

ADR LAW NOTES



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

DLA ADR Homepage at:

<http://www.landandmaritime.dla.mil/offices/legal/adr/default.asp>

or

www.dla.mil/adr

Defense Logistics Agency ADR Practice Group

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DLA DIRECTOR ISSUES UPDATED ADR MEMORANDUM

In his May 24, 2011 ADR Memorandum to the DLA Executive Board, the DLA Director reemphasized that ADR is a priority for the Agency. He reminded the Board that when unassisted negotiations are unsuccessful, an ADR process must first be considered. A management decision not to use ADR shall only be made after its possible use has been fully evaluated and discussed. At a minimum, discussions are to take place between the deciding official and the activity ADR Specialist located in the Offices of Counsel. A decision not to use ADR must be documented in writing by an official at least one level above the deciding official.

POC: Beth Lagana, DLA-DG, DSN: 850-1859, Commercial (614) 692-1859;
Beth.Lagana@dla.mil

TAKING THE TIME TO WRITE A MEDIATED AGREEMENT: A MEDIATOR'S CONFESSION

At the conclusion of a long and tiring day of mediation, the parties and the mediator (me), sat down to write the terms of the settlement. After one or two drafts that were reviewed and edited by all, one party asked to replace some standard waiver language with a different version on line

that the party had previously used. The other party did not object, so I obliged. I copied and pasted the new language in to the draft agreement, editing it as appropriate. All the parties received

the new draft, eagerly signed it, and left satisfied with the settlement. However, after the parties left, I reread the agreement, and noticed some typos were not corrected, including a major one in the new substituted waiver language. Luckily, I was able to collect all of the signed agreements and had the parties sign new, corrected copies. Nevertheless, I had violated one of my own procedures. My standard procedure is to make sure all of the parties take the time necessary to reread draft agreements each time a change is made. I did not do that this time. Apparently, I did not review it carefully either. I know I was trying to help the parties out by hurrying the process because I had noted one of the parties had another meeting to attend and everyone seemed very tired. Notwithstanding my good intentions, I was wrong (and probably also tired).

So, the lesson learned is that even though everyone, including an experienced mediator, is tired, rushing matters can lead to mistakes. So.....try not to rush.

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A RESOLUTION AVENUE FOR AN EMPLOYEE/SUPERVISOR DISPUTE

Scenario: An employee feels her supervisor talks to her in a disrespectful manner. The supervisor feels that the employee acts disrespectful to him whenever he tries to talk about the errors in her work product. They have ended up emailing each other as much as possible, instead of talking directly to one another. This hinders the work flow

and is uncomfortable for each of them.

Potential resolution: During a mediation, the parties can talk about why each feels the way they do. The parties, in a calm, controlled environment, can advise each other what they want to change. The supervisor can explain the difficulty caused by the employee's errors, help her with additional training, and explain the consequences for other than fully acceptable performance. The employee can explain what she finds demeaning about the supervisor's tone of voice and words. Thereafter, the supervisor and employee could agree that whenever the employee feels demeaned, she can say a word such as "bananas" to alert the supervisor of the problem. Thereafter, they can restart the conversation, perhaps with a more productive outcome.

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RANKING OF TOP U.S. ADR LAW SCHOOLS

For 2011, US News & Reports ranked the top 10 U.S. ADR Law Schools as follows:

- 1. Pepperdine University (Straus)**
- 2. Harvard University**
- 3. Hamline University**
- 4. University of Missouri**
- 5. Ohio State University (Moritz)**
- 6. Marquette University**
- 7. Yeshiva University (Cardozo)**
- 8. University of Oregon**
- 9. University of Nevada--Las Vegas (Boyd)**
- 10. University of California (Hastings)**