



DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, D.C. 20350-2000

IN REPLY REFER TO

OPNAVINST 5800.8

N09BE

24 NOVEMBER 1998

OPNAV INSTRUCTION 5800.8

From: Chief of Naval Operations
To: All Divisions of OPNAV

Subj: ALTERNATIVE DISPUTE RESOLUTION

Ref: (a) Administrative Dispute Resolution Act of 1996, Public
Law 104-320
(b) SECNAVINST 5800.13

Encl: (1) Request for Consideration for Alternative Dispute
Resolution
(2) Alternative Dispute Resolution Agreement

1. Purpose. To implement the provisions of references (a) and (b) and provide guidance to Office of the Chief of Naval Operations (OPNAV) managers and employees contemplating alternative action to deal with employment disputes.

2. Policy. It is Chief of Naval Operations (CNO) policy to:

a. Use Alternative Dispute Resolution (ADR) as an optional method to resolve disputes for employees who have expressed dissatisfaction over a matter concerning their employment.

b. Ensure that, if ADR is used, it is voluntarily entered into by all parties involved in the dispute.

c. Ensure that the rights of all parties accorded by governing regulations and statutes will be fully protected including the right of parties to revert back to the applicable dispute resolution process if the issue(s) is/are not resolved through ADR.

d. Ensure that agreements resulting from the ADR process are legal, binding and enforceable, and will take into consideration the impact the agreements will have on other employees.

e. Provide official duty time to the parties to the dispute when they are participating in the ADR process.

f. The parties to the dispute will bear any cost for their own representation during the process.

3. Applicability and Scope. The provisions of this instruction apply to all OPNAV employees.

4. Objectives. The use of ADR should:

- a. Create a nonadversarial process whereby involved parties can resolve disputes themselves.
- b. Allow for the intervention of an impartial third party to facilitate open communications and remedies for resolution.
- c. Reduce litigation and improve relationships.

5. Definitions

a. ADR Program. A voluntary procedure that parties agree to use, in lieu of formal adjudication, to resolve issues in controversy. Selected techniques could include mediation, neutral expert fact-finding, or any combination thereof. The primary responsibility for the program rests with the Command Deputy Equal Employment Opportunity (EEO) Officer (N09BE).

b. ADR Board. A group comprised of the EEO Officer (N09B); Command Deputy, EEO Officer (N09BE); the Assistant for Civilian Personnel and SES Policy (N09BD); and the Activity Dispute Resolution Specialist (the designated qualified individual within the OPNAV staff).

c. Mediation. A process where an impartial third-party assists the disputants in finding a mutually acceptable solution to their dispute. The mediator has no power to impose a settlement but serves as a facilitator to help the parties come to agreement. Mediation is confidential and voluntary. It is usually informal, non-adversarial and binding only when the parties reduce the resolution to writing. Decisions reached through the mediation process will not be precedent-setting. Nor will the process be used when the facts are in dispute or the issues are technical.

d. Neutral Expert Fact-finding. A process where an impartial fact-finder with subject matter expertise investigates and evaluates the facts of the dispute and submits a report of findings. The fact-finder is authorized to mediate disputes after an investigation if the disputants and the ADR Board agree. This technique is best used where basic facts are in dispute or there are technical issues.

6. Responsibilities

a. ADR Board is responsible for administering the ADR Program in OPNAV:

(1) Screening all cases for feasibility of using ADR, determining the appropriate techniques and ensuring qualified mediators or neutral expert fact-finders are appointed;

(2) Evaluating and redesigning the program based on pertinent factors, as appropriate.

b. Participants are responsible for:

(1) Complying with the provisions of this instruction;
and

(2) Participating in the process in good faith and cooperating in the settlement efforts.

c. Mediators and/or Neutral Fact-finders are responsible for:

(1) Assisting the parties in reaching a mutually satisfactory resolution of a dispute; and

(2) Ensuring they are unbiased.

7. Criteria for Using ADR

a. The ADR Program will be applicable to matters which would be subject to the OPNAV Administrative Grievance Procedure or the EEO Complaints Procedure.

b. The ADR Board will determine which cases are applicable for the ADR process and the techniques to be used in each case (e.g., mediation, neutral expert fact-finding, etc.). Criteria considered include:

(1) The dispute involves factual or other unprecedential issues;

(2) Traditional processes appear unlikely to resolve the issue short of litigation;

(3) The parties want to settle the dispute quickly;

(4) The parties wish to maintain, establish or restore good working relationships;

(5) Importance of the issue is minor compared to potential cost and disruption if traditional processes are used;
or

(6) A neutral party is more likely to understand the complexities of the case.

c. Generally, ADR shall not be used when:

(1) A definitive and precedential resolution is required and ADR processing is not likely to be accepted;

(2) The matter in dispute significantly affects persons who are not parties to the proceeding; or

(3) A full public record is important and the proceeding will not provide that record.

