

Administrative Changes to AFI 51-1201, *Alternative Dispute Resolution Processes in Workplace Disputes*

OPR: SAF/GCD

Reference in **Paragraph 23.1** to “available through the AF ADR website located at: <http://www.adr.af.mil/>” is hereby changed to “available online and can be accessed through SAF/GCD’s AF Portal page”.

Reference in **Paragraph 25.4.3.** to “online at <http://www.adr.af.mil/shared/media/document/AFD-071002-009.pdf>” is hereby changed to “can be accessed through SAF/GCD’s AF Portal page”.

Reference in **Paragraph 26.5.3.** to “paragraph 34” is hereby changed to “Section D of this instruction”.

Reference in **Paragraph 40.1.** to “paragraph 24” is hereby changed to “paragraph 26”.

16 December 2009

21 MAY 2009

Law



**ALTERNATIVE DISPUTE RESOLUTION
PROCESSES IN WORKPLACE DISPUTES**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

ACCESSIBILITY: Publications and forms are available on the e-Publishing website at: www.e-Publishing.af.mil for downloading or ordering.

RELEASABILITY: There are no releasability restrictions on this publication

OPR: SAF/GCD
Supersedes AFI 51-1201, 21 April 2004

Certified by: SAF/GCD (Mr. R. Philip Deavel)
Pages: 33

This instruction implements Air Force Policy Directive 51-12, *Alternative Dispute Resolution*, and Department of Defense Directive 5145.5, *Alternative Dispute Resolution*. It prescribes the Air Force Alternative Dispute Resolution (ADR) program and procedures for resolving disputes in the Air Force workplace. It assigns responsibility for carrying out the program at Headquarters, Major Commands (MAJCOMs) and installation levels. It specifies minimum qualifications for Air Force mediators and standards of conduct for Air Force mediators and other neutrals. It describes the rules of confidentiality applicable to ADR proceedings in the Air Force, and it mandates the development and use of performance measurements and evaluations to assess the effectiveness of the ADR program in resolving workplace disputes. Although this publication is placed in the 51 (Law) series, it affects organizations outside the Office of the General Counsel and the Judge Advocate General Corps. This publication applies to all activities in the Department of the Air Force and to Air Force Reserve Command (AFRC) units. This publication does not apply to the Air National Guard (ANG), which is subject to ANGI 51-12, *Alternative Dispute Resolution*, regarding ADR in ANG activities, or the Civil Air Patrol. This publication may be supplemented at any level, but all supplements must be routed to SAF/GCD for coordination prior to certification and approval. Refer recommended changes and questions about this publication to the Office of Primary Responsibility (OPR) using the AF IMT 847, *Recommendation for Change of Publication*; route AF IMT 847s from the field through Major Command (MAJCOM) ADR program managers. This instruction requires collecting and maintaining information protected by the Privacy Act (PA) of 1974 authorized by Title 5, CFR 293; 10 U.S.C. 8013, and Executive Order 9397. Forms affected by the PA have an appropriate PA statement. The applicable PA System Notice is available online and currently located at: <http://www.defenselink.mil/privacy/notices/usaf>. System identifier F051 SAFGC A, *Air Force Mediator Utilization Management Records*, applies. Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with AF Manual (AFMAN) 33-363, *Management of Records*, and disposed of in accordance with the Air Force Records Disposition Schedule (RDS), currently located at <https://www.my.af.mil/gcss-af61a/afirms/afirms/>.

SUMMARY OF CHANGES

This publication has been substantially revised and must be reviewed in its entirety. The provisions relating to the ADR Steering Committee have been eliminated. The title of “ADR Champion” has been changed throughout to “ADR Manager.” Responsibilities of installation commanders, staff judge advocates and ADR managers have been revised. The Central Labor Law Office and its role in workplace disputes ADR has been replaced and expanded by the Labor Law Field Support Center. The ADR “Functional Area Manager” has been redesignated the “Functional ADR Liaison.” Rules and procedures for management participation in ADR and screening criteria for offering ADR have been changed. Types of workplace disputes eligible for ADR have been expanded to accommodate changes introduced by implementation of the National Security Personnel System under Title 5, U.S. Code, Chapter 99 and Title 5, Code of Federal Regulations, Part 9901. Selection, training, minimum qualifications and criteria for certification of Air Force mediators have been modified or added. Standards of conduct applicable to mediators and other neutrals in Air Force workplace disputes have been updated to accommodate recent changes. Performance metrics and data collection requirements have been modified and expanded.

Section A—Purpose and Policy	4
1. Purpose.	4
2. Program Policy.	4
Section B—Responsibilities and Authorities	4
3. General Counsel of the Air Force (SAF/GC).	4
4. Air Force Dispute Resolution Specialist (AFDRS) and Deputy Dispute Resolution Specialist (DDRS).	4
5. Assistant Secretary of the Air Force (Manpower & Reserve Affairs) (SAF/MR).	4
6. Deputy Chief of Staff, Manpower and Personnel (AF/A1).	5
7. The Judge Advocate General (AF/JA).	5
8. Labor Law Field Support Center (LLFSC).	5
9. MAJCOMs.	5
10. MAJCOM ADR Manager for Workplace Disputes.	6
11. Installation Commander.	6
12. Installation ADR Manager for Workplace Disputes.	7
13. Functional ADR Liaisons (FALs).	8
14. Staff Judge Advocate (SJA).	8
15. Installation Civilian Personnel Functions.	9
16. Installation Equal Opportunity (EO) Director.	9
17. ADR Support Providers	9
18. Neutrals.	9

Section C—ADR Procedures in Workplace Disputes	10
19. Disputes Eligible for ADR.	10
20. ADR Plan	10
21. Management Participation in ADR Proceedings.	11
22. ADR Case Selection Criteria.	11
23. ADR Agreement and Selection of Neutral.	12
24. Convening and Conducting ADR Proceedings	13
25. Appointment and Qualifications of Air Force Mediators.	13
26. Standards of Conduct for Mediators and other Neutrals.	15
27. Participants in ADR Proceedings.	18
28. Reaching Settlement.	18
29. Impasse.	19
Section D—Confidentiality	19
30. Statutory Protection.	19
31. Criteria for Confidentiality Protection.	19
32. Application of Confidentiality Protection to Specific Communications.	20
33. Understanding of the Parties.	21
34. Waiver of Objection to Disclosure by the Neutral; 15-Day Limitation.	21
35. Remedy for Violation of Confidentiality Protection.	22
36. Freedom of Information Act (FOIA).	22
37. Other Protections Available.	22
Section E—ADR Program Performance Measurements and Quality Assurance	22
38. ADR Performance Metrics.	22
39. Annual ADR Report.	25
40. Complaints About Mediation Services.	25
41. Forms	25
42. Records	25
Attachment 1—GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION	27
Attachment 2—SAMPLE ADR EVALUATION FORM	32

Section A-Purpose and Policy

1. Purpose. Maintaining a productive work environment in which disputes are avoided or settled quickly and at the lowest possible organizational level is essential to the effective functioning of the Air Force and the accomplishment of its national security mission. ADR and other early collaborative dispute resolution processes have been shown to be highly effective in resolving workplace disputes fairly and quickly, while conserving scarce resources.

2. Program Policy. It is Air Force policy to voluntarily use ADR and other early collaborative dispute resolution processes (as defined in Attachment 1) to the maximum extent practicable and appropriate to resolve workplace disputes at the earliest stage feasible, by the fastest and least expensive method possible, and at the lowest possible organizational level.

Section B-Responsibilities and Authorities

3. General Counsel of the Air Force (SAF/GC). Provides overall policy and guidance for the Air Force ADR Program, pursuant to Air Force Policy Directive 51-12.

4. Air Force Dispute Resolution Specialist (AFDRS) and Deputy Dispute Resolution Specialist (DDRS). The Deputy General Counsel of the Air Force for Dispute Resolution (SAF/GCD) is the Air Force Dispute Resolution Specialist (AFDRS). The AFDRS shall:

- 4.1. Establish and implement Air Force ADR policy and guidance.
- 4.2. Submit, manage and execute the Air Force ADR Program Budget.
- 4.3. Encourage, develop, and implement initiatives, activities, and training programs related to ADR and associated skills, including mediation skills, ADR awareness, negotiation skills and other collaborative conflict management and dispute resolution processes, throughout the Air Force.
- 4.4. Identify and eliminate unnecessary barriers to the use of ADR.
- 4.5. Ensure Air Force personnel are aware of and have access to existing ADR resources on the Internet.
- 4.6. Solicit ADR data from the field for each preceding fiscal year and prepare a summary report to the Secretary of the Air Force by the date specified in AFPD 51-12 regarding progress made in implementing the Air Force ADR program.
- 4.7. Develop and implement policy and guidance for the use of voluntary binding arbitration, in accordance with (IAW) 5 U.S.C. § 575(c).
- 4.8. Appoint a Deputy Dispute Resolution Specialist (DDRS) to assist the AFDRS in carrying out the foregoing duties and responsibilities and to serve as acting AFDRS in the absence of the AFDRS. The AFDRS may delegate to the DDRS such authority as is necessary and proper to carry out the purposes of the Air Force ADR program. The DDRS, or designee, will serve as the primary Department of the Air Force representative to the Department of Defense ADR Coordinating Committee and the Interagency ADR Working Group Steering Committee. The DDRS, or designee, will serve as the Air Force liaison to such other government and private-sector organizations as deemed appropriate.

5. Assistant Secretary of the Air Force (Manpower & Reserve Affairs) (SAF/MR). As the Air Force's designated director of civilian and military equal opportunity (EO) programs, SAF/MR works with SAF/GCD to provide policy recommendations and guidance on the use of ADR in Air Force Equal

Opportunity (EO) programs. The Deputy Assistant Secretary for Strategic Diversity Integration (SAF/MRD) is designated the OPR for exercising this function.

