

Rule 16.4 Alternative Dispute Resolution

(a) **Purpose.** The Court adopts Local Rules 16.4 to 16.7~~10~~ to make available to the Court and the parties a broad program of court-annexed dispute resolution processes designed to provide quicker, less expensive, and generally more satisfying alternatives to continuing litigation.

It is not contemplated that all of these processes ~~==early neutral evaluation, mediation, arbitration, summary jury trial, and summary bench trial==~~ will be suitable for every case. Rather, the Judges of the Court believe that the careful selection of processes to fit the cases will result in the efficient preparation and resolution of those cases, to the benefit of the parties, their counsel, and the Court.

(b) Definitions.

~~(1) "Arbitration" is an adjudicative process by which a neutral person or persons (the arbitrator(s)) decide the rights and obligations of parties. The arbitration process described in Local Rule 16.7 is court-annexed, in that it is arranged and administered by the Court. It is also consensual, in that the parties consent to participate, and non-binding.~~

~~(12) The "assigned Judge" is the Judge to whom the case is assigned. If the Judge has referred the matter to a Magistrate Judge, the Magistrate Judge is the assigned Judge under Local Rules 16.4 to 16.10 with respect to actions or decisions which are to be made by the assigned Judge.~~

~~(23) "Early Neutral Evaluation" ("E.N.E.") is a pre-trial process involving a neutral evaluator who meets with the parties early in the course of the litigation to help them focus on the issues, organize discovery, work expeditiously to prepare the case for trial, and, if possible, settle all or part of the case. The neutral evaluator provides the parties with an evaluation of the legal and factual issues, to the extent possible, at that early stage of the case.~~

~~(34) "Mediation" is a non-binding settlement process involving a neutral mediator who helps the parties to overcome obstacles to effective negotiation. The mediation process described in Local Rule 16.6 is court-annexed.~~

~~(5) "Summary Jury Trial" is a court-annexed, non-binding process in which the parties briefly present their case to a jury with a Judicial Officer presiding and then use the decision of the jury and information about the jurors' reaction to the legal and factual arguments as an aid to settlement negotiations.~~

~~(6) "Summary Bench Trial" is a court-annexed pretrial procedure intended to facilitate settlement consisting of a summarized presentation of a case to a Judicial Officer whose decision and subsequent factual and legal analysis serves as an aid to settlement negotiations.~~

(c) **The ADR Administrator.** The "ADR Administrator" is the person appointed by the Court with full authority and responsibility to direct the programs described in this Section. The ADR Administrator shall be a person with training and experience in the administration of ADR Programs. The ADR Administrator shall:

- (1) Administer the selection, training, and use of the Federal Court Panel;
- (2) Collect and maintain biographical data with respect to members of the Federal Court Panel to permit assignments commensurate with the experience, training, and expertise of the panelists and make the list of panelists and the biographical data available to parties and counsel;
- (3) Prepare applications for funding of the ADR Program by the United States government and other parties;
- (4) Prepare reports required by the United States government or other parties with respect to the use of funds in the operation and evaluation of the program;
- (5) Develop and maintain such forms, records, docket control, and data as may be necessary to administer and evaluate the program;
- (6) Periodically evaluate, or arrange for outside evaluation of, the ADR Program and report on that evaluation to the Court, making recommendations for changes in these Rules, if needed; and
- (7) Develop, and make available upon request, lists of private or extra-judicial ADR providers.

Decisions of the ADR Administrator, acting within the authority conferred in these Rules, shall be orders of the Court for purposes of enforcement and sanctions.

(d) **Federal Court Panel.** There is hereby authorized the establishment of a Federal Court Panel consisting of persons who, by experience, training, and character, are qualified to act as ~~evaluators, mediators, arbitrators, or other~~ neutrals in one or more of the processes provided for in these Rules.

(1) Appointment to the Panel. The Federal Court Panel shall consist of persons nominated by the Court's Advisory Group and confirmed by the Judges of the Court.

(2) Qualifications and Training.

(A) Panelists shall be lawyers who have been admitted to the

practice of law for at least five (5) years and are currently either members of the bar of the United States District Court for the Northern District of Ohio or members of the faculty of an accredited Ohio law school. The Court may waive these requirements to appoint other qualified persons with special expertise in particular substantive fields or experience in dispute resolution processes.

(B) All persons selected as panelists shall:

(i) Undergo such dispute resolution training as the Court may prescribe;

(ii) Take the oath set forth in 28 U.S.C. § 453; and

(iii) Agree to follow the provisions of these Rules.

Each person shall be appointed as a Federal Court Panelist for a period of three (3) years. Appointment may be renewed upon a demonstration of continued qualification.

(3) Compensation of Panelists.

