

Dispute Resolution Committee **Structure and Process**

I. Dispute Resolution Committee (DRC) Structure. The DRC is a two-tiered Committee, involving a DRC Administration Committee (committee governance) and the DRC Mediator/Arbiter Panel.

DRC Administration Committee: The DRC Administration Committee is responsible for the governance of the Committee. The Administration Committee is responsible for the following:

1. Development of Committee structure, general policies, rules, and procedures;
2. Reporting to and communicating with the GPUS CC;
3. Training and developing of mediator and arbiters;
4. Receiving complaints and dispute resolution requests;
5. Assigning complaints and dispute resolution requests to mediators or to an arbitration panel and tracking the progress of such cases through to completion.
6. Reporting the results of mediation and arbitration cases to the GPUS CC (or steering committee), while protecting confidentiality where appropriate.
- 7.. Maintaining an archive of DRC decisions and rule interpretations

DRC Mediator and Arbiter Pool: This Pool is responsible to:

1. Accept assignments for mediation or arbitration;
2. In mediation, facilitate open discussion and dispute resolution of issue or personal conflicts through mediation techniques, reporting resolution or impasse.
3. In arbitration, collaborate on a arbitration panel by engaging in the following:
 - a. Fact-finding
 - b. Rule or policy interpretation
 - c. Rendering a panel decision
 - d. Reporting the decision to the DRC Co-chairs, who shall report to the GPUS CC (or SC)

II. Mediation Process and Structure: Mediation is the process of bringing conflicting parties together to discuss their issues and points of contention in a safe, non-adversarial environment. The process is built around refereed discussion, problem-solving and compromise. The mediator does not act as a hearing officer and does not judge the facts or impose a solution. Instead, the mediator facilitates the parties in the expression of their positions and in the exploration of potential solutions or resolutions to the conflict. The power of this process is found in the fact that the parties work out mutually acceptable solutions and agree to the resolution. The process and the details of the resolution shall be confidential, unless all parties waive confidentiality in writing.

Mediator: Since the mediator is not a judge or fact-finder, it is most efficient and practical for one mediator to work on an individual conflict. The mediator needs to:

1. Be without conflict of interest in the matter;
2. Be fair and impartial;
3. Be trained in mediation techniques
4. Maintain confidentiality in all mediation discussions
5. Report the resolution or impasse of all mediations and file any mediation agreements to the Administration Committee.

Appointment of Mediator: Once a conflict or dispute is reported to the DRC through the appropriate complaint or mediation request process, then DRC Intake Committee shall seek an available mediator from the pool of mediators. In selecting an available mediator, an effort should be made to find a skilled mediator who will be satisfactory to the parties.

Mediator Authority: In a very real sense it is the parties to a dispute who empower the mediator through their submission to the mediation process. Since the mediator is not a fact-finder and does not make any determinations or decisions relative to the dispute, the mediator's authority is most analogous to a facilitator or referee. The mediator is authorized to maintain the decorum of the discussion, to structure the process, and to facilitate problem-solving exercises.

III. Arbitration Process and Structure: Arbitration is a quasi-judicial process in that the arbitrators have fact-finding responsibilities and are expected to make determinations and decisions which are binding upon the parties to the dispute. For this reason the arbitration process must be formal and must follow very clearly defined rules and procedures. The DRC and the arbitrators must be empowered by the bylaws and the rules and procedures of the Party.

Timeliness: the DRC arbitration process should be completed within 60 days of receipt of the grievance. Should this timeline be impossible due to extenuating circumstances, a full report will be made to the Co-Chairs for possible assistance.

A. Arbitration Panel: In each case where arbitration is appropriate, the DRC Committee (or an appropriate subcommittee thereof) shall appoint a three member arbitration panel. Since this arbitration panel will sit and act as fact-finders and will issue binding decisions, it is essential that the panel be carefully appointed so as to avoid all appearance of conflict. For this reason, the members of the arbitration panel need to:

1. Be without conflict of interest in the matter;
2. Be fair and impartial;
3. Be trained in arbitration methods and techniques
4. Report the final decision of the Arbitration Panel and file such decision with the Administration Committee.

B. Challenge of Arbiters: Once an Arbitration Panel is appointed either party may veto (strike) the participation of one (1) arbiter, without stating the reason for such veto. In addition, either party may challenge for cause the participation of an arbiter by stating clear grounds for such challenge (bias, conflict of interests), The DRC (or an appropriate subcommittee thereof) shall consider such challenge for cause, granting the challenge where it is deemed appropriate and fair. Where arbiters are removed by challenge, then the DRC Committee (or an appropriate subcommittee thereof) shall appoint replacement arbiters.

