

DEPARTMENT OF THE ARMY
Headquarters, U.S. Army Medical Command
2050 Worth Road
Fort Sam Houston, TX 78234-6000

MCEE

11 March 2002

MEMORANDUM FOR Commanders, MEDCOM Major Subordinate Commands and Installations

SUBJECT: U.S. Army Medical Command Equal Employment Opportunity Alternative Dispute Resolution Program Policy

1. The U.S. Army Medical Command (MEDCOM) established its initial alternative dispute resolution (ADR) program in April 1997, with approval from the Department of Army (DA). This program introduced the use of an ADR method (mediation) at the precomplaint stage of the Equal Employment Opportunity (EEO) complaints process that could assist in the early resolution of EEO complaints. In 1999, the Equal Employment Opportunity Commission (EEOC) directed that by January 2000, all Federal agencies, to include DA, must establish or have available an ADR program as an option for complainants in the EEO complaints process.

2. I strongly encourage commanders of MEDCOM installations and those installations servicing MEDCOM personnel to use the MEDCOM EEO ADR Program or any other DA-approved ADR/mediation program. The MEDCOM EEO ADR/mediation program offers:

- a. Mediation as the recommended ADR option.
- b. A cooperative and nonthreatening forum to facilitate communication.
- c. A win/win approach to problem solving.
- d. Ownership (by the participants) of resolution efforts and results.

3. We have experienced positive results in MEDCOM from the use of this ADR program. The number of mediations during the pre-complaint stage of the EEO process generally remained the same

MCEE


SUBJECT: U.S. Army Medical Command Equal Employment Opportunity (EEO) Alternative Dispute Resolution Program (ADR) Policy

during the last two fiscal years (96 for FY 00 and 95 for FY 01). However, the success of the program is best reflected in the 77.9 percent resolution rate of those complaints in FY 01. This is a significant increase from the 48.9 percent resolution rate the previous year. These early resolutions have had a direct impact on the decreasing number of formal EEO complaints filed in MEDCOM and on reducing the costs incurred with the traditional administrative processing of the complaints.

4. To obtain full employee support for the ADR Program, I encourage union involvement and participation. You are reminded, however, that any proposed change to local personnel policies, practices, or working conditions affecting bargaining unit employees requires advance notification to recognized unions.

5. The updated implementing guidance on the MEDCOM EEO ADR Program is enclosed for your information and action, as appropriate. The changes reflected in the design of the program are intended to: (a) ensure the Program conforms to current guidance and regulatory requirements from the EEOC and DA, and (b) provide the greatest flexibility for implementing the Program.

6. Our point of contact is Mrs. Delia Ramirez Trimble, Director, Office of Equal Employment Opportunity Programs, at DSN 471-8170, Commercial (210) 221-8170, Fax (210) 221-8614.



JAMES B. PEAKE

Encl
as

Lieutenant General
Commanding

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U.S. Army Medical Command
Equal Employment Opportunity
Alternative Dispute Resolution Program

1. PURPOSE. This revision incorporates any changes required by the Equal Employment Opportunity Commission (EEOC) and the Department of Army (DA) as published in their directives and regulations governing the establishment of an alternative dispute resolution (ADR) program. The U.S. Army Medical Command (MEDCOM) guidance describes policies and procedures and establishes responsibilities for the MEDCOM Equal Employment Opportunity (EEO) ADR Program during the precomplaint stage of the EEO complaints procedure. The use of ADR at the formal EEO complaint stage (as required by referenced directives and regulations below) is incorporated into the complaints process through the use of mediation programs designed and effected by the Department of Defense, Civilian Personnel Management Service, Office of Complaint Investigations and EEOC District Offices at investigations and hearings, respectively.

This guidance covers MEDCOM installations and is recommended for those activities that service MEDCOM personnel and that are not already covered by a DA-approved ADR process. The objectives of the MEDCOM EEO ADR Program are to:

- a. Establish a process wherein the involved parties can attempt to resolve precomplaints themselves.
- b. Provide an ADR environment intended to facilitate open communication.
- c. Permit impartial third party intervention during the precomplaint stage of processing.
- d. Educate the parties about practical problem-solving techniques.

e. Make available a forum that can be used to address any employment issue or situation (EEO and non-EEO) that could benefit from using an ADR (mediation) process.

