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*POLICY CONSENSUS INITIATIVE*

# solutions

*to establishing sound government DR practices*

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## **Executive Orders**

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**How governors can  
promote collaborative processes  
and dispute resolution  
for more effective  
governance**

VOLUME I ▼ SEPTEMBER 2000

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## Solutions

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**PCI and its partners** work to promote effective problem-solving within states by encouraging the culture and best practices of consensus building and conflict resolution.

In order to support state leaders in delivering better governance, and to strengthen trust between citizens and their government, PCI and its partners:

- ♦ Offer a nationally recognized source of information and resources;
- ♦ Demonstrate the effectiveness of the use of consensus building processes;
- ♦ Create and support capacity, structure, and networks among and between states.

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## Executive Orders:

# HOW GOVERNORS CAN PROMOTE CONSENSUS BUILDING

A governor's leadership can be instrumental in advancing the use of consensus building practices and dispute resolution (or, as it is sometimes called, ADR—Alternative Dispute Resolution) in states. Overcoming institutional resistance to change requires support from top leaders. Executive Orders (EOs) are emerging as one of the most effective mechanisms for governors to encourage, or direct, administrative agencies to employ these practices. Through such orders, governors can officially ("on the record") begin to overcome some of the resistance to incorporating new practices in the institutions of state government.

Executive orders demonstrate a governor's support not only for initiating but also for expanding consensus building and dispute resolution programs to new areas of government. EOs have been used by governors—both Republicans and Democrats—who are interested in promoting dispute resolution and collaborative processes to achieve more effective governance.

This issue of **solutions** describes some of these experiences, including lessons learned, examples of different EOs, and ideas for drafting the most effective orders.

## THE EVOLUTION OF EXECUTIVE ORDERS

The first EO for these purposes was issued in 1994 by Montana Governor Marc Racicot. He was approached by a diverse group of Montana citizens who felt the state needed better ways to make decisions about natural resource and other controversial issues. The group proposed creating the Montana Consensus Council as a vehicle for using collaborative problem solving to address such issues. Racicot's Executive Order established the Montana Consensus Council, laid out its purpose, and established its governance mechanism—a Board appointed by the governor. The Council is attached to the governor's office and has become an established resource in Montana state government. The Council provides education and training and helps facilitate consensus building on a variety of issues for the legislature, state agencies and other public officials, citizens, and communities (see excerpt, page 4).

Four years later, in 1998, Governor Fob James of Alabama was approached by members of the Chief Justice's ADR Commission. They presented Gov. James

with draft proposals for two EOs. The first promoted use of ADR by state agencies (see excerpt, page 7), and the second—developed in consultation with a number of administrative agencies—established a state agency task force to facilitate implementation of the first EO through education, training, and coordination of activities among agencies. The Task Force is made up of representatives from the Governor's office, the Attorney General's Office, select agencies, state court, state bar, and the Center for Dispute Resolution. Shortly after the EO was signed, Governor Don Siegelman was elected. The Task Force approached him and gained his support to continue their activities. The group has established a workplace mediation program for state agencies and a state ADR working group, with representatives from most of the state's administrative agencies.

The next Executive Order was enacted in Massachusetts, a state that has had a comprehensive state dispute resolution program—the Massachusetts Office of Dispute Resolution (MODR)—in the executive branch for 15 years. (See page 12 for complete EO.)

***Racicot's Executive Order established the Montana Consensus Council, laid out its purpose, and established its governance mechanism—a Board appointed by the governor.***

Despite several outstanding examples of successful government use of dispute resolution in Massachusetts, few state agencies were employing consensus building or dispute resolution approaches. This was due in part to many agencies' lack of knowledge about the principles and practice of ADR. To address this, MODR Director Freddie Kay suggested to the staff of newly elected Governor Paul Cellucci that he consider issuing an EO. His staff agreed and Governor Cellucci approved and announced the EO during his remarks at a State House event when he proclaimed a state Mediation Week. The order, titled "Integrating Dispute Resolution into State Government," identifies the benefits of ADR and requires state agencies to "work diligently to fully utilize, wherever appropriate, alternative dispute resolution to resolve disputes...."

The Massachusetts Executive Order sent a clear message to state secretaries, department directors, and agency heads to fully encourage and use ADR wherever appropriate to resolve disputes. It requires the head of each agency to designate an ADR Coordinator who is to report directly to him or her. It also establishes the coordinators' responsibilities, provides for their training, and requires them to submit ADR plans and make annual reports on the status of their ADR programs.

PCI, with Kay's assistance, began promoting Massachusetts' comprehensive Executive Order to other state programs, citing it as a model for how EOs could broaden existing programs and overcome resistance to change in government.

