

PROPOSED AMENDMENT

RULE 16.4 ALTERNATIVE DISPUTE RESOLUTION

(a) The judicial officer assigned to preside over the case shall encourage the resolution of disputes by settlement or other alternative dispute resolution programs.

(b) **Settlement.** At every conference conducted under these rules, the judicial officer shall inquire as to the utility of the parties conducting settlement negotiations, explore means of facilitating those negotiations, and offer whatever assistance may be appropriate in the circumstances. Assistance may include a reference of the case to another judicial officer for settlement purposes. Whenever a settlement conference is held, a representative of each party who has settlement authority must attend in person or be available by telephone, with permission of the judicial officer presiding over the settlement conference.

(c) **Alternative Dispute Resolution Programs.**

(1) **Discretion of Judicial Officer.** The judicial officer, following an exploration of the matter with all counsel, may refer appropriate cases to alternative dispute resolution programs that have been designated for use in the district court or that the judicial officer may make available. The dispute resolution programs described in subdivisions (2) through (4) are illustrative, not exclusive. More-over, nothing herein shall preclude the parties from engaging in private dispute resolution programs as long as they comply with any schedule established by the court.

(2) **Mediation.**

(a) The judicial officer may refer the case to mediation upon the agreement of all parties.

(b). The mediator selected will be assigned from the Senior District Judges and Magistrate Judges who have volunteered to handle alternative dispute resolution matters.

(c) The mediator shall meet, either jointly or separately, with each party and counsel for each party and shall take any other steps that may appear appropriate in order to assist the parties to resolve the impasse or controversy. A representative of each party with settlement authority must attend each mediation session unless alternative arrangements are approved by the mediator.

(d) If mediation does not result in a resolution of the dispute, the mediator shall promptly report the termination of mediation to the judicial officer.

(e) If an agreement is reached between the parties on any issues, the mediator shall make appropriate note of that agreement and refer the parties to the judicial officer for entry of a court order.

(f) Any communication related to the subject matter of the dispute made during the mediation by any participant, mediator, or any other person present at the mediation shall be a confidential communication to the full extent contemplated by Fed. R. Evid. 408. No admission, representation, statement, or other confidential communication made in setting up or conducting the proceedings not otherwise discoverable or obtainable shall be admissible as evidence or subject to discovery.

(g) Mediators serve under the supervision of the liaison Magistrate Judge in charge of the alternative dispute resolution program and the Chief District Judge of the district.

(3) *Other Alternate Dispute Resolution Programs.*

(a) Use of mediation is not exclusive. At the request of parties, the court may consider other forms of alternative dispute resolution including, but not limited to, mini-trial, summary jury trial and arbitration.

(4) *Limited Appointment of Counsel.*

(a) Upon request of an unrepresented party, the Court may appoint counsel for the limited purpose of providing legal advice and representation in preparation for and during the course of mediation or early neutral evaluation ordered under this rule. Although the scope of this representation is limited, counsel shall provide such services as counsel deems appropriate to the mediation, including but not limited to review of the pleadings, communication with opposing counsel, and interviews with the client and such key witnesses as may be necessary in advance of the mediation or early neutral evaluation.

(b) Counsel appointed under this paragraph shall be a member in good standing of the bar of this Court, shall agree to serve without compensation from the party and shall file a Limited Representation Appearance on a form provided by the Clerk of Court confirming counsel's consent to serve pro bono and for the limited purpose of assisting the otherwise unrepresented party in the alternative dispute resolution process ordered for the case in which the appearance is filed. The client shall be required to sign the entry of appearance as an indication of the client's consent to and understanding of the nature of the limited scope representation.

(c) The court-appointed representation shall terminate, and appointed counsel shall have no further obligation to advise or otherwise appear on behalf of the party, when the alternative dispute resolution process is concluded and any resulting settlement agreement is executed. Nothing in this rule prohibits the party and counsel from continuing the legal representation on terms they may negotiate, subject to approval of the court. Appointed counsel may not condition the undertaking of the party's representation on the making of such agreement.

Public notice for comment issued May 14, 2014.