

INDIANA – SOUTHERN

Effective December 1, 200 and amended April 16, 2003

LOCAL RULES OF ALTERNATIVE DISPUTE RESOLUTION

PREAMBLE

These Rules have been adopted to provide uniform procedures for utilizing mediation in the resolution of certain cases in this Court, with the view that the interests of the parties before the Court may be better served by alternatives to the traditional adversarial litigation process. Mediation as provided under these Rules is a separate, alternative method of dispute resolution and does not preclude settlement conferences and mediation conducted by the District Judges or Magistrate Judges of the Court. The parties may also voluntarily pursue other forms of alternative dispute resolution not provided for under these Rules.

RULE 1. GENERAL PROVISIONS

RULE 1.1 SCOPE OF THE RULES

(a) Title and Citation. These Rules shall be known as the Local Alternative Dispute Resolution Rules of the United States District Court for the Southern District of Indiana. They shall be cited as AS.D.Ind. Local A.D.R. Rule ____.

(b) Scope of the Rules. The alternative dispute resolution method governed by these Rules is mediation. Any individual who serves as the primary facilitator for mediation under these Rules is referred to herein as the Mediator.

Settlement conferences conducted by the Judges and Magistrate Judges of the Court are not governed by these Rules.

RULE 1.2 APPLICATION OF ALTERNATIVE DISPUTE RESOLUTION

Unless limited by specific provisions, or unless there are other applicable specific statutory, common law, or constitutional procedures, these Rules shall apply in all civil litigation filed in the U.S. District Court for the Southern District of Indiana, except in the following cases and proceedings:

- (a)** Applications for writs of habeas corpus under 28 U.S.C. ' 2254;
- (b)** Forfeiture cases;
- (c)** Non-adversary proceedings in bankruptcy;

- (d) Social Security administrative review cases; and
- (e) Such other matters as specified by order of the Court; for example, matters involving important public policy issues, constitutional law, or the establishment of new law.

RULE 1.3 IMMUNITY FOR MEDIATORS ACTING UNDER THESE RULES

To the extent permitted under applicable law, each Mediator shall have immunity in the performance of his or her duties under these Rules, in the same manner, and to the same extent, as would a duly appointed Judge.

RULE 1.4 JURISDICTION OF PROCEEDING

At all times during the course of mediation, the case remains under the jurisdiction of the Judge to whom the case is assigned on the Court docket. For good cause shown the assigned Judge at any time may terminate the mediation.

RULE 1.5 OTHER METHODS OF DISPUTE RESOLUTION

These Rules shall not preclude the parties from utilizing any other reasonable method or technique of alternative dispute resolution to resolve disputes to which the parties agree. However, any use of arbitration by the parties will be governed by and comply with the requirements of 28 U.S.C. " 654 - 657.

RULE 1.6 CONFIDENTIALITY OF PROCEEDINGS

Any written or oral communications made during the course of any processes or proceedings covered under these Rules are confidential unless otherwise agreed by the parties. The unauthorized disclosure of any confidential communications by any persons may result in the imposition of sanctions pursuant to Rule 2.9.

Mediation shall be regarded as settlement negotiations as governed by FED. R. EVID. 408.

RULE 1.7 DISQUALIFICATION OF MEDIATORS

In any case in which a Mediator has been selected by the parties or appointed by the Court, the Mediator shall disqualify himself or herself from the proceeding if and when his or her impartiality might reasonably be questioned. In addition, each Mediator shall be subject to the disqualification rules found in 28 U.S.C. ' 455.

In any case in which a party reasonably believes an appointed Mediator should be disqualified, a Request for Disqualification of Mediator, setting forth the grounds therefor, shall be filed with the Clerk for consideration by the Court.

RULE 1.9 DESIGNATION OF ADMINISTRATOR

The Clerk and his/her designee shall serve as administrators of the processes covered under these Rules.

RULE 2. MEDIATION

RULE 2.1 PURPOSE

Mediation under this section involves the confidential process by which a person acting as a Mediator, selected by the parties or appointed by the Court, assists the litigants in reaching a mutually acceptable agreement. It is an informal and nonadversarial process. The role of the Mediator is to assist in identifying the issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, and finding points of agreement as well as legitimate points of disagreement. Final decision-making authority rests with the parties, not the Mediator.

It is anticipated that an agreement may not resolve all of the disputed issues, but the process, nonetheless, can reduce points of contention. Parties and their representatives are required to mediate in good faith, but are not compelled to reach an agreement.

