAZOS, JR.
Chief of Staff

DISTRIBUTION: INTERNET



DEPARTMENT OF THE NAVY
HUMAN RESOURCES SERVICE CENTER EAST
NORFOLK NAVAL SHIPYARD, BUILDING 17
PORTSMOUTH, VIRGINIA 23709-5000

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HRSCEINST 5800.1
Code 10

HRSC EAST INSTRUCTION 5800.1

From: Director, Human Resources Service Center East

Subj: ALTERNATIVE DISPUTE RESOLUTION (ADR) PROCEDURE

Ref: (a) SECNAVINST 5800 of 11 Dec 96
(b) Civil Rights Act of 1964, as amended
(c) Civil Rights Act of 1991
(d) ADR Act of 1990, PL 101-552
(e) 29 CFR 1614

Encl: (1) Agreement to Participate in the ADR Process
(2) Intake Form
(3) Alternative Dispute Resolution Process Overviews
(4) Alternative Dispute Resolution Request
(5) HRO Checklist
(6) Navy Certified Mediator Application
(7) Standards of Conduct for DON Certified Mediators
(8) Confirmation of Alternative Dispute Resolution Session
(9) Confidentiality Agreements
(10) Alternative Dispute Resolution Settlement Agreements
(11) Alternative Dispute Resolution Attempt
(12) Alternative Dispute Resolution Survey
(13) Dispute Resolution Session Minutes
(14) HRSC East Alternative Dispute Resolution Neutral Checklist.

1. Purpose. To provide guidance under the provisions of references (a) through (e) for the use of Alternative Dispute Resolution (ADR) procedures in the resolution of disputes.

2. Applicability. This policy applies to all activities requesting ADR services from the Human Resources Service Center East (HRSC East).

3. Background

a. Reference (a) requires that all Navy activities develop and implement an ADR system.

b. Traditional dispute resolution processes often impose a decision handed down by a third party, where neither party is satisfied, and the disputants' conflict often continues or increases. In contrast, ADR can provide solutions to workplace conflicts through participation and buy-in of all concerned

ENCLOSURE (1)

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parties. In addition, such a process can resolve disputes in a more timely and cost effective manner, thereby preserving scarce resources.

c. Alternative means of dispute resolution emphasize creativity and cooperation in lieu of adjudicative or adversarial means of solving problems. ADR may take a variety of forms. Many of these processes involve some form of assisted negotiation relying in large part on mediation skills. ADR is a process that fosters open communications. ADR emphasizes the importance of quick response and constructive intervention to assist both parties in resolving conflicts at the earliest possible stage. The process provides a means through which employees at all levels may resolve work-related concerns prior to use of traditional dispute resolution methods, e.g., administrative grievance or EEO complaint processes. Additionally, ADR provides disputants the option of requesting a professional neutral to facilitate a resolution in cases where the aggrieved party has already initiated a grievance or entered into the EEO complaint process.

4. Policy. ADR techniques shall be used as an alternative to litigation or formal administrative procedures to the maximum extent practicable. Use of these techniques may resolve the entire issue in controversy or a portion of the issue in controversy. The goal is to resolve disputes and conflicts at the earliest stage feasible, by the fastest and least expensive method possible and at the lowest possible organizational level prior to litigation. Every conflict and issue in controversy, regardless of the subject matter, is a potential candidate for ADR.

5. Objectives.

a. Create a voluntary non-adversarial process whereby involved parties can resolve work-related employee concerns/issues.

b. Provide an environment of open communication where employees can present issues in a non-threatening forum.

c. Avoid expensive and protracted litigation and improve relationships.

d. Provide the opportunity for an impartial third party to assist in identifying the underlying causes of work-related concerns/issues and facilitate resolution.

e. Train workforce in ADR techniques.

ENCLOSURE (1)

6. Procedure

a. Commands are encouraged to instruct their employees to use their chain of command as the first option in resolving a work-related dispute.

b. If the issue is still unresolved, Commands may elect to utilize the HRSC East ADR process in an attempt to resolve the dispute. Command participation in the HRSC East ADR process is always voluntary and the command employee may withdraw from ADR at any time. If the Command elects to use the HRSC East ADR process, appropriate management official(s) must participate.

c. This instruction is available for immediate use at serviced activities. When activities have bargaining obligations, unions must be provided specific notice and opportunity to bargain prior to making the provisions of this instruction available to unit employees.

d. Once an employee raises/files a grievance or a complaint within applicable time limits, and the employee elects in writing to pursue the complaint/grievance utilizing the voluntary ADR process, the steps and time limits associated with the processing of the matter, under the traditional processing mechanism (grievance or complaint procedures), will be tolled at the step and timeframe applicable when the election was signed.

e. The ADR Specialist, as an impartial third party, will work to improve communication and understanding between the parties, help the parties explore alternative solutions to resolve the issue(s), and attempt to facilitate agreement between the parties. The ADR Specialist is responsive to the concerns of the parties and ensures that each issue is treated fairly. The ADR Specialist does not have the authority to decide the dispute, but rather assists the parties in achieving the goal of resolving the matter in a way that is mutually acceptable.

7. Guidelines.

a. ADR services may be obtained through the HRSC East. When neutrals are assigned from other geographic areas, the Activity requesting ADR services will pay travel and per diem for the person rendering the service.

b. ADR services requested from the HRSC East will be obtained as follows:

(1) Employee contacts the appropriate Human Resources Office (HRO) department, i.e., ADR Office, EEO, Labor Relations, etc. for ADR services. The HRO Specialist will advise the employee of his/her rights under any applicable negotiated

agreements. Appropriate labor organizations will be notified and afforded an opportunity to be represented at any meetings to which they are entitled in accordance with the applicable negotiated agreement and/or Statute. This information will also be provided to the employee.

(2) In advising an employee of his/her rights and responsibilities, the HRO Specialist will advise the employee of the option of electing ADR, discuss the effect on regulatory and/or negotiated timeframes, and may request ADR services from the HRSC East.

(3) When ADR services are requested from HRSC East, the HRO Specialist will obtain a written agreement from the aggrieved party to participate in the ADR process and inform the deciding official in the traditional complaints/grievance process that normal processing has been tolled during the ADR effort to resolve the matter.

(4) The HRO Specialist may then request the services of an ADR neutral from HRSC East. The HRO Specialist will provide a summary of the dispute to the ADR neutral and will provide administrative and logistical support for the ADR process. HRSC East will assign a neutral. The neutral must conclude the ADR session(s) within forty-five (45) calendar days from receiving the request for ADR services from the HRO. If the ADR process is not concluded within 45 calendar days, the disputant may elect to have the matter revert to the traditional complaint or grievance process at the step and timeframe at which it was originally tolled. The disputant must inform the neutral and the HRO Specialist of such an election, in writing, within five calendar days after expiration of the 45 day ADR period.

(5) All parties involved in ADR will agree to maintain confidentiality of all records and discussions except when the matter involves a criminal act or could jeopardize public health or safety. Where the confidentiality requirement precludes effective inquiry into the issue(s) raised, the ADR neutral will advise the employee of the options to:

(a) Authorize use or release of required information;
or

(b) Terminate action under ADR.

(6) The ADR process will be concluded when one of the following occurs:

(a) There is a written resolution agreement signed by the parties involved in the dispute. The HRO Specialist will ensure that the terms of the settlement agreement are completed and that all necessary settlement agreements are appropriately coordinated and signed.

(b) A written withdrawal of the concern is signed by the employee.

(c) If there is no resolution, the dispute process will continue in accordance with appropriate EEO/grievance guidelines.

8. Responsibilities.

a. HRSC East EEO Manager

(1) Manages the HRSC East ADR program.

(2) Requires the necessary ADR training for the cadre of neutrals.

(3) Ensures that the cadre of neutrals has received the necessary ADR training.

(4) Assigns neutrals for ADR sessions.

(5) Approves the individuals to be included in the cadre of neutrals.

(6) Train workforce in ADR techniques and awareness.

b. Disputant:

(1) Voluntarily agrees to use the ADR process and signs the Agreement to Participate in the ADR Process (enclosure (1)).

(2) Participates in good faith during the process.

(3) Presents information relevant to the allegation and participates in resolving the dispute.

(4) Cooperates in settlement efforts and signs settlement agreement if agreement is reached.

c. Respondent:

(1) Participates in good faith during the ADR process.

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(2) Cooperates in settlement efforts and signs settlement agreement.

(3) Presents information relevant to the allegation and participates in resolving the dispute.

d. HRO Specialist:

(1) Completes the requisite training as required by the HRSC East EEO Manager.

(2) ~~informs~~ ~~disputant~~ of ADR process ~~✓~~

(3) Gives ~~disputant~~ a copy of ADR synopsis.

(4) ~~Obtains~~ ~~disputant's~~ signature on the Agreement to Participate in the ADR Process (enclosure (1)).

(5) Completes the Intake Form (enclosure (2)) with the disputant.

(6) Gives the disputant a copy of the Mediation, Conciliation, Early Neutral Inquiry (ENI), Settlement Conference (enclosure (3)) or other appropriate ADR process overview.

(7) Sends the completed ADR Request (enclosure (4)) to HRSC East, Code 10 within ~~five~~ (5) calendar days from intake ~~✓~~

(8) Provides administrative support to the neutral.

(9) Coordinates implementation of settlement terms.

(10) Complies with the HRO Checklist (enclosure (5)).

e. Neutrals:

(1) Completes the necessary training for certification as designated by the HRSC East EEO Manager.

(2) Completes a Navy Certified Mediator Application (enclosure (6)), and forwards it to the HRSC East EEO Manager.

(3) Signs the Standards of Conduct for DON Certified Mediators (enclosure (7)), and obtains supervisor's signature/ approval.

(4) Confirms that the intake form received from HRO Specialist is complete. If information is not complete, contact HRO Specialist for completion.

ENCLOSURE (1)

(5) Within three (3) work days faxes or E-mails the ADR Request to the HRO Specialist with the following completed:

Date/Time ADR scheduled -
Neutral Assigned -
Date Confirmation Letter sent -

(6) Sends Confirmation of ADR Session (enclosure (8)) to participants within 3 workdays.

(7) Ensures all parties have signed the Confidentiality Agreement (enclosure (9)).

(8) Ensures all parties have signed the ADR Settlement Agreement (enclosure (10)) if reached, and provide copies to parties. If no settlement agreement is reached, complete the ADR Attempt form (enclosure (11)).

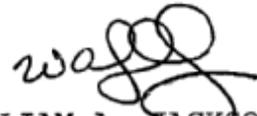
(9) Asks participants to complete a ADR Survey form (enclosure (12)).

(10) Prepares Dispute Resolution Session Minutes (enclosure (13)) and summary if other than Mediation is used.

(11) Complies with the HRSC East Alternative Dispute Resolution Neutral Checklist (enclosure (14)).

Evaluation. The HRSC East is responsible for evaluating the effectiveness of the ADR program.

10. Forms. Local reproductions of the enclosures 1 through 14 are authorized.



WILLIAM A. JACKSON, JR.

Distribution: (HRSCEINST 5215.1)
List II

Copy to:
All HRSC East Serviced Activities

AGREEMENT TO PARTICIPATE IN THE ADR PROCESS

I, _____, voluntarily agree to have my
(Disputant's Name)
dispute processed under the ADR guidelines

I, acknowledge that _____, has provided
(HRO Specialist)
me a copy of the procedures which will be used in the process of
my dispute.

I agree to attempt to resolve this dispute in good faith and
cooperate with the neutral assigned to this dispute, and give
serious consideration to suggestions made in regard to developing
an appropriate solution to the problem(s).

I desire to pursue the _____
(Mediation, Conciliation, Early Neutral
Inquiry, Settlement Conference, Other)
process in an attempt to resolve my dispute.

I understand that the neutral has no authority to make decisions
on issues raised nor to act as an advocate, attorney or judge for
either party. I understand that I may elect to have a
representative present at any time during the process and that I
may consult my representative prior to signing a settlement
agreement. It is further understood that if this process does
not result in resolution, I may continue to have my Dispute
processed in accordance with the prescribed EEO/grievance
guidelines.

Disputant's Signature

Date

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INTAKE FORM

This Intake Form must be completed at the initial meeting with information provided by the employee. If necessary, additional sheets may be used. Responses on the continuation sheets should be numbered to match the number of the questions. If a particular question is not applicable respond with N/A.

1. Name of Disputant (Last, First, MI)	2. Disputant's Social Security No.
3. Home Address (incl: City, State, ZIP)	4. Home Phone Number (include area code)
	5. Work Phone Number (include Area Code and DSN)
6. Current Command/Address:	7. Name of Command and Position held at the time of the dispute:
8. Representative Name and Address (incl city, state and ZIP)	9. Representative's Phone Number (include Area Code and DSN)
	10. Date Incident Occurred
11. Name and phone number(s) of management official(s):	

ENCLOSURE (2)

ENCLOSURE (1)

INTAKE FORM CONT'D	
<p>12. Please describe in detail the specific date(s), events(s) or incident(s) which you believe led to the dispute. Be specific as to the date(s) of each incident(s).</p>	
<p>13. Please describe, several ways to resolve your dispute:</p>	
<p>14. Please submit any documentation in your possession that supports and/or is related to your dispute. The documentation should be submitted with your intake form.</p>	
Disputant's Signature	Date Signed
HRO Specialist's Signature	Date Signed

MEDIATION

What is Mediation? While conflict is a normal part of our daily lives, it can often be an uncomfortable experience, especially when it involves the workplace. When you find yourself in a dispute with a fellow employee, manager, or other colleague, mediation can help you resolve issues in a private, confidential and timely manner.

The EEO mediation process is an informal one that uses a neutral third party known as a mediator to facilitate resolution of the dispute. The mediator has no power to make a decision or force one on any party; instead, the mediator works with all parties to reach a voluntary agreement of their own making.

How does the process work? The process usually begins with a joint session. During the first meeting, the mediator will explain the process and how it works, and will answer any questions the parties may have. After each party has had a chance to tell his or her side of the story, the mediator may ask questions to clarify or elaborate on a particular topic. After the first joint session, the mediator may meet with each party separately (caucus) to discuss the issues in greater detail and to gain a better sense of how the parties would like the issue resolved.

The mediation process may then continue with a series of separate meetings, or the mediator may decide to continue meeting with the parties jointly. During these joint and private meetings, the mediator will explore with the parties various options for resolving the dispute. The mediator can act in any number of roles, i.e., communicator, translator, agent of reality, etc. The *goal* of mediation is to reach a mutually agreeable resolution.

Why should you use mediation? Mediation is *confidential*. The mediator will keep all information confidential. The mediator will not willingly be a witness in a court of law or an administrative process. No written record will be made of the mediation process.

Secondly, mediation is *quick*. An EEO mediation settlement takes much less time to achieve than the more timely (and costly) process of litigation.

Finally, you do not give up any of your rights to pursue the matter formally. While mediation is designed to be an informal settlement process, it is entirely *voluntary*. The parties or the mediator can end the mediation any time.

Is Mediation Right for Me?

To assist in choosing whether or not Mediation is an appropriate ADR process for your dispute, you should consider the following:

- a. The case involves continuing relationships.
- b. The parties want it settled confidentially and informally.
- c. The parties indicate they would like to have a say in shaping an agreement.

