

# NORTH CAROLINA- WESTERN

## LCvR 16.2 MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION (“ADR”).

**(A) *Mandatory Mediated Settlement Conference.*** All parties to civil actions are required to attend a Mediated Settlement Conference, unless otherwise ordered by the Court. A mediated settlement conference is a pretrial, Court ordered (by Local Rule) conference of the parties to a civil action and their representatives conducted by a mediator. The procedure for the conference shall be as provided in LCvR 16.3. A non-exclusive list of Court-approved mediators is maintained by the Court.

**(B) *Cases Not Suitable For ADR.*** These rules for mandatory ADR shall not apply to *habeas corpus* proceedings or other actions for extraordinary writs, appeals from rulings of administrative agencies, forfeitures of seized property, and bankruptcy appeals. The judicial officer may determine, either *sua sponte* or on application of any party, that any other case is not suitable for ADR, in which case no ADR procedure will be ordered.

## LCvR 16.3 RULES APPLICABLE TO MEDIATION OR ADR

**(A) *Time for Proceeding.*** The Court favors the use of alternative dispute resolution (ADR), ordinarily in the form of a mediated settlement conference, for the efficient and orderly resolution of civil cases. Accordingly, in the CIAC, the parties shall indicate their opinion(s) regarding the usefulness of ADR, the preferred method of ADR, and the most advantageous time at which to commence ADR. If the parties fail to submit, or are unable to agree on, a proposed method of ADR, a mediated settlement conference shall be selected as the default. The presiding magistrate judge or other judicial officer will in the Scheduling Order, or an Order for Alternative Dispute Resolution issued shortly thereafter, select the ADR method and order it to commence on a schedule after due consideration of the applicable responses given by counsel in the CIAC.

**(B) *Rules for Proceeding.*** Upon entry of an Order for Alternative Dispute Resolution, the case shall proceed as follows:

**(1) *Rules Governing Mediation.*** If a mediated settlement conference is ordered, the conduct of the ADR proceeding shall be governed by the *Rules Governing Mediated Settlement Conferences in Superior Court Civil Actions* promulgated by the North Carolina Supreme Court pursuant to N. C. Gen. Stat. §7A-38 (the “Mediation Rules”), and by the supplemental rules set forth herein.

**(a) *Interpretation of State Court Terms.*** Wherever the Mediation Rules refer to “Senior Resident Superior Court Judge” and “Administrative Office of the Court,” it shall mean “judicial officer” and “Clerk of Court” of the United States District Court, respectively.

**(b) *Appropriate Facilities.*** Rule 3(a) of the Mediation Rules is modified to permit the mediated settlement conference to be held in an appropriate facility anywhere as may be agreed to by the parties or allowed by the Court.

**(2) Rules Governing Alternative ADR Proceeding.** If an Alternative ADR Procedure is ordered, the ADR proceeding shall be governed by these Rules and by such other procedural rules submitted by the parties and approved by the judicial officer. The rules submitted by the parties shall include, in addition to rules regarding the actual proceeding, provisions setting a deadline for completion of the proceeding; the location for the proceeding; pre-proceeding submissions; and the method for selection and compensation of a mediator, evaluator or other “neutral” to preside over the proceeding.

**(3) Impact on Federal Law.** Nothing in this alternative dispute resolution program shall be deemed to override the Federal Arbitration Act or any other provision of the United States Code.

**(4) Exceptions to Rules.** The judicial officer may, either *sua sponte* or on motion of any party, permit exceptions or deviations from these rules.

**(C) Supplemental Rules for Mediated Settlement Conferences.** In addition to the Mediation Rules, the following rules shall also apply to mediated settlement conferences in the Western District:

**(1) No Record Made.** There shall be no record made of any proceedings under these rules.

**(2) Telephonic Attendance.** All mediated settlement conferences shall be conducted in person, unless leave is otherwise granted by the mediator.

**(3) Mediator’s Report of Outcome.** The mediator’s report required by the Mediation Rules shall be issued within seven (7) days of the conclusion of the Mediated Settlement Conference. The mediator may submit his or her report on a report form provided by the Clerk of Court, or by using his or her own letterhead or individually developed mediation report form. Such report may be filed by the mediator electronically or by conventional means.

**(D) Judicial Settlement Conference.**

**(1) Mandatory Consideration.** The judicial officer to whom a case is assigned may, at any time, order the parties to participate in a settlement conference to be convened by the Court. Any party may also request a judicial settlement conference.

**(2) Mandatory Attendance by Representatives with Full Authority to Effect Settlement.** A person with full authority to settle all pending claims must be present at the settlement conference and, for purposes of this rule, the “person with full authority to settle” shall not be the attorney. Such rule is not applicable to government attorneys and federal agency parties. Government attorneys are required to bring as much binding authority to settle as is feasible under the circumstances.

**(3) Presiding Judicial Officer.** Any judicial officer of the district other than the judicial officer to whom the case is assigned for disposition may preside over a judicial settlement conference convened by the Court.