6. Deputy Chief of Staff, Manpower and Personnel (AF/A1). Works with SAF/GCD to provide guidance on the use of ADR and other collaborative dispute resolution processes in Air Force labor-management relations and civilian and military EO programs. The Air Force Civilian Force Policy Division, AF/A1PC, is the designated OPR to exercise this function for labor-management relations programs. The Air Force EO Program Office, AF/A1Q, is the designated OPR to exercise this function for civilian and military EO programs. In addition, AF/A1Q will:

- 6.1. Work with SAF/GCD to provide guidance to the field on the use of ADR and other collaborative processes in resolving Air Force workplace disputes.
- 6.2. Work with SAF/GCD to provide appropriate ADR awareness and mediation training for personnel assigned to administer Air Force workplace dispute programs.
- 6.3. Provide support to the Air Force AFDRS in advocating and defending the workplace disputes ADR program requirements before the Personnel & Training (P&T) Panel.

7. The Judge Advocate General (AF/JA).

- 7.1. Makes recommendations to SAF/GCD on Air Force ADR policy and procedures with respect to workplace disputes.
- 7.2. Coordinates on execution of Air Force workplace disputes ADR policy. **Note:** In labor and employment law disputes, this function may be exercised by the Administrative Law Division (AF/JAA) and/or the Labor Law Field Support Center (LLFSC) in AFLOA/JACL, as appropriate.
- 7.3. Works with the AFDRS to provide necessary ADR training and guidance for Air Force judge advocates, civilian attorneys and paralegal personnel.

8. Labor Law Field Support Center (LLFSC). The LLFSC is a part of the General Litigation Division, Directorate of Civil Law and Litigation, Air Force Legal Operations Agency (AFLOA/JACL). The LLFSC is responsible for providing cradle-to-grave legal representation and support to the Air Force and its component units in civilian labor and employment disputes, including formal equal employment opportunity (EEO) complaints, Federal Labor Relations Authority (FLRA) proceedings, and Merit Systems Protection Board (MSPB) appeals. These responsibilities include participation in ADR proceedings arising in the course of such disputes. In disputes in which it has representational responsibility, the LLFSC shall coordinate with the installation staff judge advocate, IAW with paragraph 14, regarding participation by the servicing LLFSC attorney in ADR proceedings and the terms of any settlements resulting from such proceedings.

9. MAJCOMs. Each MAJCOM Commander, Vice Commander, or designee will:

- 9.1. Appoint an individual assigned to the MAJCOM headquarters organization to serve as the MAJCOM ADR Manager for Workplace Disputes. The individual appointed may be civilian or military; if civilian, the MAJCOM ADR Manager shall be a permanent full-time civil service employee, preferably in the grade of GS-13 or higher, or pay band equivalent. If military, the ADR Manager shall be a commissioned officer O-4 or higher, or a senior noncommissioned officer, E-8 or higher. The MAJCOM ADR Manager may be assigned to the civilian personnel or staff judge advocate function.
- 9.2. Approve the MAJCOM ADR Plan for Workplace Disputes.

10. MAJCOM ADR Manager for Workplace Disputes. The MAJCOM ADR Manager for Workplace Disputes (MAJCOM ADR manager) will:

- 10.1. Design, implement, and update as necessary the MAJCOM ADR Plan for Workplace Disputes.
- 10.2. Serve as the MAJCOM primary point of contact for all workplace ADR activities and initiatives with subordinate installations and SAF/GCD.
- 10.3. Collect and report MAJCOM ADR data from subordinate installations as requested by higher headquarters.
- 10.4. Exercise oversight of installation ADR programs and training requirements.
- 10.5. Submit to SAF/GCD a MAJCOM request for Air Force ADR program support for the following fiscal year. In addition to the MAJCOM request for support, submit consolidated requests from respective subordinate installations for ADR program support. Ensure the MAJCOM and consolidated installation requests, or negative reply, reach SAF/GCD NLT 1 March preceding the fiscal year for which support is requested.

11. Installation Commander. The installation commander will:

- 11.1. Promote the use of ADR to resolve workplace disputes under his or her jurisdiction and provide overall direction in the execution of the installation's ADR program for workplace disputes.
- 11.2. Establish guidance encouraging managers and supervisors to participate in good faith in ADR proceedings whenever ADR has been offered to and accepted by the employee as provided in paragraph 22. In discharging this responsibility, the installation commander is encouraged to adopt a policy, applicable to civilian workplace disputes subject to their jurisdiction, requiring supervisors and managers to participate in good faith in an ADR process once a dispute is determined to be appropriate for ADR. (See paragraphs 21 and 22 for additional information and guidance.)
- 11.3. Appoint an individual to serve as the installation's ADR Manager for Workplace Disputes. The ADR Manager should be a civilian employee in the grade of GS-12 or above (or pay band equivalent), and must be regarded as fair and impartial to all stakeholders in ADR, including management, employees, and labor unions with exclusive bargaining rights. The ADR Manager shall not be assigned to the civilian personnel function (Civilian Personnel or Human Resources Office) or the legal function (Staff Judge Advocate), and shall not hold an elected or appointed position with an exclusive bargaining representative. If no qualified civilian candidates are available, the commander may assign a field-grade commissioned officer or senior NCO to serve as the ADR Manager until a qualified civilian employee is available. The commander shall solicit and consider recommendations from representatives of labor unions with exclusive bargaining rights before appointing the ADR Manager.
- 11.4. Approve the installation ADR plan for workplace disputes. Ensure that appropriate bargaining obligations are fulfilled. See paragraph 20 for ADR plan requirements.
- 11.5. Appoint qualified individuals to serve as collateral-duty mediators, IAW paragraph 25. This authority may be delegated to the installation vice or deputy commander or, if applicable, the installation Executive Director.
- 11.6. Exercise best efforts to ensure adequate staffing and training resources to provide competent ADR services to those who need them.

12. Installation ADR Manager for Workplace Disputes. The installation ADR Manager for Workplace Disputes (ADR manager) will:

- 12.1. Assist the commander in setting workplace disputes ADR policies and procedures and promoting the ADR Program among all organizations on the installation.
- 12.2. Work with the MAJCOM ADR Manager, installation Civilian Personnel (DP) for appropriated fund employees, Human Resources Office (HRO) for nonappropriated fund employees, Staff Judge Advocate (SJA) or designee, EO Director, installation functional organizations, and local unions, as appropriate, to develop and implement the installation ADR plan for workplace disputes (see paragraph 20) for the installation commander's approval. Coordinate any agreements with unions with the installation DPC/HRO and SJA or designee to ensure compliance with applicable laws, regulations, and local collective bargaining agreements. Submit a copy of the approved ADR plan through the MAJCOM ADR Manager to SAF/GCD.
- 12.3. Designate one or more Functional ADR Liaisons (FALs) as required to assist in administering the ADR program at the functional levels, to avoid unnecessary duplication of effort, and to ensure their activities are consistent with Air Force ADR policy and guidance.
- 12.4. Market the installation workplace disputes ADR program by disseminating program guidance and information to management, union officials and employees.
- 12.5. Consolidate and report, through command channels, the installation's ADR data, including the annual ADR report, when requested by higher headquarters.
- 12.6. Maintain a consolidated list of ADR resources available at the installation (including names and contact information of ADR FALs, local ADR agreements and instructions, and rosters of neutrals assigned to the installation).
- 12.7. Screen and recommend eligible employees for appointment as collateral-duty neutrals.
- 12.8. Ensure collateral-duty neutrals receive adequate initial and refresher training by submitting nominations through command channels for centrally funded mediation or other appropriate ADR skills training, by procuring ADR training through other sources when they are available and funding permits, or by providing the training in-house.
- 12.9. On an annual basis, review existing ADR plans and procedures to identify barriers to use of ADR in resolving workplace disputes, and work with DPC, EO, installation JA, and other organizations as appropriate to remove those barriers.
- 12.10. Ensure that an ADR suitability determination is made for every eligible workplace dispute, pursuant to the case selection procedures and criteria set forth in paragraph 22.
- 12.11. Exercise oversight of the installation workplace disputes ADR program, including conducting case intake, advising parties of their rights and options with respect to ADR, convening ADR proceedings, assigning neutrals, and coordinating on requests and compulsory processes to disclose confidential ADR communications.
- 12.12. Submit through the MAJCOM ADR Manager any requests for Air Force ADR program support for the following fiscal year. Requests should be submitted on or before 1 February to ensure the consolidated MAJCOM request reaches SAF/GCD NLT 1 March preceding the fiscal year for which support is requested.
- 12.13. Encourage collateral-duty neutrals to apply for voluntary certification under the Air Force Mediator Certification Program, ensure they meet the standards for the level of certification for

which they are applying, and review and forward applications for certification to SAF/GCD for action. Ensure applications for Level III and Level IV certification are routed through the MAJCOM ADR Manager before going to SAF/GCD. See paragraph 25.4 for more information.

12.14. Maintain a conspicuous link to the Air Force ADR web site (<http://www.adr.af.mil>) in all of the installation's workplace dispute-related web sites.

13. Functional ADR Liaisons (FALs).

13.1. FALs are individuals assigned to organizations with functional responsibility for workplace dispute programs who are designated by the ADR Manager to help facilitate the use of ADR in the programs they administer. Under the oversight of the ADR Manager, FALs may conduct case intake, perform case screening pursuant to paragraph 22, schedule ADR proceedings, and provide administrative support to neutrals and parties in ADR proceedings. FALs must be familiar with Air Force ADR policy and the installation's ADR program before undertaking ADR support duties.

13.2. The ADR Manager will decide whether and to what extent FALs and the functional activities they represent are needed, based on anticipated ADR workload. Normally, the installation EO office, DPC for appropriated fund employees, and Human Resources Office (HRO) for nonappropriated fund employees should be considered for a FAL to facilitate the use of ADR in their respective workplace dispute programs, but this is discretionary with the ADR Manager. Designation of one or more FALs in EO, DPC and HRO shall not detract from or interfere with the operation or management of workplace dispute processes over which these organizations have oversight responsibility.

13.3. Under appropriate circumstances, an installation that historically has had little or no ADR activity may be serviced by a FAL in lieu of an ADR Manager, if the installation is within close geographical proximity to an installation that is serviced by an ADR Manager who agrees to assume responsibility for the FAL. Such an arrangement must be memorialized in a Memorandum of Understanding, signed by each installation's commander or authorized designee, and approved by SAF/GCD.

14. Staff Judge Advocate (SJA). The installation SJA (and; for AFRC installations, the appropriate designee, as determined by AFRC/JA):

14.1. Provides legal advice and guidance to the commander and ADR Manager in developing, implementing, and administering the installation ADR plan.

