

VI. ALTERNATIVE DISPUTE RESOLUTION.

Rule 16 - 6.01. Mediation and Early Neutral Evaluation.

The Court may refer appropriate civil cases to Alternative Dispute Resolution (ADR): mediation or early neutral evaluation. The Court may also refer cases to any ADR process that the parties may agree upon.

(A) Mediation.

Mediation is an informal non-binding dispute resolution process in which an impartial neutral facilitates negotiations among the parties to help them reach settlement. A mediator may not impose the mediator's own judgment on the issues for that of the parties. The following cases shall not be referred for mediation:

- (1) appeals from rulings of administrative agencies;
- (2) habeas corpus and extraordinary writs;
- (3) bankruptcy appeals;
- (4) Social Security cases; and
- (5) prisoner civil rights cases.

(B) Early Neutral Evaluation.

Early neutral evaluation brings together parties and counsel in the early pretrial period to present case summaries before and receive a non-binding assessment from an experienced neutral evaluator. Immediate settlement is not a primary purpose of this process, though it may lead to settlement negotiations. Any civil case may be appropriate for early neutral evaluation, if the judge believes the parties are likely to benefit mutually from such referral.

(Amended October 1, 2001; effective November 1, 2001.)

Rule 16 - 6.02. Referral to Alternative Dispute Resolution and Duties of Participants.

(A) Order Referring Case to Alternative Dispute Resolution.

(1) The Court, on its own motion or on the motion of any party, may enter an Order Referring Case to Alternative Dispute Resolution. The Order shall state whether the case is referred to mediation or early neutral evaluation or other mutually agreed ADR process, shall designate a lead counsel who is responsible for coordinating ADR, and shall inform counsel and the parties of their additional obligations regarding ADR.

(2) The Order shall specify a date on which the ADR referral will terminate. Absent good cause, this date shall not be extended. Unless otherwise ordered, referral to ADR does not abate or suspend the action, and no scheduled dates shall be delayed or deferred, including the date of trial.

(3) If the parties agree that the referral to ADR has no reasonable chance of being productive, the parties may jointly move the Court for an order vacating the ADR referral prior to the selection of the neutral.

(B) Duties of Participants.

(1) **Parties.** All named parties and their counsel are required to attend the ADR conference, participate in good faith, and possess the requisite settlement authority unless excused under paragraph (4), below.

(i) **Corporation or Other Entity.** A party other than a natural person (e.g. a corporation or association) satisfies this attendance requirement if represented by a person (other than outside counsel) who has authority to settle and who is knowledgeable about the facts of the case.

(ii) **Government Entity.** A unit or agency of government satisfies this attendance requirement if represented by a person who has authority to settle, and who is knowledgeable about the facts of the case, the government unit's position, and the procedures and policies under which the governmental unit decides whether to accept proposed settlements. If the action is brought by the government on behalf of one or more individuals, at least one such individual also shall attend.

(2) **Counsel.** Each party shall be accompanied at the ADR conference by the lawyer who will be primarily responsible for handling the trial of the matter.

(3) **Insurers.** Insurer representatives are required to attend in person unless excused under paragraph (4), below, if their agreement would be necessary to achieve a settlement.

(4) **Request to be Excused.** A person who is required to attend an ADR conference may be excused from attending in person only after a showing that personal attendance would impose an extraordinary or otherwise unjustifiable hardship. A person seeking to be excused must submit, no fewer than 15 days before the date set for the conference, a motion to the Judge, simultaneously copying all counsel and the neutral. The motion shall: (i) set forth all considerations that support the request; (ii) identify an appropriate substitute; and (iii) indicate whether the other party or parties join in or object to the request.

(Amended October 1, 2001; effective November 1, 2001)

(Amended July 10, 2006; effective August 28, 2006)

Rule 16 - 6.03. Neutrals.

(A) Certification of Neutrals.

(1) The Court may certify those persons who are eligible to serve as neutrals (mediators or evaluators) in such numbers as the Court deems appropriate. The Court shall have the authority to establish qualifications for and monitor the performance of neutrals, and to withdraw the certification of any neutral. Lists of certified neutrals shall be maintained by the Clerk, and shall be made available to counsel, litigants, and the public for inspection upon request.

(2) Any member of the bar of this Court who is certified as a neutral shall not for that reason be disqualified from appearing as counsel in any other case pending before the Court.

(3) In January of each even-numbered year, the Clerk shall examine the list of certified neutrals to determine which neutrals did not receive appointments during the previous two years. The Clerk shall notify those neutrals that the Court's record does not show any appointments for those years, and shall solicit their interest in continuing to be carried on the Court's list of certified neutrals. If the neutral desires to remain on the list, the neutral shall submit by March 1 information demonstrating ADR experience and/or training during the previous two years. If such information is not provided the neutral shall be removed from the list.

(B) Appointment of Neutrals.

(1) Within the time prescribed by the Order Referring Case to Alternative Dispute Resolution, the parties must notify the Clerk in writing of the parties' choice of a neutral. If the parties fail timely to select a neutral, the Clerk shall select a neutral from the list and notify

the parties.

(2) Notwithstanding subsection (B)(1), the Court, in consultation with the parties, may appoint a neutral who has special subject matter expertise germane to a particular case, whether or not such individual is on the list of certified neutrals.

