

## TEXAS - SOUTHERN

LR16.4. **Alternative Dispute Resolution.** Pursuant to 28 U.S.C. § 652 (1998) and to facilitate the settlement or narrowing of issues in civil actions, the Court adopts the following Alternative Dispute Resolution Program:

16.4.A. **ADR Methods Available.** The Court approves the use of the following ADR methods in civil cases pending before district, magistrate, and bankruptcy judges: mediation, early neutral evaluation, mini-trial, summary jury trial, and, if the parties consent, non-binding arbitration pursuant to 28 U.S.C. § 654 (1998) (collectively, “ADR”). A judge may approve any other ADR method the parties suggest and the judge finds appropriate for a case.

16.4.B. **Timing of ADR Decision.**

- (1) Before the initial conference in a case, counsel are required to discuss with their clients and with opposing counsel the appropriateness of ADR in the case.
- (2) At the initial pretrial conference the parties shall advise the judge of the results of their discussions concerning ADR. At that time and at subsequent conferences, if necessary, the judge shall explore with the parties the possibility of using ADR. The judge may require the use of mediation, early neutral evaluation, and, if the parties consent, non-binding arbitration pursuant to 28 U.S.C. § 654 (1998).

16.4.C. **ADR Referral.** A judge may refer any civil case to ADR on motion of any party, on the agreement of the parties, or on its own motion. If the parties agree upon an ADR method or provider, the judge will respect the parties’ agreement unless the judge believes another ADR method or provider is better suited to the case and parties. The authority to refer a case to ADR does not preclude the judge from suggesting or requiring other settlement initiatives.

16.4.D. **Opposition to ADR Referral, ADR Method or ADR Provider.** A party opposing in a particular case either the ADR referral, ADR method, or the appointed ADR provider must file written objections within 14 days of entry of the order for ADR, and must explain the reasons for any opposition. The objections and related submissions shall be filed with the judge presiding over the case. (Amended by General Order 2009-17, effective 12/1/09).

16.4.E. **Standing Panel, ADR Administrator and List of Providers.**

(1) **Standing Panel.** The Court shall maintain a Standing Panel on ADR Providers (“Panel”) to oversee implementation, administration, and evaluation of the Court’s ADR program. The Chief Judge of the District will appoint three members, one of whom shall be a district judge who shall serve as chair person. Each Panel member shall be appointed for a three year term. The Panel shall review applications from prospective ADR providers and annually shall prepare an ADR List of those qualified under the criteria contained in this rule.

(2) **ADR Administrator.** The Court shall designate a person in the Court clerk's office as ADR Administrator to assist the Panel with its responsibilities and to serve as the primary contact for public inquiries regarding the Court's ADR program.

(3) **ADR Provider List.**

a. Copies of the ADR Provider List shall be available to the public in the clerk's office.

b. To be eligible for initial listing as an ADR provider, the applicant must meet the following minimum qualifications:

(i) membership in the bar of the United States District Court for the Southern District of Texas;

(ii) licensed to practice law for at least ten years; and

(iii) completion of at least forty hours training in dispute resolution techniques in an alternative dispute resolution course approved by the State Bar of Texas Minimum Continuing Legal Education department.

c. Each applicant for the ADR Provider List shall submit a completed application in December or January for consideration for the next ADR Provider List. The applicant must use the form available in the clerk's office. The application shall contain:

- (i) the ADR method(s) for which the applicant seeks to be listed; (ii) a concise summary of the applicant's training, experience, and qualifications for the ADR method(s) for which the applicant seeks to be listed;
- (ii) a concise summary of the applicant's training, experience, and qualifications for the ADR method(s) for which the applicant seeks to be listed;
- (iii) the subject matter area(s) in which the applicant has particular expertise (*e.g.*, the concentration of non-ADR practice, board certification); (iv) the applicant's fee schedule; and (v) a commitment to accept some cases for no fee or a reduced fee.

(amended by General Order No. 2012-13, effective October 18, 2012).

d. To maintain the listing, an ADR Provider annually, between January 1 and January 31, must file a certification with the ADR Administrator that the provider has completed five hours of ADR training during the previous calendar year. Self-study of court decisions on ADR and authoritative writings on ADR techniques and/or ADR ethics may be used to satisfy this requirement, if the provider identifies the materials studied and the dates of study in the annual certificate.

