

General Counsel

ALTERNATIVE DISPUTE RESOLUTION PROGRAM

BY ORDER OF THE DIRECTOR



DAN MARCUM
Acting Director, Information Technology

WILLIAM E. SHERMAN
General Counsel

AUTHORITY: Defense Commissary Agency Directives Management Program is established in compliance with DoD Directive 5105.55, Defense Commissary Agency (DeCA), November 1990 and DOD Directive 5145.5, Alternate Dispute Resolution, April 22, 1996.

HOW TO SUPPLEMENT: This directive may not be supplemented.

MANAGEMENT CONTROL SYSTEM: This directive does not contain Management Control provisions that are subject to evaluations, testing and other requirements of DeCAD 70-2 and as specified in the Federal Managers' Financial Integrity Act.

HOW TO ORDER COPIES: Copies may be obtained only by contacting the General Counsel, DeCA, Fort Lee, VA 23801-1800, or by calling (804) 734-8116, DSN 687-8116

SUMMARY: This directive provides guidance on matters pertaining to alternative methods of resolving controversies without resorting to litigation.

OFFICE OF PRIMARY RESPONSIBILITY (OPR): HQ DeCA/GC
COORDINATORS: REG DIRS/CD/SS/CI/RM/SSE/RMH/CII

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1. PURPOSE:

a. As part of the effort to make the Defense Commissary Agency (DeCA) operate in a more efficient and effective manner, and to encourage, where possible, consensual resolution of disputes and issues in controversy by means other than administrative or judicial litigation, DeCA will make the greatest possible use of alternative dispute resolution (ADR).

b. The goal of ADR is to promote voluntary, informal, and consensual resolution of issues in controversy in a more timely and less costly manner. It attempts to define the real issues, promote communication and minimize distraction from the mission.

c. This directive implements the Administrative Dispute Resolution Acts of 1990 and 1996 (5 USC 571 *et. seq.*) and authorizes the use of alternative dispute resolution techniques within DeCA. This directive provides internal guidance only. Neither the ADR Act nor this Directive confers any additional right on a party to an issue in controversy with DeCA.

d. This directive applies to HQ DeCA, Field Operating Agencies (FOAs), Regions, Zones, Commissary Stores and Central Distribution Centers.

2. POLICY:

a. It is DeCA policy to use ADR to the maximum extent practicable and appropriate to resolve issues in controversy at the earliest stage feasible, by the fastest and least costly method possible. ADR may be used to resolve the entire issue in controversy or to resolve any portion of an issue in controversy. ADR complements DeCA's corporate philosophy of "doing the right thing, every time, all the time," and the basic principles of honesty, integrity and fairness. However, ADR itself will not be used as an excuse or reason for "settling" a case. Further, ADR will only be entered into in good faith. For example, it would be improper to enter into ADR if in doing so we imply that a solution sought may be available where we cannot legally or practically grant that remedy.

b. While every dispute is a potential candidate for resolution by ADR, it may not be appropriate in every case. ADR will not be used:

- (1) Where an employee's employment with the Agency has been terminated.
- (2) In cases of misconduct involving sexual harassment.
- (3) In cases of misconduct involving violence in the workplace
- (4) In cases of misconduct involving theft.
- (5) In cases involving non-employees such as baggers, vendor stockers, and contractual personnel.

c. In addition, the following indicators may warrant the declination of ADR for a particular issue in controversy:

- (1) A definitive or authoritative resolution of the matter is required for precedential value. An ADR proceeding is not likely to be accepted generally as an authoritative precedent.

(2) The matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made. An ADR proceeding would not likely serve to develop a recommended policy for the agency.

(3) Maintaining specific policies is of special importance so that variations among individual decisions would not be appropriate. Decisions in successive unrelated ADR proceedings may not reach consistent results.

(4) The matter significantly affects persons or organizations that are not parties to the proceedings.

(5) A full public record of the proceeding is important. A dispute resolution proceeding cannot provide such a record.

(6) The agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in light of changed circumstances. A dispute resolution proceeding may interfere with the agency's fulfilling that requirement.

Before declining to enter into ADR the matter will be discussed with the DeCA Alternative Dispute Resolution Specialist (ADRS) or designee.

3. TERMS:

a. Alternative Dispute Resolution (ADR). Any technique for resolving issues in controversy without resort to litigation in either an administrative or judicial forum. ADR does not replace litigation, but is intended to divert from formal channels those cases that may be resolved in an informal, non-adversarial setting.

b. Alternative Dispute Resolution Specialist (ADRS). The ADRS is the General Counsel, DeCA.

c. Alternative Dispute Resolution (ADR) Coordinator. An employee, trained in the use of ADR techniques, who, as an additional duty, serves as the representative for the ADR process and facilitates the processing of ADR in DeCA. While an ADR Coordinator may be trained as a third-party neutral, he or she does not function as a neutral when performing the duties of ADR Coordinator.

d. Issue in Controversy. An issue that is material to a decision concerning an administrative program of DeCA, and regarding which there is disagreement between the agency and a person(s) who would be substantially affected by the decision.

e. Third-Party Neutral. A third-party neutral is 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 Government employee or someone outside the Government. A third-party neutral must be qualified in accordance with the accepted practices for the level of neutral sought to be employed.

4. RESPONSIBILITIES:

a. The Deputy Director will appoint an ADR Coordinator for the Headquarters and Field Operating Activities, DeCA.

b. Region Directors will appoint an ADR Coordinator for their Region.

c. The General Counsel, DeCA will:

(1) Serve as the DeCA Alternative Dispute Resolution Specialist (ADRS) and shall be the proponent for establishing and implementing DeCA ADR policy, plans, and guidance; and for administering the DeCA ADR program.

(2) Determine the minimum training requirements for DeCA ADR Coordinators.

(3) Monitor implementation and evaluate program execution and results.

(4) Provide information regarding ADR techniques and procedures.

(5) Review all resolutions arrived at via ADR for legal sufficiency, compile information on DeCA ADR activities, and prepare any reports required to be filed.

d. The Directors of Human Resources, Acquisition Management and Equal Employment Opportunity will develop and submit to the ADRS plans to implement ADR within their areas of responsibility throughout DeCA.

e. ADR Coordinator.

(1) Serves as an advocate for the ADR process, but does not serve as an advocate for a particular side in a controversy, or as a third-party neutral in a case he or she has processed. ADR Coordinator will make the initial determination whether an issue in controversy should be submitted to ADR in accordance with the guidelines in paragraph 2, above.

(2) Informs an interested party regarding the availability of ADR.

(3) Explains the ADR techniques available and where appropriate recommends an ADR technique to be used for a particular issue in controversy.

(4) When required for an ADR proceeding arranges for a third-party neutral.

(5) Assists in the preparation of the written agreement to participate in ADR.

(6) Files reports of ADR activities, as required by paragraph 6 of this Directive, with the ADRS.

f. All DeCA Employees. Once the Agency has determined that a matter is appropriate for ADR, each DeCA employee or employee applicant will fully cooperate with and support the ADR Process.

5. PROCEDURES:

a. ADR Plans. Separate ADR plans addressing contract and workplace disputes prepared in accordance with Paragraph 4(c) of this Directive will be developed. Each plan will address the following areas:

(1) Purpose Statement.

(2) ADR Processes/Techniques. Possible techniques that may be utilized

(3) Responsibilities. The roles of participants in the ADR process.

- (4) Requesting and Selecting a Neutral.
- (5) ADR Agreement. The elements of an agreement to enter into ADR must be prepared prior to using ADR. The agreement shall, where appropriate, address issues regarding confidentiality, expenses, and restrictions on use of documents.
- (6) Additional Reporting Requirements.
- (7) Definitions. Additional definitions that may be useful or unique to the respective areas.

ADR Plans are intended to be living documents and may be revised as necessary to implement DeCA ADR policy.

b. Use of Third-Party Neutrals. Ordinarily, DeCA will use third-party neutrals in its ADR Program. Third-party neutrals may be arranged for by contract, inter service support agreement, or on loan from the Health and Human Services Interagency Program on Shared Neutrals (Shared Neutral Program).

c. DeCA Employees as Third-Party Neutrals. A DeCA employee qualified under the accepted practices for a particular ADR technique may serve as a third-party neutral under the Shared Neutral Program. A DeCA employee may only serve as a third-party neutral on a DeCA issue in controversy with the prior approval of the ADRS. Conflict of interest principles will be observed in approving the use of a DeCA employee as a third-party neutral on a DeCA issue.

d. ADR Agreement. In order to enter into an ADR technique, the parties must execute a written agreement (including any agreed upon waivers of processing time limits). Sample Agreements are attached to each ADR Plan.

e. Specific processes are discussed in the workplace and contracting ADR plans.

f. If a resolution is reached, the resolution must be reduced to writing and reviewed for legal sufficiency. In any event, the responsible ADR Coordinator must complete a DD Form 2815 for ADR.

6. REPORTING REQUIREMENTS:

a. The ADR Coordinator will ensure that a report is filed with the ADRS on DD Form 2815, for each case, controversy or issue in controversy for which an alternative dispute resolution technique was considered, whether or not implemented, and whether or not a settlement was reached. Any matters reported which are the subject of confidentiality must be clearly indicated on the report. **Note:** Techniques such as positional (traditional) negotiation, interest-based negotiation or, in the case of contracting, collaborative problem solving, do not require reports.

b. The ADRS will compile the annual report to DoD from the individual reports filed by the ADR Coordinator.