

**THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

SUPPLEMENT

LOCAL CIVIL RULES

**PLAN FOR ALTERNATIVE DISPUTE RESOLUTION
AND SETTLEMENT PROCEDURES
and
RULES OF PRACTICE**

**Effective: May 1, 1998
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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

**PLAN FOR ALTERNATIVE DISPUTE RESOLUTION
AND SETTLEMENT PROCEDURES
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RULES OF PRACTICE**

[Reference LCvR16.3]

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**PLAN FOR
ALTERNATIVE DISPUTE RESOLUTION AND SETTLEMENT PROCEDURES
AND RULES OF PRACTICE**

TABLE OF CONTENTS

	Page
I. PURPOSE AND RESPONSIBILITIES	
1.1 Purpose	Supp.-1
1.2 Responsibilities	Supp.-2
II. COURT-SPONSORED ALTERNATIVE DISPUTE RESOLUTION	
A. FEDERAL PANELS	
2.1 Court-Appointed Federal Panels	Supp.-3
2.2 Use of Non-Panel Neutrals	Supp.-3
2.3 Qualifications and Training	Supp.-4
2.4 Compensation	Supp.-4
2.5 Oaths of Panel Members	Supp.-5
2.6 Conflicts of Interest	Supp.-5
2.7 Immunity	Supp.-5
2.8 Codes of Ethics/Standards of Conduct	Supp.-6
B. MEDIATION	
3.1 Mediation - Description	Supp.-6
3.2 Referral, Scheduling and Selection of Mediator . . .	Supp.-6
3.3 Attendance and Settlement Authority Requirements . .	Supp.-7
3.4 Written Statements for Submission to Mediator . . .	Supp.-8
3.5 Communications with Mediator	Supp.-8
3.6 The Mediation Session and Authority of Mediator . .	Supp.-8
3.7 Confidentiality	Supp.-9
3.8 Conclusion of Mediation and Report of Mediator . . .	Supp.-10
3.9 Recovery of Mediator Fees as Costs	Supp.-10

C. EARLY NEUTRAL EVALUATION (ENE)

4.1 Early Neutral Evaluation - DescriptionSupp.-10
4.2 Referral, Scheduling and Selecting an Evaluator. . . .Supp.-11
4.3 Attendance and Settlement Authority Requirements . . .Supp.-12
4.4 Written Submissions and Other Preparation
RequirementsSupp.-12
4.5 Communications with the Evaluator Supp.-13
4.6 The ENE Process and Authority of the EvaluatorSupp.-14
4.7 Confidentiality Supp.-15
4.8 Conclusion of the ENE Session Supp.-15
4.9 Recovery of Evaluator Fees as Costs Supp.-15

D. COURT-ANNEXED NON-BINDING ARBITRATION

5.1 Non-binding Mandatory and Consensual pursuant to
28 U.S.C. § 651, et seq. Supp.-16
5.2 Procedures for Referral.Supp.-17
5.3 Selection of Arbitrator(s)Supp.-19
5.4 Scheduling the Arbitration HearingSupp.-20
5.5 Attendance and Settlement Authority Requirements . . Supp.-21
5.6 Arbitration Summary and Submission to Arbitrator(s) . Supp.-22
5.7 Communications with Arbitrator(s) Supp.-22
5.8 The Arbitration Hearing & Authority of Arbitrator(s). Supp.-23
5.9 Arbitration Award and Judgment Supp.-24
5.10 Trial De Novo Supp.-25
5.11 Limitations on Use of Arbitration Information Supp.-26
5.12 Optional Waiver of Trial de Novo; Consent to
Voluntary Binding ArbitrationSupp.-26

III. ADDITIONAL JUDICIAL SETTLEMENT OPTIONS

A. SUMMARY JURY TRIAL

6.1 Summary Jury Trial - Description Supp.-26
6.2 Procedures for Referral and Setting the
Summary Jury TrialSupp.-26

6.3	Attendance and Settlement Authority Requirements . . .	Supp.-27
6.4	Submission of Written Materials to the Court	Supp.-28
6.5	Summary Jury Trial Process	Supp.-28
6.6	Limitations on use of Summary Jury Trial Information	Supp.-28
6.7	Conclusion of the Summary Jury Trial	Supp.-29
6.8	Optional Consent to Binding Summary Jury Trial	Supp.-29
	B. SUMMARY BENCH TRIAL	
7.1	Summary Bench Trial - Description	Supp.-30
7.2	Procedures for Referral and Setting the Summary Bench Trial	Supp.-30
7.3	Attendance and Settlement Authority Requirements . . .	Supp.-30
7.4	Submission of Written Materials to the Court	Supp.-31
7.5	The Summary Bench Trial Process	Supp.-31
7.6	Limitations on use of Summary Bench Trial Information.	Supp.-32
7.7	Conclusion of the Summary Bench Trial	Supp.-32
7.8	Optional Consent to Binding Summary Bench Trial . . .	Supp.-33
	C. EXECUTIVE MINI TRIAL	
8.1	Court-Annexed Executive Mini Trial - Description . .	Supp.-33
8.2	Referral and Setting an Executive Mini Trial as a Court Procedure	Supp.-34
8.3	The Mini Trial Panel - Composition and Selection . . .	Supp.-34
8.4	Attendance and Settlement Authority Requirements . . .	Supp.-35
8.5	Written Statements and Materials for Submission . . .	Supp.-35
8.6	Communications with Neutral Advisor	Supp.-36
8.7	The Mini Trial Information Exchange Process	Supp.-36
8.8	Negotiations Between Party Executives and the Role of the Neutral Advisor	Supp.-36
8.9	Confidentiality	Supp.-37
8.10	Conclusion of Executive Mini Trial Proceedings	Supp.-37
	D. SPECIAL MASTERS	
9.1	Special Masters	Supp.-38

IV. LITIGATION/TRIAL PROCESS OPTIONS

**A. ABBREVIATED LITIGATION AND TRIAL ALTERNATIVE -
THE "COST REDUCTION TRIAL TRACK"**

10.1 "Cost Reduction Trial Track" with Limited Discovery
and Pretrial Requirements Supp.-38
10.2 Selection, Referral and Requirements for Adoption
of "Cost Reduction Trial Track" Supp.-39
10.3 Scheduling Order Procedure Supp.-39
10.4 Judicial Officer to Try the Case Supp.-40
10.5 Final Award Supp.-40
10.6 Appeal Options Supp.-40
10.7 Jury Options Supp.-41
10.8 Motion Practice Waived Supp.-41
10.9 Modifications of Discovery Motions Supp.-41
10.10 Limitations on Discovery Supp.-41
10.11 Final Pretrial Order Requirements Supp.-43
10.12 Trial Modifications Supp.-44
10.13 Settlement and Alternative Dispute Resolution
Procedures Supp.-44
10.14 Escape Clause Supp.-44
10.15 Applicable Rules. Supp.-44

