GEORGIA – NORTHERN

LR 16.7 ALTERNATIVE DISPUTE RESOLUTION PLAN

A. Purpose. The court adopts this Alternative Dispute Resolution ("ADR") Program to provide alternative processes for the resolution of civil disputes with resultant savings in time and costs to litigants and to the court, but without sacrificing the quality of justice or the right of the litigants to a full trial in the event of an impasse following ADR. The program and the procedures established thereunder are intended to comply fully with the Alternative Dispute Resolution Act of 1998. 28 U.S.C. § 651 et.seq.

B. Description of ADR Program. At various stages in the litigation of a civil case, litigants and their counsel are required to consider whether utilization of an alternative dispute resolution process is desirable or appropriate in their particular case. See LR 16.7D, below. A judge may authorize use of an ADR process that is facilitated by individuals or programs not connected with the court or, alternatively, the judge may authorize utilization of an ADR process offered through the court's court-annexed ADR program.

> **(1) General Referrals.** A judge may in his or her discretion refer any civil case to a non-binding ADR process, e.g. early neutral evaluation, mediation, or non-binding arbitration. Upon the consent of the parties, the judge may refer any civil case to binding arbitration, binding summary jury trial or bench trial, or other binding ADR process. The timing of the referral to a binding or non-binding ADR process under this section is within the discretion of the referring judge.
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> **(2) Court-annexed ADR Program**. Note: This program has not been funded by Congress and will not be implemented until funded.
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> **(3) Compromise Negotiations.** Every ADR process conducted in a civil case filed in this court will be treated as a compromise negotiation for purposes of the Federal Rules of Evidence and the Georgia Rules of Evidence. No record will be made of the ADR proceedings. The ADR neutral in the particular case is disqualified from appearing as a witness, consultant, attorney, or expert in any pending or future action relating to that dispute.
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> **(4) Stay of Proceedings.** In the initial Order directing the litigants to an ADR process or to the court-annexed ADR program, the judge will have indicated whether the proceedings will or will not be stayed during the ADR process.

C. Definitions.

As used in this local rule:

> **(1) Mediation** is a non-binding supervised process presided over by a qualified and neutral mediator.

(2) Early neutral evaluation ("ENE") is a non-binding supervised process where a neutral evaluator provides the litigants with an evaluation of the strengths and weaknesses of each party's case to the extent possible at an early stage, helps the parties focus on the issues, organizes an efficient discovery plan, identifies a plan for expeditious resolution of the case by dispositive motion or trial, and/or, if possible, settles all or part of the issues in the case.

(3) Arbitration is the submission of a dispute to a neutral third party or panel, which then renders a decision. Arbitration is an adjudicative process that requires each side to offer evidence and present argument, upon which the neutral or panel then decides the case.

D. Requirement to Consider ADR.

(1) Counsel for the litigants are required to discuss utilization of an ADR process at the Early Planning Conference (see LR 16.1). If counsel wish to participate in ADR, counsel shall immediately so notify the judge to whom the case is assigned in writing, specifying which ADR process is desired and whether they desire to participate in the court-annexed ADR plan or otherwise. If counsel decide against participation in an ADR process at this time, this decision must be reported in the Preliminary Planning Report (see LR 16.2).

(2) For cases not resolved sooner, counsel shall again consider participation in ADR at the required Conference After Discovery (see LR 16.3). The assigned judge must be notified immediately if counsel wish to participate in an ADR process.

(3) In any case in which all counsel do not support participation in ADR, individual counsel may provide the judge confidential notice, in writing, of that counsel's desire for ADR. The judge will then make a determination as to whether the case should be included in the ADR program.

E. Notification of Referral. The judge will notify the parties in writing when the judge has referred a case to an ADR process, specifying whether the referral is to the court-annexed program or otherwise.

