



U.S. DEPARTMENT OF LABOR

OSHA DIRECTION

Occupational Safety and Health Administration

DIRECTIVE NUMBER: DIR 12-01 (CPL 02)

EFFECTIVE DATE: October 1, 2012

SUBJECT: Whistleblower Alternative Dispute Resolution (ADR) Program

ABSTRACT

Purpose: The purpose of this direction is to establish two one-year pilots: one in Region V and one in Region IX to administer an Alternative Dispute Resolution (ADR) program for its whistleblower complaint activities. Both pilots will operate concurrently and implement the attached proposed ADR policy and procedures.

Scope: For the duration of the pilot, both Regions V and IX are authorized to conduct up to 15 mediation sessions each, and may continue to offer unlimited early resolution.

References: OSHA Instruction: CP: 02-03-003, September 20, 2011 – Whistleblower Investigations Manual.

Cancellations: None.

State Impact: None.

Action

Offices: Office of the Whistleblower Protection Program (OWPP), Regional and Area Offices in Regions V and IX.

Originating

Office: OWPP, Washington, DC.

Contact:

Office of the Whistleblower Protection Program
200 Constitution Ave., NW, N3112
Washington, DC 20210
(202) 693-2199

By and Under the Authority of

David Michaels, PhD, MPH
Assistant Secretary

Executive Summary

For the duration of the pilot, both Regions V and IX are authorized to conduct up to 15 mediation sessions each, and may continue to offer unlimited early resolution. For its mediation sessions, the Occupational Safety and Health Administration (OSHA) has chosen the Federal Mediation and Conciliation Service (FMCS) to serve as the neutral third party mediator. For the pilot, the attached Mediation Agreement form will be used in each mediation session held by FMCS (see Appendix A). Funding for the pilot will be provided by OWPP. This includes the FMCS mediation session and reasonable travel and per diem costs for the mediator. Information about FMCS may be found at <http://www.fmcs.gov/internet>.

Significant Changes

This Direction implements a new program.

TABLE OF CONTENTS

| | | |
|--------------|--|-----------|
| I. | BACKGROUND..... | 1 |
| II. | OUTCOME MEASURES..... | 2 |
| III. | DEFINITIONS..... | 3 |
| IV. | ROLES AND RESPONSIBILITIES..... | 4 |
| | A. INVESTIGATORS..... | 4 |
| | B. REGIONAL ADR COORDINATORS (RARDCs) | 4 |
| | C. REGIONAL SUPERVISORY INVESTIGATORS (RSIs)..... | 5 |
| | D. MEDIATORS..... | 5 |
| | E. NATIONAL ADR COORDINATOR..... | 5 |
| V. | CORE ADR CONCEPTS..... | 6 |
| | A. ADR MUST BE VOLUNTARY..... | 6 |
| | B. PARTIES MUST PARTICIPATE IN GOOD FAITH..... | 6 |
| VI. | EARLY RESOLUTION..... | 6 |
| | A. OVERVIEW..... | 6 |
| | B. PROCESS..... | 7 |
| VII. | MEDIATION..... | 8 |
| | A. OVERVIEW..... | 8 |
| | B. PROCESS..... | 9 |
| | C. MEDIATION PRINCIPLES..... | 13 |
| VIII. | PARTIES' ABILITY TO SETTLE DURING OSHA INVESTIGATION..... | 15 |
| IX. | QUALITY CONTROL..... | 15 |
| X. | REFERENCES..... | 15 |

ATTACHMENTS

APPENDIX A - FEDERAL MEDIATION AND CONCILIATION SERVICE MEDIATION AGREEMENT

ALTERNATIVE DISPUTE RESOLUTION

I. Background.

This Direction explains the general process that the Occupational Safety and Health Administration (OSHA) will use in implementing an Alternative Dispute Resolution (ADR) program for all complaints filed under the whistleblower provisions of Section 11(c) of the Occupational Safety and Health Act of 1970 (OSH Act), [29 U.S.C. §660\(c\)](#); Surface Transportation Assistance Act (STAA), [49 U.S.C. §31105](#); Asbestos Hazard Emergency Response Act (AHERA), [15 U.S.C. §2651](#); International Safe Container Act (ISCA), [46 App U.S.C. §1506](#); Safe Drinking Water Act (SDWA), [42 U.S.C. §300j-9\(i\)](#); Federal Water Pollution Control Act (FWPCA), [33 U.S.C. §1367](#); Toxic Substances Control Act (TSCA), [15 U.S.C. §2622](#); Solid Waste Disposal Act (SWDA), [42 U.S.C. §6971](#); Clean Air Act (CAA), [42 U.S.C. §7622](#); Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), [42 U.S.C. §9610](#); Energy Reorganization Act (ERA), [42 U.S.C. §5851](#); Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21), [49 U.S.C. §42121](#); The Sarbanes-Oxley Act (SOX), [18 U.S.C. §1514A](#); Pipeline Safety Improvement Act (PSIA), [49 U.S.C. §60129](#); Federal Railroad Safety Act (FRSA), [49 U.S.C. §20109](#); National Transit Systems Security Act (NTSSA), [6 U.S.C. §1142](#); Consumer Product Safety Improvement Act (CPSIA), [15 U.S.C. §2087](#); Section 1558 of the Affordable Care Act (ACA), [P.L. 111-148](#); Consumer Financial Protection Act of 2010 (CFPA), Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, [P.L. 111-203](#); Seaman's Protection Act, 46 U.S.C. §2114 (SPA), as amended by Section 611 of the Coast Guard Authorization Act of 2010, [P.L. 111-281](#); Section 402 of the FDA Food Safety Modernization Act (FSMA), P.L. 111-353; and Section 31307 of the Moving Ahead for Progress in the 21st Century Act, 49 U.S.C. §30171.

In 1990, the Administrative Dispute Resolution Act (ADRA), Pub. L. No. 101-552, required Federal agencies to consider alternatives to litigation. ADRA was amended by the Administrative Dispute Resolution Act of 1996, Pub. L. No. 104-320. Under the ADRA as revised, each Federal agency is required to “adopt a policy that addresses the use of alternative means of dispute resolution and case management.” In amending the ADRA, Congress found that, “such alternative means may be used advantageously in a wide variety of administrative programs.” The ADRA defines an “administrative program” to include a “Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rule making, adjudication, licensing, or investigation....”