B. TRIAL ALTERNATIVE

11.1 Consent to Magistrate Judge Trials Supp.-44

V. EXTRA-JUDICIAL DISPUTE RESOLUTION

12.1 Voluntary Binding Arbitration Supp.-45
13.1 Private, Out-of-Court ADR Supp.-45

EXHIBIT I - ADR Rules

List of ADR Orders and Procedures Supp.-46

EXHIBIT II - ADR Rules

**Form for Agreement and Stipulation of All Parties Adopting
the "Cost Reduction Trial Track" with Limited Discovery and
Pretrial Requirements Supp.-47**

**PLAN FOR ALTERNATIVE DISPUTE RESOLUTION
AND SETTLEMENT PROCEDURES
and
RULES OF PRACTICE**

I. PURPOSE AND RESPONSIBILITIES

1.1 Purpose.

The Plan for Alternative Dispute Resolution and Settlement Procedures and Rules of Practice (ADR Rules) pursuant to LCvR16.3 contains the rules for practicing and participating in a variety of court-sponsored dispute resolution and settlement encouraging options as well as options within the trial process. These procedures are typically either offered by the Court through its own judicial officers or sponsored and administered by the Court with the assistance of panels of attorneys or other professionals. Also parties may request ADR procedures not specifically offered by the Court, may request assistance with modifying or tailoring any court-offered procedure or may privately participate in dispute and settlement procedures outside the Court. Each Court program or procedure is designed to assist litigation management and offer a choice for the appropriate dispute resolution process for each case thus providing quicker, less expensive and often more satisfying alternatives to the civil litigation and settlement process without impairing the quality of justice or the right to trial. This plan and rules may be cited as "LCvR16.3 Supp. §____."

N.B. Due to the utilization of the Judicial Settlement Conference by every case set on a trial docket, the rules for practice for that settlement procedure are found separately at LCvR16.2.

EXHIBIT I - ADR RULES contains a list of General Orders for ADR Practice, other Orders and procedures available from the Court Clerk's office relating to administrative matters or less routine dispute resolution practices.

1.2 Responsibilities.

(a) **The Court.** The judges of this Court have full responsibility over these rules, and any judge assigned to a case has final authority over any court-related settlement or dispute resolution process undertaken in that case. The term "court" means any United States District Judge, Magistrate Judge, or Clerk of Court or court personnel to whom responsibility for a particular action or decision has been delegated by the judges of this Court. The ADR Administrator and staff are responsible for the daily operation, administration and management of the Court's ADR panels and programs.

(b) **ADR Advisory Committee.** The ADR Advisory Committee, appointed by the Chief Judge, is established for the purpose of monitoring, evaluating and recommending changes and improvements in ADR procedures and programs and insuring consistency with local rules. The committee shall also be responsible for reviewing applications and recommending mediators, case evaluators, arbitrators or other neutrals to the Court for panel membership, for periodic review of current panel membership and any complaints of panel members. The committee shall meet annually or on call and may consist of at least one judicial officer(s), one or more member(s) of the ADR Panels, a member of the Local Rules Committee, the Clerk of Court or the Clerk's designee and the ADR Administrator.

(c) **Counsel of Record: Planning, Choosing Options and Certification.** All counsel must plan for ADR in connection with discovery, scheduling and cost management efforts and consider use of early settlement options. All litigants are to be advised of the ADR and settlement procedures available in this Court and attorneys are required to discuss options for early dispute resolution with their clients and opposing counsel prior to a status conference and make a selection if appropriate. Certification of such discussion is required pursuant to LCvR16.3(c). The brochure, ***Resolving Disputes in Federal Court - Alternatives and Options for Civil***

Cases, is available through the Court Clerk's office for education of litigants and assistance with required discussions and shall be distributed at status and scheduling conferences.

II. COURT-SPONSORED ALTERNATIVE DISPUTE RESOLUTION

A. FEDERAL PANELS

2.1 Court-Appointed Federal Panels.

The Court has established panels of neutral mediators, arbitrators and evaluators to assist with the ADR and settlement programs. Panel members shall consist of persons who by experience, training and character appear qualified to serve in one or more of the processes provided for in these rules and will be appointed through the ADR Advisory Committee selection process. Appointment to a panel means that the panel member has met at least the minimum qualifications, training and experience requirements. The Court shall appoint panel members in such numbers as they deem appropriate and may, for good cause shown, withdraw appointment. Any comments or complaints concerning panel members should be made to the ADR Administrator. Any person whose name appears on a panel roster may ask at any time to have his or her name removed or, if selected to serve, decline to serve at that time but remain on the roster. Any member of the bar who serves as a panel member shall not for that reason be disqualified from appearing or acting as counsel in any other case pending before this Court.

2.2 Use of Non-Panel Neutrals.

Upon proper application, the assigned judge may appoint non-panel members to a specific case who are qualified persons with expertise in particular substantive fields or have expertise in a specific dispute resolution process. Certain Court staff may be selected in limited circumstances upon approval of the assigned judge and agreement of all the parties where emergency or cost factors preclude panel member service.

2.3 Qualifications and Training.

Each lawyer serving as an ADR panel member shall be admitted to the practice of law for at least 5 years and be a member in good standing with the bar of this Court or be a member of the faculty of an accredited law school. Arbitrators and evaluators shall be lawyers. A mediator who is a non-attorney must be a professional mediator or other professional who would otherwise qualify as a special master. All panel members shall be determined by the Court to be competent to perform the specific program duties. All panel members shall be knowledgeable about civil litigation in federal court and shall have strong mediation, arbitration, evaluation or other ADR process skills. Panel members shall have successfully completed all training and other experience requirements as the Court may require. (See ADR Administrative Orders/Procedures for Federal Panels.)

