



## DEPARTMENT OF THE NAVY

NAVAL SEA SYSTEMS COMMAND  
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ARLINGTON VA 22242-5160

IN REPLY REFER TO

NAVSEAINST 12771.3A  
Ser OOL/134  
12 Nov 97

NAVSEA INSTRUCTION 12771.3A

From: Commander, Naval Sea Systems Command

Subj: ALTERNATIVE DISPUTE RESOLUTION (ADR)

Ref: (a) Administrative Dispute Resolution Act of 1996  
(b) SECNAVINST 5800.13  
(c) DoD Directive 5145.5, "Alternative Dispute Resolution (ADR)," 22 Apr 96 (NOTAL)  
(d) Executive Order 12988, "Civil Justice Reform," 5 Feb 96  
(e) Executive Order 12871, "Labor-Management Partnership," 1 Oct 93  
(f) Report of the National Performance Review, "Creating a Government that Works Better & Costs Less," 7 Sep 93  
(g) Equal Employment Opportunity Commission Policy Statement "EEOC: Alternative Dispute Resolution Policy," 17 Jul 95  
(h) Executive Order 12979, "Agency Procurement Protests," 25 Oct 95  
(i) Operating Agreement Between the Commander, Naval Sea Systems Command and NAVSEA's Affiliated Program Executive Officers (PEOs), April 1997

Encl: (1) Metrics Collection Form

1. Purpose. To establish the requirement that all Naval Sea Systems Command (NAVSEA) activities develop, implement and utilize an Alternative Dispute Resolution (ADR) system consistent with the provisions of references (a) through (h).
2. Cancellation. NAVSEAINST 12771.3.
3. Applicability. This instruction applies to NAVSEA Headquarters and field activities, and to associated Program Executive Offices (PEOs) in accordance with reference (i).

4. Definition

"Alternative Dispute Resolution" (ADR) means any procedure that parties agree to use, instead of a formal adjudication, to resolve issues in controversy, including, but not limited to, interest-based negotiations, partnering, conciliation, facilitation, mediation, ombudsmanship, fact finding, mini-trials, neutral evaluation, and arbitration, or any combination thereof.

12 Nov. 97

5. Background

a. This instruction supersedes and replaces NAVSEAINST 12771.3 only and reflects the expanded scope of ADR initiatives within NAVSEA. This instruction does not supersede or replace local guidance, already implemented, which is consistent with this new instruction.

b. References (a) through (h) set out the Federal Government's policies promoting the resolution of disputes with ADR techniques whenever appropriate.

c. Traditional dispute resolution processes often impose a decision handed down by a third party, where neither party is satisfied, and the process is protracted and expensive. In contrast, ADR can provide faster and less costly solutions to disputes and issues in controversy involving NAVSEA programs through stakeholders' participation and buy-in, thereby preserving scarce resources.

d. Alternative dispute resolution emphasizes creativity and cooperation in lieu of adjudicative or adversarial means of solving problems. ADR may take a variety of forms, ranging from consensual decision-making techniques, for example, mediation using a neutral, to binding arbitration. Many of these processes involve some form of assisted negotiation by a neutral third party, relying in large part on mediation skills. It is recognized that there is no single ADR technique or process that will be applicable in every situation or that will meet the needs of every activity and its employees. Activities are to implement an ADR process which best compliments local requirements.

6. Policy. It is the policy of NAVSEA that:

a. All Headquarters and field activities, and PEOs, will, whenever agreed to by all parties to a dispute, implement an ADR procedure in resolving contractual, environmental, EEO/personnel and other disputes over which the Command has cognizance.

b. ADR will not be used when it is determined not appropriate or not in the Government's best interest.

7. Objectives

a. Create voluntary processes which are, to the greatest extent practicable, non-adversarial, whereby involved parties can resolve disputes arising from issues in controversy.

b. Avoid expensive and protracted litigation and improve work relationships with contractors, customers and employees of NAVSEA.

c. Allow for the intervention of an impartial/neutral third party in appropriate cases to assist in identifying the underlying causes of the dispute and offer remedies for resolution.

#### 8. Responsibilities

a. NAVSEA's Dispute Resolution Specialist. NAVSEA will designate a Dispute Resolution Specialist who will promote and coordinate the use of ADR within NAVSEA, establish ADR training requirements for NAVSEA employees, and report to the Navy's Deputy Dispute Resolution Specialist by the end of November each year the information required by SECNAVINST 5800.13.

b. Deputy Commanders, Program Executive Officers, Heads of Command Staff codes, Commanders of the Naval Surface Warfare Center (NSWC), Naval Undersea Warfare Center (NUWC) and Naval Ordnance Center (NOC) will:

(1) Promote the use of ADR.

