



Dispute Resolution Programs

A Report Submitted January 12, 2001

to

The Honorable Gene Derfler

Senate President,

The Honorable Mark Simmons

House Speaker

and

Honorable Members of the Legislature

Pursuant to ORS 183.502(9)

by

The Department of Justice,

The Oregon Dispute Resolution Commission

and the

Department of Administrative Services

Executive Summary¹

This report was prepared by the Department of Justice (DOJ), the Dispute Resolution Commission (ODRC) and the Department of Administrative Services (DAS) and describes the expansion and development of agency Alternative Dispute Resolution (ADR) programs as required by ORS 183.502(9).

A fundamental function of government is the orderly management of conflict and resolution of disputes. Alternative dispute resolution (ADR), and in particular collaborative processes like mediation, are tools available to agencies for managing conflict constructively. To ensure that these tools are used effectively DOJ, ODRC and DAS have developed and improved ADR systems affecting all state agencies. This report describes those systems and the utilization of ADR by state agencies, including:

- Improvements to the collaborative dispute resolution Model Rules.
- 22 State agency ADR programs that routinely use collaborative processes, primarily mediation, to resolve disputes.
- 107 collaborative processes, many of which resolved complex public policy issues.
- A survey showing 84 percent of participants in collaborative processes were "somewhat" or "very" satisfied with the *process* and that 78 percent were also satisfied with the *outcome* of the collaborative process.
- A high level of successful outcomes. Excluding cases that are still in progress or in which the outcome was unknown, over 90% of the cases that used a collaborative process ended in a full or partial agreement.
- 65 Trainings provided to state agencies and the public on ADR related topics.
- Technical support to state agencies on over 100 ADR related matters.
- Initiation of 28 "dispute system design" projects to improve the efficiency of agency systems.
- Development of an evaluation framework to ensure that good ADR practices are being used, and that the outcome of these practices are measurable improvements in satisfaction, efficiency and cost reduction for state government.
- Appointment of 29 agency ADR Coordinators and initiation of a system for assessing agency dispute resolution needs, pursuant to Executive Order 00-09.
- Adoption, by 26 state agencies, of mediation confidentiality rules.
- Improvements to the State Agency Mediator Roster, making it easier for agencies to hire mediators and facilitators and to utilize ADR processes.

¹ Pursuant to ORS 183.502(9), an executive summary of this report has been sent to every member of the Legislative Assembly. If you have received the executive summary, and would like a copy of the full report, contact: Mike Niemeyer, DOJ ADR Coordinator at (503) 378-4620 or Susan Brody, ODRC Executive Director at (503) 378-2877 x 22.

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I. OVERVIEW

A. Purpose of this Report

This report was prepared by the Department of Justice (DOJ), The Dispute Resolution Commission (ODRC) and the Department of Administrative Services (DAS) and describes the expansion and development of agency Alternative Dispute Resolution (ADR) programs as required by ORS 183.502(9). This report also includes a discussion of the systems that have been developed to support agency use of ADR. This report does not cover non-collaborative forms of dispute resolution, such as arbitration, and does not discuss individual cases, other than those receiving assistance from the Public Policy Dispute Resolution Program.²

B. Conflict and its Costs to Government

State agencies are involved in thousands of disputes each year involving everything from driver's license renewals to complex natural resource issues. Often the actions of government, such as the siting of a prison, generate significant conflict. This vigorous articulation of conflicting views is often a catalyst for positive social change and emblematic of democratic government. There are times, however, when conflict is destructive, wasting resources and damaging relationships. There are also times when the *process* used to resolve conflict is costly and inefficient. Agencies may sometimes use the most familiar, rather than the most appropriate dispute resolution process. Dispute resolution processes may force parties into an adversarial relationship or make it difficult to address underlying problems. Some systems for resolving conflict may not provide consistent or fair outcomes and may not be accessible to all. Conflict may result in poor public policies, wasted time and resources, a lack of public trust in governmental decision-making and damaged relationships.

A fundamental function of government is the orderly management of conflict and resolution of disputes. ADR is one of the tools available to agencies for managing conflict constructively.

C. A Coordinated Approach to ADR in Oregon

Under ORS 183.502 agencies can and do use ADR in a wide variety of cases. Certain ADR activities, however, are most effectively performed when agencies work together in a coordinated and systematic manner. Efficiently integrating informal and collaborative dispute resolution processes into the contested case process, for example, requires the development of rules and procedures that should be consistent among state agencies.

Coordination to ensure that ADR is available to agencies and that it is used appropriately is a duty of DOJ, ODRC and DAS under ORS 183.502 and Executive Orders 96-32 and 00-09. This coordination occurs primarily through a Dispute Resolution Steering Committee and Coordinating Agencies.

² For a definition of terms used in this report see Appendix A page 19.

Dispute Resolution Steering Committee

The Oregon Dispute Resolution Commission, Department of Justice and The Department of Administrative Services collaborate to increase the use of alternative dispute resolution by state agencies pursuant to ORS 183.502(5). The Steering Committee members collaborate to increase use of ADR to resolve disputes by assisting agencies with ADR programs, designating agency clusters and coordinating agencies, coordinating with state and local government and evaluating ADR programs. In 1996 Executive Order 96-32³ created a Dispute Resolution Steering Committee composed of representatives of DOJ, DAS, ODRC and the Governor's office.

The members of the Steering Committee are:

Greg Wolf, Governor's ADR Advisor
Don Arnold, Division Administrator, Dept of Justice
Mike Niemeyer, ADR Coordinator, Dept. of Justice
Craig Greenleaf, ODRC Commissioner
Bill Braly, Department of Administrative Services

The Dispute Resolution Steering Committee has broad duties under ORS 183.502, and very limited resources, to advance ADR within state government. The Steering Committee must, therefore, make strategic use of its resources. In the past, this has meant focusing on complex public policy disputes and on dispute systems design activities. The Steering Committee has focused on these activities through the *Oregon Public Policy Dispute Resolution Program*.

The *Oregon Public Policy Dispute Resolution Program* was established in 1990 by the Department of Land Conservation and Development to promote the use of collaborative processes for resolving disputes involving public policy matters. From 1990 to 1997 this program was primarily focused on natural resource disputes and the 11 state agencies that dealt with those issues. The program is now focused more broadly on the activities described in ORS 183.502(5), including ADR related training, dispute systems design and dispute resolution for all areas of state government. The Steering committee member agencies and the cluster coordinators are all considered part of this program.

Agency Clusters and Coordinating Agencies

DOJ, ODRC and DAS have designated clusters of state agencies and, within those clusters, a coordinating agency pursuant to ORS 183.502(5)(d). These coordinating agencies are to coordinate ADR activity among agencies in their cluster. A chart displaying the organization of these clusters can be found in *Appendix B page 21*.

There are currently four agency clusters with at least one Coordinating Agency in each: The Department of Land Conservation and Development (DLCD) is the coordinating agency for *the Natural Resources Cluster* of state agencies; the Department of Human Services is the Coordinating Agency for the *Human Services Cluster*; the Department of Transportation and the Oregon Economic and Community Development Office share the coordination of the *Transportation and Community Development Cluster*; and the Department of Administrative Services coordinates *the General Government Cluster* of agencies.

³ A copy of this Executive Order may be found at: [www.http://www.governor.state.or.us/governor/legal/execords.htm](http://www.governor.state.or.us/governor/legal/execords.htm)

The Coordinating Agencies have hired full-time Cluster Coordinators to fulfill the agency's duties under ORS 183.502(5)(d). Cluster Coordinators coordinate ADR among agencies in their cluster on behalf of the Coordinating Agency. The Coordinators help agencies in their cluster:

- Assessing the appropriateness of collaborative processes for specific controversies.
- Procuring the services of an appropriate impartial mediator.
- Training and educating government officials and agency staff
- Evaluating completed dispute resolution processes
- Providing grants for collaborative processes
- Reviewing and designing agency dispute resolution systems and processes

Agency ADR Coordinators

Through Executive Order EO-00-09 the Governor directed all agencies with more than 50 FTE to designate an ADR coordinator for that agency. Additionally, the Executive Order directs these agency ADR Coordinators to:

- Work with DR Steering Committee and Cluster Coordinators to report on and encourage the use of ADR in their agency.
- Participate in training and orientation sessions
- Acquire knowledge of ADR in their agency;
- Submit to the Governor by Sept 2001 an agency Needs Assessment and an annual agency ADR report.

A list of Agency ADR coordinators may be found in *Appendix C, page 22*

II. GOALS FOR ADR IN STATE GOVERNMENT

The goal of agency ADR programs under ORS 183.502(7) is to:

- increase agency efficiency,
- decrease the costs of resolving disputes, and
- increase public and agency satisfaction with the process and results of dispute resolution.

How is this done? How can ADR reduce dispute resolution costs, make agencies more efficient and result in greater satisfaction? During the last year, the program evaluation framework has been developed that will be used to measure and improve program performance. This framework ensures that we are using what we believe to be good ADR practices, and that the outcomes of these practices are measurable improvements in satisfaction, efficiency and cost reduction.

These outcomes are divided into two main parts, "Case management" and "ADR Systems." Case Management outcomes relate to the use of ADR in specific disputes or controversies. These outcomes define success in an individual case. If ADR is successful in resolving a particular controversy the "time and resources spent in disagreement and conflict is redirected towards a more constructive purpose." The outcome structure also has additional outcomes that must be achieved in order for this goal to be realized. For example: Agreements must be complete (no hard issues deferred); the right parties must be involved in the process; parties must perceive the process to be fair; and, the process used should be appropriate for the controversy.

The second major group of outcomes are described as "ADR Systems" outcomes. These outcomes focus on systems and procedures that ensure ADR is available and that it advances the mission of state government. Like all outcomes, the goal is more efficient agencies, more cost-effective dispute resolution and greater satisfaction. With respect to ADR systems, this outcome is achieved when, for example: agencies deal with disputes as early as possible; agencies have expedited access to qualified mediators; ADR provides citizens with greater access to decision-making; and, when screening and assessment procedures exist so that the best dispute resolution approach is identified for every case.

All of the work of the dispute resolution program is ultimately directed at achieving these outcomes. Evaluation instruments have been developed to measure progress in achieving these outcomes and to verify that the goals of efficiency, cost reduction and increased satisfaction are being realized. Monitoring and evaluation are also used to generate feedback and "lessons learned" so that ADR practices can be improved.

III. STATEWIDE ADR SYSTEMS

This section describes the systems within state government that ensure that ADR is available to state agencies and that it is used effectively. Over the last biennium DOJ, ODRC and DAS have worked to put systems in place to ensure that agency experience with ADR is institutionalized into good practices through statutes, rules and training. In addition, work has been done to increase capacity for ADR by ensuring that competent mediators and facilitators are available, that agency staff have ADR skills and that funds are available for ADR activities. These systems apply to all state agencies.

