TENNESSEE – EASTERN

LR16.3 Alternative Dispute Resolution

(a) Reference by Court. The Court may, in the judge's discretion and with the consent of the parties, refer any civil case, including adversary proceedings removed from bankruptcy court, for a settlement conference or any other method of alternative dispute resolution deemed appropriate to the needs of the case except that arbitration can only be authorized as provided in 28 U.S.C. § 654. Additionally, mediation can be ordered by the Court without consent of the parties as set forth in Local Rule 16.4.

(b) Consideration of ADR by Litigants. Pursuant to the Alternative Dispute Resolution Act of 1998, 28 U.S.C. §§ 651 *et seq.*, litigants in all civil cases, except those exempted as indicated below, shall consider the use of an alternative dispute resolution process at an appropriate stage in the litigation.
Civil cases which are exempted from this requirement are:

- Deportation Actions
- Forfeiture and statutory penalty actions
- Freedom of Information actions
- Government collection actions
- Judgments - actions to enforce or register
- Prisoner actions to vacate sentence, for habeas corpus, or for mandamus
- *Pro Se* Prisoner Cases
- Social Security reviews
- Summons/subpoenas - proceedings to enforce/contest government summons and private party depositions
- Third-party IRS tax actions
- Fed. R. Civ. P. 11 Proceedings
- Student loan cases

LR16.4 Federal Mediation Program

(a) **Mediation Referrals and Withdrawals.**

With or without the agreement of the parties in any civil action, except those exempted pursuant to Local Rule 16.3, the Court may refer all or part of the underlying dispute to Mediation pursuant to this Local Rule. Any Mediation reference may be withdrawn by the presiding judge upon a determination for any reason that the matter referred is not suitable for Mediation. Once an order has been entered directing that the parties participate in a Mediation, the parties will be required to do so unless the Court enters an order withdrawing the Mediation

Reference.

(b) **Definitions.**

For purposes of this Rule:

(1) "Mediator" means an attorney approved by the Court in accordance with paragraph (k) of this Rule.

(2) "Mediation" means a procedure presided over by an approved Mediator to promote conciliation, communication, and the ultimate settlement of a civil action pending in this Court.

(3) "Mediation Conference" means a settlement conference or meeting conducted by a Mediator during the course of a Mediation.

(4) "Mediation Reference" means a directive contained within a scheduling order or other order entered by the Court directing the parties to participate in a Mediation.

(5) "Presiding Judge" means the Judicial Officer assigned to a civil action.

(6) "Mediation Report" means a report filed with the Court by a Mediator in the form provided by the District Court Clerk.

(7) "Mediation Panel" includes the Mediators who are approved by the Court to participate in Mediation.

(c) **Approval of Mediators.**

The Court shall approve those persons who are eligible and qualified to serve as Mediators. The Court shall have complete discretion and authority to withdraw the approval of any Mediator at any time.

(d) **List of Approved Mediators.**

A list of those Mediators comprising the Mediation Panel shall be maintained in the office of the Clerk and shall be made available to counsel and to the public upon request.

(e) **Neutrality of a Mediator.**

No Mediator shall accept an engagement in a Mediation in circumstances in which he or she has a personal bias or prejudice relative to the parties or issues involved in the dispute being mediated.

(f) **Mediators as Counsel in Other Cases.**

No Mediator who has been engaged as a Mediator shall appear as counsel in the matter upon which he or she was engaged as a Mediator or in any substantially related matter. No person who is approved and designated as a Mediator shall for that reason be disqualified from appearing and acting as counsel in any other case pending before the Court.

(g) **Disclosure of Conflicts.**

Prior to accepting an engagement as a Mediator, each Mediator shall disclose to the parties all actual or potential conflicts of interest reasonably known to the Mediator, any current, past, or expected future professional relationship, consulting relationship, personal relationship, or pecuniary interest with or in any party or attorney involved in the Mediation, as well as any other circumstance or matter which would result in the disqualification of a judicial officer under 28 U.S.C. § 455. Mediators shall also disclose to all parties any offer made to the Mediator before completion of the Mediation process of a future professional, consulting, or pecuniary relationship with any party or attorney or law firm involved in the underlying dispute.