2.4 Compensation.

(a) **In General.** Unless otherwise established by statute, prescribed by the Judicial Conference of the United States, directed by the Court or unless proceeding pro bono, mediators and evaluators may charge reasonable fees. The cost of the panel member's services shall be shared equally by all the parties, unless otherwise agreed by counsel, and be payable at the time of the particular dispute resolution session. Fee schedules are set forth in the Court's roster books in the office of the Court Clerk.

(b) **Compensation of Arbitrators pursuant to 28 U.S.C. § 651, et seq.** Subject to limits set by the Judicial Conference of the United States or as the Court may direct, arbitrators serving during any period that funding is appropriated for arbitrators under this statute, shall be paid from the designated court funds, as follows: \$150.00 as a single arbitrator or \$100.00 as a member of a panel of three arbitrators per day or portion of each day of hearing in which

they participate. If statutory funding ceases, arbitrators may charge reasonable fees pursuant to (a) above.

(c) **Pro bono Service.** Each panel member must serve pro bono at least once per year if requested by the parties in an appropriate case or if requested or ordered by the Court. Members may do other pro bono service as appropriate.

2.5 Oaths of Panel Members.

Every panel member serving under these rules shall take the oath or affirmation prescribed by 28 U.S.C. § 453 upon qualification and confirmation of appointment.

2.6 Conflicts of Interest.

No person shall serve as a panel member in an action in which any of the circumstances specified in 28 U.S.C. § 455 exist or may in good faith be believed to exist and any panel member may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144. All panel members or other ADR providers serving under these Rules have a continuing obligation of disclosure to the parties.

Any panel member or other ADR provider when asked or selected to serve shall do a complete conflicts check and be able to represent to the ADR Staff and counsel that no conflict of interest exists. A party who has an objection to any panel member selected based upon an allegation of conflict of interest shall report the objection to the ADR Administrator/staff who will investigate and have another neutral appointed if necessary.

2.7 Immunity.

Panel members or those authorized to serve in a specific case are performing quasi-judicial functions and are entitled to the immunities and protections that the law accords to persons serving in such capacity.

2.8 Codes of Ethics/Standards of Conduct.

Any neutral serving under these rules shall be subject to any Codes of Ethics and/or Standards of Conduct set by statute, the Judicial Conference of the United States, other professional organizations to which the neutral may belong and/or that may be approved and adopted by this Court.

B. MEDIATION

3.1 Mediation - Description.

Mediation is a flexible, non-binding process in which an impartial third person, the mediator, facilitates communication between disputing parties, assists negotiation and promotes understanding, reconciliation and settlement. The purpose of this procedure in this Court is to provide parties a very early dispute resolution process before positions harden and costs become too great.

3.2 Referral, Scheduling and Selection of Mediator.

(a) **Referral.** Referral to mediation usually occurs as a result of agreement of the parties as reflected in the Status Report, discussion at the status and scheduling conference, or at any other appropriate time at the request of the parties. Once a judge determines that referral is appropriate, a referral order shall be entered which shall define the window of time for mediation.

(b) **Scheduling the Session and Selecting the Mediator.** At the status and scheduling conference or as soon as practical after referral, usually within ten (10) days, or as the Court may direct, parties are to select a mediator of their choice, schedule the mediation session within the time ordered by the Court and file the Selection and Order Form with the Court Clerk. A list of mediators is available from the Court. The ADR Staff may assist with scheduling if requested by the parties. If no selection is timely

made or if the parties cannot agree upon the mediator, the ADR Staff shall make the selection and set the time and place of the session.

(c) **Location of Mediation Session.** Mediation sessions may be held in any suitable location, including the courthouse, agreeable to the mediator and the parties with consideration given to convenience and cost. If there is no agreement on location, it shall be held in the courthouse.

3.3 Attendance at Mediation and Settlement Authority Requirements.

(a) **Who Shall Attend.** The lead attorney who will try the case for each party shall appear, and shall be accompanied by one with full settlement authority. The latter will be the parties if natural persons, or representatives of parties which are not natural persons, but may not be counsel (except in-house counsel) or a person who is not directly or actively associated with the party or parties. Other interested entities such as insurers or indemnitors shall attend and are subject to the provisions of this Rule. Governmental entities and boards shall send a representative and counsel who, together, are knowledgeable about the facts of the case and the governmental unit's or board's position, and have, to the greatest extent feasible, authority to settle.

(b) **Full Settlement Authority.** A plaintiff or representative of a plaintiff must be able to make a binding decision on behalf of the plaintiff or plaintiffs. A defendant or representative of a defendant must have authority to decide to offer the plaintiff a sum up to the existing demand of the plaintiff or the policy limits of any applicable insurance policy whichever is less.

(c) **Requests to be Excused.** A party may be excused from attending in person or attending with less than the full settlement authority only after a showing that such attendance would impose an extraordinary or otherwise unjustifiable hardship. Attendance may only be excused by filing proper application with the assigned

judge, with copies to opposing counsel and the mediator setting forth the considerations supporting the request and indicating whether the other party(ies) joins or objects. Any party excused from appearing in person shall be available to participate by telephone, if required.

3.4 Written Statements for Submission to Mediator.

Statements shall be submitted to the mediator and served on opposing counsel at least three (3) days preceding the date of the scheduled mediation unless otherwise ordered by the Court. It shall state the name, title or status of each person expected to attend, including counsel, and identify each person with full settlement authority. It shall concisely summarize the parties' claims/defenses/counterclaims, etc., the parties' views concerning factual issues, issues of law (citing authority), liability, damages or relief requested. Counsel may also attach copies of documents or any joint stipulations if such would be beneficial to the resolution of the case. The statement shall not exceed five (5) pages in length and shall not be filed in the case or made part of the court file.

3.5 Communications With The Mediator.

Generally there should be no ex parte communications between any mediator and any counsel or party prior to a mediation session except with respect to scheduling matters unless authorized by the mediator. Mediators may conduct a joint conference call for purposes of discussing procedural issues or materials to be submitted and may initiate follow-up settlement discussions, if appropriate.

3.6 The Mediation Session and Authority of Mediator.

(a) **The Process.** Mediation is an informal procedure. There are generally no time constraints. Typically, the mediator meets

initially with all parties and their counsel in joint session and then separately in private caucuses. Interests of the parties are discussed, often strengths and weaknesses of legal positions are identified, and options for a mutually agreeable resolution are generated.

