

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA**

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**ORDER ADOPTING ALTERNATIVE DISPUTE RESOLUTION PLAN**

The Court hereby adopts the attached Alternative Dispute Resolution Plan (the "Plan") and directs the Clerk as follows:

1. The Clerk shall place a notice in appropriate legal publications announcing that individual judges of this Court may order civil disputes to mediation under the Alternative Dispute Resolution Plan and that qualified neutrals will be selected by the Court for the Federal Panel of Neutrals. The notice shall specify that copies of the Plan will be available from the Clerk's office.

2. The notice shall request persons with appropriate qualifications to submit a completed application, similar to the attached form, to the Clerk's office within thirty (30) days of publication of the notice.

3. The notice shall solicit persons with the following minimum qualifications for consideration by the Court for selection to the Panel: (1) a member of the Alabama Bar- and this court, in good standing, with at least 7 years experience in the active practice of law and in which at least 50% of that experience is in litigation; or (b) extensive documented experience as a neutral who has successfully mediated cases; or (c) a former judge from an Alabama trial court; or (d) a former district, magistrate or bankruptcy judge from any federal court sitting in Alabama. All persons who meet the minimum qualifications set forth above must also document completion of training as a neutral or mediator by a recognized group specializing in alternative dispute resolution, such as the American Arbitration Association, which requires training in ethical issues. A law degree is not necessarily required for selection to the Panel, but is highly recommended. The Court will select, in its sole discretion, those persons to be named to the Panel from the applications submitted.

4. The Clerk is further directed to create a system for monitoring the success or failure of cases referred to mediation, including but not limited to, the time from filing to settlement or trial, the mediator involved and any other item relevant to evaluate the merits of the program.

DONE, this the 8<sup>th</sup> day of February, 1995.

**CHARLES R. BUTLER, JR.  
CHIEF UNITED STATES DISTRICT JUDGE**

**ALEX T. HOWARD, JR.**  
**UNITED STATES DISTRICT JUDGE**

**RICHARD W. VOLLMER, JR.**  
**UNITED STATES DISTRICT JUDGE**

**W. B. HAND**  
**SENIOR UNITED STATES DISTRICT JUDGE**

**VIRGIL PITTMAN**  
**SENIOR UNITED STATES DISTRICT JUDGE**

**DANIEL H. THOMAS**  
**SENIOR UNITED STATES DISTRICT JUDGE**

U.S. DISTRICT COURT  
SOU. DISTRICT OF ALABAMA  
FILED THIS THE  
8TH DAY OF FEBRUARY  
ENTRY NO. 3954  
DEBORAH S. HUNT, CLERK  
BY: BETTY J. TURNER, DEPUTY CLERK

**ALTERNATIVE DISPUTE RESOLUTION PLAN  
UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF ALABAMA**

**I. INTRODUCTION**

The disposition rate for civil cases in the Southern District of Alabama has consistently been very favorable. Implementation of an alternative dispute resolution (ADR) plan in this district for civil cases, however, offers several potential advantages for the Court system, attorneys, and litigants. The variety of mechanisms available through ADR presents opportunities for resolving some disputes more quickly than traditional litigation. As a result, ADR can reduce the expense to litigants. By using ADR in the early stages of a case, substantial savings in discovery and other costs may result in the event of settlement.

Development of this ADR Plan was, guided by several principles: the potential for early intervention and evaluation by the Court; flexibility; the existence and success of Court-ordered mediation by several judges in some state Courts; and the desire to allow litigants to select a mediator if possible. This Plan operates from the premise that individual judges will maintain flexibility in deciding to exclude some cases from ADR or deciding not to select any cases to participate in ADR. If cases are selected for ADR, then the Plan first permits the parties to choose a neutral. The Court selects a neutral only in the event the parties cannot or fail to agree within the applicable deadline.

Though the Plan explicitly provides procedures for mediation, parties should not be discouraged from selecting other forms of ADR. It is the intent of this Plan to encourage the use of all forms of ADR by granting the parties discretion to employ any number of ADR processes available through private means, so long as procedures agreed upon by the parties and approved by the Court are utilized. The ADR Plan is in addition to the right of the parties to request a settlement conference with the Court.

