

OHIO SOUTHERN

July 1, 2010

16.3 Alternative Dispute Resolution

(a) Evaluation of Cases for ADR

(1) Upon request by any party or in its discretion, and at such times during the progress of the case as appear appropriate, the Court may assign any civil case which is not exempted hereunder for one or more mediation or settlement week conferences. With the consent of all parties, the Court will also consider assigning any case for any other type of dispute resolution process which is an alternative to traditional litigation, including a summary jury trial.

(2) Litigants shall consider the use of one or more alternative dispute resolution processes at the conference held pursuant to Fed. R. Civ. P. 26(f). They shall also consult about phasing initial discovery to most economically and efficiently focus potential settlement discussions.

(3) The Court will consult with counsel at conferences held pursuant to Fed. R. Civ. P. 16 about the application of ADR processes to the case. The Court may at any stage of any case convene a separate conference to be attended by the Trial Attorney and each party or their authorized representative to determine if the issues of the case, the needs and relationships of the parties, or other factors make further efforts at ADR appropriate for the potential resolution of the dispute.

(b) Exclusion of Categories of Cases

Unless otherwise ordered in a specific case, the categories of cases exempted from initial disclosure by Fed. R. Civ. P. 26(a)(1)(E) (ii), (iii), (iv), (vii), and (viii) are also exempt from assignment to mediation or settlement week conferences administered by this Court. Actions for review on an administrative record, and actions by the United States to recover benefit payments or collect on student loans guaranteed by the United States may be assigned to such ADR proceedings as the ADR Coordinator at that location of the Court deems prudent.

(c) Confidentiality

(1) In addition to Fed. R. Evid. 408, and any other applicable privilege, pursuant to 28 U.S.C. § 652(d) evidence of conduct or statements made in settlement negotiations is not admissible to prove liability for or invalidity of a claim or its amount. In order to promote candor and protect the integrity of this Court's ADR processes, in addition to other protections afforded by law all communications made by any person (including, but not limited to parties, counsel, and judicial officers or other neutral participants) during ADR proceedings conducted under the authority of this Court are confidential, and are subject to disclosure only as provided in subsection (c)(3) of this Rule. Any participant in the process, whether or not that participant is a party to the case in which the ADR proceeding has been attempted or has occurred, may seek an Order to prevent disclosure of any communication deemed confidential by this Rule.

(2) Communications deemed confidential by this Rule include, but are not limited to, statements or expressive conduct occurring during the ADR proceeding itself, such as offers to compromise, statements about the value of a case or claim, statements about the strength or weakness of a claim or defense, and statements concerning the possible resolution of all or part of a case. Confidential communications also include communications made in connection with selecting an ADR process, initiating the process, and selecting or retaining a mediator or other neutral.

(3) Communication deemed confidential by this Rule may be disclosed, if such disclosure is not otherwise prohibited by law, only in the following circumstances:

(A) Following an actual or attempted ADR proceeding, neutrals are permitted to report to the Court information intended to aid in further management of the case, including: (i) whether the case has settled, or may settle in the near future without further Court management; (ii) if the case has not settled, suggestions about case management (such as the desirability of further pretrial discovery followed by the scheduling of additional ADR proceedings, or followed by rulings on one or more issues); (iii) information about the parties' conduct if the neutral concludes that a party did not participate in good faith in the ADR proceeding or otherwise violated a Court order or Disciplinary Rule relating to the proceeding; and (iv) any other information which the parties authorize the neutral to communicate to the Court; or

(B) All participants to the ADR process, including parties, counsel, and neutrals, consent in writing to the disclosure of the communication; or

(C) A judicial officer assigned to the case determines that such disclosure is needed in connection with possible sanctions for misconduct relating to the ADR proceeding; or

(D) The judicial officer who would otherwise enter judgment in the case or, in the event of the unavailability of that judicial officer, the Chief District Judge, conducts an *in camera* hearing or comparable proceeding and determines both the following: (i) that evidence of the content of the communication is not otherwise available and that there is a compelling need for the evidence which substantially outweighs the policy favoring confidentiality; and (ii) the evidence will be used to establish or disprove a claim of criminal or professional misconduct or malpractice made against a neutral, counsel, or party relating to the ADR proceeding; or will be used in a proceeding in which fraud, duress, or incapacity is in issue regarding the validity or enforceability of an agreement reached during the ADR proceeding; or maintaining the confidentiality of the communication will pose a significant threat to public health or safety; or

(E) The disclosure is otherwise required by law.

(d) Selection of Mediators and Other Neutrals

(1) Each location of the Court shall maintain and regularly update a roster of appropriately experienced attorneys willing to serve as volunteer neutrals for the Court's ADR programs. A United States Magistrate Judge or Court employee at each location of the Court shall be designated by the Chief Judge as the "ADR Coordinator" to implement, administer,

oversee, and evaluate the Court's ADR programs at that location, and to be primarily responsible for recruiting, screening, and training attorneys to serve as neutrals for the Court, pursuant to 28 U.S.C. § 651(d).

(2) ADR Coordinators may coordinate scheduling, training of neutrals, and other features of this Court's ADR program with comparable state court ADR programs or bar association programs.

(3) Volunteer mediators for Settlement Week or similar programs administered by this Court shall be appointed by the ADR Coordinator from the lists maintained at the location of the Court where the case is pending. Counsel are encouraged to consult about the selection of a mediator, and to propose the appointment of someone having familiarity with the subject matter of a particular case when that is deemed likely to improve the ADR process.

(4) Before accepting appointment in any ADR proceeding conducted under the authority of this Court, the neutral shall make inquiry reasonable under the circumstances to determine whether there are facts that a reasonable person would consider likely to affect his or her impartiality, including personal or financial interest in the outcome of the proceeding, or existing or past relationships with a party, counsel, or a significant, foreseeable witness to the dispute. The neutral shall consider the factors set forth in 28 U.S.C. § 455. The neutral shall decline to participate in circumstances likely to be considered to affect impartiality, and if in doubt shall disclose facts known or learned to all counsel and unrepresented parties as soon as is practical.

(5) In unusually complex cases, or other situations in which service as a neutral is anticipated to impose a significant time demand, parties are permitted (but not required) to agree among themselves and with the assigned neutral (other than a Magistrate Judge) to reasonably compensate such neutral. If the parties have clearly memorialized any such arrangements in writing, the Court may enter such Orders as are just to enforce such a written agreement.

(e) Remedies and Procedures Not Specified in this Rule

(1) This Court, or any Division or location of this Court, may by General Order provide supplemental procedures for ADR not inconsistent with this Rule and applicable law.

(2) Any judicial officer presiding in a civil case may, in that case, enter such Orders as are lawful, just and appropriate to fairly administer an ADR program suitably tailored to it.

(3) Mediators, and other neutrals used in ADR proceedings conducted by this Court shall control proceedings before them.

(4) Any breach or threatened breach of the confidentiality provisions of this Rule, and any refusal to attend and participate in good faith by a party or their counsel shall be reported to the presiding judicial officers who may, after notice, impose sanctions or make such other Orders as are just.