DEPARTMENT OF THE NAVY
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SECNAVINST 5800.13C
OGC
MAY 13 2019

SECNAV INSTRUCTION 5800.13C

From: Secretary of the Navy

Subj: ALTERNATIVE DISPUTE RESOLUTION (ADR) POLICY AND MISSION OF THE DEPARTMENT OF THE NAVY ADR PROGRAM OFFICE

Ref: (a) 5 U.S.C. §7121
(b) 5 U.S.C. §571 et seq.
(c) DoD Instruction 5145.05 of 27 May 2016
(d) SECNAVINST 5430.7R
(e) SECNAVINST 5430.25F
(f) Federal Acquisition Regulations Part 33
(g) E.O. 12988
(h) EEOC Management Directive MD-110 of 5 August 2015
(i) EEOC Management Directive MD-715 of 1 October 2003
(j) E.O. 12979
(k) DoD Instruction 1400.25, Vol. 771 of 26 December 2013
(l) SECNAVINST 5210.8F
(m) SECNAV M-5214.1
(n) Civilian Human Resources Manual, Subchapter 773

Encl: (1) Responsibilities

1. Purpose. This instruction provides Department of the Navy (DON) policy for the use of ADR. This instruction has been revised and should be reviewed in its entirety.

2. Cancellation. SECNAVINST 5800.13B.

3. Definitions

a. ADR. Any procedure that is used in lieu of a formal administrative process or litigation to resolve issues in controversy, including, but not limited to, partnering, conciliation, facilitation, mediation, fact-finding, mini-trials, neutral evaluation, and arbitration, or any combination thereof. For purposes of this instruction, arbitration entered into under reference (a) is not included in this definition.

b. Issue in Controversy. Any issue material to a Departmental decision that gives rise to a disagreement between the DON and a person(s) outside the Department or between

persons within the Department. See reference (b), at Section 571(8). The term includes, but is not limited to, a work-related issue between co-workers that adversely affects mission accomplishment or morale.

c. In-house Neutral. A civilian employee of the DON, or a military member of the U.S. Navy or U.S. Marine Corps, who serves in the capacity of a neutral, as described in reference (b) at Sections 571 and 573.

4. Applicability. This instruction applies to the Offices of the Secretary of the Navy, the Chief of Naval Operations, the Commandant of the Marine Corps, and all U.S. Navy and U.S. Marine Corps installations, commands, activities, field offices, and all other organizational entities within the DON.

5. Policy. ADR techniques can efficiently resolve issues in controversy and enable the DON to more effectively devote its resources and personnel to its overall mission. Together, references (b) and (c) require the DON to adopt an ADR policy and to designate a senior official as the "Dispute Resolution Specialist," charged with implementing the ADR policy and ensuring appropriate training. References (d) and (e) assign the management of the DON ADR Program to the General Counsel of the Navy. Reference (a) and references (f) through (k) are examples of how the Federal Government uses ADR in a wide range of judicial and administrative contexts.

a. Using ADR to the Maximum Extent. ADR techniques shall be used as an alternative to litigation or formal administrative procedures to the maximum extent practicable. Use of these techniques may resolve the entire issue in controversy or a portion of the issue in controversy. The goal is to resolve disputes and conflicts at the earliest stage feasible, by the fastest and least expensive method possible, and at the lowest possible organizational level prior to litigation. Every issue in controversy, regardless of the subject matter, is a potential candidate for ADR.

b. Agreements to Use ADR. Subject to an order, rule, or practice of an administrative forum or court, and prior to participating in a dispute resolution proceeding, agency representatives shall execute an appropriate agreement to use ADR. Such agreements generally define the nature of the proceeding, pertinent procedures, and include a statement regarding confidentiality. Such agreements themselves are not

confidential under reference (b).

c. Confidentiality for Administrative ADR. Reference (b) applies to ADR used for administrative programs. It establishes general confidentiality rules that prohibit parties and neutrals from disclosing dispute resolution communications. See reference (b) at Section 574. There are significant exceptions. For example, a statement by one party that is available to all other parties is not deemed confidential under the statute. DON representatives wishing to vary the statutory confidentiality rules for a specific ADR proceeding shall consult with, and obtain the approval of, the Assistant General Counsel (ADR).

d. Use of Binding Arbitration. Except for labor-management grievance arbitrations under reference (a), the use of binding arbitration requires additional DON guidance beyond the scope of this instruction. DON personnel may not require the use of binding arbitration as a condition of entering into a contract with the DON or obtaining other benefits. See reference (b) at Section 575.

