SPENCER FANE BRITT & BROWNE

1400 COMMERCE BANK BUILDING
1000 WALNUT STREET
KANSAS CITY, MISSOURI 64106-2140
TELEPHONE (816) 474-8100

JEROME T. WOLF
DIAL DIRECT (816) 292-8225

TELEX 43-4345
FAX (816) 474-3216

KANSAS OFFICE
SUITE 500, 40 CORPORATE WOODS
9401 INDIAN CREEK PARKWAY
OVERLAND PARK, KANSAS 66210
TELEPHONE (913) 345-8100
FAX (913) 345-0736

WASHINGTON, D.C. OFFICE
1133 CONNECTICUT AVENUE, N.W.
SUITE 1000
WASHINGTON, D.C. 20036
TELEPHONE (202) 775-2376
FAX (202) 833-8491

PLEASE REPLY TO THE MISSOURI OFFICE
FILE NO. JTW/32

September 17, 1991

Ms. Elizabeth Plapinger
Center for Public Resources, Inc.
366 Madison Avenue
New York, NY 10017

Re: Civil Justice Reform Act 1990, U.S. District Court, Western District of Missouri, Early Assessment Program

Dear Elizabeth:

Please find enclosed for your information a copy of the "Early Assessment Program" that our Advisory Group proposed to the U.S. District Court for the Western District of Missouri. The Court has approved the program and has submitted it to the Judicial Conference for review and approval.

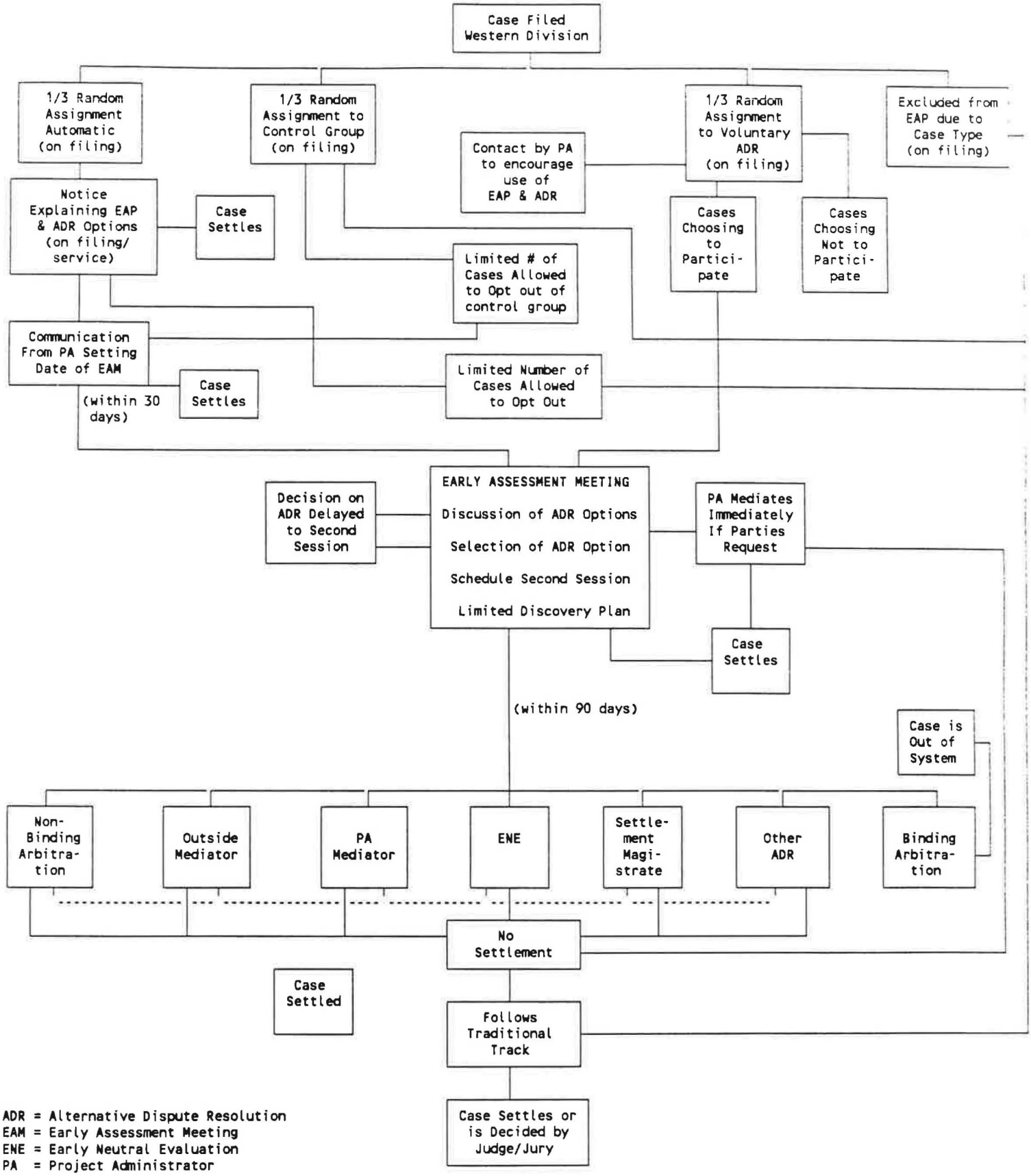
If you have any questions about the program, including its rationale and implementation, please telephone me.

