

ADR APPENDIX
TO
UNIFORM LOCAL RULES 16.3.1 M

RULES FOR ALTERNATIVE DISPUTE RESOLUTION
IN THE
MIDDLE DISTRICT OF LOUISIANA

With amendments through March 2001

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ALTERNATIVE DISPUTE
RESOLUTION**

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Exhibit A - Hold Harmless and Confidentiality Agreement

**RULES FOR
ALTERNATIVE DISPUTE
RESOLUTION**

A. PURPOSE AND SCOPE OF RULES

A-1. Title.

These are the Rules for Alternative Dispute Resolution (ADR) in the United States District Court for the Middle District of Louisiana. These Rules should be referred to as “ADR Rule A-1 through F-9, Local Rule 16.3.1M, ADR Appendix.”

A-2. Purpose and Scope.

- (a) Purpose. The Court recognizes that full, formal litigation of claims can impose large economic burdens on parties and can delay resolution of disputes for considerable periods. The Court also recognizes that alternative dispute resolution procedures have the potential to provide a variety of benefits, including greater satisfaction of the parties, innovative methods of resolving disputes and greater efficiency in achieving settlements, and will facilitate settlement and help narrow issues in certain civil actions. The Court adopts these ADR Rules to make available to litigants a range of Court-sponsored ADR processes and neutrals to provide quicker, less expensive and potentially more satisfying alternatives to continuing litigation without impairing the quality of justice or the right to trial. The neutrals provided through this program meet the minimum qualifications set forth in these Rules and the Court does not warrant the quality or competence of the neutrals selected.

- (b) Scope. These ADR Rules supplement the Uniform Local Rules of the Court and, except as otherwise indicated, apply to all civil actions filed in this Court. Cases subject to these ADR Rules also remain subject to the Uniform Local Rules of the Court. These ADR Rules do not apply to ADR procedures outside the Court-Annexed Program.

B. AUTHORIZATION AND DEFINITIONS

B-1. Authorization.

The Court authorizes the use of mediation, settlement conferences, early neutral evaluations, summary bench trials and summary jury trials as alternative dispute resolution processes in all civil actions, including adversary proceedings in bankruptcy.

B-2. Definitions.

- (a) **Mediation.** Mediation is a non-binding settlement process involving a neutral mediator who helps the parties overcome obstacles to effective negotiation. The mediator may offer suggestions or point out certain issues which the parties may have overlooked, but ultimate resolution of the dispute rests with the parties themselves. Mediation proceedings are confidential and private.
- (b) **Early Neutral Evaluation (ENE).** Early neutral evaluation commences early in the case at which time the litigants present summaries of their case to an outside neutral who has expertise in the subject matter of the case. The neutral evaluator helps parties identify issues in the case. The process enhances communication and provides litigants with a more realistic understanding of the likely outcome of the case.
- (c) **Summary Jury and Summary Bench Trials.** These techniques are designed for trial-ready cases headed for protracted trials. In cases referred to either of these processes, the Court conducts an abbreviated trial, either before a regularly empaneled jury or before a District or Magistrate Judge. The jury or Judge offers a non-binding verdict, which is used for settlement negotiations immediately following the trial. In summary jury trials, the lawyers are generally permitted to question the jurors about their decision.
- (d) **Settlement Conference.** Settlement conferences are conducted by a judicial officer. The judicial officer usually hears presentations from the parties in a joint session, then meets individually with the parties to

explore their underlying interests and to help them reach an agreement on the outcome of the case. Each presiding judicial officer, however, sets the specific format of his/her settlement conference.

- (e) **Neutrals.** Neutrals are usually often lawyers or other professional individuals trained in various alternative dispute resolution techniques. Neutrals are facilitators of the various alternative dispute resolution sessions who attempt to help the parties settle their dispute. A neutral does not represent any side to the conflict, and an individual who has an interest in or conflict with the case or parties involved cannot serve as a neutral.

C. ADMINISTRATION OF PROGRAM

C-1. Consideration of ADR.

