

LOUISIANA NATIONAL GUARD
ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

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1. **Purpose.** This manual outlines procedures to be followed when conducting Alternative Dispute Resolution (ADR) within the Louisiana National Guard (LANG).

2. **Alternative Dispute Resolution.**

a. The LANG retains the right to decide whether a particular dispute is appropriate for resolution by ADR. This determination is final and not subject to an appeal or further review; however, the Agency may reconsider a determination at any time during the processing of the dispute.

b. Verbal disputes are presumed to be appropriate for ADR and are not to be screened before offering ADR unless the dispute is summarized in writing and a determination is made that ADR is not appropriate.

c. Examples of disputes eligible for ADR include the following:

(1) Employee grievances filed under a negotiated grievance procedure that provides for ADR;

(2) Grievances filed by employees not subject to a negotiated grievance procedure that is otherwise authorized by law or policy;

(3) Equal Employment Opportunity (EEO) discrimination pre-complaints and formal complaints;

(4) Disciplinary actions subject to statutory or regulatory appeal procedures such as a letter of reprimand;

(5) Labor-management disputes, including Unfair Labor Practice allegations, negotiability appeals, bargaining impasses, and union or management grievances filed under a negotiated procedure that provides for ADR; and/or

(6) Other disputes not specifically listed, on a case-by-case basis.

d. Supervisors are required to participate in good faith in an ADR process once a dispute is determined to be appropriate for ADR. Good faith participation does not require any party or authorized representative of a party to settle or agree to terms that are unacceptable or unenforceable.

e. The Agency is not required to use ADR if any of the following circumstances exist:

(1) A definitive decision in the matter is needed;

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(2) The matter involves significant issues of government policy that cannot be resolved without additional proceedings;

(3) The need to maintain an established government policy, requiring consistent results;

(4) The matter significantly affects non-parties;

(5) The need for the development of a full public record; and/or

(6) The agency must maintain continuing jurisdiction over the matter with authority to alter the disposition in light of changed circumstances.

f. The following types of disputes may be inappropriate for ADR:

(1) Disputes in litigation that can be resolved through an expedited legal determination disposing of the matter, such as a motion to dismiss or summary judgment;

(2) Disputes in which there is substantial evidence that the claimant initiated the action to harass, intimidate, or is otherwise flagrantly abusing the process; and/or

(3) Any other dispute in which one or more articulable circumstance exists to justify not offering ADR.

g. Participants in ADR Proceedings

(1) Participants in dispute ADR proceedings consist of mediators, neutrals, and parties. For training purposes, and with the parties' consent, co-mediators and mediation mentors may participate during all stages of the proceedings, including private caucuses.

(2) Subject to local bargaining agreements, parties may appear alone or with one or more representatives of their choice. Representatives may or may not be attorneys. A Neutral will have the authority to set reasonable limits on the number of representatives and the need for full and effective communication between the parties and Neutral.

(3) The person representing management in an ADR proceeding will have sufficient authority to act on behalf of the Agency to settle the issue(s) in controversy, or have immediate access to those who do have such authority. Customs, courtesies, and

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civil decorum will be maintained depending on the setting, and the mediator has the authority to suspend or terminate the mediation based upon party misconduct.

h. ADR Agreement and Selection of a Neutral

(1) Parties agreeing to use mediation or some other ADR procedure to resolve a dispute evidenced by a written claim or complaint will execute a written agreement, in advance, before the proceeding. The agreement will contain the time, date, and location of the proceeding (if available at the time the agreement is executed) and the Neutral's name and phone number, plus a description of the essential features of mediation or other procedure offered.

(2) Neutrals may be designated by the State ADR Manager or selected by the parties from a list of alternatives provided by the State ADR Manager. If a suitable Neutral cannot be obtained from local resources, the National Guard Bureau (NGB) ADR Program Office can provide ADR support. The Agency is responsible for all costs associated with ADR, to include travel and associated costs of the Neutral.

i. Convening, Conducting, and Facilitating ADR Proceedings

(1) A single proceeding to resolve multiple disputes involving the same parties, or one dispute involving multiple participants, such as an organizational facilitation, is permitted.

