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"Over 79 Years of Ensuring Quality Podiatric Medicine For The Citizens Of Texas"

HEMANT MAKAN
EXECUTIVE DIRECTOR

PROCEDURES FOR:

ALTERNATIVE DISPUTE RESOLUTION

&

NEGOTIATED RULEMAKING

[Effective December 4, 2006]

PURPOSE

The Sunset Advisory Commission, during the 79th Legislative Session (2005), required that the Texas State Board of Podiatric Medical Examiners (TSBPME) implement a "Negotiated Rulemaking and Alternative Dispute Resolution Procedures" policy.

Texas Occupations Code §202.163 "NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES" provides that: "(a) The Board shall develop and implement a policy to encourage the use of: (1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of Board rules; and (2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the Board's jurisdiction. (b) The Board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies. (c) The Board shall designate a trained person to: (1) coordinate the implementation of the policy adopted under Subsection (a); (2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and (3) collect data concerning the effectiveness of those procedures, as implemented by the Board." [Added by Acts 2005, 79th Leg., ch. 26, § 11, eff. Sept. 1, 2005.]

MISSION

The purpose of the TSBPME is to protect the health, safety and welfare of the citizens of the State of Texas through regulation of Podiatric Physicians licensed by the Board and investigation of complaints against Podiatric Physicians and persons practicing Podiatric Medicine without a Texas license. It is our goal to ensure that Texas consumers are effectively and efficiently served by high quality professionals and businesses by setting clean standards and maintaining compliance.

POLICY

It is the policy of the Texas State Board of Podiatric Medical Examiners to encourage the use of "Alternative Dispute Resolution" or "Negotiated Rulemaking" where appropriate consistent with provisions found within Texas Government Code Chapter 551, 552, 2001, 2008 and 2009.

The Board will ensure that any "Alternative Dispute Resolution" or "Negotiated Rulemaking" resolution undertaken on behalf of the Board or its Committees will be conducted in accordance with applicable Texas laws and rules, and upon direction of the Board's Legal Counsel at the Office of the Attorney General (with additional reference to the "Administrative Law Handbook" published by the Administrative Law Division at the Office of the Attorney General).

The Board's Executive Director is the designated trained person required to: (1) Coordinate the implementation of this policy adopted under TOC §202.163(a); (2) Serve as a resource for any training needed to implement the procedures for "Negotiated Rulemaking" or "Alternative Dispute Resolution;" and to (3) Collect data concerning the effectiveness of these procedures, as implemented by the Board.

Alternative Dispute Resolution

Board Rules Chapter 376 "Violations & Penalties," Chapter 377 "Procedures Governing Grievances, Hearings & Appeals" and Chapter 390 "Procedures for the Negotiation and Mediation of Certain Breach of Contract Claims Asserted by Contractors Against the State of Texas" provide for dispute resolution through the State Office of Administrative Hearings (SOAH) for contested cases (complaint investigations) and contract disputes.

Since at least 2004, the Board has been a part of round-table meetings/discussions/training regarding Mediation/Alternative Dispute Resolution at the Center for Public Policy Dispute Resolution at the University of Texas School of Law.

In its office, the Board maintains Training & Guideline Manuals published by the Center for Public Policy Dispute Resolution at the University of Texas School of Law for reference and guidance, with primary lawful direction provided by the Board's Legal Counsel at the Office of the Attorney General (with additional reference to the "Administrative Law Handbook" published by the Administrative Law Division at the Office of the Attorney General).

In addition, the Board adopts by reference the model "Guidelines for the Use of Alternative Dispute Resolution by Texas State Agencies" published by the State Office of Administrative Hearings (http://www.soah.state.tx.us/AboutUs/ADR/model_guidelines.htm).

Negotiated Rulemaking

Texas Occupations Code §202.151 "General Rulemaking Authority" provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the laws regulating the practice of podiatry.

All Board proposed rules are published accordingly in the Texas Register (<http://www.sos.state.tx.us/texreg/index.shtml>) thus allowing for "Public Comment" pursuant to Texas Government Code §2001.029. State agencies are directed to review their administrative rules by the Government Code, §2001.039, added by Acts, 1999, 76th Legislature, Chapter 1499, Art. 1, Section 1.11. Included in the Texas Register are notices of *plan to review*. Notices of *intention to review*, which invite public comment on specified rules and notices of *re-adoption*, which summarize public comment to specified rules, are published as they are filed in the Rules Review section in each issue of the *Texas Register*.

INQUIRIES

Inquiries regarding the content of this policy should be directed to Hemant Makan, Executive Director, at (512)-475-3301 or by e-mail at Hemant.Makan@foot.state.tx.us.

Hemant Makan; Executive Director; (512)-475-3301; Hemant.Makan@foot.state.tx.us



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State Office of Administrative Hearings

Guidelines for the Use of Alternative Dispute Resolution by Texas State Agencies

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I. Introduction to Guidelines for the Use of Alternative Dispute Resolution by Texas State Agencies

Texas government is made up of many diverse agencies with different missions, different challenges, different populations of employees, and different public constituencies. These Guidelines are intended to assist state agencies in identifying, developing, and implementing alternative dispute resolution (ADR) processes in appropriate areas of agency operations, thereby enabling the agencies to better fulfill their missions, serve the public's interest, and contribute to good government.

