

**BY ORDER OF THE
SECRETARY OF THE AIR FORCE**

**DEPARTMENT OF THE AIR FORCE
INSTRUCTION 51-1201**



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Law

**NEGOTIATION AND DISPUTE
RESOLUTION PROGRAM**

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This Instruction implements Department of the Air Force Policy Directive 51-12, *Negotiation and Dispute Resolution*. It establishes the Department of the Air Force Negotiation and Dispute Resolution (NDR) Program and promulgates the Department of the Air Force (DAF) policy and procedures required to address the use of alternative means of dispute resolution and conflict management practices under the Administrative Dispute Resolution Act (ADRA) and DoD Instruction (DODI) 5145.05, *Alternative Dispute Resolution (ADR) and Conflict Management*. It assigns responsibility to Headquarters stakeholders to align resources to support ADR and conflict management practices appropriate for their respective transactional areas. Material in the appendices supports Major Commands (MAJCOMs), Field Commands (FLDCOMs), Direct Reporting Units (DRUs), and Field Operating Agencies (FOAs) in fulfilling their responsibilities for workplace dispute resolution. It also includes minimum qualifications and standards of conduct for DAF mediators and other neutrals, the rules of confidentiality applicable to DAF ADR proceedings, performance measurements and evaluations to assess the effectiveness of the NDR Program in resolving workplace disputes, and best practices for the establishment of Command-level workplace NDR programs. This instruction applies to Department of the Air Force civilian employees and uniformed members of the United States Space Force, the Regular Air Force, the Air Force Reserve, and the Air National Guard on federal active duty status under Title 10, U.S. Code. This instruction does not apply to contractors, non-federalized ANG units in a military status under Title 32 of the U.S.C., which are subject to Chief National Guard Bureau Instruction (CNGBI) 0402.01, *National Guard Alternative Dispute Resolution*, or the Civil Air Patrol. This instruction may be supplemented at any level, but all supplements must be routed to Deputy General Counsel of the Air Force (Contractor Responsibility and Conflict Resolution (SAF/GCR))

for coordination prior to certification and approval. The authorities to waive wing/delta unit level requirements are identified with a Tier number (“**T-0, T-1, T-2, T-3**”) following the compliance statement. See Department of the Air Force Instruction (DAFI) 90-160, *Publications and Forms Management*, for a description of the authorities associated with Tier numbers. Submit requests for waivers through the chain of command to the appropriate Tier waiver approval authority or alternatively, to the requestor’s commander for non-tiered compliance items. This instruction requires the collection and/or maintenance of information protected by the Privacy Act of 1974 authorized by Department of Defense Directive (DoDD) 5400.11, *DoD Privacy Program*. The applicable SORN F051 SAFGC A, *Air Force Mediator Utilization Management Records*, is available at: <http://dpclo.defense.gov/Privacy/SORNs.aspx>. Ensure all records generated as a result of processes prescribed in this instruction adhere to Air Force Instruction 33-322, *Records Management and Information Governance Program*, and are disposed in accordance with the Air Force Records Disposition Schedule, which is located in the Air Force Records Information Management System. Refer recommended changes and questions about this instruction to the Office of Primary Responsibility using the Department of the Air Force Form 847, *Recommendation for Change of Publication*; route every Department of the Air Force Form 847 from the field through MAJCOM, FLDCOM, DRU and FOA Commanders or their designees.

SUMMARY OF CHANGES

This instruction has been substantially revised and should be reviewed in its entirety. It updates language to reflect application to the United States Space Force and charges NDR Program stakeholders to take an active role in employing ADR and conflict management practices appropriate for their transactional areas, to include training and resource alignment. For workplace mediations, whether a dispute is appropriate for ADR is a Command/Agency function to be performed by the installation Staff Judge Advocate, and when found appropriate, management is expected to participate in the mediation. DAF mediators who mediate as a “lead” or solo mediator must be certified by the NDR Program. While the guidelines for certification are published separately, this instruction designates three levels of proficiency based on education, training, and experience: Level I (Certified), Level II (Advanced), and Level III (Expert).

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1. Overview. In accordance with the *Administrative Dispute Resolution Act of 1996* (ADRA) and the policy established in Department of Defense (DoD) Instruction (DoDI) 5145.05, *Alternative Dispute Resolution (ADR) and Conflict Management*, this Department of the Air Force (DAF) Instruction (DAFI) establishes the DAF Negotiation and Dispute Resolution (NDR) Program.

2. Roles and Responsibilities

2.1. The Deputy General Counsel for Contractor Responsibility and Conflict Resolution (SAF/GCR). SAF/GCR will:

2.1.1. Execute, through the Deputy General Counsel (SAF/GCR), the functions and authorities of the Dispute Resolution Specialist for the DAF.

2.1.2. In accordance with HAF MD 1-14, *General Counsel and The Judge Advocate General*, lead the DAF NDR Program.

2.1.3. In appropriate cases and mission areas, promote and expand the use of negotiation, ADR, and conflict management practices in accordance with DoDI 5145.05 and the ADRA.

2.1.4. Act as the certifying official for DAF-level guidance implementing the NDR Program.

2.1.5. Establish standards of conduct for mediation and the use of related ADR techniques, including the utilization of neutrals, for DAF mediators and parties.

2.1.6. In accordance with HAF MD 1-14, approve and establish the DAF's best practices to guide leaders in implementing NDR programs as delineated in this instruction.

