

FOR MORE INFORMATION  
ABOUT  
THE MEDIATION PROGRAM

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Revised 7/01

# MEDIATION PROGRAM



## THE ROLE OF THE U.S. OFFICE OF SPECIAL COUNSEL

**T**he U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Under the Civil Service Reform Act and the Whistleblower Protection Act, the OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing. To that end, OSC investigates allegations of prohibited personnel practices and other improper employment practices within its jurisdiction, and seeks appropriate corrective or disciplinary action.

## THE OSC MEDIATION PROGRAM

**T**he OSC offers Alternative Dispute Resolution (ADR) to resolve selected prohibited personnel practice complaints. ADR, used in appropriate circumstances, can yield results that are faster, less expensive, and less contentious than traditional OSC complaint processing. The OSC primarily uses mediation to provide parties the opportunity to resolve an OSC complaint without the need for a lengthy investigation or costly litigation.

## WHAT IS MEDIATION?

**M**ediation is an informal process in which a neutral third party – the mediator – assists the opposing parties in reaching a voluntary, negotiated resolution of the complaint. Mediation is different from other forms of dispute resolution in that the parties participate voluntarily, and the mediator has no authority to make a decision. The decision-making power rests in the hands of the parties.

## HOW DOES MEDIATION WORK?

**M**ediation gives the parties the opportunity to discuss the issues raised in the complaint, clear up misunderstandings, find areas of agreement and, ultimately, to incorporate those areas of agreement into a final resolution of the complaint.

Participation in the OSC Mediation Program is voluntary. In selected cases that are slated for referral to OSC's Investigation Division, the OSC ADR Specialist contacts the complainant and employing agency to invite them to participate in the mediation program. If both parties agree, OSC schedules a mediation session. OSC mediators, who have extensive mediation training and experience in federal personnel law, conduct a mediation session at a mutually convenient time and location. If mediation results in resolution, the agreement is reduced to writing and becomes binding on both parties.

## ADVANTAGES OF MEDIATION

Many parties prefer mediation as a dispute resolution process because it is:

- ☑ **INFORMAL.** The process is informal and flexible; attorneys are not necessary. There are no formal rules of evidence and no witnesses.
  - ☑ **CONFIDENTIAL.** The mediator will not disclose any information revealed during the mediation. The sessions are not tape-recorded or transcribed. At the conclusion of the mediation, mediators destroy any notes they took during the mediation session.
  - ☑ **QUICK AND INEXPENSIVE.** When parties want to get on with their business and their lives, mediation may be desirable as a means of producing rapid results. The majority of mediations are completed in one or two sessions.
- Moreover, mediation generally produces or promotes:
- ☑ **MUTUALLY SATISFACTORY RESULTS.** Parties are generally more satisfied with solutions that have been mutually agreed upon, as opposed to solutions that are imposed by a third party decision-maker.

- ☑ **GREATER PARTY CONTROL.** Parties who negotiate their own settlements have more control over the outcome of their dispute. Parties have an equal say in the process. There is no determination of fault. Rather, the parties reach a mutually agreeable resolution to their conflict.
- ☑ **PRESERVATION OF RELATIONSHIPS.** Many disputes occur in the context of ongoing work relationships. Mediated settlements that address all parties' interests often preserve working relationships in ways that would not be possible in a win/lose decision-making procedure. Mediation can also make the termination of a work relationship more amicable.
- ☑ **COMPREHENSIVE AND CUSTOMIZED AGREEMENTS.** Mediated agreements often help resolve procedural and interpersonal issues that are not necessarily susceptible to legal determination. The parties can tailor their settlement to their particular situation and attend to the fine details of implementation.
- ☑ **A FOUNDATION FOR FUTURE PROBLEM-SOLVING.** After a mediation resolution, if a subsequent dispute occurs, parties are more likely to utilize a cooperative forum of problem-solving to resolve their differences than to pursue an adversarial approach.

## ANSWERS TO FREQUENTLY ASKED QUESTIONS

**Does mediation work?** While each case is unique, general statistics from a wide range of forums indicate that mediation resolves over 70% of disputes.

**Does OSC require the parties to participate in mediation?** No. Participation is strictly voluntary.

**What happens if one party declines OSC's invitation to mediate, or decides to terminate mediation before resolution of the complaint?** In either case, the complaint will be assigned to the Investigations Division, as it would have been had mediation not been offered to the parties.

**Who mediates OSC complaints?** OSC cases are conducted by mediators who are experienced and trained in mediation and in federal personnel law. All internal OSC mediators are neutral, unbiased professionals with no stake in the outcome of the mediation process.

**Who attends the mediation session?** The complainant and a representative from the employing agency attend the mediation. While it is not necessary to have an attorney or other representative attend the session, either party may choose to do so. It is essential, however, that the individuals attending the mediation session have the authority to resolve the dispute.

**How long does the mediation process take?** The length of the mediation session depends upon the complexity of the case and willingness of the parties to resolve the dispute. Most mediations are completed in eight hours or less.

**What happens if the mediation does not result in resolution?** The parties risk nothing by participating in mediation. If resolution is not achieved, the complaint is assigned to the Investigations Division, as it would have been had the parties not tried mediation.

**Are all OSC complaints eligible for mediation?** No. The OSC ADR Unit evaluates each complaint that has been selected for referral to OSC's Investigation Division to determine whether 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. Allegations that do not warrant referral to the Investigation Division are not eligible for mediation.

**Can a complaint that is already in the Investigation or Prosecution Division be mediated?** Mediation may be available as an option at the investigation and prosecution stages at the discretion of OSC.