



CHIEF NATIONAL GUARD BUREAU INSTRUCTION

NGB-JA
DISTRIBUTION: A

CNGBI 0402.01
24 July 2015

NATIONAL GUARD ALTERNATIVE DISPUTE RESOLUTION

References: See Enclosure B.

1. Purpose. This instruction establishes policy and assigns responsibilities for implementing and maintaining a National Guard (NG) Alternative Dispute Resolution (ADR) Program in accordance with (IAW) references a and b, to help maintain a productive work environment where work disputes, including Equal Employment Opportunity (EEO) and Military Equal Opportunity (MEO) complaints, are settled quickly and at the lowest possible organizational level.

2. Cancellation. This instruction replaces National Guard Regulation 27-1/Air National Guard Instruction 51-12, 06 April 2001, "Alternative Dispute Resolution."

3. Applicability. This instruction applies to all elements of the NG.

4. Policy. It is NG policy to voluntarily use ADR and other early collaborative dispute resolution processes to the maximum extent practicable and appropriate to resolve workplace disputes.

a. ADR is waived in instances of fraud, waste, abuse, criminal behavior, or when there is harm or a threat of harm to a person.

b. Whenever the Complainant accepts ADR, management will participate in mediation or facilitation to the maximum extent practical and appropriate.

5. Definitions. See Glossary.

6. Responsibilities. See Enclosure A.


7. Summary of Changes. This instruction reestablishes the Chief Counsel of the National Guard Bureau (NGB) as the National Guard Dispute Resolution

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Specialist (NGDRS). It establishes the requirement that Commanders at Joint Force Headquarters–State (JFHQs–State), armories, installations, and field operating agencies, are responsible for ADR implementation in their commands and requires them to appoint an ADR Manager to oversee ADR program planning and implementation in their respective organizations. This instruction recognizes the limited applicability of civilian equal opportunity processes provided by references c and d to NG technician employment.

8. Releasability. This instruction is approved for public release; distribution is unlimited. Obtain copies through <<http://www.ngbpdcc.ngb.army.mil>>.

9. Effective Date. This instruction is effective upon publication and must be reissued, cancelled, or certified as current within five years of its publication.


FRANK J. GRASS
General, USA
Chief National Guard Bureau

Enclosure:

- A -- Responsibilities
- B -- References
- GL -- Glossary

ENCLOSURE A
RESPONSIBILITIES

1. NGDRS. The NGDRS will:

- a. Establish and implement NG ADR policy and guidance.
- b. Submit, manage, and execute the NG ADR Program budget.
- c. Develop, and implement initiatives, activities, and training programs throughout the NG related to ADR and its associated skills, such as mediation, negotiation, and other collaborative conflict management and dispute resolution processes.
- d. Identify and eliminate unnecessary barriers for the use of ADR.
- e. Ensure NG personnel are aware of and have access to existing ADR resources to include the NG ADR website.
- f. Solicit ADR data from the field for each preceding fiscal year and prepare a summary report to the Department of Defense (DoD) regarding progress made in implementing the NG ADR program in accordance with this instruction.
- g. Appoint a Deputy Dispute Resolution Specialist (DDRS).

2. DDRS. The DDRS will:

- a. Serve as the acting NGDRS in his or her absence and assist in carrying out the responsibilities in paragraph 1 above.
- b. Serve as the primary NG representative to the DoD ADR Coordinating Committee and the Interagency ADR Working Group Steering Committee.
- c. Liaise with other government and private-sector organizations as appropriate.
- d. Act as the certification authority for all NG Mediator levels.

3. Chief of Equal Opportunity (NG-J1-EO). The Chief of NG-J1-EO will:

- a. Provide oversight of the use of ADR within the NG EEO and MEO programs.

b. Liaise with the Office of the NGB Chief Counsel (NGB-JA) to provide policy recommendations and guidance on the use of ADR in NG discrimination complaint resolution programs.

4. Office of Complaints Management and Adjudication (NG-J1-CMA). NG-J1-CMA is the office of primary responsibility (OPR) for implementing this policy and guidance regarding the use of ADR in NG EEO and MEO programs. NG-J1-CMA will:

a. Coordinate with the NGDRS and the State ADR Managers to:

(1) Provide guidance on the use of NG ADR and other collaborative dispute resolution processes in NG EEO and MEO programs.