2.1.7. Receive ADR data from major commands (MAJCOMs), field commands (FLDCOMs), field operating agencies (FOAs), and direct reporting units (DRUs), and provide Department of Defense (DD) Form 2815, *Alternative Dispute Resolution (ADR) Annual Report*, to the (DoD) Deputy General Counsel (Legal Counsel) (DGC(LC)) in accordance with DoDI 5145.05.

2.1.8. Establish policy for the use of voluntary binding arbitration, in accordance with 5 U.S.C. § 575(c) of the ADRA and HAF MD 1-14, as appropriate.

2.1.9. Receive input from Program stakeholders, to include SAF/AQ, SAF/SQ, SAF/IA, SAF/IE, SAF/MR, AF/A1, SF/S1, SAF/DI, and AF/JA to establish the following:

2.1.9.1. NDR Program strategic direction and objectives.

2.1.9.2. Identification of barriers to the use of ADR and conflict management practices.

2.1.9.3. Alignment of the DAF's NDR educational and training resources with the NDR strategic direction and objectives. Provide substantive resources as appropriate for Program stakeholders to support their NDR educational and training responsibilities as delineated in this instruction.

2.2. The Judge Advocate General (AF/JA). AF/JA will:

2.2.1. Collaborate, as appropriate, with leaders and SAF/GCR to establish NDR policy and procedures to promote and expand the use of ADR and conflict management practices, including elimination of barriers to their use. **(T-1)**

2.2.2. In accordance with HAF MD 1-14, collaborate with SAF/GCR on the implementation of DAF NDR policy. **(T-1)**

2.2.3. Collaborate, as appropriate, with leaders and SAF/GCR on the reporting of ADR data as provided in this instruction and HAF MD 1-14. **(T-1)**

2.2.4. Ensure training is received by their personnel involved in implementing and maintaining the NDR Program, as required by DoDI 5145.05. **(T-0)**

2.2.5. Adhere to the process requirements and records requirements in Appendix 4 regarding appropriateness (suitability) determinations. **(T-1)**

2.3. The Assistant Secretary of the Air Force for Acquisition, Technology, and Logistics (SAF/AQ); the Assistant Secretary of the Air Force for Space Acquisition and Integration (SAF/SQ); the Deputy Under Secretary of the Air Force, International Affairs (SAF/IA); the Assistant Secretary of the Air Force for Installations, Environment, and Energy (SAF/IE); the Assistant Secretary of the Air Force for Manpower and Reserve Affairs (SAF/MR); the Deputy Chief of Staff for Manpower, Personnel and Services (AF/A1); the Deputy Chief of Space Operations for Human Capital (SF/S1); and the Director of Diversity and Inclusion (SAF/DI). SAF/AQ, SAF/SQ, SAF/IA, SAF/IE, SAF/MR, AF/A1, SF/S1, and SAF/DI will:

2.3.1. Establish negotiation, ADR, and conflict management education and training resources in their respective transactional areas, in collaboration with appropriate educational and training commands and organizations, and SAF/GCR, in alignment with NDR strategic direction and objectives. **(T-1)**

2.3.2. Ensure training is received by respective personnel involved in implementing and maintaining the NDR Program within their respective functional areas, as required by DoDI 5145.05. **(T-0)**

2.3.3. Provide adequate resources, including dedicated personnel resources, necessary to fulfill their respective NDR responsibilities delineated in Department of the Air Force Policy Directive (DAFPD) 51-12, this instruction, and as required by law and by DoDI 5145.05. **(T-1)**

2.4. MAJCOMs, FLDCOMs, DRUs and FOAs. Each MAJCOM, FLDCOM, DRU and FOA Commander will:

2.4.1. Ensure adequate resources are provided, including dedicated personnel resources, necessary to fulfill the command NDR responsibilities delineated in DAFPD 51-12, this instruction, and as required by law and DoDI 5145.05. **(T-1)**

2.4.2. Support the provision of NDR educational and training resources to appropriate personnel within their commands, in collaboration with the Secretariat, Air Staff and Office of the Chief of Space Staff functionals delineated in [paragraph 2.3](#), appropriate education and training commands and organizations, and SAF/GCR in alignment with NDR Program strategic direction and objectives. **(T-1)**

2.4.3. Ensure training is received by personnel under their command who are involved in implementing and maintaining the NDR Program, as required by DoDI 5145.05. (T-1)

2.4.4. Collect and report ADR data at their respective commands using DD Form 2815. DD Form 2815 shall be routed by commanders to SAF/GCR annually no later than 10 October, to enable DAF compliance with DoDI 5145.05 reporting requirements. (T-1)

2.4.5. Adhere to the procedural requirements in Appendix 2 regarding the utilization of workplace neutrals and the process requirements in Appendix 4 regarding appropriateness (suitability) determinations. (T-1)

2.4.6. Consider the best practices and related guidance provided by SAF/GCR for establishment of Command-level Workplace NDR programs. See Appendix 3, Appendix 4, and the DAF NDR Program website at www.adr.af.mil. (T-2)

3. Procedural Standards and Resources

3.1. For procedures regarding the use of neutrals, including workplace mediators, and the DAF standards of conduct and the ADRA confidentiality requirements that pertain to them, see Appendix 2.

3.2. Regulations regarding the use of ADR in acquisition can be found in the Air Force Federal Acquisition Regulation Supplement (AFFARS) (e.g. Part 5333, *Protests, Disputes, and Appeals* and Subpart 5301.91, *Ombudsman Program*). Additional guidance can be found in the *ADR Deskbook for Acquisition Professionals* at www.adr.af.mil, along with resources regarding other transactional disputes (e.g., environmental, international).

