

Shared Neutrals Program

A Partnership Project of the:



Oklahoma Federal Executive Board

Supreme Court of Oklahoma



**Equal Employment Opportunity Commission,
Dallas**

VA Medical Center, Oklahoma City



Federal Aviation Administration

**American Federation of Government
Employees**



for
Alternative Dispute Resolution
Partnering to Create Efficiencies
Through Shared Resources

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DEFINITIONS

Agency Process: A mechanism that is already in place to deal with workplace disputes. This will include mechanisms such as the Equal Employment Opportunity (EEO) process, Union agreement, or other means.

Alternative Dispute Resolution (ADR): A group of processes that provide an alternative means of resolving disputes by using a neutral third party (mediator, facilitator, arbitrator, etc.). The neutral does not have a stake in the issues or outcome.

Confidential: Any discussion held during an ADR process will not be discussed or made known outside of the proceeding.

Issues: Workplace disputes or problems that can be worked through traditional or non-traditional processes.

Mediation: An intervention by a neutral third party who has been designated to facilitate negotiation with an ultimate goal of reaching an acceptable solution to a dispute.

Mediator: A neutral, trained facilitator in the mediation process.

Mutually Acceptable: Satisfactory to the needs and expectations of all parties involved.

Negotiate: To confer, discuss, or bargain in order to reach agreement on a contract or other subject of common concern to the parties.

Neutral Party: An individual who does not have an interest in the outcome of the dispute.

Settlement Agreement: A legally binding written agreement signed by all parties, containing the terms of the agreement resolving the parties' dispute.

Solution: The settlement agreement reached by the parties.

Shared Neutral: A trained Federal employee participating in the Oklahoma FEB's program to provide mediation services to Federal agencies, other than their own, throughout Oklahoma.

Union Grievance: A process used by bargaining unit employees and union officials to resolve conflicts between management's actions and the perceived requirements of the collective bargaining agreements between the parties.

Voluntary: Processes in which the parties have chosen to participate of their own free will.

OKLAHOMA FEDERAL EXECUTIVE BOARD "SHARED NEUTRALS" PROGRAM

The Shared Neutrals Program is a project of the Oklahoma Federal Executive Board (FEB) to provide mediation as an alternative to resolve disputes in the federal workplace. The shared resources of the Oklahoma federal community from a cadre of interagency mediators, trained in partnership with the State Supreme Court of Oklahoma, Oklahoma City VA Medical Center (VAMC), and the Equal Employment Opportunity Commission (EEOC). The vision is to resolve disputes at the earliest possible date to increase the quality of communication within the workforce, resulting in maintaining a productive work environment and reducing cost and time involved with formal processes.

BENEFITS OF UTILIZING THE OKLAHOMA FEB'S SHARED NEUTRALS:

The FEB Shared Neutrals Program uses mediation as an economical and expeditious option by which disputes can be resolved. This method of dealing with workplace disputes is favorable to all parties, without bias. Neither party surrenders legal rights or entitlements when using the Shared Neutrals Program. Mediation is one way by which disputes may be resolved. Government agencies and private sector companies are using a variety of Alternative Dispute Resolution (ADR) processes in increasing numbers and with great success.

WHAT IS MEDIATION?

Mediation is provided as an informal method of resolving disputes with a fellow employee, manager or colleague. In mediation, a neutral person (a Mediator) helps two or more persons explore ways to resolve their differences and reach an agreement to best address their mutual interests. All parties must be willing to resolve the problem for this process to be successful. Mediation, unlike arbitration or court proceedings, has no focus on "placing blame" with the Mediator having no authority to force a decision on the parties involved. Those involved in the dispute decide what is important and make decisions based on those factors. A Mediator assists the parties in becoming "decision-makers" through establishing communication which leads to an understanding of each other and allows the individuals to create options and solutions to address their concerns.

MEDIATION IS A TYPE OF PROBLEM SOLVING PROCESS THAT:

Helps individuals involved in a dispute communicate with each other; encourages the persons affected to create their own solutions and examine unique solutions to a problem instead of referring the problem to a judge, arbitrator or another outside decision-maker; thus maintaining control by the individuals involved; and helps the persons involved develop realistic and mutually satisfactory solutions.

WHAT IS A UNION'S ROLE IN THE OKLAHOMA FEB SHARED NEUTRALS PROGRAM?

If there is a negotiated agreement with a union to use mediation within their grievance process, a union representative can be present during the mediation session. The Union's involvement should be stated upon requesting mediation to establish a clear understanding of the involvement beforehand.

WHEN SHOULD MEDIATION BE CONSIDERED?

Mediation can be used to resolve Equal Employment Opportunity (EEO) complaints, Union grievances (if mediation has already been negotiated), and other forms of disputes on a case by case basis.

VARIOUS SITUATIONS WHEN USE OF THE SHARED NEUTRALS PROGRAM WOULD BE APPROPRIATE

- The dispute is primarily factual.

- The position of each side has merit, but its value is overstated.
- The cost of litigating the dispute would exceed the potential recovery.
- No further discovery is required—or limited expedited discovery will suffice—for each side to assess its strengths and weaknesses.
- A speedy resolution is desirable.
- There is an opportunity to rehabilitate a disaffected employee through open communication.
- Trial preparations could be costly and protracted.
- A neutral third party could help diffuse the emotion or hostility that may inhibit an appropriate resolution.
- There is a continuing relationship among the parties.
- The parties have indicated they want to settle.
- The law governing the issues is well settled.

SITUATIONS WHEN USE OF THE SHARED NEUTRALS PROGRAM WOULD BE INAPPROPRIATE

- The dispute is primarily over issues of law and a decision with precedential value is needed.
- A significant policy question is involved.
- A full public record of the proceeding is important.
- The outcome would significantly affect nonparties.
- The costs of using an ADR procedure would probably be greater (in time and money) than the costs of pursuing litigation.
- The case involves a willful or criminal violation of law.
- The advantage of delay runs heavily in favor of one side.
- One side has little motivation to settle.
- There is a need for continuing board or court supervision of one of the parties.
- The case is likely to be resolved efficiently without assistance (e.g. settle, motion)
- More time must elapse before each side's position and settlement possibilities can be evaluated.