OSHA administers the whistleblower provisions of the OSH Act and 21 other statutes. All of these laws cover millions of public and private sector employees

in healthcare, food, finance, air travel, pipeline, transit, rail, and other industries. OSHA receives approximately 2,500 whistleblower complaints annually. ADR can assist complainants and respondents in resolving their disputes (whistleblower complaints) in a cooperative and voluntary manner, allowing OSHA to conserve limited investigative resources. ADR can also provide immediate relief, and finality, to both parties.

OSHA offers *early resolution* and *mediation* as alternatives to whistleblower investigations.

II. Outcome Measures.

For the duration of the pilot, both Regions V and IX are authorized to conduct up to 15 mediation sessions each, and may continue to offer unlimited early resolution. For its mediation sessions, OSHA has chosen the Federal Mediation and Conciliation Service (FMCS) to serve as the neutral third party mediator. For the pilot, the attached Mediation Agreement form will be used in each mediation session held by FMCS (see Appendix A). Funding for the pilot will be provided by OSHA's Office of the Whistleblower Protection Program (OWPP). This includes the FMCS mediation session (not to exceed the amount agreed upon by the agencies) and reasonable travel and per diem costs for the mediator. Information about FMCS may be found at <http://www.fmcs.gov/internet>.

At the end of the first 120 days of the pilot, the pilot will be evaluated for the following outcome measures. The ADR Outcome Form (see Attachment F), along with the whistleblower Integrated Management Information System, will assist in tracking this information. Based on this evaluation, OSHA will decide whether to continue the pilot, expand the pilot to other Regions, implement the ADR program in all Regions, or terminate the pilot. Both Regions will collect the following information:

- Number of cases where:
 1. Docket Letters with ADR program information were sent
 2. Early resolution was requested
 3. Mediation was requested
 4. Parties withdrew from the ADR program once requested
 5. Parties settled –
 - Through early resolution
 - Through mediation
- For cases settled:
 1. What is the average damages award?
 2. How many included reinstatement?
- Duration of mediation sessions, in hours.
- Participant information for each case utilizing ADR (early resolution or mediation):
 1. Size of respondent company

2. Whether parties were represented by attorneys
3. Statute under which complaint filed
4. Merit or non-merit (if investigator had so concluded)
5. For mediation - stage in investigation at which mediation was requested

Within 30 days after the end of the first 120-day period, both regions will submit the above information to OWPP, together with lessons learned from the pilot thus far, and their recommendations for Chapter 24 – Alternative Dispute Resolution, to be included in OSHA’s Whistleblower Investigations Manual (the Manual, available at www.whistleblowers.gov).

III. Definitions.

Alternative Dispute Resolution (ADR) – is an approach to the settlement of disputes (whistleblower complaints) by means other than binding decisions made by courts or tribunals. As a general matter, ADR is broadly understood to involve the use of negotiation, mediation, conciliation, or arbitration. These techniques are not mutually exclusive in any particular conflict, but can be used sequentially or in combination with other adjudicative methods for resolving disputes (whistleblower complaints). ADR is typically a consensual process that involves the intervention of a third-party neutral to assist parties in resolving their conflict.

Early Resolution – is a voluntary process in which the parties to a dispute (whistleblower complaint) attempt to resolve the dispute (whistleblower complaint) prior to OSHA launching an investigation. If the parties elect to pursue early resolution, an OSHA regional ADR coordinator (RARDC) may help the parties reach a settlement agreement before the respondent provides a response to the complaint. The focus of early resolution is quick resolution of the dispute (whistleblower complaint) rather than an investigation to determine the validity of the charge, pretext, or potential violations. Should the parties elect to pursue early resolution but fail to enter into a settlement agreement within the specified time frame, the case will be assigned to an investigator to investigate the complaint.

Investigation – is a process in which an OSHA official (the investigator) investigates the dispute (whistleblower complaint) and provides a written determination based on the evidence and the facts of the case.

Mediation – is a voluntary process in which the parties agree to utilize a neutral third party to assist them in resolving a dispute (whistleblower complaint) by mutual agreement. Mediators have no authority to impose settlements. A mediator can help parties reach agreement by clarifying differences in a dispute (whistleblower complaint) or negotiation; defining problems or issues; establishing realistic expectations; maintaining the pace and track of negotiations;

generating options; and improving communications.

Shuttle Diplomacy – is a technique used in mediation, whereby the mediator may move between participants who are located in different rooms, or meet different participants at different times for all or part of the process. This technique may also be referred to as “caucusing” or “use of private sessions.”

Settlement – An agreement between parties, on the area of dispute (whistleblower complaint), that was mutually resolved without resorting to legal proceedings. A settlement may be reached at any time after the filing of the complaint and prior to the issuance of the Secretary’s Findings.

IV. Roles and Responsibilities.

A. Investigators.

Investigators are responsible for identifying cases in which mediation may be appropriate and providing the parties with information about OSHA’s ADR program. Investigators will not speculate on the potential outcome of mediation. Upon the request or concurrence of the respective parties, the investigator will refer the case to the Regional Supervisory Investigator (RSI) and RADRC for mediation evaluation.

B. Regional ADR Coordinators (RARDC).

The RARDC’s duties may be fulfilled by the RSI or another individual as determined by the Regional Administrator (RA). The RADRC is responsible for:

1. Providing information to interested parties about OSHA’s ADR program;
2. Assisting parties who timely request early resolution in reaching a settlement agreement;
3. Upon authority delegated by the RA, granting or denying the parties’ request to mediate within OSHA’s ADR program;
4. Conducting a “convening call” with the parties and the mediator to discuss the ADR process;
5. Coordinating with the mediator on cases approved for mediation;
6. Sending confirmation letters notifying the parties that OSHA is suspending an investigation or enforcement action pending mediation, or notifying the parties that OSHA is resuming an investigation or enforcement action if mediation does not result in the timely settlement of the case;

7. Remaining available for phone inquiries from mediators on the day of scheduled mediations; and
8. Approving settlement agreements or securing the approval of the RA, as appropriate.

C. Regional Supervisory Investigators (RSI).

The RSI is responsible for:

1. Coordinating with the investigators on identifying cases in which mediation may be appropriate and providing the parties with information about OSHA's ADR program;
2. Ensuring that OSHA suspends its investigation or enforcement action pending mediation; and
3. Ensuring that OSHA resumes its investigation or enforcement action if mediation does not result in the timely settlement of the case.