3.3. Command compliance with DoDI 5145.05 ADR data reporting requirements may be accomplished electronically. Recommended guidelines for the tracking and reporting of data in workplace disputes can be found in Appendix 3.

PETER J. BESHAR
General Counsel

Attachment 1

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

References

Title 5 U.S.C. § 552a, *Privacy Act*, 21 November 1974

Title 5 U.S.C. § 571, *et seq.*, *Administrative Dispute Resolution Act of 1996*, 19 October 1996

29 C.F.R. Part 1614, *Federal Sector Equal Employment Opportunity*

DoDI 5145.05, *Alternative Dispute Resolution (ADR) and Conflict Management*, 27 May 2016

HAF MD 1-14, *General Counsel and The Judge Advocate General*, 29 December 2016

DAFPD 51-12, *Negotiation and Dispute Resolution*, 12, January 2023

AFI 33-322, *Records Management and Information Governance Program*, 23 March 2020

DAFI 36-2710, *Equal Opportunity Program*, 18 June 2020

DAFI 90-160, *Publications and Forms Management*, 14 Apr 2022

AFFARS, Part 5333, *Protests, Disputes, and Appeals*, and Subpart 5301.91, *Ombudsman Program*

CNGBI 0402.01, *National Guard Alternative Dispute Resolution*, 24 July 2015

EEOC MD-110, *Equal Employment Opportunity Commission Equal Employment Opportunity Management Directive*, 5 August 2015

Adopted Forms

DD Form 2815, *Alternative Dispute Resolution (ADR) Annual Report*

DAF Form 847, *Recommendation for Change of Publication*

Abbreviations and Acronyms

ADR—Alternative Dispute Resolution

ADRA—Administrative Dispute Resolution Act

AFFARS—Air Force Federal Acquisition Regulation

DAF—Department of the Air Force

DAFI—Department of the Air Force Instruction

DAFPD—Department of the Air Force Policy Directive

DoD—Department of Defense

DoDI—Department of Defense Instruction

DRU—Direct Reporting Unit

EEO—Equal Employment Opportunity

EEOC—Equal Employment Opportunity Commission

FLDCOM—Field Command

FOA—Field Operating Agency

HAF—Headquarters Air Force

MAJCOM—Major Command

NDR—Negotiation and Dispute Resolution

SJA—Staff Judge Advocate

Office Symbols

AF/A1—Deputy Chief of Staff for Manpower, Personnel, and Services

AF/JA—Office of The Judge Advocate General

AF/JAC—Civil Law and Litigation Directorate

SAF/AQ—Assistant Secretary of the Air Force for Acquisition, Technology, and Logistics

SAF/DI—Director of Diversity and Inclusion

SAF/IA—Deputy Under Secretary of the Air Force (International Affairs)

SAF/IE—Assistant Secretary of the Air Force for Installations, Environment, and Energy

SAF/GC—Office of the General Counsel

SAF/GCR—Office of the General Counsel Contractor Responsibility and Conflict Resolution

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

SAF/SQ—Assistant Secretary of the Air Force for Space Acquisition and Integration

SF/S1—Deputy Chief of Space Operations for Human Capital

Terms

Alternative Dispute Resolution (ADR)—Any procedure that is used to resolve issues in controversy by mutual agreement of the parties, including but not limited to conciliation, facilitation, mediation, fact-finding, minitrials, advisory arbitration, and the use of ombuds, or any combination thereof (5 U.S.C. § 571(3)). ADR proceedings utilize the services of a neutral third party to assist the parties in resolving their dispute.

Confidentiality—As used in this instruction, 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 Administrative Dispute Resolution Act of 1996, 5 U.S.C. § 574.

Dispute Resolution—The process of settling disagreements to include adjudication, such as litigation or arbitration, or alternative means, such as facilitation, mediation, conciliation, or negotiation.

Workplace Dispute—A formal or informal claim or issue in controversy that arises out of an existing or prospective employment relationship between the DAF and its civilian employees, applicants for employment, or military members, or which otherwise materially affects conditions

of employment for DAF 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.

Workplace Neutral—An individual designated or appointed to assist the parties in resolving workplace disputes. 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 a DAF 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. DAF civilian employees and military members serving as mediators in DAF workplace disputes must also meet minimum qualifications as set forth in Appendix 2, Section 1. For purposes of determining whether communications are confidential, the term “neutral” also includes ADR intake or other administrative personnel designated and identified by a MAJCOM, FLDCOM, DRU, or FOA Commander or their designee 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.

Attachment 2**GUIDANCE ON THE USE OF NEUTRALS, THE DAF STANDARDS OF CONDUCT AND ADRA CONFIDENTIALITY REQUIREMENTS FOR THIRD-PARTY NEUTRALS****Appendix 2****Section 1. Appointment and Qualifications of DAF Mediators**