~~(A) Panelists Mediators and evaluators shall receive no compensation for **all time spent by the panelist on court annexed ADR procedures, including preparation time. The parties and the panelist are free to negotiate in advance a limitation on the number of preparation hours that may be charged. The panelist's charges will be divided equally among the parties on a per capita basis. The maximum hourly rate that may be charged by the panelist shall be \$275.00 per hour. If the Court determines that a party does not have the financial resources to pay the panelist's charges, the Court may assign a panelist who will provide four and one-half (4 ½) hours of service, in addition to any necessary preparation time, without charge. No panelist will be required to provide more than four and one-half (4 ½) hours of free service per year.** the first four and one half (4 1/2) hours of services which is to begin when the Mediator or Evaluator meets with the parties for the initial mediation conference or initial evaluation session. Preparation time by the Mediator or Evaluator for the respective ADR proceeding shall not be included in the first four and one half (4 ½) hours of service.~~

~~Once the initial four and one half (4 ½) hours of service have been provided by the Mediator or Evaluator, the parties shall be equally responsible for the Panelist's compensation at the rate of \$150 per hour. A compensation schedule for arbitrators shall be published by the Court.~~

~~(B) No panelist may be assigned in one calendar year to more than one case which falls within the Complex Case Track (See Local Rule 16.2 and 16.3(c)), nor to a total of more than five (5) cases, without the consent of the panelist.~~

(4) Immunity. All persons serving as Court appointed neutrals in the court-annexed ADR program are performing quasi-judicial functions and are entitled to the immunities and protections that the law accords to persons serving in such capacity.

(e) **Referral to ADR**. Parties are encouraged to use the provisions of these Rules regarding ADR, and the Judicial Officer shall direct the parties to an appropriate ADR program when, in the judgment of the Judicial Officer, such referral is warranted. In the event it is a case referred to a Magistrate Judge for case management only, any reference to ADR may be made only with the approval of the District Judge to whom the case was assigned. ADR hearing dates shall not be modified without leave of Court.

Rule 16.5 Early Neutral Evaluation (E.N.E.)

(a) **Eligible Cases.** Any civil case may be referred to E.N.E.

(b) **Selection of Cases.** A case may be selected for E.N.E.:

(1) By the Court at the Case Management Conference (See Local Rule 16.1(b)(2)); or

(2) At any time:

(A) By the Court on its own motion;

(B) By the Court, on the motion of one of the parties; or

(C) By stipulation of all parties.

(c) **Administrative Procedure.**

(1) Upon notice that a case has been referred to E.N.E., the ADR Administrator will promptly provide the parties with a Notice of Referral, listing of available neutrals selected from the Federal Court Panel who are qualified to deal with the subject matter of the lawsuit. The parties shall confer with each other within ten (10) days after receiving the written Notice of Referral and provide the ADR Administrator with an agreed list of three proposed evaluators, ranked in order of preference. In the event of multiple parties not united in interest, the parties shall add the name of one proposed evaluator for each such additional party.

If the parties fail to provide the ADR Administrator with an agreed list of three proposed evaluators, or additional proposed evaluator(s) when there are multiple parties not united in interest, the ADR Administrator shall select from the list of available neutrals provided to the parties an evaluator who is qualified to deal with the subject matter of the lawsuit. The ADR Administrator shall make a preliminary determination that the proposed evaluator has no conflicts of interest and that the proposed evaluator can serve.

Nothing in this Rule shall limit the right of the parties, with consent of the Court, to select a person of their own choosing to act as an evaluator hereunder.

(2) The ADR Administrator shall contact the proposed evaluator(s), in the order of preference provided by the parties, concerning potential conflicts of interest and scheduling. Once a determination has been made that a proposed evaluator can serve, the ADR Administrator shall provide written Notice of Designation (which shall include the name, address and telephone number of the Evaluator) to counsel for all parties (or to parties not yet represented by counsel)

and to the Evaluator. If, after Notice of Designation is given or sent, a new party is joined in the action, the ADR Administrator shall promptly send that new party a copy of the Notice of Designation.

(3) Promptly after receiving the Notice of Designation, the Evaluator shall schedule the evaluation session which, unless otherwise ordered by the Court, shall be not more than thirty (30) days from the date of the written Notice of Designation. The Evaluator shall send written notice to all parties and to the ADR Administrator advising them as to the date, time and location of the evaluation session.

(4) A request the parties for postponement of a scheduled evaluation session must be presented in writing to the ADR Administrator, and not to the Evaluator.

(d) Neutrality of Evaluator. If at any time the Evaluator becomes aware of or a party raises an issue with respect to the Evaluator's neutrality because of some interest in the case or because of a relationship or affiliation with one of the parties, the Evaluator shall disclose the facts with respect to the issue to all of the parties. If a party requests that the Evaluator withdraw because of the facts so disclosed, the Evaluator may withdraw and request that the ADR Administrator appoint another evaluator. If the Evaluator determines that withdrawal is not warranted, the Evaluator may elect to continue. The objecting party may then request the ADR Administrator to remove the Evaluator. The ADR Administrator may remove the Evaluator and choose another from the Federal Court Panel. If the ADR Administrator decides that the objection is unwarranted, the evaluation session shall proceed as scheduled, or, if delay was necessary, as soon after the scheduled date as possible.