F. Selection of ADR Neutral.

(1) General Referrals. For ADR processes conducted by others, the judge will appoint the ADR neutral. However, before making the appointment, the judge may direct that each party send the judge a list of the names of three (3) ADR neutrals after which the judge will then select the ADR neutral. If the parties have mutually agreed on one of the ADR neutrals listed in their submissions, the parties may so notify the judge, who in his or her discretion, may consider their recommendations. The judge will provide the parties written notice of the identity of the ADR neutral selected and will send a copy of the appointment to the ADR neutral.

(2) Referrals to Court-Annexed Program. In cases referred to the court annexed

program, the ADR administrator shall appoint the neutral after providing counsel with the names of three (3) or more proposed neutrals and considering any objections counsel may have to the proposed neutrals.

(3) Judicial Contact. Once a neutral has been appointed, counsel are not allowed to have any oral or written communication regarding the ADR process with the judge to whom the case is assigned.

(4) ADR Conferences. Once appointed, the ADR neutral will arrange for a conference at a time within thirty (30) days from the date of the notice naming the ADR neutral, unless otherwise ordered by the judge.

G. Disqualification of ADR Neutrals.

Any person selected as an ADR neutral may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144 and shall be disqualified in any case in which such action would be required by a justice, judge, or magistrate judge governed by 28 U.S.C. § 455.

H. Required Submissions Before ADR Conferences.

At least seven (7) days before the ADR conference, the parties must submit to the ADR neutral:

(a) copies of relevant pleadings and motions;

(b) a short memorandum which identifies the persons, in addition to counsel, who will attend the ADR conference and identifies the individuals connected to the opposing litigant whose presence would be helpful to a productive session. The ADR neutral shall determine whether any person so identified should be requested to attend;

(c) a written statement, not to exceed ten (10) pages double spaced, which summarizes the legal and factual position of each party respecting the issues in dispute. For ENE conferences, each party also shall prepare a written evaluation statement; any written evaluation statements for an ENE conference shall not be submitted to the judge;

(d) such other relevant materials as the ADR neutral requests. At the conference, counsel shall be prepared to respond fully and candidly in a private caucus to questions by the ADR neutral regarding the estimated costs to counsel’s clients of any remaining discovery and of litigating the case through trial, including attorneys' fees and expert witnesses, and regarding the claimed damages, including the method of computation.

I. Procedure Applicable to all ADR Conferences.

(1) Attendance. The attorney primarily responsible for each litigant’s case must personally attend the ADR conference and must be prepared and authorized to discuss all relevant issues, including settlement unless excused by the neutral. The litigants must

also be present unless excused by court order. When a litigant is other than an individual, an authorized representative of such litigant, with full authority to settle, must attend.

When a litigant has insurance coverage for the claims in dispute, an authorized representative of the insurance company, with full authority to settle, must attend. Willful failure of a party to attend an ADR conference will be reported to the administrator by the ADR neutral, who will then report the absence to a judicial officer for possible imposition of sanctions.

ADR conferences will be private. Persons other than the litigants and their representatives may attend only with the permission of all litigants and with the consent of the ADR neutral.

(2) Time and Place. The ADR neutral will fix the date and length of each ADR conference. The conference will be held at a location agreeable to the ADR neutral and the litigants or as otherwise directed by the judge.

(3) Informal Procedure. The ADR conference, and such additional conferences as the ADR neutral deems appropriate, will be informal.

(4) Private Caucuses; Confidentiality. The ADR neutral may hold separate, private caucuses with any litigant or counsel. The ADR neutral must not disclose to any other party any information disclosed by a litigant during a caucus which that party indicates to the ADR neutral should be treated as confidential. It will be the responsibility of each party to clearly indicate to the ADR neutral which information is and is not deemed confidential by that litigant.

(5) Statements; Confidentiality. The ADR neutral shall have the litigants and their attorneys sign a form agreeing that any statements made or presented during the ADR conference are confidential and may not be used as evidence in any subsequent administrative or judicial proceeding. The only exception shall be if the judge requests a report from the EN evaluator in the judge's order appointing the EN evaluator.

