

**21.2 ALTERNATIVE DISPUTE RESOLUTION**

It is the policy of the Court to encourage the use of Alternative Dispute Resolution ("ADR") methods. Any Judge is authorized to facilitate the use of voluntary ADR by taking any one or more of the following actions at or after the Case Management Conference or at other reasonable times during the litigation:

- (A) Suggesting that the parties engage in settlement negotiations and appropriately participate in such negotiations;
- (B) Informing the parties about the availability of early neutral evaluation programs (including those offered by local bar associations) and, upon agreement of the parties, entering appropriate orders;
  - (1) Referring the dispute to early neutral evaluation.
  - (2) Staying proceedings in the litigation for up to sixty (60) days pending completion of the early neutral evaluation process.
  - (3) Implementing the results of the process.
- (C) Informing the parties of the existence and benefits of the Ohio Private Judging Act, Ohio Revised Code 2701.10 and, upon agreement of the parties to utilize that Act, to enter appropriate orders authorized there under; and
- (D) Upon request of the parties to the litigation, evidenced by a written certification of agreement from all parties, entering such orders to refer the dispute to any other ADR method as the Judge deems to be consistent with the interests of justice.

(E) MEDIATION

(1) Eligible Cases

- (a) Any Business Case may be referred to mediation.
- (b) As used herein, "Business Case" means any case filed with the Court primarily involving one or more of the following areas of law: contract law, matters arising under or governed by the Uniform Commercial Code (as adopted in Ohio or in another jurisdiction), commercial and business torts, corporate law, securities law, trade secrets law, the law related to employment relations, the law of unfair competition and/or covenants-not-to-compete, construction law, maritime law, international business law, real estate law (except foreclosure actions), or an action or proceeding based upon a right conferred by statute if the injury associated with such right is purely economic in nature.

(2) Selection of Cases

- (a) When Selected, a Business Case may be referred for mediation:
  - (i) At the Case Management Conference; or
  - (ii) At any time by agreement of the parties with the approval of the Court.

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- (b) How Selected: A Business Case may be selected for mediation:
  - (i) By the Court on its own motion;
  - (ii) By the Court, on motion of one of the parties; or
  - (iii) By stipulation of all parties, approval of the Court.
- (c) Objection to Mediation.
  - (i) For good cause, a party may object to the referral to mediation by the Court motion by filing a written request for reconsideration within ten days of the date of the Court's Order.
  - (ii) Mediation processes shall be stayed pending decision on the request for consideration, unless otherwise ordered by the Court.
- (d) Arbitration. If all parties advise the Court that they would prefer Court ordered arbitration to mediation, the Court may order the case to arbitration under Local Rule 29.
- (e) Private ADR. If all parties advise the Court that they would prefer to use a private ADR process (including private arbitration or mini-trial) the Court may permit them to do so at the expense of the parties, subject to:
  - (i) The submission to the Court of an agreement executed by the parties, providing for the conduct including the termination within sixty (60) days of the ADR process, and;
  - (ii) The filing with the Court, within ten (10) days of the completion of the ADR process, of a written report, signed by the neutral ADR officer or by the parties if no neutral was used.

### (3) List of Eligible Mediators

- (a) Mediators in all cases referred to mediation shall be selected from the List of Eligible Mediators. The List of Eligible Mediators shall be maintained by the ADR Administrator and distributed to all Judges of the Court. All Mediators whose names are placed upon the List of Eligible Mediators shall have all of the following minimum qualifications:
  - (i) They shall be admitted to the practice of law in the State of Ohio;
  - (ii) They shall have devoted a substantial portion of their legal practice to Business Cases for a period of not less than twelve (12) years prior to their selection; and
  - (iii) They shall be generally regarded as highly-reputable attorneys in the Greater Cleveland legal community.
- (b) Mediators shall be selected by the Administrative Judge. Any person desiring to become a Mediator of the Court shall apply in writing to the ADR Committee. The credentials of all applicants shall be reviewed by the Administrative Judge. A Mediator's name may be removed from the List of Eligible Mediators for good cause.

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- (c) The mediator shall receive compensation of one hundred dollars (\$100) for mediation hearings of four (4) hours or less. This fee shall be borne by the Court. Additional time spent by the Mediator may be charged at the Mediator's normal hourly rate to be borne equally by the parties. Mediation sessions shall not exceed four (4) hours without the prior written consent of all parties.

### (4) Administrative Procedure

- (a) The file shall be sent to the ADR Administrator who shall promptly notify the parties in writing and shall include the names of three (3) proposed Mediators taken from the List of Eligible Mediators. Each party shall then rank the mediators in order of preference and shall, within ten (10) days of the date of the written notice, return the ranked list to the ADR Administrator who shall:
  - (i) Choose one party's list at random and "strike" the least preferred name on the list from consideration;
  - (ii) Go to the other party's list and "strike" the least preferred remaining name on that list from consideration;
  - (iii) Selected the remaining name as the Mediator.
- (b) In the event of multiple parties not united in interest, the ADR Administrator shall add the name of one proposed mediator for each such additional party, and shall process the returned lists in the manner provided in section (a) above.
- (c) The ADR Administrator, after conferring with the selected Mediator concerning potential conflicts of interest and scheduling, shall give or send written Notice of Designation to counsel for all parties (or to parties not yet represented by counsel) and to the Mediator.
- (d) Promptly after receiving the Notice of Designation, the Mediator shall schedule the mediation conference which shall not be more than thirty (30) days from the date of the written Notice of Designation. The Mediator shall send written notice to all parties and to the ADR Administrator advising them as to the date, time and location of the mediation conference.
- (e) Nothing in this Rule shall limit the right of the parties with notification to the Court, to select a person of their own choosing to act as a Mediator hereunder, provided such selection is made ten (10) days from the date of referral.

### (5) Neutrality of Mediator

If at any time, the Mediator becomes aware of or a party raises an issue with respect to the Mediator's neutrality because of some interest in the case or because of relationship or affiliation with one of the parties, the Mediator shall disclose the facts with respect to the issue to all of the parties. If a party requests that the Mediator withdraw because of the facts so disclosed, the Mediator may withdraw and request that the ADR Administrator appoint another Mediator. If the Mediator determines that withdrawal is not warranted, the Mediator may elect to continue. The objecting party may then request the assigned Judge to remove the Mediator. The assigned Judge may remove the Mediator and choose another from the List of

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Eligible Mediators. If the assigned Judge decides that the objection is unwarranted, the mediation conference shall proceed as scheduled, or, if delay was necessary, as soon after the scheduled date as possible.

### (6) Written Submissions to Mediator

- (a) At least five (5) days before the mediation conference, the parties shall submit to the Mediator:
  - (i) Copies of relevant pleadings and motions;
  - (ii) A short memorandum stating the legal and factual positions of each party respecting the issues in dispute; and
  - (iii) Such other material as each party believes would be beneficial to the Mediator.
- (b) Upon reviewing such material, the Mediator may, at his or her own discretion or on the motion of a party, schedule a preliminary meeting with counsel.
- (c) Written mediation memorandum shall not be filed and shall not be shown to the Court.

### (7) Attendance at Mediation Conference

The attorney who is primarily responsible for each party's case shall personally attend the mediation conference and shall be prepared and authorized to discuss all relevant issues, including settlement. The parties shall also be present, except that when a party is other than an individual or when a party's interests are being represented by an insurance company, an authorized representative of such party or insurance company, with full authority to settle, shall attend in person and not by telephone. Willful failure of a party to attend the mediation conference shall be reported by the Mediator to the assigned Judge who may impose appropriate sanctions.

### (8) Procedure at Mediation Conference

- (a) The mediation conference, and such additional conferences as the Mediator deems appropriate shall be informal. The Mediator shall conduct the process in order to assist the parties in arriving at a settlement of all or some of the issues involved in the case.
- (b) The Mediator may hold separate, private caucuses with any party or counsel.
- (c) If the parties have failed, after reasonable efforts, to develop settlement terms, or if the parties request, the Mediator may submit to the parties a final settlement proposal which the Mediator believes to be fair. The parties will carefully consider such proposal and, at the request of the Mediator, will discuss the proposal with him or her. The Mediator may comment on questions of law at any appropriate time.
- (d) The Mediator may conclude the process when:
  - (i) A settlement is reached; or
  - (ii) The Mediator concludes, and informs the parties, that further efforts would not be useful.

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- (e) The Mediator shall report the results of the mediation to the assigned Judge and the ADR Administrator by letter, with copies to counsel for each party (or if a party is not represented by counsel, to the party's representative), promptly within ten (10) days of the close of the mediation conference. The report shall be limited to one or more of the following, as appropriate: advising the assigned Judge that the case has been settled and, if the settlement is as to less than all parties or issues in the case, which parties or issues have settled; that the case has not been settled; that further mediation efforts would or would not be useful; the failure of a party or the party's attorney to attend the mediation conference; and the Mediator's recommendation, if any, as to future processing of the case.

If a settlement agreement is reached, the Mediator, or one of the parties at the Mediator's request, shall prepare an appropriate written entry for the Court, which entry shall be signed by the parties and filed with the assigned Judge for approval by the Court.

- (f) All mediations shall be concluded within sixty (60) days from the date of referral.

### (9) Confidentiality

The entire mediation process is confidential. The parties and the Mediator may not disclose information regarding the process, including settlement terms, to the Court or to third persons unless all parties otherwise agree. Parties, counsel and Mediators may, however, respond to confidential inquiries or surveys by the persons authorized by the Court to evaluate the mediation program. Information provided in such inquiries or surveys shall remain confidential and shall not be identified with particular cases.

The mediation process shall be treated as a compromise negotiation for purposes of the Ohio Rules of Evidence. The Mediator is disqualified as a witness, consultant, attorney, or expert in any pending or future action relating to the dispute, including actions between persons not parties to the mediation process.

*Effective: 11/01/00*