MAJCOM, FLDCOM, DRU, and FOA Commanders and their designees, are granted wide latitude in meeting their responsibilities under this instruction. If they decide to use DAF mediators, they should determine and execute the best means for recruiting and making available qualified mediators (or other types of neutrals), based on need and availability. At installations that do not have a history of significant workplace dispute activity, in lieu of maintaining a roster of internal mediators, mediators or other third-party neutrals may be obtained from other sources. Installation commanders should seek ‘volunteers’ to perform mediation duties, vice ‘appointing’ them; further, a recommendation from the individual’s first line supervisor and commander is highly recommended, attesting to the individual’s fitness to perform such duties, taking into consideration the person’s professional manner and demeanor, ability to speak and write very well, and innate ability to engage others in conversation, among other things. While on appointment, and selected to perform a mediation, the individual’s duty should be recognized as an “in lieu of” duty/responsibility taking precedence over normal day-to-day duties/responsibilities. Once a specific mediation is completed, the individual returns to normal duties until assigned to perform another mediation. Individuals who receive DAF-provided mediation training generally should be made available for mediation duties, following appropriate on-the-job training. Exceptions may be made for individuals who receive mediation training in order to manage an NDR program or provide ADR support. DAF mediators on active rosters should undergo a minimum of 8 hours of mediation refresher training per fiscal year, including at least 1 hour of training in standards of conduct, confidentiality, and/or drafting settlement agreements. Commanders and their designees also should institute mechanisms for ensuring that mediators receive annual refresher training on duty time.

Commanders or their designees should appoint mediators in writing, and assign them to specific cases once appointed. Mediators in training are apprentice mediators. Before a DAF apprentice mediator can mediate a DAF workplace dispute as a “lead” or solo mediator, the individual should meet the following minimum qualification requirements:

1. Successful completion of the DAF Basic Mediation Course or a comparable mediation training program consisting of at least 30 hours of combined classroom instruction and role-play exercises. SAF/GCR leads NDR Program support for annual Air Education and Training Command basic mediation courses.
2. Co-mediation in three or more disputes with a mediator certified at least Level I (Certified) and is observed and evaluated by a mediator certified at Level II (Advanced) or higher.

3. Approval for appointment as a lead mediator, conditional upon Level I certification, by a commander or commander's designee.

For Equal Employment Opportunity (EEO) complaint mediations, mediators should understand EEO laws and federal agency EEO complaint procedures contained in 29 C.F.R. Part 1614, and Equal Employment Opportunity Commission (EEOC) Management Directive 110. Commanders or their designees should ensure that individuals assigned to mediate EEO complaints have the proper training and/or qualifications to perform such duties. For additional information on EEO complaints, refer to DAFI 36-2710, *Equal Opportunity Program*.

Finally, the DAF offers certification of DAF mediators at three levels of proficiency based on education, training, and experience. The three levels are: Level I (Certified); Level II (Advanced); and Level III (Expert). SAF/GCR is the certification authority for all levels, and is responsible for establishing the DAF Mediator Certification Program Guidelines. This includes the authority to suspend, revoke, or reinstate mediator certification, as warranted. Certification at Level I (Certified) is mandatory to mediate as a "lead" or solo mediator, but is not required to co-mediate or otherwise serve as a third-party neutral in a DAF workplace dispute, except as follows:

1. A DAF mediator who evaluates another mediator for purposes of qualifying the mediator to meet basic qualification standards or to obtain Level I (Certified) certification should be certified at Level II (Advanced) or higher.
2. Only mediators certified at Level II (Advanced) or higher are eligible for SAF/GCR NDR Program funds to travel to another location to conduct mediations. Additional information regarding the appointment and qualifications of DAF mediators and the ADAF Mediator Certification Program can be found at www.adr.af.mil.

Section 2. Standards of Conduct for Third Party Neutrals

If MAJCOM, FLDCOM, DRU, and FOA Commanders, or their designees decide to use third-party neutrals to meet their responsibilities under DAFI 51-1201, the DAF Standards of Conduct apply with equal force to any individual who serves as a third party neutral in DAF dispute resolution proceedings, regardless of ADR process, technique employed, or type of dispute. In this regard, all third party neutrals must be familiar with and adhere to the following standards of ethical conduct. Standards of conduct may not be waived. (T-0)

1. Self-Determination. A neutral shall conduct ADR proceedings 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 ADR, including selection of the neutral, process design, participation in or withdrawal from the process, and outcomes. A neutral shall not undermine party self-determination for any reasons such as higher settlement rates, egos, or outside pressures.

2. Impartiality. A neutral shall decline to serve if he or she cannot conduct the proceeding in an impartial manner. Impartiality means freedom from favoritism, bias, or prejudice. A neutral shall conduct the proceeding in an impartial manner and avoid conduct that gives the appearance of partiality. If at any time a neutral is unable to conduct an ADR proceeding in an impartial manner, the neutral shall withdraw from the proceeding. In addition, a neutral shall not act with partiality, bias, or prejudice based on a participant's personal characteristics, background, values or beliefs, or performance at the mediation, or for any other reason. Nor shall a neutral give or accept a gift, favor, loan, or other item of value that raises a question as to the neutral's actual or perceived impartiality, or that is inconsistent with the neutral's ethical obligations under the DoD Joint Ethics Regulation, DoD Directive 5500.07, *Standards of Conduct*, or applicable federal statutes and regulations governing ethical conduct of federal employees.

3. Conflicts of Interest. A neutral shall avoid a conflict of interest or the appearance of a conflict of interest before, during and after conducting ADR proceedings. A conflict of interest can arise from the involvement by a neutral with the subject matter of the dispute or from any relationship between the neutral and any participant in the proceeding, whether past or present, personal or professional, that reasonably raises a question of the neutral's impartiality. In this regard:

(a) A neutral 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 neutral.

(b) A neutral also shall disclose, as soon as practicable, all actual and potential conflicts of interests that are reasonably known to the neutral and could reasonably be seen as raising a question about the neutral's impartiality.

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

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

(e) A neutral shall not conduct an ADR proceeding concerning an EEO complaint if the neutral previously investigated or counseled the complainant with respect to the same or a related complaint.

