

# CALIFORNIA – CENTRAL

GENERAL ORDER NO. 11-10 (Supersedes General Orders No. 04-01 and No. 07-01)

## 1. SCOPE AND PURPOSE

**1.1 Scope.** This General Order (“Order”) governs the elective and presumptive referral of certain actions to the Alternative Dispute Resolution (ADR) Program for mediation with a neutral from the Mediation panel (previously known as the Attorney Settlement Officer Panel) appointed by the Court. The Order shall be effective on December 1, 2011 and applies to actions which fall within the scope of this Order, regardless of when the actions commenced.

**1.2 Purpose.** The Court finds that the number of criminal and civil cases in this District, together with the adoption of Congressional requirements for the priority scheduling of criminal trials and the shortage of Judges in this District, have placed significant pressures on litigants, counsel and the Court. The purpose of the ADR Program is to alleviate some of these pressures and to encourage the fair, speedy, and economical resolution of controversies by referring suitable cases to an impartial neutral who is experienced in one or more designated areas of law and in the process of alternative dispute resolution.

## 2. ADMINISTRATION

**2.1 ADR Judge.** A district judge shall be appointed by the Chief Judge to serve as Chair of the ADR Committee. That judge will also serve as the ADR Judge of this Court. The ADR Judge shall serve as the primary liaison between the Court and ADR Program staff, consulting with staff on matters of policy, program design and evaluation, education, training and administration.

**2.2 Appointment of the ADR Program Director.** The ADR Program shall be coordinated by an ADR Program Director at the direction of the Clerk of Court.

**2.3 Duties of the ADR Program Director.** The duties of the ADR Program Director shall be established by the Court, and shall include the following:

- (a) Maintain, on the Court website, the current list of panel members available to act as mediators;
- (b) Report to the Court on the status and effectiveness of the ADR Program, and maintain records, including disposition and success rates, for this purpose;
- (c) Serve as a neutral in selected cases;

(d) Perform any additional duties as the Court may direct which are necessary for the efficient administration of the ADR Program.

**2.4 Duties of the Bar.** The Central District's Lawyer Representatives' Mediation Panel Selection Committee will assist the Court with the ADR Program in the following ways:

- (a) Recruit suitable candidates for the Mediation Panel;
- (b) Review candidate applications for the Mediation Panel and provide advice to the Court in connection with the selection and appointment of panel members; and
- (c) Perform such additional duties as the Court may direct which are necessary for the efficient administration of the ADR Program.

### **3. MEDIATOR QUALIFICATIONS AND SELECTION**

**3.1 Qualifications.** A person may serve as a member of the Mediation Panel if:

- (a) the person has been a United States Appellate, District, Magistrate or Bankruptcy Judge, or a California Judicial Officer; or
- (b) the person is currently a member in good standing of the Bar of the United States District Court, Central District of California, with at least 10 years legal practice experience, substantial experience with or knowledge of civil litigation in federal court, and significant expertise in one or more of the following areas:

- (1) Admiralty
- (2) Americans with Disabilities Act
- (3) Antitrust
- (4) Bankruptcy
- (5) Business/Commercial Litigation
- (6) Civil Rights
- (7) Class Actions
- (8) Consumer Credit
- (9) Copyright/Trademark
- (10) Employment/Discrimination/Wrongful Termination
- (11) Environmental
- (12) ERISA
- (13) Foreclosure
- (14) Insurance Coverage/Bad Faith
- (15) Labor
- (16) Patent
- (17) Personal Injury
- (18) Products Liability
- (19) Real Estate/Construction

- (20) Securities
- (21) Tax

The Court may modify these and other minimum requirements in individual circumstances for good cause. The Court shall only make such modification upon a determination that the applicant has demonstrated satisfactory evidence of sufficient education, training, skills and/or experience.

**3.2 Training Requirements.** In order to qualify for appointment to the Mediation Panel, an applicant shall successfully complete a court-conducted training course in mediation or provide proof that he or she has successfully completed a court-approved training course in mediation. In order to qualify for subsequent reappointments to the Mediation Panel, an applicant shall agree to periodically participate in court-conducted or court-approved refresher or advanced training. The Court may, in its discretion, waive the training requirements upon application by the individual.

