



CHIEF NATIONAL GUARD BUREAU INSTRUCTION

NG-J1-EO
DISTRIBUTION: A

CNGBI 9600.01
09 June 2013

ALTERNATIVE DISPUTE RESOLUTION POLICY AND GUIDANCE

References: See Enclosure C.

1. Purpose. This instruction provides policy for Alternative Dispute Resolution in the National Guard for resolving workplace disputes through the Equal Employment Opportunity (EEO) and Equal Opportunity (EO) complaint systems.

2. Cancellation. This instruction cancels All States Memorandums Log Numbers P00-0045 and P11-0002, dated 31 July 2000 and 09 March 2011 respectively, entitled "Equal Opportunity Alternative Dispute Resolution Program."

3. Applicability. This instruction applies to the Army and Air National Guard of the States, Territories, and the District of Columbia, referred to in this instruction as the National Guard.

4. Policy.

a. It is National Guard policy to encourage voluntary use of Alternative Dispute Resolution (ADR) and other collaborative dispute-resolution processes to the maximum extent practical and appropriate. Resolve workplace disputes at the earliest stage feasible, by the fastest and least expensive method possible, and at the lowest possible organizational level consistent with the Department of Defense (DoD), the Department of the Army, and the Department of the Air Force in accordance with (IAW) references a through j.

b. The National Guard will use ADR in EEO and EO discrimination complaints to the maximum extent practical and appropriate IAW references e and j. It is presumed that most matters are suitable for ADR.

(1) ADR is limited to mediation for EEO complaints (see Enclosure A).

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(2) The preferred ADR process for EO complaints is facilitation (see Enclosure B).

(a) The National Guard Bureau (NGB) prefers to use ADR first to address all workplace disputes.

(b) ADR is offered throughout the EO pre-complaint and formal complaint process.

(c) Whenever a complainant accepts ADR, management will participate in mediation or facilitation to the maximum extent practical and appropriate.

(d) ADR is waived in instances of fraud, waste, abuse, criminal behavior, harm, or threats of harm to persons.

5. Definitions.

a. Mediation -- A structured process in which disputing parties seek the assistance of a qualified mediator to help them resolve their issues in controversy. The primary attribute of mediation is the process in which the mediator assists parties involved in a dispute in the use of interest-based, problem-solving techniques that allow for resolution of their dispute. To reach a settlement, the parties can participate in separate and confidential caucuses with the mediator and explore possible settlement options thoroughly.

b. Facilitation -- The facilitation process mirrors the mediation process. The difference is that there is less inclination to caucus throughout the process. A facilitator does not typically become as involved in the substantive issues of a dispute as would a mediator, but focuses more on procedural assistance and remains impartial to the topics under discussion.

6. Responsibilities.

a. NGB Chief Counsel is responsible for the oversight of all NGB ADR programs.

b. Chief of the ADR Branch is responsible for:

(1) Establishing and implementing policy guidance for the EO ADR program.

(2) Encouraging, developing, and implementing ADR initiatives.

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(3) Conducting training as required and identifying and eliminating unnecessary barriers to ADR.

(4) Maintaining a trained cadre of ADR neutrals who are available to conduct mediation and facilitation for EEO and EO complaints.

7. Summary of Changes. None.

8. Releasability. This instruction is approved for public release; distribution is unlimited. NGB directorates, The Adjutants General, the Commanding General of the District of Columbia, and Joint Force Headquarters-State may obtain copies through <<http://www.ngbpdc.ngb.army.mil>>.

9. Effective Date. This instruction is effective upon publication and must be reissued, cancelled, or certified as current within five years of its publication IAW reference f.