14.2. Advises the commander or designee on the suitability of workplace disputes for resolution through the use of ADR. This can be accomplished by individual case screening or by development of review procedures and guidelines for use by ADR program personnel. In disputes in which the LLFSC has representational responsibility, this function will be accomplished by or coordinated with the servicing LLFSC attorney.

14.3. Reviews and provides timely coordination of and advice on all legal issues arising in connection with ADR proceedings. Coordinates issues involving confidentiality of ADR proceedings (see Section D) with SAF/GCD by email (safgcd.workflow@pentagon.af.mil). In disputes in which the LLFSC has representational responsibility, these functions will be accomplished by or coordinated with the servicing LLFSC attorney.

14.4. Designates an attorney member of his or her staff to represent management in ADR proceedings, as appropriate. In disputes in which the LLFSC has representational responsibility, ADR representation is a function of the servicing LLFSC attorney.

14.5. Reviews and coordinates on written settlement agreements resulting from ADR proceedings as required. In disputes in which the LLFSC has representational responsibility, the servicing LLFSC attorney also reviews and coordinates on all settlement agreements resulting from ADR proceedings.

14.6. Assists the ADR Manager in providing awareness training and briefings on workplace dispute ADR processes and techniques to installation personnel.

15. Installation Civilian Personnel Functions. The installation DPC (for appropriated fund employees) or HRO (for nonappropriated fund employees):

15.1. Assists the installation ADR Manager in developing and implementing the installation ADR program in non-EEO workplace disputes.

15.2. Works with the installation ADR Manager, SJA or designee, functional organizations, and local unions to integrate the use of ADR into non-EO workplace disputes in accordance with the installation ADR plan.

15.3. Provides technical support to neutrals and agency representatives in ADR proceedings as necessary and appropriate.

15.4. Reviews settlement agreements resulting from ADR proceedings in workplace disputes for compliance with personnel rules, regulations, and policies.

16. Installation Equal Opportunity (EO) Director. The installation EO Director:

16.1. Makes ADR and other collaborative dispute prevention and resolution processes available for use in EEO complaints, in accordance with applicable Equal Employment Opportunity Commission (EEOC) directives.

16.2. Makes ADR and other collaborative dispute prevention and resolution processes available for use in Military Equal Opportunity (MEO) complaints.

16.3. Assists the installation ADR Manager in developing and implementing the installation ADR program with respect to EEO complaint procedures, MEO complaint procedures, EO educational programs (for both military members and civilian employees), unit climate assessments, and other elements of the Air Force EO Program.

16.4. Reviews settlement agreements resulting from ADR proceedings in EEO complaints for compliance with applicable EEO rules, regulations and policies.

17. ADR Support Providers : Either party to an ADR proceeding, or the neutral, may request technical assistance on an issue in dispute. Individuals who provide this assistance are ADR support providers, and should be made available on telephone standby while ADR proceedings are underway. Certain key functions, and individuals assigned to those functions, including Civilian Personnel, Labor Relations, EO, Legal, and Comptroller, should be available on a regular and recurring basis. Other organizations will be tasked as needed. ADR support providers are non-party participants in ADR proceedings and are therefore subject to the same confidentiality requirements that apply to the parties. For more information, see Section D.

18. Neutrals. A neutral is an individual designated or appointed to assist the parties resolve one or more issues in controversy. A neutral may be a military member or civilian employee of the Federal Government or any other individual, including a contractor hired to provide services as a neutral. Anyone serving as a neutral in an Air Force workplace dispute must not have an official, financial, or personal conflict of interest in any issue in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral may serve. Air Force civilian employees and military

members serving as mediators in Air Force workplace disputes must also meet minimum qualifications as set forth in paragraph 25.3.

Section C-ADR Procedures in Workplace Disputes

19. Disputes Eligible for ADR. For purposes of this AFI, a workplace dispute is any formal or informal claim or issue in controversy that arises out of an existing or prospective employment relationship between the Air Force and its civilian employees, applicants for employment, or military members, or which otherwise materially affects conditions of employment, for which a remedial process is authorized by law, regulation, or policy. A workplace dispute may be written or oral. If ADR is attempted for an oral dispute, the dispute should be documented to permit tracking for purposes of ADR data collection IAW paragraph 38. Subject to collective bargaining obligations and case screening requirements, every workplace dispute is a potential candidate for ADR as part of an installation ADR plan (see paragraph 20). Examples of disputes eligible for ADR include the following:

- 19.1. Employee grievances filed under a negotiated grievance procedure that provides for ADR.
- 19.2. Grievances filed by employees not subject to a negotiated grievance procedure that are otherwise authorized by law or policy (e.g., a grievance filed as part of the Air Force Administrative Grievance System).
- 19.3. Civilian EEO discrimination pre-complaints and formal complaints.
- 19.4. Military Equal Opportunity (MEO) complaints.
- 19.5. Adverse actions subject to statutory or regulatory appeal procedures.
- 19.6. 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.
- 19.7. Administrative proceedings under the National Security Personnel System (NSPS) for which ADR is authorized by regulation or implementing issuance.
- 19.8. Other workplace disputes not specifically listed, on a case-by-case basis. For workplace disputes involving military members exclusively and not implicating MEO complaints, eligibility for ADR is a matter of command discretion, subject to the case selection requirements of paragraph 22.

20. ADR Plan . Each Air Force installation shall maintain a plan for utilizing ADR as part of its workplace dispute procedures. Ensure a copy of the approved installation ADR plan is submitted through the MAJCOM ADR Manager to SAF/GCD. The ADR plan may supplement the MAJCOM ADR plan or be stand-alone, or, to the extent it affects dispute procedures subject to collective bargaining obligations, it may be incorporated into separate agreements negotiated with appropriate unions. ADR plans developed at locations outside the United States must be consistent with applicable host nation labor laws and agreements. Installations have broad discretion with respect to the content of the ADR plan, but at a minimum, the plan must include:

- 20.1. A statement promoting the use of ADR in workplace disputes subject to the plan. If there is a local installation policy requiring management participation in ADR, include the policy in the ADR plan.
- 20.2. A procedure for determining which disputes are eligible for ADR.
- 20.3. The default ADR process(es) to be employed (e.g., mediation, peer review, etc.).

20.4. Source of third-party neutrals. If the plan calls for using local employees as collateral duty neutrals, it must also specify the methods for selecting, training, and managing the roster of collateral-duty neutrals.

20.5. Responsibility for ADR data collection and reporting.

21. Management Participation in ADR Proceedings. Installation commanders are encouraged to adopt local policies requiring supervisors and managers to participate in good faith in an ADR process once a dispute is determined to be appropriate for ADR. (See paragraphs 11.2 and 22 for additional information and guidance.) 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.

22. ADR Case Selection Criteria. All workplace disputes initiated in writing and filed with an Air Force activity pursuant to an established grievance, complaint or appeal process or entered into an electronic case management or tracking system, such as the system used to manage EEO complaints, will be screened utilizing the following criteria to ensure that ADR is an appropriate vehicle for resolving the dispute. Oral disputes are presumed to be appropriate for ADR and need not be screened before offering ADR, unless the dispute is synopsisized in writing and a determination that ADR is not appropriate is made in accordance with this paragraph. Not all workplace disputes are appropriate for ADR. Under the Administrative Dispute Resolution Act of 1996 (ADRA),¹ the Agency is required to consider not using ADR when certain considerations are present. Accordingly, the Air Force retains the right to decide whether a particular dispute is appropriate for resolution by ADR before offering ADR to the employee.

22.1. The determination whether ADR is appropriate for a particular dispute is an Agency function to be performed by the installation SJA and the servicing LLFSC attorney if the matter is within the LLFSC's purview. This function may be delegated to the installation ADR Manager. All eligible workplace disputes are presumed to be appropriate for ADR unless one or more of the criteria of this paragraph are found to exist.

22.2. Screening a dispute to determine whether it is appropriate for ADR may be accomplished by reviewing each dispute individually, or by using case screening guidelines, incorporating the criteria set forth in paragraphs 22.5., 22.6., or 22.7., that have been specifically reviewed and approved by the SJA or designee.

22.3. A determination that ADR is not appropriate for a particular dispute shall be made in writing, supported by at least one of these criteria. The determination shall be reviewed and approved by the installation SJA or designee (including the servicing LLFSC attorney, if applicable), and added to the official dispute case file. The determination is final and not subject to appeal or further review; however, the Agency may reconsider a determination at any time during the processing of the dispute.

22.4. An unconditional offer of ADR must be made to the employee if the dispute is found appropriate for ADR; however, do not make the offer until screening has been completed.

22.5. Statutory bases for considering to not use ADR.² An agency is required by the ADRA to consider not using ADR if any of the following circumstances exist:

22.5.1. A definitive decision in the matter is needed as precedent.

¹ P.L. 104-320 (October 19, 1996), 5 U.S.C. § 571 *et seq.*

² 5 U.S.C. § 572(b).

22.5.2. The matter involves significant issues of government policy that cannot be finally resolved without additional proceedings.

22.5.3. The need to maintain an established government policy is especially important, requiring consistent results.

22.5.4. The matter significantly affects non-parties.

22.5.5. Development of a full public record is important.

22.5.6. The agency must maintain continuing jurisdiction over the matter.

22.6. Under the ADRA criteria, the following types of disputes ordinarily are considered inappropriate for ADR:

22.6.1. Disputes presenting significant legal issues of first impression, for which a precedential decision is required or desired. When citing this provision, identify the issue(s) requiring a decision.

22.6.2. Disputes presenting non-severable allegations of misconduct punishable under the Uniform Code of Military Justice (UCMJ) or state or federal criminal laws.

22.6.3. Military personnel quality force actions, such as involuntary administrative separations, denials of reenlistment, resignations, promotion propriety actions, and officer grade determinations.

22.6.4. Complaints under Article 138, UCMJ.

22.6.5. Civilian position classification appeals.

22.6.6. Disputes involving allegations of fraud, waste and abuse or other improper conduct within the jurisdiction of the Inspector General (IG) complaint system.

22.7. Non-statutory bases for considering not to use ADR. The following types of disputes may be inappropriate for ADR, depending on the surrounding circumstances, even if they do not meet the statutory criteria. A finding that ADR is inappropriate under this provision must specifically describe the circumstances upon which it is based.