(b) **The Authority of the Mediator.** Mediators shall have the discretion to structure the mediation so as to maximize prospects for resolving all or part of the case. The mediator may not disclose communications made during a private caucus to another party or counsel without the consent of the party who made the communication. The mediator does not serve as a judge or arbitrator and has no authority to render any decision on any disputed issue or to force a settlement. A mediator generally does not give an overall evaluation of the case. However, if requested and all the parties and the mediator agree, the mediator may assist with case evaluation, if qualified, and with discovery planning.

3.7 Confidentiality.

Mediation is regarded as a settlement procedure and is confidential and private. The Court, the mediator, all counsel and parties, and any other persons attending the mediation shall treat as confidential all written and oral communications made in connection with or during any mediation session. The Court extends to all such communications all the protection afforded by Rule 408 Federal Rules of Evidence and by Rule 68 Federal Rules of Civil Procedure. In addition, unless otherwise stipulated by all parties and the mediator, the Court prohibits disclosure of any written or oral communication made by any party, counsel, mediator or other participant in connection with or during any mediation session to anyone not involved in the litigation. Nor may such written or oral communication, absent stipulation by all parties and the mediator, be disclosed to the assigned judge or used for any purpose, including impeachment, in any pending or future proceeding in this

Court. There shall be no stenographic or electronic record, e.g., audio or video, of the mediation process.

The mediator shall not be required to testify in any proceedings or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

3.8 Conclusion of Mediation and Report of Mediator.

The mediation shall be concluded by resolution and settlement, by adjournment for future mediation session, or upon declaration of impasse by the mediator that current efforts to resolve the dispute are no longer worthwhile. If the parties reach an agreement to settle the case, lead counsel shall promptly notify the Court and prepare and file the appropriate dismissal or closing papers. If the case does not settle, the case will proceed toward its scheduled trial.

At the conclusion of the mediation, the mediator shall send the ADR Staff a report on a form provided by the Court indicating only whether the case settled, settled in part, or did not settle.

3.9 Recovery of Mediator Fees as Costs.

If settlement is not accomplished by mediation, and the case is later concluded by trial or otherwise, the prevailing party may recover as costs in the action the fees paid to the mediator following proper procedure in accordance with LCvR54.2.

C. EARLY NEUTRAL EVALUATION

4.1 Early Neutral Evaluation - Description.

Early Neutral Evaluation (ENE) brings all parties and their counsel together early in the pretrial period for a confidential session to receive a non-binding assessment by an experienced neutral attorney with subject-matter expertise. The objective of ENE is to expedite the legal process, clarify issues and position

the case for early resolution by settlement, dispositive motion or trial thereby potentially reducing costs. The evaluator can serve as a mentor in the case evaluation process, will provide case planning guidance and, if requested by the parties, may offer settlement assistance.

4.2 Referral, Scheduling and Selecting an Evaluator for ENE.

(a) **Referral.** Referral to ENE usually occurs as a result of agreement of the parties as reflected in the Status Report, discussion at the status and scheduling conference, by the Court in its discretion, on its own motion, on motion of any party or at any other appropriate time at the request of the parties. When a judge determines that referral is appropriate, a referral order shall be entered which shall define the window of time for the ENE session to occur.

(b) **Scheduling the Session and Selecting the Evaluator.** At the status and scheduling conference or as soon as practical after referral and as the Court may direct, parties are given a list of up to ten (10) evaluators (numbers are subject to availability of evaluators with subject matter expertise who appear to have no apparent conflict with the case) to select an evaluator of their choice, schedule the evaluation session within the time ordered by the Court and file the Selection and Order Form with the Court Clerk. The ADR Staff is available to assist with scheduling if requested by the parties. If no selection is timely made or if the parties cannot agree upon the evaluator, the ADR Staff shall make the selection and set the time and place of the session.

(c) **Location of Evaluation Session.** Evaluation sessions may be held in any suitable location, considering convenience and cost, agreeable to the evaluator and the parties. If there is no agreement on location, it shall be held in the courthouse.

4.3 Attendance at ENE and Settlement Authority Requirements.

(a) **Who Shall Attend.** The lead attorney who will try the case for each party shall appear, and shall be accompanied by one with full settlement authority. The latter will be the parties if natural persons, or representatives of parties which are not natural persons, but may not be counsel (except in-house counsel) or a person who is not directly or actively associated with the party or parties. Other interested entities such as insurers or indemnitors shall attend and are subject to the provisions of this Rule. Governmental entities and boards shall send a representative and counsel who, together, are knowledgeable about the facts of the case and the governmental unit's or board's position, and have, to the greatest extent feasible, authority to settle.

(b) **Full Settlement Authority.** A plaintiff or representative of a plaintiff must be able to make a binding decision on behalf of the plaintiff or plaintiffs. A defendant or representative of a defendant must have authority to decide to offer the plaintiff a sum up to the existing demand of the plaintiff or the policy limits of any applicable insurance policy whichever is less.

(c) **Requests to be Excused.** A party may be excused from attending in person or attending with less than the full settlement authority only after a showing that such attendance would impose an extraordinary or otherwise unjustifiable hardship. Attendance may only be excused by filing proper application with the assigned judge, with copies to opposing counsel and the evaluator setting forth the considerations supporting the request and indicating whether the other party(ies) joins or objects. Any party excused from appearing in person shall be available to participate by telephone, if required.

4.4 Written Submissions and Other Preparation Requirements.

(a) **Statements.** ENE statements shall be submitted to the evaluator and served on opposing counsel at least three (3) days

preceding the date of the scheduled evaluation unless otherwise ordered by the Court. It shall state the name, title or status of each person expected to attend, including counsel, and identify each person with full settlement authority. It shall concisely describe the substance of the suit, addressing the party's views on the key liability issues and damages; it shall address whether there are legal or factual issues which early resolution would reduce significantly the scope of the dispute or contribute to settlement negotiations; it shall identify the contemplated discovery and that necessary to equip the parties for meaningful settlement discussions. Copies of documents out of which the suit arose (e.g., contacts), or those that would materially advance the purposes of the evaluation session, (e.g., medical reports or documents by which special damages might be determined) may be attached. The statement itself shall not exceed five (5) pages in length and shall not be filed in the case or made part of the court file.

(b) **Additional Requirements.** The parties shall prepare and be able to respond fully and candidly in a private caucus to questions by the evaluator concerning: (1) The estimated costs, including legal fees, to that party, of litigating the case through trial; (2) Witnesses (both lay witnesses and experts); (3) Damages, including the method of computation and the proof to be offered; and (4) Plans for discovery.

