

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA**

ALTERNATIVE DISPUTE RESOLUTION PLAN

I. INTRODUCTION

The Northern District of Alabama's case disposition rate has consistently been very favorable, ranking the district among the most efficient courts in the nation. Nevertheless, implementation of an alternative dispute resolution (ADR) plan in the district offers several potential advantages for the court system, attorneys, and litigants. The variety of mechanisms available through ADR present opportunities for resolving some disputes more quickly than traditional litigation would allow. ADR can greatly reduce the expense to the parties. If used in a case's early stages, ADR can provide substantial savings in discovery and expert witness costs. Local Rule 16.1(b) refers to this ADR Plan.

Development of this Plan was guided by three principles: the court's early intervention and evaluation, flexibility, and a preference for non-binding over binding processes. The fact that the Plan explicitly describes only mediation should not be interpreted as discouraging other types of ADR. To the contrary, the Plan encourages parties to employ any number of ADR processes available through private means.

II. PANEL OF NEUTRALS

The court has a Federal Court Panel of Neutrals (Panel). The Panel will be comprised of persons who the judges deem have the requisite training and experience. The Chief Judge of the court will designate a district judge, magistrate judge, or other individual to receive applications from persons interested in serving on the Panel. This designee will compile the list of names of qualified persons. Any person placed on the Panel may be removed for cause at the Chief Judge's discretion. There is no maximum limit to the number of people who may be included on the Panel.

In some instances, a case may be appropriate for mediation, but the parties may be unable to afford the cost of ADR. Therefore, each person serving on the Panel will be encouraged, though not required, to volunteer to serve as a neutral, without remuneration, for at least one mediation up to one day per year.

III. REFERRAL OF CASES TO ADR

Each judge may decide to exclude certain classes of cases from ADR referral. All cases in classes not excluded may be referred to ADR by agreement of all the parties or by the Court after consultation with the parties.

Each judge is encouraged to conduct an ADR evaluation conference during the early stages of case development to determine whether a case might be appropriate for ADR and, if so, what

form of ADR (mediation or some other form) should be employed. This conference may be held in conjunction with a pretrial conference under Rule 16 or a scheduling conference under Rule 16(b), but may be conducted as a separate conference.

IV. MEDIATION

In mediation, litigants meet with a neutral mediator for in-depth settlement discussions. The mediator may be appointed by the court or selected by the litigants. The mediator facilitates discussions among litigants to assist them in identifying the underlying issues and in developing a creative and responsive settlement package. The mediator does not, however, make findings of fact, make recommendations to the court of how to decide issues in the case, or render a decision on the merits of the case.

The purposes of mediation are to increase the chances of settlement, help the litigants devise better settlements, and improve relationships among the litigants.

1. Eligible Cases.

Any civil case not specifically excluded by category by the assigned judge may be referred to mediation.

2. Selection of Cases.

a. When Selected. A case may be selected for mediation:

- i. when the status of discovery is such that the parties are generally aware of the strengths and weaknesses of the case; or
- ii. at any earlier time by agreement of the parties and with the approval of the court; or
- iii. for purposes of resolving discovery.

b. How Selected. A case may be selected for mediation:

- i. by the court on its own motion; or
- ii. by the court, on motion of one of the parties; or
- iii. by agreement of all parties.

c. Objection to Mediation. A party may object to the referral to mediation by the court by filing a written request for reconsideration, for good cause shown, within fourteen (14) days of the date of the court's order, unless a

judge orders otherwise. Mediation processes will be stayed pending decision on the request for reconsideration, unless otherwise ordered by the court.

