

**ALTERNATIVE DISPUTE RESOLUTION**

It is the intent of the Court to facilitate the use of alternative dispute resolution (“ADR”) in all matters, including specifically contested matters and adversary proceedings, to the extent practicable, helpful and appropriate.

**(a) ADR REPORT**

Upon order of the Court entered in any contested matter or adversary proceeding, the Debtor and/or Trustee, and all parties (as well as all parties-in-interest affected thereby, including official Committees(s)) shall submit a report addressing the status of settlement negotiations, disclosing the identity of the person responsible for settlement negotiations for each party, and truthfully, candidly and realistically evaluating whether alternative dispute resolution is appropriate in the contested matter or adversary proceeding. Counsel shall certify in the report that their clients have been informed of the ADR procedures available in this district. In the event the parties conclude that ADR is appropriate and agree upon a method of ADR and a neutral, they should identify both the method of ADR and the neutral they have selected, the method by which the neutral was selected, and how the neutral will be compensated. If the parties agree upon an ADR method and neutral, the Court will defer to the parties' agreement, unless the Court finds that another ADR method or neutral is better suited to the contested matter, adversary proceeding or the parties.

**(b) REFERRAL TO ADR**

The Court on its own motion or upon the motion of any party or party-in-interest may order the participation in a non-binding alternative dispute resolution proceeding, including non-binding arbitration, early neutral evaluation, mediation, or mini-trial in accordance with Local Rule 1001(i). The order may further direct the parties to bear all expenses relating to alternative dispute resolution proceedings in such proportions as the Court finds appropriate, and may direct that portions thereof be allowed as an administrative expense entitled to priority in the case, but in no event should apportioning of costs constitute a penalty for failing to arrive at a settlement. The alternative dispute resolution proceeding shall begin at a date and time selected by the parties, subject to the schedule of the neutral or neutrals, but in no event later than forty-five (45) days after the entry of the order compelling participation in the proceeding.

**(c) ATTENDANCE**

Party representatives with authority to negotiate a settlement and all other persons necessary to negotiate a settlement must attend and participate in good faith in the alternative dispute proceeding, subject to the Court's power to assess appropriate sanctions.

**(d) SELECTION OF NEUTRAL**

Upon entry of an order compelling participation in alternative dispute resolution, or upon agreement of the parties where they have not selected a neutral or neutrals from the roster, the Clerk shall forthwith furnish to each party a list of neutrals. If the compelled procedure is non-binding arbitration or moderated settlement conference, the list shall include five neutrals whose names have been selected from the roster of arbitrators maintained in the District Clerk's Office. If the compelled procedure is other than non-binding arbitration or moderated settlement conference the list shall include three neutrals selected from general neutral roster. The parties shall then confer with each side entitled to strike one name from the three neutral list (two names from the five neutrals list). The person remaining shall be designated the neutral. The parties may by agreement reject the list furnished by the Clerk and instead unanimously select a neutral or neutrals from either roster. Failure of counsel to timely notify the Clerk of their strikes or selection shall result in the selection of the neutral or neutrals by the Clerk. The Clerk shall promptly notify the neutral or neutrals selected. If any person selected is unable or unwilling to serve the Clerk shall submit an additional list of names to the parties until a neutral or complete panel of neutrals is selected. When a neutral or full panel of neutrals have been selected and have agreed to serve, the Clerk shall promptly notify the neutral or neutrals and the parties of the selection. No person shall serve as a neutral if any of the circumstances specified in 28 U.S.C. § 455 of the Judicial Code of Conduct exist, or if the neutral believes in good faith that such circumstances exist. Any person whose name appears on the roster maintained in the Clerk's Office may ask at any time to have his or her name removed, or, if selected to serve in any case, decline to serve but remain on the roster.

Upon its own motion or upon motion and showing of good cause by any party, the Court may order appointment of a neutral or neutrals from outside the roster of qualified neutrals maintained by the Clerk's Office.

**(e) CONFIDENTIALITY**

Except as otherwise provided herein, a communication relating to the subject matter of any case under Title 11, contested matter or adversary proceeding made by a participant in an alternative dispute resolution procedure, whether before or after the institution of formal judicial proceedings, is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding.

(1) Any record made at an alternative dispute resolution procedure is confidential, and the participants or the third party neutral(s) facilitating the procedure may not testify, or be required to testify, in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring the disclosure of confidential information or data relating to or arising out of the matter in dispute.

(2) An oral communication or written material used in or made a part of an alternative dispute resolution procedure is only admissible or discoverable if it is admissible or discoverable independent of the procedure.

(3) If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to any Court having jurisdiction of the proceedings to determine, *in camera*, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order of the Court or whether the communications or materials are subject to disclosure.

**(f) SUMMARY TRIAL OR JURY TRIAL**

In cases where other alternative dispute resolution procedures have proved unsuccessful and a complex and lengthy trial is anticipated, the Court may conduct a summary trial or jury trial, *provided* that the Court finds that a summary trial or jury trial may produce settlement of all or a significant part of the issues and thereby effect a saving in time, effort and expense for all concerned. The Court should develop procedures, which may include referral to one or more neutrals on the roster of arbitrators (for report and recommendation), for such summary trial or jury trial with the advice of counsel.

**(g) REPORT**

At the conclusion of each ADR proceeding, the neutral or panel of neutrals shall submit to the Court a notice of outcome, including the style and number of the case, the date(s) of the ADR proceeding, the names of the participants and only whether the case has settled or not.

**(h) SANCTIONS**

All sanctions available under Federal Rule of Civil Procedure 16(f), Federal Rule of Bankruptcy Procedure 7016 and/or any Local Rule or previous Order of the Court shall apply to any violation of this rule.

**(i) COURT AUTHORIZATION NOT REQUIRED**

Nothing in this rule should be interpreted as limiting parties' ability to agree to a form of alternative dispute resolution or the selection of a neutral without a court order, through mutual consent. In fact, consent is preferred.