D. Mediators.

The mediator will serve as a neutral third party and facilitate the mediation proceedings. The mediator is responsible for:

1. Coordinating with the RADRC on cases approved for mediation;
2. Participating in the convening call;
3. Conducting the mediation session within 30 to 60 business days of the convening call;
4. Contacting OSHA to request additional time for mediation, if the mediator believes it is necessary, and informing OSHA of the progress of the mediation; and
5. Informing OSHA of the results of the mediation.

E. National ADR Coordinator (NADRC).

The NADRC is responsible for:

1. Providing technical assistance to the RADRC, RSIs, investigators, and mediators;
2. Providing training to OSHA staff on ADR and to mediators on OSHA statutes and policies. Where appropriate, this includes

coordinating with OSHA's Training Institute and the RADRCs;

3. Collecting and evaluating feedback from RADRC, RSI, investigators, mediators and ADR participants; and
4. Tracking, monitoring and reporting on the overall outcomes of the ADR program, including providing statistics and recommendations.

V. Core ADR Concepts.

A. ADR Must Be Voluntary.

1. ADR is a voluntary process. Both parties must agree to pursue ADR instead of an investigation.
2. The RADRC, RSI, or investigator should encourage parties to participate in ADR by explaining the benefits of OSHA's ADR program and providing informational materials about the program at the beginning of an investigation.
3. The RADRC, RSI, or investigator should also remind the parties of the ADR options where appropriate in the course of the investigation. For example, if OSHA is considering issuing merit findings, or the Regional Solicitor is preparing to file suit, the RSI or investigator may recommend that the parties reconsider mediation as an alternative to litigation.

B. Parties Must Participate in Good Faith.

ADR is only effective when the parties participate in good faith. Participating in "good faith" means that the parties engage in the process with openness to resolving the dispute (whistleblower complaint) and that they treat each other, the process and any third-party neutrals with respect. Parties should come fully prepared to discuss resolution of the dispute (whistleblower complaint), and must have full settlement authority.

VI. Early Resolution.

A. Overview.

Early resolution is a valuable alternative to the expensive and time-consuming process of an investigation. Before beginning an investigation, OSHA will offer the parties the option to resolve their dispute

(whistleblower complaint) quickly and informally with the assistance of an OSHA representative, e.g., RADRC, RSI, or investigator.

B. Process.

1. Upon receiving a valid complaint, OSHA will send opening letters to both the respondent(s) and the complainant(s) informing the parties about OSHA's ADR program and option to request early resolution (see Attachment A).
2. Within five (5) to seven (7) business days after sending the opening letters, the RADRC may contact both parties to discuss the benefits of ADR and OSHA's early resolution process.
3. Each party will have ten (10) business days from the date they receive the opening letter in which to contact the RADRC to request early resolution.
4. If only one party agrees to early resolution, the RADRC will notify both parties that early resolution is not available and that the investigation will proceed according to the procedures identified in the Manual, Chapter 3, Conduct of the Investigation.
5. If both parties agree to early resolution, the RADRC will contact each party separately to determine whether there is common ground for settlement.
6. If the parties can agree upon a framework for settlement, the RADRC will draft a proposed settlement agreement following the procedures outlined in the Manual, Chapter 6, Remedies and Settlement Agreements. Alternatively, the parties may draft and submit an agreement for OSHA's approval following the procedures outlined in the Manual, Chapter 6, Remedies and Settlement Agreements.
7. The RADRC is available to assist the parties in reaching a final settlement or determine that early resolution is not viable.
8. The parties must enter into a settlement agreement within 20 days of receipt of the opening letter to respondent or respondent may provide its Statement of Position by the 20th day. Attempting early resolution does not confer an extension of time in which the respondent may submit its statement.
9. During the early resolution process, the RADRC is available to provide general information about the whistleblower law and

procedures to the parties, but shall not comment on the merits of the individual case.

VII. Mediation.

A. Overview.

1. Mediation is a valuable alternative to the expensive and time-consuming process of an investigation.
2. Mediation is a voluntary process in which the parties agree to utilize a neutral third party to assist them in resolving a dispute (whistleblower complaint) by mutual agreement.
3. A mediator can assist the parties in reaching an agreement by clarifying differences in a dispute (whistleblower complaint) or negotiation; defining problems or issues; establishing realistic expectations; maintaining the pace and track of negotiations; generating options; and improving communications. However, mediators have no authority to impose settlements.
4. The mediator has no authority to determine whether a complaint has merit or the amount of a complainant's damages. The mediator may suggest how the parties might reach an agreement. The mediator may also give the parties an objective perspective on the strengths and weaknesses of their positions.
5. Mediation is a separate process from an investigation. Information obtained during mediation is confidential and will not be disclosed to OSHA.
6. While the parties are in mediation, OSHA will stay the investigation.
7. The parties may request mediation at any point during the investigation. OSHA will strive to accommodate such requests, but does not guarantee that it will be able to provide a mediator in every case.
8. In the event that parties are unable to reach an agreement within a reasonable time frame, as determined by the mediator and as outlined below, the mediator will announce that the mediation process has concluded. OSHA will resume its investigation following the procedures outlined in Chapters 3 to 5 of the Manual, as appropriate.

B. Process.

1. If both parties request mediation, the RADRC, with input from the mediator, will determine whether the dispute (whistleblower complaint) is suitable for mediation. In making this determination, the RADRC and mediator will consider several factors, including, but not limited to:
 - a. Whether the parties are truly willing to participate and resolve the dispute (whistleblower complaint) in good faith;
 - b. Whether a mediator is available;
 - c. Whether OSHA has resources to provide a mediator to the parties; and
 - d. Whether the parties have legal representation. In the event one party is represented and another is not and the case is accepted for mediation, the RADRC and the mediator will take steps necessary to ensure that any non-represented parties are not disadvantaged by the uneven representation. The necessary measures will be determined on a case-by-case basis.
2. If OSHA cannot accommodate the parties' mediation request, the RADRC will notify the parties that mediation is not available and that OSHA will continue with its investigation or enforcement action.
3. If OSHA has resources available to grant the parties' mediation request, the RADRC will send an acknowledgement letter notifying the parties that the investigation will be stayed and that the RADRC will be contacting them within ten (10) business days to schedule a "convening call." A copy of this letter will be sent to the mediator, the RSI, and NADRC (see Attachment D).
4. The RADRC will conduct the convening call or separate calls with the parties and the mediator to discuss the mediation and to further evaluate whether the case is suitable for mediation. The RADRC should discuss, at a minimum:
 - a. Logistics, including venue, date, and time of the mediation;
 - b. Who will attend (the RADRC will explain that persons with full settlement authority must be at the mediation);

- c. Confidentiality;
 - d. The parties' rights to representation and the mediator's role as a neutral third party; and
 - e. The RADRC will explain OSHA's requirements for the approval of settlement agreements.
5. If after the convening call the RADRC and the mediator agree that the case is suitable for mediation, the RADRC will send a confirmation letter to both parties. The confirmation letter should include: (1) the date, time, and location of the mediation; (2) the names of the mediator and participants; and (3) instructions regarding any pre-mediation requirements, such as documentation or position statements. The RADRC will send copies of the confirmation letter to the NADRC, RSI, and mediator.
- a. Venue: The mediation proceeding should be held at a neutral and private location. The mediator and parties should have access to a phone, computer, or fax.
 - b. In-person mediation: Except in extraordinary circumstances, mediation proceedings should be held in person. When resources prevent face-to-face mediations, the parties may agree to conduct a virtual mediation using technologies such as WebEx, Skype, or teleconferencing.
 - c. One day: Mediation proceedings should initially be scheduled for no more than one (1) day. In limited situations where the mediator believes that the parties are close to reaching a settlement, the mediator may seek approval from the RADRC to extend the proceeding for additional time.
 - d. Pre-mediation requirements: The mediator may require that the parties bring certain documentation relating to the issues in dispute or provide documentation, if any, related to the disputed issues.
6. If after the convening call the RADRC no longer finds the case suitable for mediation, or if either party no longer wishes to proceed with the mediation, the RADRC will notify the parties that the case has not been accepted for mediation and that OSHA will continue with its investigation or enforcement action.

7. Where mediation is approved, the mediator should conduct the mediation within 30 to 60 business days after the convening call.
8. The mediator has discretion to determine the structure of the mediation; there is no “one-size-fits-all” approach. A typical mediation may proceed as follows:
 - a. Ground rules: The mediator explains the basic mediation process, ground rules, and general phases of the proceeding.
 - b. Opening the Mediation: The complainant has an opportunity to explain his/her position followed by the comments of the respondent.
 - c. Joint Discussion: The mediator will lead a conversation to describe the issues, seek underlying interests, and explore possible options.
 - d. Caucuses: The mediator may split the parties into separate rooms for part of the mediation and meet with each party separately to discuss their position (initial settlement demands) and interests (issues behind the demands). Caucusing privately with each party assists the mediator in identifying common ground and areas of impasse.
 - e. Resolution: Following the caucus, the mediator may continue in shuttle diplomacy or may reconvene the parties in a joint session to continue to explore settlement options.
9. The mediation may result in one of the following dispositions:
 - a. Settlement: If the complainant and respondent reach an agreement, the mediator will ensure that the agreement is reduced to writing and incorporated into a settlement agreement in accordance with OSHA’s policies on settlement procedures. These policies are outlined in the Manual, Chapter 6, Remedies and Settlement Agreements. The mediator will forward the draft agreement to the RADRC for approval. If OSHA approves the settlement agreement, OSHA will sign and return the agreement to the mediator, for signature by both parties.

If the settlement agreement is not approved by OSHA, the RADRC will explain to the mediator why the agreement cannot be approved. The mediator will then instruct the

parties on why the agreement was not approved. If possible, the parties should revise the agreement, and resubmit to OSHA for approval.

If an agreement is reached and approved by OSHA, the parties should sign the agreement before the conclusion of the mediation proceeding. However, in the event that OSHA is not able to approve the agreement on the same day as the mediation but later approves it, or the parties are otherwise unable to sign the agreement on the same day as the mediation, the parties must sign and return any OSHA-approved settlement agreement within five (5) business days of the mediation. This timeframe may be extended for good cause shown, as determined by OSHA.

- b. **No Agreement Reached:** If after one (1) day the complainant and respondent are not close to settling the matter, the mediator will end the mediation and the investigation or enforcement action will resume. Likewise, if the parties leave the mediation with the intention of finalizing an agreement, but the parties do not sign a final settlement agreement within five (5) business days, the mediator will declare that no agreement was reached. Similarly, if OSHA does not approve any settlement agreement reached by the parties, the mediator will declare that no agreement was reached.
- c. **Withdrawal:** If one or both parties decide to end the mediation for whatever reason, the mediator must stop and treat the mediation as if it reached no agreement.
- d. **Termination:** The mediator may terminate the mediation proceeding if either party is abusive to the mediator, the respondent fails to make a decision-maker available, or either party is acting in bad faith. If the mediator terminates the mediation, OSHA will resume the investigation or proceed with its enforcement action.
- e. **Continuance:** In limited situations where the mediator believes that the parties are close to reaching a settlement, the mediator may seek approval from the RADRC to extend the proceeding for additional time. Where some, but not all, of the issues have been resolved by the end of the first day, the mediator will secure a written agreement memorializing the resolved issues.

10. After completion of the mediation proceeding, the mediator will send the ADR Outcome Form to the RARDC, informing OSHA of the results of the mediation (see Attachment F).

C. Mediation Principles.

1. Neutrality.

- a. At all phases of the mediation, the mediator will use a “facilitative” approach. The mediator will focus on facilitating a discussion between the parties to reach a resolution acceptable to both parties. The mediator may ask each party to consider the other party’s position when evaluating the merits of their own positions in an effort to bring the parties closer to settlement.
- b. The mediator has no decision-making authority and does not represent either party.

2. Right to Representation.

- a. Both parties may bring representatives to the mediation proceedings, such as attorneys, union representatives, or interpreters. The parties will notify the mediator if they plan to bring a representative to the mediation. In the event one party is represented and another is not, the RARDC and the mediator will take steps necessary to ensure that any non-represented parties are not disadvantaged by the uneven representation. The necessary measures will be determined on a case-by-case basis.
- b. The mediation is intended to facilitate a conversation between the two parties in conflict, and the mediator should ensure that representatives do not dominate the proceeding. The mediator may ask that attorneys or representatives provide advice and counsel, but not speak for a party.
- c. The mediator must inform an unrepresented party of the party’s right to seek legal counsel prior to attending the mediation proceeding. The mediator will not refer an attorney, but may direct the unrepresented party to a lawyer referral service, or state bar association.
- d. The mediator will not comment on the fairness of any settlement agreement reached, so long as both parties

voluntarily accept the agreement and know of their right to seek counsel.

