District Local Rule Civ 16.4 (Civil)

(a) Purpose and Scope.

1) Purpose. Pursuant to the findings and directives of Congress in 28 U.S.C. § 651 et seq., the primary purpose of this local rule is to provide parties to civil cases and proceedings in bankruptcy in this district with an opportunity to use Alternative Dispute Resolution (ADR) procedures. This rule is intended to improve parties' access to the dispute resolution process that best serves their needs and fits their circumstances, to reduce the financial and emotional burdens of litigation, and to enhance the Courts' ability to timely provide traditional litigation services. Through this rule, the Courts authorize the use of judicial settlement conference, mediation and arbitration.

2) Scope.

(A) Cases Pending Before a District Judge or Magistrate Judge. This local rule applies to all civil cases pending before any district judge or magistrate judge in this district.

(B) Proceedings Pending Before a Bankruptcy Judge. Under 28 U.S.C. § 651 et seq., and the Courts' inherent authority, proceedings pending before any bankruptcy judge in this district also may be afforded an opportunity to participate in judicial settlement conference, mediation and arbitration.

3) Authority of the Courts. The referral of a civil action and bankruptcy adversary proceeding to judicial settlement conference, mediation or arbitration does not divest the Court of the authority to exercise management and control of the case during such proceedings.

(b) ADR Procedures and Rules.

1) Matters subject to ADR. All civil cases are eligible for referral to ADR under this subsection. At the Rule 16 Scheduling Conference, or at any other time determined by the presiding judge, any civil case may be referred to ADR. Bankruptcy adversary proceedings and contested cases may be referred to ADR at the discretion of the bankruptcy judge.

2) Judicial Settlement Conference.

(A) Definition. A judicial settlement conference is a process in which a settlement conference judge, (magistrate judge or other judge designated by the presiding judge) is made available to facilitate communication between the parties and assist them in their negotiations, e.g., by clarifying underlying interests, as they attempt to reach an agreed settlement of their dispute. Whether a settlement results from a judicial settlement conference and the nature and extent of the settlement are within the sole control of the parties.

(B) Initiation of a Judicial Settlement Conference. At any time after an action or proceeding is commenced, any party may request, or the presiding judge on his or her own initiative may order, a judicial settlement conference. As a general rule, the presiding judge assigned to the matter will not conduct the judicial settlement conference.

(C) Procedure for Judicial Settlement Conference. After the initiation of the judicial settlement conference process, the settlement conference judge will issue an order governing the process and procedure utilized by that judge for the settlement conference.

(D) Attendance at a Judicial Settlement Conference. All parties and their counsel must participate in the settlement conference process fully, reasonably, and in good faith. The attorney(s) who will be primarily responsible for handling the actual trial of the matter, all parties, and insurers, if applicable, with authority to settle, must attend the session(s), unless otherwise excused by the settlement conference judge upon a showing of good cause.

(E) Report of Settlement Conference Judge. At the conclusion of a judicial settlement conference, a docket entry order in the docket will reflect only whether settlement was or was not achieved, unless the parties specifically agree otherwise.

(F) Confidentiality. None of the matters or information discussed during the settlement

conference will be communicated to the presiding judge assigned to the matter, unless all parties expressly stipulate to such communications.

3) Mediation.

(A) Definition. Mediation is a process by which a neutral third party (the "mediator") appointed by the Court or agreed to by the parties to assist the parties in an attempt to reach a mutually acceptable agreement. The role of the mediator is to aid the parties in identifying the issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, generating options and finding points of agreement. Whether a settlement results from a mediation and the nature and extent of the settlement are within the sole control of the parties.

(B) Matters Subject to Mediation. All civil cases are eligible for referral to mediation under this subsection. Except for good cause shown, at the Rule 16 Scheduling Conference, all civil cases will be referred to mediation except the following: (1) student loan recovery; (2) Medicare; (3) forfeiture; (4) bankruptcy appeals; (5) federal tax suits; (6) Federal Tort Claims Act cases in excess of $1 million; and (7) cases involving temporary restraining orders, preliminary injunctions, or other actions involving extraordinary injunctive relief. Bankruptcy adversary and contested cases will be referred to mediation at the discretion of the bankruptcy judges.