WHEN DOES THE MEDIATION PROCESS BEGIN?

The mediation process begins upon request and can be initiated by anyone involved in a dispute. In the EEOC hearing context, an Administrative Judge may initiate the process.

HOW DOES THE OKLAHOMA FEB SHARED NEUTRALS PROGRAM WORK?

EEO process: Mediation can be utilized at any point, voluntarily, or as a result of arriving at the administrative hearing in the formal stage of an EEO complaint. An Administrative Judge may require mediation using the Shared Neutrals Program cadre of mediators. See Flowchart provided at page 10.

Union grievance: Mediation is purely voluntary unless the negotiated agreement calls for mediation as part of the grievance process. See Flowchart at page 11.

In both examples, mediation is more effective if used at the earliest possible date.

WHO IS INVOLVED IN THE MEDIATION PROCESS?

Any current or former federal employee or an applicant for employment for a federal agency in the State of Oklahoma who has a federal workplace dispute can participate in the Program.

Union: An authorized representative for the aggrieved person if: 1) the employee is covered by a union contract and 2) the dispute could result in a grievance.

Management participant: The Agency representative who is authorized to negotiate and execute binding settlement agreements on behalf of the Department.

Mediator: An impartial, neutral third party trained in conflict resolution techniques, who has been approved to participate in the Oklahoma FEB Shared Neutrals Program. When deemed beneficial, sessions may be conducted in which Co-Mediators (two) are assigned to facilitate the process.

Other Team Members: Generally, only the Mediator, the employee (and his/her representative, if desired), the union representative, and the management participant are present in the room when mediation takes place. Behind the scenes, a few people may be aware of the issues and provide support to the resolution effort including the Labor Relations Specialist, and/or EEO counselor; however, all are bound by confidentiality. In EEOC ordered mediations, only the mediator, the parties and their representatives will participate unless other authority is granted.

Attorneys: If an attorney represents a party, the attorney's role must be discussed with the Mediator prior to the mediation session. In EEOC ordered mediations, the parties' attorney may appear and participate.

HOW IS THE OKLAHOMA FEB SHARED NEUTRALS PROGRAM EVALUATED?

The Program is evaluated using three (3) different feedback mechanisms:

Customer (User) Survey – This form is voluntarily completed by the users of the Program (employees, management reps., etc.) at the end of each session.

Annual Federal Executive Board Member Survey – This is completed on an annual basis by the members of the FEB, rating the Program as meeting/not meeting their organization’s needs.

Mediator Survey – The person most intimately involved in the process completes this survey which provides their perspective on what works and what needs improvement at the conclusion of each session.

The Dallas EEOC Office provides statistical information to the FEB regarding success rates and agencies served. The information will be shared among FEB members but will omit identifying information which would violate the Privacy Act.

These instruments and statistical information will be combined to evaluate the ability of the Shared Neutrals Program to meet the needs of the federal community in Oklahoma. The input also allows for future improvements and modifications to the Shared Neutrals Program.

ARE MEDIATION SESSIONS CONFIDENTIAL?

The program requires the Mediator to protect the **CONFIDENTIALITY** of the parties’ disclosures, and the mediation process itself. Mediation sessions and all materials disclosed are **CONFIDENTIAL**. All parties must agree to **CONFIDENTIALITY**, inasmuch as Mediators will not testify concerning the mediation discussions. In addition, Mediators do not disclose anything learned, in a separate session, without permission. Of course, if the case is not settled and goes to formal hearing or litigation, each party could use processes to obtain information or documents that would normally be obtained through discovery or pursuant to the Freedom of Information Act.

WILL AN EMPLOYEE’S RIGHT TO PURSUE COURT AND ADMINISTRATIVE ACTION BE AFFECTED?

No. If unresolved issues remain at the end of the mediation, the Mediator and the complainant will state these issues in writing during the final mediation session, and the complainant may continue processing them through the formal complaint/grievance process. Mediations ordered by EEOC Administrative Judges do not defer other processing of cases toward hearing dates.

HOW DOES THE OKLAHOMA FEDERAL EXECUTIVE BOARD SELECT AND TRAIN MEDIATORS?

Federal agencies were asked to select individuals to serve as Oklahoma FEB Mediators, providing their services as a collateral duty, on an as needed basis. These individuals are trained through a partnership with the Oklahoma State Supreme Court, utilizing a modified version of their mediation curriculum which has also been bolstered by EEO training provided through the EEOC as well as advanced mediation training provided through the auspices of the Veteran’s Administration.

FORMS/EXAMPLES

The following are descriptions of the forms contained in this booklet for your convenience, this includes a one-page form requesting “Shared Neutral” services from the Federal Executive Board.

The following forms are located beginning on page 13

REQUEST/CONSENT FORM. This is the form by which the request for mediation is initiated. It is drafted so that all necessary parties can evidence their agreement to participate in the mediation process on the same document. It is also fashioned so the request for mediation could be jointly made to the agency's ADR coordinator, if appropriate. In federal field offices, this document may not be necessary.

REQUEST FOR OKLAHOMA FEDERAL EXECUTIVE BOARD (FEB) SHARED NEUTRAL. This form provides preliminary instructions and can be faxed to the Oklahoma FEB office when requesting the assignment of a neutral.

AGREEMENT TO PARTICIPATE IN MEDIATION. This is the form all persons participating in the mediation must sign before beginning a voluntary mediation session. It can be done at or before the mediation session. This form sets forth all the terms under which the mediation is being conducted, and under which the parties are participating. It binds all parties to confidentiality and confirms that all rights the parties have are preserved.

SETTLEMENT AGREEMENT. This is a form that a mediator may use to record the agreement between the parties.

CUSTOMER, FEB MEMBER, AND MEDIATOR SURVEYS. These surveys are the primary tools by which the FEB's Shared Neutrals program is evaluated.

ORDER OF REFERRAL FOR SETTLEMENT CONFERENCE. This is an order to participate in mediation issued by an Administrative Judge.

RULES FOR SETTLEMENT CONFERENCES. Rules set forth by the Equal Employment Opportunity Commission.

REPORT. Report from mediator to the Administrative Judge regarding outcome of settlement conference.



