

*The Air Force Alternative Dispute Resolution Program
2012*



*Report to the
Secretary of the Air Force on the
Air Force Alternative Dispute Resolution Program*



*Prepared by
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December 2012*

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The Air Force Alternative Dispute Resolution (“ADR”) Program is mandated by the Administrative Dispute Resolution Act (“ADRA”) of 1996, 5 USC 571, et seq. This law requires that the head of each federal agency designate a senior official as the agency’s dispute resolution specialist who will be responsible for the implementation of the ADRA of 1996 and the agency's ADR policy. Air Force policy with respect to the implementation of this program is set forth in Air Force Policy Directive (AFPD) 51-12 (January 2003). The Air Force Principal Deputy General Counsel is the Air Force Dispute Resolution Specialist under the ADRA pursuant to AFPD 51-12, and the Dispute Resolution Division (SAF/GCD) administers the Air Force ADR Program.

Executive Summary

For nearly two decades, ADR processes have consistently proven themselves to be faster, less expensive, less divisive, and more flexible at resolving Air Force (AF) disputes, thereby freeing up resources for core mission accomplishment. During Fiscal Year 2012 (FY12), the Air Force ADR Program further developed the Air Force Integrated Conflict Management System (ICMS) while continuing its reach into new areas. The Air Force ICMS, which leverages the crosscutting application of dispute resolution, conflict management, and negotiation skills to more effectively prevent and resolve Air Force disputes, remains the central concept of the Air Force ADR Program. The ICMS both promotes conflict management skills and maintains a robust capability to effectively and efficiently resolve those disputes that cannot be prevented.

The Department of Justice hosted a FY12 Symposium on Federal Alternative Dispute Resolution Programs in March of this year. United States Attorney General Eric H. Holder, Jr. was a keynote speaker who urged participants “to renew our commitment to strengthen ADR programs across the federal government; to develop new resources and expand the practical use of ADR in government agencies; and to improve our collective ability to resolve disputes effectively, equitably, and efficiently.”

The Air Force Conflict Management Advisory Committee (CMAC) was created this year with Headquarters and Secretariat-level participation by senior leaders in A1DL, A1DV, A1PC, A1Q, A1S, AF/HCX, AFMSA/SG, HAF/ES, AFLOA/JA, SAF/IGQ, SAF/GCA, and SAF/MRBA. The CMAC plays a key role in examining ways to further integrate the Air Force’s approaches to internal conflict and in assessing whether there are ways to more effectively leverage the resources we do have for conflict management.

A conflict management coaching pilot program commenced. The program provides AF professionals, who assist AF employees who are experiencing conflict, with a 50-minute process designed to provide employees with the ability to more effectively manage their conflict.

The Negotiation Center of Excellence (NCE), consistent with its mission to instill negotiation and conflict management skills as a core competency for warfighters and those who support them, has extended its negotiation courses, which are specifically directed to the unique cross-cultural negotiation issues faced by the military, to new audiences.

The Air Force ADR Program continues to maintain short dispute resolution cycle times and avoid unnecessary dispute resolution costs with streamlined dispute resolution processes. Specifically:

Early Resolution techniques were applied in 2369 workplace disputes, resolving 1139. ADR resolution was attempted in 63% of total eligible disputes and resolved 66% of those attempted (293 disputes). Timeliness and customer satisfaction continued to meet or exceed AF goals. Utilizing ADR processes continues to resolve and close workplace disputes more quickly and inexpensively, and at the appropriate organizational level.

Contract disputes continue to be resolved by ADR in roughly half the time required for traditional litigation, saving money and avoiding program disruption. Through ADR, the Air Force has avoided paying over an estimated \$275 million in contractor claims since the AF “ADR First” policy was instituted over a decade ago.

**ANNUAL REPORT TO THE SECRETARY
THE AIR FORCE ADR PROGRAM**

The Air Force continues to remain a leader in the alternative dispute resolution field. Because the Air Force has always been a champion of early resolution efforts, emphasis on the broad conflict management spectrum of processes and training, of which dispute resolution is a subset, grew in FY12 and will continue to grow.

A. The Conflict Management Advisory Committee (CMAC)

The CMAC is a newly formed Committee chaired by SAF/GCD designed to improve the way the Air Force manages conflict. The Air Force spends millions each year on employee grievances, and AF organizations lose productivity when conflicts take extended time to resolve and generate employee stress with its subsequent negative health impacts. Our workplace dispute figures do not include the kinds of disputes that are often not raised within our system but are still problematic. For example, peer to peer disputes and conflicts that result in dysfunctional work groups can undermine readiness and deplete resources when undetected. At the same time, we are mindful that in the current environment there are many demands on scarce resources. Members of the CMAC share AF best practices, provide input on new AF-wide SAF/GCD initiatives, and strategically assess developments in the conflict management field to determine whether there are enhancements that would fit AF needs and resources. CMAC discussion will enhance conflict management policy, theory and practice in the Air Force and, in a time of limited resources, help the Air Force to consider ways to optimally leverage its conflict management resources particularly in curricula and program execution.

B. Significant Results Achieved Through the Use of ADR

1. Air Force Acquisition Disputes ADR

AFLOA/JAQ Contract Litigation Field Support Center ("CLFSC") produced significant positive outcomes in the successful use of ADR processes to resolve high visibility, high dollar, and mission-critical disputes. For example, the CLFSC settled Northrop Grumman's \$110 million KC-X Tanker termination litigation through ADR, by producing a litigation risk analysis and the development of a multi-variable decision tree allowing the settlement authority, Major General Wendy Masiello, to rapidly assess the Air Force's options during the course of the mediation. Similarly, Lockheed Martin's F-22 "tail-up" cost litigation was expertly and efficiently settled after the CLFSC engaged in ADR wargaming exercises. A global settlement agreement resolved a complex dispute with Boeing over F-15E flight simulators. This win-win settlement involved improvements made to the video system that upgraded the pilot training experience, highlighting how non-monetary terms in settlements can serve our Airmen well. Finally, the Extended Debriefing Pilot Program continues to be implemented to successfully resolve multiple protests including a \$960 million medical contract protest. In FY12, the Air Force conducted an Extended Debriefing for a major audit services contract that so far has allowed the Air Force to work with the parties and stay out of federal court.

The Air Force contract trial team (AFLOA/JAQ) handles bid protest litigation at the General Accountability Office (GAO), in addition to the ASBCA proceedings referenced below as well as assisting the Department of Justice in contract cases at the U.S. Court of Federal Claims. For bid protests, in FY12, the Air Force requested outcome prediction (a form of ADR)

in all 77 GAO protests that went to Agency Report and received it in 15 protests, with all but one being resolved without formal GAO action.

FY12 saw a significant increase in contractor claims against the Air Force docketed at the Armed Services Board of Contract Appeals (ASBCA). The number docketed in FY12 was 74, up from the 45 appeals docketed in FY11. The total number of active ASBCA appeals at the end of FY12 also increased dramatically to 94, up 46 from last year’s 48 appeals.

The Air Force offered ADR in 100% of eligible appeals in FY12 (Table One) as the offer is now embedded in correspondence. There are two approved exceptions to the Air Force “ADR First” policy: either a dispositive motion is pending; or a senior-level exemption is granted. Neither exception was invoked in FY12.

FY 03- FY 12 Offer Rate

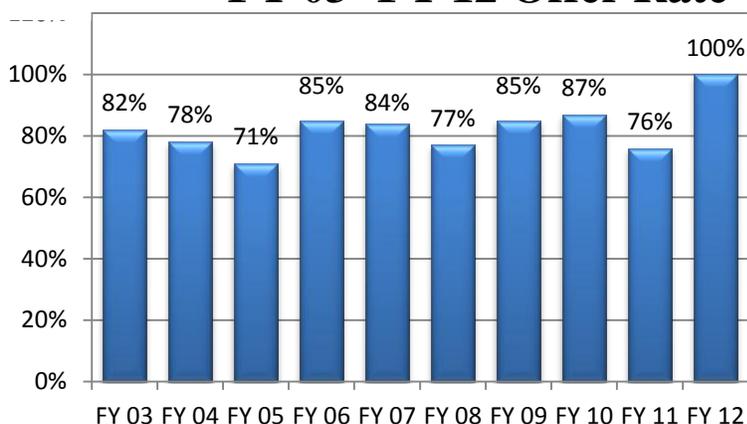


Table One

Historically, more contractors have agreed to use ADR than have rejected ADR. Contractors rarely reject ADR outright, and many contractors request ADR at the beginning of a dispute. Of the 38 ASBCA cases closed in FY12, 14 settled without ADR, nine settled after ADR, six were dismissed on jurisdictional grounds, one was withdrawn, and eight were decided by the ASBCA (Table Two). Therefore, of the 17 cases available for ADR (cases that did not reach a negotiated settlement, get withdrawn, or were dismissed on jurisdictional grounds), 53% (nine cases) attempted ADR. This is up 44% from last year’s 9% attempt rate. All cases that attempted ADR resulted in settlement. Seventy-nine percent of eligible cases (cases not withdrawn or dismissed on jurisdictional grounds) were resolved using early involvement: either settlement negotiations or ADR.

FY12 Case Results

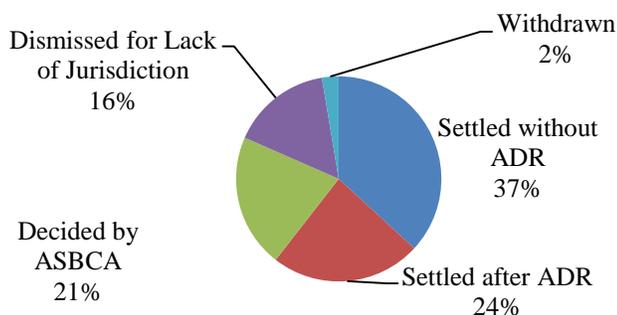


Table Two

a. ADR Reduces Resolution Time

ADR takes far less time to resolve disputes than does the formal trial process. The data from FY03 through FY12 shows that, on average, ADR resolves disputes more quickly than use of traditional litigation (Table Three). Mixed cases, where only part of the case utilized ADR with the remainder going to trial, are removed from this calculation.

**Case Resolution Time Comparison
FY 2003- 2012 Docket to Resolution**

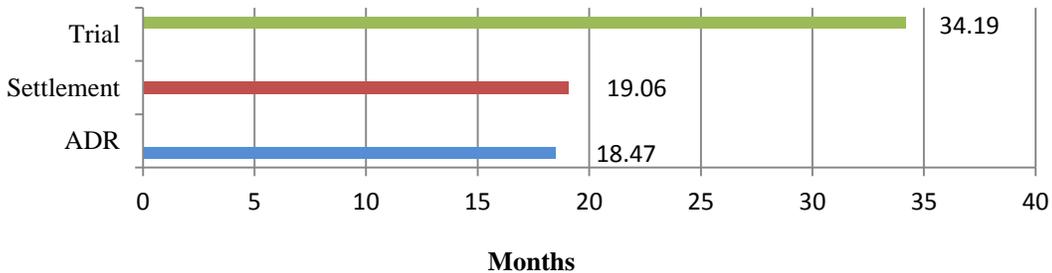


Table Three

More importantly, since FY03, once the parties agree to use ADR, the time to resolution averages 9.9 months (Table Four). In FY12, the nine ADR cases took a record low average of 35 days from the date of the ADR Agreement to resolution. This is due in part to the litigators’ upfront efforts in settlement negotiations, which are done simultaneously in preparation for an ADR proceeding. By resolving the controversy early, ADR can avoid much of the cost of full litigation on the merits, including the government’s liability for interest on contractor claims.¹

ADR Agreement in Principle to Resolution

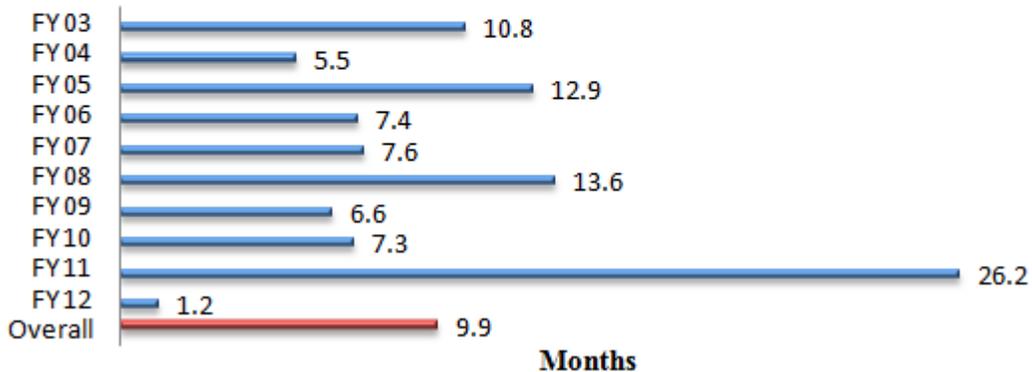


Table Four

¹ The FY11 ADR agreement in principle to resolution time was an aberrant 26.2 months because of distortion caused by a single case, which the ASBCA broke into three separate appeals. In this case, there was early agreement in principle to an ADR resolution, but the actual ADR proceeding did not take place until two years later.

b. Value of Disputes Resolved Through ADR

The AF ADR Program helped the Air Force avoid paying over a total of an estimated \$275 million since the AF “ADR First” policy was instituted in FY00. This figure is calculated by adding up the difference between the amount contractors claimed and the amount the Air Force ended up paying as a result of ADR resolutions.