(h) **Confidentiality and Restrictions on the Use of Information.**

The Mediation Conference and all proceedings relating thereto, including statements made by any party, attorney, or other participant, are confidential and are inadmissible to the same extent as discussions of compromise and settlement are inadmissible under Federal Rule of Evidence 408. Mediation proceedings may not be reported, recorded, placed into evidence, or made known to the Presiding Judge, or construed for any purpose as an admission against interest. Mediators shall not divulge the details of information imparted to them in confidence in the course of Mediations without the consent of the parties, except as otherwise may be required by law.

(i) **Compensation of Mediators.**

Mediators shall be compensated at rates to be agreed upon by the parties and the Mediator. Compensation for any Mediator's services shall be borne equally by the parties to the Mediation unless other arrangements are agreed to by the parties.

(j) **Subpoenas.**

Neither the parties to the Mediation nor any other person in any forum shall attempt to subpoena the Mediator or any documents created in connection with, and for the purpose of, Mediation, without first obtaining leave of court to do so.

(k) **Qualification of Mediators.**

An individual may be approved to serve as a Mediator if, within the discretion of the Court, he or she meets the following qualifications:

* All Mediators must be lawyers, licensed to practice in the State of Tennessee, and admitted to practice before the United States District Court for the Eastern District of Tennessee.

* All Mediators must have practiced law at least five years.

* All Mediators must agree to report the results of their Mediations in accordance with paragraph (m) of this rule.

* All Mediators approved after January 1, 1997, must have had at least 40 hours of formal Mediation training as approved by the Court and such procedural training as shall be provided by the Clerk.

* All Mediators must agree that they will be available to conduct at least one Mediation per year without compensation.

* All Mediators must commit to at least one year of service on the Mediation Panel.

* All Mediators must agree to participate in the reporting and research requirements of the program as they may be developed; it is provided, however, that no reporting or research requirement shall require a Mediator to divulge any confidence in violation of Paragraph (h) of this Rule.

* All Mediators must agree to comply with the provisions of this Rule and of any Standing Order which may be entered in any Division of this Court for purposes of implementing this Rule.

* All Mediators must agree to provide to the Court such biographical and other information as the Court may require.

* Any lawyer approved by the United States District Court for Middle District of Tennessee as an ADR panel member shall be deemed approved as a Mediator in this District and may conduct Mediations in accordance with this Local Rule and the Standard Operating Procedures in force and effect in this District's Federal Mediation Program.

* Pursuant to 28 U.S.C. § 653(b), magistrate judges of this Court may service as neutrals and conduct judicial settlement conferences provided they have received formal training to serve as neutrals in the alternative dispute resolution process.

(l) **Party Attendance Required.**

Unless otherwise excused by the Mediator in writing, all parties, or party representatives, and any required claims professionals (e.g., insurance adjusters) shall be present at the Mediation Conference with full authority to negotiate a settlement. Failure to comply with the attendance or settlement authority requirements may subject a party to sanctions by the Court.

(m) **Mediation Report.**

Within 7 days following the conclusion of each Mediation Conference, the Mediator shall file a Mediation 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; (b) whether the Mediation

was continued with the consent of the parties; or (c) whether the Mediation was terminated without a settlement. No other information shall appear on the Mediation 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.

(n) **Standing Orders**.

Each Division of the Court may prescribe by Standing Order procedures that are specific to that particular Division and which are necessary to the implementation of this Local Rule. Such Standing Order shall not conflict with the provisions of this Rule, however.

(o) **Special Procedures When Mediation is Ordered Without the Consent of the Parties.**

(1) In the event the parties cannot agree on a Mediator, the Administrator shall select three approved Mediators and one additional approved Mediator for each additional party over two. After receiving the Administrator's designation, the parties shall each strike one name from the Court's designations. The remaining Mediator shall be assigned to the case unless a timely objection is made to the Administrator and upheld. In that event, or in the event the Mediator selected cannot serve, the process will be repeated.

(2) In the event the parties cannot agree on the compensation of the Mediator, the parties shall submit the dispute to the Administrator who shall set the Mediator's compensation.

