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**Law**

**ALTERNATIVE DISPUTE RESOLUTION IN  
WORKPLACE DISPUTES**

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This instruction implements Air Force Policy Directive 51-12, *Alternative Dispute Resolution*, and Department of Defense Directive 5145.5, *Alternative Dispute Resolution*. It prescribes the Air Force Alternative Dispute Resolution (ADR) program and procedures for resolving workplace disputes. It assigns responsibility for carrying out the program at Headquarters, MAJCOM and installation levels. It specifies minimum qualifications and standards of conduct for Air Force neutrals. It describes the rules of confidentiality applicable to ADR proceedings in the Air Force, and it mandates the development and use of performance measurements and evaluations to assess the effectiveness of the ADR program in resolving workplace disputes. Although this AFI is placed in the 51 (Law) series, it affects organizations outside the Office of the General Counsel and the Judge Advocate General Corps. This AFI applies to all activities in the Department of the Air Force. This AFI does not apply to the Air National Guard, which is subject to ANGI 51-12 regarding the ADR program and activity.

***Section A—Purpose and Policy***

**1. Purpose.** Maintaining a productive work environment in which disputes are settled quickly and at the lowest possible organizational level is essential to the effective functioning of the Air Force. ADR processes have been shown to be highly effective in resolving workplace disputes fairly and quickly, while conserving scarce resources. Accordingly, the President and Congress have determined that each federal agency must take steps to promote the greater use of ADR as part of an effort to make the Federal Government operate in a more efficient manner.

**2. Program Policy.** It is Air Force policy to voluntarily use ADR to the maximum extent practicable and appropriate to resolve workplace disputes at the earliest stage feasible, by the fastest and least expensive method possible, and at the lowest possible organizational level.

### ***Section B—Responsibilities and Authorities***

**3. General Counsel of the Air Force (SAF/GC).** Provides overall policy and guidance for the Air Force ADR Program, pursuant to Air Force Policy Directive 51-12.

**4. Air Force Dispute Resolution Specialist (AFDRS) and Deputy Dispute Resolution Specialist (DDRS).** The Deputy General Counsel of the Air Force for Dispute Resolution (SAF/GCD) is the Air Force Dispute Resolution Specialist (AFDRS). The AFDRS shall:

- 4.1. Establish and implement Air Force ADR policy, guidance, and regulations.
- 4.2. Submit, manage and execute the Air Force ADR Program Budget.
- 4.3. Encourage, develop, and implement initiatives, activities, and training related to ADR throughout the Air Force.
- 4.4. Identify and eliminate unnecessary barriers to the use of ADR.
- 4.5. Ensure Air Force personnel are aware of and have access to existing ADR resources on the Internet.
- 4.6. Solicit ADR data from the field for each preceding fiscal year and prepare a summary report to the Secretary of the Air Force by 30 December of each year regarding progress made in implementing the Air Force ADR program.
- 4.7. Serve as the primary Department of the Air Force representative to the Department of Defense ADR Coordinating Committee.
- 4.8. Serve as the Air Force liaison to such government and private-sector organizations as deemed appropriate.
- 4.9. Chair the Air Force ADR Program Steering Committee.
- 4.10. Work with the Air Force ADR Program Steering Committee to issue and revise as necessary the Air Force Five-Year ADR Plan.
- 4.11. Develop training and education programs for Air Force personnel.
- 4.12. Develop policy guidance for the use of voluntary binding arbitration, IAW 5 U.S.C. § 575(c).
- 4.13. Appoint a Deputy Dispute Resolution Specialist (DDRS) to assist the AFDRS in carrying out the foregoing duties and responsibilities and to serve as acting AFDRS in the absence of the AFDRS. The AFDRS may delegate to the DDRS such authority as is necessary and proper to carry out the purposes of the Air Force ADR program.

**5. Assistant Secretary of the Air Force (Manpower & Reserve Affairs) (SAF/MR).** Works with SAF/GCD to provide policy recommendations and guidance on the use of ADR in Air Force equal opportunity programs. The Deputy Assistant Secretary for Equal Opportunity (SAF/MRE) is designated the OPR for exercising this function and serves as the SAF/MR representative to the Air Force ADR Program Steering Committee.

**6. Deputy Chief of Staff, Personnel (AF/DP).** Works with SAF/GCD to provide guidance on the use of ADR in Air Force civilian and military equal opportunity and labor-management relations programs. The

Directorate of Personnel Policy, AF/DPP, is designated the OPR for exercising this function and serves as the DP representative to the Air Force ADR Program Steering Committee. AF/DPP will:

- 6.1. Work with SAF/GCD to provide guidance to the field on the use of ADR in resolving Air Force workplace disputes.
- 6.2. Work with SAF/GCD to provide appropriate ADR awareness and mediation training for personnel assigned to administer Air Force workplace dispute programs.
- 6.3. Assist the AFDRS in collecting and reporting, no later than 30 November of each year, data pertaining to the use of ADR in all Air Force workplace disputes (including EEO complaint programs) during the preceding fiscal year.
- 6.4. Assist the AFDRS to ensure that ADR data collected meets ADR program requirements.
- 6.5. Provide support to the Air Force ADR Program Office and the ADR Program Steering Committee in advocating and defending the workplace disputes ADR program requirements before the Personnel & Training (P&T) Panel.

#### **7. The Judge Advocate General (AF/JA).**

- 7.1. Makes recommendations to SAF/GCD on Air Force ADR policy and procedures with respect to workplace disputes.
- 7.2. Coordinates on execution of Air Force workplace disputes ADR policy. **Note:** In labor and employment law disputes, this function may be exercised by the Administrative Law Division (AF/JAA) and/or the Air Force Central Labor Law Office (CLLO) in AFLSA/JACL, as appropriate.
- 7.3. Appoints a representative to serve on the Air Force ADR Program Steering Committee.
- 7.4. Works with the AFDRS to provide necessary ADR training and guidance for Air Force judge advocates, civilian attorneys and paralegal personnel.

**8. Air Force ADR Program Steering Committee.** Appointments to this committee shall be made by those tasked in paragraph 4.3 of Air Force Policy Directive 51-12 to work with the AFDRS to develop and implement the Air Force ADR Program. Members of this committee shall be appointed in writing by their principals and delegated sufficient authority to represent and act on behalf of their principals on all matters properly before the committee. This committee is chaired by the AFDRS or DDRS. It shall meet from time to time, as deemed necessary and appropriate by the AFDRS or DDRS, to discuss and plan the following:

- 8.1. Personnel within committee members' respective organizations to be trained on ADR.
- 8.2. Degree of implementation of ADR programs and initiatives within their organizations.
- 8.3. Resources available or needed for ADR program training and implementation.
- 8.4. Identification of Air Force Policy Directives or Instructions requiring amendment or creation to further facilitate the use of ADR.
- 8.5. Development and use of metrics to ensure the ADR Program goals and objectives are clearly defined and accurately measured.
- 8.6. Other agenda items pertaining to the Air Force ADR program as deemed relevant by the AFDRS or DDRS.

**9. MAJCOMs.** Each MAJCOM Commander or Vice Commander will:

- 9.1. Designate an individual to serve as the MAJCOM ADR Champion for Workplace Disputes.
- 9.2. Approve the MAJCOM ADR Plan for Workplace Disputes.

**10. MAJCOM ADR Champion for Workplace Disputes.** The MAJCOM ADR Champion for Workplace Disputes will:

- 10.1. Design, implement and administer the MAJCOM ADR Plan for Workplace Disputes.
- 10.2. Serve as the MAJCOM primary point of contact for workplace disputes and ADR activities and initiatives with subordinate installations and SAF/GCD.
- 10.3. Collect and report MAJCOM ADR data as requested by higher headquarters.

