

CIVIL RULE 16.4

ALTERNATIVE DISPUTE RESOLUTION

a) Purpose and Scope.

1) Purpose. Pursuant to the findings and directives of Congress in 28 U.S.C. § 651 et seq., the primary purpose of this local rule is to provide parties to civil cases and proceedings in bankruptcy in this district with an opportunity to use alternative dispute resolution (ADR) procedures. This rule is intended to improve parties' access to the dispute resolution process that best serves their needs and fits their circumstances, to reduce the financial and emotional burdens of litigation, and to enhance the court's ability to timely provide traditional litigation services. Through this rule, the court authorizes and regulates the use of mediation and arbitration.

2) Scope.

A) Cases Pending Before a District Judge or Magistrate Judge. This local rule applies to all civil cases pending before any district judge or magistrate judge in this district.

B) Proceedings Pending Before a Bankruptcy Judge. Under 28 U.S.C. § 651 et seq., and the court's inherent authority, proceedings pending before any bankruptcy judge in this district also may be afforded an opportunity to participate in mediation and arbitration.

b) ADR Procedures and Rules.

1) Judicial Settlement Conference

A) Definition. A Judicial Settlement Conference is a process in which a Magistrate Judge (Settlement Conference Judge) is made available in order to facilitate communication between the parties and assist them in their negotiations, e.g., by clarifying underlying interests, as they attempt to reach an agreed settlement of their dispute. Whether a settlement results from a Judicial Settlement Conference and the nature and extent of the settlement are within the sole control of the parties.

B) Initiation of a Judicial Settlement Conference. At any time after an action or proceeding is commenced, any party may request, or the assigned judge on his or her own initiative may order, a Judicial Settlement Conference. As a general rule, the judge assigned to the matter will not conduct the Judicial Settlement Conference. None of the matters or information discussed during the conference will be communicated to any judge assigned to matter, unless all parties expressly stipulate to such communications.

C) Procedure for Judicial Settlement Conference. After the initiation of the Judicial Settlement Conference process, the Settlement Conference Judge will issue an order governing the process and procedure utilized by that Judge for the Judicial Settlement Conference.

D) Report of Settlement Conference Judge. At the conclusion of a Judicial Settlement Conference, a docket entry order with the court will reflect whether settlement was or was not achieved.

2) Mediation.

A) Definition. Mediation is a process in which a private, impartial third party (the “Mediator”) is hired or retained by the parties to facilitate communication between them to assist in their negotiations, e.g., by clarifying underlying interests, as they attempt to reach an agreed settlement of their dispute. Whether a settlement results from a Mediation and the nature and extent of the settlement are within the sole control of the parties.

B) Initiation of a Mediation. At any time after an action or proceeding is at issue, any party may request, or the assigned judge on his or her own initiative may order, a Mediation. None of the matters or information discussed during the conference will be communicated to any judge assigned to matter.

C) Selection of a Mediator. The parties may either select from the list of approved Mediators found on the Court’s website or select someone not on the Court’s list through mutual agreement. The parties may contact the Court’s ADR Coordinator for facilitation of selection of a mediator from the Court’s list.

D) Report of Mediator. Within five days of the conclusion of a Mediation, the Mediator shall file a report with the Court’s ADR Coordinator indicating when mediation occurred and merely whether settlement was or was not achieved.

3) Arbitration.

A) Definition. Arbitration is a process whereby an impartial third party (the “Arbitrator”) is hired or retained by the parties to hear and consider the evidence and testimony of the disputants and others with relevant knowledge and issues a decision on the merits of the dispute. The Arbitrator makes an *award* on the issue(s) presented for decision. The Arbitrator’s award is binding or non-binding as the parties may agree in writing.

B) Cases Eligible for ADR Arbitration. No civil action, or proceeding in bankruptcy, shall be referred to Arbitration as the parties’ ADR method, except upon written consent of all parties. Additionally, no matter will be referred to arbitration if the court finds that:

- (i) The action is based upon an alleged violation of a right secured by the Constitution of the United States;
- (ii) Jurisdiction is based in whole or in part on 28 U.S.C. § 1343;
- (iii) The relief sought includes money damages in an amount greater than \$150,000.00; or
- (iv) The objectives of arbitration would not be realized for any other reason.

C) Initiation of an Arbitration. At any time after an action or

proceeding is at issue, any party may request an Arbitration. Both parties must, consent in a writing, signed by all parties and their counsel, before an Arbitration will be ordered by the judge assigned to the matter.

D) Selection of an Arbitrator. The parties may select from the list of approved Arbitrators found on the Court's website. The parties, for good cause, may select an Arbitrator not on the Court's approved Panel of Arbitrators only with the approval of the judge assigned to the case.

E) Procedure for Arbitration. After the initiation of Arbitration, the Arbitrator will issue to the parties a document setting forth the process and procedure utilized and to be followed.

F) Award. At the conclusion of an Arbitration, the Arbitrator shall issue to the parties a written Award.

c) Selection of ADR Procedure.

1) Mandated Early ADR Selection Process.

A) The Parties' Duty to Consider ADR, Confer and Report. ~~In accordance with Dist. Idaho Loc. Civ. R. 16.1(a) No later than five (5) days prior to the Rule 16 scheduling conference~~, unless otherwise ordered, in every case to which this rule applies, the parties must meet and confer about (i) whether they might benefit from participating in some ADR process; (ii) which type of ADR process is best suited to the specific circumstances in their case; and (iii) when the most appropriate time would be for the ADR session to be held. In their litigation plan or proposed scheduling order, the parties must report their shared or separate views about the utility of ADR, which ADR procedure would be most appropriate, and when the ADR session should occur.

B) Designation of Process. After considering the parties' submissions, the court may order the parties, on appropriate terms and in conformity with this rule, to participate in ADR. The court may refer the case to Judicial Settlement Conference, Mediation or, with written consent of all parties, to an ADR procedure which, by stipulation of all parties, has been tailored to meet the specific needs of the parties and the case.

2) Referral to ADR during Pretrial Period. Notwithstanding the provisions of paragraph (c)(1) above regarding the early selection process, at any time before entry of final judgment, the court may, on its own motion or at the request of any party, order the parties to participate in a Judicial Settlement Conference or Mediation or, with the written consent of all parties, Arbitration.

3) Protection Against Unfair Financial Burdens. Assigned judges shall take appropriate steps to assure that no referral to ADR results in an imposition on any party of an unfair or unreasonable economic burden.

4) Right to Secure ADR Services Outside the Programs Sponsored by the Court. Nothing in this rule precludes the parties from agreeing to seek ADR services outside the court's program. Parties remain free to use any form of ADR and any neutral they choose. To the extent resources permit, court staff may assist mediators outside of the court's ADR program.

d) Process Administration.

1) ADR Coordinator. The ADR Coordinator is responsible for implementing, administering, overseeing and evaluating, along with the Board of Judges, the ADR program and procedures covered by this local rule. The ADR Administrator may be contacted through the court's website: www.id.uscourts.gov or as follows:

U.S. District Court
ADR Administrator
550 W Fort St
Boise ID 83724
(208) 334-9067 (telephone)
(208) 334-9202 (facsimile)

2) ADR Resources. The ADR Administrator maintains the requirements for, and roster of, available neutrals and information regarding the ADR process and procedures set forth in this rule.

RELATED AUTHORITY

28 U.S.C. § 651 through 658; 207