(3) At the request of an approved Mediator, the cost of his or her services or any portion thereof may be taxed as court costs.

(p) **Administration of the Mediation Program**.

Pursuant to 28 U.S.C. § 651(d), the Court shall appoint a judicial officer or employee by separate order to serve as the Administrator of the Federal Mediation Program. The Clerk shall designate the Division Managers of each of the four divisions of the Court to assist the Administrator by serving as Mediation coordinators in each of the respective divisions of the Court. The Administrator shall promulgate, and update from time to time, standard operating procedures for the Court's Mediation program. The standard operating procedures shall conform to the requirements of the Act and the local rules of this Court.

The Court's Mediation program shall be known as "The Federal Mediation Program." The Administrator shall be responsible for communications between the approved Mediators and the Court and vice versa. The Administrator shall chair a standing committee on Mediator qualifications and approval which will make recommendations to the chief judge of the district concerning the addition and removal of approved Mediators. The chief judge shall appoint two other members of this standing committee.

LR16.5 Federal Arbitration Program

(a) **Arbitration Referrals and Withdrawals.**

The Court may refer any civil action (including any adversary proceeding in bankruptcy) to Arbitration under the provisions of this Rule if the parties consent to such reference. Such reference may not be made, however, where --

(1) the action is exempted from alternative dispute resolution pursuant to Local Rule 16.3(b);

(2) the action is based on an alleged violation of a right secured by the Constitution of the United States;

(3) jurisdiction is based in whole or part on 28 U.S.C. § 1343; or,

(4) the relief sought consists of money damages in an amount greater than $150,000, exclusive of punitive damages, interest, costs, and attorney fees.

Any Arbitration reference may be withdrawn by the presiding judge upon a determination for any reason that the matter referred is not suitable for Arbitration. Once an order is entered directing the parties to participate in Arbitration, the parties will be required to complete the Arbitration process unless the Court enters an order withdrawing the Arbitration reference.

(b) **Definitions.** For purposes of this Rule:

(1) "Arbitrator" means a person approved by the Court in accordance with paragraph (k) of this Rule.

(2) "Arbitration" means a procedure presided over by an approved Arbitrator and conducted in accordance with this Rule and 28 U.S.C. §§ 654-658.

(3) "Arbitration hearing" is the proceeding conducted before an approved Arbitrator for the purpose of presenting evidence, arguments of counsel, briefs of law, etc., to the arbitrator to enable him or her to make an Arbitration award. It is an expedited, adversarial hearing which is intended to reduce cost and delay in appropriate cases.

(4) "Presiding judge" means the judicial officer assigned to a civil action. A magistrate judge is deemed to be a "presiding judge" only if the case has been referred to the magistrate judge pursuant to 28 U.S.C. § 636(c).

(5) "Arbitration Reference Order" means an agreed order which is presented by the parties to the presiding judge, which is approved by him and which is filed by the Clerk. The agreed order shall be in substantially the same form as Appendix I to this Rule. Forms are available from the Clerk.

(6) "Arbitrator panel" is the panel of Arbitrators approved by the Court.

(7) “Arbitration award” is the written decision of the Arbitrator.

(8) “Standing Committee on Arbitrator Approval” shall include the judicial officer or court employee selected to serve as the Administrator of the Arbitration program and two other members. This committee shall be appointed by the chief judge and serve at the chief judge’s pleasure.

(9) The Court’s Arbitration program shall be known as “The Federal Arbitration Program.”

(c) **Approval of Arbitrators.** The Court shall approve those persons who are eligible and qualified to serve as Arbitrators. The Court shall have complete discretion and authority to withdraw the approval of any Arbitrator at any time.

(d) **List of Approved Arbitrators**. A list of those Arbitrators comprising the Arbitration panel shall be maintained in the office of the Clerk and shall be made available to counsel and tothe public upon request.

(e) **Neutrality of an Arbitrator.** No Arbitrator shall accept an engagement in an Arbitration proceeding in circumstances in which he or she has a personal bias or prejudice relative to the parties or issues involved in the dispute being Arbitrated.