22.7.1. 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.

22.7.2. Disputes in which there is substantial evidence that the claimant initiated the action to harass or intimidate, or is otherwise flagrantly abusing the process.

22.7.3. Any other dispute in which one or more articulable circumstance exists to justify not offering ADR. A judgment that a claim will fail for lack of evidence is not, by itself, an articulable basis for finding ADR inappropriate to resolve the claim.

22.8. In any case where authorized agency officials disagree about the suitability of ADR to resolve a dispute, the commander or designee will make the final determination.

23. ADR Agreement and Selection of Neutral.

23.1. Agreements to engage in ADR. Parties agreeing to use mediation or some other ADR procedure to resolve a dispute evidenced by a written claim or complaint, must execute a written agreement to that effect in advance of 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 telephone number, plus a description of the essential features of mediation or other

procedure offered. Refer to the *Air Force Mediation Compendium: How to Mediate Civilian Personnel Disputes* (available through the AF ADR website located at: <http://www.adr.af.mil/>) for an example of a mediation agreement. Installation ADR Managers may use their own agreement templates to suit local needs, so long as they provide the necessary information to the parties. Agreements to engage in ADR to resolve oral disputes may be oral or written. Written agreements to mediate or use other ADR processes will be maintained in the official dispute file.

23.2. Selection of neutrals. Installation ADR plans should prescribe the method for selecting the neutral. Neutrals may be designated by the ADR Manager or selected by the parties from a list of alternatives provided by the ADR Manager. If a suitable neutral cannot be obtained from local resources, the Air Force ADR Program Office in SAF/GCD can provide ADR support at no cost to the requesting installation, subject to availability of funds. Send requests for mediation and other ADR support to safgcd.workflow@pentagon.af.mil.

24. Convening and Conducting ADR Proceedings .

24.1. Convening the ADR proceeding. Once the mediator or other neutral is selected, the ADR Manager or FAL will convene the proceeding by arranging for its place, date and time. Do not combine multiple, unrelated disputes involving multiple parties into a single ADR proceeding (a single proceeding to resolve multiple disputes involving the same parties, or one dispute involving multiple participants, such as an organizational facilitation, is permitted). 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 agreement to use ADR, unless the parties consent in writing to extend this period.

24.2. Conducting the ADR proceeding.

24.2.1. The ADR Manager ensures that suitable facilities are made available to conduct the proceeding at a neutral location outside the organization in which the dispute arose. Ensure reasonable accommodation of persons with disabilities who are parties to or otherwise participating in the session. This includes, but is not limited to, physical accessibility to meeting facilities, translators, and services for the hearing or vision impaired. Translators and others who must be present while the proceeding is in session, including private caucuses, are nonparty participants and must treat all communications as confidential. If the ADR Manager determines that a neutral location is not reasonably available or cannot provide reasonable accommodation, other suitable facilities will be selected with the concurrence of the parties.

24.2.2. The facilities must provide sufficient meeting space and privacy to accommodate parties during joint sessions and any private caucuses, plus access to telephone, computer and other equipment as necessary to facilitate contact with ADR support providers and to assist with preparation of a settlement agreement should a settlement be reached.

24.2.3. Prior to the proceedings, the ADR Manager or FAL will provide the parties and the neutral a telephone number at which he or she may be contacted for assistance during the proceeding, and the names and numbers of any on-call ADR support providers.

24.2.4. Unless a different procedure is agreed to by the parties and approved by the ADR Manager, mediation of an Air Force workplace dispute shall follow the facilitative mediation model and will be conducted in accordance with the *Air Force Mediation Compendium*.

25. Appointment and Qualifications of Air Force Mediators.

25.1. Recruitment and term of service.

25.1.1. The installation ADR Manager will determine the best means for recruiting and making available qualified mediators (or other types of neutrals, consistent with the installation ADR plan), based on need and availability. Larger installations with significant workplace dispute activity will recruit, train and maintain a roster of mediators, collateral-duty or full-time (or a mixture of the two), sufficient to meet anticipated needs and to assure sufficient mediation opportunities to maintain mediator proficiency. Installation commanders and their designees have discretion to determine the appropriate number and mix of mediators on the roster to serve the installation's requirements; however, the ratio of collateral-duty mediators to mediation opportunities should afford each mediator at least one mediation opportunity per calendar quarter.

25.1.2. Smaller installations and installations that do not have a history of significant workplace dispute activity may, in lieu of maintaining a roster of internal mediators, obtain mediators or other third-party neutrals from other sources, including other Air Force installations, other agencies within and outside DoD, federal agency shared neutral programs, or private sector (contract) mediators. The ADR Manager or designee may contact SAF/GCD directly for assistance in obtaining contract or other Air Force mediators. Send email requests for assistance to safgcd.workflow@pentagon.af.mil.

25.1.3. Individuals who receive Air Force-provided mediation training are generally expected to be available for mediation duties, following appropriate on-the-job training as specified in paragraph 25.3.2. Exceptions may be made for individuals who receive mediation training in order to manage an ADR program or provide ADR support, such as FALs and attorneys and other personnel involved in ADR case screening. No set period of service is required, but 24 months following completion of training (12 months for overseas locations) is recommended. Supervisors of collateral-duty mediators must allow them time away from the workplace as reasonably necessary to perform their mediator duties, subject to the regulatory limitation on collateral duty time.

25.1.4. Air Force mediators on active rosters must undergo a minimum of eight hours of mediation refresher training per year, including at least one hour each of training in standards of conduct, confidentiality, and drafting settlement agreements. Installation ADR Managers are responsible for ensuring their collateral-duty mediators receive annual refresher training. Refresher training is included in collateral duty time.

25.2. Appointment of mediators. The installation commander, or designee, appoints collateral-duty mediators in writing. The appointment may specify a specific period of service (24 months is recommended, 12 months at overseas locations). Reappointments, or appointments for periods longer than recommended, are authorized. Once appointed, mediators will receive their specific case assignments from the ADR Manager.

25.3. Minimum qualifications for collateral-duty mediators. Before an Air Force mediator can mediate an Air Force workplace dispute as a "lead," or solo, mediator, he or she must meet the following minimum qualification requirements:

25.3.1. Successful completion of the Air Force Basic Mediation Course or a comparable mediation training program consisting of at least 30 hours of combined classroom instruction and role-play exercises. Non-Air Force mediation training must teach the facilitative mediation model.

25.3.2. Co-mediation in three or more federal workplace disputes in which the mediator is observed and evaluated by an experienced lead mediator.

25.3.3. Appointment as a mediator by the installation commander or designee as provided in paragraphs 11.5 and 25.2.

25.3.4. For EEO complaint mediations, collateral-duty mediators must also know and understand federal agency EEO complaint procedures contained in 29 C.F.R. Part 1614, and EEOC Management Directive (MD) 110. In addition, mediators in EEO cases must have a working knowledge of the following federal anti-discrimination laws: Title VII of the Civil Rights Act of 1964, as amended; the Rehabilitation Act of 1973, as amended (including the standards in the Americans with Disabilities Act of 1990 applicable to the Rehabilitation Act); the Age Discrimination in Employment Act, as amended; and the Equal Pay Act, as amended. The mediator must also have a basic understanding of the various theories of unlawful discrimination and the available remedies in EEO cases. ADR Managers must ensure that individuals assigned to mediate EEO complaints have the proper training and/or qualifications to perform such duties.

25.4. Certification of Air Force mediators.

25.4.1. The Air Force offers certification of Air Force collateral duty mediators at four different levels of proficiency based on education, training and experience. The four levels are: Level I (Basic); Level II (Intermediate); Level III (Advanced); and Level IV (Master). SAF/GCD is the certification authority for all levels.

25.4.2. Certification at any level is voluntary, and is not required to mediate or otherwise serve as a third party neutral in an Air Force workplace dispute, except as follows:

25.4.2.1. An Air Force mediator who evaluates another mediator for purposes of qualifying the mediator to meet basic qualification standards or to obtain Level I (Basic) certification must be certified at Level II (Intermediate) or higher.

25.4.2.2. An Air Force mediator who travels to another location on Air Force ADR Program funds to conduct mediation must be certified at Level II (Intermediate) or higher.

25.4.3. Standards and procedures for certification are available from SAF/GCD and online at <http://www.adr.af.mil/shared/media/document/AFD-071002-009.pdf>.

26. Standards of Conduct for Mediators and other Neutrals.³ Mediators who mediate Air Force workplace disputes must be familiar with and adhere to the following standards of ethical conduct applicable to mediators.⁴ Installation ADR Program Managers must ensure that all mediators assigned to workplace disputes under their oversight (including outside mediators) are aware of and observe these standards. Air Force mediators who violate one or more standards of conduct may be relieved of

³ References to “mediators” and “mediations” in this paragraph are intended to apply with equal force to any individual who serves as a third party neutral in Air Force dispute resolution proceedings, regardless of ADR process or technique employed.

⁴ These Standards are adapted from *A Guide for Federal Employee Mediators: A Supplement to and Annotation of the Model Standards of Conduct for Mediators* (May 9, 2006), issued by the Federal Interagency ADR Working Group (IADRWG) Steering Committee. This guide, intended for federal agency mediators, adopts and supplements for federal practice the Model Standards of Conduct for Mediators approved in 2005 by the governing bodies of the American Bar Association, the American Arbitration Association, and the Association for Conflict Resolution. The Guide is available on the IADRWG’s website at http://www.adr.gov/pdf/final_manual.pdf.

mediation duties under paragraph 40.1., and decertified under the Air Force Mediator Certification Program.

26.1. Self-Determination. A mediator shall conduct a mediation on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome. Parties may exercise self-determination at any stage of a mediation, including selection of the mediator, process design, participation in or withdrawal from the process, and outcomes. A mediator shall not undermine party self-determination for any reasons such as higher settlement rates, egos, or outside pressures.

26.2. Impartiality. A mediator shall decline to serve as a mediator if he or she cannot conduct the proceeding in an impartial manner. Impartiality means freedom from favoritism, bias or prejudice. A mediator shall conduct the proceeding in an impartial manner and avoid conduct that gives the appearance of partiality. If at any time a mediator is unable to conduct a mediation in an impartial manner, the mediator shall withdraw from the mediation.