A. ADR Related Rules & Procedures

By design, ADR is a creative and flexible process for resolving disputes or achieving a more cooperative outcome. ADR related rules and procedures must strike a balance that ensures ADR is compatible with the other processes of state government and, at the same time, that ADR rules do not eliminate the flexibility, innovation or simplicity that makes ADR viable. In the case of mediation confidentiality, rules are necessary in order to comply with statutes (ORS 36.220 to 36.238) and to ensure consistency and a balance between confidentiality and open government policies. The ADR related rules described in this section also include the Attorney General's ADR related Model Rules of Procedure and the Attorney General's Mediation Confidentiality Rules.

Mediation Confidentiality Rules

Most complex public policy disputes are resolved in open and public processes. The mediation and facilitation of some controversies, however, may require a degree of candor or confidentiality in order for the parties to discuss the real issues in dispute or to explore possible solutions to a problem. Since 1997, ORS 36.220 through 36.238 have authorized state agencies to make certain mediation communications confidential. This Act also allows agencies to limit the discovery and admissibility of mediation communications in subsequent proceedings.

For most agencies, these confidentiality and inadmissibility provisions are available only by adopting, with the approval of the Governor, mediation confidentiality rules developed by the Attorney General pursuant to ORS 36.224.⁴ As of December 2000, 26 state agencies, including the Department of Transportation, the Department of Human Resources, The Department of Consumer and Business Services, the Treasurer, the Department of Administrative Services, the Department of Land Conservation and Development and the Department of Justice had adopted rules providing for the confidentiality of mediation communications. A complete list of agencies that have adopted mediation confidentiality rules pursuant to ORS 36.224 is found in *Appendix F page 33*.

Collaborative Dispute Resolution Model Rules

The Administrative Procedures Act (APA) requires state agencies to adopt rules of procedure for use in rulemaking, contested cases and other administrative proceedings. The APA also directs the Attorney General to prepare Model Rules of Procedure that state agencies may adopt.

⁴ A list of the rules and instructions for their adoption may be found at:
<http://www.doj.state.or.us/adr/rules.shtml>

ORS 183.502(3) authorizes the Attorney General, in consultation with the Oregon Dispute Resolution Commission and the Oregon Department of Administrative Services, to develop for agencies model rules for the implementation of alternative means of dispute resolution. These collaborative dispute resolution Model Rules are intended to be used with the Attorney General's Model Rules related to rulemaking, contested cases or other administrative proceedings. Like all of the Model Rules, an agency may adopt all or part of these rules by reference without complying with the rulemaking procedures of ORS 183.325 to 183.410.

An outline of the Attorney General's collaborative dispute resolution Model Rules and a link to the full text of these rules may be found at http://www.doj.state.or.us/adr/mr_indx.shtml. The complete set of the Attorney General's Model Rules, including commentary, sample notices and forms can be found in the Attorney General's Administrative Law Manual.⁵ The manual is updated and published every two years following the adjournment of the regular legislative session. Copies of this manual may be purchased from the Department of Justice, 100 Justice Building, 1162 Court St. NE, Salem, OR 97310. Phone (503) 378-5555 ext. 325.

B. Training and Education

Education and training of state agencies about ADR options and processes is offered in a variety of ways, through presentations at conferences or agency staff meetings, and through special trainings designed to meet the specific needs of a work unit. Some state agency staff need a basic introduction to ADR to help them be more aware of, and able to access, the range of collaborative processes and resources that are available. Other state agency staff are already aware of ADR, but need skill building training to assist them in practicing collaborative problem solving techniques on the job. There is a growing interest by state employees in being more effective participants in ADR processes, particularly ones involving complex public policy issues.

Over 60 separate trainings and presentations have been delivered in the last two years to state agency employees and other interested participants by program staff and private mediation trainers. The types of sessions offered ranged from training on designing dispute resolution systems to advanced negotiation skill development. As an example, the Department of Justice's Public Law Conference included a number of sessions specifically focused on ADR; several hundred state employees attended these sessions. In another example, public policy program staff held a training session on conflict management for contracts managers at the Department of Administrative Services. For a list of some of the ADR training offered within the last biennium see *Appendix E, page 30*.

To aid the training and education efforts described above, the public policy dispute resolution program has produced a number of information and education materials. Most recently, a new Collaborative Handbook was completed which provides a comprehensive introduction to the principles and practices of ADR, including a wealth of information on resources available at both the state and national level. This handbook has also been made available on the ODRC web site. The program also updated its brochure and produced other informational material including a display board to be used at conferences and other events. The DOJ and ODRC websites also were updated and refined to provide easy access to ADR information for state employees and the public.

⁵ A copy of the rules can also be found at http://www.doj.state.or.us/adr/mr_indx.shtml

C. Mediator Selection and Procurement

State Roster of Mediators and Facilitators

The Department of Justice, in cooperation with the Oregon Dispute Resolution Commission, improved the Oregon State Agency Mediator Roster. Agencies may use the Roster to obtain the names of mediators or facilitators who are appropriate for a particular controversy. There are over 200 mediators on the Roster. The Department of Justice has also created a model Personal Services Contract for Mediators And Facilitators and has received an exemption from standard procurement requirements that allows for easier and more efficient procurement of mediators and facilitators by state agencies. Mediators and facilitators interested in being included in the Roster must complete a statement of qualifications and meet certain minimum qualifications.

In March of 2000 a series of forums was held to solicit comments from mediators on the state roster and to discuss a proposal to develop a sub-roster of mediators for complex public policy controversies. Additional information on these forums may be found at <http://www.odrc.state.or.us/ppsub.htm>.

List of State Employee Mediators and Facilitators

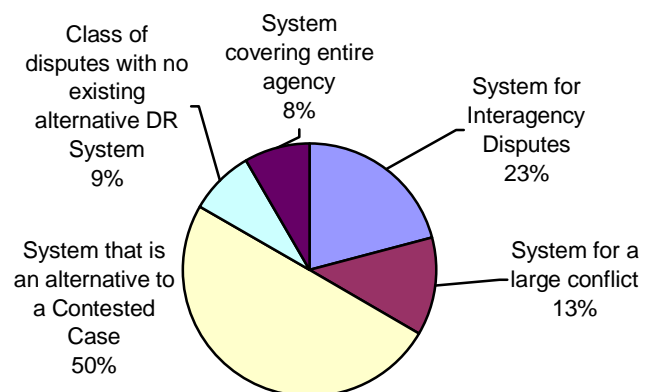
The Department of Justice has, within the last biennium, developed a list of state agency employees with skill in mediation, facilitation, dispute-resolution or other collaborative-problem-solving processes. The list was developed for agencies seeking persons who could facilitate meetings or mediate contested case matters or disputes that might otherwise lead to a contested case. The list will be made available to state agencies that may have a need for these services.

The list is not meant to be used for matters that require significant amounts of mediator time, or matters in which the process could more effectively or efficiently be conducted by a mediator or facilitator who is not affiliated with state government (i.e., matters in which the dispute is in litigation and the state is a party or matters in which a state employee could be perceived as being biased by one or more of the participants.) The list is also not to be used for complex public policy disputes.

D. More Efficient Government Systems

In recent years a discipline has developed which is referred to as "Dispute Systems Design" or DSD. DSD is increasingly being used by state agencies who have had positive experiences with mediation and who wish to incorporate it into the agency processes in a more routine manner. An agency may also, as the result of other structural changes or shifts in mission, wish to look at its existing dispute resolution systems for potential improvements. The product of a dispute systems design effort is not necessarily a recommendation for more mediation programs. It may be more efficient to

**Agency Dispute Systems Design Projects
1999 - 2001**



develop systems that use informal conflict resolution techniques. Maybe all that is needed is make use of a person who can answer questions or follow-up on complaints, as in the case of an agency ombuds person. In some cases a DSD may find that the costs of changing an agency's dispute resolution systems would not justify the benefits. The goal is always greater agency efficiency and effectiveness, not the promulgation of any particular dispute resolution process. During the past biennium ADR Coordinators in the Public Policy Dispute Resolution Program helped agencies review their dispute resolution systems and make improvements to those systems in 28 matters. The following are two examples of a dispute systems design:

Americans With Disabilities Act (ADA) Mediation Service. With a grant from the dispute resolution program, the Oregon Disabilities Commission engaged persons with an interest in ADA mediation. This group worked together to design a system for providing mediation of issues related to the American With Disabilities Act (Titles I and II-employment and public agencies) and to Oregon law on disabilities. The design has been completed and program implementation is underway. The program has begun training agency users, mediators and peer mentors. The Human Services Cluster Coordinator assisted with the grant application and management, design process, training, and publicity for this project.

The DEQ Cleanup Program System Design. Assistance was provided by the Natural Resources Cluster Coordinator to the Department of Environmental Quality (DEQ) in response to a legislative directive for an ADR system for the Independent Cleanup Pathway (ICP). The ICP is designed for contaminated sites with low to moderate contamination where property owners voluntarily undertake cleanup efforts and seek a "No Further Action" determination from DEQ. DEQ worked with stakeholders to design the ADR system. The program includes mediation and the opportunity for an independent technical review. While the authority to make determinations in the Cleanup Program still resides with the DEQ Director under this new program, it is expected that the ADR mechanisms can improve the efficiency and satisfaction with ICP determinations.

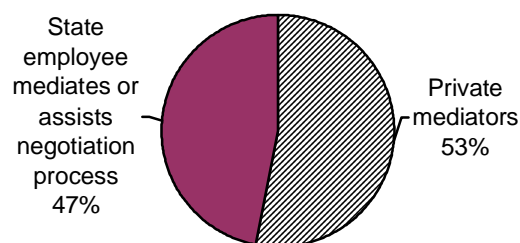
E. Agency Programs

While many state agencies use ADR on a case-by-case basis, some agencies have developed programs in which ADR is used routinely. This report describes 22 state agency ADR programs. A short summary of each program is found in *Appendix D on page 23*.

Agency ADR programs typically used a mediator to assist two parties in resolving a dispute. In some cases the state was one of those parties, as in the Right-of-Way ADR program at ODOT. In other cases, such as the Workers Compensation Mediation Program, the state was not a party. Nine programs handled disputes in which the state was *not* a party and eight involved agency-parties. In most programs the mediator was a private party. In some programs, a state employee facilitated the negotiations or assisted two private parties in a dispute, as was the case with the Consumer Services Office at the Public Utilities Commission.

In most programs the ADR process was an alternative to or done in conjunction with a contested case process and in eight programs the parties would likely have to resort to litigation if a negotiated or mediated resolution was not found through the ADR program.

Who provides assistance in State ADR programs?



IV. THE RESOLUTION OF PUBLIC DISPUTES

A goal of ADR in state government is the resolution of conflict, allowing time and resources spent in disagreement to be redirected to more constructive purposes.

This section provides information for the last two years on the types of disputes handled by the program and the processes used to help resolve those disputes. Included here are case descriptions and results achieved.