Remember, the mediation process is completely voluntary. Any party can end the proceedings any time and the complainant may pursue the filing of a formal EEO complaint.

Who should be present during the Mediation? Parties can represent themselves or have a legal representative stand in for them. However, if the parties have someone represent them, the representative should have the authority to enter into a resolution agreement.

ENCLOSURE (3)
ENCLOSURE (1)

EARLY NEUTRAL INQUIRY

What is Early Neutral Inquiry (ENI)? Early Neutral Inquiry is a dispute resolution method in which a Dispute Resolution Specialist (DRS) provides a non-binding evaluation of the facts in dispute after reviewing statements and relevant documentation and makes recommendations regarding possible resolution of the dispute. The ENI is an informal, mostly oral inquiry, which allows for the introduction of some documentation and evidence.

How does the process work? Prior to the ENI, each side is requested to submit a statement (no more than two pages) identifying the session participants, major disputed issues, and any discovery that would be necessary for meaningful settlement discussions. The session begins with each side presenting a 15-minute opening statement, without interruption from the DRS or other party. The opening statement presents the party's case, any legal theories, and describes the supporting documentation. The DRS may ask questions of each side to clarify issues and to fill in information gaps. The DRS also explores with each side the expectations from the process.

The DRS prepares a written report/assessment of each side's case, determines which side is likely to prevail and states the probable relief that might be ordered if the claimant should prevail. Upon return to the session, the DRS asks the parties if they would like to explore settlement discussions. If both sides agree to settlement discussions, the DRS facilitates these discussions without disclosure of the written report. If either party declines the offer to begin settlement discussions or no settlement is reached, the DRS discloses the written report. The written report may comment on the specific events and/or documentation and explain the rationale for the conclusions reached. The ENI assists both parties in considering the strengths and weaknesses of their positions.

Why should you use Early Neutral Inquiry? ENI is an appropriate process when more *documentation is essential* to facilitate settlement. It is also useful when the parties wish to have a *neutral assessment* of their dispute in a private setting. It provides the parties and/or their representatives an opportunity to hear the other side present its case. ENI helps the parties focus on the key issues and promptly discloses the key evidence. This process offers the disputants a confidential, frank, and thoughtful assessment of the relative strengths and weaknesses of the parties' positions and the overall value of the case.

Is Early Neutral Inquiry Right for Me? To assist you in choosing whether or not ENI is an appropriate ADR process for your dispute, you should consider the following:

- a. A process that provides confidentiality is not required.
- b. A neutral assessment of the dispute in a private setting is desired.
- c. There is documentation, which needs to be considered.
- d. Because of time constraints, expenses or other factors, early settlement is a possibility.
- e. There is some confusion about the case and there has been little or no communication with the other party.

Who should be present during the Early Neutral Inquiry? The disputant and his/her representative, management official (with authority to settle), the agency representative, and the DRS. In ENI both parties are often represented by attorneys; however, this is not a requirement. If settlement is not reached in the ENI, the disputant may file a formal complaint.

CONCILIATION

What is Conciliation?

The EEO conciliation process is a dispute resolution method in which a neutral third party participates in the process of facilitating agreement between the parties. The neutral has no authority to impose a settlement on either party involved in the dispute.

How does the process work?

The conciliation process is similar to the mediation process with the following exceptions. During conciliation, the conciliator collects/reviews evidence and documentation, provides counseling, and recommends options to the parties for resolutions. If no formal agreement is reached, the conciliator will submit a written summary of the process and all evidence and documentation submitted by the parties. The **goal** of conciliation is to reach a mutually agreeable resolution.

Why should you use conciliation?

Conciliation is an appropriate process when a **written record** of the conciliation is desired. It is also useful when the parties wish to have a neutral assessment of their dispute.

Conciliation is **quick**. An EEO conciliation settlement takes much less time to achieve than the process of litigation.

You do not give up any of your rights to pursue the matter formally. The process is **voluntary**.

Is Conciliation right for me?

To assist in choosing whether Conciliation is an appropriate ADR process for your dispute, you should consider the following:

- a. A written record of the ADR proceeding is desired.
- b. The case involves continuing relationships.
- c. The parties would like to have a say in shaping an agreement.

Who should be present during Conciliation?

The disputant and if desired, his/her representative; the management official (with authority to settle) and if desired, the agency representative; and the conciliator.

SETTLEMENT CONFERENCE

What is a Settlement Conference? The EEO Settlement Conference process is a dispute resolution method wherein a skilled Dispute Resolution Specialist (DRS) conducts a conference attended by opposing parties and/or their representative. The purpose of the conference is to reach a mutually acceptable settlement in the matter prior to litigation or formal proceeding.

How does the process work? Prior to the settlement conference, each side submits a short account of the events giving rise to the claim/suit, the significant points of their dispute, key documentation and evidence, and requested remedies. The DRS reviews these materials prior to convening the settlement conference. During the conference, the DRS will receive and review evidence from either party and confer with appropriate agency officials and the parties to the dispute regarding areas of agreement and possible settlement options. The DRS facilitates negotiations between the parties and their representatives but is not a trier of fact and will not make final decisions for the parties.

