



United States District Court
DISTRICT OF MINNESOTA

LR 16.5 ALTERNATIVE DISPUTE RESOLUTION AND MEDIATED SETTLEMENT CONFERENCE

(a) Alternative Dispute Resolution.

(1) *Purpose.* The court has devised and implemented an alternative dispute resolution program to encourage and promote the use of alternative dispute resolution in this district.

(2) *Authorization.* The court authorizes the use of alternative dispute resolution processes in all civil actions, including adversary proceedings in bankruptcy, except that the use of arbitration is authorized only as provided in 28 U.S.C. § 654.

(3) *Administrator.* The Chief Magistrate Judge is the administrator of the court's alternative dispute resolution program.

(4) *Neutrals.* The full-time magistrate judges constitute the panel of neutrals made available for use by the parties. The disqualification of a magistrate judge from serving as a neutral is governed by 28 U.S.C. § 455.

(b) Mediated Settlement Conference. Before trial — except in a proceeding listed in Fed. R. Civ. P. 26(a)(1)(B) — the court must schedule a mediated settlement conference before a magistrate judge. The court, at a party's request or on its own, may require additional mediated settlement conferences. Each party's trial counsel, as well as a party representative having full settlement authority, must attend each mediated settlement conference. If insurance coverage may be applicable, an insurer's representative having full settlement authority must also attend.

(c) Other Dispute Resolution Processes.

(1) *Mandatory Judicial Processes.* The court may order the parties, trial counsel, and other persons whose participation the court deems necessary to participate in any or all of the following processes before a judge: mediation, early neutral evaluation, and, if the parties consent, arbitration.

(2) *Mandatory Nonjudicial Processes.* The court may order the parties, trial counsel, and other persons whose participation the court deems necessary to participate in any or all of the following processes before

someone other than a judge: mediation, early neutral evaluation, and, if the parties consent, arbitration. The court may order the parties to pay, and may allocate among them, the reasonable costs and expenses associated with such a process, but the court must not allocate any such costs or expenses to a party who is proceeding in forma pauperis pursuant to 28 U.S.C. § 1915.

(3) *Optional Processes.* The court may offer civil litigants other alternative dispute resolution processes such as, for example, mediation, early neutral evaluation, minitrials, summary trials, and arbitration.

(d) Confidentiality of Dispute Resolution Communications.

(1) *Definition.* A “confidential dispute resolution communication” is any communication that is:

(A) made to a neutral during an alternative dispute resolution process; and

(B) expressly identified to the neutral as being confidential information that the party does not want communicated to any other person outside of the alternative dispute resolution process.

(2) *Nondisclosure.* A confidential dispute resolution communication must not be disclosed outside the alternative dispute resolution process by anyone without the consent of the party that made the confidential dispute resolution communication.

[Adopted effective November 1, 1996; amended January 3, 2000; amended July 23, 2012]

2012 Advisory Committee’s Note to LR 16.5

The language of LR 16.5 has been amended in accordance with the restyling process described in the 2012 Advisory Committee’s Preface on Stylistic Amendments.

The title and structure of LR 16.5 have been amended to emphasize the importance of the required mediated settlement conference and to specify, as envisioned by 28 U.S.C. § 652(b), that such a conference is not required in certain actions (namely, proceedings listed in Fed. R. Civ. P. 26(a)(1)(B)). Former LR 16.5(a)(2) required that a mediated settlement conference be held “[w]ithin 45 days prior to trial.” This time limit has been eliminated as unnecessary in revised LR 16.5(b), which relates to mediated settlement conferences. Other subsections of LR 16.5 have been revised to more closely conform their language to the language of the governing statute, the Alternative Dispute Resolution Act of 1998, 28 U.S.C §§ 651-658. Arbitration as an alternative dispute resolution process is governed by 28 U.S.C. §§ 654-658.

1999 Advisory Committee's Note to LR 16.5

The Alternative Dispute Resolution Act of 1998 requires that every district authorize the use of Alternative Dispute Resolution processes in all civil actions, (Title 28 United States Code, Section 651(b)) and to provide litigants in all civil cases with at least one alternative dispute resolution process (Title 28 United States Code, Section 652(a)). By this Local Rule 16.5(a)(1) the Court complies with the requirement of the Act that it authorize the use of Alternative Dispute Resolution processes. To comply with the requirement of Section 652(a) of Title 28 United States Code, (the Alternative Dispute Resolution Act of 1998), that the court provide litigants in all civil cases with at least one alternative dispute resolution process, Local Rule 16.5(a)(2) requires that a settlement conference be held in every civil case, not exempted by the Rule. The Judges of the District Court have concluded that a mediated settlement conference presided over by a magistrate judge is the one alternative dispute resolution process it will provide to litigants in all civil cases.

Parties are of course free to agree upon the use of other alternative dispute resolution processes, and Local Rule 16.5(b) authorizes the court to order any other alternative dispute resolution process which it deems necessary. Because the voluntary selection by the parties of alternative dispute resolution processes as well as court-ordered alternative dispute resolution processes depart from the "panel of neutrals" made available by LR 16.5(a)(3), the Court is not establishing by this Rule the "amount of compensation" (See 28 U.S.C. § 658) to be received by such persons, allowing that compensation to be freely negotiated, as in longstanding practice, by the parties.

The Alternative Dispute Resolution Act of 1998 also requires that the Court adopt appropriate processes for making neutrals available for use by the parties, and authorizes the use of Magistrate Judges for this purpose. (See Title 28 United States Code, Section 653) By this Rule, the Court expressly designates the full time Magistrate Judges of the District to be the panel of neutrals contemplated by the Act, and expressly makes them available to the parties for the purpose of conducting mediated settlement conferences in every civil case not otherwise exempted by local rule. The Act further requires that the court adopt rules for the disqualification of neutrals. To comply with this provision of the Act, the Court expressly incorporates by reference the provisions of Title 28 United States Code, Section 455.

The Act further requires that the court adopt rules to provide for the confidentiality of the alternative dispute resolution process and to prohibit disclosure of confidential dispute resolution communications. See Title 28 United States Code Section 652(d). By Local Rule 16.5(c) the Court complies with this requirement of the Act.

1996 Advisory Committee's Note to LR 16.5

In 1986, the Federal Practice Committee in the District of Minnesota recommended that the Court not adopt a formal ADR program. In 1993, the Civil Justice Reform Act Advisory Group also recommended that the Court not impose mandatory ADR. The Advisory Committee, like the CJRA Group, supports the use of selective ADR mechanisms on a case by case basis as determined by the individual Judge or Magistrate Judge. This Rule recognizes the Court's authority to require the parties to pay reasonable costs associated with ADR, but expressly exempts from this requirement parties who are proceeding in forma pauperis.

Regarding settlement conferences, see 28 U.S.C. 473(b)(5), which provides "a requirement that, upon notice by the Court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference."