EMPLOYEE MEDIATION CORNER

A series of informational handouts on various conflict resolution subjects brought to you by the Employee Mediation Office of the D.C. Courts.

Taking A Positive Approach to Conflict

Denise was so frustrated she had to take a break to walk around the outside of the court building. "I am so fed up," she complained to her friend and co-worker, Lauren. "I am so sick of doing everyone else's work on top of mine!!"

"EVERYONE's work?" asked Lauren. "What do you mean?"

"Actually, it's Beth. She is always dumping her case jackets on my desk. I know I finish my filing faster than most other people in the office, but that doesn't mean that I should have to pick up Beth's slack!"

"Have you talked this over with Beth?" Lauren asked.

"Well - not exactly. She knows what she's doing is wrong, and I'm not going to give her the satisfaction of complaining. I just finish all the work on my desk and don't speak to her unless I have to...... This has been going on for so long now that I guess I'm stuck doing the extra work."

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The Normal Responses to Conflict

Conflict in the workplace is a common and normal occurrence. In our diverse Court community we all have different habits, opinions, and expectations. Sometimes we can misunderstand each other or get in each other's way. Denise feels that Beth is taking advantage of her by giving her extra work. Beth thinks that when people are done with their own case jackets they would want to help finish others in the office.

Unfortunately, Denise is handling her frustrations as many of us do, by trying to ignore the problem. Instead of confronting Beth directly with her concerns, she acts as if nothing is wrong and then complains to a third party. Beth doesn't know what the problem is, she just thinks that Denise doesn't like her.

Ignoring Conflict

Ignoring a conflict is one of the most common responses people have when confronted with a situation. Instead of addressing the person or subject directly, we often avoid the issue and desperately hope things will get better. The reality is, however, that unless the conflict is managed head-on, it will probably get worse.

Conflict in the workplace rarely goes away by itself. The most productive and healthy way to deal with conflict is with open and honest communication. To identify the problem and acknowledge it to the others involved is the first step in resolving a conflict. The best option is to take direct action and use assertive communication to address an issue that is troubling you.

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Bob, a branch manager, yelled at Travis, another branch manager, "You'd better do something about those slobs who work for you!"

"What???" gasped Travis.

"Don't play innocent with me!" growled Bob. "You know that they have been eating lunch in my conference room and have been leaving it a disgusting mess for the past week! I don't think I should have to baby sit or play maid to your staff!!!!"

Travis answered in a low tense voice, "For your information, it is not YOUR conference room. And, you have no way of proving that it's my staff and not YOURS. Everybody knows that your employees have no respect for Court property."

Aggression, Attacks and Accusations

Another way people often deal with conflict is with an angry "in your face" attitude. Sometimes we are so energized about addressing conflict that we become aggressive and confrontational.

Bob deals with conflict by attacking. Yes, he is directly communicating his frustrations, but it's brutal. Human nature leads us to respond to an attack with a counter-attack. Even though the conflict has been identified, instead of leading to resolution, it is escalating. Bob and Travis should provide a unified, productive resolution of issues in the office, but in fact, they are creating an environment that is tense for everyone.

Dealing Effectively with Conflict

Ignoring the conflict or responding with aggression clearly do not work. However, there is an alternative. The productive way to manage conflict is open, yet respectful. When the people involved discuss the issue openly and calmly, they promote the mutual exchange of ideas.

As we said before, conflict is normal and, in fact, should be seen as an *opportunity*. Conflict as an opportunity is a signal that there is a problem which needs to be solved. Conflict means that things in the office need to be clarified: issues, expectations, or responsibilities that have simply not been commonly understood.

When you are able to handle conflict in this manner, you will have career skills that will serve you, the Court and the customers we serve.

The Employee Mediation Office provides D.C. Courts staff with an alternative forum for the resolution of workplace disputes. If you are interested in mediating a conflict or would like more information on the Employee Mediation Office, please call us at 879-4246.

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Creating a Comprehensive ADR Training Program[1]

I. Introduction	Executives and managers, in their roles as decision-makers, need to understand the ADR processes and how they work. In addition, individuals used as third-party neutrals must be skilled and competent in specific ADR processes, and potential disputants must be aware of the ADR processes being offered and how they differ from traditional dispute resolution processes. When targeted to the specific ADR program needs, training and education can be the key to these critical aspects of an ADR program.