These agencies may need conflict management systems that are specifically designed to address their unique characteristics. The State Office of Administrative Hearings (SOAH) has not attempted to fashion a "one size fits all" set of guidelines that will suit all agencies' needs because there is no such thing. An agency must give specific attention to its own objectives, culture, and needs, as well as those of the people whom the agency serves, in designing appropriate conflict management systems. An agency may want to consider employing the services of someone trained in developing conflict management systems to assist the agency in its review and implementation of ADR processes within its organization.

Through these Guidelines, SOAH has attempted to provide information that will be of use to an agency that may not have much expertise in the area of ADR. The Guidelines identify common areas of ADR use within government in Texas, other states, and the federal government. The Guidelines also make reference to various web sites which may provide additional assistance or information to you. SOAH does not maintain any web site other than its own and takes no responsibility for the content of other web sites. **In using information obtained from other web sites, please be aware that Texas law contains broad confidentiality protection for ADR processes, whereas other jurisdictions' confidentiality provisions may vary.**

A. State Policy

In 1997, the Texas State Legislature declared:

It is the policy of this state that disputes before governmental bodies be resolved as fairly and expeditiously as possible and that each governmental body support this policy by developing and using alternative dispute

resolution procedures in appropriate aspects of the governmental body's operations and program. Governmental Dispute Resolution Act (GDRA), Ch. 2009, Tex. Gov't Code.

The Sunset Commission, in the summer of 2002, re-emphasized this policy by issuing an across-the-board recommendation applicable to the agencies undergoing Sunset Review. That recommendation directs most of those agencies:

1. to develop and implement a policy to encourage the use of:
 - a. negotiated rulemaking procedures for the adoption of agency rules under Chapter 2008, Tex. Gov't Code, and
 - b. appropriate ADR procedures under the GDRA to assist in resolving internal and external disputes under the agency's jurisdiction; and
2. to conform procedures, to the extent possible, to any model guidelines issued by SOAH for use of ADR by state agencies.

Some agencies are also required to designate a trained person:

1. to coordinate the implementation of the policy,
2. to serve as a resource for any training needed to implement the procedures, and
3. to collect data concerning the effectiveness of the implemented procedures.

In addition to rulemaking, the Sunset Commission identified several types of disputes as being particularly well suited to resolution through ADR procedures: internal employee conflicts or grievances, inter-agency conflicts, contract disputes, and actual or potential contested matters.

The Legislature has given SOAH broad permission to issue model guidelines for the use of ADR by state agencies. Because SOAH's primary mission is to conduct fair, objective, prompt, and efficient contested case hearings and ADR proceedings, its internal ADR guidelines have focused primarily on ADR processes related to resolving contested cases.

B. Glossary of Helpful Terms & Processes

Administrative Procedure Act (APA)

Tex. Gov't Code, ch. 2001. The APA sets out minimum standards of uniform practice and procedure for state agencies and provides that contested cases may be

resolved by an agreed settlement or consent order. ADR is one way to reach such a resolution. Tex. Gov't Code § 2001.056.

Alternative dispute resolution (ADR)

A wide variety of processes, ranging from informal to formal, intended to achieve conflict resolution through agreement of the parties to the conflict. A third-party neutral usually guides the participants through the process, facilitates effective communication, and helps them explore what is really most important to each participant. The goal is to develop an agreed resolution that meets the most important needs of each participant. In this context, ADR may include but is not limited to: mediation, facilitation, negotiated rulemaking, collaborative problem-solving, consensus building, and arbitration. Participants may customize processes to best suit their needs, but this should be done under the supervision of a third-party neutral to ensure that no participant achieves an advantage through the design of the process. Common types of ADR processes used in Texas are found in the Texas Alternative Dispute Resolution Procedures Act, ch. 154, Tex. Civ. Prac. & Rem. Code.

Arbitration

A form of ADR, governed by an agreement between the parties or special rules or statutes providing for the process, in which a third-party neutral issues a decision after a streamlined and simplified hearing. Arbitrations may be binding or non-binding. Because of sovereign immunity issues, state agencies must have legislative authorization in order to engage in binding arbitration.

In non-binding arbitration, the ruling by the arbitrator is only advisory. It is intended to provide the parties with a realistic assessment of the strengths and weaknesses of their respective positions so that the parties may be able to reach an agreed settlement. One risk of non-binding arbitration is that the party who "wins" the non-binding ruling may become more insistent that any resolution should be heavily weighted in its favor.

Conciliation

A facilitated process much like mediation, but with less structure. For example, it may be done over the telephone. The process is designed to mend the relationship between the parties and bring about a reconciliation between them.

Consensus building

A facilitated process much like mediation, but involving a larger group with a number of issues. Consensus building typically takes place over a longer period of

time than a mediation. Often, participants sitting "at the table" and participating in the negotiations represent constituencies who are not present, but who must approve a final agreement.

Governmental Dispute Resolution Act (GDRA)

Tex. Gov't Code, ch. 2009. This Act encourages the use of alternative dispute resolution processes by governmental entities and sets forth standards for government use of ADR.

Hybrid processes

A combination of two or more ADR processes.