New Mexico was the next state where an executive order was issued. In January 2000, the legislature passed the Government Dispute Resolution Act, which authorizes, but does not require, state and local government to use dispute resolution processes. The New Mexico Consensus Council, an emerging state dispute resolution program, approached the Governor's Chief

*Excerpted from....*

**Montana Executive Order**

As Governor, I hereby create the Montana Consensus Council. Its mission is:

- ◆ To provide assistance for building agreement on natural resource and other public policy issues;
- ◆ To anticipate and resolve controversial issues before disputes occur, thereby reducing the social and financial costs associated with prolonged disagreement;
- ◆ To encourage and support opportunities for citizens to work together and build agreement among diverse interests;
- ◆ To enhance the capacity of citizens, communities, agencies, and organizations to jointly solve problems and resolve disputes; and
- ◆ To increase public awareness and understanding of cooperative approaches to building agreement on public policy.

Marc Racicot  
Governor

of Staff, Lou Gallegos, with a proposal that Governor Gary Johnson issue an Executive Order to demonstrate his support for state agencies implementation of the Government DR Act. With help from two cabinet secretaries—Jennifer Salisbury of the Minerals, Energy and Natural Resources Department and Peter Maggiore of the Environment Department—an EO based on the Massachusetts model was drafted and signed by Governor Johnson.

The New Mexico EO takes a more prescriptive approach than does the Massachusetts Order. New Mexico's adds an ADR Advisory Council made up of the heads of each executive agency or their appointees, with responsibilities for developing a template for agency ADR plans, identifying uses and applications for ADR throughout state government, and tracking data on ADR use. It also designates a lead agency, the General Service Department's Risk Management Division, for implementing the Government DR Act and the EO and for staffing the council.

Oregon was one of the first states to adopt consensus based approaches, yet they decided to seek an executive order to achieve greater use by state government. The Oregon Dispute Resolution Com-

mission was established by law in 1989, and since then an extensive infrastructure has been developed to assist state agencies with the use of collaborative processes. As a leading champion of the use of consensus building, both inside and outside the state, Oregon Governor John Kitzhaber designated a member of his staff—Greg Wolf—as his ADR advisor.

In 1996, Oregon established a Dispute Resolution Steering Committee by Executive Order (see excerpt, page 10). The Committee, which coordinates activities at the state level, is chaired by the Governor's advisor and includes a member of the Commission as well as representatives from the Attorney General's office and the Department of Administrative Services. A Memorandum of Understanding was also established between the Commission and the Department of Justice regarding coordination and roles of the two agencies in managing ADR services. Oregon was the first state to designate coordinators for agencies; since 1998 four public policy dispute resolution coordinators have worked full time with clusters of agencies to help them incorporate dispute resolution practices.

Despite these accomplishments, the Steering Committee felt an executive order would help them enlist all state agencies in implementing dispute resolution activities. They proposed that Governor Kitzhaber issue an EO, which he signed in July 2000. The order calls for each state agency to review their processes for managing conflicts and controversies, and to take steps to ensure their dispute resolution processes are efficient and effective. It requires heads of all agencies with more than 50 employees to appoint an ADR coordinator to work with the steering committee and the cluster coordinators to encourage and facilitate appropriate use of ADR within their agencies. Agency coordinators must submit a needs assessment to the governor that includes a description of which controversies could benefit from ADR and a summary of the ways the agency ensures that ADR is available. They are required to make annual reports describing training activities, ADR programs, their use and effectiveness, and their goals for improvement. The Steering Com-

mittee and the cluster coordinators are to provide technical assistance and consultation to the individual agencies in developing and carrying out their plans.

There may be times when governors consider executive orders as a way to create a particular dispute resolution initiative. In 1999, Minnesota Governor Jessie Ventura issued an EO in support of the Minnesota Workplace Mediation Pilot Project. (See page 14 for complete EO.) The order encourages, but does not

mandate, state agency participation in the pilot project. It encourages agencies to appoint coordinators and to recommend staff members from their agencies as mediators for the program. It gives agencies responsibility and authority to pay for the mediator's training, release

time for training, and up to 20 hours annually to mediate as part of an internal pool of mediators. The EO also spells out the Minnesota Office of Dispute Resolution's responsibilities for coordinating and managing the project.

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***The scope of an EO can be broad or narrow, integrating ADR in state government or creating a statewide program or project.***

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## **STEPS TO ENACTING AN EFFECTIVE EXECUTIVE ORDER**

Given this evolution in the use of executive orders, what steps should state programs take to get an effective EO in place? The next section discusses how to approach developing an EO so that it will be enacted and implemented. It also describes elements to consider in drafting the order and how to follow up to ensure the EO is carried out effectively.

### **Proposing an Executive Order**

Before approaching a governor about issuing an executive order, it is important to understand who will support such an idea and who will resist it, whose interests must be taken into consideration, and the timing of the order. If the governor is about to leave office, what are the chances that the EO can actually be implemented?

