



Army Alternative Dispute Resolution Program

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

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

Major Authorities Affecting ADR in DoD

- Administrative Dispute Resolution Act of 1996 Pub. L. No. 104-320, 5 U.S.C. 571 *et seq.* (“ADRA of 1996”) (requires federal agencies to adopt ADR programs and policies in administrative processes)
- Executive Order No.12988, Civil Justice Reform, 61Fed. Reg. 4,729 (1996) (ADR in civil litigation)
- Executive Order No. 12979, Agency Procurement Protests, 12979, 60 Fed. Reg. 55,171 (1995) (ADR in agency bid protest procedures)
- Federal Acquisition Regulation (FAR) Part 33 - Protests, Disputes and Appeals, 48 C.F.R. 33.103, 33.204 & 33.214 (ADR in contract disputes)
- EEOC, Federal Sector Equal Employment Opportunity, 29 C.F.R. Sec. 1614.107(b)(2) (ADR in federal sector EEO complaints)
- DoD Directive 5145.5, *Alternative Dispute Resolution* (April 22, 1996) (requires all components to have ADR programs and promote ADR use - currently undergoing revision)
- Environmental Conflict Resolution Policy (OMB-CEQ Memo, Nov 2005) (promotes greater use of collaborative problem solving)

ADRA of 1996

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

Distribution:
ASA (Civil Works)
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Army ADR Policy

- Encourages 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
- Must consider ADR in “each case”
- Principal Deputy General Counsel is Army “Dispute Resolution Specialist” (ADRS)
- ADRS coordinates with stakeholders to establish and implement Army ADR program
- Directs the hire of an ADR specialist and additional manpower in OGC to support the ADRS

Army ADR Program Goals

- Promote the identification and resolution of issues in controversy as early and as inexpensively as possible, at the lowest possible organizational level
- Support and assist Army components and activities to build and maintain effective conflict management and dispute resolution capabilities
 - Training & mentoring
 - Third-party neutral support
- Establish and implement comprehensive ADR policies and guidance for all Army dispute resolution activities

Current Directions

- Collaboration with major ADR stakeholders
 - Assistant Secretaries (M&RA, CW, I&E, ALT), OTJAG, AMC, COE
 - Develop and coordinate the Army 5-year ADR plan
- Assess current status of ADR in the Army (survey)
- Outreach (ADR awareness and promotion)
- Develop training curricula and delivery mechanisms
- Expand and enhance ADR data collection and reporting, especially in workplace disputes
- Develop ADR best practices/lessons learned
- Promote collaboration with other DoD ADR programs

Future Directions

- Build an Army-wide support infrastructure for component-driven ADR programs
- Provide tiered training in ADR and negotiation skills for a wide spectrum of Army audiences
- Collaborate with other DoD components to tap into ADR resources and expertise
- Provide one-stop access to Army ADR Information/Best Practices
- Accurately and reliably track, measure and report Army ADR usage and success

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