



Army Alternative Dispute Resolution

ADR Program Office
Office of the General Counsel

Overview

- ADR – Definition and place in the dispute resolution spectrum
- Major ADR authorities of interest to practitioners
- Army ADR policy and program goals

ADR – Definition

“Any procedure that is used to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, factfinding, minitrials, arbitration, and the use of ombuds, or any combination thereof.”

--Administrative Dispute Resolution Act of 1996

The Dispute Resolution Spectrum

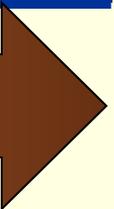
Dispute Avoidance

NEGOTIATION	ALTERNATIVE DISPUTE RESOLUTION		LITIGATION
Unassisted Negotiations	Process Assistance	Outcome Prediction	Private Litigation
Traditional Settlement Negotiations	Conciliation Facilitation Mediation Ombuds	Early Neutral Evaluation Fact-Finding Non-binding Arbitration	Binding Arbitration Summary Trial with Binding Decision
	Mini-Trial Settlement Judge		Administrative Boards (EEOC, MSPB, FLRA, ASBCA) Judicial Forums (Federal Courts)
Non-binding Processes			Binding Processes

Parties

Control

3d-Party



Administrative Dispute Resolution Act of 1996 (ADRA)

Section 3 of the ADRA requires federal agencies to:

- Adopt policies addressing the use of ADR as a means of dispute resolution for all administrative programs
- Designate a senior agency official to be the agency “Dispute Resolution Specialist”
- Provide agency staff training in ADR and negotiation techniques

ADRA of 1996

- Authorizes the use of federal employees as neutrals
- Provides that ADR is supplementary to other dispute resolution procedures
- Extends confidentiality protection to certain “dispute resolution communications”
- Establishes authority and procedures for agencies to agree to use binding arbitration
- Calls for the establishment of an interagency committee to facilitate and encourage use of ADR
- Gives circumstances where agency should consider not using ADR to resolve a dispute

Army ADR Policy



DEPARTMENT OF THE ARMY
WASHINGTON DC 20310

JUN 22 2007

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Army Alternative Dispute Resolution Policy

1. This memorandum reaffirms the Army's implementation of the Administrative Dispute Resolution Act of 1990 by Secretary of the Army Memorandum, subject: Implementation of the Administrative Dispute Resolution Act of 1990, dated July 25, 1995. That Act, and Congress' renewal of the legislation through the Administrative Dispute Resolution Act of 1996, encourage the use of Alternative Dispute Resolution (ADR) to reduce the time and costs of settling disputes and empower deciding officials to resolve conflicts more creatively and expeditiously.
2. During the past decade, the Army has used ADR to settle thousands of disputes in a variety of areas, ranging from contract claims to personnel matters. This experience has demonstrated that ADR is an effective tool to resolve disputes quickly and with less cost than traditional methods.
3. Army personnel are urged to use ADR procedures in appropriate cases. The use of ADR techniques may resolve all or part of the issue in controversy. The goal is to resolve disputes at the earliest stage feasible, by the fastest and least expensive method possible, and at the lowest possible organizational level. It is essential that personnel involved in the resolution of disputes receive ADR training and consider ADR in each case.
4. The Principal Deputy General Counsel of the Army is the Army's Dispute Resolution Specialist (ADRS). The ADRS shall:
 - a. Serve as the proponent for establishing and implementing Army ADR policy, guidance, and regulations;
 - b. Submit, manage, and execute the Army ADR Program budget;
 - c. Encourage, develop, and implement ADR initiatives, activities, and training throughout the Army;
 - d. Identify and eliminate unnecessary barriers to the use of ADR;
 - e. Ensure Army personnel are aware of and have access to existing ADR resources;
 - f. Ensure appropriate personnel receive ADR briefings and training;

SUBJECT: Army Alternative Dispute Resolution Policy

- g. Prepare a summary report to the Secretary of the Army by September 30 of each year regarding progress made in implementing the Army ADR program in the previous year;
 - h. Develop a five-year plan for the Army ADR Program;
 - i. Secure resources necessary to implement the Army ADR policy and program; and,
 - j. Coordinate with the Assistant Secretaries of the Army for Acquisition, Logistics, and Technology; Civil Works; Manpower and Reserve Affairs; Installations and Environment; and Financial Management and Comptroller; The Judge Advocate General; the Command Counsel of Army Materiel Command; the Chief Counsel of the Corps of Engineers; and other appropriate organizations for the development and implementation of the Army ADR program.
5. To assist the ADRS in performing these responsibilities, I am directing the hiring of an ADR specialist within the Office of the Army General Counsel (OGC). In addition, the Deputy Under Secretary of the Army, in coordination with the Assistant Secretaries of the Army for Manpower and Reserve Affairs and Acquisition, Logistics, and Technology, shall identify appropriate personnel to detail to the OGC, for the purpose of facilitating the application of ADR initiatives in the areas of workplace disputes and acquisition.

