

## MEDIATION FORMS – U.S. DISTRICT COURTS

### OVERVIEW

Federal district courts have different requirements from state courts as a whole and thus different form needs. District court mediation programs are generally voluntary, require that attorneys communicate with each other and their clients about the appropriateness of ADR, and offer pro bono options for qualified parties.

The forms below offer good examples for use in these programs.

### GOOD EXAMPLES

#### **Alternative Dispute Resolution (“ADR”) Statement and Certification – South Carolina**

District courts often require that counsel discuss ADR options and the appropriateness of the case for such options with parties and opposing counsel. This form provides an example of counsel certification that such actions were taken.

#### **Stipulation and [Proposed] Order Selecting ADR Process – Northern District of California**

This is a nicely formatted stipulation and order to ADR. It is written in clear language and is easily completed and understood.

#### **Order Referring Case to Alternative Dispute Resolution – Eastern District of Missouri**

Some courts prefer to put all the instructions for the attorneys in the order of referral. This is a good example of this approach. The order details the responsibilities of the attorneys in scheduling the conference, notifying the court, and compensating the mediator. It also lays out the rules for the conference. The language is clear and unambiguous.

#### **Motion and Order Concerning Appointment of Pro Bono Neutral – Eastern District of Missouri**

This request for a pro bono neutral is simple and direct. The affidavit is nicely laid out. Particularly good are the placement of the request and the order on the same page and the option for the judge to reduce the neutral's fee, rather than waiving it altogether.

Other courts using this as a model may want to simplify the language so that it could more easily be understood by unrepresented litigants.

#### **ADR Report – Western District of Oklahoma**

Mediation report forms are used by courts to monitor what occurred in the mediation. Courts need to know whether and when the mediation occurred, what the outcome was, and what further steps will be taken by the parties (particularly who will be filing the stipulation). This information is required for any further action by the court. It is also necessary for the court's monitoring of the functioning of the program.

The best mediation reports not only gather information on what occurred in the mediation, but are also used as an opportunity for the court to collect data for more sophisticated analysis of the program's functioning. As such, a good form asks a number of questions about the characteristics of the case, such as what type of case it is, the timing of the mediation, the amount of time spent in mediation, and who attended. This information allows the court to more clearly understand which cases benefit from mediation and what impact it has on the courts and the litigants.

The best mediation reports also use checkboxes and structured-response questions as often as possible. This makes it easy to complete and to enter into a database, as well as eliminates ambiguity in responses.

Some very good information is retrieved through this report. It is a nice example of a report that gathers information that could be used for evaluative purposes. Despite the fact that the form goes beyond the questions of whether the case was mediated and what the outcome was, it does not impose a lot of work on the mediator. Particularly good are the questions about the timing of ADR and when settlement occurred.

Courts in which multiple sessions are possible should consider modifying the form to allow the mediator to include more than two sessions. One way to do this would be to note the first session date, the final session date, and the number of sessions.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA**

\_\_\_\_\_ **DIVISION**

	)	<b>C/A No.:</b>
	)	
<b>Plaintiff,</b>	)	<b>ALTERNATIVE DISPUTE RESOLUTION</b>
<b>v.</b>	)	
	)	<b>(“ADR”) STATEMENT</b>
	)	
	)	<b>AND CERTIFICATION</b>
<b>Defendants.</b>	)	

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Pursuant to Local Civil Rule 16.03, the undersigned certifies that he or she has (1) provided the party he or she represents with any materials relating to ADR which were required to be provided by Local Civil Rule 16.01 on order of the Court; (2) discussed the availability of ADR mechanisms with the party; and (3) discussed the advisability and timing of ADR with opposing counsel.

Submitted<sup>2</sup> this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
*Signature of Counsel of Record*

\_\_\_\_\_  
*Name, address, etc.*

Attorney for: \_\_\_\_\_  
*Party*

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<sup>2</sup>This statement must be filed and served. Local Civil Rule 16.03, D.S.C. A separate statement and certification is required for each party represented.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CASE NO.

Plaintiff(s),

v.

STIPULATION AND [PROPOSED]  
ORDER SELECTING ADR PROCESS

Defendant(s).