6. Responsibilities. See enclosure (1).

7. Organization. The Assistant General Counsel (ADR) and the DON ADR Program are part of the Office of the General Counsel (OGC). The Assistant General Counsel (ADR) shall report to the Deputy General Counsel (DGC). Personnel within the DON ADR Program shall report to the Assistant General Counsel ADR.

8. Records Management

a. Records created as a result of this instruction, regardless of format or media, shall be managed per reference (l). The records disposition schedules from reference (l) can also be found on the Directives and Records Management Division (DRMD) portal page: https://portal.secnav.navy.mil/orgs/DUSNM/DONAA/DRM/SitePages/Home.aspx.

b. For questions concerning the management of records related to this instruction or the records disposition schedules, please contact your local Records Manager or the DRMD program office.

9. Reports. The reporting requirement contained in enclosure

(1), paragraph 6(c) is exempt from information collection control, per reference (m), Part IV, paragraph 7p.

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RESPONSIBILITIES

1. The GC shall:

a. Appoint the Assistant General Counsel (ADR); and

b. Provide budgetary and other necessary support for the Assistant General Counsel (ADR) and the DON ADR Program.

2. The Assistant General Counsel (ADR), under the direction of the GC and the DGC, shall promote the efficient and effective use of ADR techniques in the DON. To that end, the Assistant General Counsel (ADR) shall:

a. Serve as the Dispute Resolution Specialist (see reference (c)) for the DON;

b. Be responsible for the coordination, approval, and implementation of ADR policy within the DON;

c. Act as the DON point of contact on ADR matters;

d. Serve as the DON member on the Department of Defense ADR Coordinating Committee established by reference (c);

e. Serve as the DON member, or delegate membership as appropriate, on other interagency ADR working groups, committees or organizations of interest to the DON;

f. Provide legal and business advice on the use of ADR; and

g. Supervise the DON ADR Program.

3. The DON ADR Program Office is an organization within OGC. Under the direction of the Assistant General Counsel (ADR), it shall:

a. Coordinate ADR policy and initiatives within the DON at all levels to ensure consistency, effectiveness, compliance with law and executive policy, and avoidance of duplicate effort;

b. Assist activities in securing or creating cost-effective ADR techniques or local programs;

c. Promote the use of ADR, and provide training in negotiation and ADR methods;

d. Serve as legal counsel for in-house neutrals used on ADR matters. This role is intended to avoid organizational conflicts of interest faced by command counsel serving in an advisory or advocacy capacity for the parties in an issue in controversy. The ADR Program shall have no other role in a particular issue in controversy if used in this capacity; and

e. For matters not involving an in-house neutral, assist DON attorneys and other representatives concerning issues in controversy that are amenable to using ADR.

4. The Assistant Secretary of the Navy (Manpower and Reserve Affairs) shall:

a. Appoint a principal liaison to coordinate with the DON ADR Program Office;

b. Develop, in coordination with the DON ADR Program Office, workplace ADR policies, procedures, and initiatives for the DON (see reference (n)).

5. Commanders and heads of shore activities at the Echelon I and II levels shall:

a. Designate an Activity Dispute Resolution Specialist (ADRS), who will promote the use of ADR within that activity, and serve as the principal liaison to the DON ADR Program. Activities may enter into an agreement with another part of the DON to meet this requirement or may assign the responsibilities as a collateral duty; and

b. Provide training and necessary support for the ADRS and selected personnel.

6. Commanders and heads of all activities shall:

a. Periodically review their existing approaches to dispute resolution, and, where feasible, foster the use of ADR by identifying and removing unnecessary barriers, including encouraging the inclusion of ADR clauses into collective bargaining agreements when those agreements are renegotiated;

b. Coordinate ADR initiatives and policy, prior to implementation and routinely thereafter, with the appropriate Echelon I and II ADRS, and with the DON ADR Program. The purpose

of the coordination is to establish that training, procedures and uses of ADR are consistent with law, regulation, policy, and recognized professional ethics; and

c. Report the use of ADR techniques as directed by the Assistant General Counsel (ADR). Reports shall be in a format specified by the DON ADR Program Office or by using data collection systems developed by the DON ADR Program Office; and

d. Only decline the use of ADR after providing a written justification that complies with reference (b) at Section 572(b), or a showing of impracticability.