

**FISH AND WILDLIFE SERVICE
EQUAL OPPORTUNITY**

Equal Opportunity

Part 061 Complaint Processing and Adjudication

Chapter 3 Alternative Dispute Resolution for EEO Complaints

061 FW 3

3.1 What is the purpose of this chapter? The purpose of this chapter is to ensure that all Service personnel are aware of current Alternative Dispute Resolution guidelines and the procedures we use for mediating Equal Employment Opportunity (EEO) cases.

3.2 What are the objectives of this chapter? The objective of this chapter is to provide Servicewide procedural guidelines for processing EEO cases when the Alternative Dispute Resolution process is appropriate.

3.3 What is the Alternative Dispute Resolution (ADR) policy? We adopted the ADR process to expedite the processing and resolution of EEO complaints.

A. ADR attempts to enhance the pre-complaint process by providing maximum participation of managers, supervisors, and the aggrieved in resolving employment matters through mediation at the earliest stage of the complaint process.

B. To meet ADR goals, we use professional mediation services by tapping into a roster of qualified in-house conflict management and dispute resolution practitioners certified to provide conflict management and ADR assistance to employees and managers. We may also use contractual agreements with other Government agencies to provide ADR.

3.4 What are the authorities for this chapter? You can find the authorities for all the chapters in Part 061 in 061 FW 1.

3.5 Who is responsible for the Alternative Dispute Resolution Process?

A. The Chief, Branch of Equal Opportunity and Diversity (Bureau EEO Officer):

(1) Provides information on the Conflict Resolution (CORE) PLUS program to Service EEO specialists and counselors.

(2) Provides technical advice or assistance to CORE PLUS Neutrals and reviews agreement proposals as needed. CORE PLUS Neutrals are conflict resolution practitioners.

B. EEO Counselors:

(1) Explain the Service's ADR procedures to aggrieved persons and to managers who are willing to reach resolutions to complaints.

(2) Coordinate with both parties and the mediator to refer the dispute to the mediator for mediation. If mediation is not successful, the EEO Counselor issues a Notice of Final Interview (29 CFR 1614).

C. Mediator. During mediation, the mediator is a neutral third-party who may use a variety of means to facilitate resolution of the conflict between the parties. During mediation, the mediator encourages the complainant or his or her representative and the involved management officials to:

(1) Clear up misunderstandings,

(2) Determine underlying interests and concerns,

(3) Find areas of agreement, and

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(4) Incorporate the areas of agreement into solutions (or mediated settlement) devised by and acceptable to the concerned parties.

D. Aggrieved Person and his or her Representative. The role of the aggrieved person is to cooperate with the mediator in developing and presenting information relevant to the allegations and recommending solutions.

(1) The aggrieved person may have a representative present to participate in the process.

(2) The representative serves as an advisor to the aggrieved person only.

(a) Since this is an administrative process, the representative may not actively participate in the mediation by cross examining, arguing, or presenting the aggrieved person's case.

(b) During the joint mediation meeting, the representative may only direct his/her remarks/comments to the aggrieved person.

(c) The representative may speak to the mediator on behalf of the aggrieved person during the separate caucus meetings.

3.6 Why does the Service use Alternative Dispute Resolution? We use the ADR process to:

A. Provide more efficient and effective options for resolution during the informal EEO complaint process to all parties involved.

B. Reduce the number of formal complaints by increasing the number of complaints/disputes resolved at the pre-complaint stage.

C. Reduce the average processing time of complaints.

D. Reduce the costs associated with processing complaints.

E. Increase active participation in problem-solving by involved parties, which reduces the number of future complaints.

F. Ensure better use of staff and resources.

G. Increase the confidence of employees and managers in the Service EEO process.

H. Enhance the overall morale and cooperation of employees, supervisors, and managers.

I. Create a work environment with open communication, access to information, and effective problem-solving.

J. Enhance the EEO counseling program by introducing a forum that provides maximum participation of managers, supervisors, and employees in resolving employment matters through mediation at the earliest stage of the complaint process.

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K. Attempt to prevent an often irreversible escalation of tensions.

3.7 What are the criteria for using the ADR Process? Unless we determine the issue is not appropriate or feasible for mediation, we will offer ADR to the aggrieved. See 5 U.S.C. 572(b) for examples of situations in which ADR may not be appropriate.

3.8 What issues does the Service exclude from using the ADR process?

A. We generally exclude the following issues from the ADR process:

- (1) Allegations of sexual harassment,
- (2) Class complaints,
- (3) Claims or complaints from applicants for employment, and
- (4) Allegations involving termination.

B. However, we may consider ADR for any issue if:

- (1) The parties agree to or request ADR, and
- (2) The Chief, Branch of Equal Opportunity and Diversity (Bureau EEO Officer) approves it.

3.9 What are the ADR procedures?

A. If we determine that the complaint meets the criteria of the program, the EEO Counselor explains and offers the program to the aggrieved person.

B. Participation by the aggrieved person is voluntary; if the aggrieved elects to participate in ADR, Service managers have a duty to cooperate in the ADR process.

C. If the aggrieved person elects to participate in the program, the pre-complaint processing period must be 90 days. The EEO Counselor must inform the Responding Management Official (RMO) of the aggrieved election, explain the ADR process to the RMO, identify a mediator, and coordinate the exchange of the parties' contact information with the mediator.

D. If mediation is not successful, the mediator must inform the EEO Counselor of the result. The EEO Counselor must issue the Notice of Final Interview and Right to File Complaint to the aggrieved.

E. If mediation is successful, the EEO Counselor must prepare a written resolution agreement consistent and in compliance with 061 FW 4. Upon approval, the aggrieved party and his or her representative, the Regional Director (or a management designee), and other appropriate officials must sign and date the agreement.

F. If the aggrieved person declines ADR or the issues are not within the program criteria, the matter is addressed using traditional pre-complaint counseling (29 CFR 1614).

3.10 Are negotiations for resolutions confidential? All matters discussed during ADR, excluding disclosure of criminal acts, violence, or threats of violence against a person, are confidential. Nothing

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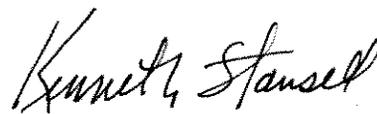
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said or done during attempts to resolve the complaint through ADR may become the subject of an EEO complaint.

3.11 What is the Service's settlement authority for ADR settlement agreements? The Assistant Director – Budget, Planning and Human Resources, in consultation with the appropriate officials in the Office of the Solicitor and the Regional office, reviews and approves or declines to approve all mediated settlements that convey any material benefit to the aggrieved/complainant prior to execution (see 061 FW 4).

3.12 What are the reporting requirements for ADR? The Branch of Equal Opportunity and Diversity must report ADR efforts and results as a part of the monthly and semi-annual reports described in 061 FW 1.


Acting Deputy
DIRECTOR

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