

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

Entered April 27, 2000

IN THE MATTER OF
AMENDMENT OF THE
LOCAL RULES OF PROCEDURE

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GENERAL ORDER NO. 2000-2

ORDER

This Court earlier proposed adoption of the attached amendments to Rules 6.G., 8, 161. and 20 off its Local Rules of Procedure. Having now been approved by the Judicial Council of the Fifth Circuit, through its Rules Committee, the amendments are hereby ADOPTED by the Court, effective May 1, 2000.

DONE at Laredo, Texas, this 27th day of April, 2000.

/s/
George P. Kazen
Chief United States District Judge

Rule 6.G. Consolidation.

Add Subparagraph 4:

4. The term "oldest case," as used in this Rule, means the case filed first in any court, state or federal, including cases removed or transferred to this Court.

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Rule 8. Civil Initial Pretrial Conference; Scheduling Orders.

(Fifth Paragraph)

By individual notice, the Court will require attendance at conferences "by an attorney who has the authority to bind that party regarding all matters...", 28 U.S.C. §473(b)(2)., and require ~~"that all extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request."~~ 28 U.S.C. §473(b)(3).

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Rule 16.F. Objections.

3. ~~Defense communications shall be signed by the client and counsel.~~ All papers must contain a certificate of service on all counsel. A copy of the instrument and certificate shall be filed with the district clerk.

Rule 20. Alternative Dispute Resolution

Pursuant to 28 U.S.C. § 652 (1998) and to facilitate the settlement or narrowing of issues in civil actions, the Court adopts the following Alternative Dispute Resolution Program:

A. ADR Methods Available. The Court approves the use of the following ADR methods in civil cases pending before district, magistrate, and bankruptcy judges: mediation, early neutral evaluation, mini-trial, summary jury trial, and, if the parties consent, non-binding arbitration pursuant to 28 U.S.C. § 654 (1998) (collectively, "ADR"). A judge may approve any other ADR method the parties suggest and the judge finds appropriate for a case.

B. Timing of ADR Decision.

1. Before the initial conference in a case, counsel are required to discuss with their clients and with opposing counsel the appropriateness of ADR in the case.
2. At the initial pretrial conference the parties shall advise the judge of the results of their discussions concerning ADR. At that time and at subsequent conferences, if necessary, the judge shall explore with the parties the possibility of using ADR. The judge may require the use of mediation, early neutral evaluation, and, if the parties consent, non binding arbitration pursuant to 28 U.S.C. § 654 (1998).

C. ADR Referral. A judge may refer any civil case to ADR on motion of any party, on the agreement of the parties, or on its own motion. If the parties agree upon an ADR method or provider, the judge will respect the parties' agreement unless the judge believes another ADR method or provider is better suited to the case and parties. The authority to refer a case to ADR does not preclude the judge from suggesting or requiring other settlement initiatives.

EXPLANATION OF AMENDMENTS

Edited introductory paragraph to conform to ADR Act.

Edited version of old Paragraph D to conform to ADR Act.

Edited version of old Paragraph A(1).

Edited version of old Paragraph A(2) to make judge's authority to order ADR explicit.

Renumbered old Paragraph B.

D. Opposition to ADR Referral, ADR Method or ADR Provider. A party opposing in a particular case either the ADR referral, ADR method, or the appointed ADR provider must file written objections within ten days of entry of the order for ADR, and must explain the reasons for any opposition. The objections and related submissions shall be filed with the judge presiding over the case.

Edited version of old Paragraph C to correspond with other rule changes relating parties' lodging of objections to Court-ordered ADR.

E. Standing Panel, ADR Administrator and List of Providers.

New titles for this Section and Subparagraphs.

1. Standing Panel. The Court shall maintain a Standing Panel on ADR Providers ("Panel") to oversee implementation, administration, and evaluation of the Court's ADR program. The Chief Judge of the District will appoint three members, one of whom shall be a district judge who shall serve as chairperson. Each Panel member shall be appointed for a three year term. The Panel shall review applications from prospective ADR providers and annually shall prepare an ADR List of those qualified under the criteria contained in this rule.

Edited version of old Paragraph E to clarify Panel's composition and role.

2. ADR Administrator. The Court shall designate a person in the Court clerk's office as ADR Administrator to assist the Panel with its responsibilities and to serve as the primary contact for public inquiries regarding the Court's ADR Program.

New provision to create and define ADR Administrator's position and role.

3. ADR Provider List.

New Paragraph to implement goal of ADR Act.

a. Copies of the ADR Provider List shall be available to the public in the clerk's office.

b. To be eligible for initial listing as an ADR provider, the applicant must meet the following minimum qualifications: (i) membership in the bar of the United States District Court for the Southern District of Texas; (ii) licensed to practice law for at least ten years; and (iii) completion of at least forty hours training in dispute resolution techniques in an alternative dispute resolution course approved by the State Bar of Texas Minimum Continuing Legal Education department.

Edited (and reformatted) version of old Paragraph E(1). The minimum necessary ADR training is completion of 40 hours. Usually, the training will be in mediation prior to seeking certification as a mediator. The Panel retains discretion to define the minimum training necessary for certification in arbitration or ADR techniques other than mediation.

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| <p>c. Each applicant for the ADR Provider List shall submit a completed application in December or January for consideration for the next ADR Provider List. The applicant must use the form available in the clerk's office. The application shall contain: (i) the ADR method(s) for which the applicant seeks to be listed; (ii) a concise summary of the applicant's training, experience, and qualifications for the ADR method(s) for which the applicant seeks to be listed; (iii) the subject matter area(s) in which the applicant has particular expertise (e.g., the concentration of non-ADR practice, board certification); (iv) the applicant's fee schedule; and (v) a commitment to accept some cases for no fee or a reduced fee.</p> | <p>Edited version of old Paragraph E(2), with addition of the schedule for filing ADR provider applications and some detail on the form of the applications.</p> |
| <p>d. To maintain the listing, an ADR Provider annually, between January 1 and January 31, must certify in writing to the Panel that the provider has completed five hours of ADR training during the previous calendar year. Self-study of court decisions on ADR and authoritative writings on ADR techniques and/or ADR ethics may be used to satisfy this requirement, if the provider identifies the materials studied and the dates of study in the annual certificate.</p> | <p>Edited version of old Paragraph E(3), adding schedule for submission of evidence of compliance with the annual requirements and modifying those requirements.</p> |
| <p>e. Each ADR provider shall remain on the ADR Provider List for five years, provided the requirements of subparagraph E(3)(d) are met. After a five-year term, the ADR provider may apply for re-listing.</p> | <p>Edited version of old Paragraph E(4) to add new cross-references.</p> |
| <p>f. An applicant denied listing may request a review of that decision by sending a letter to the Chief Judge of the District. The Chief Judge shall have final decision-making authority on the matter.</p> | <p>New addition to old Paragraph E to provide due process to rejected applicants.</p> |
| <p>g. In any particular case, a judge may approve any ADR provider on which the parties agree, even if the provider is not listed on the ADR Provider List or does not satisfy the criteria for eligibility for the list.</p> | <p>Edited version of old Paragraph E(5) to clarify the scope of judges' authority to appoint ADR providers, whether or not listed on the Court's ADR Provider Listing.</p> |

F. Attendance; Authority to Settle. Party representatives (in addition to litigation counsel) with authority to settle and all other persons necessary to negotiate a settlement, such as insurance carriers, must attend the ADR proceeding. attend the ADR proceeding.

Edited version of old Paragraph F to clarify that litigation Counsel are not “party representatives”.

G. Fees. The provider and the parties generally will determine the fees for each ADR proceeding. However, the judge presiding over a case has the right to review the reasonableness of fees and to adjust them as appropriate. A judge also may at any time request a provider on the ADR Provider List or any other person to conduct an ADR proceeding *pro bono* or for a reduced fee.

Edited version of old Paragraph G to conform to ADR Act and clarify judges’ authority to appoint mediators *pro bono* or for reduced fee.

