

GENERAL ORDER NO. 36

ADR MULTI-OPTION PILOT PROGRAM

I. PURPOSE

The court adopts an ADR Multi-Option Pilot program (the "ADR Pilot") to offer litigants in certain civil cases a range of court-connected alternative dispute resolution (ADR) processes. These processes are designed to provide quicker, less expensive and potentially more satisfying alternatives to continuing litigation without impairing the quality of justice or the right to trial.

The Northern District of California is one of three federal courts specifically mandated by Congress, under the Civil Justice Reform Act of 1990, to "experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution." 28 U.S.C. §471 Note. The ADR Pilot represents one such experiment through which the court hopes to assess the potential of various ADR processes in different kinds of cases.

II. SUMMARY

In this pilot, litigants in certain cases designated upon the filing of the complaint or notice of removal are presumptively required to participate in one non-binding ADR process offered by the court (Arbitration, Early Neutral Evaluation, Mediation, or Early Settlement Conference with a Magistrate Judge) or may substitute a similar process offered by a private provider. Unless they have stipulated to an ADR process, counsel shall participate in a joint telephone conference with the Director or Deputy Director of the court's Alternative Dispute Resolution (ADR) program to consider the suitability of the ADR options to their case. When litigants have not stipulated to an ADR process before the Case Management Conference (see General Order No. 34), the judge will discuss the ADR options with counsel at that conference. If the parties cannot agree on a process before the end of the Case Management Conference, the judge will select one of the ADR processes offered by the court unless persuaded that no ADR process is likely to deliver benefits to the case sufficient to justify the resources consumed by its use.

III. SCOPE

All civil actions filed in this court on or after July 1, 1993 that are assigned to the following judges and subject to the Case Management Pilot

(General Order No. 34), shall be automatically assigned to the ADR Pilot and governed by this General Order (excluded cases are listed in Appendix A):

Chief Judge Thelton E. Henderson
Judge Marilyn Hall Patel
Judge Fern M. Smith

Judge Vaughn R. Walker
Judge Barbara A. Caulfield

IV. RELATIONSHIP TO OTHER COURT RULES

ADR Pilot cases shall remain subject to this court's Local Rules and General Orders (including General Order No. 34 governing the Case Management Pilot), as well as to individual judges' Standing Orders, but the provisions of this General Order shall supersede any conflicting provisions of any such Rules or Orders.

V. SERVICE OF PERTINENT DOCUMENTS

Upon the filing of a complaint or notice of removal, the Clerk shall give the filing party an Order re Court Procedures indicating whether the case has been assigned to the ADR Pilot and specifying, among other dates, a date and time for an ADR Telephone Conference; a copy of this General Order; a Notice re ADR Multi-Option Pilot; the brochure entitled *Dispute Resolution Procedures in the Northern District of California*; and such other materials as required by the Court. The filing party shall serve these documents on all other parties with the complaint or notice of removal and other papers required to be served.

Any party who, after the filing of the original complaint and before the initial Case Management Conference, causes a new party to be joined in the action, shall promptly serve on that new party a copy of the items described in the preceding paragraph.

A party required under this Order to serve documents on another party shall file proof of service promptly after effecting service.

VI. ADR OPTIONS

All litigants whose cases are assigned to the ADR Pilot are presumptively required to select one of the following court ADR programs in which to participate:

- *Arbitration (non-binding or binding)*
- *Early Neutral Evaluation (ENE)*
- *Mediation*
- *Early Settlement Conference with a Magistrate Judge (subject to availability)*

These programs are described in the brochure *Dispute Resolution Procedures in the Northern District of California*. Arbitration is governed by Local Rule 500, ENE by General Order No. 26 and Mediation by General Order No. 37. The brochure, Rule and General Orders are available in the court clerk's office.

A private ADR procedure (such as arbitration, ENE or mediation) conducted within the time frames set forth in Section VII.D. may be substituted for a court program if the parties so stipulate and the assigned judge approves.

