

****TO BE FILED MANUALLY WITH THE ADR DEPARTMENT****

**** DO NOT FILE ELECTRICALLY ****

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

| | | |
|---------------|---|-----------|
| | : | Case No.: |
| | : | |
| | : | |
| Plaintiff(s), | : | |
| | : | |
| | : | |
| -VS- | : | |
| | : | |
| | : | |
| Defendant(s). | : | |

REPORT OF EARLY NEUTRAL EVALUATOR

This form is provided as a convenience to the Early Neutral Evaluator. It is not meant to inhibit the Evaluator from reporting the results of an Early Neutral Evaluation session in whatever manner is appropriate under the Local Rules. This form is intended to assist the Court Administrative Staff in the future processing of the case and it is merely intended to serve as a checklist of the elements which need to be reported to the Court. The Report of Evaluator will be maintained by the ADR Administrator and will not become part of the Court's permanent record.

Instructions

1. This is a report of non-confidential information filed with the Court pursuant to Local Rule 16.5(g); and

2. This Report shall not contain confidential information unless counsel and/or parties consent to confidential information being disclosed to the Court.

Filing Instructions

One copy of the Report of Evaluator must be filed manually with the ADR Department.

IF MORE SPACE IS REQUIRED, PLEASE ATTACH ADDITIONAL PAGES

1. Name, address and telephone number of the Early Neutral Evaluator:

2. Date, time and location of the Early Neutral Evaluation session:

a. Date and time of the initial ENE session:

b. Location of initial ENE session:

c. If applicable, date and time of the subsequent ENE session:

d. Location of the subsequent ENE session:

3. Attorneys and parties in attendance at ENE session:

a. Were any attorneys or parties missing? If so, who and why?

b. Did Plaintiff and Defense counsel submit the required Evaluation Statement pursuant to Local Rule 16.5(e)? If no, please identify the party who failed to comply with L.R. 16.5(e).

c. Had the Plaintiff and Defense counsel consulted with their clients as to the status of the case prior to the ENE session?

4. Duration and preparation of ENE session:

a. **TIME EXPENDED:**

Duration of initial ENE session: Hours _____ Minutes _____

Preparation time: Hours _____ Minutes _____

Duration of subsequent ENE session: Hours _____ Minutes _____

b. **COMPENSATION REQUESTED:**

Initial ENE session: Yes No Amount: _____

Subsequent ENE session: Yes No Amount: _____

5. If settlement was reached, a date certain by which a journal entry or dismissal entry will be submitted to the Court: **(Note: unless there are extenuating circumstances, the dismissal entry should be submitted to the Court within 14 days.)**

6. Is settlement realistic at this time (upon the conclusion of the ENE session)? If no, please explain:

7. Were the parties provided with an evaluation of the case? Yes No
If no, please explain why.

8. Reportable agreements and legal/factual stipulations consented to by the parties **(see page 6 - Consent to Disclosure)** (reportable agreements may include, but are not limited to: narrowing issues, dismissing claims, scope of discovery (depositions, document exchange, etc.), stages of discovery, discovery disputes, legal issues which may present an impasse). If more space is needed, please attach a separate sheet of paper.

a. Have claims been narrowed: Yes No
Please explain:

b. Please state any legal/factual stipulations agreed to by the parties:

c. Have the parties agreed to dismiss any claims: Yes No
Please explain:

d. Legal issues which may present an impasse:

9. Comment regarding anticipated discovery disputes, dispositive issues/discovery status, anticipated motion practice, etc.:

a. If the Court has set the discovery and motion deadlines, will the parties have difficulty in maintaining the schedule? Please explain.

10. Other observations/recommendations, including judicial action required to move case toward settlement or trial (e.g. pending dispositive motions; immediate settlement conference with the judicial officer).

[EXAMPLE: Be specific as to timing and obligations of parties. If court agrees, this will become binding (e.g. Defendant contends that no liability can be assessed due to immunity. Initial discovery will be limited to this issue for a period of four weeks. Defendant will file a motion by (date); Plaintiff will file a response by (date). No reply will be filed except for unforeseen issues. The Court will attempt to rule within 30 days. If motion is denied, discovery will immediately proceed on all issues, to be completed within (number) days.]

11. Recommendations, if any, as to future ADR processing that might assist in resolving the dispute:

12. Suggestions for improving the Early Neutral Evaluation process:

Evaluator

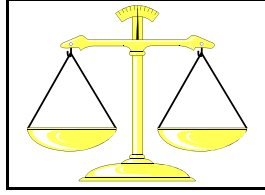
Dated: _____

**CONSENT TO DISCLOSURE OF CONFIDENTIAL INFORMATION
(If Confidential Information is Disclosed in this Report,
Counsel and/or the Parties Must Consent Below)**

We, counsel and/or the parties have reviewed the within Report of Evaluator and fully understand that the Report will be filed with the ADR Administrator and consent to its disclosure to the assigned judicial officer, if requested. We further consent to disclosure of confidential information in the Report pursuant to Local Rule 16.5(h).

Counsel for Plaintiff(s)

Counsel for Defendant(s)



SUGGESTIONS FOR CONDUCTING AN EARLY NEUTRAL EVALUATION ("ENE") SESSION

Prior to the ENE session

1. **Prepare** by reading Local Rule 16.5(e) and reading the written submissions of the parties.
2. Contact counsel to arrange for the ENE session to be scheduled within the time limits set by the Court.
3. **Instruct counsel to meet with their clients to fully inform them of the status of the case prior to the ENE session, including any pending motions or open discovery issues.**

At the ENE session

4. **Introduce** yourself, counsel, the parties and the ENE process at the conference. Make clear to counsel and the parties that you are a facilitator of the litigation process, you are not a decision-maker and you are not principally a settlement facilitator. Explain that ENE is confidential and describe your role in the process. Explain that ENE may lead to settlement but its principal objective is to make the litigation process more focused and more efficient.
5. **Further**, as provided by Local Rule 16.4(d)(3), Evaluators shall receive no compensation for the first four and one-half (4 ½) hours of services which is to begin when the Evaluator meets with the parties at the initial evaluation session. Preparation time by the Evaluator for the evaluation session shall not be included in the first four and one-half (4 ½) hours of service. It is the Evaluator's responsibility to inform counsel and the parties when the initial 4½ hours have been exhausted. If the Evaluator elects to be compensated beyond the initial 4 ½ hours, the parties shall be equally responsible for the Evaluator's compensation at the rate of \$150 per hour. It is further the responsibility of the Evaluator to arrange for payment of any additional hours expended beyond the initial 4 ½ hours.
6. **Postponement of ENE Session:** All requests for postponement of an ENE session shall be presented, in writing, to Peggy N. Daniels, ADR Administrator. If the continuance requested does not exceed the completion date ordered by the judicial officer, the ADR Administrator will authorize the continuance. However, if the time requested exceeds the completion date, the ADR Administrator will request an extension on behalf of the Evaluator from the judicial officer.
7. **Request presentations** of the case by the parties, beginning with the plaintiff. Encourage the parties themselves to speak if they wish. Minimize interruptions, including those of the Evaluator, counsel and other parties. At this stage, refrain from expressing judgments.

8. **Question** counsel and the parties to clarify issues and test the arguments.
9. **Identify** points of agreement and disagreement with the idea of preparing for stipulations and focusing on issues which remain. Help the parties to agree on a plan for exchanging information and conducting discovery which will enable them to prepare expeditiously for the resolution of the case by trial, settlement or dispositive motion.
10. **Caucus** privately with each party and his/her counsel to discuss the costs of litigating the case and to discuss the legal and factual issues candidly. Explain the confidentiality of the caucus. If something you learn in caucus needs to be communicated to the other party, encourage that party to communicate or request specific permission to communicate the information yourself. Keep information learned in caucus confidential unless you get specific permission to divulge it.
11. **Reconvene** counsel and the parties to determine whether they wish your assistance in exploring settlement.
12. **Evaluate** the legal and factual issues for the parties after determining that they do not wish your assistance in mediating settlement discussions. Explain your views about the likelihood of liability, the probable range of damages and other matters at issue in the litigation.
13. **Plan** and schedule the discovery and motion deadlines which will be needed to prepare the case for meaningful negotiations and to prepare efficiently for trial. Encourage the parties to set priorities and minimize unnecessary motions or discovery. If a future ENE session is planned, schedule it and notify the ADR Administrator (telephonically and in writing).
14. **Suggest** other ADR options which might assist the parties in resolving the dispute before trial.
15. **Report** the results of the conference to the ADR Administrator. **It is your responsibility to inform counsel and the parties that you will file a report with the Clerk's Office for transmission to the ADR Administrator. Keep in mind that the Report shall not contain confidential information unless counsel and the parties consent in writing to such disclosure.**
16. Questions concerning the ENE program should be directed to Peggy Nichols, ADR Administrator, at 216-357-7007.