

**RULE 38 ALTERNATIVE DISPUTE RESOLUTION**

**38.1 ESTABLISHMENT OF LOCAL RULE**

(1) Pursuant to Supreme Court Rule 17, the Court adopts the following Alternative Dispute Resolution (A.D.R.) local rule. The purpose of this local rule shall be to foster timely, economical, fair and voluntary settlement of lawsuits without delaying or interfering with a party's right to resolve a lawsuit by trial. This rule shall apply to civil actions, heard on the record, pending in a non-family court division, upon the agreement of the parties or upon an order of the Court.

(2) A.D.R. programs shall include arbitration, early neutral evaluation, mediation, mini-trial, and summary jury trial, all as defined by Supreme Court Rule 17.01, and any other A.D.R. procedures approved by the Court. A.D.R. shall be non-binding unless the parties enter into a written agreement to the contrary.

(3) Nothing herein shall preclude the parties from agreeing to participate in an A.D.R. program independent of this Rule, provided that the Court is aware of and agrees to the proposed A.D.R. program.

**38.2 NOTICE OF ALTERNATIVE DISPUTE RESOLUTION SERVICES**

(1) In all civil actions to which this rule applies, a Notice of the availability of A.D.R. shall be furnished to all parties. The Circuit Clerk shall provide the Notice to the party or parties initiating the action at the time the action is filed. The opposing party or parties shall be provided the Notice along with the summons and petition.

(2) The Notice shall advise the parties of the availability and purposes of A.D.R. and shall inform the parties that the names of neutrals qualified under this rule and a description of their background and fees may be obtained from the Clerk.

(3) Upon receipt of the A.D.R. Form contained in the Notice, and at any other time, counsel shall discuss A.D.R. with their

clients.

### **38.3 REFERRAL TO ALTERNATIVE DISPUTE RESOLUTION**

(1) If all parties agree to utilize an A.D.R. procedure, the Court may enter an Order of Referral to A.D.R. Absent such agreement by the parties, the Court may determine, on its own initiative or on motion of a party, whether or not the case is appropriate for A.D.R. If the Court determines A.D.R. is appropriate, it shall so indicate on the Order of Referral. When the Court orders the parties to participate in an A.D.R. program, the parties shall proceed accordingly and shall report the outcome thereof, but not the specific results, to the Court, as provided by Supreme Court Rule 17. The results shall be reported on a form, within 90 days of the Order, or within ten days of the conclusion of the process, whichever is sooner, unless another time is set by the Court. The Court may determine the A.D.R. program. Discovery shall not be delayed during the pendency of the A.D.R. process unless ordered by the Court upon motion of a party.

(2) If, after conferring with all other parties, a party concludes that A.D.R. has no reasonable chance of being productive, the Court shall be so advised in writing. This "opt out" notification shall be made within 30 days of the Order of Referral. The cause shall not thereafter be referred by the Court to A.D.R., absent compelling circumstances which shall be set out by the Court in a subsequent Order of Referral.

(3) The results of the A.D.R. process shall not be binding upon the parties unless the parties agree.

(4) Settlement shall be by a written document setting out the essential terms of the agreement and executed after termination of the A.D.R. process.

#### **38.4 SELECTION OF NEUTRALS**

Within ten days of the Order of Referral, the parties shall jointly select a neutral available and willing to serve from a list of qualified persons provided by the Court. Such list shall be compiled by the Circuit Clerk from applications of individuals qualified and willing to serve. In the event the parties cannot agree upon the neutral to be selected, the Court shall make the selection. The parties may, at any time, agree upon any other neutral, whether or not the neutral is on a Court maintained list, provided the neutral is qualified under Supreme Court Rule 17.04.

#### **38.5 ATTENDANCE**

Unless the Court orders otherwise, all parties (or their representatives with authority to resolve the case, including insurance carriers) shall attend the A.D.R. meeting set by the neutral.

#### **38.6 CONFIDENTIALITY**

The proceeding shall be private, confidential, and regarded as settlement negotiations as provided in Supreme Court Rules 17.05 and 17.06. No stenographic, electronic or other record of an A.D.R. process shall be made.

#### **38.7 COMPENSATION**

The mediator, arbitrator or other neutral shall receive such compensation as the parties and the person selected agree. The fee, unless otherwise agreed by the parties, shall be borne equally by the parties, and shall be paid directly to the person selected. The Court shall have the right to review the reasonableness of the fee charged by the neutral.

### **38.8 LIST OF NEUTRALS**

The Circuit Clerk shall maintain and make available to counsel, parties and the public the list of qualified neutrals compiled by the Clerk under this rule. The list shall include the neutral's training, experience, qualifications and other information deemed appropriate. Neutrals shall be trained as provided in Supreme Court Rule 17.04. The Court en banc may remove any name from the list in its sole discretion, with or without cause. Neutrals shall advise the Clerk of any material change regarding their listing.

### **38.9 DISQUALIFICATION AND WITHDRAWAL OF NEUTRALS**

No person shall serve as a neutral in a proceeding in which the neutral is interested, prejudiced, related to a party, has been counsel to a party in the cause, or under any other circumstances which reasonably call into question the neutral's impartiality. A neutral may withdraw for any reason deemed appropriate by the neutral.