

TENNESSEE – MIDDLE

LR16.02 - ADR: STATEMENT OF AUTHORITY AND PURPOSE

(a) Authority. Pursuant to 28 U.S.C. §§ 471, 473(a)(6) and 475; 28 U.S.C. § 651(a), *Fed. R.*

Civ. P. 16(c)(9), 53 and 83, and this Court's Civil Justice Expense and Delay Reduction Plan of 1994, as provided in Local Rule 16.02, this Court is authorized to experiment with court-supervised methods of alternative dispute resolution and to determine the type(s) of alternative dispute method(s) that are effective in the speedy, just, prompt and inexpensive resolution of litigation. These Rules create alternative procedures to traditional litigation and define the process to refer appropriate cases to such procedure as well as to monitor the results of these alternative procedures.

(b) Purpose of Alternative Dispute Resolution (“ADR”). The purpose of alternative dispute resolution is to provide a mechanism by which the Court and the parties can consider ADR techniques to aid in resolution of cases by settlement and thereby avoid the expense of trial and delay in adjudication. By use of these techniques, settlements can be facilitated early in the proceedings, thereby reducing otherwise unnecessary time and expense of protracted pretrial proceedings, including discovery and other pretrial preparation. Under these Rules, the Middle District of Tennessee's Alternative Dispute Resolution program provides for judicially conducted settlement conferences, mediation, early neutral evaluation, nonbinding arbitration, and Rule 68 offers of judgment. The Mediation, Early Neutral Evaluation and Nonbinding Arbitration proceedings will be conducted by ADR Panel Members who are appointed by the Court and who will conduct these ADR procedures under the supervision of the Court.

(c) Application of Alternative Dispute Resolution. All cases filed in this District are subject to alternative dispute resolution. These rules, however, are applicable only to an ADR proceeding pursuant to order of reference in a specific case.

(d) Referrals to Alternative Dispute Resolution Proceedings.

(1) Upon motion of the parties or at the initiative of the Court, a District Judge or Magistrate Judge to whom the case is assigned may refer the case for mediation, early neutral evaluation, a settlement conference, nonbinding arbitration, or other nonbinding method of alternative dispute resolution provided by the Court, with or without the consent of the parties. The Order of Reference may include a date by which the ADR proceedings must be concluded.

(2) If appropriate, the Court or ADR neutral shall require that a party or a representative of a party with the authority to settle the action be present for the ADR proceeding except upon good cause shown. A party that is a governmental entity need not have present at the proceeding the persons who would be required to approve a settlement before it could become final (e.g., the members of a city council or the chief executive of a major agency), but must send to the proceeding a representative who is knowledgeable about the facts of the case and the governmental entity's position.

(e) Supervisory Power of the Court. Notwithstanding any provision of this Rule, the District Judge to whom a civil action is assigned retains full authority to supervise every action that is subject to this Rule consistent with *Title 28 of the United States Code*, the *Federal Rules of Civil Procedure* and Local Rules of Court.

(f) Sanctions. To ensure compliance with these Rules, if a party or the party's attorney, without good cause, fails to comply with an Order under these Rules, such as failure to pay the ADR panel member's fee, then pursuant to *Fed. R. Civ. P. 16(f)*, the Court may impose sanctions upon the party or the party's counsel, including but not limited to the payment of reasonable attorney fees, ADR panel member's fees and costs incurred by the reason of the failure to comply with these Rules; contempt; or any other lawful sanction.

(g) Adherence to Schedule. Unless the case is settled at the conclusion of the referral to an ADR proceeding, the action shall proceed toward final disposition in accordance with the Scheduling or Case Management Order.

LR16.03 - ADR: DEFINITIONS, PROCEDURES AND ADMINISTRATION

(a) Definitions. As used in these Rules, the following terms are defined as follows:

(1) "Alternative dispute resolution proceeding" is any process designed to aid parties in resolving their disputes outside of a formal judicial proceeding, and includes judicial settlement conferences, mediation, nonbinding arbitration, early neutral evaluation, and summary jury trial.

(2) "Judicially Conducted Settlement Conference" is a form of mediation set by order of the Court in which a Judge of the Court presides pursuant to *Fed. R. Civ. P. 16*.