It is also important to consider how a proposal for an order will be made to the governor and who will

champion it with the governor and the governor's staff. It is advisable to mobilize the agencies or organizations that will support the effort, and collect data and information to make the case for the proposal, as well as success stories that can be drawn upon to help make the case.

As mentioned in the examples above, state dispute resolution programs, state bar associations, and citizen groups have taken the lead in proposing EOs. The initiative could also come from other sources—such as other governors, cabinet members, or trusted advisors.

## DRAFTING AN EXECUTIVE ORDER

If you plan to draft an executive order for a governor's consideration, it is important to consult agency leaders and employees at all levels who will be involved in implementing, administering, managing, and evaluating the effort. Seeking their advice and gaining their support will help ensure enactment and successful implementation of the order. There may be other ADR leaders both inside and outside government who also should be called on to support the enactment of an EO with a governor and staff.

In determining what kinds of provisions to include in the executive order, ask these leaders the following questions:

- ♦ What barriers will need to be overcome if dispute resolution is to be adopted as a practice by state government agencies?
- ♦ What kinds of incentives would assist in overcoming the barriers?
- ♦ What kinds of resources will be needed?
- ♦ Are there legal issues that must be addressed to enable agencies to use mediation and other dispute resolution processes?

It is also useful to draw on experience and insights from other states. Keep in mind, however, that while there is much to be learned from other states' EOs, each state is unique. Executive orders must be crafted to suit the context and needs of the particular state.

## Elements to Consider When Drafting an Executive Order

Based on what has been learned about the attributes of successful state dispute resolution programs, the following factors need to be considered in developing an executive order.

- ♦ Decide on the purpose and scope
- ♦ Determine the approach
- ♦ Provide clear authority
- ♦ Provide resources
- ♦ Establish mechanisms to ensure the quality and competency of the program
- ♦ Establish mechanisms for implementation and coordination
- ♦ Provide for knowledgeable direction and leadership
- ♦ Create incentives and rewards
- ♦ Provide for capacity building
- ♦ Establish feedback mechanisms

***Decide on the purpose and scope***—The opening statements in an executive order typically provide the rationale, purpose, and philosophy behind an order. Consider whether the scope of the order will be broad or narrow and whether it will be directed toward integrating dispute resolution in state government (as in the Massachusetts EO) or creating a particular program such as the Minnesota workplace mediation program for all administrative agencies. An EO can be used to establish a state consensus center, as Montana did, or a coordinating body such as in the Alabama and Oregon Orders.

Because state agencies serve very different functions, it is important to consider whether to adopt a general policy favoring ADR and/or whether to charge agencies to develop their own goals and policies to fit their particular mandates and circumstances.

***Determine the Approach***—Will the executive order be mandatory or voluntary? In deciding the approach to take, assess the pros and cons of requiring agencies to conform to the EO versus encouraging them to do so. In Massachusetts and Oregon, two states with well established dispute resolution programs, governors enacted orders *requiring* all agencies to adopt these practices. In contrast, Alabama's EO *encourages*

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*In contrast to the Massachusetts and Oregon Executive Orders, Alabama encourages rather than requires state agencies to implement appropriate dispute resolution procedures.*

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state agencies to implement ADR approaches. With all the issues that crowd the agendas of busy agency heads, it may be difficult to convince them to implement a new initiative unless it is required.

Still, there are concerns about how wholeheartedly agency heads will take on a mandated program, and how governors will ‘enforce’ their executive orders. If an EO uses mandates, attention must be given to the “carrots,” or incentives that will accompany the ‘sticks.’ Otherwise, agencies may resist carrying out an unfunded mandate. Minnesota’s workplace mediation pilot has been successful without mandating agency participation because it provides for education and training for leaders and staff, and employs leaders as spokespersons to persuade their peers to adopt the new practices.

Even when executive orders require involvement, there is an issue about how prescriptive they should be. On one hand, being overly prescriptive about the steps an agency must follow can create resistance. On the other, not being specific enough about how to carry out the EO may leave too much to chance. Experience suggests that when state leaders are consulted about the content of orders, they recommend being more prescriptive, not less.

***Provide Clear Authority***—Research on barriers to ADR use suggests that lack of clear authority for the use of such processes in government agencies is a significant obstacle. If policies do not say that mediation or other ADR processes may be used, the assumption is that they may not. Executive orders should give agencies clear authority to use these processes.