SAF/GCD conducts a continuing analysis of data pertaining to contract disputes to ascertain if the use of ADR has any perceptible effect on the ultimate resolution of the dispute. Thus far, the data indicate that ADR is “outcome neutral” – that is, the amount the Air Force pays on contractor claims is not increased as a result of using ADR to resolve contract claims. For FY94-99 (before the AF “ADR First” policy), the Air Force paid an average 34% of contractors’ claims. For FY00 to FY12, the Air Force paid an average of 14.85% of contractors’ claims.

c. Early Involvement

SAF/GCD works with the Air Force contract trial team (AFLOA/JAQ) to increase early resolution of contract disputes through ADR at both the ASBCA and GAO. Early involvement involves settlement negotiations and ADR proceedings initiated before the issuance of a contracting officer’s final decision, and often before the submission of a formal Contract Disputes Act claim. Increased use of early involvement to resolve contract disputes benefits the Air Force greatly by allowing it to retain control over the outcome, with less disruption to AF programs and to the Air Force’s working relationships with its contractors.

d. Negotiation Training for the Acquisition Workforce

This two-day interest-based negotiation training, developed by SAF/GCD in cooperation with the NCE and Defense Acquisition University (DAU) and rolled out in 2007, continues to be in high demand. Since our last report, this course was delivered seven times at the following bases: Robins, Hill, Eglin, and Hanscom. Evaluations are consistently positive. The average rating for coursework effectiveness was 85% and instructor effectiveness was 88% in FY12.

SAF/GCD has ensured the systematic delivery and availability of this course to the AF acquisition workforce by institutionalizing this training within the Air Force Institute of Technology (AFIT). This is consistent with the long established model for how SAF/GCD has institutionalized new programs and initiatives within the Air Force. This office acts as the “research laboratory” for the development and deployment of new programs which, as they mature, are then transferred to the field to sustain, often with some level of continuing support from SAF/GCD.

2. Air Force Workplace Disputes

Air Force Instruction (AFI) 51-1201 requires all AF activities with assigned civilian personnel to collect and report in real time to SAF/GCD their dispute resolution results in the following categories of civilian workplace disputes: Equal Employment Opportunity (EEO) complaints (formal and informal), employee grievances (bargaining unit and non-bargaining unit), Unfair Labor Practice (ULP) allegations, Merit Systems Protection Board (MSPB) appeals,

and other generic disputes that arise in the AF work environment.² SAF/GCD tracks the utilization and success of early resolution activities including ADR and facilitative processes such as team facilitations before a dispute occurs, timeliness of ADR processes, and customer satisfaction with ADR (AFI 51-1201, paragraph 38). In FY12, SAF/GCD secured our AFI 51-1201 inspection requirements into the revision of AFI 90-201, *The Air Force Inspection System*.

Our data collection and reporting efforts at SAF/GCD rely on the field to capture all dispute data and dispute resolution efforts arising out of the various personnel programs administered by the Air Force. These include ADR processes that utilize a third-party neutral, and more informal early resolution activities that resemble ADR but do not use a third-party neutral (“other” early resolution). Together, these activities, labeled as “ER,” comprise the totality of AF efforts to resolve workplace disputes early, quickly, inexpensively, and at the lowest possible organizational level.

a. Early Resolution (ER) Attempts and Resolutions

SAF/GCD utilizes a data reporting program that allows bases to report ER data real-time through a web-based system. In addition to providing bases with immediate access to program metrics, the system also makes the reported data available to parent major commands (MAJCOMs). The spreadsheet at Attachment 1 depicts all ER data, by MAJCOM and direct reporting unit (DRU), reported to SAF/GCD for FY12 and the changes from FY11. The results are summarized in Table Five.

ER Attempt and Resolution Rates in Workplace Disputes FY11 – FY12

| | FY11³ | FY12 | % Change |
|--|-------------------------|-------------|-----------------|
| Workplace Disputes Pending and Filed | 3979 | 3391 | -15% |
| Workplace Disputes on Hand at end of FY | 218 | 230 | 6% |
| Workplace Total Disputes Closed | 3761 | 3161 | -16% |
| Disputes that Attempted ER | 2542 | 2369 | -7% |
| ER Resolutions | 1664 | 1139 | -32% |
| Total ER Attempt Rate | 68% | 75% | 7% |
| Total ER Resolution Rate | 65% | 48% | -17% |

Table Five

As Table Five illustrates, there was a 16% decrease in the total number of workplace disputes closed from FY12 as compared to FY11. These numbers cover all types of workplace disputes: 1485 negotiated grievance procedures (NGPs), 101 administrative grievance system (AGS) actions, 179 unfair labor practice (ULP) charges, 1145 Equal Opportunity (EO) cases, and 118 Merit System Protection Board (MSPB) disputes.

² With the exception of Military Equal Opportunity complaints, use of ADR in purely military personnel disputes is a matter of command discretion.

³ Database upgrades refined FY11 calculations. Numbers now reflect all closed disputes during FY11 regardless of the fiscal year in which the dispute was initiated. The database also allowed users to correct and update their FY11 statistics. This explains the slight variations in numbers from our FY11 Report to the Secretary of the Air Force.

Two types of dispute resolution efforts are reflected in the Table Five and Table Six statistics respectively: early resolution includes all efforts to resolve a matter prior to a formal proceeding (whether or not a neutral participates), while ADR involves use of a third-party neutral. When SAF/GCD speaks of “resolution” it means a disposition of the case that settles the outstanding issues and terminates further processing. Air Force professionals resolved 1139 workplace cases in FY12, diverting 36% of disputes from traditional processes that are much more expensive, time consuming, and labor intensive.

Overall, FY12 the early resolution attempt rate increased 7% compared to FY11, with the percentage resolution decreasing by 17% compared to FY11. When SAF/GCD broke down overall attempt and resolution rates into individual types of workplace disputes, the FY12 record is mixed. For example, NGPs and AGS actions had very high percentage attempts at early resolution (99% and 91% respectively), whereas ULP charges, MSPB, and EO only had an early resolution attempt rate of 53%, 75%, and 44% respectively. SAF/GCD thus plans on targeting outreach efforts related to ULPs and EO cases to increase early resolution attempts where appropriate.

With regard to ADR attempts (using a neutral), SAF/GCD identified two areas for improvement working with the AF Equal Opportunity Program Manager: case screening and program marketing. With regard to case screening, installations deemed fewer cases eligible for ADR in FY12 compared to FY11 (22% of all cases in FY12 contrasted to 32% of cases in FY11). We are working on efforts to increase our Air Force personnel’s ability to conduct suitability determinations with the hope that more cases will be found eligible for ADR in the future. Where ADR was attempted in FY12, it was more successful than not, achieving resolution in 59% of eligible EO cases, 78% in NGPs, and 77% of other types of disputes. The relative total number of disputes resolved through ADR increased slightly from FY11 (63%) to FY12 (66%). Two overall conclusions emerge from the statistics presented for FY12: when ADR is used, it more often than not resolves the matter, and where greater early resolution attempts occur, the likelihood of resolution increases.