(f) A neutral shall not advise, counsel, or represent any party in any future proceeding with respect to the subject matter of the ADR proceeding, nor shall the neutral offer advice,

guidance or counsel to any official responsible for approving a settlement of the dispute that was the subject matter of the proceeding over which the neutral presided.

(g) A DAF neutral shall not accept an ADR assignment that would conflict with his or her regularly assigned duties.

4. Competence. A neutral shall accept a dispute resolution assignment only when he or she has the necessary competence to satisfy the reasonable expectations of the parties. If a neutral, before or during the course of an ADR proceeding, determines that he or she cannot conduct the proceeding competently, the neutral shall take appropriate steps to address the situation, including, but not limited to, withdrawing or requesting appropriate assistance.

5. Confidentiality. A neutral shall maintain the confidentiality of all information obtained during the ADR proceeding, unless otherwise agreed to by the parties or disclosure is required by applicable law or policy, including the confidentiality provisions of 5 U.S.C. § 574 of the Administrative Dispute Resolution Act of 1996, 5 U.S.C. § 571 *et seq.* (October 19, 1996)(ADRA). In addition:

(a) A neutral 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 neutral 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, unless the settlement agreement contains a confidentiality clause prohibiting disclosure of the terms.

(b) A neutral 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.

(c) Information indicating fraud, waste and abuse, criminal misconduct, or threats of violence may be subject to disclosure, notwithstanding confidentiality. The neutral shall 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 neutral shall consult the commander, vice commander or his or her designee and take appropriate action in accordance with the confidentiality requirements set forth in Section 3 below.

(d) A neutral in a DAF dispute shall also comply with the confidentiality provisions of the ADRA, as more fully set forth in Section 3 below.

6. Quality of the Process. A neutral shall conduct the ADR proceeding 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. Moreover:

(a) A neutral shall ensure that the ADR proceeding 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.

(b) A neutral shall work with the parties to control the number of persons participating in the ADR proceeding to assure proper decorum and full and open discussion of the issues.

(c) A neutral serving as a mediator shall not knowingly misrepresent any material fact or circumstance during the course of 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.

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

(e) A neutral shall withdraw from and terminate an ADR proceeding that is being used to contravene DAF or DoD directives or to further criminal conduct. Depending on the circumstances, and notwithstanding confidentiality, the neutral may be required to report the events leading up to his or her withdrawal and termination of the proceeding.

(f) A neutral serving as 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 neutral serving as a mediator shall explore the circumstances of the party's behavior and potential accommodations or adjustments to correct the condition.

(g) If a neutral reasonably believes that a participant's conduct, including that of the neutral, jeopardizes conducting the ADR proceeding consistent with these standards of conduct, the neutral shall take appropriate steps including, if necessary, postponing, withdrawing from, or terminating the ADR proceeding.

Section 3. ADRA Confidentiality Requirements for Third-Party Neutrals

Congress has recognized that confidentiality is essential for ADR processes to be effective (see ADRA, 5 U.S.C. § 574). Accordingly, the ADRA provides confidentiality protection for certain "dispute resolution communications" made in the course of ADR proceedings. The DAF vigorously supports the confidentiality of dispute resolution communications whenever it is consistent with the ADRA to do so. The following are the criteria for confidentiality protection. Confidentiality requirements may not be waived. **(T-0)**

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

(a) 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 (**Note:** 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).

(b) It must be made or prepared specifically for the purposes of the dispute resolution proceeding (**Note:** This key restriction on the scope of the ADRA’s confidentiality protections is found in the definition of “dispute resolution communication” which states, at 5 U.S.C. § 571(5), that it covers “any oral or written communication prepared for the purposes of a dispute resolution proceeding...”). (**Note:** 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”).

(c) It must be made by a party to the neutral in confidence, or generated by the neutral and provided to the parties in confidence (**Note:** 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)).

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.

3. The confidentiality protection conferred by the ADRA does not extend to dispute resolution communications in Military Equal Opportunity 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 DoD and DAF regulatory policy.

4. Application of Confidentiality Protection to Specific Communications. As a general rule, dispute resolution communications that meet the three threshold criteria set forth above are treated as confidential and can be disclosed only if an exception listed below is applicable to the disclosing person.

(a) Exceptions applicable to the neutral (5 U.S.C. § 574(a)(1)-(4)). Notwithstanding confidentiality, the neutral may disclose a dispute resolution communication if:

- (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;
- (2) The communication has already been made public;
- (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
- (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.

(b) Exceptions applicable to a party (5 U.S.C. § 574(b)(1)-(7)). Notwithstanding confidentiality, a party may disclose a dispute resolution communication if:

- (1) It was made by the party seeking disclosure;
- (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;
- (3) The communication has already been made public;
- (4) The communication is required by statute to be made public (e.g., in response to a Congressional subpoena);
- (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;
- (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
- (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.

(c) Other exceptions to confidentiality (5 U.S.C. § 574(f)-(i)).

(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.

(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.

(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.

(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.

5. Understanding of the Parties. To protect the reasonable expectation of the parties in the confidentiality of dispute resolution communications, the neutral conducting the session should 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 confidentiality protection, can be found at www.adr.af.mil.