8. Procedures

a. The ADR Program may be initiated any time during the dispute resolution process (e.g., before a grievance is filed, at the counseling stage in an EEO matter, etc.).

b. Employees, supervisors/managers, Employee Relations Division staff and EEO staff may request a case be reviewed by the ADR Board for inclusion in the ADR process by submitting a Request for Consideration for Alternative Dispute Resolution (enclosure (1)). Requests will be forwarded to the ADR Board via N09B, for review/action.

c. The ADR Board will review the request and, if approved, designate an ADR technique.

d. If both parties agree to participate in ADR they will be requested to sign an ADR Agreement (enclosure (2)). Refusal by any party to the dispute to sign the Agreement will result in withdrawal of approval to use the ADR process.

e. When ADR is elected, the Board will make all logistical and administrative arrangements.

f. When ADR is initiated, traditional processing of the dispute immediately stops. The process will stop to give the parties time to attempt resolution. It is important to note that the clock is still ticking as far as initiating the informal process; i.e., 45 calendar days, 20 calendar days, etc. If the parties are unable to resolve the dispute, the initially selected process will resume (i.e., counseling).

g. Procedures will be informal and confidential, except that final products such as reports or settlements may be disclosed to those having a need to know.

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h. Parties to a dispute may be represented by or consult with a representative of their choice. However, the representative may not be anyone whose services as a representative would result in a conflict or apparent conflict of interest with the priority needs of OPNAV. Any costs incurred by a party to ADR for personal representation will be borne by that party.

i. If mediation is used, mediation sessions will normally last from two to six hours each and normally will not exceed three sessions.

j. If a neutral expert fact-finder is used, relevant documents may be reviewed, interviews may be conducted and/or the disputants may be requested to make a presentation of their case. Normally, within five workdays after the conclusion of the investigation, the fact-finder will render an opinion and submit a written report to the ADR Board. If the ADR Board concurs with the recommendations, the report will be provided to the disputants. The results are non-binding, but admissible in court. The fact-finder has the authority to mediate the dispute after the report is issued if the disputants and the ADR Board agree.

k. All proposed settlement agreements and/or recommendations for resolution of disputes must be presented to the ADR Board for appropriate coordination and approval before they are finalized.

l. Approved settlements resulting from the ADR process must be signed by both parties and are binding.

m. Disputes not resolved through ADR shall revert back to the appropriate process.



A. N. LANGSTON
Rear Admiral, USN
Director, Navy Staff

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REQUEST FOR CONSIDERATION FOR ALTERNATIVE DISPUTE RESOLUTION

Requester's Name

Please provide a brief explanation of the issues and why you feel an alternative method of dispute resolution will be appropriate.

Signature _____ Date _____

Enclosure (1)

ALTERNATIVE DISPUTE RESOLUTION AGREEMENT

I agree to participate in the selected Alternative Dispute Resolution (ADR) process in good faith. I will sincerely attempt to resolve this dispute by cooperating throughout the process and giving full consideration to all suggestions made in regard to developing a realistic solution to the problem(s).

I understand that my participation is voluntary and that I may terminate the process at any time.

I understand that I may have a personal representative throughout the process at no cost to the government.

I further understand that the mediator (or fact-finder, as appropriate) assigned to this case will not serve as an advocate. His/her sole function is to act as a neutral third party. Any agreements or decisions resulting from this process are entered into voluntarily and by mutual acceptance of the parties.

I agree that all ADR sessions are confidential and that all offers, promises, conduct and statements, whether written or oral, made in the course of the proceeding are inadmissible in any later hearing or litigation of this dispute.

I also understand that I may not subpoena or attempt to require the mediator or fact-finder for this case to testify or produce records, notes or a work product in any future proceedings and that no recordings or stenographic records will be made of the sessions.

EMPLOYEE SIGNATURE

DATE

SUPERVISOR/MANAGER SIGNATURE

DATE

ADR NEUTRAL

DATE