Very truly yours,

Jerome T. Wolf

JTW.pr
Enclosure

EARLY ASSESSMENT PROGRAM (EAP)



ADR = Alternative Dispute Resolution
EAM = Early Assessment Meeting
ENE = Early Neutral Evaluation
PA = Project Administrator

JTW:PUBLIC/BIDBILL/PRGENORD.02:09/13/91

Outline of Proposed General Order
EARLY ASSESSMENT PROGRAM

I. Purpose
II. Program Description and Procedure
  A. Case Selection
  B. Early Assessment Meeting
  C. Opting Out
  D. Notice to Parties
III. Project Administrator
  A. Selection
  B. Responsibilities
IV. Attendance at Program Sessions
  A. Parties
  B. Counsel
  C. Location
V. Confidentiality
  A. General Provisions
  B. Exception
  C. Evaluation
  D. No Recording
VI. Evaluation
VII. Alternative Dispute Resolution (ADR) Options and Procedures
  A. Procedures Applicable to Mediation, Non-Binding Arbitration and Early Neutral Evaluation
  B. Description of Specific ADR Options and Procedures
    1. Mediation
    2. Non-Binding Arbitration
    3. Early Neutral Evaluation
    4. Magistrate Settlement
    5. Other Options
VIII. Certification, Qualification and Compensation of Neutrals
  A. Certification
  B. Lists of Certified Neutrals
  C. Qualifications
  D. Oath
  E. Disqualification
  F. Compensation
  G. Neutrals as Counsel in Other Cases
  H. Reports of Violations
IX. Sanctions
X. Selection of a Neutral

* * *

ATTACHMENTS

Attachment A -	Notice Regarding the Early Assessment Program
Attachment B -	Neutral's Application Form
Attachment C -	Notice to Parties When Case Selected for Early Assessment Program

Proposed General Order 9/13/91

United States District Court

Western District of Missouri

Early Assessment Program

Early Implementation Project

I. PURPOSE

The Court recognizes that full formal litigation of civil claims can impose large economic and other burdens on parties and can delay the resolution of disputes. There is presently no procedure in place that encourages the parties to: (1) confront the facts and issues in their case before engaging in expensive and time consuming discovery procedures, or, (2) engage in early discussions of the issues, or, (3) consider the views of the opposing side, or, (4) consider the projected costs of future proceedings in an effort to settle the case before costs and attorneys fees have made settlement more difficult, or (5) consider other methods of resolving their disputes.

Therefore, the Court has decided to implement an experimental program beginning January 1, 1992 and extending through December 31, 1994 designed to give parties the means to resolve their disputes in a faster and less costly manner. This program is called the "Early Assessment Program" (Program).

An evaluation of the Program will be completed at the end of the experimental period to measure its success or failure.

II. PROGRAM DESCRIPTION AND PROCEDURE

A. Case Selection.

1. The following cases are excluded from the Program:

   a. Multi-district cases
   b. Social security appeals
   c. Bankruptcy appeals
   d. Habeas Corpus actions
   e. Prisoner *pro se* cases and other *pro se* cases where motion for appointment of counsel is pending
   f. Class actions

2. Automatic Program Cases. One of every three civil cases filed in the Western Division, except those types of cases excluded, during the period January 1, 1992 to December 31, 1994, shall be randomly assigned to the Program.

3. Voluntary Program Cases. One of every three civil cases filed in the Western Division, except those types of cases excluded, during the period January 1, 1992 to December 31, 1994, shall be

randomly assigned to a group of cases that may or may not elect to participate in the Program. From this group of cases the Administrator will select cases that appear promising for use of alternative dispute resolution, based on the experience of other Courts and his or her judgment. The Administrator will contact the attorneys and parties in those cases selected to encourage their participation in the Program, but they shall not be required to participate. If they do elect to participate, they shall generally follow the same procedures as those cases automatically assigned to the Program.

4. Control Group Cases. One of every three civil cases filed in the Western Division, except those types of cases excluded, during the period January 1, 1992 to December 31, 1994, shall be assigned to the Control Group. Those cases shall be exempted from any mandated use of alternative dispute resolution. However, the parties may specifically request of the Administrator to be included in the Program, or agree to use some form of alternative dispute resolution on their own.

B. Early Assessment Meeting (Assessment). For those cases automatically assigned to the Program, an Assessment will be held within 30 days after completion of responsive pleadings. An Assessment will be held at a mutually convenient time with the Administrator.

1. The Project Administrator (Administrator) shall notify the attorneys (or *pro se* parties, if applicable) of the date of the Assessment.

2. The Administrator, at the Assessment, shall advise the parties and their attorneys of various "alternative dispute resolution" (ADR) options available to them for a resolution of their dispute. Those options are set out in paragraph VII.

3. If the Administrator determines, in consultation with the parties, that additional discovery is needed or if the parties, at the Assessment, elect the option of "early neutral evaluation" the Administrator shall, working with the parties, devise a plan for sharing the important information and/or conducting the key discovery that will equip them, as expeditiously as possible, to enter meaningful settlement discussions, or to posture the case for another session or other form of disposition.

4. The Administrator shall also help the parties identify areas of agreement and explore the possibility of settling the case through mediation techniques. If appropriate, and agreeable to the parties and the Administrator, a mediation process may be initiated immediately, or at a later date, with the Administrator serving as mediator.