H. Binding Nature. The results of all ADR proceedings approved by this rule are non-binding unless the parties agree otherwise in a written agreement or by announcement in open court.

Edited version of old Paragraph H to clarify the effect of ADR proceedings under this rule.

I. Confidentiality, Privileges and Immunities. All communications made during ADR proceedings (other than communications concerning scheduling, a final agreement, or ADR provider fees) are confidential, are protected from disclosure, and may not be disclosed to anyone, including the Court, by the provider or the parties. Communications made during ADR proceedings do not constitute a waiver of any existing privileges and immunities. The ADR provider may not testify about statements made by participants or negotiations that occurred during the ADR proceedings. This provision does not modify the requirements of 28 U.S.C. § 657 (1998) applicable to non-binding arbitrations.

Edited version of old Paragraph I to clarify and expand the scope of confidentiality in ADR proceedings, clarify the court’s role, and to conform to the ADR Act requirements for arbitration.

J. Standards of Professional Conduct and Disqualification of ADR Providers.

1. All providers are subject to disqualification pursuant to standards consistent with those set forth in 28 U.S.C. § 455 (1988). In addition, all ADR providers are required to comply with the State Bar of Texas Alternative Dispute Resolution Section's Ethical Guidelines for Mediators, the Code of Ethics for Arbitrators in Commercial Disputes promulgated by the American Arbitration Association, and the American Bar Association and such other rules and guidelines as the Panel specifies. Copies of these standards are available from the clerk's office.
2. Issues concerning potential ADR provider conflicts shall be raised with the judge presiding in the case relating to the ADR proceeding.

Edited version of old Paragraph J to identify applicable standards for ethics and disqualification of ADR providers.

New provision to address how to challenge ADR providers’ conflicts of interest (to conform To ADR Act).

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K. Conclusion of ADR Proceedings. After each Edited version of old Paragraph ADR proceeding the provider, the parties, and the Court will take the following actions:

1. Within 10 days of completion of the proceeding, the parties jointly shall send to the ADR Administrator a memorandum stating the style and civil action number of the case; the names, addresses, and telephone numbers of counsel and party representatives in attendance; the type of case; the ADR method used; whether the case settled; and the fees paid to the ADR provider. A copy of this memorandum shall also be sent to the judge presiding over the case. This reporting provision does not apply to non binding arbitrations conducted pursuant to 28 U.S.C. § 654.
2. Within 10 days of completion of the proceeding, the ADR provider shall send a report to the ADR Administrator and the judge presiding over the case disclosing only the information listed in subparagraph K. 1.
3. Thereafter, the ADR Administrator shall submit a questionnaire evaluating the ADR provider and proceeding to the parties and counsel; counsel and the parties must complete and return the questionnaires. The Court, attorneys, and the public may review the questionnaires in the clerk's office. Data in the questionnaires shall be compiled by the ADR Administrator each calendar year. The questionnaires shall be retained by the clerk's office for at least three years.

L. Evaluations. The Court annually shall evaluate and issue a public report on the use of ADR in the district, dispositions of ADR proceedings, and other matters the Panel requires.

M. Sanctions. Fed. R. Civ. P. 16(f) sanctions apply to violations of this rule.

Edited version of old Paragraph K.

New version, similar to old Paragraph K(1), but placing upon the parties the burden of reporting fees paid to the ADR provider and the outcome of the ADR proceeding. Reports now will go both to the ADR Administrator and the judge presiding over the case (to the extent permitted by the ADR Act). This is necessitated by the common failure of ADR providers to comply with the reporting requirements.

Edited version of old Paragraph K(1) (*see supra*).

Edited version of old Paragraphs K(2) and K(3) to place responsibility for sending out questionnaires and performing ADR provider evaluations upon ADR Administrator, as well as to formalize data gathering responsibility for the Court's ADR Program, as required by the ADR Act.

Edited version of old Paragraph K(3) to formalize the ADR Act's requirement of evaluations and public reporting of Court's ADR Program, as required by ADR Act.

Edited version of old Paragraph L.

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