6. 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 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 (5 U.S.C. § 574(e)). 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 commander or their designee, in order for command assistance to be provided to the neutral to provide notice of the demand to the parties and any affected nonparty participants. The cognizant Staff Judge Advocate (SJA) point of contact will coordinate the demand with the Civil Law and Litigation Directorate (AF/JAC), which will in turn coordinate with SAF/GCR by e-mail (SAF.GCR.Workflow@us.af.mil). **A neutral shall not disclose communications from ADR proceedings without a written legal determination that disclosure is authorized or required.**

7. Remedy for Violation of Confidentiality Protection. A dispute resolution communication that is disclosed in violation of the ADRA or this instruction is not admissible in any

proceeding relating to the issues in controversy with respect to which the communication was made (5 U.S.C. § 574(c)).

8. Freedom of Information Act (FOIA). A dispute resolution communication that is confidential under 5 U.S.C. § 574(j) of the ADRA is exempt from disclosure under FOIA, 5 U.S.C. § 552(b)(3).

Attachment 3

NEGOTIATION AND DISPUTE RESOLUTION PROGRAM PERFORMANCE MEASUREMENTS AND QUALITY ASSURANCE IN WORKPLACE DISPUTES

Appendix 3

1. ADR Performance Metrics. To measure ADR performance, including efforts to settle workplace disputes before an employee receives an unconditional offer to use a qualified third-party neutral, MAJCOM, FLDCOM, DRU and FOA Commanders or their designees should collect and report the data required to complete the Department of Defense (DD) Form 2815, *Alternative Dispute Resolution (ADR) Annual Report*, to the DoD Deputy General Counsel (Legal Counsel) (DGC(LC)) in accordance with DoDI 5145.05 and the metrics specified below. Periodically, additional measurement and reporting requirements may be established consistent with the overall Negotiation and Dispute Resolution Program goal of encouraging early resolution of disputes. MAJCOM, FLDCOM, DRU and FOA Commanders and their designees have overall responsibility for the collection and reporting of ADR data at their installations, and coordinate with other offices, e.g., Equal Opportunity, Civilian Personnel Service, Nonappropriated Fund Human Resources, Staff Judge Advocate, and participating local labor unions, as necessary, to ensure accuracy and completeness.

(a) Neutral Assisted Resolution ADR Timeliness Rates. This metric measures two periods. The first period starts on the date an employee agrees to an unconditional offer of ADR and ends on the date the ADR proceeding begins. The second period starts on the date an employee agrees to an unconditional offer of ADR and ends on the date the ADR proceeding is terminated. An ADR proceeding terminates on the date a settlement agreement is approved, impasse is declared, or a dispute is withdrawn. The goal is an average of 45 calendar days or less for each dispute category and for the aggregate of all reported disputes.

(b) Neutral Assisted Resolution 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 (a sample questionnaire can be found at www.adr.af.mil). The goal is to achieve an overall rating of "Satisfied" or better for the ADR process employed from at least 80 percent of the respondents, and an overall rating of "Good" or better for the neutral from at least 80 percent of the respondents. Due diligence should be exercised in obtaining customer satisfaction feedback from ADR participants as soon as the ADR process is completed.

2. Complaints about Mediation Services.

(a) Complaints about mediators or other neutrals should be directed to commanders or their designees. After consulting with the SJA or designee, they should decide whether corrective action is necessary and, if so, what action should be taken. If there is a substantiated complaint alleging misconduct, such as a breach of the standards of conduct, the cognizant SJA point of contact will coordinate with the AF/JAC, which will in turn coordinate with SAF/GCR by e-mail (SAF.GCR.Workflow@us.af.mil) to determine whether the mediator should be relieved of further mediation duties. **(T-1)**

(b) Complaints about third-party neutrals under contract with SAF/GCR should be directed to the DAF NDR Program Office (SAF.GCR.Workflow@us.af.mil). Complaints should clearly document the facts and circumstances surrounding the incident and request a specific remedy. Action taken will depend on the facts of each case. **(T-1)**

3. Records. Records created as a result of the processes prescribed in this instruction or this Appendix will be maintained in accordance with the Air Force Records Disposition Schedule, located in the Air Force Records Information Management System. Additional guidance for retention and disposition of Negotiation and Dispute Resolution records is as follows:

(a) NDR Program files. These are files generated in connection with NDR 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 NDR Program.

(b) 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. If there is no official dispute file, these records are treated as ADR case files.

(c) 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. Personal notes taken by the neutral should be destroyed as soon as practicable, to include after final coordination of a settlement agreement, withdrawal of the case, or a decision by both parties to end the dispute resolution proceeding indefinitely. **(T-2)**

4. Procedures Involving Joint Service and DoD Activities.

(a) Every organization with a population of DAF employees is subject to the policy established in DoDI 5145.05, *Alternative Dispute Resolution (ADR) and Conflict Management*.

(b) The DAF may establish a memorandum of agreement or a Host Tenant Support Agreement with each agency or the host military service responsible for implementing and administering NDR programs.

(c) Commanders or their designees should consult with the AF/JAC and, through the AF/JAC, SAF/GCR prior to executing memoranda of agreement and Host Tenant Support Agreements. Policies regarding dispute resolution settlement authority while a DAF employee is working for a non-DAF agency or at a non-DAF installation should be coordinated through the AF/JAC and, through the AF/JAC, SAF/GCR.

(d) Only DAF-approved memoranda of agreement should be used when providing service to members of other military services including Joint organizations or other DoD activities.

Attachment 4**BEST PRACTICES FOR THE ESTABLISHMENT OF COMMAND-LEVEL
WORKPLACE NEGOTIATION AND DISPUTE RESOLUTION (NDR) PROGRAMS****Appendix 4**

1. NDR Program Managers. MAJCOM, FLDCOM, DRU and FOA Commanders or their designees are encouraged to consider appointing a Workplace Negotiation and Dispute Resolution (NDR) Program Manager to facilitate the responsibilities, functions, and activities described in this Appendix.

