



STATE OF WEST VIRGINIA  
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NGWV-TAG

**MAY 23 2019**

MEMORANDUM FOR All Personnel

SUBJECT: Alternative Dispute Resolution (ADR) Policy

1. Applicability and guidance for this policy comes from CNGBM 0402.01 "Alternative Dispute Resolution Procedures".
2. The purpose of this memorandum is to outline procedural guidelines concerning Alternative Dispute Resolution (ADR) within the West Virginia National Guard. ADR is a form of mediation which can be used to successfully resolve workplace disputes in an informal fashion. It is an alternative to the formal process of Military Equal Opportunity (MEO) complaints, Equal Employment Opportunity (EEO) complaints, Inspector General (IG) complaints, and labor grievances (technician employees), which take considerably more time and resources to resolve. While all employees of the West Virginia National Guard, technician, AGR, MA and traditional, have the inherent right to file such formal complaints, the use of ADR as an alternative option is highly encouraged by managers and supervisors in order to come to a timely and satisfactory resolution to a conflict within the workplace.
3. Whoever holds the State Equal Employment Manager (SEEM) position is appointed as the WVNG ADR Manager and will be responsible for ADR data collection and reporting.
4. Commanders are encouraged to adopt local policies emphasizing the requirement that managers and supervisors participate in good faith in an ADR process once a dispute is determined to be appropriate for ADR. Good faith participation does not require any party or authorized representative of a party to settle or agree to terms that are unacceptable or unenforceable.
5. All eligible disputes, written or oral, are presumed to be appropriate for ADR unless one or more of the following criteria are found to exist:
  - a. A definitive decision in the matter is needed.

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

c. The need to maintain an established government policy, requiring consistent results.

d. The matter significantly affects non-parties.

e. The need for the development of a full public record.

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

g. 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.

h. Disputes presenting non-severable allegations of misconduct punishable under the authority of Title 10 U.S.C. §§ 801 through 946, "Uniform Code of Military Justice" for military personnel performing duty under Title 10, U.S.C., "Armed Forces," as amended, State Code of Military Justice for military personnel performing duty under Title 32, U.S.C., "National Guard," as amended or State active duty orders, State or Federal criminal laws, or the final authority of The Adjutant General (TAG) pursuant to section 709 of Title 32, U.S.C., "National Guard," as amended.

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

j. Complaints under the authority of Article 138 of reference c, or the State equivalent.

k. Civilian position classification appeals.

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

6. Participants in dispute ADR proceedings consist of mediators, neutrals and parties. All mediators are certified and trained per the guidance set forth in the CNGBM 0402.01. Mediators are to be impartial to the parties involved, having no knowledge of the incident(s), prior to being assigned as mediators. Neutrals will be individuals who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy.

a. Subject to local bargaining agreements, parties may appear alone or with one or more

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representatives of their choice. Representatives may or may not be attorneys. A Neutral will have the authority to set reasonable limits on the number of representatives and the need for full and effective communication between the parties and Neutral.

b. The person representing management in an ADR proceeding will have immediate access to those who have the authority to settle the issue(s) in controversy. Military customs and courtesies, and civil decorum will be maintained and the mediator has the authority to suspend or terminate the mediation based upon party misconduct.

7. The following guidelines outline the ADR process:

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

b. Neutrals will be designated by the State ADR Manager or selected by the parties from a list of alternatives provided by the State ADR Manager. If a suitable Neutral cannot be obtained from local resources, the WVNG will request assistance from the NG ADR Program Office or another State National Guard which can provide ADR support.

c. Once the mediator or other Neutral is selected, the State ADR Manager will convene the proceeding by arranging for its location, date and time. Unrelated disputes involving multiple parties will not be combined into a single ADR proceeding.

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

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

d. To conduct the ADR proceedings the State ADR Manager will ensure:

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

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

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(3) Translators and others who will be present while the proceeding is in session, including private caucuses, are nonparty participants. If the State ADR Manager determines a neutral location is not reasonably available or cannot provide reasonable accommodation, other suitable facilities may be selected.

e. Mediation of a NG workplace dispute will follow the facilitative mediation model. In the event a different procedure is agreed to by the parties and approved by the ADR Manager, alternate methods of ADR may be employed.

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

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

8. To ensure quality of the process, mediation will be conducted in a manner that promotes diligence, timeliness, presence of the appropriate participants, party participation, procedural fairness, party competency and mutual respect.

9. To reach a settlement neutrals will assist parties in drafting a settlement agreement describing the terms and conditions of their settlement if parties are able to settle one or more issues in their case.

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

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

c. Any agreement reached or order issued pursuant to a dispute resolution proceeding may be disclosed. For example, an agreement to mediate a dispute or a settlement agreement reached as a result of that mediation is not protected from disclosure under Title 5 U.S.C. §§ 571-584, "Administrative Dispute Resolution Act of 1996." Disclosure or other uses of such an agreement, however, may be restricted by the terms of the agreement itself or by other

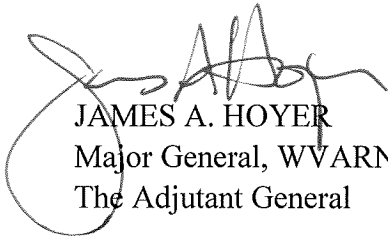
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measures. Allegations of breach of a settlement agreement will be handled according to procedures established for the type of workplace dispute.

10. In the instance an ADR reaches an impasse, the proceedings should be terminated. Prior to termination of an ADR process, the mediator will caucus to determine if the impasse can be overcome. However, parties will be advised of other remedies and processes available to them if ADR fails to resolve the dispute as long as applicable time limits are met.

11. The point of contact for this memorandum is the State Equal Employment Manager (SEEM), SSG Matthew C. Shifflett at (304) 561-6430 or DSN 623-6430.



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