

~~ADMINISTRATIVE - INTERNAL USE ONLY~~

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Category: 7 - Management

OPR: AO/DCI

Title: AR 7-12 CENTRAL INTELLIGENCE AGENCY
USE OF ALTERNATIVE DISPUTE RESOLUTION AT THE CIA

SUMMARY: 25 February 2004

AR 7-12 is added to the regulatory system. This regulation defines the use of Alternative Dispute Resolution (ADR) at the CIA.

Because this regulation is new, boldfaced text has not been used.

This regulation was written by the Agency Ombudsman, (secure).

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12. CENTRAL INTELLIGENCE AGENCY USE OF ALTERNATIVE DISPUTE RESOLUTION AT THE CIA

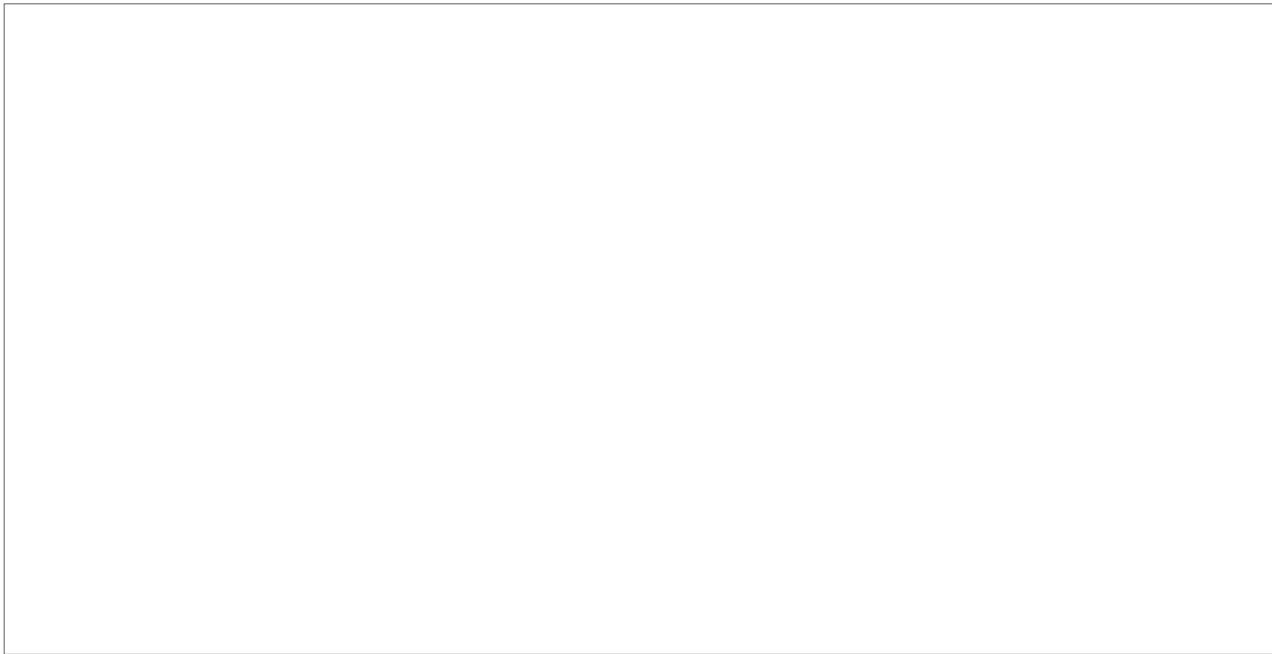
SYNOPSIS. This regulation defines the use of Alternative Dispute Resolution (ADR) at the CIA.

a. **AUTHORITY.** Section 8 of the Central Intelligence Act of 1949, The Administrative Dispute Resolution Act of 1998.

b. **GENERAL**

- (1) Pursuant to the Administrative Dispute Resolution Act of 1998 (ADR Act) and consistent with best management practice, the Central Intelligence Agency (Agency) is committed to the use of alternative dispute resolution (ADR) where appropriate and consistent with the mission of the Agency. The use of ADR often helps resolve disputes in a more timely, less costly, and less adversarial way than litigation.
- (2) This Regulation reiterates the Agency's commitment to ADR in the area of employment-related disputes that are, or could develop into employee grievances and disputes related to claims of discrimination or retaliation under Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, Equal Pay Act, the Rehabilitation Act, and implementing regulations.