26.2.1. A mediator may not act with partiality or prejudice based on a participant's personal characteristics, background, values or beliefs, or performance at the mediation, or for any other reason.

26.2.2. A mediator shall neither give nor accept a gift, favor, loan or other item of value that raises a question as to the mediator's actual or perceived impartiality, or that is inconsistent with the mediator's ethical obligations under the DoD Joint Ethics Regulation or applicable federal statutes and regulations governing ethical conduct of federal employees.

26.3. Conflicts of Interest. A mediator shall avoid a conflict of interest or the appearance of a conflict of interest before, during and after a mediation. A conflict of interest can arise from the involvement by a mediator with the subject matter of the dispute or from any relationship between the neutral and any participant in the mediation, whether past or present, personal or professional, that reasonably raises a question of the mediator's impartiality.

26.3.1. A mediator shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest, or which would reasonably create the appearance of a conflict of interest, for a mediator.

26.3.2. A mediator shall disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality.

26.3.3. If a mediator learns any fact after accepting a mediation assignment that raises a question with respect to the mediator's service creating a potential or actual conflict of interest, or which would reasonably create the appearance of a conflict of interest, the mediator shall disclose it in writing to the parties as soon as practicable. After disclosure, if all parties agree, the mediator may proceed with the mediation.

26.3.4. If a conflict of interest can reasonably be viewed as undermining the integrity of the mediation or violating the quality of the process, the mediator shall withdraw from the proceeding or decline to proceed further regardless of the expressed desire or agreement of the parties to the contrary.

26.3.5. A mediator may not mediate an EEO complaint if the mediator previously investigated or counseled the complainant with respect to the same or a related complaint.

26.3.6. A mediator may not advise, counsel, or represent any party in any future proceeding with respect to the subject matter of the mediation, nor may the mediator offer advice, guidance or counsel to any official responsible for approving a settlement of the dispute that was the subject matter of the mediation over which the mediator presided.

26.3.7. A collateral-duty Air Force mediator shall not accept a mediation that would conflict with his or her regularly assigned duties.

26.4. **Competence.** An ADR Manager shall make, and the mediator shall accept, an assignment as a mediator only when the mediator has the necessary competence to satisfy the reasonable expectation of the parties. If a mediator, before or during the course of a mediation, determines that he or she cannot conduct the proceeding competently, the mediator shall discuss the determination with the ADR Manager and take appropriate steps to address the situation, including, but not limited to, withdrawing or requesting appropriate assistance. The installation ADR Manager is responsible for ensuring that collateral-duty mediators are provided sufficient training and mediation experience to meet this standard.

26.5. **Confidentiality.** A mediator shall maintain the confidentiality of all information obtained during the mediation, unless otherwise agreed to by the parties or disclosure is required by applicable law or policy, including the confidentiality provisions of the ADRA.⁵

26.5.1. A mediator shall not communicate to any non-participant information about how the parties acted during the proceeding or what they said, unless disclosure is authorized or required by law. In all cases, the mediator may report whether the parties appeared as scheduled, whether or not the parties reached resolution, and the terms of that resolution as reflected in the settlement agreement.

26.5.2. A mediator who meets with the parties separately in private session (caucus) shall not convey directly or indirectly to any other person, any information that was obtained during the private session without the consent of the party who disclosed the information.

26.5.3. Information indicating fraud, waste and abuse, criminal misconduct, or threats of violence may be subject to disclosure, notwithstanding confidentiality. The mediator must advise the parties of this before taking their opening statements. Prior to disclosing, outside the ADR proceeding, any dispute resolution communication that may indicate fraud, waste and abuse, criminal misconduct, or threat of violence, the mediator shall consult the ADR Manager and take appropriate action IAW paragraph 34.

26.5.4. A mediator in an Air Force workplace dispute mediation must also comply with the confidentiality provisions of the ADRA, as more fully set forth in Section D.

26.6. **Quality of the Process.** A mediator shall conduct the mediation in accordance with these standards of conduct and in a manner that promotes diligence, timeliness, presence of the appropriate participants, party participation, procedural fairness, party competency and mutual respect among all participants.

26.6.1. A mediator shall ensure that the mediation is scheduled at a date, time and place that the neutral and the parties can devote their full, undivided attention to the matters at hand. In discharging this obligation, the mediator may work through or defer to the servicing ADR Manager.

⁵ 5 U.S.C. § 574.

26.6.2. A mediator shall work with the parties to control the number of persons participating in the mediation to assure proper decorum and full and open discussion of the issues. In discharging this obligation, the mediator may work through or defer to the servicing ADR Manager.

26.6.3. A mediator shall not knowingly misrepresent any material fact or circumstance during the course of a mediation, nor conduct a proceeding other than mediation but label it mediation to gain the protection of rules, statutes or other governing authorities pertaining only to mediation.

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

26.6.5. A mediator shall withdraw from and terminate a mediation that is being used to contravene Air Force or DoD directives or to further criminal conduct. Depending on the circumstances, and notwithstanding confidentiality, the mediator may be required to report the events leading up to his or her withdrawal and termination of the proceeding.

26.6.6. A mediator is responsible for assuring the self-determination of the parties during mediation. If during the course of a mediation a party appears to be having trouble understanding the process, issues, or options for settlement, or is having difficulty participating in the mediation, or is otherwise acting in a manner raising a reasonable question whether the party has the requisite capacity to comprehend the proceedings and to participate freely therein, the mediator must explore the circumstances of the party's behavior and potential accommodations or adjustments to correct the condition.

26.6.7. If a mediator reasonably believes that a participant's conduct, including that of the mediator, jeopardizes conducting the mediation consistent with these standards of conduct, the mediator shall take appropriate steps including, if necessary, postponing, withdrawing from, or terminating the mediation.

27. Participants in ADR Proceedings. Participants in workplace dispute ADR proceedings shall consist of the mediator or other neutral and the parties to the dispute. For training purposes, and with the parties' consent, a co-mediator or mediation mentor may also be present at all stages of the proceedings, including private caucuses. Subject to local bargaining agreements, the parties may appear alone or with one or more representatives of their choice. Representatives may, but need not, be attorneys. The neutral shall have authority to set reasonable limits on the number of representatives based on the size of the room and the need for full and effective communication between the parties and the neutral. The person representing management in an ADR proceeding must have sufficient authority to act on behalf of the Air Force to settle the issues in controversy, or have immediate access to those who do have such authority.

28. Reaching Settlement.

28.1. If the parties are able to settle one or more issues in their case, the neutral will assist them in drafting a settlement agreement describing the terms and conditions of their settlement. The settlement agreement is subject to review and approval to ensure legal and regulatory compliance and the ability of the parties to carry out its terms. All issues concerning the legal sufficiency and regulatory compliance of any term or condition must be resolved before the agreement becomes final

and enforceable. Where possible, the parties will seek guidance on the enforceability of proposed terms before signing a settlement agreement. See the *Air Force Mediation Compendium* for sample settlement agreements.

28.2. Allegations of breach of a settlement agreement will be handled according to procedures established for the type of workplace dispute to which the settlement pertains (e.g., EEO, NGP).

29. Impasse. An impasse occurs when the parties fail to resolve an issue and the neutral determines that further proceedings would be futile. ADR proceedings should be terminated when impasse is reached and the parties should be advised of the other remedies and processes available to them. ADR is not a replacement for other dispute procedures and remedies; therefore, a party who elects ADR does not waive the right to pursue such other available remedies if ADR fails to resolve the dispute as long as applicable time limits are met.

Section D-Confidentiality

30. Statutory Protection. Congress has recognized that confidentiality is essential for ADR processes to be effective.⁶ Accordingly, the ADRA provides confidentiality protection for certain “dispute resolution communications” made in the course of ADR proceedings. The Air Force vigorously supports the confidentiality of dispute resolution communications whenever it is consistent with the ADRA to do so.

31. Criteria for Confidentiality Protection.

31.1. Threshold criteria. To warrant protection as confidential, an oral or written communication must meet three threshold criteria:

31.1.1. It must be made during participation in the dispute resolution proceeding by specified parties, i.e., the time period between the appointment or designation of a neutral and the termination of the proceeding, either by an executed settlement agreement or an impasse declared by the neutral;⁷

31.1.2. It must be made or prepared specifically for the purposes of the dispute resolution proceeding⁸ and not be discoverable before the proceeding began;⁹ and

31.1.3. It must be made by a party to the neutral in confidence,¹⁰ or generated by the neutral and provided to the parties in confidence.

⁶ See ADRA, 5 U.S.C. § 574 (1999).

⁷ 5 U.S.C. § 574(a) provides that a “neutral in a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication or any communication provided in confidence to the neutral.” A “dispute resolution proceeding” is defined as any “alternative means of dispute resolution...in which a neutral is appointed and specified parties participate.” 5 U.S.C. § 571(6). A dispute resolution proceeding is terminated when an enforceable settlement is reached as to all issues or an impasse is declared as to one or more issues in controversy.

⁸ This key restriction on the scope of the ADRA’s confidentiality protections is found in the definition of “dispute resolution communication” which states it covers “any oral or written communication prepared for the purposes of a dispute resolution proceeding...” 5 U.S.C. § 571(5).

⁹ 5 U.S.C. § 574(f) states that “Nothing in this section shall prevent the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a dispute resolution proceeding.”

31.2. For purposes of application of confidentiality protection, the term “neutral” includes ADR intake officials and other personnel whose assigned duties include taking information in confidence from a party for the purpose of determining whether to use an alternative means of dispute resolution to resolve issues in controversy.

31.3. The confidentiality protection conferred by the ADRA does not extend to dispute resolution communications in MEO complaints or any other purely military personnel matters. In such cases, the scope of confidentiality with respect to communications that would otherwise meet the threshold criteria is entirely a matter of command discretion or Air Force regulatory policy.

32. Application of Confidentiality Protection to Specific Communications.

32.1. General rule. Dispute resolution communications that meet the three threshold criteria in paragraph 31.1 are treated as confidential and can be disclosed only if an exception listed in paragraph 32.2 is applicable to the disclosing person.