ADR Attempt and Resolution Rates for FY12

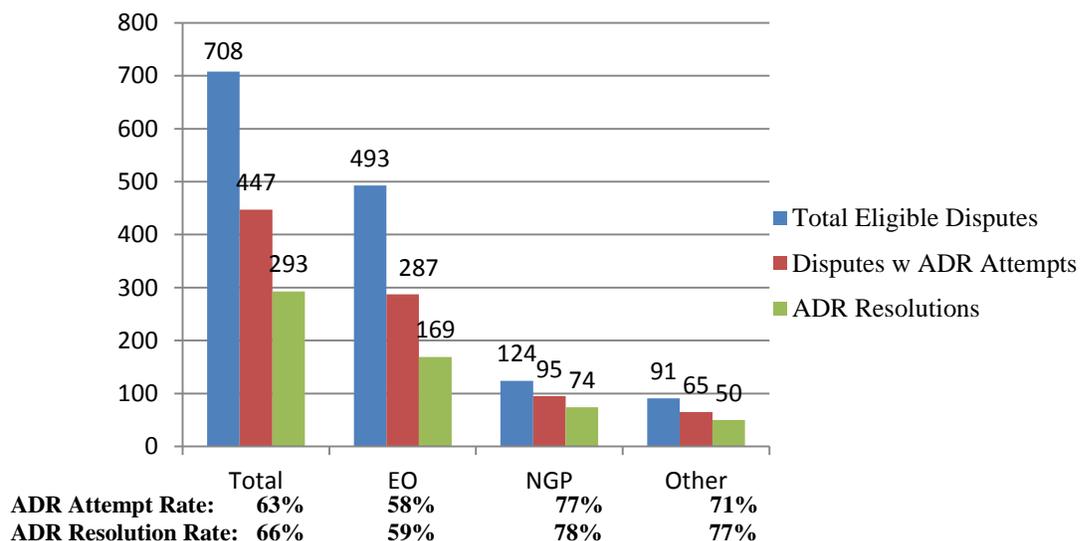


Table Six

b. Timeliness

AFI 51-1201 specifies a standard of 45 days or less to complete ADR from the point at which the parties agree to use it. As indicated in the summary of FY12 timeliness data in Table Seven, average ADR processing times in FY12 have decreased since FY11 and the average is still within the 45-day AF standard. By way of comparison, the average processing time to close a civilian formal EO complaint where ADR was not utilized was 539.7 days versus 223.3 days when ADR is utilized.⁴

ADR Timeliness in EEO Disputes FY11-12 Average

| | FY11 | FY12 | % Change |
|----------------------------|----------------|----------------|-----------------|
| Informal EEO | 48 days | 46 days | -4% |
| Formal EEO | 23 days | 24 days | 4% |
| Average for all EEO | 45 days | 42 days | -7% |

Table Seven

c. Customer Satisfaction

As a voluntary process, ADR must present a positive experience for all parties to a dispute, regardless of the outcome, to ensure its continued viability as a dispute resolution option. Perceptions of fairness, impartiality, commitment to the parties and their problems, and competency among those assigned to help the parties work through the issues are crucial to the long-term success of any ADR program. AFI 51-1201 requires bases to gauge the satisfaction of ADR users both with the process in which they participated and the third-party neutral conducting it. Ratings of the process range from very satisfied to very dissatisfied, and ratings of the neutral range from excellent to poor. The goal for the process metric is at least 80% or better of satisfied respondents. The goal for the neutral metric is at least 80% of respondents rating their neutral as good or better. Results for the last two fiscal years are displayed in Table Eight.

AF ADR Customer Satisfaction FY11-12 Average

| | | | | | | |
|----------------|-----------------------|------------------|----------------|---------------------|--------------------------|-------------|
| Process | Very Satisfied | Satisfied | Neutral | Dissatisfied | Very Dissatisfied | FY11 |
| | 75% | 17% | 6% | 2% | 1% | |
| | 55% | 27% | 11% | 4% | 3% | FY12 |
| Neutral | Excellent | Good | Average | Fair | Poor | FY11 |
| | 86% | 11% | 2% | 0% | 0% | |
| | 72% | 19% | 8% | 1% | 0% | FY12 |

Table Eight

⁴ Data taken from the Air Force Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints for FY12 (i.e., FY12 462 Report).

For FY12, 82% of all ADR users who completed evaluations were satisfied or very satisfied with the process. This exceeds the 80% metric though this is slightly lower than FY11. For the quality of third-party neutrals, most of whom are AF civilian employees and military members trained to be collateral-duty mediators, the surveys continue to show a high degree of satisfaction, with an overwhelming 91% garnering an excellent or good rating from the parties in FY12, similar to FY11. These results demonstrate a process and personnel that Air Force employees trust and respect.

3. Mediator Certification Program

To improve the quality of AF collateral-duty mediators and ensure a diverse mediator corps with a mix of skills, knowledge, and experience, SAF/GCD has a voluntary four-level certification program. Levels range from basic (I) to master (IV), based on experience, training, and other indicators of proficiency. Although the certification program is voluntary, SAF/GCD does encourage certification in order to build confidence in the AF mediator corps and to recognize our collateral-duty mediators for their invaluable service to the AF ADR program. In FY12, the total number of certified mediators is 104 down from 134 last year, due in large part to retirements and lower number of funded course seats in our centrally-funded Basic Mediation Course. In total, SAF/GCD has certified 32 mediators at Level I, 58 at Level II, nine at Level III, and five at Level IV.

C. General Counsel's ADR Awards for FY12

AFI 36-2869, *General Counsel Awards Program*, authorizes an annual General Counsel's ADR Award for individuals and organizations whose accomplishments during the preceding year significantly advanced the AF ADR Program. The awards for FY12 will be presented to:

- **Small Organization Award for Workplace ADR:** The 55th Bomb Wing Equal Opportunity Office, Offutt Air Force Base, Nebraska. This small organization award recognizes the office's outstanding efforts, including a refocus on ADR outreach. They set new records by servicing Air Combat Command (ACC)'s largest wing and 56 tenant units, increasing program utilization by a 1 to 15 ratio in ADR requests between FY11 and FY12. Specifically, the team implemented numerous education initiatives to include tailoring 20 unit-specific ADR briefings, designing three executive teambuilding sessions, and facilitating 250 hours of conflict resolution training. This proactive approach positively improved the overall human relations climate and yielded the highest ADR customer satisfaction rate in the last five years. Program personnel meticulously handled facilitations and mediations for over 220 personnel with a 100% settlement rate with less than 15 processing days overall per dispute, resulting in the lowest EEO complaints per capita in ACC. Staff's collaborative efforts for MEO/EEO contacts ensured 200+ members were directed to appropriate channels thus reducing the need for complaint filing and over a \$900,000 savings for the Air Force.
- **Large Organization Award for Workplace ADR:** The 72d Air Base Wing, Tinker Air Force Base Oklahoma, Alternative Dispute Resolution Program has distinguished itself as the premier large installation-level ADR Program in the Air Force. True ambassadors of ADR, the team implemented numerous education initiatives to include publishing weekly mediator updates, teaching conflict resolution skills to over 500 new

employees, and arming more than 1,000 personnel with ADR awareness information and interest-based negotiation skills. Additional achievements include stepping up to mentor over 15 ADR Managers AF-wide and recommending database initiatives to headquarters that cut survey input time in half. With the goal of improving an already exceptional mediator cadre, the program sent 12 to the Basic Mediation Course and five experienced mediators to the Advanced Mediation Course. These efforts resulted in the resolution of 105 complaints with a cost avoidance savings in excess of \$345,000 and enhanced workplace health, morale, and productivity for Tinker Air Force Base employees.

