

MONTANA

16.5 Alternative Dispute Resolution.

(a) Mediation and Evaluation.

- (1) Pursuant to 28 U.S.C. § 651 et seq., the Court encourages mediation and neutral evaluation as alternative dispute resolution (“ADR”) procedures. Parties must consider using ADR procedures at an appropriate point in the litigation. Parties may engage in ADR with or without the assistance of the Court.
 - (A) Mediation is a non-binding process in which an impartial third party assists the parties in reaching an agreed settlement. A settlement conference is mediation conducted by a judicial officer. A mediator may confer separately and privately with any party during a session.
 - (B) Neutral evaluation is a non-binding process in which the parties present summaries of their cases to an evaluator, who assesses the parties’ legal positions and provides them with an impartial evaluation of the case. The evaluator may help the parties identify areas of agreement, provide case planning guidance, and assist in negotiating a settlement.
- (2) The Chief Deputy Clerk of Court must annually prepare a statement for the Chief Judge regarding the District’s use of ADR procedures.

(b) General Rules.

- (1) The presiding judge retains case management responsibility at all times. Where a case is referred to a magistrate judge for all pretrial proceedings, the magistrate judge is the presiding judge.
- (2) All settlement proceedings are confidential. Attorneys, participants, mediators, and evaluators must preserve the confidentiality of all communications made in the course of ADR procedures.
- (3) All persons serving as mediators or evaluators under this Rule are performing quasi-judicial functions and are entitled to the immunities and protections accorded by law to persons serving in such capacity.
- (4) *Obligation of Good Faith.*
 - (A) Each party must ensure that a person with ultimate settlement authority attends and participates in any ADR procedure ordered by the presiding judge. A unit or agency of government satisfies this attendance requirement if represented by a person who has, to the greatest extent feasible, authority to settle and who is knowledgeable about the facts of the case, the governmental unit’s position, and the procedures and policies under which the governmental unit decides whether to accept proposed

settlements.

(B) Failure to participate in good faith may result in the imposition of sanctions against the offending party.

(5) When a case is settled, the parties must immediately notify the Court by filing a notice in the case.

(6) Names of available mediators and evaluators are available from the Chief Deputy Clerk of Court.

(c) Motions and Orders for ADR.

(1) The presiding judge may, *sua sponte* or on the motion of a party, order the parties to participate in mediation or neutral evaluation.

(2) The presiding judge will select the mediator or evaluator and may select any person not involved in the case.

(3) The presiding judge or a judicial mediator or evaluator may issue appropriate Orders to govern the proceedings. A non-judicial mediator or evaluator may set forth the governing procedures in a letter to the parties. Such letters will not be filed in the record of the case.