Information exchange

A process through which governmental entities meet with various parties to give or obtain information or to clarify issues. This is usually done through meetings with individuals or groups.

Interest-based negotiation

In any conflict, a party's interests are the concerns, private needs, or public policies that cause it to take a certain position in the conflict. In interest-based negotiation, the parties focus on the interests that lie behind their respective positions and attempt to reach a resolution that meets the interests of all parties.

Mediation

A confidential, informal dispute resolution process in which an impartial person, the mediator, facilitates communication between or among the parties to promote reconciliation, settlement, or understanding among them.

Negotiated rulemaking

A consensus-based process in which an agency develops a proposed rule by using a neutral facilitator and a balanced negotiating committee composed of representatives of all interests that the rule will affect, including those interests represented by the rulemaking agency itself. (Definition from Texas Negotiated Rulemaking Deskbook, Center for Public Policy Dispute Resolution, The University of Texas School of Law, October 1996.)

Negotiated Rulemaking Act

Tex. Gov't Code, ch. 2008. This Act authorizes state agencies to use a negotiated rulemaking process in carrying out their rulemaking functions.

Policy dialogue

A consensus process in which the parties attempt to develop a proposal that meets the interests of the group. Although the group defines for itself what consensus means, it most commonly refers to the willingness of the parties to live with the agreement of the group.

TADR Act

Texas Alternative Dispute Resolution Procedures Act, Tex. Civ. Prac. & Rem. Code, ch. 154.

Third-party neutral, impartial third party

An individual trained to conduct ADR processes who has no personal interest or stake in the outcome of the dispute. Minimum requirements include a 40-hour basic mediation training course. (Governmental Dispute Resolution Act, ch. 2009, Tex. Gov't Code)

C. Principles for ADR Use by State Agencies

State agencies should apply certain principles in designing and implementing agency ADR programs:

1. Any resolution reached as a result of the ADR procedure should be through the voluntary agreement of the parties.
2. ADR procedures must be consistent with the GDRA, Tex. Gov't Code, ch. 2009 (GDRA); Tex. Civil Prac. & Rem. Code, ch. 154 (TADR Act); and the Administrative Procedures Act, Tex. Gov't Code, ch. 2001 (the APA).
3. ADR procedures are intended to supplement and not limit other dispute resolution procedures available for use by a governmental body. GDRA § 2009.052(a).
4. ADR processes may not be applied in a manner that denies a person a right granted under state or federal law or under a local charter, ordinance, or other similar provision, including a right to an administrative or judicial hearing. GDRA, § 2009-052(b).
5. It is strongly recommended that an employee who administers ADR processes established by state agencies should have completed the minimum training standards set forth in § 154.052 of the Texas Alternative Dispute Resolution Procedures Act, Tex. Civ. Prac. & Rem. Code.

That employee should:

- maintain necessary agency records while maintaining the confidentiality of participants,
- establish a method of choosing third-party neutrals who possess the minimum qualifications described in TADR Act § 154.052,
- require third-party neutrals to adhere to a particular standard of conduct or code of ethics,

- provide information about available ADR processes to agency employees, potential users, and users of the program,
 - arrange training or education necessary to implement adopted ADR processes, and
 - establish a system to evaluate the program and the mediators.
6. A governmental body may appoint a governmental officer or employee or a private individual as an impartial third-party in an ADR procedure. GDRRA § 2009.053.
 7. Impartial third-parties:
 - must be qualified as required by the TADR Act § 154.052, but are not subject to any specific credentialing requirement in the State of Texas,
 - are subject to the standards and duties described in the TADR Act § 154.053,
 - have the qualified immunity described in the TADR Act § 154.055,
 - must maintain confidentiality as described in the TADR Act § 154.073 and GDRRA § 2009.054; and
 - may not be required to testify in proceedings relating to or arising out of the matter in dispute. GDRRA § 2009.054(d).
 8. The parties have the right to object to the person appointed to serve as the third-party neutral. The participants must trust the neutrality and impartiality of this person to enable the process to succeed. GDRRA § 2009.053.
 9. Agencies may require participation in mediation but may not require that the participants reach an agreement. No one may dictate the terms of the agreement reached by the participants as long as the resolution is legal and complies with any rules set up for the process.
 10. Oral and written communications between the parties, and between the parties and the mediator, related to the ADR process are confidential and may not be disclosed unless all the parties consent to the disclosure. This also includes any description of the conduct and demeanor of participants. GDRRA § 2009.054; TADR Act §§ 154.053, 154.073.
 11. A final written agreement to which a governmental body is a signatory is subject to required disclosure, is excepted from disclosure, or is confidential, as provided by the TADR Act § 154.073 and other laws, including the Public Information Act, Tex. Gov't Code, ch. 552; GDRRA § 2009.054(d).
 12. An impartial third-party may not be required to testify in any proceeding relating to or arising out of the matter in dispute. GDRRA § 2009.054(d)

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II. Guidelines and Information for Dispute Resolution Coordinators

An extremely valuable source of information specifically developed for dispute resolution coordinators can be found at the web site of the Policy Consensus Initiative:

www.policyconsensus.org

Some topics include:

- o What is a Dispute Resolution Coordinator?
- o Choosing DR Coordinators and Identifying Their Roles
- o Orientation and Training for DR Coordinators
- o Overview of Agencies' Use of ADR Processes
- o Key Elements in Integrating DR in an Agency
- o Some Basic Steps to Initiating ADR in an Agency
- o Resources

See also: www.usdoj.gov/adr/manual for information that may assist a dispute resolution coordinator in identifying an agency's ADR needs and designing effective ADR programs.