3. **Decision-Makers Must Be Present.**

To successfully resolve a dispute (whistleblower complaint), the parties present must have full settlement authority. The parties present should make themselves available for the ADR proceeding. If the parties reach a settlement, the RARDC and the RA or his/her designee must be available for review and approval of the agreement.

4. **Confidentiality.**

- a. Both the RARDC and the mediator should assure the parties that statements made or evidence submitted in mediation will not be disclosed to any party outside of the proceeding. This assists the parties in exploring realistic settlement options without the fear that what they discuss during the mediation will be used against them in the investigation.
- b. The mediator and OSHA representatives shall not discuss the merits of the complaint or the content of the mediation with each other. The mediator may only communicate the outcome reached, and if an agreement is reached, the mediator will send the agreement to OSHA.
- c. At the conclusion of the mediation, all information or materials provided to or created by the mediator, including all notes, records, or documents generated during the course of the mediation proceeding shall be destroyed. Parties or their representatives are not prohibited from retaining their own notes.
- d. Any settlement agreement reached must be approved by the RA or his/her designee, as defined in the Manual, Chapter 1, paragraph X.A.1. OSHA will maintain a copy of the settlement agreement. OSHA will follow all applicable rules and procedures under the Freedom of Information Act, and the Privacy Act.
- e. Parties must agree in writing that the mediator cannot be later subpoenaed or called to testify about what was said during the mediation.

5. Conflict of Interest.

- a. In general, mediators should avoid participating where there is an actual or potential conflict of interest between the mediator and one or more parties attending the mediation.
- b. However, the parties may waive a conflict after the mediator fully discloses it to them. If the parties wish to waive a conflict, the mediator must note the conflict and the fact that both parties waive it in the Mediation Agreement signed by both parties (see Appendix A).
- c. Otherwise, where a conflict exists, the mediator will excuse him/herself and a new mediator will be appointed.

VIII. Parties' Ability to Settle During OSHA Investigation.

Nothing in OSHA's ADR program precludes or prohibits the parties' ability to settle their whistleblower complaint with the assistance of their investigator, the RSI, or other mediation/ADR service during an OSHA investigation, as provided in the Manual, Chapter 6.

IX. Quality Control.

To ensure that OSHA's ADR program is effective, fair, and impartial, an OSHA official who is not involved in the investigation of the complaint may attend a mediation proceeding or audit an early resolution case file. Where OSHA elects to attend a mediation proceeding, the mediator should be informed ahead of time, both the complainant and respondent must consent to the presence of the OSHA official and the OSHA official must sign the confidentiality agreement.

X. References.

- A. OPM ADR Guide – http://www.opm.gov/er/adrguide_2002/index.asp
- B. Department of Labor ADR Guide – http://www.opm.gov/er/adrguide_2002/section1-labor.asp
- C. A GUIDE FOR FEDERAL EMPLOYEE MEDIATORS – http://www.adr.gov/pdf/final_manual.pdf

ATTACHMENTS

- A. Complainant and Respondent Notification Letters
- B. ADR Frequently Asked Questions (FAQs)
- C. Request for Mediation Form
- D. ADR Acknowledgement Letter
- E. Mediation Agreement – RESERVED
- F. ADR Outcome Form
- G. Mediator Resume

ATTACHMENT A Complainant Notification Letter

Certified Mail #[1234 5678 9012 3456 7890]
[date]

[Complainant Name
Street Address
City, State ZIP]

Re: Respondent/Complainant/Case No. 1-2345-02-001

Dear [Mr./Ms. Complainant Last Name]:

This letter acknowledges receipt of your whistleblower complaint filed under [name of the whistleblower statute] (Acronym), [citation], on [date] against [Respondent] (Respondent).

The Occupational Safety and Health Administration (OSHA) is responsible for enforcing the whistleblower provisions of [Acronym], and will conduct its investigation following the procedures outlined in 29 CFR Part [Number]. You may obtain a copy of the pertinent statute and regulations at <http://www.whistleblowers.gov>. Upon request, a printed copy of these materials will be mailed to you.

Information Sharing: Under these procedures, OSHA will disclose to the parties information relevant to the resolution of the case as well as provide all parties an opportunity to fully respond. As such, both you and [Respondent] will receive a copy of each other's submissions to OSHA that are responsive to the above referenced whistleblower complaint. We have notified Respondent of the filing of this complaint and provided Respondent with a copy. **We request that any future documents that you submit to OSHA, you also send a copy to the Respondent at the address below:**

[Name]
[Street or P.O. Address]
[City, State, Zip]

If the information provided contains personal, identifiable information about individuals other than you, such information, where appropriate, should be redacted before disclosure. OSHA may contact the party directly for the unredacted copy, if necessary.

Alternative Dispute Resolution: OSHA has a voluntary Alternative Dispute Resolution (ADR) program where the parties may resolve the complaint through *Early Resolution* or

Mediation.

Early Resolution is a process in which the parties to a dispute (whistleblower complaint) attempt to resolve the dispute (whistleblower complaint) without an investigation. If the parties elect to pursue early resolution, an OSHA Regional ADR Coordinator (RARDC) may help the parties reach a settlement agreement before the respondent provides a response to the complaint. The focus of early resolution is quick resolution of the dispute (whistleblower complaint) rather than an investigation to determine the validity of the charge, pretext, or potential violations. Should the parties elect to pursue early resolution but fail to reach a settlement agreement within the specified time frame, the case will be assigned to an investigator to investigate the complaint. However, even if early resolution attempts fail, parties may enter into a settlement agreement at any time during the course of the investigation.

If you would like to pursue early resolution, please call the RARDC identified below **within ten (10) business days of your receipt of this letter**. If the respondent also requests early resolution, the RADRC will contact you to determine whether there is common ground for settlement.

If you and the respondent do not reach a settlement agreement through early resolution within 20 days of the receipt of the opening letters, an OSHA investigator will be assigned to your case and will contact you in the near future.

Mediation is a voluntary process in which the parties agree to utilize a neutral third party to assist them in resolving a dispute (whistleblower complaint) by mutual agreement. The parties may request mediation at any time after an investigation is underway, *i.e.*, after the respondent provides a response to the complaint. In appropriate cases, OSHA will stay the investigation and assign a neutral third-party mediator to help the parties negotiate a settlement agreement.