- (a) **Timing.** Before the initial conference in all civil cases, counsel shall discuss the appropriateness of ADR in the litigation with their clients and with opposing counsel.
- (b) **Decision.** At the initial pretrial conference, the parties shall advise the Court of the results of their discussions concerning ADR. At that time, and at subsequent conferences, if necessary, the Court may explore with the parties the possibility of using ADR.

C-2. Referral and Opposition.

- (a) **Referral.** The Court may refer a case to ADR at its discretion, or on the request of any party, or on the agreement of the parties. Only mediation and early neutral evaluation may be mandated. If the parties agree upon an ADR method or neutral, the Court will respect the parties' agreement unless the Court believes another ADR method, or neutral, is better suited to the case and parties. The authority to refer a case to ADR does not preclude the Court from suggesting or requiring other settlement initiatives.
- (b) **Opposition.** A party opposing the ADR referral must file written objections with the assigned Judge making the referral within seven (7)

days of the date of the Order of Referral and explain the reasons for any opposition.

C-3. ADR Unit.

- (a) Members. The ADR Unit shall consist of the Chief District Judge, the ADR Magistrate Judge, the Standing Panel for ADR neutrals, the Chief Deputy Clerk of Court, the ADR Clerk and such deputy clerks as the Court may authorize. The ADR Unit shall be responsible for the design, implementation, administration and evaluation of the Court's ADR program. It also shall be responsible for recruiting, screening and training attorneys, and others, to serve as neutrals in the Court's ADR program.
- (b) Contacting the ADR Unit. The address and phone number of the ADR Unit are:

ADR Deputy Clerk of Court
Russell B. Long Federal Building
and Courthouse
777 Florida Street
Suite 139
Baton Rouge, LA 70801
Telephone: (225) 389-3500
Fax: (225) 389-3501

C-4. ADR Magistrate Judge.

The ADR Magistrate Judge shall implement, administer, oversee, and evaluate the Court's alternative dispute resolution program and is responsible for supervising the ADR Unit, consulting with same on the issues of policy, assisting with the training program for neutrals, the determination of complaints alleging violations of these ADR Local Rules, and the disqualification of neutrals. The ADR Magistrate Judge will annually certify and/or re-certify the neutrals in accordance with the criteria contained in these rules, administer the oath to the neutrals, and submit their names to the ADR Clerk for inclusion in the Register of Neutrals.

C-5. Standing Panel.

- (a) Panel Members. The Chief District Judge shall appoint a Standing Panel for ADR neutrals. The Court will appoint three members and designate one member as chairperson. The Panel will be responsible for recruiting and screening neutrals and will review the applications for recommendation to the ADR Magistrate Judge. The Panel will also assist with and recommend appropriate training for the neutrals.
- (b) Terms. Each Panel member shall serve a two-year term but may be re-appointed upon application to the Chief District Judge.

C-6. ADR Clerk.

- (a) Defined. The ADR Clerk shall be the Chief Deputy Clerk of Court or a deputy clerk assigned for that function by the Clerk of Court or the Chief Deputy Clerk of Court.
- (b) Duties. The duties of the ADR Clerk shall be as follows:
 - 1. Coordinating, managing, and tracking cases assigned to an ADR process.
 - 2. Scheduling and noticing hearings or proceedings before neutrals.
 - 3. Monitoring the selection of neutrals and assigning neutrals.
 - 4. Providing for the training of neutrals.
 - 5. Collecting and accounting for the certification and re-certification fees.
 - 6. Collecting and maintaining records for the continuing educational credits for the neutrals.
 - 7. Maintaining a current Register of Neutrals (The Register of Neutrals). This list will contain, at a minimum, each neutral's name,

address and telephone number, his/her areas of expertise, his/her Court approved rate/fee and the term expiration date.

8. Maintaining a current list of pro bono or reduced fee arrangements for the neutrals.

9. Gathering, compiling, and analyzing evaluation data.

C-7. Violation of the ADR Rules.

(a) Reporting Violation.