2. REFERENCES.

a. Administrative Dispute Resolution Act of 1990 (Public Law 101-552).

b. 29 Code of Federal Regulations (CFR) 1614, subject: Federal Sector Equal Employment Opportunity, dated 9 Nov 99.

c. EEOC, EEO Management Directive 110, subject: Federal Sector Complaints Processing Manual, dated 28 Oct 99.

d. Army Regulation (AR) 690-600 (Draft), subject: EEO Discrimination Complaints.

e. AR 600-7, subject: Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by DA, dated 15 Dec 83.

3. ABBREVIATIONS. Explanations of abbreviations and special terms used in this regulation are in the glossary.

4. POLICY. The MEDCOM policy is to use the MEDCOM EEO ADR Program as its ADR/mediation process to attempt resolution of EEO discrimination complaints at the earliest opportunity in the EEO Complaints Processing System.

5. RESPONSIBILITIES.

a. The Commander:

(1) Promotes the MEDCOM EEO ADR Program (or any other DA-approved ADR/mediation program).

(2) Provides necessary resources to support the MEDCOM EEO ADR program.

b. The EEO Officer:

(1) Administers the MEDCOM EEO ADR Program (or any other DA-approved ADR/mediation program).

(2) Consults with Staff Judge Advocate (SJA) and Civilian Personnel Advisory Center/Civilian Personnel Operations Center (CPAC/CPOC) staff and/or management officials, as necessary.

(3) Ensures that appropriate training for all MEDCOM personnel is provided in support of the MEDCOM EEO ADR program.

(4) Assigns EEO Counselor for inquiry of EEO complaint.

(5) Provides guidance to and supervises EEO Counselors.

(6) Offers participation in the MEDCOM EEO ADR Program to aggrieved person at the appropriate stage in the process.

(7) Identifies resolution (management) official.

(8) Selects mediator.

(9) Provides administrative support to the mediator.

(10) Coordinates signed settlement agreements with other staff and/or management officials, as necessary.

(11) Coordinates the final interview with the EEO Counselor if a settlement agreement is not reached after mediation is completed. At the final interview contact, the aggrieved will be issued a Notice of Right to File a Formal Complaint of Discrimination letter.

(12) Ensures that all complaint transactions, to include complaints processed under the MEDCOM EEO ADR Program, are input into the DA automated complaints tracking system (Complaints and Appeals Tracking System [CATS]).

c. The EEO Counselor:

(1) Conducts precomplaint counseling inquiry and prepares the Precomplaint Intake Interview Summary (Appendix A).

(2) Provides Rights and Responsibilities letter and information on the MEDCOM EEO ADR Program to the aggrieved.

(3) Conducts the final interview and provides the Notice of Right to File a Formal Complaint of Discrimination letter to

the complainant if a settlement agreement is not reached after mediation is completed.

(4) Prepares counselor's report, as appropriate.

d. The Civilian Personnel Representative:

(1) Provides civilian personnel information to the resolution official and mediator, as needed.

(2) Coordinates on signed settlement agreements, if appropriate.

e. The Labor Counselor:

(1) Provides advice to the resolution official and the Civilian Personnel staff, as required.

(2) Coordinates on signed settlement agreements, if appropriate.

f. Mediator:

(1) Reviews Precomplaint Intake Interview Summary (Appendix A) and documents on an Addendum (Appendix B) any additional matters raised by the aggrieved during the mediation not previously recorded. The Addendum will be provided to the EEO Officer.

(2) Explains mediation process to participants.

(3) Conducts mediation sessions.

(4) Coordinates settlement agreement with participating parties.

(5) Briefs EEO Officer on settlement agreement or notifies EEO Officer of no settlement and terminates mediation process.

g. Resolution Official:

(1) Identified by the EEO Officer as the individual (usually a management official) with authority to engage in

resolution discussions and to sign and execute a settlement agreement.

(2) Participates in good faith in mediation.

(3) Cooperates in settlement efforts, as appropriate.

(4) Signs settlement agreement, as appropriate.

h. Aggrieved Person:

(1) Participates in good faith in mediation.

(2) Cooperates in settlement efforts.

(3) Signs settlement agreement, as appropriate.