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III. Common Areas of ADR Use in the State of Texas

A. Employee Disputes

Government and private business have increasingly found ADR processes to be helpful in addressing employee complaints and grievances. The use of mediation and ombudsmen (and, in the private sector, arbitration) are the most common processes used in this area.

- Texas Intergovernmental Shared Neutrals Program

The Texas Intergovernmental Shared Neutrals Program (TISNP) is a pilot project that provides mediators, through a shared mediator pool, to participating state and local governmental entities for the mediation of employment disputes. The participating entities include the Texas Department of Public Safety, the Texas Department of Human Resources, the State Office of Administrative Hearings, the Center for Public Policy Dispute Resolution, the Texas Building and Procurement Commission, the City of Austin, the Austin Independent School District, the Texas Department of Health, and the Texas Commission on Environmental Quality.

SOAH coordinated the implementation of TISNP, which began operation in January, 2001. By sharing employees to serve as third-party neutrals, the agencies in the pool are able to receive mediator services when needed, in exchange for agreeing to provide mediators when needed by other agencies. This arrangement results in the provision of mediations at little or no cost to the requesting agency. Additionally, the involvement of external mediators, most often as a co-mediator with an internal mediator, provides employees with increased confidence in the mediators' neutrality and confidentiality.

Information about the TISNP project (including a mission statement, statement of principles, mediation overview, and mediator standards of conduct) will soon be available through SOAH's web site: www.soah.state.tx.us.

- Examples of Agencies with mediation programs for employee disputes:
 - Department of Public Safety; contact: Kevin Casey
 - Department of Human Services; contact: Terri St. Arnauld
 - Office of the Comptroller; contact: Janet Bray
 - Texas Department of Criminal Justice; contact: Greg Monteilh
 - The University of Texas at Austin; contact: Debra Kress
- Ombudsman (see Paragraph E: Office of Ombudsman)
- Resources
 - *Using Mediation in Employee Complaints and Grievances: A Source Book for Governmental Entities*, Center for Public Policy Dispute Resolution, The University of Texas School of Law (2000).

B. Rulemaking

Most state agencies have rulemaking authority. Generally, an agency exercises its rulemaking authority through traditional rulemaking under the APA or negotiated rulemaking under the Texas Negotiated Rulemaking Act. Additionally, a state agency may use policy dialogues which lead to agency rulemaking.

In traditional rulemaking, an agency, through its staff, may draft a rule and publish it for public comment in the Texas Register, in accordance with the provisions of the Texas APA. The public, including those who will be affected by the rule if the agency adopts it, is allowed to make comments to the agency on whether, and how, the rule should or should not be adopted as proposed. The agency then considers these public comments and decides whether to make modifications or amendments to the rule, whether to adopt the rule as it was proposed, or whether to take no action on the rule. In traditional rulemaking, public input comes after the rule has been drafted.

In negotiated rulemaking, the agency convenes a working group comprised of stakeholder representatives, i.e., those to be affected by the rule, including representatives of the agency. This working group, through principled, interest-based negotiation, develops a draft rule which is presented to the agency's decision-makers for proposed adoption. The agency will publish the proposed rule in the Texas Register, and the process for adoption continues as in a traditional APA rulemaking. The difference between traditional rulemaking and negotiated rulemaking is that in negotiated rulemaking, the agency agrees to involve the stakeholders "up front" in preparing the rule, which it then publishes in the Texas Register as a proposed rule. In traditional rulemaking, formal stakeholder input is sought "after" the rule is drafted, during the public comment period.

A process known as a "policy dialogue leading to agency rulemaking" is similar to negotiated rulemaking but lacks the formality of negotiated rulemaking. Additionally, the agency does not commit in advance to proposing the rule for adoption, but merely agrees to consider doing so.

- Agencies that have used negotiated rulemaking:
 - Department of Agriculture
 - Department of Human Services
 - Office of the Attorney General
 - Office of the Comptroller
 - Office of the Governor
 - Public Utility Commission

- Texas Commission on Environmental Quality
- Texas General Land Office
- Texas Parks and Wildlife Department
- Agency that has used policy dialogues:
 - Department of Protective and Regulatory Services Resources
- Resources
 - Texas Negotiated Rulemaking Act, Chapter 2008, Tex. Gov't Code
 - Texas Negotiated Rulemaking Deskbook, Center for Public Policy Dispute Resolution, The University of Texas School of Law (1996).

C. Contracts

The State of Texas has adopted a policy and process encouraging the use of negotiation and mediation to resolve contract claims against the state.

SOAH drafted model rules for the negotiation and mediation of contract claims against state entities under Chapter 2260, Tex. Gov't Code, in collaboration with the Office of the Attorney General and an interagency working group. This interagency working group was facilitated by the UT Center for Public Policy Dispute Resolution. The model rules, or guidelines, are available on the Office of the Attorney General's web site at http://www.oag.state.tx.us/notice/model_rules.pdf. Agencies with rulemaking authority could adopt these model rules as posted or modify them to better suit an agency's particular circumstances.