**3.3 Application for Appointment to Mediation Panel.** An application for appointment to the Mediation Panel may be obtained from the ADR Program Director or downloaded from the Court's website, [www.cacd.uscourts.gov](http://www.cacd.uscourts.gov). The application shall be submitted to the ADR Program Director.

**3.4 Appointment of Mediators to Panel.** Mediators shall be appointed to the Mediation Panel by the Court. A panel member may ask the ADR Program Director at any time to have his or her name removed from the panel roster. The Court may, in its sole discretion, remove any person from the Mediation Panel who violates this Order, *see* Section 11, or is unable to commit sufficient time to, or otherwise meet the requirements of, panel membership.

**3.5 Term of Appointment.** Appointment to the Mediation Panel shall be for a term of two years. The term may be renewed at the discretion of the Court upon the consent and re-application of the panel member. Panel members who do not reapply for appointment at the expiration of the two-year term will be removed from the panel roster.

**3.6 Oath Required.** Every mediator appointed to the Mediation Panel shall take the oath or affirmation prescribed in 28 U.S.C. § 453.

**3.7 Minimum Case Requirement.** Panel members are expected to mediate a minimum of two cases per appointment term. At least one case per term shall be a case that has been assigned by the Court. Panel members who do not meet the minimum case requirement will not be reappointed at the end of their term unless they contact the ADR Program Director and establish good cause for reappointment.

### **3.8 Compensation.**

(a) **Volunteer time.** Panel members shall volunteer their preparation time and the first three hours of a mediation session. After three hours of a mediation session, the panel member may (1) give the parties the option of concluding the mediation; (2) continue the mediation and volunteer his or her time; or (3) continue the mediation on such terms and rates as the panel member and all parties agree. The mediation session will continue beyond three hours only if all

parties and the panel member agree.

**(b) *Payment.*** If the mediation session continues beyond three hours, the terms and conditions of payment must be clearly communicated in writing to the parties. The parties may agree to pay the fee in other than equal portions. The parties must pay the mediator directly, or the mediator's law firm or employer, as directed by the mediator. On a form survey provided by the Court (in the form attached as "Exhibit I", *see* section 8.8 below), the mediator must promptly report to the ADR Program the amount of payment received.

**3.9 Limits on Role of Mediator.** The panel member has no authority to render a decision or to dictate a settlement.

**3.10 Immunities.** Panel members are performing quasi-judicial functions and are entitled to the immunities and protections that the law accords to persons serving in such capacity.

**3.11 Disqualification of Mediators.**

**(a) *Applicable Standards.*** No person may serve as a neutral in a case in the Court's ADR Program in violation of:

- (1) the standards set forth in 28 U.S.C. § 455; or
- (2) any applicable standard of professional responsibility or rule of professional conduct; or
- (3) other guidelines adopted by the Court concerning disqualification of neutrals.

**(b) *Mandatory Disqualification and Notice of Recusal.***

A prospective neutral who discovers a circumstance requiring disqualification must immediately notify the parties and the ADR Program Director in writing. The parties may not waive a basis for disqualification that is described in 28 U.S.C. § 455(b).

**(c) *Disclosure and Waiver of Non-Mandatory Grounds for Disqualification.*** If a prospective neutral discovers a circumstance that would not compel disqualification under an applicable standard of professional responsibility or rule of professional conduct or other guideline, or under 28 U.S.C. § 455(b), but that might be covered by 28 U.S.C. § 455(a) (impartiality might reasonably be questioned), the neutral shall promptly disclose that circumstance in writing to all parties and the ADR Program Director. A party who has an objection to the neutral based upon an allegation that the neutral has a conflict of interest must present this objection in writing to the ADR Program Director within 10 calendar days of learning the source of the potential conflict or shall be deemed to have waived objection.

**(d) *Objections Not Based on Disclosure By Neutral.*** Within 7 days of learning the identity of a proposed neutral, a party who objects to service by that neutral must deliver to the ADR Program Director and to all other counsel a writing that specifies the bases for the objection. The ADR Program Director shall determine whether the proposed neutral will serve or whether another neutral should be appointed.