(3) The Clerk shall send a Notice of Appointment of Neutral to the parties and to the individual designated by the parties, after lead counsel has confirmed that individual's availability. Upon receipt of the Notice of Appointment, lead counsel shall send to the neutral a copy of the Order referring the case to Alternative Dispute Resolution. The appointment shall be effective until the neutral notifies the Court in writing that the referral has been concluded.

(C) Compensation of Neutral.

(1) Unless otherwise agreed by all parties or ordered by the Court, one-half the cost of the neutral's services shall be borne by the plaintiff(s) and one-half by the defendant(s) at the rate contained in the neutral's fee schedule filed with the Court. In a case with third-party defendants, cost shall be divided into three equal shares. A neutral shall not charge or accept in connection with a particular case a fee or thing of value from any source other than the parties. The Court may review the reasonableness of the fee and enter any order modifying the fee. Compensation shall be paid directly to the neutral upon the conclusion of the ADR process. Failure to pay the neutral shall be brought to the Court's attention.

(2) A party who demonstrates a financial inability to pay all or part of that party's pro rata share of the neutral's fee may request the Court to appoint a neutral who has agreed to serve pro bono. The Court may waive all or part of that party's share of the fee. A neutral appointed to serve pro bono may apply to the Court for payment of that share of the neutral's fee waived for an indigent party, consistent with regulations approved by the Court.

When so ordered by the Court, payment to the neutral shall be made by the Clerk from the Attorney Admission Fee Non-Appropriated Fund. Other parties to the case who are able to pay the fee shall bear their pro rata portions of the fee.

(D) Disqualification of Neutral.

(1) The term “conflict of interest” as used in this rule means any direct or indirect financial or personal interest in the outcome of a dispute, or any existing or prior financial, business, professional, family or social relationship with any participant in an ADR process which is likely to affect the neutral’s impartiality or which may reasonably create an appearance of partiality or bias.

(2) A neutral shall avoid a conflict of interest or the appearance of a conflict of interest during and after a mediation or early neutral evaluation. A neutral shall make a reasonable inquiry to determine whether there are any facts that would cause a reasonable person to believe that an actual or potential conflict of interest exists for the neutral in connection with service in a particular case referred to ADR by the Court.

(3) A neutral shall disclose to participants, as soon as practicable, all facts and information relevant to any actual and potential conflicts of interest that are reasonably known to the neutral. If, after accepting a designation by the parties, a neutral learns any previously undisclosed information that could reasonably suggest a conflict of interest, the neutral must promptly disclose the information to the participants. After the neutral’s disclosure, the ADR may proceed if all parties agree to service by the neutral.

(4) Notwithstanding the agreement of the parties to waive a conflict of interest, a neutral shall withdraw from or decline a designation in a case if the neutral determines that an actual or potential conflict of interest may undermine the integrity of the mediation or

early neutral evaluation.

(5) Any party who believes that an assigned neutral has a conflict of interest may request the neutral to recuse. If the neutral declines, the party may file a motion for disqualification of the neutral. Failure to file a motion will waive the objection.

(E) Unavailability of Neutral. A neutral who cannot serve within the period of referral shall notify lead counsel who will arrange for selection of a different neutral by agreement of the parties or by the Clerk.

(Amended October 1, 2001; effective November 1, 2001)

(Amended February 10, 2004; effective March 12, 2004)

(Amended July 10, 2006; effective August 28, 2006)

Rule 16 - 6.04. Communications Concerning Alternative Dispute Resolution.

(A) Confidentiality.

Alternative dispute resolution proceedings are private and confidential. A neutral may exclude all persons other than the named parties and their counsel from ADR conferences. Other individuals may participate with the consent of the neutral, provided they agree to the rules pertaining to confidentiality. All written and oral communications made or disclosed to the neutral are confidential and may not be disclosed by the neutral, any party, or other participant, unless the parties otherwise agree in writing. Documents created by the parties for use by the neutral shall not be filed with the Court. The neutral shall not testify regarding matters disclosed during ADR proceedings. This rule does not prohibit or limit the enforcement of agreements or the collection of non-identifying information for Court-approved research and evaluation purposes, or the filing of the ADR compliance report.

(B) Pre-Mediation Ex Parte Communication.

The neutral designated in a case may communicate privately and ex parte with counsel and unrepresented parties prior to the commencement of the formal dispute resolution process.

(Amended October 1, 2001; effective November 1, 2001)

(Paragraph B amended August 19, 2005; effective September 20, 2005)

Rule 16 - 6.05. Reporting Requirements.

(A) Failure to Participate in ADR Process in Good Faith.

The neutral shall report to the judge any willful or negligent failure to attend any ADR conference, to substantially comply with the Order Referring Case to Alternative Dispute Resolution, or otherwise participate in the ADR process in good faith. The judge may impose any sanctions deemed appropriate.

(B) Compliance Certification.

Within 14 days after the ADR referral is concluded, the neutral shall file with the Court an Alternative Dispute Resolution Compliance Report on a form provided by the Clerk.

(C) Report of Settlement.

If the parties settle any claim during the ADR referral, a written settlement agreement, a stipulation for dismissal, a motion for leave to voluntarily dismiss, or a proposed consent judgment, signed by all parties and counsel, shall be filed with the Court no later than fourteen (14) days after the last ADR conference.

(D) Proposed Litigation Plan.

If an ADR referral results in decisions or agreements regarding scheduling or other case management matters, the parties shall file a proposed litigation plan or motion to amend an existing Case Management Order with the Court no later than fourteen (14) days after the last ADR conference.

(Amended October 1, 2001; effective November 1, 2001)