In drafting an EO, it is important to research and understand the state’s existing statutory framework for use of dispute resolution and consensus based processes. How will the proposed order relate to the traditional dispute resolution processes that are currently being

*Excerpted from....*

#### **Alabama Executive Order Number 42**

NOW THEREFORE, I, Fob James, Jr., by virtue of the Constitution and laws of the United States of America and the State of Alabama, as Governor of the Great State of Alabama, for these reasons and for other good and valid considerations, do hereby encourage state agencies to study, develop and implement appropriate procedures within their agencies to allow, upon agreement and after all sovereign, discretionary, and qualified immunity issues are resolved, the use of mediation to resolve disputes among parties, whether involving other state agencies, their agents, servants, employees, or other third parties

Fob James, Jr.  
Governor

used? Some states have established a generalized approach to the use of ADR in all contexts, while others have a more patchwork approach. Depending on the scope and purpose of the EO, it may need to take into account the existing statutory framework and whether it imposes requirements, offers opportunities, or puts constraints on the activities to be authorized in the order.

Do existing statutory provisions authorize state expenditures for use of ADR and collaborative processes? That information is important in determining how to make resources available for implementing the EO. What is the interplay, if any, between the EO and the state administrative procedure act or other policies governing agency procedures? Careful consideration should be given to such provisions as they relate to the goals and purpose of the EO.

It may be advantageous to relate the executive order to an existing statutory provision or to enact an EO to bolster such a provision. For example, the New Mexico Government DR Act did not specify how state government was to actually implement its provisions. Nor did it name a lead or coordinating agency or identify the steps agencies should take to carry out the provisions. Their EO mandates that executive agencies

“shall assume responsibility for implementing each provision of the Dispute Resolution Act...” Oregon’s EOs also help reinforce statutory provisions that authorize agency use of ADR.

**Provide Resources**—What kinds of resources (money, expertise, time) are needed to carry out the executive order? What resources already are available to state agencies? If no resources are provided in the EO, will state agencies view the order as another unfunded mandate?

Lack of resources is identified consistently as a significant barrier to greater use of collaborative problem solving and dispute resolution in government. Funding affects how a program will be carried out or whether it can be carried out at all. State agencies particularly struggle with the resource issue.

Part of the rationale behind statutes and executive orders is to authorize the expenditure of funds. While only legislatures have the power to appropriate state funds, governors may be able to set up mechanisms to reallocate existing resources for ADR related activities. For example, instructions to state agencies on budget preparation from the Oregon Department of Administrative Services Budget Management Division describe the aims of dispute resolution and urge agencies to budget for their use.

None of the executive orders to date address this important issue. The Oregon EO makes the agency ADR coordinator responsible for identifying funds for meeting their ADR objectives. But it is not clear what will happen once funds are identified.

Funds aren’t the only resources agencies need to successfully incorporate ADR practices. They also need access to training, technical assistance, and consultation to develop capacity to use collaborative methods and conflict resolution processes. The Massachusetts and Oregon EOs make their existing comprehensive state dispute resolution offices responsible for providing consultation and technical assistance to agencies in developing their plans and reports.

**Establish mechanisms to ensure the quality and competency of the program**—As the use of dispute resolution and consensus building processes expand in

almost every sphere of activity, so do concerns about the fairness, impartiality, and quality of ADR programs and services. In drafting an EO, it is important to ensure that the programs and services will be developed and carried out responsibly. This suggests the need for designating competent, qualified people to oversee these

programs, and for establishing an oversight or coordinating mechanism charged with developing policies and principles to deal with such issues as:

- ◆ Access to dispute resolution services
- ◆ Disclosure of information about programs and services
- ◆ Standards to ensure the quality, fairness, and impartiality of the services
- ◆ Policies to address issues of confidentiality, conflict of interest and ethics
- ◆ Mechanisms for handling grievances and complaints.

Existing EOs have fallen somewhat short in specifying responsibilities in this area. The Oregon Executive Order that established the Steering Committee charges it with providing overall policy coordination with respect to use of collaborative processes, but it does not mention establishing standards to ensure fairness, impartiality, and quality.

**Establish mechanisms for implementation and coordination**—It is important to consider what implementing mechanisms will be incorporated in the executive order. Will the EO make use of existing lines of authority or create new ones? Who will carry out the provisions of the order and how will they do it? In addition to setting up implementing mechanisms, the order should spell out roles and responsibilities. Will roles be clearly delineated at both the state and the cabinet or coordinating level? Who will be accountable to whom for carrying out the roles and responsibilities?

If the purpose of the executive order is to integrate dispute resolution in state government or to establish a

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*In drafting an EO, it is important to ensure that the programs and services will be developed and carried out responsibly.*

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*New Mexico's Executive Order spells out the responsibilities for agency ADR coordinators.*

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statewide initiative, there are two levels at which implementation must occur: 1) the agency level, and 2) the cabinet level.