c. **RESPONSIBILITIES**

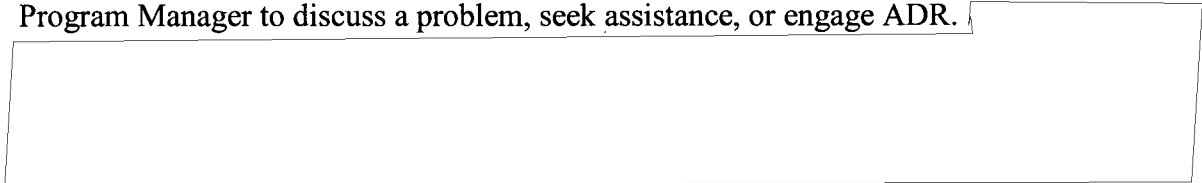


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- (4) To avoid concerns about neutrality and impartiality, Agency employees who perform as mediators may not be part of the Complainant or Grievant's immediate Directorate, Mission Support Office or be otherwise unacceptable to the parties.
- (5) Funding to pay for routine mediation services of external mediators will be provided by the Administrative Officer of the DCI.

d. POLICY

- (1) Any Agency employee, including supervisors, may refer a person to the Agency's ADR Program Manager to discuss a problem, seek assistance, or engage ADR.



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The Agency's ADR program maintains strict confidentiality in its mediation process. In order to participate in this program, employees must sign a confidentiality agreement. The parties agree not to subpoena the ADR mediators as witnesses in any further proceedings. In this regard, the ADR mediators will not record or transcribe the mediation sessions. Any notes that are taken by the mediators during the mediation will be destroyed at the conclusion of the mediation or upon the signing of a settlement agreement.

- (2) Participation in mediation does not waive any legal rights or penalize a person in any way. No person participating in the mediation will be penalized in any way because of their participation in the ADR program or their inability to reach an agreement.
- (3) The majority of mediations are completed in one session, which usually last from one to five hours. Depending on the complexity of the case, some mediations may last all day, or require follow-up sessions. Since one of the purposes of using ADR is to reduce time spent in dealing with the dispute, the ADR Program Manager will take all reasonable measures to avoid delay and to ensure that no party is allowed to misuse the process.

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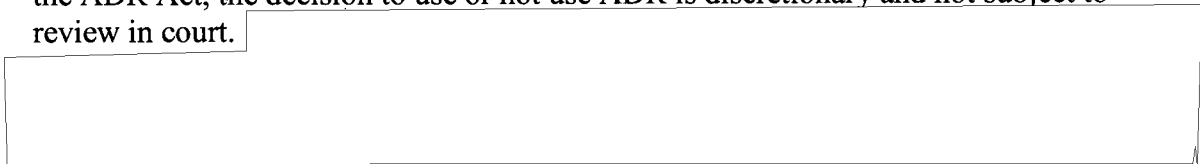
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e. VOLUNTARY ASPECT OF ADR AND MANAGEMENT

- (1) In all cases, participation throughout ADR is voluntary.
- (2) If a complainant or grievant opts to participate in ADR in a case for which ADR has been determined by the Agency to be appropriate, the ADR Program Manager shall assure that a senior Agency Official with settlement authority is either at the table during the ADR mediation, or promptly accessible. However, participation in ADR of a *particular* supervisor or management official is not mandatory (if a particular supervisor or management official chooses not to participate in ADR, the operating official is responsible for authorizing someone to participate.)
- (3) The creative process of mediation often produces settlements that were unanticipated when the process began. Therefore, it is important that the senior manager assigned to the mediation be delegated full settlement authority for the anticipated scope of the case. Also, the senior manager should assure that as the case in mediation develops, there is consultation with other Agency offices that may have an interest in a particular outcome.
- (4) Both the mediator and the participants have the ability to terminate the mediation for any reason including for reasons that a party or parties are not participating voluntarily, competently or in good faith. If mediation is terminated, the ADR Program Manager will record the termination without further comment.

f. DETERMINING WHETHER ADR IS APPROPRIATE

- (1) While most cases can benefit from ADR, the Agency always has discretion to determine whether a dispute is appropriate or inappropriate for ADR. Pursuant to section 581(b) of the ADR Act, the decision to use or not use ADR is discretionary and not subject to review in court.



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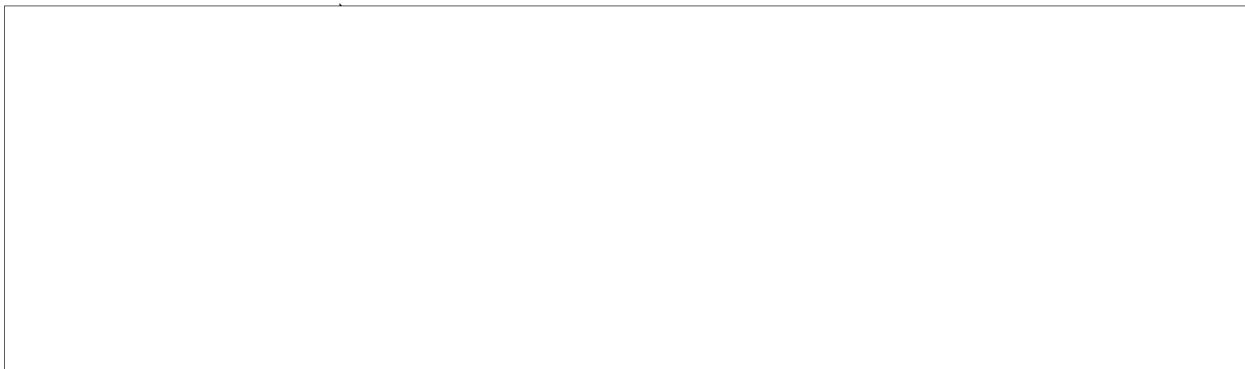
Management of the Agency unit employing the Complainant or Grievant may be consulted before the determination is made.