2. “NDR” refers to the name of the program – the Negotiation and Dispute Resolution Program. “ADR,” or alternative dispute resolution, represents the spectrum of tools available for the resolution of conflict in the workplace.

3. ADR Plan. Each MAJCOM, FLDCOM, DRU, and FOA should maintain a plan for utilizing ADR as part of its workplace dispute procedures and ensure a copy is submitted through their Commander to SAF/GCR. Each DAF installation should maintain a plan for utilizing ADR as part of its workplace dispute procedures, and ensure that a copy is submitted through its MAJCOM or FLDCOM to SAF/GCR. The ADR plan may supplement a MAJCOM or FLDCOM 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 local labor unions. ADR plans developed at locations outside the United States must be consistent with applicable host nation labor laws and agreements. Organizations have broad discretion with respect to the content of the ADR plan, but at a minimum, it should include **(T-2)**:

(a) The communication plan for coordinating appropriateness (suitability) determinations in accordance with this Appendix.

(b) Source of third-party neutrals. Identify whether local employees will be used as collateral-duty neutrals and, if so, specify the methods for selecting, training, and managing them.

(c) Responsibility for ADR data collection and reporting.

4. Workplace Disputes Eligible and Ineligible for ADR. For purposes of this instruction, 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 DAF 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. Installations should track all disputes, even oral disputes, in the ADR data collection system. Subject to collective bargaining obligations and case screening requirements, every workplace dispute is a potential candidate for ADR. Examples of disputes ordinarily eligible or ordinarily ineligible for ADR can be found at www.adr.af.mil.

5. ADR Case Appropriateness Selection Criteria. All eligible workplace disputes filed with a DAF 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, should be screened in accordance with the criteria set forth below to ensure that ADR is an appropriate vehicle for resolving the dispute. All eligible workplace disputes are presumed to be appropriate for ADR, though some eligible workplace disputes may not be appropriate for ADR. The DAF retains the right to decide whether a dispute is appropriate for resolution by ADR before offering ADR to the employee.

(a) Statutory bases for considering not using ADR (5 U.S.C. § 572(b)). An agency is required by the Administrative Dispute Resolution Act of 1996, 5 U.S.C. § 571 *et seq.* (October 19, 1996)(ADRA) to consider not using ADR if certain circumstances exist. The statutory bases for considering not using ADR can be found at www.adr.af.mil.

(b) Non-statutory bases for considering not using ADR. Some disputes may be inappropriate for ADR, depending on the surrounding circumstances, even if they do not meet the statutory criteria. One example is when the aggrieved party requests anonymity. A judgment that a claim will fail for lack of evidence is not, by itself, a basis for finding ADR inappropriate to resolve the claim.

(c) The determination whether ADR is appropriate for a particular dispute is a Command/Agency function to be performed by the installation SJA and, if it is within their purview, the servicing LLFSC attorney. **(T-1)**

(d) In the EEO pre-complaint process, the SJA has the responsibility of making the initial appropriateness (suitability) determination. If the management official designated to represent the Agency in the ADR process does not initially concur, the management official should discuss the initial determination with the SJA. In the event of ongoing non-concurrence, the installation commander's decision on the appropriateness of the case for ADR is final and not subject to appeal or further review by a party. When the installation commander is named in an EEO complaint or otherwise has an interest in the matter or suitability determination, the next officer in the chain of command will assume responsibility for suitability and participation decisions. **(T-2)** The SJA shall document the final decision, along with the reason(s) for the final determination. **(T-1)** If a formal EEO complaint has been filed and accepted (in part or in full) the assigned agency representative makes a recommendation to the AF/JAC as to whether ADR is appropriate for an eligible dispute. A decision whether or not to pursue ADR with accompanying rationale must be documented in writing by the appropriate JA representative. **(T-2)**

(e) Screening a dispute to determine whether it is appropriate for ADR is accomplished by reviewing each eligible dispute and applying the statutory and non-statutory bases for considering not using ADR which have been specifically reviewed and approved by the SJA or designee. The review should be completed within 7 calendar days of an agency official being made aware of an employee's intent to file a dispute or within 7 calendar days of the filing of a complaint or grievance. For EEO disputes, the review need only be made at the informal stage of a complaint. **(T-2)**

(f) At the completion of the screening, if a dispute against the Agency is determined to be appropriate for ADR, an offer of ADR will be made to the employee within 7 calendar days. **(T-2)** Management officials must participate in ADR if the employee accepts. **(T-2)** If the dispute is found inappropriate for ADR, an offer of ADR will not be made to the employee. **(T-2)**

(1) The employee's participation should be strongly encouraged. If an employee has not accepted the offer of ADR after 7 calendar days, that employee should be presumed to have rejected the offer of ADR.

(2) When the dispute is found appropriate for ADR, the SJA, in consultation with the servicing AF/JAC attorney, shall discuss with the settlement authority and/or the installation commander the appointment of a suitable agency representative to participate in ADR on the Agency's behalf. The representative is usually the cognizant management official with settlement authority. **(T-3)**

6. Management Participation in ADR Proceedings. Commanders and their designees are encouraged to adopt policies requiring supervisors and managers to 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. Terms are unenforceable, for example, when they are contrary to law or governing regulations.