J. Procedure at Mediation Conference.

(1) Procedure. The mediator will conduct the process in order to assist the litigants in arriving at a settlement of all or some of the issues involved in the case. The mediator will determine how to structure the mediation conference.

(2) Settlement Proposal by Mediator. If after reasonable efforts the litigants fail to develop settlement terms or upon request of the litigants, the mediator may submit to the litigants a final settlement proposal that the mediator believes to be fair. The litigants carefully will consider such proposal and, at the request of the mediator, will discuss the proposal with the mediator. The mediator may comment on questions of law at any appropriate time.

(3) Conclusion of the Mediation Process. The mediator will conclude the process when:

(a) a settlement is reached by the litigants; or

(b) the mediator concludes, and informs the litigants, that further efforts would not be useful.

K. Procedure at ENE Conference.

(1) Procedure. The evaluator will conduct the process in order to help the parties focus the issues and work efficiently and expeditiously to make the case ready for trial or settlement. The evaluator will determine how to structure the evaluation conference.

(2) Scope. At the initial conference, and at any additional conferences the evaluator deems appropriate, the evaluator may:

(a) permit each litigant to make a brief oral presentation of its position through counsel or otherwise;

(b) help the litigants to identify areas of agreement and, if feasible, enter stipulations;

(c) determine whether the litigants wish to negotiate, with or without the evaluator's assistance, before evaluation of the case;

(d) help the litigants identify issues and assess the relative strengths and weaknesses of the litigants' positions;

(e) help the litigants 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;

(f) help the litigants to assess litigation costs realistically;

(g) determine whether one or more additional conferences would assist in the settlement or case development process and, if so, schedule the conference and direct the litigants to prepare and submit any additional written materials needed for the conference;

(h) at the final conference (which may be the initial conference), give an evaluation of the strengths and weaknesses of each litigant's case and of the probable outcome if the case is tried, including, if feasible, the dollar value of each claim and counterclaim;

(i) advise the litigants, if appropriate, about the availability of ADR processes that might assist in resolving the dispute;

(j) act as a mediator or otherwise assist in settlement negotiations either before or after presenting the evaluation called for in Section (2)(h) above; and

(k) assist the litigants in narrowing the issues in the case, and, if requested by the judge, the evaluator may send a report to the judge on whether a preliminary pretrial conference should be held with the judge under Rule 16 to further narrow the issues in the case.

L. Report to the Court. Within seven (7) days following any ADR process, the ADR neutral will file a Report indicating the date and length of the ADR process and whether all required litigants were present. If a settlement agreement is reached, the Report will indicate that a settlement is reached and the date by which the final settlement agreement will be executed and the dismissal filed. If no settlement agreement is reached, the ADR neutral will report in writing that the ADR process was held, that no agreements were reached, and the recommendations, if any, of the ADR neutral as to the future processing of the case. The written Report shall be prepared by the ADR neutral (or at the ADR neutral's request, one of the litigants), shall be signed by the litigants, and shall be delivered to the ADR administrator. If a settlement is reached, the ADR neutral, or one of the litigants at the ADR neutral's request, shall prepare a written document reflecting briefly the terms of the settlement agreement which shall be signed by the litigants and retained by the ADR neutral and the litigants.

M. Fee.

(1) General. Litigants are encouraged to agree upon compensation of the ADR neutral at or before the first conference. Relevant factors to be considered in determining an appropriate fee include the complexity of the litigation, the degree of skill necessary to facilitate the dispute, and the ability of the litigants to pay.

(2) Court Annexed Program. Neutrals in the court-annexed ADR program are required to list their fee schedules as part of their applications. The court will review fee schedules for reasonableness. Daily rather than hourly rates are encouraged. Any issues with regard to fees will be resolved by the ADR administrator.

(3) Before being placed on the roster for the court’s annexed ADR program, a neutral must agree to provide pro bono hours and hours at reduced rates to defray ADR costs for parties with limited ability to pay. The number of hours required will be determined by the judges.