SUPREME COURT OF THE STATE OF NEW YORK
COMMERCIAL DIVISION - COUNTY OF WESTCHESTER
HON. KENNETH W. RUDOLPH
HON. ALAN D. SCHEINKMAN

RULES OF THE
ALTERNATIVE DISPUTE RESOLUTION PROGRAM

PREAMBLE

It is the policy of this Court to encourage the resolution of disputes and the early settlement of pending litigation through voluntary settlement procedures. The following Rules shall govern cases sent to alternative dispute resolution by the Justice Presiding in the Commercial Division or referred upon consent of the parties. As indicated hereinafter, parties whose cases are the subject of an order of reference are free at the outset to use the services of a private ADR provider of their choosing in lieu of taking part in this court's program. Further, after a case has been submitted to the court's program, parties can terminate the process and proceed to ADR elsewhere.

Rule 1. Program: The Commercial Division of the Supreme Court of the State of New York, County of Westchester, operates the Alternative Dispute Resolution Program ("the Program"). The Program shall be applicable, as hereinafter set forth, to cases referred by the Justice Presiding in the Commercial Division (the Commercial Division Justice) and commercial cases referred by consent of the parties to the extent the Program can accommodate them. These Rules shall govern all cases so referred.

Rule 2. Panel: The Administrative Judge shall establish and maintain a roster of Neutrals ("the Roster") who shall be compensated in accordance with these rules unless the parties otherwise agree.

(i) In order to be eligible to serve as a Mediator and be listed on the Roster, one must have:

(a) Successfully completed a minimum of twenty-four (24) hours of training in an OCA-sponsored or OCA-recognized training program and;

(b) Any other mediation training or experience deemed appropriate by the Administrative Judge.

(c) Every member of the Roster, and any other person who serves as a Neutral pursuant to these Rules, shall comply with the Code of Ethical Standards for Neutrals of the Commercial Division. Continuing presence on the Roster is subject to review by the Administrative Judge. Neutrals may be removed from the Roster at the discretion of the Administrative Judge in

consultation with the Unified Court System Office of ADR Programs.

(d) The Roster will be available through the Program Administrator, located in Westchester County Supreme Court or on the Commercial Division website (at http://www.nycourts.gov).

Rule 3. Determination of Suitability; Order of Reference: Cases shall be referred to alternative dispute resolution ("ADR") as soon after they have been commenced as is practicable. At the outset of each case described in Rule 1, the suitability of the action for ADR shall be determined by the Commercial Division Justice, after considering the views of the parties insofar as practicable. If the Commercial Division Justice decides to refer a case to the Program or if the parties consent to a referral at a conference or in a written stipulation, the Commercial Division Justice shall issue an Order of Reference requiring that the case proceed to ADR in accordance with these Rules. A case not deemed appropriate for referral at its outset may be referred to the Program later in the discretion of the Commercial Division Justice.

Rule 4. Selection of Neutral; Private ADR Providers:

(i) An action referred to the Program shall be assigned to a Neutral chosen from the Panel. The parties shall be given an opportunity to select the Neutral, except that if they do not submit the appropriate form bearing the agreed-upon names within five business days from notification of the issuance of the Order of Reference, which deadline is not subject to adjournment, or if administrative necessity so requires, the Program Administrator shall select the Neutral.

(ii) Notwithstanding the foregoing, the parties may designate as the Neutral a person who is not a member of the Panel or may proceed to ADR using the good offices of a private ADR provider; but in either instance the parties must complete the ADR process within the deadlines set forth in these Rules and comply with Rule 5.