Definitions: For the purpose of this resource book, training refers to providing an adequate skill and knowledge basis for those who may be involved in administering, recommending usage of, or participating in ADR processes. Training usually involves providing basic dispute resolution skills for users and associated program personnel and advanced technical process skills for neutrals. Education provides the contextual background and framework to understand and appreciate the strengths and weaknesses of ADR and where, when, and how to use it. Educational approaches generally take the form of awareness/orientation programs for executives, management, and end users of ADR processes.

This chapter discusses what issues must be considered prior to designing a training program, what specific steps to follow once you are ready to design the program, concrete examples of training programs, and particular components to ADR curriculum.

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[1] This chapter has been updated from the original document prepared by Doris Campos-Infantino, DHHS, and Pete Swanson, FMCS, under the auspices of the MicroDesign Subgroup of the Dispute Systems Design Working Group of the Administrative Conference of the United States in June, 1993.

II. Pre-design Considerations

As a general rule, you can be sure that the success of your ADR program will be in direct proportion to how well you lay the groundwork through proper training and education of your agency on ADR. Programs commonly fail because people do not really understand the strengths and weaknesses of ADR or where it fits in with their universe of disputes. Most critical to the success of any ADR program is support from agency leaders, which can be manifested in the allocation of, or reallocation of resources, and encouragement of the use of ADR processes. Program managers and individuals who manage formal dispute resolution processes in the agency are also potential sources for support of ADR efforts.

Once there is agency support to initiate and implement an ADR program or to begin using ADR processes, you will need to design a training program to fit your needs. The focus of the training plan may be to meet a specific need such as to develop a cadre of in-house mediators. These efforts might result in a mediator skills course.

An agency that chooses to undertake a more comprehensive ADR effort needs to develop a training program to match. For example, an agency interested in implementing ADR at all programmatic and staff levels might first educate top management on the use and benefits of ADR, train employees to be third-party neutrals, and educate potential disputants on the ADR processes available for their use. The result would be a series of courses; an awareness course for managers, a course for users, and ultimately a course for neutral third parties.

Key questions to consider during the pre-design phase of training are:

Who is the audience?
Are they executive, agency attorneys, or program staff?
Are they users, neutrals, or individuals involved in the operation of dispute resolution systems?

Where are the dispute resolution mechanisms in the agency?
Where will ADR efforts be concentrated?

When will the training be needed?

How will they use the training/education?
To enhance their ability to resolve disputes in their day-to-day worklife?
To decide whether and when to refer disputants to use an ADR process?
To serve as a third party neutral in ADR processes?

What additional support and/or resources will they need to be effective in their role?
Will they need on-going technical assistance on ADR processes or on case selection?
Will they need on-going tips on what works and what does not?
Will they need updated information about where and how to access third-party neutrals?

The answers to these questions will help in determining the most appropriate type of training program design.

III. Training Program and Course Design

The level and extent of training and educational programs depends on a number of different factors, including the purpose of the ADR program; target audience knowledge and familiarity with ADR; audience size; the extent to which the audience may already use ADR processes; and programmatic responsibilities of the participants among other considerations.

What is the purpose of your training and educational program? Clearly identifying the purpose of a particular program can aid you in determining what kind of presentation to make.

There are four main steps in developing a training program. Each step involves gathering information to identify specific needs and identifying resources to meet them. Each step yields a specific part of the training plan.

STEP 1: Identify the Training Purpose

What is the need that the training will be satisfying?
What are the expected outcomes of the training?

RESULT: Course objectives established.

STEP 2: Identify the Audience

What part of the organization are the participants from?
What are their roles in the ADR effort?

What do they need to know?
What specific skills and knowledge do they need to conduct their role?

RESULT: Learning goals are established.

STEP 3: Identify the Program Content and Instruction Needs

What will be covered?
Does the audience need theoretical or practical knowledge?
What kind of lecture and/or exercises are required for each?
What subjects are prerequisites to the essential subject matter?
What expertise and presentation style should the instructors have?

RESULT: Agenda components and outline, instructor needs.

STEP 4: Identify the Program Format and Logistics

Determine the sequence and timing of each component, and their respective exercises.
Identify instructors for each component.
How many breakout rooms will you need?

RESULT: Agenda and instructor assignments.

IV. Program Examples

General Audience -- If you are trying to reach a general audience, say all mid-level managers of a particular agency, it is a good idea to provide them with a general overview of ADR. It becomes difficult to train audiences over 50 in skills per se because the instructor-to-student ratio is too high. Instead, you may want to provide a demonstration of ADR processes or an instructor-led role-play that students can observe and comment on. Bring in peers who may have had the occasion to use ADR in their day-to-day responsibilities and hold a panel discussion. The focus should be on interactive dissemination rather than providing skills, lasting no longer than a day.

