



Early ADR Policies and Procedures

Effective: January 1, 2025

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**ALTERNATIVE DISPUTE RESOLUTION
POLICIES AND PROCEDURES**

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I. DEFINITIONS

A. Mediation

Mediation refers to a nonadjudicative, third-party intervention wherein an impartial neutral, selected by the parties, facilitates negotiations between the parties to help them reach a mutually acceptable agreement. The parties are responsible for negotiating a settlement. The neutral's role is to assist the process in ways acceptable to the disputants.

B. Early Neutral Evaluation

Early Neutral Evaluation refers to a nonadjudicative, third-party intervention by an impartial experienced attorney, selected by the parties, with subject matter expertise. After reviewing concise presentations of the parties' claims, the neutral provides a non-binding evaluation of the case and thereafter is available to assist the parties in reaching an agreement.

C. Arbitration

Arbitration involves the referral of a dispute to an impartial third party (or a panel of three), selected by the parties, who, after giving the parties an opportunity to present evidence and arguments, renders a non-binding determination in settlement of the claim(s). Arbitration in the federal district court is further defined in 28 U.S.C. § 654. Parties may agree to be bound by the arbitrator's decision which is non appealable.

D. ADR Coordinator

ADR Coordinator is the Clerk of Court or designee responsible for assisting the Court and its Civil Case Management/ADR Committee in the administration of these Early ADR Policies and Procedures.

II. GENERAL PROVISIONS

A. ADR Internet Site

The Court's website, www.pawd.uscourts.gov, contains information about the Court's ADR processes, information about neutrals and their fees, answers to frequently asked questions, various forms approved by the Court, and information about becoming a neutral in the Court's programs.

B. ADR Judge

The Court has appointed a United States District Judge (who serves as the Chair or member of the Court's Standing Committee on Civil Case Management and ADR) to serve as the ADR Judge. This Committee is responsible for overseeing the ADR program.

If a party files a motion with the Court alleging matters such as bad faith or requesting enforcement of a settlement reached as a result of the ADR process, the assigned judicial officer may adjudicate the motion or may elect to request another judge to do so. Should the latter occur, the matter will be referred internally to another judge who is a member of the Civil Case Management and ADR Committee, to decide the motion.

C. Neutrals

- 1) **Panel Neutrals.** The Court maintains a panel of neutrals serving in the Court's ADR programs. Neutrals will be selected from time to time by the Court from applications submitted by lawyers or other qualified dispute resolution professionals.
- 2) **Private Neutrals.** There are numerous private sector providers of ADR services including arbitration, mediation, fact-finding, neutral evaluation, and private judging. Private providers may be lawyers, law professors, retired judges, or other professionals with expertise in dispute resolution techniques. Virtually all private sector providers charge fees for their services. The Court is willing to refer cases to private providers with the stipulation of the parties. The assigned Judicial Officer will take appropriate steps to assure that a referral to private ADR does not result in an imposition on any party of an unfair or unreasonable economic burden. At the conclusion of the private ADR session, with the exception of private arbitration, the neutral is to complete and file the Report of the Neutral, indicating that the session was held and if the session resulted in a settlement. At the conclusion of the private arbitration, the arbitrator is to file a report only indicating the date that the arbitration was held.

3) **Qualifications and Training.** Each person serving as a panel neutral in the Court's ADR program must be a member of the bar of this Court, a member of the faculty of an accredited law school, or be approved by this Court to serve as a neutral, as determined by the Civil Case Management and ADR Committee to be competent to perform the applicable duties, and must successfully complete initial and periodic training sessions as required by the Court and be a registered user of the Electronic Case Filing (ECF) system for the United States District Court, Western District of Pennsylvania. (All neutrals, including those who are retained privately, are required to be registered users of the Court's ECF system.) Additional minimum requirements for serving on the Court's panel of neutrals, which the Court may modify in individual circumstances for good cause, are as follows:

a) **Mediators.**

1) **Attorney Mediators.** Panel Mediators who are attorneys must have been admitted to the practice of law for at least seven years and must have:

- a) substantial experience with civil litigation in federal court;
- b) completed 40 hours of mediation training, including training in the facilitative method of mediation;
- c) strong mediation process skills and the temperament and training to listen well, facilitate communication across party lines and assist the parties with settlement negotiations.

2) **Non-attorney Panel Mediators.** Non-attorney mediators may be appointed to a case only with the consent of the parties. Mediators who are not attorneys may be selected to serve on the Court's panel of mediators if they are knowledgeable about civil litigation in federal courts and have:

- a) appropriate professional credentials in another discipline;
- b) 40 hours of mediation training, including training in the facilitative method of mediation;
- c) experience mediating at least five(5) cases; and
- d) strong mediation process skills and the temperament and training to listen well, facilitate communication across party lines and assist the parties with settlement negotiations.

3) **All Mediators.** All mediators must adhere to the Model Standards of Conduct for Mediators as last adopted or amended by the American Arbitration Association, American Bar Association and Association for Conflict Resolution, as well as any other applicable standards of professional conduct which may be required by the Court.

