



THE U.S. NUCLEAR REGULATORY COMMISSION ALTERNATIVE DISPUTE RESOLUTION PROGRAM MANUAL

The Office of Small Business and Civil Rights (SBCR) administers the Employee Equal Opportunity (EEO) ADR program.

The purpose of the ADR Program Manual is to make all NRC employees and stakeholders aware of the agency's ADR program and procedural processes and to assist individuals in better understanding how to resolve Equal Employment Opportunity complaints fast, confidentially, and effectively.

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CHAPTER 1

Introduction

The mission of the U.S. Nuclear Regulatory Commission (NRC) is to license and regulate the Nation's civilian use of radioactive materials to provide reasonable assurance of adequate protection of public health and safety, to promote the common defense and security, and to protect the environment. To fulfill its responsibility to protect public health and safety, the NRC performs five principal regulatory functions: developing regulations and guidance for applicants and licensees; licensing or certifying applicants to use nuclear materials, operate nuclear facilities, and decommission facilities; inspecting and assessing licensee operations and facilities to ensure that licensees apply with NRC requirements and taking appropriate followup or enforcement actions when necessary; evaluating operational experience of license facilities and activities; and conducting research, holding hearings, and obtaining independent reviews to support regulatory decisions.

Consistently ranked as one of the “Best Places To Work in the Federal Government,” the NRC is committed to creating and maintaining a work environment that maximizes the potential of all employees. To achieve the desired goal, the NRC expects everyone to adhere to the agency's fundamental organization values: integrity, service, openness, commitment, cooperation, excellence, and respect (commonly referred to as ISOCER values). These values guide every action we take—from a decision on a safety, security, or environmental issue; to how we perform an administrative task; to how we interact with our fellow employees and other stakeholders.

As such, it is the policy of the NRC to provide equal employment opportunity to employees and applicants for employment and to prohibit discrimination based on race, color, national origin, religion, sex (including pregnancy, sexual orientation, and gender identity), age (age 40 and over), mental and physical disability, genetic information, and reprisal for participation in activity protected by the civil rights statutes or reprisal for opposing practices made unlawful by these statutes. The NRC is committed to using alternative dispute resolution (ADR) as a tool to resolve employment discrimination claims at the earliest stage possible in an expeditious and cost-effective manner. In compliance with the U.S. Equal Employment Opportunity Commission (EEOC) regulations,¹ the NRC has developed a confidential, informal, nonadjudicative, and nonadversarial ADR program to assist employees (and contractors in appropriate cases), managers, and supervisors in reaching mutually acceptable and voluntary resolutions to employment discrimination claims.

One of the key roles of the agency's Office of Small Business and Civil Rights (SBCR) is to provide mediation services to resolve workplace disputes and preserve working relationships through use of the agency's ADR program. During the past 18 years, the NRC's commitment to

¹ The EEOC regulations are in Chapter 29 of the *Code of Federal Regulations* (29 CFR) Part 1614, “Federal Sector Equal Employment Opportunity” (revised November 1999). The text of these EEOC regulations can be accessed through the EEOC's Web site, <http://www.eeoc.gov/federal/1614-final.html>.

providing high-quality mediation services has resulted in significant cost savings and other tangible benefits for both parties (the agency and aggrieved person/complainant) participating in the ADR process. SBCR is committed to ensuring qualified experienced mediators provide commensurate services to resolve both simple and complex disputes, while ensuring civility, building trust, and preserving relationships.

Background

The Federal Government has made clear that Federal agencies are required to use ADR as a means of offering an “inexpensive means to resolving disputes as an alternative to litigation....”² Since November 1999, the EEOC regulation³ has required Federal agencies to make an ADR program available during the Equal Employment Opportunity (EEO) precomplaint and formal complaint processes. The EEOC’s Management Directive (MD) 110 provides instructions for designing an ADR process to address EEO complaints and prescribes the ADR core principles that are necessary to successfully develop Federal ADR programs. Chapter 2 sets forth these core principles.

CHAPTER 2

What Is Alternative Dispute Resolution?

The Administrative Dispute Resolution Act of 1996 (ADRA) defines ADR as “any procedure that is used to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, fact-finding, mini-trials, arbitration, and use of ombudsman, or any combination thereof.”

SBCR’s Civil Rights program administers the NRC’s ADR program. The NRC’s ADR process relies on mediation as its primary means of assisting employees to address workplace disputes and grievances. The ADR program uses a shared neutral model and coordinates mediators to provide mediation services to requesting parties. Mediation is offered during the informal and formal complaint processes.

What Is Mediation?

Mediation is defined as a voluntary, confidential informal process in which a trained neutral third party, a mediator, assists the disputing parties in finding a mutually acceptable solution in a manner different from traditional methods. Unlike litigation, for example, the rules of evidence do not apply, no testimony is taken, and the mediator does not decide the dispute. The term “neutral” is used to denote an individual who, with respect to an issue in controversy, functions specially to aid the parties in resolving the controversy. Mediation is an informal, confidential,

² Public Law 104-320, also known as the Administrative Dispute Resolution Act (ADRA)

³ 29 CFR Part 1614

nonadversarial form of dispute resolution that encourages open communication, emphasizes problem solving and creative solutions, and seeks to resolve issues quickly.

