



... dedicated to bringing you current items of interest on EEO, Diversity, and Alternative Dispute Resolution

September 2008

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## *Director's welcome*

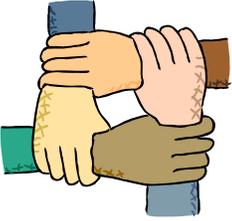
Greetings!

As the Region's Deputy EEO Officer, I am pleased to announce the first in what we hope will be a continuing effort to inform, educate and enlighten personnelists, managers and supervisors on the intricacies of Equal Employment Opportunity. Our desire is to provide a mechanism to share with you recent case law, regulatory guidance and "common sense" approaches to what can, at times, be a very daunting area of personnel management. This, our inaugural issue, concentrates on the basics - what is EEO, why is Alternative Dispute Resolution such a compelling alternative to traditional methods of dispute resolution and who can I call if I have a question or concern involving an EEO issue. Our hope is that this newsletter will become a means of sharing knowledge and experience - we solicit your input and questions. Though many of us on staff have years of experience in this field, we are always open to new ideas and unique strategies. Our Navy is best served by a workforce that reflects our Nation's diversity - join with us to ensure equality, fairness and that an appreciation for differences is valued and foundational to our way of doing business. Our Navy deserves nothing less!



*Food for thought.....  
Prejudice, not being founded on reason, cannot  
be removed by argument—  
Samuel Johnson*

## EEO and Diversity



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*If we are to achieve a richer culture, rich in contrasting values, we must recognize the whole gamut of human potentialities, and so weave a less arbitrary social fabric, one in which each diverse human gift will find a fitting place*

*Margaret Mead*

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### **EEO: Is it really all that complicated? Here is a little synopsis:**

*The laws and regulations: Title 29, Code of Federal Regulations, Section 1614.101; Title VII of the Civil Rights Act; Age Discrimination in Employment Act (ADEA); Equal Pay Act (29 USC 206(d)) and Rehabilitation Act.*

In a nutshell, the U.S. Government provides equal opportunity in employment for all persons, and makes it illegal to engage in discriminatory employment practices based on the following protected categories: **race, color, religion, sex, national origin, age or disability**. The law goes on to protect from retaliation any person who participates in the complaint process under these regulations. Essentially, with civil service, every manager, supervisor, employee and even an applicant for employment, is protected from discrimination under the law. They are also entitled to work in an environment that is free from sexual as well as non-sexual harassment.

### **What is Diversity?**

Whereas EEO is about discrimination based on protected categories, diversity is about inclusion of all persons. It's the concept of recognizing the uniqueness of all individuals and embracing a wide range of cultures, backgrounds and experiences. Navy recognizes the diversity within our nation and rightfully concludes that the Navy workforce must reflect that diversity.

**What is Diversity Management?** Creating and maintaining a work environment that provides the opportunity for every employee to maximize their potential and fully contribute to the DON mission. Good diversity management leverages the resources of DON to fully utilize all personnel while appreciating similarities and understanding our differences. Diversity Management is necessary for survival in a highly competitive employment arena. It attracts top candidates, can increase retention rates (lower recruiting costs; lower training costs) and—it improves customer service!

*Next Issue: "Communicating Across Cultures"*

## Recent EEO Case Law

The complainant requested unstructured flexi-place. Her reasonable accommodation request was denied by the Agency because her medical evidence did not specifically address a need to work from home. The EEOC agreed with the Agency and found that the submitted medical evidence did not address the requested accommodation and showed, rather, that the employee could and did perform her job successfully. **Cook v. Environmental Protection Agency, Appeal # 0120070877, EEOC OFO 4/3/08.**



## Alternative Dispute Resolution- What is it?

Alternative Dispute Resolution (ADR) is an approach toward resolving disputes in a way that is an “alternative” to established and traditional complaint processes. Administrative complaint processes are protracted in nature and are toxic to the workforce. The conflict continues to grow before a decision is made on the merits. Early dispute resolution allows the parties to engage in a confidential session early on, before positions become more polarized. The Navy’s preferred ADR method is facilitative, interest-based mediation, led by a trained neutral. Whether you have an EEO complaint, grievance, conflict between individuals or a group of employees, ADR may be the key to early, effective resolution. The neutral party can help the participants generate a shared resolution to the situation. The key is forward--focus...though the past is important, ADR methods are designed to center the parties’ attention on future relationships.