(e) Written Submissions to the Evaluator.

(1) No later than five (5) days before the evaluation session, each party shall submit to the Evaluator and serve on all other parties a written evaluation statement. The statement shall not exceed ten (10) pages and shall conform to this Rule. The statement shall:

(A) Identify the person, in addition to counsel, who will attend the session as a representative of the party with decision making authority;

(B) Identify any legal or factual issues whose early resolution might reduce the scope of the dispute or contribute to settlement;

(C) Describe discovery which is contemplated; and,

(D) Include as exhibits copies of all pleadings filed by the party submitting the written statement.

The statement may include any other information the party believes useful in preparing the Evaluator and other parties for a productive session. The statement may identify individuals connected to another person (including a representative of an insurer) whose presence would be helpful or necessary to make the session productive. The Evaluator shall determine whether any person so identified should be requested to attend and may make such request.

(2) Written evaluation statements shall not be filed and shall not be shown to the Court.

(3) In addition to submitting the written evaluation statement, the parties shall prepare to respond fully and candidly in a private caucus to questions by the Evaluator concerning:

(A) The estimated costs to that party of litigating the case through trial, including legal fees;

(B) Witnesses (both lay witnesses and experts);

(C) Damages, including the method of computation and the proof to be offered; and

(D) Plans for discovery.

(f) Attendance at the Evaluation Conference.

(1) All parties shall be present, except that when a party is other than an individual or when a party's interests are being represented by an insurance company, an authorized representative of such party or insurance company, with full authority to act and to settle, shall attend. Willful failure of a party to attend the evaluation conference shall be reported by the Evaluator to the ADR Administrator for transmittal to the assigned Judge, who may impose appropriate sanctions.

(2) Each party shall be represented at the session by the attorney expected to be primarily responsible for handling the trial of the case.

(g) Procedure at Evaluation Conferences.

(1) Each E.N.E. conference shall be informal. The Evaluator shall conduct the process in order to help the parties to focus the issues and to work efficiently and expeditiously to make the case ready for trial or settlement.

(2) At the initial conference, and at additional conferences as the Evaluator deems appropriate, the Evaluator shall:

(A) Permit each party to make a brief oral presentation of its position, without interruption, through counsel or otherwise;

(B) Help the parties to identify areas of agreement and, if feasible, enter stipulations;

(C) Determine whether the parties wish to negotiate, with or without the Evaluator's assistance, before evaluation of the case;

(D) Help the parties identify issues and assess the relative strengths and weaknesses of the parties' positions;

(E) Help the parties to agree on a plan for exchanging information and conducting discovery which will enable them to prepare expeditiously for the resolution of the case by trial, settlement, or dispositive motion;

(F) Help the parties to assess litigation costs realistically;

(G) Determine whether one or more additional conferences would assist in the settlement or case development process and, if so, schedule the conference and direct the parties to prepare and submit any additional written materials needed for the conference;

(H) At the final conference (which may be the initial conference), give an evaluation of the strengths and weaknesses of each party's case and of the probable outcome if the case is tried, including, if feasible, the dollar value of each claim and counterclaim;

(I) Advise the parties, if appropriate, about the availability of ADR processes that might assist in resolving the dispute; and

(J) Report to the ADR Administrator in writing within ten (10) days of the close of the E.N.E. conference: the fact that the E.N.E. process was completed, any agreements reached by the parties, and the Evaluator's recommendation, if any, as to future ADR processes that might assist in resolving the dispute.

(3) The Evaluator may, subject to the requirements stated in this Rule:

(A) Determine how to structure the evaluation conference;

(B) Hold separate, private caucuses with any party or counsel but may not, without the consent of that party or counsel, disclose the contents of that discussion to any other party or counsel; and

(C) Act as a mediator or otherwise assist in settlement

negotiations either before or after presenting the evaluation called for in subsection (g)(2)(H) of this Rule.

(h) Confidentiality. The entire E.N.E. process is confidential. The parties and the Evaluator shall not disclose information regarding the process, including settlement terms, to the Court or to third persons unless all parties otherwise agree. Parties, counsel, and evaluators may, however, respond to confidential inquiries or surveys by persons authorized by the Court to evaluate the E.N.E. program. Information provided in such inquiries or surveys shall remain confidential and shall not be identified with particular cases.

The E.N.E. process shall be treated as a compromise negotiation for purposes of the Federal Rules of Evidence and state rules of evidence. The Evaluator is disqualified as a witness, consultant, attorney, or expert in any pending or future action relating to the dispute, including actions between persons not parties to the E.N.E. process.

Rule 16.6 Mediation

(a) **Eligible Cases.** Any civil case may be referred to mediation.

