QUESTIONS AND ANSWERS

ADR PROGRAM

1. What is the Court's Alternative Dispute Resolution (ADR) Program?
In 2005, the Board of Judges for the Western District of Pennsylvania approved Local Civil Rule of Court 16.2 that requires parties involved in all civil actions (except social security cases and cases that involve prisoners) to agree upon a form of ADR as part of the litigation process.

2. What is the background of the Court's ADR Program?
The mission of the United States District Court for the Western District of Pennsylvania is to preserve and enhance the rule of law while providing an impartial and accessible forum for the just, timely and economical resolution of legal proceedings within the court's jurisdiction, so as to protect individual rights and liberties, promote public trust and confidence in the judicial system, and to maintain judicial independence. One of the critical functions in achieving this mission is the promotion and use of Alternative Dispute Resolution (ADR) in civil cases.

In 2001, the Court, following the directives of the Civil Justice Reform Act of 1990 and the Alternative Dispute Resolution Act of 1998, established an Advisory committee made up of members of the bar and bench to develop a vigorous ADR program. Together with the Court's Case Management/ADR Committee, ADR Policies and Procedures were developed and approved by the Board of Judges in August 2005. The Court's ADR Rule (LCvR 16.2) was then modified, approved by the Court's Rules Committee, and posted for comment in September 2005. Beginning in June 2006, select district court judges piloted the implementation of this new local rule, which mandated the use of one of three possible ADR processes in all civil cases, with the exception of social security and those cases involving prisoners. Parties were required to determine which ADR method they wanted to employ and to discuss their choice at the initial case management conference, subject to the approval of the assigned judge. At the conclusion of this pilot period, implementation of the ADR program became court-wide in December 2007.

3. What are the ADR processes?
The three processes available through the court are: mediation, early neutral evaluation (ENE) and arbitration.

4. What is Mediation?
Mediation refers to a process in which an impartial neutral, selected by the parties, facilitates negotiations between the parties to help them reach a mutually acceptable agreement.

5. What is Early Neutral Evaluation (ENE)?
Early Neutral Evaluation refers to a process in which an impartial attorney, selected by the parties and with subject matter expertise, provides a non-binding evaluation of the case and is available to assist the parties reach a mutually acceptable agreement.

6. What if we choose ENE and then, as a result of the evaluation, would like the evaluator to serve as a mediator?
The parties can make arrangement directly with the evaluator to engage him/her in the additional role of a mediator. Should this development result in the need for additional time to complete the ADR process, parties may request limited additional time from the court. However, the grant of any additional time is solely in the discretion of the Court.

7. Is the arbitration the same as that offered by the court in the past?
Yes. Arbitration involves referral of the case to an impartial third party (or a panel of three) for a non-binding determination in settlement of the claim(s) following the presentation of evidence and arguments. Unlike other neutrals, arbitrators on the Court's list are paid by the court for their services, in accordance with 28 U.S.C. §658 and consistent with Judicial Conference policy. The parties are also free to engage a separate, private arbitration company or arbitrator, or consent to binding arbitration.

8. Can we use other forms of ADR, such as summary trials?
Yes. The ADR Policies and Procedures provide for other forms of ADR, including summary trials and special masters.

9. How does this program help litigants?
The concept of this Court's ADR program is that it will expedite the resolution of cases and reduce the costs of litigation for clients.

10. Are there lawyers available to assist *pro se* litigants?
Yes. The Court has developed a program under the auspices of the law firm of Jones Day to make attorneys available to counsel *pro se* litigants using the ADR process.

11. Who will pay for the ADR program selected?
Costs will generally be shared among or between the parties, except for Arbitration. The Court will continue to pay arbitrators, in accordance with 28 U.S.C. §658 and consistent with Judicial Conference policy. Indigent parties may ask the Court to apportion most, or all, of the costs on the other side, or request the appointment of a *pro bono* neutral.

12. Can the costs of an ENE or mediation be limited by setting a cap on the number of hours the evaluator or mediator can spend on the case?
The parties are free to regulate expense by agreement. It should be noted that current court experience shows that the costs associated with a mediation session are often significantly less than those associated with taking a day of depositions.

13. Are judges still going to try cases?
Yes. Some cases are simply not able to be settled and those cases will proceed to trial. Even in those cases, good faith use of this program will reduce the number of summary judgment motions filed, thereby streamlining the case and enabling judges to conduct trials more quickly.

14. Will judges still conduct settlement conferences?
Yes. Judges have the discretion to conduct settlement conferences in cases over which they preside or to which they are referred. Additionally, judges may, at the request of another judge on the Court, volunteer their time to conduct settlement conferences in cases that are not otherwise assigned to them.

15. Does the ADR process happen before, during or after discovery?
Ideally the ADR process will happen before discovery, but after F.R.C.P. 26(a)(1) disclosures. Once parties have spent substantial time and money in discovery, they seem less amenable to settlement. However, in some situations, limited discovery must occur, such as the plaintiff's deposition, before meaningful settlement discussions can take place. These issues should be addressed to the judge assigned to the case and limited discovery may be allowed at the court's discretion.

16. Why is the emphasis on having ADR so early in the litigation process?
The goal of this program is to help litigants toward an inexpensive and prompt resolution of their case whenever possible.

17. Who is required to attend the ADR session?
The ADR Policies and Procedures detail who is required to attend the mediation, ENE, or arbitration proceeding. Generally, those persons with authority to resolve the case **must** be available during the ADR session. Parties will be required to identify those persons who will attend the ADR session and upon order of court, their appearance is mandatory.

18. Is "in-house" counsel an adequate representative at a mediation or ENE for a corporate or other entity?
If "in-house" counsel meets the applicable criteria that they have the authority to resolve the case and is knowledgeable about the facts of the case, they are an adequate representative.

19. What if one of the parties does not participate in good faith?
Good faith participation is essential to the use of this program. If one side has a reasonable belief that the other party is not participating in good faith, they should address that issue to either the judge assigned to their case or the ADR Judge, who is the judge who serves as chair of the court's Standing Committee on Case Management/ADR.

20. How can I become a neutral?
Once you have reviewed the Policies and Procedures for the ADR program found on the court's web site (www.pawd.uscourts.gov) and believe you are eligible to apply for any one or several of the categories (mediator, evaluator or arbitrator), there is an application form on the web site to complete and submit to the court for review and approval.