- 4) **Pro Bono Mediations.** A party who demonstrates a financial inability to pay all or part of that party's pro rata share of the neutral's fee may request the Court to appoint a mediator who has agreed to serve *pro bono*. The Court may waive all or part of that party's share of the fee. Other parties to the case who are able to pay the fee must bear their pro rata portions of the fee. All court approved mediators must agree to perform one (1) *pro bono* mediation per year by random selection where at least one party is appearing *pro se* and when deemed appropriate by the presiding judge.
- 5) **Early Neutral Evaluators.** Panel Evaluators must have been admitted to the practice of law for at least 15 years and must have:
 - a) substantial experience with civil litigation in federal court;
 - b) substantial expertise in the subject matter of the cases assigned to them;
 - c) the temperament and training to listen well, facilitate communication across party lines and, if called upon, assist the parties with settlement negotiations; and
 - d) agreed to adhere to the Model Standards of Conduct for Mediators as last adopted or amended by the American Arbitration Association, American Bar Association and Association for Conflict Resolution, as well as any other applicable standards of professional conduct which may be required by the Court.
- 6) **Arbitrators.** Panel Arbitrators must have been admitted to the practice of law for at least 10 years and must have:
 - a) For not less than five years, committed 50% or more of their professional time to matters involving litigation; or
 - b) substantial experience serving as a neutral in dispute resolution proceedings; and
 - c) agree to adhere to the Model Standards of Conduct for Arbitrators.
- 4) **Immunities.** All persons serving as neutrals in any of the Court's ADR programs are performing quasi-judicial functions and are entitled to the immunities and protections that the law accords to persons serving in such capacity.

- 5) **Annual Requirements.** All court approved neutrals shall complete an annual email survey to (i) confirm continued participation as a neutral, (ii) provide accurate contact information, and (iii) indicate willingness to accept one (1) full or partial *pro bono* mediation per year, upon request from the presiding judge. Failure to respond to the annual email survey will result in the neutral's removal from the list. Additionally, neutrals seeking reinstatement must undergo a reapplication process.
- 6) **Agreements.** A mediator or neutral evaluator shall:
 - a) ask the parties to sign an agreement to mediate or to engage in ENE;
 - b) ask all persons participating in a mediation or ENE to sign a confidentiality agreement, as part of the mediation or ENE agreement or as a separate document; and
 - c) clarify by agreement or engagement letter (i) that he or she serves only as a neutral and not as legal counsel for any participant and (ii) all fees and expenses that will be charged and payment terms.
- 7) **Exclusion of judicial officers.** No judicial officer (District or Magistrate Judge) will be assigned as a neutral for this Early ADR Program.

D. Evaluation of ADR Programs

Congress has mandated that the Court's ADR programs be evaluated. Neutrals, counsel and parties must promptly respond to any inquiries or questionnaires from persons authorized by the Court to evaluate the programs. Responses to such inquiries will be used for research and monitoring purposes only and the sources of specific information will not be disclosed to the assigned Judicial Officer in any report.

E. Participation at ADR Session

- 1) **Parties.** Each party (and other real parties in interest such as insurers) must personally participate in the selected ADR process session in accordance with any applicable Order of Court issued by the presiding judicial officer. In the absence of any specifically applicable Order of Court pertaining to such participation and attendance, these Early ADR Practices and Procedures shall apply, under which each party must personally participate in the selected ADR process session. This requirement reflects the Court's view that the principal values of Alternate Dispute Resolution include affording litigants an opportunity to articulate their positions and to hear, firsthand, both their opponent's version of the matters in dispute and a neutral assessment of the merits of the case.
- 2) **Corporation or Other Entity.** A party other than a natural person (e.g., a corporation or an association) satisfies this participation requirement if represented by a decision maker(s) (other than outside counsel) who has full settlement authority and who is knowledgeable about the facts of the case.

- 3) **Government Entity.** A unit or agency of government satisfies this participation requirement if represented by a person who has, to the greatest extent feasible, full settlement authority, and who is knowledgeable about the facts of the case, the governmental unit's position, and the procedures and policies under which the governmental unit decides whether to accept proposed settlements. If the action is brought by the government on behalf of one or more individuals, at least one such individual also must attend.
- 4) **Necessary Parties.** Any party who fails to have in attendance the necessary decision maker(s) may be subject to sanctions.
- 5) **Counsel.** Each represented party must be accompanied at the selected ADR process session by the lawyer who will be primarily responsible for handling the trial of the matter. If a party is proceeding *pro se*, a request may be made to the Court to name a *pro bono* attorney to represent the *pro se* litigant at the selected ADR process session.
- 6) **Insurers.** Insurer representatives, including, if applicable, risk pool representatives, are required to participate in person unless excused by the neutral or presiding judicial officer, if their agreement would be necessary to achieve a settlement.
- 7) **Remote Participation.** The decision to conduct the ADR session in-person or remotely, in whole or in part, shall be at the discretion of the appointed neutral.
- 8) **Participation by Telephone or Video.** A person excused from attending an otherwise in-person ADR process session must be available to participate by telephone or video.

