



DoD INSTRUCTION 5145.05

ALTERNATIVE DISPUTE RESOLUTION (ADR) AND CONFLICT MANAGEMENT

Originating Component:	Office of the General Counsel of the Department of Defense
Effective:	May 27, 2016
Releasability:	Cleared for public release. Available on the Internet from the DoD Issuances Website at http://www.dtic.mil/whs/directives .
Reissues and Cancels:	DoD Directive 5145.5, "Alternative Dispute Resolution (ADR)," April 22, 1996
Approved by:	Robert S. Taylor, Acting General Counsel of the Department of Defense

Purpose: This issuance reissues the 1996 directive as a DoD instruction in accordance with the authority in DoD Directive (DoDD) 5145.01 to establish:

- Policy and assign responsibilities for the oversight and management of the DoD ADR Program.
- The DoD ADR Coordinating Committee, and a framework to encourage the expanded use of alternative means of dispute resolution and conflict management practices as an integral part of normal business practices within the DoD in accordance with the authority in Sections 571 through 584 of Title 5, United States Code (U.S.C.) and Executive Order 12988.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY.

a. This issuance applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this issuance as the “DoD Components.”).

b. Application of this issuance to the Office of the Inspector General of the Department of Defense must be consistent with the Inspector General Act of 1978, as amended, Appendix to Title 5, U.S.C.

1.2. POLICY. It is DoD policy:

a. To foster and advance collaboration and coordination among the DoD Components on the use of ADR and conflict management practices.

b. That each DoD Component establish and implement ADR program(s) to resolve disputes at the earliest possible stage of the conflict and at the lowest possible organizational level. Any conflict or dispute, regardless of subject matter, is a potential candidate for ADR.

c. That DoD personnel are encouraged to identify and address underlying conflict regarding any issue that is material to a decision concerning an administrative program of an agency at the earliest stage possible in order to prevent and avoid disputes.

d. That all personally identifiable information collected during the course of the ADR process be maintained and protected in accordance with DoDD 5400.11 and DoD 5400.11-R.

1.3. INFORMATION COLLECTIONS. DD Form 2815, “Alternative Dispute Resolution (ADR) Annual Report,” referred to in Paragraphs 2.2.a. and 2.4.j. of this issuance, has been assigned Report Control Symbol DD-GC(A)2099 in accordance with the procedures in Volume 1 of DoD Manual 8910.01.

SECTION 2: RESPONSIBILITIES

2.1. GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE (GC DOD). The GC DoD establishes policy and provides guidance on the administration of ADR and Conflict Management in accordance with DoDD 5145.01. As the Director, Defense Legal Services Agency, the GC DoD oversees ADR activities and Conflict Management within the DoD in accordance with DoDD 5145.04.

2.2. DEPUTY GENERAL COUNSEL (LEGAL COUNSEL) (DGC(LC)). Under the authority, direction, and control of the GC DoD, the DGC(LC):

a. Monitors the implementation of policies and procedures pertaining to the use of ADR and conflict management practices within the DoD, including, but not limited to, information collected through DD Form 2815, as needed, but not more than annually.

b. Serves as the DoD Dispute Resolution Specialist and oversees and manages the use of ADR and conflict management practices within the DoD (through the DoD ADR Program) in accordance with Title 5, U.S.C., and DoDD 5145.01.

c. Provides reports, as necessary, to the Secretary of Defense on the use of ADR within the DoD.

d. Chairs the DoD ADR Coordinating Committee.

e. Ensures that the DoD ADR Coordinating Committee:

(1) Shares information among the DoD Components on ADR and conflict management policies and practices.

(2) Collaborates among and between the DoD ADR programs and their officials and representatives, as needed, in the design and implementation of ADR and conflict management practices.

(3) Collaborates with the officials and representatives of other programs in the DoD (e.g., Equal Employment Opportunity and Diversity; Employee Relations; Human Resources; Labor Relations; Employee Assistance Programs; Litigation; Environmental; Acquisition) as needed and appropriate to integrate ADR and conflict management practices into the normal business practices of the DoD.

(4) Establishes DoD-wide working groups and takes other steps to coordinate and facilitate ADR and conflict management practices within the DoD.

f. Ensures that the Associate Director, Defense Office of Hearings and Appeals Center for Alternative Dispute Resolution (DOHA CADR), coordinates and monitors policies and procedures pertaining to DoD ADR activities and Conflict Management within the DoD in accordance with DoDD 5145.04 and in so doing:

- (1) Provides support to the DGC(LC) in fulfilling the duties pursuant to this issuance.
- (2) Provides facilitative and administrative support for the activities of the ADR Coordinating Committee.
- (3) Represents the DoD as a member of the Interagency ADR Working Group Steering Committee in accordance with requirements of the May 1, 1998 Presidential Memorandum for the Heads of Executive Departments and Agencies.
- (4) Upon request of a DoD Component, provides assistance in the design, implementation, training, and evaluation of ADR and conflict management practices.
- (5) Upon request of a DoD Component, designates and makes available third-party neutrals qualified to conduct ADR and conflict management processes specified by the DGC(LC).

2.3. DIRECTOR, WASHINGTON HEADQUARTERS SERVICES (WHS). Under the authority, direction, and control of the Deputy Chief Management Officer of the Department of Defense, through the Director of Administration, and in addition to the responsibilities in Paragraph 2.4., the Director, WHS, offers ADR services to WHS-serviced customers in accordance with Administrative Instruction 106.

