

MEDIATION PROGRAM

I. CHANGE: Paragraph V. Policy, revised to include grievance extensions when mediation occurs.

II. RESCISSION: Memorandum 00-027-00 dated April 14, 2000.

III. NEXT REVIEW DATE: July 2006.

IV. AFFECTED SERVICES: All services and programs.

V. POLICY: To assure a work environment that is conducive to the delivery of high quality patient services. Management and union officials are dedicated to finding creative, acceptable and early resolution of disputes. Mediation is an alternative means of resolving disputes. This policy is not intended to eliminate the use of other forms of Alternative Dispute Resolution (ADR). If this process does not resolve disputes, other forms of resolution may be used such as, Equal Employment Opportunity (EEO) process, grievances, etc. to resolve complaints. If a grievance has been filed and mediation is requested the, time periods for that step of the grievance procedure will be extended until the mediation is completed.

VI. RESPONSIBILITY:

A. Union and management officials are responsible for mediator training and for the application of ADR under Article (6) of the Master Agreement between AFGE and the Department of Veterans Affairs.

B. Management and labor have overall responsibility for development and implementation of the Mediation Program.

C. Management is responsible for funding initial and ongoing training of mediators.

D. Service chiefs are responsible for maintaining awareness and commitments to mediation to resolve disputes within their services. They should also ensure that all supervisors are fully supportive of mediation efforts.

E. Supervisors and employees are responsible for maintaining an awareness of mediation as an alternate way to resolve disputes that arise within the workplace, and for cooperating to the fullest extent in any mediation effort.

F. The Mediation Coordinator will be responsible for managing the procedural details of the mediation process.

G. The role of the mediator includes, but is not limited to assisting parties in identifying issues, fostering joint problem solving, and exploring settlement opportunities. In mediation, decision-making authority rests with the parties. The Mediator is not authorized to make decisions or force a decision on any party to the dispute. The Mediator shall not provide

2.

## Mediation Program

counseling, therapy, or legal advice to either party during the mediation process. If either party does not understand how an agreement may adversely affect legal rights or obligations, then the parties should consult their respective representative.

VII. PROCEDURE: An employee or management official may request mediation. Mediation requests should be made verbally or in writing to the Human Resources Management Service Mediation Coordinator.

A. For each dispute of which the disputant is a bargaining unit member: Labor and management mediators will make a joint determination whether mediation is appropriate for this matter. Prior to processing the request, management or union officials will ensure both parties are willing to participate in mediation. Certain cases may not be appropriate for mediation. If it is determined that a case is not appropriate for mediation, the management or union official mediator(s) will notify the Mediation Coordinator who will inform the parties. The Mediation Coordinator will refer the disputants, as appropriate, to other methods of resolution. If mediation is determined to be appropriate, the Mediation Coordinator will notify the parties that the matter has been accepted for mediation. The mediator(s) will schedule the mediation. The Mediation Coordinator will then secure the location for the mediation. The parties involved in the mediation will be asked by the mediator to sign an Agreement to Mediate prior to mediation (Attachment). This document will set forth the requirements for both parties entering into mediation to act in good faith in order to resolve their differences. The disputants and the mediator(s) will also be asked to complete an evaluation at the conclusion of mediation. All evaluations will be forwarded to the Partnership Council.

B. For each dispute of which the disputant is a not a bargaining unit member: A management mediator will make a determination whether mediation is appropriate for this matter. Prior to processing the request, management will ensure both parties are willing to participate in mediation. Certain cases may not be appropriate for mediation. If it is determined that a case is not appropriate for mediation, the mediator will notify the Mediation Coordinator who will inform the parties. The Mediation Coordinator will refer the disputants, as appropriate, to other methods of resolution. If mediation is determined to be appropriate, the Mediation Coordinator will notify the parties that the matter has been accepted for mediation. The mediator will schedule the mediation. The Mediation Coordinator will then secure the location for the mediation. The parties involved in the mediation will be asked by the mediator to sign an Agreement to Mediate prior to mediation (Attachment). This document will set forth the requirements for both parties entering into mediation to act in good faith in order to resolve their differences. The disputants and the mediator will also be asked to complete an evaluation at the conclusion of mediation.