When the parties reach agreement, the DRS drafts a written settlement agreement which will contain the terms agreed to by the parties to settle the dispute. The DRS will maintain a written record of the proceedings and prepare a summary report which will address the facts in dispute, contain related documentation and a summary of settlement efforts. Attorneys usually represent the parties and much of the discussion is between the attorneys.

Why should you use Settlement Conference? Settlement Conference is an appropriate process when **documentation is essential** to facilitate settlement, and the parties desire to achieve ends that judgments could not achieve. This process offers disputants an opportunity for improved communications, **analytical focus** and feedback, assists parties with a reality check, and improves the quality (**fairness**) of agreements.

Is Settlement Conference Right for Me? To assist in choosing whether or not Settlement Conference is appropriate for your dispute, you should consider the following:

- a. There are legal issues which need to be decided.
- b. There are financial damages involved.
- c. A written report of the facts is desired.
- d. Technical documents are reviewed.

Who should be present during the Settlement Conference? The disputant and his/her representative, management official (with authority to settle), the agency representative and the DRS. In the Settlement Conference both parties are usually represented by attorneys. If settlement is not reached, the disputant may file a formal complaint.

ALTERNATIVE DISPUTE RESOLUTION REQUEST

This is a request for an ADR Specialist to attempt resolution of issues raised during the initial session with a Human Resources Office (HRO) Specialist. The ADR method selected by the disputant is Mediation, Conciliation, Early Neutral Inquiry, Settlement Conference, Other.

The issue(s) arising in this dispute and any special requirements or needs of the parties related to the ADR session are as follows:

Requesting HRO: _____

Point of contact: _____

Telephone & Address: _____

Names of parties and daytime telephone numbers and addresses:

Disputant: _____

Disputant's Representative: _____

Respondent: _____

Respondent's Representative: _____

Dates and times that parties and room are available for the ADR session (listed in order of preference):

TO BE COMPLETED BY NEUTRAL

DATE/TIME ADR SCHEDULED: _____

NEUTRAL ASSIGNED: _____

DATE CONFIRMATION LETTER SENT: _____

ENCLOSURE (4)
ENCLOSURE (1)

HRO CHECKLIST

- __ 1. Inform disputant and respondent of ADR process.
- __ 2. Give disputant and respondent a copy of ADR synopsis.
- __ 3. Complete the intake form with the disputant.
- __ 4. Obtain disputant's signature on the Agreement to Use the ADR Process. (Copy to be attached to Intake Form and forwarded to HRSC East within 5 calendar days).
- __ 5. Identify individuals for the dispute resolution (DR) session who has signature authority.
- __ 6. Obtain three (3) available dates that are convenient for the parties participating in the DR session.
- __ 7. Temporarily reserve a meeting room (for the 3 above dates) and schedule the time for the DR session. Ensure the room is appropriate for a DR session, i.e., private, large enough, phone and copy machine available, etc.
- __ 8. Send the completed ADR Request to HRSC East, Code 10 within five (5) calendar days from the Intake session.
- __ 9. Once the Neutral has informed the HRO Specialist of the selected date, reconfirm the selected date with the parties within two workdays. Notify the Neutral within 24 hours that the selected date is satisfactory.
- __ 10. Secure the meeting room once HRSC East has notified the HRO of the definite DR session date.
- __ 11. Provide administrative support to the Neutral.
- __ 12. When the DR session results in a settlement, coordinate implementation of the settlement terms.
- __ 13. If no settlement is reached, continue processing the dispute in accordance with appropriate regulations at the local activity.
- __ 14. HRO will maintain the official record.

NAVY CERTIFIED MEDIATOR APPLICATION

NAME: _____

TITLE: _____ SERIES & GRADE _____

MAILING ADDRESS: _____

PHONE NUMBER: _____ DSN: _____ FAX: _____

E-MAIL ADDRESS: _____

SUPERVISOR'S NAME, TITLE, PHONE #: _____

COURSE TITLE	SOURCE	DATE	#HRS

DOES YOUR ACTIVITY HAVE AN ESTABLISHED ADR PROGRAM? YES ___ NO ___

IF YES, BRIEFLY DESCRIBE YOUR INVOLVEMENT: _____

ENCLOSURE (6)
ENCLOSURE (1)

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IS MEDIATION A PART OF YOUR ACTIVITY'S ADR PROGRAM? YES ___ NO ___
IF SO, PLEASE DESCRIBE WHEN & HOW MEDIATION IS USED:

Enclosure (6)
ARE YOU ACTIVELY INVOLVED IN ANY MEDIATION PROGRAMS OUTSIDE OF
YOUR ACTIVITY (e.g. schools, courts, and community-based
agencies)? YES ___ NO ___

IF YES, BRIEFLY DESCRIBE YOUR INVOLVEMENT:

DURING THE PAST 12 MONTHS HOW MANY INSTANCES HAVE YOU USED
MEDIATION TO RESOLVE WORKPLACE DISPUTES? _____ OTHER TYPES OF
DISPUTES? _____

DURING THE PAST 12 MONTHS HOW MANY OF THE INSTANCES IN WHICH YOU
WERE THE MEDIATOR, WAS THE PARTIES SUCCESSFUL IN REACHING A
WRITTEN AGREEMENT? _

ARE YOU WILLING TO TRAVEL OUTSIDE YOUR GEOGRAPHIC AREA TO MEDIATE
DON WORKPLACE DISPUTES? YES _____ NO _____

NOTE: During phase III of the certification process, candidates will be evaluated on their ability to use the DON mediation model to facilitate resolution of workplace disputes. The Navy mediation model is consistent with the process taught at the Justice Center of Atlanta and the Navy specific course presented by DON staff during workplace disputes resolution training. All DON certified mediators referred to activities to provide mediation services will use this model. Please review the following standards of conduct which were developed specifically for DON certified mediators.