6. ADR PROCESS.

a. The ADR covers a number of processes to include, among others, conflict resolution techniques, mediation, conciliation, and peer review. In the MEDCOM EEO ADR Program, the recommended ADR process is mediation. Mediation is the intervention into the situation in question of an impartial and neutral third party who has no authoritative decision-making power, but is present to assist concerned parties to voluntarily reach their own mutually acceptable settlement of the issues in dispute. The mediator must have successfully completed training and been certified in mediation. The mediator may be either from another Army installation, another Federal agency, or from the private sector. To maintain the third party neutrality feature of this process, the mediator should not be from the same installation. In the event the mediator is from the same installation, the neutrality and impartiality of the mediator must be assured.

b. Participation in the MEDCOM EEO ADR Program will be voluntary for the aggrieved person.

c. To avoid confusion or the appearance of a conflict of interest in the MEDCOM EEO ADR Program, no person may mediate a precomplaint if previously involved in the processing of that precomplaint.

d. Mediators will proceed expeditiously to conduct mediation. Mediators assigned to a case will inform the aggrieved person and the resolution official how the mediation effort will proceed, including procedures and schedules. Mediators should normally complete mediation in one calendar day. To promote confidentiality in the mediation process, no written records or transcripts of the proceedings are kept. Mediators will decide on which participants will be present in a particular session.

e. All participants will provide assistance to assigned mediators to enable mediation to proceed. Mediators manage all the mediation sessions. Mediators also have the authority to terminate mediation at any time, as deemed necessary.

f. The parties involved in mediation may be represented during the process by a designated representative. However, the respective parties, that is, the aggrieved person and the resolution official, are encouraged to speak for themselves in order to facilitate communication and settlement.

g. Mediation requires the voluntary participation of the aggrieved person. The mediation process may be terminated at any time by the aggrieved person. If no settlement has been reached, the aggrieved will be issued a Notice of Right to File a Formal Complaint of Discrimination letter. Neither the aggrieved nor the resolution official designated to participate in the ADR process will be coerced into accepting the other party's offer to resolve the dispute.

7. PROCEDURES.

a. The EEO Counselor or a designated EEO official (considered performing in the role of an EEO Counselor) will initiate the normal precomplaint intake interview in accordance with 29 CFR 1614 and AR 690-600, and provide the following information to the aggrieved person:

(1) Rights and responsibilities letter, modified to include information regarding the options of ADR/mediation.

(2) Waiver of anonymity.

(3) Right to representation.

(4) MEDCOM EEO ADR Program information leaflet.

b. After initiation of the precomplaint process, the EEO Counselor or designated EEO official (performing in the role of an EEO Counselor) will complete all initial interviews, orally brief the EEO Officer and provide the EEO Officer with the Precomplaint Intake Interview Summary (Appendix A).

c. Following initiation of the precomplaint process and after reviewing the Precomplaint Intake Interview Summary, the EEO Officer will determine on a case-by-case basis if the complaint should be mediated. There will be very few reasons for not offering mediation.

d. If the EEO Officer, as the Commander's designee, decides to extend an offer to the aggrieved to participate in mediation, the offer should be provided, in writing, to the aggrieved within 2 calendar days but not later than the 20th calendar day following initiation of the precomplaint counseling. The aggrieved person may elect to participate in mediation or proceed through traditional counseling. The aggrieved must be advised that election of mediation will extend the precomplaint processing period to 90 calendar days. The Agreement to Participate in Mediation (Appendix C) must be returned to the EEO Officer within 3 calendar days. If mediation is not accepted, the EEO Counselor will continue counseling, conduct the final interview, and issue the Notice of Right to File a Formal Complaint of Discrimination letter no later than the 30th calendar day from the date the complaint was initiated.

e. When the offer of mediation is accepted, the EEO Officer will select a mediator within 7 calendar days. Upon selection of the mediator, the EEO Officer will provide the mediator a copy of the Precomplaint Intake Interview Summary and the Agreement to Participate in Mediation. The EEO Officer and the mediator will schedule the mediation as soon as possible. The EEO Officer will provide administrative support. The mediator must conclude the mediation within the referenced 90 calendar days. If any issues are not resolved, the EEO Officer will ensure that the Precomplaint Intake Interview Summary is completed indicating that the ADR was not successful and that a Notice of Right to File a Formal Complaint of Discrimination letter is issued to the aggrieved person.

