

**SPECIAL
POINTS OF
INTEREST:**

- **First
Annual
ADR
Excellence
Awards**

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ADR Newsletter

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OCT/NOV/DEC 2008

First Annual ADR Awards

The Office of Resolution Management (ORM) is pleased to announce the First Annual Alternative Dispute Resolution (ADR) Excellence Award. In April 2007, the Secretary of Veterans Affairs (VA) approved the establishment of the award to recognize exemplary accomplishments by VA organizations and individuals in furthering ADR.

ORM is currently accepting nominations for this award through December 31, 2008. Nominations (including self-nominations) should be submitted through the relevant administration or staff office to VA's Workplace ADR Program. VHA employees should submit nominations to the Management Support Office/EEO Affirmative Employment Team (10A2E); VBA employees to the Office of Diversity Management and EEO (20M2), and NCA employees to the Office of Diversity Management and EEO (41).

Award categories are (A) Individual ADR efforts by an employee; (B) Individual ADR efforts by a manager, and (C) Workplace ADR Program recognition. Any individual or program within the Department meeting the nomination criteria may be nominated.

Nomination Criteria

Each nomination must include a brief one page narrative that summarizes the nominee's ADR



Nominations for First Annual ADR Awards accepted through December 31, 2008

accomplishments. The narrative summary should address the nominee's contributions in one or more of the following areas:

- A) How the individual or program effectively managed conflict; thereby preventing disputes from arising and saving time and resources;
- B) How the individual or program contributed to the fair, efficient, and effective resolution of disputes;
- C) How the individual or program furthered the Department's mission and goals by promoting and utilizing ADR; and

D) How the individual or program encouraged others to use ADR and/or developed creative and innovative ideas and solutions.

Use VA Form 0892 to submit the nomination. The form is available on the Internet at: <http://www.va.gov/vaforms/va/pdf/VA0892.pdf>.

A panel of individuals including representation from the administrations, staff offices, and unions including those with backgrounds in ADR will assist by reviewing the nominations and recommending award winners to the Assistant Secretary for Human Resources and Administration (HR&A). The Assistant Secretary for HR&A will review recommendations and make final selection for the awards, subject to concurrence from the Secretary. Equal consideration will be given to all nominees.

So if you or someone you know made great strides in ADR during fiscal year 2008, complete a nomination form and submit through your administration or staff office to the Workplace ADR Program by December 31, 2008. We look forward to recognizing those individuals and organizations committed to conflict management and dispute resolution.



Contract Mediators in VA

Did you know VA uses contract mediators to conduct ADR services such as mediation, facilitation, and limited training as needed? Facilities having difficulties locating a VA certified mediator or mediators from their local Federal Executive Board, where applicable, may request a contract mediator through the Workplace ADR Program in Washington, DC. Contact Liz Hawkins, ADR Specialist for more information at 202-501-2800. The following are frequently asked questions about requesting contract mediators:

1. Is there a cost or chargeback to the facility for contract mediation services?

No. The Workplace ADR Program funds these services. Cancellation fees may apply if mediation is cancelled in less than 48 hours of the scheduled session, so it is important for the ADR coordinator to notify the contract mediator as soon as possible of any cancellations.

2. How quickly can a mediator be assigned and conduct a mediation?

It depends. Keep in mind that VA is not the only agency for which contract mediators provide services. It may take 2 to 3 days after submitting your request to Workplace ADR before a mediator is assigned. Once an assignment is made, the ADR coordinator works with the mediator's schedule and availability. On average, mediations can occur within 2 weeks of the request.

3. What information should I have available for the contract mediator?

If applicable you should have the contract mediator's agreement to mediate form ready for all parties to sign at the time of mediation, mediation assessment forms for the parties to complete after the mediation and a settlement agreement template. These documents are available on the Workplace ADR Program's webpage at: <http://vaww1.va.gov/adr/page.cfm?pg=86>. It is also helpful to provide the mediator with background information about the case and remedies sought.

**“A 53%
resolution rate
and potential
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you.”**

Using External Mediators

To assist VA facilities in the Central Plains Operation (CPO) and Western Operation (WO) areas, Office of Resolution Management ADR coordinators Charlyn Stewart (CPO) and Vickye Gammage (WO) worked with facility ADR coordinators and contract mediators to schedule mediations and facilitations in Arizona, California, and Texas. Mediation and facilitation sessions were conducted from June 2008 to September 2008, resulting in 53% of the complaints being resolved or withdrawn. About a group facilitation conducted by contract mediators, one facility ADR coordinator noted that the resolution reached may have saved the agency approximately a half million dollars. A 53% resolution rate and potential savings of millions of dollars to the agency proves that mediation can work for you.

Confidentiality and the mediator



By Greg Burke

VA certified mediators play an important role in VA ADR programs and conduct many of the mediations occurring in VA facilities nation-wide. VA also uses non-VA mediators. However, all mediators share common obligations to the parties in the mediation and the ADR Program using the mediator's services.

A principal obligation of any mediator is to maintain the confidentiality of communications made privately by parties to the mediator and in general sessions with all the parties. The Administrative Dispute Resolution Act of 1996 (ADRA) provides the statutory authority for the confidentiality necessary to conduct mediations and bars mediators from voluntarily disclosing confidential communications or dispute resolution communications.

Under ADRA, mediators cannot disclose dispute resolution communications, i.e. communications prepared for or made during the mediation. Mediators also cannot disclose confidential communications whether

made in the lead-up to the mediation or during the mediation itself. Confidential communications occur under circumstances where the source of the communication expects that it will not be further disclosed.

However, ADRA limits confidentiality in the following circumstances: Federal employee mediators who receive information regarding criminal conduct in a Federal program must report that conduct to appropriate authorities. Similarly, a non-criminal communication must be made public if it contains information that a statute requires to be disclosed and no one else is reasonably available to disclose the information.

Mediators may also disclose dispute resolution or confidential communications if parties or affected participants to the mediation consent in writing or if the communications have already been made public.

Unless conditions are met for these voluntary disclosures, mediators may disclose confidential or dispute resolution communications only upon a court order issued to prevent a manifest injustice, to establish a violation of law, or to prevent harm to the public health and safety despite and resulting to mediation confidentiality.

The mediator may discuss the information with another neutral if the neutral, such as an ADR Program Coordi-

nator, is also acting as a neutral in assisting the parties to resolve their dispute. Such discussions would not constitute an unlawful disclosure under ADRA if between neutrals acting as neutrals in connection with the case. Disclosing non-identifiable information for educational or research purposes is also permissible under ADRA.

ADRA's requirements end after the parties reach final signed agreement to resolve their dispute or the mediation is terminated. Although mediators must maintain confidences of communications made before final signed agreement or termination, mediators' subsequent communications with the parties or other participants in the mediation are not confidential.

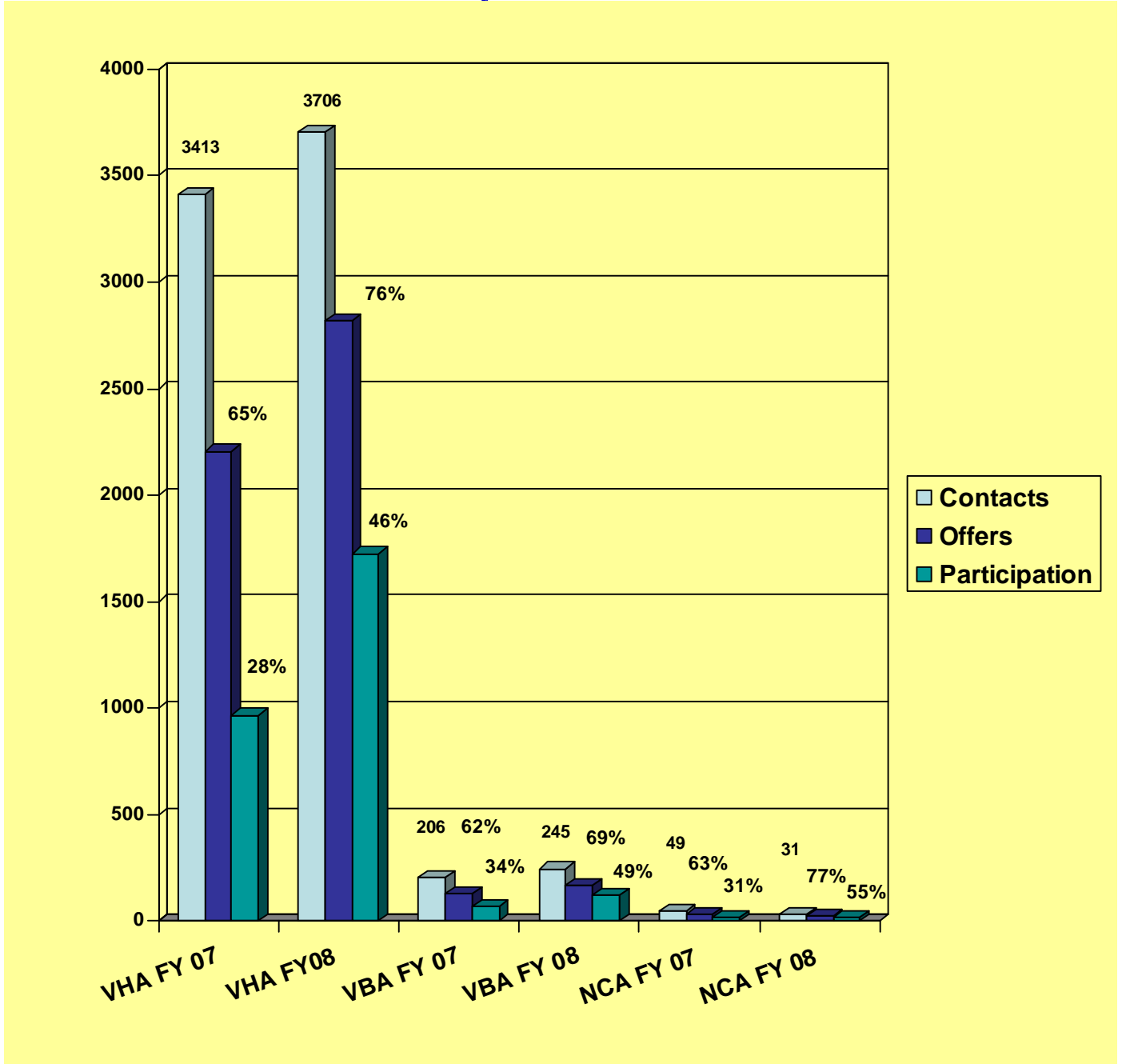
After agreement is reached, even confidential or dispute resolution communications can be disclosed as necessary to resolve a dispute concerning the meaning of the final signed agreement or between the mediator and a party to the mediation.