Pete Geren
Acting Secretary of the Army

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Army ADR Policy

- Encourage use of ADR whenever appropriate to resolve disputes at the earliest stage feasible, by the fastest and least expensive method possible, and at the lowest possible organizational level
- Train Army personnel in ADR and ADR techniques
- Consider use of ADR in “each case”
- Principal Deputy General Counsel is Army “Dispute Resolution Specialist” (ADRS)
- Coordination with stakeholders to establish and implement Army ADR program

ADR Policy in EEO Complaints

- DoD and Army policy: ADR should be used to the maximum extent practicable and appropriate, by the least expensive means possible, at the lowest possible organizational level
- EEOC policy: Agencies must make ADR available at both the informal precomplaint stage and the formal complaint stage
- ADR must be:
 - Voluntary
 - Neutral
 - Confidential
 - Enforceable
- ADR is appropriate to resolve most, but not all, disputes
- Mediation is the most common ADR process for EEO cases

Army ADR Program Goals

- Promote identification and resolution of issues in controversy as early and as inexpensively as possible, at the lowest possible organizational level
- Develop and deploy Army mediation, negotiation, and other dispute-resolution training programs
- Support and assist Army components and activities to build and maintain effective conflict management and dispute resolution capabilities
 - Training & mentoring
 - Third-party neutral support
- Provide policy and guidance as necessary in support of Army ADR program goals

ADR: A Business Approach to a Business Problem

- Most workplace disputes (e.g., EEO complaints, grievances) are *business*, not *legal*, problems
- Most EEO complaints don't result in a finding of discrimination
 - Fiscal Year 2012 (most recent data):
 - 15,706 formal complaints were closed (Government-wide)
 - 6,758 merit decisions were issued (Government-wide)
 - Total findings of discrimination: 214 (3.1%)
 - Previous years: 2009 (2.9%); 2010 (3.3%); 2011 (3.0%)
- Many do allege legitimate workplace issues
 - Poor communication, personality conflicts, bad management practices, weak leadership, *BULLYING*...
- Investigate the facts, discuss with counsel, supervisory chain and EEO officer as to how best to resolve the issue

Good Cases for ADR

- Relationship between the parties is important
- Case involves no unique questions of law
- Unassisted negotiations aren't going anywhere
- Confidentiality is desired
- Parties want resolution sooner than later
- Parties want control over process and outcome
- Parties need a reality check
- Emotions are running high
- Transaction costs exceed likely case value

Bad Cases for ADR

- Authoritative decision is needed for precedent
- Public record of proceedings is needed
- Case significantly affects non-parties
- ADR would undermine development or consistent application of Government policy
- Case involves significant issues of criminal misconduct, fraud waste or abuse, or threats to health or safety
- Significant operational limitations make ADR impossible or impractical

Army ADR

- Workplace
 - EEO complaints
 - Non-EEO (grievances, labor-management)
- Acquisition
 - AFARS Part 5133.204
 - ASBCA (appeals)
- Environmental
 - Environmental Collaboration and Conflict Resolution (ECCR)
 - Army Corps of Engineers – IWR
- Other disputes that can be resolved informally

How to Reach Us

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U.S. ARMY ALTERNATIVE DISPUTE RESOLUTION PROGRAM (ADR)

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- Library
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ALTERNATIVE DISPUTE RESOLUTION

Alternative Dispute Resolution (ADR)

Bio for Marc Van Nuys, Director of ADR

It is Army policy to encourage the voluntary use of alternative dispute resolution processes, such as mediation and facilitation, to resolve administrative disputes as early as possible, by the fastest and least expensive methods available, and at the lowest possible organizational level. All disputes should be considered for ADR. While ADR is not appropriate for every dispute, it is often the best choice, especially when it is necessary or desired to preserve the relationship between the parties, whether that relationship involves employment or contractual obligations.

The current ADR policy, promulgated by a SECARMY memorandum on 22 June 2007, gives the Office of the Army General Counsel the overall responsibility for ADR policy, guidance, and training. The program's two major focus areas are in workplace disputes dealing with civilian employees and labor-management relations, and acquisition disputes, such as contract claims and appeals. The Army ADR Program is administered by the ADR Practice Group in OGC. It is staffed by an attorney director, an attorney director of ADR for workplace disputes and training, and an attorney director of ADR for acquisition disputes. Although workplace and acquisition disputes are the program's primary focus, Army ADR policy applies to other disputes as well, including environmental conflicts and claims. The ADR Practice Group provides advice and guidance regarding the uses of ADR, collects and reports ADR data for the Army, helps disputing parties obtain appropriate third-party neutral support, and conducts training in mediation and negotiation skills and other conflict management and prevention processes upon request.

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Privacy and Security Policies

ADR News

EEOC Releases Federal Workforce Report for FY 2009

The Equal Employment Opportunity Commission has released its annual report on the federal workforce for FY 2009. The report is available on the [EEOC website](#). [More Information](#).



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