f. The mediation will be concluded when one of the following occurs:

- (1) Written withdrawal of the complaint.
- (2) Signing of a settlement agreement.
- (3) Settlement is not reached.

g. In accordance with AR 690-600, the EEO Officer will ensure that the terms of the settlement agreement are carried out. If there is no settlement agreement, a Notice of Right to File a Formal Complaint of Discrimination letter will be issued. In this case, the EEO Officer will ensure that the complaint processing will continue in accordance with 29 CFR 1614 and AR 690-600.

h. When agreement is reached, the parties (aggrieved, the aggrieved person's representative, resolution official) will sign the agreement. This agreement is binding upon both parties. Depending on the terms of the agreement, however, the agreement is enforceable only after appropriate coordination has been completed.

Note: Should a regulatory or legal provision preclude carrying out a term of the agreement, the mediator or the EEO Officer will be responsible for meeting with all appropriate parties to renegotiate that part of the agreement.

8. MEDIATION--ADDITIONAL INFORMATION.

a. The mediator will be selected by the EEO Officer. Since a mediator is a neutral third party who assists the parties in reaching a mutually satisfactory resolution of a dispute, no person may serve as a mediator if that person has a personal or official duty relationship with either party.

b. The mediator will determine the role of the designated representatives for management and the aggrieved during the mediation. However, the aggrieved always has the right to confer with his/her designated representative prior to the signing of an agreement.

c. Statements made during mediation are privileged and

confidential and may not be subpoenaed or used in any way in connection with any subsequent proceedings between the parties. Further, the parties agree not to subpoena (or request as a witness) the mediator in any subsequent proceedings between the parties. (Reference Appendix C, Agreement to Participate in Mediation)

d. The mediator will brief the EEO Officer regarding any complaint issues on which no settlement was reached.

9. RECOMMENDED FORMS.

a. Appendix A, Precomplaint Intake Interview Summary. The EEO Counselor, a designated EEO official (performing in the role of an EEO Counselor), and/or the EEO Officer will complete this form during the precomplaint intake interview to record relevant information and document initiation of the mediation process. This form becomes a part of the EEO case file.

b. Appendix B, Addendum to the Precomplaint Intake Interview Summary. The EEO Counselor or mediator will use this form to document any issues or matters not previously identified during the informal counseling or ADR/mediation process, respectively, or recorded on the Precomplaint Intake Interview Summary.

c. Appendix C, Agreement to Participate in Mediation. The aggrieved person indicates acceptance of the offer to participate in mediation by signing this form and returning it to the EEO Officer. The resolution (management) official should also sign the form.

GLOSSARY
(Abbreviations)

ADR Alternative Dispute Resolution

AR 690-600 (Draft). Army Regulation

(This regulation sets forth policies and procedures on counseling, filing, processing, investigating, settling, and deciding EEO discrimination complaints in the Department of Army. It is being revised to reflect the changes incorporated in Title 29, CFR 1614.)

CATS Complaints and Appeals Tracking System

CFR 1614 Code of Federal Regulations

(This regulation revised the way that Federal agencies and the Equal Employment Opportunity Commission process administrative complaints and appeals of employment discrimination filed by Federal employees and applicants for Federal employment. This final rule was published on July 12, 1999 and effective November 9, 1999.)

CPAC Civilian Personnel Advisory Center

CPOC Civilian Personnel Operations Center

DA Department of Army

EEO Equal Employment Opportunity

EEOC Equal Employment Opportunity Commission

EEOO Equal Employment Opportunity Officer

MEDCOM U.S. Army Medical Command

SJA Staff Judge Advocate

(Special Terms)

Alternative Dispute Resolution (ADR)

A variety of techniques and methods used to resolve disputed issues, including but not limited to settlement negotiations, conciliation, facilitation, mediation, fact-finding, and mini-trials, or any combination thereof.

Discrimination

Any act or failure to act, impermissibly based in whole or in part on a person's race, color, religion, sex, national origin, age, physical or mental disability, and/or reprisal, that adversely affects privileges or benefits of employment, working conditions, results in disparate treatment, or has a disparate impact on employees, former employees, applicants for employment, and some contract employees.

EEO Counselor

An individual designated by the Army to perform EEO counselor duties, working under the direction of the EEO Officer, who makes informal inquiries and facilitates resolution of precomplaints.

