

# WYOMING

## Rule 16.3 ALTERNATIVE DISPUTE RESOLUTION

(a) Voluntary Dispute Resolution. The Court urges the parties to strongly consider voluntary alternative dispute resolution (ADR) in all non-exempt civil cases as a means of expeditiously resolving a dispute prior to trial. ADR procedures include settlement conferences, summary jury trials, court annexed arbitration, early neutral evaluation, and other dispute resolution techniques.

(1) Stipulated Agreement and Motion for Referral to ADR. The parties may request from the Clerk of Court a form for a Stipulated Agreement and Motion for Referral to ADR for a voluntary ADR procedure in all non-exempt civil actions. The parties shall file the Stipulated Agreement and Motion for Referral to ADR with the Clerk of Court indicating, therein, the ADR procedure selected and the neutral selected to conduct the ADR procedure. The Clerk of Court shall forward a copy of the Stipulated Motion and Agreement for Referral to the ADR Administrator for processing.

(2) Notification of Neutral and Acceptance or Rejection. The ADR Administrator shall notify the selected neutral that litigants are requesting to conduct the ADR procedure. The ADR Administrator shall also provide to the selected neutral copies of the Stipulated Agreement and Motion for Referral to ADR and the case docket sheet. The neutral shall check for conflicts of interest and notify the ADR Administrator within five (5) days from the date of notice, whether the referral will be accepted or rejected. If the referral is accepted by the neutral, the neutral shall immediately notify the ADR Administrator of such and the ADR Administrator shall seek an order from the trial judge approving the same. Once an order of approval is filed with the Clerk of Court, the neutral shall be responsible to contact the parties and make all necessary arrangements to conduct the ADR procedure.

(3) Notice by Neutral of ADR Procedure Outcome. Immediately after the conclusion of an ADR procedure, the neutral shall contact the Clerk of Court and advise of the outcome of the proceeding. The Clerk of Court shall then likewise notify the trial Judge and the ADR Administrator.

(4) Report of Neutral. The neutral, within ten (10) days after the conclusion of the ADR proceeding, shall fill out and return to the ADR Administrator, the Neutral ADR Report previously provided.

(5) Referral to ADR Neutrals. The parties may request the referral of a case to a specific neutral listed below, or the Court, within its discretion, may refer a case to a specific neutral listed below:

- (i) Court-Connected Judicial Officer;
- (ii) Panel Neutral;
- (iii) Other Neutrals Approved by the Court.

The parties may request the Clerk of Court to provide a current list of neutral panel members, qualified and approved by the Court to conduct ADR.

(b) Mandatory Dispute Resolution. The Court may, in its discretion, require the parties to engage in non-binding ADR procedures. The Court may require the parties to participate in such proceedings at any time after all the parties have appeared in the action.

(c) Additional Criteria and Procedures Pertaining to Settlement Conferences.

(1) Attendance and Authority to Settle.

(i) Attendance by Counsel. Except with leave of court, counsel who will try the case shall be present at the settlement conference. A person possessing full settlement authority shall also be present.

(ii) Attendance of Parties. The parties to the litigation shall be present in person or through an authorized corporate/governmental representative.

(iii) Plaintiff's Authority to Settle. A plaintiff, or authorized representative, shall have full and final authority to authorize dismissal of the case with prejudice, or to accept a settlement amount down to the amount of the defendant's last offer.

(iv) Defendant's Authority to Settle. A defendant, or authorized representative, shall have full and final settlement authority to pay a settlement amount up to the amount of the plaintiff's prayer (excluding punitive damage prayers in excess of \$100,000.00) or up to the plaintiff's last demand, whichever is lower. The purpose of these requirements is to have parties or representatives present who can settle the case during the course of the conference without consulting a superior who is not in attendance.

(v) Board/Committee Approval. If board/committee approval may be required to authorize settlement, the approval of the board/committee must be obtained in advance of the conference, and the attendance of at least one sitting member of the board/committee having the full authority of the board/committee to settle (preferably the Chairman) is required.

(vi) Failure to Appear. Counsel appearing without their clients (whether or not counsel has been given settlement authority) will cause the conference to be canceled and rescheduled. The noncomplying party, attorney, or both may be assessed the costs and expenses incurred by other parties and the Court, as a result of such cancellation. Additional sanctions may be imposed as deemed appropriate by the judge to whom the case is assigned.

(vii) Insurance Representatives. Any insurance company that may be a party or is contractually required to defend or pay damages, if any, must have an authorized settlement representative present at the conference. Such representative shall have final settlement authority to commit the company to pay, in the representative's discretion, any amount up to the policy limits. The purpose of this requirement is to have an insurance representative present who can settle the outstanding claim or claims during the course of the conference without consulting a superior who is not in attendance. An insurance representative authorized to pay, in his/her discretion, up to the plaintiff's last demand will also satisfy this requirement. Failure to fully comply with this requirement may result in the imposition of appropriate sanctions by the district judge assigned to the case.

(viii) Attendance by Telephone. No participant shall appear and participate by telephone without prior permission of the neutral. Participation by telephone will be allowed only when exigent circumstances exist.

