

## **DUCivR 16-2 ALTERNATIVE DISPUTE RESOLUTION**

### **(a) Authority.**

Under 28 U.S.C. §§ 471-482 and §§ 651-658 and the court's Civil Justice Expense and Delay Reduction Plan of 1991, the court has established a court-annexed alternative dispute resolution (ADR) program for the District of Utah.

### **(b) Procedures Available.**

The procedures available under the court's ADR program include arbitration and mediation. In addition, notwithstanding any provision of this rule, all civil actions may be the subject of a settlement conference as provided in DUCivR 16-3.

### **(c) Cases Excluded from ADR Program.**

(1) Prisoner is a Party. Unless otherwise ordered by the assigned judge, cases in which a prisoner is a party will not be subject to this rule.

(2) Excluded from Referral to Arbitration. Pursuant to the 1998 Alternative Dispute Resolution Act, the following types of cases may be referred to mediation but are excluded from referral to arbitration in the court's ADR program.

(A) The action originates as a bankruptcy adversary proceeding, as an appeal from the bankruptcy court, or as a review of judgment of administrative law forums or other official adjudicated proceeding;

(B) The action is based on an alleged violation of a right secured by the Constitution of the United States; or

(C) Jurisdiction is based in whole or in part on 28 USCA §1343.

### **(d) Certificate of ADR Election.**

Except as excluded by section (c) of this rule, all counsel in civil actions should discuss the court's ADR program with their clients. The clerk will automatically issue to counsel a Notice of ADR which advises that any party at any time may contact the ADR program administrator in the office of the clerk to discuss or to request that the matter be referred to the ADR program. If one or more of the parties elects referral to the ADR program, the court or magistrate judge conducting the initial scheduling conference will consult with the parties whether to order referral of the matter to the program.

### **(e) Case Referral Procedure.**

Referral into the court's ADR program will be made by order of the district, bankruptcy, or magistrate judge. Referrals to mediation may be made after consultation with the parties at the initial scheduling conference either on motion of one or more parties or on the court's motion. Referrals to arbitration may be made after consultation with the parties at the initial scheduling conference or on motion of one or more parties and the consent of all parties. The order will designate whether the case is referred to mediation or arbitration.

**(f) Stay of Discovery.**

Unless otherwise stipulated by all parties, formal discovery pursuant to Fed. R. Civ. P. 26 through 37 will be stayed with respect to all parties upon entry of an order referring a civil action to the court's ADR program. Unless otherwise ordered by the assigned judge, no scheduled pretrial hearings or deadlines will be affected by referral into the ADR program.

**(g) ADR Case Administration.**

The administration of all cases referred to the ADR program will be governed by the District of Utah ADR Plan, a copy of which is appended to these rules.

**(h) Supervisory Power of the Court.**

Notwithstanding any provision of this rule or the court's ADR Plan, every civil action filed with the court will be assigned to a judge as provided in DUCivR 83-2 of these rules. The assigned judge retains full authority to supervise such actions, consistent with Title 28, U.S.C., the Federal Rules of Civil Procedure, and these rules.

**(i) Compliance Judge.**

The court will designate a district or magistrate judge to serve as the ADR compliance judge (ADR judge) to hear and determine complaints alleging violations of provisions of this rule or the ADR Plan. When necessary, the chief judge may designate an alternative district or magistrate judge to temporarily perform the duties of the ADR judge.

**(j) Violations of the Rules Governing the ADR Program.**

(1) Complaints. A complaint alleging that any person or party, including the assigned ADR roster or pro tem member(s) has materially violated a provision of this rule or the ADR Plan shall be submitted to the ADR judge in writing or under oath. Copies of complaints that are reviewed by the ADR judge and not deemed frivolous and dismissed shall be sent by the clerk to all parties to the action and, where appropriate, to the assigned ADR roster or pro tem member(s). Complaints shall neither be filed with the clerk nor submitted to the judge assigned to the case.

(2) Confidentiality. Absent a waiver of confidentiality by all necessary persons, or an order of the court, complaints submitted pursuant to this rule shall not disclose confidential ADR communications.