32.2. Exceptions.

32.2.1. Exceptions applicable to the neutral.¹¹ Notwithstanding confidentiality, the neutral may disclose a dispute resolution communication if:

32.2.1.1. All parties to the dispute resolution proceeding and the neutral consent to disclosure in writing and, if the communication was provided by a nonparty participant, that participant consents to disclosure in writing;

32.2.1.2. The communication has already been made public;

32.2.1.3. The communication is required by statute to be made public (e.g., in response to a Congressional subpoena); however, the neutral should make such communication public only if no other person is reasonably available to disclose the communication; or

32.2.1.4. A court determines the communication must be disclosed to prevent a manifest injustice, help establish a violation of law, or prevent harm to the public health or safety of sufficient magnitude in the particular case to outweigh the loss of confidentiality.

32.2.2. Exceptions applicable to a party.¹² Notwithstanding confidentiality, a party may disclose a dispute resolution communication if:

32.2.2.1. It was made by the party seeking disclosure;

32.2.2.2. All parties to the dispute resolution proceeding and the neutral consent to disclosure in writing and, if the communication was provided by a nonparty participant, that participant consents to disclosure in writing;

32.2.2.3. The communication has already been made public;

32.2.2.4. The communication is required by statute to be made public (e.g., in response to a Congressional subpoena.);

¹⁰ The term “in confidence” is defined to mean that the information is provided with the express intent by the source that it not be disclosed, or under circumstances that would create the reasonable expectation on behalf of the source that the information will not be disclosed. *See* 5 U.S.C. § 571(7).

¹¹ 5 U.S.C. § 574(a)(1)-(4).

¹² 5 U.S.C. § 574(b)(1)-(7).

32.2.2.5. A court determines the communication must be disclosed to prevent a manifest injustice, help establish a violation of law, or prevent harm to the public health or safety of sufficient magnitude in the particular case to outweigh the loss of confidentiality;

32.2.2.6. It is relevant to determining the existence or meaning of an agreement or award that resulted from the dispute resolution proceeding, or to the enforcement of such an agreement or award; or

32.2.2.7. Except for communications generated by the neutral and provided to the parties in confidence, it was made available to all parties in the proceeding. This exception would apply to communications made by a party during joint sessions in which all other parties are present, but would not apply to communications made by the neutral to the parties during joint sessions. Accordingly, communications generated by the neutral to the parties during joint sessions are protected as confidential; communications between the parties themselves are not.

32.2.3. Other exceptions to confidentiality:¹³

32.2.3.1. Information that is otherwise discoverable remains discoverable. Merely because the information was presented in the course of a dispute resolution proceeding does not make it confidential.

32.2.3.2. Dispute resolution communications may be used to resolve a subsequent dispute between a party and a neutral, but the disclosures must be limited to only those necessary to resolve such dispute.

32.2.3.3. Information from dispute resolution proceedings may be gathered and disclosed for research or educational purposes in cooperation with other agencies, governmental entities, or ADR programs as long as the parties and specific issues in controversy are not identifiable.

32.2.3.4. Any agreement reached or order issued pursuant to a dispute resolution proceeding may be disclosed under the ADRA. Thus, for example, an agreement to mediate a dispute or a settlement agreement reached as a result of that mediation is not protected from disclosure under the ADRA. However, disclosure or other uses of such an agreement may be restricted by the terms of the agreement itself or by other measures. See paragraph 37.

33. Understanding of the Parties. To protect the reasonable expectation of the parties in the confidentiality of dispute resolution communications, their agreement to enter into an ADR proceeding (e.g., a mediation agreement if the ADR proceeding is mediation) should include an explanation of the confidentiality provisions applicable to the proceeding. In addition, the ADR Manager or case intake official will explain the confidentiality provisions and secure an acknowledgment that each party understands the protections afforded. Finally, the neutral conducting the session must explain the confidentiality provisions during opening remarks, and affirmatively establish that the parties understand the provisions. A sample confidentiality clause in a mediation agreement and a mediator's opening statement including an explanation of the confidentiality protection can be found in the *Air Force Mediation Compendium*.

34. Waiver of Objection to Disclosure by the Neutral; 15-Day Limitation. If a neutral receives a discovery request or is otherwise compelled by legal process to disclose a dispute resolution communication (including an administrative demand for disclosure asserting as its basis a statutory or

¹³ 5 U.S.C. § 574(f)-(i).

other legal right to the communication), the ADRA requires the neutral to make reasonable efforts to notify the parties and any affected nonparties of the demand.¹⁴ Any objection to disclosure is waived if not made within 15 calendar days after notice of the demand for disclosure. Therefore, whenever a neutral receives a demand to disclose a dispute resolution communication, it is essential that the neutral immediately notify the ADR Manager, who will assist the neutral to provide notice of the demand to the parties and any affected nonparty participants. The ADR Manager will also notify the SJA or other point of contact in the servicing legal office, who will coordinate the demand with the servicing LLFSC attorney, if applicable, and with SAF/GCD by e-mail at safgcd.workflow@pentagon.af.mil. **Under no circumstances should the neutral disclose a communication made during ADR proceedings without first obtaining a legal determination that disclosure is authorized or required.**

35. Remedy for Violation of Confidentiality Protection. A dispute resolution communication that is disclosed in violation of the ADRA or this AFI is not admissible in any proceeding relating to the issues in controversy with respect to which the communication was made.¹⁵

36. Freedom of Information Act (FOIA). A dispute resolution communication that is confidential under the ADRA is exempt from disclosure under FOIA.¹⁶ Process FOIA requests for disclosure of a dispute resolution communication by first determining whether the communication is an agency record subject to FOIA.¹⁷ If it is, and qualifies for confidentiality protection, use FOIA exemption 3 (information prohibited from disclosure by another statute)¹⁸ as the basis for withholding.

37. Other Protections Available. Even if a dispute resolution communication is not protected by the ADRA as confidential, other limitations on disclosure or further use of the communication may be available. Practitioners should consider Rule 408 of the Federal Rules of Evidence (which can currently be accessed at: <http://www.uscourts.gov/rules/>) limiting admissibility of evidence of previous settlement negotiations, additional exemptions under FOIA or the Privacy Act, or separate contractual provisions between the parties to limit disclosure, if such provisions are authorized for inclusion in settlement agreements.

Section E-ADR Program Performance Measurements and Quality Assurance

38. ADR Performance Metrics. Data to measure ADR performance will be collected and reported in accordance with paragraph 39. Any measurement adopted for assessing ADR activity must be tied to the overall ADR program goal of encouraging early resolution of disputes by maximizing availability of ADR and other early dispute resolution processes across a wide range of eligible disputes. At the same time, because ADR is a voluntary process, ADR Managers must ensure that measurements are not used to improperly induce parties to select ADR over other dispute resolution options or settle a dispute against their wishes. Installation and MAJCOM programs may establish additional measurement and reporting requirements, but must, at a minimum, collect and report through command channels to SAF/GCD at the end of every fiscal year the data specified below. The installation ADR Manager has overall responsibility for the collection and reporting of ADR data, and will coordinate with other offices, e.g., EO, DPC, HRO, JA, and participating unions, as necessary to ensure accuracy and completeness.

¹⁴ 5 U.S.C. § 574(e).

¹⁵ 5 U.S.C. § 571(c).

¹⁶ 5 U.S.C. § 574(j).

¹⁷ FOIA, 5 U.S.C. § 552(f).

¹⁸ 5 U.S.C. § 552(b)(3).

38.1. **ADR Offer and Acceptance Rates.** These metrics measure the percentage of eligible disputes in which an unconditional offer of ADR is made pursuant to paragraph 22.4., and the percentage of offers ultimately accepted into ADR. Activities will track and report the total number of offers of ADR to employees during the reporting period, and the number of offers accepted by employees and, if applicable, management.

38.1.1. The ADR Offer Rate is the percentage of total disputes, by category, in which an unconditional offer of ADR is made to the complaining employee. This percentage is obtained by dividing the number of unconditional offers of ADR made to employees, by the total number of disputes in each category during the applicable reporting period, and multiplying the result by 100. The goal for this metric is to unconditionally offer ADR in at least 75 percent of eligible disputes.

38.1.2. The ADR Acceptance Rate is the percentage of ADR offers that are agreed to and accepted into ADR. This percentage is obtained by dividing the number of offers of ADR accepted by disputants, by the total number of offers of ADR made during the applicable reporting period, and multiplying the result by 100. The goal for this metric is acceptance of at least 50 percent of ADR offers, that is, at least one-half of all ADR offers result in a referral to ADR. As illustrated in the scenarios below, the data reported for this metric may vary depending on whether the reporting activity observes a mandatory participation policy for management, as provided in paragraph 21.

38.1.2. 1 Scenario 1. An installation that **does not** require supervisors and managers to participate in ADR reports a total of 12 negotiated grievances (NGP) during the reporting period. ADR is offered to the grievant in 10 of these cases, resulting in an ADR offer rate of 83.3 percent (10 ADR offers, divided by 12 total disputes, multiplied by 100, equals 83.3). Of these 10 offers, six are accepted by the grievant. Since management is not obligated to participate in ADR, the six offers accepted by the grievant must be presented to management for acceptance or rejection, and management accepts the offer in four cases. This leaves a net of four grievances accepted into ADR by both parties, and the ADR acceptance rate is **40 percent** (four cases accepted into ADR, divided by 10 offers, multiplied by 100).

38.1.2.2. Scenario 2. An installation that **does** require managers and supervisors to participate in ADR also reports 12 NGPs and 10 offers of ADR to the employee, as in Scenario 1. The offer rate is the same as in Scenario 1, 83.3 percent (10 divided by 12 times 100). As in Scenario 1, six of the 10 offers are accepted by employees. However, because the installation ADR policy requires management participation in ADR, no separate offer is made to management, and all six cases go to ADR, for an acceptance rate of **60 percent** (six offers accepted, divided by 10 offers, multiplied by 100).

38.2. ADR Resolution Rates. Measures the effectiveness of ADR to resolve disputes by comparing the number of resolutions (i.e., settlements or unconditional withdrawals) using ADR, with the number of disputes in which ADR was accepted, and expressing the result as a percentage. This metric is obtained by dividing the total number of disputes resolved using ADR by the total number of disputes accepted into ADR during the reporting period, and multiplying the result by 100. The goal for this metric is to resolve at least 70 percent of the disputes in which ADR is employed. Although this measure is useful at a macro level for gauging the overall effectiveness of an ADR program at promoting early resolution of disputes, ADR Managers must ensure it is not used in individual cases to pressure parties into settlements to which they would otherwise not agree.