C. Arbitration Authority: Because the Arbitration Panels may act as determiners of fact, making findings of fact and may order remedies to the parties, it is essential that the authority of the arbiters to perform their duties be authorized by through specific authorizing language by the Bylaws and the Rules and Procedures of the USGP. Until such authorization is specifically granted, the DRC cannot and will not offer arbitration services.

IV. Initial Complaint Process: The Dispute Resolution Process begins with a written Complaint or a Request for Dispute Resolution submitted to the DRC.

A. Written Complaint:

1. Standing: Complaints or Requests for Dispute Resolution may be submitted by:

- a. Any parties of interests to the dispute; or¹
- b. The Steering Committee

In submitting a Complaint or Request for Dispute Resolution the filing party shall indicate the party's standing to make the complaint.

2. Timeliness: Complaints must be limited to conduct that took place within six (6) months of the complaint's submission date or conduct that took place earlier, but was only just discovered within 6 months of the complaint's submission date.

3. Complaint Contents: The complaint should present the details of the dispute in clear concise detail. As much as possible the complaint should present only the basic facts and points of dispute or disagreement. Multiple issues of dispute should either be filed as separate complaints or a separate "counts" within the complaint. It is important that the complaint include information necessary to determine the "standing" of the complainant and to determine the timeframe for the complaint. The complainant should use the basic form provided by the DRC.²

B. DRC Complaint Processing: The DRC Intake Committee shall receive the complaints or requests for resolution.

1. Initial Determinations: The DRC Intake Committee shall make certain initial determinations and shall report these determinations in an Intake Report. Based on the written complaint and other information, which may be sought, the DRC Intake Committee will:

- a. Determine whether the complaint involves ethical, interpersonal, political and/or other issues; and

¹ A party of interest would be any Green Party Member, committee, caucus or other Party organization, which is directly involved with or affected by the conflict or dispute.

² We should develop a very simple complaint form. I could probably adopt a simple form we use for administrative complaints in Florida.

b. Make a preliminary determination in writing about whether and how to proceed. This determination shall be reported to the DRC Administrative Committee and the parties. This Intake Report shall state clearly the procedure recommended and the reasons for the determination. The same shall apply to a recommendation of dismissal. **This Intake Report should be made within 30 days of the complaint being received.**

2. Initial Actions: In determining how to proceed with a complaint the DRC Intake Committee may take the following actions:

a. Dismissal: The DRC Intake Committee may recommend dismissal of an action either as a general dismissal³ or a dismissal with prejudice.

(1) A complaint may be dismissed for being untimely, stating an issue or complaint over which the DRC has no authority or ability to resolve, or raising political issues, which should be resolved through normal party processes (See Political Issues below).

(2) A complaint may be dismissed with prejudice, if the DRC Intake Committee concludes that the complaint is untimely,⁴ or that complainant filed her or his complaint in retaliation against a person who had filed a complaint within the previous six months against the complainant. If a person has more than one complaint dismissed with prejudice, that person's actions will be referred to the Ethics Review Panel described below for further appropriate action.

b. Referral to Mediation. As a general principle mediation would be the appropriate initial action for most complaints. It is in the nature of Green process that issues and disputes should be resolved through discussion and consensus, rather than adversarial process. It is expected that Green Party members will submit to mediation for the resolution of disputes and issues, prior to resorting to arbitration. The following shall be the only exceptions to mediation as the first step in dispute resolution:⁵

³ A complaint dismissed with a general dismissal may be brought back or reasserted when the complaint

⁴ A complaint concerning matters occurring or discovered more than six (6) months precedent to the filing of the complaint.

⁵ It would be fair to question whether there should be any exceptions to mediation as the first step in dispute resolution. Today, more and more courts are requiring mediation before they will try an issue.

(1) Issues of Party ethics and discipline;

(2) Where the history of the dispute makes it clear to the DRC Intake Committee that mediation would be a fruitless exercise.

c. Referral to an Arbitration Panel: Where a complaint has been to Mediation, without success (the effort ended in an impasse), or where one of the above exceptions to prior mediation is met, then the complaint shall be referred to an Arbitration Panel.

d. Ethics Review Panel: Where the issue or complaint concerns a matter, which may require Party discipline or sanctions, then the matter shall be referred directly to an Ethics Review Panel. In such cases it is not necessary to first pass by the mediation process.

e. Mixed Issues: Where the complaint contains mixed issues requiring Arbitration and Ethics Review, such complaint may be referred to a combined Arbitration and Ethics Review Panel for consideration.