- (2) The following are some of the circumstances favoring the use of ADR. This is not an exhaustive list nor does this list limit Agency discretion to determine that a particular case is either appropriate or inappropriate for ADR:
 - (a) There will be a continuing working relationship between the parties.
 - (b) The parties are interested in seeking resolution but there are barriers to communication due to personality conflicts or past history.
 - (c) A thorough exchange of information will improve the outcome.
 - (d) There are underlying issues which are not formally part of the complaint or grievance and may not be resolvable by relief available in litigation, but which are the catalyst for the dispute.

- (e) There is a need for joint problem solving and creative relief alternatives.
 - (f) Settlement possibilities may be enhanced by a neutral parties' ability to facilitate private meetings with the parties and to conduct frank discussions.
 - (h) The use of a third party would enhance settlement possibilities by facilitating discussions.
- (3) The following types of issues generally will not be accepted for ADR:
- (a) Complaints or grievances by persons not selected for employment at the Agency.
 - (b) Complaints or grievances concerning punishment or penalties for traffic violations and similar infractions.
 - (c) Complaints or grievances arising from alleged criminal actions and administrative actions for fraud, waste or abuse.
 - (d) Complaints or grievances arising from security decisions of the Agency.
 - (e) Complaints or grievances arising from alleged security violations of an employee.
 - (f) Complaints or grievances arising from actions beyond the power of the Agency to resolve (for example, because they involve limitations specifically imposed by law or decisions of other agencies (such as the Office of Personnel Management)).

g. FORMS OF ADR USED AT THE AGENCY

- (1) The primary kinds of ADR techniques used by the Agency for disputes are mediation and conciliation:
- (a) *Mediation* is the most widely used form of ADR. Mediation is a flexible, non-binding process led by a trained and experienced neutral party (the mediator) who facilitates negotiations between the parties to help them reach a settlement. The mediator may extend the traditional bounds of settlement discussions and broaden resolution options that were not previously apparent to the parties. Within the limits of law and Agency policy, the process is confidential (see paragraph h below). The primary parties to the mediation are the complainant or grievant, and a representative of Agency management. However, employer to employee disputes, or employee and/or manager disputes with contractors are appropriate for mediation. With the assistance of the mediator (who helps the parties communicate and negotiate, but has no decision-making authority with regard to resolving the dispute), the parties identify and clarify the issues around the dispute, explore options for resolution, and try to develop a resolution that satisfies both sides.



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- (2) There are many other kinds of ADR techniques and hybrid techniques (for example, neutral evaluation, fact-finding, partnering, and group facilitation). The ADR Program Manager can provide more information on these techniques and their appropriate use.

h. CONFIDENTIALITY

- (1) The process of ADR is meant to be confidential so that parties are encouraged to speak frankly and participate freely in development of options. Before engaging in ADR, the mediator or ADR service provider, and/or the ADR Program Manager will explain confidentiality to the parties. Subject to the specific exceptions below, the mediator or other ADR provider and the parties will be asked to make a good-faith commitment to confidentiality and to sign an agreement to mediate which includes provisions on confidentiality.
- (2) Exceptions to confidentiality include the following:
 - (a) The final written settlement agreement resolving the dispute is not confidential. The parties however, may agree to disclose it only on a strict need-to-know basis.
 - (b) Evidence disclosed during the mediation of child, elder or spousal abuse.
 - (c) Disclosures of violations of law and national security and substantial waste, fraud, and abuse.
 - (d) Threats of imminent harm to self or other persons.
 - (e) Disclosures of specific incidents of harassment.
 - (f) Pursuant to the guidelines in section 574 of the ADR Act, a court may order the neutral or a party to disclose confidential information.

i. RESOLVING DISPUTES; AVAILABLE REMEDIES

- (1) Legal Remedies. To resolve disputes, a mediator can use the same range of remedies a court could order if the case went to trial, including all remedies available under civil rights laws. Further, the Agency may resolve disputes without a finding of discrimination or an admission of wrongdoing.
- (2) Settlement. ADR is a means for parties to a dispute to find ways to resolve the dispute in a manner that meets all participants' needs. ADR is not intended to reward the filing of complaints, nor is it intended to substitute facile outcomes for the hard work of developing productive working relationships, management accountability, avoiding discrimination and inappropriate actions in the workplace, and good leadership. Participants in ADR are encouraged to use the creativity of the process to consider the widest possible range of outcomes.
 - (a) ADR settlement agreements are binding. An agreement resolving a complaint or grievance shall be in writing. The agreement is a contract, containing mutually enforceable rights and obligations, and is binding on both the Agency and the complainant/grievant.
 - (b) ADR settlements. Settlements of disputes in ADR are compromises of contested disputes. As such, no settlement (including a settlement involving extraordinary

actions such as those described below) may be deemed a precedent for another dispute.

