

ADR OVERVIEW

A. Introduction.

Upon the recommendation of the Committee on Alternative Dispute Resolution (ADR), which was established in December, 1990 shortly after the Northern District of Ohio was selected as a pilot district for voluntary arbitration, the new local rules offer and provide guidelines for the use of a broad menu of court-annexed ADR techniques designed to provide quicker, less expensive, and generally more satisfying alternatives to traditional litigation. The ADR techniques provided for in §16 of the Local Rules are: Early Neutral Evaluation (ENE), Mediation, Arbitration, Summary Jury Trial, and Summary Bench Trial. A judicial officer may also utilize other methods of court-annexed alternative dispute resolution procedures or recommend or facilitate the use of any extrajudicial procedures for dispute resolution not otherwise provided for by the Local Rules. L.R. §16.10.

B. Pursuant to L.R. §16.4(d) the Federal Court Panel consists of persons who, by experience, training, and character, are qualified to act as evaluators, mediators, arbitrators, or other neutrals in one or more of the ADR processes provided for under the Local Rules. Prospective Federal Court Panel members are nominated by the court's Civil Justice Reform Act Advisory Group and confirmed by the judicial officers of the court. Each panelist is appointed for a three year term and appointments may be renewed upon a demonstration of continued qualification. Panelists shall:

1. Undergo such dispute resolution training as the court may prescribe;
2. Take the oath set forth in 28 U.S.C. § 453; and
3. Agree to follow the provisions of §16 of the Local Rules.

C. Involvement of the Clerk's Office.

The ADR Administrator, facilitates and monitors the ADR process by sending notices of selection and providing the parties with relevant lists of qualified members of the Federal Court Panel to act as early neutral evaluators, mediators, or arbitrators. The ADR Administrator also receives the final reports of early neutral evaluators, mediators and arbitrators and, when appropriate, ensures the confidentiality of those reports. Referral Orders shall be electronically filed and docketed by the courtroom deputy assigned to the judicial officer or by Clerk's office operation specialists. The Notice of Referral to an ADR process, conflict requests, ranking sheets, Notice of Designation, Reports of Evaluator, Reports of Mediator, Arbitration Awards, interim reports are docketed events and are processed by the ADR Administrator.

1. **Early Neutral Evaluation (ENE).**

- a. Any civil case may be referred to ENE L.R. §16.5(a). A case may be selected for ENE at the case management conference (L.R. §16.1(a)) or at any time:
 - 1. By the court on its own motion;
 - 2. By the court on the motion of one of the parties; or
 - 3. By stipulation of all parties. L.R. §16.5(b).
- b. The Order of Referral to ENE is issued via the court's electronic filing system to all counsel, the parties and the ADR Administrator.
- c. The ADR Administrator provides the parties with a list of available neutrals on the Federal Court Panel.
- d. A neutral evaluator is selected:
 - 1. By the parties not later than 10 days after the date of the written notice; or
 - 2. By the ADR Administrator, if the parties fail to notify the ADR Administrator of a selection within the time frame specified. L.R. §16.5(c).
- e. A Notice of Designation of the Evaluator is issued via the court's electronic filing system to all counsel, the parties if applicable and to the Evaluator. L.R. § 16.5(c).
- f. Promptly after receiving the Notice of Designation of the Evaluator, the Evaluator shall schedule the ENE session and file electronic notice through the court's CM/ECF system advising counsel, the parties and the ADR Administrator of the date, time and location of the ENE session.
- g. No later than five (5) days prior to the ENE session, counsel shall submit to the Evaluator and serve on all other parties a written ENE statement. The ENE statement shall:

1. Identify the person, in addition to counsel, who will attend the ENE session as a representative of the party with decision making authority;
2. Identify any legal or factual issues whose early resolution might reduce the scope of the dispute or contribute to settlement; and
3. Describe discovery which is contemplated.
4. Include as exhibits copies of all pleadings filed by the party submitting the written ENE statement.

Written ENE statements are not to be electronically filed or shown to the court. If the Clerk's office receives an ENE statement, such statement should be forwarded to the ADR Administrator for processing.

- h. The ENE session shall be held within 30 days of the receipt of the Notice of Designation of the Evaluator, unless otherwise ordered by the court. L.R. §16.5(c).
- i. Within 10 days of the close of the ENE session, the Evaluator shall prepare and submit to the ADR Administrator the Report of Early Neutral Evaluator. L.R. §16.5(g).