1. Report Against a Party or Counsel of Record. Any counsel of record, party, neutral, or ADR Unit member who perceives a material violation of these ADR Rules by a party or counsel of record may submit a written report to the ADR Clerk who will notify all other parties and the assigned Magistrate Judge for further disposition. Such reports shall not be filed in the record of the case.

2. Report Against a Neutral. Any counsel of record, party, ADR Unit member or other neutral who perceives a material violation of these ADR Rules or The Standards of Conduct for Mediators, as incorporated herein, by a neutral, may submit a written report to the ADR Clerk who will notify all other parties and the assigned Magistrate Judge for further disposition. Such reports shall not be filed in the record of the case.

(b) Sanctions for Violation of these Rules. If, upon receiving a written allegation that a party, lawyer or neutral has materially violated one of these ADR Rules or The Standards of Conduct for Mediators as incorporated herein, and the Magistrate Judge determines that the matter warrants further proceedings, the Magistrate Judge shall issue an order to show cause why sanctions should not be imposed, or other appropriate action taken. The Magistrate Judge will afford all interested parties an opportunity to be heard before deciding whether to impose monetary sanctions or to recommend that the Court impose other sanctions. Any objections to such sanctions shall be made by motion under Civil Uniform L.R. 74.1M.

C-8. Evaluation of the Program.

- (a) Questionnaire. In an effort to gather information and evaluate the programs, the ADR Clerk shall send a copy of the appropriate questionnaire to all participants in the ADR session after the Certificate of Compliance has been filed. Responses will be kept confidential and not divulged to the Court, the attorneys or the parties. Only aggregate information about the program will be reported.
- (b) Evaluation. Once a year, the ADR Clerk shall summarize the information from the questionnaires and submit this summary to the ADR Unit for consideration and incorporation of any suggestions into the ADR program, if found beneficial.

D. NEUTRALS

D-1. Qualifications and Other Requirements of Neutrals.

- (a) Qualifications. To be eligible for listing, neutrals must meet these minimum qualifications:
 - 1. Membership in the Bar of any United States District Court or a Bachelors degree in any profession the Panel determines would be of benefit to the program.
 - 2. A license to practice law, or five or more years of active practice in your professional area.
 - 3. Completion of at least forty (40) hours training in dispute resolution techniques in an alternative dispute resolution course approved by the Louisiana State Bar Association Mandatory Continuing Legal Education (MCLE) Committee or the Louisiana State Bar Association ADR Section.
- (b) Submissions. To be eligible for listing, a neutral must submit:

1. A completed application form with two (2) copies approved by the Court, which can be obtained from the Clerk of Court's Office.
2. A Statement of Commitment to accept gratis, or at a reduced fee, at least one case or litigant a year and to accept all other appointments at the neutral's approved rate or for a fixed fee which has been approved by the Court.

(c) Duties. Once selected, a neutral must:

1. Take the Oath, sign the Oath and ADR Agreement for Court-Annexed Neutrals before being assigned any cases for ADR.
2. Participate annually in at least five (5) hours of ADR training.
3. Repealed (March 2001)

D-2. Re-Certification.

By January 31ST of each year, the neutrals shall submit proof of their continuing education courses taken during the previous year to the ADR Clerk for final submission to the ADR Magistrate Judge for re-certification.

D-3. Terms.

Each neutral will remain on the list for four (4) years, if re-certified annually. After a four-year term, the neutral may apply for re-listing.

D-4. Disqualification of Neutrals.

- (a) All neutrals 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 Judge pursuant to 28 U.S.C. §455, or for material violation of The Standards of Conduct for Mediators adopted by the American Arbitration Association, the American Bar Association, the Society of Professionals in Dispute Resolution, and the State of Louisiana (La. R.S. 9:4107, as amended from time to time).