In the interim, please save any evidence bearing on your complaint, such as notes, minutes, letters, or check stubs, etc., and have them ready when the investigator named below meets with you. It will be helpful for you to write down a brief factual account of what happened and to prepare a list of the names, addresses, and telephone numbers of the potential witnesses, together with a brief summary of what each witness should know.

You are expected to cooperate in the investigation of your complaint and failure to do so may cause your complaint to be dismissed.

Attention is called to your right and the right of any party to be represented by counsel or other representative in this matter. In the event you choose to have a representative appear on your behalf, please have your representative complete the Designation of Representative form enclosed and forward it promptly.

Sincerely,

[Name]
Regional ADR Coordinator
Telephone: (123) 456-7890
Fax: (123) 456-7890

[Name]
Whistleblower Manager

Enclosures: Designation of Representative
ADR Frequently Asked Questions
Request for Mediation Form

Respondent Notification Letter

Certified Mail #[1234 5678 9012 3456 7890]
[date]

[Employer Name
Street Address
City, State ZIP]

Re: Respondent/Complainant/Case No. 1-2345-02-001

Dear Sir or Madam:

We hereby serve you notice that a complaint has been filed with this office by [Mr./Ms.] [Complainant's name] (Complainant) alleging retaliatory employment practices in violation of the whistleblower provisions of [name of statute] (Acronym), [citation]. A copy of the complaint is enclosed.

The Occupational Safety and Health Administration (OSHA) is responsible for enforcing the whistleblower provisions of [Acronym], and will conduct its investigation following the procedures outlined in 29 CFR Part [Number]. You may obtain a copy of the pertinent statute and regulations at <http://www.whistleblowers.gov>. Upon request, a printed copy of these materials will be mailed to you.

Under these procedures, OSHA will disclose to the parties information relevant to the resolution of the case as well as provide all parties an opportunity to fully respond. As such, both you and Complainant will receive a copy of each other's submissions to OSHA that are responsive to the above referenced whistleblower complaint. **We request that any future documents that you submit to OSHA, you also send a copy to the Complainant at the address below:**

[Name]
[Street or P.O. Address]
[City, State, Zip]

If the information provided contains personal, identifiable information about individuals other than the complainant, such information, where appropriate, should be redacted before disclosure. OSHA may contact the party directly for the unredacted copy, if necessary.

Alternative Dispute Resolution: OSHA has a voluntary Alternative Dispute Resolution (ADR) program where the parties may resolve the complaint through *Early Resolution* or *Mediation*.

Early Resolution is a process in which the parties to a dispute (whistleblower complaint) attempt to resolve the dispute (whistleblower complaint) without an investigation. If the parties elect to pursue early resolution, an OSHA Regional ADR Coordinator (RARDC) may help the parties reach a settlement agreement before the respondent provides a response to the complaint. The focus of early resolution is quick resolution of the dispute (whistleblower complaint) rather than an investigation to determine the validity of the charge, pretext, or potential violations. Should the parties elect to pursue early resolution but fail to reach a settlement agreement within the specified time frame, the case will be assigned to an investigator to investigate the complaint. However, even if early resolution attempts fail, parties may enter into a settlement agreement at any time during the course of the investigation.

If you would like to pursue early resolution, please call the RARDC identified below **within ten (10) business days of your receipt of this letter**. If the complainant also requests early resolution, the RADRC will contact you to determine whether there is common ground for settlement.

Mediation is a voluntary process in which the parties agree to utilize a neutral third party to assist them in resolving a dispute (whistleblower complaint) by mutual agreement. The parties may request mediation at any time after an investigation is underway, *i.e.*, after the respondent provides a response to the complaint. In appropriate cases, OSHA will stay the investigation and assign a neutral third-party mediator to help the parties negotiate a settlement agreement.

In the event that either you or the complainant are unable to reach a settlement agreement within 20 days of your receipt of your opening letter, you may submit a written account of the facts and a statement of your position with respect to the allegation within this 20-day time frame. Please note that a full and complete initial response, supported by appropriate documentation, will expedite OSHA's determination in this case.

The following two paragraphs must be included for complaints filed under STAA, AIR21, SOX, PSIA, FRSA, NTSSA, CPSIA, ACA, CFPA, SPA, and FSMA. Do not include these two paragraphs in notification letters for complaints filed under the other statutes, as they do not provide for preliminary, immediate reinstatement of the complainant.

[Within the same 20 days you may request a meeting to present your position. The meeting will be held before the issuance of any findings and a preliminary order. At the meeting, you may be accompanied by counsel and by any persons relating to the complaint, who may make statements concerning the case.

If the investigation provides this agency with reasonable cause to believe that the Act has been violated and reinstatement of the complaint is warranted, you will again be contacted prior to the issuance of findings and a preliminary order, at which time you will be advised of the substance of the relevant evidence supporting the complainant's allegations, and you will be given the opportunity to submit a written response, to meet

with the investigator and to present statements from rebuttal witnesses. Your rebuttal evidence must be presented within ten (10) business days of this agency's notification described in this paragraph.]

Attention is called to your right and the right of any party to be represented by counsel or other representative in this matter. In the event you choose to have a representative appear on your behalf, please have your representative complete the Designation of Representative form enclosed and forward it promptly. All communications and submissions should be made to the investigator assigned below. Your cooperation with this office is invited so that all facts of the case may be considered.

Sincerely,

[Name]
Regional ADR Coordinator
Telephone: (123) 456-7890
Fax: (123) 456-7890

[Name]
Whistleblower Manager

Enclosures: Designation of Representative
 ADR Frequently Asked Questions
 Request for Mediation Form

U.S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
DESIGNATION OF REPRESENTATIVE

| | |
|-------------------------------------|----------------------------|
| [Complainant] v. [Respondent] | Case Number: 0-1234-56-789 |
|-------------------------------------|----------------------------|

TO:

[Investigator's name], Investigator
U.S. Department of Labor - OSHA
[Address]

The undersigned hereby enters his appearance as representative of:

in the above captioned matter:

| | |
|--------------------------------------|--|
| _____ Signature of Representative | Representative's Address and ZIP Code |
| _____ Type or Print Name | |
| _____ Title | _____ Area Code Telephone Number |
| _____ Date | E-mail address: _____ |

ATTACHMENT B

Alternative Dispute Resolution

Frequently Asked Questions (FAQs)

GENERAL

What is OSHA's ADR program?

Alternative Dispute Resolution (ADR) is a consensual process that involves the intervention of a third-party neutral to assist parties in resolving their conflict. ADR generally consists of a variety of techniques to resolve disputes. OSHA's ADR program implements two of these techniques, *early resolution* and *mediation*.