How Does the Employee EEO ADR Program Work?

In those cases that the agency determines to be appropriate, mediation is offered. If the aggrieved person/complainant voluntarily agrees to participate, the EEO ADR coordinator conducts premediation meetings with all parties to familiarize them with the ADR process. The mediator subsequently convenes a conference with all parties, explains the process, establishes ground rules, and assists with facilitating a resolution.

The parties to the dispute are considered to be the agency and the aggrieved person/complainant. Participants in the mediation include the (1) aggrieved person/complainant, (2) the responsible management official required to participate in the process, (3) the management official who has the authority to settle the complaint, (4) representatives (optional), (5) a representative of the Office of the General Counsel (OGC) (optional), (6) the certified mediator, (7) the agency official, and (8) the National Treasury Employees Union (NTEU) representative, when appropriate.

The NRC's ADR program is designed to fit within the mission and culture of the agency with flexibility to respond to the numerous situations encountered at the agency. The flexibility in the program's design allows the NRC to adapt to changing circumstances not anticipated at the time the program was initially implemented. The EEOC's policy statement on ADR⁴ sets out the ADR core principles. The NRC's ADR program conforms to the core principles set forth in ADRA, as described below.

Fairness

The NRC's ADR program is designed to be fair to participants during each phase of the process. Participants receive information about all aspects of the ADR proceedings, including, but not limited to, their right to representation throughout the ADR process. The concept of fairness also requires incorporation of other provisions such as voluntariness, neutrality, confidentiality, and enforceability.⁵

Neutrality

To be effective, an ADR proceeding must be impartial and independent of any control by either party (the agency or the aggrieved person/complainant), in both perception and reality. Using a neutral third party as a facilitator or mediator assures this impartiality. A neutral third party is one who has no stake in the outcome of the proceeding. For example, he or she might be an employee of another Federal agency who knows none of the parties and whose type of work differs from that of the parties. Alternatively, he or she may be an employee within the same agency, as long as he or she can remain neutral about the outcome of the proceeding.

⁴ Appendix H to MD 110, posted on www.eeoc.gov

⁵ EEOC MD 110, at 3-2 and 3-15 through 3-17

To ensure at all times the independence and objectivity of the neutral third party, Federal agencies have developed formal programs for “sharing” neutrals in ADR or conflict resolutions. A number of collaborative and cooperative efforts have been accomplished through local Federal Executive Boards and the Federal Mediation and Conciliation Service (Shared Neutrals Program). These programs allow the NRC and other participating Federal agencies, through reciprocal agreements, to share trained neutral mediators and other mediation resources. SBCR may also engage other mediation services through contracts to obtain trained neutral mediators.

The neutrals can have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless the interest is fully disclosed in writing to the parties (agency and aggrieved person/complainant) and they agree that the neutral may serve. Any neutral used in EEO ADR proceedings is charged with the responsibility to ensure that ADR proceedings are conducted in accordance with EEO law, 29 CFR Part 1614 regulations, and the core principles enunciated by the EEOC. Neutrals should not have any stake in the outcome of the dispute or be involved in the administrative processing or litigation of the dispute. For example, neutrals should not also serve as counselors or investigators in that particular matter. Participants in the ADR process have the right to reject a specific neutral and have another selected who is acceptable to all parties.

Confidentiality

Confidentiality is essential to the success of all ADR proceedings. Congress recognized this by enhancing the confidentiality provisions in Section 574 of ADRA, specifically exempting qualifying dispute resolution communications from disclosure under the Freedom of Information Act. Parties who know that their ADR statements and information are kept confidential will feel free to be frank and forthcoming during the proceeding without fear that such information may later be used against them. To maintain that degree of confidentiality, explicit limits must be placed on the dissemination of ADR information. The NRC’s ADR process assures confidentiality consistent with ADRA provisions. Neutrals should not discuss confidential communications, comment on the merits of the case outside the ADR process, or make recommendations about the case. The NRC’s staff and management who are not parties to the process are not to ask neutrals to reveal confidential communications.

The NRC’s policies provide for the protection of privacy of all complainants, respondents, witnesses, and complaint handlers. For implementation and reporting purposes, the details of a resolution can be disseminated to specific offices with a need to have that information. The NRC has clear written policies protecting the confidentiality of what is said and done during an ADR proceeding.

Ethics

Neutrals are required to follow the professional guidelines applicable to the type of ADR practiced at the NRC.

Preservation of rights

Participants in the ADR process retain their right to have their claim adjudicated if a mutually acceptable resolution is not achieved.

Self-determination

The ADR process provides participants an opportunity to make informed, uncoerced, and voluntary decisions.