5. Participants in the Program must select, with the assistance of the Administrator, one of the ADR options. If the parties are unable to agree, the Administrator shall select the ADR option. If the Administrator determines that a second session is necessary before a decision can be reached on the appropriate ADR process, it may be scheduled as soon as possible thereafter.

6. The first session of the ADR process selected typically shall be held not later than 90 days after the Assessment, unless the Administrator, in his or her discretion determines that a later date is necessary.

C. Opting Out. Cases will not normally be allowed to opt out of that phase of the Program to which they were originally assigned, primarily because of the experimental nature of the Program and the need for empirical data to test it. Allowing a significant number of cases to opt out may affect the evaluation of the Program. However, there may be cases where good cause can be demonstrated for opting out.

All requests to opt out shall be in letter form and shall set forth in detail the reasons for the request. A letter asking to opt out shall be directed to the Administrator within 10 days of receiving notice that the case is assigned to the Program. Subject to the considerations stated herein, the Administrator may grant or deny the request in his or her discretion. Appeals from the Administrator's decision, while discouraged, may be made by written motion to the Judge to whom the case is assigned.

D. Notice to Parties. Notice to parties of case selection for the Program shall be provided (using the form provided in Appendix C) as follows:

1. The Clerk shall provide a copy of the Notice to each attorney filing an action and to each eligible person filing such action *pro se*.

2. The Notice shall be attached by the Clerk to each summons issued in such action;

3. Within 20 days of the filing, the attorney shall file with the Court a certificate stating that the attorney has mailed or otherwise provided a copy of the Notice to each party that the attorney represents in the action, or the guardian or representative of each such party.

4. In each action in which service of process is waived or accepted by an attorney on behalf of a party, the attorney for the party shall file, within 20 days of waiving or accepting service, a certificate stating that the attorney has mailed or otherwise provided a copy of the Notice to each party that the attorney represents in the action, or the guardian or representative of each

such party. The certificate may be contained in the answer or other responsive pleading.

III. PROJECT ADMINISTRATOR (Administrator)

A. Selection. The Administrator shall be selected by the Court.

B. Responsibilities. In addition to any responsibilities or duties noted elsewhere in this General Order, the Administrator shall have the following responsibilities:

1. Administer the Program, including coordination of all activities with the office of the Western District Clerk.

2. Coordinate the selection of cases for the Assessment, and establish procedures to provide a copy of this General Order (and notice listed in Appendix C) to each party in cases selected for the Program.

3. Conduct the Assessment. Where requested by the parties, and in his or her discretion, serve as a mediator at the Assessment or at any subsequent session.

4. Assist in monitoring the evaluation of the program, including participation in the development, compilation, and analysis of questionnaires for attorneys and clients.

5. Take original action on requests of parties to be allowed out of the phase of the Program to which they were originally assigned.

6. Report regularly to the Court and the Advisory Group on the status of the Program, making appropriate recommendations for modifications of the Program.

7. Decide, in his or her discretion, at any time in the process, to exempt or withdraw a case from the Program, if for any reason the case is not suitable for the Program.

8. Permit, in his or her discretion, parties to submit written statements, no longer than ten (10) pages, and no sooner than seven (7) days prior to the session, for those ADR processes where written statements are not usually submitted.

9. Collect all files, written statements, and other confidential materials from the neutrals, for storage or destruction.

IV. ATTENDANCE AT PROGRAM SESSIONS

A. Parties. It is the intent of the Court that the parties attend all Program sessions where there will be significant discussion

about resolving the case. The parties themselves shall attend all Program sessions unless their attendance has been excused by the Administrator. This attendance requirement reflects the Court's view that one of the principal purposes of the Program sessions is to afford litigants an opportunity to articulate their positions to learn about opposing parties' positions.

Where attendance of a party is required, a party other than a natural person satisfies the attendance requirement if it is represented by a person or persons, other than outside counsel, with authority to enter into stipulations, with reasonable settlement authority, and with sufficient stature in the organization to have direct access to those who make the ultimate decision about settlement.

B. Counsel. Each party shall be accompanied at the Program sessions by the lawyer expected to be primarily responsible for handling the trial of the matter. If a party is not represented by counsel, that party may appear on his or her own behalf.

C. Location. The Program sessions shall be held in meeting space at the United States Courthouse, or in some other neutral location selected by the Administrator, or in a location agreed to by the parties and approved by the Administrator.

V. CONFIDENTIALITY

A. General Provisions. This Court shall treat as confidential all written and oral communications, not under oath, made in connection with or during any Program session except as noted in paragraph V.B. and C.

The Court hereby extends to all communications not under oath all the protections federal Courts and Federal Rule of Evidence 408 give to communications made in settlement negotiations or as offers of compromise. No communication made in connection with or during any Program session may be disclosed (by either the parties, their counsel, or the neutrals who provide ADR assistance) or used for any purpose (including impeachment or to prove bias or prejudice of a witness) in any pending or future proceeding in this Court. The privileged and confidential status afforded to communications made in connection with or during any Program session is extended to include (but is not limited to) the Administrator's, Mediator's, Evaluator's, Arbitrator's or other neutral's comments, assessment, evaluations, and recommendations about case development, discovery, or motions. The Administrator and neutrals shall not discuss matters addressed at the Program sessions outside those sessions, except with the permission of the parties or as allowed under paragraphs V.B. or C. below.