**11. Installation Commanders.** Installation commanders will:

- 11.1. Provide overall direction in the execution of the installation's ADR program for workplace disputes, to include a published policy promoting the use of ADR to resolve workplace disputes.
- 11.2. Appoint an individual to serve as the installation's ADR Champion for Workplace Disputes. To be effective, the ADR Champion should be regarded as fair and impartial to all stakeholders in ADR, including management, employees, and labor unions. In addition, to ensure reasonable continuity, the ADR Champion should be a civilian employee of sufficient grade or rank to effectively discharge his or her duties. If no qualified civilian candidates are available, the commander may assign a field-grade commissioned officer to serve as the ADR Champion. For purposes of this requirement, commanders of Field Operating Agencies or Direct Reporting Units with appointing authority, or equivalent, under AFD 36-1, *General Civilian Personnel Provisions and Authorities* will designate an ADR Champion for Workplace Disputes for their respective organizations, IAW AFD 51-12 paragraph 4.4.
- 11.3. Approve the installation ADR plan for workplace disputes. The ADR program may be outlined in a local regulation, a stand-alone plan, integrated into existing grievance procedures contained in collective bargaining agreements, or a combination thereof, depending on the local work environment. Regardless of the method(s) chosen to implement the ADR plan, the use of ADR is intended to be a voluntary supplement to, not a substitute for, existing workplace dispute resolution procedures. In all cases, the installation commander must ensure that appropriate bargaining obligations are fulfilled.
- 11.4. Appoint collateral-duty mediators, IAW paragraph 22. This authority may be delegated to the installation vice or deputy commander or, if applicable, the installation Executive Director.
- 11.5. Exercise best efforts to ensure availability of adequate training resources to maintain proficiency of collateral-duty mediators and personnel who administer the ADR program.

**12. Installation ADR Champion for Workplace Disputes.** The installation ADR Champion for Workplace Disputes will:

- 12.1. Assist the commander in setting workplace disputes ADR policies and procedures and promoting the ADR Program among all organizations on the installation.
- 12.2. Work with the MAJCOM ADR Champion, installation Civilian Personnel Flight (CPF), Staff Judge Advocate (SJA) or designee, Equal Employment Opportunity (EEO) Manager, installation functional organizations, and local unions, as appropriate, to negotiate appropriate agreements or

develop plans for the use of ADR in workplace disputes for the installation commander's approval. Coordinate any agreements with unions with the installation DP and SJA or designee to ensure compliance with applicable laws, regulations, and local collective bargaining agreements.

12.3. Designate one or more ADR Functional Area Managers (FAM) to assist in administering the ADR program at the functional levels to avoid unnecessary duplication of effort and to ensure their activities are consistent with Air Force ADR policy and guidance.

12.4. Market the installation workplace disputes ADR program by disseminating program guidance and information to management, union officials and employees.

12.5. Consolidate and report, through command channels, the installation's ADR data, including the annual ADR report, when requested by higher headquarters.

12.6. Maintain a consolidated list of ADR resources available at the installation (including names and contact information of ADR FAMs, ADR marketing materials, local ADR agreements and instructions, and lists of neutrals). Forward the names and contact information of local ADR FAMs to the MAJCOM ADR Champion.

12.7. Screen and recommend eligible employees for appointment as collateral-duty neutrals.

12.8. Ensure ADR FAMs, program administrators, participants and neutrals receive adequate initial and refresher training by submitting nominations through command channels for centrally funded ADR training, and by procuring ADR training through other sources when they are available and funding permits.

12.9. Periodically review existing ADR plans and procedures to identify obstacles to use of ADR in resolving workplace disputes, and work with CPF, EEO, installation JA, and other organizations as appropriate to remove those obstacles.

12.10. Make recommendations to the commander or designee on the suitability of various workplace disputes for resolution through the use of ADR. In fulfilling this responsibility, the ADR Champion will seek guidance from the installation JA and other offices (e.g., CPF, EEO) as necessary, utilizing the eligibility and case screening guidelines in paragraphs 19. and 21.

12.11. Exercise oversight of the installation workplace disputes ADR program, including conducting case intake, advising parties of their rights and options with respect to ADR, convening ADR proceedings, assigning neutrals, and coordinating on requests and compulsory processes to disclose confidential ADR communications.

12.12. Develop for the following fiscal year a workplace disputes ADR activity plan along with anticipated requirements for Air Force ADR Program funds to be forwarded through the installation commander to the MAJCOM ADR Champion.

12.13. Maintain a conspicuous link to the Air Force ADR web site (<http://www.adr.af.mil>) in all of the installation's workplace dispute-related web sites (e.g., EEO, labor-relations, agency grievance procedures, Merit Systems Protection Board [MSPB] appeals).

### **13. ADR Functional Area Managers (FAMs).**

13.1. ADR FAMs are individuals assigned to organizations with functional responsibility for workplace dispute programs who are designated by the ADR Champion to help facilitate the use of ADR in the programs they administer. Under the oversight of the ADR Champion, FAMs may conduct case

intake, perform case screening pursuant to paragraph 19., schedule ADR proceedings, and provide administrative support to neutrals and parties in ADR proceedings. FAMs must be familiar with Air Force ADR policy before undertaking ADR support duties.

13.2. The ADR Champion will decide the number of ADR FAMs and the functional activities represented based on ADR workload. Normally, the installation EEO office, CPF for appropriated fund employees, and Human Resources Office (HRO) for nonappropriated fund employees would have at least one ADR FAM designated to facilitate the use of ADR in their respective workplace dispute programs. Designation of one or more FAMs in EEO, CPF and HRO shall not detract from or interfere with the operation or management of workplace dispute processes over which these organizations have oversight responsibility. See AFI 36-701, *Labor Management Relations* (27 July 1994); AFI 36-1201, *Discrimination Complaints* (25 July 1994); AFI 36-1203, *Administrative Grievance System* (1 May 1996); AFI 34-301, *Nonappropriated Fund Personnel Management and Administration* (25 July 1994).

13.3. EEOC Requirements. By regulation, the U.S. Equal Employment Opportunity Commission (EEOC) requires all federal agency EEO complaint programs to make ADR available during the pre-complaint (informal) processing stage and complaint (formal) processing stage. ADR Champions and installation EEO Managers must ensure that at a minimum, the installation ADR program has sufficient qualified personnel to manage and administer an ADR program that meets EEOC requirements as set forth in EEOC regulations at 29 C.F.R. Part 1614 and EEOC Management Directive 110 (MD-110).

#### 14. Staff Judge Advocate (SJA). The installation SJA:

14.1. Provides legal advice and guidance to the commander and ADR Champion in developing, implementing, and administering the installation ADR plan.

14.2. Advises the commander or designee on the suitability of workplace 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. For disputes involving CLLO as agency representative, the SJA will consult with CLLO as part of the case screening process.

14.3. Reviews and provides timely coordination of and advice on all legal issues arising in connection with ADR proceedings, including confidentiality of ADR communications (see **Section D**) and attendance at ADR proceedings by the union other than as the bona fide representative of a party who is a bargaining unit employee. Inform SAF/GCD by telephone (DSN 227-0379) or electronically (<mailto:gcdadr@pentagon.af.mil>) of significant issues involving confidentiality of ADR communications and union attendance (other than as the employee's representative) at EEO complaint mediations. **Note:** in disputes involving CLLO as agency representative, the SJA will also coordinate legal issues with CLLO.

14.4. Where appropriate, designates an attorney member of his or her staff to represent management in ADR proceedings.

14.5. Reviews and coordinates on written settlement agreements as required. **Note:** CLLO reviews and coordinates on all settlement agreements in Office of Special Counsel cases, administrative EEO Class Action cases, and all other labor and employment law cases (e.g., EEO, MSPB, Unfair Labor Practice [ULP] charges, grievance arbitrations) in which it has been designated agency representative.

14.6. Assists the ADR Champion in providing awareness training and briefings on workplace dispute ADR processes and techniques.

**15. Civilian Personnel Flight (CPF).** The installation CPF:

15.1. Assists the installation ADR Champion in developing and implementing the installation ADR program in non-EEO workplace disputes.

15.2. Works with the installation ADR Champion, SJA or designee, functional organizations, and local unions to integrate the use of ADR into non-EEO workplace disputes in accordance with the installation ADR program.

15.3. Provides technical support to neutrals and agency representatives in ADR proceedings as necessary and appropriate.

15.4. Reviews settlement agreements resulting from ADR proceedings in non-EEO workplace disputes for compliance with personnel rules, regulations, and policies.

**16. Installation Equal Employment Opportunity (EEO) Manager.** The installation EEO Manager:

16.1. Is responsible for managing an ADR program for use in EEO complaints, in accordance with applicable EEOC directives.

16.2. Assists the installation ADR Champion in developing and implementing the installation ADR program with respect to the EEO complaint program.

16.3. Works with the installation ADR Champion, SJA or designee, functional organizations, and local unions as appropriate, to integrate the use of ADR into the EEO complaint program in accordance with the installation ADR program and EEOC and Air Force directives.

16.4. Reviews settlement agreements resulting from ADR proceedings in EEO complaints for compliance with applicable rules, regulations and policies.

**17. ADR Support Providers :** Either party to an ADR proceeding, or the neutral, may request technical assistance on an issue in dispute. Individuals who provide this assistance are ADR support providers, and should be made available on telephone standby while ADR proceedings are underway. Certain key staff organizations, and individuals within those organizations, such as CPF, Labor Relations Office (LRO), EEO Office, HRO (for nonappropriated fund employees) and Comptroller, should be available on a regular and recurring basis. Other organizations will be tasked as needed.

**18. Neutrals.** A neutral may be a military member or civilian employee of the Federal Government or any other individual, including a contractor hired to provide services as a neutral, who meets the minimum qualifications for serving as a neutral. See paragraph 22. Anyone serving as a neutral must 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 neutral may serve. Neutrals serving as mediators must also adhere to the Air Force standards of conduct for mediators. See paragraph 23.

***Section C—ADR Procedures in Workplace Disputes***

**19. Disputes Eligible for ADR.** For purposes of this AFI, a workplace dispute is any formal or informal claim or issue in controversy, arising out of an existing or prospective employment relationship between

the Air Force and its civilian employees, applicants for employment, or military members, for which a remedial process is authorized by law, regulation, or policy. A workplace dispute may be written or oral. If ADR is attempted for an oral dispute, the dispute should be documented in writing to ensure it is appropriate for ADR under paragraph 21., and to permit tracking for purposes of ADR data collection IAW paragraph 38. Subject to collective bargaining obligations and case screening requirements, every workplace dispute is a potential candidate for ADR as part of an installation ADR plan (see paragraph 20.). Examples of potentially eligible disputes include the following:

- 19.1. Employee grievances filed under a negotiated grievance procedure that provides for ADR.
- 19.2. Administrative grievances filed under AFI 36-1203.
- 19.3. EEO discrimination complaints filed under 29 C.F.R. Part 1614, and AFI 36-1201.
- 19.4. MSPB appeals. See 5 C.F.R. 1201(b)(1) for MSPB rules extending appeal deadlines for ADR proceedings.
- 19.5. ULP allegations. See AFI 36-701, *Labor Management Relations*, Section D (27 July 1994).
- 19.6. Collective bargaining impasses.
- 19.7. Negotiability appeals.
- 19.8. Union or management grievances filed under a negotiated grievance procedure that provides for ADR.
- 19.9. Military Equal Opportunity (MEO) informal complaints, IAW AFI 36-2706, Section 4E.
- 19.10. Other workplace disputes not specifically listed, on a case-by-case basis. For workplace disputes involving military members exclusively and not implicating MEO complaints, eligibility for ADR is a matter of command discretion, subject to the case screening requirements of paragraph 21.2.

**20. ADR Plan.** Each Air Force installation shall develop a plan for utilizing ADR techniques in its workplace dispute procedures. The plan may be stand-alone, or, to the extent it affects dispute procedures subject to collective bargaining obligations, it may be incorporated into separate agreements negotiated with appropriate unions. Installations have broad discretion with respect to the content of the ADR plan, but at a minimum, the plan should include a policy statement promoting the use of ADR in workplace disputes, the ADR technique(s) and procedures to be used, the method(s) for obtaining neutrals, and responsibility for data collection and reporting. ADR plans developed at locations outside the United States must be consistent with applicable host nation labor laws and agreements.

**21. ADR Case Selection Criteria.** All eligible written workplace disputes must be screened utilizing the following criteria to ensure that ADR is an appropriate vehicle for resolving the dispute. The SJA is primarily responsible for ensuring that workplace disputes are properly screened to determine suitability for ADR. See paragraph 21.3. for available options for case screening. This screening must be accomplished before ADR is unconditionally offered to either party.

21.1. The Administrative Dispute Resolution Act of 1996 (ADRA)<sup>1</sup> requires federal agencies to consider **not** using ADR if one or more of the following conditions exist:

- 21.1.1. A definitive decision in the matter is needed as precedent.

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1. P.L. 104-320 (October 19, 1996), 5 U.S.C. § 571, *et seq.*

21.1.2. The matter involves significant issues of government policy that cannot be finally resolved without additional proceedings.

21.1.3. The need to maintain an established government policy is especially important, requiring consistent results.

21.1.4. The matter significantly affects non-parties.

21.1.5. Development of a full public record is important.

21.1.6. The agency must maintain continuing jurisdiction over the matter.<sup>2</sup>

21.2. Examples of disputes that would ordinarily be considered inappropriate for ADR under one or more of the ADRA criteria include, but are not limited to:

21.2.1. Misconduct punishable under the Uniform Code of Military Justice (UCMJ) or state or federal criminal laws.

21.2.2. Military personnel quality force actions, such as involuntary administrative separations, denials of reenlistment, resignations, promotion propriety actions, and officer grade determinations.

21.2.3. Complaints under Article 138, UCMJ.

21.2.4. For civilian employees, ADR may not be used as a substitute for disciplinary action under AFI 36-704. However, ADR may be used to resolve grievances, MSPB appeals, or EEO complaints resulting from civilian disciplinary action.

21.2.5. Civilian position classification appeals.

21.2.6. Disputes involving allegations of fraud, waste and abuse or other improper conduct within the jurisdiction of the Inspector General (IG) complaint system.

21.3. Screening may be accomplished either by the SJA or designee reviewing each dispute on its merits to determine whether ADR is appropriate and should be offered, or by other authorized agency personnel (e.g., ADR Champion, FAM, ADR intake official) using case screening guidelines, incorporating the criteria set forth in paragraphs 21.1. and 21.2. above, that have been specifically reviewed and approved by the SJA or designee. **Regardless of the method of screening utilized, ADR must not be unconditionally offered to a party until screening has been accomplished and the dispute found appropriate for ADR.** A dispute that has been screened and found appropriate for ADR need not be screened again, even if multiple ADR attempts are made.

21.4. In any case where authorized agency officials disagree about the suitability of ADR to resolve a dispute, the commander or designee will make the final determination.

## 22. Mediator Recruitment, Qualifications and Training, and Appointment.

22.1. Mediator recruitment and term of service.

22.1.1. The installation ADR Champion will determine the best means for obtaining qualified mediators, based on need and availability. Larger installations with significant workplace dispute activity will recruit, train and maintain a roster of collateral-duty mediators, of sufficient number

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2. *Id.*, § 572(b).

to meet anticipated needs and to assure sufficient mediation opportunities to maintain mediator proficiency. Installation commanders and their designees have discretion to determine the appropriate number of mediators on the roster to serve the installation's requirements; however, the ratio of collateral-duty mediators to mediation opportunities should afford each mediator at least one mediation opportunity per calendar quarter. Installations that do not have significant workplace dispute activity (i.e., an average of five or fewer ADR opportunities per year), may, in lieu of maintaining a roster of internal collateral-duty mediators, use mediators from other Air Force bases, federal shared neutral programs, or private sector (contract) mediators. The ADR Champion or designee may contact SAF/GCD directly for assistance in obtaining contract mediation services or other Air Force mediators. The Air Force ADR Program maintains a website for this purpose at <http://www.adr.af.mil/feedback/request.htm>.

22.1.2. Collateral-duty mediators who receive Air Force-provided mediation training must agree to perform mediation duties and fulfill the responsibilities required of the position for at least 24 months (12 months for mediators assigned to overseas locations). Exceptions and early release from the 24-month (or 12-month) commitment must be approved by the installation commander or designee. Collateral-duty mediation duties may account for no more than 20 percent of an employee's official duty time. Once trained, collateral-duty mediators must receive a sufficient level of mediation experience and refresher training to maintain an acceptable level of competency during the period for which they agree to serve. To maintain mediation skills, a trained collateral-duty mediator should be assigned to mediate a minimum of one dispute per calendar quarter. Supervisors of collateral-duty mediators must allow them time away from the workplace as reasonably necessary to perform their mediator duties and maintain their proficiency, subject to the 20 percent limitation on official duty time.

22.2. Mediator qualifications and training. At a minimum, Air Force collateral-duty mediators must successfully complete the 32-hour Air Force Basic Mediation Course, or a comparable training program consisting of a minimum 30 hours of combined classroom training and role-playing exercises, before assuming their duties as mediators. In addition, mediation training must familiarize the trainee with the facilitative method of mediation utilized in Air Force workplace disputes. Collateral-duty mediators must also maintain an acceptable level of proficiency through active mediation of cases and refresher training. ADR Champions will ensure that collateral-duty mediators are assigned a sufficient number of cases and provided additional training of at least 8 hours of refresher or upgrade training every 12 months to maintain proficiency. For collateral-duty mediators, training will be included in the 20 percent limitation on official duty time. Installation ADR Champions will work with the MAJ-COM ADR Champion and SAF/GCD to take advantage of centrally funded training, and should also promote locally funded or no-cost external training to the greatest extent practicable. Refer to paragraph 24. for additional guidance on mediator qualifications in EEO complaint mediations.

22.3. Appointment of mediators. The installation commander, or designee, appoints collateral-duty mediators in writing, to serve for a period of not less than 24 months (12 months at overseas locations), and may relieve them of mediator duties at any time. To maximize the benefit of a collateral-duty mediator's experience, reappointments at the conclusion of a period of service, or for periods longer than 24 months (12 months for overseas locations), are encouraged. Once appointed, mediators will receive their specific case assignments from the ADR Champion.

**23. Standards of Conduct for Neutrals.** Air Force neutrals must be familiar with and adhere to the following standards of ethical conduct.<sup>3</sup> Installation ADR Champions must ensure that all neutrals assigned to workplace disputes observe the following standards:

23.1. **Consent.** A neutral shall make reasonable efforts to ensure that all parties understand the ADR process to which they have agreed and the options available to them, and that the parties are free and able to make whatever choices they desire regarding participation in the process generally, or regarding specific settlement options.

23.2. **Self-Determination.** A neutral shall respect and encourage self-determination by the parties in their decision to resolve their dispute and on the terms of that resolution. Neutrals shall also refrain from being directive or judgmental regarding the issues in dispute and options for settlement.

23.3. **Impartiality.** A neutral shall maintain impartiality and evenhandedness toward the parties and the issues in dispute. Where the neutral's impartiality is in question, the neutral shall decline to participate in or shall withdraw from the ADR process. Where the neutral declines to participate or withdraws, the ADR Champion will designate another neutral if the parties desire to continue the ADR process.

23.4. **Conflicts of Interest.** A neutral shall, to the extent possible, avoid conflicts of interest and, in any event, shall resolve such conflicts in favor of the mediator's primary obligation to impartially serve the parties to the dispute. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and the parties agree that the neutral may serve.

23.5. **Confidentiality.** A neutral shall maintain confidentiality of the mediation process and communications made in connection with the process, to the extent necessary to comply with the law, including the confidentiality provisions of the ADRA,<sup>4</sup> and the reasonable expectations of the parties.

23.6. **Integrity of the Process.** A neutral shall conduct the ADR proceeding in a fair and diligent manner. The neutral shall protect the integrity of the process by encouraging mutual respect between the parties and by taking reasonable steps, subject to the principle of self-determination, to limit abuse of the process, including discontinuing the proceeding if necessary.

23.7. **Competency.** A neutral shall maintain sufficient skills to conduct the ADR proceeding in a competent manner. Where such skills are lacking, the neutral shall decline to serve or shall withdraw from serving as neutral. Installation ADR Champions are responsible for ensuring that collateral-duty mediators are provided sufficient training and mediation experience to meet this standard.

23.8. Additional information concerning these standards, including commentary, can be found at the Air Force ADR website, <http://www.adr.af.mil>.

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3. These standards are adapted from the Model Standards of Conduct for Mediators, drafted by a joint committee of delegates from the American Bar Association (ABA), American Arbitration Association (AAA), and Society of Professionals in Dispute Resolution (SPDR). The Model Standards have been approved by the AAA, SPDR, and the Litigation and Dispute Resolution Sections of the ABA. The Model Standards are available at AAA's website at <http://www.adr.org>.

4. 5 U.S.C. § 574.

**24. Additional EEOC Requirements.** The EEOC requires mediators in EEO complaints to know and understand federal agency EEO complaint procedures contained in 29 C.F.R. Part 1614, and MD-110. In addition, mediators in EEO cases must have a working knowledge of the following federal anti-discrimination laws: Title VII of the Civil Rights Act of 1964, as amended; the Rehabilitation Act of 1973, as amended (including the standards in the Americans with Disabilities Act of 1990 applicable to the Rehabilitation Act); the Age Discrimination in Employment Act, as amended; and the Equal Pay Act, as amended. The mediator must also have a basic understanding of the various theories of unlawful discrimination and the available remedies in EEO cases. ADR Champions must ensure that individuals assigned to mediate EEO complaints have the proper training and/or qualifications to perform such duties.

**25. ADR Agreement and Selection of Neutral.**

25.1. Mediation agreement and other agreements to engage in ADR. Parties agreeing to use mediation or other ADR procedure to resolve their dispute must execute a written agreement to that effect. The agreement will contain the time, date, and location of the proceeding and the neutral's name and telephone number, plus a description of the essential features of mediation or other procedure offered. Refer to the *Air Force Mediation Compendium: How to Mediate Civilian Personnel Disputes* for a sample mediation agreement. Installation ADR programs may design their own model agreements to suit local needs, so long as the models provide the necessary information to the parties. Agreements to engage in less formal ADR processes, such as facilitation, should also be in writing, but may be oral if the ADR Champion authorizes and the parties consent to an oral agreement.

25.2. Selection of neutrals. Installation ADR plans should prescribe the method for selecting the neutral. Neutrals may be designated by the ADR Champion or selected by the parties from a list of alternatives provided by the ADR Champion. Funding for contracting with private sector neutrals or obtaining Air Force neutrals TDY from other Air Force installations is available from the Air Force ADR Program Office. See <http://www.adr.af.mil/feedback/request.htm>.