FRANK J. GRASS
General, USA
Chief, National Guard Bureau

Enclosures:

- A -- Procedures for Equal Employment Opportunity Complaints
- B -- Procedures for Equal Opportunity Complaints
- C -- References
- GL -- Glossary

ENCLOSURE A

ALTERNATIVE DISPUTE RESOLUTION PROCEDURES FOR
EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS

1. Introduction. Use the following procedures for informal EEO complaints when the complainant chooses ADR or if the State requests it.
2. Assessment and relationship with State Judge Advocate. Whenever a complainant elects to use the ADR process or whenever the State Equal Employment Manager (SEEM) believes that an informal complaint is ripe for mediation, the SEEM reviews the complaint for ADR suitability in conjunction with the State Judge Advocate (See reference h for examples). Afterward, the SEEM immediately notifies the Chief of the ADR Branch by telephone at 703-607-1576 or by using the email address found on the NGB EO Web page.
3. Request. The SEEM will complete a copy of the ADR form (Request for Mediation of Pre-Complaint in Appendix A), and submit it, along with copies of all documentation provided by the two parties and documents the EEO counselor obtained and/or prepared. Then, forward the same documents to the Chief of the ADR Branch.
4. Documentation. Assemble copies of documentation in chronological order and place them into a hardbound complaint folder.
5. Case Number. The Chief of the ADR Branch will assign an ADR number for tracking purposes upon receipt of the documentation. The case number reflects the two-letter state abbreviation, followed by "ADR." The type of complaint will be identified as "EEO" or "MEO," for Military Equal Opportunity (MEO), followed by a sequential number (For example, IA-ADR-EEO-1 or IA-ADR-MEO-1).
6. Mediator. After the SEEM and State Judge Advocate find ADR is suitable and the parties agree to use it, the SEEM arranges for a mediator. If the SEEM does not have a mediator available, then the Chief of the ADR Branch can provide information regarding available mediators. When the mediation concludes, the SEEM notifies the Chief of the ADR Branch of the outcome.
7. Settlement. If all parties reach a settlement, then the SEEM forwards a copy of the agreement to the Chief of the ADR Branch. All settlement agreements must contain the provision specified in reference g, paragraph 7-12 a, b, e, and f. Therein, "Complaints Management and Support Activity (CMSA)" will be replaced with "Director, National Guard Bureau-Equal Opportunity."
8. Notification. If an agreement is not reached and the complainant desires to file a formal complaint, then the SEEM must inform the Complaints

Management and Adjudications Division that a mediation has occurred whenever the complaint is submitted for Acceptance and Dismissal. The SEEM will send a copy of the notice to the Chief of the ADR Branch.

9. Second Mediation. The Investigations Resolutions Division (IRD) will conduct a second mediation on all formal complaints accepted for investigation.

ENCLOSURE B

PROCEDURES FOR EQUAL OPPORTUNITY COMPLAINTS

1. Introduction. The following procedures will be used for processing all informal and formal MEO complaints.
2. Assessment. Whenever an informal complaint is expressed to a MEO Professional, he or she will immediately confer with the SEEM, who will assess suitability for ADR. If approved, the MEO Professional will immediately present the complainant with the option to participate in an ADR model called “facilitation.”
3. Facilitation. Facilitation is used to improve the flow of communication in a meeting between the parties of a dispute. The parties can sign a settlement agreement, but it will not bind the Army or Air National Guard nor the United States Army or Air Force. The case is resolved when the Commander says it is resolved, not when the agreement is signed. Neither a settlement review chain nor agency personnel on standby as subject matter experts are needed.
4. Preparation. If the complainant agrees to participate in the facilitation session, then the MEO Professional and SEEM determine the appropriate attendees for the facilitation session. The MEO Professional will then contact the attendees to solicit their participation. If the identified attendees agree to participate, then the SEEM and MEO Professional will prepare for the facilitation by completing a copy of the ADR form (Request for MEO Complaint Facilitation in Appendix B) and submitting it to the Chief of the ADR Branch, for tracking purposes. The SEEM or MEO Professional will arrange for the facilitator. If none are available, the Chief of the ADR Branch provides the SEEM and MEO Professional with the name of a facilitator to conduct the facilitation.
5. Facilitator Selection. The SEEM and MEO Professional select the facilitator, contact the facilitator, solicit available dates from all parties, arrange logistics, and schedule the facilitation session.
6. Notification. When the facilitation session concludes, the SEEM contacts the Chief of the ADR Branch regarding the outcome.
7. No Resolution. If the informal complaint is not resolved during the facilitation session, then the MEO Professional resumes processing the informal complaint, pursuant to reference i.
8. Formal Complaint. When the basic fact-finding concludes, the MEO Professional again offers the parties the option to attend a “facilitation”