(3) "Mediation" is an informal process in which a neutral person, called a mediator, conducts discussions among the disputing parties designed to enable them to reach a mutually acceptable agreement among themselves on all or any part of the issues in dispute.

(4) "Nonbinding arbitration" is a process in which an ADR neutral or a panel of ADR neutrals, called an arbitrator or an arbitration panel, considers the facts and arguments presented by the parties and renders a written decision that is nonbinding.

(5) "Early Neutral Evaluation" is a process in which an ADR neutral called an evaluator, after receiving brief presentations by the parties summarizing their positions, identifies the central issues in dispute as well as areas of agreement, provides the parties with an assessment of the relative strengths and weaknesses of their case and upon request of the parties, may offer a valuation of the case. Upon request of the parties, the early neutral evaluation process may include mediation.

(6) "Rule 68 Offer of Settlement" is an offer by a party pursuant to *Fed. R. Civ. P. 68*

and Local Rule 68.01 to an opposing party to settle a civil action.

(7) "Dispute Resolution Neutrals" and "ADR Panel Members" include Arbitrators, Mediators, or Evaluators who are selected by the Court to conduct an alternative dispute resolution proceeding.

(b) Qualifications of ADR Panel Members. An individual may be approved to serve as an ADR panel member by order of the Court, if he or she meets the following qualifications:

(1) must be a lawyer, licensed to practice in the State of Tennessee, and admitted to practice before the United States District Court for the Middle District of Tennessee;

(2) must have practiced law at least five years;

(3) must have had formal training, including at least forty (40) hours of formal ADR training as approved by the Court and such additional training as may be provided by the Court;

(4) must agree that they will be available to conduct at least one ADR proceeding per year without compensation;

(5) must commit to at least one year of service on the ADR Panel;

(6) must agree to participate in the reporting and research requirements of the ADR program as they may be developed; provided, however, that no reporting or research requirement shall require an ADR panel member to divulge any confidence in violation of Local Rule 16.08 regarding Confidentiality and Restrictions on the Use of Information;

(7) must agree to comply with the provisions of these Rules and any Standing Order which may be entered in any Division of this Court for the purpose of implementing this Rule;

(8) must agree to provide to the Court such biographical and other information as the Court may require; and

(9) must agree to take the oath under 28 U.S.C. §453 that is required of a judicial officer.

(c) Selection of Non-Panel ADR Provider. Upon approval of the Court, the parties may select an ADR provider who is not an ADR panel member to provide an ADR service for that case. Any lawyer who has been approved by a federal or state court of this state, for service as a qualified ADR neutral shall be deemed a qualified neutral for ADR proceedings in this District.

(d) List of ADR Panel Members. The Clerk of Court or ADR Coordinator shall maintain a list of Court-approved panel members whose names and resumes of their professional experiences shall be available upon request of a party's counsel.

(e) Compensation of ADR Panel Members. All ADR Panel members shall be compensated at rates to be agreed upon by the parties and the ADR panel member or as set by the Court.

Compensation for any panel member's services shall be borne equally by the parties to the ADR proceeding unless other arrangements are agreed to by the parties or are set by the Court.

(f) Selection of ADR Panel Members.

(1) Except for judicially sponsored settlement conferences and Rule 68 offers of judgment, within fourteen (14) days of the Court's order directing a dispute resolution procedure, the parties must either agree on a dispute resolution neutral from the list of court-approved neutrals and submit a neutral's name to the court for its approval, or notify the court that no agreement has been reached. In the event the parties are unable to agree, the Clerk or ADR coordinator will select at random three neutrals from the list approved by the Court (with one additional such neutral designated for each additional party over two) for the parties consideration and each party shall have one strike. The Court will enter an order appointing the remaining neutral from the parties' designations.

(2) If the parties are unable to agree, the Judge shall appoint the remaining neutral unless valid and timely objection is made by one of the parties. Objections to the Court's order of appointment must be made by motion for reconsideration within fourteen (14) days of the date of the Court's order. On the motion for reconsideration, the ADR procedure is stayed pending a decision, unless otherwise ordered by the court. If an objection is sustained, the selection process shall be repeated.

(3) A neutral selected by the Court to serve under this process may choose not to serve for any reason, in which case the process, under Rule 16.03(f), will be repeated. If a neutral chosen by the parties is unable or unwilling to serve on the particular case, then the parties shall select another, or if they are unable to agree, the Rule 16.03(f) process will be repeated.