- Resources:
 - Resolution of Certain Contract Claims Against the State, Chapter 2260, Tex. Gov't Code.
 - Office of the Attorney General, Rules, Negotiation and Mediation of Certain Contract Disputes, 1 Tex. Admin. Code § 68.
- D. Contested Cases

SOAH has used ADR processes, primarily mediation, in its contested case hearing process since 1995. Although mediation is the form of ADR most frequently used at SOAH, other variations of assisted negotiation are available: mini-trials, early neutral case evaluation by an impartial third party, and fact-finding by an expert.

Mediation may be used in disputes that already are "contested cases," may become contested cases, or may never become contested cases. Often, the most effective time to

resolve a dispute is early in the dispute, before positions have hardened and the parties have become invested in their own points of view. However, many disputes are not mediated until after a contested case has been initiated.

- Examples of agencies that have in-house mediation programs for contested cases:
 - Texas Commission on Environmental Quality,
www.tceq.state.tx.us/comm_exec/dispute_res/index.html
 - Texas Workers' Compensation Commission,
www.twcc.state.tx.us/commission/divisions/medrev.html
- Mediations at SOAH

Mediations in contested cases pending at SOAH are generally referred to as mediated settlement conferences. SOAH Procedural Rule 155.37, (found at 1 Tex. Admin. Code § 155.37), sets forth the procedures Administrative Law Judges and parties follow in requesting and referring disputes to mediation. SOAH is also authorized to conduct mediations in disputes involving governmental entities even if the dispute is not a contested case at SOAH. Further information about mediation at SOAH may be found on this web site under "ADR at SOAH" in Questions and Answers About ADR at SOAH, Guidelines for Mediated Settlement Conferences, and What You Need to Know for Your Mediated Settlement Conference at SOAH.

How do parties and judges decide whether a case is appropriate for mediation and whether the parties are ready to mediate? The following list of factors may be helpful in considering that decision. Parties must think carefully about each factor. The significance of a particular "yes" or "no" answer will vary from case to case.

- Factors to Consider in Deciding Whether to Try Mediation
 - A. Is the issue appropriate for mediation?
 1. What evidence will each party need to prove its case? If the case is heavily fact-based:
 - Are the facts objectively knowable?
 - How definitive is the proof expected to be?
 - How heavily does the case depend on the credibility of witnesses?
 2. Is the controlling law clear? Are required standards of conduct clear?
 3. Is an agency litigating the case for a policy reason?

4. Is either party looking for a precedent?
 5. Is a party looking for something that cannot be obtained by an order from an ALJ or the agency but that may be achievable by agreement?
 6. How wide is the range of possible resolutions of the dispute? For example, in an enforcement case, if there was a violation, does the agency have discretion to impose a range of sanctions?
 7. Are there options that may meet all interests but that the ALJ cannot order?
 8. Do the parties have an ongoing relationship? Will resolution of the dispute likely require voluntary cooperation between the parties? Will use of mediation have a favorable effect on the parties' future relationship?
 9. Is the potential result of litigation sufficient to justify the resources litigation will require?
 10. If a complete settlement is not likely, would mediation nonetheless be helpful? For example, might mediation be used to narrow the issues? Streamline discovery?
 11. How much time and how many resources will a mediation take? A contested case hearing?
 12. Are there reasons, other than economic considerations, why the agency might wish to consider mediation? For example, increased compliance? Greater "buy-in" from the regulated community?
- B. Are the parties ready to mediate?
1. How knowledgeable are the parties about the issues in dispute? The strengths and weaknesses of their respective cases?
 2. Does each party understand how the other party perceives the facts? How the other party interprets the facts?
 3. Do any legal issues need to be decided before the parties can meaningfully evaluate the merits of their respective cases?
 4. Have the parties engaged in settlement discussions? How hard have they tried (number of meetings, etc., not details of efforts)? Why didn't the matter settle?
 5. Have the parties considered the consequences of losing the case?
 6. Do the parties have communication problems? Have they stopped hearing each other? Quit saying anything new?
 7. Do they trust each other to negotiate in good faith?
 8. Do the persons who would represent the parties in the mediation have

- sufficient authority to enter into a settlement agreement?
9. What is the power balance between the parties?
 10. Has necessary discovery been completed? Or can it be avoided?
 11. Are there deadlines coming up that could be avoided by settlement?
 12. Can all necessary parties be brought to the negotiating table?
 13. Are there interested persons or stakeholders who might play a role in a mediation but who would not have standing to participate in a contested case?

For another list of factors to be used in assessing whether a collaborative process might be an appropriate mechanism for resolving a controversy, see Oregon's "Assessment for Use of Collaborative DR Processes" at http://www.doj.state.or.us/ADR/adr_mrules_0010.htm.