F. Good Faith Definition

It is the expectation of the Court that all parties ordered to mediation shall attend with full and complete settlement authority and shall participate in good faith. "Good faith" shall refer to the duty of the parties to meet and negotiate with a willingness to reach agreement, full or partial, on matters in dispute. If parties and/or party representatives with full settlement authority participate, consider and respond to the proposals made by each other, and respect each other's role by not acting in a manner which is arbitrary, capricious or intended to undermine the mediation process, the parties are deemed to be acting in good faith.

In good faith negotiations, neither party is required to make a concession or agree to any proposal, nor are they precluded from seeking the best possible resolution for their own interests. If a party is attending a mediation session with the intent not to make any demand or offer of settlement, or if they intend to wait until the disposition of certain motions to engage in settlement discussions, they shall explicitly inform the mediator and all other parties in writing no later than 15 calendar days prior to the mediation session. A refusal to make an offer or a demand shall not exempt ADR participation. The parties may either elect to move forward with the mediation session or proceed to Early Neutral Evaluation (ENE).

If the parties elect to move forward with the mediation session knowing that no demand or offer of settlement may be made, there is no violation of good faith.

- 1) **Motion for Sanctions.** All ADR Motions for Sanctions must be consistent with the process outlined in Attachment A.

III. MEDIATION

A. Description

Mediation is a flexible, non-binding, confidential process in which a neutral person (the mediator), selected by the parties, facilitates settlement negotiations. Generally, mediation will utilize a facilitative approach, but the mediator should be prepared to provide evaluative assessments if requested by all parties. The mediator improves communication across party lines, helps parties articulate their interests and understand those of their opponent, probes the strengths and weaknesses of each party's legal positions, identifies areas of agreement, and helps generate options for a mutually agreeable resolution to the dispute. The mediator generally does not give an overall evaluation of the case. A hallmark of mediation is its capacity to expand traditional settlement discussion and broaden resolution options, often by exploring litigant needs and interests that may be formally independent of the legal issues in controversy.

B. Eligible Cases

Appropriate civil cases may be referred to mediation by order of the assigned Judicial Officer.

C. Mediators

- 1) **Referral.** No later than the Initial Case Management Conference (Rule 16) the parties are to choose a mediator who is available during the appropriate period and has no apparent conflict of interest.
- 2) **Compensation.** Unless otherwise agreed by all parties or ordered by the Court, one-half the cost of the mediator's services must be borne by the plaintiff(s) and one-half by the defendant(s) at the rate contained in the neutral's fee schedule filed with the Court. In a case with third-party defendants, the cost must be divided into three equal shares. A neutral must not charge or accept in connection with a particular case a fee or thing of value from any source other than the parties. Compensation must be paid directly to the neutral upon the conclusion of the ADR process, or as otherwise agreed to by the parties and the mediator. Failure to pay the mediator must be brought to the Court's attention.
- 3) **Fee Waiver.** A party who demonstrates a financial inability to pay all or part of that party's *pro rata* share of the neutral's fee may request the Court to appoint a mediator who has agreed to serve *pro bono*. The Court may waive all or part of that party's share of the fee. Other parties to the case who are able to pay the fee must bear their *pro rata* portions of the fee. Panel mediators shall serve on a *pro bono* or partial *pro bono* basis upon request of the Court, pursuant to Section II.C.3(a)(4) of these policies and procedures.

D. Timing and Scheduling the Mediation

- 1) **Scheduling by Mediator.** Promptly after being chosen to mediate a case, the mediator shall, after consulting with all parties, fix the date and place of the mediation within the deadlines set by paragraph 2 below, or the order

- referring the case to mediation.
- 2) **Deadline for Conducting Mediation.** Unless otherwise ordered or extended by the Court for good cause shown pursuant to Section III.D.3 *infra*, the mediation shall be held within 60 days after the initial scheduling conference (see LCvR 16.1.A.2). This is a presumptive timeline for the ADR proceeding, subject to adjustment by the Court to meet the needs of the case.
 - 3) **Request to Extend the Deadline.**
 - a) **Motion Required.** Requests for extension of the deadline to conduct a mediation must be made as soon as practicable, or when a conflict is first known, in a motion directed to the assigned Judicial Officer, with a copy to the other parties and the mediator.
 - b) **Content of Motion.** Such motion must:
 - 1) detail the considerations that support the request;
 - 2) indicate whether the other parties concur in or object to the request; and
 - 3) be accompanied by a proposed order setting forth a new deadline by which the mediation will be held.
 - 4) **Telephone Conference Before Mediation.** The mediator must schedule a brief joint telephone conference with counsel and any unrepresented parties before the mediation session to discuss matters such as the scheduling of the mediation, the procedures to be followed, the nature of the case, and which client representatives will attend.
 - 5) **Written Mediation Statements Required.** Written mediation statements may be required at the discretion of the mediator.