COSTS ASSOCIATED WITH FORMAL PROCESSES WITHOUT MEDIATION

The real advantages of using some type of an ADR process can be easily viewed from a cost perspective. The following excerpt puts some numbers to the EEO process and is from a report that can be found at: <http://www.gsa.gov/eo/eo5.htm>. The “Cost to the Government” figure is determined using several different years and adding 4% a year to arrive at a 1996 figure.

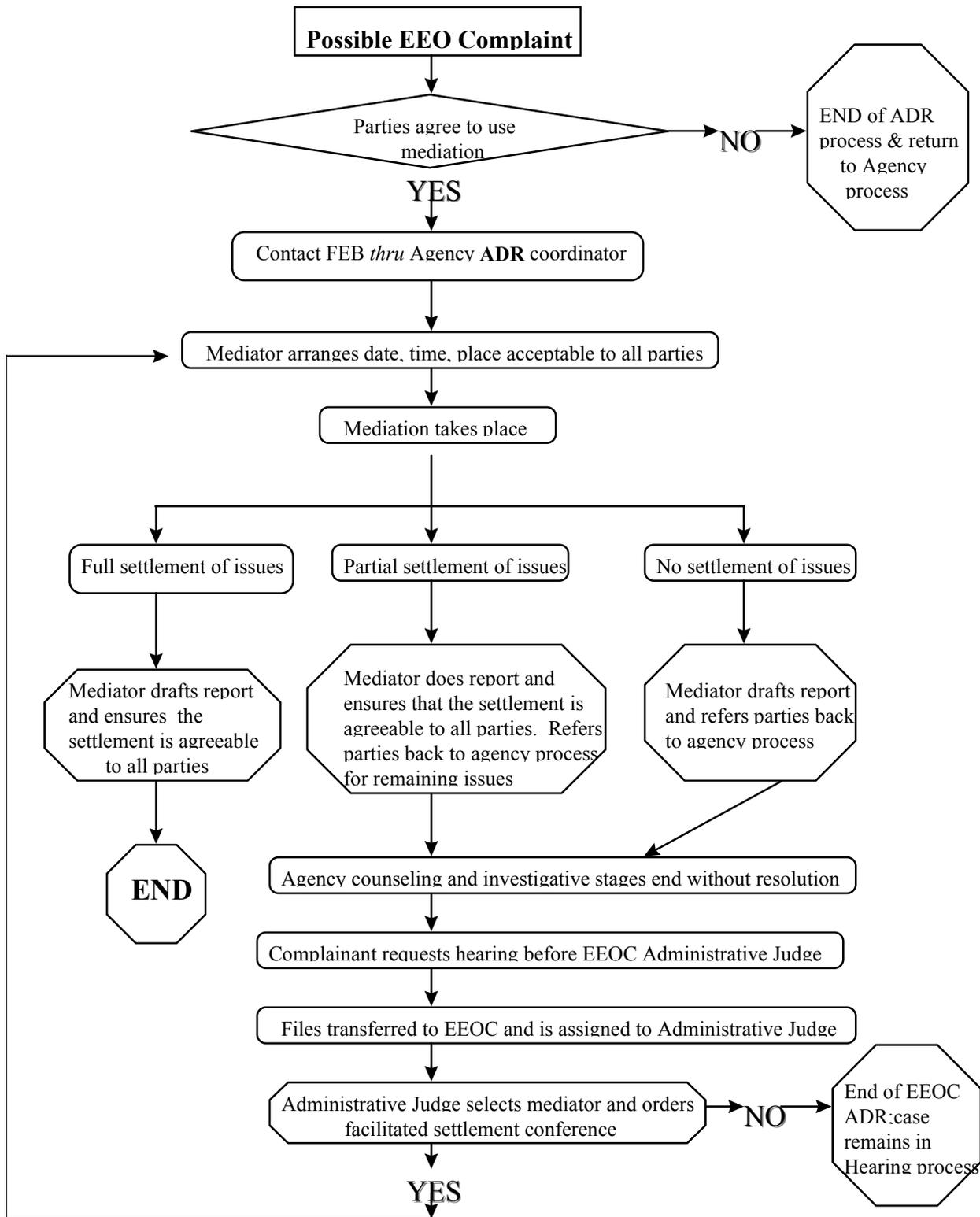
Different agencies such as the EEOC and GAO have identified “stages” as follows to define various costs associated with each step of the process: pre complaint; counseling; formal filing; investigation; post investigation with resolution; proposed disposition; final agency decision (FAD) without hearing; hearing; FAD after an EEOC hearing; settlements; and then an appeal. We will use these distinctions in order to use the cost analysis literature available.

