

OHIO-NORTHERN

Rule 16.4 Alternative Dispute Resolution

(a) Purpose. The Court adopts Local Rules 16.4 to 16.7 to make available to the Court and the parties a program of court-annexed dispute resolution processed designed to provide alternatives to traditional litigation.

It is not contemplated that these processes will be suitable for every case. Rather, the Judges of the Court believe that the careful selection of processes to fit the cases will result in the efficient preparation and resolution of those cases, to the benefit of the parties, their counsel, and the Court.

(b) Definitions.

(1) The "assigned Judge" is the Judge to whom the case is assigned. If the Judge has referred the matter to a Magistrate Judge, the Magistrate Judge is the assigned Judge under Local Rules 16.4 to 16.7 with respect to actions or decisions which are to be made by the assigned Judge.

(2) "Early Neutral Evaluation" ("E.N.E.") is a pre-trial process involving a neutral who meets with the parties early in the course of the litigation to help them focus on the issues, organize discovery, work expeditiously to prepare the case for trial, and, if possible, settle all or part of the case. The neutral evaluator provides the parties with an evaluation of the legal and factual issues, to the extent possible, at that early stage of the case. The evaluation process described in Local Rule 16.5 is court-annexed.

(3) "Mediation" is a non-binding settlement process involving a neutral who helps the parties to overcome obstacles to effective negotiation. The mediation process described in Local Rule 16.6 is court-annexed.

(c) The ADR Administrator. The "ADR Administrator" is the person appointed by the Court with full authority and responsibility to direct the programs described in this Section. The ADR Administrator shall be a person with training and experience in the administration of ADR Programs. The ADR Administrator shall:

- (1) Administer the selection, training, and use of the Federal Court Panel;
- (2) Collect and maintain biographical data with respect to members of the Federal Court Panel to permit assignments commensurate with the experience, training, and expertise of the panelists and make the list of panelists and the biographical data available to parties and counsel;
- (3) Prepare applications for funding of the ADR Program by the United States government and other parties;

(4) Prepare reports required by the United States government or other parties with respect to the use of funds in the operation and evaluation of the program;

(5) Develop and maintain such forms, records, docket control, and data as may be necessary to administer and evaluate the program;

(6) Periodically evaluate, or arrange for outside evaluation of, the ADR Program and report on that evaluation to the Court, making recommendations for changes in these Rules, if needed; and

(7) Develop, and make available upon request, lists of private or extra-judicial ADR providers. Decisions of the ADR Administrator, acting within the authority conferred in these Rules, shall be orders of the Court for purposes of enforcement and sanctions.

(d) Federal Court Panel. There is hereby authorized the establishment of a Federal Court Panel consisting of persons who, by experience, training, and character, are qualified to act as neutrals in one or more of the processes provided for in these Rules.

(1) Appointment to the Panel. The Federal Court Panel shall consist of persons nominated by the Court's Advisory Group and confirmed by the Judges of the Court.

(2) Qualifications and Training.

(A) Panelists shall be lawyers who have been admitted to the practice of law for at least five (5) years and are currently either members of the bar of the United States District Court for the Northern District of Ohio or members of the faculty of an accredited Ohio law school. The Court may waive these requirements to appoint other qualified persons with special expertise in particular substantive fields or experience in dispute resolution processes.

(B) All persons selected as panelists shall:

- (i) Undergo such dispute resolution training as the Court may prescribe;
- (ii) Take the oath set forth in 28 U.S.C. § 453; and
- (iii) Agree to follow the provisions of these Rules.

Each person shall be appointed as a Federal Court Panelist for a period of three (3) years. Appointment may be renewed upon a demonstration of continued qualification.

(3) Compensation of Panelists.

(A) The maximum hourly rate that may be charged by the panelist for court-annexed services shall be \$275.00 per hour. Unless otherwise agreed, the panelist's charge shall be split equally between the plaintiffs and the defendants.

(B) No compensation shall be provided for preparation time.

(C) If the Court determines that a party does not have the financial resources to pay the panelist's charge, the Court may assign a panelist who will provide four and one half (4

½) hours of neutral service, in addition to any necessary preparation time, without charge. No panelist will be required to provide more than four and one half (4 ½) hours of free service per year.