E. Procedure at Mediation

- 1) **Procedure.** Mediators and parties have discretion to structure the mediation so as to maximize the benefits of the process. Mediators may utilize varied dispute resolution approaches such as facilitative or evaluative methodologies in accordance with their professional judgment.
- 2) **Separate Caucuses.** The mediator may hold separate, private caucuses with each side or each lawyer or, if the parties agree, with the parties only. The mediator may not disclose communications made during such a caucus to another party or counsel without the consent of the party who made the communication.
- 3) **Follow Up.** At the close of the mediation session, the mediator and parties shall jointly determine whether it would be appropriate to schedule any additional ADR activity. Additional ADR activities to which the parties may agree include but need not be limited to: written or telephonic reports by the parties to one another or to the mediator; exchange of specified information; another mediation session; or asking the Court for a settlement conference.

F. Report of the Neutral

Within five (5) days of the conclusion of the mediation, the mediator must electronically file the “Report of Neutral” which includes the caption and case number, the date of the mediation, whether any follow up is scheduled, whether the case resolved in whole or in part, and any stipulations the parties agree may be disclosed.

IV. EARLY NEUTRAL EVALUATION

A. Description

In Early Neutral Evaluation (ENE) the parties and their counsel, in a confidential session, make compact presentations of their claims and defenses, including key evidence as developed at that juncture, and receive a non-binding evaluation by an experienced neutral lawyer, selected by the parties, with subject matter expertise. The evaluator also helps identify areas of agreement, offers case- planning suggestions and, if requested by the parties, settlement assistance.

B. Eligible Cases

Subject to the availability of an evaluator with subject matter expertise, appropriate civil cases may be referred to ENE by order of the assigned Judicial Officer.

C. Evaluators

- 1) **Referral.** No later than the Initial Case Management Conference (Rule 16) the parties are to choose an evaluator who has expertise in the subject matter of the lawsuit, is available during the appropriate period and has no apparent conflict of interest.
- 2) **Compensation.** Unless otherwise agreed by all parties or ordered by the Court, one-half the cost of the evaluator's services must be borne by the plaintiff(s) and one-half by the defendant(s) at the rate contained in the evaluator's fee schedule filed with the Court. In a case with third-party defendants, the cost must be divided into three equal shares. An evaluator must not charge or accept in connection with a particular case a fee or thing of value from any source other than the parties. Compensation must be paid directly to the evaluator upon the conclusion of the ADR process, or as otherwise agreed to by the parties and the evaluator. Failure to pay the evaluator may be brought to the Court's attention.
- 3) **Fee Waiver.** A party who demonstrates a financial inability to pay all or part of that party's pro rata share of the neutral's fee may request the Court to appoint an evaluator who has agreed to serve *pro bono*. The Court may waive all or part of that party's share of the fee. Other parties to the case who are able to pay the fee must bear their pro rata portions of the fee. Panel neutrals shall serve on a *pro bono* or partial *pro bono* basis upon request of the Court.

D. Timing and Scheduling the Early Neutral Evaluation (ENE)

- 1) **Scheduling by Evaluator.** Promptly after being appointed to a case, the evaluator must, after consulting with all parties, fix the date and place of the ENE within the deadlines set by paragraph 2 below, or the order referring the case.
- 2) **Deadline for Conducting Session.** Unless otherwise ordered or extended by the Court for good cause shown pursuant to Section IV.E. *infra*, the ENE shall be held within 60 days after the initial scheduling conference (*see* LCvR

16.1.A.2). This is a presumptive timeline for the ADR proceeding, subject to adjustment by the Court to meet the needs of the case.

E. Requests to Extend Deadline

- 1) **Motion Required.** Requests for extension of the deadline to conduct an ENE session must be made as soon as practicable, or when a conflict is first known, in a motion directed to the assigned Judicial Officer, with a copy to the other parties and the evaluator.
- 2) **Content of Motion.** Such motion must:
 - a) detail the considerations that support the request;
 - b) indicate whether the other parties consent or object to the request; and
 - c) be accompanied by a proposed order setting forth a new deadline by which the ENE will be held.

F. Ex Parte Contact Prohibited

Except with respect to scheduling matters, there must be no ex parte communications between parties or counsel and the evaluator, including private caucuses to discuss settlement, until after the evaluator has either delivered orally his or her evaluation or, if so requested by the parties, has committed his or her evaluation to writing, or all parties have agreed that ex parte communications with the evaluator may occur.

G. Telephone Conference Before Early Neutral Evaluation

The evaluator must schedule a brief joint telephone conference with counsel before the ENE to discuss matters such as the scheduling, the procedures to be followed, the nature of the case, and which client representatives will attend.