- (b) Any party who believes an assigned neutral has a conflict of interest shall bring this to the attention of the ADR Clerk within seven (7) days of learning the source of conflict or shall be deemed to have waived objection. Anyone may obtain a copy of the Conflicts of Interest Explanation from the ADR Clerk.
- (c) Any assigned neutral who discovers a possible conflict of interest shall immediately notify the parties of the source of the conflict and shall not proceed further until the conflict is resolved. In the event the conflict cannot be resolved, the neutral shall notify the ADR Clerk that he/she is disqualified. The ADR Clerk shall then follow the procedure set forth in Section E-2 (d).

E. MEDIATION PROGRAM

E-1. List of Mediators.

The ADR Clerk shall maintain the current list of certified mediators . To be certified, mediators have to meet the minimum qualifications listed above, be approved for listing.

E-2. Selection of Mediator.

- (a) Once an Order (Order of Referral to Mediation), referring a case to mediation has been signed, the parties are encouraged to agree on a person to be appointed as the mediator from The Register of Neutrals kept by the ADR Clerk. Counsel for the plaintiff shall then notify the ADR Clerk of their selection in writing.
- (b) If the parties do not agree on a mediator within fifteen (15) days after the Order of Referral is signed, if no objection, or, within fifteen (15) days of the ruling on the objection if an objection is filed, each party shall, within five (5) days thereafter, submit to the opposing party or parties a list of four (4) mediators from The Register of Neutrals. The opposing party or parties may strike any or all of the names on this list. The opposing party or parties shall then submit the lists to the ADR Clerk within five (5) days thereafter. The ADR Clerk shall select a

mediator from the names remaining after the parties have exercised their strikes. If the parties have stricken all names on their list, the ADR Clerk shall select a mediator from the Register of Neutrals, excluding any person whose name previously was stricken by any party.

- (c) Once (a) or (b) above has been completed, the ADR Clerk shall notify the mediator(s) of his or her selection, send the mediator a copy of the complaint, Status Report, and a current docket sheet and request a preliminary check for potential conflicts of interest and request that the mediator contact the parties to discuss the fee arrangement and any limitations that should apply.
- (d) If a conflict of interest is found to exist, the mediator(s) shall, within seven (7) days of receipt of the notice, notify the ADR Clerk who will request that the parties make a new selection, or, if the parties are unable to do so, shall assign another neutral.
- (e) If a conflict is not found to exist and the selection is final, the mediator(s) shall, within seven (7) days of receipt of the notice, notify the ADR Clerk whether the Court approved rate or a fixed fee will apply and will disclose all fee and expense arrangements and any limitations in the ADR process. The ADR Clerk shall then notify the ADR Magistrate Judge who will issue the Mediation/ENE Order.

E-3. Mandatory Guidelines for Mediation.

- (a) Attendance. In addition to counsel who will try the case, a person with full settlement authority must be present for each party at the conference. This requirement contemplates the presence of the party, or, if a corporate entity, an authorized representative of the party, who has full and final settlement authority. The purpose of this requirement is to have representatives present who can settle the case during the course of the conference without consulting a superior. Upon proper application to the mediator, a governmental entity, insurance company or corporate board may be granted permission to proceed with a representative with limited, or no authority, provided he/she has direct communication with a representative with full authority throughout the mediation process, even if the mediation continues through lunch or

after working hours. In an extreme case, the mediator may grant permission to proceed without any representative. Any other persons deemed necessary to negotiate a settlement may also attend, at the discretion of the mediator, upon proper application to the mediator. Counsel of record will be responsible for timely advising any involved non-party allowed to attend the mediation session of these requirements.