3. Classification of Complaints: If the complaint, on its face, raises any actionable ethical, personal, or political issues, all issues identified by the PC shall be handled in the following three ways.

a. Political Issues. Political Issues are those issues, which concern the rule-making, and/or legislative decision-making processes of the Party. Any political issue raised by a complaint shall be resolved through existing party processes. It is essential that the consensus process be allowed to work completely, before the DRC accepts any political complaint for resolution. The resolution of conflicts through the Green consensus process is considered the highest form of conflict resolution. It is of vital importance that the processes of the DRC not interfere with or take the place of the normal working of the consensus process. The DRC shall, therefore, refer political issues or complaints back to the correct body for resolution through the consensus process. This principle does not, however, prevent the DRC from intervening in “political issues,” where consensus process has been finalized and a dispute remains.

b. Interpersonal Disputes. When interpersonal disputes are brought to the DRC, the complaining party must first indicate what efforts have already been attempted to resolve the issues, including personal communications with the other party. Any personal issue raised by the

complaint shall be referred to the relevant parties for resolution through mediation.

c. Challenges to official actions, rulings and decisions: Where the complaint involves a challenge to official final actions (or inaction), rulings and decisions of any committee or body of the GPUS the complaint should, unless otherwise exempt, be referred first to mediation and then if unresolved to binding arbitration. As noted above, care must be taken not to cut short the consensus process. For this reason, a complaint may challenge only a final decision, ruling or action (or inaction) of a committee or organizational body of the GPUS. It would be improper to challenge issues in discussion or in voting, consensus process and such challenges would be referred back to the political process as premature (see political issues above).

d. Ethical Issues. A complaint may raise the issue of a violation of the Party's ethical standards and principles.⁶

V. Mediation Procedures: Once the above described initial Complaint Process is completed by the DRC Intake Committee and a determination is made that mediation is appropriate, then the following procedures shall be followed:

A. Notification of Parties: The DRC Intake Committee shall provide the following notification:

1. The Complainant(s) shall be notified that the Complaint has been accepted and that it is being referred to mediation.
2. The Respondent(s) (parties being complained against) shall be notified of the Complaint and provided with a copy thereof. The Respondent shall be notified that the Complaint has been referred to mediation and shall be encouraged to participate in the mediation. The Respondent's voluntary participation is required in order for the matter to go forward to mediation.

B. Assignment of Mediator or Mediation Team: The DRC Intake Committee shall consider the following in assigning the complaint to a mediator or a mediation team:

1. Is the matter sufficiently complex or sensitive so as to require the appointment of a mediation team (two to three mediators)? The use of a

⁶ I believe that we must make sure that any ethical rules that might be enforced by this process be clearly delineated and be very specific and detailed, if we want to avoid a morass of charges and counter-charges on every slight. Furthermore, it is one thing to have a aspirational code of ethics as guidance and a goal for ethical conduct and communications and it is very much another thing to create enforceable ethic rules. To allow for enforcement, the rules must be very specific and have clear criteria for defining violation.

team has the advantage of allowing a broader more balanced approach. It also allows for sharing of the workload.

2. Does the mediator or mediation team have sufficient skills and training for the particular complaint.
3. Is the mediator or mediation team available and the best fit considering geographic location and the specific circumstances of the matter.
4. Is the mediator or mediation team sufficiently removed from the issues to be considered to be capable of providing fair, balanced, unbiased service. The freedom from bias needs to be a freedom from both actual or perceived bias. The DRC Intake Committee shall provide the mediator or mediation team being considered with the minimal information necessary for the mediator or mediation team to review the matter for conflicts or bias (Names of parties and basic issue to be resolved).
5. Before the matter is finally assigned to the mediator or mediation team, the subject parties shall be consulted to be confirm that the selected mediator or mediation team are acceptable to both parties.

C. Mediator or Mediation Team Review of Complaint and Intake Report:

The mediator or mediation team shall review the Complaint and the Intake Report to confirm agreement with the conclusions and recommendations of that report. In the event that the mediator or mediation team should differ with the DRC Intake Committee relative to the necessary interventions or actions to take, then the mediator or mediation team shall confer with the DRC Intake Committee with the objective of seeking consensus as to the appropriate actions to take. The Intake Report is confidential to the Intake Committee, the parties, and the proposed mediators or the mediation team.