7. ADR Agreement and Selection of Neutrals. Parties agreeing to use mediation or some other ADR procedure to resolve a dispute evidenced by a written claim or complaint should execute a written agreement to that effect in advance of the procedure. Written agreements to mediate or use other ADR processes should be maintained according to the records retention policy. ADR plans should prescribe the method for selecting the neutral. Commanders or their designees may appoint neutrals or they may be selected by the parties from a list of candidates. If a suitable neutral cannot be obtained from local resources, the DAF NDR Program Office in SAF/GCR may provide ADR support at no cost to the requesting installation, subject to availability of funds. Send requests for mediation and other ADR support to SAF/GCR by email (SAF.GCR.Workflow@us.af.mil) with a courtesy copy to AF/JAC by email (AF.JA.ORG-AFLOA-LLFSC.Emp.Discr@us.af.mil).

Additional guidance regarding ADR agreements, the selection of neutrals, and an example of an ADR agreement can be found at www.adr.af.mil.

8. Convening and Conducting ADR Proceedings. An ADR proceeding should be convened in every eligible and appropriate dispute in which both parties agree to use ADR. Detailed guidance on how to convene and conduct ADR proceedings can be found at www.adr.af.mil.

(a) ADR proceedings should be convened as soon as practicable after the parties agree to use ADR, normally within 5 calendar days, but no later than 45 calendar days after agreement to use ADR, unless the parties consent in writing to extend this period.

(b) ADR proceedings should be conducted in suitable facilities at a neutral location outside the organization in which the dispute arose. Prior to the proceedings, the parties and the neutral should be provided a telephone number of someone they may contact for assistance during the proceeding, and the names and numbers of any on-call ADR support providers.

9. Participants in ADR Proceedings. Participants in workplace dispute ADR proceedings consist of the mediator(s) or other neutral(s) and the parties to the dispute. 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 has the 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 ADR proceedings should have sufficient authority to act on behalf of the DAF to settle the issues in controversy, or have immediate access to those who do have such authority.

10. Reaching Settlement.

(a) If the parties are able to settle one or more issues in their case, the neutral assists 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. When necessary, the parties may seek guidance on the enforceability of proposed terms before signing a settlement agreement. The settlement agreement should contain a statement that the terms of the agreement are not final until the legal and regulatory compliance review is formally documented. Sample settlement agreements can be found at www.adr.af.mil.

(b) Allegations of breach of a settlement agreement are handled according to procedures established for the type of workplace dispute to which the settlement pertains (e.g., EEO or Negotiated Grievance Procedure). These procedures should be included in the actual settlement agreement.

(c) All appropriate offices should review the mediated settlement agreements for legal sufficiency. Individual and global settlement agreements involving multiple venues or case types should be routed through all appropriate offices for coordination. Settlement agreements of EEO formal complaints should be routed to the Director, Air Force Civilian Appellate Review Office. If a legal office concludes that a change must be made to an agreement for legal sufficiency, the neutral or the commander or their designee should ensure that the change is coordinated with the parties.

(d) The ADR neutral will not retain a copy of the settlement agreement. The commander or their designee may retain copies of settlement agreements for peer-to-peer disputes and any other disputes not part of another administrative or grievance process.

11. Impasse. 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.

12. Complaints about Mediation Services.

(a) Complaints about mediators or other neutrals should be directed to Commanders or their designees. After consulting with the SJA or designee, they should decide whether corrective action is necessary and, if so, what action should be taken. If there is a substantiated complaint alleging misconduct, such as a breach of the standards of conduct, the cognizant SJA point of contact will coordinate with the AF/JAC, which will in turn coordinate with SAF/GCR by e-mail (SAF.GCR.Workflow@us.af.mil) to determine whether the mediator should be relieved of further mediation duties. **(T-1)**

(b) Complaints about third-party neutrals under contract with SAF/GCR should be directed to the DAF NDR Program Office. Complaints should clearly document the facts and circumstances surrounding the incident and request a specific remedy. Action taken will depend on the facts of each case. **(T-1)**

13. Records. Records created as a result of the processes prescribed in this instruction or this Appendix will be maintained in accordance with the Air Force Records Disposition Schedule, located in the Air Force Records Information Management System. Additional guidance for retention and disposition of Negotiation and Dispute Resolution records is as follows:

(a) NDR Program files. These are files generated in connection with NDR 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 NDR Program.

(b) ADR case files. These files include records that document ADR proceedings in specific disputes, such as intake forms, appropriateness determinations, 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. If there is no official dispute file, these records are treated as ADR case files.

(c) 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. Personal notes taken by the neutral should be destroyed as soon as practicable, to include after final coordination of a settlement agreement, withdrawal of the case, or a decision by both parties to end the dispute resolution proceeding indefinitely. **(T-2)**

14. Procedures Involving Joint Service and DoD Activities.

- (a) Every organization with a population of DAF employees is subject to the policy established in DoDI 5145.05, *Alternative Dispute Resolution (ADR) and Conflict Management*.
- (b) The DAF may execute a memorandum of agreement or a Host Tenant Support Agreement with each agency or the host military service responsible for implementing and administering NDR programs.
- (c) Commanders or their designees should consult with the AF/JAC and, through the AF/JAC attorney, SAF/GCR prior to executing memoranda of agreement and Host Tenant Support Agreements.
- (d) Policies regarding dispute resolution settlement authority while a DAF employee is working for a non-DAF agency or at a non-DAF installation should be coordinated through the AF/JAC and SAF/GCR.
- (e) Only DAF-approved memoranda of agreement should be used when providing service to members of other military services including Joint organizations or other DoD activities.