Mediators -- If you want to form a cadre of internal mediators, class size generally should not exceed 25 participants. The focus here will not be general, as in the last example, but very focused, specific and very participatory. Provide at least two instructors for a minimum of three days of solid skills-based training. Consider also the use of coaches during the training to give the trainees additional personal attention. Further, it is essential to provide your trainee with opportunities to be mentored through live cases after the training has been completed.

Administrative Personnel -- For those persons who must decide whether to recommend ADR processes in their cases, or who may act as parties in a dispute, it is a good idea to put together a program that contains equal parts training and education. Provide them with the necessary informational context to understand ADR (its strengths and weaknesses; where and how to offer it, etc.) Follow the educational portion with an experiential element during which they participate in an ADR role-play. Following that, expose them to some of the basic skills required by third parties. Generally, keep it to a day or less.

This last type of training prepares participants for what would occur in an ADR process and helps them understand what is expected of them as participants. Further, this type of program familiarizes individuals who must refer cases to ADR so they can make appropriate referrals in their own agencies.

Senior Managers -- As a rule, it takes the blessing of senior management to ensure the success of ADR. Another general rule is that senior managers do not have the time to really get involved in the program elements. Therefore available time becomes the single most important factor in setting up a training and education program. You will be fortunate to have half a day when planning a program for this audience. But even a two or four hour briefing, or various twenty-minute training talks can serve a purpose. The key rule is impact, impact, impact. Whatever program you design has to be one they remember after they have left the classroom. Therefore it must be interactive, poignant, and hard hitting.

V.   Tips, Tactics and Things to Remember

The following tips, tactics and things to remember are offered to you from agency ADR practitioners experienced in developing and conducting ADR training:

Make the program highly interactive -- straight lecture formats tend to bore sophisticated professionals.

Gear the program towards experiential learning -- fit in as many exercises as possible to keep the program lively and energetic, and give the participants the chance to get practice at applying some of the learned concepts.

Bring in experienced practitioners to assist in the instruction -- they have much to share about what happens in actual practice. These can be brought in as special speakers to enhance a theory and concepts lecture or to deliver portions of the course if they are skilled

trainers. Experienced practitioners can be of particular assistance in coaching and debriefing small group exercises.

Bring in subject-matter experts – when training an audience that will be working in a specific subject area. Pay close attention to the curriculum an expert proposes to ensure it will meet your needs.

VI.	**Components and Framework of an ADR Curriculum**	The overall objectives of an ADR Curriculum include:

- Gain support and promote ADR within the organization.

- Provide information and opportunity to overcome objections and resistance to the use of alternative dispute resolution methods

- Provide specific knowledge and skills needed by personnel to implement ADR methods and procedures effectively

- Promote understanding of ADR among the organization's ADR clients (internal or external)

(See the chapter appendices for sample curriculum.)

VII.	**Identifying Sources of Training**	A number of options are available when selecting sources to provide the training needed to make up the ADR curriculum for an organization.

- Use existing training courses
    - Government sources – interagency or in-house training
    - Non-governmental sources – colleges, universities, professional associations or consultants

- OR -

- Design and develop tailored or custom training
    - In-house, agency-designed, developed, and delivered
    - In-house, consultant-designed, developed, and delivered

- OR -

- Use a combination of sources.

The level of resources available may affect decision making about training sources. Larger organizations, or those whose programs

involve a large number of disputes that have great impact, may find it beneficial to design, develop, and deliver their entire ADR curriculum with in-house staff and resources. Others may find that existing training can be used to meet some of the training needs and tailored training would be needed only for agency-specific components of the curriculum.

Consultation on ADR training systems and related training tailored to agency needs are available from several government agencies that are assisting with implementation of ADR government-wide. These services are also available from some non-government sources.

Existing training courses are available for:

- awareness – introductory or overview training on basic ADR methods;

- specific ADR skills such as negotiation, mediation, and arbitration;

- ADR systems design; and

- training of neutrals.

1. ADR Systems Design Training

For managers or others responsible for designing the ADR system to be implemented in the organization.

To provide a framework to guide dispute system designers in:

- Identification of issues that need to be considered in program design and implementation
- Organizational analysis and assessment and analysis of agency dispute resolution practices
- Identification of cost concerns
- Evaluation of the program

Training for systems designers and the actual design of the ADR system, should precede training for program staff in specific ADR methods and skills. The type of ADR method selected for implementation, and the design of the system may affect the content of the training that would be appropriate for program staff.