VIII. REFERENCE: Administrative Dispute Resolution Act, 5 U.S.C.582, 1990.

/s/Virgil D. Lucas  
for and in the absence of  
Dean S. Billik, FAAMA  
Director

Attachment

3.

Mediation Program

ATTACHMENT

MEDIATION PROGRAM

The Mediators will ask the parties to sign the attached agreement prior to mediation. If parties do not agree, mediation will not occur.

MEDIATION PROGRAM

AGREEMENT TO PARTICIPATE IN MEDIATION  
AND MAINTAIN CONFIDENTIALITY

1. I understand that this is an agreement by the parties to attempt to resolve the following issues, by submitting these issues to mediation:

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2. I understand that this mediation is a voluntary dispute resolution process that is non-adversarial in nature and seeks to find reconciliation between disputing parties. The mediation process does not declare winners or losers. The main focus is to seek a resolution that is informal, quick and minimizes the harm to either party.

3. I understand that the Mediator(s) is not involved in the immediate occurrence and is committed to treating this matter in a fair and unbiased way. The Mediator's role is to facilitate and help the parties reach for themselves a mutually satisfactory resolution to the problem. However, the decision-making power rests with the parties, not the Mediator. If the parties cannot agree on a resolution, the Mediator will NOT impose a resolution nor will he/she offer judgment as to which party, if any is at fault.

4. I understand that the Mediator has no authority to make decisions or act as a judge or arbitrator. The Mediator will not act as an advocate or attorney for any party. To the extent either the complainant or the agency wishes to have a representative or legal counsel to consult with or assist them at any stage in the mediation, the party is responsible for taking steps to obtain such a person.

5. I understand that mediation is a confidential process. Any documents submitted to the Mediator and statements made during the mediation are for settlement purposes only. I agree not to subpoena or request the mediator to serve as a witness, or request or use as evidence any materials prepared by the Mediator for the mediation except for the settlement document signed by all parties. In no event will the Mediator testify on behalf of any party or

4.

Mediation Program

submit any type of report in connection with this mediation. However, I understand that matters are admissible even though brought up in a mediation session. Mediation is not a substitute for normal discovery processes. Information will be held as confidential.

6. I understand that no party shall be bound by anything said or done at the mediation unless a written settlement is reached and executed by all necessary parties. If a settlement is reached, the Mediator shall reduce the agreement to writing and when signed and approved by the appropriate authorities for all the parties, the settlement document shall be legally binding upon all parties to the agreement.

7. In electing to use mediation, I understand that no statutory deadlines are waived, and that all statutory deadlines must be adhered to.

8. The aggrieved party's RIGHTS to pursue informal or formal processes are not waived and will be protected during the mediation process. At the same time, the aggrieved party's RESPONSIBILITIES to comply with all requirements of any administrative or court processes, e.g., time limits, point of contact, ARE NOT WAIVED and must be adhered to.

9. I understand that in the event the mediation is terminated for any reason, the aggrieved party may continue to pursue an informal or formal resolution of the matter as he/she sees fit.

10. No admission of guilt or wrongdoing by either party is implied, and none should be inferred, by participation in this process.

11. I will sincerely attempt to resolve this matter, agree to cooperate with the Mediator assigned to this matter, and give serious consideration to all suggestions made in regard to developing a realistic solution to the problem. I will conduct myself in a courteous and non-hostile manner, use appropriate language and to allow the Mediator to interrupt the process if the Mediator feels a caucus or break is needed to facilitate the mediation process.

12. The Mediator agrees to notify the parties, their representative and the appropriate management official of the status and results of the mediation process as soon as possible after the determination of the process, including settlements, withdrawal from, or unsuccessful conclusion of the process.

BY SIGNATURE BELOW, I ACKNOWLEDGE THAT I HAVE READ, UNDERSTAND AND AGREE TO THIS AGREEMENT TO PARTICIPATE IN MEDIATION:

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AGGRIEVED PARTY'S SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
AGGRIEVED PARTY'S REPRESENTATIVE SIGNATURE

\_\_\_\_\_  
DATE

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5.

Mediation Program

RESPONSIBLE MANAGEMENT OFFICIAL'S SIGNATURE

DATE

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ADDITIONAL SIGNATURE

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DATE

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