- Individual Achievement Award for Workplace ADR: Dr. L. J. Van Belkum distinguished herself in the performance of outstanding service to the United States as the Deputy Inspector General, 21st Space Wing, Peterson Air Force Base, Colorado. Her significant accomplishments in integrating Alternative Dispute Resolution processes into established dispute resolution programs resulted in an 83% success rate for resolving disputes. Her leadership and tireless advocacy for cooperative problem solving techniques made alternative dispute resolution a first resort for supervisors and commanders. Using expert negotiation and mediation, she conducted 26 mediations. Resolution was accomplished in nine mission-critical and three highly sensitive disputes between individuals and organizations, achieving significant savings of over \$196,000. Dr. Van Belkum's outreach efforts and educational presentations increased awareness of alternative dispute resolution processes throughout the wing. Specifically, she conducted nine individual visits with new unit commanders and educated more than 240 newly assigned Airmen on effectively communicating with supervisors.
- Other ADR Award: The members of the Commercial Litigation Field Support Center (CLFSC), Commercial Law and Litigation Directorate, Air Force Legal Operations Agency (AFLOA), Joint Base Andrews, Maryland, led the Air Force in the successful use of ADR processes to resolve high visibility, high dollar, and mission-critical disputes. The CLFSC demonstrated true ADR excellence in numerous high-visibility cases, including the KC-X Tanker termination and the F-22 "Tail-Up" costs litigation, masterfully settling claims of \$110 million and \$147 million respectively. Specifically, the CLFSC utilized an innovative 2-day multi-party/multi-mediator ADR process, developed a multi-variable decision tree allowing the settlement authority to assess options, and created brilliant win-win settlement agreements to resolve complex disputes. Finally, the CLFSC trail-blazed new avenues in ADR by successfully implementing an Extended Debriefing Pilot Program to resolve Government Accountability Office bid protests.

D. Building Negotiation and Influence Skills through the Air Force Negotiation Center of Excellence (NCE)

The NCE, co-founded by SAF/GCD and Air University in 2005, provides research, training, and education in adaptive conflict management, negotiation and mediation skills to include cross-cultural and multi-party negotiation competency. Reflecting Air Force Doctrine Directive 1-1 *Leadership and Force Development* listing negotiation as a "necessary competence" and AFDPD 36-26 *Total Force Development* making negotiation a required skill for all Airmen, the NCE's goal is to support the AF-wide development of adaptive conflict management, negotiation and mediation skills as a core leadership competency for all Airmen (officer, enlisted, civilian). This goal also supports the Air University Continuum of Education

and Strategic Guide/Institutional Competency List (ICL) requirement to provide Airmen with “Fostering Collaborative Relationships” education with a “Negotiation” emphasis. The NCE Objectives include:

1. Provide skills training and education at the right time and at the right level for each Airman. The primary venue for this leadership development is through AETC training and education programs, both in-residence as well as using distance and blended learning tools. As resources permit, conduct outreach programs.
2. Provide Airman this training and education in the most cost-conscious manner by developing in-house teaching materials and exercises and a robust web resource free of copyright restrictions.
3. Continuously mine feedback and conduct research to keep NCE materials and products both relevant to the AF mission and valued by the Airman.

DOD and AF leadership documents stress negotiation skills as key to the collaborative leadership needed to achieve mission success in the 21st century. These skills play an important role in achieving Quadrennial Defense Review and AF Strategic Plan priorities to build partner capability and find interagency solutions. The NCE is committed to making adaptive conflict management, negotiation and mediation a core capability of the 21st Century Air Force, across all functional areas.

1. International Negotiations Executive Seminar

SAF/GCD and the NCE presented the International Negotiations Executive Seminar in Brussels in October 2011 to representatives from the U.S. government, NATO, and EU organizations. This two-day training as met with such positive feedback that SAF/GCD is exploring funding options to provide this training on an annual basis.

2. Air University Negotiation Course Offerings

The NCE is involved in every facet of Air Force professional military education. From Airman Leadership School to the General Officer Pre-deployment Acculturation Course (GOPAC), NCE curriculum is infused throughout. The NCE also served as Faculty Advisor for five AWC research efforts, advising a student on an award-winning Professional Studies Project (PSP) entitled “Are pilots graduating SUPT today meeting AMC’s current and future needs?”, which won the AWC AY12 Global Reach Award.

3. Air Education and Training Command Support

The NCE also continues to support Air Education and Training Command’s Basic Air Advisor Program by providing coursework and consulting support for a six-hour seminar at Joint Base McGuire-Dix-Lakehurst, N.J. The coursework is region-specific skills instruction to support the AF Contingency Response Forces’ potential deployments to the SOUTHCOM or AFRICOM REGIONS.

4. New Initiatives in FY12

In FY12, the NCE began many new initiatives to reach a broader and more tech-savvy audience. The NCE is developing an online interactive version of the *Practical Guide to*

Negotiating in the Military. This product uses a scenario throughout the presentation's six modules of instruction to illustrate the basic negotiating concepts "in action." Included in this product are knowledge checks to help the learner gain immediate feedback on his/her grasp of the concepts. The NCE is also developing the final scene (of three) for the on-line cross-cultural negotiation simulation *Mission to Zargun*. This high-definition avatar-based simulation gets the learner to negotiate for resources in a cross-cultural environment. It has built-in feedback and mentorship so the learner gets an assessment of how well they are dealing with the presented challenges. The NCE was invited by the Defense Language National Security Education Office (DLNSEO) to be the DOD subject matter expert on their Joint Knowledge On-Line project titled *Cross-Cultural Negotiations CCN – TO 165*. This project results in an on-line, interactive course that introduces cross-cultural negotiations basics (using the NCE models) and reinforces the concepts through three scenario-based exercises reflecting three distinct cultures.

5. NCE Publications

The NCE is submitting a book chapter to an upcoming edition (Rutledge Publications) on *Cross-Cultural Competence*. The chapter is the last of 23 chapters in the book and is entitled *Raumschach Negotiations*. The thesis is that in cross-cultural negotiations, multiple actions occur on multiple levels. Lacking proper cross-cultural awareness and negotiation skills, actions on one level impact other levels. The three levels included in this model are Culture, Interpersonal Trust, and Respect and Issue.