(4) If the parties fail to notify the Clerk of the Court in writing of their agreement on a neutral by the stated deadline, the Court will select three or more neutrals for the parties from which the Court will designate one or more neutral(s) for the ADR proceeding. For good cause shown, a party may seek relief from this provision by filing a motion for such relief in the action.

(5) Persons acting as neutrals pursuant to a court-ordered ADR proceedings are appointed as special masters pursuant to *Fed. R. Civ. P. 53* and shall have immunity to the same extent as a Judge of this Court in the conduct of the ADR proceeding.

(g) The Administration of the ADR. The ADR Program shall be administered by the Clerk or his designee, called the ADR Coordinator, in conjunction with the Court's ADR Committee, and with approval of the Court.

LR16.04 - ADR: JUDICIALLY CONDUCTED SETTLEMENT CONFERENCES

(a) Settlement Judge. Settlement conferences will be conducted by a District Judge or Magistrate Judge other than the Judge to whom the case is assigned for trial, except when requested and agreed upon by the parties that the Judge to whom the case is assigned should

handle the settlement conference or the Judge to whom the case is assigned deems it appropriate to preside over the settlement conference because of the exigencies of the case. The Judge to whom the case is assigned for a settlement conference shall be referred to as the "Settlement Judge."

(b) Scheduling Settlement Conferences. A Judge who is assigned to the case may schedule a settlement conference as part of the case management order or as a result of discussions during a case management conference, with or without the consent of any or all parties. A party may file a motion requesting a settlement conference, if a settlement conference is not otherwise provided in the case management order.

(c) Party Attendance. The assigned Judge shall require that the parties or their representatives with full settlement authority to attend the settlement conference except upon good cause shown. A party that is a governmental entity need not have present at the proceeding the persons who would be required to approve a settlement before it could become final (e.g., the members of a city council or the chief executive of a major agency), but must send to the conference a representative who is knowledgeable about the facts of the case and the governmental entity's position.

(d) Settlement Statements.

(1) Procedures for Submission.

a. At least seven (7) days before the settlement conference, each party shall deliver under seal, directly to the courtroom deputy for the Settlement Judge, an ex parte settlement conference statement, which shall specify the party's settlement position.

b. The settlement statement shall be furnished only to the Court and not to any other party.

c. The settlement statement shall not be filed with the Clerk of Court.

(2) Contents of the Settlement Statement.

a. The settlement statement shall include a summary of the party's view of the law as to theory of liability or defense, factors compelling or blocking settlement, status of discovery, and identification of any essential or concerned third parties. In addition, each party shall state whether any settlement offer has been made and the terms thereof shall also contain a candid assessment of the strengths and weaknesses of both sides of the case, an appraisal of the issue of liability, the status of the parties settlement discussions, if any, and an assessment of the economic cost of proceeding to trial.

(1) Plaintiff's settlement statement shall contain an assessment from plaintiff's viewpoint of damages and the strengths and weaknesses of plaintiff's position.

(2) Defendant's settlement statement shall contain an assessment of the

plaintiff's damages, defendant's exposure to those damages and the respective strengths and weaknesses of defendant's position.

b. The settlement statement shall contain a statement of the settlement authority extended by the client based on the attorney's written evaluation and opinion, which shall be furnished to the client in sufficient time to obtain express settlement instructions.

(3) Confidentiality. No part of any of the contents of the discussions or any statements made or information provided to the Court and/or to any other party or counsel during a settlement conference shall be used by any party or repeated to or otherwise provided to any other person by any party for use in the litigation or any other litigation for any purpose whatsoever or for any other purpose not in connection with the case or any other litigation. This protection includes, but is not limited to, the protection provided by Rules 408 and 409 of the *Federal Rules of Evidence*. Likewise, all disclosures made to the Settlement Judge shall be kept in strict confidence.

LR16.05 - ADR: MEDIATION

(a) Notice of Time and Place for Mediation. After a case has been referred for mediation and the Mediator is selected, the ADR Coordinator, in consultation with the mediator and counsel for the parties, shall set the time and place for the hearing and send notice to the mediator at least twenty-one (21) days before the date for mediation conference.