(4) Immunity. All persons serving as Court appointed neutrals in the court-annexed ADR program are performing quasi-judicial functions and are entitled to the immunities and protections that the law accords to persons serving in such capacity.

(e) **Referral to ADR.** Parties are encouraged to use ADR for the resolution of their disputes, and the Judicial Officer shall guide the parties to an appropriate ADR process when, in the judgment of the Judicial Officer, such referral is warranted, and shall make the parties aware that a neutral may be selected through this Court's ADR Program. In the event it is a case referred to a Magistrate Judge for case management only, any reference to ADR may be made only with the approval of the District Judge to whom the case was assigned. Without leave of Court, neither the parties nor the neutral may modify the time allowed for completing an ADR process.

(f) **Private ADR.** If all parties advise the Court that they would prefer to use a private ADR process, the Court may permit them to do so at the expense of the parties subject to:

(1) The submission to the Court of an agreement, executed by the parties, providing for the conduct of the ADR process including, without limitation, confirming their agreement to use and pay for a private ADR process and explaining how a neutral will be selected.

(2) The filing with the Court, within ten (10) days of the completion of the ADR process, of a written report signed by the neutral or by the parties if no neutral was used.

Rule 16.5 Early Neutral Evaluation (E.N.E.)

(a) **Eligible Cases.** Any civil case may be referred to E.N.E.

(b) **Selection of Cases.** A case may be selected for E.N.E.:

(1) By the Court at the Case Management Conference (See Local Rule 16.1(b)(2)); or

(2) At any time:

(A) By the Court on its own motion, in consultation with the parties;

(B) By the Court, on the motion of one of the parties; or

(C) By stipulation of all parties.

(c) **Administrative Procedure.**

(1) Upon notice that a case has been referred for court-annexed E.N.E., the ADR Administrator will promptly provide the parties with a Notice of Referral, listing of available panelists who are qualified to deal with the subject matter of the lawsuit. The parties shall confer with each other within ten (10) days after receiving the written Notice of Referral and provide the ADR Administrator with an agreed list of three proposed evaluators, ranked in order of preference. In the event of multiple parties not united in interest, the parties shall add the name

of one proposed evaluator for each such additional party. If the parties fail to provide the ADR Administrator with an agreed list of at least three proposed evaluators, the ADR Administrator shall select from the list of available panelists provided to the parties an evaluator who is qualified to deal with the subject matter of the lawsuit. The ADR Administrator shall make a preliminary determination that the proposed evaluator has no conflicts of interest and that the proposed evaluator can serve. Nothing in this Rule shall limit the right of the parties, with consent of the Court, to select a person of their own choosing to act as an evaluator hereunder.

(2) The ADR Administrator shall contact the proposed evaluator(s), in the order of preference provided by the parties, concerning potential conflicts of interest and scheduling. Once a determination has been made that a proposed evaluator can serve, the ADR Administrator shall provide written Notice of Designation (which shall include the name, address and telephone number of the chosen panelist, hereafter, the "Evaluator") to counsel for all parties (or to parties not yet represented by counsel) and to the Evaluator. If, after Notice of Designation is given or sent, a new party is joined in the action, the ADR Administrator shall promptly send that new party a copy of the Notice of Designation.

(3) Promptly after receiving the Notice of Designation, the Evaluator shall schedule the evaluation session which, unless otherwise ordered by the Court, shall be not more than thirty (30) days from the date of the written Notice of Designation. The Evaluator shall send written notice to all parties and to the ADR Administrator advising them as to the date, time and location of the evaluation session.

(4) Without leave of Court, neither the parties nor the neutral may modify the time allowed for completing an ADR process.

(d) Neutrality of Evaluator. If at any time the Evaluator becomes aware of or a party raises an issue with respect to the Evaluator's neutrality because of some interest in the case or because of a relationship or affiliation with one of the parties, the Evaluator shall disclose the facts with respect to the issue to all of the parties. If a party requests that the Evaluator withdraw because of the facts so disclosed, the Evaluator may withdraw and request that the ADR Administrator appoint another evaluator. If the Evaluator determines that withdrawal is not warranted, the Evaluator may elect to continue. The objecting party may then request the ADR Administrator to remove the Evaluator. The ADR Administrator may remove the Evaluator and choose another from the Federal Court Panel. If the ADR Administrator decides that the objection is unwarranted, the evaluation session shall proceed as scheduled, or, if delay was necessary, as soon after the scheduled date as possible.

(e) Written Submissions to the Evaluator.

(1) No later than five (5) days before the evaluation session, each party shall submit to the Evaluator and serve on all other parties a written evaluation statement. The statement shall not exceed ten (10) pages and shall conform to this Rule. The statement shall:

(A) Identify the person, in addition to counsel, who will attend the session as a representative of the party with decision making authority

(B) Identify any legal or factual issues whose early resolution might reduce the scope of the dispute or contribute to settlement;

(C) Describe discovery which is contemplated; and,

(D) Include as exhibits copies of all pleadings filed by the party submitting the written statement. The statement may include any other information the party believes useful in preparing the Evaluator and other parties for a productive session. The statement may identify individuals connected to another person (including a representative of an insurer) whose presence would be helpful or necessary to make the session productive. The Evaluator shall determine whether any person so identified should be requested to attend and may make such request.

(2) Written evaluation statements shall not be filed and shall not be shown to the Court

(3) In addition to submitting the written evaluation statement, the parties shall prepare to respond fully and candidly in a private caucus to questions by the Evaluator concerning:

(A) The estimated costs to that party of litigating the case through trial, including legal fees;

(B) Witnesses (both lay witnesses and experts);

(C) Damages, including the method of computation and the proof to be offered; and

(D) Plans for discovery.

(f) Attendance at the Evaluation Conference.

(1) All parties shall be present, except that when a party is other than an individual or when a party's interests are being represented by an insurance company, an authorized representative of such party or insurance company, with full authority to act and to settle, shall attend. Willful failure of a party to attend the evaluation conference shall be reported by the Evaluator to the ADR Administrator for transmittal to the assigned Judge, who may impose appropriate sanctions.

(2) Each party shall be represented at the session by the attorney expected to be primarily responsible for handling the trial of the case.

(g) Procedure at Evaluation Conferences.

(1) Each E.N.E. conference shall be informal. The Evaluator shall conduct the process in order to help the parties to focus the issues and to work efficiently and expeditiously to make the case ready for trial or settlement.

(2) At the initial conference, and at additional conferences as the Evaluator deems appropriate, the Evaluator shall:

(A) Permit each party to make a brief oral presentation of its position, without interruption, through counsel or otherwise;

(B) Help the parties to identify areas of agreement and, if feasible, enter stipulations.

(C) Determine whether the parties wish to negotiate, with or without the Evaluator's assistance, before evaluation of the case;

(D) Help the parties identify issues and assess the relative strengths and weaknesses of the parties' positions;

(E) Help the parties 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 parties 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 parties 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 party'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 parties, if appropriate, about the availability of ADR processes that might assist in resolving the dispute; and

(J) Report to the ADR Administrator in writing within ten (10) days of the close of the E.N.E. conference: the fact that the E.N.E. process was completed, any agreements reached by the parties, and the Evaluator's recommendation, if any, as to future ADR processes that might assist in resolving the dispute.

(3) The Evaluator may, subject to the requirements stated in this Rule:

(A) Determine how to structure the evaluation conference;

(B) Hold separate, private caucuses with any party or counsel but may not, without the consent of that party or counsel, disclose the contents of that discussion to any other party or counsel; and

(C) Act as a mediator or otherwise assist in settlement negotiations either before or after presenting the evaluation called for in subsection (g)(2)(H) of this Rule.

(h) Confidentiality. The entire E.N.E. process is confidential, and privileged to the extent provided under Ohio Rev. Code Ch. 2710 and Sixth Circuit law. The parties and the Evaluator shall not disclose information regarding the process, including settlement terms, to the Court or to third persons unless all parties otherwise agree. Parties, counsel, and evaluators may, however, respond to confidential inquiries or surveys by persons authorized by the Court to evaluate the E.N.E. program. Information provided in such inquiries or surveys shall remain confidential and shall not be identified with particular cases.