(2) ADR proceedings should be convened as soon as practicable after the parties agree to use ADR, normally within 15 calendar days, but no later than 45 calendar days after the agreement to use ADR, unless the parties consent in writing to extend this period.

j. Conducting ADR Proceedings. The State ADR Manager will ensure:

(1) Suitable facilities are made available to conduct the proceeding at a neutral location outside the organization in which the dispute arose;

(2) Reasonable accommodation of persons with disabilities who are parties to or otherwise participating in the session, to include, but not limited to, physical accessibility to meeting facilities, translators, and services for the hearing or vision impaired; and/or

(3) Translators and others who will be present while the proceeding is in session, including private caucuses, are nonparty participants.

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k. Facilitating ADR Proceedings.

(1) Locations where facilitation takes place must provide sufficient meeting space and privacy to accommodate parties during joint sessions or any private caucus.

(2) Neutrals will have access to a telephone, computer with internet access, and other equipment as necessary to facilitate contact with ADR support providers.

l. Quality of the Process. Mediation will be conducted in a manner that promotes diligence, timeliness, presence of the appropriate participants, party participation, procedural fairness, party competency, and mutual respect. The mediator will:

(1) Work with parties to control the number of people participating in the mediation to ensure proper behavior in a full and open discussion.

(2) Not knowingly misrepresent any material fact or circumstance during the course of mediation, or conduct a proceeding and label it as mediation to gain the protection of rules, statutes, or other governing authorities pertaining to mediation.

(3) Not convert mediation into a non-mediation process, or a facilitative mediation into an evaluative or transformative mediation without the informed consent of the parties and the prior authorization of the State ADR Manager. A mediator who assumes a dispute resolution role that requires a greater degree of subject matter expertise, such as early neutral evaluation, will have sufficient expertise to meet the standard of competence or withdraw from the mediation.

(4) Withdraw from and terminate a mediation that is being used to contradict National Guard or Department of Defense (DoD) policies or to further criminal conduct.

(5) Assure self-determination of parties during mediation. A party may not possess the requisite self-determination if he/she has trouble understanding the process, issues, or options for settlement; or has difficulty participating in the mediation; or otherwise acts in a manner which raises a reasonable question whether he/she has the requisite capacity to comprehend the proceedings and to participate freely therein.

(6) Postpone, withdraw from, or terminate the mediation when a participant's conduct jeopardizes the mediation process. A mediator must withdraw from the mediation if the mediator believes their conduct may jeopardize the mediation.

m. Reaching Settlement. Neutrals will assist parties in drafting a settlement agreement describing the terms and conditions of their settlement if parties are able to settle one or more issues in their case.

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(1) Settlement agreements are subject to review and approval by a State JA or the NGB-JA servicing attorney to ensure legal and regulatory compliance. Only an NGB-JA servicing attorney may approve a settlement agreement in disputes in which it has representational responsibility.

(2) Parties will seek guidance on the enforceability of proposed terms before signing a settlement agreement; therefore, all issues concerning the legal sufficiency and regulatory compliance of any term or condition will be resolved before the agreement becomes final.

(3) Any agreement reached or order issued pursuant to a dispute resolution proceeding may be disclosed. For example, an agreement to mediate a dispute or a settlement agreement reached as a result of that mediation is not protected from disclosure. However, disclosure or other uses of such an agreement may be restricted by the terms of the agreement itself or by other measures. Allegations of breach of a settlement agreement will be handled according to procedures established for the type of workplace dispute.

n. Impasse. ADR proceedings should be terminated when parties fail to resolve an issue and a Neutral determines that further proceedings would be futile. Prior to the termination of an ADR process, the mediator will caucus to determine if the impasse can be overcome. However, parties should be advised of other remedies and processes available to them if ADR fails to resolve the dispute as long as applicable time limits are met.

o. Mediators will be appointed, meet the qualifications, and abide by the standards dictated by CNGBM 0402.01 (Alternative Dispute Resolution Procedures), 4 January 2016.

3. Points of Contact and Distribution of These Procedures

a. Any individual wanting further information concerning these procedures may contact CW3 Philip M. Cancienne, State Equal Employment Manager, at 504-258-4943 or philip.m.cancienne.mil@army.mil.

b. These Procedures shall be available in the Office of Equal Opportunity for distribution.

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