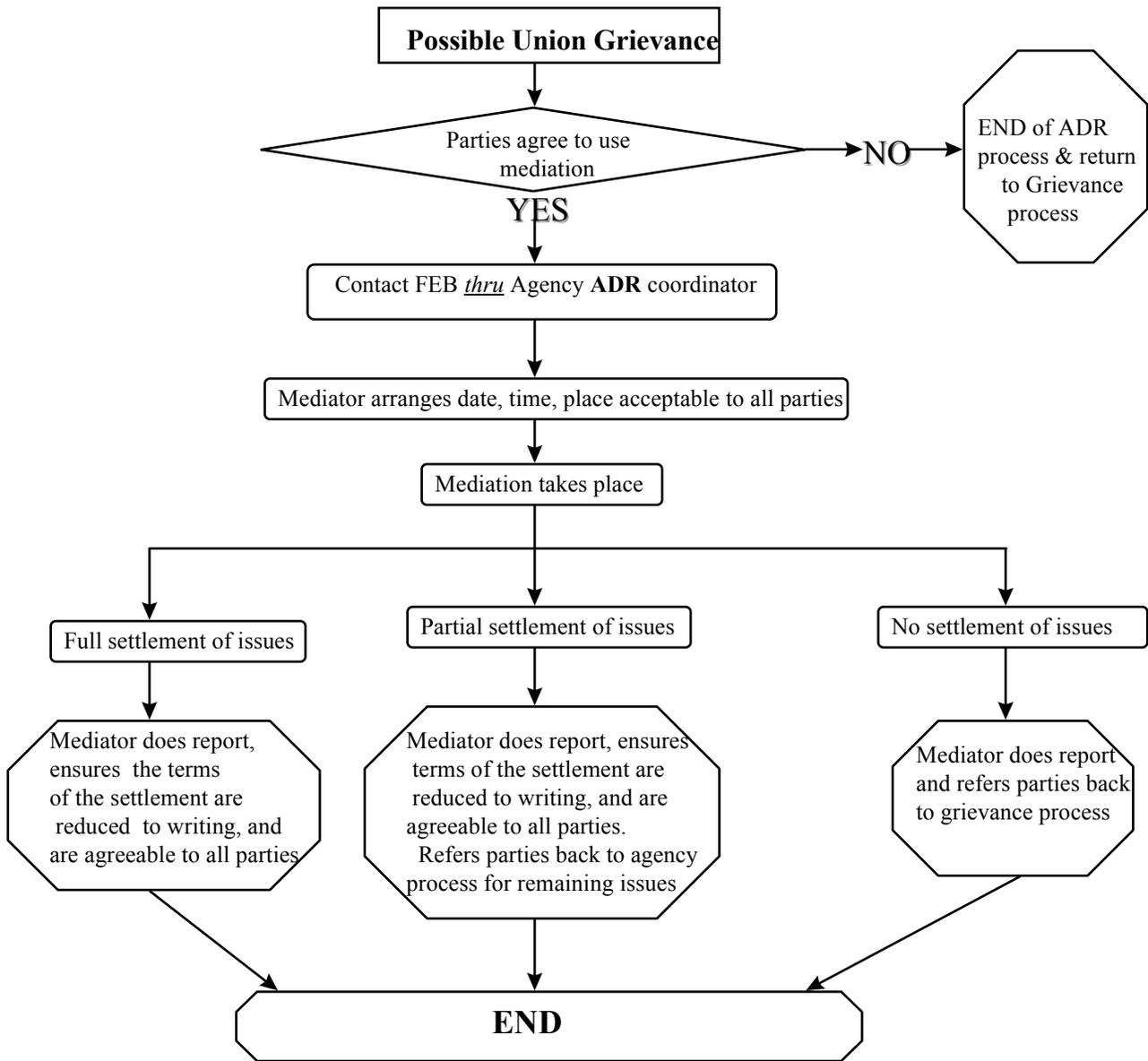
Equal Employment Opportunity Complaints (EEOC)

From the various sources of historical data and prior analysis, we have assigned a monetary amount to each stage. Sources are listed in Sources and Credits on page 14.

Stage.....	Cost to the Government.....	1996 Dollars
Pre Complaint.....	822.78	
Counseling.....	1,360.03	
Filed Formal.....	787.08	
Investigation.....	3,213.44	
Post Investigation with Resolution.....	2,231.12	
Proposed Disposition.....	2,854.90	
Final Agency Decision Without Hearing.....	1,521.00	
Hearing.....	6,041.20	
Final Agency Decision After EEOC hearing	2,281.50	
SUBTOTAL.....	21,113.05.....	28,872
Settlements.....	15,537.00.....	21,264
SUBTOTAL.....		50,136
Appeal.....		136,083
Indirect Costs of Final Processing of a Case..	8,000.00.....	14,390
Total Potential Cost.....		200,609

The number of cases considered in the study were 6,448. Even though data had not been collected to capture precise costs in individual cases, the data clearly indicates that each step along the way costs twice as much as the previous one. The last two stages, the most contentious in nature, more than double the costs of each case. This exponential increase makes clear: the earlier the resolution, the greater the savings.





EXPLAIN MEDIATION:

Problem-solving process, chance to resolve issues on your own. “We are here to help you work out an understanding acceptable to each of you.” Mediators do not make the decision for the Parties. It is the Parties who reach agreement or do not reach agreement. The mediator merely assists them in this process.

VOLUNTARY:

You can leave at any time, without loss of any rights. Our expectations: good faith, and listen to each other.

MEDIATORS’ ROLE:

Neutrals, not judges; we do not decide or make recommendations. [We are federal employees, but not part of your organization]. We have no stake in the outcome of your dispute.

CONFIDENTIALITY:

Anything that you tell us in confidence stays confidential with us. We hope that each of the Parties will agree not to discuss these conversations with persons who are not involved with this mediation. We may take notes, but will destroy them after the mediation.

EXPLAIN JOINT AND PRIVATE SESSIONS:

We will begin by asking each of you to explain to us and each other how you view the issues at hand. After that, we will identify the basic areas of disagreement. Then we will work together to examine the issues and talk about possible solutions. We will do these things in joint and private sessions, depending on what we believe will be most beneficial. There is no reason as to why we begin with a particular person, so don’t read anything into who is chosen to speak first. Anything one of the Parties asks us to keep confidential in a private session, will be kept private. We want you to feel comfortable speaking frankly and want to assure you that we will keep private any discussions will be regarded as confidential.

BREAKS:

Let us know if you would like to take a break, get coffee, collect your thoughts, calm down, etc. We will be taking breaks and we encourage you to suggest a break if you want one.

ATTORNEYS:

Welcome them (if present). Note informality, but invite them to talk as their client wishes. If attorneys are not present, consultation may be appropriate.

OUTCOME:

Goal is a resolution evidenced by a written agreement signed by both Parties that will eliminate any need to go further with dispute.

GROUND RULES:

Common courtesy, no interruptions.

AGREEMENT TO MEDIATE:

Review and have Parties sign.

SETTLEMENT AGREEMENT:

Mediator writes with Parties, and Parties sign.

A SAMPLE INTRODUCTION

It's good to see the two of you here. I'm (Mediator's Name) and this is (Mediator's Name). We will be serving as your Mediators. You may call us by our first names; how would you like us to address you?

The purpose of our meeting is to help you work out an understanding acceptable to both of you to resolve the conflict between you.

First, we would like to explain how we will proceed, so you know what is happening next. We will begin by asking each of you to explain to us as Mediators exactly how you view things. We will do our best to understand your view. After that, we will identify and agree on the basic issues of your disagreement. Then we will work together to examine each of your expectations and possible solutions. Our goal is to help you find a solution with which you are both comfortable.