(2) Confidentiality.

(i) Confidential Settlement Conference Memoranda. The parties are required to submit to the neutral memoranda or position papers prior to the settlement conference. The parties will be advised by the neutral of the information to be included in the memoranda and when it is to be submitted. The

memoranda shall be submitted to the neutral and not filed with the Court. The neutral will treat settlement conference memoranda as strictly confidential and will destroy all settlement conference memoranda after the conclusion of the conference.

(ii) Confidentiality of Settlement Conference. All communications, representations, evidence and transcripts regarding negotiations and agreements made during a settlement conference shall be held to be strictly confidential and are not subject to disclosure, pursuant to Rule 408 of the Federal Rules of Evidence or as otherwise provided by law. Disputes between parties concerning the terms or enforcement of the terms of a settlement agreement may be excepted from above.

(3) Reporting of Settlement Conference Negotiations. No transcript shall be made of any settlement conference negotiations.

(4) Reporting of Settlement Conference Agreement. A neutral Rule 16.3 20 may require at the conclusion of a settlement conference, that a court reporter report the outcome of the conference and the terms of any settlement reached by the parties. No transcript of the Court Reporter's notes shall be made without the prior written permission of the Court.

(d) Referral to Arbitration. A district court will allow referral to arbitration of any civil action, including any adversary proceeding in bankruptcy, when the parties consent, except in cases alleging violation of a constitutional right, when jurisdiction is based in whole or part on 28 U.S.C. § 1343, or when the relief sought consists of money damages greater than \$150,000.

(e) Cases Exempt from ADR. The following cases are hereby exempt from ADR:

- (1) *Pro se* cases;
- (2) Preliminary injunctions/TRO's;
- (3) Cases challenging the constitutionality of a statute;
- (4) Social security cases;
- (5) Freedom of Information Act cases;
- (6) Privacy Act cases;
- (7) Immigration cases;
- (8) Prisoner 1983 cases, post-conviction §2255 cases, and habeas proceedings.

(f) Private ADR. Parties are free, at any time, to engage in private ADR proceedings independent of or in addition to ADR with a court-connected Judicial Officer or panel neutral.

(g) Notice to Court of Private ADR. The parties shall give notice to the Court of an agreement to engage in private ADR proceedings in order to assist the Court in managing its docket.

(h) ADR Neutrals

(1) Panel of Neutrals. The Court shall maintain a panel of individuals qualified and approved by the Court to conduct ADR.

(2) Qualifications of Neutrals. To be eligible for listing on the panel of neutrals, the following minimum qualifications must be met:

(i) Member in good standing of the bar of the United States District Court for the District of Wyoming and the State of Wyoming;

(ii) Fifteen (15) years experience practicing law; Rule 16.3 21 August 20, 2001

(iii) Completion of at least ten (10) hours of training in ADR technique courses approved by the Wyoming State Bar Board of Continuing Legal Education;

(iv) Conduct at least one ADR proceeding every calendar year to remain qualified. Failing this, a neutral will be required to again complete ten (10) hours of training as required in (2)(iii) above by the end of March of the following year to remain on the panel of neutrals. Any neutral removed from the panel must reapply and meet the qualifications set forth above;

(v) All neutrals will remain on the panel for five (5) years if the above- qualifications are met every year. After five (5) years, neutrals must reapply for inclusion on the panel.

(i) Panel Duties. Duties of the ADR Advisory Neutral Selection Panel shall include the review of all neutral application forms to determine eligibility, qualifications, training and experience of each applicant. The panel shall recommend qualified applicants to the Chief Judge for final approval of membership on the list of neutrals.

(3) ADR Advisory Neutral Selection Panel. The Chief Judge of the Court shall appoint a minimum of three members to the ADR Advisory Neutral Selection Panel. At least one member of the panel shall be a district judge or magistrate judge.

(4) Disqualification of Neutrals. All neutrals are subject to disqualification pursuant to 28 U.S.C. § 455.

(5) Applications. Applications for inclusion on the list of panel neutrals shall contain the following information:

(i) The areas of the law in which the neutral asserts to have expertise, together with a comprehensive description of that expertise;

(ii) The ADR methods the neutral agrees to conduct;

(iii) A summary of training, experience and qualifications for the ADR method(s) the neutral seeks to conduct;

(iv) The neutral's fee schedule;

(v) A commitment to accept cases for a reduced fee or *pro bono*;

(6) Fees. The neutrals and the parties may determine for Rule 16.3 22 themselves the fees to be paid for ADR services. The Court reserves the right to review the reasonableness of the fees.

(i) ADR Administrator. The Court shall select an individual in the Court system to act as ADR Administrator.

(1) Duties. The ADR Administrator shall assist the Court in the implementation, administration and evaluation of the ADR Plan.

(2) Annual Report. The ADR Administrator shall report to the Chief Judge and the Clerk of Court

annually, on or before March 1, the number of cases referred to ADR, the methods of ADR employed and the percentage of cases resolved by referral to ADR.