1) Who will be responsible for implementing the ADR program at the *agency level*? Most executive orders require the agency head to appoint an ADR coordinator for the agency. This approach attempts to ensure that the coordinator will not only be directly accountable to the agency leader, but will be able to communicate effectively with the leader. It does not ensure that people appointed as coordinators will know anything about dispute resolution or collaborative processes, or that they will have the skills to successfully introduce this kind of change to the organization. Will it be another assignment added to an already heavy workload? What provision will be made to ensure the coordinator has time to fulfill the role? What will be needed to motivate a coordinator to take on this new role? What help will be available to a newly appointed coordinator? Who will provide the coordinator with information, orientation, training, and technical assistance?

The kinds of responsibilities executive orders have given to agency coordinators include the following:

- ◆ Acquiring knowledge about ADR processes
- ◆ Participating in training
- ◆ Determining how ADR might be applied in their agency
- ◆ Promoting ADR use
- ◆ Developing plans for training and programs
- ◆ Designing systems for reviewing cases
- ◆ Coordinating their activities with other agencies and the oversight body
- ◆ Making assessments and providing feedback
- ◆ Making annual reports

2) Who will coordinate the DR program at the *cabinet level*? Who will coordinate among agencies for common, crosscutting issues? Lack of internal coordina-

*Excerpted from....*

**New Mexico Executive Order 00-08**

SECTION 2. AGENCY RESPONSIBILITY

Each Executive Agency shall assume responsibility for implementing each provision of the Dispute Resolution Act within that agency. The head of each Executive Agency shall designate an Alternative Dispute Resolution Coordinator who shall encourage and facilitate the use of ADR in his or her agency and who shall report directly to the head of the agency. The head of each Executive Agency and his or her designated ADR Coordinator shall be responsible for:

- A. Becoming familiar with ADR, where and how it might be used in their agency, and regularly exploring, encouraging and facilitating the use of ADR in their agency.
- B. Developing a plan, to be updated annually, for implementing ADR in their agency including its use for developing, implementing and enforcing rules, imposing penalties, addressing multi-agency issues, resolving other regulatory, permitting and employment actions, and addressing other State government issues.
- C. Developing a plan for training managers and staff in the various forms and uses of ADR.
- D. Transmitting both plans described in Sections 2.B and 2.C above to the Risk Management Division of the GSD no later than Dec. 31, 2000 and annually thereafter.

Gary E. Johnson  
Governor

tion is one of the most prevalent barriers to implementing dispute resolution initiatives across state government. Establishing communication, gaining interdepartmental cooperation, and building relationships across agencies is crucial to successful implementation of a statewide program.

If the purpose of an executive order is to create a statewide initiative, the EOs should specifically name and charge the oversight body with responsibilities for coordinating policies, procedures, and programs to ensure consistency and quality. Policies or standards regarding such issues as ensuring quality, fairness, and impartiality of the services; access to services; confidentiality; conflicts of interest; and ethics must be consistent across agencies. If no mechanism exists for coordination among agencies, the EO should establish one. Where mechanisms do exist, they should be given authority to coordinate the DR activities of state agencies.

In addition to providing the authority to establish standards and policies to ensure consistency and quality, executive orders can give coordinating bodies responsibility for setting goals; providing ongoing education and training; developing templates to guide agencies in developing plans, policies, and reports; collecting and

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*The Oregon Executive Order charges a Steering Committee with providing overall policy coordination with respect to use of collaborative processes*

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disseminating data and results; making progress reports to the governor and legislature; and identifying and implementing new uses and projects.

The New Mexico EO created an ADR Advisory Council but does not charge the Council with coordination. This could be implied, however, from wording that gives the Council responsibility to “ensure that state government benefits from an economy of scale in the implementation of training and ADR services.” The Massachusetts EO specifically names the Massachusetts Office of Dispute Resolution (MODR) as the coordinating entity. But it does charge MODR with consulting, training, and assisting agency ADR coordinators in developing their plans.

As mentioned previously, the second Alabama EO established a statewide Task Force and charged it with facilitating implementation of the first order by developing programs for information, education, training, and coordination. The Oregon EOs carefully define the roles of the two existing coordinating mechanisms (the state-level steering committee and coordinators for clusters of cabinet agencies). The order also charges the Steering Committee with ensuring consistency of agency plans and annual reports. And coordinators are charged with planning and coordinating their activities with their assigned cluster coordinators.