The initiative for these standards came from three professional groups: the American Arbitration Association, the American Bar Association and the Society Of Professionals In Dispute Resolution.

These standards are consistent with the Navy mediation model and serve as a general framework for the practice of mediation and are another step in the development of DON mediators, as well as a tool to assist mediators in assisting parties to resolve workplace disputes.

STANDARDS OF CONDUCT FOR DON CERTIFIED MEDIATORS

The following standards of Conduct for Mediators are intended to perform three major functions: to serve as a guide for the conduct of mediators, to inform the mediating parties and to promote confidence in mediation as a process for resolving disputes. These standards draw on existing codes of conduct for mediators and take into account issues and problems that have surfaced in mediation practice.

I. SELF-DETERMINATION: A Department of the Navy (DON) Certified Mediator shall recognize that Mediation is based on the principle of Self- Determination by the Parties.

Self-determination is the fundamental principle of mediation. It requires that the mediation process rely upon the ability of the parties to reach a voluntary, UN-coerced agreement. Any party may withdraw from the process at any time. The mediator may provide information about the process, raise issues and help parties explore options. The primary role of the mediator is to facilitate a voluntary resolution of the dispute.

Parties shall be given the opportunity to consider all proposed options. A mediator cannot personally ensure that each party has made a fully informed choice to reach a particular agreement, but it is a good practice for the mediator to make the parties aware of the importance of consulting with other professionals, where appropriate, to help them make informed decisions.

II. IMPARTIALITY: A DON Certified Mediator shall conduct the Mediation in an impartial manner.

The concept of mediator impartiality is central to the mediation process. A mediator shall mediate only those matters in which he or she can remain impartial and evenhanded. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is obligated to withdraw from the mediation.

A mediator shall avoid conduct that gives the appearance of partiality toward one of the parties. The quality of the mediation process is enhanced when the parties have confidence in the impartiality of the mediator.

A mediator must guard against partiality or prejudice based on the parties' personal characteristics, background or performance at the mediation.

ENCLOSURE (7)
ENCLSOURE (1)

III. CONFLICTS OF INTEREST: A DON Certified Mediator shall disclose all actual or potential conflicts of interest reasonably known to the Mediator. After Disclosure, the Mediator shall decline to mediate unless all parties choose to retain the Mediator. The need to protect against conflicts of interest also governs conduct that occurs during and after mediation.

A conflict of interest is a dealing or relationship that might create the impression of possible bias. The basic approach to questions of conflict of interest is consistent with the concept of self-determination. The mediator has a responsibility to disclose all actual and potential conflicts that are reasonably known to the mediator and could reasonably be seen as raising a question about impartiality. If all parties agree to mediate after being informed of conflicts, the mediator may proceed with the mediation. If, however, the conflict of interest casts serious doubt on the integrity of the process, the mediator shall decline to proceed.

A mediator must avoid the appearance of conflict of interest both during and after the mediation. The mediator's commitment must be to the parties and the process. Forces from outside the mediation process should never influence the mediator to pressure the parties to settle.

IV. COMPETENCE: A DON Certified Mediator will mediate only when he or she has the necessary qualifications to satisfy the reasonable expectations of the parties.

Training and experience in mediation are necessary for effective mediation. A person who offers herself or himself as available to serve as a mediator gives parties the expectation that she or he has the competency to mediate effectively. It is essential that mediators assigned to the parties have the requisite training and experience.

Mediators should have information available for the parties regarding the mediator's relevant training, education and experience to assure parties that they have necessary qualifications and experience to undertake the role of mediator.

When DON Certified Mediators are requested to mediate disputes, the DON shall make reasonable efforts to ensure that each mediator is qualified for the particular mediation.

V. CONFIDENTIALITY: A DON Certified Mediator shall maintain the reasonable expectations of the parties with regard to confidentiality.

The parties' expectations of confidentiality depend on the circumstances of the mediation and any agreements they may make. The mediator shall not disclose any matter that a party expects to be confidential unless given permission by all parties or unless required by law or other regulatory policy.

Since the parties' expectations regarding confidentiality are important, the mediator should discuss the expectations with the parties and clearly identify during the opening statement what is not confidential.

If the mediator holds private sessions with a party, the nature of these sessions with regard to confidentiality should be discussed prior to undertaking such sessions.

In order to protect the integrity of the mediation, a mediator will avoid communicating information about how the parties acted in the mediation process, the merits of the case or settlement offers. The mediator may report if required, whether the parties appeared at a scheduled mediation and whether an agreement was reached.