(b) **Selection of Cases.**

(1) **When Selected.** A case may be selected for mediation:

(A) When the status of discovery is such that the parties are generally aware of the strengths and weaknesses of the case; or

(B) At any earlier time by agreement of the parties and with the approval of the Court.

(2) **How Selected.** A case may be selected for mediation:

(A) By the Court on its own motion;

(B) By the Court, on motion of one of the parties; or

(C) By stipulation of all parties.

(3) **Objection to Mediation.**

(A) For good cause, a party may object to the referral to mediation by the Court on its own motion by filing a written request for reconsideration within ten (10) days of the date of the Court's order.

(B) Mediation processes shall be stayed pending decision on the request for reconsideration, unless otherwise ordered by the Court.

~~(4) **Arbitration.** If all parties advise the Court that they would prefer court-annexed arbitration to mediation, the Court may order the case to arbitration under Local Rule 16.7.~~

~~(45) **Private ADR.** If all parties advise the Court that they would prefer to use a private ADR process (including private arbitration or mini-trial), the Court may permit them to do so at the expense of the parties, subject to:~~

~~(A) The submission to the Court of an agreement, executed by the parties, providing for the conduct of the ADR process;~~

~~(B) The filing with the Court, within ten (10) days of the completion of the ADR process, of a written report signed by the neutral or by the parties if no neutral was used.~~

(c) **Administrative Procedure.**

(1) Upon notice that a case has been referred to Mediation, the ADR Administrator will promptly provide the parties with a Notice of Referral, listing of available neutrals selected from the Federal Court Panel who are qualified to deal with the subject matter of the lawsuit. The parties shall confer with each other within ten (10) days after receiving the written Notice of Referral and provide the ADR Administrator with an agreed list of three proposed mediators, ranked in order of preference. In the event of multiple parties not united in interest, the parties shall add the name of one proposed mediator for each such additional party.

If the parties fail to provide the ADR Administrator with an agreed list of three proposed mediators, or additional proposed mediator(s) when there are multiple parties not united in interest, the ADR Administrator shall select from the list of available neutrals provided to the parties a mediator who is qualified to deal with the subject matter of the lawsuit. The ADR Administrator shall make a preliminary determination that the proposed mediator has no conflicts of interest and that the proposed mediator can serve.

Nothing in this Rule shall limit the right of the parties, with consent of the Court, to select a person of their own choosing to act as a mediator hereunder.

(2) The ADR Administrator shall contact the proposed mediator(s), in the order of preference provided by the parties, concerning potential conflicts of interest and scheduling. Once a determination has been made that a proposed mediator can serve, the ADR Administrator shall provide written Notice of Designation (which shall include the name, address and telephone number of the Mediator) to counsel for all parties (or to parties not yet represented by counsel) and to the Mediator. If, after Notice of Designation is given or sent, a new party is joined in the action, the ADR Administrator shall promptly send that new party a copy of the Notice of Designation.

(3) Promptly after receiving the Notice of Designation, the Mediator shall schedule the mediation conference which, unless otherwise ordered by the Court, shall not be more than thirty (30) days from the date of written Notice of Designation. The Mediator shall send written notice to all parties and to the ADR Administrator advising them as to the date, time and location of the mediation conference.

(4) A request by the parties for postponement of a scheduled mediation conference must be presented in writing to the ADR Administrator, and not to the Mediator.

(d) Neutrality of Mediator. If at any time the Mediator becomes aware of or a party raises an issue with respect to the Mediator's neutrality because of some interest in

the case or because of a relationship or affiliation with one of the parties, the Mediator shall disclose the facts with respect to the issue to all of the parties. If a party requests that the Mediator withdraw because of the facts so disclosed, the Mediator may withdraw and request that the ADR Administrator appoint another mediator. If the Mediator determines that withdrawal is not warranted, the Mediator may elect to continue. The objecting party may then request the ADR Administrator to remove the Mediator. The ADR Administrator may remove the Mediator and choose another from the Federal Court Panel. If the ADR Administrator decides that the objection is unwarranted, the mediation conference shall proceed as scheduled or, if delay was necessary, as soon after the scheduled date as possible.

(e) Written Submissions to Mediator.

(1) At least five (5) days before the mediation conference, the parties shall submit to the Mediator:

(A) Copies of relevant pleadings and motions;

(B) A short memorandum stating the legal and factual positions of each party respecting the issues in dispute; and

(C) Such other material as each party believes would be beneficial to the Mediator.

(2) Upon reviewing such material, the Mediator may, at his or her own discretion or on the motion of a party, schedule a preliminary meeting with counsel.

(3) Written mediation memoranda shall not be filed and shall not be shown to the Court.

(f) Attendance at Mediation Conference. The attorney who is primarily responsible for each party's case shall personally attend the mediation conference and shall be prepared and authorized to discuss all relevant issues, including settlement. The parties shall also be present, except that when a party is other than an individual or when a party's interests are being represented by an insurance company, an authorized representative of such party or insurance company, with full authority to settle, shall attend. Willful failure of a party to attend the mediation conference shall be reported by the Mediator to the ADR Administrator for transmittal to the assigned Judge, who may impose appropriate sanctions.