**II. PANEL OF NEUTRALS**

The Court will establish a Federal Court Panel of Neutrals (Panel) from which the parties may select a neutral or from which the Court shall select a neutral in the event the parties cannot agree. The Panel will be comprised of persons who, based on their training or experience, are deemed to possess the qualities necessary for performance as neutrals. The Clerk of Court will receive applications from persons interested in being included on the Panel. This person will compile the list of names or persons deemed by the judges to be qualified to serve on the Panel. Any person placed on the Panel may be removed at the discretion of the Court. There is no maximum limit to the number of people who may be included on the Panel. Any person becoming a member of the Panel or otherwise mediating a case subject to this Plan agrees to be bound by the provisions of this Plan, and the then existing Standards of Conduct for Mediators of the American Arbitration Association (to the extent not inconsistent with this Plan or order of this Court).

It is anticipated that there will be cases for which Mediation would be appropriate but in which the parties are unable to afford the additional cost of ADR. Each person serving on the Panel therefore will be required if requested, to serve as neutral, without remuneration, in at least one case annually. Each person applying for inclusion on the Panel will indicate on the application form the number of hours he or she is willing to serve annually on an uncompensated basis.

### **III. REFERRAL OF CASES TO ADR**

#### **A. Exclusion of Categories of Cases**

Each judge may decide to exclude certain cases from consideration for referral to ADR.

#### **B. Evaluation of Cases for Potential Use of ADR**

Each judge is encouraged to evaluate whether a case will benefit from a form of ADR. Each judge is encouraged to make this determination at the time of the scheduling conference under Rule 16 (b). Though such a determination might also be made later at the final pretrial conference under Rule 16 (d), such an evaluation at that time might result in the delay of the trial. As a result, it is anticipated that if a case is not mediated shortly after the initial scheduling conference, then all notices, selection of mediators, and actual mediation will be scheduled to accomplish mediation within thirty (30) days following expiration of the discovery deadline. In this manner the trial will not be delayed by mediation unless the individual judge decides to do so.

After consulting with the parties, the Court will decide whether ADR could be employed in the dispute. This evaluation may reveal that the case may be ripe for mediation immediately or after only limited discovery is conducted by one or other parties. In this event, the Court may enter an appropriate order to facilitate this discovery and provide for mediation following this discovery. On the other hand, the parties might agree to another form of ADR at this time and request that the Court facilitate their agreement through appropriate scheduling or other means.

### **IV. ADR PROCESS**

#### **A. Mediation**

In the event the parties do not request and agree on any other form of ADR, the Court may order mediation of any case it believes will benefit from these procedures.

In mediation, litigants meet with a neutral mediator for in-depth settlement discussions. The mediator may be appointed by the Court or selected by the litigants. He or she may be expert in the subject area of the dispute, but this is not a requirement. The mediator facilitates discussions among litigants to assist them in identifying the underlying issues and in developing a creative and responsive settlement package. The mediator does not, however, make findings of fact, make recommendations to the Court of how to decide issues in the case, or render a decision on the merits of the case.

The purposes of mediation are to increase the chances of settlement, help the litigants devise better settlements, and improve relationships among the litigants.

1. **Eligible Cases.** Any civil case not specifically excluded by the judge to which the case is assigned may be referred to mediation.
2. **Selection of Cases.** A case may be selected for mediation:
  - a. by the Court on its own motion;
  - b. by the Court, on motion of one of the parties; or
  - c. by stipulation of all parties.
3. **Objection to Mediation.** A party may object to the referral to mediation by the Court by filing a written request for reconsideration, for good cause shown, within ten (10) days of the date of the Court's order. Mediation processes will be stayed pending decision on the request for reconsideration, unless otherwise ordered by the Court.
4. **Administrative Procedure .**
  - a. Notice to Parties; Selection of Mediator by Parties. The Court will promptly notify the parties in writing when a case is referred to mediation. The parties will first be given the opportunity to select the mediator of their choice. The mediator selected shall be chosen from the Panel maintained by the Court. If the parties prefer a neutral not a member of the Panel, then that person may mediate the case if he or she signs a written agreement to be bound by the rules of this ADR Plan. The parties must, within ten (10) days of the date of the Court's notice of referral to mediation, notify the Court of the name of the person selected by the parties to serve as mediator and file the written agreement of the selected mediator.
  - b. Selection of Mediator by Court; Notice to Parties; Setting of Mediation Conference.
    - i. If the parties fail to agree on a mediator within the ten (10) day time period, or fail to notify the Court within the ten (10) day time period, the Court will select a mediator from the Federal Court Panel.
    - ii. The Court will determine the identity of all interested parties to the mediation. The Court will then determine whether any mediator selected by the Court has any potential conflicts of interest. If there is- no conflict, then the Court will give or send written notice to the parties, with a copy to the mediator, advising them of the identity of the mediator selected. The mediator will then contact all of the parties and arrange a mediation conference at a time no more than thirty (30)

days from the date of the Court's notice naming the mediator.