(b) Conference Statements. Counsel shall submit a conference statement of their respective views on the dispute in accordance with Appendix 1(b) to these Rules. In addition, this statement shall include a summary of the party's view of the law as to theory of liability or defense, factors compelling or blocking settlement, status of discovery, and identification of any essential or concerned third parties. Each party shall state whether any settlement offer has been made and the terms thereof. All documents deemed critical by counsel for a party on questions of liability and damages shall be submitted to the mediator. The documents may include medical reports, bills, records, photographs, and any other documents supporting the party's claims, including a brief summary of each party's factual and legal positions. The conference statement, documents and information contained therein may be disclosed only with the consent of the producing party.

(c) Sanctions. Failure to submit the conference statements, liability and damages documents within the time designated shall result in the imposition of costs of sixty dollars (\$60.00) pursuant to *Fed. R. Civ. P. 16(f)* payable to the Clerk of the Court, unless the Mediator waives the imposition of costs for good cause shown.

(d) Presence of Parties, Evidence. A party is required to attend or be present at a mediation hearing, unless excused totally, or in part, by the Mediator. No testimony shall be taken or permitted of any party.

(e) Mediator's Report. Within fourteen (14) days following the mediation, the Mediator

shall file a report on a form provided by the Clerk indicating whether all required parties were present. The report should also indicate: (a) whether the case settled at the conclusion of the conference; (b) whether the Mediation was continued with the consent of the parties; and (c) whether the Mediation was terminated without a settlement. No other information shall appear on the Mediator's report nor, without the consent of all parties, shall any other or additional report or communication regarding the status of the Mediation be provided by the Mediator to the Presiding Judge.

(f) Notification of Settlement. When cases are settled or otherwise disposed of before the mediation conference date, it is the duty of plaintiff's counsel to notify immediately the ADR Coordinator of the disposition of the case. If the parties' notice of the disposition of a case is given to the ADR Coordinator at least seven (7) days before the date for the mediation conference, any fees sent to the Clerk of the Court, and payable to the mediators, shall be returned. The parties are responsible for Court and Mediator fees.

(g) Preparation of Judgment. If the mediation results in a settlement of the dispute, the plaintiff's counsel shall prepare a judgment, approved as to form by opposing counsel for entry by the Court.

LR16.06 - ADR: EARLY NEUTRAL EVALUATION

(a) Purpose. The Early Neutral Evaluation ("ENE") proceeding is conducted by an experienced, objective and neutral attorney, called an evaluator, who generally meets with the parties early in their case to evaluate the case's strengths and weaknesses. Unlike mediation, the Early Neutral Evaluator focuses upon an evaluation of the merits of the claims, defenses, and/or counterclaims, and only with the parties' consent, attempts to negotiate a settlement. ENE differs from nonbinding arbitration in that the evaluator does not render a written decision or declare the prevailing party.

(b) Procedure.

(1) Within fourteen (14) days of the Order of Reference, or within the time limits of the Court's Order of Reference, the ADR Coordinator in consultation with the evaluator and counsel for the parties shall fix a specific time, date and place for the evaluation conference. The evaluation session shall be held in a suitable neutral setting, e.g., at the office of the evaluator or in the courthouse. The ADR Coordinator shall provide notice to the parties of the time, date and place for the evaluation conference.

(2) Written Evaluation Statements. No later than seven (7) days prior to the evaluation conference each party shall submit directly to the Evaluator, a written evaluation statement. The statement shall include a summary of the party's view of the law as to theory of liability or defense, factors compelling or blocking settlement, status of discovery, and identification of any essential or concerned third parties. Each party shall state whether any settlement offer has been made and the terms thereof. Such statements shall not exceed 15 pages (not counting exhibits and attachments). The written evaluations shall not be filed with the

court and shall not be shown to the assigned judge. The conference statement, documents and information contained therein may be disclosed only with the consent of the producing party.

(c) Attendance at the Evaluation Session. The parties must attend the evaluation session unless excused by written permission of the assigned evaluator. This requirement reflects the court's view that one of the principal purposes of the evaluation session is to afford litigants an opportunity to articulate their positions and to hear, first hand, both their opponent's version of the matters in dispute and a neutral assessment of the relative strengths of the two sides' cases. A party other than a natural person (e.g., a corporation or association) satisfies this attendance requirement if it is represented at the session by a person (other than outside or in-house counsel) with authority to enter stipulations (of fact, law, or procedure) and to bind the party to the terms of a settlement. In cases involving insurance carriers, representatives of the insurance companies, with the authority to settle, shall attend the evaluation session.

