

# CONNECTICUT

*December 1, 2009*

## **Rule 16 (h) Alternative Dispute Resolution (ADR)**

1. In addition to existing ADR programs (such as Local Rule 53's Special Masters Program) and those promulgated by individual judges (e.g., Parajudicials Program), a case may be referred for voluntary ADR at any stage of the litigation deemed appropriate by the parties and the judge to whom the particular case has been assigned.

2. Before a case is referred to voluntary ADR, the parties must agree upon, subject to the approval of the judge:

- (a) The form of the ADR process (e.g., mediation, arbitration, summary jury trial, minitrial, etc.);
- (b) The scope of the ADR process (e.g., settlement of all or specified issues, resolution of discovery schedules or disputes, narrowing of issues, etc.);
- (c) The ADR provider (e.g., a court-annexed ADR project; a profit or not-for-profit private ADR organization; or any qualified person or panel selected by the parties);
- (d) The effect of the ADR process (e.g., binding or nonbinding).

3. When agreement between the parties and the judge for a voluntary ADR referral has been reached, the parties shall file jointly for the judge's endorsement a "Stipulation for Reference to ADR." The Stipulation, subject to the judge's approval, shall specify:

- (a) The form of ADR procedure and the name of the ADR provider agreed upon;
- (b) The judicial proceedings, if any, to be stayed pending ADR (e.g., discovery matters, filing of motions, trial, etc.);
- (c) The procedures, if any, to be completed prior to ADR (e.g., exchange of documents, medical examination, etc.);
- (d) The effect of the ADR process (e.g., binding or nonbinding);
- (e) The date or dates for the filing of progress reports by the ADR provider with the trial judge or for the completion of the ADR process; and
- (f) The special conditions, if any, imposed by the judge upon any aspect of the ADR process (e.g., requiring trial counsel, the parties, and/or representatives of insurers with settlement authority to attend the voluntary ADR session fully prepared to make final demands or offers).

**4.** Attendance at ADR sessions shall take precedence over all non-judicially assigned matters (depositions, etc.). With respect to court assignments that conflict with a scheduled ADR session, trial judges may excuse trial counsel temporarily to attend the ADR session, consistent with the orderly disposition of judicially assigned matters. In this regard, trial counsel, upon receiving notice of an ADR session, immediately shall inform the trial judge and opposing counsel in matters scheduled for the same date of his or her obligation to appear at the ADR session.

**5.** All ADR sessions shall be deemed confidential and protected by the provisions of Fed. R. Evid. 408 and Fed. R.Civ. P. 68. No statement made or document produced as part of an ADR proceeding, not otherwise discoverable or obtainable, shall be admissible as evidence or subject to discovery.

**6.** At the conclusion of the voluntary ADR session(s), the ADR provider's report to the judge shall merely indicate "case settled or not settled," unless the parties agree to a more detailed report (e.g., stipulation of facts, narrowing of issues and discovery procedures, etc.). If a case settles, the parties shall agree upon the appropriate moving papers to be filed for the trial judge's endorsement (Judgment, Stipulation for Dismissal, etc.). If a case does not settle but the parties agree to the narrowing of discovery matters or legal issues, then the ADR provider's report shall set forth those matters for endorsement or amendment by the judge.