(2) Designate an ADR point of contact.

(3) Delegate authority to appropriate officials to engage in ADR processes, including authority to select, with appropriate staff advice, the most suitable ADR technique for implementation.

(4) Ensure necessary funding and other resources are available to implement and use ADR, including training.

(5) On no less than an annual basis, evaluate overall effectiveness of the ADR program.

c. ADR Points of Contact will:

(1) Promote and coordinate use of ADR.

(2) Sponsor ADR training.

(3) Collect and maintain reporting information as described in paragraph 10, below, forwarding requisite data, via the appropriate chain of command, to NAVSEA's Dispute Resolution Specialist for annual reporting to SECNAV.

9. Training. Fundamental to the successful implementation of an ADR program throughout NAVSEA is an awareness of when and how to use the various ADR techniques and procedures. NAVSEA supports training appropriate personnel in the use of

ADR to meet these objectives. All training of NAVSEA employees in ADR will be reported to NAVSEA's Dispute Resolution Specialist. Notification in advance is not required.

10. Reporting Requirements. SECNAVINST 5800.13 requires the submission of a report to the Navy's Deputy Dispute Resolution Specialist by the end of November each year describing the Command's use of ADR techniques during the preceding fiscal year. For this report, Deputy Commanders, Program Executive Officers, Heads of Command Staff codes, and Commanders of NSWC, NUWC and NOC shall collect information on the types of ADR techniques used in their respective programs, the total number of ADR processes attempted, the success rate, and any barriers to the use of ADR. By 1 November of each fiscal year, this information shall be provided to the NAVSEA Dispute Resolution Specialist in the format required by enclosure (1) for each fiscal year for incorporation in NAVSEA's report submitted on 30 November.

11. Action. Addressees will implement this instruction upon receipt.



G. R. STERNER

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# ALTERNATIVE DISPUTE RESOLUTION (ADR) — ANNUAL REPORT FY \_\_\_\_\_

1. Activity/Code: \_\_\_\_\_ Prepared by: \_\_\_\_\_ Telephone No.: \_\_\_\_\_

2.\* Indicate each case by type, subject matter, and duration of ADR conducted during Fiscal Year \_\_\_\_\_.

(ADR Techniques)

Ombudsman			Mediation			Conciliation			Facilitation			Fact Finding			Mini-Trial			Non-Binding Arbitration			Binding Arbitration			Interest-Based Negotiations		

(Indicate total of each ADR technique used in last block of each column.)

\* Codes for the ADR table:

Subject Matter: Contracts (C), Personnel (P), Environmental (EN), Tort (T),  
Discrimination Complaints (DC)

Type of Agreement: Full Agreement (F), Partial Agreement (PA),  
No Agreement (N)

Duration of ADR Process: Days (D)/Weeks (W)/Months (M) (from date of ADR  
agreement through conclusion)

Example:

MINI-TRIAL		
P	F	3 M
C	PA	5 W

(Attach a continuation sheet, if required.)

3. If you encountered barriers to implementing ADR in resolving disputes at your activity, please indicate what they were by putting the number of instances in the appropriate box:

- One or both parties declined    
  Funding limitations    
  Union objections    
  Time  
 Loss of control    
  Other (please specify) \_\_\_\_\_

4. If ADR was used after another formal dispute resolution process had been initiated (e.g., litigation), please indicate the number of instances and in which forum the formal process was taking place:

- Federal District Court    
  Armed Services Board of Contract Appeals    
  Equal Employment Opportunity Commission    
  Court of Federal Claims  
 Merit Systems Protection Board    
  Other (please specify) \_\_\_\_\_

5. Indicate the total number of ADR proceedings during Fiscal Year \_\_\_\_\_ that:

- a. the Navy requested \_\_\_\_\_, of which the other party accepted \_\_\_\_\_;  
 b. the other party requested \_\_\_\_\_, of which the Navy accepted \_\_\_\_\_;  
 c. the court or tribunal ordered \_\_\_\_\_.

6. Indicate the total dollar amounts requested and settled in matters subject to ADR concluded during

FY \_\_\_\_\_: (Requested) \$ \_\_\_\_\_ (Settled) \$ \_\_\_\_\_