The E.N.E. process shall be treated as a compromise negotiation for purposes of the Federal Rules of Evidence and state rules of evidence. The Evaluator is disqualified as a witness, consultant, attorney, or expert in any pending or future action relating to the dispute, including actions between persons not parties to the E.N.E. process.

Rule 16.6 Mediation

(a) **Eligible Cases.** Any civil case may be referred to mediation.

(b) **Selection of Cases.**

(1) **When Selected.** A case may be selected for mediation:

(A) When the status of discovery is such that the parties are generally aware of the strengths and weaknesses of the case; or

(B) At any earlier time by agreement of the parties and with the approval of the Court.

(2) **How Selected.** A case may be selected for mediation:

(A) By the Court on its own motion, in consultation with the parties;

(B) By the Court, on motion of one of the parties; or

(C) By stipulation of all parties.

(3) **Objection to Mediation.**

(A) For good cause, a party may object to the referral to mediation by the Court on its own motion by filing a written request for reconsideration within ten (10) days of the date of the Court's order.

(B) Mediation processes shall be stayed pending decision on the request for reconsideration, unless otherwise ordered by the Court.

(c) **Administrative Procedure.**

(1) Upon notice that a case has been referred to Mediation, the ADR Administrator will promptly provide the parties with a Notice of Referral, listing of available panelists who are qualified to deal with the subject matter of the lawsuit. The parties shall confer with each other within ten (10) days after receiving the written Notice of Referral and provide the ADR Administrator with an agreed list of three proposed mediators, ranked in order of preference. In the event of multiple parties not united in interest, the parties shall add the name of one proposed mediator for each such additional party.

If the parties fail to provide the ADR Administrator with an agreed list of at least three proposed mediators, the ADR Administrator shall select from the list of available panelists provided to the parties a mediator who is qualified to deal with the subject matter of the lawsuit. The ADR Administrator shall make a preliminary determination that the proposed mediator has no conflicts of interest and that the proposed mediator can serve.

Nothing in this Rule shall limit the right of the parties, with consent of the Court, to select a person of their own choosing to act as a mediator hereunder.

(2) The ADR Administrator shall contact the proposed mediator(s), in the order of preference provided by the parties, concerning potential conflicts of interest and scheduling.

Once a determination has been made that a proposed mediator can serve, the ADR Administrator shall provide written Notice of Designation (which shall include the name, address and telephone number of the chosen panelist, hereafter, the “Mediator”) to counsel for all parties (or to parties not yet represented by counsel) and to the Mediator. If, after Notice of Designation is given or sent, a new party is joined in the action, the ADR Administrator shall promptly send that new party a copy of the Notice of Designation.

(3) Promptly after receiving the Notice of Designation, the Mediator shall schedule the mediation conference which, unless otherwise ordered by the Court, shall not be more than thirty (30) days from the date of written Notice of Designation. The Mediator shall send written notice to all parties and to the ADR Administrator advising them as to the date, time and location of the mediation conference.

(4) Without leave of Court, neither the parties nor the neutral may modify the time allowed for completing an ADR process.

(d) Neutrality of Mediator. If at any time the Mediator becomes aware of or a party raises an issue with respect to the Mediator's neutrality because of some interest in the case or because of a relationship or affiliation with one of the parties, the Mediator shall disclose the facts with respect to the issue to all of the parties. If a party requests that the Mediator withdraw because of the facts so disclosed, the Mediator may withdraw and request that the ADR Administrator appoint another mediator. If the Mediator determines that withdrawal is not warranted, the Mediator may elect to continue. The objecting party may then request the ADR Administrator to remove the Mediator. The ADR Administrator may remove the Mediator and choose another from the Federal Court Panel. If the ADR Administrator decides that the objection is unwarranted, the mediation conference shall proceed as scheduled or, if delay was necessary, as soon after the scheduled date as possible.