A. Dispute Resolution Processes

While some disputes involving state agencies are most appropriately handled through administrative or legal procedures, many can be effectively resolved through collaborative processes. These collaborative processes include mediation, collaborative rulemaking and collaborative planning or problem solving.

Mediation involves the use of an impartial third party to assist two or more participants in reaching a mutually acceptable resolution to a conflict or controversy. It is usually applied to a situation where there is a preexisting dispute. Collaborative planning, problem solving and rulemaking are more forward-looking, aimed at developing consensus about how to best approach a difficult policy or regulatory issue in the future.

These collaborative processes are used across the spectrum of government activities. On one end of the spectrum are processes that improve the efficiency and effectiveness of policy formation. (See "framing issues" and "developing policy" in the box to the right.) At the other end of the spectrum agencies use mediation to resolve an enforcement action when a cooperative resolution is more effective in protecting the public and achieving compliance.

Opportunities for Collaboration In Government

Framing Issues - Agencies may, for example, consult with affected parties to identify all the issues that need to be addressed in an upcoming rule revision process.

Developing Policy - Agencies can work collaboratively with state, local and federal governments, service providers, interest groups and other "stakeholders" to reach agreement on how to distribute resources (e.g. federal block grant funds.)

Implementing Policy - Agencies can include stakeholders in the process of developing an agency's procedures for granting and reviewing permits.

Interpreting Policy - Agencies can resolve disputes arising over the application of rules. They could, for example, convene a collaborative process to agree on how legislation can be implemented into rules.

Enforcement - Agencies can negotiate creative enforcement agreements to address the root causes of non-compliance.

B. Types of Assistance Provided

As part of the services offered to state agencies, program staff help to determine the appropriate collaborative process for a specific issue or controversy. This involves providing technical assistance, case screening, and case assessment. These functions are critical first steps to ensure that a dispute or conflict is handled in the best possible way.

Screening and Assessment

Not all disputes are appropriate for ADR. In complex cases *case screening* and *assessment* assist the state agency in evaluating options and determining if ADR is appropriate.

Screening typically involves reviewing the facts of the case, consulting with state and making an initial determination as to whether the case looks promising for mediation or another collaborative process. *Case assessment*, on the other hand, is a more involved process that includes interviews with a variety of internal and external stakeholders to help determine which parties need to be “at the table.” The assessment also determines which issues are most critical and establishes the time frame for resolving the dispute. The assessment is guided by criteria⁶ which, when applied to a specific controversy will indicate the likelihood of a collaborative process being successful and if so, under what conditions.

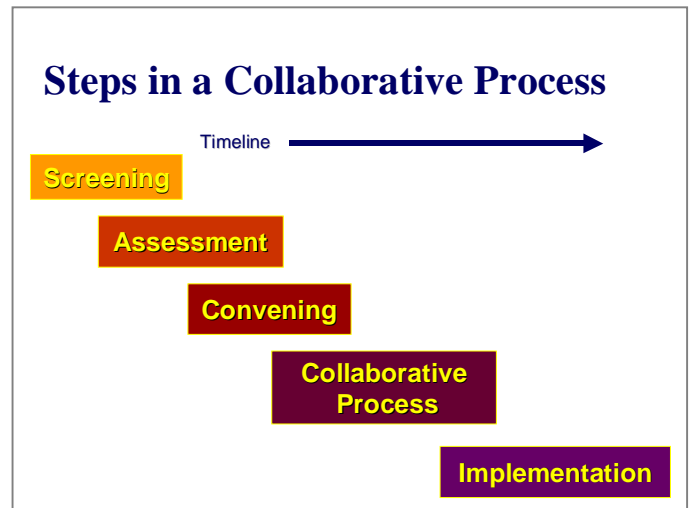
Based on case screening and assessment, an agency makes a determination about whether to move forward with a collaborative process. Program staff are then available to help the agency select and contract with a mediator, through use of the state mediator roster and procurement process described in Section III of this report. Mediators are also hired in some cases to conduct assessments of complex public policy disputes.

Grants

Grant funds are available to assist agencies with the costs of hiring a mediator to conduct a process or do a complex case assessment. In all of these grant programs, the funds help to leverage contributions from the various parties so that there is a sharing of mediation costs. In the 1999-2001 biennium, the Department of Land Conservation and Development has administered \$200,000 in grant funds to assist agencies in utilizing collaborative dispute resolution processes to resolve natural resource disputes. The dispute resolution account for grants and special projects at the Department of Administrative Services has provided \$90,000 that is used, in part, for hiring mediators. In addition, the Department of Transportation recently received a federal grant that will provide some funding for collaborative processes that have a transportation component. Approximately \$225,000 is available through the grant program through the spring of 2003. The grant program has an evaluation component; to determine the effectiveness of applying alternative dispute resolution approaches to transportation and community development controversies. The evaluation will contribute to a better understanding of where these innovative techniques will most likely succeed and how to design them to maximize effectiveness.

Technical Assistance

Program staff also provided valuable technical assistance on dispute resolution matters to state agencies and members of the public. In the same two-year period, staff responded to over 100 separate technical assistance requests that ranged from requests for names of possible mediators to advice on confidentiality of mediation communications.



⁶ Such as Model Rules OAR 137-005-0020 and 137-005-0022.

C. Public Disputes Resolved Collaboratively, Some Examples

The following case descriptions highlight the use of collaborative processes in a variety of disputes and conflict situations. The program provided assistance in many additional cases, as well; summary data for all cases is provided later. Some of the descriptions focus on processes that deal with a specific dispute that has already occurred and needs resolution, while some are focused on reaching consensus on a future approach to a difficult public policy issue.

Pre-Need Funeral Trust Collaborative Process. The Public Policy Program funded an assessment and a portion of a collaborative process involving regulation of Pre-Need Funeral Trusts. The Secretary of State's Office, the Mortuary & Cemetery Board, the Department of Justice, the Department of Consumer & Business Affairs and industry and consumer group representatives agreed to take part in a collaborative process. The goal was to make joint legislative recommendations regarding state regulation and enforcement process for endowment care providers and sale of "pre-need" funeral services. A recent embezzlement case highlighted the need for changes to the statutory regulatory and consumer protection process. Currently the Secretary of State oversees Pre-Need Funeral Trusts, while funding is through registration fees. This collaborative process resulted in a mutually agreed upon legislative concept that may be used to draft appropriate legislation.

Pesticide Use Reporting. The Department of Agriculture is receiving assistance in its efforts to implement controversial legislation related to pesticide use reporting. The public policy program provided grant funding to support assessment and design work with the stakeholders involved in this project. The Department of Agriculture hired a mediator/facilitator to work with the advisory group appointed to deal with implementing this statute. Work is ongoing on this project.

Dept of Transportation/South Central Oregon Regional Partnership. A collaborative process was used to develop the Scope of Work for an independent economic feasibility assessment on Highway 140 south of Lakeview to the Nevada border. A group of nearly 30 shareholders – consisting of regional staff from Transportation, Economic & Community Development, Land Conservation & Development, Housing, and Environmental Quality, as well as local government representatives from Lake and Klamath Counties, the Cities of Lakeview and Klamath Falls, and the general citizenry of the area – successfully persevered through extended negotiations resulting in a project Scope of Work that was unanimously approved by all partners to the project.

Department of Transportation (ODOT) Rulemaking. ODOT initiated a collaborative rulemaking process in February 1999 to pro-actively address internal and external concerns and dissention around access management decisions for state highways. The Director of ODOT appointed an Access Management Advisory Committee (AMAC), comprised of representatives of 16 different interest groups, which utilized a collaborative process to improve communication, obtain public input, and explore balanced, practical solutions to the implementation of access management policies.

By mid-December of 1999, AMAC produced a set of proposed administrative rules for access management on state highway facilities. Although each individual interest group did not receive its "wish list," the rules, as a package, represent a major step forward; the collaborative process itself also helped to restore credibility and trust between ODOT and some of its stakeholders.

Fish Passage Task Force. The Legislature asked the Department of Fish and Wildlife to convene a Fish Passage Task Force to work on significant issues related to fish passage. The Department of Fish and Wildlife did not receive funding to support the effort and asked for assistance from the public policy program. The program funded a case assessment and process design project to determine the best way to approach the project. Following assessment/design work, the agency and stakeholders entered an agreement to collaborate and are meeting regularly with assistance of a grant funded mediation team.

Work to date is progressing well and it appears that the group is near an agreement on a legislative package that would resolve these complex and long-standing issues.

Wallowa County, Children's Services Planning Process- Oregon Commission on Children and Families. In December of 1999 the Human Services Cluster Coordinator facilitated a process with state and local agencies and community representatives. Approximately 70 people participated in a process to resolve conflicts and develop a comprehensive plan to serve the needs of children in that county. Key issues were resolved, the local program was reorganized and next steps were identified.

Neighborhood Street Design Collaborative Process The program is also assisting the Department of Land Conservation and Development with a collaborative approach to street design in residential neighborhoods. This work is aimed at developing consensus among stakeholders to reduce street widths in residential areas while maintaining important public safety access. The group reached consensus on a set of standards in November 2000. The stakeholders are currently circulating the agreement with their constituents for ratification.

City of Salem-City of Keizer Sewer Treatment Plant Dispute. The program provided funding for a mediation over use restrictions near the regional sewerage treatment facility. The parties agreed to a framework for settlement in July 2000. The case included representatives of property owners, the City of Keizer, Marion County and the City of Salem.

Foster Care Claims. In the summer of 2000, the Risk Management Division of Department of Administrative Services Claims Unit discovered a marked increase in the number of claims made and amount paid as a result of intentional destructive acts of children in foster care. The Public Policy Program organized a meeting between the Department of Human Services Managers and the Risk Management Claims Manager to look at the causes and solutions of this trend. Participants of this collaborative effort are designing a cost effective tracking method and assessing the feasibility of using dispute resolution processes. The intended outcome is to establish restitution for claimants, increase foster child accountability and decrease future occurrences, while maintaining appropriate services to children. The ultimate outcome of this process is to reduce the amount of claims filed and paid.

Older Driver Advisory Committee Process. The Oregon Department of Transportation (ODOT) completed a collaborative process in response to HB 2446, which directed the Department of Motor Vehicles to conduct a study on the effects of aging on driving ability. The statute required that an advisory committee be appointed to participate in the study and to develop a comprehensive approach to licensing drivers. Recommendations of the advisory committee, and the subsequent actions taken by the department, will be reported to the Seventy-First Legislative Assembly in 2001.

Economic & Community Development/Windmaster Corners. An agreement-seeking process involving a variety of state and federal agencies, local governments from the Hood River area, and local landowners. These landowners were outside the city's existing sewer system and failing septic systems. Large-group problem-solving processes were utilized and a consensus achieved on overcoming logistical and financial barriers to city sewer access. With assistance from congressional representatives federal funds were obtained to cover a majority of costs.

