

## **Frequently Asked Questions about Mediation at the U.S. Office of Special Counsel**

### **What is mediation?**

Mediation is an informal and flexible process in which a neutral third party - the mediator - assists the opposing parties in reaching a voluntary, negotiated resolution of the complaint. Mediation is different from other forms of dispute resolution in that the parties participate voluntarily, and the mediator has no authority to make a decision. The decision-making power rests in the hands of the parties.

### **How does mediation work?**

Mediation gives the parties the opportunity to discuss the issues raised in the complaint, identify their priorities and concerns, clear up misunderstandings, find areas of agreement and, ultimately, incorporate those areas of agreement into a final resolution of the complaint. Participation in OSC's mediation program is voluntary. Selected cases are referred to OSC's Alternative Dispute Resolution (ADR) Unit for review. If the ADR Unit determines that a case is a good candidate for mediation, an OSC ADR Specialist contacts the complainant and the employing agency to invite them to participate in the mediation program. If both parties agree, OSC will assign mediators who will work with the parties to prepare for and schedule a mediation. If mediation results in resolution, the agreement is put into writing and becomes binding on both parties.

### **Who mediates the case?**

OSC's mediation panel are trained in both mediation and federal personnel law. They are neutral, unbiased professionals with no stake in the outcome of the mediation process. Either one mediator or two co-mediators will be assigned to mediate the case.

### **What is the cost?**

There is no cost to either the employee or the agency for OSC's mediation services.

### **How do we get started?**

Once OSC has offered mediation and both parties have agreed, all participants will sign OSC's Agreement to Mediate. The Agreement details the terms of the mediation and, importantly, commits all parties to keep dispute resolution communications confidential from those not participating in the mediation. The parties and their attorneys, if any, are required to be available to mediate the case over the following 3-4 months.

OSC mediators will then initiate pre-mediation discussions with each party to help them prepare for mediation. The parties will be asked to explore the context of the dispute, identify their interests, think of possible options for resolution, and discuss their questions with the mediators. At any time during the mediation process any party may consult with an OSC subject matter expert. In some cases, these pre-mediation discussions will result in a resolution. Otherwise, a mediation will be scheduled at a time convenient to all the participants in person, by telephone, or videoconference.

### **What is an OSC subject matter expert?**

An OSC subject matter expert is a senior, experienced member of OSC's IPD staff who can provide information about OSC's investigative process and how OSC might analyze and evaluate a claim. The subject matter expert would not be involved in the investigation or supervision of the case if it does not settle. The subject matter expert is bound by the same confidentiality provisions that govern the mediators.

### **Where will the mediation be held?**

Mediation sessions are generally held at OSC's Washington, DC headquarters or one of our field offices (Dallas, TX; Oakland, CA; Detroit, MI). If these locations are not convenient, we will send mediators to the agency location if possible. If an in-person mediation session is not possible, we will conduct virtual mediation sessions via Microsoft Teams or Zoom, which can accommodate video and/or audio communications.

### **Who attends the mediation session?**

The complainant and one or more representatives from the employing agency attend the mediation. Either party may also bring an attorney or other support person. OSC requires that individuals with authority necessary to resolve the dispute attend the mediation session.

### **What occurs during a mediation session?**

Mediation is a facilitated conversation between the parties. The mediator serves as a neutral who guides parties through the process. The mediator is not a decision-maker or an advocate for either side. Instead, the mediator assures that both sides have an opportunity to express their needs and concerns; explore relevant facts, issues, emotions, and relationships; and generate ideas toward a mutually acceptable resolution. The parties usually meet together with the mediator and communicate directly with each other. Often the parties also meet individually with the mediator to discuss confidentially the issues and possible resolutions that could meet both parties' needs. Each party retains control and decides whether to settle; no one can force a party to agree to a settlement. If the parties agree to settlement terms, they draft and sign an agreement. If a party is not represented by an attorney, he or she may review a draft agreement with an attorney before signing.

### **How should you prepare for a mediation session?**

No formal steps are required, but preparation improves the effectiveness of the mediation. Parties should obtain all relevant information needed to discuss the details of the case and to make settlement decisions. This includes financial data and calculations if financial loss is claimed, and medical data relevant to a claim for damages. It is helpful to reflect on and outline discussion points to raise in the mediation with the other side. While each party should have a clear understanding of its own view of the case, it also is helpful to think about the *other* side's perspective, and consider options that will meet the needs of *both* parties. Remember that there can be no settlement agreement unless both sides agree.

### **How long does a mediation session last?**

Mediations are usually scheduled to last for a full business day. Sometimes additional follow-up may be required. The length of time depends on the complexity of the case and the willingness of the parties to resolve the dispute.

### **What happens after the mediation session?**

Should the case resolve, the parties will write and sign a settlement agreement either at the end of the mediation session or afterward. OSC will then close the complaint.<sup>1</sup> If a settlement is not reached, the complaint will proceed to investigation as if no mediation occurred. Anything discussed in the mediation session remains confidential within the ADR Unit, and the OSC mediators have no further involvement with the case.

### **How successful is mediation?**

While each case is unique, at OSC more than two-thirds of cases mediated result in an immediate settlement.

### **What if I say “no” to mediation? Will it reflect badly on me (or my agency)?**

Your decision to mediate or not will have no effect on the investigation of your case. The ADR Unit does not share any information from its conversations with you with anyone outside of the ADR Unit, even while offering mediation. Furthermore, the staff who investigates your case will have no access to information that indicates who said “yes” or “no” to mediation.

For additional information about the mediation process at OSC, please see the video posted on the OSC website at <https://osc.gov/Pages/ADR.aspx>.

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<sup>1</sup> Note that 5 U.S.C. §1215 independently authorizes OSC to consider disciplinary action.