

## FOURTH DISTRICT ADR PROGRAM RULES

**A. Timing:** Unless exempted, all civil cases will be assigned an “ADR Track” *at the first scheduled court appearance*.

**B. Preliminary Conference Notice:** In the Supreme Court, the preliminary conference notice will advise the parties about the Mandatory ADR Program, direct them to confer, in advance, about ADR and to come to the conference with a proposed plan. Counsel have a duty to discuss ADR with their clients.

**C. Requests to Opt Out:** Requests to opt out of this program will be addressed by the Assigned Judge at the first court appearance. Opt out will be granted only for good cause. Inconvenience, travel costs, attorney fees or other costs shall not constitute good cause. A party seeking such relief must set forth specific reasons why ADR has no reasonable chance of being productive.

**D. Orders of Reference:** At the time the ADR Track is established, a timetable will be set for scheduling and completion. Timing of the ADR intervention will be decided by the Assigned Judge. Generally, the first ADR intervention will occur within 12-16 weeks after the first court appearance as it is the intent of the program to have cases proceed to ADR as early as possible in the case. In some cases, ADR intervention may be deferred for a brief period to permit some expedited discovery, as deemed necessary in order to facilitate resolution through the ADR process. If the ADR option determined to be the most appropriate is settlement conferencing by the Court, no Order of Reference is necessary.

**E. Selection of Neutral and Stipulations:** The neutral, i.e., mediator, evaluator, arbitrator, referee, JHO, will be selected at the preliminary conference. The parties may stipulate to a neutral who is not a CDRC mediator, specially trained court employee, JHO or a member of the court roster of mediators or neutrals, but such will be subject to judicial approval.

**F. Fee Waivers:** A party who has not been granted poor person status under CPLR article 11, but believes is financially unable to pay all or part of the pro rata share of the neutral’s fee, may move for a waiver of the fee requirement.

**G. Scheduling Orders:** In Supreme Court cases, at the preliminary conference, the Assigned Judge, in addition to setting the ADR Track, will also discuss pre-trial discovery and issue a scheduling order. Referral of the case to ADR will not delay or defer other established milestone discovery dates which are designed to move the case towards trial.

**H. Conflict of a Selected Neutral:** Upon receipt of an Order of Reference, the neutral will review the case for possible conflicts and notify the Assigned Judge and all parties immediately, whereupon another neutral will be assigned, after consultation with the parties. A neutral shall

disqualify in any cases in which a judge would be disqualified under prevailing ethical rules, including waiver and remittal.

**I. Disqualification of a Neutral:** After an Order of Reference is issued, if a party believes that a disqualifying conflict exists, he or she should first consult with the neutral. If the matter is not resolved within 14 days, an appropriate motion must be filed with the court seeking assignment of another neutral.

**J. Unavailability of a Selected Neutral:** If a selected neutral is or becomes unavailable to serve within the time period set forth in the Order of Reference, he or she shall notify all counsel, all unrepresented parties and the Court. A new neutral shall be selected by agreement of the parties or, if they cannot agree, by the Court.

**K. Attendance at ADR Sessions:** The attorneys who are expected to try the case for any represented party shall appear and participate in ADR and shall be accompanied by an individual with authority to settle the lawsuit. This includes the parties (if they are natural persons) or representatives of the parties that are not natural persons. These latter individuals may not be counsel (except in-house counsel). Attorneys for the parties shall notify other interested parties such as insurers and indemnitors, who shall attend. Only the Assigned Judge may excuse attendance of any attorney, party or party's representative

**L. Good Faith:** Parties and counsel shall participate in good faith, without any time constraints and put their best efforts towards settlement.

**M. The ADR Process:** The process may differ, depending upon whether the ADR option is arbitration, mediation or neutral evaluation.

- **Written Memoranda:** All parties should be prepared to provide a three-page limited confidential memorandum that includes the following information:
  - the name and the role of each person expected to attend the ADR session;
  - the name of the person who has full settlement authority;
  - the issues in dispute;
  - a concise summary of the party's claims or defenses as to each disputed issue;
  - the party's view of liability and damages;
  - the relief sought; and
  - suggestions as to how the matter might be resolved.

With the exception of settlement conferencing by the Assigned Judge, no portion of the confidential memorandum submitted by a party shall be disclosed to the Court or to the other parties (except by express agreement) and it shall remain privileged under CPLR 4547 and 3101.

- **Location:** All sessions will occur at the courthouse, unless otherwise agreed.
- **Confidentiality:** All ADR sessions are confidential and private. Evidence of any conduct or statements made during the session is inadmissible pursuant to CPLR

4547. No participant in the ADR process may communicate confidential information acquired during ADR sessions without the consent of the affected party. There shall be no stenographic recording, electronic recording – audio or visual – of the ADR session. With the exception of settlement conferencing by the Assigned Judge there shall be no communication between the Assigned Judge and the neutral regarding a case referred for ADR.

- Interpretation services: If interpretation services are necessary, they will be arranged through the Chief Clerk's Office and provided at no expense to the parties.

- Conclusion: The ADR session shall be concluded:

- by the parties' resolution and settlement of the dispute;
- by adjournment for a future session, as agreed by the parties and the neutral; or
- upon the neutral's determination that future efforts are no longer worthwhile because there is an impasse.

Agreements resolving all or some of the issues in dispute shall be reduced to writing and signed by the parties and submitted to the Assigned Judge.

Impasses will be reported to the Assigned Judge by the neutral. Requests for extension of time will be submitted to the Assigned Judge by the parties.

**N. Compensation of Neutrals:** All neutrals appointed from the Part 146 Court Rosters shall receive \$150/hour for the first two hours of the initial meeting. If necessary, the neutral may charge \$90/hour for up to two hours of preparation time for cases which require substantial preparation. If the session is cancelled by the parties less than 48 hours prior to the set time, they shall pay a \$150 cancellation fee. Any party who has been granted poor person status is relieved of his or her share of the neutral's fee. All other parties will continue to pay their pro rata share. Court employees who are assigned as neutrals will not be awarded any compensation for serving as mediators. JHO's who are assigned as neutrals will be paid by the court at the statutory daily rate.

**O. Pro Bono Service:** All neutrals who are on the Court's Part 146 roster must provide pro bono services as a neutral. The minimum service requirement is one pro bono case for every four fully compensated cases for which the neutral is selected.

**P. Special ADR Counsel to Assist Self-Represented Litigants:** At the preliminary conference, the Assigned Judge may assign a pro bono special ADR counsel to assist self-represented litigants in preparing for and participating in ADR. Appointment of a Special Counsel is in no way guaranteed. It is at the sole discretion of the Assigned Judge. If the ADR session does not result in settlement, the Assigned Judge shall issue an order relieving the Special Counsel of further representation duties and terminate the attorney-client relationship.