(g) Procedure at Mediation Conference.

(1) The mediation conference, and such additional conferences as the Mediator deems appropriate, shall be informal. The Mediator shall conduct the process in order to assist the parties in arriving at a settlement of all or some of

the issues involved in the case.

(2) The Mediator may hold separate, private caucuses with any party or counsel but may not, without the consent of that party or counsel, disclose the contents of that discussion to any other party or counsel.

(3) If the parties have failed, after reasonable efforts, to develop settlement terms, or if the parties request, the Mediator may submit to the parties a final settlement proposal which the Mediator believes to be fair. The parties will carefully consider such proposal and, at the request of the Mediator, will discuss the proposal with him or her. The Mediator may comment on questions of law at any appropriate time.

(4) The Mediator may conclude the process when:

(A) A settlement is reached; or

(B) The Mediator concludes, and informs the parties, that further efforts would not be useful.

(5) The Mediator shall report the results of the mediation to the ADR Administrator within ten (10) days of the close of the mediation conference.

(A) If a settlement agreement is reached, the Mediator, or one of the parties at the Mediator's request, shall prepare a written entry reflecting the settlement agreement, which entry shall be signed by the parties and filed with the ADR Administrator for approval by the Court.

(B) If a settlement agreement is not reached, the Mediator shall report in writing to the ADR Administrator that mediation was held, any agreements reached by the parties, and the Mediator's recommendation, if any, as to future processing of the case.

(h) Confidentiality. The entire mediation process is confidential. The parties and the Mediator may not disclose information regarding the process, including settlement terms, to the Court or to third persons unless all parties otherwise agree. Parties, counsel, and mediators may, however, respond to confidential inquiries or surveys by persons authorized by the Court to evaluate the mediation program. Information provided in such inquiries or surveys shall remain confidential and shall not be identified with particular cases.

The mediation process shall be treated as a compromise negotiation for purposes of the Federal Rules of Evidence and state rules of evidence. The Mediator is disqualified as a witness, consultant, attorney, or expert in any pending or future action relating to the dispute, including actions between persons not parties to the mediation process.

Rule 16.7 Arbitration

~~(a) Eligible Cases.~~ Any civil case may be referred to arbitration as authorized by 28 U.S.C. § 651, et seq.

~~(b) Selection of Cases.~~

~~(1) When Selected.~~ A case may be selected for arbitration:

~~(A) By the Court at the Case Management Conference (See Local Rule 16.1(b)(2));~~

~~or~~

~~(B) At any time thereafter:~~

~~(i) By the Court on its own motion;~~

~~(ii) By the Court on motion of one of the parties; or~~

~~(iii) By stipulation of all parties.~~

~~(2) Written Notice to Parties.~~ The ADR Administrator shall give or send prompt written notice of selection to all parties.

~~(3) Relief from Selection.~~

~~(A) At any time prior to the expiration of the twenty (20) days following the date shown on the written notice of selection, any party may decline to consent to arbitration under this Rule by filing a statement to that effect with the ADR Administrator. No person affiliated with the Court may attempt to coerce a party or attorney to consent to arbitration. If a party or attorney declines to consent, no Judge to whom the action is or may be assigned may be advised of the identity of that party or attorney. No party or attorney may be prejudiced for declining to participate in arbitration.~~

~~(B) The assigned Judge may, acting sua sponte or on motion by any party, exempt any case from arbitration if the objectives of arbitration would not be realized:~~

~~(i) Because the case involves complex or novel legal issues;~~

~~(ii) Because legal issues predominate over factual issues;~~

~~or~~

~~(iii) For other good cause.~~

~~(C) In lieu of arbitration under this Rule, the parties to a civil action may elect private consensual arbitration under the Federal Arbitration Act (9 U.S.C. § 1, et seq.) and agree that the case be referred to binding arbitration. The order of referral shall specify the agreement of the parties with respect to the conduct of the arbitration and payment of the Arbitrator(s).~~

~~(c) Administrative Procedure.~~

~~(1) Selection of Arbitrators. When a case has been referred for arbitration, the ADR Administrator shall forthwith furnish to each party the names of five proposed arbitrators drawn at random from available neutrals on the Federal Court Panel. If there are multiple parties not united in interest on either side of the case, the ADR Administrator shall add the name of one proposed arbitrator for each additional party. The parties shall then confer for the purpose of selecting three arbitrators or, if the parties agree in writing, a single arbitrator, in the following manner:~~

~~(A) Each party shall be entitled to strike one name from the list, beginning with the first-named plaintiff to strike the first name, the first-named defendant(s) the next, and alternating between plaintiffs and defendants in the order named. If the parties have agreed to select a single arbitrator, the first-named plaintiff and the first-named defendant shall each strike an additional name until a single name remains:~~