Where the parties have agreed that all or a portion of the information disclosed during the mediation is confidential, the parties' agreement shall be respected by the mediator.

Confidentiality should not be construed to limit or prohibit the effective monitoring, research or evaluation of mediation programs by responsible persons. Under appropriate circumstances, the DON ADR Specialist and researchers will be permitted to obtain access to the statistical data and, with the permission of the parties, to individual case files, observations of live mediations, interviews, and surveys of participants in the process.

VI. QUALITY OF THE PROCESS: A DON Certified Mediator shall conduct the mediation fairly, diligently and in a manner consistent with the principle of self-determination by the parties.

A DON Certified Mediator shall work to ensure a quality process and to encourage mutual respect among the parties. A quality process requires a commitment by the mediator to diligence and procedural fairness. There must be adequate opportunity for each party to participate in discussions. The parties decide when and under what conditions they will reach an agreement or terminate a mediation.

A mediator may agree to mediate only when he or she is prepared to commit the attention essential to effective mediation.

Mediators shall only accept cases when they can satisfy the reasonable expectations of the parties concerning the time of the process. A mediator shall not allow a mediation to be unduly delayed by the parties or their representatives.

The primary purpose of a mediator is to facilitate the parties' voluntary agreement. This role differs substantially from other work relationships such as Personnelist, EEO Counselor, Investigator, Management Representative, etc. Mixing the role of a mediator and the role of providing professional advice is problematic and mediators must strive to distinguish between the roles. A mediator should, therefore, refrain from providing professional advice. Where appropriate, a mediator should recommend that parties seek outside professional advice, or consider resolving their disputes through other processes.

A mediator shall withdraw from mediation when incapable of serving or unable to remain impartial.

A mediator shall withdraw from mediation or postpone a session if the mediation is being used to further illegal conduct, or if a party is unable to participate due to drug, alcohol or other physical or mental incapacity.

Mediators should not permit their behavior in the mediation process to be guided by a desire for a high settlement rate.

I HAVE READ THE FOREGOING STANDARDS OF CONDUCT FOR DON CERTIFIED MEDIATORS. IF SELECTED FOR CERTIFICATION, I AGREE TO MEDIATE CASES FOR THE DEPARTMENT OF NAVY. MY SIGNATURE BELOW INDICATES MY ACKNOWLEDGEMENT OF RECEIPT AND UNDERSTANDING OF THE STANDARDS OF CONDUCT, WHICH I WILL ADHERE TO WHEN REFERRED TO MEDIATE WORK PLACE DISPUTES.

SIGNATURE & DATE: SUPERVISOR _____

SIGNATURE & DATE: NEUTRAL _____

MEDIATION AND CONFIDENTIALITY AGREEMENT

I. The Parties

The Department of the Navy and the undersigned employee are involved in a dispute concerning his/her employment.

II. Agreement to Participate in Mediation

The parties agree voluntarily to participate in mediation in an effort to resolve the dispute.

III. Confidentiality

The mediation process is confidential. The parties and the Alternative Dispute Resolution (ADR) neutral agree that they will not disclose information regarding the process, including settlement terms, to third parties, unless the participants otherwise agree in writing or as authorized by law. Confidentiality, however, shall not extend to threats of imminent physical harm.

The parties agree not to subpoena the ADR neutral in any further administrative or judicial proceeding and further agree that the neutral will be held harmless of any claim of damages arising from the Mediation process.

The mediation process shall be treated as a compromise negotiation for purposes of the Federal Rules of Evidence (Rule 408 and any other applicable rules) and state rules of evidence. The neutral will be disqualified as a witness, consultant or expert in any pending or future action relating to the subject matter of the mediation, including those between persons not parties to the mediation. Failure to meet the confidentiality requirements of this Agreement is a basis for exclusion from ADR sessions.

IV. Settlement

If a settlement is reached by the parties, the agreement shall be reduced to writing and, when signed, shall be binding upon all parties to the agreement.

For the Disputant:

For the Navy:

Disputant Date

Respondent Date

Disputant's Attorney Date
or Representative

Respondent's Date
Representative

Neutral Date

ENCLOSURE (1)

ALTERNATIVE DISPUTE RESOLUTION SETTLEMENT AGREEMENT

The parties to this agreement are _____
(hereinafter the "Disputant") and _____
(hereinafter "Agency").

On _____ the Disputant made initial contact with an
Alternative Dispute Resolution (ADR) neutral regarding an
allegation. Disputant raised the following issues:

(Briefly describe allegations):

At this time, Disputant and the Agency desire to resolve
this matter without the time and expense required for continued
litigation or adjudication of a discrimination or grievance
claim. In the furtherance of that desire, the Disputant and the
Agency agree to the following:

I. Lump sum in lieu of other relief

The Agency agrees to pay Disputant the sum of _____
_____ in lieu of any other relief to which
(s)he may be entitled. Even though it is not described as back
pay or wages in this agreement, it is understood that this amount
may be subject to Federal or state income taxes.

(Any other relief to be provided):

II. No further relief

Disputant agrees that (s)he is not entitled to any relief
that is not expressly provided under the terms of this agreement.

III. General release

Disputant agrees to release the Agency and its officers or
employees from any and all claims arising from the allegations
described above.

