United States District Court
DISTRICT OF MINNESOTA

LR 16.5 ALTERNATIVE DISPUTE RESOLUTION AND MEDIATED SETTLEMENT CONFERENCE

(a) Alternative Dispute Resolution.

(1) Purpose. The court has devised and implemented an alternative dispute resolution program to encourage and promote the use of alternative dispute resolution in this district.

(2) Authorization. The court authorizes the use of alternative dispute resolution processes in all civil actions, including adversary proceedings in bankruptcy, except that the use of arbitration is authorized only as provided in 28 U.S.C. § 654.

(3) Administrator. The court will designate by administrative order the administrator of the court's alternative dispute resolution program.

(4) Neutrals. The full-time magistrate judges constitute the panel of neutrals made available for use by the parties. The disqualification of a magistrate judge from serving as a neutral is governed by 28 U.S.C. § 455.

(b) Mediated Settlement Conference. Before trial — except in a proceeding listed in Fed. R. Civ. P. 26(a)(1)(B) or where the parties have participated in a private mediation — the court must schedule a mediated settlement conference before a magistrate judge. The court, at a party's request or on its own, may require additional mediated settlement conferences. Each party's trial counsel, as well as a party representative having full settlement authority, must attend each mediated settlement conference. If insurance coverage may be applicable, an insurer's representative having full settlement authority must also attend.

(c) Other Dispute Resolution Processes.

(1) The court may order the parties, trial counsel, and other persons whose participation the court deems necessary, to participate in any or all of the following alternative dispute resolution processes: mediation, early neutral evaluation, and, if the parties have consented, arbitration.

(2) The court may offer the parties the opportunity to participate in other alternative dispute resolution processes, including mini-trials and summary trials.

(3) The court may order the parties to pay, and may allocate among them, the reasonable costs and expenses associated with the processes set forth in subparagraphs (1) and (2), but the court must not allocate any such costs or expenses to a party who is proceeding in forma pauperis as authorized by 28 U.S.C. § 1915.

(d) Confidentiality of Dispute Resolution Communications.

(1) Definitions.

(A) A "confidential dispute resolution communication" is a communication that (i) relates to a settlement proposal or to a party's considerations regarding settlement and (ii) is made by a participant to a different participant during or in connection with a court-ordered alternative dispute resolution process.

(B) A "participant" is anyone that participates in a court-ordered alternative dispute resolution process, including a magistrate judge or other neutral. A party and its representatives are a single "participant" for purposes of subparagraph (A).

(2) Nondisclosure. A confidential dispute resolution communication must not be disclosed outside the alternative dispute resolution process in which it was made unless the court authorizes, or the parties agree to, the communication's disclosure.

(A) A party may file a letter seeking authorization to disclose a confidential dispute resolution communication, but the letter must not include the content of the communication at issue, even if the letter is filed under seal. This rule authorizes a party to file such a letter by ECF.

(B) This rule does not prohibit the parties from entering into an agreement that establishes greater or lesser restrictions on the disclosure of confidential dispute resolution communications.

(C) This rule does not address whether the terms of a settlement, once final, will be confidential.

(D) This rule does not prohibit a party from disclosing information known or learned outside the alternative dispute resolution process.

[Adopted effective November 1, 1996; amended January 3, 2000; amended July 23, 2012; amended May 14, 2014; amended March 19, 2021]

2021 Advisory Committee's Note to LR 16.5

Local Rule 16.5(b) has been amended to provide that a mediated settlement conference before a magistrate judge is not required, absent an order of the court, where the parties have participated in a private mediation.

Local Rule 16.5(c) has been condensed and simplified to better reflect the court's practice. It has also been revised to avoid suggesting — as previous LR 16.5(c)(1) arguably, but erroneously, did — that a magistrate judge could preside over an arbitration.

Local Rule 16.5(d) has been amended to establish a default rule of confidentiality for virtually all communications made in connection with a settlement conference or court-ordered alternative dispute resolution process. The previous version of LR 16.5(d) required a party to "expressly identif[y]" the communications that it wished to keep confidential. The default rule of confidentiality in the amended rule will be more workable for both the court and practitioners. By virtue of the definitions in LR 16.5(d)(1), the only communications that fall outside of the default rule of confidentiality are those that are made exclusively among a party and its representatives, provided they do not implicate inter-party communications.

In light of the new default rule of confidentiality, LR 16.5(d)(2) now provides a mechanism for the parties to seek, by means of a letter, court authorization to disclose a confidential dispute resolution communication. Of course, if the parties agree to disclosure, no court authorization is required.