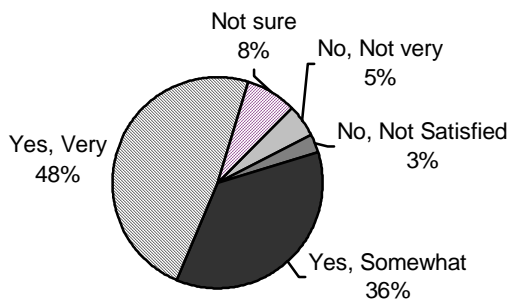
D. Case Results

During the two-year period from October 1998 through October 2000 assistance was provided in over 203 separate cases. In 96 of these cases screening or assessment was the only service provided by the program. In 107 of the cases, a collaborative process was used. Over 90% of the cases that used mediation or another collaborative process ended in a full or partial agreement⁷. Mediators from the private sector were hired to provide assistance in 55 of the cases.

Satisfaction with the Process and Outcome

The text and charts in this section summarize the results of 156 evaluation forms involving 23 separate, collaborative processes and 18 different mediators or facilitators (providers). Generally, these forms were distributed at the end of the process by the provider and were returned by the parties directly to the Department of Justice or the Oregon Dispute Resolution Commission. These forms were collected between July 1999 and September 2000. All forms received during that period were included in this summary. 53% of the evaluated cases were characterized as mediation and 47% as facilitation. The evaluations were generally completed by the principal party or claimant in the case (53%) and 29% of the responses were from a state agency representative who was involved in the process. 8% of the forms were completed by attorneys representing parties and 3% by attorneys representing the state agency. None of the forms was completed by a provider.

Were you satisfied with the Process?

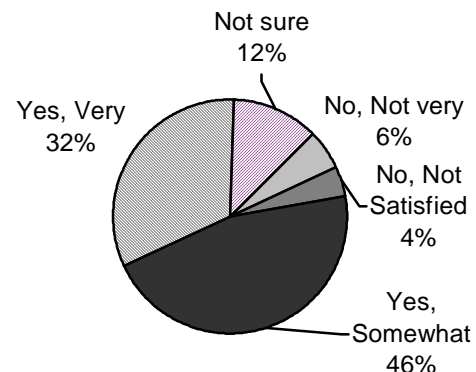


As noted in Section I/II of this report, State Statute (ORS 183.502) specifically identifies the importance of agency and public satisfaction with the process and results of ADR. The evaluation survey results reported here show that 84 percent of the respondents were somewhat or very satisfied with the collaborative process in which they participated. In addition, 78 percent reported satisfaction with the outcome of the collaborative process.

Other survey highlights:

- In only 16% of the cases was litigation seen as the process that the parties would likely use if the collaborative process failed.
- 63% indicated that they would "strongly recommend" the provider to others in a similar situation. Only 3% indicated that they would "not recommend" the provider to others.

Were you satisfied with the outcome?



⁷ 47 of 51 cases reached full or partial agreement. This does not include cases still in progress (6) or cases in which the outcome was unknown (9).

V. THE FUTURE OF ADR IN OREGON STATE GOVERNMENT

The future of ADR in state government includes both opportunities and obstacles. A great deal of progress has been made, especially in the last two years, in developing systematic approaches for meeting the ADR needs of state agencies. More and more agencies are knowledgeable about collaborative processes—how and when to use them effectively—and are benefiting from their application. The number of agency ADR programs has increased and more individual cases are being handled by the public policy dispute resolution program than ever before. However, a number of agencies still do not take full advantage of the appropriate use of collaborative processes; the challenge for the next three to five years will be to fully integrate ADR into the practices and systems of state government.

The following statement articulates a vision for ADR in state government:

Collaborative dispute resolution is integrated into the institutions and culture of state government, promoting a more civil society. State agencies routinely consider whether collaborative processes are appropriate for each dispute or potential controversy. Use of collaborative approaches provides citizens with greater access to public decision making.

There is a general awareness and understanding by agencies and the public of the dispute resolution program and how to access and use collaborative processes effectively. Agency dispute resolution needs are assessed and responded to systematically. Collaborative processes are used efficiently and effectively throughout state government.

The dispute resolution program supports the development of the field by encouraging networking among dispute resolution professionals, reflecting on and evaluating the application of collaborative processes and developing and applying standards of best practice.

Key ADR Initiatives for the 2001-2003 Biennium

1. *Make it easier for agencies and the public to use ADR to resolve public disputes.* This will be accomplished by increasing the number and visibility of agency ADR programs, including greater use of the internet for disseminating information on ADR.
2. *Implement the program evaluation framework, making it fully operational.* This initiative includes improved data collection and reporting through use of more sophisticated data collection instruments and a comprehensive ADR data base with information on all ADR activities and initiatives underway in state government.
3. *Assist all state agencies with over fifty employees to implement the Governor's new executive order on dispute resolution.* This involves continued training of agency coordinators, assistance in preparing agency ADR needs assessments, and reviewing annual ADR reports. This work will help all state agencies be more informed about how to access ADR services and better able to evaluate when a collaborative approach to a controversy would be appropriate.
4. *Continue to improve the state mediator roster and procurement process so that state agencies have ready access to skilled professionals.* A public policy subroster will be created, providing more specific information about the mediators with expertise in complex public policy disputes. In addition, orientation sessions will be held to help acquaint roster members with the roster process, state agency rules, and other topics that will increase their effectiveness.

6. *Expand the uses of the state employee mediator and facilitator list.* There is a significant need for inexpensive ways to resolve workplace interpersonal disputes. The state employee mediator list will be evaluated for its potential use in resolving interpersonal workplace disputes.

Please direct any questions regarding this report to:

Mike Niemeyer, ADR Coordinator
Department of Justice
Phone (503) 503-378-4620

Susan Brody, Executive Director
Oregon Dispute Resolution Commission
Phone (503) 378-2877

Glossary of Terms Used in this Report

ADR - An acronym for “Alternative Dispute Resolution.” The term is used in ORS 183.502 to describe those process that are an alternative to traditional dispute resolution. ADR includes mediation, arbitration or other collaborative problem solving processes.

ADR Coordinator - State employees with expertise in alternative and collaborative forms of dispute resolution. The Oregon Public Policy Dispute Resolution Program has four dispute resolution coordinators who provide assistance to clusters of state agencies.

Agency Cluster - A group of state agencies assigned to a coordinating agency and an ADR Coordinator as part of the Oregon Public Policy Dispute Resolution Program. See Appendix B for a list of agencies by cluster.

Agency ADR Coordinator - State agency employees with experience or skill in alternative dispute resolution or who have been appointed by their agency in response to Executive Order EO-00-09.

Case Assessment – A process to determine if a particular controversy or matter is appropriate for a collaborative or alternative dispute resolution process. In the case of complex public policy disputes an assessment is often conducted by a neutral, external to the agency, with skills in convening parties and designing dispute resolution processes. An assessment may also be used as an opportunity to clarify the issues in dispute, design a dispute resolution process, and determine the costs of such a process or to determine who should participate in the process. See OAR 137-005-0020 and 137-001-0008.

Case Screening – Screening is used to determine if the agency that is sponsoring or initiating a dispute resolution process has sufficient resources and “buy-in” from management and staff and if the nature of the dispute and timing is appropriate for a collaborative process. While an assessment usually involves all the parties in a controversy a screening usually involves only the agency or a few key parties to a dispute. Screening is often done using in-house experts and resources and usually precedes a more formal assessment with an outside neutral.

Cluster Coordinator - An employee of a "coordinating agency" the cluster coordinator performs the functions of the coordinating agency under ORS 183.502() including, ...These Cluster Coordinators are also considered part of the Public Policy Dispute Resolution program and their working title is "....."

Collaborative Process - A process designed to encourage parties to work together to develop mutually agreeable solutions to disputes.

Consensus - A unanimous concurrence among the participants and stakeholders in a dispute resolution process. Some groups may consider consensus to have been achieved when, given the current conditions, a workable solution is developed to which no party objects.

Dispute Systems Design – A discipline in which an organization or agency considers conflict and conflict management systems in a systematic manner. This term may also be applied to the process of designing a comprehensive, step-by-step approach to a particular type of controversy. An agency may, for example, design a process in which staff provide information or negotiate directly with clients and later offer mediation, contested case hearings or more formal processes if a conflict escalates.

Facilitation – A process in which a person encourages and fosters discussions and negotiations to assist a group in reaching agreement or consensus. The facilitator is concerned primarily with the process during a meeting or negotiation and may help the parties design and follow an agenda and communicate more effectively.

Mediation- A process in which a person assists two or more disputants in reaching a mutually acceptable resolution of a controversy. A mediator has no authority to impose an outcome on the participants. This term is also defined in ORS 36.110 for the purpose of mediation confidentiality.

Negotiated Rulemaking / Collaborative Rulemaking - An agreement-seeking or consensus process in which a proposed rule is developed by a committee composed of representatives of the interests affected by the rule, including the rulemaking agency. This process is usually done with the assistance of facilitator or mediator.

Public Policy Dispute – A public policy dispute is a controversy that involves governmental agencies and non-governmental stakeholders. These disputes are often complex, with many issues and parties. The issues usually involve the broader public domain, rather than the interests of a single group or individual.

Agency Dispute Resolution Clusters & Coordinating Agencies

GOVERNOR
 Advisor: Greg Wolf
Steering Committee: ODRC; DOJ; & DAS

OREGON DISPUTE RESOLUTION COMMISSION
 Public Policy Dispute Resolution Program
Susan E. Brody and Kristen Erbes

ATTORNEY GENERAL
 Alternative Dispute Resolution Coordinator
Mike Niemeyer

Human Services Cluster
Coordinating Agency
 Dept. of Human Services
Cluster Coordinator:
Karen Hartley
503-945-5941

Natural Resources Cluster
Coordinating Agency
 Dept. of Land Conservation
 and Development
Cluster Coordinator
Dale Blanton
503-373-0050 x 246

**General Government
 Services Cluster**
Coordinating Agency
 Dept. of Admin. Services
Cluster Coordinator
Susan Marshall
503-378-5469

**Community
 Development Cluster**
Coordinating Agency
 OECD, Dept. of
 Transportation
Cluster Coordinator
Carolyn Berry
503-986-3821

- All Divisions of DHS
- Commission on Children and Families
- Commission for the Blind
- Oregon Disabilities Commission
- Insurance Pool Governing Board
- Long Term Care Ombudsman
- Psychiatric Security Review Board

- Dept. of Land Conservation /Dev
- Dept. of Agriculture
- Columbia River Gorge Commission
- Dept. of Energy
- Dept. of Environmental Quality
- Dept. of Fish and Wildlife
- Dept. of Forestry
- Dept. of Geology and Mineral Industries
- Land Use Board of Appeals
- Division of State Lands
- Marine Board
- Dept. of Parks and Recreation
- Dept. of Water Resources
- Commodities Commissions