following the same steps described herein. The SEEM also advises the Chief of the ADR Branch regarding the outcome of the facilitation.

9. Costs. The requesting State is responsible for the cost of travel and per diem of the chosen facilitator.

10. Preferences. The SEEM can designate preferences for his or her facilitator, such as rank, gender, military member, civilian, or language preference. The State, Territory, or District of Columbia may appoint an internal mediator to conduct a mediation, or request a mediator to conduct a facilitation, from the Chief of the ADR Branch.

11. Conclusion. Whenever a complaint is filed, facilitation is offered at each level of the complaint process when the allegations are presented to the Command. The SEEM and the MEO Professional follow the steps described herein.

APPENDIX A TO ENCLOSURE B

REQUEST FOR MEDIATION OF PRE-COMPLAINT FORM

REQUEST FOR MEDIATION OF PRE-COMPLAINT		
The proponent of this form is NG-J1-EO, the prescribing directive is CNGBI 9600.01		
Privacy Act Statement		
<p>AUTHORITY: Title VII of the Civil Rights Act of 1964, as amended 42 USC 2000e and Title 29 Code of Federal Regulations, Part 1614.</p> <p>PRINCIPLE PURPOSE: Used by National Guard technicians when requesting mediation of an informal complaint of discrimination.</p> <p>ROUTINE USES: Used by National Guard Technicians in requesting mediation of an informal complaint of discrimination from the National Guard Bureau. Used by the State Adjutant General when requesting mediation of an informal complaint from the National Guard Bureau. The form becomes a part of the official complaint file. This information may be disclosed to the Equal Employment Opportunity Commission, state or federal courts for reviews, decisions, and appeals of decisions. The National Guard Bureau Equal Opportunity Office is the official custodian of record.</p> <p>DISCLOSURE: Voluntary. A complainant requesting mediation of an informal complaint of discrimination must complete this form. It is not mandatory in that requests for mediation of informal complaints of discrimination will be accepted if submitted in other formats. Failure to provide information as specified may result in delay or rejection of the mediation request.</p>		
Section I - Complaint Information		
1. Date of Request	2. Date of Initial Contact with EEO Office about complaint	3. Local Docket No.
4. Preferred method of mediation <input type="checkbox"/> On-Site <input type="checkbox"/> VTC <input type="checkbox"/> Telephonic	5. Basis: <input type="checkbox"/> Race <input type="checkbox"/> Color <input type="checkbox"/> National Origin <input type="checkbox"/> Religion <input type="checkbox"/> Retaliation <input type="checkbox"/> Sex (including pregnancy) <input type="checkbox"/> Disability <input type="checkbox"/> Age <input type="checkbox"/> Genetic Information	
6. Claims/Issues (briefly stated)		
Section II - Complainant Information		
7. Name (Last, MI, First)		8. Phone number
9. Address (street, city, zip code)		10. Email address
11. Activity/Major Command Information/Complainant's Activity and Installation (please spell out, with addresses)		
12. Complainant's Major Command		
13. Activity Complaint Against (if different from Complainant's Activity)		
14. Major Command Against (if different from Complainant's Major Command)		
Section III - EEO POC Information		
15. Name		17. Phone number:
16. Address (street, city, zip code)		18. Fax
		19. Email address