**26. Convening and Conducting ADR Proceedings.**

26.1. Convening the proceeding. Once the mediator or other neutral is selected, the ADR Champion or FAM will convene the proceeding by arranging for its place, date and time. Do not combine multiple, unrelated disputes involving multiple parties into a single ADR proceeding (a single proceeding to resolve multiple disputes involving the same parties is permitted). ADR proceedings should be convened as soon as practicable, normally within 15 calendar days after ADR is selected, but no later than 45 calendar days after selection, unless the parties consent in writing to extend this period.

26.2. Conducting the proceeding. The ADR Champion ensures that suitable facilities are made available to conduct the proceeding at a neutral location outside the organization in which the dispute arose. The facilities must be reasonably accessible for any party with disabilities. If the ADR Champion determines that a neutral location is not reasonably available or cannot reasonably accommodate a party with disabilities, other suitable facilities may be selected with the concurrence of the parties. The facilities must provide sufficient meeting space and privacy to accommodate parties during joint sessions and any private caucuses, plus access to telephone, computer and other equipment as necessary to facilitate contact with ADR support providers and to assist with preparation of a settlement agreement should a settlement be reached. Prior to the proceedings, the ADR Champion or FAM will provide the parties and the neutral a telephone number at which he or she may be contacted for assistance during the proceeding, and the names and numbers of any on-call ADR support providers.

**27. Participants in ADR Proceedings.** Participants in workplace dispute ADR proceedings shall consist of the mediator or other neutral and the parties to the dispute. For training purposes, and with the parties' consent, a co-mediator or mediation mentor may also be present at all stages of the proceedings, including private caucuses. Subject to local agreements, the parties may appear alone or with one or more representatives of their choice. Representatives may, but need not, be attorneys. The neutral shall have authority to set reasonable limits on the number of representatives based on the size of the room and the need for full and effective communication between the parties and the neutral. The person representing the Air Force in an ADR proceeding must have sufficient authority to act on behalf of the Air Force to settle the issues in controversy, or have immediate access to those who do have such authority.

### **28. Reaching Settlement.**

28.1. If the parties are able to settle one or more issues in their case, the neutral will assist them in drafting a settlement agreement describing the terms and conditions of their settlement. The settlement agreement is subject to review and approval to ensure legal and regulatory compliance and the ability of the parties to carry out its terms. All issues concerning the legal sufficiency and regulatory compliance of any term or condition must be resolved before the agreement becomes final and enforceable. Where possible, the parties will seek guidance on the enforceability of proposed terms before signing a settlement agreement. See the *Air Force Mediation Compendium* for sample settlement agreements.

28.2. Allegations of breach of a settlement agreement will be handled according to procedures established for the type of workplace dispute to which the settlement pertains (e.g., EEO, NGP).

**29. Impasse.** An impasse occurs when the parties fail to resolve an issue and the neutral determines that further proceedings would be futile. ADR proceedings should be terminated when impasse is reached and the parties should be advised of the other remedies and processes available to them. ADR is not a replacement for other dispute procedures and remedies; therefore, a party who elects ADR does not waive the right to pursue such other available remedies if ADR fails to resolve the dispute as long as applicable time limits are met.

### ***Section D—Confidentiality***

**30. Statutory Protection.** Congress has recognized that confidentiality is essential for ADR processes to be effective.<sup>5</sup> Accordingly, the ADRA provides confidentiality protection for certain “dispute resolution communications” made in the course of ADR proceedings. It is Air Force policy to vigorously support the confidentiality of dispute resolution communications whenever it is consistent with the ADRA to do so.

### **31. Criteria for Confidentiality Protection.**

31.1. Threshold criteria. To warrant protection as confidential, an oral or written communication must meet three threshold criteria:

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5. See ADRA, 5 U.S.C. § 574 (1999).

31.1.1. It must be made during participation in the dispute resolution proceeding by specified parties, i.e., the time period between the appointment or designation of a neutral and the termination of the proceeding, either by settlement or impasse;<sup>6</sup>

31.1.2. It must be made or prepared specifically for the purposes of the dispute resolution proceeding<sup>7</sup> and not be discoverable before the proceeding began;<sup>8</sup> and

31.1.3. It must be made by a party to the neutral in confidence,<sup>9</sup> or generated by the neutral and provided to the parties in confidence.

31.2. For purposes of application of confidentiality protection, the term “neutral” includes an ADR intake official who is designated and identified by the ADR Champion as a neutral for the purpose of taking information from the party or parties to a dispute to assist them in deciding whether to use a dispute resolution proceeding to resolve the dispute.

## 32. Application of Confidentiality Protection to Specific Communications.

32.1. General rule. Under the ADRA, dispute resolution communications that meet the three threshold criteria are treated as confidential and can be disclosed only if an exception listed in paragraph **32.2.** is applicable to the disclosing person.

32.2. Exceptions.

32.2.1. Exceptions applicable to the neutral. Notwithstanding confidentiality, the **neutral** may disclose a dispute resolution communication if:

32.2.1.1. all parties to the dispute resolution proceeding and the neutral consent to disclosure in writing and, if the communication was provided by a nonparty participant, that participant consents to disclosure in writing;<sup>10</sup>

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6. 5 U.S.C. § 574(a) provides that a “neutral in a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication or any communication provided in confidence to the neutral.” A “dispute resolution proceeding” is defined as any “alternative means of dispute resolution...in which a neutral is appointed and specified parties participate.” 5 U.S.C. § 571(6). A dispute resolution proceeding is terminated when an enforceable settlement is reached as to all issues or an impasse is declared as to one or more issues in controversy.

7. This key restriction on the scope of the ADRA’s confidentiality protections is found in the definition of “dispute resolution communication” which states it covers “any oral or written communication prepared for the purposes of a dispute resolution proceeding...” 5 U.S.C. § 571(5).

8. 5 U.S.C. § 574(f) states that “Nothing in this section shall prevent the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a dispute resolution proceeding.”

9. The term “in confidence” is defined to mean that the information is provided with the express intent by the source that it not be disclosed, or under circumstances that would create the reasonable expectation on behalf of the source that the information will not be disclosed. *See* 5 U.S.C. § 571(7).

10. *Id.*, § 574(a)(1) (*Note*: If a nonparty participant provided the confidential dispute resolution communication, that participant also must consent in writing.).

32.2.1.2. the communication has already been made public;<sup>11</sup>

32.2.1.3. the communication is required by statute to be made public; however, the neutral should make such communication public only if no other person is reasonably available to disclose the communication; or<sup>12</sup>

32.2.1.4. a court determines the communication must be disclosed to prevent a manifest injustice, help establish a violation of law, or prevent harm to the public health or safety of sufficient magnitude in the particular case to outweigh the loss of confidentiality.<sup>13</sup>

32.2.2. Exceptions applicable to a party. Notwithstanding confidentiality, a **party** may disclose a dispute resolution communication if:

32.2.2.1. it was made by the party seeking disclosure;<sup>14</sup>

32.2.2.2. all parties to the dispute resolution proceeding and the neutral consent to disclosure in writing and, if the communication was provided by a nonparty participant, that participant consents to disclosure in writing;<sup>15</sup>

32.2.2.3. the communication has already been made public;<sup>16</sup>

32.2.2.4. the communication is required by statute to be made public;<sup>17</sup>

32.2.2.5. a court determines the communication must be disclosed to prevent a manifest injustice, help establish a violation of law, or prevent harm to the public health or safety of sufficient magnitude in the particular case to outweigh the loss of confidentiality;<sup>18</sup>

32.2.2.6. it is relevant to determining the existence or meaning of an agreement or award that resulted from the dispute resolution proceeding, or to the enforcement of such an agreement or award; or<sup>19</sup>

32.2.2.7. except for communications generated by the neutral and provided to the parties in confidence, it was made available to all parties in the proceeding. This exception would apply to communications made by a party during joint sessions in which all other parties are present, but would not apply to communications made by the neutral to the parties during joint sessions.<sup>20</sup> Accordingly, communications generated by the neutral to the parties during joint sessions are protected as confidential; communications between the parties themselves are not.