~~(B) The parties shall submit to the ADR Administrator, within ten (10) days of receipt by them of the original list, the names of the three arbitrators or the name of the single arbitrator selected from the list by means of the process described in sub-section (A) above. In the event the parties fail to notify the ADR Administrator of the selection of arbitrator(s) within the time provided, the Clerk shall make the selection of arbitrator(s) at random from the original list of five names:~~

~~(C) The ADR Administrator shall promptly notify the person or persons of their selection. If any person so selected is unable or unwilling to serve, the process of selection under this Rule shall begin again to select another arbitrator for that position:~~

~~(2) Notification of Hearing. When the selected arbitrator(s) have agreed to serve, the ADR Administrator shall confer with them concerning potential conflicts of interest and shall thereafter promptly send written Notice of Designation to counsel for the parties and the Arbitrator(s):~~

~~(A) Promptly after receiving the Notice of Designation, the Arbitrator(s) shall schedule the arbitration hearing, which shall not be more than thirty (30) days from the date of the written Notice of Designation and not more than one hundred eighty (180) days from the date of the filing of the answer or the date of the filing of a reply to a counterclaim, and shall provide written notice to counsel for the parties and the ADR Administrator advising them as to the date, time and location of the arbitration hearing:~~

~~(3) Unless all parties consent, or unless the assigned Judge so orders for~~

~~good cause, no arbitration hearing may commence until thirty (30) days after disposition by the assigned Judge of any motion to dismiss the complaint, motion for judgment on the pleadings, motion to join necessary parties, or motion for summary judgment.~~

~~(4) The Arbitrator(s) may, for good cause, grant one continuance for not more than thirty (30) days from the arbitration hearing date set in the written notice. No subsequent continuance may be granted except by the assigned Judge, for good cause.~~

~~—————(d) Neutrality of Arbitrator(s):~~

~~—————(1) No person shall serve as an arbitrator in an action in which any of the circumstances specified in 28 U.S.C. § 455 exist.~~

~~—————(2) If at any time an arbitrator becomes aware of or a party raises an issue with respect to the Arbitrator's neutrality because of some interest in the case or because of a relationship or affiliation with one of the parties or attorneys, the Arbitrator shall disclose the facts with respect to the issue to all of the parties. If a party requests that the Arbitrator withdraw because of the facts so disclosed, the Arbitrator may withdraw and request that the ADR Administrator appoint another arbitrator. If the Arbitrator determines that withdrawal is not warranted, the Arbitrator may elect to continue. The objecting party may then request the ADR Administrator to remove the Arbitrator. The ADR Administrator may remove the Arbitrator and choose another from the Federal Court Panel. If the ADR Administrator decides that the objection is unwarranted, the arbitration hearing shall proceed as scheduled or, if delay was necessary, as soon after the scheduled date as possible.~~

~~—————(e) Submissions to Arbitrator(s):~~

~~—————(1) At least five (5) days before the arbitration hearing, the parties shall submit to each arbitrator:~~

~~—————(A) A set of relevant pleadings; and~~

~~—————(B) A short memorandum by each party stating the legal and factual positions of the party, together with copies of the documentary exhibits the party intends to offer at the hearing.~~

~~—————(2) At least five (5) days before the arbitration hearing, each party shall deliver to the other party a copy of the memorandum and copies of the documentary exhibits provided to the Arbitrator(s), and each party shall make available any non-documentary exhibits for examination by the other party. If a party fails to deliver a copy of a documentary exhibit or to make available for examination a non-documentary exhibit as required, the Arbitrator(s) may refuse to receive the exhibit in evidence.~~

~~—————(f) Attendance at Arbitration Hearing:~~

~~—————(1) Each individual who is a party shall attend the hearing in person. When a party is other than an individual or when a party's interests are being represented by an insurance company, an authorized representative of the party or insurance company, with full authority to settle, shall attend.~~

~~—————(2) Absence of a party shall not be a ground for continuance. An award against an absent party shall be made only upon presentation of proof satisfactory~~

to the Arbitrator(s).

~~(g) Procedure at Arbitration Hearing.~~

~~(1) Conduct of Hearing. The Arbitrator(s) may administer oaths and affirmations and all testimony shall be given under oath or affirmation. Each party shall have the right to cross-examine witnesses except as herein provided. In receiving evidence, the Arbitrator(s) shall be guided by the Federal Rules of Evidence, but shall not thereby be precluded from receiving evidence considered by the Arbitrator(s) to be relevant and trustworthy and which is not privileged. Attendance of witnesses and production of documents may be compelled in accordance with Fed. R. Civ. P. 45.~~

~~(2) Transcript or Recording. A party may cause a transcript or recording to be made of the proceedings at the party's expense. Except as provided in subsection (i)(2) of this Rule, no transcript of the proceedings shall be admissible in evidence at any subsequent trial de novo.~~