The NCE published the 2nd edition of the NCE primer *Practical Guide to Negotiating in the Military*. The 2nd edition expands the primer from 32 to 51 pages with more depth in the discussions, a detailed glossary, updated illustrations and explanations of the concepts as well as more detail to the negotiations guides.

6. NCE Future Initiatives/Challenges and Opportunities

The NCE is initiating a series of collaborative efforts within the AF Culture and Language Institute to provide blended coursework on cross-cultural communications within a negotiation. They are creating 10 videos of short (3-5 minute) stories that illustrate negotiating concepts based on real AF issues, events and challenges. The NCE is writing a publishable article on challenges to negotiations in the military context with insights from field interviews. Finally, the staff is developing a series of case studies on strategic level negotiations for classroom use and a companion primer to the NCE 2nd edition that focuses on cross-cultural negotiation essentials.

E. SAF/GCD Promoted Use of ADR in Environmental and Land Use Controversies, Housing Privatization, and Complex Disputes

As part of its mission to promote more systematic use of conflict management and dispute resolution skills throughout the Air Force, SAF/GCD along with the Installations, Energy & Environment Division of the Office of General Counsel (SAF/GCN) participates in the joint Office of Management and Budget (OMB)/President's Council on Environmental Quality (CEQ) initiative to promote the use of collaborative problem-solving and dispute resolution techniques in environmental, public lands, and natural resources disputes. SAF/GCN, at the request of the Air Force Real Property Agency (now part of the Air Force Civil Engineer Center (AFCEC)), also has worked together with SAF/GCD to provide negotiation training and support to personnel in carrying out their functions in closing out transactions, addressing disputes arising

in relation to the Air Force real property portfolio, and addressing environmental disputes with regulators. This included writing a section of the Air Force Real Property Handbook outlining a dispute resolution process that draws on ADR and negotiation techniques.

Working collaboratively, SAF/GCD and SAF/GCN co-taught a two-day intermediate negotiation course for the Air Force Real Property Agency in San Antonio and Sacramento in August and November 2011 respectively, following up from the basic negotiation training offered in 2009. This was a “hands-on” practicum using a complex enhanced use lease scenario, and approximately 50 people participated. Based on the success of these two courses, the real estate division of AFCEC has asked for an advanced-level class in 2013 as well as a repeat basic negotiation class for new personnel. SAF/GCN, with SAF/GCD assistance, is exploring ways of expanding negotiation training to the Air Force engineering community more broadly in FY13, including leveraging the experience of individuals who have already gone through the training.

SAF/GCD has also begun working with the SAF/GCN attorney who represents the National Guard Bureau in negotiating agreements and helping resolve disputes centering around the joint use of local airport facilities and associated costs. While the initial round of review for disputed costs will be at the Air Force Audit Agency, SAF/GCD is helping provide agreement language and handbook guidance for how to address cost issues that are not resolved based on the initial review.

Finally, SAF/GCD has been instrumental in providing facilitators to help Air Force organizations working through difficult and conflict-prone discussions associated with the complete reorganization of the Air Force engineering structure from headquarters through the base level. This included arranging for an outside facilitator for two days of high-level Senior Executive Service and General Officer meetings, SAF/GCD personnel facilitating a follow-up meeting, arranging for a facilitator for a one-day facilitated meeting at Cannon AFB, and providing input and assisting in the arrangements for getting a facilitator for a top-to-bottom review of Air Force energy roles and procedures.

F. ADR Program Outreach Efforts

Other agencies look to the Air Force for support and guidance in dispute resolution. High-level, high-dollar cases at the Air Force as well as the National Reconnaissance Office, United States Department of Agriculture, National Guard Bureau, and Defense Threat Reduction Agency were successfully resolved with Air Force ADR support from SAF/GCD. In addition to dispute resolution services, the Air Force ADR office also provided training and educational support to the Defense Intelligence Agency, some Army personnel, Pension Benefit and Guaranty Corporation, North Atlantic Treaty Organization, and European Union organizations. SAF/GCD provided consultation services to the Office of Personnel Management Federal Executive Board to enhance its data reporting and the U.S. Office of Special Counsel’s ADR Unit to expand and improve the effectiveness of its services.

The Federal Government's Inter-Agency ADR Working Group Steering Committee was formed to coordinate, promote, and facilitate the effective use of ADR in the government, pursuant to the Administrative Dispute Resolution Act and a White House Presidential Memorandum. The Air Force is a member of the Steering Committee and participates in initiatives that cut across agency boundaries, such as ethical standards. Among the major projects to which SAF/GCD has contributed are guides to standards of conduct for neutrals,

confidentiality requirements in federal ADR proceedings, and standards for federal agency ombudsmen. This year, SAF/GCD chaired collaborative efforts with fellow Working Group members to submit a panel presentation approved for next year's American Bar Association annual dispute resolution conference.

The DoD ADR Coordinating Committee, established by the Secretary of Defense pursuant to DoD Directive 5145.5, holds periodic meetings attended by representatives of the ADR programs from the military departments and components. SAF/GCD is an active participant in these DoD-level meetings. This year, SAF/GCD provided intermediate mediation course consultation to the Defense Intelligence Agency and presented its Avatar mediator refresher training program to inspire other DoD components to utilize virtual training. In FY12, our program commenced a partnership with the National Guard Bureau (NGB) to provide facilitation support for its military equal opportunity cases until the NGB can develop internal facilitators of their own.

The AF ADR program external and Portal websites are the centerpiece of our efforts to ensure the public, AF personnel, collateral-duty mediators, installation, and MAJCOM ADR program managers have timely access to ADR information. The AF ADR program website provides information about AF initiatives to use ADR techniques to resolve a wide range of disputes and is a popular source of information for AF ADR program managers and collateral-duty mediators. This year, a new Mediator Portal community was created to improve dialogue among field personnel. In addition, training webinars and guide booklets have been updated and uploaded to ensure the websites are rich with resources.

G. SAF/GCD Secured Sufficient Resources to Meet Our Mission

Air Force Policy Directive 51-12 makes SAF/GCD responsible for: (1) submitting, managing, and executing the AF ADR Program budget; and (2) supporting the development and implementation of initiatives consistent with the goals set forth in AFPD 51-12. SAF/GCD secured sufficient funding to pay for ADR-related case support, training, travel, and neutral services, as well as its commitment to the NCE, in FY12.