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11. *Id.*, § 574(a)(2).

12. *Id.*, § 574(a)(3) (For example, in response to a Congressional Subpoena.)

13. *Id.*, § 574(a)(4).

14. *Id.*, § 574(b)(1).

15. *Id.*, § 574(b)(2) (*Note:* If a nonparty participant provided the confidential dispute resolution communication, that participant also must consent in writing.).

16. *Id.*, § 574(b)(3).

17. *Id.*, § 574(b)(4) (For example, in response to a Congressional Subpoena.)

18. *Id.*, § 574(b)(5).

19. *Id.*, § 574(b)(6).

20. *Id.*, § 574(b)(7).

### 32.2.3. Other exceptions to confidentiality:

32.2.3.1. Information that is otherwise discoverable remains discoverable. Merely because the information was presented in the course of a dispute resolution proceeding does not make it confidential.<sup>21</sup>

32.2.3.2. Dispute resolution communications may be used to resolve a subsequent dispute between a party and a neutral, but the disclosures must be limited to only those necessary to resolve such dispute.<sup>22</sup>

32.2.3.3. Information from dispute resolution proceedings may be gathered and disclosed for research or educational purposes in cooperation with other agencies, governmental entities, or ADR programs as long as the parties and specific issues in controversy are not identifiable.<sup>23</sup>

32.2.3.4. Any agreement reached or order issued pursuant to a dispute resolution proceeding may be disclosed under the ADRA.<sup>24</sup> Thus, for example, an agreement to mediate a dispute or a settlement agreement reached as a result of that mediation is not protected from disclosure under the ADRA. However, disclosure or other uses of such an agreement may be restricted by the terms of the agreement itself or by other measures. See paragraph 37.

32.3. MEO complaints. This section does not apply to MEO complaints. Confidentiality of communications made during mediation of informal MEO complaints is governed by AFI 36-2706, section 4E. Refer to that AFI for guidance.

**33. Understanding of the Parties.** To protect the reasonable expectation of the parties in the confidentiality of dispute resolution communications, their agreement to enter into an ADR proceeding (e.g., a mediation agreement if the ADR proceeding is mediation) should include an explanation of the confidentiality provisions applicable to the proceeding. In addition, the ADR Champion or case intake official will explain the confidentiality provisions and secure an acknowledgment that each party understands the protections afforded. Finally, the neutral must explain the confidentiality provisions during opening remarks, and affirmatively establish that the parties understand the provisions. A sample confidentiality clause in a mediation agreement and a mediator's opening statement including an explanation of the confidentiality protection can be found in the *Air Force Mediation Compendium*.

**34. Waiver of Objection to Disclosure by the Neutral; 15-Day Limitation.** If a neutral receives a discovery request or is otherwise compelled by legal process to disclose a dispute resolution communication (including an administrative demand for disclosure asserting as its basis a statutory or other legal right to the communication), the ADRA requires the neutral to make reasonable efforts to notify the parties and any affected nonparties of the demand.<sup>25</sup> Any objection to disclosure is waived if not made within 15 calendar days after notice of the demand for disclosure. Therefore, whenever a neutral receives a demand to disclose a dispute resolution communication, it is essential that the neutral immediately notify the ADR

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21. *Id.*, § 574(f).

22. *Id.*, § 574(i).

23. *Id.*, § 574(h).

24. *Id.*, § 574(g).

25. *Id.*, § 574(e).

Champion, who will assist the neutral to provide notice of the demand to the parties and any affected non-party participants. The ADR Champion will also notify the SJA or other point of contact in the servicing legal office. The SJA will coordinate the demand, as appropriate, with SAF/GCD, Director of Workplace Disputes ADR Programs, at DSN 227-0379, Commercial (703) 697-0379, or by e-mail at <mailto:gcdadr@pentagon.af.mil>. **Under no circumstances should a neutral, party or party representative disclose a communication made during ADR proceedings without first obtaining a legal determination that disclosure is authorized or required.**

**35. Remedy for Violation of Confidentiality Protection.** A dispute resolution communication that is disclosed in violation of the ADRA or this AFI is not admissible in any proceeding relating to the issues in controversy with respect to which the communication was made.<sup>26</sup>

**36. Freedom of Information Act (FOIA).** A dispute resolution communication that is confidential under the ADRA is exempt from disclosure under FOIA.<sup>27</sup> Process FOIA requests for disclosure of a dispute resolution communication by first determining whether the communication is an agency record subject to FOIA.<sup>28</sup> If it is, and qualifies for confidentiality protection, use FOIA exemption 3 (information prohibited from disclosure by another statute)<sup>29</sup> as the basis for withholding.

**37. Other Protections Available.** Even if a dispute resolution communication is not protected by the ADRA as confidential, other limitations on disclosure or further use of the communication may be available. Practitioners should consider Rule 408 of the Federal Rules of Evidence limiting admissibility of evidence of previous settlement negotiations, additional exemptions under FOIA or the Privacy Act, and separate contractual provisions between the parties to limit disclosure.

### ***Section E—ADR Program Performance Measurements and Quality Assurance***

**38. ADR Performance Data.** Data to measure ADR performance will be collected and reported in accordance with paragraph 39. Any measurement adopted for assessing ADR activity must be tied to the overall ADR program goal of encouraging early resolution of disputes by maximizing ADR availability across a wide range of eligible disputes. At the same time, because ADR is a purely voluntary process, ADR Champions must ensure that measurements are not used to improperly induce parties to select ADR or settle a dispute against their wishes. Installation and MAJCOM programs may establish additional measurement and reporting requirements, but must, at a minimum, collect and report through command channels to SAF/GCD at the end of every fiscal year the data specified below. The installation ADR Champion has overall responsibility for the collection and reporting of ADR data, and will coordinate with other offices, e.g., EEO and CPF, as necessary to ensure accuracy and completeness.

38.1. **ADR Attempt Rates.** Measures ADR usage in workplace disputes by comparing the number of ADR attempts to the total number of workplace disputes, and expressing the result as a percentage. To obtain this figure, divide the total number of ADR attempts by the total number of qualifying work-

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26. *Id.*, § 571(c).

27. *Id.*, § 574(j).

28. FOIA, 5 U.S.C. § 552(f).

29. *Id.*, § 552(b)(3).

place disputes for the reporting period, and multiply the result by 100. The goal is to attempt ADR in at least 50 percent of eligible disputes. An “ADR attempt” occurs when a neutral is appointed and specified parties participate in a proceeding using one or more ADR procedures to resolve a dispute. See [Attachment 1](#) for definitions of specific ADR procedures. Separate percentage goals may be established for specific categories of disputes, including EEO complaints, negotiated grievances, and ULP allegations, based on historical data.

38.2. Dispute Resolution Rates. Measures the effectiveness of ADR to resolve disputes by comparing the number of resolutions using ADR to the number of disputes in which ADR was attempted, and expressing the result as a percentage. To obtain this figure, divide the total number of disputes resolved using ADR by the total number of ADR attempts during the reporting period, and multiply the result by 100. The goal is to resolve at least 70 percent of the disputes in which ADR is attempted. Although this measure is useful for gauging the overall effectiveness of an ADR program at promoting early resolution of disputes, ADR Champions must ensure it is not used to pressure parties into settlements they would otherwise not agree to.

38.3. ADR Timeliness Rates. Measures the average period, in calendar days, between initiation of an ADR proceeding (occurs when both parties agree to use ADR) and termination of that ADR proceeding, either by settlement or declaration of impasse. The figure is derived by taking the aggregate number of calendar days attributable to all ADR proceedings completed during the reporting period, and dividing the total by the number of completed proceedings. The goal is an average of 45 calendar days or less.