(iii) Every member of the Panel, and any other person who serves as a Neutral pursuant to subdivision (b) of this Rule, shall comply with the [Standards of Conduct for Mediators promulgated by the Commercial Division of the State of New York]. In order to avoid conflicts of interest, any person tentatively designated to serve as a Neutral shall, as a condition to confirmation in that role, conduct a review of his or her prior activities and those of any firm of which he or she is a member or employee. The Neutral shall make disclosures to the parties who may object to the Neutral's ability to serve or the Neutral shall disqualify himself or herself if he or she would not be able to participate as Neutral fairly, objectively, impartially, and in accordance with the highest professional standards. The Neutral shall also avoid an appearance of a conflict of interest. In the event that any potentially disqualifying facts should be discovered, the Neutral shall either decline the appointment or shall fully inform the parties and the Commercial Division's Program Administrator of all relevant details. Unless all parties after full disclosure consent to the service of that Neutral, the Neutral shall

decline the appointment and another Neutral shall promptly be selected by the Program Administrator. Any such conflicts review shall include a check with regard to all parents, subsidiaries, or affiliates of corporate parties.

Rule 5. Confidentiality:

(i) The ADR proceeding shall be confidential. All documents prepared by parties or their counsel, and communications made by the parties or their counsel, for, during, or in connection with, the ADR proceeding, and any notes or other writings prepared by the Neutral in connection with the proceeding shall be kept in confidence by the Neutral and the parties and shall not be summarized, described, reported or submitted to the court by the Neutral or the parties. No party to the ADR proceeding shall, during the action referred to ADR or in any other legal proceeding, seek to compel production of documents, notes or other writings prepared for or generated in connection with the ADR proceeding, or seek to compel the testimony of any other party or the Neutral concerning the substance of the ADR process. Any settlement, in whole or in part, reached during the ADR proceeding shall be effective only upon execution of a written stipulation signed by all parties affected or their duly authorized agents. Such an agreement shall be kept confidential unless the parties agree otherwise, except that any party thereto may thereafter commence an action for breach of the agreement. Documents and information otherwise discoverable under the Civil Practice Law and Rules shall not be shielded from disclosure merely because they are submitted or referred to in the ADR proceeding.

(ii) No party to an action referred to the Program shall subpoena or otherwise seek to compel the Neutral to testify in any legal proceeding concerning the content of the ADR proceeding. In the event that a party to an action that had or has been referred to the Program attempts to compel such testimony, that party shall hold the Neutral harmless against any resulting expenses, including reasonable legal fees incurred by the Neutral or reasonable sums lost by the Neutral in representing himself or herself in connection therewith. However, notwithstanding the foregoing and the provisions of Rule5 (a), a party or the Program Administrator may report to an appropriate disciplinary body any unprofessional conduct engaged in by the Neutral and the Neutral may do the same with respect to any such conduct engaged in by counsel to a party.

(iii) Notwithstanding the foregoing, to the extent necessary, (a) the parties may include confidential information in a written settlement agreement; (b) the Neutral and the parties may communicate with the Program Administrator about administrative details of the proceeding; and (c) the Neutral may make general reference to the fact of the services rendered by him or her in any action required to collect an unpaid, authorized fee for services performed under these Rules. Furthermore, this Rule shall not apply to binding arbitration.

Rule 6. Immunity of the Neutral: Any person designated to serve as Neutral pursuant to these Rules shall be immune from suit based upon any actions engaged in or omissions made while

serving in that capacity.

Rule 7. Procedure:

(i) Unless otherwise agreed by the parties, cases referred to the Program shall be mediated.

(ii) Unless otherwise directed by the Commercial Division Justice, all proceedings in this court other than the ADR process, including all disclosure proceedings and motion practice, shall be stayed from the date of the Order of Reference until 45 days from the date on which the Program Administrator confirms to the parties that a particular Neutral has been designated to conduct the proceeding ("the Confirmation Date"). Notwithstanding the stay, if informal exchange of information concerning the case will promote the effectiveness of the ADR process and the parties so agree, the Neutral shall make reasonable directives for such exchange consistent with any pre-existing disclosure order of the court and in compliance with the deadlines herein set forth.