VII. PROCEDURE FOR SELECTING AND PARTICIPATING IN ADR PROCESS

A. Stipulation

As soon as feasible after filing or removal, counsel shall confer to attempt to agree on an ADR process. If counsel agree on an ADR process, they shall file, as soon as feasible, a Stipulation and Order Selecting ADR Process in the form attached as Appendix B to this General Order. The parties also shall specify which information, if any, will be disclosed or discovered before the ADR process begins.

If the parties file a stipulation selecting an ADR procedure before the date set for the ADR Telephone Conference (see ¶ B, below), the Telephone Conference shall not take place. Parties who stipulate to a procedure after the Telephone Conference may do so in their Case Management Statement.

B. ADR Telephone Conference

On the Order re Court Procedures distributed by the clerk upon the filing of the complaint or notice of removal, the clerk shall specify a time and date, 95 to 105 days after filing, for a joint ADR Telephone Conference. During the phone conference, the ADR Director or Deputy Director will discuss with counsel the suitability of the ADR options for their particular case.

The court will notify the parties of the procedures for the ADR Telephone Conference. The attorney expected to be primarily responsible for handling the trial of the matter shall participate in the ADR conference. Clients and their insurance carriers are strongly encouraged to participate as well. Counsel may request an in-person ADR conference at the court in lieu of the telephone conference by calling the ADR Unit at 415/556-3167.

C. Case Management Conference

If the parties do not stipulate to an ADR option before the Case Management Conference, the judge shall discuss with the parties the selection of an option at that Conference. The ADR Director or Deputy Director may consult with the judge before the Case Management Conference and may recommend a specific ADR option for that case.

If the parties agree to a particular ADR option at the Case Management Conference and the judge approves, the judge will issue an order referring the case to that program. If the parties do not agree on an ADR program, and the judge deems it appropriate, he or she will select one of the court ADR programs (either Non-binding Arbitration, ENE, Mediation or an Early Settlement Conference with a Magistrate Judge) and issue an order referring the case to that program.

If the parties persuade the judge that no ADR process is likely to deliver benefits to the case sufficient to justify the resources consumed by its use, the judge will exempt their case from the Pilot.

D. Timing of ADR Process

Unless otherwise ordered, Arbitrations shall be conducted within 135 days after the Case Management Conference and Early Neutral Evaluation or mediation sessions shall be conducted within 90 days after the date for which the first Case Management Conference was initially set.

E. Certification of Completion

The arbitrator(s) shall file an award upon completion of a court-connected arbitration. Upon completion of a court-connected ENE session, mediation session, or a Magistrate Judge Settlement Conference, the neutral or Magistrate Judge shall file a Certification in the form provided by the court certifying that the process was completed. When a private ADR program is substituted for a court process, the parties shall file the Certification.

F. Selection of Neutrals in Court ADR Programs

Parties shall select arbitrators in accordance with LR 500. The ADR Directors will assign ENE evaluators and mediators to cases from the court's rosters of trained neutrals for each of these two programs. While parties may indicate a preference for a particular Magistrate Judge for an Early Settlement Conference, the court will select the Magistrate Judge based on availability.

G. Payment of Neutrals

1. Arbitrators

Arbitrators are paid by the court through funds authorized pursuant to 28 U.S.C. §657. Arbitrators who serve alone are paid \$250 per day of hearing or portion thereof and members of three-arbitrator panels are paid \$150 per day or portion thereof.

2. ENE Evaluators and Mediators

ENE evaluators and mediators shall volunteer their preparation time and the first four hours of their time in ADR sessions. After four hours, the neutral may either (1) continue to volunteer his or her time or (2) give the parties the option of concluding the procedure or paying the neutral for additional time at an hourly rate of \$150. The procedure will continue only if all parties and the neutral agree.

All terms and conditions of payment must be clearly communicated to the parties. The parties may agree to pay the fee in other than equal portions. The parties shall pay the neutral directly. At the conclusion of the ADR process, the neutral shall promptly report to the court the amount of any payment received.