(2) Provide ADR awareness and mediation training for personnel assigned to administer NG EEO and MEO workplace dispute programs.

b. Provide support to the NGDRS and State ADR Managers in advocating and defending the NG ADR program.

c. Assists the NGDRS and DDRS in performing their duties enumerated in paragraphs 1d, 1e, 1f, 2b, and 2c above.

5. Equal Opportunity Specialist, Alternative Dispute Resolutions (NG-J1-CMA/ADR). The NG-J1-CMA/ADR will:

a. Serve as the OPR for both EEO/MEO and non-EEO/MEO ADR utilization and assistance.

b. Coordinate with NGB-JA to provide guidance on the use of ADR in both EEO/MEO and non-EEO and MEO workplace disputes.

c. Perform ADR as needed.

(1) Generally, ADR for National Guard of the United States (NGUS) personnel serving on active duty pursuant to reference e and civilian personnel employed under reference f performing duty at a State NG organization or NGB is provided by the appropriate service.

(2) However, NG-J1-CMA/ADR may, on a case-by-case basis, perform ADR for NGUS or civilian personnel referenced above.

6. Chief of the Office of Technician Policy (NG-J1-TN). The Chief of NG-J1-TN will:

- a. Coordinate with the NGDRS to provide guidance on the use of ADR in Labor-Management disputes involving the NG Technician Program.
- b. Recommend solutions to the NGDRS on NG ADR policy and procedures with respect to disputes involving the NG Technician Program, bargaining unit technicians, and administrative grievance procedures.
- c. Coordinate with the NGB-JA Administrative Law Division or the NGB-JA Litigation and Employment Law Division on the execution of NG workplace dispute ADR policy, as appropriate.
- d. Coordinate with the NGDRS to provide Hearing Examiner training and guidance for NG Judge Advocates (JA), civilian attorneys, and paralegal personnel.

7. NGB-JA. NGB-JA will:

- a. Provide full spectrum legal representation and support to the NGB, the NG and its component units in civilian labor and employment disputes, including formal EEO complaints, Federal Labor Relations Authority proceedings, and Merit Systems Protection Board appeals.
- b. Participate in ADR proceedings arising in the course of such disputes.
- c. Coordinate with State JAs, in disputes in which NGB-JA has representational responsibility, regarding participation by the servicing NGB-JA attorney in ADR proceedings and the terms of any settlements resulting from such proceedings.

8. The Adjutants General (TAG) and the Commanding General of the District of Columbia (CG). TAGs and the CG, or his or her designee will:

- a. Appoint an individual assigned to a JFHQ-State to serve as the State ADR Manager.
- b. Approve the State ADR Plan.

9. State ADR Manager. The State ADR Manager will:

- a. Design, implement, and update, as necessary, the State ADR Plan.
- b. Serve as a State's primary point of contact for all ADR activities and initiatives with subordinate bases, installations, armories, State JAs and the NGB-JA.

- c. Review settlement agreements resulting from ADR proceedings for compliance with applicable equal opportunity (EO) rules, regulations and policies.
- d. Collect and report State ADR data from subordinate organizations as requested by the NGB-JA.
- e. Exercise oversight of the State's ADR program and training requirements.
- f. Determine the best means for recruiting and making available qualified mediators or other types of Neutrals, consistent with the State ADR plan based on need and availability.
- g. Ensure Neutrals receive adequate initial and refresher training by submitting nominations through command channels for centrally funded mediation or other appropriate ADR skills training, by procuring ADR training through other sources when they are available and funding permits, or by providing in-house training.
- h. Review existing ADR plans and procedures and identify barriers of ADR in resolving disputes, and work with NG-J1-CMA, NG-J1-CMA/ADR, NGB-JA, and other organizations as appropriate to remove those barriers on an annual basis.
- i. Ensure that an ADR suitability determination is made for every eligible dispute.
- j. Exercise oversight of the State ADR program, ensuring parties are advised of their rights and options with respect to ADR, assigning Neutrals, and coordinating on requests and compulsory processes to disclose confidential ADR communications.
- k. Encourage collateral-duty Neutrals to apply for voluntary certification under the NG Mediator Certification Program. Ensure they meet the standards for the level of certification for which they are applying, and review and forward applications for certification to NGB-JA for action.
- l. Ensure applications for Level II and Level III certification are routed through the State ADR Manager office before forwarding to the NGB-JA.
- m. Display the link to the NG ADR Web site in a conspicuous place on all of the installation's workplace dispute-related websites. The NG ADR website address is located at reference g.

n. Submit a State's request for NG ADR program support for the following fiscal year.

o. Submit consolidated requests from respective subordinate commands for NG ADR program support, and ensure the State's and consolidated installation requests, or negative replies, reach NGB-JA no later than (NLT) 01 March preceding the fiscal year for which support is requested.