(1) A party that is a governmental entity need not have present at the proceeding the persons who would be required to approve a settlement before it could become final (e.g., the members of a city council or the chief executive of a major agency), but must send to the proceeding a representative who is knowledgeable about the facts of the case and the governmental entity's position.

(2) The evaluation conference may proceed as set forth in Appendix 1(c) to these Rules. Each party shall be accompanied at the evaluation by the lawyer expected to be primarily responsible for handling the trial of the action. A party or lawyer will be excused from attending the evaluation session only upon good cause shown to the assigned evaluator. Any such party or lawyer shall set forth all considerations that support the request. A party or lawyer who is excused from appearing in person at the session shall be available to participate by telephone.

(d) Order for Entry. After the evaluation conference, any agreement of the parties as to stipulations, discovery, or the matters relating to case management shall be reduced by the parties to an order for entry by the assigned District Judge or Magistrate Judge.

LR16.07 - ADR: NONBINDING ARBITRATION

(a) Purpose. The purpose of nonbinding arbitration is to provide the parties with a brief written decision by an experienced attorney on the merits of the action that declares the prevailing party and states the amount of damages or other necessary relief that should be awarded to the prevailing party. The arbitrator's decision is nonbinding.

(b) Conference Statement. At least seven (7) days prior to the date of the arbitration conference, counsel for the parties shall file with the Arbitrator, a written analysis of their claims or defenses, as well as key or critical documents in support of their respective positions. Counsel shall serve these papers upon opposing counsel contemporaneous with the filing of these papers.

(c) Presence of the Parties. The procedure for this nonbinding arbitration may be as

suggested in Appendix 1(d) to these Rules. Unless otherwise excused by the Arbitrator in writing, all parties, or party representatives, and any required claims professionals (e.g., insurance adjusters) shall be present at the Arbitration Conference with full authority to negotiate a settlement. A party that is a unit of government need not have present at the proceeding the persons who would be required to approve a settlement before it could become final (e.g., the members of a city council or the chief executive of a major agency), but must send to the proceeding a representative who is knowledgeable about the facts of the case and the governmental unit's position. Failure to comply with the attendance requirements may subject a party to sanctions by the Court, pursuant to *Fed. R. Civ. P. 16(f)*.

(d) Incorporation of Arbitration Statutes. Arbitration conferences under this Rule shall be governed by the provisions of 28 U.S.C. " 651 through 658 that are incorporated herein by reference.

LR16.08 - ADR: CONFIDENTIALITY AND RESTRICTIONS ON THE USE OF INFORMATION

(a) Confidentiality. All ADR proceedings under these Rules and matters relating thereto, including statements made by any party, attorney, or other participant, are deemed confidential and are inadmissible as evidence to the same extent as discussions of compromise and settlement are inadmissible under Federal Rule of Evidence 408. Any statement at an ADR proceeding may not be reported, recorded, placed into evidence, or made known to the assigned judge, or construed for any purpose as an admission against interest.

(b) Subpoenas. Neither the parties to an ADR proceeding nor any other person in any forum shall attempt to subpoena an ADR panel member or any documents produced or created in connection with, and for the purpose of ADR proceedings without first obtaining leave of this Court to do so.

(c) Duty of ADR Panel Member. ADR panel members shall not divulge the details of the information imparted to them in confidence in the course of an ADR proceeding without the consent of the parties, except as otherwise may be required by law. In the absence of a statute to the contrary, an ADR Panel member must treat information revealed in an ADR proceeding as confidential, except for the following:

- (1) Information that is statutorily mandated to be reported; or
- (2) Information that the parties agree may be disclosed; or
- (3) Information that, in the judgment of the ADR Panel member, reveals a danger of serious physical harm either to a party or to a third person.

(d) Confidentiality of Record. Mediators, Arbitrators and Evaluators shall maintain the confidentiality in the storage and disposal of records and shall render anonymous all identifying information when materials are used for research, training or statistical compilations.