4.5 Communications With The Evaluator.

Generally there should be no ex parte communications between any evaluator and any counsel or party prior to an evaluation session except with respect to scheduling matters unless authorized by the evaluator. Evaluators may conduct a joint conference call for purposes of discussing procedural issues or materials to be submitted and may initiate follow-up settlement discussions, if appropriate.

4.6 The ENE Process and Authority of the Evaluator

(a) **The Process.** All ENE Conferences are informal. Rules of evidence shall not apply and there shall be no formal examination or cross-examination of witnesses or parties. Each party (through counsel or otherwise), orally and through documents or other media, presents its claims or defenses and describes the principle evidence on which they are based. Caucusing is used to explore litigation costs realistically and discuss possibilities of settlement.

(b) **Authority of Evaluator.** An evaluator shall (1) help the parties focus and identify areas of agreement and, where feasible, enter stipulations; (2) assess the relative strengths and weaknesses of parties' contentions and evidence, and explain carefully the reasoning that supports these assessments; (3) estimate, where feasible, the likelihood of liability and dollar range of damages; (4) help the parties devise a plan for sharing the important information and/or conducting the key discovery that will equip them as expeditiously as possible to enter meaningful settlement discussions or to position the case for disposition by other means; (5) issue a written evaluation; (6) conduct settlement discussions if requested and stipulated; (7) hold follow-up conferences by telephone or, with consent of all parties, schedule and hold an additional session for additional evaluation, settlement discussions, or case development planning.

(c) **Evaluation and Settlement Discussions.** If all parties stipulate, they may proceed to discuss settlement after the evaluation has been written but before it is presented. The written evaluation shall be presented only to the parties on demand by any party.

(d) **Limitations on Authority of Evaluator.** Evaluators have no authority to compel parties to conduct or respond to discovery or to file motions. Nor do evaluators have authority to determine what the issues in any case are, to impose limits on parties' pretrial activities, or to impose sanctions.

4.7 Confidentiality.

The Court, the evaluator, all counsel and parties, and any other persons attending the ENE session shall treat as confidential all written and oral communications made in connection with or during any ENE session. The Court extends to all such communications all the protection afforded by Rule 408 Federal Rules of Evidence and by Rule 68 Federal Rules of Civil Procedure. In addition, unless otherwise stipulated by all parties and the evaluator, the Court prohibits disclosure of any written or oral communication made by any party, counsel, evaluator or other participant in connection with or during any ENE session to anyone not involved in the litigation. Nor may such written or oral communication, absent stipulation by all parties and the evaluator, be disclosed to the assigned judge or used for any purpose, including impeachment, in any pending or future proceeding in this Court. There shall be no stenographic or electronic record, e.g., audio or video, of the ENE process.

The evaluator shall not be required to testify in any proceedings or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

4.8 Conclusion of ENE Session.

At the conclusion of the ENE Session, the evaluator shall send the ADR Staff a report on a form provided by the Court indicating only that the session was held and if it settled. Unless settled, the case will proceed toward its scheduled trial.

4.9 Recovery of Evaluator Fees as Costs.

If an evaluation or ENE conference is held in a case pursuant to these rules, and the case is later concluded by trial or other disposition, the prevailing party may recover as costs in the action

any fees paid to the evaluator following proper procedure in accordance with LCvR54.2.

D. COURT-ANNEXED NON-BINDING ARBITRATION

5.1. Non-binding Arbitration - Description.

(a) **Mandatory and Consensual Non-binding Arbitration Pursuant to 28 U.S.C. § 651, et seq. - Jurisdiction.** This section governs the mandatory and consensual referral of certain actions to non-binding arbitration for so long as funding under 28 U.S.C. § 651, et seq., remains in effect. It shall not affect Title 9 of the United States Code. Arbitration under this section is generally required for pending cases if the relief sought consists only of money damages not in excess of \$100,000, exclusive of interest and costs, except prisoner cases, administrative appeals or any action based on an alleged violation of a right secured by the Constitution of the United States or if jurisdiction is based in whole or in part on 28 U.S.C. § 1343. Counsel must certify in good faith in the Status Report that the damages which may be recoverable exceed such amount or that the case is otherwise not eligible for mandatory arbitration.

(b) **Attorney's Fee Disputes.** This procedure is authorized for attorney's fee disputes (See LCvR54.3).

(c) **Description.** Non-binding arbitration is essentially an adjudicative process in which an arbitrator or panel of three arbitrators issues a non-binding award on the merits after an expedited, adversarial hearing. It was originated for contract or tort cases of more modest dollar amounts; however any case may consent to use the program. It is less formal and less expensive than a full trial. Limited use of witness testimony and limited cross-examination under oath are allowed. The non-binding award can be used as a basis for subsequent negotiations or can be accepted and entered as judgment. Either party may reject the non-binding award and file a demand for trial de novo in writing and pay the

required deposit fees of \$150.00 for one arbitrator or \$300.00 for a panel of three arbitrators.

(d) **Effect of Statutory Repeal or Discontinuation of Funding.**

If authorization for mandatory/consensual arbitration pursuant to 28 U.S.C. § 651, et seq., or its appropriated funding ceases in this Court, non-binding arbitration will then be solely by consent of the parties. The process and administration of the program shall remain intact but certification as to amount of damages will no longer be required, arbitrators may charge reasonable fees, and other appropriate changes may occur.

5.2 Procedures for Referral.

(a) **Consensual Reference to Non-binding Arbitration Pursuant to 28 U.S.C. § 651, et seq.** Any civil action may be referred to non-binding arbitration under this order and the ADR Plan at the status and scheduling conference or at any other appropriate time upon written consent of the parties and by order or referral of the assigned judge. Consent must be freely and knowingly obtained and no party or attorney in any such case may be prejudiced for refusing to consent to participate in arbitration.