(iii) The first ADR session shall be conducted within 30 days from the Confirmation Date. Immediately after confirmation, all parties shall communicate with one another and the Neutral and take all steps necessary to comply with said deadline. Unless otherwise directed by the Neutral, at least ten days before that session, each party shall deliver to the Neutral a copy of its pleadings and a memorandum of not more than ten pages (except as otherwise agreed) setting forth that party's opinions as to the facts and the issues that are not in dispute, contentions as to liability and damages, and suggestions as to how the matter might be resolved. Except as otherwise agreed, this memorandum shall not be served on the adversary or filed in court, shall be read only by the Neutral, and shall be destroyed by the Neutral immediately upon completion of the proceeding.

(iv) Attendance is required at the first ADR session and at a second session if the Neutral directs that one shall take place. The location of each ADR session shall be determined by the Neutral.

(v) Unless exempted by the Neutral for good cause, every party must appear at each ADR session in person or, in the case of a corporation, partnership or other business entity, by an official (or more than one if necessary) who is both fully familiar with all pertinent facts and empowered on his or her own to settle the matter. In addition, counsel for each represented party shall be present at each session. Any attorney who participates in the ADR process shall be fully familiar with the action.

(vi) If the ADR process [results in a settlement of the case] is successful, the Neutral shall immediately advise the Program Administrator, and the parties shall forthwith submit a stipulation of discontinuance to the Commercial Division Justice.

(vii) At the end of the session(s) mandated by subdivision (iv) of this Rule, any party or the Neutral may terminate the ADR proceeding. In such case the Neutral shall immediately inform the Program Administrator of the termination. If the ADR effort has been terminated by one party only, the identity of that party shall not be reported.

(viii) Notwithstanding the foregoing, if a party or counsel fails to schedule an appearance for an ADR session in a timely manner, appear at any scheduled session or otherwise comply with these Rules, the Neutral shall advise the Program Administrator, succinctly specifying the nature of the infraction, and may, if deemed appropriate, recommend the imposition of sanctions.

(ix) Upon termination of the proceeding by a party pursuant to subdivision (vii) of this Rule, the Program Administrator should not learn which party brought the proceeding to an end. The Program Administrator shall report to the Commercial Division Justice at the conclusion of the proceeding whether the proceeding produced a resolution of the case in whole or in part. The Program Administrator shall also report to the Commercial Division Justice, on an appropriate form, a copy of which shall be forwarded to the parties, any violation of these Rules as indicated by a Neutral pursuant to subdivision (viii) of this Rule and any recommendation for sanctions. The Commercial Division Justice may impose sanctions or take such other action as is necessary to ensure compliance with and respect for the court's Order and these Rules.

Rule 8. Compensation of Neutrals:

(i) Neutrals shall be compensated at the rate of $300.00 per hour unless the parties and the neutral agree otherwise in writing, except that Neutrals shall not be compensated for the first four (4) hours spent in required ADR sessions conducted pursuant to Rule 7 (iv) of these rules or for time spent on the selection and appointment process.

(ii) The Neutral's fees and expenses shall be borne equally by the parties unless otherwise agreed in writing.

Rule 9. Completion of ADR; Report: The ADR session or sessions shall be concluded within 45 days from the Confirmation Date. The Neutral shall report to the Program Administrator as to success or lack of success no later than seven days thereafter.

Rule 10. Continuation of ADR after Expiration of the Stay: If the matter has not been entirely resolved within the 45-day period as provided in Rule 9, but the parties and the Neutral believe that it would be beneficial if the ADR process were to continue, the process may go forward. However, absent extraordinary circumstances, there shall be no additional stay of other proceedings in the case.

Rule 11. Further ADR:

(i) After completion of the ADR proceeding, upon request of a party or upon its own initiative, the Commercial Division Justice, in his or her discretion, may issue an order directing a second referral to the Program. Any such referral shall be entertained and ordered as early as practicable.

(ii) Any case so referred shall proceed in accordance with these Rules.

(iii) In any case referred to the Program a second time, the parties shall pay the Neutral assigned a fee at the rate set forth in Rule 8.

Rule 12. Administration of Program: The Program shall be supervised by the Principal Law Clerk for the Commercial Division Justice, who shall act as the Program Administrator. The conduct of ADR proceedings shall be coordinated by the Program Administrator.

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THE COMMERCIAL DIVISION
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