

ADR LAW NOTES



Legal Developments, Issues and Other Matters of Interest Concerning Alternative Dispute Resolution

DLA ADR Homepage at:

<http://www.dssc.dla.mil/offices/legal/adr/adr.html>

Defense Logistics Agency ADR Practice Group

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SOME “TIPS” FOR A SUCCESSFUL MEDIATION

Mediators for DLA were asked to provide some “lessons learned” from some of their mediations. Below are some of their “tips.”*

Sometimes, an innocent, casual conversation between the mediator and a participant who arrives first for a mediation can be deemed (by the later arriving participant who witnesses the conversation) as an attempt to influence the mediator. Everyone should be sensitive to this perception.

If one party has concerns about the neutrality of a mediator, the process should stop until the concerns are resolved to everyone’s satisfaction.

Prior to a mediation, each participant should be aware of the principal issue that has brought him or her to the mediation table.

If parties are at different geographic locations, sometimes a facilitated conference call is useful to address preliminary matters.

Facilitated conference calls can oftentimes be used instead of face-to-face mediations as a process to resolve disputes.

Mediations are more likely to result in successful outcomes if the parties plan ahead for the mediations. For example, in EEO cases, complainants should be aware of what to expect in a formal EEO process if a settlement is not reached during the mediation. Supervisors should discuss with their personnel specialists and with an Office of Counsel representative, the merits of the complaint, who should represent management at the mediation, authority issues, and options for settlement.

Personal points of views or value judgments of a DLA mediator are irrelevant in a mediation and will not influence the behavior of the mediator. What counts

are the points of view and value judgments of the participants.

Sometimes co-mediators are necessary in order to make each participant comfortable. For example, in sexual harassment cases, it might be useful to have both a male and a female mediator present.

Agreements should be reduced to writing and signed by all necessary parties. Tentative agreements are just that – tentative.

Resident experts are important resources. If you think you might need their advice during a mediation, try to contact them ahead of time, or have a list of names and numbers to call should the need for outside advice arise.

If a document such as a last chance agreement plays a part in the controversy, go over the document word-for-word in open session.

Even if a mediation is not successful, the mediator and all of the parties should attend a “closing” session.

An attitude of “what can I do to help resolve this matter” is very useful during a mediation.

Focus on interests, not positions. For example, if the “position” is “I want money”, but the interest is using the money to pay a daycare worker, perhaps a time-off award (which eliminates having to pay a daycare worker during the time off) will meet the interest.

Caucuses (private meetings with one side) should be used only when beneficial to the mediation process. For example, caucuses can be useful to assess the negotiating flexibility of each party, to do reality checks, and to help parties look for solutions that will meet the needs of all sides. It can be, but is not necessarily, a useful technique to overcome an impasse during negotiations.

If a party uses a representative to speak for him/her at a

mediation, be aware that sometimes the representative may, unintentionally, not accurately express the real concerns of the party. It is important to understand the true concerns of a party. “Body language” can speak volumes.

Parties oftentimes are not satisfied with a process unless they feel that they have been “heard.” Consequently, even if a party has a representative present, it is important to make sure that if a party wants to be heard, the party has the opportunity to do so.

Judges who serve as mediators will sometimes act instead, like a settlement judge or as a neutral evaluator. Make sure everyone understands and agrees on the ADR process that will be used.

If a settlement is reached, make sure that everyone understands the who, what and where terms of the agreement. For example, if the government agrees to pay a contractor some money, but the contract includes an assignment, the money might have to be given to the assignee instead of the contractor.

During a pre-mediation conference, it can be useful to advise participants that if they are not making progress within a certain time in the mediation, the likelihood of reaching a resolution is greatly diminished. On the other hand, negotiations can often not begin until participants have had the opportunity to express their concerns, frustrations, and anger.

Participants may be reluctant to resolve a dispute if they feel the resolution will be shared with others who do not have a need-to know.

***Contributed by some of the mediators for DLA from DDC, DDJC, DLIS, DRMS, DSCC, DSCP, DSCR, HQ DLA, and DCMA**

DLA MEDIATOR MENTORING PILOT PROJECT

The DLA ADR Practice Group is sponsoring a pilot project for DLA mediators. The pilot project is a program involving a mentoring relationship between more experienced and less experienced DLA mediators. Anyone interested in learning more about the pilot program should contact Beth Lagana, DLA ADR Counsel, DSN 850-1859, Comm. (614) 692-1859, Beth.Lagana@dla.mil.

OPPORTUNITY TO RECEIVE DLA ADR AWARDS

Announcement: DLA is starting an ADR Awards program that will include monetary recognition from \$500 to \$1000. More information about the program will be disseminated in the near future. Stay tuned.

RECOMMENDED READING

The following book was recommended as a good ADR resource:

Situational Mediation: Sensible Conflict Resolution, by Oliver Ross, published by Idyll Arbor, Incorporated.

Readers are encouraged to recommend ADR reading selections. Recommendations should be sent to Beth.Lagana@dla.mil.