**Does ADR REALLY work? The answer is: Yes!** Ghandi once said that you cannot shake hands with a closed fist. Nowhere is that statement more meaningful than in CNRSW’s ADR program. The program has been a hit since its inception: In 2001, just two years after the program began, a complaint sent through ADR took 46 days to resolve, and if at the informal level, 26 days, without costly litigation. Its success is in the record: The FY 07 resolution rate for CNRSW’s program was 80%. The FY08 resolution rate as of 31 March 2008 stands at 87%--a testament to this gifted cadre of mediators. They have conquered the challenge of working with disputing parties and achieving realistic resolutions. Navy mediators undergo intensive training to achieve Navy mediator certification. From many professions in Navy, the mediators manage to accommodate these extra requirements. This would be impossible without the support of their managers and supervisors. The ADR program takes commitment at all levels to work and this group of people and their management officials have risen to the challenge.

Margaret Mead said “Never doubt that a small group of thoughtful committed people can change the world...” Indeed, this group has already begun...

## ADR CASE LAW

### **Sacramone v. Postmaster General, United States Postal Service, EEOC No. 01A52251 (February 16, 2006)**

An employee filed an EEO claim alleging that an agency official made insulting remarks to her during the mediation of her complaint. The claim was dismissed by the agency and the decision upheld by the EEOC. Settlement negotiations, including statements made, must be treated as confidential and privileged to assure a candid interchange to settle disputes informally. To allow the complainant to file a new complaint regarding comments by an agency representative in settlement negotiations of a previously filed EEO complaint would defeat this purpose.

### **England v. Commissioner, Social Security Administration, EEOC No. 01A62265 (August 31, 2006)**

Settlement agreements are binding contracts. In this case, an employee filed an EEO complaint alleging breach of a settlement agreement which involved assisting the employee with an individual development plan to address her goals of being able to compete for a position. The employee claimed the settlement agreement was violated when the agency denied training that was discussed and requested in conjunction with the individual development plan. The EEOC found that since the settlement agreement was plain and unambiguous on its face, its meaning must be determined only from what is actually on the document. The settlement agreement stated that a plan would be developed and that individual development plan was clearly drafted.

*Windows of opportunity exist for only a brief moment in time, you have to have vision in order to spot them, and take advantage of them.*

*John Sculley*



**An ounce of Mediation is worth 100 pounds of Litigation!**

## Navy Mediators Honored at Recognition Ceremony

On 1 May 08, Rear Admiral L. R. Hering, Commander, Navy Region Southwest (CNRSW), presented members of the CNRSW Alternative Dispute Resolution (ADR) Mediator Cadre with recognition awards. The ceremony recognized 18 mediators for their professionalism and dedication to serve. Admiral Hering also presented awards to CNRSW executive management for supporting and promoting the use of ADR within their Commands.

"This ceremony is our way of honoring a dedicated group of people whose work is directly tied to mission accomplishment," said Mahealani Tolbert, Deputy Equal Employment Officer (EEO).

Established in 1999, the CNRSW mediation program focuses primarily on resolving conflicts that range from EEO complaints to grievances, and any other types of workplace disputes that have the possibility of being settled outside of litigation. Early resolution of these disputes equates to substantial dollar savings as well as promotion of a healthy workforce environment.

In mediation, a mediator helps the parties resolve their own dispute in a manner that is acceptable to both of them. The mediator's role is to help each party focus on their individual interests and goals in order to seek an agreement that meets the needs of everyone. In a facilitative style, the mediator concentrates on getting the parties to communicate with each other in order to come up with their own solutions in a collaborative manner. The mediators attend regular and frequent training to hone their skills and techniques.

While the Navy ADR program has a national goal of a 70 percent resolution rate, CNRSW currently averages 87 percent resolution due to this talented group of people and their supporters. "The ADR team works to raise awareness of the program and actively encourages both managers and employees to utilize ADR in resolving disputes," said Connie Ferris, Program Manager. "I believe this is some of the most important work being done in Navy today. It greatly mitigates the costs associated with disputes that would otherwise escalate into litigation."

For more information on the programs offered by ADR, please contact Connie Ferris, Dispute Resolution Center, Human Resources Office (619) 532-3530.

## DIVERSITY EVENTS

### Hispanic Heritage Month

15 September -15 October 2008

### National Disability Awareness Month

October 2008

### National American Indian Heritage Month

November 2008

## Upcoming EEO Training

### Model EEO Program:

23 & 25 Sept 2008



CNRSW Mediator Cadre



Rear Admiral Hering accepts ADR CNRSW Recognition Award presented from Rick Hipple, DON ADR associate counsel

## Points of contact

### Servicing PMA/HRO

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#### Deputy EEO Officer

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#### Complaints Management

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#### Reasonable Accommodation

Mary Berube 532-1047

#### Alternative Dispute Resolution

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#### Model EEO Program

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#### Investigations

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