



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
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SECNAVINST 12771.2
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SECNAV INSTRUCTION 12771.2

From: Secretary of the Navy

Subj: DEPARTMENT OF THE NAVY ADMINISTRATIVE GRIEVANCE SYSTEM

Ref: (a) DoD Instruction 1400.25, Subchapter 771, of
December 1996
(b) DON General Counsel Memorandum 89-03 of 10 Apr 1989
(NOTAL)

1. Purpose

a. To revise policy and responsibility for the Department of the Navy (DON) Administrative Grievance System (AGS) in compliance with reference (a).

b. To assign responsibilities and clarify requirements for the DON AGS under which DON activities can internally review employee disputes involving working conditions within the control of DON management.

2. Policy

a. Grievances presented by employees of the DON under the DON AGS will be considered expeditiously, fairly, and impartially, and resolved as quickly as possible. All persons involved in the dispute resolution process shall be free from restraint, interference, coercion, discrimination, or reprisal. The procedures set forth in this instruction are designed to achieve these objectives.

b. Alternative dispute resolution (ADR) techniques should be used to resolve disputes consistent with the requirements of this instruction. ADR techniques include a broad range of approaches for dealing with conflict and seeking solutions satisfactory to all parties. These techniques include, but are not limited to, problem solving, mediation, facilitation, conciliation, early-neutral evaluation, fact-finding, settlement conferences, ombudsmen, and peer review.

3. Applicability

a. The AGS covers current appropriated fund non-bargaining unit DON employees. It also covers former DON employees with respect to matters arising during their previous employment at the activity or command, provided a remedy is available consistent with applicable law and regulation.

b. The AGS covers bargaining unit employees when a matter covered by the AGS cannot be grieved under a negotiated grievance procedure (NGP), either because an NGP is not in effect at the relevant time, or because it does not cover the matter being grieved.

c. For members of the DON Office of General Counsel with occupational series GS-904, 905, 1221, and 1222 series, the activity or command head is the General Counsel of the Navy. The AGS includes law clerks and attorneys only when a matter covered by the AGS is not subject to coverage under reference (b).

d. The AGS does not cover:

(1) An applicant for employment who is not a present or former DON employee for whom a remedy can be provided;

(2) Civilian Mariner employees of the Military Sealift Command; and

(3) Reinstatement and transfer eligibles who have applied for a position under a merit promotion program, non-citizens recruited overseas and appointed to overseas positions, or nonappropriated fund employees.

e. Non-preference eligible Civilian Intelligence Personnel Management System (CIPMS) employees, employed under section 1590 of title 10, United States Code (U.S.C.), may grieve their removal, suspension, reduction in grade or pay, or furlough for 30 days or less if they have completed 1 year of current continuous service in the same or similar position in the Department of Defense (DoD) under other than a temporary

appointment of 2 years or less, except for terminations for national security reasons under section 1590(e) of title 10, U.S.C. An activity's AGS should normally provide for an impartial hearing in removal cases involving such CIPMS employees. These hearings may be done on a reimbursable basis by the Defense Civilian Personnel Management Service's Office of Complaint Investigations.

f. Any employment matter may be grieved under the AGS except for the following:

- (1) The content of published DON regulations and policy;
- (2) Any matter covered by an NGP or subject to formal review and adjudication by the Merit Systems Protection Board, the Office of Personnel Management, the Federal Labor Relations Authority, or the Equal Employment Opportunity Commission, or any matter that the employee files under another review or reconsideration procedure, or dispute resolution process within the DoD;
- (3) Non-selection for promotion from a group of properly ranked and certified candidates, or failure to receive a noncompetitive promotion;
- (4) Preliminary notice of an action that, if effected, would be covered under the grievance system or excluded from coverage under subparagraph 3b above;
- (5) The substance of an employee's performance elements, standards, or job objectives;
- (6) Determinations concerning awards, additional step increases, recruitment or relocation bonuses, retention allowance, physicians' comparability or additional pay allowances;
- (7) Supervisory differentials, critical position pay, or dual compensation waivers;
- (8) Any action taken under a voluntary, formal agreement entered into by an employee involving geographic relocation or return from an overseas assignment;

(9) Termination of a probationer, return of an employee serving supervisory or managerial probation to a nonsupervisory or nonmanagerial position, or separation or termination of an employee during a trial period;