H. Written Statements

- 1) **Time for Submission.** Written Statements must be submitted directly to the evaluator and must be served on all other parties pursuant to deadlines established by the evaluator.
- 2) **Prohibition Against Filing.** The Statements constitute confidential information, must not be filed, and the assigned Judicial Officer must not have access to them.
- 3) **Content of Statement.** The Evaluator shall advise the parties as to what content the Statements must include. Examples are below. Identify, by name and title or status:
 - a) The person(s) with decision-making authority, who, in addition to counsel, will attend the ENE as representative(s) of the party; and
 - b) persons connected with a party opponent (including an insurer representative) whose presence might substantially improve the utility of the ENE or the prospects for settlement;
 - c) describe briefly the substance of the suit, addressing the party's views of the key liability issues and damages and discussing the key evidence;
 - d) address whether there are legal or factual issues whose early resolution

- would reduce significantly the scope of the dispute or contribute to settlement negotiations;
- e) identify the discovery that is necessary to equip the parties for meaningful settlement negotiations;
 - f) describe the history and status of any settlement negotiations; and
 - g) include copies of documents out of which the suit arose (e.g., contracts), or whose availability would materially advance the purposes of the evaluation session, (e.g., medical reports or documents by which special damages might be determined).

I. Procedure at an Early Neutral Evaluation

- 1) **Components of an Early Neutral Evaluation.** Unless otherwise agreed to by the parties and evaluator, the evaluator must:
 - a) Permit each party (through counsel or otherwise), orally and through documents or other media, to present its claims or defenses and to describe the principal evidence on which they are based;
 - b) help the parties identify areas of agreement and, where feasible, enter stipulations;
 - c) assess the relative strengths and weaknesses of the parties' contentions and evidence, and explain the reasoning that supports these assessments;
 - d) estimate, where feasible, the likelihood of liability and the dollar range of damages;
 - e) help the parties devise a plan for sharing the important information and/or conducting the key discovery that will equip them as expeditiously as possible to enter meaningful settlement discussions or to position the case for disposition by other means;
 - f) help the parties assess litigation costs realistically; and
 - g) if the parties are interested, help them, through private caucusing or otherwise, explore the possibility of settling the case; and
 - h) determine whether some form of follow up to the session would contribute to the case development process or to settlement.
- 2) **Process Rules.** The session must be informal. Rules of evidence must not apply. There must be no formal examination or cross-examination of witnesses and no recording of the presentations or discussion must be made.
- 3) **Evaluation.** The evaluation must be presented to the parties orally. The recipients of any oral presentation should include party representatives, insurers and risk pool representatives, as applicable. The parties should determine in advance whether the oral evaluation will be delivered in a joint or separate session. In the event that the parties cannot agree, the decision shall be left to the discretion of the Evaluator. Any party's evaluation may be reduced to writing and provided to that party upon their request. Any evaluation, oral or written, constitutes confidential information which shall not be disclosed to the assigned Judicial Officer or anyone else except as provided by these Early ADR Policies and Procedures.
- 4) **Settlement Discussions.** At any point during the ENE, if all parties agree, they may proceed to mediation and/or discuss settlement.

J. Follow Up

At the close of the ENE session, the neutral evaluator and parties shall jointly determine whether it would be appropriate to schedule any additional ADR activity. Additional ADR activities to which the parties may agree include but need not be limited to written or telephonic reports by the parties to one another or to the neutral evaluator; exchange of specified information; a mediation session; or asking the court for a settlement conference.

K. Report of the Neutral

Within five (5) days of the conclusion of the ENE, the evaluator must electronically file “Report of Neutral” which includes the caption and case number, the date of the session, whether any follow up is scheduled, whether the case resolved in whole or in part, and any stipulations the parties agree may be disclosed.

V. COURT SPONSORED ARBITRATION (pursuant to 28 U.S.C. § 651.)

A. Description

Arbitration is an adjudicative process in which an arbitrator or a panel of three arbitrators, selected by the parties, issues a non-binding judgment (“award”) on the merits after an expedited, adversarial hearing. Either party may reject the non-binding award and proceed in accordance with the presiding judicial officer’s case management order. An arbitration occurs earlier in the life of a case than a trial and is less formal and less expensive. Because testimony is taken under oath and is subject to cross-examination, arbitration can be especially useful in cases that turn on credibility of witnesses. Arbitrators do not facilitate settlement discussions.

B. Eligible Cases

A case may be referred to arbitration by order of the assigned Judicial Officer.

C. Arbitrators

- 1) **Selection.** After entry of an order referring the case to arbitration, the parties must choose an arbitrator from the Court’s panel or, if the parties cannot decide, an arbitrator will be selected by the Court. The parties have the option of choosing a panel of three arbitrators. If the parties cannot agree upon the panel of three, one or more arbitrators may be selected by the Court. If any person so selected is unable or unwilling to serve, the Court will secure another arbitrator after conferring with the parties.
- 2) **Compensation.** Per Judicial Conference Policy, arbitrators are paid by the Court \$250.00 per day or portion of each day of hearing in which they serve as a single arbitrator, or \$100.00 for each day or portion of each day in which they serve as a member of a panel of three. No party may offer or give the arbitrator(s) any gift. No compensation is permitted for preparation time on the case.
- 3) **Payment and Reimbursement.** When filing an award, arbitrators must submit a voucher on the form prescribed by the Clerk of Court or designee for payment of compensation and for reimbursement of any reasonable transportation expenses necessarily incurred in the performance of duties. No reimbursement will be made for any other expenses.