2. ADR Awareness Training

For:

- Executives and senior managers
- General Counsel and agency attorneys
- Managers and supervisors in programs using ADR, or in programs which may have potential for application of ADR methods
- Employees in organizational units where ADR is used
- For ADR clients (internal or external)

ADR Awareness Training should be provided early in the process of instituting ADR in the organization.

Objectives are to:

- Introduce ADR background and concepts
- Gain buy-in and promote support for ADR, overcome resistance
- Show benefits of using ADR methods

An ADR awareness briefing specially designed for the executive audience should be included in the ADR curriculum. One training design consideration for executives would be to assure that the course is not too lengthy — no more than 1-3 hours.

Awareness training for program managers and other audiences would include the same or similar objectives as the briefing for executives but might include information about ADR methods and procedures, strengths and weaknesses, benefits, and information on how to start an ADR program.

The awareness training is more effective when it includes a segment that provides participants an opportunity to experience selected ADR methods and techniques.

3. ADR Methods and Skills Training (introduction or intermediate)

For program managers and staffs actively involved in ADR

To provide knowledge and skill in use of ADR methods that will promote effective application of an ADR program and enable users to select from available ADR methods. The program should provide:

- Skill building in negotiation, interest-based negotiation
- Knowledge of the specific ADR process used by the organization: mediation, minitrial, settlement judges, fact-finding, negotiated rulemaking, arbitration, etc.

Specific training needed in ADR methods and skills depends on the ADR approaches used in the organization. ADR methods and processes include a diverse array of dispute resolution approaches such as mediation, minitrials, settlement judges, fact-finding, negotiated rulemaking, arbitration, and variations of these techniques.

Other ADR methods and skills training covered in the ADR curriculum might include:
- Analyzing potential disputes
- Conflict management
- Selecting ADR methods
- Getting parties to the table

4. Program Specific ADR Systems and Procedures

For program managers and staff actively involved in ADR.

To provide necessary agency-specific information to those who use ADR methods. The training should provide knowledge of:

- Specific ADR procedures in the organization
- Organization-specific issues and concerns
- Unique aspects of the organization's ADR system

Once the organization's ADR system is designed, program managers and staff who will be using the system need to know methods and procedures.

This training need might be met with a *training module that could be used in* conjunction with the general training on ADR methods and skills, or it could be delivered as a separate module.

5. ADR Skills Training (Advanced, In-depth Skills development)

For neutral third parties.

To provide skills and knowledge needed to perform the roles and functions of a neutral third party using an ADR procedure such as mediation, negotiation, or arbitration.

Objectives for neutrals might include developing the following skills:

- Good communication: listening actively, using clear neutral language in speaking and writing
- Ability to analyze problems
- Ability to be sensitive to values of the disputants, including gender, ethnic, and cultural differences
- Ability to deal with complex factual materials
- Ability to maintain control of a diverse group of disputants
- Interest-based negotiating
- Ability to earn trust

Neutral training should provide knowledge of:

- The range of dispute resolution processes.
- The particular dispute resolution process being used including existing standards for practices covering the dispute process
- Ethical standards and commonly encountered ethical dilemmas.

An organization's ADR curriculum may not need to include this component if the organization plans to select and hire neutrals from outside the organization rather than use in-house staff.

Specific skills and knowledge needed depend on the type of ADR method employed. Specific training may vary for mediation, arbitration, or other neutral roles.

TRAINING CHECKLIST

✓ **Planning Considerations:**

- Who is the audience?
- Where are the dispute resolution mechanisms in the agency?
- When will the training be needed?
- How will the training be used?
- What additional support and/or resources will participants need to be effective in their roles?

✓ **Level and Extent of Training Program Depends on:**

- Purpose of the ADR Program
- Target audience's knowledge and familiarity with ADR
- Audience size
- Extent to which the audience may already use ADR processes
- Programmatic responsibilities of the participants

✓ **Developing the Training Program:**

- Step One: Identify the training purpose
- Step Two: Identify the audience
- Step Three: Identify the program content and instruction needs
- Step Four: Identify the program format and logistics

✓ **Tips, Tactics, Things to Remember:**

- Make the program highly interactive
- Gear the program towards experiential learning
- Bring in experienced practitioners to assist in the instruction
- Bring in subject-matter experts