In summary, confidentiality is a necessary element in conducting mediations successfully. But mediators should be aware of its limits and effectively communicate those limits to the parties and other participants in mediations.

Contact Greg Burke, Office of Resolution Management at (202) 501-2925 if you have any questions.

“Confidentiality is a necessary element in conducting mediations.”

EEO ADR Activity in VA—FY 07 & FY 08



In FY 08, VHA EEO ADR offers increased by 11% and the ADR participation rate increased by 18%

In FY 08, VBA EEO ADR offers increased by 7% and the ADR participation rate increased by 15%.

In FY 08, NCA EEO ADR offers increased by 14% and the ADR participation rate increased by 24%.

The goal for ADR participation set forth by the Equal Employment Opportunity Commission is 45—50%.



Workplace ADR Program

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Mediation:

A Solution to Workplace Disputes

The Workplace ADR Program solicits articles for VA's quarterly ADR newsletter. The purpose of the newsletter is to communicate information relating to the use of ADR in workplace disputes and serve as a resource for those interested in learning more about ADR and its application within VA. We invite you to submit ideas and articles for the newsletter through your respective administrations: VHA to Roberto Rojo (10A2E), VBA to Johnny Logan (20M42), NCA to Nicole Maldon (40A), VACO staff offices to your VACO ADR Liaison, and labor organizations to your ADR Council Representative. We are looking for ideas and articles on ADR-related topics, noteworthy activities, initiatives, accomplishments, best practices, or other items designed to educate and inform VA employees and managers on ADR and its benefits in addressing workplace disputes. We hope the VA community will find the newsletters a useful resource for obtaining interesting and helpful information representing ADR activity throughout VA. For more information, visit our website at:

<http://vaww1.va.gov/adr/page.cfm?pg=86>

Dear Mediator:

I have an upcoming mediation for a workplace dispute. Both parties seem to want to mediate, but the employee told me that she would not participate if her first line supervisor is present because he intimidates her. Management insists that the supervisor be there because he knows the facts. We seem to be at impasse before we even get started. What can we do?

Answer:

The tension you describe is not uncommon in mediation. Since you cannot force management to give up its right to choose who will participate, you should try to persuade the employee that facing her supervisor in the controlled environment, with the mediator serving as a buffer, is the best way to overcome her fear of intimidation. Similarly, advise the supervisor that mediation promotes candor, even venting without recrimination, so he knows what to expect. If the supervisor does not have full settlement authority, it is possible another management official will attend, thus providing a further buffer. At all times the mediator maintains control of the process, though not its outcome. If you cannot convince the employee to meet under these conditions another option to consider is facilitation, whereby the mediator may conduct alternating meetings with each party separately. While promising no direct face-to-face contact may get the parties to engage in the facilitation, it requires a very skilled mediator to pull it off effectively, since the mediator becomes the sole medium of information between the parties. It places a premium on active listening and effective communication skills to ensure that the information the mediator conveys to each party is accurate, to avoid misunderstanding if an agreement is reached. It also requires a deep appreciation of confidentiality, since the mediator can divulge only what each party expressly authorized to be divulged to the other. Before considering facilitation, however, you should try to convince the parties that face-to-face communication is the most effective way to reach a meaningful and lasting resolution to their dispute.

NOTE: If you have a question, please forward it to: WorkplaceADR@va.gov.