- (b) **Contacts.** The mediator may, in his/her discretion, communicate with the lawyers, the parties, the insurance representatives, or any one of them outside the presence, or hearing, of the other, but may not communicate with the trial judge or Magistrate Judge regarding any matter on the merits of the case during or after the mediation.
- (c) **Timing.** The mediation session shall be held within sixty (60) days after the date of the Mediation/ENE Order. The ADR Clerk, or as otherwise agreed upon by the parties, shall be responsible for arranging the mediation session. Mediation may take place at the courthouse, the mediator's office or at any other location to which the parties consent. Counsel shall respond to the ADR Clerk and arrange the mediation session within a short period of time after receipt of the Mediation/ENE Order. The mediator may request an extension of this time from the ADR Magistrate Judge if the mediator feels it would be beneficial to settlement of the case.
- (d) **Submissions.** The mediator shall communicate with all counsel of record and unrepresented parties, within a reasonable time prior to the mediation conference, in order to discuss what documentation, if any, will be needed to conduct the mediation. The mediator shall set appropriate deadlines for the submission of this material and the participants shall be responsible for the timely submission of this material to the mediator. None of the material submitted to the mediator shall be filed in the record, but shall either be destroyed or returned to the participants after completion of the mediation, at the discretion of the participants. The mediator may accept documents or memoranda on a confidential basis, and not served on the other parties, indicating strengths and weaknesses in that party's case and the range in which that party proposes settlement. Memoranda so submitted shall be treated with confidentiality by the mediator.

- (e) Hold Harmless and Confidentiality Agreement. All participants shall be required to execute a Hold Harmless and Confidentiality Agreement with the mediator immediately prior to the mediation conference. That document is published herein as Exhibit A to these rules. This rule does not preclude a report to or any inquiry by the ADR Clerk or Magistrate Judge pursuant to ADR LR C-7 regarding a possible violation of the ADR Local Rules.

E-4. Compensation of the Mediator.

- (a) Payment. The mediator(s) shall be paid a reasonable fee for his/her services, unless the assigned Judge has approved the case or litigant as pro bono or at a reduced fee. The mediator's hourly rate of pay will be approved by the Court when the mediator is approved for listing and will remain in effect for one year. The mediator may request a change in the rate at the time the re-certification papers are submitted to the ADR Clerk. A reasonable fee may include payment for travel, preparation time, administrative costs and other expenses, but only at a rate below the approved hourly rate. Final terms and conditions will be approved by the Court and entered in the Mediation/ENE Order. The mediator is responsible for billing the parties and collecting the fee.
- (b) Parties' Responsibility. Plaintiff(s) shall be responsible for 50% of the mediator's total fee and defendant(s) shall be responsible for the remaining 50%, unless the parties agree otherwise in writing, or by order of the Court. Parties represented by the same counsel shall be considered to be one party for purposes of compensating the mediator, unless otherwise agreed to by the parties or by order of the Court.
- (c) Pro Bono or Reduced Fee. The assigned Judge may require a pro bono litigant to pay the litigant's share of the mediator's fee out of all or part of any settlement proceeds or money judgment. Counsel of record, or the pro se litigant, shall be responsible for paying the fee when the case settles or the money judgment is satisfied.
- (d) Non-payment. In the event of non-payment by one or more of the parties, the mediator may file a motion or letter with the assigned Judge for an order directing payment of his or her fees.

E-5. Stay of Proceedings.

All scheduling order deadlines, discovery and pending motions shall be stayed for sixty (60) days from date of the Mediation/ENE Order unless the parties agree otherwise. In the event the parties cannot agree, any party may move the assigned Magistrate Judge to have the stay lifted, in whole or in part, for good cause shown.

E-6. Certificate of Compliance.

Within five (5) days of the mediation session, the mediator shall file the Neutral's Certificate of Compliance in the record, with a copy to the ADR Clerk, informing the Court of the outcome of the mediation session. In the event the matter is settled, counsel for the parties shall file a motion to dismiss, stipulation of dismissal and/or consent judgment with the Court as soon as possible. The ADR Clerk shall inform the assigned Magistrate Judge in the event the matter is not settled.

F. EARLY NEUTRAL EVALUATION

F-1. Authorization.

Early Neutral Evaluation (ENE) may be mandated by the assigned Judge, or any party may request early neutral evaluation.

F-2. Timing and Submissions.

Timing of the ENE session and the submissions to be presented to the evaluator shall be in accordance with sections E-3 (c) and (d).

F-3. Selection.

An evaluator may be selected in accordance with Section E-2 of these Rules.