RULE 2.2 CASE SELECTION

The Court with the agreement of the parties may refer a civil case for mediation. Unless otherwise ordered or as specifically provided in Rule 2.8, referral to mediation does not abate or suspend the action, and no scheduled dates shall be delayed or deferred, including the date of trial.

RULE 2.3 LISTING OF MEDIATORS: COMMISSION REGISTRY OF MEDIATORS

Any person who wishes to serve as a Mediator pursuant to these Rules must be registered with and satisfy the requirements of the Indiana Supreme Court Commission for Continuing Legal Education (hereinafter "Commission").

RULE 2.4 SELECTION OF MEDIATORS

Upon the issuance of an order referring a case to mediation, the parties may, within fifteen (15) days of referral: (1) choose a Mediator from the Commission's registry, or (2) agree upon a non-registered Mediator and notify the Court in writing of the agreement, providing the name and address of the selected Mediator. In the event a Mediator is not selected by agreement, the Court will designate three (3) registered Mediators from the Commission's registry who are willing to mediate within the Southern District of Indiana. Each side alternately shall strike the name of one Mediator. The side initiating the lawsuit will strike first. The Mediator remaining after the striking process will be deemed the selected Mediator.

A person selected to serve as a Mediator under this Rule may choose not to serve for any reason. At any time, a party may request that the Court replace the Mediator for good cause shown. In the event a Mediator chooses not to serve or the Court orders the replacement of the Mediator, the selection process will be repeated.

RULE 2.5 MEDIATION COSTS

(a) Mediation Fee. Each Mediator to whom a civil action is referred shall be compensated at a rate agreed upon by the parties and the Mediator.

(b) Prohibited Compensation. A Mediator may not give or receive any commission, rebate, contingent fee, or similar remuneration for referring any person to mediation or for serving as a Mediator.

RULE 2.6 MEDIATION PROCEDURE

(a) Advisement of Participants. The Mediator shall:

(1) advise the parties of all persons whose presence at the mediation might facilitate settlement; and

(2) disclose to the parties or their attorneys any factual documentation revealed during the mediation if, at the end of the mediation process, the disclosure is agreed upon by all parties.

(b) Mediation Sessions.

(1) The parties, their attorneys, and other persons with settlement authority shall be present at all mediation sessions unless otherwise agreed. At the discretion of the Mediator, non-parties to the dispute may also be present.

(2) Mediation sessions are not open to public.

(c) Confidential Statement of Case.

The attorney for each side shall submit to the Mediator a confidential statement of the case, not to exceed ten (10) pages, prior to a mediation session, which shall include:

- (1) the legal and factual contentions of the party as to both liability and damages;
- (2) the factors considered in arriving at the current settlement posture; and
- (3) the status of the settlement negotiations to date.

A confidential statement of the case may be supplemented by damage brochures, videos, and other exhibits or evidence. The supplemental materials shall be made available to opposing counsel at least five (5) days prior to the mediation session. The confidential statement of the case and its contents shall not be disclosed to opposing parties and shall at all times be held privileged and confidential to the extent provided by law, unless an agreement to the contrary is provided to the Mediator. In the mediation process, the Mediator may meet jointly or separately with the parties and may express an evaluation of the case to one or more of the parties or their representatives. If the mediation process does not result in settlement, any submitted confidential statement of the case shall be returned to the submitting attorney or party.

(d) Termination of Mediation.

The Mediator shall terminate mediation whenever the Mediator believes that continuation of the process would harm or prejudice one or more of the parties, whenever the ability or willingness of any party to participate meaningfully in mediation is so lacking that a reasonable agreement is unlikely, or whenever the Mediator determines that continuing the mediation process would be futile. The Mediator shall not state the reason for termination to the Court except when the termination is due to conflict of interest or bias on the part of the Mediator, in which case another Mediator may be assigned by the Court. Either party may withdraw from and terminate mediation if it is determined that continuing the mediation process would be futile.

(e) Report of Mediation: Status.

(1) Within ten (10) days after the mediation, the Mediator shall submit to the Court under seal (unless the parties agree otherwise), without comment or recommendation, a report of mediation status. The report shall indicate whether an agreement was reached in whole or in part, or whether the mediation was continued by the parties.

(2) If an agreement is reached, in whole or in part, it shall be reduced to writing and signed by the parties and their counsel. Except with the consent of all parties, the agreement shall not be filed with the Court. If the agreement is complete on all issues, a joint stipulation of disposition shall be filed with the Court.