\_\_\_\_\_ /

Counsel report that they have met and conferred regarding ADR and have reached the following stipulation pursuant to Civil L.R. 16-8 and ADR L.R. 3-5:

The parties agree to participate in the following ADR process:

**Court Processes:**

- Non-binding Arbitration (ADR L.R. 4)
- Early Neutral Evaluation (ENE) (ADR L.R. 5)
- Mediation (ADR L.R. 6)

*(Note: Parties who believe that an early settlement conference with a Magistrate Judge is appreciably more likely to meet their needs than any other form of ADR, must participate in an ADR phone conference and may not file this form. They must instead file a Notice of Need for ADR Phone Conference. See Civil Local Rule 16-8 and ADR L.R. 3-5)*

**Private Process:**

- Private ADR (*please identify process and provider*) \_\_\_\_\_

\_\_\_\_\_

The parties agree to hold the ADR session by:

- the presumptive deadline (*The deadline is 90 days from the date of the order referring the case to an ADR process unless otherwise ordered.*)
- other requested deadline \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Attorney for Plaintiff

Dated: \_\_\_\_\_

\_\_\_\_\_  
Attorney for Defendant

When filing this document in ECF, please be sure to use the appropriate ADR Docket Event, e.g., "Stipulation and Proposed Order Selecting Early Neutral Evaluation."

**[PROPOSED] ORDER**

Pursuant to the Stipulation above, the captioned matter is hereby referred to:

- Non-binding Arbitration
- Early Neutral Evaluation (ENE)
- Mediation
- Private ADR

Deadline for ADR session

- 90 days from the date of this order.
- other \_\_\_\_\_

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES JUDGE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

, )  
 )  
Plaintiff(s), )  
 )  
Vs. ) Case No.  
 )  
, )  
 )  
Defendant(s). )

**ORDER**  
**REFERRING CASE TO ALTERNATIVE DISPUTE RESOLUTION**

After due consideration of the issues and in consultation with the parties, the Court finds that this cause is appropriate for referral to an alternative form of dispute resolution as provided by the local rules of this Court.

**IT IS HEREBY ORDERED THAT:**

- (A) Referral to ADR: This case is referred to: **Mediation.**
- (B) Conduct of ADR Conference(s): The ADR conference(s) shall be conducted in accordance with the procedures outlined in E.D.Mo. L.R. 6.01 - 6.05.
- (C) Scheduling ADR Conference(s): The ADR conference(s) shall be concluded before , unless extended by order of the Court. Although ADR conferences may be conducted at any location agreed to by the parties, counsel, and the assigned neutral, the parties are advised that such conferences may be conducted in designated space in the United States District Court, 111 So. 10<sup>th</sup> Street, 5<sup>th</sup> Floor, St. Louis, Missouri, by making arrangements with the Office of the Clerk.

- (D) Designation of Lead Counsel: is designated as lead counsel and shall be responsible for working with the parties and the neutral to coordinate an agreeable date, time, and, if necessary, location for the initial ADR conference.
- (E) Responsibilities of Lead Counsel: Not later than , lead counsel shall notify the clerk of the agreed choice of neutral selected by the parties and the date, time and location of the initial ADR Conference (see Designation of Neutral/ADR Conference Report form, <[www.moed.uscourts.gov](http://www.moed.uscourts.gov)>, ADR, forms). Upon selection of the neutral, lead counsel shall send a copy of this order to the neutral.
- (F) General Rules Governing ADR Conference(s): Although the ADR process is defined in detail in the Local Rules, the following additional guidelines shall govern the process:
- (1) Memoranda: Not later than ten (10) days prior to the initial ADR conference, each party will provide the neutral with a memorandum presenting a summary of disputed facts and a narrative discussion of its position relative to both liability and damages. These memoranda shall be treated as **Confidential Communications** and shall not be filed in the public record of the case nor provided to any other party or counsel.
  - (2) Disclosure of Participants and Duty to Attend: Not later than ten (10) days prior to the ADR Conference, each party will provide to the opposing party, and to the neutral, a list of all persons who will participate in the ADR Conference on behalf of the party making the disclosure. This list shall state the names of the individuals attending and their general job titles. Pursuant to Rule 16-6.02(B), all parties, counsel of record, and corporate representatives or claims professionals having authority to settle claims shall attend the mediation conference in person unless otherwise agreed to by the parties or approved by the court, and participate in good faith. For early neutral evaluation conferences, all counsel of record and their clients shall attend in person unless otherwise agreed to by the parties or approved by the court.
  - (3) Authority of the Neutral: The neutral shall have authority to consult and conduct conferences and private caucuses with counsel, individual parties, corporate representatives and claims professionals, to suggest alternatives, analyze issues and positions, question perceptions, stimulate negotiations, and keep order.