D. Mediation Principals and Procedures: Mediation by the DRC shall be conducted according to the following Principals and Procedures:

1. Mediation Principles:

a. Green Process: Mediation is perfectly aligned with Green Principles. It places emphasis upon personal responsibility for the resolution of conflicts and disputes, rather than relying upon externally imposed judgments or corrective actions.

b. Confidentiality: All mediation shall be done in complete confidentiality. This confidentiality shall extend to all aspects of the process from the complaint to the final resolution. All participants in the process, including the parties and DRC members and mediators, commit themselves to confidentiality relative to the entire process.

c. Voluntary Participation: Mediation works because the participants engage in the process voluntarily, making a good faith effort to resolve their conflicts or issues.

d. Facilitated Communication: An essential part of mediation is the practice of facilitated communication. Many disputes arise out of an inability for individuals to communicate clearly and to understand the positions, perspectives, and sentiments of the other. Mediation provides the opportunity for each party to hear the other in a non-threatening ambiance. This process encourages parties to actively listen and to at least try to understand the perceptions of the other.

e. Problem-solving Techniques: Mediation is joint problem-solving engaged in by those involved in a dispute or conflict. It takes the emphasis off of establishing right or wrong and judgmental findings and places the emphasis on finding mutually acceptable solutions and resolutions.

f. Solutions Determined by the Participants: . In mediation true solutions and resolutions are those discovered and accepted by the participants themselves. Mediation is effective due to the fact that the parties take responsibility for actively seeking seeking mutually acceptable resolution. This ownership of the solution greatly increases the long-term success of mediation.

g. Not a “fact-finding” or “judgment” process: It is extremely important that all participants understand that mediation is neither a “fact-finding” nor a “judgment” process. The mediator is a guide and facilitator of the discussion and resolution seeking process and not a judge of the facts or the parties. As noted above, solutions are found by, accepted by, and implemented by the parties.

2. Mediation Procedures: The DRC is responsible for drafting a useful manual on Green Party Mediation, which will provide the details for effective mediation. These procedures will provide the basic outline of the standard procedures, while the manual will provide the detail and guidance for effective mediation.

a. Explanation of Procedures: In order for mediation to be effective it is vital that the participants understand the process. The mediator begins the mediation explaining the principles of mediation (see above). This introduction to mediation is designed to help the participants relax and trust the process. It is common in mediation to have the parties sign a document agreeing to confidentiality relative to the discussions held in the mediation.

b. Statements of the Parties: It is typical for mediation to start off with a statement by each party of the issues, problems, disputes and the facts as understood by that party.

- * Parties are encouraged to frankly lay out all the known issues and facts.

- * Each party making a statement shall be accorded the courtesy of active listening, without any interruption.

- * At the conclusion of a statement, the mediator may ask clarifying questions, designed to allow the mediator to better understand the issues. While an opposing party might be allowed to ask a clarifying question at this point, generally such questions are not helpful in that they tend to degenerate quickly into a form of “cross-examination” which is not appropriate.

- * It is common for the mediator to summarize the issues and alleged facts at the conclusion of the parties’ statements.

c. To Discuss or Caucus?: Good mediation cannot be conducted according to a rigid formula. Once each party has presented their view of the issues or dispute, the mediation moves into the problem-solving stage. This can be done either by beginning an open discussion between the parties or by the mediator caucusing privately with each party. The mediator might consider the following in determining the best technique to use.

- * Are the subjects or issues an emotional in nature? If so, immediate open discussion, without some private problem-solving first, might be pre-mature and ineffective.

- * If the issues are non-emotional, but require in-depth consensus work, then it may be possible to directly begin joint problem-solving.

- * Does the mediator need to seek more information and explore issues and facts privately with the parties? Sometimes it is wise for the mediator to probe for more information, both concerning facts and issues, in a private caucus with each party. Very often a party will share things in private, that they would hesitate to share in openly.

d. Caucusing: The mediator caucuses with a party when the mediator meets with a party alone. In a face to face mediation, this usually entails separating the parties so that the mediator can meet

separately with each party. In a phone mediation this may require the mediator having the ability to place one party on hold, while speaking confidentially with the other party.

Once the mediator meets with one party, he/she will then meet with the other party. Depending upon the complexity of the issues and the need, the mediator may alternate back and forth between the parties, working to bring the parties' positions and search for solutions closer together. The caucus serves to:

- * Allow the mediator to clarify facts and issues in a more relaxed, non-adversarial ambiance.
- * Allow the mediator to relieve any tensions and reassure the parties about the process.
- * Allow the mediator to explore the issues with the parties, looking for ways to resolve the problems between the parties.
- * Determining what facts, issues or possible solutions that might be shared with the other party.

e. Important Caucus Principles:

- * **Confidentially:** When the mediator seeks additional facts or in caucus, it is primarily for the purpose allowing the mediator to better understand the issues and to see potential solutions. The mediator may not share any such information without the express permission of the party.
- * **Party Control v. Imposed Solutions:** Most people resent others attempting to control their actions or behavior. It is important that the parties understand clearly that no one is going to impose a resolution in mediation. Either the parties take positive control of the solution seeking process or the mediation will not work. From the beginning the mediator must encourage the parties to be actively engaged in the problem-solving process.