B. Exception. The Administrator and neutrals may communicate to the assigned Judge or the Court en banc regarding matters of non-compliance by parties or attorneys with this General Order.

C. **Evaluation**. Nothing in paragraph V.A. shall be construed to prevent parties, counsel, or neutrals from responding to inquiries by persons duly authorized by the Court en banc to analyze and evaluate the Program. The names of the people responding and any information that could be used to identify specific cases or parties shall be confidential.

D. **No Recording**. No recording shall be made of any of the meetings or sessions held under the Program, nor shall parties utilize private reporters or any other type of recording technology during the Program meetings or sessions, unless all parties agree, or unless the recording is made under non-binding arbitration described in paragraph VII below.

VI. EVALUATION

An ongoing evaluation of the project shall be undertaken beginning with its initial implementation. The purpose of the evaluation will be to determine the success of the Program in speeding the processing of cases and reducing costs. The evaluation will also measure the satisfaction of parties and attorneys with the Program. The evaluation will be performed by an outside group such as The Center for the Study of Dispute Resolution at the University of Missouri-Columbia. However, day-to-day analysis and evaluation of the program will be the responsibility of the Administrator. Quarterly and annual reports shall be prepared, with a final report after the conclusion of the Program.

VII. ALTERNATIVE DISPUTE RESOLUTION (ADR) OPTIONS AND PROCEDURES

A. Procedures Applicable to Mediation, Non-Binding Arbitration and Early Neutral Evaluation.

1. In every case in which mediation, non-binding arbitration or early neutral evaluation is selected the Administrator shall:

   a. Designate the neutral as set out in paragraph X of the General Order, unless the parties agree on a neutral, drawn from the list of certified neutrals.

   b. Designate the time period in which the ADR process shall be conducted.

2. Not later than ten (10) days after selection of the neutral, counsel shall file a report with the Administrator indicating the agreed-upon meeting date for the ADR process selected.

3. Upon failure of counsel to either file the report or to secure a mutually agreeable date, the Administrator shall fix the date, after consultation with the neutral involved.

4. Failure to comply with the attendance or settlement authority requirements of paragraphs IV.A. B. and C. of the General Order may subject a party to sanctions by the Court.

5. The neutral may, with the consent of all parties and counsel, reschedule the session to a date certain not later than ten (10) days after the scheduled date. Any continuance beyond that time must be approved by the Administrator.

6. Subject to approval of the neutral, the session may proceed in the absence of a party who, after due notice, fails to be present. Upon motion of an attending party or upon the Court's own motion, sanctions may be imposed by the Court on any party who, absent good cause shown, failed to attend the meeting.

7. Within thirty (30) days following the conclusion of the session, the neutral shall file a report with the Administrator indicating whether all required parties were present and the outcome of the session, in addition to other information the Administrator may require for evaluation purposes.

8. If the parties settle the case prior to the ADR session, the neutral, Administrator and Court shall be advised promptly.

B. Description of Specific ADR Options and Procedures.

1. Mediation. Mediation is a process in which a neutral third party assists the parties in developing and exploring their underlying interests (in addition to their legal positions), promotes the development of options and assists the parties toward settling the case through negotiations.

The mediator must be an attorney at law, certified by the Court in accordance with this order, who possesses the unique skills required to facilitate the mediation process including the ability to help the parties develop alternatives, analyze issues, question perceptions, use logic, conduct private caucuses, stimulate negotiations between opposing sides and keep order.

The mediation process does not normally contemplate presentations by witnesses. The mediator does not review or rule upon questions of fact or law, or render any final decision in the case.

2. Non-Binding Arbitration. Non-binding Arbitration is a procedure in which the parties choose a neutral person to hear their dispute and render a decision. An arbitration is typically less formal than a trial, is usually shorter, and is conducted in a neutral setting. An arbitrator may be selected by the parties on the basis of his or her expertise, or on the basis of the mutual respect of the parties for the arbitrator. The decision becomes a final judgment of the Court after 30 days unless a party files an

appeal as provided herein. In that event, the case proceeds as scheduled to trial.

a. A list of all exhibits a party intends to offer, a list of all witnesses a party intends to call, and a list of all depositions or portions of depositions a party intends to use, shall be served on each party at least ten days prior to the hearing. A copy of each written exhibit, marked for identification, and a copy of all affidavits a party intends to use must be delivered to each party by the same date. Any exhibit which is not easily or economically copied shall be made available for inspection at any reasonable time.

b. Formal proof of authenticity or foundation for any exhibit listed in accordance with paragraph a. above shall not be required unless the proponent has been notified in writing at least five days prior to the hearing of the precise objection to authenticity or foundation.

c. The arbitrator may refuse to receive an exhibit or to permit the testimony of a witness if a party has failed to comply with paragraph a. or b. above in connection with that exhibit or witness.

d. Each party shall deliver to the arbitrator, and file with the Administrator, at least seven days prior to the hearing, a written statement which sets forth briefly the following:

(1) A summary of the claims made;
(2) The critical fact issues; and
(3) Contested legal issues, with citation of the party's primary authority.

e. Rule 45, Federal Rules of Civil Procedure, shall govern the issuance of subpoenas for attendance of witnesses and for the production of documentary evidence. Testimony at an arbitration hearing shall be under oath or affirmation administered by the arbitrator.

f. The Court contemplates that ordinarily each party's presentation at the arbitration hearing will require no more than two and one-half hours. The presentation of testimony shall be kept to a minimum. Each party's presentation to the arbitrator should be primarily through the statements and arguments of counsel.

g. A party may record the arbitration hearing in any non-disruptive manner. The cost of the recording shall be paid by the party making the recording.

h. A written arbitration award shall be filed with the Administrator and the Court and served upon each party promptly after the hearing is concluded. The arbitration award shall be entered as the judgment of the Court at the end of thirty days after filing unless a party files a statement with the Administrator and the Court that the award is not accepted.