(Amended by General Order No. 2012-13, effective October 18, 2012).

e. Each ADR provider shall remain on the ADR Provider List for five years, provided the requirements of subparagraph E(3)(d) are met. After a five-year term, the ADR provider may apply for re-listing.<sup>422</sup>

f. An applicant denied listing may request a review of that decision by sending a letter to the Chief Judge of the District. The Chief Judge shall have final decision making authority on the matter.

g. In any particular case, a judge may approve any ADR provider on which the parties agree, even if the provider is not listed on the ADR Provider List or does not satisfy the criteria for eligibility for the list.

16.4.F. **Attendance; Authority to Settle.** Party representatives (in addition to litigation counsel) with authority to settle and all other persons necessary to negotiate a settlement, such as insurance carriers, must attend the ADR proceeding.

16.4.G. **Fees.** The provider and the parties generally will determine the fees for each ADR proceeding. However, the judge presiding over a case has the right to review the reasonableness of fees and to adjust them as appropriate. A judge also may at any time request a provider on the ADR Provider List or any other person to conduct an ADR proceeding *pro bono* or for a reduced fee.

16.4.H. **Binding Nature.** The results of all ADR proceedings approved by this rule are non-binding unless the parties agree otherwise in a written agreement or by announcement in open court.

16.4.I. **Confidentiality, Privileges and Immunities.** All communications made during ADR proceedings (other than communications concerning scheduling, a final agreement, or ADR provider fees) are confidential, are protected from disclosure, and may not be disclosed to anyone, including the Court, by the provider or the parties. Communications made during ADR proceedings do not constitute a waiver of any existing privileges and immunities. The ADR provider may not testify about statements made by participants or negotiations that occurred during the ADR proceedings. This provision does not modify the requirements of 28 U.S.C. § 657 (1998) applicable to non-binding arbitrations.

16.4.J. **Standards of Professional Conduct and Disqualification of ADR Providers.**

- (1) All providers are subject to disqualification pursuant to standards consistent with those set forth in 28 U.S.C. § 455 (1988). In addition, all ADR providers are required to comply with the State Bar of Texas Alternative Dispute Resolution Section's Ethical Guidelines for Mediators, the Code of Ethics for Arbitrators in Commercial Disputes promulgated by the American Arbitration Association, and the American Bar Association and such other rules and guidelines as the Panel specifies. Copies of these standards are available from the clerk's office.

- (2) Issues concerning potential ADR provider conflicts shall be raised with the judge presiding in the case relating to the ADR proceeding.

16.4.K. **Conclusion of ADR Proceedings.** After each ADR proceeding the provider, the parties, and the Court will take the following actions:

- (1) Within 14 days of completion of the proceeding, the parties jointly shall send to the ADR Administrator a memorandum stating the style and civil action number of the case; the names, addresses and telephone numbers of counsel and party representatives in attendance; the type of case; the name of the ADR provider, the ADR method used; whether the case settled; and the fees paid to the ADR provider. This reporting provision does not apply to non-binding arbitrations conducted pursuant to 28 U.S.C. § 654.
- (2) Within 14 days of completion of the proceeding, the ADR provider shall send a report to the ADR Administrator and the judge presiding over the case disclosing only the information listed in subparagraph K.(1).
- (3) Thereafter, the ADR Administrator shall submit a questionnaire evaluating the ADR provider and proceeding to the parties and counsel; counsel and the parties must complete and return the questionnaires by mail to the ADR administrator. The Court, attorneys, and the public may review the questionnaires in the clerk's office. Data in the questionnaires shall be compiled by the ADR Administrator each calendar year. The questionnaires shall be retained by the clerk's office for at least three years.

*(Amended by General Order No. 2012-13, effective October 18, 2012)*

16.4.L. **Evaluations.** The Court annually shall evaluate and issue a public report on the use of ADR in the district, dispositions of ADR proceedings, and other matters the Panel requires.

16.4.M. **Sanctions.** Fed. R. Civ. P. 16(f) sanctions apply to violations of this rule.