- Capitol Planning Commission
- Commission on Black Affairs
- Consumer and Business Services
- Employment Dept.
- Employment Relations Board
- Commission on Hispanic Affairs
- State Library
- Oregon Gov't Standards and Practices Commission
- State Fair and Exposition Center
- Dept. of Education
- Secretary of State
- State Treasurer
- Commission for Women
- Licensing and Regulating Boards
- Liquor Control Commission
- Public Employees Retirement
- Racing Commission
- Dept. of Revenue
- Dept. of Veterans Affairs

- Dept. of Aviation
- Economic and Community Development Dept.
- Housing and Community Services
- Public Utility Commission
- Dept. of Transportation
- Travel Information Council
- State Lottery
- Community Development Office

Agency ADR Coordinators

Agency	First Name	Last Name	Title	Phone
Agriculture	Brent	Searle	ADR Coordinator	503-986-4558
Construction Contractors Board	William	Boyd	Program Manager	503-378-4621x4028
Corrections	Daniel	VanLehman	Manager	
DAS	Dan	Hartman	Chief Risk Officer	503-378-5526
DCBS	Ed	Lanssens	Mediator	503-947-7255
Dept.Higher Ed	*			
Dept.of Veterans Affairs	Butch	Gehley	Administrator	503-373-2142
DEQ	Dawn	Farr	Org.Imprvmt.Coordinator	503-229-6935
DHS	Gin	Denison	Ombudsman	503-945-6904
DLCD	*			
DOGAMI	*			
DOJ	Mike	Niemeyer	ADR Coordinator	503-378-4620
DSL	Jennette	Holman	Asst. Director	
Education	John	Lenssen	Education Specialist	503-378-3600x2709
Education	Merced	Flores	Assoc.Superintendent	503-378-3600x2701
Employment	Janie K.	McCollister	IGA Manager	503-947-1324
Energy	Kathy	King	Transportation Program Manager	503-378-5584
Forestry	Scott	Hayes	Forest Practices Program	503-945-7475
Housing	Dave	Sheelar	Ombudsman	503-986-2017
Labor & Industries				
Lottery	Suzzette	Allen	Contracts Officer	503-540-1018
Military	Carla	Ploederer	Director of state personnel	503-945-3865
ODFW	Carol	Brown	Director Human Resources	503-872-5262x5606
ODOT	Margaret	Weil	Senior Public Policy Analyst	503-986-3438
OECD	*			
OLCC	Judith	Bracanovich	Manager	503-872-5108
Parks & Recreation	Laurie	Warner	Deputy Director	503-378-6905
PERS	Steve	Delaney	Gov.Relations Mgr.	503-603-7694
Public Safety Standards	Alan	Scharn	Deputy Director	503-378-2100x203
PUC	Tom	Barkin	Chief ALJ	503-378-6681
Revenue	Linda	West	Training Manager	503-945-8563
Secretary of State	Beverlee G.	Mix	Personnel Director	503-986-1526
State Police	*			
State Treasurer	Kevin	Nordhill	Risk Manager	
Student Assistance	*			
Water Resources	Meg	Reeves	Deputy Director	503-378-8455x247
Youth Authority	*			

*ADR Coordinator appointment pending

Oregon State Agency ADR Programs 1999 - 2001

(Agencies listed Alphabetically)

AGRICULTURE DEPT

Oregon Farm Mediation Program

CONTACT: Brent Searle 1-800-347-7028

LAWS/RULES: ORS 21.480

DESCRIPTION: With over 160 mediation cases under its belt, the Oregon Farm Mediation Program has demonstrated its value to mediation participants and the State of Oregon. Cases ranging from financial mediation (between farmers and their creditors) in the early years of the program, to nuisance complaints, contracts, and farm labor issues in later years have successfully been resolved in over 80% of the cases.

Most recent cases (past three years) have been farm labor related, and 91% of those cases have been successfully resolved through a settlement negotiated in mediation. The cases handled by the farm mediation program, while dealing with private party disputes, can be very complex. Many are multi-party disputes. The farm labor cases, for example, average 10 participants per mediation, sometimes involving a farmer as employer, a farm labor contractor, the employees, and their legal counsel. These cases average 9 hours and deal with very technical labor laws. Other cases generally average 2-3 hours to resolve.

Well over 500 parties have participated in mediation through the program over the past decade. Participant Satisfaction Survey Findings: Over 92% of those who used the farm mediation program to resolve a dispute indicated they would recommend the program to someone else. 86% of mediation participants indicate that the settlement reached in mediation is a "fair or somewhat fair" resolution of the issues. 90% of participants rated the mediators as good or very good at conducting the mediation in a professional manner.

CONSTRUCTION CONTRACTORS BOARD

CONTACT: 24-Hour Contractor Inquiry Line 503-378-4610 or 888-366-5635 Telephone 503-378-4621 or visit: <http://ccbed.ccb.state.or.us/WebPDF/CCB/tips/how2help.pdf>

LAW/RULES: The laws relating to the Construction Contractors Board are found in ORS Chapter 701. The rules relating to the Construction Contractors Board are found in OAR Chapter 812.

DESCRIPTION: More than 4,000 claims against construction and landscaping businesses are filed with the Board each year. About 75 percent of homeowner claims are settled with a Board mediator/investigator meeting at the jobsite with the homeowner and contractor.

The investigator looks at the issues in the claim and tries to resolve the dispute. If the dispute continues, the Board offers a hearing and appeal decision process. If the contractor refuses to cooperate or pay any amount ordered, payment is made from the contractor's bond to the limits provided by the law. Homeowners can file claims with the Board if they think the registered/licensed business has done negligent or improper work, breached a contract, allowed liens to be filed, or otherwise caused damage. Generally, the deadline for filing claims is one year from when the work was substantially completed. You can file a claim if you have a direct contractual agreement with a registered/licensed business. (The one-year deadline does not apply to filing a lawsuit.) Claims filed against unregistered/unlicensed business are sent to the Board's Enforcement Section. Enforcement staff assess civil penalties for violations and try to get contractors to comply with the law to protect future customers.

CONSUMER & BUSINESS SERVICES, WORKERS COMP DIVISION

Medical review Unit, Dispute Resolution Section

CONTACT: For more information contact Janis Checchia at (503) 503 947-7796 or visit http://www.cbs.state.or.us/external/wcd/docs/wcd_facts/drs_mru.pdf

LAWS/RULES: OAR 436-009: The Oregon Medical Fee and Relative Value Schedule or OAR 436-010: Medical Services

DESCRIPTION: Seven reviewers with professional medical expertise and a paralegal specialist identify and investigate complex issues in response to disputes arising from the provision of medical services to injured workers. The reviewer facilitates early resolution of the dispute through negotiation and education. If, however, the dispute cannot be resolved through negotiation, the reviewer coordinates the collection of pertinent data from available resources and prepares an inclusive medical/legal record for review. In addition, the reviewer conducts medical/legal research relevant to the issues in dispute. An administrative assistant coordinates any consulting physician involvement by selecting a physician or panel of physicians. The reviewer authors relevant questions to be asked of the consulting physician(s), and incorporates the consultation report in the final decision analysis. Finally, the reviewer prepares a legal order based on conclusions of law, the Oregon Revised Statutes, and Oregon Administrative Rules. The orders may be appealed to the Central Hearings Officer Panel and then to the Court of Appeals.

CONSUMER & BUSINESS SERVICES, WORKERS COMPENSATION DIVISION

Dispute Resolution Section, Rehabilitation Review Unit

CONTACT: For more information contact Janis Checchia at (503) 503 947-7796 or visit: http://www.cbs.state.or.us/external/wcd/docs/wcd_facts/drs_rru.pdf

LAWS/RULES: Law: OAR 436-120: Vocational Assistance to Injured Workers

DESCRIPTION: The majority of a consultant's time is spent resolving disputes over vocational assistance eligibility and the type and extent of services. They also review and approve return-to-work plans submitted by insurers and vocational rehabilitation providers. They consult with workers and other parties regarding plans, vocational issues, and the application of statutes and rules. Consultants engage in a variety of processes to resolve disputes. They review file material and request additional information from the parties. They talk to workers, insurers, employers, trainers, medical providers, or others over the phone or in person and attempt to negotiate agreements. They review and analyze complex labor market information, visit job sites to observe requirements of particular jobs, and convene conferences for the purpose of fact-finding, mediation, or arbitration. If the parties reach agreement, the consultant will issue a formal letter of agreement—or an order of dismissal if the parties reach an agreement not covered under the vocational assistance rules. If the dispute is not resolved by agreement or dismissal, the consultant completes an investigation, weighs the evidence, renders a decision and issues a Director's Order. A Director's Order generally includes finding of facts, applicable rules and statutes, conclusions of law and a decision. The orders may be appealed to the Central Hearings Officer Panel and then to the Court of Appeals.

CONSUMER & BUSINESS SERVICES, INSURANCE DIVISION

Consumer Protection Section, Premium Audit Mediation Program

CONTACT: Ed Lanssens, Mediator, Consumer Protection Section. Phone (503) 947-7255. Also see: <http://www.cbs.state.or.us/external/wcb/index.html>.

LAWS/RULES: The Director of the Department of Consumer and Business Services prescribes by rule, the guidelines for the premium audit program system for workers' compensation insurance in the State of Oregon. The program operates under the Attorney general's model rules of procedure (March 1999 version) and confidentiality rules OAR 836-005-0500, 836-005-0510, 836-005-0520, 836-005-0530, 836-005-0540, 836-005-0550, and 836-005-0560.

DESCRIPTION: Workers' Compensation insurers are required to maintain a premium audit program, which seeks to achieve and maintain equitable premium charges to Oregon employers. The premium audit programs also functions to provide for the collection of credible statewide data for rate-making. The premium audit system includes provisions for employer education of the audit reporting function of the rating system, a continuing test audit program providing for auditing of all insurers, a continuous monitoring of the audit program system pursuant to ORS 737.235, and an appeal process pursuant to ORS 737.505 for employers to question the results of a premium audit.

The Alternative Dispute Resolution (ADR) Program was developed in 1990 and implemented in response to an overwhelming backlog of premium audit cases. Ted Kulongoski, then Director of the Department of Insurance and Finance (currently known as DCBS) recognized the need for providing an alternative method of resolving disputes outside of the administrative process available at that.

The mediation process begins when both parties return the signed and dated Agreement-To-Mediate. Every effort is made to keep the process as informal as possible. Most often mediation occurs on an "Ex parte" basis by phone. Occasionally, at the request of both parties, a more formal mediation may be scheduled for face-to-face discussion. However because the other method is very successful and cost-effective, the need for face-to-face mediations are rare.

In addition to the mediation process, the ADR Program mediator often works with petitioners to educate them and help them better understand worker's compensation premium calculation, classification system and other requirements involved in what is a very complex and often misunderstood system.