(10) For Senior Executive Service (SES) or Senior Intelligence Executive Service (SIES) employees, performance evaluations and awards (including meritorious or distinguished executive rank awards), reassignment following receipt of an unsatisfactory rating, return to another pay system during the 1-year period of probation or for less than fully successful executive performance, or for failure to be recertified, conditional recertification, or termination during probation for unacceptable performance;

(11) Termination or expiration of a time-limited excepted appointment, a term or temporary appointment or promotion, or an SES or SIES limited emergency or limited term appointment;

(12) Termination of a temporary or term promotion at a time other than in subparagraph 3f(11) above, provided the employee was informed in advance of the temporary nature of the appointment or promotion and the employee was returned to his or her former position from which temporarily promoted or to a different position of equivalent grade and pay;

(13) SES or senior level pay rate changes;

(14) A separation or termination action except as provided for CIPMS employees (see subparagraph 3e above); and

(15) Oral admonishments and letters of caution.

4. Responsibilities

a. Echelon 1 and 2 Commands. May issue guidance and organizational requirements to their activities or commands as needed.

b. Heads of Navy Activities and Marine Corps Commands

(1) Are authorized to decide all grievances filed by employees under their command.

(2) May delegate authority to decide grievances to subordinate managers and supervisors.

(3) May issue an implementing instruction following this instruction and reference (a).

c. Deciding Officials. A deciding official must be assigned to an organizational level higher than any employee involved in the grievance or having a direct interest in the matter being grieved unless the deciding official is the head of the activity or command and will:

(1) Determine whether to accept, suspend, or cancel all or part of the grievance; and

(2) Issue a final decision within the prescribed time limits.

d. Grievant. A grievant must present the grievance to the deciding official in writing and within the prescribed time limits. Each grievance must provide a clear statement of the issues and indicate the specific personal relief sought.

e. Servicing Human Resources Office

(1) Provide advice, guidance, and necessary assistance on ADR and the processing of grievances to managers and employees and provide the grievant with the name of the command/activity ADR coordinator.

(2) Maintain a separate grievance file for each written grievance filed under the DON AGS for a period of 4 years after the case is closed. The file shall contain all documents or copies of documents related to the grievance.

(3) Use the ADR Tracker online tool to record and track the total number of ADR processes attempted along with their success rate.

(4) Address barriers to the use of ADR.

5. Rights of Grievant and Representatives

a. To be accompanied, represented, and advised by a representative of their own choice in processing a grievance under this guide unless as noted in paragraph 8.

b. Entitled to freedom from restraint, interference, coercion, discrimination, or reprisal in presenting a grievance.

c. Entitled to a reasonable amount of official duty time, as determined by the deciding official, to present a grievance, and to communicate with management and personnel officials, if they are DON employees and are in a duty status. Employees shall be given a reasonable amount of official time to prepare a grievance.

d. Shall have full access to relevant information and shall be given copies of such information unless to do so would be unduly burdensome or contrary to law or regulation.

6. Time Limits. When calculating time limits under the AGS, the day of an action or receipt of a document is not counted. The last day of the time limit is counted unless it is a Saturday, a Sunday, a legal holiday, or a day on which the employee is not regularly scheduled to work. In those cases, the last day of the time limit shall be moved to the next regularly scheduled work day. All time limits are counted in calendar days.

7. Processing Grievances. ADR techniques should be used where practicable in the resolution of disputes. ADR techniques include a broad range of approaches for dealing with conflict and seeking solutions satisfactory to all parties. These techniques include, but are not limited to, problem solving, mediation, facilitation, conciliation, early-neutral evaluation, fact-finding, settlement conferences, ombudsmen, peer review, and arbitration.

a. Problem Solving/Informal Process

(1) An employee may informally present a work-related problem to his or her immediate supervisor before filing a formal grievance. If the problem involves a matter or action

directly involving that supervisor, and the employee has been unable to resolve the matter with that supervisor, the employee may present the matter to the next level supervisor, if any, within the activity or command. The problem must be presented within 15 days following the date of the act or event that the employee believes created the problem, or the date the employee became aware of (or reasonably should have become aware of) the act or event. The employee may present a matter of concern regarding a continuing practice or condition at any time.

(2) A supervisor must consider the employee's problem and attempt to resolve it within 15 days, and no later than 30 days from the date the problem is first brought to the supervisor's attention, even though it may not be covered by the grievance process. Where appropriate, the use of a neutral party (e.g., conciliator, facilitator, or mediator) is encouraged. If the employee presents the problem orally, the supervisor's determination may be oral or written. If the problem is presented in writing, the determination must be in writing. If the problem is not resolved, the supervisor shall inform the employee of the time limits for filing a formal grievance. If the supervisor believes the matter is not covered by the grievance process, the supervisor shall so inform the employee and advise the employee of the appropriate process, if any, for resolving the problem.