Said Report shall include the fact that the ENE process was completed, any agreements reached by the parties, and the Evaluator's recommendation, if any, as to future ADR processes that might assist in resolving the dispute.

2. **Mediation.**

- a. Any civil case may be referred to mediation (L.R. §16.6(a)) when the status of discovery is such that the parties are generally aware of the strengths and weaknesses of the case or at any earlier time by agreement of the parties and with the approval of the court. A case may be selected for mediation:
 1. By the court on its own motion;
 2. By the court, on the motion of one of the parties; or
 3. By stipulation of all parties. L.R. §16.6(b).

- b. The Order of Referral to Mediation is issued via the court's electronic filing system to all counsel, the parties and the ADR Administrator. When a case is referred to mediation, the ADR Administrator shall promptly notify counsel and the parties of the names of proposed Mediators taken from the Federal Court Panel. L.R. §16.6(c).
- c. Counsel shall rank the proposed Mediators in order of preference and electronically file the ranked list within 10 days through the court's CM/ECF system. The ADR Administrator shall select the Mediator pursuant to the guidelines set forth in L.R. §16.6(c). However, nothing shall limit the right of the parties, with the consent of the court, to select a person of their own choosing as the Mediator. L.R. §16.6(c).
- d. The ADR Administrator, after conferring with the selected Mediator concerning potential conflicts of interest and scheduling, shall, pursuant to L.R. §16.6(c), provide counsel and the parties with a written Notice of Designation of Mediator. Said Notice of Designation of Mediator shall be electronically filed through the court's CM/ECF system.
- e. Pursuant to L.R. §16.6(c), the Mediator shall schedule the mediation conference within 30 days of receipt of the Notice of Designation, unless otherwise ordered by the court. The Mediator shall electronically file a letter/notice with the court's CM/ECF system which sets forth the date, time and location of the mediation conference.
- f. At least 5 days before the mediation conference, pursuant to L.R. §16.6(e), counsel shall submit to the Mediator a mediation memoranda which should include, but is not limited to the following:
 - 1. Copies of relevant pleadings and motions;
 - 2. A short memorandum stating the legal and factual positions of each party respecting the issues in dispute; and
 - 3. Such other material as each party believes would be beneficial to the Mediator.

Written mediation memoranda are not to be electronically filed or shown to the court. If the Clerk's office receives a written mediation memoranda, it should be forwarded to the ADR Administrator for processing.

- g. Within 10 days of the close of the mediation conference, the Mediator shall prepare and submit to the ADR Administrator the Report of Mediator. L.R. §16.6(g). Said Report shall include, but is not limited to, the following:
1. If settlement is achieved, the Mediator, or one of the parties at the Mediator's request, shall prepare a written entry reflecting the settlement agreement, which shall be signed by the parties and filed with the ADR Administrator for approval by the court. L.R. §16.6(g).
 2. If settlement is not achieved, the Mediator shall report in writing to the ADR Administrator that mediation was held, any agreements reached by the parties, and the Mediator's recommendation, if any, as to future processing of the case. L.R. §16.6(g).

Reports of Mediator shall not be electronically filed with the court. The Clerk's office is directed to forward all Reports of Mediator to the ADR Administrator for processing.

3. **Arbitration.**

- a. Any civil case may be referred to arbitration as authorized by 28 U.S.C. § 651 et seq. L.R. §16.7(a). A case may be selected for arbitration by the court at the case management conference (See L.R. §16.1(a)) or at any time thereafter
1. By the court on its own motion;
 2. By the court, on the motion of one of the parties; or
 3. By stipulation of all parties. L.R. §16.7(b).
- b. The Order of Referral to Arbitration is issued via the court's electronic filing system to all counsel, the parties and the ADR Administrator. Upon receipt of the Order of Referral to Arbitration, the ADR Administrator will provide counsel and the parties, through the court's CM/ECF system, a Notice of Referral to Arbitration, along with the names of proposed arbitrators. L.S. §16.7(c).

Any party may decline to consent to arbitration by filing a statement to that effect with the ADR Administrator. §16.7(b).

- c. Counsel shall confer with each other and select the arbitrators or arbitrator from the proposed list of arbitrators pursuant to L.R. §16.7(c) and electronically file said list through the court's CM/ECF system. If counsel fails electronically file the list of arbitrators within the time frame specified, the ADR Administrator shall make the selection at random from the original list. L.R. §16.7(c). The ADR Administrator shall promptly notify potential arbitrator(s) of his/her selection and request a conflict check. If any panel member is unable or unwilling to serve, the process shall begin again under the rules to select another arbitrator for that position.
- e. When the arbitrator(s) have agreed to serve, the ADR Administrator shall prepare and electronically file a Notice of Designation of Arbitrator(s) through the court's CM/ECF system.
- f. Pursuant to L.R. §16.7(c), the Arbitrator(s) shall schedule the arbitration hearing and electronically file a letter/notice which sets forth the date, time and location of the arbitration hearing. The arbitration hearing shall be scheduled within thirty (30) days from the date of the Notice of Designation of Arbitrator(s) and no more than one hundred eighty (180) days from the date of electronic filing of the answer or the date of the electronic filing of a reply to a counterclaim.
- g. At least 5 days before the arbitration hearing, pursuant to L.R. §16.7(e), the counsel shall submit to each arbitrator:
 - 1. A set of relevant pleadings; and
 - 2. A short memorandum by each party stating the legal and factual positions of the party, together with copies of the documentary exhibits the party intends to offer at the hearing. L.R. §16.7(e).
- h. At least 5 days before the arbitration hearing, each party shall deliver to the other party a copy of the memorandum and copies of the documentary exhibits provided to the arbitrator(s), and each party shall make available any non-documentary exhibits for examination by the other party. L.R. §16.7(e).

Written arbitration statements shall not be electronically filed or shown to the court. If the Clerk's office receives a written arbitration statement, it shall be sent to the ADR Administrator for processing.

- i. The arbitrator(s) shall submit the arbitration award directly to the ADR Administrator within ten (10) days of the close of the arbitration hearing. Arbitration awards shall not be electronically filed with the court.
- j. The ADR Administrator shall manually serve copies of the arbitration award on all counsel and the parties. L.R. §16.7(h).
 - 1. Unless a party has filed a demand for trial de novo within the time frame stated in L.R. §16.7(i), the ADR Administrator shall electronically enter judgment on the arbitration award in accordance with Fed. R. Civ. P. 58 through the court's CM/ECF system.
 - 2. Any party may demand a trial de novo by filing with the ADR Administrator and serving upon all counsel of record a written statement of the reasons for the demand within 30 days of filing the arbitration award, except that the United States, its officers and agencies shall have 60 days to file and serve a written demand for a trial de novo with the ADR Administrator.
 - (a) A demand for trial de novo shall not be electronically filed with the court.

4. **Summary Jury Trial.**

- a. Any civil case triable to a jury may be assigned for summary jury trial. L.R. §16.8(a). A case may be selected for summary jury trial by the court at the case management conference (See L.R. §16.1(a)) or at any time thereafter
 - 1. By the court on its own motion;
 - 2. By the court, on the motion of one of the parties; or
 - 3. By stipulation of all parties. L.R. §16.8(a).
- b. Ordinarily a case should be set for summary jury trial when discovery is substantially completed and conventional pretrial negotiations have failed to achieve settlement. The summary jury trial should usually precede the trial by approximately 60 days. L.R. §16.8(c).
- c. The summary jury trial **shall not** be conducted by the judicial officer to whom the case is assigned or referred. L.R. §16.8(c).

- d. If the case does not settle as the result of the summary jury trial, it will proceed to trial on the scheduled date. L.R. §16.8(c).

4. **Summary Bench Trial.**

- a. Any civil case not triable to a jury may be assigned for a summary bench trial. A summary bench trial is a court-annexed pretrial procedure intended to facilitate settlement consisting of a summarized presentation of a case to a judicial officer whose decision and subsequent factual and legal analysis serves as an aid to settlement negotiations. L.R. §16.9(a). A case may be selected for summary bench trial by the court at the case management conference (See L.R. §16.1(a)) or at any time thereafter
 - 1. By the court on its own motion;
 - 2. By the court, on the motion of one of the parties; or
 - 3. By stipulation of all parties. L.R. §16.9(b).
- b. The summary bench trial **shall not** be conducted by the judicial officer assigned to the case or who will preside over the case at trial. L.R. §16.9(c).
- c. The parties shall submit proposed findings of fact and conclusions of law in advance of the summary bench. L.R. §16.9(c).
- d. Where appropriate, the same procedural considerations applicable to summary jury trials may be adapted to summary bench trials to reflect the nature of the proceedings. L.R. §16.9(c).

5. Other ADR procedures.

A judicial officer may utilize other methods of court-annexed alternative dispute resolution procedures, recommend or facilitate the use of any extrajudicial procedures for dispute resolution not otherwise provided for by the Local Rules. L.R. §16.10.