The mediator is not the problem-solver. She/he is a problem-solving facilitator, encouraging the parties to engage in an effective problem-solving exercise. A solution or resolution discovered by the parties, is their solution and thus much more effective.

* **Avoid fact arguments:** People often tend to view mediation as a form of trial and the mediator as a type of judge. It is essential that the mediator educate the parties and guide them toward productive, solution oriented processes. While a general understanding of the perceived facts is important in order for the mediator to understand the issues and problem, it is not necessary for the mediator to be a “fact finder.”

The mediator should thus discourage fact arguments. It is often helpful to point out the importance of perceptions. It is thus not important to prove whether **Party A** lied to **Party B**. It is important, however, to acknowledge that **Party B** perceives that **Party A** lied to him and that **Party B** now has difficulty trusting **Party A**. The mediation issue becomes how **Party B** and rebuild his trust for **Party A**. On the way to the resolution, **Party B** may need to consider whether he/she can forgive **Party A** for the perceived lack of honesty. At the same time, can **Party A** put aside her/his offense at being accused of dishonesty.

* **Compromise:** All successful mediation requires some compromise on each side. The compromise may be that the parties will give up the need to prove which one was right, put aside a hurt or offense, or to move away from an absolute fixed position.

f. Joint Conferencing: When the mediator feels that it would be beneficial, she/he might invite the parties back together to discuss the progress that has been made. These joint conferences could be used to solidify progress made or to allow the parties to clarify positions. Since any real resolution must be the work of the two parties, it is important that at some point the parties come back together to “agree together” on resolutions being discussed.

If the resolution is partial the parties may at some point return to caucus to work through other issues. When final resolution has been reached, a final joint conference is used to summarize the progress and agreement reached.

g. Mediation Agreement: It is important that any agreements reached by the parties be memorialized in a mediation agreement. The Mediator drafts the agreement with the consensus agreement of the parties. The following principles should be followed:

* The agreement should focus upon the agreed solutions arrived at, rather than the dispute, factual or otherwise.

- * Any commitment of the parties to do or not do anything should be clearly enumerated.

- * Unless the mediation agreement expressly states otherwise, the mediation agreement is not generally confidential. For this reason, confidential information shared during the mediation should not be placed in the agreement.

h. Final Mediation Report: Once the mediation has been concluded the mediator or mediation team should draft a Final Mediation Report. This report may report results (1) **Resolution**, (2) **Partial Resolution**, (3) **Impasse**. The Report should indicate the following:

- * Where there has been resolution or partial resolution the Mediator shall attach the Mediation Agreement to the Report.

- * Where there the Mediation Agreement involves any agreement or commitments requiring participation, monitoring, or action from third-parties, this details need to be clearly delineated, with recommendation for implementation. This is particularly important if any of the Mediation Agreement's terms require approval or action by any Green Party committee, caucus or other group.

- * Where the final result of the Mediation is impasse, then the Mediator shall make a recommendation relative to any further official DRC action.

- * As in all other aspects of the mediation, the Report shall respect the confidentiality of the mediation process.

- * The Report shall note whether any **DRC Mediation Follow-up** is recommended.

I. Mediation Follow-up: Although some mediations resolve problems definitively, it is often beneficial to provide some mediation follow-up. This follow-up may include the following:

- * Simple periodic mediator calls to the parties for a short period.

- * Mediator availability for advice, counsel, low-level facilitation between the parties.

- * Follow-up Team services: In more complex cases, it may be necessary to assign a Follow-up Team to monitor compliance and to offer continuing mediation, as needed. Where this level of follow-up services are needed, the Follow-up Team shall file a **Closure**

Report when it appears that the issues are resolved and the Follow-up Team services can be reasonably terminated.

J. Evaluation: An evaluation form shall be developed and parties shall be requested to evaluate the effectiveness of the procedure.

VI, Arbitration Procedures

VII. Ethics Review Panel Procedures

VIII. Appeal Procedures

Note:

This document is sufficiently complete in order to provide the necessary procedures for basic mediation services. Once these procedures are approved, the DRC will be able to begin taking in mediation cases.

As can be seen there is much further work to be done in the development of Arbitration, Ethics Review Panel, and Appeal procedures. All of these final subjects relate to a level of intervention that the DRC is not presently prepared to offer. The DRC will therefore resubmit this document, at such time as the appropriate procedures are developed.