EEO Officer

The individual designated by the activity commander to administer the activity's EEO program. This includes managing and operating the complaint processing system, supervising and training EEO counselors, and advising the activity commander on the disposition of complaints.

Mediation

A method used to resolve complaints of discrimination wherein an impartial and neutral third party intervenes to facilitate settlement of the dispute.

Mediator

An impartial and neutral third party, who has no decision-making authority, trained and certified to intervene between disputing parties as a means to facilitate settlement of complaints of discrimination.

Negotiated Settlement Agreement (NSA)

A written settlement agreement knowingly and voluntarily signed by the aggrieved individual or agent and the Army during the precomplaint or formal complaint process that resolves an EEO complaint. The terms of the agreement are binding on both parties.

Precomplaint

A matter of alleged discrimination that an aggrieved person brings to the attention of an EEO counselor or EEO official before a formal discrimination complaint is filed.

APPENDIX A

PRECOMPLAINT INTAKE INTERVIEW SUMMARY

DA DOCKET NUMBER: _____

PART I: PRELIMINARY

NAME OF AGGRIEVED: _____
(Print - Last, First, Middle Initial)

JOB TITLE/SERIES/GRADE: _____

ORGANIZATION ASSIGNED TO: (Complete address including office symbol)

WORK TELEPHONE: _____ HOME TELEPHONE: _____

HOME ADDRESS: _____

DATE PRECOMPLAINT INTAKE INTERVIEW CONDUCTED: By Telephone
 In-Person
 Other (facsimile/
E-mail)

PRECOMPLAINT INTAKE INTERVIEW CONDUCTED BY:
 EEO Official: _____
(Print first and last name)
 EEO Counselor: _____
(Print first and last name)

PART II: BASIS OF COMPLAINT (Identify specific race, color, religion, sex, national origin, age, physical or mental disability, or reprisal, as alleged.)

RACE _____ DISABILITY Mental Physical
 COLOR _____ SEX Male Female
 RELIGION _____ AGE _____ Date of birth _____
 NATIONAL ORIGIN _____ REPRISAL _____
(Date(s) of prior EEO activity.)

PART III: INCIDENT(S) GIVING RISE TO COMPLAINT (Specify who, what, when, where, and dates. Use additional sheet of paper if necessary.)

NAME AND ADDRESS OF ORGANIZATION WHERE ALLEGED DISCRIMINATION OCCURRED

NAME, COMPLETE ADDRESS, AND PHONE NUMBER OF OFFICIALS RESPONSIBLE FOR ALLEGED DISCRIMINATION

PART IV: RELIEF SOUGHT

PART V: DISCUSSION

The aggrieved was provided with the Aggrieved Person's Rights and Responsibilities Notice and was specifically advised of the following:

- The basis(es) for filing pre-complaint, formal complaint, and/or class complaint, and of right to file.
- The precomplaint, formal and/or class complaint process.
- The 45-day requirement from effective date of personnel action or of the date of the matter alleged to be discriminatory.
- The role of the EEO counselor, including that counselor is not an advocate for either the aggrieved person or the agency and acts strictly as a neutral party.
- The activity's **Alternative Dispute Resolution (ADR) Program** and right to elect either ADR (if offered) or counseling.

- The right to representation throughout complaint process.
- The responsibility of the aggrieved to notify EEO office in writing of non-attorney or attorney representation, including address and phone number.
- The responsibility of the aggrieved to notify EEO office in writing of any change in address and phone number.
- The right to remain anonymous during the pre-complaint process.
- The possible election requirement between a negotiated grievance procedure, MSPB procedure, and the EEO complaint process.
- The election options in age and wage based discrimination complaints.

PART VI: ELECTION OF REPRESENTATION

Attorney Non-Attorney
 Name of Representative: _____
 Telephone Number: _____
 Address: _____

PART VII: ALTERNATIVE DISPUTE RESOLUTION

- Wishes to participate in ADR, if offered. _____
(Aggrieved must sign and date)
- Matter determined not appropriate for ADR. _____
(EEO officer must initial and date)
- Matter determined appropriate for ADR. _____
(EEO officer must initial and date)

Date of written offer of ADR _____

Date of Agreement to Participate in ADR _____

Name of assigned ADR mediator _____

Date ADR mediator assigned _____

Result of ADR:

- ADR was successful. Negotiated settlement agreement attached.