5. **No Stay of Proceedings.** Upon the entry of an order directing mediation, proceedings in the dispute in mediation will not be stayed. Upon motion by any concerned party, the Court may, for good cause shown, stay certain proceedings for such length of time as the Court deems appropriate.
6. **Neutrality of Mediator.** If at any time during the process of mediation the mediator becomes aware of, or a party raises, an issue concerning the mediator's neutrality for any reason, the mediator will disclose the facts relevant to the issue to all of the parties. If a party believes in good faith that the mediator will not be or remain impartial, the party may request that the mediator withdraw. Upon receiving such a request, the mediator will notify the Court immediately. The Court may then appoint another mediator or pursue any other course necessary to facilitate the process. If another neutral is appointed then the Court will select from the Panel of Neutrals, following the procedure outlined above.
7. **Written Submissions to Mediator.**
  - a. Materials to be Submitted: When Due. At least five (5) days before the mediation conference, the parties must submit to the mediator:
    - i. copies of relevant pleadings and motions;
    - ii. a short confidential memorandum stating the legal and factual positions of each party respecting the issues in dispute; and
    - iii. such other materials as the party believes would be beneficial to the mediator.
  - b. Confidentiality. The parties shall be responsible for identifying any documents or communications that they deem confidential which should not be communicated to other parties.
  - c. Preliminary Meeting. Upon reviewing those items, the mediator may, at his or her own discretion or on the request of a party, schedule a preliminary meeting with counsel.
8. **Attendance at Mediation Conference.**

The attorney primarily responsible for each party's case and who is expected to try the case for that party, must personally attend the mediation conference and must be prepared and authorized to discuss all relevant issues, including settlement. The parties must be present. When a party is not an individual or when a party's interests are being

represented by an insurance company, an authorized representative of such party or insurance company, with full authority to settle, must attend.

Failure of a party or necessary representative to attend the mediation conference shall be reported by the mediator to the Court. The Court may then impose appropriate sanctions. Any requested exceptions to this attendance requirement must be timely addressed to the Court.

Mediation sessions will be private. Persons other than the parties and their representatives may attend only with the permission of all parties and with the consent of the mediator.

9. **Time and Place of Mediation.** The mediator will fix the time of each mediation session. The mediation will be held at any location agreeable to the mediator and the parties or as otherwise directed by the Court.

10. **Procedure at Mediation Conference.**

a. Informal Procedure. The mediation conference, and such additional conferences as the mediator deems appropriate, will be informal. The mediator will conduct the process in order to assist the parties in arriving at a settlement of all or some of the issues involved in the case.

b. Private Caucuses; Confidentiality. The mediator may hold separate, private caucuses with any party or counsel. The mediator must not disclose to any other party to the mediation any information disclosed by a party during a caucus which that party indicates to the mediator should be treated as confidential. It will be the responsibility of each party to clearly indicate to the mediator which information is and is not deemed confidential by the party.

c. Witnesses. It is not anticipated that any testimony will be taken during mediation. If necessary, however, and with the consent of the mediator, the parties may produce witnesses to provide the mediator and the parties with additional information about the issues in dispute. The mediator will determine the manner in which witnesses may present information and the rights of other parties to question or cross examine witnesses.

d. Expert Advice. When necessary, the mediator may obtain expert advice concerning technical aspects of the dispute, provided the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice will be made by the mediator or by the parties, as the mediator may determine.

e. Conclusion of the Mediation Process. The mediator will conclude the process when:

- i. a settlement is reached; or
  - ii. the mediator concludes, after that number of conferences he or she deems necessary, that further efforts would not be useful and informs the parties; or
  - iii. one of the parties requests in good faith the mediation be terminated.
- f. Report to the Court. The mediator will report the results of the mediation to the Court, according to the following rules:
- i. if a settlement agreement is reached, a representative of one of the parties will prepare a written summary reflecting the general terms of the settlement agreement until final documents and releases are prepared. The parties and their counsel, if both are present, shall sign this document reflecting their agreement that this document reflects the general understanding reached by the parties through mediation and the agreement that final documents be prepared to formalize this understanding. The mediator will then report to the Court how the case has been resolved. The mediator will also specify whether a consent order, a stipulation of dismissal or other document will be filed and by what date.
  - ii. if a settlement agreement is not reached, the mediator will report that a mediation was held, but that no agreement was reached. Under no circumstances is the mediator to comment on the mediation other than to report the failure to settle or the scheduling of another mediation conference at a later date.

