



## **BAR NOTICE**

The United States District Court has amended the Civil Justice Expense and Delay Reduction Plan, (Plan) of the Western District of North Carolina. Section Four of the Plan has been amended to require that all parties to civil actions filed on or after January 1, 1995, must attend a mandatory mediated settlement conference or some other alternative dispute resolution program as stipulated to among the parties.

Counsel must select which alternative dispute resolution program they believe is appropriate for their case, and file a stipulation with the court within thirty days after the close of discovery. If counsel fail to file a stipulation, the court will mandate a mediated settlement conference. If a mediated settlement conference is ordered by the court, the proceeding shall be governed by and a mediator shall be selected in accordance with the *Rules Governing Mediated Settlement Conferences In Superior Court Civil Actions* promulgated from time to time by the North Carolina Supreme Court pursuant to N.C.G.S. section 7A-38, and by the rules set forth in the amended Civil Justice Expense and Delay Reduction Plan.

Copies of the revised Plan are available from the Clerk's office and will also be mailed out to counsel on all cases filed on or after January 1, 1995.

- b. have the effect of tolling the progress of the case pending disposition of such motions (for example, Rule 12(b)(6) motions filed prior to and separately from an answer)

shall be ruled on by the Court within thirty (30) days.

5. Attorneys must sign all motions, including motions to continue. Signatures of the parties will not be required.

C. Status Reports.

In any civil case where a motion or bench trial has been under advisement by the Court for a period in excess of sixty (60) days, the Clerk of Court shall, in writing, advise the Judicial Officer to whom the case is assigned of the status of the motion. The Clerk of Court shall supply a copy of status reports to the parties affected.

**SECTION FOUR: ALTERNATIVE DISPUTE  
RESOLUTION PROGRAM**  
(Amended December 16, 1994)

I. MANDATORY ALTERNATIVE DISPUTE RESOLUTION (ADR).

A. Mandatory Mediated Settlement Conference. All parties to civil actions filed on or after January 1, 1995, in the United States District Court for the Western District of North Carolina are required to attend a Mediated Settlement Conference.

B. Selection of Alternative ADR Procedure. Recognizing that certain lawsuits may best be resolved by utilizing a technique for alternative dispute resolution other than a mediated settlement conference, the Judicial Officer may, at the request of and with the consent of the parties, order the parties, their attorneys and other persons with authority to settle the action to attend and participate in another ADR procedure in lieu of the mandatory mediated settlement conference, including without limitation, arbitration, summary jury trial, mini-trial and early neutral evaluation ("Alternative ADR Procedures").

C. **Cases Not Suitable for ADR.** These rules for mandatory ADR shall not apply to habeas corpus proceedings or other actions for extraordinary writs, appeals from rulings of administrative agencies, forfeitures of seized property, and bankruptcy appeals. The Judicial Officer may determine, either *sua sponte* or on application of any party, that any other case is not suitable for ADR, in which case no ADR procedure will be ordered.

## II. **RULES APPLICABLE TO SELECTED PROCEEDING.**

A. **Time for Proceeding.** Within 30 days after the deadline for discovery under Section Three above, the parties shall file with the court a Stipulation for Alternative Dispute Resolution, at which time the Judicial Officer shall enter an Order for Alternative dispute Resolution. In the event a Stipulation for Alternative Dispute Resolution is not timely filed by the parties, the Order for Alternative Dispute Resolution will specify Mediated Settlement Conference as the designated ADR procedure. The selected ADR proceeding shall be completed no later than the earlier of 90 days after entry of the Order for Alternative Dispute Resolution or the appearance of the case on a trial calendar.

B. **Rules for Proceeding.** Upon entry of the Order for Alternative Dispute Resolution, the case shall proceed as follows:

1. If a Mediated Settlement Conference is ordered, the ADR proceeding shall be governed by and a mediator shall be selected in accordance with the *Rules Governing Mediated Settlement Conferences In Superior Court Civil Actions* promulgated from time to time by the North Carolina Supreme Court pursuant to N.C.G.S. § 7A-38 (the "Mediation Rules"), and by the supplemental rules set forth in Paragraph IV below.

a. Wherever the Mediation Rules refer to "Senior Resident Superior Court Judge" and "Administrative Office of the Court" it shall mean "Judicial Officer" and "Clerk of the United States District Court," respectively.

b. Rule 3(a) of the Mediation Rules is modified to permit the mediated settlement conference to be held in an appropriate facility anywhere in the division in which the case is pending.

c. In the event that the Mediation Rules conflict with the other rules contained in this Plan or other Local Rules adopted by the United States District Court for the Western District of North Carolina, then the rules in this Plan or in the Local Rules shall control.

2. If an Alternative ADR Procedure is ordered, the ADR proceeding

shall be governed by these Rules and by such other procedural rules submitted by the parties and approved by the Judicial Officer. The rules submitted by the parties shall include, in addition to rules regarding the actual proceeding, provisions setting a deadline for completion of the proceeding; the location for the proceeding; pre-proceeding submissions; and the method for selection and compensation of an arbitrator, evaluator or other "neutral" to preside over the proceeding ("Neutrals").

3. Nothing in this Alternative Dispute Resolution Program shall be deemed to override the Federal Arbitration Act or any other provision of the United States Code.