***Provide for knowledgeable direction and leadership***—Dispute resolution programs should be staffed and lead by people with knowledge and experience in dispute resolution and consensus building. They also should be skilled at introducing and guiding new initiatives and have the leadership skills and ability to work effectively within the cultures of government agencies. They need expertise and credibility to guide agencies in the use of mediation and other consensual approaches to dispute resolution. This applies to DR coordinators both at the agency level and, most impor-

*Excerpted from...*

**Oregon Executive Order NO. 96-32**

IT IS HEREBY ORDERED AND DIRECTED

1. A Steering Committee comprised of the Governor's Dispute Resolution Advisor, the State Attorney General or designee, the chair of the Oregon Dispute Resolution Commission (ODRC) or designee, the Dispute Resolution Coordinator in the Department of Justice and a state agency member as appointed by the Governor is created to provide overall policy coordination with respect to use of collaborative processes within state government. The Committee will operate on the principles of consensus.
2. The Steering Committee shall develop an integrated plan to expand and deliver dispute resolution services throughout state government and make recommendation to the Governor to carry it out.
3. The Committee and the Executive Branch agencies shall work together to identify opportunities to use or expand use of dispute resolution programs and services by state agencies, the Department of Justice and the Dispute Resolution Commission.
4. The Steering Committee may establish an Advisory Committee to provide advice and recommendations to the Steering Committee on ways to integrate and coordinate dispute resolution programs of the state executive and judicial branches
5. The Governor or his designee will convene and chair the Steering Committee and Advisory Committee.

John A. Kitzhaber  
Governor

tantly, at the cabinet or coordinating level. Responsibility for staffing the coordinating body should be placed with those who possess the knowledge and experience to guide a statewide dispute resolution initiative. For example, the Alabama Executive Order names the Alabama Center for Dispute Resolution Director as head of the Task Force. Oregon's EO empowers the existing DR coordinating mechanisms, with their seasoned leaders, to head the statewide initiative. The resources and information available through these already established mechanisms provide the necessary support and guidance to new agency coordinators.

If these kinds of resources do not exist in state government, they may exist in a state court or state university. In Hawaii and Maryland, comprehensive state court-based ADR offices provide support and guidance to state agencies. Florida State University and the University of Texas Law School each house comprehensive dispute resolution programs with capacity to assist state government. In Montana an Executive Order was used to establish a council to serve state government.

**Create Incentives and Rewards**—One of the challenges to introducing new practices in government is creating incentives—and removing disincentives. It is important to be aware of the impact of reward and incentive systems, both formal and informal, on whether new initiatives like dispute resolution can be successfully introduced. Mediation and other ADR processes have been embraced by private sector corporations which see them as ways to save time and money. Bringing change to governmental institutions is a bigger job because government doesn't necessarily respond to those kinds of incentives.

How can agencies reward government employees who use dispute resolution methods? Some agencies have incorporated changes in their performance evaluation systems. In Ohio, for example, state hearing officers at the Board of Tax Appeals were formerly rewarded for the number of opinions they wrote. The performance rating system was revised to incorporate a new category that recognizes the number of cases they mediate. At the U.S. Department of Justice, hiring and promotion policies were changed to give equal consideration to attorneys with ADR experience and those with litigation experience.

In developing an EO, drafters should evaluate whether to incorporate provisions for review of existing incentive and reward systems and identification of new incentives and methods for rewarding employees who use ADR and other consensus based processes. For example, the Massachusetts and Oregon EOs establish awards to be made yearly to those who promote and use ADR. In Oregon the governor presents the award.

**Provide for capacity building through education and training**—Most executive orders make provisions for training, with some requiring agency coordinators to receive training. In addition to providing agencies with a centralized source of expertise, all agency staff should be knowledgeable enough to ask for assistance from their agency coordinator about how to identify issues that may be appropriate for dispute resolution and collaborative practices. Training programs are essential to raise awareness and build capacity within agencies. Several states are currently instituting extensive

training programs for both existing staff and for all new hires.

**Establish feedback mechanisms**—How will the use of ADR and other collaborative processes be monitored and evaluated? Sustaining these programs requires the ability to demonstrate results. Establishing mechanisms for collecting data and evaluating programs is also important to ensuring quality and protecting against problems—or even abuses—that may creep into the system. The executive order should establish clear mechanisms for assessment and feedback.

The New Mexico EO requires the ADR Council to collect and disseminate data on the results of agencies' ADR processes. The Massachusetts EO requires agencies to report annually to the Secretary of Administration and Finance, and the Oregon EO specifies that annual reports be submitted to the governor.

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***While there is much to be learned from other states' EOs, each state is unique. Executive Orders must be crafted to suit the context and needs of the particular state.***

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## **SUPPORTING AN EXECUTIVE ORDER**

It is not enough to simply pass an executive order. If a governor wants to ensure the order is implemented successfully, the surest way to do so is to continue championing the idea with administrative agencies. This is best accomplished when governors name one of their advisors—someone already interested in conflict resolution and consensus building—to help lead the effort. A governor can also work closely with the state's dispute resolution coordinating body to assist them in getting their messages out to all of state government.

Executive orders have proven very effective tools for leaders in promoting the use of dispute resolution and other collaborative approaches in government. This overview has attempted to harvest some of the lessons learned about how to design executive orders so they actually achieve their intended purpose. More lessons will undoubtedly emerge as more states make use of this important device. Our hope is that this guide will inform the dialogue about how EOs can advance the use of consensus building and conflict resolution processes as a means of achieving more effective governance.