11. **Confidentiality.**

The entire mediation process is confidential and by entering into mediation the parties mutually covenant with one another to preserve confidentiality on the basis established in this Plan. The parties and the mediator may not disclose information regarding the terms of the settlement to the Court or to third persons unless otherwise agreed by the parties. Parties, counsel and mediators may, however, respond to confidential inquiries or surveys by persons authorized by the Court to evaluate the mediation program. Information provided in such inquiries or surveys must remain confidential and not be identified with particular cases.

The mediation process shall be treated as a compromise negotiation for purposes of the Federal Rules of Evidence and State rules of evidence, if applicable. As a result, any information revealed and not otherwise known by the opposing party is inadmissible for any purpose absent a specific ruling of the Court.

The mediator is disqualified as a witness, consultant, attorney, or expert in any pending or future action relating to the dispute, including actions between persons not parties to the mediation process.

12. **No Record.** No record will be made of the mediation proceedings except as provided above.

13. **Expenses, Mediator's Fee, and Deposits.**

a. Expenses. The expenses of a witness for a party will be paid by the party producing the witness. All other expenses of mediation, including necessary travel and other expenses of the mediator, the expenses of any witnesses called by the mediator, and the cost of any evidence or expert advice produced at the direct request of the mediator, will be borne equally by the parties unless otherwise agreed by the parties or directed by the Court.

b. Mediator's Fee. A mediator will be compensated at a reasonable rate, agreed to in writing by the parties, or set by the Court. The mediator's fee will be borne equally by the parties unless otherwise agreed by the parties in writing or directed by the Court. The mediator's fee's or expenses shall not be the subject of negotiation during the mediation process.

c. Payment of Mediation Fees. The parties shall pay their respective share of mediation fees and expenses within thirty (30) days of receipt of the statement from the mediator. As a result, the parties are placed on notice that these fees must be paid and should be provided for before disbursements are made from settlement funds. In the event settlement funds are disbursed to a party before mediation fees are paid, this disbursement shall obligate that attorney to pay that party's respective share of the mediator's fees and expenses. Nothing in this paragraph shall prevent a party from petitioning the Court to review a mediator's statement as unreasonable or as deviating from the original agreement or the ADR Plan. Parties must object within ten (10) days of the receipt of the statement.

b. **Other Forms of ADR**

Parties may employ any form of ADR upon which they mutually agree. Parties are free to utilize a single ADR process or a combination of ADR processes. Such alternate forms of ADR would include, but not be limited to, arbitration, mediation-arbitration, and mini-trials. If requested and agreed upon in writing by all of the parties in an appropriate manner, the Court will make available its resources to facilitate these forms of ADR. Upon the written request and agreement of all parties in an appropriate manner, the Court also may sanction the use of summary jury trials in appropriate cases and upon such conditions as the Court deems necessary and to which the parties agree.



the Court and the Court will designate a mediator. Should either party object to the Court-designated mediator, the objecting party shall submit the objection in writing, stating the grounds therefore, to the Court within five (5) days after notice of the designation of the mediator by the Court.

3. Unless otherwise agreed, the fee of the mediator shall be paid equally by the parties (one-half by the plaintiff(s); one-half by the defendant(s)), and in the manner required by the mediator and by the ADR Plan. In the absence of any other compensation agreement, the mediator's fee shall not exceed the rate of \$150.00 per hour. If any higher fee is charged by the mediator without agreement of the parties, or if the parties find the fee to be otherwise excessive, the parties may petition this Court for relief.

4. The first mediation conference shall be initiated within \_\_\_\_\_ days from the date of this order. The mediator shall set the initial mediation conference with due regard to the schedules or other commitments of the parties and counsel, and may continue or adjourn the mediation conference in the mediator's discretion, so long as the continuance or adjournment of the conference does not adversely interfere with the schedule of this Court.

5. All parties and trial counsel shall attend the mediation conference except as provided by the ADR Plan. Failure of the designated persons to attend the mediation conference absent good cause shown shall result in sanctions.

6. This referral to mediation, does not toll the time for completion of discovery or for any other schedule in this case unless otherwise ordered by this Court.

DONE and ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

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UNITED STATES DISTRICT JUDGE