What happens if I want to pursue early resolution or mediation and my employer (or employee) does not agree?

OSHA's ADR program is voluntary. Both the complainant and respondent must agree to participate. If either party does not wish to participate, OSHA will conduct an investigation.

How much does this process cost?

There is no charge to participate in OSHA's ADR program.

What are the benefits of ADR?

ADR allows the parties to resolve the matters in dispute in a mutually satisfactory manner and is faster than an investigation. The process may also allow the parties to preserve or repair the employment relationship. If you do not reach a settlement agreement through early resolution or mediation, OSHA will investigate the complaint like any other. Additionally, even if ADR attempts fail, parties may enter into a settlement agreement at any time during the course of the investigation.

How can I learn more about OSHA's ADR program?

Please contact the Regional ADR Coordinator identified in OSHA's opening letter.

EARLY RESOLUTION

What is early resolution?

Early resolution is a process in which the parties to a dispute (whistleblower complaint) attempt to resolve the dispute (whistleblower complaint) without an investigation. If the parties elect to pursue early resolution, an OSHA Regional ADR Coordinator may help the parties reach a settlement agreement before the respondent provides a response to the complaint. The focus of early resolution is quick resolution of the dispute (whistleblower complaint) rather than an investigation to determine the validity of the charge. Should the parties elect to pursue early resolution but fail to reach a settlement agreement within the specified time frame, the case will be assigned to an investigator to investigate the complaint. However, even if early resolution attempts fail, parties may enter into a settlement agreement at any time during the course of the investigation, with or without the assistance of the OSHA investigator.

What is the early resolution process?

Upon receiving a valid complaint, OSHA will send opening letters to both the respondent(s) and the complainant(s). Each party will have ten (10) business days from the date they receive the opening letter in which to contact the OSHA Regional ADR Coordinator to request early resolution. If both parties request early resolution, the Regional ADR Coordinator will contact each party separately to determine whether there is common ground for settlement. If the parties can agree upon a framework for settlement, the Regional ADR Coordinator will draft a proposed settlement agreement following the procedures outlined in the Whistleblower Investigations Manual (the Manual, available at www.whistleblowers.gov), Chapter 6, Remedies and Settlement Agreements. The parties may accept, reject, or modify that proposal until a final settlement is reached or the Regional ADR Coordinator determines that early resolution is not viable.

Does attempting early resolution delay the OSHA investigation?

No. The respondent may provide its Statement of Position within 20 days of receiving OSHA's opening letter unless the parties reach a signed settlement agreement prior to that date. Attempting early resolution does not confer an extension of time in which the respondent may submit its statement.

What happens if we are unable to resolve our dispute (whistleblower complaint)?

In the event the complainant and respondent are unable to reach a settlement through early resolution, OSHA will proceed with its investigation following the procedures outlined in the Manual, as appropriate (Chapter 3, Conduct of Investigation; Chapter 4, Case Disposition; or Chapter 5, Documentation and Secretary's Findings). Parties may also seek to resolve their dispute (whistleblower complaint) by requesting mediation at any point during the investigation. Additionally, even if early resolution attempts fail, parties may enter into a settlement agreement at any time during the course of the investigation.

Are all complaints eligible for early resolution?

No. The complainant and respondent must both request early resolution within ten (10) days of receiving OSHA's notification letter. After that date, early resolution is no longer available. Moreover, if only one party requests early resolution, the Regional ADR Coordinator will notify that party that early resolution is not available and that the investigation will proceed according to the procedures identified in the Manual, Chapter 3, Conduct of the Investigation.

MEDIATION

What is mediation?

Mediation is a voluntary process in which the parties agree to utilize a neutral third party to assist them in resolving a dispute (whistleblower complaint) by mutual agreement. Mediators have no authority to impose settlements. A mediator can help parties reach

agreement by clarifying differences in a dispute (whistleblower complaint) or negotiation; defining problems or issues; establishing realistic expectations; maintaining the pace and track of negotiations; generating options; and improving communications.

Does OSHA require the parties to participate in mediation?

No. Participation in mediation is strictly voluntary. If either party declines to participate in mediation, the complaint will be processed just like any other.

Who are the mediators?

At this time, OSHA has contracted with the Federal Mediation and Conciliation Service (FMCS) to provide neutral, highly trained mediators. FMCS is a United States government agency separate from OSHA that specializes in alternative dispute resolution. See: <http://www.fmcs.gov/internet>.

Is the mediation process confidential?

Yes. Information discussed during mediation is confidential and will not be disclosed to OSHA. Mediation sessions are not tape-recorded or transcribed. Notes taken by the mediator are destroyed.

May the parties bring an attorney or other representative to the mediation?

Yes. While it is not necessary to bring an attorney or other representative to mediation, either party may choose to do so. The mediator will decide what role the attorney or representative will play. If a party plans to bring an attorney or other representative to mediation, he or she should notify the mediator prior to the session.

How long does mediation take?

Mediation is a very efficient process that saves time and money. Under OSHA's ADR program, mediation will take place over one day. In rare cases, a mediator may recommend additional time for mediation, subject to approval by OSHA. Successful mediations avoid time-consuming investigation and achieve a prompt resolution of the complaint.

What happens to a complaint if it is not resolved in mediation?

If a complaint is not resolved during mediation, OSHA will proceed with its investigation following the procedures outlined in the Manual, as appropriate (Chapter 3, Conduct of Investigation; Chapter 4, Case Disposition; or Chapter 5, Documentation and Secretary's Findings). Additionally, even if mediation attempts fail, parties may enter into a settlement agreement at any time during the course of the investigation.

Can information revealed during mediation be used during an investigation if the complaint is not resolved during mediation?

No. Because the entire mediation process is strictly confidential, information revealed during mediation cannot be disclosed to anyone, including OSHA personnel. It, therefore, cannot be used during any subsequent investigation.

ATTACHMENT C
REQUEST FOR MEDIATION FORM

Case No. [Enter Number]

The Occupational Safety and Health Administration (OSHA) employs an Alternative Dispute Resolution (ADR) program under which the Complainant and Respondent may resolve their dispute (whistleblower complaint) outside of the investigative process. Under OSHA's ADR program, OSHA provides the parties with a neutral third-party mediator to work with the complainant and the respondent to attempt settlement. The parties may request mediation at any point during OSHA's investigation. OSHA will strive to accommodate such requests, but does not guarantee that it will be able to provide a mediator in every case. If OSHA approves the parties' request to mediate, the investigation will be stayed pending the outcome of the mediation.