VIII. QUESTIONS ABOUT PILOT

Parties may direct questions about ADR options, the ADR Telephone Conference or the operation of the ADR Pilot to the court's ADR Unit at 415/556-3167. Any request for continuance of the ADR Telephone Conference must be made in the first instance to the ADR Director and not to the assigned judge.

IX. REQUESTS FOR RELIEF

To seek relief from any obligation imposed by this Order or an ADR order, including an extension of the deadline for conducting the ADR session, a party shall submit a letter to the ADR Director, for transmittal to the assigned judge, detailing the considerations that support the request and indicating whether the other party or parties join or object to it. Such letter requests shall be accompanied by a proposed order setting forth the date by which the party shall meet the obligation in question. Such requests will be granted only after a showing of extraordinary circumstances.

X. EVALUATION

Congress has mandated that the court's ADR programs be evaluated. Neutrals, attorneys and clients shall promptly respond to any inquiries or questionnaires from persons authorized by the court to evaluate the programs. Questionnaire responses will be used for research and monitoring purposes only and the sources of specific information will not be disclosed to the assigned judge or in any report.

ADOPTED: July 1, 1993
AMENDED: January 18, 1994

FOR THE COURT



CHIEF JUDGE

APPENDIX A

CATEGORIES OF CASES EXCLUDED FROM PILOT

The following types of cases, based on information set forth on the Civil Cover Sheet, are excluded from this General Order: class actions, multidistrict litigation, transferred cases, cases filed by pro se plaintiffs, cases remanded from appellate court, reinstated and reopened cases,

government debt collection cases, and cases in the following nature of suit categories: Prisoner Petitions (510 - 550) Forfeiture/Penalty (610 - 690), Bankruptcy (422 - 423), Social Security (861 - 865), Contracts (only nos. 150 (Recovery of Overpayment and Enforcement of Judgment), 151 (Medicare Act), Civil Rights (only no. 441 (Voting)), and other Statutes (only nos. 400 (State Reapportionment), 460 (Deportation), 810 (Selective Service), 875 (Customer Challenge 12 USC 3410), 892 (Economic Stabilization Act), 894 (Energy Allocation Act), 895 (Freedom of Information Act) and 900 (Appeal of Fee Determination Under Equal Access to Justice)).

1
2
3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF CALIFORNIA
5

6) CASE NO. CV
7)

7 Plaintiff,)

7) STIPULATION AND ORDER SELECTING
8) ADR PROCESS
9)
10)
11)

8 v.)

10 Defendant.)
11)
_____)

12 **I. ADR PROCESS**

13 The parties hereby stipulate to participate in the ADR process checked
14 below (*select one court-connected or private process*).

15 **Court-connected ADR processes:**

- 16 Arbitration
17 Non-binding
18 Binding
19 Early Neutral Evaluation (ENE)
20 Early Settlement Conference with a Magistrate Judge
21 Mediation

22 **Private ADR process:**

23 Type of Process: _____

24 Name, address and phone number of private provider:

25 _____
26 _____
27 _____
28

1 **II. TIMING FOR ADR PROCESS**

2 **Cases in ENE or Mediation (or similar private process):**

3 The parties shall conduct the ADR session by _____ (no
4 later than 90 days after the date set for the first Case Management
Conference unless otherwise ordered under General Order 36, § VII.D.).

5 **Cases in Arbitration (court-connected or private):**

6 The parties shall conduct the Arbitration by _____ (no later
7 than 135 days after the date set for the first Case Management
8 Conference unless otherwise ordered -- the clerk will send the parties
9 a list of arbitrators for ranking within 10 days after the Case
Management Conference).

10 **III. OTHER STIPULATIONS** (e.g. regarding additional disclosures and/or
11 discovery before the ADR session, issues to be addressed in ADR
session, etc.)

12
13
14
15
16
17
18 Dated:

Dated:

19
20
21 _____
22 Plaintiff

Defendant

23
24 IT IS SO ORDERED.

25
26 Dated:

United States District Judge