F-4. Compensation of the Evaluator.

Evaluators shall be paid in accordance with section E-4 of these Rules.

F-5. Components of ENE Session.

(a) Duties. The evaluator shall:

1. Permit each party (through counsel or otherwise), orally and through documents or other media, to present its claims or defenses and to describe the principal evidence on which they are based;
2. Assist the parties in identifying areas of agreement and, where feasible, enter stipulations;
3. Assess the relative strengths and weaknesses of the parties' contentions and evidence, and explain carefully the reasoning that supports these assessments;
4. If the parties are interested, help them, through private caucusing or otherwise, explore the possibility of settling the case;
5. Estimate, where feasible, the likelihood of liability and the dollar range of damages;
6. Help the parties devise a plan for sharing the important information and/or conducting key discovery that will equip them as expeditiously as possible to enter meaningful settlement discussions or to position the case for disposition by other means;
7. Help the parties assess litigation costs realistically; and
8. Determine whether some form of follow-up to the session would contribute to the case development process or to settlement.

(b) Process Rules. The session shall be informal. Rules of evidence shall not apply and there shall be no formal examination of witnesses.

F-6. Confidentiality.

- (a) Confidential Treatment. This Court, the evaluator, all counsel and parties, and any other persons attending the ENE session shall treat as confidential all written and oral communications made in connection with or during any ENE session. The Court hereby extends to all such communications all the protection afforded by FREvid. 408 and by FR CivP 68.
- (b) Hold Harmless and Confidentiality Agreement. All participants shall be required to execute a Hold Harmless and Confidentiality Agreement with the evaluator immediately prior to the ENE session. That document is published herein as Exhibit A to these rules. This rule does not preclude a report to or any inquiry by the ADR Clerk or Magistrate Judge pursuant to ADR LR C-7 regarding a possible violation of the ADR Rules.
- (c) Stipulation. Communications made in connection with or during an ENE session may be disclosed only if all parties attending the ENE session so agree. Nothing in this section shall be construed to prohibit parties from entering written agreements resolving some or all of the case or entering and filing procedural or factual stipulations based on suggestions or agreements made in connection with an ENE session.

F-7. Follow-Up.

- (a) Discussion at Close of ENE. At the close of the ENE session, the evaluator and the parties shall discuss whether it would be beneficial to schedule any follow-up to the session.
- (b) Follow-Up. The evaluator may order the following types of follow-up without stipulation:
 - (1) Responses to settlement offers or demands;
 - (2) A focused telephone conference;

- (3) Exchanges of letters between counsel addressing specified legal or factual issues; or
 - (4) Written or telephonic reports to the evaluator, *e.g.*, describing how discovery or other events occurring after the ENE session have affected a party's analysis of the case or position with respect to settlement.
- (c) Stipulation to Follow-Up Session. With the consent of all parties, the evaluator may schedule one or more follow-up ENE sessions that may include additional evaluation, settlement discussions, or case development planning.
- (d) Limitations on Authority of Evaluator. Evaluators have no authority to compel parties to conduct or respond to discovery or to file motions nor do they have the authority to limit issues to curtail pretrial activities, or to impose sanctions.

F-8. Stay of Proceedings.

All scheduling order deadlines, discovery and pending motions shall be stayed for sixty (60) days from date of the Mediation/ENE Order unless the parties agree otherwise. In the event the parties cannot agree, any party may move the assigned Magistrate Judge to have the stay lifted, in whole or in part, for good cause shown.

F-9. Certificate of Compliance.

Within five (5) days of the ENE session, the evaluator shall file the Certificate of Compliance in the record, with a copy to the ADR Clerk, stating: the date of the session, whether any follow-up is scheduled, whether the case settled in whole or in part, and any stipulations the parties agree may be disclosed. In the event the matter is settled, counsel for the parties shall file a motion to dismiss, stipulation of dismissal, and/or consent judgment with the Court within twenty (20) days of the ENE session. The ADR Clerk shall inform the assigned Magistrate Judge in the event the matter is not settled.