



# The EEOC Mediation Program: A Successful Illustration of Collaboration in the Capital

ABA Conference

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# Purpose

- To present the results of a study that addresses the acceptability of the EEOC mediation program by its participants.

# Objectives

- This study addresses the following questions:
  - Background Issues
    - Did the participants have representation at mediation?
    - What was the resolution status of the mediation at the time of the participant survey?
  - Major Issues
    - What was the participant feedback about the mediation process, the mediator, and the fairness of the process and the outcome?
    - Did the participants obtain what they wanted from mediation?
    - Would the participants use the program again?



# Significance & Justification

- Alternate dispute resolution methods are gaining acceptance in the workplace
- Mediation, in particular, is becoming a popular ADR tool
- EEOC's mediation program is one of the largest programs available
- This study is one of the most comprehensive evaluations of any mediation program

# Background: The EEOC



- EEOC's Mission
  - To administer and enforce Title VII and its amendments (to eliminate workplace discrimination)
- Its Strategies to Timely Process Charges
  - Its Case Backlog
  - Strategies (Under chairpersons Norton, Thomas, Kemp, Casellas, & Castro)
- Its Mediation Program
  - A-B-C Classification System
  - The Mediators



# Literature Review: General Theoretical Framework

- Procedural Justice
  - Fairness
    - Adequate Information
    - Prompt Scheduling
    - Opportunity for assistance
  - Voice
  - Mediator
    - Fairness
    - Neutrality
- Distributive Justice

# Literature Review: Specific Framework



## McEwen (1994)

- Location: EEOC (Pilot Program)
- Method: Exit Surveys
- Sample Size: 267 completed mediations
- Conclusions:
  - Average time for completion = 67 days
  - Settlement rate = 52%
  - Satisfaction with the process = 66% of charging parties and 72% of respondents
  - Reuse rate = 84% of the charging parties and 83% of the respondents



# Specific Framework Continued

## – Kochan (2000)

- Location: Massachusetts Commission Against Discrimination
- Method: Mail Survey
- Sample Size: 19 cases
- Conclusions:
  - Mediator understood the dispute: 70% of the charging parties and 88% of the respondents
  - Satisfaction with the outcome: 50% of the charging parties and 68% of the respondents
  - Mediation was fair = 30% of the charging parties and 35% of the respondents
  - Reuse the program = 63% of the charging parties and 77% of the respondents



# Research Methodology

- Method
  - Exit Surveys
- The Instrument
  - Twenty-two item survey
  - Likert scale format
  - Original, but pilot-tested
- Sampling Plan
  - To survey participants from mediation conducted under the supervision of the 50 EEOC field offices from approximately March 1 to July 31, 2000



# Research Methodology Continued

- Data Collection Procedure
  - Distributed at the end of the mediation session
  - A complete protocol was developed to handle the survey distribution and data collection
- Response Rate
  - Approximately 46% from the charging parties (1,683)
  - Approximately 50% from the respondents (1,572)
- Data Analysis
  - Summary statistics



# Results: Representation & Resolution Status

- Representation
  - Charging Parties: 41%
  - Respondents: 58%
- Resolution Status
  - Charging Parties
    - Mediation completed and the charges resolved: 56%
    - Mediation completed, but the charged unresolved: 18%
    - Mediation on-going: 14%
  - Respondents
    - Mediation completed and the charges resolved: 61%
    - Mediation completed, but the charged unresolved: 20%
    - Mediation on-going: 13%



## Results Continued: Process and Outcome

- Process (Procedural Justice Measure)
  - Adequate Explanation of the Process:
    - 88% of the charging parties and 85% of the respondents
  - Prompt Scheduling:
    - 88% of the charging parties and 91% of the respondents
  - Opportunity to Present Views:
    - 90% of the charging parties and 95% of the respondents



## Results Continued: The Mediator

- **Understanding of Needs:**
  - 86% of the charging parties and 87% of the respondents
- **Helped to Clarify Needs:**
  - 84% of the charging parties and 80% of the respondents
- **Neutrality in the Beginning:**
  - 92% of the charging parties and 92% of the respondents
- **Remained Neutral Throughout:**
  - 91% of the charging parties and 89% of the respondents
- **Helped to Develop Realistic Options:**
  - 85% of the charging parties and 84% of the respondents



# Results Continued: Outcome Assessment

## Distributive Justice Measures

- **Fairness of Mediation:**
  - 79% of the charging parties and 87% of the respondents
- **Fairness of Results:**
  - 55% of the charging parties and 63% of the respondents
- **Realistic Development of Options:**
  - 75% of the charging parties and 76% of the respondents



# Results Continued: Did the Parties Obtain What They wanted?

- Our Final Distributive Justice Measure
  - 79% of the charging parties knew what they wanted going into the mediation; out of this, 41% obtained what they wanted.
  - 83% of the respondents knew what they wanted going into the mediation, out of which 54% obtained what they wanted.



# Results Continued: Parties' Willingness to Use the Program Again

- 91% of the charging parties and 96% of the respondents indicated that they would be willing to use the program again.

# Key Comparisons to Prior Mediation Research



- Comparison to McEwen (1994)
  - Overall, the results indicate that the present EEOC program is much more acceptable to the participants than the pilot EEOC mediation program.
- Comparison to Kochan et al. (2000)
  - Overall, the results are more positive than those reported by Kochan et al. in the MCAD study.



# Conclusions

- **Representation and Mediation Status**
  - The majority of the respondents had some type of representative, whereas the majority of the charging parties did not have such representation.
  - The majority of the participants reported that their cases resulted in a resolution of the charge.
- **Participant Feedback**
  - The participants expressed strong satisfaction with the mediation process.
  - The participants were very satisfied with the role and conduct of the mediators.



# Conclusions Continued

- An overwhelming majority of the participants were satisfied with the fairness of the mediation session.
- A majority of the participants were satisfied with the results of the mediation, although they were less satisfied with the results of the mediation than with the fairness of the mediation session.
- The vast majority of the participants knew what they wanted from mediation before going into mediation.
- The respondents agreed more strongly than the charging parties that they received what they wanted from mediation.
- An overwhelming majority of the participants indicated that they would use the program again.

# What are the Implications of this Research for Employment Law Counsel?



- The Bar's (plaintiff/management) perception of the EEOC?
- Is this mediation “success” limited to a certain type of dispute?
- Are we effectively using mediation in our practice?
- What do most charging parties want?
- Can mediation meet our clients’ needs?
- Will enhanced mediation skills benefit our clients?



# Next Round of Research

“The Coming Attraction”

# Factors that Facilitated the Resolution of Disputes



- Conduct Engaged in by the Charging Party = 36%
  - Flexibility & Reasonableness
  - Desire for closure
  - Listening
- Conduct Engaged in by the Respondent = 20%
  - Flexibility & Reasonableness
  - Commitment to Resolution
  - Listening



# Reasons for the Non-Resolution of Disputes

- **Charging Party is Responsible = 32%**
  - Specific Factors
    - Position
    - Emotional state
    - Hardball tactics
- **Both Parties Equally at Fault = 28%**
  - Specific Factor
    - Position/Stance
- **Respondent is Responsible = 26%**
  - Specific Factors
    - Position
    - Influenced by outside factors



# A Note of Gratitude



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<http://www.eeoc.gov/mediate/report/index.html>

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