(f) **Arbitrators as Counsel in Other Cases.** No Arbitrator who has been engaged as an Arbitrator shall appear as counsel in the matter for which he or she was engaged as an Arbitrator or in any substantially related matter. No person who is approved and designated as an Arbitrator shall for that reason be disqualified from appearing and acting as counsel in any other case pending before the Court.

(g) **Disclosure of Conflicts.** Prior to accepting an engagement as an Arbitrator, each Arbitrator shall disclose to the parties all actual or potential conflicts of interest reasonably known to the Arbitrator, any current, past, or expected future professional relationship, consulting relationship, personal relationship, or pecuniary interest with or in any party or attorney involved in the Arbitration, as well as any other circumstance or matter which would result in the disqualification of a judicial officer under 28 U.S.C. § 455. Pursuant to 28 U.S.C. § 655(b)(2), Arbitrators are subject to the disqualification rules set forth in 28 U.S.C. § 455. Arbitrators will also disclose to all parties any offer made to the Arbitrator before completion of the Arbitration process of a future professional, consulting, or pecuniary relationship with any party or attorney or law firm involved in the underlying dispute.

(h) **Confidentiality and Restrictions on the Use of Information.** The Arbitration hearing and all proceedings relating thereto, including statements made by any party, attorney, or other participant, are confidential and are inadmissible in evidence at the trial de novo except as

permitted by 28 U.S.C. § 657(c)(3). Arbitration proceedings may be closed to the public by the Arbitrator.

(i) **Compensation of Arbitrators.** Subject to any regulations which may be promulgated by the Judicial Conference of the United States, Arbitrators shall be compensated at rates to be agreed upon by the parties and the Arbitrator. Compensation and expenses for any Arbitrator's services shall be borne equally by the parties to the Arbitration unless other arrangements are agreed to by the parties.

(j) **Subpoenas/Immunity.** Federal Rule of Civil Procedure 45 shall apply to the issuance of subpoenas for the attendance of witnesses and the production of documentary evidence at any Arbitration hearing. Neither the parties to the Arbitration nor any other person in any forum shall attempt to subpoena the Arbitrator or any documents created in connection with, and for the purpose of, Arbitration without first obtaining leave of court to do so. All individuals serving as Arbitrators pursuant to this Rule are performing quasi-judicial functions and are entitled to the immunities and protections that the law accords persons serving in such capacity.

(k) **Qualification of Arbitrators.** An individual may be approved to serve as an Arbitrator if, within the discretion of the Court, he or she meets the following qualifications:

* All Arbitrators must be approved by the chief judge and must be listed on the roster of approved Arbitrators of the American Arbitration Association, the Federal Mediation and Conciliation Service, a similar, reputable Arbitration service, or must be lawyers, licensed to practice in the state of Tennessee, and admitted to practice before the United States District Court for the Eastern District of Tennessee.

* All Arbitrators, except those approved as non-lawyer Arbitrators, must have practiced law at least 5 years.

* All Arbitrators shall take the oath or affirmation described in 28 U.S.C. § 453 and shall complete any training required by the Court.

* All Arbitrators must agree that they will be available to conduct at least one Arbitration per year without compensation.

* All Arbitrators must commit to at least one year of service on the Arbitration panel.

* All Arbitrators must agree to comply with 28 U.S.C. §§ 654-658, the provisions of this Rule and of any Standing Order which may be entered in any Division of this Court for purposes of implementing this Rule.

* All Arbitrators must agree to provide to the Court such biographical and other information as the Court may require.

* All Arbitrators must be recommended by the Standing Committee on Arbitrator Approval and determined by the chief judge to be competent to perform the duties of Arbitrator. Arbitrators may be approved based on formal training in Arbitration procedures, prior experience as an Arbitrator, or some combination thereof. The chief judge shall certify, in his discretion, as many Arbitrators as are determined to be necessary for proper operation of the program. The Court specifically reserves the right to limit the size of the Arbitrator panel. Any person whose name appears on the list of approved Arbitrators may ask at any time to have his/her name removed or, if selected to decide a case, decline to serve but remain on the list.

* Applications to become an approved Arbitrator shall be submitted to the Administrator of the Court's Arbitration program. Applications shall be submitted in the form set forth in Appendix II to this Rule. Forms are available from the Clerk.