A judgment so entered shall have the same force and effect as a judgment of the Court in any other civil action, except that it may not be appealed. In a case involving multiple claims or parties, any part of an arbitration award for which a party does not file a statement of non-acceptance shall become part of the final judgment in the case with the same force and effect as a judgment of the Court in a civil action, except that it shall not be subject to appeal.

3. Early Neutral Evaluation. Early neutral evaluation is a process in which parties obtain from an experienced neutral (an Evaluator) a non-binding, reasoned evaluation of the case on its merits. After essential information and position statements are exchanged, the Evaluator convenes a session which typically lasts about two hours. At the meeting, each side briefly presents the factual and legal basis of its position. The Evaluator may ask questions and help the parties identify the parties' underlying interests, the main issues in dispute as well as areas of agreement. He or she may also help the parties explore options for settlement. If settlement does not occur, the Evaluator then offers his or her opinion as to the settlement value of the case, including the likelihood of liability and the likely range of damages. With the benefit of this assessment, the parties are again encouraged to discuss settlement, with or without the Evaluator's assistance. They may also explore ways of narrowing the issues, exchanging information about the case or otherwise preparing efficiently for trial.

The Evaluator has no power to impose a settlement or to dictate any agreement regarding the pretrial management of the case.

a. No later than seven calendar days in advance of the evaluation session, each party shall submit to the Evaluator, and serve on all parties, a written evaluation statement. Such statements may not exceed ten pages and shall conform to the following guidelines: While they may include any information that would be useful, they must (1) give a brief statement of the facts; (2) identify the pertinent principles of law; (3) identify the legal and factual issues that are in dispute; (4) address whether there are any legal or factual issues whose early resolution might reduce the scope of the dispute or contribute significantly to the productivity of settlement discussions; (5) identify any additional discovery that promises to contribute most to equipping the parties for meaningful settlement negotiations; and (6) identify the

person(s), in addition to counsel, who will attend the session as the party's representative with decision-making authority. Parties may identify in these statements persons associated with a party opponent whose presence at the evaluation session would improve significantly the prospects for making the session productive; the fact that a person has been so identified shall not be a sufficient basis for compelling the presence of that person at the evaluation session. Parties should attach to their statement any photographs, declarations or other documentary evidence (e.g., contract, medical reports, relevant photos, or statements of key witnesses), the availability of which will advance the purposes of the session and assist the Evaluator as well as the other parties in appreciating the merits of each party's case. Documents shall be indexed so that they are easily assessed by the Evaluator.

These statements shall not be filed with the Court, and the assigned Judge shall not have access to them.

b. The Evaluator shall have considerable discretion in structuring the evaluation sessions. The sessions shall proceed informally. Rules of evidence shall not apply. There shall be no formal examination or cross-examination of witnesses.

c. In each case the Evaluator shall:

(1) permit each party to make an oral presentation;

(2) help the parties identify areas of agreement and, where appropriate, enter stipulations;

(3) assess strengths and weaknesses of the parties' contentions and evidence; and

(4) explore the possibility of settling the case through private caucusing and mediation techniques such as:

(i) Drawing the parties out in private caucus as to their opinions of their chances of success on each important issue, the consequences of an unfavorable verdict on that issue to the value of their case, the number of witnesses needed to be deposed regarding that issue, and the cost and fees entailed in proving that issue through discovery and the trial; and

(ii) Drawing the parties out on their underlying interests and settlement offers they are willing to make at this time and

whether those offers can be communicated to the opposing party.

d. If settlement negotiations and mediation do not result in settlement, the Evaluator shall in writing:

(1) estimate, where feasible, his or her view of the likelihood of liability and the dollar range of damages; and

(2) give his or her opinion of the verdict if he or she were the trier of fact.

e. At the close of the evaluation session, the Evaluator shall determine whether it would be appropriate to schedule a followup to the session. While the nature of any such followup shall be fixed by the Evaluator, in his or her discretion, it might include written or telephonic reports by the parties to one another or to the Evaluator, or, if the parties consent, a second evaluation session or a settlement conference hosted by the Evaluator.

f. Within limits imposed by this General Order, or by the Administrator, Evaluators shall have authority to structure and conduct evaluation sessions and to fix the time and place thereof. Except as described here and in paragraphs d. and e. above, Evaluators shall have no authority to order parties or counsel to take any action outside the evaluation session, to compel parties to produce information, to rule on disputed matters, or to determine what the issues are in the case.

4. Magistrate Settlement. The purpose of the settlement conference is to permit an informal discussion between the attorneys, parties and the magistrate of every aspect of the lawsuit, thus permitting the magistrate to privately express his or her views concerning the actual dollar settlement value or other reasonable disposition of this case.