D. Timing and Scheduling the Hearing

- 1) **Scheduling by Arbitrator.** Promptly after being appointed to a case, the arbitrator(s) must arrange for the pre-session phone conference and, after consulting with all parties, must fix the date and place for the arbitration within the deadline fixed by the assigned Judicial Officer, or if no such deadline is fixed, within 90 days after the notice of appointment. Counsel and unrepresented parties must respond promptly to and cooperate fully with the arbitrator(s) with respect to scheduling the pre-session phone conference and

the arbitration hearing. The hearing date must not be continued or vacated except for emergencies as established in writing and approved by the assigned Judicial Officer. If the case is resolved before the hearing date, or if due to an emergency a participant cannot attend the arbitration, counsel or an unrepresented party must notify the arbitrator(s) immediately upon learning of such settlement or emergency.

- 2) **Place and Time.** The hearing may be held at any location within the Western District of Pennsylvania selected by the arbitrator(s), including by video if agreed upon by the parties and approved by the arbitrator(s). In selecting the location, the arbitrator(s) must consider the convenience of the parties and witnesses. Unless the parties agree otherwise, the hearing must be held during normal business hours.

E. *Ex Parte* Contact Prohibited

Except with respect to scheduling matters, there must be no *ex parte* communications between parties or counsel and an arbitrator.

F. Written Arbitration Statements

- 1) **Time for Submission.** No later than 10 calendar days before the arbitration session, each party must submit directly to the arbitrator(s), and must serve on all other parties, a written Arbitration Statement.
- 2) **Prohibition against Filing.** The statements must not be filed and the assigned Judicial Officer must not have access to them.
- 3) **Content of Statement.** The statements must be concise and must:
 - a) Summarize the claims and defenses;
 - b) identify the significant contested factual and legal issues, citing authority on the questions of law;
 - c) identify proposed witnesses; and
 - d) identify, by name and title or status, the person(s) with decision-making authority, who, in addition to counsel, will attend the arbitration as representative(s) of the party.
- 4) **Modification of Requirement by Arbitrator(s).** After jointly consulting counsel for all parties and any unrepresented parties, the arbitrator(s) may modify or dispense with the requirements for the written Arbitration Statements.

G. Telephone Conference Before Arbitration

The arbitrator(s) must schedule a brief joint telephone conference with counsel and any unrepresented parties before the arbitration to discuss matters such as the scheduling of the arbitration, the procedures to be followed, whether supplemental written material should be submitted, which witnesses will attend, how testimony will be presented, including expert testimony, and whether and how the arbitration will be recorded.

H. Authority of Arbitrators and Procedures at Arbitration

- 1) **Authority of Arbitrators.** Arbitrators must be authorized to:
 - a) Administer oaths and affirmations;
 - b) make reasonable rulings as are necessary for the fair and efficient conduct of the hearing; and
 - c) make awards.
- 2) **Prohibition on Facilitating Settlement Discussions.** Arbitrators are not authorized to facilitate settlement discussions. If the parties desire assistance with settlement, the parties or arbitrator(s) may request that the case be referred to mediation (*see* Section III above), or a settlement conference before the Court.
- 3) **Presumption against Bifurcation.** Except in extraordinary circumstances, the arbitrator(s) must not bifurcate the arbitration.
- 4) **Quorum.** Where a panel of three arbitrators has been named, any two members of a panel must constitute a quorum, but the concurrence of a majority of the entire panel must be required for any action or decision by the panel, unless the parties stipulate otherwise.
- 5) **Testimony.**
 - a) **Subpoenas.** Attendance of witnesses and production of documents may be compelled in accordance with Fed. R. Civ. P. 45.
 - b) **Oath and Cross-examination.** All testimony must be taken under oath or affirmation and must be subject to such reasonable cross-examination as the circumstances warrant.
 - c) **Evidence.** In receiving evidence, the arbitrator(s) must be guided by the Federal Rules of Evidence but must not thereby be precluded from receiving evidence which the arbitrator(s) consider(s) relevant and trustworthy, and which is not privileged.
- 6) **Transcript or Recording.** A party may cause a transcript or recording of the proceedings to be made but must provide a copy to any other party who requests it and who agrees to pay the reasonable costs of having a copy made.
- 7) **Default of Party.** The unexcused absence of a party must not be a ground for continuance, but damages must be awarded against an absent party only upon presentation of proof thereof satisfactory to the arbitrator(s).

I. Award and Judgment

- 1) **Form of Award.** An award must be made after an arbitration under this Rule. Such an award must state clearly and concisely the name or names of the prevailing party or parties and the party or parties against which it is rendered, and the precise amount of money, if any, awarded. It must be in writing and (unless the parties stipulate otherwise) be signed by the arbitrator or by at least two members of a panel. No arbitrator must participate in the award without having attended the hearing. Costs within the meaning of Fed. R. Civ. P. 54 and LCvR 54.1 may be assessed by the arbitrator(s) as part of an arbitration award.