(C) Initiation of a Mediation. At any time after an action or proceeding is at issue, any party may request, or the presiding judge on his or her own initiative may order, mediation. None of the matters or information discussed during the mediation will be communicated to any judge assigned to the matter, unless all parties expressly stipulate to such communications.

(D) Selection of a Mediator. The parties may either select from the roster of approved mediators found on the Courts' website or select someone not on the Courts' roster through mutual agreement. The parties may contact the Courts' ADR Administrator for facilitation of selection of a mediator from the Courts' roster.

(E) Procedures of Mediation. Once selected or appointed, the mediator will determine the place of the mediation session, the materials to be submitted in advance of the mediation or at the time of the mediation, who must attend the mediation session for the parties, and how the mediation session will be conducted. However, mediators will have no authority to order parties or counsel to take any action outside the mediation session, to compel parties to produce information, or, except as allowed by these rules, to rule on disputed matters. Mediators will be subject to sanctions, including removal from the Courts' roster of mediators, if the mediator fails to assume the responsibilities provided herein.

(F) Attendance at the Mediation Session(s). All parties and their counsel must participate in the mediation process fully, reasonably, and in good faith. The attorney(s) who will be primarily responsible for handling the actual trial of the matter, and all parties, and insurers, if applicable, with authority to settle, must attend the session(s), unless otherwise excused by the mediator upon showing of good cause.

(G) Report of Mediator. Within seven (7) days following the last mediation session, the mediator will file a report with the Courts' ADR Administrator, with a copy to the parties, indicating when mediation occurred and whether the case has, in whole or in part, settled. The mediator must not report any of the substantive matters discussed during the mediation unless the parties specifically agree otherwise. Following this report, a docket entry order in the docket will reflect only whether settlement was or was no achieved, unless the parties specifically agree otherwise.

(H) Confidentiality. The mediator must abide by the confidentiality rules agreed to by the parties. Confidentiality protections of F.R.E. 408 will extend to mediations under this Rule.

(I) Impartiality. The mediator has a duty to be impartial, and has a continuing duty to advise all parties of any circumstances bearing on possible bias, prejudice or partiality.

(J) Compensation to Mediators. Mediators will be compensated at their regular fees and expenses, which will be clearly set forth in the information and materials provided to the

parties by the mediator. Unless other arrangements are made among the parties or ordered by the Court, the interested parties will be responsible for a pro rata share of the mediator's fees and expenses. If a mediator is not paid, the Court, upon motion of the mediator, may order payment.

4) Arbitration.

(A) Definition. Arbitration is a process whereby an impartial third party (the "arbitrator") is hired or retained by the parties to hear and consider the evidence and testimony of the disputants and others with relevant knowledge and issues a decision on the merits of the dispute. The arbitrator makes an award on the issue(s) presented for decision. The arbitrator's award is binding or non-binding as the parties may agree in writing.

(B) Cases Eligible for Arbitration. No civil action, or proceeding in bankruptcy, will be referred to arbitration as the parties' ADR method, except upon written consent of all parties. Additionally, no matter will be referred to arbitration if the Court finds that:

(i) The action is based upon an alleged violation of a right secured by the Constitution of the United States;

(ii) Jurisdiction is based in whole or in part on 28 U.S.C. § 1343;

(iii) The relief sought includes money damages in an amount greater than $150,000.00; or

(iv) The objectives of arbitration would not be realized for any other reason.

(C) Initiation of an Arbitration. At any time after an action or proceeding is at issue, any party may request an arbitration. All parties must consent in a writing, signed by all parties and their counsel, before an arbitration will be ordered by the judge assigned to the matter.

(D) Selection of an Arbitrator. The parties may select an arbitrator with consent of the presiding judge.

(E) Procedure for Arbitration. After the initiation of arbitration, the arbitrator will issue to the parties a document setting forth the process and procedure utilized and to be followed.

(F) Award. At the conclusion of an arbitration, the arbitrator will issue to the parties a written award. The arbitrator's award is binding or non-binding as the parties may agree in writing.

(c) Selection of ADR Procedure.

1) Mandated Early ADR Selection Process.

(A) The Parties' Duty to Consider ADR, and Confer. No later than five (5) days prior to the Rule 16 scheduling conference, unless otherwise ordered, in every case to which this rule applies, the parties must meet and confer about (i) whether they might benefit from participating in some ADR process; (ii) which type of ADR process is best suited to the specific circumstances in their case; and (iii) when the most appropriate time would be for the ADR session to be held.

(B) Designation of Process. After considering the parties' submissions, the Court may order the parties, on appropriate terms and in conformity with this rule, to participate in ADR. The Court may refer the case to judicial settlement conference, mediation, arbitration or, with written consent of all parties, to an ADR procedure which, by stipulation of all parties, has been tailored to meet the specific needs of the parties and the case.

2) Referral to ADR during Pretrial Period. Notwithstanding the provisions of paragraph (c)(1) above regarding the early selection process, at any time before entry of final judgment, the Court may, on its own motion or at the request of any party, order the parties to participate in a judicial settlement conference or mediation or, with the written consent of all parties, arbitration. Presiding judges will take appropriate steps to assure that no referral to ADR results in an imposition on any party of an unfair or unreasonable economic burden.

3) Right to Secure ADR Services Outside the Programs Sponsored by the Court. Nothing in this

rule precludes the parties from agreeing to seek ADR services outside the Courts' program. To the extent resources permit and consistent with this rule, parties remain free to use any form of ADR and any neutral they choose.

(d) ADR Administration.

1) ADR Administrator. The ADR Administrator is responsible for implementing, administering, overseeing and evaluating, along with the Board of Judges, the ADR program and procedures covered by this local rule. The ADR Administrator may be contacted through the Courts' website, www.id.uscourts.gov, or as follows:

U.S. District Court ADR Administrator
550 West Fort St. #400
Boise, ID 83724
(208) 334-9067 (telephone)
(208) 334-9202 (facsimile)

2) ADR Resources. The ADR Administrator maintains the information regarding the ADR process and procedures set forth in this rule.

3) Roster of Approved Mediators.

(A) Maintenance of Roster. The ADR Administrator is responsible for maintaining the roster of approved mediators found on the Courts' website, which is updated at least annually by the ADR Administrator. The roster contains the following information about each mediator: (a) name, address, telephone and fax number(s) and email, (b) professional affiliation(s), (c) education; and (d) legal and/or mediation training and experience. A mediator may be removed from the roster either at the mediator's request or by Court order. If removed from the mediation roster by Court order, the person will not be returned to the roster absent a Court order obtained upon motion and affidavit sufficiently explaining the circumstances of such removal and reasons justifying the return of the person to the mediation roster.

(B) Eligibility for Inclusion.

(i) To be eligible for inclusion on the roster of approved Mediators found on the Courts' website, an attorney: (a) must have been admitted to practice for not less than five (5) years or possess a particular expertise, training, or background in mediation; (b) must be a member of the bar of this Court or a retired or non-practicing attorney or judge; and, (c) must have attended a minimum of forty (40) hours core mediator knowledge and skills training, including role-play simulations of mediated disputes.Such training must have included such competencies as information gathering, effective communication, ethical concerns, the role of a mediator as a neutral third party, control of the mediation process, and problem analysis.The training required by this section will be acquired by completing programs approved by an accredited college or university or by one of the following organizations: Idaho State Bar, Idaho Mediation Association, Society of Professionals in Dispute Resolution, American College of Civil Trial Mediators, Northwest Institute for Dispute Resolution, Institute for Conflict Management, the National Academy of Distinguished Neutrals or any mediation training provided by the federal courts.Any program that does not meet this criteria may be submitted for approval either prior to or after completion.

(ii) In order for a person to remain on the roster of approved Mediators found on the courts' website for the District of Idaho, the Mediator must submit proof that the Mediator has completed a minimum of five (5) hours of additional training or education during the preceding three (3) calendar years on one of the following topics: mediation, conflict management, negotiation, interpersonal communication, conciliation, dispute resolution or facilitation.

RELATED AUTHORITY
28 U.S.C. § 651 through 658
Fed. R. Evid. 408;
Fed R. Civ. P. 16(c)(2)(I)