

From the AGO Committee on Career Development & Support

ALTERNATIVE DISPUTE RESOLUTION (ADR)
and Our “Mediation” and “Arbitration” clauses in the AGO Model Contract

Several Guild documents have been developed to assist AGO members with the resolution of disputes with their employers. Many of these approaches rely upon written contracts between the employer and the employee. Our Model Contract and other documents contemplate ADR in the following ascending order of severity: mentoring, mediation, grievance procedures, arbitration and litigation.

Definitions

Mentor: a trusted counselor or guide; [TUTOR](#), [COACH](#).

Mediate: the act or process of mediating; *especially* : intervention between conflicting parties to promote reconciliation, settlement, or compromise.

Arbitrate: the action of arbitrating *especially* : the hearing and determination of a case in controversy by an arbiter.

Litigate: to carry on a legal contest by judicial process; DISPUTE ; to contest in law.

When problems arise, it is helpful to have wise counsel from a colleague. Beyond talking the problem out, specific action can be recommended from a friend who has been through a similar situation. This form of mentoring might solve the problem early on or help to avert some difficult consequences. If successful, mediation, the next most serious step, becomes unnecessary. And, at this point in time, there is no reason to invoke the AGO’s Grievance Procedures. Arbitration (an informal substitute for court litigation) and court litigation also are avoided.

Occasionally, if mentoring has not been used successfully, mediation does have a place in the resolution of disputes. When it works, arbitration and litigation are avoided. In mediation, a skilled person facilitates a settlement by talking to the parties both separately and jointly. The results of mediation usually are not “binding” as arbitration or litigation might be, although a contractual obligation to mediate in good faith might be binding. The mediator ideally restores the parties to their pre-dispute orientation by recommending concessions on one or both sides. Experienced, professional mediators are very skilled at this.

Our Model Contract (www.agohq.org) (click on “Professional Development,” then “Model Contract”) contains several cumulative and alternative contract paragraphs which deal with dispute resolution. Paragraph 52 protects the parties by providing, as many contracts provide, for the law of the local forum to apply. Paragraph 53 reserves to the employee the right to pursue mediation and arbitration through a well known agency, the Federal Mediation and Conciliation Service, which is headquartered in Washington, DC and maintains lists of mediators and arbitrators in all states. Other well established agencies include the American Arbitration Association which has offices in many major cities. In paragraph 54, ADR Systems of America is listed as a “default” mediation agency in the event that the employer and employee cannot agree between themselves on a mediator and a course of mediation. Paragraph 55 reserves to the employee the right to pursue the AGO’s Grievance Procedures.

The “caveat” near the bottom of the page qualifies paragraph 54 as one which might be helpful but also as one which might delay the use of other more serious forms of dispute resolution. You probably would not want to start mediation and then immediately file a lawsuit or file under the AGO’s Grievance Procedures or invoke arbitration. (Incidentally, many local courts have mediation and/or arbitration systems of their own. These forms of ADR are favored by the courts because they relieve some of the caseload. Also, they take less time and are cheaper to use.)

Please review our Mentor Program which may be found in the October, 2005 TAO and on the Guild’s Website. Familiarize yourself with all of these resources before you need them!

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Bibliography:

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Books: Getting to Yes, Fisher & Ury (Penguin)
Beyond Reason, Fisher & Shapiro (Penguin)
The Mediator's Handbook, Jennifer Beer
Conflict and Closure, booklet published by The =
Association of Anglican Musicians