E. Office of Ombudsman

The use of an ombudsman has become increasingly common in the state of Texas. Ombudsmen perform a variety of functions. Some ombudsmen receive and investigate complaints, act as an information resource, provide impartial guidance and assistance, and act as non-legal advocates. For a helpful introduction to the roles of ombudsmen in the state, see:

- Governmental Ombudsmen of the State of Texas: www.glo.state.tx.us/gost/index.html

See also:

- Texas Department of Aging and Disability Services, www.dads.state.tx.us
- Texas Department of Insurance, Ombudsman for employee issues, concerns, and complaints, Curtis Polk, (572) 305-7334, curtis.polk@tdi.state.tx.us
- Texas Department of Banking, www.banking.state.tx.us
- Texas Workers Compensation Commission, www.twcc.state.tx.us/information/dispute.html

F. Binding Arbitrations

Although binding arbitration is an ADR process, it is specifically excluded as an option

for agencies under the GDDRA § 2009.005(c) due to sovereign immunity concerns. The Legislature may, and sometimes does, authorize binding arbitration for a specific program. It provided an election for binding arbitration in nursing home enforcement actions brought by the State under Tex. Health and Safety Code, ch. 242. Either the nursing home facility or the State can elect to engage in arbitration at SOAH rather than go through a more lengthy contested case or judicial litigation process.

Binding arbitration shortens the decision-making process, but the ultimate decision is taken away from the disputants. The Participants no longer have the power to decide whether and how to resolve a dispute.

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IV. Texas Statutes

The following statutes specifically address the use of ADR in the State. There are also numerous state statutes that reference ADR use in specific agency functions that are not listed here.

- o Texas Alternative Dispute Resolution Procedures Act, Chapter 154, Tex. Civ. Prac. & Rem. Code
- o Governmental Dispute Resolution Act, Chapter 2009, Tex. Gov't Code
- o Texas Negotiated Rulemaking Act, Chapter 2008, Tex. Gov't Code
- o Resolution of Certain Contract Claims Against the State, Chapter 2260, Tex. Gov't Code

Resources

- o *Commentary on the Governmental Dispute Resolution Act and the Negotiated Rulemaking Act*, Center for Public Policy Dispute Resolution, The University of Texas School of Law (1998).

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V. Best Practices/Ethics

Anyone who is interested in designing or implementing an ADR process for government is encouraged to refer to and use the available ADR Best Practices and Ethical Guidelines.

- o www.policyconsensusus.org
Best Practice Tools:
Ten Keys to Success
A Practical Guide to Consensus
- o <http://www.acinet.org>
Publications & Library -> Articles & Resources:
Best Practices for Government Agencies:
Guidelines for Using Collaborative Agreement-Seeking Processes
- o www.texasadr.org
State Bar of Texas ADR Section:
Ethical Guidelines for Mediators
Texas Roundtable Training Standards for ADR Trainers
- o www.txmediator.org/standards.htm
Standards of Practice for Mediators

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VI. Evaluation/Quality of ADR Programs

An important component of any ADR system is the ability to evaluate its effectiveness and its quality.

- o www.policyconsensusus.org
Best Practice Tools:
Assuring Quality in ADR Practice and Programs Evaluation

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VII. ADR Resources, Including ADR Organizations in Texas

State Bar of Texas Alternative Dispute Resolution Section: www.texasadr.org (Contains links to numerous other web sites).

Center for Public Policy Dispute Resolution: www.utexas.edu/law/academics/centers/cppdr

Texas Association of Mediators: www.txmediator.org

The Association of Attorney-Mediators: www.attorney-mediators.org

The Ombudsman Association: www.ombuds-toa.org

A. A. White Dispute Resolution Institute : www.law.uh.edu/blakely/aawhite/

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VIII. Federal Government's Use of ADR

The federal government has used ADR extensively in a number of areas. For information about specific programs, please refer to the web site for the federal agency.

- o **United States Office of Personnel Management**

- Alternative Dispute Resolution - A Resource Guide**

- www.opm.gov/er/adrguide_2002/

- The Guide provides an overall picture of how the most common forms of ADR are being implemented in federal agencies. It summarizes a number of current ADR programs

(including alternative discipline programs), and it includes descriptions of shared neutrals programs where agencies have collaborated to reduce the costs of ADR. It provides a listing of training and resources available from federal and non-federal sources. It also provides selected ADR-related web sites.

- o **U.S. Department of Justice Office of Dispute Resolution**
www.usdoj.gov/odr/

The Office of Dispute Resolution coordinates the use of ADR for the Department of Justice. The office is responsible for ADR policy matters, ADR training, assisting lawyers in selecting the right cases for dispute resolution, and finding appropriate neutrals to serve as mediators, arbitrators, and neutral evaluators. The office also coordinates the interagency ADR Working Group, an organization that promotes the use of ADR throughout federal executive branch agencies.

- o **Interagency Alternative Dispute Resolution Working Group**
www.usdoj.gov/adr/

This web site contains resources to assist federal agencies in developing ADR programs and numerous other resources including: law review articles on federal ADR programs, federal agency ADR surveys, confidentiality comments, and a link to the federal ADR program Manager's Resource Manual.

- o **Federal ADR Program Manager's Resource Manual**
www.usdoj.gov/adr/manual/

This manual on ADR program design is intended to provide guidance to agency designers as they undertake to identify their agency's ADR needs and to design effective ADR programs. It includes a checklist of issues for agency designers to consider as they develop their ADR programs.