In the first year out of 237 hearing requests there were 169 requests for mediation. Since 1991 there have been more than 1,090 hearing requests, and more than 893 requests for mediation. Out of the 893 requests for mediation there have been over 727 resolutions. More currently, the ADR Program for the January 2000 through December 2000 period, showed a 95 percent resolution rate (53 resolved out of 56 hearing requests).

CONSUMER & BUSINESS SERVICES, WORKERS COMP BOARD, HEARINGS DIVISION

Mediation Program

CONTACT: Salem Hearings Division, (503) 378-3308, ext. 227, or toll-free, (877) 311-8061. See: <http://www.cbs.state.or.us/external/wcb/contents/medbro1.pdf>

DESCRIPTION: This program mediates: Mental stress cases, Complex occupational disease claims, Cases with old dates of injury that have both accepted and denied conditions, Cases that also include claims under ORS chapter 659, the Americans With Disabilities Act, and other employment-related issues, Cases with permanent total disability benefit claims, Any case the parties consider appropriate for settlement. The program is voluntary; all parties must want to mediate the dispute. If a case doesn't settle, it's put back on the docket. The ALJ who mediated the case won't preside at the hearing, and there is no communication between the mediator and the trial ALJ.

CONSUMER & BUSINESS SERVICES, WORKERS COMP BOARD

Ombudsman for Injured Workers (OIW) - Formerly Workers' Compensation Ombudsman

CONTACT: [Maria Carraher](#), Ombudsman (503) 378-3351 or 1-800-927-1271. Or visit <http://www.cbs.state.or.us/external/wco/whatwedo.html>

DESCRIPTION: The ombudsman serves as an independent advocate for injured workers. The office accepts and mediates complaints from workers about the workers' compensation system.

DISABILITIES COMMISSION

Americans With Disabilities Act Mediation Service:

CONTACT: For more information call ODC (503)378-3142 or toll free (800) 358-3117 (both of these phone numbers work for TTY users); or send an E-mail to janine.delaunay@state.or.us

LAW/RULES: ADA refers to the Americans with Disabilities Act, signed into law on July 26, 1990. The ADA makes it illegal to treat people differently because of their disability. It covers discrimination in employment, activities of state and local governments, public accommodations, transportation and telecommunications. The ADA allows parties to file a formal complaint with the U.S. Department of Justice, and it encourages alternative dispute resolution. The State of Oregon has similar laws against this kind of discrimination, and in some cases, Oregon's laws are more strict than the ADA. People with disabilities are protected by both state and federal laws.

DESCRIPTION: The Oregon Disabilities Commission received a grant from the Public Policy Dispute Resolution Program and collaboratively designed a system for providing mediation service related to the American With Disabilities Act(Titles I and II-employment and public agencies)and Oregon law on disabilities. The service will provide users with lists of ADA mediators and peer mentors, information, training, and referrals. Implementation of the Service is underway, including training, qualifying mediators and peer mentors, publicity, and administrative options.

EDUCATION, DEPARTMENT OF

Mediation Services -Office of Special Education – ODE

CONTACT: Office of Special Education, 255 Capitol Street NE Salem, OR 97310-0203
503.378.3600 or visit <http://www.ode.state.or.us/sped/spedlegal/mediation/medinfo.htm>

LAWS/RULES: The Federal Special Education Law, Individuals with Disabilities Education Act (IDEA) requires the use of mediation services for special education disputes *when a due process hearing is requested*

DESCRIPTION: The Office of Special Education (OSE) has offered mediation services to Oregon parents and school districts since 1983. A state mediation system was established in response to: (1) concerns expressed by parents and educators regarding the ineffectiveness of due process hearings and complaint investigation procedures for resolving special education disputes, and (2) recommendations from parents, educators and advocates for an alternative dispute resolution procedure.

EMPLOYMENT RELATIONS BOARD

State Conciliator and Mediators

CONTACT: Wendy L. Greenwald, State Conciliator, Phone: 503-378-6471 x 242; Robert C. Nightingale, Mediator, Phone: 503-378-6471 x240; or James A. Adams, Mediator, Phone 503-378-6471 x233. Or visit: <http://www.erb.state.or.us/conserv.htm>.

DESCRIPTION: Services Provided: Mediation of collective bargaining disputes, contract grievances, unfair labor practice complaints and State Personnel Relations Law appeals. Training or facilitation in interest-based collective bargaining/problem solving techniques and labor-management cooperation. Maintains an arbitration panel and provides arbitrator lists for contract grievances, interest arbitrations, fair dismissal hearings, and appeals of reduction/recall of teacher staff. Compiles interest and grievance arbitration awards.

The State Conciliation Service provides facilitation services to assist parties during their interest-based bargaining or problem solving process. Services provided by facilitators include assisting in setting agendas, providing facilitation and/or recording services during the entire bargaining process or a specific problem, providing facilitation and/or recording services to labor-management committees, assisting parties in staying in an interest-based process, working with facilitators within the group to improve their skills, and other needs identified by the parties.

HOUSING & COMMUNITY SERVICES

Manufactured Dwelling Park Mediation Program

CONTACT:David Sheelar, (503) 986-2017. Also see: <http://www.hcs.state.or.us/mdpo/program.html>

LAW/RULES: ORS chapters 90 and 446.

DESCRIPTION: OHCS administers the Manufactured Dwelling Park Ombudsman (MDPO) Program. The program was created by the 1989 Oregon Legislature for **three** primary purposes: 1) To assist park owners and residents in resolving concerns associated with their parks and living situations through informal dispute resolution, and to engage in activities that might lead to improvements in manufactured dwelling park relationships; 2) To provide technical assistance, information about the laws, and information about resources available that might assist in the voluntary resolution of disputes; and 3) To maintain statistics and information about manufactured dwelling parks in Oregon, including a list of manufactured dwelling park names and locations throughout the state for use by legislators and the general public.

The MDPO Program is funded by an annual assessment imposed on all owners of manufactured dwellings that are considered personal property. In Oregon, there are approximately 1,500 manufactured dwelling parks with over 63,000 manufactured dwelling spaces. The MDPO Program responds to an average of 3,000 calls per year from persons with questions or concerns about the many aspects of park living, and provides information about options that may help resolve concerns

JUSTICE, DEPARTMENT OF

Motor Vehicle Mediation Program

CONTACT: Cheryl Pellegrini, AIC Consumer Protection & Financial Fraud Section (503) 378-4620

LAWS/RULES: ORS 180.095, OAR 137-020-0705 to 137-020-713.

DESCRIPTION: Department of Justice has negotiated contracts with Community Dispute Resolution Programs in Clackamas and Jackson Counties to carry out a pilot program testing the efficiency, effectiveness, and fairness of mediating certain disputes between dealers and their customers arising from used motor vehicle transactions. Throughout the design, implementation, and evaluation of the used motor vehicle mediation pilot program, the Department shall periodically consult with dealers, consumers, mediators, and other interested persons. This program sunsets in 2001.

JUSTICE, DEPARTMENT OF

Trial Division Pilot Mediation Program

CONTACT: Tim Wood, Division Administrator, (503) 378-6313.

LAW/RULES: ORS 183.502. OAR 137-05-0300 and 137-050-0310.

DESCRIPTION: ADR program initiated in 1997 pursuant to ORS 183.502. To date this program has:

- Developed rules and procedures establishing a collaborative dispute resolution pilot program in the Trial and Civil Enforcement Divisions.
- Established a process for screening civil cases to determine if the use of ADR is appropriate.
- Convened a steering committee to oversee program development.
- Developed and implemented a protocol for evaluating the efficiency and effectiveness of cases resolved through collaborative processes.
- Increased the use of collaborative and alternative dispute resolution processes.
- Evaluated training needs and provided ADR training for Trial Division attorneys.

HUMAN SERVICES, DEPARTMENT OF- SERVICES TO CHILDREN AND FAMILIES

Legal Assistance Mediation (post-adoptive communications) Program:

CONTACT: SCF Legal Assistance Specialists. Heather Mowry (503) 947-5168

DESCRIPTION: Services to Children and Families (SCF) of DHS expanded this Program statewide to serve children, birth parents, and adoptive parents interested in open adoption. Mediators assist the parties in creating post-adoption communication agreements. SCF created master contracts with mediators to improve efficient administration.

HUMAN SERVICES, DEPARTMENT OF - SERVICES TO CHILDREN AND FAMILIES

General Child Welfare Mediation (Voluntary)

CONTACT: Sharon Bolen at (503) 945-5848.

DESCRIPTION: This service provides confidential dispute resolution for issues related to case planning, family, visitation, relationship building and services. The purpose of this program is to help children maintain relationships with caregivers, prevent disruption in families, assist in developing long-term plans for children, and developing written plans for visitation and contact. A master contract allows branches to easily obtain mediator services.

HUMAN SERVICES, DEPARTMENT OF- SERVICES TO CHILDREN AND FAMILIES

JCIP - Juvenile Dependency Mediation (Mandatory)

CONTACT: Erin Ruff (503) 986-5583 or contact your local court for more information.

DESCRIPTION: SCF is in partnership with the Oregon Judicial Department to establish a court annexed dependency mediation program. Pilot projects are being implemented in Umatilla, Baker, Wallowa, Union, Jackson, Lincoln and Marion Counties. This program is not available after SCF files a petition for termination of parental rights.

LAND CONSERVATION AND DEVELOPMENT, DEPARTMENT OF

Land Use Board of Appeals Mediation

CONTACT: Information on independent mediation can be obtained from Dale Blanton, Public Policy Dispute Resolution Program, (503) 373-0050, Ext. 246 or via email at dale.blanton@state.or.us.

DESCRIPTION: All parties to a LUBA appeal may at any time stipulate that the appeal proceeding be stayed to allow the parties to enter into mediation. Mediation can often be an efficient and cost effective means of resolving the conflicts giving rise to an appeal.

LAW/RULES: ORS 197.860

PUBLIC UTILITIES COMMISSION

Consumer Complaints Section

CONTACT: The Oregon Public Utility Commission's Consumer Services Division at 1-800-522-2404. If you are hearing- or speech-impaired and have a TDD, the toll-free number is 1-800-553-9600. The address of the OPUC Consumer Services Office is: 550 Capitol St. N.E. Suite 215, Salem, OR 97301-2551.

DESCRIPTION Staff respond to consumer complaints regarding regulated utilities. If a consumer can not work out a problem with a utility they may call one of the PUC toll-free numbers, leave their name and phone number and a consumer analyst from the OPUC Consumer Services Office will make an effort to resolve the dispute between you and the utility company.

PUBLIC UTILITIES COMMISSION

Hearings Section, Mediation

CONTACT: Tom Barkin, Administrator, Hearings Division, (503) 378-6681.

DESCRIPTION: If a consumer is not happy with the answer they receive from PUC Consumer Complaints section they may file a formal complaint with the Commission. Within 15 days, the utility must answer the complaint and state its side of the dispute. A hearing is then set and a final determination will be made by the Commission based on a recommendation by a hearings officer. Mediation is available as an alternative to a contested case hearing, if both sides agree.