We would like you to understand our role;

Our role is not to judge right or wrong; we are interested in assisting you develop solutions for the future. We are here to ensure both parties have the opportunity to share your experiences and communicate effectively. We want to assure you that anything that you may say during our session is confidential. We may be taking notes from time to time so that we can remember things, but when we finish, the notes will be destroyed.

Either of you may ask to take a break at anytime during our discussion. For example, if you feel yourself becoming upset at any time and feel a break would be beneficial, let us know, and we will take time out. You may step outside for a few minutes if you wish, but we will ask you to let us know what is happening and to return when you are ready to continue. Sometimes it is helpful for us to meet separately with each of you during our discussion, so we may ask that of you occasionally.

It is necessary for each of you to sign this written agreement to voluntarily mediate. If you would just look it over, please. It basically states that you have come of your own accord, that what you say here will be kept confidential, and the Mediators will not be asked to release information discussed here, nor will they be summoned into court to testify on matters disclosed here.

Last of all, we would like to discuss the ground rules.

We ask each of you to agree not to interrupt when the other person is speaking. We have placed paper and pencil on the table so you can keep notes. We also would like for you to agree to avoid the use of any abusive language, name calling, etc. These rules are especially important in the next part of our discussion (Address each Party by name and ask) (Name), can you agree?

MOVING INTO "THE STORY-TELLING STAGE"

We'd like to begin now with hearing each of you explain your perspective on this situation. Is it all right with you if we begin with (Name of Complainant), since he/she initiated the complaint? We will hear from you (Name of Responding Party) when he/she is finished. In case there are things you disagree with as (Name of Complainant) speaks, make note of them and explain your perspective on them when it is your turn. (Name)

ADDITIONAL SOURCES

29 Code of Federal Regulations, Part 1614 (29 C.F.R. Part 1614) Federal Sector Equal Employment Opportunity
<http://www.gsa.gov/eo/cfr16141.htm>

ADR & Mediation Resources: <http://www.adr.com/>

American Arbitration Association: <http://www.adr.org>

Conflict Research Consortium: <http://www.colorado.edu/conflict/index.html>

Defense Logistics Agency ADR site: <http://www.dsccl.dla.mil/doccr/adr/drafta1.html>

Department of Labor's ADR site: <http://www.dol.gov/dol/asp/public/programs/adr/main.htm>

Executive Order 12871, Labor-Management Partnerships: <http://www.npr.gov/library/direct/orders/24ea.html>

General Services Administration ADR site: <http://www.gsa.gov/eo/eo5.htm>

The Justice Center of Atlanta: <http://www.justicecenter.org>

Mediation information site: <http://www.mediate.com/medspage.cfm>

San Francisco Superior Court: <http://www.ci.sf.ca.us/courts/superior/adr/index.htm>

U.S. Navy's ADR site: <http://www.ogc.secnav.hq.navy.mil/Adr.html>

Veteran's Administration ADR site: <http://www.va.gov/adr/>

CREDITS

1. Navy's ADR site. "DON-OGC: NAVY ALTERNATIVE DISPUTES RESOLUTION"
<http://www.ogc.secnav.hq.navy.mil/Adr.html>
2. GSA OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY "THE COST SAVINGS ASSOCIATED WITH THE AIR FORCE ALTERNATIVE DISPUTE RESOLUTION PROGRAM" <http://www.gsa.gov/eo/adr3.htm>
3. San Francisco Superior Court. "ALTERNATIVE DISPUTE RESOLUTION PROGRAM (ADR)."
<http://www.ci.sf.ca.us/courts/superior/adr/index.htm>
4. VA Dispute Systems Design. "VA MEDIATION PROGRAM DESIGN." <http://www.va.gov/adr/cheklist.htm>

REQUEST/CONSENT FOR MEDIATION THROUGH SHARED NEUTRALS PROGRAM

The following REQUEST/CONSENT FOR MEDIATION form should be submitted to the agency’s designated Alternative Dispute Resolution (ADR) representative. The ADR representative will take appropriate steps to contact the other party(ies) regarding its (their) willingness to participate in mediation.

In the event the opposing parties are jointly requesting mediation, the signed form should be provided to the ADR representative who will request involvement of the FEB Shared Neutral program.

The designated ADR representative will keep both parties informed regarding the status of the request for mediation.

If either party has any questions regarding the mediation process they may contact the Oklahoma Federal Executive Board at (405) 231-4167.

MEDIATION REQUEST/CONSENT FORM (PART 1)

1. The undersigned parties and their representatives understand that mediation is a voluntary, confidential process, and that no party will be bound by anything said or done at the mediation, unless and until a written settlement agreement is reached and executed by all necessary parties.
2. In electing to use mediation, the parties and their representatives understand that they are not waiving any statutory deadlines and that they remain responsible for the timelines of their claims.
3. In the event mediation is terminated for any reason, the aggrieved person may continue to pursue all rights held by the party.
4. The issue(s) for mediation (please describe):

5. Each party involved in this matter is requested to sign this document and indicate that they are willing to participate in mediation:

INITIATING PARTY: _____

[NAME, TELEPHONE NUMBER] _____ DATE _____

I understand the above information, agree that mediation is a proper way to attempt to resolve the issue(s), and agree to participate in the mediation process.

MEDIATION REQUEST/CONSENT FORM (PART 2)

* * * * *

UNION REPRESENTATIVE
(IF NECESSARY AND/OR APPROPRIATE): _____

[NAME, TELEPHONE NUMBER] _____ DATE _____

_____ I understand the above information, agree that mediation is a proper way to attempt to resolve the issue(s), and agree to participate in the mediation process.

* * * * *

OTHER PARTY OR AGENCY REPRESENTATIVE: _____

[NAME, TELEPHONE NUMBER] _____ DATE _____

_____ I understand the above information, agree that mediation is a proper way to attempt to resolve the issue(s), and agree to participate in the mediation process.

* * * * *

OTHER PARTY REPRESENTATIVE
(IF ANY): _____

[NAME, TELEPHONE NUMBER] _____ DATE _____

_____ I understand the above information, agree that mediation is a proper way to attempt to resolve the issue(s), and agree to participate in the mediation process.