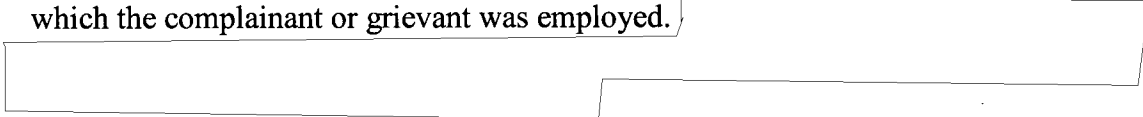
- (c) Claims of discrimination or retaliation settlements. In cases related to claims of discrimination or retaliation under Title VII of the Civil Rights Act, the Rehabilitation Act, and implementing regulations (including 29 C.F.R. § 1614), if the complainant believes the Agency has not complied with the terms of the Settlement Agreement, the complainant may, pursuant to 29 C.F.R. subsection §1614.504, notify the Agency's Director of Equal Employment Opportunity in writing within thirty (30) days of the date of the alleged violation of the Settlement Agreement to request that the Settlement Agreement be implemented specifically or to request that his or her claim be reinstated. If the Agency fails to respond in writing within 35 days after the complainant has served the Agency with the allegation of noncompliance; (or if, within 30 days of receiving the Agency's determination concerning the allegations of noncompliance), the complainant may appeal to the EEOC pursuant to 29 C.F.R. § 1614.504(B).

- j. **RESOLUTIONS.** Generally, disputes should be resolved at the lowest organizational level possible, consistent with delegations of authority. Thus, except as provided below (or as otherwise determined in a particular case by the Agency Ombudsman or other executive authority), the immediate supervisor of the employee (or other management representative participating in the ADR) has the primary responsibility for the resolution of a dispute and assuring implementation thereafter, and for undertaking any appropriate consultation with his or her manager, legal counsel, human resources managers, or others.



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- (2) *Resolutions that involve extraordinary actions.* If a resolution would involve an extraordinary action that ordinarily would be inappropriate for the supervisor to take (such as promotion out of cycle, priority treatment for assignments or reassignments, or selection outside of ordinary competition for major training), approval must be obtained from the appropriate Agency authority as determined by the Agency Ombudsman.
- (3) *Resolutions affecting retirement payments.* All federal agencies are required to consult with the Office of Personnel Management (OPM) before resolving a dispute in a manner that may affect retirement payment amounts or entitlements. The Agency's ADR Program Manager involved in such a potential resolution will consult the appropriate Human Resources office, which will make the necessary contact with OPM.
- (4) *Resolutions that involve money.* Funding may be required in resolution of disputes referred to ADR. Generally, funding for all damages, fees, and so forth, paid in settlement of a complaint or grievance will come from the budget of the organization in which the complainant or grievant was employed.



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- k. **NON-RESOLUTION.** If a dispute referred to the Agency Ombudsman is not resolved through ADR, the Ombudsman will promptly return the case to the appropriate official,

where the case will be handled as if it had not been referred. Consistent with confidentiality, no report will accompany the return, other than a statement that the case was not resolved in ADR and is being returned for resumption of regular processing.

i. NOT USED

m. EDUCATION AND TRAINING IN ADR. The Agency's ADR Program Manager shall be responsible for providing on-going education and training in support of ADR, including the following:

- (1) Basic and continuing training related to credentialing of Agency mediators.
- (2) Conflict management and ADR training for managers and supervisors (including how to avoid workplace disputes using interest-based dispute resolution techniques and good management practices).
- (3) Awareness education about ADR and the Agency ADR program for all employees.
- (4) Training on how to use ADR skills for EEO and grievance counselors and human resources personnel.
- (5) Training for Agency attorneys and management representatives in how to participate as effective negotiators in ADR.

n. USE OF ATTORNEY OR NON-ATTORNEY REPRESENTATIVES IN THE ADR PROCESS

- (1) Participants in ADR may use outside attorneys or representatives during the ADR process. However, employees and their attorney or non-attorney representatives must comply with the Agency's policy concerning access to Agency facilities, information, and personnel by private attorneys and other personal representatives.



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