(b) **Mandatory Reference to Non-binding Arbitration Pursuant to 28 U.S.C. § 651, et seq.** Any of the following civil actions (excepting administrative reviews and prisoner cases, or any action based on a alleged violation of a right secured by the Constitution of the United States or if jurisdiction is based in whole or in part on 28 U.S.C. § 1343) seeking only money damages in an amount not exceeding \$100,000.00, exclusive of interest, costs and attorney fees, and in which any claim for non-monetary relief is determined by the assigned judge to be insubstantial, shall be referred to mandatory, non-binding arbitration:

(1) **When the United States is Not a Party.** Actions in which the United States is not a party which are founded on diversity of citizenship (28 U.S.C. § 1332), federal question

(28 U.S.C. § 1331) or admiralty or maritime jurisdiction (28 U.S.C. § 1333), and which arise under contract or written instrument or which arise out of personal injury or property damage.

(2) **When the United States is a Party.** Actions in which the United States is a party which arise under the Federal Tort Claims Act (28 U.S.C. § 2671, et seq.); the Longshore and Harbor Workers' Compensation Act (33 U.S.C. § 901, et seq.); the Suits in Admiralty Act (46 U.S.C. App. § 741, et seq.) which involve no general average; or under the Miller Act (40 U.S.C. § 3133), when the United States has no monetary interest in the claim.

(c) **Determination of Monetary and Non-Monetary Claims.**

(1) **Separate Certification.** For purposes of § 5.2(b), and in order to make a determination as to whether the damages are in excess of \$100,000.00, damages shall be presumed not to exceed \$100,000.00, exclusive of interest, costs and attorneys fees unless counsel asserting such claims certify in writing in the Status Report that to their best knowledge and belief, in good faith, the damages which may be recoverable exceed such amount.

(2) **Determination by Court.** Notwithstanding the amount of damages alleged in a party's pleading or certification, the assigned judge may, acting sua sponte, or in response to a motion, and after affording the parties an opportunity to be heard, require arbitration if satisfied that no genuine claim for damages in excess of \$100,000, exclusive of interest, costs and attorney fees exists. For actions which are subject to this section, except that they include a claim for nonmonetary relief, the assigned judge may, acting sua sponte, or in response to a motion, at the initial status and scheduling conference or at any appropriate time thereafter, make such determination and refer the case to arbitration if appropriate.

(d) **Exemption from Mandatory Reference.** The assigned judge may, sua sponte, or on motion of any party, exempt any case from the application of this section where the objectives of arbitration would not be realized because (1) the case involves complex or novel legal issues, (2) because legal issues predominate over factual issues, or (3) for other good cause.

5.3 Selection of Arbitrator(s).

Whenever an action is referred to arbitration pursuant to this section, the ADR Staff shall furnish to each party a list of ten (10) arbitrators whose names have been drawn at random from the roster of arbitrators maintained by the ADR Staff and who have no apparent conflict or counsel may request a specific list of arbitrators with subject-matter expertise, if available. The parties shall confer in the following manner for the purpose of selecting a single arbitrator or, if all parties so request in writing, a panel of three (3) arbitrators:

(a) **Striking Names.** Each side shall be entitled to strike two names from the list, plaintiff(s) to strike the first name, defendant(s) the next, then plaintiff(s), and then defendant(s).

(b) **Ranking Names.** The parties shall then select the panel from the remaining six names by alternately selecting one name, defendant(s) to make the first choice, plaintiff(s) the second, and continuing in this fashion. If all counsel can agree on the name of one arbitrator on the Candidate's List, counsel may submit that one name on the Ranking List with specific written agreement stated on the Ranking List form.

(c) **Selection Procedure If No Agreement.** If counsel fail to timely submit the Ranking List or are unable to agree, the ADR Staff shall make the selection at random from the original list of 10 names. In cases involving multiple plaintiffs and/or multiple defendants or third parties when all plaintiffs or all defendants

cannot agree among themselves, the ADR Staff will provide counsel with specific procedure if requested.

(d) **Submission of Ranking List.** The parties shall list the six names in the order selected and submit them on the Ranking List form to the ADR Staff no later than ten (10) days from receipt of the Candidates for Arbitrator List.

(e) **Notification by ADR Staff.** The ADR Staff shall promptly notify the person(s) selected. If any person so selected is unable or unwilling to serve, the ADR Staff shall notify the person whose name appears next on the list. If the ADR Staff is unable to select an arbitrator or constitute a panel of arbitrators from the six selections, the process shall be repeated.

When the requisite number of arbitrators has agreed to serve, the ADR Staff shall promptly send written notice to counsel of record and pro se parties, if any, and to the arbitrator(s), of the date, time and place of the arbitration hearing and the arbitrator(s) selected.

5.4 Scheduling the Arbitration Hearing.

(a) **Hearing Date.** The ADR Staff shall assist counsel of record at the initial status and scheduling conference, or whenever a case may be referred to arbitration, in setting a mutually convenient date for the hearing usually prior to the scheduled discovery cut-off date. In no event shall an arbitration hearing under this Rule begin later than 180 days after the filing of an answer nor should an arbitration hearing date be set or continued to within thirty (30) days of the scheduled trial date.

(b) **Postponement Due to Motions.** Unless all parties stipulate in writing or the assigned judge orders otherwise for good cause, no arbitration hearing may commence until 30 days after disposition by the Court of any motion to dismiss the complaint, motion for judgment on the pleadings, motion to join necessary parties, or motion for summary judgment, provided such motion was filed and

served prior to or within 30 days of the status and scheduling conference.

(c) **Place and Time of Hearing.** Hearings shall be held in hearing rooms in the U.S. Courthouse or Federal Complex made available by the Clerk of Court. If no such room is available, the hearing shall be held at any location after consultation with the ADR Staff and arbitrator(s) with consideration given to the convenience of all participants. Unless the parties agree otherwise, the hearing shall be held during normal business hours.

5.5 Attendance and Settlement Authority Requirements.

(a) **Who Shall Attend.** The lead attorney who will try the case for each party shall appear, and shall be accompanied by one with full settlement authority. The latter will be the parties if natural persons, or representatives of parties which are not natural persons, but may not be counsel (except in-house counsel) or a person who is not directly or actively associated with the party or parties. Other interested entities such as insurers or indemnitors shall attend and are subject to the provisions of this Rule. Governmental entities and boards shall send a representative and counsel who, together, are knowledgeable about the facts of the case and the governmental unit's or board's position, and have, to the greatest extent feasible, authority to settle.

(b) **Full Settlement Authority.** A plaintiff or representative of a plaintiff must be able to make a binding decision on behalf of the plaintiff or plaintiffs. A defendant or representative of a defendant must have authority to decide to offer the plaintiff a sum up to the existing demand of the plaintiff or the policy limits of any applicable insurance policy whichever is less.