* * * * *

**MEDIATION WILL NOT BE CONDUCTED IF ALL NECESSARY AND APPROPRIATE PARTIES
HAVE NOT AGREED TO PARTICIPATE**

REQUEST FOR OKLAHOMA FEDERAL EXECUTIVE BOARD (FEB) SHARED NEUTRAL

This request starts the ADR process, but does not release you from the timeliness requirements associated with filing EEO complaints, or any other formal process. If a solution is not reached, your rights to pursue an EEO complaint, Union grievance, or any other avenue open to you will continue, subject to any timeliness requirements.

1. It is your responsibility to meet all the requirements of the EEO complaint or Union grievance process, or any other process you select.
2. A mediator should contact you within 7 business days after your request. If no one has contacted you within this time frame, please call the FEB Office at (405) 231-4167.
3. At the mediation meeting, you may include a representative of your choice, but you and the other participant(s) will be the responsible parties in formulating the solution. If you are a bargaining unit employee and the use of mediation has been negotiated, you may wish to include your Union representative. Management and Union (when the mediation involves a bargaining unit employee) have the option to be present during the mediation as stipulated by the bargaining unit agreement.
4. You may stop the mediation process at any time. If there has been no settlement or a partial settlement, the remaining issues will be handled within your respective Agency's process.



you within 7 business days after your request. If no one has contacted you within this time frame, please call the FEB Office at (405) 231-4167.

you may include a representative of your choice, but you and the other responsible parties in formulating the solution. If you are a bargaining unit employee and the use of mediation has been negotiated, you may wish to include your Union representative.

The following person(s) request a mediator be assigned from the Oklahoma FEB Shared Neutrals Program. They have read and agree with the above information.	
Name: _____	Phone: _____
Name: _____	Phone: _____
Agency: _____	POC Phone: _____
Send to:	Oklahoma Federal Executive Board 215 Dean A. McGee, Ste 320 Oklahoma City, OK 73102 (405) 231-4165
or FAX:	

AGREEMENT TO PARTICIPATE IN SHARED NEUTRALS PROGRAM (Part 1)

1. I understand that this is an agreement by the parties to submit to mediation in an attempt to resolve the following issues:

2. I understand that mediation is a 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 is not involved in the dispute 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 they offer judgment as to which party, if any, is at fault. In certain circumstances, Co-Mediators will be assigned to the matter.
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 party wishes to have a representative or legal counsel to consult with or assist them in the mediation, that party is responsible for taking steps to have such person present.
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. (With the exception of a settlement agreement signed by the parties). In no event will the Mediator testify on behalf of any party or submit any type of report in connection with this mediation other than to confirm that the mediation did or did not occur, the parties did or did not appear with the requisite authority and the dispute was or was not settled. However, I understand that matters that are admissible in a court of law or other administrative process continue to be admissible even though brought up in a mediation session.
6. I understand that no party shall be bound by anything said or done in the mediation unless a written settlement is reached and executed by all necessary parties. If a settlement is reached, the agreement shall be reduced to writing by the Mediator and, when executed by the parties with authority, the settlement document shall be legally binding.
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 process, e.g., time limits, points of contact, ARE NOT WAIVED, and must be adhered to.

AGREEMENT TO PARTICIPATE IN SHARED NEUTRALS PROGRAM (Part 2)

- 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 they see 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 dispute. I will conduct myself in a courteous and non-hostile manner, use appropriate language, and 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 representatives and the appropriate management official of the status and results of the mediation process within one working day of termination 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 the provisions of this agreement, and will participate in mediation:

Aggrieved Party's Signature Date

Union Official's Signature (if appropriate) Date

Management Official's Signature Date

Additional Signatures Date

Additional Signatures Date

Additional Signatures Date

Mediator's Signature Date

Mediator's Signature Date

SHARED NEUTRALS PROGRAM SETTLEMENT AGREEMENT

Unless otherwise stated, the undersigned settle all disputes existing between them.

SECTION ONE

Participant One _____ agrees to:

- 1.
- 2.
- 3.

SECTION TWO

Participant Two _____ agrees to:

- 1.
- 2.
- 3.

SECTION THREE

The Agency _____ agrees to:

- 1.
- 2.
- 3.

SECTION FOUR

This agreement is a binding and enforceable settlement contract and neither participant can change its mind at a later date without another written Agreement among the parties.

1. This agreement has been entered into freely by all the undersigned. The agreement does not constitute an admission of guilt, fault or wrongdoing by either party. This agreement shall be kept confidential and the terms here shall not be disclosed by either party except to authorized officials or other officials responsible for implementing the agreement unless agreed to by mutual consent. This agreement shall not serve as a precedent for resolving any other dispute that arises between the parties.
2. This agreement constitutes the entire agreement and there are no other terms to this agreement except those specified herein.
3. The parties agree to use mediation to resolve any disagreements concerning this agreement.

Participant One _____ Date _____

Participant Two _____ Date _____

Union Representative _____ Date _____

Agency Representative _____ Date _____

CUSTOMER SURVEY FOR SHARED NEUTRALS PROGRAM (PART 1)

We are looking for ways to improve, as well as determine the effectiveness of the Oklahoma Federal Executive Board (FEB) Shared Neutrals Program. Persons who have utilized this Program are asked to complete this questionnaire. Completing the form is voluntary, however, your input will assist in improving the program.

- 1. Agency: _____
- 2. Nature of Dispute: _____
- 3. Relationship of parties: _____
- 4. How long did the mediation last?(Hrs) _____

5. Describe the type of settlement that resulted from the mediation process.
 Full settlement of all issues No settlement of any issues
 Partial settlement of the issues

6. Please describe any other impacts or benefits that you felt resulted from the mediation process. Examples might include relationships repaired, communication enhanced, office productivity enhanced, money saved, etc.

7. Were you satisfied with the process? Yes No

Please provide any comments: _____

8. Would you use mediation again? Yes No

Please provide any comments:

9. Is there anything that you think should be done to improve the Oklahoma FEB Shared Neutrals Program?

Yes No

Please provide any comments:

CUSTOMER SURVEY FOR SHARED NEUTRALS PROGRAM (Part 2)

10. Please rate the following items on a scale of 1 to 5 by circling the number that represents your choice:

- 1 = strongly disagree
- 2 = somewhat disagree
- 3 = neither agree or disagree
- 4 = somewhat agree
- 5 = strongly agree
- N = don't know or are unable to determine

The mediation process was impartial.	1	2	3	4	5	N
The right parties were at the table.	1	2	3	4	5	N
Both sides negotiated in good faith.....	1	2	3	4	5	N
Mediation was appropriate for this matter.	1	2	3	4	5	N
You were able to fully present your case.	1	2	3	4	5	N
The mediator helped create a positive atmosphere.	1	2	3	4	5	N
The mediator helped create realistic options for settling the matter.	1	2	3	4	5	N
The mediator was impartial.....	1	2	3	4	5	N
The mediator provided the right amount of input.	1	2	3	4	5	N
The mediator listened well.....	1	2	3	4	5	N
The mediator helped clarify the key issues of the parties.	1	2	3	4	5	N
The mediator explained the process well.	1	2	3	4	5	N
The mediator was fair.....	1	2	3	4	5	N
The mediator was effective.....	1	2	3	4	5	N

11. If this was a co-mediation, was it beneficial to have two mediators? Yes No

Please provide comments:

Thank you for taking the time to fill out this survey. The information you have provided will help us to improve the program. Please mail this questionnaire to: Oklahoma Federal Executive Board

215 Dean A. McGee , Ste 320

Oklahoma City, OK 73102

Or FAX to: (405) 231-4165

AGENCY SURVEY ON SHARED NEUTRALS PROGRAM (PART 1)

We are continually looking for ways to improve, as well as determine the effectiveness of the Oklahoma Federal Executive Board (FEB) Shared Neutrals Program. FEB member agencies who have participated in the Program are requested to complete this questionnaire. Completing the questionnaire is voluntary, but will assist us in our efforts to improve the program. Please mail the questionnaire to the address above or FAX it to 231-4165.

1. Agency: _____

2. Please describe any impacts or benefits that you feel have resulted from the mediation process. Examples might include relationships repaired, communication enhanced, office productivity enhanced, money saved, etc.

3. Are you satisfied with the overall process? Yes No

Please provide any comments:

4. Will your agency continue to use mediation? Yes No

Please provide any comments:

5. Is there anything that you think should be done to improve the Oklahoma FEB Shared Neutrals Program?

Yes No

Please provide any comments:

6. Please rate the following items on a scale of 1 to 5 by circling the number that represents your choice:

- 1 = strongly disagree
- 2 = somewhat disagree
- 3 = neither agree or disagree
- 4 = somewhat agree
- 5 = strongly agree
- N = don't know or are unable to determine

a) The mediation process is impartial to your agency. 1 2 3 4 5 N

b) The right parties were at the table. 1 2 3 4 5 N

AGENCY SURVEY ON SHARED NEUTRALS PROGRAM (PART 2)

- c) Negotiations were in good faith. 1 2 3 4 5 N
- d) Mediation has been used appropriately. 1 2 3 4 5 N
- e) Your agency has been able to fully present your cases. 1 2 3 4 5 N
- f) Mediators have helped to create a positive atmosphere. 1 2 3 4 5 N
- g) Utilizing a mediator has helped create realistic options. 1 2 3 4 5 N
- h) The mediators have been impartial. 1 2 3 4 5 N
- i) Mediators have provided the right amount of input. 1 2 3 4 5 N
- j) Mediators have listened well. 1 2 3 4 5 N
- k) Mediators have helped clarify the key issues. 1 2 3 4 5 N
- l) Mediators have been fair. 1 2 3 4 5 N
- m) Mediation has been effective. 1 2 3 4 5 N

7. If your agency has participated in a co-mediation, was it beneficial to have two mediators?

Yes No

Please provide any comments:

8. Please provide any other comments: _____

Thank you for taking the time to fill out this survey. The information you have provided will help us to improve the program. Please mail the questionnaire to:
Oklahoma Federal Executive Board
215 Dean A. McGee, Ste 320
Oklahoma City, OK 73102
Or Fax to: (405) 231-4165



MEDIATOR FEEDBACK FORM

We are continually looking for ways to improve, as well as determine (through measurement) the effectiveness of the Oklahoma Federal Executive Board (FEB) Shared Neutrals Program. Persons who have participated as neutrals (mediators) are requested to complete this form upon completion of each mediation. Please mail the questionnaire (in a sealed envelope) to the address below or FAX it to 231-4165 (private fax).

Mediator Info:

Name: _____ Employing Agency: _____

Services Info:

Requesting Agency: _____ Date of Mediation: _____

Parties involved:

_____ Name _____ Name

Please circle the number best describing the final disposition of the mediation session:

1. No Resolution—Conflict still exists
2. No Resolution—Communication between parties has improved as a result of mediation
3. Partial Resolution—A settlement agreement has been executed for some of the issues
4. Complete Resolution—A settlement agreement has been executed for all identified issues

Are you satisfied with the process? Yes No

Please provide any comments: _____

Is there anything that you think should be done to improve the Oklahoma FEB Shared Neutrals Program? Yes No Please provide any comments:

_____ Please rate the following items on a scale of 1 to 5 by circling the number that represents your choice:

- | | |
|-------------------------------|---|
| 1 = strongly disagree | 2 = somewhat disagree |
| 3 = neither agree or disagree | 4 = somewhat agree |
| 5 = strongly agree | N = don't know or are unable to determine |

The mediation process has been impartial.	1	2	3	4	5	N
The right parties were at the table.	1	2	3	4	5	N
Both sides negotiated in good faith.	1	2	3	4	5	N
Mediation has been used appropriately.	1	2	3	4	5	N
You helped create realistic options for settling the matter.	1	2	3	4	5	N
You were able to be impartial.	1	2	3	4	5	N
You have been able to give the right amount of input.	1	2	3	4	5	N
You listened well.	1	2	3	4	5	N
You were able to help clarify key issues.	1	2	3	4	5	N
You have been able to explain the process well.	1	2	3	4	5	N
You have been effective.	1	2	3	4	5	N

If you have participated in a co-mediation, was it beneficial to have two mediators? Yes No

Thank you for taking the time to fill out this survey. Please mail to the Oklahoma Federal Executive Board, 215 Dean A. McGee, Ste 320, Oklahoma City, OK 73102 or FAX to 231-4165.