**3.12 Related Cases/Multiple Cases with Common Party.** A panel member may conduct a mediation for a group of related cases or a group of cases with one common party if (1) all parties to all cases agree, in writing, (2) all parties to all cases agree, in writing, to compensation terms and rates of the mediator, subject to the limitations of section 3.8 above, and (3) the panel member discloses to all parties the number of cases in which the panel member has previously conducted mediations involving any of the parties participating in the current proceeding.

**3.13 Members of Mediation Panel.** All attorneys who are serving on the Court's Attorney Settlement Officer Panel as of the date this Order becomes effective shall automatically be appointed as members of the Mediation Panel after they have taken the oath or affirmation prescribed in 28 U.S.C. § 453.

#### **4. ADR PROGRAM GENERAL PROVISIONS**

**4.1 Referral to the Court's Mediation Panel.** Cases may be referred to the ADR Program for mediation with a neutral from the Mediation Panel in one of two ways: 1) through the Court-Directed ADR Program, as described in section 5 below; and 2) under Civil L.R. 16-15, as described in section 6 below.

**4.2 Description: Mediation.** Mediation is a flexible, non-binding, confidential process in which a neutral person (the mediator) facilitates settlement negotiations. The mediator improves communication across party lines, helps parties articulate their interests and understand those of their opponent, probes the strengths and weaknesses of each party's legal positions, identifies areas of agreement and helps generate options for a mutually agreeable resolution to the dispute. A hallmark of mediation is its capacity to expand traditional settlement discussion and broaden resolution options, often by exploring litigant needs and interests that may be formally independent of the legal issues in controversy.

**4.3 Status of Discovery, Motions and Trial During the ADR Process.** Any case referred to the ADR Program continues to be subject to management by the judge to whom it is assigned. Selection of a case for ADR has no effect on the normal progress of the case toward trial. Referral of a case to ADR is not grounds for avoiding or postponing any deadline or obligation imposed by the case management order, unless so ordered by the Court.

**4.4 Cases Assigned to a Magistrate Judge Pursuant to 28 U.S.C. § 636(c) and the Local Civil Rules.** The provisions of this Order are applicable to those cases that are assigned to a magistrate judge pursuant to 28 U.S.C. § 636(c) and the Civil Local Rules if the magistrate judge determines that the case would benefit from participation in the ADR Program.

**4.5 Case Types Exempted.** The following case types shall not be referred to the Mediation Panel:

- (a) habeas corpus and extraordinary writs;
- (b) immigration and naturalization;
- (c) prisoner civil rights;
- (d) social security;
- (e) petitions to enforce IRS summonses.

**4.6 Cases Involving a Self-Represented Party.** The Court, in its discretion, may order a case involving a self-represented party to the Mediation Panel. In such cases, within seven (7) days of the Order/Referral to ADR, the party proceeding without a lawyer and the opposing counsel must arrange for a phone conference with the ADR Program Director to discuss ADR options.

## **5. REFERRAL OF CASES TO THE COURT-DIRECTED ADR PROGRAM**

**5.1 Court-Directed ADR Program.** With the exception of those case types exempted in section 4.5 above and cases involving a party who is not represented by counsel (*see* section 4.6), all civil cases which are assigned to judges participating in the Court-Directed ADR Program are presumptively referred to the Mediation Panel or a private dispute resolution process. The participating judges are listed on the court website, [www.cacd.uscourts.gov](http://www.cacd.uscourts.gov), ADR section, under “List of District Judges Participating in the ADR Program.” In all such cases, a “Notice to Parties of Court-Directed ADR Program” in the form attached as “Exhibit C” will be provided to counsel at the time of the filing of the complaint or notice of removal for service on all parties. Counsel are required to furnish and discuss with their clients the “Notice to Parties: Court Policy on Settlement and Use of Alternative Dispute Resolution” (the “ADR Notice to Parties”) and the ADR options available to them before the conference described in section 5.2 below.

**5.2 The Parties’ Duty to Consider ADR, Confer and Report.** Unless otherwise ordered, at the conference of the parties held pursuant to Fed. R. Civ. P. 26(f) and Civil L.R. 26-1, counsel shall meet and confer about whether their case is best suited to a mediation with a neutral selected from the Mediation Panel or a private mediation, and when the mediation should occur. *See* Civil L.R. 26-1(c). The parties shall include their shared or separate views regarding the appropriate ADR procedure and proposed date of the session in the written report required by Fed. R. Civ. P. 26(f) and Civil L.R. 26-1.

**5.3 Order/Referral to ADR.** After considering the parties’ written report required by Fed. R. Civ. P. 26(f) and Civil L.R. 26-1, the assigned judge will file an Order/Referral to ADR, in the form attached as “Exhibit B.”

**5.4 Discretionary Referral.** For cases that do not meet the criteria of section 5.1 of this Order but which the assigned judge determines would benefit from participation in this Program, the assigned judge may file an “Order/Referral to ADR,” in the form attached hereto as “Exhibit B.”

**5.5 Cases Transferred to a Judge Participating in the Court-Directed ADR Program.** For cases that are transferred to a judge participating in the Court-Directed ADR Program, a “Notice to Parties of Court-Directed ADR Program” in the form attached as “Exhibit C” will be provided to counsel at the time of the transfer by the courtroom deputy clerk for the judge receiving the case.

**5.6 Cases Transferred From a Judge Participating in the Court-Directed ADR Program to a Judge Not Participating in the Court-Directed ADR Program.** The provisions of this section are applicable to those cases that are transferred to a judge who is not participating in the Court-Directed ADR Program but who determines that the case would benefit from and should remain in the Court-Directed ADR Program. If the judge who is not participating in the Court-

Directed ADR Program determines that the transferred case would not benefit from mediation with a neutral selected from the Mediation Panel or private mediation, then an order vacating the referral in the form attached hereto as “Exhibit D” will be prepared and filed by the courtroom deputy clerk for the judge receiving the case.

**5.7 Change in Ordered ADR Procedure.** If all parties wish to request a change from the ordered ADR Procedure – from the Mediation Panel to private mediation or from private mediation to the Mediation Panel – the parties shall file a Request: ADR Procedure Selection (Exhibit A). In such instances, counsel shall also notify the ADR Program Director of this change.

## **6. REFERRAL OF CASES TO ADR PROGRAM PURSUANT TO CIVIL LOCAL RULE 16-15.2**

**6.1 Cases Referred Pursuant to the Court-Directed ADR Program Excepted.** Nothing in this section shall apply to cases referred to the ADR Program pursuant to the Court-Directed ADR Program. Rules for the Court-Directed ADR Program are found in section five of this Order.

**6.2 The Parties’ Duty to Consider ADR, Confer and Report.** Unless otherwise ordered, at the conference of the parties held pursuant to Fed. R. Civ. P. 26(f) and Civil L.R. 26-1, counsel shall meet and confer about which of the three ADR procedures specified in Civil L.R. 16-15.4 (a settlement proceeding before the assigned district judge or magistrate judge, the Mediation Panel or private mediation) is best suited to the case and when the ADR session should occur. *See* Civil L.R. 26-1(c). The parties shall include their shared or separate views regarding the appropriate ADR procedure and proposed date of the session in the written report required by Fed. R. Civ. P. 26(f) and Civil L.R. 26-1. This report must be accompanied by a Request: ADR Procedure Selection, in the form attached as “Exhibit A.” *See* Civil L.R. 16-15.2.

**6.3 Order/Referral to ADR.** After considering the parties’ written report and Request: ADR Procedure Selection, the assigned judge will file an Order/ Referral to ADR, in the form attached as “Exhibit B.”

**6.4 Referral to or Change in ADR at Any Time After Issuance of Initial Case Management or Scheduling Order.** At any time after issuance of the initial case management or scheduling order and before entry of final judgment, if all parties agree that referral to a particular ADR procedure is appropriate, or wish to request a change to the ordered ADR procedure, the parties shall file a Request: ADR Procedure Selection (Exhibit A).

## **7. SELECTION AND ASSIGNMENT OF MEDIATOR.**

### **7.1 Selection of Mediator.**

(a) *By Stipulation.* The parties may stipulate to a mediator from the Mediator Panel list maintained by the ADR Program Director and made available on the Court’s website. Upon obtaining the consent of the selected mediator, the parties shall file a Stipulation Regarding Selection of Mediator, in the form attached hereto as “Exhibit E.” If the parties have not filed a

Stipulation Regarding Selection of Mediator within twenty-one (21) days from the Order/Referral to ADR, the ADR Program Director will assign a mediator.