(c) **Requests to be Excused.** A party may be excused from attending an arbitration hearing in person or attending with less than the full settlement authority required only after a showing that such attendance would impose an extraordinary or otherwise

unjustifiable hardship. Attendance may only be excused by filing proper application with the assigned judge, with copies to opposing counsel and the arbitrator setting forth the considerations supporting the request and indicating whether the other party(ies) joins or objects to the request. Any party excused from appearing in person shall be available to participate by telephone, if required.

5.6 Arbitration Summary for Submission to Arbitrator.

An Arbitration Summary shall be submitted to the arbitrator(s) and served on opposing counsel at least three (3) days preceding the date of the Arbitration Hearing unless otherwise ordered by the Court. It shall state the name, title or status of each person expected to attend, including counsel, and identify each person with full settlement authority. It shall concisely summarize the parties' claims/defenses/counterclaims, etc., the parties' views concerning factual issues, issues of law (citing authority), liability, damages or relief requested.

Counsel may also attach to the statement copies of documents or any joint settlement stipulations if such would be beneficial to the arbitrator and to the resolution of the case. The statement shall not exceed five (5) pages in length and shall not be filed in the case or made part of the court file.

5.7 Communications With Arbitrator(s).

There shall be no ex parte communications between the arbitrator(s) and any counsel or party prior to the hearing except with respect to scheduling matters. The arbitrator(s) may conduct a joint conference call for purposes of discussing procedural issues or materials to be submitted prior to the hearing. Unless initiated by the arbitrator(s) for follow-up settlement discussions, any communication following a session will be only with the

authorization of the ADR Administrator and approval of the arbitrator(s).

5.8 The Arbitration Hearing and Authority of the Arbitrator.

(a) **The Procedure and Evidence.** The hearing shall be conducted informally and normally lasts less than a half day. Evidence may be summarized and presented through counsel who may incorporate argument on such evidence in the presentation. The Federal Rules of Evidence shall be a guide, but shall not be binding. Counsel may present factual representations supportable by reference to discovery materials, including depositions, stipulations, signed statements of witnesses, or other documents or by a representation that counsel personally spoke with the witness and is repeating what the witness stated. Statements, reports, and depositions may be read from, but not at undue length. Physical evidence, including documents, may be exhibited during a presentation. Any live testimony shall be taken under oath. If all counsel and the Arbitrator(s) agree prior to the hearing, the parties (or their representatives) and preferably only one key witness per side may be allowed to testify and opposing counsel may be allowed limited cross examination.

(b) **Authority of Arbitrator.** The arbitrator to whom an action is referred shall have the following powers: (1) to conduct arbitration hearings and make reasonable rules and issue orders necessary for the fair and efficient conduct of the hearing; (2) to administer oaths and affirmations if necessary; (3) to give a verbal or written assessment/evaluation if requested; (4) to give a verbal or written opinion or findings of fact or conclusions of law at the discretion of the arbitrator; (5) to make awards; (6) and to allow the hearing to go forward upon the unexcused absence of a party, but damages shall be awarded against an absent party only upon presentation of proof satisfactory to the arbitrator(s).

Any two members of a panel shall constitute a quorum, but (unless the parties stipulate otherwise) the concurrence of a majority of the entire panel shall be required for any action or decision by the panel.

(c) **Transcript or Recording.** A party may cause a transcript or recording to be made of the arbitration hearing at its expense but shall, at the request and expense of opposing party, make a copy available to that party.

5.9 Arbitration Award and Judgment.

(a) **Filing of Arbitration Award.** The arbitrator shall file the award with the Clerk of Court promptly following the close of the hearing and in any event not more than ten (10) days following the close of the hearing. The ADR Staff shall promptly serve copies on the parties.

(b) **Contents of the Award.** The award shall state clearly and concisely the name or names of the prevailing party or parties on each of their claims or counterclaims and the party or parties against which it is rendered and the precise amount of money and other relief, if any, awarded. It shall be in writing and signed by the arbitrator or by at least two (2) members of a panel. No member of a panel shall participate in the award without having attended the hearing. The purpose of the award is to indicate the arbitrator's view as to the probable outcome if the case is tried, including the dollar value of each claim and counterclaim, if any. All awards shall be in keeping with the evidence presented and the applicable law.

Costs within the meaning of Rule 54 Fed. R. Civ. P. and LCvR54.2, statutory interest and attorneys fees, if applicable, may be assessed as part of an arbitration award, but unless specifically set forth, will be presumed not included.

(c) **Sealing of the Award.** Promptly upon the receipt of the award, the ADR Staff shall serve copies on the parties, and shall

file the award under seal. The contents of any arbitration award made under this section shall not be made known to any judge who might be assigned to the case until the final judgment has been entered or the action has otherwise been terminated, except as may be necessary to assess fees and costs and for purposes of preparing the report required by § 903(b) of the Judicial Improvements and Access to Justice Act.

(d) **Entry of Judgment on Award.** If no party files a demand for trial de novo within thirty (30) days of the filing of the sealed award in accordance with § 5.10 of this rule, the award will be unsealed and the Clerk shall enter judgment thereon in accordance with Fed. R. Civ. P. 58, and the judgment shall have the same force and effect as any judgment of the Court in a civil action, except that no appeal shall lie from such judgment (any notice of appeal shall be treated as a demand for a trial de novo if filed within thirty (30) days of the filing of the sealed award). If no interest, costs or fees are included, then any applications for attorney's fees, interest or costs following the entry of judgment should be in conformity with LCvR54.1 and 54.2.

5.10 Trial De Novo.

(a) **Time for Demand of Trial de Novo and Restoration to Court Docket.** Within thirty (30) days after the filing of the arbitration award with the Court, any party may file with the Court and serve on all the parties a written demand for a trial de novo. In such cases, the sealed award shall not be unsealed or be filed as a judgment in the case, and the action shall be treated for all purposes as if it had not been referred to arbitration. Any right of trial by jury is preserved and the case will proceed toward trial pursuant to the scheduling order(s) entered in the case.

[5.10(b) and (c) repealed effective 3/8/04]

5.11 Limitations on Admission of Arbitration Information.

At a trial de novo, the Court shall not admit any evidence that there has been an arbitration proceeding, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding, or any transcript thereof, unless the evidence would otherwise be admissible in the Court under the Federal Rules of Evidence, or the parties have otherwise stipulated.