~~(3) Place of Hearing. Arbitration hearings may be held at any location within the Northern District of Ohio selected by the Arbitrator(s). In making the selection, the Arbitrator(s) shall consider the convenience of the panel, the parties, and the witnesses.~~

~~(4) Time of Hearing. Unless the parties agree otherwise, hearings shall be held during normal business hours.~~

~~(5) Authority of Arbitrator(s). The Arbitrator(s) may make reasonable rules and issue orders necessary for the fair and efficient conduct of the hearing. Any two members of a panel shall constitute a quorum. The concurrence of a majority of the entire panel shall be required for any action or decision of the panel, unless the parties stipulate otherwise.~~

~~(6) Ex Parte Communication. There shall be no ex parte communication between an arbitrator and any counsel or party on any matter touching the action except for purposes of scheduling or continuing the hearing.~~

~~(h) Award and Judgment.~~

~~(1) Filing of Award. The Arbitrator(s) shall file the award with the ADR Administrator promptly following the close of the hearing and in any event not more than ten (10) days following the close of the hearing. As soon as the award is filed, the ADR Administrator shall serve copies on the parties.~~

~~(2) Form of Award. The award shall state clearly and concisely the name or names of the prevailing party or parties and the party or parties against whom it is rendered, and the sum of money awarded, if any. The award shall specify~~

which party is to pay the costs as provided in 28 U.S.C. § 1920 and whether interest is awarded. If interest is awarded, the award shall separately state the amount.

~~(3) Entry of Judgment on Award. Unless a party has filed a demand for trial de novo within the time stated in subsection (i)(1) of this Rule, the ADR Administrator shall enter judgment on the arbitration award in accordance with Fed. R. Civ. P. 58. A judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the Court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise.~~

~~(4) Sealing of Arbitration Awards. The content of any arbitration award made under this Rule shall not be made known to any Judge unless:~~

~~(A) The Court has entered final judgment or the action has been otherwise terminated; or~~

~~(B) The Judge needs the information for the purpose of preparing the report required by § 903(b) of the Judicial Improvements and Access to Justice Act.~~

~~(i) Trial de Novo.~~

~~(1) Right to Trial de Novo. Any party may demand a trial de novo in the district court by filing with the ADR Administrator a written demand containing a short and plain statement of the reasons for the demand. The party shall serve a copy upon all counsel of record and any unrepresented party. Such a demand must be filed and served within thirty (30) days after the date of filing of the arbitration award, except that the United States, its officers and agencies, shall have sixty (60) days to file and serve a written demand for a trial de novo. Upon the filing of a demand for a trial de novo the action shall be treated for all purposes as if it had not been referred to arbitration, except that no additional pretrial discovery shall be permitted without leave of court, for good cause. Any right of trial by jury that a party would otherwise have shall be preserved inviolate. Withdrawal of a demand for a trial de novo shall reinstate the Arbitrator's award.~~

~~(2) Limitation on Admission of Evidence. The assigned Judge shall not admit at the trial de novo any evidence that there has been an arbitration proceeding, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding, unless:~~

~~(A) The evidence would otherwise be admissible under the Federal Rules of Evidence; or~~

~~(B) The parties have otherwise stipulated.~~

Rule 16.8 Summary Jury Trial

~~(a) Eligible Cases. Any civil case triable to a jury may be assigned for summary jury trial.~~

~~(b) Selection of Cases. A case may be selected for summary jury trial:~~

~~(1) By the Court at the Case Management Conference. (See Local Rule 16.1(b)(2)); or~~

~~(2) At any time:~~

~~(A) By the Court on its own motion;~~

~~(B) By the Court, on the motion of one of the parties; or~~

~~(C) By stipulation of all parties.~~

~~(c) Procedural Considerations. Summary jury trial is a flexible ADR process. The procedures to be followed should be determined in advance by the assigned Judge in light of the circumstances of the case. The following matters should be considered by the assigned Judge and counsel in structuring a summary jury trial:~~

~~(1) Scheduling. Ordinarily a case should be set for summary jury trial when discovery is substantially completed and conventional pretrial negotiations have failed to achieve settlement. In some cases, settlement prospects may be advanced by setting the case for an early summary jury trial. To facilitate an early summary jury trial, limited and expedited discovery should be obtained to accommodate earlier settlement potential. The summary jury trial should usually precede the trial by approximately sixty (60) days.~~

~~(2) Presiding Judge. The summary jury trial shall be conducted by the District Judge or Magistrate Judge to whom the case is assigned or referred.~~

~~(3) Submission of Written Materials. It is generally advantageous to have various materials submitted to the Court before the summary jury trial begins. These could include a statement of the case, stipulations, exhibits, and proposed jury instructions.~~

~~(4) Attendance. Each individual who is a party shall attend the summary jury trial in person. When a party is other than an individual or when a party's interests are being represented by an insurance company, an authorized representative of the party or insurance company, with full authority to settle, shall attend.~~

~~(5) Size of Jury Panel. Usually the jury shall consist of six (6) jurors. To~~

accommodate case concerns, the size of the jury panel may vary. Because the summary jury trial is usually concluded in a day or less, the Presiding Judge may choose to use the challenged or unused panel members as a second jury. This procedure can provide the Court and counsel with additional juror reaction.