10. Commanders. Commanders will:

a. Promote the use of ADR to resolve disputes under his or her jurisdiction and provide overall direction in the execution of the ADR program.

b. Encourage managers and supervisors to establish policy applicable to disputes in his or her jurisdiction to participate "in good faith" in ADR proceedings whenever ADR has been offered to and accepted by the claimant.

11. State JA. State JAs will:

a. Provide legal advice and guidance to TAGs and State ADR Managers in developing, implementing, and administering the State's ADR plan.

b. Advise on the suitability of disputes for resolution through the use of ADR. This can be accomplished by individual case screening or by development of review procedures and guidelines for use by ADR program personnel. In disputes in which the NGB-JA has representational responsibility, this function will be accomplished by or coordinated with the servicing NGB-JA attorney.

c. Review and provide timely coordination on all legal issues arising in connection with ADR proceedings, particularly involving confidentiality of ADR proceedings with NGB-JA. E-mail with digital signature will be considered written communication. In disputes in which the NGB-JA has representational responsibility, these functions will be accomplished by or coordinated with the servicing NGB-JA attorney.

d. Designate an attorney, of his or her staff, to represent management in ADR proceedings, as appropriate. In disputes in which the NGB-JA has representational responsibility, these functions will be accomplished by or coordinated with the servicing NGB-JA attorney.

e. Review and coordinate written settlement agreements resulting from ADR proceedings as required. In disputes in which the NGB-JA/LEL has representational responsibility, the servicing NGB-JA attorney will review and coordinate with the State JA on all settlement agreements.

f. Assist the ADR Manager in providing personnel awareness training and briefings on ADR processes and techniques.

12. Civilian Personnel Office (CPO) and Human Resources Office (HRO). The CPO and HRO will:

a. Assist the State ADR Manager in developing and implementing the State ADR program in non-EEO and MEO workplace disputes.

b. Coordinate with the State ADR Manager, State JA or designee, functional organizations, and local unions to integrate the use of ADR into non-EEO and MEO disputes IAW the State ADR plan.

c. Provide technical support to Neutrals and agency representatives in ADR proceedings, as appropriate.

d. Review settlement agreements resulting from ADR proceedings for compliance with personnel rules, regulations, and policies, if necessary.

13. State Equal Employment Manager (SEEM). The SEEM will:

a. Provide ADR and other collaborative dispute prevention and resolution processes for use in Title 5 Federal civilian employee EEO complaints, IAW applicable Equal Employment Opportunity Commission (EEOC) directives.

b. Assist the State ADR Manager in developing and implementing the State ADR program with respect to EO procedures, EO educational programs, unit climate assessments, and other elements of the NG EO Program.

c. Review settlement agreements resulting from ADR proceedings for compliance with applicable EEOC, NGB, Army, Air Force and DoD rules, regulations and policies.

d. Ensure that NG-J1-CMA receives a signed and dated request form for mediation or facilitation IAW reference h.

14. Air and Army National Guard (ANG and ARNG) EO Professionals. ANG and ARNG EO Professionals will:

a. Provide ADR and other collaborative dispute prevention and resolution processes for use in MEO complaints.

b. Assist the State ADR Manager in developing and implementing the State ADR program in MEO complaint procedures, MEO educational programs, unit climate assessments, and other elements of the NG MEO Program.

c. Review settlement agreements resulting from ADR proceedings for compliance with applicable EEOC, NGB, Army, Air Force and DoD policies.

d. Ensure that NG-J1-CMA receives a signed and dated request form for mediation or facilitation IAW reference h.

15. ADR Support Providers. ADR Support Providers will:

a. Provide technical assistance on an issue in dispute.

b. Serve as telephone standbys while ADR proceedings are underway.

16. Neutrals. Neutrals will provide assistance to any or all parties to resolve one or more issues in controversy.

ENCLOSURE B

REFERENCES

- a. 5 U.S.C. §§ 571 through 584, “Administrative Dispute Resolution Act of 1996”
- b. DoD Directive 5145.5, 22 April 1996, “Alternative Dispute Resolution”
- c. Equal Employment Opportunity Commission Management Directive 110, 09 November 1999
- d. Part 1614 of Title 29, Code of Federal Regulations, “Federal Sector Equal Employment Opportunity”
- e. Title 10, United States Code, “Armed Forces,” as amended
- f. Title 5, United States Code, “Government Organization and Employees,” as amended.
- g. < <http://www.nationalguard.mil/Leadership/JointStaff/J1/OfficeofEqualOpportunity/AlternativeDisputeResolution.aspx> >, 21 May 2015
- h. CNGBI 9600.01, 09 June 2013, “Alternative Dispute Resolution Policy and Guidance”

GLOSSARY

PART I. ACRONYMS

ADR	Alternative Dispute Resolution
ANG	Air National Guard
ARNG	Army National Guard
CG	Commanding General of the District of Columbia
CPO	Civilian Personnel Office
DDRS	National Guard Deputy Dispute Resolution Specialist
DoD	Department of Defense
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
EO	Equal Opportunity
EOA	Equal Opportunity Advisor
EOL	Equal Opportunity Leader
HRO	Human Resources Office
IAW	In accordance with
JA	Judge Advocate
JFHQ-State	Joint Force Headquarters-State
MEO	Military Equal Opportunity
NG	National Guard
NG-J1-EO	Office of Equal Opportunity
NG-J1-CMA	Complaints Management and Adjudication Division
NG-J1-CMA/ADR	Equal Opportunity Specialist, Alternative Dispute Resolutions
NG-J1-TN	Office of Technician Policy
NGB	National Guard Bureau
NGB-JA	Office of the National Guard Bureau Chief Counsel
NGDRS	National Guard Dispute Resolution Specialist
NGUS	National Guard of the United States
NLT	Not later than
OPR	Office of primary responsibility
SEEM	State Equal Employment Manager
TAG	The Adjutant General

PART II. DEFINITIONS

Air and Army National Guard Equal Opportunity Professionals -- Civilian Personnel Office and Human Resource Office Equal Opportunity designees, Air National Guard Equal Opportunity Specialists and Equal Opportunity Counselors, and Army National Guard Equal Opportunity Advisors and Equal Opportunity Leaders.

Alternative Dispute Support Providers -- Non-party participants in Alternative Dispute Resolution proceedings assigned to key functions to include the Civilian Personnel Office, the Human Resource Office, Labor Relations, Equal Opportunity, legal, and United States Property and Fiscal Officer.

Alternative Dispute Resolution -- Any procedure that is used to resolve issues in controversy including but not limited to the services of a neutral third party through facilitation, mediation, fact-finding, mini-trial, arbitration, and the use of ombuds, or any combination.

Arbitration -- The hearing and determining of a dispute or the settling of differences between parties by a neutral person, called an arbitrator, chosen or agreed to by them. The arbitrator's decision can be binding or nonbinding, but National Guard policy generally precludes binding arbitration outside of the collective bargaining context.

Facilitation -- A structured process that mirrors the mediation process with a lesser inclination to caucus throughout the process. A facilitator does not typically become as involved in the substantive issues of a dispute as would a mediator, but focuses more on procedural assistance and remains impartial to the topics under discussion.

Mediation -- A structured process where parties seek the assistance of a qualified mediator to help them resolve their issue in controversy. A structured process using interest-based negotiation techniques and joint and separate confidential (option of the parties, to include the mediator or facilitator) caucuses between each party and mediator.

Neutral -- An individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy. An individual that is not serving in a National Guard dispute, that does not have an official, financial, or personal conflict of interest in any issue in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the individual may serve. This individual may be a current or former Federal government employee, Service member or contractor, or someone outside the government.

Settlement -- An agreement ending a dispute or lawsuit, generally releasing all pending claims between the parties which may or may not involve judicial or neutral participation.

State Alternative Dispute Resolution Manager -- An individual appointed or designated at the State level to promote the use of Alternative Dispute Resolution processes for resolving disputes, to facilitate the development and implementation of the State's Alternative Dispute Resolution plan, and to provide oversight of the organization's Alternative Dispute Resolution program. This individual may be civilian or military. The civilian will be a permanent, full-time civil service employee, preferably in the grade of GS-13 or higher. The military member will be a commissioned officer, O-4 or higher, or a senior Non-commissioned officer, E-8 or higher. The individual may be assigned to civilian personnel or to a Judge Advocate function.