

# ADR LAW NOTES



## Legal Developments, Issues and Other Matters of Interest Concerning Alternative Dispute Resolution

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Defense Logistics Agency ADR Practice Group

January 1999

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### DLA-GC PRESENTS ADR TRAINING TO HQ DLSC PROCUREMENT CLIENTS

In September and October 1998, DLA-GC presented training to the HQ DLSC procurement clients on use of ADR and mediation in resolving contract disputes. This is part of an agency-wide effort to ensure that contract clients understand ADR and mediation, and appreciate the benefits of these tools in resolving any type of contract dispute at any time. A videotape has been made of this training and was sent to all DLA field offices in December.

The training summarized the types of ADR, outlined the philosophy of interest-based negotiation, and described the benefits of third party neutrals. The presentation covered the legal and policy bases for ADR, and highlighted how use of ADR supports DLA strategic goals. Particular emphasis was placed on describing mediation, the process, and its benefits. The training included various DLA examples illustrating the points presented, most drawn from the contract arena.

The feedback from the training has been very positive. The clients commented that it was very interesting and useful, and seem open to using ADR and mediation now that they have information about these processes. No negative comments were received, or resistance to these options expressed. Hopefully, there will be increased use of ADR in resolving contract disputes as the clients move to apply the concepts they learned in training.

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### OGC SPONSORS ADR IN CONTRACTING WORKSHOP

The Defense Logistics Support Command's Office of Counsel sponsored an ADR in Contracting Workshop on July 22, 1998, in Springfield, Virginia. Approximately 30 DLA contracting attorneys attended this one-day event. The Workshop's primary goal was to expand the use of ADR techniques in the contracting arena. Speakers at the Workshop included Roberta Eaton, DLA Deputy General Counsel for Logistics, Peter Steenland, Senior Dispute Resolution Counsel for the Department of Justice, Judge William Thomas of the Board of Contract Appeals for the Department of Veterans Affairs, and Beth Lagana of the DLA Office of Counsel, Columbus Region.

Discussion at the workshop focused on identifying pre-award and post-award contracting issues that may benefit from the use of ADR techniques such as mediation. Elizabeth Grant, Associate General Counsel for Procurement, advocated the use of pilot programs to test ADR in novel areas, such as offering mediation in response to Congressional inquiries on behalf of contractor-constituents. Additionally, the group also discussed the duties and responsibilities of attorneys and clients as set forth in the DLA Directive on ADR. The DLA General Counsel, Bruce Baird, concluded the workshop by praising DLA's ADR Program and by encouraging DLA attorneys to maximize the use of ADR in appropriate cases, especially when unassisted negotiations between the parties fail to resolve contract disputes.

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## **ADR IN CONTRACTING SUBGROUP IS FORMED**

Thirteen DLA lawyers have joined to form an "ADR in Contracting Subgroup" to the ADR Practice Group. The purpose of the group is to share information concerning ADR in contracting, and to identify areas where some type of action would help advance ADR in contracting objectives. This group acts under the auspices of the ADR Practice Group.

At their first conference call in December, the group decided to move out on three separate tasks. The first task was to develop a resource document that identifies/evaluates good neutrals that could be used for resolving contract disputes. A second task was to prepare an outline of ways that ADR success stories/information could be disseminated--to other lawyers, to clients, and to contractors. A third task was developing a training package on the different types of training materials available to train clients in ADR. This package will cover ADR overall, not just training in the contract area. Further projects may be identified as the group evolves.

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## **INTER-AGENCY ADR WORKING GROUP TO REPORT TO ATTORNEY GENERAL JANET RENO**

An Inter-Agency Working Group on ADR has been established this past fall to coordinate, promote and facilitate the use of ADR processes in executive agencies. The establishment of this group was authorized as part of the 1996 amendments to the ADR Act although the group was specifically created May 1, 1998 by Presidential Memorandum. Four section groups have been established so that the working group can operate more effectively; DLA is represented on three. These groups/representatives are: Contracts/Procurement (Elizabeth Grant); Workplace (Carolyn Perry); Civil Enforcement

(Rod Ficker), and Claims against the Government (no DLA representative).

Each group will provide a report to Attorney General Janet Reno on the progress executive agencies have made in the use of ADR. Report dates are staggered from September through December 1999. Any efforts DLA can make in advancing its ADR program in the next few months will be particularly helpful to ensure the best possible report to Ms. Reno on our agency ADR program. For more information, the website for the group is:

<http://www.financenet.gov/iadrwg.htm>.

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## **DLA DIRECTIVE ON ADR IS PUBLISHED**

The DLA Directive on ADR, DLAD 5145.1, became effective December 4, 1998. Pursuant to the Directive, ADR techniques are required to be used as an alternative to litigation or formal administrative procedures to the maximum extent practicable. A management decision not to use ADR, when unassisted negotiations have not been effective, can only be made after its possible use has been fully evaluated and discussed. The decision not to use ADR must be made by an official at least one level above the deciding official, and only after consultation with legal counsel. A management decision not to use ADR must be explained in writing.

The Directive will soon be available on the DLA ADR Homepage at [www.dsc.dla.mil/Offices/DOCCR/adr/adr.html](http://www.dsc.dla.mil/Offices/DOCCR/adr/adr.html) and on DLAPS.

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