**(b) *By Assignment.*** If the parties are unable to stipulate to a mediator, they may ask that the ADR Program Director assign a mediator from the Panel list. Such request for assignment shall be made by filing a Stipulation Regarding Selection of Mediator, in the form attached hereto as “Exhibit E.”

**7.2 Notice of Assignment of Mediator.** A “Notice of Assignment of Mediator” in the form attached hereto as “Exhibit F” shall be filed by the ADR Program in every case in which a mediator from the Mediation Panel is selected by the parties or assigned by the ADR Program Director. The ADR Program will provide the panel member with a copy of the Notice of Assignment, a copy of the current docket sheet and copies of any documents from the case file identified by the panel member as being necessary for his or her preparation for the mediation.

## **8. PROCEDURES FOR SCHEDULING AND CONDUCTING THE MEDIATION**

**8.1 Mediator’s Initial Communication with Counsel.** Within thirty (30) days of the Notice of Assignment of Mediator, the panel member must communicate with counsel to schedule the mediation session. The communication may take the form of a brief joint telephone conference with counsel, as described below, or in writing, at the mediator’s discretion. A joint telephone conference with counsel would likely include a discussion of the following matters:

- (a) fixing a mutually convenient date, time and place for the mediation;
- (b) the procedures to be followed during the mediation;
- (c) who shall attend the session on behalf of each party;
- (d) what material or exhibits shall be provided to the mediator prior to the mediation or brought by the parties to the mediation;
- (e) any issues or matters that the mediator would like the parties to address in their written mediation statements;
- (f) page limitations for mediation statements;
- (g) whether the parties are likely to want to continue beyond the three pro bono hours offered by the panel member and, if so, the terms and rates of the panel member (see section 3.8 above); and
- (h) any other matters that might enhance the quality of the mediation.

**8.2 Notice: Date and Location of Mediation.** Within thirty-five (35) days of the Notice of Assignment of Mediator, the mediator shall advise the ADR Program of the scheduled date of the mediation by filing a Notice of Mediation Date, in the form attached as “Exhibit G,” or by



other communication. The mediator shall strive to schedule the mediation for the earliest possible date after the parties have had reasonable time to evaluate their case, thus minimizing the expense of the litigation. The mediation must be completed within the time-frame ordered by the assigned judge or, if no completion date has been ordered, no later than forty five (45) days before the Final Pretrial Conference. *See* Civil L.R. 16-15.2. Counsel may seek a continuance of the ADR deadline from the assigned judge for good cause. The Court shall provide suitable space for the mediation if a request is made to the ADR Program Director. If, for any reason, the mediator is unable, within thirty-five (35) days of the Notice of Assignment, to set a mediation date, the mediator shall notify the ADR Program Director that a mediation could not be scheduled.

**8.3 Continuances and Rescheduling.** No continuance or rescheduling of the mediation shall be granted except upon agreement of the mediator. The ADR Program Director shall be notified of any continuance or rescheduling of the mediation. Any continuance of the mediation beyond the completion date ordered by the judge or imposed by local rule must be approved by the assigned judge.

#### **8.4 Mediation Statements.**

**(a) Content and Timing.** At the request of the mediator, each party shall submit directly to the mediator a confidential mediation statement no later than seven (7) calendar days before the session. The mediation statement shall outline the underlying facts of the dispute, the key legal issues in the case, possible areas of agreement and options for settlement, and the settlement history of the dispute, if any. The mediation statement shall also identify, by name, and title or status:

(1) the person(s) with decision-making authority who, in addition to counsel, will attend the mediation on behalf of the party; and

(2) person(s) connected with either party (including insurer representatives) whose presence at the mediation might substantially improve the productivity of the mediation or the prospects for settlement.

**(b) Confidential Nature of Statement.** Mediation statements shall be subject to the protection afforded by the confidentiality provisions contained in section 9 below. Mediation statements must not be filed and the assigned judge shall not have access to them. The mediator may, with the consent of the parties, request that counsel serve the statements on other parties to the lawsuit.