(3) In the event of any breach or failure to perform under the agreement, upon motion and after hearing, the Court may impose sanctions, including entry of judgment consistent with the agreement.

RULE 2.7 RULES OF EVIDENCE

With the exception of privileged communications, the rules of evidence do not apply in mediation, but factual information having a bearing on the question of damages should be supported by documentary evidence whenever possible.

RULE 2.8 DISCOVERY

Whenever possible, parties are encouraged to limit discovery to the development of information necessary to facilitate the mediation process. Upon stipulation by the parties or as ordered by the Court, discovery may be deferred during mediation pursuant to FED. R. CIV. P. 26(c).

RULE 2.9 SANCTIONS

Upon motion by either party, the Court may impose sanctions against any person who fails to comply with these Rules.

RULE 2.10 MEDIATOR PRIVILEGE

Except as otherwise provided by law, Mediators shall not be subject to process requiring the disclosure of any matter discussed during the mediation, but rather, such matter shall be considered confidential and privileged in nature. The confidentiality requirement may not be waived by the parties, and a party or the Mediator may object to any attempt to obtain testimony or physical evidence from mediation.

RULE 3. CONDUCT AND DISCIPLINE FOR PERSONS CONDUCTING MEDIATION

RULE 3.0 PURPOSE

This Rule establishes standards of conduct for persons conducting mediation pursuant to these Rules.

RULE 3.1 ACCOUNTABILITY AND DISCIPLINE

A person who accepts appointment as a Mediator under these Rules consents to the jurisdiction of the Court in the enforcement of these standards.

RULE 3.2 COMPETENCE

A Mediator shall decline appointment, request technical assistance, or withdraw from a dispute beyond the Mediator's competence.

RULE 3.3 DISCLOSURE AND OTHER COMMUNICATIONS

(a) A Mediator has a continuing duty to communicate as follows:

(1) notify participants through their counsel of the date, time, and location of the process, at least ten (10) days in advance, unless a shorter time period is agreed upon by the parties;

(2) describe the mediation process, including the possibility that the Mediator may conduct private sessions;

(3) disclose the cost structure of the process;

(4) advise that the Mediator does not represent any of the parties or the Court;

(5) disclose any past, present or known future professional, business, or personal relationship with any party, insurer, or attorney involved in the process, and any other circumstances bearing on the perception of the Mediator's impartiality;

(6) explain the extent to which information obtained through the process from and about any participant is or is not privileged and may be subject to disclosure; and

(7) advise that any agreement signed by the parties constitutes evidence that may be introduced in litigation concerning enforcement of settlement.

(b) A Mediator may not misrepresent any material fact or circumstance nor promise a specific result or imply partiality.

(c) A Mediator shall preserve the confidentiality of all proceedings, except where otherwise provided by agreement of the parties or by law or order of the Court.

RULE 3.4 DUTIES

(a) A Mediator shall observe all applicable statutes, administrative policies, rules of professional conduct, and rules of Court.

(b) A Mediator shall act in a timely and expeditious fashion.

(c) A Mediator shall be impartial and civil, and shall utilize an effective system to identify potential conflicts of interest at the time of appointment. After disclosure pursuant to S.D.Ind. Local A.D.R. Rule 3.3(A), to the extent provided under 28 U.S.C. ' 455(e) a Mediator may serve with the consent of the parties, unless a conflict of interest arises or the Mediator believes the Mediator can no longer be impartial, in which case the Mediator shall withdraw.

(d) A Mediator shall avoid the appearance of impropriety.

(e) A Mediator shall display and promote mutual respect among the participants throughout the process.

RULE 3.5 FAIR, REASONABLE AND VOLUNTARY AGREEMENTS

(a) A Mediator shall not coerce any party.

(b) A Mediator shall withdraw whenever a proposed resolution is unconscionable or unjust.

(c) A Mediator shall not make any substantive decision for any party.

RULE 3.6 SUBSEQUENT PROCEEDINGS

(a) An individual may not serve as a Mediator in any dispute on which another Mediator already has been serving without first ascertaining that the current Mediator has been notified of the desired change.

(b) A person who has served as a Mediator in a proceeding may act as a Mediator in subsequent disputes between the parties, and the parties may provide for a review of the agreement with the Mediator on a periodic basis. However, the Mediator shall decline to act in any capacity except as a Mediator unless the subsequent association is clearly distinct from the issues involved in the alternative dispute resolution process. The Mediator may not subsequently act as an investigator for any court-ordered report or make any recommendations to the Court regarding the litigation.