4. The Judicial Officer may, either *sua sponte* or on application of any party, permit exceptions or deviations from these Rules.

### **III. GENERAL RULES APPLICABLE TO ALTERNATIVE ADR PROCEDURES.**

A. **Nonbinding Nature.** No ADR proceeding is binding unless the parties agree otherwise. ADR proceedings under these Rules shall not impair the right of the litigants to demand trial.

B. **No Delay of Other Proceedings.** The ADR proceeding shall not be cause for the delay of other proceedings in the case, including but not limited to the conduct or completion of discovery, the filing or hearing of motions, or the trial of the case, except by order of the Judicial Officer.

C. **Inadmissibility of ADR Proceedings.** ADR proceedings and information relating to or disclosed during those proceedings shall be governed by Rule 408 of the Federal Rules of Evidence. A Neutral may not be deposed or called as a witness to testify at any subsequent proceeding concerning anything said or done in an ADR proceeding. The Neutral's notes are privileged and not subject to discovery.

D. **No Record Made.** There shall be no record made of any proceedings under these Rules, unless the parties have stipulated to binding arbitration, mini-trial or summary jury trial, in which case any party may request that a record be made.

E. **Ex Parte Communication Prohibited.** There shall be no *ex parte* communication between the Neutral and any counsel or party on any matter touching the proceeding, except with regard to scheduling matters. Nothing in this Rule prevents the Neutral from engaging in *ex parte* communications, with consent of the parties, for the purpose of assisting settlement negotiations.

**F. Immunity of the Neutral.** A Neutral acting pursuant to these Rules shall have judicial immunity in the same manner and to the same extent as a judge of the U.S. District Court.

**G. Attendance.** If a binding Alternative ADR Procedure is selected, the parties and their counsel may determine who shall be required to attend the ADR proceeding. Unless otherwise recommended by the parties and approved by the Judicial Officer, in addition to counsel of record, the following persons shall physically attend any nonbinding Alternative ADR Procedure:

1. All individual parties; or an officer, director or employee having authority to settle the claim for a corporate party; or in the case of a governmental agency, a representative of that agency with full authority to negotiate on behalf of the agency and to recommend settlement to the appropriate decision-making body of the agency; and
2. For any insured party against whom a claim is made, a representative of the insurance carrier who is not such carrier's outside counsel and who has full authority to settle the claim.

A party or person required to attend who resides more than 200 miles by the usual highway route may appear at the Alternative ADR Procedure, with the Judicial Officer's prior consent, through telephone communication.

**H. Use of Subpoena.** Any party may cause a subpoena to be issued pursuant to Rule 45 of the Federal Rules of Civil Procedure to compel attendance of a witness at the ADR proceeding.

**L. Indigent Cases.** No party found to be indigent by the Court for the purposes of these rules shall be required to pay a court-appointed Neutral. If a party has not previously been found to be indigent, that party may apply to the Judicial Officer or designee for a finding of indigency and to be relieved of the obligation to pay his or her share of the compensation due. Such a motion shall be heard no later than 10 days before the hearing or conference. If a party is found to be indigent, the Neutral's fee shall be reduced by the indigent's proportionate share rather than requiring the other parties to make up the difference.

**J. Sanctions For Failure To Attend Alternative ADR Procedure.** If a person fails to attend a duly ordered Alternative ADR Procedure without good cause, the Judicial Officer may impose upon the party or his principal any lawful sanction, including but not limited to the payment of attorneys' fees, neutral fees and expenses incurred by persons attending the procedure; contempt; or any

other sanction authorized by Rule 37(b) of the Federal Rules of Civil Procedure.

K. Neutral's Report of Outcome. Within seven (7) days of the conclusion of the ADR proceeding, the Neutral shall file a report with the Court certifying the outcome of the proceeding on a form provided by the Clerk of Court.

#### IV. SUPPLEMENTAL RULES FOR MEDIATED SETTLEMENT CONFERENCES.

In addition to the Mediation Rules, the following rules shall also apply to mediated settlement conferences in the Western District:

A. No Record Made. There shall be no record made of any proceedings under these rules.

B. Telephonic Attendance. A party or person required to attend who resides more than 200 miles by the usual highway route may appear at the mediated settlement conference, with the Judicial Officer's prior consent, through telephone communication.

C. Mediator's Report of Outcome. The mediator's report required by the Mediation Rules shall be issued within seven (7) days of the conclusion of the Mediated Settlement Conference on a report provided by the Clerk of Court.

#### V. JUDICIAL SETTLEMENT CONFERENCES.

A. Mandatory Consideration. The Judicial Officer to whom a case is assigned may, at any time, order the parties to participate in a settlement conference to be convened by the Court. Any party may also file a request for a settlement conference.

B. Mandatory Attendance by Representatives With Full Authority to Effect Settlement. At the time of the conference, attorneys for all parties and either the party or a person with the full authority to settle all pending claims must be present. For purposes of this rule, the "person with full authority to settle" shall not be the attorney.

C. Presiding Judicial Officer. Any Judicial Officer of the District other than the Judicial Officer to whom the case is assigned for disposition may preside over a settlement conference convened by the Court.