The settlement conference statement (oral) of each party shall be presented to the magistrate, setting forth the positions of the parties concerning factual issues, issues of law, damage or relief requested. Pertinent evidence to be offered at trial, documents or otherwise, should be brought to the settlement conference for presentation to the magistrate if thought particularly relevant.

The magistrate may, with the agreement of the parties, converse with any or all sides of the dispute outside the hearing of the other.

The failure to attend a settlement conference or the refusal to cooperate fully may result in the imposition of sanctions by the magistrate. The magistrate may issue such other and additional

requirements of the parties or persons having an interest in the outcome as he or she shall deem proper in order to expedite the amicable resolution of the case. The magistrate shall not discuss the merits of the case with the assigned Judge but may discuss the status of motions and other procedural matters with him or her.

5. Other Options. The Administrator, in his or her discretion, after consultation with the parties, may select some other form of alternative dispute resolution such as mini-trials, summary jury trials, binding arbitration, or some hybrid form of alternative dispute resolution. However, the Administrator may not select binding arbitration unless all parties agree.

VIII. CERTIFICATION QUALIFICATION AND COMPENSATION OF NEUTRALS (Mediators, Arbitrators, Evaluators)

A. Certification. The Court shall certify those persons who are eligible and qualified to serve as neutrals (mediators, evaluators, arbitrators) under this General Order, in such numbers as the Court shall deem appropriate. Thereafter, the Court shall have complete discretion and authority to withdraw the certification of any neutral at any time. The Administrator shall be a certified neutral.

B. Lists of Certified Neutrals. Lists of certified neutrals shall be maintained by the Administrator, and shall be made available to counsel, parties and the public upon request.

C. Qualifications. An individual may be certified to serve as a neutral if:

1. He or she is a former State Court Judge who presided in a Court of general jurisdiction, or

2. He or she is a retired federal judicial officer, or

3. He or she is currently a member of The Missouri Bar and has been a member of another state bar and/or The Missouri Bar for at least eight (8) years and is currently admitted to the Bar of this Court,

In addition, an applicant for certification must have completed a minimum of:

4. for mediators, sixteen (16) 50-minute continuing legal education equivalent hours of training, certified under Missouri Supreme Court Rule 17 or by this Court, or

5. for arbitrators, four (4) 50-minute continuing legal education equivalent hours of training certified under Missouri Supreme Court Rule 17 or by this Court, or

6. for evaluators, sixteen (16) 50-minute continuing legal education equivalent hours of training certified by this Court,

In addition, an applicant must complete the required application form (see Appendix B) and be approved by the Court, or the Court's designee.

D. Oath. Every neutral shall take the oath or affirmation prescribed by 28 U.S.C. § 453 upon qualifying as a neutral.

E. Disqualification. Any person selected as a neutral may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144, and shall be disqualified in any case in which such action would be required by a justice, judge, or magistrate governed by 28 U.S.C. § 455.

No person shall serve as a neutral in an action in which any of the circumstances specified in 28 U.S.C. § 455 exist, or which in good faith are believed to exist. If a circumstance covered by 28 U.S.C. § 455(a) exists, such as the neutral's law firm represents or has represented one of the parties, or one of the lawyers who would appear before the neutral at the session is involved in a case the neutral is handling in his or her private practice, the neutral shall promptly disclose to all the parties, in writing, the circumstance.

Any party who believes an assigned neutral has a conflict of interest shall bring this to the attention of the Administrator within 10 days of learning the source of conflict or shall be deemed to have waived objection.

F. Compensation. Neutrals shall be compensated at the hourly rate as listed by them on the application (Appendix B) and shown on the list of certified neutrals. Absent agreement of the parties to the contrary, the cost of the neutral's services shall be borne equally by the parties. Except as provided in this General Order, no neutral shall charge or accept in connection with his or her service in any particular case, any fee or thing of value from any other source whatever, absent written approval of the Court given in advance of the receipt of any such payment or thing of value.

A party may request the service of a neutral who has agreed to serve pro bono, if a party demonstrates to the Administrator an inability to pay the fees of the neutral. The lists of certified neutrals maintained by the Administrator shall indicate if a neutral has agreed to serve pro bono.

G. Neutrals as Counsel in Other Cases. Any member of the bar who is certified and designated as a neutral pursuant to this General Order shall not for that reason be disqualified from appearing and acting as counsel in any other case pending before the Court. However, such member of the bar may not represent any party to an ADR session in which he or she serves as neutral in any matter related to that service.

H. Reports of Violations. Neutrals shall promptly report to the Administrator and the Court violations of this General Order.

IX. SANCTIONS

If a party fails to make a good faith effort to participate in the Program in accordance with the provisions and spirit of this Order, the assigned Judge or Court may impose appropriate sanctions.

X. SELECTION OF A NEUTRAL

The parties may agree upon the selection of a neutral before or at the Assessment. If they do not agree, the Administrator will give the parties a list of potential neutrals for the type of ADR process selected. The number of potential neutrals on the list will be twice the number of "sides" in the litigation plus one. (For example, in litigation having two "sides," the list will contain five names.) The parties will have ten days from the Assessment to select a neutral and report their selection, in writing, to the Administrator. If the parties are unable to agree on a neutral, each side of the action may strike (within ten (10) days of the Assessment) up to two of the potential neutrals, doing so by indicating its "strikes" in writing to the Administrator. The Administrator shall then designate one of the remaining neutrals as the neutral assigned to the case and shall promptly notify the parties (and the neutral) of the designation.