If you are interested in participating in mediation, please fax this form or call the Regional ADR Coordinator at: Telephone: (123) 456-7890 or Fax: (123) 456-7890.

_____ I am interested in pursuing mediation as an alternative to OSHA's investigation.

Signature

Date

Print Full Name
address

Daytime Phone Number

Email

ATTACHMENT D
ADR ACKNOWLEDGEMENT LETTER

Certified Mail #[1234 5678 9012 3456 7890]
[date]

[Complainant/Respondent Name]
Street Address
City, State ZIP]

Re: Respondent/Complainant/Case No. 1-2345-02-001

Dear [Mr./Ms.] [Complainant/Respondent Last Name]:

This letter acknowledges the parties' mutual request for Alternative Dispute Resolution (ADR) in the whistleblower case filed by [Complainant] under [name of the whistleblower statute] (Acronym), [citation], on [date] against [Respondent] (Respondent). I will be contacting you within ten (10) business days to schedule a convening call. The convening call will include myself, both parties, and an assigned mediator. The call's purpose is to discuss rights of the parties, go over the mediation process, and to arrange the date, time, and location of the mediation.

OSHA's investigation will be stayed until five days after your mediation occurs if your case is accepted for mediation. If OSHA does not have a final, signed settlement agreement by that date, the assigned investigator will resume the investigation.

If your case is accepted for mediation, the mediation will be conducted according to the provisions in OSHA's *Alternative Dispute Resolution (ADR) Program Direction*. You can review the Direction and other information about OSHA's ADR program at www.whistleblowers.gov. Should you have any questions prior to the convening call, please contact me at the telephone or fax numbers below.

Thank you for participating in OSHA's ADR program.

Sincerely,

[Name]
Regional ADR Coordinator
Telephone: (123) 456-7890
Fax: (123) 456-7890

cc: [Name], Mediator
[Name], National ADR Coordinator
[Name], Regional Supervisory Investigator (if different than Regional ADR
Coordinator)

ATTACHMENT E
MEDIATION AGREEMENT

RESERVED

ATTACHMENT F

ADR OUTCOME - MEDIATOR SIGN-OFF FORM

Case Number:

Date:

Case Name:

Beginning Date: _____ **Ending Date:** _____

Total Time: _____

CASE DISPOSITION

_____ **Agreement**

_____ **No Show**

_____ **No Agreement**

_____ **Continuance**

REPRESENTATION OF PARTIES

_____ **Complainant represented by counsel**

_____ **Respondent represented by counsel**

If only one party was represented by counsel, did you perceive an imbalance of power? If yes, how did you handle this?

ADDITIONAL MEDIATOR COMMENTS

MEDIATORS/OBSERVERS:

| | | |
|------------|-----------|-------|
| <hr/> | <hr/> | <hr/> |
| Print Name | Signature | Date |

| | | |
|------------|-----------|-------|
| <hr/> | <hr/> | <hr/> |
| Print Name | Signature | Date |

ATTACHMENT G

MEDIATOR RESUME



NAME

[Click here and type address]

[Put Phone, Fax and E-mail here]

Experience

[Date]

[Employer]

[Location]

Title

- Duties
- Duties

Education

[Date]

[University]

[Location]

- Degree
- Degree

Affiliation

APPENDIX A

FMCS Case No: _____

FEDERAL MEDIATION AND CONCILIATION SERVICE MEDIATION AGREEMENT

The undersigned parties hereby request the mediation assistance of the Federal Mediation and Conciliation Service (FMCS) in the attempted resolution of the dispute between [Enter Complainant Name] (Complainant) and [Enter Respondent Name] (Respondent). The parties understand that mediation is a voluntary process that may be terminated at any time. The parties agree to maintain the confidentiality of all information disclosed in the course of the mediation and further agree to the following terms:

1. Proceedings before the mediation are informal and the rules of evidence for all civil proceedings do not apply. No voice, stenographic, or other recording of the mediation will be made.
2. Mediation sessions are private. The complainant is entitled to be present. Non-parties may attend only with the permission of the parties and the consent of the mediator.
3. Any statements made by the parties, other participants, or the mediator during the mediation process and any documents created for or during the mediation are inadmissible and not discoverable for any purpose whatsoever in any pending or subsequent judicial or other proceeding, absent the written consent of all of the parties, the mediator, and the FMCS.
4. The parties will not seek to compel the testimony, by subpoena or otherwise, of the mediator or any other employee of the FMCS to testify in any proceeding for any reason. The parties also will not seek to compel, by subpoena or otherwise, the production of documents created for or during the mediation in any proceeding or for any reason.
5. Evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation proceedings.
6. The obligations imposed by this agreement are in addition to and do not supersede any obligations imposed by applicable State or Federal laws regarding mediation confidentiality.
7. The mediator has no authority to compel agreement or other resolution of the dispute and will issue no written recommendations or conclusions. At the request of the parties, or on the initiative of the mediator, the mediator may provide an oral recommendation or opinion to resolve the dispute. In that circumstance, the parties may jointly decide to implement the recommendation or opinion but neither party is obligated to do so.

8. The parties shall not rely on nor introduce as evidence in any proceedings any views, comments, or suggestions made by any party or participants with respect to a possible settlement of the dispute any admissions made by another party or participant in the course of the mediation proceedings, or any proposals, opinions or comments of the mediator. In accordance with FMCS policy, the mediator's notes and records of the mediation content, if any, are routinely destroyed.
9. The FMCS and its employees will be held harmless of any claim for damages for any act or omission occurring during or in connection with the mediation process, to the extent permitted by applicable law.
10. Any conflict of interest between the mediator and myself has been disclosed to me and I consent to the mediator's participation.
11. The parties agree to be bound by this agreement. By signing below, the parties represent that they have full authority to bind their respective organizations and/or members to this agreement.

| | | |
|------------------------|-----------|------|
| Print Name Complainant | Signature | Date |
|------------------------|-----------|------|

| | | |
|--|-----------|------|
| Print Name Complainant Representative | Signature | Date |
|--|-----------|------|

| | | |
|-----------------------|-----------|------|
| Print Name Respondent | Signature | Date |
|-----------------------|-----------|------|

| | | |
|---|-----------|------|
| Print Name Respondent Representative | Signature | Date |
|---|-----------|------|