(l) **Procedures in Connection with the Reference to Arbitration.**

(1) The approval and entry of the Arbitration Reference Order by the presiding judge begins the Arbitration process. See Appendix I.

(2) Upon entry of the Arbitration Reference Order, the Clerk shall serve copies of it on the designated Arbitrator, counsel of record, and any parties proceeding pro se.

(3) The presiding judge may refuse to approve a proposed Arbitration Reference Order if, in the Court's discretion, the case is not appropriate for Arbitration or if such approval would cause undue delay in the prompt resolution of the case. A proposed Arbitration Reference Order submitted within 30 days of the filing of a scheduling order in the case will be presumptively timely. Once an Arbitration Reference Order is approved by the presiding judge and filed, any trial date previously scheduled is automatically canceled, unless otherwise ordered by the Court.

(4) Unless otherwise stipulated by all parties, formal discovery pursuant to Fed. R. Civ. P. 26 through 37 will be stayed upon entry of an Arbitration Reference Order. Notwithstanding this stay, the Arbitrator may allow, or the parties may agree to, limited discovery utilizing the procedures set forth in Fed. R. Civ. P. 26 through 37 or other less formal means. The Arbitrator shall have the authority and discretion to control the course, scope and manner of discovery while the case is under reference to Arbitration. The Arbitrator shall also have authority to resolve discovery disputes while the case is under reference to Arbitration.

(m) **Procedures for the Arbitration Hearing and the Filing of the Arbitration Award**

(1) Once the Arbitration Reference Order is served on the Arbitrator, he or she shall consult promptly thereafter with counsel of record and any pro se parties for the purpose of arranging a schedule for completion of any pre-hearing discovery, any other necessary prehearing preparations and the setting of a date, time and place for the Arbitration hearing.

(2) Within 30 days of service of the Arbitration Reference Order on the Arbitrator, he or she shall file with the Clerk an "Arbitrator's Notice of Scheduling" in substantially the same form as Appendix III hereto. Forms are available from the Clerk.

(3) The Arbitration hearing shall be held in a suitable place designated by the Arbitrator or, if space is available, in the United States Courthouse in a space assigned by the Clerk.

(4) The Arbitration hearing and the filing of the Arbitration award shall take place not later than 150 days after entry of the Arbitration Reference Order unless the parties obtain an order from the Court granting an extension based on good cause shown.

(5) If the Arbitration award is not filed within the time allowed in paragraph 4 of this section, the Clerk shall automatically restore the case to the docket of the presiding judge and notify him and the parties that the Arbitration has been terminated.

(6) The hearing before the Arbitrator may proceed in the absence of any party who, after notice, fails to be present. Additionally, if a party fails to participate in the hearing, the Court may impose appropriate sanctions including, but not limited to, the striking of any demand for a trial de novo filed by that party. See also Fed. R. Civ. P. 16(c)(9) and (f). If any party fails to pay the Arbitrator's fees or expenses in a timely manner, the cost of his or her services, or any portion thereof, may be taxed as costs.

(7) The Arbitrator is authorized to administer oaths or affirmations and each party shall have the right to cross-examine witnesses. The Arbitrator shall be authorized to make reasonable rules and issue orders necessary for the fair and efficient conduct of the hearing including, but not limited to, requiring the parties to submit pre-hearing statements to the Arbitrator and requiring service of same on parties.

(8) The Federal Rules of Evidence shall be used as the guide to the admissibility of evidence, but shall not be controlling. The Arbitrator shall control the admission of evidence at the Arbitration hearing.

(9) A party may have a recording and transcript made of the Arbitration hearing at the party's expense.

(10) Unless otherwise stipulated by the parties, the Arbitration award shall state in writing the reasoning underlying the award.

(11) It shall be the responsibility of the Arbitrator to serve counsel of record and any pro se parties with a copy of the Arbitration award. In accordance with 28 U.S.C.§ 657(b), such award shall be treated as confidential and not be made known to any judge who might be assigned to the case until the district court has entered final judgment in the case or the case is otherwise terminated. The Arbitrator shall not file the award with the Clerk. That is the responsibility of the prevailing party or plaintiff. See paragraph (n)(1).