- ADR was not successful. Aggrieved issued a Notice of Right to File a Formal Complaint of Discrimination on _____ (date) _____; notified of requirement to file a formal complaint within 15 calendar days after receipt of Notice of Right to File; and provided a DA Form 2590-R, (Formal Complaint of Discrimination).

PART VIII: SUMMARY (EEO official to complete only those that are applicable.)

- Election of traditional counseling only.

Name of assigned EEO counselor _____

Date EEO counselor assigned _____

- Willing to participate in ADR, if offered.
- Elected to remain anonymous. (Aggrieved must initial) _____
- Elected to waive right to remain anonymous. (Aggrieved must initial) _____
- Declined to pursue matter under Title VII. (Aggrieved must initial) _____

(Printed name of Aggrieved Person)

(Printed name/title of EEO Official)

(Signature of Aggrieved Person)

(Signature of EEO Official)

(Date signed by Aggrieved Person)

(Date signed by EEO Official)

PRIVACY ACT STATEMENT (6 U.S.C. §552a)

Authority: Public Law 92-261

Purpose: Used for processing of complaints of discrimination because of race, color, national origin, religion, sex, age, physical or mental disability, or reprisal by Department of the Army civilian employees, former employees, or applicants for employment.

Routine Uses: Information will be used (a) as a data source for complaint information for production of summary descriptive statistics and analytical studies of complaints processing and resolution efforts and may also be used to respond to general request for information under the Freedom of Information Act; (b) to respond to request from legitimate outside individuals or agencies (Congress, White House, Equal Employment Opportunity Commission) regarding the status of a complaint or appeal; or (c) to adjudicate complaint or appeal.

Disclosure: Voluntary, however, failure to complete all appropriate portions of this form may lead to rejection of complaint on the basis of inadequate data on which to determine if complaint is acceptable.

APPENDIX B

ADDENDUM TO THE PRECOMPLAINT INTAKE INTERVIEW SUMMARY

ADDENDUM TO THE PRECOMPLAINT INTAKE INTERVIEW SUMMARY

Date _____
DA Docket Number _____

MEMORANDUM FOR EEO OFFICER

SUBJECT: Addendum to the Precomplaint Intake Interview Summary

1. The following matter(s), in addition to those previously identified in the Precomplaint Intake Interview, dated _____, were identified during the informal counseling or ADR process:

2. I certify by signing below that I have received a copy of this addendum to the Precomplaint Intake Interview Summary.

Signature of Aggrieved Person

Signature of EEO counselor/mediator

Signature of EEO Officer

APPENDIX C

AGREEMENT TO PARTICIPATE IN MEDIATION

This is an agreement, by the parties signing below, to participate in mediation and extend the precomplaint processing period to 90 calendar days (60 calendar days in addition to the traditional counseling period of 30 days).

The parties understand that participation in mediation is voluntary for the aggrieved person. The aggrieved person may terminate mediation at any time.

The parties further understand that the mediator has no authority to make decisions on issues raised during mediation nor act as an advocate or attorney for either party. The aggrieved person has the right to representation during the EEO process. However, the mediator will determine the role of the designated representative during mediation. The aggrieved may consult with his/her designated representative for purposes of review prior to signing a settlement agreement.

Each party agrees not to subpoena (or request as a witness) any mediator or request or use as evidence any materials prepared by the mediator for use during mediation with the exception of the signed settlement agreement. In no event will the mediator voluntarily serve as a witness or testify on behalf of either party.

If there are issues that have not been settled at the close of mediation, the mediator and the aggrieved person will document these issues in writing during the final mediation session. The aggrieved person understands that he/she has the right to pursue these issues through the discrimination complaint process. If applicable, the aggrieved person will be provided the Notice of Right to File a Formal Complaint of Discrimination letter upon termination of the mediation process or no later than the 90th day of extended counseling, whichever comes first.

The parties understand and stipulate that the terms of this Agreement are confidential except for the limited purpose of implementation and enforcement of the Agreement.

Aggrieved (print or type)

Management Official (print or type)

Aggrieved (Signature)

Management Official (Signature)

Date _____

Date _____