Attachment A

UNITED STATES DISTRICT Court
WESTERN DISTRICT OF MISSOURI
Office of the Clerk

NOTICE REGARDING THE EARLY ASSESSMENT PROGRAM IN THE WESTERN DISTRICT OF MISSOURI

The U.S. District Court, Western District of Missouri recently adopted an Early Assessment Program. The Program is a 3-year experiment applicable to cases filed in the Western Division of the District. The purpose of the Program is to offer alternative dispute resolution services to selected cases in order to reduce costs and time in processing cases. Pursuant to General Order, the Court of the District shall certify those persons who are eligible and qualified to serve as neutrals (i.e., mediators, arbitrators, evaluators), in such numbers as the Court shall deem appropriate. An individual may be certified to serve as a neutral if:

(1) He or she is a former State Court Judge who presided in a Court of general jurisdiction, or

(2) He or she is a retired federal judicial officer, or

(3) He or she is currently a member of The Missouri Bar and has been a member of another state bar and/or The Missouri Bar for at least eight (8) years and is currently admitted to the Bar of this Court,

In addition, an applicant for certification must have completed a minimum of:

(4) for mediators, sixteen (16) 50-minute continuing legal education equivalent hours of training, certified under Missouri Supreme Court Rule 17 or by this Court, or

(5) for arbitration, four (4) 50-minute continuing legal education equivalent hours of training certified under Missouri Supreme Court Rule 17 or by this Court, or

(6) for evaluators, sixteen (16) 50-minute continuing legal education equivalent hours of training certified by this Court,

In addition, the applicant must complete the application form (see attachment) and be approved by the Court, or the Court's designee.

If you are interested in becoming a neutral for the Western District of Missouri and meet the above requirements, please complete the attached application form and return to:

Clerk, U.S. District Court
Western District of Missouri
U.S. Courthouse
Kansas City, MO 64106
Attn: Early Assessment Program

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

NEUTRAL'S APPLICATION FORM

In accordance with General Order of the Western District of Missouri, I am applying for certification as a neutral with the United State District Court for the Western District of Missouri. The following information is supplied in support of this application:

1. Last Name/First/MI: _____ Missouri Bar ID No.: _____

2. Firm's Name: _____

3. Street Address: _____

4. City/Zip + Ext.: _____

5. Office Phone No: _____ Office Fax No: _____

6. Date admitted to: The Missouri Bar:_____ Bar of This Court:____

7. Are you a member in good standing of The Missouri Bar? _____

8. What is the hourly fee you will charge for your services? _____

9. Will you handle a limited number of cases (1-2 per year) pro bono? ____

10. Check all of areas of legal practice or experience which best describes your legal background.

____ Insurance	____ Contracts	____ Real Property
____ Products Liability	____ Patents/Trademark	____ Personal Injury
____ Civil Rights	____ State Judicial Off.	____ Administrative Law
____ Federal Judicial Off.	____ Labor	____ Anti Trust
____ Banks & Banking	____ Environmental	____ Securities

____ Other(Describe)_____

11. (a) Have you ever been disciplined for violation of any code of professional ethics or responsibility _____ (b) Have you ever been found by a Court to be guilty of a felon? _____ (c) Have you even been liable for fraud or any other intentional tort? _____ (d) Have you ever had a professional license revoked or suspended other than for non payment of dues? _____

If any answer to 11(a)-(d) is yes, please explain the circumstances on a separate sheet and attach.

12. List below the training sessions, sponsor, location, dates, hours that qualify you as a neutral:

_____
_____
_____
_____
_____

NEUTRALS APPLICATION FORM

13. In the space below briefly describe your experience, qualifications, special areas of expertise, and any other reasons why you should be selected as a neutral.

_____ _____

Signature Date

[NOTE. This complete form will be made available to parties to assist them in choosing a neutral.]

FOR Court USE ONLY

Date Certified by the Court as a neutral: _____

Attachment C
United States District Court
Western District of Missouri
Kansas City, Missouri

(Notice to parties when case has been selected for Early Assessment Program so that parties can commence preparation)

RE: _____
(Case Title and Civil No.)

This notice is to advise you that your case has been selected for inclusion in the Western District Early Assessment Program. Enclosed please find a copy of the General Order describing the Program in more detail. Please read carefully.

As a party to a lawsuit filed in this Court, you are entitled to pursue all claims or defenses to claims that you have asserted until a disposition of the claims or defenses is made by the Court or a jury. However, the vast majority of lawsuits filed in this and other Courts are resolved not by the Court or a jury, but by voluntary settlement by the parties before any trial takes place. This is often true even in cases in which the parties believe at the outset of the lawsuit that no voluntary resolution of the dispute is possible. By settlement, the expense and inconvenience of litigation can be reduced, the dispute can often be resolved more quickly, and any uncertainty as to the result of the litigation can be eliminated.

In many cases that are settled, however, the settlement does not take place as early, economically, or satisfactorily to the parties as possible. The purpose of the Early Assessment Program is to provide alternative dispute resolution (ADR) services to assist parties in arriving at a voluntary resolution of a dispute early, efficiently, and satisfactorily.