*The following EXECUTIVE ORDERS, and EO excerpts on the preceding pages, are offered as guidelines. We suggest reviewing the Orders and comparing them to the checklist of “Elements to Consider when Drafting an Executive Order” (from page 6).*

THE COMMONWEALTH OF MASSACHUSETTS EXECUTIVE DEPARTMENT

ARGEO PAUL CELLUCCI  
GOVERNOR

EXECUTIVE ORDER NO. 416

INTEGRATING DISPUTE RESOLUTION INTO STATE GOVERNMENT

WHEREAS, this Administration is committed to ensuring that state agencies utilize more efficient, less expensive, and more satisfying methods of resolving disputes; and

WHEREAS, traditional adjudicatory processes have become increasingly costly, time consuming, and contentious; and

WHEREAS, alternative dispute resolution (ADR) offers a means of resolving disputes more quickly, less expensively, and with more satisfying results; and

WHEREAS, ADR has been used with great success in both the public and private sectors of Massachusetts as well as throughout the country; and

WHEREAS, an increased use of ADR by state secretariats, departments, and agencies will enhance the operation of state government and better serve the public; and

WHEREAS, the Massachusetts Office of Dispute Resolution can assist agencies of the Commonwealth to expand their use of ADR;

NOW, THEREFORE, I, Argeo Paul Cellucci, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me as Supreme Executive Magistrate, do hereby order that state agencies work diligently to fully utilize, wherever appropriate, alternative dispute resolution to resolve disputes and, to that end, I order the following:

The Secretary of each Executive Office and the Director of each Department shall designate an Alternative Dispute Resolution (ADR) Coordinator who shall encourage and facilitate the use of ADR in his or her secretariat or department and shall report directly to that secretary or director.

The head of each state agency shall designate an Alternative Dispute Resolution (ADR) Coordinator who shall encourage and facilitate the use of ADR in his or her agency and shall report directly to that agency head.

The Secretariat, Department and Agency ADR Coordinators shall participate in an ADR Orientation and Training conducted by the Massachusetts Office of Dispute Resolution MODR by October 1, 2000.

## MASSACHUSETTS EXECUTIVE ORDER NO. 416, continued

The Secretariat and Department ADR Coordinators shall be responsible for:

- ◆ Becoming familiar with ADR, where and how it might be used in their offices and agencies, and regularly exploring, encouraging and facilitating the use of ADR in their respective secretariats, departments, and agencies.
- ◆ Meeting quarterly with the Agency ADR Coordinators within their respective secretariat or department to explore potential use for ADR in that agency.
- ◆ Submitting to the Secretary of the Executive Office for Administration and Finance by December 1, 2000, an ADR plan for their secretariat or department and each of its related agencies outlining a systematic means of reviewing cases and non-litigation matters to determine their ADR potential. The Massachusetts Office of Dispute Resolution shall be available to meet with, consult and assist Secretariat and Department ADR Coordinators to develop their ADR Plans.
- ◆ Submitting a Secretariat or Department ADR Annual Report, with the first one due August 1, 2001, to the Secretary of the Executive Office of Administration and Finance, updating the Secretary on the status of the ADR Program throughout the secretariat or department, including the cases and other matters for the past year that have participated in ADR, and ADR training (such as negotiation skills training) received by their employees during the past fiscal year. The Annual Report shall also include the goals of the secretariat or department for improving their ADR Program in the next fiscal year.

The Massachusetts Office of Dispute Resolution and the Executive Office for Administration and Finance shall present an annual "Commonwealth Dispute Resolution Award" to honor a person in Massachusetts government who has played a significant role in the promotion, use, or identification of appropriate uses in dispute resolution in the Commonwealth or who has played a significant role in the resolution of a dispute.

Given at the Executive Chamber in Boston  
this 16th day of November in the year one  
thousand nine hundred and ninety-nine.

Argeo Paul Cellucci  
Governor

## ***Elements to Consider When Drafting an Executive Order***

- |   |   |
|---|---|
| <input type="checkbox"/> Decide on the purpose and scope  | <input type="checkbox"/> Establish mechanisms for implementation and coordination |
| <input type="checkbox"/> Determine the approach   | <input type="checkbox"/> Provide for knowledgeable direction and leadership       |
| <input type="checkbox"/> Provide clear authority  | <input type="checkbox"/> Create incentives and rewards                            |
| <input type="checkbox"/> Provide resources  | <input type="checkbox"/> Provide for capacity building                            |
| <input type="checkbox"/> Establish mechanisms to ensure the quality and competency of the program | <input type="checkbox"/> Establish feedback mechanisms                            |

