

RULE CV-88. ALTERNATIVE DISPUTE RESOLUTION

(a) ADR Methods Available. The Court recognizes these ADR methods: early neutral evaluation, mediation, minitrial, moderated settlement conference, summary jury trial, and arbitration. The Court may approve any other ADR method the parties suggest or the Court believes is suited to the litigation.

(b) ADR Report. Upon order of the Court entered early in the case, the parties shall submit a report addressing the status of settlement negotiations, disclosing the identity of the person responsible for settlement negotiations for each party, and evaluating whether alternative dispute resolution is appropriate in the case. 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 an ADR provider, they should identify both the method of ADR and the provider they have selected, the method by which the provider was selected, and how the provider will be compensated.

(c) Referral to ADR. The Court may refer a case to ADR on the motion of a party, on the agreement of the parties, or on its own motion; however, the Court may refer a case to arbitration only with the consent of the parties (including but not limited to their consent by contract to arbitration). If the parties agree upon an ADR method or provider, the Court will respect the parties' agreement unless the Court determines that another ADR method or provider is better suited to the case and parties. If the parties are unable to agree on an ADR provider, the Court will select a provider.

(d) Attendance; Authority to Settle. In addition to counsel, party representatives with authority to negotiate a settlement, and all other persons necessary to negotiate a settlement, including insurance carriers, must attend the ADR session.

(e) Fees. The provider and the litigants will determine the fees for the ADR. The Court reserves the right to review the reasonableness of the fees. If the provider and litigants are unable to agree, the Court will determine an appropriate fee.

(f) Certification and List of Providers.

(1) The Court will appoint three members in each division to a standing panel on ADR providers and designate one member as chairperson. The panel will review applications from providers and annually prepare a roster of those qualified under the criteria contained in this rule.

(2) To be eligible for listing, providers must meet the following minimum qualifications:

a. the person must be a member of the bar of the United States District Court for the Western District of Texas; and

b. the person must have been a member of the bar of the highest court of any state or the District of Columbia for at least five years; and

c. the person must have completed at least forty hours training in dispute resolution techniques in an alternative dispute resolution course approved by the State Bar of Texas Minimum Continuing Legal Education Department or the federal courts, or have been a judge of a court of record in the State of Texas.

(3) A provider denied listing may request a review of that decision.

(4) The Court may appoint and parties may select by agreement a provider who is not on the list.

(g) Disqualification. No person shall serve as a provider if any of the circumstances specified in 28 U.S.C. § 455 of the Judicial Code of Conduct exist, or if the provider believes in good faith that such circumstances exist.

(h) Relief from Referral. A party opposing either the ADR referral or the appointed provider must file written objections with the Court within ten (10) days of receiving notice of the referral or provider. Any party may obtain relief from an order upon a showing of good cause. Good cause may include a showing that the expenses relating to alternative dispute resolution would cause undue hardship to the party seeking relief from the order. In that event, the Court may in its discretion appoint a provider from the list of providers to serve at a reduced fee, or without fee, and at no cost to the party or parties.

(i) Confidentiality. Except as otherwise provided herein, or as agreed by the participants, a communication relating to the subject matter of any civil or criminal dispute made by any participant during an alternative dispute resolution procedure, whether before or after the institution of formal judicial proceedings, is confidential, may not be disclosed, may not be used as evidence against the participant in any judicial or administrative proceeding, and does not constitute a waiver of any existing privileges or immunities.

(1) Any record made at an alternative dispute resolution procedure is confidential, and the participants or the third party facilitating the procedure may not 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 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 the 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.

(j) Summary Jury Trial. In cases where alternative dispute resolution procedures have proved unsuccessful and a complex and lengthy trial is anticipated, the Court may conduct a summary jury trial provided that the Court finds that a summary 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 and provided the parties consent to the procedure. The Court should develop procedures for such summary jury trial with the advice of counsel.

(k) Final ADR Report. At the conclusion of each ADR proceeding, the provider shall submit to the Court a notice of outcome, including the style and number of the case, the type of case, the method of ADR, whether the case has settled, and the provider's fees.

(l) Sanctions. The sanctions available under Federal Rule of Civil Procedure 16(f) shall apply to any violation of this rule.