38.4. Customer Satisfaction. Measures the overall satisfaction of parties in the ADR process and the performance of the neutral as expressed in a voluntary questionnaire (see [Attachment 2](#)). The goal is to achieve an overall rating of “Satisfied” or better for the ADR process employed from at least 80% of the respondents, and an overall rating of “Good” or better for the neutral from at least 80% of the respondents, during the measuring period.

38.5. Data pertaining to ADR attempt rates, ADR resolution rates, and ADR timeliness will be maintained and reported in accordance with the reporting procedures established in paragraph [39](#). for each of the following categories of workplace disputes:

38.5.1. Administrative grievances filed under AFI 36-1203.

38.5.2. Grievances filed under a collective bargaining agreement negotiated grievance procedure.

38.5.3. MSPB appeals.

38.5.4. EEO complaints (informal pre-complaints and formal complaints).

38.5.5. ULP allegations (whether filed with the FLRA or not).

38.5.6. Other disputes not meeting the definitions of the foregoing disputes, for which a remedy or resolution is available.

**39. Annual ADR Report.** At the end of each fiscal year, SAF/GCD will issue an ADR data call to each MAJCOM, FOA and DRU with significant workplace dispute activity. Respondents will collect and consolidate ADR data for the previous fiscal year from installations or other subordinate organizations and report it to SAF/GCD. Format and content of the report will be specified by SAF/GCD in the data call. Reports will not contain information that identifies the parties to ADR proceedings or requires disclosure of any dispute resolution communications.

**40. Complaints About Mediation Services.**

40.1. Complaints about mediators or other neutrals should be directed to the installation ADR Champion. After consulting with the SJA or designee, the ADR Champion will decide whether corrective action is necessary and, if so, what action should be taken. For example, a new mediation conference with a different mediator may be offered if it is determined the mediator's conduct materially affected the outcome of the mediation to the detriment of one or both parties. If a substantiated complaint or series of complaints establishes one or more breaches of mediator standards of conduct or other misconduct sufficient to warrant relieving the mediator of further mediation duties, the ADR Champion and SJA may individually or jointly recommend such action to the installation commander or designee, whose decision on the recommendation shall be final.

40.2. Complaints about third-party neutrals under contract with SAF/GCD should be directed through the MAJCOM ADR Champion to the Air Force ADR Program Office in SAF/GCD. Complaints must clearly document the facts and circumstances surrounding the incident and request a specific remedy. Action taken will depend on the facts of each case.

**41. Records Maintenance and Disposition.** Notes taken by the neutral and the parties and/or their representatives during a dispute resolution proceeding shall not become part of official records maintained by the Air Force and should be destroyed once the dispute resolution proceeding is completed. ADR intake forms, ADR agreements, and settlement agreements pertaining to or resulting from the dispute resolution proceeding shall be maintained in the official dispute file and are subject to the disposition requirements applicable to the official dispute file, IAW AFMAN 37-139, Records Disposition Schedule.

MARY L. WALKER  
The General Counsel

## Attachment 1

### GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

#### *References*

Public Law 104-320, *Administrative Dispute Resolution Act of 1996*, 110 Stat. 3870, codified at 5 U.S.C. § 571, *et seq.*

*Uniform Code of Military Justice*, 10 U.S.C. § 801, *et seq.*

*Freedom of Information Act*, 5 U.S.C. § 552

*Privacy Act*, 5 U.S.C. § 552a

Title 5 C.F.R., Part 1201 (MSPB Regulations)

Title 5 C.F.R., Parts 2423-2424 (FLRA Regulations)

Title 29 C.F.R., Part 1614 (EEOC Regulations)

Department of Defense Directive 5145.5, *Alternative Dispute Resolution* (April 22, 1996)

Department of Defense Regulation 5400.7/Air Force Supplement, *DoD Freedom of Information Act Program* (22 July 1999)

Air Force Policy Directive 36-1, *General Civilian Personnel Provisions and Authorities* (7 March 1995)

Air Force Policy Directive 51-12, *Alternative Dispute Resolution* (9 January 2003)

Air Force Instruction 33-332, *Air Force Privacy Act Program* (8 Nov 2000)

Air Force Instruction 36-701, *Labor Management Relations* (27 July 1994)

Air Force Instruction 36-704, *Disciplinary and Adverse Actions* (22 July 1994)

Air Force Instruction 36-1201, *Discrimination Complaints* (25 July 1994)

Air Force Instruction 36-1203, *Administrative Grievance System* (1 May 1996)

Air Force Instruction 36-2706, *Military Equal Opportunity and Treatment Program* (1 December 1996)

Air Force Manual 37-139, *Records Disposition Schedule* (1 Mar 1996)

EEOC Management Directive 110 (November 9, 1999)

#### *Abbreviations and Acronyms*

**ADR**—Alternative Dispute Resolution

**ADRA**—Administrative Dispute Resolution Act

**AF/DP**—Air Force Deputy Chief of Staff for Personnel

**AF/DPP**—Directorate of Personnel Policy

**AFDRS**—Air Force Dispute Resolution Specialist

**AFDDRS**—Air Force Deputy Dispute Resolution Specialist  
**AF/JA**—The Judge Advocate General of the Air Force  
**AF/JAA**—Office of the Judge Advocate General, Administrative Law Division  
**AFLSA/JACL**—Air Force Legal Services Agency, General Litigation Division  
**AGS**—Administrative Grievance System  
**CLLO**—Air Force Central Labor Law Office  
**CPF**—Civilian Personnel Flight  
**DRU**—Direct Reporting Unit  
**EEO**—Equal Employment Opportunity  
**EEOC**—Equal Employment Opportunity Commission  
**FAM**—Functional Area Manager  
**FLRA**—Federal Labor Relations Authority  
**FOA**—Field Operating Agency  
**FOIA**—Freedom of Information Act  
**HRO**—Human Resources Office  
**IAW**—In accordance with  
**IG**—Inspector General  
**MEO**—Military Equal Opportunity  
**MSPB**—Merit Systems Protection Board  
**NGP**—Negotiated Grievance Procedure  
**OPM**—Office of Personnel Management  
**OPR**—Office of Primary Responsibility  
**SAF/GC**—Office of the Air Force General Counsel  
**SAF/GCD**—Office of the Air Force General Counsel, Dispute Resolution Division  
**SAF/MR**—Assistant Secretary of the Air Force (Manpower and Reserve Affairs)  
**SAF/MRE**—Deputy Assistant Secretary for Equal Opportunity  
**SJA**—Staff Judge Advocate  
**UCMJ**—Uniform Code of Military Justice  
**ULP**—Unfair Labor Practice

### *Terms*

**ADR Attempt**—An ADR attempt occurs when a neutral is appointed and specified parties participate in a dispute resolution proceeding using one or more ADR procedures. Simply informing the parties about the option of ADR does not count as an attempt.

**ADR Champion for Workplace Disputes**—An individual appointed at the Headquarters Air Force, MAJCOM, and installation level to promote the use of ADR processes for resolving workplace disputes, to facilitate the development and implementation of the organization's workplace disputes ADR plan, and to provide oversight of the organization's workplace disputes ADR program. Any civilian employee or active duty military of suitable grade or rank, experience, and trust among ADR stakeholders and assigned to the organization may be appointed ADR Champion.

**ADR Stakeholder**—An organization or individual with an official or, in the case of a complainant, claimant or grievant, a personal interest in the initiation, processing, and resolution of one or more workplace disputes. Commanders, supervisors, individual employees, dispute program owners (e.g., CPF and EEO) and legal and other advisors (e.g., SJA) are all ADR stakeholders.

**Agency**—Each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include -- (A) the Congress; (B) the courts of the United States; (C) the governments of the territories or possessions of the United States; (D) the government of the District of Columbia.