(6) Voir Dire. Parties should ordinarily be permitted some limited voir dire. Whether challenges are to be allowed ought to be determined in advance.

(7) Opening Statements. It is helpful if each party has a chance to make a brief opening statement to help put the case into perspective. It may be possible to combine voir dire and the opening statement into one procedure, and fifteen (15) minutes may be sufficient time for each party.

(8) Transcript or Recording. A party may cause a transcript or recording to be made of the proceedings at the party's expense, but no transcript of the proceedings should be submitted in evidence at any subsequent trial unless the evidence would be otherwise admissible under the Federal Rules of Evidence.

(9) Case Presentations. As this is not a full trial, it is expected that counsel will present a condensed narrative summarization of the entire case consisting of an amalgamation of an opening statement, evidentiary presentations, and final arguments. In this presentation, counsel may present exhibits, read excerpts from exhibits, reports and depositions, all of which evidentiary submissions should be subject to the approval of the Presiding Judge by addressing motions in limine at a reasonable time in advance of the scheduled summary jury trial. This advanced consideration permits the summary jury trial proceedings to proceed uninterruptedly without objections. Generally, live witnesses should not be permitted, although an exception may be made by the Presiding Judge. An attorney certifies that offering any such summary of testimony or evidence is based upon a good faith belief and a reasonable investigation that the testimony or evidence would be available and admissible at trial.

(10) Jury Instructions. Jury instructions should be given. They will have to be adapted to reflect the nature of the proceeding.

(11) Jury Deliberations. Jury deliberations should be limited in time. Jurors should be encouraged to reach a consensus verdict. If that is not possible, separate verdicts may give the parties a sense of how jurors view the case.

(12) De-briefing the Jurors. After the verdict, the Presiding Judge should initiate and encourage a discussion of the case by the parties and the jurors.

(13) Settlement Negotiations. Within a short time after the summary jury trial, the Presiding Judge and the parties should meet to see whether the matter can be settled. A sufficient period between the end of the summary jury trial and the meeting is necessary to allow the parties to evaluate matters, but the Presiding

Judge should exercise care not to allow too much time to elapse.

~~(14) Trial. If the case does not settle as the result of the summary jury trial, it should proceed to trial on the scheduled date.~~

~~(15) Limitation on Admission of Evidence. The assigned Judge shall not admit at a subsequent trial any evidence that there has been a summary jury trial; the nature or amount of any verdict, or any other matter concerning the conduct of the summary jury trial or negotiations related to it, unless:~~

~~(A) The evidence would otherwise be admissible under the Federal Rules of Evidence; or~~

~~(B) The parties have otherwise stipulated.~~

Rule 16.9 Summary Bench Trial

~~(a) Eligible Cases. Any case not triable to a jury may be assigned for a summary bench trial.~~

~~(b) Selection of Cases. A case may be selected for summary bench trial:~~

~~(1) By the Court at the Case Management Conference (See Local Rule 16.1(b)(2));~~

~~(2) At any time:~~

~~(A) By the Court on its own motion;~~

~~(B) By the Court, on the motion of one of the parties; or~~

~~(C) By stipulation of all parties.~~

~~(c) Procedural Considerations:~~

~~(1) Presiding Judge. The summary bench trial shall be conducted by a Judicial Officer other than the Judicial Officer who will ultimately preside at the binding trial.~~

~~(2) Proposed Findings of Fact and Conclusions of Law. The parties shall submit proposed findings of fact and conclusions of law in advance of the summary bench trial.~~

~~(3) Procedural Considerations. Where appropriate, the same procedural considerations applicable to summary jury trials may be adapted to summary bench trials to reflect the nature of the proceedings.~~

Rule 16.710 Other ADR Procedures

A Judge may utilize other methods of court-annexed alternative dispute resolution procedures, **including Summary Jury Trials, Summary Bench Trials, and Arbitration**, or recommend or facilitate the use of any extrajudicial procedures for dispute resolution not otherwise provided for by these Local Rules.

In the event a reference to extrajudicial procedures is made, all further court-annexed case management procedures may be stayed and an administrative closing of the case may be made pursuant to Administrative Office guidelines for cases in which all presently contemplated proceedings have been completed. (See Guide to Judiciary Policies and Procedures, Volume XI, Chapter 5, Subsection III, H, p. 26).

If the case is resolved extrajudicially, then the administrative closing order may be supplemented with a terminal dispositive order. If the case is not resolved extrajudicially, the case may be returned to a court-annexed case management protocol for processing and ultimate disposition.