Local Rule 16.5(d) does not prohibit parties from entering into their own agreement regarding restrictions on the disclosure of confidential dispute resolution communications. It also does not address the confidentiality of communications in connection with alternative dispute resolution processes that were not ordered by the Court.

In addition, certain stylistic changes have been made to better align with the court's style guidelines.

2014 Advisory Committee's Note to LR 16.5

Local Rule 16.5(a)(3) has been amended to provide that the court will designate an administrator of the court's alternative dispute resolution program by administrative order, rather by local rule.

2012 Advisory Committee's Note to LR 16.5

The language of LR 16.5 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

The title and structure of LR 16.5 have been amended to emphasize the importance of the required mediated settlement conference and to specify, as envisioned by 28 U.S.C. § 652(b), that such a conference is not required in certain actions (namely, proceedings listed in Fed. R. Civ. P. 26(a)(1)(B)). Former LR 16.5(a)(2) required that a mediated settlement conference be held "[w]ithin 45 days prior to trial." This time limit has been eliminated as unnecessary in revised LR 16.5(b), which relates to mediated settlement conferences. Other subsections of LR 16.5 have been revised to more closely conform their language to the language of the governing statute, the Alternative Dispute Resolution Act of 1998, 28 U.S.C §§ 651-658. Arbitration as an alternative dispute resolution process is governed by 28 U.S.C. §§ 654-658.

1999 Advisory Committee's Note to LR 16.5

The Alternative Dispute Resolution Act of 1998 requires that every district authorize the use of Alternative Dispute Resolution processes in all civil actions, (Title 28 United States Code, Section 651(b))and to provide litigants in all civil cases with at least one alternative dispute resolution process (Title 28 United States Code, Section 652(a)). By this Local Rule 16.5(a)(1) the Court complies with the requirement of the Act that it authorize the use of Alternative Dispute Resolution processes. To comply

with the requirement of Section 652(a) of Title 28 United States Code, (the Alternative Dispute Resolution Act of 1998), that the court provide litigants in all civil cases with at least one alternative dispute resolution process, Local Rule 16.5(a)(2) requires that a settlement conference be held in every civil case, not exempted by the Rule. The Judges of the District Court have concluded that a mediated settlement conference presided over by a magistrate judge is the one alternative dispute resolution process it will provide to litigants in all civil cases.

Parties are of course free to agree upon the use of other alternative dispute resolution processes, and Local Rule 16.5(b) authorizes the court to order any other alternative dispute resolution process which it deems necessary. Because the voluntary selection by the parties of alternative dispute resolution processes as well as court-ordered alternative dispute resolution processes depart from the "panel of neutrals" made available by LR 16.5(a)(3), the Court is not establishing by this Rule the "amount of compensation" (See 28 U.S.C. § 658) to be received by such persons, allowing that compensation to be freely negotiated, as in longstanding practice, by the parties.

The Alternative Dispute Resolution Act of 1998 also requires that the Court adopt appropriate processes for making neutrals available for use by the parties, and authorizes the use of Magistrate Judges for this purpose. (See Title 28 United States Code, Section 653) By this Rule, the Court expressly designates the full time Magistrate Judges of the District to be the panel of neutrals contemplated by the Act, and expressly makes them available to the parties for the purpose of conducting mediated settlement conferences in every civil case not otherwise exempted by local rule. The Act further requires that the court adopt rules for the disqualification of neutrals. To comply with this provision of the Act, the Court expressly incorporates by reference the provisions of Title 28 United States Code, Section 455.

The Act further requires that the court adopt rules to provide for the confidentiality of the alternative dispute resolution process and to prohibit disclosure of confidential dispute resolution communications. See Tile 28 United States Code Section 652(d). By Local Rule 16.5(c) the Court complies with this requirement of the Act.

1996 Advisory Committee's Note to LR 16.5

In 1986, the Federal Practice Committee in the District of Minnesota recommended that the Court not adopt a formal ADR program. In 1993, the Civil Justice Reform Act Advisory Group also recommended that the Court not impose mandatory ADR. The Advisory Committee, like the CJRA Group, supports the use of selective ADR mechanisms on a case by case basis as determined by the individual Judge or Magistrate Judge. This Rule recognizes the Court's authority to require the parties to pay reasonable costs associated with ADR, but expressly exempts from this requirement parties who are proceeding in forma pauperis.

Regarding settlement conferences, see 28 U.S.C. 473(b)(5), which provides "a requirement that, upon notice by the Court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference."