

Legal Services

ALTERNATIVE DISPUTE RESOLUTION

By Order of the Secretaries of the Army and the Air Force:

RUSSELL C. DAVIS
Lieutenant General, USAF
Chief, National Guard Bureau

Official:

MICHAEL S. MILLER
Lieutenant Colonel, USAF
Chief, Office of Policy and Liaison

History. This is a new publication.

Summary. This regulation describes National Guard Alternative Dispute Resolution (ADR) policies and procedures pursuant to DOD 5145.5-D.

Applicability. This regulation is applicable to all personnel assigned to the National Guard Bureau (NGB) and all National Guard members and technicians of each State and Territory.

Proponent and exception authority. The proponent of this regulation is the Chief Counsel, Office of the Chief Counsel, National Guard Bureau (NGB-JA). The proponent has the authority to approve exceptions to this regulation that are consistent with controlling law and regulation. The proponent may delegate the approval authority, in writing, to a division chief within the proponent agency in the grade of colonel or the civilian equivalent.

Management Control Process. This regulation contains management control provisions and identifies key management controls that must be evaluated.

Supplementation. Supplementation of this regulation is prohibited without prior approval from the Office of the Chief Counsel (NGB-JA).

Suggested Improvements. Users of this regulation are invited to forward comments or suggestions on DA Form 2028 (Recommended Changes to Publications and Blank Forms) to the Office of the Chief Counsel, NGB, 1411 Jefferson Davis Hwy, Suite 11300, Arlington, VA 22202-3231.

Interim Changes. Interim changes are not official unless authenticated by the Chief Counsel, NGB. Interim changes will be destroyed upon their expiration dates unless sooner superseded or rescinded.

Distribution: A.

1-1. Purpose

To provide an avenue through which all National Guard units, activities and staffs can implement and encourage the use of Alternative Dispute Resolution (ADR) in appropriate situations, and assign responsibilities and establish goals for its use.

1-2. References

Required and related publications and referenced forms are listed in Appendix A.

1-3. Explanation of abbreviations and terms

Abbreviations and special terms used in this regulation are explained in the glossary.

1-4. Responsibilities

- a. The Chief, NGB, will appoint a Dispute Resolution Specialist (DRS) to promote ADR within the National Guard and have overall responsibility for oversight of the NGB ADR Program.
- b. The Director, Army National Guard (ARNG) will appoint one individual as an ADR Advocate.
- c. The Director, Air National Guard (ANG) will appoint one individual as an ADR Advocate.
- d. Each Adjutant General (AG) should appoint a State ADR Advocate, who will serve as the proponent in the State for the ADR Program and will act as the point of contact for information regarding the ADR Programs in that State.
- e. The Chief Counsel, NGB, will-
 - (1) Serve as the NGB's DRS and have overall responsibility for oversight of the NGB ADR Program.
 - (2) Participate in the Senior ADR Working Group.
 - (3) Appoint one individual as an ADR Advocate.
- f. The Division Chief, Equal Opportunity, NGB; the Division Chief, Human Resources, NGB; and the Division Chief, Acquisition, NGB will –
 - (1) Each participate in the Senior ADR Working Group.
 - (2) Each appoint one individual as an ADR Advocate.

1-5. Policies and Procedures

- a. It is Department of Defense (DOD) policy that each DoD component shall establish and implement ADR policies and programs, use ADR techniques as an alternative to litigation or administrative proceedings where appropriate, review its existing approaches to dispute resolution, and foster use of ADR and eliminate barriers to its use. DoD 5145.5-D, Alternative Dispute Resolution, 22 April 1996.
- b. Consistent with DoD policy, the Departments of the Army and Air Force have promulgated policies encouraging the voluntary use of ADR to resolve disputes as an alternative to litigation or formal administrative proceedings to the "maximum extent practicable" and as "appropriate." (Secretary of the Army Policy Memorandum, Implementation of the Administrative Dispute Resolution Act of 1990, 25 July 1995 and AFPD 51-12, Alternative Dispute Resolution, 1 April 99)
- c. In keeping with these policies, the NGB's policy is that the use of ADR, where appropriate and feasible, is strongly encouraged for the resolution of disputes. (Office of the Chief Counsel - National Guard Bureau Memorandum, Implementation of National Guard Bureau Alternative Dispute Resolution Program, 16 Nov 1999) Every conflict and issue in controversy is a potential candidate for ADR. The NGB's goal, consistent with this policy, is to resolve disputes at the lowest organizational level possible by the least expensive method. ADR may be used to resolve either a portion of the issue or the entire issue in controversy.
- d. The NGB will appoint ADR Advocates who are responsible for the implementation of this ADR regulation, as appropriate. The Chief Counsel, NGB, will serve as the NGB's DRS and have overall responsibility for oversight of the NGB ADR Program.
- e. At a minimum, the Chief Counsel, NGB (NGB-JA); the Division Chief, Human Resources (NGB-HR); the Division Chief, Equal Opportunity (NGB-EO); the Division Chief, Acquisition (NGB-AQ); the Director, ARNG; and the Director, ANG will each appoint one individual as an ADR Advocate. The qualifications of individuals selected as ADR Advocates will be left to the discretion of the division chiefs and directors, but such ADR Advocates must be willing to allocate whatever portion of their time is necessary to effectively support the NGB ADR effort. The ADR Advocates will act as proponents and champions of ADR within their offices/directorate and subject matter areas and will be expected to promote the use of ADR in those areas.

f. Additional ADR Advocates should be considered by the division chiefs of other NGB offices for other types of activities that may be appropriately managed through ADR. Upon approval by the Senior ADR Working Group, as described in g(1) – (5) below, such other NGB offices will become part of the Senior ADR Working Group.

g. The Chief Counsel and the division chiefs/directors (or their designees) of offices that appoint ADR Advocates under e and f above, will meet as necessary, at least quarterly, to ensure implementation of NGB ADR policy and to develop and review periodically a five-year plan for the NGB ADR Program. Each such division chief or director will develop an ADR plan to direct how ADR will be conducted on matters arising in that subject area. Use of existing ADR plans from other DoD components where possible and as models is highly encouraged to reduce costs and time invested. This group will be called the Senior ADR Working Group. Other responsibilities of this Working Group include:

- (1) Ensure that ADR Advocates have an opportunity to receive the training required by 1-5i below
- (2) Meet with the ADR Advocates as a group at least semi-annually to monitor progress, ensure that ADR training is on-going, act as mentors in developing creative ways in which ADR may be used, and prevent obstacles to the use of ADR if possible.
- (3) Review statistics compiled by the ADR Advocates to monitor use of ADR and ensure that results include cost-savings and end products that are in the best interest of NGB.
- (4) Develop estimates of training and travel budget amounts, and other resources, which would be needed to adequately train and use ADR Advocates, both at NGB and in the States. Maximum use should be made of free local governmental training courses.
- (5) Determine any need for revision of National Guard policy and regulations to provide for or facilitate the use of ADR, including workplace disputes, contract or grant disputes, environmental cleanup disputes, and other areas in which ADR may be appropriate.
- (6) Submit a report by the end of November each year describing use of ADR by NGB and the National Guards of each State and Territory during the preceding fiscal year. The report shall be submitted to the Chief Counsel, NGB. Data to be collected and the means of such collection shall be determined by the Senior ADR Working Group and the ADR Advocates together, consistent with DoD reporting requirements as reflected in DD Form 2815.

h. ADR Advocates will work to further develop and implement requirements and measurement tools as directed by the Senior ADR Working Group. Reports will be made to the Senior ADR Working Group as directed and will include information such as the types of ADR used, the total number of ADR processes attempted, the success rate, and any barriers to the use of ADR. Each ADR Advocate will work with their customers in the State National Guards to educate, assist and coordinate ADR issues as appropriate. ADR Advocates will also be expected to:

- (1) Assist their office chief/director in coordinating the implementation of the ADR Program.
- (2) Advise management on the suitability of various disputes for resolution through the use of ADR.
- (3) Ensure that office chiefs/directors are aware of the latest ADR Program guidance and information.
- (4) Provide timely advice and other support needed to implement the ADR plan and achieve the NGB's policy of voluntarily using ADR to the maximum extent appropriate and practicable.
- (5) Ensure that ADR activity within the office/directorate is coordinated so that it avoids unnecessary duplication of NGB efforts, is consistent with NGB ADR Program guidance, and be aware of respective ADR efforts and plans in other offices/directorates so that there is coordination and, if possible, synergy between the various efforts.

i. Each individual appointed as an ADR Advocate will receive appropriate training and support in order to fully understand the ADR process and ensure that further training may be provided to other individuals in the organization as needed. It is essential that appointed ADR Advocates are trained in order for the ADR program to be successful.

j. The AG's of each State and Territory are responsible for implementing ADR Programs fully throughout the State, ensuring that ADR Programs receive the widest distribution and promotion to all applicable personnel. Each AG should appoint a State ADR Advocate, who will serve as the proponent in the State for the ADR Program and will act as the point of contact for information regarding the ADR Programs in that State. The State ADR Advocate will be expected to fulfill, in the context of the State Guard Program and framework, the responsibilities listed in section h above. The State ADR Advocate will make available to NGB all necessary data in order to assist and support the preparation of the annual report listed in section g(6) above. The State ADR Advocate will forward to the NGB Office of Chief Counsel copies of any significant state guidance implementing and promoting ADR. States are strongly encouraged to provide training for the State ADR Advocate.

**Appendix A
References**

**Section 1
Required Publications**

DoD 5145.5-D

Alternative Dispute Resolution, 22 April 1996. (Cited in para 1-5a)

Secretary of the Army Policy Memorandum, Implementation of the Administrative Dispute Resolution Act of 1990, 25 July 1995. (Cited in para 1-5b)

AFPD 51-12

Alternative Dispute Resolution, 1 April 99. (Cited in para 1-5b)

Office of the Chief Counsel - National Guard Bureau Memorandum, Implementation of National Guard Bureau Alternative Dispute Resolution Program, 16 Nov 1999. (Cited in para 1-5c)

**Section II
Related Publications**

Public Law 104-320

Administrative Dispute Resolution Act of 1996 (110 Stat. 3870).

Executive Order 12988

Civil Justice Reform, 5 February 1996.

Executive Order 12979

Agency Procurement Protests, 25 October 1995.

President of the United States Memorandum, Alternate Means of Dispute Resolution, 1 May 1998.

Secretary of Defense Memorandum, Alternative Dispute Resolution, 23 June 1997.

Secretary of the Air Force Memorandum, Implementation of the Administrative Dispute Resolution Act of 1996, 21 April 1998.

AFPD 36-12

Dispute Resolution, 27 September 1993.

AFI 36-2706

Military Equal Opportunity and Treatment Program, 1 December 1996.

AFI 36-1201

Discrimination Complaints, 25 July 1994.

AFI 36-1203

Administrative Grievance System, 1 May 1996.

NGR 600-21

Equal Employment Program in the Army National Guard, 5 April 1993.

NGR 600-22/30-3

National Guard Military Discrimination Complaint System, 1 October 1992.

NGR 690-600/40-1614

Civilian Discrimination Complaint Processing and Adjudication, Vol I & II, 15 March 1993.

29 CFR Sections 1614.105(f) and 1614.108(b)

Equal Employment Opportunity Commission Complaint Processing, current edition.

Section III

Prescribed Forms

This section contains no entries.

Section IV

Referenced Forms

DD Form 2815

Glossary

Section I Abbreviations

AG

Adjutant General

ADR

Alternative Dispute Resolution

ANG

Air National Guard

ARNG

Army National Guard

DoD

Department of Defense

DRS

Dispute Resolution Specialist

NGB

National Guard Bureau

Section II Terms

This section contains no entries.

Section III

Special Abbreviations and Terms

Alternative Dispute Resolution (ADR)

Any procedure which is used in lieu of a formal process of litigation to resolve conflicts and issues in controversy, including, but not limited to, partnering, conciliation, facilitation, mediation, ombudsmanship, fact finding, mini-trials, neutral evaluation, and arbitration or any combination thereof.

ADR Advocate

Person appointed by a division chief or a director who is responsible for promoting and coordinating the use of ADR within an organization of the NGB or National Guard.

Dispute Resolution Specialist (DRS)

Chief Counsel, NGB, who is responsible for the overall ADR policy and initiative within the NGB or National Guard. Oversees the activities of the Senior ADR Working Group.

State ADR Advocate

Person appointed by The Adjutant General who is the proponent in the State for promoting and coordinating use of the ADR Program, and who will act as the point of contact for information regarding the ADR Programs in that

State.

Senior ADR Working Group

Working group consisting of Chief Counsel, NGB-JA, the Division Chiefs for NGB-EO, NGB-HR, NGB-AQ, the division chiefs of other divisions that have appointed ADR Advocates, and the Director, ARNG, and the Director, ANG.