

## RESOLVING CONFLICT

### Newsletter of the Interagency Alternative Dispute Resolution Working Group of the U.S. Government- Steering Committee

Issue 6 – November, 2017

*In this issue of **Resolving Conflict**, there is an article about the Sharing Neutrals program, an article about how the Food and Drug Administration Program persuades people to mediate, and an interview with Howard Gadlin, who retired as Ombuds from NIH recently. There is also a letter from the current chairs of the IADRWG Steering Committee.*

#### **Letter from the Chair and Vice-Chair of the IADRWG Steering Committee**

Melissa Leibman, Chair (DOJ) and  
David Moora, Vice-Chair (EPA)

Dear Colleagues -

The Steering Committee transitioned to new leadership in the spring, with our first meeting as the Chair and Vice-Chair on May 17, 2017. David and I are excited as the group continues to meet its mission by facilitating, encouraging, and providing coordination for agencies in the following areas: 1) developing programs that employ ADR; 2) training agency personnel to recognize when and how to use ADR; 3) developing procedures that permit agencies to obtain the services of neutrals on an expedited basis; and 4) maintaining records to ascertain the benefits of ADR.

In particular, this year, two ad hoc committees are currently engaged in two important projects. One is working to develop materials that will assist agencies in their efforts to document and evaluate the

benefits of ADR, and the other is working to support further collaboration for agency efforts to provide ADR training.

Please reach out to me or David if you would like to contribute to the work of the sections or committees, or if you have ideas about new projects or initiatives that would further the mission of the group.

Lastly, we want to thank Ramona Buck of FMCS for her leadership of the steering committee this past 2016-2017 year! We are especially grateful that Ramona continues to support the work of the steering committee in a number of ways, including her efforts to produce this newsletter.

[Melissa.Leibman2@usdoj.gov](mailto:Melissa.Leibman2@usdoj.gov)  
[moora.david@epa.gov](mailto:moora.david@epa.gov)

#### **Federal Sharing Neutrals Program**

By Neil Kaufman, HHS

The Federal Sharing Neutrals Program (SN) provides federal agencies with access to a list of trained, experienced mediators. These mediators are current and retired federal employees who provide their services at no cost to participating federal agencies. SN is a cooperative arrangement of over 40 federal agencies and sub-agencies which have signed an Agreement to Participate assuring they will provide mediators or other services to the program in exchange for the free mediation services they receive from the program.

Sharing Neutrals was first conceived in the mid-1990s by a group of Federal agencies interested in finding a low-cost way to jump start mediation as a means of resolving conflict in the federal sector. The program originators realized that the DC area had a core group of Federal employees who already had considerable mediation training and experience through local community and court programs. The idea was to tap this group's expertise to see if mediation could be as effective in federal sector programs as it had proven to be in the community and court programs.

Since its inception, SN has grown from about five participating agencies and a handful of cases per year to over 40 participating agencies and 250 cases per year. The program handles mostly Equal Employment Opportunity and workplace disputes and settles between 50%-60% of cases that are mediated. SN also consistently receives 90% or better user satisfaction ratings and is a past recipient of the OPM Director's Award for Outstanding Alternative Dispute Resolution Programs.

Every individual and agency participating in SN agrees to abide by principles of confidentiality, as outlined in [Section 574](#) of the Administrative Dispute Resolution Act, as amended in 1996, and the [Standards of Practice for Sharing Neutrals](#). Supervisors must sign off on employee requests to become mediators for SN, and applicants must have certain minimum qualifications (both training and experience) before mediating on their own: [Supervisor's Approval - PDF](#). SN mediators have a variety of backgrounds, which include HR, EEO, legal and many other areas. The mediators are highly motivated and dedicated to resolving conflict.

The parties involved in an SN mediation are asked to provide feedback on the mediation

process and the mediator's performance by completing the User Survey: [User Survey - PDF](#). Feedback from the surveys shows that even when parties do not reach an agreement, they still overwhelmingly express satisfaction with the mediation process. The process is designed to provide an opportunity for parties to gain a better understanding of the issues, interests and concerns involved, and this new understanding can lead to improved relationships and work environments. If you are interested in having a case mediated by an SN mediator, you can send your request to the ADR hotline at [ADR@hhs.gov](mailto:ADR@hhs.gov). Allow two weeks lead-time to be matched with a lead mediator and a co-mediator. Lead mediators have both training and experience mediating EEO and workplace cases, and co-mediators have training in mediation but may have little experience. SN uses this co-mediation model, in keeping with what is used in most community and court programs, to provide additional topic-specific training and to ensure competent mediation practice.

For more information on the Sharing Neutrals program, please contact Kimberly Freeman at [Kimberly.Freeman@hhs.gov](mailto:Kimberly.Freeman@hhs.gov) or Fern Kaufman at [Fern.Kaufman@dot.gov](mailto:Fern.Kaufman@dot.gov) or <https://www.hhs.gov/about/agencies/dab/adr-services/sharing-neutrals/index.html>.

### **Why should I mediate?**

By Lula Mae Gray, Food and Drug Administration

*In this article, Lula Mae Gray shares the arguments and ideas she uses in persuading people in her agency to try mediation:*

Often employees ask me this question, "Why should I consider mediation?" My answer is usually always the same---why not?--You have nothing to lose! Mediation is an opportunity. It is an opportunity for the

participants in workplace conflict to identify, clarify and discuss issues and miscommunications which can help to facilitate a better understanding of the workplace dispute. A better understanding of the workplace dispute, even when participants don't always agree, and trust me---they won't, can improve the workplace environment. We all know that conflict doesn't happen in a vacuum, it is pervasive. So when one or two employees are in conflict, it can and usually does affect the whole group, team, branch or division. The mediation process gives those involved in the dispute a "safe environment" to acknowledge differences and opinions. With the assistance of an ADR Practitioner, who is a third party neutral, a meaningful discussion can take place between the participants. The mediation process and the skills of the ADR Practitioner can allow the participants in conflict to examine ways to address dissatisfaction and unmet expectations. Once this has been accomplished, the participants then have the opportunity to define and create their own resolution or, at the very least, have a better understanding of what brought them to the table in the first place. Sometimes, just the opportunity to vent in a safe environment can prevent escalation of the conflict.