STATE OF MINNESOTA EXECUTIVE DEPARTMENT

JESSE VENTURA  
GOVERNOR

EXECUTIVE ORDER 99-5

PROVIDING FOR THE CREATION OF A WORKPLACE MEDIATION PILOT PROJECT;  
RESCINDING EXECUTIVE ORDER 97-20

I, JESSE VENTURA, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the Constitution and the applicable statutes do hereby issue this Executive Order:

WHEREAS, workplace disputes disrupt the ability of agencies to fulfill their missions; and

WHEREAS, unresolved disputes can undercut workplace morale, interpersonal relationships, and hence, productivity; and

WHEREAS, many disputes fall outside of established grievance procedures and could be resolved before rising to the level of a formal complaint; and

WHEREAS, mediation assists the disputants in finding a resolution to their dispute in a non-adversarial setting; and

WHEREAS, a mediation program that uses trained state employees to help resolve disputes within state agencies would be easily accessible and economic; and

WHEREAS, the use of mediation can mitigate or reduce the reliance on or trend toward litigation as a means of resolving employee disputes; and

WHEREAS, the Office of Dispute Resolution has developed and administered mediation programs for state agencies; and

WHEREAS, the departments of Employee Relations and Finance, the Minnesota Association of Professional Employees, Association of Federal, State, County and Municipal Employees, Middle Managers Association, Minnesota Government Engineers' Council, and Minnesota Nursing Association have all worked with the Bureau of Mediation Services and Office of Dispute Resolution to fashion a shared neutrals mediation program for state agencies;

NOW, THEREFORE, I hereby order that:

I. There be established in the Bureau of Mediation Services, through its Office of Dispute Resolution, a workplace mediation pilot project.

II. The Office of Dispute Resolution assumes the following responsibilities:

A. Coordinate the recruitment, selection and training of mediators.

B. Assist agencies in publicizing the workplace mediation pilot project.

C. Implement the pilot project, which includes, but is not limited to, these duties

1. maintain phone access during normal working hours;

2. contact parties requesting mediation or are requested to mediate their disputes;

3. contact mediators, assign them to cases and provide them with relevant information;

4. provide appropriate materials, and collect, evaluate and summarize evaluation forms; and debrief mediators

## MINNESOTA EXECUTIVE ORDER 99-5, continued

- D. Maintain a base of available mediators sufficiently large to accommodate the requests for mediation.
- E. Maintain and conduct regular mediator training updates as needed.
- F. Supervise the professional department of the mediators and implement corrective action as needed.
- G. Provide technical assistance to parties inquiring about the workplace mediation pilot project and consult with appropriate state employees and bargaining units.

### III. Executive branch agencies assume the following responsibilities:

- A. Encourage managers, supervisors and employees to use the pilot project and guarantee release time for employees to participate in mediations through the project.
- B. Recommend potential mediators to the Office of Dispute Resolution.
- C. Pay for the training and approve release time for training and up to 20 hours a year to conduct mediation for those chosen for the roster.
- D. Appoint a workplace mediation pilot project coordinator to work with the Office of Dispute Resolution, employees and bargaining units.
- E. Participate in evaluation of the pilot project.

This Order shall be annually reviewed by the Governor, in consultation with the affected agency or agencies, in order to assess its reasonableness and need.

Pursuant to Minnesota Statutes 1998, section 4.035, subd. 2, this Order shall be effective fifteen (15) days after publication in the State Register and filing with the Secretary of State and shall remain in effect until rescinded by proper authority or it expires in accordance with Minnesota Statutes 19998, section 4.035, subd. 3.

IN TESTIMONY WHEREOF, I have set my hand this second day of April, 1999.

Jesse Ventura  
Governor

## ***Elements to Consider When Drafting an Executive Order***

- |   |   |
|---|---|
| <input type="checkbox"/> Decide on the purpose and scope  | <input type="checkbox"/> Establish mechanisms for implementation and coordination |
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| <input type="checkbox"/> Establish mechanisms to ensure the quality and competency of the program | <input type="checkbox"/> Establish feedback mechanisms                            |

VOLUME I ▼ SEPTEMBER 2000

# solutions

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## Executive Orders

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### How Governors Can Promote Collaborative Processes and Dispute Resolution in States

This issue of **solutions** is the first in a series focused on government use of dispute resolution. Produced by the Policy Consensus Initiative, the series offers up-to-date information and guidance on best practices in the use of collaborative processes and conflict resolution in government. The aim of the **solutions** series is to enable readers to pick and choose the issues that address their specific needs and compile their own “bench book” on government dispute resolution practices. Future volumes will include topics such as drafting dispute resolution legislation; selecting, hiring, and contracting with neutrals; approaches to quality control; roster design and management; guidance for agency DR coordinators; case management systems; and program evaluation. PCI welcomes suggestions for **solutions** topics.

**P | C | I**

*POLICY CONSENSUS INITIATIVE*

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