3. Administrative Procedure.

- a. Notice to Parties; Selection of Mediator by Parties. The court will notify the parties in writing when a case is referred to mediation. The parties will first be given the opportunity to select the mediator of their choice. The parties must, within fourteen (14) days of the date of the court's notice of referral to mediation, notify the court of the name of the person selected by the parties to serve as mediator.
- b. Selection of Mediator by Court; Notice to Parties; Setting of Mediation Conference.
 - i. If the parties fail to agree on a mediator within the fourteen-day time period, or fail to notify the court within the fourteen-day time period, the court will appoint a mediator from the Panel of Neutrals.
 - ii. After ascertaining from the appointed mediator the existence of any potential conflicts of interest, the court will give or send written notice to the parties, with a copy to the mediator, advising them of the identity of the mediator appointed. The mediator will then contact all of the parties to schedule the mediation conference to occur as soon as practicable and within any time parameters that may be ordered by the court.

4. Stay of Proceedings.

Upon the entry of an order directing mediation, proceedings in the dispute in mediation will be stayed for such time period as may be set by the court. Upon motion by any concerned party, the court may, for good cause shown, extend the time period of the stay for such length of time as the court deems appropriate.

5. Neutrality of Mediator.

If at any time during the process of mediation the mediator becomes aware of, or a party raises, an issue concerning the mediator's neutrality based on either an interest in the case or a relationship or affiliation with one of the parties or counsel, the mediator will disclose the facts relevant to the issue to all of the parties. If a party believes in good faith that, based on the facts disclosed by the mediator, the mediator will not be or remain impartial, the party may request that the mediator withdraw. Upon receiving such a request, the mediator must withdraw. The parties will timely select another mediator or request that the Court appoint another mediator. If

necessary, the Court will then appoint another mediator from the Panel of Neutrals, according to the procedure outlined in IV.3.b.

6. Attendance at Mediation Conference.

The attorney primarily responsible for each party's case must personally attend the mediation conference and must be prepared and authorized to discuss all relevant issues, including settlement. The parties also must be present in person unless otherwise ordered by the Court or excused by the mediator. However, 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, must attend in person unless otherwise ordered by the Court or excused by the mediator with notice to the opposing party. The mediator will report a party's wilful failure to attend the mediation conference to the Court, including the failure to attend of an authorized representative with full authority to settle, which may impose appropriate sanctions. Failure to attend a mediation is not considered to be confidential for the purposes of paragraph 9 below.

Mediation sessions will be private. Persons other than the parties and their representatives may attend only with the permission of all parties and with the mediator's consent.

7. Date, Time and Place of Mediation.

The mediator, after consultation with the parties, will confirm the time of each mediation session. The mediation sessions will be held at any location agreeable to the mediator and the parties or as otherwise directed by the court.

8. Report to the Court.

The mediator will timely report to the court whether the matter settled in whole or in part or whether the parties reached an impasse.

9. Confidentiality.

The entire mediation process is confidential and by entering into mediation the parties mutually covenant with one another to preserve confidentiality on the basis established in this Plan. The parties and the mediator may not disclose information regarding the process, including the terms of settlement, except as required by law or otherwise agreed by the parties. Parties, counsel, and mediators may, however, respond to confidential inquiries or surveys by persons authorized by the court to evaluate the mediation program. Information provided in such inquiries or surveys must remain confidential and not be identified with particular cases.

The mediation process must be treated as a compromise negotiation for purposes of the Federal Rules of Evidence and State 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.

10. No Record.

No record will be made of the mediation proceedings.

11. Mediator's Fee.

The mediator's fee will be borne equally by the parties unless otherwise agreed by the parties or directed by the court.

V. FORMS OF ADR OTHER THAN MEDIATION

If the parties want to employ any form of ADR other than mediation upon which they mutually agree, parties are free to utilize a single ADR process or a combination of ADR processes. Such alternate forms of ADR would include, but not be limited to, private arbitration and mini-trials. Upon suggestion of all parties, the court also may approve the use of summary jury trials in appropriate cases and upon such conditions as the court deems necessary.

If all parties advise the court that they would prefer to use a form of ADR other than mediation, the court may permit them to do so, subject to the following:

1. the parties must execute and submit to the court an agreement providing for the conduct of the ADR process;
2. the parties must file a written report with the court within fourteen (14) days of the completion of the ADR process that states whether any agreements, resolution or determination was reached; and
3. the ADR process must be conducted at the parties' expense.