TRANSPORTATION, DEPARTMENT OF (ODOT)

Right of Way Section, Mediation Program

CONTACT: Cynthia M Fraser, ODOT, Portland, (503) 731-8442

DESCRIPTION: The program is designed to resolve disputes involving property owners when an impasse is reached in negotiations relate to the acquisition of property by Eminent Domain. The program uses private mediators who's fees are split between ODOT and the property owner (unless the parties agree on another arrangement.) In 2000 the program managed 50 to 70 cases, approximately 20 of which were completed. (95% of the cases that were concluded resulted in an agreement between the parties.)

TRANSPORTATION, DEPARTMENT OF (ODOT)

Access Management

CONTACT: Margaret Weil, ODOT, Salem (503) 986-3438. Also see www.odot.state.or.us/tdb/planning/access_mgt/amac/addrescs.doc

DESCRIPTION: The Oregon Transportation Commission adopted the proposed rules on February 9, 2000. The rule's appeal procedure establishes a collaborative discussion process. This process encourages ODOT to used ADR procedures in advance of any hearings officer proceeding. (Note: Policy Consensus Institute has produced a 15 minutes video describing the highlights of the case which is available through ODOT's ADR Coordinator.)

WATER RESOURCES DEPT.

Klamath Basin Alternative Dispute Resolution and ADR Generally

CONTACT: Adam Sussman. Manager, Enforcement and Water Rights Transfers, (503). Also see <http://www.wrd.state.or.us/programs/klamath/index.shtml>

LAWS/RULES:

DESCRIPTION: The Oregon Water Resources Department is charged with administering an adjudication on behalf of the state Circuit Court. Through the KBA/ADR, Oregon offers an option whereby the major water users, tribes, federal agencies, other governments, interest groups and citizens can not only work together to quantify and recognize historic use rights, but also collaborate on strategies that will help restore the watershed, ensure long-term sustainability and address future supply needs. The expected outcome is a negotiated agreement among these participants, which will settle the water rights and offer long-term guidance for watershed management.

In addition to the Klamath Adjudication the Department has also created a new staff position in order to make greater use of informal dispute resolution procedures. These procedures would be an alternative to a contested case hearing. This is an informal program which uses facilitation, negotiation or, in some cases, a private mediator to assist disputing parties.

Agency ADR Training

Appendix E

Conducted during the 1999 - 2001 Biennium

Date	Description	Provider	Agencies
11/2/2000	ADR in Complex Public Policy Disputes - 4 hour CLE for AAG's. 45 attendees.	Niemeyer, Peter Adler, Chris Carlson	DOJ & client agencies
10/27/2000	ADA Mediation: Training of peer mentors for participants in ADA mediations	Hartley	ODC
10/04/2000	Oregon Planning Institute Workshop	Blanton, Brody, Hartley	DLCD LUBA
09/26/2000	Advanced Negotiation Training: for managers, field staff, officers	Hartley	SDSD
9/19/2000	ADR orientation for DAS RMD Annual Retreat	Susan Marshall	DAS RMD
08/31/2000	ADA Mediation: Mediator training postponed until January, research videotaping	Hartley	ODC, 150
8/25/2000	ADR Theory and Skills for Child Support Agents. (on four dates , 8/25/00, 8/26/00, 11/2/00 and 11/2/00. 6 hrs each session)	Niemeyer, Fogarty, Shankle, Towsend, et al.	DOJ - DCS
8/22/2000	ADR Essentials - 1.5 hour CLE for AAG's.	Niemeyer, Veranth	DOJ
08/17/2000	Legislative Outreach/Training	Blanton, Erbes	PPP 124
07/26/2000	Training and Workshop. Team building and casework related to Hydro Program.	Hartley	ODFW WRD OPRD DEQ PUC
06/30/2000	Worker training: Linn Project: planned & provided trainings (7/19, 8/19)	Hartley	SCF
6/20/2000	ADR Barriers for Tax Magistrates - 2 hours	Mike Niemeyer	Tax Magistrates
6/7/2000	ADR Update - DOJ Education Section - 1 hour Training for AAG's	Mike Niemeyer	DOJ
6/7/2000	ADR Update - DOJ Government Services Section - 1 hour Training for AAG's	Mike Niemeyer	DOJ
6/5/2000	ADR Update - DOJ Business Activities Section - 1 hour Training, AAG's	Mike Niemeyer	DOJ
06/01/2000	Training for investigators for developing compliance agreements.	Tarnow	DCBS Building Codes
05/31/2000	Advanced Negotiation for DSU unit - increase use of collaborative negotiations	Hartley	OMAP
05/31/2000	Advanced negotiation training: trained legislative. Liaison - negotiation skills	Hartley	HD
5/18/2000	ADR Update - DOJ Tax & Finance Section - 1 hour Training for AAG's	Mike Niemeyer	DOJ
05/09/2000	Healthy Start Conf: trainer re: DR and relationships	Hartley	OCCF
4/29/2000	ADR Barriers in State Government - 1.5 hours	Niemeyer, Barrett, Carlson	NW ADR Conference
04/06/2000	LCCF Chairs & Directors Training: systems planning	Hartley	OCCF
03/31/2000	LAM training: planning - mediator development to support LAM	Hartley	SCF
02/12/2000	Training/Workshop - Provided Training on Collaborative approaches and mediation for citizens and government officials involved in planning. Fairview/Gresham area.	Hartley	PPP 124 DLCD 135
02/03/2000	Policy & Program Staff Training: collaboration and dispute systems design	Hartley	OCCF
12/22/99	Staff training: conference with directors - Train staff in facilitating county-based comprehensive planning and dispute resolution	Hartley	OCCF
12/10/1999	Training Hearings Officers on identifying ADR cases	Tarnow	Hearings Office
12/09/1999	Public Law Conference panel on Complex Public Policy Disputes	Blanton, Niemeyer	PPP
12/08/99	Public Law Cf: presentation - Dispute Systems design	Hartley/ Niemeyer	State Managers
12/01/1999	Conflict mgmt for contracts managers as part of certification class	Tarnow	DAS TPPS
11/13/1999	Panel on use of Collaborative Approaches.	Blanton	League of Oregon Cities
11/8/1999	Public Law Conference - Complex Public Policy Disputes - 1.5 hrs (offered 3	Jeff Wahl, Mike	Agency

Date	Description	Provider	Agencies
	times Nov and Dec. of 1999)	Niemeyer, Dale Blanton, Pete DeLuca	managers & staff
11/8/1999	Public Law Conference - Designing Dispute Resolution Systems - 1.5 hrs (offered 3 times Nov and Dec. of 1999)	Karen Hartley, Mike Niemeyer,	Agency managers & staff
11/8/1999	Public Law Conference - Effectively Negotiating your interests in a Facilitated Process - 1.5 hrs (offered 3 times Nov and Dec. of 1999)	Richard Birke	Agency managers & staff
11/8/1999	Public Law Conference - Public Participation Processes - 1.5 hrs (offered 3 times Nov and Dec. of 1999)	Teya Penniman, Jeanne Lawson, Jamie Damon	Agency managers & staff
11/6/1999	OMA Conference - Dispute Systems Design	Mike Niemeyer, Karen Hartley	Oregon Mediation Association
11/6/1999	OMA Conference - ADR in Consumer disputes	Pete Shephard, Mike Niemeyer	Oregon Mediation Association
11/06/1999	Presented at OMA - Assisting CDRCs to effectively assess and manage public policy disputes	Tarnow	OMA Conference
10/31/99	EDT: training #2: month-long communications and review materials	Hartley	DO
10/21/1999	Collaborative Decision-making Model and possible training		CST Agencies
10/07/99	CPT conf: preparation before and debrief after training	Hartley	DO
10/07/1999	PRIMA Keynote address- Raising awareness about benefits of collaborative decision-making for risk management issues	Mark Gerzon	PNW Risk Managers
10/01/99	Leaders Training: closed case	Hartley	AFS
09/15/1999	Outreach and Training for division staff. Public Policy Mediation Skill Development	Blanton	DLCD Urban Division
09/14/1999	Effective dispute resolution systems - Intro to system design and how to identify where improvements might be needed	Tarnow	Small Agency Heads Meeting
09/08/1999	Managing Y2K disputes using ADR	Tarnow	Y2K Statewide Interest Group
08/26/1999	Discuss Mediation/Collaboration session with Arnold Cogan as part of APA National.	Blanton, Cogan	APA
08/04/1999	Specialist Training: gave training to approx. 30 specialists -program support specialists (PSS),and managers who attempt to resolve complaints prior to hearings.	Hartley	AFS
07/22/1999	"Definition of Public Policy Mediation."	Bellman	PPP
06/05/1999	Co-presenting training for transit officials on using ADR - Presented 3 hour mini training on ADR for ADA/paratransit disputes.	Tarnow K. McCarty	Transit Officials
05/21/1999	Training "Introduction to Dispute Resolution"	Blanton	CIAC
05/19/1999	Assisting OLCC to mediate tavern-related neighborhood livability issues by providing training related to the integration of public policy and community programs (ODRC); dispute resolution assistance Lynne Cox provided second of two day-long trainings for OLCC investigators on facilitating contentious meetings.	Cox	OLCC and CDRCs
05/18/1999	Training for Agency Staff - Skill Development	Blanton	DLCD
05/03/1999	EDT Training: meetings with team and with Hoar.	Hartley	DHR
04/28/1999	Provided collaborative skill training for the Mid Willamette Valley Field Team	Weil	Mid Willamette

Date	Description	Provider	Agencies
			Valley CST
04/26/1999	Principles of Public Contracting Class- 30 minute presentation on conflict management at class for purchasers and contract managers	Tarnow	DAS TPPS
01/19/1999	Write and Present a Paper for the Oregon Law Institute Seminar	Blanton	Oregon Law Institute
12/09/1998	Training for Oregon Water Congress	Blanton/Hallmark	PPC
10/13/1998	ADA Conference - Trng in ADA issues	Hartley	Disabil Comm
06/25/1998	ADR Training for Leadership Oregon	Blanton	State Agencies
02/30/2000	PSS training (2): planning Program support specialist development	Hartley	AFS
	Train managers to improve their collaborative skills at CPT Staff Conference	Hartley	DHR
	Provide advanced training for EDT, who train DHS employees in teamwork and dispute resolution	Hartley	DHR
	Give DR lecture at Willamette University	Hartley	DHR
	Outreach to the University's students and faculty to promote understanding and support of ADR in government	Hartley	DHR PPDRP

Appendix F

State Agency Adoption of Mediation Confidentiality Rules Pursuant to ORS 36.224 as of 12/26/2000