As Table Nine shows, the largest component of ADR Program expenditures in FY12 was for ADR Training. Ongoing training and education is critical to maintaining AF conflict competence. The AF ADR Program invested almost one-third of its budget in innovative courses and tools to provide new training capabilities. Special note is made of our highest priority training programs: (1) the SAF/GCD Avatar Mediation Simulation; (2) the Negotiation and Appropriate Dispute Resolution Course (NADRC), which is conducted annually at the Judge Advocate General (JAG) School and attracts JAG attorneys from the Air Force as well as other DoD components; and (3) our ADR Training, which includes both a contract for Conflict Management Coaching training that will be presented in FY13 and our MAJCOM ADR program manager strategic planning meeting. Among the innovative tools sponsored by SAF/GCD is the NCE Mission to Zargun avatar training, which is being used to train deploying military members in cross-cultural negotiation. As in prior years, SAF/GCD funded the travel of AF collateral duty mediators and attorneys engaged in ADR resolutions of high-dollar or high-visibility cases.

During the Department of Justice FY12 Symposium on Federal Alternative Dispute Resolution Programs, panelist Mark Schaefer, the Director of the U.S. Institute for Environmental Conflict Resolution, Udall Foundation, noted that "In the past we often used the

term “environmental conflict resolution” or “ECR”—and people tended to associate it primarily with mediation. More and more we find ourselves referring to “environmental collaboration and conflict resolution” to reflect the full spectrum of activities...As government budgets become increasingly constrained, upstream collaborative efforts will become more and more important. Government has to become more efficient at not just resolving disputes, but at collaborative decision-making and preventing disputes in the first place.”

FY12 ADR Program Total Spending

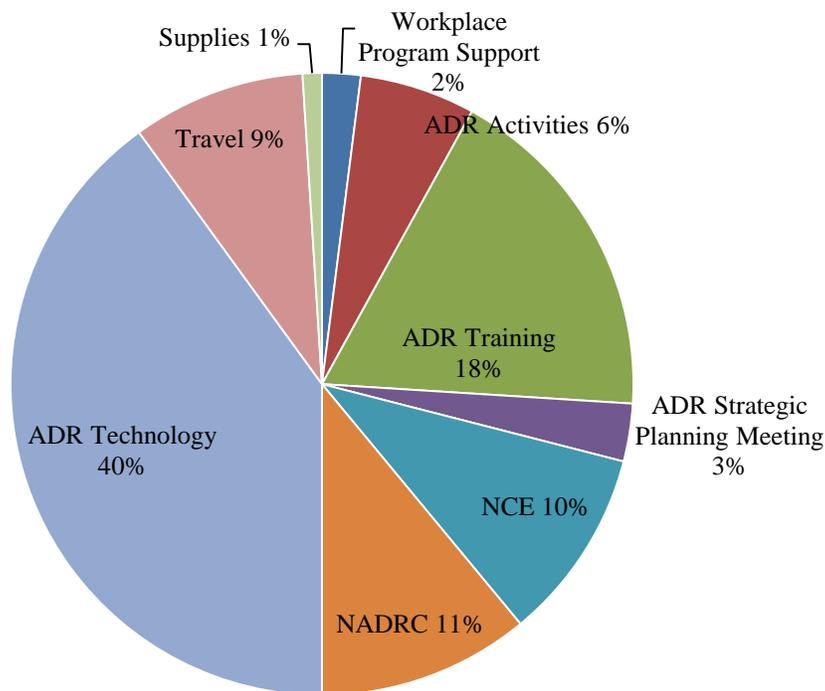


Table Nine

H. ADR Program Training: Providing Targeted Training

As a key part of our mission, the ADR Program Office offers a range of training designed to suit AF needs.

1. MAJCOM ADR Program Manager Strategic Meeting

This summer, SAF/GCD conducted its first MAJCOM ADR Program Manager strategic meeting in lieu of the traditional annual AF ADR Worldwide Conference for workplace disputes. While SAF/GCD has determined that the Worldwide ADR Conference for Installation ADR Managers can be held every other year, it is critical for the MAJCOM ADR Managers to meet yearly in order to share lessons learned regarding inspections, training, dispute resolution processes, and other cutting edge initiatives. At this year’s strategic meeting, the FY11 Award Winners received the General Counsel’s award presented by the Principal Deputy General Counsel Mr. Gordon O. Tanner, the newest Mediation Compendium was distributed, the new Workplace database features were presented, the Avatar mediator refresher training was demonstrated, and the conflict management coaching pilot was announced. The Managers’

feedback indicated that this two-day meeting to share best practices, learn more about their roles and responsibilities under AFI 51-1201, and hone their ability to develop and implement workplace ADR programs was extremely valuable.

2. Workplace Mediation Training

a. Mediation Skills Training

The AF Human Resource Management School, located at Maxwell AFB, has a fully accredited four-day basic mediation skills course to train AF personnel to be collateral-duty mediators. It also has an approved five-day course in advanced mediation, for more experienced AF mediators to learn new mediation skills and techniques and current initiatives in mediation and other facilitative dispute resolution techniques. SAF/GCD is the functional manager and owns the curriculum for both courses, and provides instructors and financial support to the school. In addition to the in-residence courses at Maxwell AFB, the school, in cooperation with SAF/GCD, sends the course on the road periodically to conduct MAJCOM or location-specific mediation training. In FY12, over 70 mediators were trained as the school hosted two basic mediation courses and one advanced mediation course. SAF/GCD enhanced the Advanced Mediation Course curriculum with our Air University Course Director. We now teach advanced concepts instead of refresher concepts, incorporate reflective coaching practices in caucus instruction, and use additional skits to give alternative presentation styles.

b. Mediation Refresher Training

AFI 51-1201 requires all active AF collateral-duty mediators to receive a minimum of eight hours of mediation refresher training per year. This year SAF/GCD launched the first-ever avatar simulation for mediator refresher training. Air Force mediators who have attended a basic mediation course can refresh their skills at any time using a common access card and their computer. The simulation's after action review allows ADR Managers to pinpoint particular skills their mediators need to improve. The ADR community, including practitioners in both the public and private sector, has eagerly sought information from SAF/GCD on this novel initiative.

SAF/GCD partners with the AF Human Resource Management School, which manages all AF mediation training, to create a modular eight-hour refresher training program that can be packaged for presentation by base ADR managers or delivered by experienced mediation instructors. The use of individual one-hour training modules provides flexibility and keeps training fresh from year to year. Modules on ethics (standards of conduct), confidentiality, and settlement agreement writing are mandatory and must be included in each eight-hour refresher training session. With the assistance of SAF/GCD, installation commanders and their ADR program managers are responsible for ensuring refresher training is completed. SAF/GCD utilizes "webinar" training that brings refresher training through the desktop personal computer to each collateral-duty mediator. All training is on SAF/GCD's Portal page. During the reporting period, SAF/GCD provided refresher training at an AFSOC Conference, at Tinker AFB, and at two locations for USAFE.

3. Negotiation and Appropriate Dispute Resolution Course (NADRC)

Every year SAF/GCD, in conjunction with the AF JAG School, funds and conducts NADRC at the AF JAG School at Maxwell AFB. This five-day course is the premier

negotiation and dispute resolution training course in the Department of Defense. The 2012 NADRC was held 30 April to 4 May. Because of the high demand for this course, the JAG School arranged to expand the enrollment, and this year 70 Air Force and Army JAGs and civilian attorneys participated.