**Alternative Dispute Resolution (ADR)**—The Administrative Dispute Resolution Act of 1996, Pub. L. No. 104-320, 110 Stat. 3870, 5 U.S.C. § 571, *et seq.* (1996), defines ADR as any procedure that is used to resolve issues in controversy, including but not limited to facilitation, mediation, factfinding, minitrials, arbitration, and the use of ombuds, or any combination thereof. Sec. 4(b), 5 U.S.C. § 571(3). Specific ADR procedures are defined as follows:

**1. Facilitation:** An unstructured and flexible process in which the parties are assisted in resolving issues in controversy by a trained third party neutral (not necessarily a mediator) utilizing interest-based negotiation techniques.

**2. Fact-finding/Early Neutral Evaluation:** A structured process in which the parties seek the assistance of a subject matter expert to review the dispute and to provide an assessment of the likely outcome of the dispute based on the facts as found or as agreed to by the parties.

**3. Mediation:** A structured process in which the parties seek the assistance of a qualified mediator to help them in resolving their issue in controversy. The primary attributes of mediation are a structured process, the use of interest-based negotiation techniques, and the use of separate and confidential caucuses between each party and the mediator.

**4. Arbitration:** Arbitration involves the parties' mutual selection of a neutral third party, an arbitrator, to decide the issue in controversy after hearing witnesses, considering other items of evidence, and listening to the arguments of each side. The arbitrator's decision, called an award, can be binding or non-binding, depending on the parties' agreement, but Air Force policy generally precludes binding arbitration outside of the collective bargaining context. Although commonly considered an ADR process, arbitration is not favored as an alternative process for resolving Air Force workplace disputes because of its use as the final step of negotiated grievance procedures in Air Force collective bargaining agreements.

**5. Ombuds:** A neutral employee appointed to receive and investigate complaints, provide guidance, answer questions, and refer inquiries and complaints to appropriate outside resources. In the Air Force, an ombuds must be officially appointed in writing by the base, Field Operating Agency (FOA), or Direct Reporting Unit (DRU).

**6. Other ADR:** Other forms of ADR not specifically identified in the ADRA include peer review panels, which are panels consisting of employees, or a combination of employees and management officials, appointed to review the facts, hear arguments, and render decisions on issues in controversy. Alternatively, an organization may employ a technique that is considered part of another agency's ADR program, such as the FLRA or EEOC. In addition, a dispute may be resolved by the use of a Federal court's ADR program.

**Confidentiality**—As used in this AFI, refers to the protection from voluntary or compulsory disclosure, afforded by the Administrative Dispute Resolution Act of 1996, to certain dispute resolution communications given in confidence for the purposes of a dispute resolution proceeding. *See* ADRA, 5 U.S.C. § 574.

**Dispute**—*See workplace dispute.*

**Dispute resolution communication**—Any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, parties or nonparty participant. A written agreement to enter into a dispute resolution proceeding, or final written agreement or arbitration award reached as a result of a dispute resolution proceeding, is not a dispute resolution communication. *See* ADRA, 5 U.S.C. § 571(5).

**Dispute resolution proceeding**—Any process in which an alternative means of dispute resolution is used to resolve an issue in controversy in which a neutral is appointed and specified parties participate. *See* ADRA, 5 U.S.C. § 571(6).

**In confidence**—Information provided -- (A) with the expressed intent of the source that it not be disclosed; or (B) under circumstances that would create the reasonable expectation on behalf of the source that the information will not be disclosed. *See* ADRA, 5 U.S.C. § 571(7).

**Issue in controversy**—An issue which is material to a decision concerning an administrative program of an agency, and with which there is disagreement -- (A) between an agency and persons who would be substantially affected by the decision; or (B) between persons who would be substantially affected by the decision. *See* ADRA, 5 U.S.C. § 571(8).

**Neutral**—An individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy. This individual may be a Federal government employee or someone outside the Government. For purposes of determining whether communications are confidential, the term “neutral” also includes ADR intake or other administrative personnel designated and identified by the ADR Champion as a neutral for the purpose of taking information from the party or parties to a dispute to assist them in deciding whether to use a dispute resolution proceeding to resolve the dispute. *See* ADRA, 5 U.S.C. § 571(9).

**Party**—A person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes. *See* ADRA, 5 U.S.C. § 571(10).

**Qualified mediator**—An individual who meets the Air Force criteria for mediating Air Force workplace disputes and who acknowledges and complies with the Standards of Conduct for Air Force Mediators.

**Remedy**—The whole or a part of an action, taken by an agency or other official administrative or judicial authority, in response to and in consequence of a grievance, complaint, or other workplace dispute. A remedy may consist of: (A) grant of money, assistance, license, authority, exemption, exception, privilege, or other relief; (B) recognition of a claim, right, immunity, privilege, exemption, or exception;

or (C) taking of other action on the application or petition of, and beneficial to, a person.

**Workplace dispute**—A formal or informal claim or issue in controversy, arising out of an existing or prospective employment relationship between the Air Force and its civilian employees, applicants for employment, or military members, for which a remedial process is authorized by law, regulation, or policy. For purposes of application of ADR principles, a workplace dispute may be written or oral.

Attachment 2

SAMPLE ADR EVALUATION FORM

<b>Date Parties Agreed to Use ADR:</b> _____ <b>Date ADR Completed:</b> _____ <b>Time ADR Started:</b> _____ <b>Time ADR Ended:</b> _____	<b>ADR Number (if any):</b> _____  <b>Neutral:</b> _____
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1. What was your role in the case? ( ) **Employee** ( ) **Union** ( ) **Agency** ( ) **Other (please specify)** \_\_\_\_\_
2. How would you compare the amount of time taken to resolve this case using the ADR process compared with what you believe would have been required if a formal dispute resolution had been used to resolve this dispute? ADR was:  
 ( ) **Significantly faster** ( ) **Somewhat faster** ( ) **Same amount of time** ( ) **Somewhat slower** ( ) **Significantly slower**
3. **ADR PROCESS** - The following questions concern your experience with the ADR Process. Please tell us how satisfied you were with each of the following features of the process. (For each feature, check the column corresponding to your opinion)

Feature	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied
1. Amount of information you received about the process.					
2. Amount of control you had over the process.					
3. Opportunity to present your side of the dispute.					
4. Fairness of the process.					
5. Overall outcome of the process.					
6. Speed with which the dispute was resolved.					
7. Outcome of the process compared to what you expected it to be before it took place.					
8. Overall, how satisfied were you with the ADR process?					

4. **Mediator/Facilitator:** Please take a moment to evaluate your mediator/facilitator using the following chart.

	Excellent	Good	Average	Fair	Poor
1. <b>Neutrality</b> (Did the mediator/facilitator have the appearance of impartiality, without favoritism or bias?)					
2. <b>Communication</b> (How well did the mediator/facilitator facilitate communication between the parties?)					
3. <b>Managing the ADR Process</b> (Did the mediator/facilitator effectively handle conflicts, suggest movement ideas, propose problem-solving solutions?)					
4. <b>Patience</b> (Did the mediator/facilitator devote the necessary time and attention to the parties to keep the process moving without appearing to rush or be in a hurry to complete the process?)					
5. <b>Expertise</b> (Did the mediator/facilitator demonstrate the necessary expertise to mediate this type of dispute?)					
6. <b>Facilitative Abilities</b> (Did the mediator/facilitator ask relevant questions to seek out pertinent information and keep the process moving forward?)					
7. <b>Overall Ability of the Mediator/Facilitator in General</b>					

5. Outcome of the Mediation (Please check one): ( ) **Full Settlement** ( ) **Partial Settlement** ( ) **Did not Settle**
6. Would you recommend this process? ( ) **Yes** ( ) **No**
7. Would you recommend this Mediator/Facilitator for future mediations? ( ) **Yes** ( ) **No**

Comments: \_\_\_\_\_  
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