Voluntariness

Participation in the NRC ADR process is strictly voluntary. In order for participants to make an informed choice, they receive appropriate information and guidance to decide whether to use ADR processes and how to use them. Parties must knowingly and voluntarily enter into an NRC ADR proceeding. An ADR resolution can never be viewed as valid if it is involuntary, nor can a dispute be actually and permanently resolved if the resolution is involuntary. Unless the parties have reached a resolution willingly and voluntarily, some dissatisfaction may survive after the ADR proceeding. Such dissatisfaction could lead to dissatisfaction with other aspects of the NRC workplace, or even to charges that the resolution was coerced or reached under duress. In addition, aggrieved parties/complainants and management officials participating in the ADR are assured that they are free to end the ADR process at any time, and that they retain the right to proceed with the administrative EEO process if they decide that they prefer that process to ADR and resolution has not been reached. The ADR coordinator reassures participants that no one can force a resolution on them, not agency management, EEO officials, or the third-party neutral.

Representation

All parties to a dispute addressed in the ADR process have a right to be accompanied by a representative of their choice, in accordance with relevant collective bargaining agreements, statutes, and regulations. In mediations that involve members of the bargaining unit, under the Federal Labor Relations Act, NTEU has the right to be present and can send a representative to be an observer during a mediation session.

Timing

Using the ADR process is encouraged at the earliest possible time and at the lowest possible level in the organization.

Coordination

Coordinating the ADR processes is essential among all affected NRC offices with responsibility for resolution of disputes, such as the Office of the Chief Human Capital Officer, SBCR, the agency dispute resolution specialists (handling policy matters), NTEU, OGC, the Employee Assistance Program, and other vested stakeholders.

Training, Evaluation, and Quality

The NRC provides appropriate training and education on ADR to its employees, managers and supervisors, and other persons protected under the applicable laws.⁶ The training that managers and supervisors receive includes, among other topics, discussions about the (1) duty

⁶ EEOC MD 110, at 3-11. For example, the interagency Shared Neutrals program administered by the Federal Mediation and Conciliation Service requires at least 20 hours of basic mediation skills training, at least three co-mediations with a qualified mediator of five independent mediations and positive evaluations from a qualified trainer/evaluator, and at least two references from two qualified mediators or trainer/evaluators.

imposed on managers and supervisors to participate in the NRC's ADR process, (2) benefits associated with participation in the ADR process, and (3) importance of providing full information related to the ADR proceeding as soon as possible.

Additionally, the NRC conducts annual and periodic program evaluations to (1) determine the effectiveness of the NRC's ADR program, (2) assess whether the ADR program has achieved its goals, (3) provide SBCR feedback on how the ADR program might be made more efficient and achieve better results, and (4) report required information on the nature and operations of the ADR program to the EEOC.⁷

Enforceability

The EEOC regulation at 29 CFR 1614.504 provides that "Any settlement agreement knowingly and voluntarily agreed to by the parties, reached at any stage of the complaint process, shall be binding on both parties." The regulation sets specific procedures for enforcing such a settlement agreement. Agreements resolving claims of employment discrimination reached through the ADR process are enforceable through this procedure.

CHAPTER 3

What Happens When an Agreement Is Reached?

The mediator will review the terms to ensure accuracy. The agency official will submit the proposed agreement to the ADR coordinator for further processing, including ensuring that the provisions are approved by the appropriate NRC officials. Thereafter, the ADR coordinator will (1) draft the settlement agreement (on occasion, OGC will draft the settlement agreement), (2) circulate the settlement agreement to OGC and the Office of the Chief Human Capital Officer for their review, (3) present the settlement agreement to the parties for review and signature, and (4) monitor and ensure the parties comply with the terms of the settlement agreement.

What Happens When an Agreement Is Not Reached?

Informal Complaint

The EEO counselor will conduct the final interview with the aggrieved party and issue a Notice of Right to File a Formal Complaint of Discrimination.

Formal Complaint

The complaint will be reinstated from the point at which processing ceased.

⁷ EEOC MD 110, at 3-15

What Are the Reasons To Use the NRC's ADR/Mediation Program?

Many participants have expressed satisfaction with the ADR program. Other reasons that support using the program to resolve disputes are the following:

- It's cost-effective.
- It's fair and impartial, and it works.
- It's neutral. (Certified mediators assist in facilitating resolutions to disputes.)
- It's confidential.
- It's an effective method for achieving open communication.
- It's an opportunity to fully understand the conflict and to identify creative solutions.
- It's efficient and often reduces complaint processing times by 70 percent.
- It's informal and does not require legal representation.
- A valid, binding agreement is achievable.
- Participants retain the right to have their claim adjudicated if a resolution is not achieved.

CHAPTER 4

Who Administers the NRC's ADR Programs?

SBCR administers the agency's EEO ADR program in coordination with OGC and OCHCO as necessary.

Who Is the Point of Contact for the Employee EEO ADR Program?

The contact information for the NRC's agency EEO ADR program is as follows:

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THE U.S. NUCLEAR REGULATORY COMMISSION ALTERNATIVE DISPUTE RESOLUTION
PROGRAM MANUAL DATED : October 25, 2019

DISTRIBUTION:

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ADAMS Accession No.: ML19009A287

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