SAF/GCD was fortunate to again have outstanding guest speakers. The Air Force TJAG Lt. General Richard C. Harding kicked off the course with Air Force General Counsel the Honorable Charles A. Blanchard as the capstone speaker. Mr. Gordon O. Tanner, Principal Deputy General Counsel, along with Ms. Carolyn White of SAF/GCN, spoke on environmental ADR; Armed Services Board of Contract Appeals Judge Diana Dickinson discussed ADR in contract cases; Civilian Board of Contract Appeals Judge Jerri Somers, Dr. Stefan Eisen and Professor Gary Weaver from American University spoke on the cross-cultural aspects of negotiation for the negotiator/warrior; and Ms. Sharon Larkin, Assistant General Counsel at the Government Accountability Office, spoke on the use of ADR in bid protests. They were joined by experts in and outside the federal government.

Mr. Marc Van Nuys, Director of the Army ADR program, coordinated the attendance of the Army representatives, as well as providing some excellent course instruction. This course was described by participants as the best yet, and reflects not only the force multiplying effects attained by a joint Air Force-Army ADR team, but the benefits of GC/JA collaboration.

4. Mediation Compendium

This year the Air Force's Mediation Compendium was revised into a more user-friendly format designed for both ADR Managers and Mediators. The last Compendium was issued in 2004, so the latest version more accurately reflects the requirements of the latest Air Force Instruction 51-1201, the ever changing intellectual landscape in ADR techniques and the needs of the field.

5. Contract Attorneys Negotiation and ADR Training

SAF/GCD delivers annual training for the AF contract trial team located at Joint Base Andrews in interest-based negotiation and procurement ADR, and is funding and working with AFLOA/JAQ on upgrades to its contract litigation and ADR database. This training is one of many collaborative ventures between SAF/GCD and the JA community. The Army ADR program and SAF/GCD also participate in negotiations training as part of the Advanced Contract Law Course at the Army JAG School in Charlottesville, Virginia.

I. Air Force Recruiting: Pathways Intern Program (PIP)

SAF/GCD operates with only one full-time administrative employee. To run the AF ADR Program, SAF/GCD relies extensively on graduate degree students for day-to-day program support and special projects in the office. These highly talented and motivated individuals employed under PIP authorizations work in collaboration with the Negotiation Center of Excellence (NCE), budget management, ADR support contracts, acquisition ADR, information technology, and workplace ADR, among others. The PIP initiative serves the ADR Program well, and also provides a source of outstanding candidates for Air Force and federal career

civilian service. Our graduating PIP this year found full-time Air Force employment following her internship.

J. Future Challenges and Opportunities

The AF ADR Program faces several challenges in FY13. Among these:

- Continuing a strong record of innovation and support to the field with personnel reductions and hiring freezes that have severely limited the capacity of SAF/GCD, which now has only three permanent employees: two attorneys and one office manager.
- Working with the Inspector General Complaints Resolution (IGQ) program to incorporate modules on interest-based negotiation and conflict management coaching in IG education to institutionalize interest-based problem solving techniques into IG conflict resolution attempts. SAF/GCD also strives to increase the IG referral network to include ADR practitioners as resources for some IG clients.
- Continuing to work with HQ Air Force Materiel Command (AFMC) and American Federal of Government Employees Council 214 (C214) to revitalize the utilization of ADR techniques within the command's negotiated grievance procedure (NGP) processes. During renegotiations of Council 214's Master Labor Agreement, we hope that labor and management will agree to lift the current moratorium on the use of ADR in NGPs as soon as possible.
- Perfecting the Air Force conflict management coaching model and training curriculum and studying the effects of the pilot implementation.
- Increasing the number of suitability determinations conducted for each Air Force dispute, thereby increasing the number of cases offering ADR.
- Integrating conflict management coaching and other reflective practices as early involvement in potential disputes at installations and a teaching tool in supervisors' courses.
- Promoting broader application of the "extended debriefing" process in a pilot program, in collaboration with SAF/GCQ, AF/JAQ, SAF/AQCK and AFPEO/CM, designed to provide supplemental information above what is traditionally provided in de-briefings in anticipation that losing offerors will file fewer bid protests.
- Continuing to work with AF/JAQ and the new Contract Law Field Support Center to improve the collection of relevant ADR data for acquisition disputes and to ensure the fullest utilization of ADR techniques and program support to the benefit of the Air Force in bid protests, formal contract disputes, and early informal resolution of acquisition disputes.
- Maintaining robust headquarters discussions with the Conflict Management Advisory Committee to reduce duplication and enhance education and training in

support of the ICMS concept, to include a renewed emphasis on conflict competence for commanders and supervisors.

- Exploring the possibility of victim-offender mediations. The Air Force's Sexual Assault Prevention and Response Program reinforces the Air Force's commitment to eliminate incidents of sexual assault through awareness and prevention training, education, victim advocacy, response, reporting and accountability. SAF/GCD will be exploring whether victim-offender mediations will assist in and promote sensitive care for victims of sexual assault and accountability for those who commit these crimes. Victim-offender mediations have been used in law enforcement agencies throughout the country and in Department of Justice programs as well.

Conclusion: The AF ADR Program Had a Productive Year

During the reporting period, the AF ADR Program achieved the following advances:

- **Acquisition:** The Contract Law Field Support Center led the Air Force in the successful use of ADR processes to resolve high visibility, high dollar, and mission-critical disputes, including the KC-X Tanker termination and the F-22 "Tail-Up" costs litigation. The use of the multi-variable decision tree and extended debriefing are examples of Air Force trail-blazing activity in the acquisition ADR field.
- **Engineering:** SAF/GCD was instrumental in providing facilitators to help Air Force organizations working through difficult and conflict-prone discussions associated with the complete reorganization of the Air Force engineering structure from headquarters through the base level.
- **Workplace:** SAF/GCD launched a cutting edge Avatar simulation for mediator refresher training and assessment. This virtual training for existing Air Force mediators saves the Air Force thousands in travel expenses related to training and provides a detailed performance assessment. Through our skilled practitioners, our program resolved 1139 of the disputes recorded diverting 36% of disputes from traditional processes that are much more expensive, time consuming and labor intensive.
- **Program Outreach:** Federal agencies continue to view the Air Force as a leader in the ADR field and seek SAF/GCD's support and guidance in dispute resolution. The Air Force assisted with high-level, high-dollar cases and provided training and educational support to various federal agencies.
- **Negotiation Center of Excellence:** SAF/GCD collaborated with the NCE to improve the understanding and appreciation of negotiation and dispute resolution processes by Airmen at all levels of professional military education. These training efforts included a highly successful two-day training in Brussels to representatives from the U.S. government, NATO and the European Union.

Through the AF ADR Program, SAF/GCD remains committed to being at the leading edge of federal government dispute resolution initiatives.