

FEDERAL COURT LAUNCHES "PILOT" ADR PROGRAM

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Commencing June 1, 2006, all cases, other than criminal habeas corpus petitions and social security matters, that are filed in the United States District Court for the Western District of PA, and are assigned to Chief Judge Ambrose and Judges Cercone, Hardiman and Schwab, will be subject to mandatory Alternative Dispute Resolution.

HISTORY AND DEVELOPMENT OF THE WESTERN DISTRICT ADR "PILOT" PROGRAM

In January of 2004, District Judges from other jurisdictions met with members of the Bench and Bar from the Western District of PA for the purpose of examining the Court's existing ADR program. Among the topics they discussed were ADR options, likelihood of cooperation, enforcement, selection of neutrals, administration, design, implementation, and fee setting. After considerable discussion, the pilot program was launched.

MISSION STATEMENT

The clear mission of the District Court for the Western District of PA's pilot ADR program is: (1) to preserve and enhance the rule of law; (2) to provide an impartial and accessible forum; (3) to provide a just, timely and economical resolution; and (4) to promote the use of alternative dispute resolution.

In order to implement the above, ADR local rule 1642 was created. This rule requires that the parties - in cases assigned to Judges Ambrose, Cercone, Hardiman and Schwab - discuss and, if possible, stipulate to adopting an ADR method at the F.R.Civ.P. Rule 26(f) "meet and confer" conference.

While participation in some form of ADR is mandatory, the parties are given three alternatives: (1) mediation, (2) an early neutral evaluation, or (3) arbitration. After the ADR process is selected, the parties are directed to select their "neutral" from a list of individuals who have been approved by the Court. Should the parties fail to mutually agree upon the neutral, the Court will choose. The neutral then works with the parties to schedule the ADR within the 60-day time period set by the Court.

DIFFERENCES BETWEEN ADR METHODS

MEDIATION

Mediation is likely to be a popular ADR forum. Mediation employs the services of an “impartial neutral” who - by way of “facilitative negotiation” -works with the parties to fashion their own resolution. The mediator does not necessarily evaluate the merits of the claim; instead, he leads the parties to voluntarily reach a mutually acceptable agreement. While the Court intends that the mediator will preside over the mediation session without any advance knowledge of the claim, the local practice is that the parties submit confidential mediation statements to the neutral in advance of the mediation conference.

EARLY NEUTRAL EVALUATION (ENE)

The “ENE” process, which is also non-adjudicative and non-binding, involves the selection of a neutral who is impartial, yet experienced in the subject matter (e.g. patent law). Under this method of ADR, the parties provide the neutral with written presentations of the claim and the defense. The neutral then meets with the parties in a non-binding evaluation session in an effort to assist the parties in reaching a settlement. During the course of the ENE process, the neutral may ultimately serve as mediator to facilitate any continuing negotiations following the evaluation, and in an effort to encourage the parties to privately reach an acceptable resolution of the dispute.

ARBITRATION

While the arbitration option has been available to parties within the Western District for many years, its non-binding feature has limited its application. Under the new proposal, the parties are encouraged to employ either a single arbitrator or a panel of arbitrators to seek either a non-binding or binding adjudication in the hope that involvement in the process itself will help the parties to consider settlement more seriously, rather than proceed to trial.

The new rules do not prevent or eliminate other forms of ADR, such as the appointment of special Masters, summary bench or summary jury trials, or privately arranged mediations. But, the Court is now presenting a more “user-friendly” path to settlement, beyond “private” ADR.

During the trial period for this new pilot program (through December of 2007), the Court intends to “see how this works,” listen to feedback from the participants, and make adjustments where necessary and appropriate. Finally, although the ADR options are mandatory, the Court accepts the simple fact that some cases must be tried.

SELECTION OF THE “NEUTRAL” AND ORIENTATION

The Western District Court recently solicited applications from attorneys and non-attorneys who are interested in serving as neutrals, arbitrators and mediators. Following the selection and notification process, four-hour long orientation sessions were conducted at the Federal Courthouse. After welcoming the participants, Chief Judge Donetta Ambrose expressed her great satisfaction with the new electronic case filing system and its many benefits, and her surprise at the cooperation they have received from the Bar during the transition. She acknowledged the importance of the role of trial judges in the federal court system, but noted that fewer and fewer cases are being tried.

Clearly, the goal of the Federal Court is to create a more efficient system, obtain settlements of those cases that should be settled in a uniform fashion, and allow more time for those cases that must be tried. The message at the orientation was loud and clear - the four Judges participating in the pilot program want it to be a success, and invite the participants to provide critical input and suggestions over the course of the next 18 months.

FINDING A "NEUTRAL"

Beginning on June 1, 2006, you will be able to peruse the complete list of approved neutrals by name, subject matter, appointment, and fees. (Yes, you can "shop.") In essence, each neutral advertises his or her particular expertise, qualifications, rates, and availability. For example, should you need a "next day" mediator, punch in the date you want and choose. For those of you who are skeptical, consult the interactive web site at www.pawd.uscourts.gov.

TRACKING THE SYSTEM

For those of you who think that the filing of a stipulation, a motion to extend, or a motion to dismiss will buy you more time, think twice. The Court intends to ignore those pleadings that typically delay the proceedings, and will direct the parties to proceed nonetheless. As court administrators who were present at the orientation noted, three-quarters of initial motions are denied, or are otherwise not dispositive. Accordingly, a new rule directs the parties to designate their ADR selection, despite the fact that a motion may be pending.

In addition, the Court will be paying close attention to the results of the pilot program in an effort to measure its success or failure. The Court will be compiling statistics on the number of settled cases, and on whether the ADR selections are proceeding in a timely fashion. The success rate for a neutral will be tracked, as well as the number of cases conducted and/or settled within the timeframe established by the rule.

Mandatory ADR has finally arrived in the federal court system - the rules and procedures are in place and the neutrals have been appointed and oriented. Are *you* prepared for an ENE, mediation or arbitration? If not, there are a number of publications, CLE seminars, and mediation training sessions designed to ease your mind. Consider attending a local ADR Committee meeting. It couldn't hurt since, sooner rather than later, ADR will be mandated in the county court system as well.