DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

SECNAVINST 5800.13A
OGC

SECNAV INSTRUCTION 5800.13A

DEC 22 2005

From: Secretary of the Navy

Subj: ALTERNATIVE DISPUTE RESOLUTION (ADR) POLICY AND MISSION OF THE DON ADR PROGRAM OFFICE

Ref: (a) Administrative Dispute Resolution Act of 1996
(b) DOD Directive 5145.5 of 22 Apr 96
(c) SECNAVINST 5430.25E
(d) SECNAVINST 5215.1D
(e) Federal Acquisition Regulations Part 33
(f) E.O. 12988
(g) EEOC Management Directives MD-110 and MD-715
(h) E.O. 12979
(i) Civilian Human Resources Manual, Subchapter 773
(j) 5 U.S.C. 7121

1. Purpose. This instruction provides a comprehensive Department of the Navy (DON) policy for the use of Alternative Dispute Resolution (ADR), and defines the authority, mission and functions of the Assistant General Counsel (ADR) and the DON ADR Program Office. This instruction has been substantially revised and should be reviewed in its entirety.

2. Cancellation. SECNAV Instruction 5800.13.

3. Scope and Applicability. This instruction applies throughout the DON.

4. Background. ADR techniques can efficiently resolve issues in controversy, and enable the DON to more effectively devote its resources and personnel to its overall mission. References (a) and (b) require the DON to adopt an ADR policy and to designate a senior official as the "Dispute Resolution Specialist," charged with implementing the ADR policy and ensuring appropriate training. Reference (c) assigns the management of the DON ADR Program to the General Counsel, and this instruction is issued under the authority found in reference (d). References (e) through (i) are examples of how the Federal

Government increasingly uses ADR in a wide range of judicial and administrative contexts.

5. Definitions

a. "Alternative Dispute Resolution" or "ADR." Any procedure that is used in lieu of a formal administrative process or litigation to resolve issues in controversy, including, but not limited to, partnering, conciliation, facilitation, mediation, using ombudsmen, fact finding, mini-trials, neutral evaluation, and arbitration or any combination thereof. For purposes of this instruction, arbitration entered into under reference (j) is not included in this definition.

b. Issue in Controversy. Any issue material to a departmental decision that gives rise to a disagreement between the DON and a person(s) outside the department or between persons within the department. See reference (a), at 5. U.S.C. 571(8). The term includes, but is not limited to, a work related issue between co-workers that adversely affects mission accomplishment or morale.

c. In-house Neutral. A civilian employee of the Department of the Navy, or a military member of the United States Navy or United States Marine Corps, who serves in the capacity of a neutral, as described in reference (a) at 5 U.S.C. 571 and 573.

6. Organization. The Assistant General Counsel (ADR) and the DON ADR Program are part of the Office of the General Counsel. The Assistant General Counsel (ADR) shall report to the Principal Deputy General Counsel. Personnel within the DON ADR Program shall report to the Assistant General Counsel (ADR).

7. Policy

a. Using ADR to the Maximum Extent. ADR techniques shall be used as an alternative to litigation or formal administrative procedures to the maximum extent practicable. Use of these techniques may resolve the entire issue in controversy or a portion of the issue in controversy. The goal is to resolve disputes and conflicts

at the earliest stage feasible, by the fastest and least expensive method possible, and at the lowest possible organizational level prior to litigation. Every issue in controversy, regardless of the subject matter, is a potential candidate for ADR.

b. Agreements to Use ADR. Subject to an order, rule or practice of an administrative forum or court, and prior to participating in a dispute resolution proceeding, agency representatives shall execute an appropriate agreement to use ADR. Such agreements generally define the nature of the proceeding, pertinent procedures, and include a statement regarding confidentiality. Such agreements themselves are not confidential under reference (a).

c. Confidentiality for Administrative ADR. Reference (a) applies to ADR used for administrative programs. It establishes general confidentiality rules that prohibit parties and neutrals from disclosing dispute resolution communications. See reference (a), at 5 U.S.C. 574. There are significant exceptions. For example, a statement by one party that is available to all other parties is not deemed confidential under the statute. DON representatives wishing to vary the statutory confidentiality rules for a specific ADR proceeding shall consult with, and obtain the approval of, the Assistant General Counsel (ADR).

d. Use of Binding Arbitration. Except for labor-management grievance arbitrations under reference (j), the use of binding arbitration requires additional DON guidance beyond the scope of this instruction. DON personnel may not require the use of binding arbitration as a condition of entering into a contract with the DON or obtaining other benefits. See reference (a) at 5 U.S.C. 575.

8. Authority and Responsibilities

a. The General Counsel shall:

(1) Appoint the Assistant General Counsel (ADR); and,

(2) Provide budgetary and other necessary support for the Assistant General Counsel (ADR) and the DON ADR Program.

b. The Assistant General Counsel (ADR), under the direction of the General Counsel and the Principal Deputy General Counsel, shall promote the efficient and effective use of ADR techniques in the DON. To that end, the Assistant General Counsel (ADR) shall:

(1) Serve as the Dispute Resolution Specialist (see reference (a), sec. 3) for the Department of the Navy;

(2) Be responsible for the coordination, approval and implementation of ADR policy within the Department of the Navy;

(3) Act as the DON point of contact on ADR matters;

(4) Serve as the DON member on the Department of Defense ADR Coordinating Committee established by reference (b);

(5) Serve as the DON member (or delegate membership as appropriate) on other interagency ADR working groups, committees or organizations of interest to the DON;

(6) Provide legal and business advice on the use of ADR; and,

(7) Supervise the DON ADR Program.

c. The Department of the Navy Alternative Dispute Resolution (DON ADR) Program Office is an organization within the Office of the General Counsel. Under the direction of the Assistant General Counsel (ADR), it shall:

(1) Coordinate ADR policy and initiatives within the DON at all levels to ensure consistency, effectiveness, compliance with law and executive policy, and avoidance of duplicate effort;

(2) Assist activities in securing or creating cost effective ADR techniques or local programs;

(3) Promote the use of ADR, and provide training in negotiation and ADR methods;

(4) Serve as legal counsel for in-house neutrals used on ADR matters. This role is intended to avoid organizational conflicts of interest faced by command counsel serving in an advisory or advocacy capacity for the parties in an issue in controversy. The ADR Program shall have no other role in a particular issue in controversy if used in this capacity; and,

(5) For matters not involving an in-house neutral, assist DON attorneys and other representatives concerning issues in controversy that are amenable to using ADR.

9. Actions

a. Commanders and heads of shore activities at the Echelon 1 and 2 levels shall:

(1) Designate an activity dispute resolution specialist (ADRS), who will promote the use of ADR within that activity, and serve as the principal liaison to the DON ADR Program. (Activities may enter into an agreement with another part of the DON to meet this requirement or may assign the responsibilities as a collateral duty.); and,

(2) Provide training and necessary support for the ADRS and selected personnel.

b. Commanders and heads of all activities shall:

(1) Periodically review their existing approaches to dispute resolution, and, where feasible, foster the use of ADR by identifying and removing unnecessary barriers, including encouraging the inclusion of ADR clauses into collective bargaining agreements when those agreements are renegotiated;

(2) Coordinate ADR initiatives and policy, prior to implementation and routinely thereafter, with the appropriate Echelon 1 and 2 ADRS and with the DON ADR

Program. The purpose of the coordination is to establish that training, procedures and uses of ADR are consistent with law, regulation, policy and recognized professional ethics; and,

(3) Report the use of ADR techniques as directed by the Assistant General Counsel (ADR). Reports shall be in a format specified by the DON ADR Program Office or by using data collection systems developed by the DON ADR Program Office.

10. Reports. The reporting requirement contained in paragraph 9.(b)(3) is exempt from reports control by SECNAVINST 5214.2B.

Alberto J. Mora
General Counsel

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