- o **Department of the Navy ADR Program**
adr.navy.mil/bkgrnd.asp

This web site contains an introduction to ADR, an ADR awareness test, the principles of conflict resolution, the Naval policy history of ADR, and how to make ADR work for you.

- o **Recommended Federal ADR Links / Sites**
adr.com/adr0/index-8.htm

This web site contains links to 23 federal agency ADR programs and other ADR resources.

- o **Environmental Protection Agency Conflict Prevention and Resolution Center**
www.epa.gov/adr

This web site contains information about the Environmental Protection Agency's use of alternative dispute resolution.

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IX. Other States' ADR Programs

When considering whether an ADR program is appropriate in a specific area, information about other states that have implemented ADR programs may be of assistance to you. Some resources include:

- o **Policy Consensus Initiative**
www.policyconsensus.org
The Policy Consensus Initiative is a national nonprofit program working with leaders at the state level -- governors, legislators, attorneys general, state agencies, and others -- to establish and strengthen the use of collaborative practices in states to bring about more effective governance. This site provides a Directory of State Resolution Programs as well as other ADR information.
- o **Florida State Courts - Alternative Dispute Resolution**
www.flcourts.org/gen_public/adr/index.shtml
This web site contains information about court-annexed ADR programs and ADR programs established by the Florida Department of Insurance, the Division of Mobile Homes of the Department of Business and Professional Regulation, the Workers Compensation Division of the Department of Labor and Employment Security, and others.
- o **Florida Conflict Resolution Consortium**
consensus.fsu.edu/
The Consortium promotes the use of consensus building and ADR processes in addressing Florida's public policy matters.
- o **Maine Court System - Alternative Dispute Resolution**
www.courts.state.me.us/courtservices/adr/office_courtadr.html
The Office of Court ADR oversees and maintains seven statewide ADR rosters of individuals who are eligible to provide ADR services to parties in court cases. The following issues are examples of ADR issues addressed by the Maine court system: domestic relations matters; small claims; larger civil and commercial cases; and land use and environmental disputes.
- o **Maine Association of Dispute Resolution Professionals**

www.madrp.org

This web site provides information about training, educational development, and standards of professional conduct for third-party neutrals in Maine.

- o **State of Massachusetts - Office of Dispute Resolution**

omega.cc.unmb.edu/~resolution

The Massachusetts Office of Dispute Resolution helps state agencies and municipalities develop integrated conflict management systems that improve their ability to deal with conflict.

- o **State of Oregon (Dispute Resolution Commission)**

www.odrc.state.or.us

This site provides information on Commission policies, programs and activities, and serves as a clearinghouse for information relating to collaborative dispute resolution in Oregon.

- o **State of Oregon Department of Justice**

www.doj.state.or.us/ADR/mr_indx.htm

This site contains the Oregon ADR Model Rules for collaborative dispute resolution in many areas of agency practice.

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X. Other Resources

- o **American Arbitration Association (AAA)**

www.adr.org

The AAA web site provides information about mediation, arbitration, fact-finding, partnering, dispute review boards, and other related alternative dispute resolution processes.

- o **Center for Public Resources (CPR)**

www.cpradr.org

This web site provides up-to-date information about ADR practices in the legal and corporate settings.

- o **Better Business Bureau Dispute Resolution Services**

www.dr.bbb.org

- o **Carter Center: The President Carter Center for Conflict Resolution at Emory**

University

www.cartercenter.org

- o **Conflict Research Consortium**

conflict.colorado.edu

- o **Harvard Law School Program on Negotiation**

www.pon.harvard.edu

- o **Journal of Dispute Resolution - Univ. of Missouri at Columbia School of Law & the Center for the Study of Dispute Resolution**

www.law.missouri.edu/csdr/

- o **Ohio State Journal on Dispute Resolution**

moritzlaw.osu.edu/dr/

- o **U.S. Institute for Environmental Conflict Resolution**

www.ecr.gov

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XI.

Attachment A:

Texas Dispute Resolution Centers

Amarillo (Potter and Randall Counties)

Dispute Resolution Center

P. O. Box 9257

Amarillo, TX 79105-9257

Phone: (806) 372-3381

Fax: (806) 373-3268

Email: peoffey@prpc.cog.tx.us

Web site: www.prpc.cog.tx.us

Pam Coffey, Program Director

Austin (Travis County)

Dispute Resolution Center

5407 N. IH 35, Suite 410

Austin, TX 78723

Phone: (512) 371-0033

Fax: (512) 371-7411

Email: kris@ausindrc.org

Web site: <http://www.ausindrc.org>

Kris Donley, Executive Director

Beaumont (Jefferson County)

Dispute Resolution Center of Jefferson County, Inc.

Courthouse Annex 1 215 Franklin Suite, 131A

Beaumont, TX 77701

Phone: (409) 835-8747

Fax: (409) 784-5811

Email: cebworth@co.jefferson.tx.us

Web site: www.co.jefferson.tx.us/med_ctr/med.htm

Cindy Bloodsworth, Executive Director

Bryan/College Station (Brazos County)

Dispute Resolution Center – Central Brazos Valley, Inc.