- 2) **Filing and Serving the Award.** Within 10 days after the arbitration hearing is concluded, the arbitrator(s) must deliver the award to the Arbitration Clerk in an unsealed envelope with a cover sheet stating: “Arbitration Award.”
- 3) **Cover Sheet.** The cover sheet also must list the case caption, case number and name(s) of the arbitrator but must not specify the content of the award. The Clerk must note the entry of the arbitration award on the docket and promptly serve copies of the arbitration award on the parties.
- 4) **Sealing of Award.** Each filed arbitration award must promptly be sealed by the Clerk. The award must not be disclosed to any Judicial Officer who might be assigned to the case until the Court has entered final judgment in the action or the action has been otherwise terminated, except as necessary to assess costs or prepare the report required by Section 903(b) of the Judicial Improvements and Access to Justice Act.
- 5) **Entry of Judgment on Award.** If no party has filed a demand for trial de novo (or a notice of appeal, which must be treated as a demand for trial de novo) the Clerk must enter judgment on the arbitration award in accordance with Fed. R. Civ. P. 58. A judgment so entered must be subject to the same provisions of law and must have the same force and effect as a judgment of the Court in a civil action, except that the judgment must not be subject to review in any other court by appeal or otherwise.

J. Rejection of Award

- 1) **Time for Rejection of Award.** If any party files and serves a Notice of Rejection of Award demanding a trial de novo within 14 days of entry of the filing of the Award, no judgment thereon must be entered by the Clerk and the action must proceed in the normal manner before the assigned Judicial Officer.
- 2) **Limitation on Admission of Evidence.** At the trial de novo the Court must not admit any evidence indicating 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 in the trial under the Federal Rules of Evidence, or
 - b) the parties have otherwise stipulated.
- 3) **Award Not to be Attached.** A party filing a demand for a trial de novo must not attach the arbitration award.

K. Stipulation to Binding Arbitration

At any time before the arbitration hearing, the parties may stipulate in writing to binding arbitration. Such stipulation must be submitted to the assigned Judicial Officer for approval and must be filed. In the event of such stipulation, judgment must be entered on the arbitration award after the award is received by the Clerk.

L. Federal Arbitration Act

Nothing in these ADR Policies and Procedures Rules limits any party's right to agree to arbitrate any dispute, regardless of the amount, pursuant to Title 9, United States Code, or any other provision of law.

VI. CONFIDENTIALITY

A. General Rule

Except as provided in subsection D of this Section VI, this Court, the ADR Coordinator, all neutrals, all counsel, all parties and any other person who participates (in person or by telephone or video) in (i) any ADR process described in Sections I through V of these Policies and Procedures, or (ii) any private ADR process pursuant to Court order, shall treat as “confidential information” (i) the contents of all documents created for or by the neutral, (ii) all communications and conduct during the ADR process, and (iii) all “communications in connection with” the ADR process.

B. Communications

Communications in connection with any ADR process include nonverbal, oral and written communications made by, between, or among (i) a party, (ii) counsel for a party, (iii) a neutral, (iv) a member of the neutral’s staff, (v) the Clerk or designee, or (vi) any other person present to further the ADR process, when the communication occurs (vii) during any ADR process, or (viii) before or after any ADR process and is made by or to the neutral, a member of the neutral’s staff, or the Clerk or designee.

C. Confidential information

- 1) shall only be disclosed to those involved in the ADR process, and shall not be disclosed to any other person, specifically including the assigned Judicial Officer or his or her staff;
- 2) shall not be used for any purpose, including impeachment, in any pending or future proceeding.

D. Limited Exceptions to Confidentiality

This Section VI does not prohibit:

- 1) Disclosure of any confidential information the neutral is required to report to the Court pursuant to (i) Sections III.C. or IV.C. hereof, both of which provide that a failure to pay the neutral must be brought to the Court’s attention, or (ii) Sections III.F or IV.K hereof, both of which address the mandatory report of the neutral.
- 2) Disclosure to the Court in writing of the failure of any party, party representative, insurer or risk pool representative to appear as required pursuant to Sections E.4 and E.6 of these Policies and Procedures and as designated in a Court Order. The disclosure permitted by this exception is only that the party, party representative, or insurer or risk pool representative failed to appear and does not include any portion of any communication in connection with the ADR process relating to the failure to appear.