(e) Written Submissions to Mediator.

(1) At least five (5) days before the mediation conference, the parties shall submit to the Mediator:

- (A) Copies of relevant pleadings and motions;
- (B) A short memorandum stating the legal and factual positions of each party respecting the issues in dispute; and
- (C) Such other material as each party believes would be beneficial to the Mediator.

(2) Upon reviewing such material, the Mediator may, at his or her own discretion or on the motion of a party, schedule a preliminary meeting with counsel.

(3) Written mediation memoranda shall not be filed and shall not be shown to the Court.

(f) Attendance at Mediation Conference. The attorney who is primarily responsible for each party's case shall personally attend the mediation conference and shall be prepared and authorized to discuss all relevant issues, including settlement. The parties shall also be present,

except that when a party is other than an individual or when a party's interests are being represented by an insurance company, an authorized representative of such party or insurance company, with full authority to settle, shall attend. Willful failure of a party to attend the mediation conference shall be reported by the Mediator to the ADR Administrator for transmittal to the assigned Judge, who may impose appropriate sanctions.

(g) Procedure at Mediation Conference.

(1) The mediation conference, and such additional conferences as the Mediator deems appropriate, shall be informal. The Mediator shall conduct the process in order to assist the parties in arriving at a settlement of all or some of the issues involved in the case.

(2) The Mediator may hold separate, private caucuses with any party or counsel but may not, without the consent of that party or counsel, disclose the contents of that discussion to any other party or counsel.

(3) If the parties have failed, after reasonable efforts, to develop settlement terms, or if the parties request, the Mediator may submit to the parties a final settlement proposal which the Mediator believes to be fair. The parties will carefully consider such proposal and, at the request of the Mediator, will discuss the proposal with him or her. The Mediator may comment on questions of law at any appropriate time.

(4) The Mediator may conclude the process when:

(A) A settlement is reached; or

(B) The Mediator concludes, and informs the parties, that further efforts would not be useful.

(5) Within ten (10) days of the close of the mediation conference, the Mediator shall report in writing to the ADR Administrator that the mediation was held, whether the mediation has resulted in a settlement and;

(A) If a settlement agreement is reached, the Mediator shall report the time frame within which the parties will submit an agreed entry to the Court concluding the matter or, if required, seeking the Court's approval of the settlement terms.

(B) If a settlement agreement is not reached, the Mediator shall report in writing to the ADR Administrator any agreements reached by the parties, and the Mediator's recommendation, if any, as to future processing of the case.

(h) Confidentiality. The entire mediation process is confidential and privileged to the extent provided under Ohio Rev. Code ch. 2710 and Sixth Circuit Law. The parties and the Mediator may not disclose information regarding the process, including settlement terms, to the Court or to third persons unless all parties otherwise agree. Parties, counsel, and mediators may, however, respond to confidential inquiries or surveys by persons authorized by the Court to evaluate the mediation program. Information provided in such inquiries or surveys shall remain confidential and shall not be identified with particular cases.

The mediation process shall be treated as a compromise negotiation for purposes of the Federal Rules of Evidence and state rules of evidence. The Mediator is disqualified as a witness, consultant, attorney, or expert in any pending or future action relating to the dispute, including actions between persons not parties to the mediation process.

Rule 16.7 Other ADR Procedures

A Judge may utilize other methods of court-annexed alternative dispute resolution procedures, including Summary Jury Trials, Summary Bench Trials, and Arbitration, or recommend or facilitate the use of any extrajudicial procedures for dispute resolution not otherwise provided for by these Local Rules.

In the event a reference to extrajudicial procedures is made, all further court-annexed case management procedures may be stayed and an administrative closing of the case may be made pursuant to Administrative Office guidelines for cases in which all presently contemplated proceedings have been completed. (See Guide to Judiciary Policies and Procedures, Volume XI, Chapter 5, Subsection III, H, p. 26).

If the case is resolved extrajudicially, then the administrative closing order may be supplemented with a terminal dispositive order. If the case is not resolved extrajudicially, the case may be returned to a court-annexed case management protocol for processing and ultimate disposition.