2.4. DOD COMPONENT HEADS. The DoD Component heads:

- a. For their respective Components, appoint a Dispute Resolution Specialist and inform the Associate Director, DOHA CADR of the appointment.
- b. Establish, implement, and operate programs to expand the use of ADR and conflict management practices that are appropriate to their respective Components and in accordance with law and DoD policy.
- c. Review and revise, where appropriate, existing ADR and conflict management practices to promote increased awareness and use of ADR and conflict management practices consistent with DoD policy.
- d. Consistent with accomplishing their assigned missions, actively promote the use of ADR and conflict management practices.
- e. Identify and eliminate barriers to the use of ADR and conflict management practices.
- f. Provide copies of Component ADR policies and implementing procedures as requested by the DGC(LC) through the Associate Director, DOHA CADR.
- g. Provide representatives and information to the DoD ADR Coordinating Committee and working groups, as requested by the DGC(LC) through the Associate Director, DOHA CADR.

- h. Provide training to employees involved in implementing and maintaining each Component's ADR policy and program.
- i. Collaborate among and between the DoD ADR programs and their officials and representatives, and with the officials and representatives of other programs (e.g., Equal Employment Opportunity and Diversity; Employee Relations; Human Resources; Labor Relations; Employee Assistance Programs; Litigation; Environmental; Acquisition), as appropriate, when designing and implementing ADR and conflict management policies and procedures so as to encourage multiple points of access, conflict management and dispute resolution at the earliest appropriate level, and increased applications of ADR and Conflict Management processes across subject matters and programs within the DoD.
- j. Provide to the DGC(LC), through the Associate Director DOHA CADR:
 - (1) Feedback regarding their implementation of this issuance.
 - (2) Such other reports as may be authorized or required by federal law or policy.
 - (3) Upon request by the DGC(LC), but not more than annually, DoD ADR data collected regarding existing ADR programs using DD Form 2815.
- k. Provide sufficient resources, including dedicated personnel resources, as necessary, to fulfill the responsibilities listed in this issuance.
- l. Ensure the collection, use, and release of personally identifiable information complies with Section 552a of Title 5, U.S.C. in accordance with DoDD 5400.11 and DoD 5400.11-R.

GLOSSARY

G.1. ACRONYMS.

ADR	Alternative Dispute Resolution
DGC(LC)	Deputy General Counsel (Legal Counsel)
DoDD	DoD Directive
DOHA CADR	Defense Office of Hearings and Appeals Center for Alternative Dispute Resolution
GC DoD	General Counsel of the Department of Defense
U.S.C.	United States Code
WHS	Washington Headquarters Services

G.2. DEFINITIONS. These terms and their definitions are for the purposes of this issuance.

ADR. Any procedure that is used as an alternative to litigation or formal administrative adjudicatory proceedings to resolve issues in controversy, including, but not limited to, facilitation, conciliation, partnering, mediation, fact finding, early neutral evaluation, mini-trials, arbitration, and the use of ombuds or any combination thereof. The term does not include unassisted negotiations.

Conflict Management. A systematic process used to proactively identify and manage, at the earliest stage possible, conflict that can lead to one or more disputes, for the purpose of reducing the incidence of disputes and increasing the likelihood that disputes that do arise may be resolved efficiently, effectively, and expeditiously. Techniques used in the process include, but are not limited to, structured unassisted negotiation (e.g., use of interest-based negotiation techniques), joint or collaborative problem-solving, and coaching.

Dispute Resolution Specialist. A senior official designated and trained in accordance with Public Law 101-552 (also known as the “Administrative Dispute Resolution Act”) and Section 9 of Public Law 104-320 (also known as the “Administrative Dispute Resolution Act of 1996”), who is responsible for the implementation of ADR within the agency, agency ADR policy, and training in ADR.

DoD ADR Coordinating Committee. The group consisting of the Dispute Resolution Specialists or designees of the DoD Components and, at the discretion of the DGC(LC) or designee, other DoD officials with ADR-related responsibilities or representatives of DoD Component ADR programs, whose purpose is to promote among the DoD Components the exchange of information on ADR and conflict management program design and implementation.

REFERENCES

- Administrative Instruction 106, “Alternative Dispute Resolution (ADR) Program,” January 30, 2014
- DoD 5400.11-R, “Department of Defense Privacy Program,” May 14, 2007
- DoD Directive 5145.01, “General Counsel of the Department of Defense (GC DoD),” December 2, 2013, as amended
- DoD Directive 5145.04, “Defense Legal Services Agency (DLSA),” April 16, 2012
- DoD Directive 5400.11, “DoD Privacy Program,” October 29, 2014
- DoD Manual 8910.01, Volume 1, “DoD Information Collections Manual: Procedures for DoD Internal Information Collections,” June 30, 2014
- Executive Order 12988, “Civil Justice Reform,” February 5, 1996
- Public Law 101-552, “Administrative Dispute Resolution Act,” November 15, 1990
- Public Law 104-320, “Administrative Dispute Resolution Act of 1996,” October 19, 1996
- Presidential Memorandum for Heads of Executive Departments and Agencies, “Designation of Interagency Committees to Facilitate and Encourage Agency Use of Alternate Means of Dispute Resolution and Negotiated Rulemaking,” May 1, 1998
- United States Code, Title 5