Mediation is unlike other processes such as arbitration or litigation. Mediation is not adversarial. Adversarial processes produce a winner and a loser. Adversarial processes such as these allow a decision to be handed down by someone else, a judge or official, and often that person has limited knowledge of the workplace conflict.

In mediation cases in which the participants don't reach resolution, the participant still retains their right to pursue the matter through other formal processes. Nothing is lost by participating in the mediation.

However, much can be gained when participants come together willingly and in good faith to recognize and address the workplace conflict.

Most participants agree that even when resolution isn't reached, they leave the mediation process with a better understanding of the underlying issues in the conflict. They often are able to see the other's side perspective in the conflict. Mediation is not a process that will or should address all workplace conflict but it does fit most—and let's face it, relationships matter in the workplace. Addressing the workplace dispute in a neutral setting with the assistance of a well-trained mediator and the possibility of preserving a good working relationship are usually enough to persuade the most reluctant participant.

[LulaMae.Gray@fda.hhs.gov](mailto:LulaMae.Gray@fda.hhs.gov)

### **Interview with Howard Gadlin on the NIH Ombuds Program**

By Ramona Buck, FMCS

Howard Gadlin, who recently retired from the Ombuds Office of NIH, began working in the ADR field in 1982 when he was asked to be the Ombuds for the University of Massachusetts. He was a senior tenured faculty member at the time and didn't have ombuds training, nor did he know much about ombudsing before he was chosen to do this. He thought it sounded like an interesting change from his regular routine, so he tried it as a two-year appointment. Rather than just experiencing it as a one-time project, he found it to be a life-changing experience. He began to read about ombudsing, took trainings and workshops on mediation and was reappointed to the position five times in his remaining ten years there.

After that, he went to UCLA which he found to be a very appealing place to work. They had a requirement that although the Ombuds could teach, they could not also be a tenured faculty member. So he had to make the decision whether or not to give up tenure. He decided to take the plunge. He chose to accept the Ombuds position, leaving the teaching behind, and he found the challenge very interesting. He was there for seven years. In both positions, he was the Ombuds for all (faculty, staff and students) and wasn't an advocate for any one group. Then, in 1998, NIH was considering what ADR program to put into place after Clinton's memo to all federal government agencies to establish conflict resolution programs. NIH brought people in to give presentations on the different kinds of ADR programs that might be established. Howard Gadlin came to talk about Ombudsing. After consideration, NIH decided to pursue Ombudsing rather than a mediation program. And Howard was contacted to see if he wanted to take it on. He was intrigued to think that he would be able to set up a new program and that he could use some of his ideas to develop the Ombuds system. It was hard for him to leave California because he loved it there. But the new program at NIH beckoned to him, and he felt like he could appreciate and feel aligned with the NIH overall mission as well. He did not regret his decision because NIH gave him total support to develop the program as he saw fit.

It was his first experience with the federal government and it was different from his work at universities. He really enjoyed his time there. NIH is a research organization, and at least one half of the employees are directly involved in research. He started with a total staff of 1 ½ and when he left, there were seven full time staff as well as student interns most years.

Howard spent 18 years working at NIH before he retired. During this time, he interacted with ADR programs at other federal government agencies as well. One thing that surprised him was that some people who ran ADR programs in federal government agencies did not provide ADR services themselves. From his perspective, a manager of an ADR program does better if he/she carries cases him/herself to provide an understanding for the nitty gritty of the cases, and an experience of the whole picture. When Howard first arrived on the federal government scene, many programs were just starting and therefore, there was a certain amount of energy around the whole concept of dispute resolution and related programs. Over time, he saw that ADR programs were often assimilated into federal agencies without producing the hoped-for changes in organizational cultures. Also, while the IADRWG Steering Committee serves a useful purpose in coordination and communication across agencies, it seems to get caught up in its own internal issues and has not always been able to focus on enhancing and advancing ADR programs across the government as much as it might have.

Howard appreciates the fact that there are ADR programs across the federal government and that there is overall tolerance for the existence of these programs. However, sometimes he thinks that the leadership in many agencies may see ADR as something for the "other people," and not for themselves. He thinks it could be used more in important decision-making for internal decisions.

In addition, one thing Howard appreciates about Ombuds programs is that the Ombuds has the responsibility to note and address systemic issues within the organization, and that gives it the strength to make needed

changes. In this way, the Ombuds can do much more than merely resolve individual conflicts; the Ombuds can help support organizational learning

Howard is enjoying his retirement, but looks back on his Ombuds career with appreciation and with the hope that such programs can continue to grow and make a difference.

[howard.gadlin@gmail.com](mailto:howard.gadlin@gmail.com)

**Disclaimer:**

The articles in this newsletter were written by and represent the views of individual members of the Interagency Alternative Dispute Resolution Working Group and do not necessarily represent the views of the Interagency Alternative Dispute Resolution Working Group as a whole, nor are they meant in any way as legal advice. Contact information has been provided for the authors at the end of each article in the event that you would like to communicate with them about the information covered.

*Send any proposed articles, ideas or items for future issues to Ramona Buck, Outreach Committee, [rbuck@fmcs.gov](mailto:rbuck@fmcs.gov)*