

MISSISSIPPI – NORTHERN and SOUTHERN

LOCAL RULE 16. Pretrial Conferences

(i) Alternative Dispute Resolution Programs. The courts have adopted a uniform Alternative Dispute Resolution Plan. That plan is appended to these Local Rules.

ADR PLAN

Rule 83.7 ALTERNATIVE DISPUTE RESOLUTION

(a) Introduction and Purpose. The United States District Courts for the Northern and Southern Districts of Mississippi developed this alternative dispute resolution (“ADR”) Local Rule to implement the Alternative Dispute Resolution Plan (the “Plan”) mandated by the Alternative Dispute Resolution Act of 1998, 28 U.S.C. § 651, et seq. The Plan is designed to provide access to effective ADR techniques and to encourage mutually satisfactory resolutions of disputes in all stages of civil litigation.

(b) Administration of ADR Plan. The chief judge of each district will designate a judicial officer, knowledgeable in ADR practices, to implement, administer, oversee, and evaluate the ADR Plan. In addition, the court may from time to time solicit recommendations from state and federal bar associations, committees and organizations interested in ADR regarding ADR programs and efficient methods of coordinating ADR resources in the state and federal courts.

(c) Voluntary Use of Other Methods. Nothing in this Local Rule prohibits parties from voluntarily engaging in any form of ADR, such as arbitration, mediation, early neutral evaluation, mini-trial or other appropriate ADR processes at any time.

(d) Definitions.

(1) An “ADR Action” is any activity in which the parties mutually engage by consent or directive of the court using ADR methods such as mediation or a settlement conference in an effort to resolve issues short of a trial.

(2) Mediation is a process in which impartial persons assist parties in reaching settlements. Mediators facilitate communications between the parties and assist them in their negotiations. When appropriate, mediators may also offer objective evaluations of cases and may make settlement recommendations.

(3) A settlement conference is a mediation conducted by the court.

(e) Cases Appropriate for ADR.

(1) Discretion of Court. The determination of whether a matter should be referred for ADR is addressed to the sound discretion of the judicial officer assigned to the case. One of the ADR methods set forth in this Local Rule must be used in all cases, unless exempted by this Local Rule or, at the discretion of the court, waived in a particular case for just cause.

(2) Actions Exempted from Consideration for ADR. The following categories of proceedings are exempt from consideration for ADR: an action for review on an administrative record; a petition for habeas corpus or other proceeding to challenge a criminal conviction or sentence; and an action brought without counsel by a person in custody of the United States, a state, or a state subdivision.

(f) Procedures for ADR.

(1) Early Conferral Regarding ADR. In the FED. R. CIV. P. 26(f) Conference, counsel must confer regarding any discovery or other conditions precedent which they believe are needed for a meaningful and effective mediation or settlement conference, as well as the time **necessary to** complete them. Counsel must inform the magistrate judge in their respective Confidential Settlement Memoranda of any discovery and other conditions precedent which they believe are necessary for meaningful ADR, as well as an estimate of the time necessary to complete them. Any party who believes there is just cause to forego ADR in a case, must detail the basis for that belief in the Confidential Settlement Memorandum.

(2) Case Management Order Provision Regarding ADR. After considering the parties' positions on ADR, the magistrate judge will incorporate an ADR deadline in the Case Management Order. The ADR deadline will be a date no later than the close of the discovery period and preferably sooner, subject to the particularities of the case. The ADR deadline should permit sufficient time for such discovery necessary to enable the parties to have an effective mediation or settlement conference, but be sufficiently in advance of the discovery deadline to encourage early discovery and the avoidance of unnecessary expense. No later than the ADR deadline, the parties must report to the magistrate judge all ADR efforts the parties have undertaken.

(3) Report Regarding ADR Required before Final Pre-Trial Conference. Before the Final Pre-Trial Conference, the parties must report to the magistrate judge all efforts the parties have made to comply with this Local Rule or provide sufficient facts to support a finding of just cause for failure to comply.

(4) Pre-ADR Procedures. If the parties elect to mediate a case, the premediation procedures, including those relating to any position statements, will be determined by the mediator selected by the parties. Alternatively, should the parties utilize a settlement conference, the judicial officer conducting the conference will direct the pre-settlement conference procedures at the time the settlement conference is scheduled. At a minimum, the parties must submit new Confidential Settlement Memoranda by a deadline set by the judicial officer.

(g) Authority to Settle.

(1) Appearance at Mediation or Settlement Conference. Counsel, including lead trial counsel for all parties, must appear at the mediation or settlement conference unless otherwise ordered by the court. If the case involves attorneys admitted pro hac vice, local counsel must also attend. If there is the potential for insurance coverage for one or more claims, and if the judicial officer has excused his presence, a representative of each insurance company involved, nevertheless must be on standby and available by phone for the duration of the entire mediation or settlement conference.

(2) Attendance of Parties. All individual parties must appear in person at the mediation or settlement conference unless excused in advance by the court. Representatives of corporate parties, organizations, or other entities must also appear at the mediation or settlement conference or be available by telephone, as the mediator or judicial officer may direct, throughout the entire mediation or settlement conference. Office closings and time zone differences do not excuse a company representative from continued participation under this Local Rule. **Each Party representative must have full authority to settle the case.**

(3) Post-Mediation Report to Court. Within seven days of the completion of a mediation conducted under this Local Rule, counsel must inform the magistrate judge in writing whether or not the case was resolved, and, if settled, any remaining conditions precedent to entry of an agreed order of dismissal.

(4) Post-Mediation Report to Court. Within seven days of the completion of a mediation conducted under this Local Rule, counsel must inform the magistrate judge in writing, using Form No. 7, whether or not the case was resolved, and, if settled, any remaining conditions precedent to entry of an agreed order of dismissal.

(h) Sanctions. If a party, party representative or attorney fails to appear or be available at a scheduled mediation or settlement conference as required by this Local Rule, or if a party, party representative or attorney is substantially unprepared to participate in the mediation or settlement conference, or if a party, party representative or attorney fails to participate in good faith during a mediation or settlement conference, a judicial officer upon motion or upon the judicial officer's own initiative, may impose appropriate sanctions including reasonable expenses and attorneys' fees incurred.

(i) Mediators.

(1) Court-Appointed Panels. In lieu of a unique federal panel of mediators, the court refers parties to the persons offering their services as mediators who meet the qualifications for inclusion on the List of Mediators provided for in Section X of the Court-Annexed Mediation Rules for Civil Litigation issued by the Mississippi Supreme Court on October 8, 1998 in *In Re: Authorization of Court-Annexed Mediation in Chancery, Circuit and County Courts*, No. 89-R-99026 S. Ct., and the Order of March 22, 1999 establishing minimum qualifications for inclusion on the list.

(2) Use of Non-Panel Mediators. Parties may use any person as a mediator, whether or not that person is on the List of Mediators referenced in this Local Rule, unless the mediator is disqualified by this Local Rule, ethical rules or by law.

(3) Immunity. Any mediator serving under this Local Rule is performing quasi-judicial functions and is entitled to the immunities and protections that the law accords to persons serving in such capacity.

(4) Codes of Ethics and Standards of Conduct. Any mediator serving under this Local Rule is subject to all ethical rules and standards of conduct set by statute, by the Judicial Conference of the United States, and by other professional organizations to which the mediator may belong or that may be approved or adopted by the court. If a mediator discovers a circumstance requiring disqualification, then the mediator must promptly inform the parties and the court of those circumstances in writing.

(5) Disqualification. No person may serve as a mediator:

- (A) in violation of the standards set forth in 28 U.S.C. § 455;
- (B) in violation of any applicable standard of professional responsibility or rule of professional conduct;
- (C) in violation of any additional standards adopted by the court; or
- (D) if the mediator discovers a circumstance requiring disqualification.

(j) Confidentiality of Proceedings.

(1) General Rule of Confidentiality. Except as otherwise provided in L.U.Civ.R. 83.7(j)(4) or required by law, all communications made in mediation or settlement conference are confidential. Mediation- and settlement conference-related communications are not subject to disclosure and may not be used as evidence against any party or participant in any judicial or administrative proceeding.

(2) No Compelled Disclosure. Except as provided in L.U.Civ.R. 83.7(j)(4) or required by law, no party, party's attorney, party's representative, mediator or judicial officer is subject to process requiring disclosure of confidential information or data related to a mediation or settlement conference conducted under this Local Rule, nor may such persons be compelled to testify in any proceeding related to matters occurring during a mediation or settlement conference.

(3) Limitations on Communications with Court. Except as provided in L.U.Civ.R. 83.7(j)(4) or required by law, a person participating in mediation or settlement conference under this Local Rule may not be compelled to disclose to the court any communication made, position taken, or opinion formed by any party or mediator in connection with mediation or settlement conference.

(4) Exceptions to the General Rule of Confidentiality. The only circumstances which may make it appropriate for a party, a party's attorney, a party's representative, a mediator or a judicial officer to disclose a confidential communication arising from proceedings governed by this Local Rule is a finding by the court that such testimony or other disclosure is necessary to:

- (A) prevent a manifest injustice;
- (B) enforce a settlement;
- (C) help establish a violation of criminal law; or
- (D) prevent harm to the public health or safety.