38.3. Non-ADR Early Resolution Rates. Measures the utilization and effectiveness of other early dispute resolution activities (including collaborative dispute resolution processes) that do not utilize a qualified third-party neutral (and therefore do not qualify as ADR), but do resolve the dispute early and informally, thus furthering Air Force policy favoring early informal resolution of most disputes. This metric tracks the percentage of total disputes in which an early resolution technique was employed, and the percentage of such cases resolved (settled or dispute unconditionally withdrawn) using that technique. The key to non-ADR early resolutions is the use of a facilitative interest-based technique at an informal stage of the dispute resolution process. For purposes of this metric, only the following four activities will be tracked and reported. Compliance with the union's representational rights, if applicable, is assumed for each activity.

38.3.1. Informal MEO complaints and informal EEO pre-complaints in the traditional counseling process (instead of ADR) in which the counselor facilitates an interest-based discussion between the complainant and the management official to resolve the complaint.

38.3.2. Meetings between the employee and management to resolve a grievance filed under the agency or negotiated grievance procedures in which a non-neutral third party participates to facilitate an agreement between the parties. This third party may be management, such as an Employee Relations specialist, or labor, such as a union steward.

38.3.3. Attempts by an EEO investigator to facilitate settlement between the parties immediately prior to conducting the investigation required by 29 C.F.R. § 1614.106.

38.3.4. Bilateral negotiations between the parties to a workplace dispute in which the negotiators expressly agree to use a structured, interest-based negotiation approach to resolve issues in controversy.

38.4. ADR Timeliness Rate. This metric measures the average period, in calendar days, between initiation of an ADR proceeding and termination of that ADR proceeding. An ADR proceeding is initiated on the date an unconditional offer of ADR is made to the employee, and terminates on the date a settlement agreement is approved or an impasse is declared. Reporting activities will track and report the cumulative number of calendar days attributable to ADR proceedings in each dispute category specified in paragraph 38.6. that were completed during the reporting period, and divide the total number of days by the number of completed proceedings. The goal is an average of 45 calendar days or less for each dispute category, and for the aggregate of all reported disputes.

38.5. Customer Satisfaction. This metric measures the overall satisfaction of parties in the ADR process and the performance of the neutral as expressed in a voluntary questionnaire (sample questionnaire that may be used can be found at Attachment 2). The goal is to achieve an overall rating of "Satisfied" or better for the ADR process employed from at least 80% of the respondents, and an overall rating of "Good" or better for the neutral from at least 80% of the respondents, during the measuring period. ADR managers must exercise due diligence in obtaining customer satisfaction feedback from ADR participants as soon as the ADR process is completed.

38.6. Data pertaining to ADR offer and acceptance rates, ADR resolution rates, non-ADR early resolution attempt and resolution rates and ADR timeliness rate will be maintained and reported in accordance with the reporting procedures established in paragraph 39 for each of the following categories of workplace disputes:

38.6.1. Agency administrative grievances.

38.6.2. Grievances filed under a collective bargaining agreement negotiated grievance procedure.

- 38.6.3. MSPB appeals.
- 38.6.4. EEO complaints (informal pre-complaints and formal complaints).
- 38.6.5. MEO complaints.
- 38.6.6. ULP allegations and charges.
- 38.6.7. NSPS administrative reconsideration proceedings.
- 38.6.8. Other disputes not meeting the definitions of the foregoing disputes, for which a remedy or resolution is available.

39. Annual ADR Report. At the end of each fiscal year, SAF/GCD will issue an ADR data call to the ADR Manager of each MAJCOM and select Field Operating Agencies (FOAs) and Direct Reporting Units (DRUs), for further dissemination to individual installation ADR Managers. Respondents will collect and report ADR data for the previous fiscal year to their MAJCOM ADR Manager and to SAF/GCD. Data to be reported shall include the metrics data described in paragraph 38, but specific format and additional content of the report will be specified by SAF/GCD in the data call. Reports will not contain information that identifies the parties to ADR proceedings or the specific issues in controversy, or that requires disclosure of any dispute resolution communications or the outcome of any dispute other than whether it was resolved or not.

40. Complaints About Mediation Services.

40.1. Complaints about mediators or other neutrals should be directed to the installation ADR Manager. After consulting with the SJA or designee, the ADR Manager will decide whether corrective action is necessary and, if so, what action should be taken. For example, a new mediation conference with a different mediator may be offered if it is determined the mediator's conduct materially affected the outcome of the mediation to the detriment of one or both parties. If a substantiated complaint or series of complaints establishes one or more breaches of mediator standards of conduct or other misconduct sufficient to warrant relieving the mediator of further mediation duties, the ADR Manager and SJA may individually or jointly recommend such action to the installation commander or designee, whose decision on the recommendation shall be final. Substantiated violation of one or more standards of conduct as set forth in paragraph 24. is also a basis for decertification of the mediator by SAF/GCD.

40.2. Complaints about third-party neutrals under contract with SAF/GCD should be directed through the MAJCOM ADR Manager to the Air Force ADR Program Office in SAF/GCD. Complaints must clearly document the facts and circumstances surrounding the incident and request a specific remedy. Action taken will depend on the facts of each case.

41. Forms (Adopted and Prescribed).

41.1. Adopted Forms. AF Form 847, Recommendation for Change of Publication.

41.2. Prescribed Forms. No forms are prescribed by this publication.

42. Records . Records created as a result of the processes prescribed in this publication are maintained in accordance with AFMAN 33-363 and disposed of in accordance with AFRIMS RDS, currently located at <https://www.my.af.mil/gcss-af61a/afirms/afirms/>. Additional guidance for retention and disposition of ADR records is as follows:

42.1. ADR program files. Files generated in connection with ADR program management, such as correspondence, statutes and regulations, guidance and policy documents, letters of appointment,

program evaluations, reports, statistical analyses, mediator certification files, and other records relating to the overall ADR program.

42.2. ADR case files. These files include records that document ADR proceedings in specific disputes, such as intake forms, ADR agreements, settlement agreements or other documentation of the disposition of the case, written evaluations of the process and/or the neutral, and any other documentation or correspondence relating to the ADR proceeding. If the files pertain to a dispute in which there is an official dispute file, such as an EEO complaint or employee grievance, they become part of the official dispute file and their retention and disposition are governed by the schedules applicable to such files. Thus, for example, a written settlement agreement resulting from an ADR proceeding in an EEO complaint becomes part of the EEO complaint file and its retention and disposition are governed by the schedule applicable to EEO records. If there is no official dispute file, these records are treated as ADR case files.

42.3. Personal notes. Notes taken by the neutral and the parties and/or their representatives during a dispute resolution proceeding, and which are not made part of the record, are not considered agency records.

MICHAEL W. ZEHNER
Deputy General Counsel (International Affairs)
Performing the Duties of the Air Force General Counsel

Attachment 1

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

References

Title 5 U.S.C. § 571, *et seq.*, *Administrative Dispute Resolution Act of 1996*
 Title 10 U.S.C. § 801, *Uniform Code of Military Justice, et seq.*
 Title 5 U.S.C. § 552, *Freedom of Information Act*
 Title 5 U.S.C. § 552a, *Privacy Act*
 Title 5 U.S.C., Chapter 99, *National Security Personnel System*
 Title 5 C.F.R., Part 9901 (NSPS Regulation)
 Title 29 C.F.R., Part 1614 (EEOC Regulation)
 Department of Defense Directive 5145.5, *Alternative Dispute Resolution*, April 22, 1996
 Department of Defense Regulation 5400.7/Air Force Supplement, *DoD Freedom of Information Act Program*, 24 June 2002
 Air Force Policy Directive 36-1, *General Civilian Personnel Provisions and Authorities*, 7 March 1995
 Air Force Policy Directive 51-12, *Alternative Dispute Resolution*, 9 January 2003
 Air Force Instruction 36-1201, *EEO Complaints*, 12 February 2007 (will convert to Air Force Instruction 36-2701, *Equal Opportunity Program—Military and Civilian*)
 Air Force Instruction 36-1203, *Administrative Grievance System*, 1 May 1996
 Air Force Instruction 36-2706, *Military Equal Opportunity (MEO) Program*, 29 July 2004 (will convert to Air Force Instruction 36-2701, *Equal Opportunity Program—Military and Civilian*)
 Air Force Instruction 33-363, *Management of Records*, 1 March 2008
 EEOC Management Directive 110, 9 November 1999

Abbreviations and Acronyms

ADR—Alternative Dispute Resolution
ADRA—Administrative Dispute Resolution Act
AF/A1—Air Force Deputy Chief of Staff for Manpower and Personnel
AF/A1Q—Air Force Equal Opportunity Office
AFDRS—Air Force Dispute Resolution Specialist
AFDDRS—Air Force Deputy Dispute Resolution Specialist
AF/JA—The Judge Advocate General of the Air Force
AF/JAA—Office of the Judge Advocate General, Administrative Law Division
AFLOA/JACL—Air Force Legal Operations Agency, General Litigation Division
AGS—Administrative Grievance System
DPC—Civilian Personnel
DRU—Direct Reporting Unit
EEO—Equal Employment Opportunity
EEOC—Equal Employment Opportunity Commission

EO—Equal Opportunity

FAL—Functional ADR Liaison

FLRA—Federal Labor Relations Authority

FOA—Field Operating Agency

FOIA—Freedom of Information Act

HRO—Human Resources Office

IAW—In accordance with

IG—Inspector General

LLFSC—Labor Law Field Support Center

MEO—Military Equal Opportunity

MSPB—Merit Systems Protection Board

NGP—Negotiated Grievance Procedure

NSPS—National Security Personnel System

OPM—Office of Personnel Management

OPR—Office of Primary Responsibility

SAF/GC—Office of the Air Force General Counsel

SAF/GCD—Office of the Air Force General Counsel, Dispute Resolution Division

SAF/MR—Assistant Secretary of the Air Force (Manpower and Reserve Affairs)

SAF/MRD—Deputy Assistant Secretary for Strategic Diversity Integration

SJA—Staff Judge Advocate

UCMJ—Uniform Code of Military Justice

ULP—Unfair Labor Practice

Terms

ADR Manager for Workplace Disputes— (Formerly ADR Champion for Workplace Disputes) An individual appointed or designated at the MAJCOM and installation level to promote the use of ADR processes for resolving workplace disputes, to facilitate the development and implementation of the organization's workplace disputes ADR plan, and to provide oversight of the organization's workplace disputes ADR program. Depending on the installation, the title for the individual performing these duties may be ADR Manager for Workplace Disputes, ADR Champion, ADR Program Administrator, ADR Program Coordinator, or ADR Program Liaison Officer.