- 3) Disclosure of specifically identified confidential information when all parties agree in writing that such specifically identified information may be disclosed.
- 4) Disclosure of confidential information by the neutral to the extent that such disclosure is necessary for the neutral to respond to, or defend against, a claim or allegation of professional misconduct or malfeasance.
- 5) Disclosure of a written settlement document signed by the parties in an action or proceeding to enforce the settlement agreement expressed in the document, unless the settlement document by its terms states that it is unenforceable or not intended to be legally binding.
- 6) To the extent that the communication or conduct is relevant and admissible evidence in a pending criminal proceeding, as determined by a court, disclosure of:
 - a) a threat of bodily injury;
 - b) a threat to damage real or personal property under circumstances constituting a felony; or
 - c) conduct causing direct bodily injury.
- 7) Disclosure of a fraudulent communication made during a mediation or ENE process to the extent that such communication is relevant and admissible evidence in a pending action to enforce or set aside an agreement reached in the mediation or ENE process as a result of that fraudulent communication.
- 8) Disclosure of any document which, although referenced or used in an ADR process, exists independently of the ADR process.
- 9) Disclosure of an arbitration award if no party timely files a demand for trial de novo (or a Notice of Appeal) as provided in Section V.J. of these Policies and Procedures.

E. Miscellaneous

The neutral shall not be called to testify as to what transpired in an ADR process. No one shall make any recording or transcript of any ADR session or proceeding, regardless of whether conducted in-person or by video conference technology, without the prior written consent of all parties and other persons participating in the ADR session.

VII. APPENDIX A

A. ADR Motion for Sanctions

Prior to the filing of any motion for sanctions regarding the ADR session, the moving party shall serve on opposing counsel a file-ready copy of their proposed motion. Within 14 days of service of the proposed motion for sanctions, the parties or their counsel shall engage in thorough discussions in an attempt to resolve the issue(s) being raised.

If the parties reach a resolution of the underlying issue(s), no further action is required.

If the parties are unable to reach a resolution of the underlying issue(s), and adjudication by the Court is required, counsel shall proceed as follows:

- 1) Prepare a certificate attesting that the parties met and discussed, either in person or by telephone, the content of the proposed motion for sanctions;
- 2) attesting that the parties were unable to resolve the issue(s) raised in the proposed motion after thorough discussions, and;
- 3) stating whether they agree (or disagree) that confidential information may be implicated in the resolution of the proposed motion.

Moving party shall file a “Notice of Intent to File Motion for Sanctions” (in the form attached), attaching the certificate described above. Both the notice and the certificate shall refrain from making any references to the specific factual predicate of the alleged breach and shall maintain the confidentiality of the ADR process.

Once the “Notice of Intent to File Motion for Sanctions” is filed, the assigned judge has the discretion to decide whether they will handle the motion for sanctions or refer it to the ADR Judge, or a designee, for resolution, per Section II.B of these ADR Policies and Procedures.

Once a determination is made concerning which judge will handle the motion for sanctions, that judge shall schedule a conference in an attempt to resolve the issue prior to the filing of the proposed motion. No motion for sanctions may be filed until leave is granted through entry of an order by the judge handling the dispute.

If leave to file the motion for sanctions is granted, the order granting same will also set forth the dates for the filing of the motion and supporting documents, as well as the response. If any part of the motion will reveal confidential information as defined in Section VI of these ADR Policies and Procedures (“Confidential Information”), the movant must request leave of court to file such parts under seal. The content of communications or documents in the public domain or otherwise available or communicated outside of the mediation process will not be deemed confidential for these purposes solely because they were further communicated during the mediation process.

No additional briefing, replies and/or sur-replies will be allowed without leave of court. If a hearing is necessary to resolve the motion for sanctions, after notice by the Court, said proceedings, or any portion thereof may be held under seal on in camera if, in the discretion of the judge resolving the motion, it is determined that the proceedings will reveal Confidential Information. The judge resolving the motion (either assigned or ADR) shall enter an order on the court's docket terminating the motion for sanctions.

Should an opinion be issued supplementing the Court's resolution of the motion for sanctions, and should that opinion refer to any Confidential Information in doing so, the Court will take all reasonable steps to minimize the dissemination and/or reference to such Confidential Information in the opinion.

If any document is sealed during this process, the judge should specify in the order resolving the motion for sanctions, a date by which the seal of that document will be lifted, or state that the document will be sealed permanently. If neither is provided, then three months from the date of termination of the case, or receipt of the mandate, the Clerk's Office will generate a notice advising the parties that the documents will be unsealed within 14 days of the notice, unless the parties file a motion at Miscellaneous No. 13-69, requesting that the seal remain in place. The Judge of the Joint IT Committee will adjudicate motions filed at Miscellaneous No. 13-69.

VIII. NOTICE OF INTENT TO FILE MOTION FOR SANCTIONS FORM

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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CIVIL ACTION NO.

NOTICE OF INTENT TO FILE MOTION FOR SANCTIONS

PLEASE TAKE NOTICE that (Name of Moving Party)
intends to present to this Honorable Court a Motion for Sanctions regarding the ADR session in
the above captioned case. Attached to this notice is a certificate that the parties have met and
conferred, either in person or by telephone, and were unable to resolve the issue(s) giving rise to
the forthcoming motion.

The parties stipulate that the issue(s) raised in the Motion for Sanctions (check one)

- will require the disclosure of confidential information
- will not require the disclosure of confidential information
- no agreement was reached on the disclosure of confidential information

Dated: _____, 20_

Signature of Counsel _____