YOUR OBLIGATIONS IN THIS COURT ARE NOT AFFECTED BY YOUR INCLUSION IN THIS PROGRAM

However, good faith participation in the Early Assessment Program and use of one of the ADR processes is required but you are not required to settle the case.

Inclusion in this program does not relieve you of any of the obligations or deadlines that you have in the lawsuit that has been filed. IF YOU HAVE BEEN SERVED YOU MUST FILE A TIMELY RESPONSE IN ORDER TO AVOID THE RISK OF A DEFAULT JUDGMENT.

The Project Administrator will schedule an Early Assessment Meeting within 30 days after the filing of responsive pleadings. The goal of the Assessment is to determine which ADR procedure is most likely to help the parties reach a settlement. Ideally the parties will mutually decide which ADR option to use.

However, if the parties are unable to agree, the decision will be made by the Administrator.

To ensure the success of this Assessment, it is important that you carefully review and objectively assess your case prior to the Assessment. In addition you should clarify your underlying interests in the case, that is, what you really wish to gain or achieve. You should come prepared to discuss your case and act in good faith in the selection of an appropriate ADR option.

Please note that parties are required to attend the Assessment unless excused by the Administrator.

The actions of a neutral can have no binding effect on discovery, motion practice or other aspects of preparation for trial. Only the assigned Judge can control these matters. However, all communications made in connection with the Program are absolutely confidential and cannot be used at trial, except as provided in the General Order and Federal Rule of Evidence 408.

Set out below are some of the major ADR options that are available through this Program. This list does not preclude the development of some other procedures by the parties, in consultation with the Administrator.

Mediation

Mediation is a process in which a neutral third party assists the parties in developing and exploring their underlying interests (in addition to their legal positions), promotes the development of options and assists the parties toward settling the case through negotiations.

The mediator is an attorney, certified by the Court in accordance with this order, who possesses the unique skills required to facilitate the mediation process including the ability to help the parties develop alternatives, analyze issues, question perceptions, use logic, conduct private caucuses, stimulate negotiations between opposing sides and keep order.

The mediation process does not normally contemplate presentations by witnesses. The mediator does not review or rule upon questions of fact or law, or render any final decision in the case.

Non-Binding Arbitration

Non-binding Arbitration is a procedure in which the parties choose a neutral person to hear their dispute and render a decision. An arbitration is typically less formal than a trial, is usually shorter, and is conducted in a neutral setting. An arbitrator may be selected by the parties on the basis of his or her expertise, or on the basis of the mutual respect of the parties for the arbitrator. The decision can become final and a judgment of the Court after 30 days unless a party does not agree to the decision. In that event, the case proceeds as scheduled to trial.

Early Neutral Evaluation (ENE)

Early neutral evaluation is a process in which parties obtain from an experienced neutral (an Evaluator) a non-binding, reasoned evaluation of their case on its merits. After essential information and position statements are exchanged, the Evaluator convenes a session which typically lasts about two hours. At the meeting, each side briefly presents the factual and legal basis of its position. The Evaluator may ask questions and help the parties identify the parties' underlying interests, the main issues in dispute as well as areas of agreement. He or she may also help the parties explore options for settlement. If settlement does not occur, the Evaluator then offers his or her opinion as to the settlement value of the case, including the likelihood of liability and the likely range of damages. With the benefit of this assessment, the parties are again encouraged to discuss settlement, with or without the Evaluator's assistance. They may also explore ways of narrowing the issues, exchanging information about the case or otherwise preparing efficiently for trial.

The Evaluator has no power to impose a settlement or to dictate any agreement regarding the pretrial management of the case.

Magistrate Settlement Conference

The purpose of the settlement conference is to permit an informal discussion between the attorneys, parties and the magistrate of every aspect of the lawsuit, thus permitting the magistrate to privately express his or her views concerning the actual dollar settlement value or other reasonable disposition of this case.

The settlement conference statement (oral) of each party shall be presented to the magistrate, setting forth the positions of the parties concerning factual issues, issues of law, damage or relief requested. Pertinent evidence to be offered at trial, documents or otherwise, should be brought to the settlement conference for presentation to the magistrate if thought particularly relevant.

The magistrate may with the agreement of the parties converse with the any or all sides of the dispute outside the hearing of the other.

The failure to attend a settlement conference or the refusal to cooperate fully may result in the imposition of sanctions by the magistrate. The magistrate may issue such other and additional requirements of the parties or persons having an interest in the outcome as he or she shall deem proper in order to expedite the amicable resolution of the case. The magistrate shall not discuss the merits of the case with the assigned Judge but may discuss the status of motions and other procedural matters with him or her.

Other Alternative Dispute Resolution Mechanisms

The Administrator and the parties may decide that some other form of alternative dispute resolution might be useful. Such other forms could include mini-trials, summary jury trials, binding arbitration or some other form of ADR developed by the parties in consultation with the Administrator.

Remember, the purpose of this Program is to help parties save time and money. It will succeed only if attorneys and parties make a good faith effort to comply with the spirit of the Program. If you have questions or concerns about the program, please have your attorney contact:

Project Administrator
(816) _____
U.S. Courthouse
Room _____
Kansas City, Missouri 63106