IV. No Further Litigation or Adjudication

This settlement covers all acts and practices to which this agreement is directed and shall serve as a final adjudication of all matters that are within the scope of the allegations described above.

V. No Admission of Fault

This agreement shall not be construed to be an admission by either party, and shall not be admissible in any proceeding as evidence of an admission by the agency of any pattern or practice that violates any civil service law, rule, or regulation prohibiting employment discrimination.

VI. Confidentiality Agreement

The Disputant and (name of activity or command) agree that they will keep the terms, amount, and fact of this Settlement Agreement completely confidential, except to the extent disclosure may be required by law, regulation, or court order. In addition Disputant agrees that (he or she) and (his or her) representative will not hereafter disclose any information concerning this Settlement Agreement or (his or her) dispute to any one employed by or connected with the Department of the Navy, including, but not limited to, past, present, or prospective employee or applicant for employment with the Department of the Navy.

VII. Noncompliance Procedure

Disputant understands and agrees that any claimed violation, breach, or failure to perform any of the commitments described in this agreement by (name of activity or command) shall be raised in writing within the time limits set by the appropriate regulations. A copy of the regulations and the appropriate appeal rights may be obtained from the HRO Specialist.

(Name of Disputant)

Date

(Agency Representative)

Date

ENCLOSURE (1)

MCBO 5800.6
12 Sep 00

Date: _____

MEMO FOR THE RECORD

SUBJ: ADR ATTEMPT

_____ and _____
appeared on _____ for their scheduled ADR session.

We appreciate their appearance and their good faith effort to attempt ADR of the dispute that exists.

Unfortunately, they were unable to resolve the dispute through ADR.

Neutral

ENCLOSURE (1)

ENCLOSURE (11)

On _____ a (Mediation, Conciliation, Early Neutral Inquiry, Settlement Conference, Other)

session for _____ (aggrieved party) lasting _____ hours was held.

The following information is provided for statistical analysis only.

Disputant: M ___ F ___ Management: M ___ F ___

Activity: _____

Were the parties represented? Yes ___ No ___

Was this an EEO complaint ___ Grievance ___ Other _____?

Topics/Issues involved in the dispute:

- | | | |
|---|--|--|
| <input type="checkbox"/> Appointment/hire | <input type="checkbox"/> Work assignment | <input type="checkbox"/> Demotion |
| <input type="checkbox"/> Termination | <input type="checkbox"/> Hours of work | <input type="checkbox"/> Performance |
| <input type="checkbox"/> Training | <input type="checkbox"/> Awards | <input type="checkbox"/> Pay |
| <input type="checkbox"/> Reprimand | <input type="checkbox"/> Suspension | <input type="checkbox"/> Non-Selection |
| <input type="checkbox"/> Reassignment | <input type="checkbox"/> Retirement | |
| <input type="checkbox"/> Term/Condition of employment | <input type="checkbox"/> Harassment (non-sexual) | <input type="checkbox"/> Harassment (sexual) |
| <input type="checkbox"/> Other _____ | | |

If EEO dispute:

Bases:

- | | |
|-----------------------------------|--|
| <input type="checkbox"/> Race | <input type="checkbox"/> National Origin |
| <input type="checkbox"/> Sex | <input type="checkbox"/> Religion |
| <input type="checkbox"/> Color | <input type="checkbox"/> Physical Disability |
| <input type="checkbox"/> Age | <input type="checkbox"/> Mental Disability |
| <input type="checkbox"/> Reprisal | |

Was an Agreement Reached? ___ Yes ___ No

Was a Partial Agreement reached? ___ Yes ___ No

If monetary agreement was reached, specify amount _____.

Were the facilities adequate and comfortable? Yes ___ No ___

Comments:

HRSC EAST ALTERNATIVE DISPUTE RESOLUTION NEUTRAL CHECKLIST

- ___ 1. Confirm that the intake form received from the HRO Specialist is complete. If incomplete, contact the HRO Specialist for completion.
- ___ 2. Within 3 work days fax or E-mail the Alternative Dispute Resolution request to the HRO Specialist with the following completed:

Date/Time ADR scheduled:
Neutral Assigned:
Date Confirmation letter sent:
- ___ 3. Send confirmation letters to participants within 3 workdays.
- ___ 4. Obtain the logistics and description of the meeting location and ensure the appropriate equipment and supplies are available, i.e., whiteboard, chartpack, paper, telephone, etc.
- ___ 5. Set up seating arrangements.
- ___ 6. Confirm the issues in dispute.
- ___ 7. Ensure that the individual with authority to resolve issue(s) is present or available by phone if they are not going to attend the Dispute Resolution session.
- ___ 8. Prepare opening statement.
- ___ 9. Prepare settlement shell.
- ___ 10. Ensure all parties have signed the Confidentiality Agreement.
- ___ 11. Ensure all parties have signed the settlement agreement if reached, and provide copies to parties.
- ___ 12. If mediation is used, destroy all notes.
- ___ 13. Ask participants to complete a survey form.
- ___ 14. Prepare Dispute Resolution Session Minutes and summary if other than Mediation is used.
- ___ 15. Forward mediation or other results to the HRO Specialist.