BEFORE THE UNITED STATES
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
DALLAS DISTRICT

Complainant,

EEOC No. 310-98-5104X

vs.

Agency No. 5-97-5035

Respondent

ORDER OF REFERRAL FOR SETTLEMENT CONFERENCE

-----(name, agency, address and phone no.)

_____ is appointed to facilitate the settlement conference. All parties or their representatives are directed to contact the facilitator within the next three days and cooperate in scheduling a settlement conference to occur within thirty (30) days from the date this order was signed. The parties shall provide the facilitator with a confidential position paper describing the dispute at least seven days before the settlement conference.

The settlement conference is mandatory and will be conducted pursuant to the rules included herewith.

Facilitated settlement conferences are private and confidential. After the settlement conference is conducted the appointed facilitator will advise the undersigned only that the case did or did not settle or that a party failed to appear or failed to appear with a settlement authority as required. Other than a copy of an executed settlement agreement provided to the Judge, no other information may be conveyed to the Administrative Judge or any other person by any party.

The Complainant must appear and be present during the conference. The respondent's representative must be authorized to negotiate a settlement (or have effective and immediate telephone contact with the person or persons authorized to commit the agency to a settlement agreement) and to execute a binding settlement agreement on respondent's behalf.

If no agreed date can be scheduled within 30 days from the date of this order, then the facilitator shall select a date within 60 days from the date of this order and all parties shall appear as directed by the facilitator. Any conflict with the scheduling which cannot be resolved among the parties is to be immediately referred to the undersigned for resolution.

No other proceedings scheduled in connection with this matter will be deferred pending the settlement conference.

June 8, 1998

David H. Rosenberg, Administrative Judge
Equal Employment Opportunity Commission
207 So. Houston
Dallas, TX 75202
(214) 655-3347 Fax (214) 655-3340

RULES FOR SETTLEMENT CONFERENCES FOR FEDERAL SECTOR COMPLAINTS PENDING BEFORE THE
DALLAS DISTRICT OFFICE OF THE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

1. The facilitator appointed to conduct the settlement conference shall not serve in any dispute in which he or she has an interest or in which the agency in which employs the facilitator has an interest. Prior to holding a settlement conference, the facilitator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt meeting with the parties. If a party disagrees as to whether the appointed facilitator should serve, the party is to notify the appointing Administrative Judge for a determination as to whether the facilitator should serve.
2. The facilitator does not have the authority to decide any issue for the parties, but will attempt to facilitate the voluntary resolution of the dispute between the parties. The facilitator is authorized to appoint a co-facilitator and to conduct joint and separate meetings with the parties and to offer suggestions to assist the parties achieve settlement.
3. The parties are not required to commit to settle their case, however, all parties are expected to commit to participate in the proceedings in good faith with the intention to settle. Complainants shall attend the conference and agency representatives are to appear with settlement authority or with direct access during the conference to the person(s) with the authority to bind the agency to a binding settlement agreement. If a party appears without appropriate authority, the settlement conference may be adjourned. The Administrative Judge retains jurisdiction for the purpose of ensuring adherence to these rules and may consider appropriate motions for sanctions.
4. The facilitator will not impose a settlement in the case. The parties are responsible for negotiating a settlement acceptable to them. The facilitator, as an advocate for settlement, will facilitate the negotiations of the parties.
5. The facilitator shall fix the time of the settlement conference within 30 days from the date the order of referral is signed with the concurrence of the parties or during the next following 30 days without the prior concurrence of the parties.
6. Settlement Conferences are private and must remain confidential. The parties and their representatives may attend settlement sessions (witnesses will not attend). Other persons may attend only with the permission of the parties and with the consent of the facilitator.
7. Confidential information disclosed to a facilitator by a party in the course of the conference shall not be divulged by the facilitator without consent. All records, reports or other documents received by the facilitator while serving in that capacity shall be confidential. The parties as well as the facilitator shall maintain the confidentiality of the conference and shall not rely on, or introduce as evidence in any arbitral, judicial, administrative or other proceeding or in any way make the Administrative Judge aware of: a) views expressed or suggestions made by another party with respect to a possible settlement of the dispute; b) admissions made by another party in the course of the settlement proceedings; c) proposals made or views expressed by the facilitator; and/or d) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the facilitator.
8. The facilitator shall report to the appointing Administrative Judge only that the matter did or did not settle and whether a party failed to appear or failed to appear with the requisite settlement authority.
9. There shall be no stenographic record of the settlement process and no person shall in any way record (by tape or otherwise) any portion of the settlement conference or related proceedings.
10. The settlement conference shall be terminated: a) by the execution of a binding memorandum of settlement which shall include the wording of or references to any boiler plate language required by an Agency by which bind the parties to the substance of their agreement; b) by declaration of the facilitator to the effect that further efforts at settlement are no longer worthwhile; or c) after the completion of a full half day settlement conference by a written declaration of a party or parties to the effect that the settlement conference is terminated.
11. The facilitator is not a necessary or proper party in judicial or administrative proceedings relating to the settlement process. Neither the facilitator nor any agency or firm employing the facilitator shall be liable to any party for any act or omission in connection with any settlement conference conducted under these rules.
12. The facilitator shall interpret and apply these rules.

REPORT

_____ (Date)

_____ (Appointing Judge)
Equal Employment Opportunity Commission
207 South Houston Street
Dallas, Texas 75202

Re: _____ vs. _____, EEOC# _____

Dear Judge _____ :

On _____ (date) a facilitated settlement conference regarding the captioned matter was conducted.

The parties appeared as directed:

- _____ With appropriate authority
- _____ Without appropriate authority

The negotiations between the parties:

- _____ Resulted in a settlement of the dispute and a copy of the Settlement Agreement is enclosed herewith.
- _____ Did not result in a settlement being reached.

If I can be of further service, please feel free to call upon me.

Very truly yours,

Facilitator