NGB Form 5438, 20130621

APPENDIX B TO ENCLOSURE B

REQUEST FOR MEO COMPLAINT/FACILITATION FORM

REQUEST FOR MILITARY EQUAL OPPORTUNITY COMPLAINT FACILITATION			
<small>The proponent of this form is NG-J1-EO, the presorbing directive is CNGBI 9600.01</small>			
AUTHORITY: 42 U.S.C. Section 2000d		Privacy Act Statement	
PRINCIPLE PURPOSE To document the request for facilitation of a military equal opportunity complaint of discrimination in the Army National Guard or the Air National Guard			
ROUTINE USES: None			
DISCLOSURE: Voluntary. However, failure to complete all portions of this form could affect the timely processing of the facilitation request or result in the rejection of the facilitation request.			
Section I - Complaint Information			
<small>* To be completed by the SEEM and submitted with the Agreement to Facilitate</small>			
1. Date of request	<input type="checkbox"/> Formal Complaint <input type="checkbox"/> Informal Complaint	4. Local docket number	5. Preferred method of mediation <input type="checkbox"/> On Site <input type="checkbox"/> VTC
6. Date of complainant's initial contact with EEO office	7. Basis <input type="checkbox"/> Race <input type="checkbox"/> Color <input type="checkbox"/> National Origin <input type="checkbox"/> Religion <input type="checkbox"/> Gender		
8. Claims/Issues			
Section II - Party Requesting Facilitation			
9. Name		10. Job Title and grade or rank	11. Phone number
12. Address		13. Email	
14. Activity/Major Command Information			
15. Complainant's activity and installation			
16. Name of complainant's representative (if applicable)			
Section III - Party against Whom complaint is filed			
17. Name		18. Job Title and grade or rank	
19. Major Command against (if different from complainant's Major Command)			
Section IV - EEO POC Contact Information (SEEM)			
20. Name		21. a) Phone _____	
22. Address		b) Fax _____	
		c) Email: _____	
23. Preferences			
24. Parties have been told that the use of alternate dispute resolution is voluntary and that they are not required to participate in order to resolve the dispute:		<input type="checkbox"/> YES	<input type="checkbox"/> NO
25. Do the parties have any objection to the use of co-facilitators?		<input type="checkbox"/> YES	<input type="checkbox"/> NO
Section V - Scheduling			
25. Location of the facilitation session (address, room number)			
27. Three dates when parties agree to make themselves available for facilitation			
a) First choice _____	b) Second choice _____	c) Third choice _____	

NGB Form 5437, 20130621

ENCLOSURE C

REFERENCES

- a. DoD Directive 5145.5, 22 April 1996, "Alternative Dispute Resolution"
- b. NG Regulation 27-1/ANG Instruction 51-12, 06 April 2001, "Alternative Dispute Resolution"
- c. DA Secretary of the Army Memorandum, 22 June 2007, "Implementation of the Administrative Dispute Resolution Act of 1990"
- d. AFPD 51-12, 05 March 2010, "Alternate Dispute Resolution"
- e. 29 Code of Federal Regulations, § 1614. 102.102 (b) (2)
- f. CNGB Instruction 5000.01, 30 November 2011, "Issuances and National Guard Bureau Publications Guidance"
- g. NG Regulation 690-600/NG Regulation (AF) 40-1614 Vol II, 15 March 1993, "National Guard Civilian Discrimination Complaint System"
- h. Administrative Dispute Resolution Act 5 U.S.C. § 572
- i. NG Regulation (Army) 690-22/NG Regulation (Air Force) 40-6014, 30 March 2001, "National Guard Military Discrimination Complaint System."
- j. EEOC Management Directive 110, 09 November 1999

GLOSSARY

ABBREVIATIONS AND ACRONYMS

ADR	Alternative Dispute Resolution
CMSA	Complaints Management Support Activity
DoD	Department of Defense
EEO	Equal Employment Opportunity
EO	Equal Opportunity
IAW	In accordance with
IRD	Investigations Resolutions Division
MEO	Military Equal Opportunity
NGB	National Guard Bureau
SEEM	State Equal Employment Manager