Texas Workforce Commission Building

801 East 29th Street

Bryan, TX 77803

Phone: (979) 779-3743, ext. 229

Fax: (979) 823-2071

Email: drc@bvccog.org

Web site: www.disputeresolutionbv.org

Cindy Taylor, Director

Conroe (Montgomery County)

Dispute Resolution Center

P. O. Box 3609

Conroe, TX 77305-3609

Phone: (936) 760-6914

Fax: (936) 538-8050

Email: kbnorris@co.montgomery.tx.us

Kathy Bivings-Norris, Director

Corpus Christi (Nueces, San Patricio, and Bee Counties)

Nueces County Dispute Resolution Services
901 Leopard, Room 401.2
Corpus Christi, TX 78401
Phone: (361) 888-0650
Fax: (361) 888-0754
Email: drsectex@igc.org
Melissa Garcia-Samuels, Executive Director

Dallas (Dallas County)
Dispute Mediation Service, Inc.
3400 Carlisle Suite 240, LB-9
Dallas, TX 75204-1272
Phone: (214) 754-0022
Fax: (214) 754-0378
Email: hcooke@dms-adr.org
Web site: <http://www.dms-adr.org>
Herbert V. Cooke, Executive Director

Denton (Denton County)
Dispute Resolution System of Denton County
P. O. Box 310439
University of North Texas
Denton, TX 76203
Phone: (940) 565-3445
Fax: (940) 565-4658
Email: mckee@scs.cmm.unt.edu
Web site: www.unt.edu/drs
Bill McKee, Director

El Paso (El Paso County)
Dispute Resolution Center
1100 N. Stanton, Suite 610
El Paso, TX 79902
Phone: (915) 533-4800
Fax: (915) 532-9385
Email: p.gross@riocog.org
Patricia Gross, Coordinator

Jake Brisbin, Jr., Executive Director

Fort Worth (Tarrant and Parker Counties)

Dispute Resolution Services of North Texas
131 E. Exchange Ave., Suite 208
Fort Worth, TX 76106
Phone: (817) 877-4554
Fax: (817) 877-4557
Email: bobgood@drsnorthtexas.org
abby@drsnorthtexas.org
Bob Good, Director

Houston (Harris County)

Harris County Dispute Resolution Center
49 San Jacinto, Suite 220
Houston, TX 77002-1233
Phone: (713) 755-8274
Fax: (713) 755-8885
Email: drc_houston@hotmail.com
Nicholas Hall, Executive Director

Lubbock (Lubbock, Hockley, Garza, Yoakum, Terry, Cochran, and Dickens Counties)

South Plains Dispute Resolution Center
P.O. Box 3730, Freedom Station
Lubbock, TX 79452-3730
Phone: (806) 762-8721
Fax: (806) 765-9544
Email: spag.drc@juno.com
D. Gene Valentini, Executive Director

Paris (Lamar, Fannin, and Red River Counties)

Dispute Resolution Services
Paris Junior College
2400 Clarksville
Paris, TX 75460-6298
Phone: (903) 783-9839
Fax: (903) 782-0443

Email: mediation@paris.cc.tx.us
Carl E. Lucas, Director

Richmond (Fort Bend County)

Fort Bend County Dispute Resolution Center
211 Houston Street
Richmond, TX 77469
Phone: (281) 342-5000
Fax: (281) 232-6443; Houston Metro Fax: (888) 303-6443
Email: fbdr@fbnet.net
Shelly Hudson, Executive Director

San Antonio (Bexar County)

Bexar County Dispute Resolution Center
Bexar County Justice Center
300 Dolorosa, Suite 1102
San Antonio, TX 78205-3009
Phone: (210) 335-2128
Fax: (210) 335-2941
Email: mlabenz@bexar.org
Web site: www.bexar.org/drc
Marlene Labenz-Hough, Director

Waco (McLennan County)

McLennan County Dispute Resolution Center
P.O. Box 1488
Waco, TX 76703
Phone: (254) 752-0955
Fax: (254) 752-0966
Email: drcwaco@hotmail.com
Web site: <http://disputeresolutioncenterwaco.org>
Michael Kopp, Executive Director

(List of Texas Dispute Resolution Centers provided by the Center for Public Policy Dispute Resolution, The University of Texas School of Law)

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Due to the large number of reference links to external web sites, please notify WebAdmin@soah.state.tx.us of any broken links you may discover within this document.

- [Alternative Dispute Resolution \(ADR\) at SOAH](#)
- [ADR Model Guidelines for Use by Texas State Agencies](#)
- [Texas Intergovernmental Shared Neutrals Program \(TISNP\)](#)
(Shared Neutrals Mediation Program for Employment Disputes)
- [ADR Home Page](#)

[Home](#) | [About Us](#) | [PFD Search](#) | [Docket](#) | [Employment](#) | [Other Links](#)

Questions about the content of this page may be forwarded to:

Renee M. Rusch
Administrative Law Judge
Alternative Dispute Resolution Team Leader
Phone: 512.475.4993
Fax: 512.475.4994
Email: Renee.Rusch@soah.state.tx.us

General questions may be forwarded to the agency at:

300 W. 15th Street, Suite 502
Austin, TX 78701
Phone: 512.475.4993
Fax: 512.475.4994
Email: questions@soah.state.tx.us

This page was last updated on : June 28, 2005

For site issues and suggestions please contact:

WebAdmin@soah.state.tx.us