ADR Stakeholder— An organization or individual with an official or, in the case of a complainant, claimant or grievant, a personal interest in the initiation, processing, and resolution of one or more workplace disputes. Commanders, supervisors, individual employees, dispute program owners (e.g., DPC and EEO) and legal and other advisors (e.g., SJA) are all ADR stakeholders.

Agency— Each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include -- (A) the Congress; (B) the courts of the United

States; (C) the governments of the territories or possessions of the United States; (D) the government of the District of Columbia.

Alternative Dispute Resolution (ADR)— Any procedure that is used to resolve issues in controversy, including but not limited to facilitation, mediation, factfinding, minitrials, arbitration, and the use of ombuds, or any combination thereof (5 U.S.C. § 571(3)). In workplace disputes, ADR proceedings utilize the services of a neutral third party to assist the parties resolve their dispute. Specific ADR procedures are defined as follows:

1. Facilitation: An unstructured and flexible process in which a trained third party neutral (not necessarily a mediator) assists the parties resolve issues in controversy by utilizing interest-based negotiation techniques.

2. Factfinding: A relatively informal process in which a neutral third party examines the evidence to determine the facts giving rise to the dispute, in order to assist the parties negotiate a resolution.

3. Early Neutral Evaluation: A structured process in which the parties seek the assistance of a subject matter expert to review the dispute and to provide an assessment of the likely outcome of the dispute based on the facts as found or as agreed to by the parties.

4. Mediation: A structured process in which the parties seek the assistance of a qualified mediator to help them in resolving their issue in controversy. The primary attributes of mediation are a structured process, the use of interest-based negotiation techniques, and the use of separate and confidential caucuses between each party and the mediator.

5. Arbitration: Arbitration involves the parties' mutual selection of a neutral third party, an arbitrator, to decide the issue in controversy after hearing witnesses, considering other items of evidence, and listening to the arguments of each side. The arbitrator's decision, called an award, can be binding or nonbinding, depending on the parties' agreement, but Air Force policy generally precludes binding arbitration outside of the collective bargaining context. Although commonly considered an ADR process, arbitration is not favored as an alternative process for resolving Air Force workplace disputes because of its use as the final step of negotiated grievance procedures in Air Force collective bargaining agreements.

6. Ombuds: A neutral employee appointed to receive and investigate complaints, provide guidance, answer questions, and refer inquiries and complaints to appropriate outside resources. In the Air Force, an ombuds must be officially appointed in writing by the base, FOA, or DRU.

7. Other ADR: Other forms of ADR not specifically identified in the ADRA include peer review panels, which are panels consisting of employees, or a combination of employees and management officials, appointed to review the facts, hear arguments, and render decisions on issues in controversy. Alternatively, an organization may employ a technique that is considered part of another agency's ADR program, such as the FLRA or EEOC. In addition, a dispute may be resolved by the use of a Federal court's ADR program.

Collaborative dispute resolution process— Any process used by two or more parties to a dispute to resolve the dispute using a collaborative, interest-based approach. See also, Non-ADR Early Resolution.

Confidentiality— As used in this AFI, refers to the protection from voluntary or compulsory disclosure, afforded by the Administrative Dispute Resolution Act of 1996, to certain dispute resolution communications given in confidence for the purposes of a dispute resolution proceeding. See ADRA, 5 U.S.C. § 574.

Dispute— See workplace dispute.

Dispute resolution communication— Any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, parties or nonparty participant. A written agreement to enter into a dispute resolution proceeding, or final written agreement or arbitration award reached as a result of a dispute resolution proceeding, is not a dispute resolution communication. See 5 U.S.C. § 571(5).

Dispute resolution proceeding— Any process in which an alternative means of dispute resolution is used to resolve an issue in controversy in which a neutral is appointed and specified parties participate (5 U.S.C. § 571(6)).

Functional ADR Liaisons (FALs)— (Formerly ADR Functional Area Managers) Individuals assigned to organizations with functional responsibility for workplace dispute programs who are designated by the ADR Manager to help facilitate the use of ADR in the programs they administer.

In confidence— Information provided -- (A) with the expressed intent of the source that it not be disclosed; or (B) under circumstances that would create the reasonable expectation on behalf of the source that the information will not be disclosed (5 U.S.C. § 571(7)).

Installation Commander— For purpose of this AFI, the commander or head of an Air Force activity exercising delegated appointing authority pursuant to AFD 36-1, General Civilian Personnel Provisions and Authorities, over civilian personnel assigned to the organization or activity under his or her command or direction, including field operating agencies and direct reporting units.

Issue in controversy— An issue which is material to a decision concerning an administrative program of an agency, and with which there is disagreement -- (A) between an agency and persons who would be substantially affected by the decision; or (B) between persons who would be substantially affected by the decision (5 U.S.C. § 571(8)).

Labor Law Field Support Center— The office within the General Litigation Division of the Air Force Legal Operations Agency that is responsible for providing legal services to installations and commanders in civilian labor and employment disputes. The LLFSC coordinates base-level legal services with the installation Staff Judge Advocate.

National Security Personnel System— An alternative human resources management system authorized by the National Defense Authorization Act for FY 2004, Pub. Law 108-136, codified at Title 5, U.S.C. Chapter 99.

Neutral— An individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy (5 U.S.C. § 571(9)). This individual may be a Federal government employee or someone outside the Government. For purposes of determining whether communications are confidential, the term “neutral” also includes ADR intake or other administrative personnel designated and identified by the ADR manager as a neutral for the purpose of taking information from the party or parties to a dispute to assist them in deciding whether to use a dispute resolution proceeding to resolve the dispute.

Non—ADR Early Resolution: The use of a collaborative, interest-based dispute resolution process to resolve issues in controversy, without the involvement of a bona fide third party neutral. For purposes of this AFI, non-ADR early resolution consists of the four scenarios described in paragraph 38.3.

Party— A person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes. See 5 U.S.C. § 571(10). An individual supervisor, manager, or other

management personnel is not a party to an Air Force workplace dispute but may participate in an ADR proceeding as a representative of the Air Force or a subordinate Air Force organization.

Qualified mediator— An individual who meets the Air Force criteria for mediating Air Force workplace disputes and who acknowledges and complies with the Standards of Conduct for Air Force Mediators.

Remedy— The whole or a part of an action, taken by an agency or other official administrative or judicial authority, in response to and in consequence of a grievance, complaint, or other workplace dispute. A remedy may consist of: (A) grant of money, assistance, license, authority, exemption, exception, privilege, or other relief; (B) recognition of a claim, right, immunity, privilege, exemption, or exception; or (C) taking of other action on the application or petition of, and beneficial to, a person.

Workplace dispute— A formal or informal claim or issue in controversy that arises out of an existing or prospective employment relationship between the Air Force and its civilian employees, applicants for employment, or military members, or which otherwise materially affects conditions of employment for Air Force civilian employees, for which a remedial process is authorized by law, regulation, or policy. For purposes of application of ADR principles, a workplace dispute may be written or oral.

Attachment 2

SAMPLE ADR EVALUATION FORM

Figure A2.1. Sample ADR Evaluation Form.

<p>Date Parties Agreed to Use ADR: _____</p> <p>Date ADR Completed: _____</p> <p>Time ADR Started: _____</p> <p>Time ADR Ended: _____</p>	<p>ADR Number (if any): _____</p> <p>Neutral(s): _____</p> <p>_____</p>
---	---

1. What was your role in the case? () **Employee** () **Union** () **Agency** () **Other (please specify)** _____
2. How would you compare the amount of time taken to resolve this case using the ADR process compared with what you believe would have been required if a formal dispute resolution had been used to resolve this dispute? ADR was:

- () **Significantly faster** () **Somewhat faster** () **Same amount of time** () **Somewhat slower**
 () **Significantly slower**

3. **ADR PROCESS** - The following questions concern your experience with the ADR Process. Please tell us how satisfied you were with each of the following features of the process. (For each feature, check the column corresponding to your opinion)

Figure A2.2. ADR Process Survey.

Feature	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied
1. Amount of information you received about the process.					
2. Amount of control you had over the process.					
3. Opportunity to present your side of the dispute.					
4. Fairness of the process.					
5. Overall outcome of the process.					
6. Speed with which the dispute was resolved.					
7. Outcome of the process compared to what you expected it to be before it took place.					
8. Overall, how satisfied were you with the ADR process?					

4. **Mediator/Facilitator:** Please take a moment to evaluate your mediator/facilitator using the following chart.

Figure A2.3. Mediation/Facilitator Evaluation.

	Excellent	Good	Average	Fair	Poor
1. Neutrality (Did the mediator/facilitator have the appearance of impartiality, without favoritism or bias?)					
2. Communication (How well did the mediator/facilitator facilitate communication between the parties?)					
3. Managing the ADR Process (Did the mediator/facilitator effectively handle conflicts, suggest movement ideas, propose problem-solving solutions?)					
4. Patience (Did the mediator/facilitator devote the necessary time and attention to the parties to keep the process moving without appearing to rush or be in a hurry to complete the process?)					
5. Expertise (Did the mediator/facilitator demonstrate the necessary expertise to mediate this type of dispute?)					
6. Facilitative Abilities (Did the mediator/facilitator ask relevant questions to seek out pertinent information and keep the process moving forward?)					
7. Overall Ability of the Mediator/Facilitator in General					

5. Outcome of the Mediation (Please check one): **Full Settlement** **Partial Settlement** **Did not Settle**

6. Would you recommend this process? **Yes** **No**

7. Would you recommend this Mediator/Facilitator for future mediations? **Yes** **No**

Comments: _____