(n) **Trial De Novo or Entry of Judgment**

(1) An Arbitration award made by an Arbitrator, or a panel of Arbitrators selected under section (o)(6) of this rule, along with proof of service of such award on the party or parties by the prevailing party or by the plaintiff, shall be filed with the Clerk by the prevailing party or plaintiff within 7 days of service of the Arbitration award on the prevailing party or plaintiff. To make certain that the Arbitrator's award is not considered by the Court or jury either before, during or after the trial de novo, the Clerk shall, upon the filing of the Arbitration award, enter onto the docket only the words "Arbitration award filed" and the date and nothing more, and shall retain the Arbitrator's award in a separate file in the Clerk's Office.

(2) Within 30 days of the filing of an Arbitration award with the Clerk, any party may file a written demand for a trial de novo in the district court.

(3) Upon demand for a trial de novo, the action shall be restored to the docket of the presiding judge and treated for all purposes as if it had not been referred to Arbitration.

(4) In the event no demand for trial de novo is filed within the designated time period, the Clerk shall file the award in the Court record, notify the presiding judge, and enter it as the judgment of the Court. The judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of a court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise.

(o) **Miscellaneous Provisions**

(1) Consent to Arbitration shall be freely and knowingly obtained**.** No party or attorney shall be prejudiced in any way for refusing to participate in Arbitration. The district judges and magistrate judges may advise the attorneys and parties of the availability of the Arbitration program, but, in doing so, shall also advise the attorneys or parties that they are free to withhold consent without adverse consequences.

(2) There shall be no ex parte communication between an Arbitrator and any counsel or party.

(3) The Court will presume that damages are not in excess of $150,000 unless counsel or a party proceeding pro se certifies that damages exceed such amount.

(4) The Administrator of the Court's Arbitration program may, from time to time, amend Appendices I, II, and III to this Rule in order to conform to the needs of the program and may do so without amendment to the body of this Rule.

(5) Nothing in this Rule shall prevent the parties, upon their own initiative and by mutual consent, from Arbitrating a pending matter pursuant to the provisions of 9 U.S.C. §§ 2 et seq., Tenn. Code Ann. §§ 29-5-301 et seq., or other state Arbitration statutes. An agreement to so Arbitrate, without an order of reference or authorization by the Court, shall not be subject to this Rule or to the Alternative Dispute Resolution Act of 1998. 28 U.S.C. §§ 651 et seq. Arbitrators who are approved pursuant to this Rule are not restricted from participating in these non-court-annexed Arbitrations.

(6) Nothing in this Rule shall prevent the parties from stipulating to a panel of three Arbitrators and proceeding under the provisions of this Rule. One of the Arbitrators shall be selected by the parties as chairperson of the panel. In order for a valid Arbitration award to be made, a majority of the Arbitrators in such cases must agree to the award and sign it. A separate dissent may be filed with the Arbitration award.

(7) At any time before the Arbitration hearing, the parties may stipulate in writing to waive their rights to request a trial de novo. Such stipulation shall be submitted to the presiding district judge or magistrate judge for approval and shall be filed. In the event of such stipulation, judgment shall be entered on the Arbitration award in accordance with paragraph (n)(4), above.

(p) **Standing Orders.** Each Division of the Court may prescribe by Standing Order procedures that are specific to that particular Division and which are necessary to the implementation of this Local Rule. Such Standing Orders shall not conflict, however, with the provisions of 28 U.S.C. §§ 654-658 or this Rule, however.

(q) **Administration of the Arbitration Program**. Pursuant to 28 U.S.C. § 651(d), the Court shall appoint a judicial officer or employee by separate order to serve as Administrator of the Federal Arbitration Program. The Clerk shall designate the Division Managers in each of the four divisions of the Court to assist the Administrator by serving as Arbitration coordinators in each of the respective divisions of the Court. The Administrator shall promulgate, and update from time to time, standard operating procedures and any necessary forms for the Court's

Arbitration program. The standard operating procedures shall conform to the requirements of the Act and the local rules of this Court. The Administrator shall be responsible for communications between the approved Arbitrators and the Court and vice versa.