**8.5 Appearance by Party Representative.** Each party shall appear at the mediation in person or by a representative with final authority to settle the case, which in the case of lawsuits brought against the United States or any of its agencies as a party, shall involve the attendance of an attorney charged with responsibility for the conduct of the case and who has final settlement authority as provided by his or her superiors. A corporation or other non-governmental entity satisfies this attendance requirement if represented by a person who has final settlement authority

and who is knowledgeable about the facts of the case. Representatives of insurers with decision-making authority are required to attend mediation sessions, unless personal attendance is excused by the mediator. At the discretion of mediator, and only with the mediator's express authorization, parties residing outside the Central District may have a representative with final settlement authority available by telephone during the entire proceeding, in lieu of personal appearance. *See* Civil L.R. 16-15.5(b).

**8.6 Attendance of Trial Attorney.** Each party shall be represented at the mediation by the attorney who is expected to try the case, unless excused for good cause by the mediator, in accordance with Civil L.R. 16-15.5(c).

**8.7 Participant Surveys.** At the time of the mediation, the mediator shall distribute to each litigant and attorney an "ADR Program Participant Survey" in the form attached hereto as Exhibit J, to be returned directly to the ADR Program. The Participant Surveys are not to be filed with the Court.

**8.8 Attendance Sheet and 'Survey for Mediators and Report of Payment.'** The mediator shall collect contact information from each mediation participant on the Mediation Attendance Record in the form attached hereto as "Exhibit H." The mediator shall submit the completed form directly to the ADR Program, with the "Survey for Mediators and Report of Payment," in the form attached hereto as "Exhibit I." The Mediation Attendance Record and Mediator Survey are not to be filed with the court. The ADR Program will use the Attendance Record to follow up with those participants of the mediation session who have not yet returned an "ADR Program Participant Survey," in the form attached hereto as "Exhibit J."

**8.9 Report to the Court.** Within five days after the conclusion of the mediation session, the mediator shall electronically file with the Court a "Mediation Report" in the form attached hereto as "Exhibit K," advising the Court as to whether the parties appeared at the mediation as required by Civil L.R. 16-15.5(b) and whether or not the case settled. Regardless of the outcome of the mediation session, the mediator will not provide the judge with any details of the substance of the mediation session. With the filing of the Mediation Report, the parties are advised that they must notify the trial judge's courtroom deputy clerk of the fact of settlement and promptly file documents regarding the final disposition of the case. *See* Civil L.R. 16-15.7. If no mediation was held, the mediator shall electronically file with the Court a Mediation Report, indicating that a mediation did not take place. If the case did not settle at the mediation session but is later settled with the assistance of the mediator, the mediator shall file a subsequent Mediation Report.

## **9. CONFIDENTIALITY**

**9.1 Confidential Treatment.** Except as provided in section 9.2 below, this Court, the mediator, all counsel and parties, and any other persons attending the mediation shall treat as "confidential information" the contents of the written mediation statements, any documents prepared for the purpose of, in the course of, or pursuant to the mediation, anything that happened or was said relating to the subject matter of the case in mediation, any position taken, and any view of the merits of the case expressed by any participant in connection with any mediation. "Confidential information" shall not be:

- (a) disclosed to anyone not involved in the litigation;
- (b) disclosed to the assigned judges; or
- (c) used for any purpose, including impeachment, in any pending or future proceeding in this court or any other forum.

**9.2 Limited Exceptions to Confidentiality.** This rule does not prohibit:

- (a) disclosures as may be stipulated by all parties and the mediator;
- (b) disclosures as may be stipulated by all parties, without the consent of the mediator, for use in a subsequent confidential ADR or settlement proceeding;
- (c) a report to or an inquiry by the ADR Judge pursuant to sections 10 and 11 below, regarding a possible violation of policies and procedures governing the ADR Program;
- (d) the mediator from discussing the mediation process with the ADR Program staff, who shall maintain the confidentiality of the process;
- (e) any participant or the mediator from responding to an appropriate request for information duly made by persons authorized by the Court to monitor or evaluate the Court's ADR program;
- (f) disclosures as are required by this Order, related ADR forms, and as otherwise required by law; or
- (g) in an action or proceeding to enforce a settlement, the admission of a written settlement agreement or a settlement placed on the record, reached as a result of mediation.