(4) Compliance with Deadlines: All deadlines must be complied with in a timely fashion and the appropriate forms filed with the Clerk of the District Court. If a deadline cannot be met, the designated lead counsel shall **file a motion requesting an extension of the deadline** prior to the expiration of that deadline. Noncompliance of any deadline set herein by this Court may result in the imposition of sanctions to the appropriate party or parties.

(G) Compensation of the Neutral: The neutral shall receive reasonable compensation for services rendered pursuant to this order, which, unless otherwise agreed by counsel, shall be borne by the parties in accordance with Rule 6.03(C)(1). Compensation is payable to the neutral upon the conclusion of the ADR referral.

**Nothing in this order alters the Case Management Order previously entered in this case. All deadlines set forth in that Case Management Order remain in full force and effect.**

**SO ORDERED** this \_ Day of \_, \_\_\_\_\_.

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UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

\_\_\_\_\_  
Plaintiff,  
v.  
\_\_\_\_\_  
Defendant.

Case No. \_\_\_\_\_

**MOTION AND ORDER CONCERNING  
APPOINTMENT OF PRO BONO NEUTRAL**

The undersigned party hereby applies for leave to proceed with the ADR process in the above-styled action without payment of neutral fees or costs and without giving security therefore. In support of my application, I declare that the following facts are true

- (1) I am a party in the above-styled action and I believe I am entitled to redress.
- (2) Because of limited financial resources, I am unable to pay the costs of the ADR process in said proceeding or give security therefore.
- (3) My financial affidavit is filed with this application in support of this request.
- (4) The neutral appointed/requested in this case is

\_\_\_\_\_

I declare under penalty of perjury that the foregoing is true and correct. Executed on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of Party

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SO ORDERED**

**DENIED**

**MODIFIED. IT IS HEREBY ORDERED** that the above requesting party compensate the Neutral at an hourly rate of \$\_\_\_\_\_.

All other parties shall pay their portion of the standard fee charged by the Neutral.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judge

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA

**A D R R E P O R T**

File Electronically at ADR Documents - ADR Report by Mediator/ Evaluator

Case Number and Name: CIV -

Name of Mediator or Evaluator: \_\_\_\_\_

**TYPE OF ADR:** (check one)       Mediation       Early Neutral Evaluation

ADR Session Held or to be Held (date): \_\_\_\_\_

Additional Session Held, if any (date): \_\_\_\_\_

**Results of Referral to ADR:**

Case settled **before** ADR       Case did **not** settle  
 Case settled **at** ADR session       Case will not be heard - Reason: \_\_\_\_\_  
 Case settled in part - Explain       Other \_\_\_\_\_  
\_\_\_\_\_

Counsel were requested to notify court if case settled or settled in part and to file the appropriate pleadings.

Did neutral serve pro bono? yes or no (check one).

Status of litigation when ADR occurred (e.g. TRO, pre-discovery, partial discovery, full discovery,  
 Trial preparation commenced, other \_\_\_\_\_ (check one)

Length of ADR session: \_\_\_\_\_

Dated: \_\_\_\_\_

  s/    
Mediator/Evaluator (Attorney Bar # \_\_\_\_\_ )

Or   s/    
Mediator (Non-attorney - I certify that I have the signed original of  
this document, which is available for inspection at any time  
by the Court or a party to this action.)

**(ATTENTION NEUTRAL: This form is to be FILED ELECTRONICALLY by the neutral immediately upon the conclusion of the ADR. This form must be completed and filed even if the session did not occur or the neutral is serving privately for any case pending in this Court. Additional forms may be retrieved from the Court's website at [www.okwd.uscourts.gov](http://www.okwd.uscourts.gov)).**

**ONLY THE NEUTRAL IS TO FILE THIS FORM**

Any Notes or other information concerning this case that is not to be filed, please send separately to ADR ADMINISTRATOR % Court Clerk, U.S. Courthouse, Room 1210, 200 N. W. 4th Street, Oklahoma City, OK 73102.