

**U.S. Department of the Interior
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To: All BC, HR, NI, NPIT, RS, and WO Field BIA Liaison Office Employees

From: Director, National Human Resources Management Center

Subject: Use of Alternative Dispute Resolution in the Processing of Complaints of
Discrimination

As of October 1, 1999, the Bureau of Land Management (BLM) has offered Alternative Dispute Resolution (ADR) as an option for processing informal and formal Complaints of Discrimination. This initiative is being introduced to comply with the Equal Employment Opportunity Commission's (EEOC) revisions to Title 29 Code of Federal Regulations (CFR) Part 1614, *Federal Sector Equal Employment Opportunity*, regarding the processing of Complaints of Discrimination. The revised regulations require all agencies to establish, or otherwise make available, an ADR program during the informal and formal complaint phases. In addition, we believe that the utilization of ADR methodology will allow BLM to reduce the number of formal Complaints of Discrimination filed, as well as number of days it now takes to process individual cases.

Attached is a brief description of how ADR will be incorporated into the current complaints process. Mediators may come from a variety of sources, including BLM employees trained in mediation, (with an emphasis on EEO/personnel related disputes), mediators from other Federal or State agencies, or contract mediators. In the past the Denver National Centers EEO Office has utilized the local Denver Federal Executive Board (DFEB)/ADR Consortium, which consists of trained mediators who are federal EEO and Personnel professionals from various agencies within the Denver area.

It is anticipated that these changes will also encourage better communication between employees and supervisors. This should contribute to the development of conflict resolution skills by all BLM employees and facilitate a healthier organization.

Questions or comments on the new ADR program may be directed to the EEO Office, at (303) 236-6668.

Signed by:
Linda D. Sedbrook
Director

Authenticated by:
Darlene Robitaille
Secretary

1 Attachment

1 - Use of ADR in the Informal and Formal Process (3 pp)

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HR-230

Use of ADR in the Informal and Formal Process

The following is a brief synopsis of how mediation will be incorporated into the informal EEO process in the BLM.

MEDIATION DURING EEO COUNSELING

Counseling is the required first step in the EEO complaint process. The regulations at 29 CFR 1614 provide that aggrieved persons who believe they have been discriminated against on the bases of race, color, religion, sex, national origin, age, sexual orientation, physical/mental disability, or retaliation for having participated in activity protected under various civil rights statutes, must consult an EEO Counselor prior to filing a complaint, in order to try to informally resolve the matter.

The regulations do not mandate specific procedures for the counseling process. In the Department of the Interior, counselors serve as facilitators to managers and employees in the resolution effort. This form of resolution effort, known as traditional EEO counseling, will continue to be available to aggrieved persons, and mediation will be offered as an alternative. The incorporation of mediation into the informal process will be as follows:

- During the initial meeting with the aggrieved, the Counselor will provide oral and written information regarding the two methods, traditional counseling and the new mediation process. The aggrieved may choose to go through mediation at any time in the informal process.
- The same information on the two methods available for processing informal complaints will be shared with the alleged responsible individual (ARI), which in most instances will be the manager involved in the alleged discriminatory action or the manager responsible for the environment where the alleged discriminatory action occurred.
- If either of the parties declines mediation, traditional counseling will continue, which will require the Counselor to conduct an initial interview with the aggrieved; formulate the issue(s) and bases for the pre-complaint; obtain remedy to resolve the issue(s) from the aggrieved; conduct a limited inquiry into the allegations within 30-days with the appropriate individuals; attempting resolution at all times; and issue the Notice of Final Interview if resolution attempts are unsuccessful by the 30th day from the date of the Initial Contact.
- If both parties agree to mediate, the counselor will notify the EEO Manager of the party's election to participate in mediation. The EEO Manager will make all necessary arrangements to facilitate the mediation. At that time, the traditional counseling process will be put on hold.

- If the case is resolved during mediation, the settlement terms will be reduced to writing, approved by the EEO Manager, and the case will be closed.
- If the case is not resolved during mediation, the case will be referred to the Counselor, who will issue a Notice of Final Interview to the aggrieved and prepare the counseling report. The report will consist of the initial interview with the aggrieved and a statement indicating that mediation was conducted.

MEDIATION DURING THE INVESTIGATE/RESOLUTION CONFERENCE (IRC)

The foundations of the IRC process are open communication, expeditious processing, and the creation of continuing opportunities for resolution of the dispute by the parties in conflict. The IRC will improve the resolution of complaints by expeditiously bring the parties together in a non-adversarial forum intended to facilitate a maximum opportunity for resolution. The IRC is an effective and direct way to investigate and secure the facts about the complaint and to surface significant hidden issues, by engaging conflicting parties in meaningful discussion with a trained facilitator. In this respect, it combines the best features of both structured mediation and systematic investigation by providing ample opportunity for settlement as the fact-finding process moves forward.

The IRC involves face-to-face meetings between the complainant and the alleged responsible individual (ARI). These meetings are arranged by the Denver National Centers EEO Manager and are conducted by an investigator with alternative dispute resolution (ADR) skills. Both parties may present evidence in support of their positions on the complaint, clarify their needs and intentions, and reply to concerns of one another. Also, they may continuously consider the possibility of a voluntary, negotiated settlement of the complaint. The incorporation of mediation or the IRC into the formal process will be as follows:

- Detailed written guidance on the IRC process will be provided in advance to all individuals who file a formal Complaint of Discrimination that is accepted by the BLM for processing (A procedural guide suitable for distribution to the parties in the IRC process will be provided to servicing EEO Managers).
- Within 15 work days following receipt of a formal Complaint of Discrimination, the servicing EEO Manager will issue a letter of acceptance or forward the complaint to the Washington Office EEO Group with recommendation to dismiss. If the complaint is accepted, the acceptance letter will include the designation of the case for IRC processing.
- Within 30 days following issuance of the acceptance letter, an investigator trained in ADR techniques will conduct the IRC. It is crucial that the complaints are accepted promptly and the initial meeting is held soon thereafter while the events surrounding the alleged discrimination can still be recalled in detail, while witnesses and documents are readily available, and when the parties may be more

willing to resolve the issue(s). In some instances, this initial discussion, which includes meeting separately with the parties to explain the IRC process and exploring negotiation and mediation as settlement options, will result in resolution.

- Immediately after the initial discussion, the investigator will proceed with the formal investigation of the complaint by obtaining the testimony of the complainant and the ARI. The complainant and the ARI are given alternate opportunities to respond and/or to rebut the statements of the other, as well as to present documents or testimony in support of their position. This should result in a clear and unequivocal understanding by the parties of the issues before them. During this part of the IRC process, the investigator identifies further documentation necessary to resolve the complaint. The testimony and documentation collected becomes a part of the official record. Once the issues have been narrowed by the parties with the help of the investigator, the investigator will open the meeting for resolution efforts. While the resolution discussion is not part of the official record of the complaint, any resulting agreement will be made a part of the official record.
- If a resolution is not obtained, the investigator will further develop the official record by interviewing witnesses and gathering necessary documentation. The entire IRC process is usually completed in one or two days. If the complaint is not resolved, the investigator will submit the completed report of investigation (ROI) to the responsible EEO Manager.