**9.3 Confidentiality Agreement.** The mediator may ask the parties and all persons attending the mediation to sign a confidentiality agreement on a form provided by the Court and attached as "Exhibit L." The confidentiality provisions of this section apply regardless of whether a confidentiality agreement is signed.

**9.4 Scope.** Nothing in this rule is intended to limit any applicable privilege or rule of evidence designed to protect mediation confidentiality, and any such broader protection shall control if applicable. *See* Civil L.R. 16-15.8.

## **10. VIOLATIONS OF THIS ORDER BY COUNSEL OR A PARTY**

**10.1 Informal Resolution.** Without prejudice to the use of more formal procedures set forth in sections 10.2 and 10.3 below, a complaint alleging that any person or party has materially

violated this Order may be presented informally to the ADR Program Director, who will attempt to resolve the matter to the satisfaction of all concerned.

**10.2 Reporting Violation.** A formal complaint alleging that any person or party has materially violated this Order must be presented in writing (not electronically) to the ADR Program Director, who will refer the matter to the ADR Judge. The letter of complaint must be accompanied by a competent declaration. Copies of the letter and declaration must be sent contemporaneously to all other parties. If the assigned judge is the ADR Judge, the ADR Program Director will refer the letter of complaint and declaration to the Vice Chair of the ADR Committee or the Vice Chair's designee. The declaration must be marked "Confidential-Not to be Filed" and must neither be filed nor disclosed to the assigned judge.

**10.3 Proceeding in Response to Complaint or Report of Violation and Sanctions.** If, upon receiving an appropriately presented and supported complaint or report of a material violation of this Order, the ADR Judge determines that the matter warrants further proceedings, the ADR Judge may refer the matter to the ADR Program Director to explore the possibility of resolving the complaint informally in accordance with section 10.1 above. If no such referral is made, or if the matter is not resolved informally, the ADR Judge for this matter shall take appropriate action. The ADR Judge may issue an order to show cause why sanctions should not be imposed. Any such sanctions proceedings shall be conducted on the record but under seal. The ADR Judge will afford all interested parties an opportunity to be heard before deciding whether to impose sanctions.

## **11. VIOLATION OF THIS ORDER BY A PANEL MEMBER**

**11.1 General Provision.** This rule is intended to promote the fair and timely resolution of complaints related to a mediator's performance in discharging his or her duties as a panel member. This section shall not limit the Court's authority to, in its sole discretion, determine who may be included on or removed from the panel or to take any other action not specifically contemplated by this section, in order to ensure that the quality of services provided by the Court Mediation Panel is commensurate with the Court's expectations and consistent with the Court's role in the administration of justice.

**11.2 Confidentiality of Complaint Proceedings.** No information or record concerning the receipt, investigation or resolution of any complaint made under this section may be open to the public. The Court shall maintain sufficient information about each complaint and its disposition to identify any history or patterns of complaints submitted under this section.

**11.3 Informal Complaints.** Informal complaints regarding a panel member's performance shall be brought to the attention of the ADR Program Director, who will conduct a preliminary review to determine whether the complaint can be informally resolved or merits a formal investigation.

**11.4 Formal Complaint Set Forth in Writing.** Any complaint regarding a panel member's performance that cannot be resolved informally shall be submitted in writing to the ADR Program Director. The complaint is not to be filed nor presented to the assigned judge. The complaint shall describe with particularity the matter, conduct and circumstances triggering the

complaint. The ADR Program Director shall send the complainant a written acknowledgment that the complaint has been received.

**11.5 Proceedings in Response to Formal Complaint.** The ADR Committee shall promptly review the complaint to determine whether the matter warrants further investigation. If the ADR Committee determines that further investigation is warranted, the ADR Judge shall conduct an investigation, or appoint a subcommittee of ADR Committee members to conduct an investigation, and present a report of the investigation to the full committee. As part of such General Order No. 11-1020 investigation, the panel member shall be afforded an opportunity to respond to the complaint. Upon conclusion of the investigation and receipt of the report, the ADR Committee shall make a final determination as to what, if any, action shall be taken.

**11.6 Notice of Final Action in Response to Formal Complaint.** The Court shall notify the complainant and the panel member, in writing, of the final disposition of the complaint.

## **12. EFFECTIVE DATE**

This General Order shall become effective on December 1, 2011.