Agency	OAR	Caption	Temp Effective Date	Perm Effective Date
Board of Dentistry	818-001-0025	Confidentiality and Inadmissibility of Mediation Communications		
Board of Medical Examiners	847-006-0000	Confidentiality and Inadmissibility of Mediation Communications	1/26/99 to 7/16/99	4/22/99
Board of Psychologist Examiners	858-020-0205	Confidentiality and Inadmissibility of Mediation Communications		7/6/99
Bureau of Labor and Industries	839-051-0010	Confidentiality and Inadmissibility of Mediation Communications	10/6/98 to 3/27/99	12/17/98
Bureau of Labor and Industries	859-051-0020	Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications		12/17/98
Construction Contractors Board	812-001-0040	Confidentiality and Inadmissibility of Mediation Communications		4/1/99
Construction Contractors Board	812-001-0050	Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications		4/1/99
DAS	125-140-0000	Confidentiality and Inadmissibility of Mediation Communications	8/18/98 to 2/13/99	
DAS	125-140-0010	Confidentiality and Inadmissibility of Mediation Communications		5/1/99
DAS	125-140-0020	Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications		5/26/99
Department of Consumer and Business Services	440-055-0010	Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications		
Department of Consumer and Business Services	836-005-0500 to 836-005-0560	Exemption from Disclosure under ORS 192.410... Scope of Mediation Confidentiality rules... Broad Confidentiality for Specified mediations....		11/7/98
Department of Environmental Quality	340-011-0003	Confidentiality and Inadmissibility of Mediation Communications		
Department of Environmental Quality	340-011-0004	Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications		
Department of Transportation	731-001-0100-731001-0160	Mediation of Highway Construction Claims		8/20/98
Department of Transportation	731-001-0170-731-001-0250	Environmental Remediation		8/21/98
Department of Transportation	731-001-0260-731-001-0340	Mediation of Right-of-Way Disputes		8/22/98
Department of Transportation	731-001-0350-731-001-0710	Mediation of Pre-litigation Contract Disputes, Torts, Disputes Involving Collective Bargaining Agreements		8/23/98
DHR - Department	410-006-0011	Confidentiality and Inadmissibility of Mediation Communications		3/1/99
DHR - Department	410-006-0021	Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications		3/1/99

Agency	OAR	Caption	Temp Effective Date	Perm Effective Date
DHR - Mental Health and Disability Services	309-012-0300	Confidentiality and Inadmissibility of Mediation Communications		Repealed 3/1/99
DHR - Mental Health and Disability Services	309-012-0310	Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications		Repealed 3/1/99
DHR - State Office for Services to Children and Families	413-010-0150	Confidentiality and Inadmissibility of Mediation Communications	11/9/98 to 5/8/99	Repealed 3/1/99
Disabilities Commission	405-001-0010	Confidentiality and Inadmissibility of Mediation Communications		
Disabilities Commission	405-001-0015	Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications		
DLCD- Department of Land Conservation and Development	660-001-0400	Confidentiality and Inadmissibility of Mediation Communications		12/11/98
DLCD- Department of Land Conservation and Development	660-001-0410	Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications		12/11/98
DOJ - Department of Justice	137-008-0100	Confidentiality and Inadmissibility of Mediation Communications	8/12/98 to 12/12/98	
DOJ - Department of Justice	137-008-0100	Confidentiality and Inadmissibility of Mediation Communications		12/1/98
Employment Department	471-008-0000	Confidentiality and Inadmissibility of Mediation Communications		5/5/99
Employment Relations Board	115-040-0040	Exemption from Disclosure under ORS 192.410 to 192.505 and Inadmissibility of Mediation Communications Pursuant to ORS 40.190 (OEC Rule 408)	5/1/98 to 10/27/98	10/27/98
Employment Relations Board	115-040-0041	Applicability of Mediator Disclosure Rules	5/1/98 to 10/27/98	10/27/98
Employment Relations Board	115-040-0042	Mediator May Not Disclose Mediation Communications in Subsequent Proceedings	5/1/98 to 10/27/98	10/27/98
Employment Relations Board	115-040-0043	Mediator May Disclose Certain Mediation Communications	5/1/98 to 10/27/98	10/27/98
Employment Relations Board	115-040-0044	Notice of Disclosure of Mediation Communications	5/1/98 to 10/27/98	10/27/98
Energy Facility Siting Council	345-015-0500	Confidentiality and Inadmissibility of Mediation Communications		4/14/99
Landscape Contractors Board	808-001-0050	Confidentiality and Inadmissibility of Mediation Communications		5/4/99
Landscape Contractors Board	808-001-0060	Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications		5/4/99
ODRC-Dispute Resolution Commission	718-060-0000	Confidentiality and Inadmissibility of Mediation Communications		8/3/99
ODRC-Dispute Resolution	718-060-0010	Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications		8/3/99

Agency	OAR	Caption	Temp Effective Date	Perm Effective Date
Commission				
Oregon Youth Authority	416-700-0100	Confidentiality and Inadmissibility of Mediation Communications	12/13/98	
Public Employees Retirement	459-060-0200	Confidentiality and Inadmissibility of Mediation Communications		
Public Employees Retirement	459-060-0210	Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications		
State Library	543-001-0010	Confidentiality and Inadmissibility of Mediation Communications	2/22/99 to 8/1/99	6/21/99
Treasury	170-001-0020	Confidentiality and Inadmissibility of Mediation Communications	8/13/98 to 12/13/98	12/14/98
Water Resources Department	690-004-0010	Confidentiality and Inadmissibility of Mediation Communications	5/11/98 to 11/6/98	3/23/99
Water Resources Department	690-004-0030	Exemption from Disclosure under ORS192.410 to 192.505 and Inadmissibility of Mediation Communications Pursuant to ORS 40.190 (OEC Rule 408)		3/23/99
Water Resources Department	690-004-0020	Applicability of Rules and Inadmissibility of Certain Mediation Communications in Large, Multi-Party Mediation	5/11/98 to 11/6/98	11/2/98
Oregon Department of Education	581-001-0110	Confidentiality and inadmissibility of Workplace Interpersonal Dispute Mediation Communications		
Oregon Department of Education	581-001-0115	Confidentiality and Inadmissibility of Mediation Communications		
Board of Psychologist Examiners	858-020-0200	Confidentiality and Inadmissibility of Mediation Communications		

EXECUTIVE ORDER NO. - 00-09

INTEGRATING DISPUTE RESOLUTION INTO STATE GOVERNMENT

WHEREAS, this Administration is committed to ensuring that state agencies utilize the most efficient and effective means of resolving disputes in fulfilling the mission of state government; and

WHEREAS, to be effective in addressing the wide array of issues they face, agencies need to employ a variety of strategies and problem solving tools; and

WHEREAS, alternative dispute resolution (ADR) methods offer an opportunity to resolve disputes in a collaborative manner; and

WHEREAS, ADR has proven to be successful in resolving and preventing public and private conflicts throughout the State of Oregon as well as globally; and

WHEREAS, the appropriate use of ADR by state agencies and the state's partners will improve the provision of public services by providing for broad input on, and creative resolutions to, complex public policy disputes; and

WHEREAS, the Oregon Dispute Resolution Commission, the Department of Justice, and the Department of Administrative Services have statutory roles in assisting agencies with ADR and are required by ORS 183.502 to collaborate in assisting state agencies to increase the use of alternative dispute resolution to resolve disputes involving the State of Oregon and a dispute resolution steering committee was created by executive order 96-32;

IT IS HEREBY ORDERED AND DIRECTED:

Each state agency shall:

- review its processes for managing conflicts and controversies and take steps to ensure that its dispute resolution and conflict management processes are efficient and effective;
- determine whether those systems could be improved through the use of facilitation, mediation, collaborative rulemaking, and other alternative dispute resolution processes, and;
- take necessary steps to implement those improvements.

1. The Director of each Executive Department or Agency, with 50 FTE employees or more, shall designate an Agency Alternative Dispute Resolution Coordinator (Agency ADR Coordinator). The Agency ADR Coordinator shall work with the Dispute Resolution Steering Committee and the Public Policy Dispute Resolution Cluster Coordinators to encourage and facilitate the appropriate use of ADR within their agency and shall report with respect to such activities to the director of that department or agency.
2. The Agency ADR Coordinator of each Executive Department or agency shall participate in an ADR orientation and training conducted by the Oregon Dispute Resolution Commission and the Department of Justice **no later** than June 30, 2001.

3. The Agency ADR Coordinator shall be responsible for:
- A. Acquiring and maintaining general knowledge of ADR processes, and the dispute resolution processes employed by their agency,
 - B. Determining where and how ADR might be applied in their or agency to increase agency efficiency, decrease the costs of resolving disputes and increase public and agency satisfaction with the process and results of agency dispute resolution activities, and
 - C. Coordinating their activities with their assigned Cluster Coordinators and with the other Agency ADR Coordinators within their cluster of agencies.
 - D. Submitting to the Governor by September 2001, an Agency ADR Needs Assessment, which shall include:
 - 1) a description of agency activities in which significant resources are used to resolve or manage disputes or controversies.
 - 2) a summary or description of the rules, policies and procedures that the agency employs, or plans to employ, to ensure that ADR is an available and effective dispute resolution option.
 - 3) a description of the process, or a proposal to develop a process, for determining which disputes or controversies could benefit from the use of ADR.
 - 4) an assessment of how well the significant dispute resolution and conflict management processes within the agency are functioning as a system.
 - 5) an assessment of ADR training needs and a strategy for meeting those needs.
 - 6) a identification of where, within the individual agency budget, funding is available to adequately meet agency ADR Plan objectives.
 - E. Submitting to the Governor, beginning on September 1, 2001, an Annual Agency ADR Report which shall include information for the previous fiscal year on:
 - 1) agency utilization of ADR,
 - 2) the effectiveness of agency ADR processes,
 - 3) ADR Training received by agency employees,
 - 4) the implementation of any new ADR programs or projects,
 - 5) the status of any activities or actions proposed in the Agency ADR Plan, and,
 - 6) the goals for improving their ADR Programs in the next fiscal year.

- F. Working with the Dispute Resolution Steering Committee to ensure consistency of Agency ADR Plans and Agency Annual Reports. The cluster coordinators will be available for consultation and technical assistance in the development of these plans and reports.
4. The Governor, in consultation with the Oregon Dispute Resolution Commission and the Department of Justice, shall present an annual "Oregon Dispute Resolution Award" to recognize and honor an individual or agency within Oregon government who has performed outstanding service in the promotion or use of alternative dispute resolution in Oregon.
5. The Director of each Executive Department or Agency shall ensure that his/her department or agency has adopted those Attorney General Model Rules of Procedure under the Administrative Procedures Act and Attorney General's Model Confidentiality Administrative Rules that the department or agency has determined are appropriate for the agency's effective use of ADR.

Done before me at Salem, Oregon on this 26th day of July 2000

John A. Kitzhaber
GOVERNOR

Bill Bradbury
SECRETARY OF STATE