(3) The above time limit for resolving the problem may be extended by mutual agreement to accommodate resolution of the dispute.

b. Formal Grievance Process

(1) An employee may file a formal, written grievance with the deciding official when a problem is not resolved during the problem-solving process or where the employee chooses to bypass that process and invoke the grievance process. If the employee used an ADR process, the employee must file a grievance no later than 15 days after the process concluded or a decision was rendered on the informal grievance. Where the employee does not use the problem-solving process, but raises the matter initially as a grievance, the employee must present the grievance within 15 days following the date of the act or event that the employee believes created the problem, or within 15 days following the

date the employee became aware of (or reasonably should have become aware of) the act or event. The employee may present a grievance regarding a continuing practice or condition at any time.

(2) An employee's grievance must be signed, dated, and contain a sufficiently detailed statement of the specific issue(s) and the specific, personal remedy sought; a statement that the employee has not filed an appeal or complaint (such as an inspector general or Equal Employment Opportunity complaint) on the same issue; copies of any documents in the employee's possession related to the grievance; and, the name, address, and telephone number of the employee's representative, if any. The remedy must be personal to the employee and may not include a request for disciplinary or other action affecting another employee. An employee may not grieve the same matter raised in any other grievance, appeal, complaint, or other dispute resolution process.

(3) The deciding official shall determine whether to join similar or identical grievances; whether to require and how to conduct an investigation; whether to allow the grievant's requested representative; and how much official time shall be granted to the employee and the employee's representative. The deciding official may also designate an impartial individual to examine a grievance and, when authorized, to make recommendations concerning its disposition.

(4) The deciding official shall fully and fairly consider the grievance and issue a written decision with supporting rationale for the decision. The deciding official shall issue the decision as soon as possible, but normally no later than 60 days from the filing of the grievance. The deciding official may extend time frames when warranted by special circumstances (e.g., when those involved are geographically dispersed or where a fact-finder is used in the process). However, a grievance decision should be rendered no more than 90 days from the filing of the grievance absent mutual agreement to extend the time limit to accommodate resolution of the dispute. If the deciding official fails to render a decision within 90 days absent such mutual agreement, the grievant may request review by the next higher management level, if any, within the DON.

(5) Whenever possible, the deciding official should rule on the merits of a grievance. However, the deciding official may cancel or temporarily suspend a grievance, or the appropriate portion of a grievance, if the grievant requests such action; the grievant or grievance is excluded from coverage; the grievant fails to provide sufficient detail to identify clearly the matter being grieved or specify the personal relief requested; the grievant fails to comply with applicable time limits or procedural requirements or requests actions be taken against another employee; or the grievant raises the same matters under another formal dispute resolution process.

(6) A deciding official's decision on the merits of the grievance is final and not subject to further review. However, an employee may request that an individual at the next higher management level within the DON, if any, review a decision to cancel a grievance or a portion of a grievance. The employee's request for review of a decision to cancel a grievance or a portion of a grievance must be submitted within 15 days from the date of receipt of the decision to cancel the grievance.

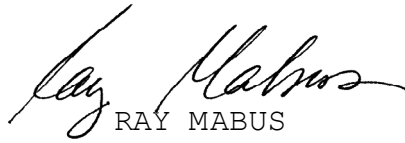
8. Disallowance of Grievant's Representative. The deciding official may disallow the choice of an individual as a representative, if it would result in a conflict or apparent conflict of interest or position, a conflict with the priority needs of the activity or command, or would give rise to an unreasonable cost to the Federal Government. If a deciding official disallows the grievant's choice of representative, that decision may be grieved within 10 days to the next higher level of management, unless the deciding official is the head of the activity or command. The decision on that grievance is final and is not subject to further review.

9. Combining Grievances. When two or more employees within the same activity have identical grievances (the dissatisfaction expressed and the relief requested are the same), the activity may process them as one grievance. The employees will be so notified and required to designate a common representative.

10. Records Management. Records created as a result of this instruction, regardless of media and format, shall be managed per SECNAV Manual (M-)5210.1 of November 2007.

SECNAVINST 12771.2
30 July 2010

11. Reports Control. Reports contained within this instruction are exempt from reports control per SECNAV M-5214.1 of December 2005.



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