5.12 Optional Waiver of Trial De Novo; Consent to Voluntary Binding Arbitration.

At any time prior to the commencement of the arbitration hearing, the parties may, by written stipulation, or joint application approved by order of the assigned judge, waive the right to a trial de novo following the award and proceed as in voluntary arbitration. The parties may continue to utilize the ADR Staff and program administration to bring the case to conclusion. In the event of such a stipulation, the provision of state and federal law governing review of awards rendered in voluntary, binding arbitration shall govern.

III. ADDITIONAL JUDICIAL SETTLEMENT OPTIONS

A. SUMMARY JURY TRIAL.

6.1 Summary Jury Trial - Description.

A summary jury trial is a flexible, non-binding process before a regular federal court jury designed to promote settlement thereby saving costs in complex, trial-ready cases headed for protracted trials. The jury's non-binding verdict can be used as a basis for subsequent settlement negotiations. The parties may stipulate to be bound by the summary jury's decision.

6.2 Procedures for Referral and Setting the Summary Jury Trial.

Any civil case triable to a jury may be subject to summary jury trial at the direction of the Court or on motion of one or all of

the parties when discovery is substantially completed. Typically the assigned judge will refer the case for summary jury trial to the assigned magistrate judge and an order setting the date and other summary jury trial requirements will be issued to counsel.

6.3 Attendance and Settlement Authority Requirements.

(a) **Who Shall Attend.** The lead attorney who will try the case for each party shall appear, and shall be accompanied by one with full settlement authority. The latter will be the parties if natural persons, or representatives of parties which are not natural persons, but may not be counsel (except in-house counsel) or a person who is not directly or actively associated with the party or parties. Other interested entities such as insurers or indemnitors shall attend and are subject to the provisions of this Rule. Governmental entities and boards shall send a representative and counsel who, together, are knowledgeable about the facts of the case and the governmental unit's or board's position, and have, to the greatest extent feasible, authority to settle.

(b) **Full Settlement Authority.** A plaintiff or representative of a plaintiff must be able to make a binding decision on behalf of the plaintiff or plaintiffs. A defendant or representative of a defendant must have authority to decide to offer the plaintiff a sum up to the existing demand of the plaintiff or the policy limits of any applicable insurance policy whichever is less.

(c) **Requests to be Excused.** A party may be excused from attending a summary jury trial in person or attending with less than the full settlement authority required only after a showing that such attendance would impose an extraordinary or otherwise unjustifiable hardship. Attendance may only be excused by filing proper application with the assigned judge, with copies to opposing counsel, setting forth the considerations supporting the request and indicating whether the other party(ies) joins or objects to the

request. Any party excused from appearing in person shall be available to participate by telephone, if required.

6.4 Submission of Written Materials to the Court.

An agreed statement of the case, any stipulations, any motions in limine with supporting briefs, exhibits, proposed jury instructions and voir dire, with appropriate service on opposing counsel, are to be filed in accordance with the Court's order(s).

6.5 The Summary Jury Trial Process.

(a) **Jury Panel.** The action shall usually be heard before a six-member jury, to be selected from a venire specially summoned for that purpose. Counsel will be permitted challenges to the venire - normally two challenges each, and the challenged or unused panel members may be used as a second jury in order to provide additional juror reaction.

(b) **Case Presentations.** All evidence shall be presented through the attorneys, who may incorporate arguments on such evidence in their presentations, and only evidence that would be admissible at trial upon the merits may be presented. Live witnesses are permitted only in the interest of special needs for a particular case. Statements, reports, and depositions may be read from, but not at undue length. Physical exhibits, including documents, may be exhibited during a presentation and submitted for the jury's consideration. After counsel's presentations, the jury will be given an abbreviated charge on the applicable law.

6.6 Limitation on Use of Summary Jury Trial Information.

Unless specifically ordered by the Court, the proceedings will not be recorded, although counsel may arrange for a court reporter at their own expense. The assigned judge shall not admit at a subsequent trial any information concerning the summary jury trial, the nature or amount of any verdict, or any other matter concerning

the conduct of the summary jury trial or negotiations related to it, unless the evidence would otherwise be admissible under the Federal Rules of Evidence, or the parties have otherwise stipulated. Summary jury trial proceedings are considered pretrial settlement negotiations and are subject to such protections as the law may allow.

6.7 Conclusion of the Summary Jury Trial.

(a) **Jury Deliberations and De-briefing of Jurors.** Jury deliberations will be limited in time. The jury may return either a consensus verdict or a special verdict consisting of an anonymous statement of each juror's findings on liability and/or damages (each known as the jury's advisory opinion). The jury will be encouraged to return a consensus verdict. After the verdict, the presiding judicial officer should initiate and encourage a discussion of the case by the parties and the jurors.

(b) **Settlement Negotiations.** Following the summary jury trial, a settlement conference shall be held by the presiding judicial officer, other settlement judge, or both.

(c) **Trial.** If the case does not settle as the result of the summary jury trial, it will proceed to trial on the scheduled trial date.

6.8 Optional Consent to Binding Summary Jury Trial.

Counsel may stipulate at any time that a consensus verdict by the jury will be deemed a final determination on the merits and that judgment may be entered thereon by the Court, or may stipulate to any other use of the verdict that will aid in the resolution of the case.

B. SUMMARY BENCH TRIALS

7.1 Summary Bench Trial - Description.

A summary bench trial is a court-annexed pretrial procedure intended to facilitate settlement consisting of a summarized presentation of a case to a judicial officer, usually a magistrate judge, whose decision and subsequent factual and legal analysis serves as an aid to settlement negotiations. The parties shall submit proposed findings of fact and conclusions of law in advance of the summary bench trial. Where appropriate, the same procedural considerations applicable to summary jury trials may be adapted to summary bench trials. Parties may stipulate to be bound by the judge's decision.

7.2 Procedures for Referral and Setting the Summary Bench Trial.

Any civil case triable to the Court may be subject to summary bench trial at the direction of the Court or on motion of one or all of the parties when discovery is substantially completed. Typically the assigned judge will refer the case for summary bench trial to the assigned magistrate judge and an order setting the date and other summary bench trial requirements will be issued to counsel.

7.3 Attendance and Settlement Authority Requirements.

(a) **Who Shall Attend.** The lead attorney who will try the case for each party shall appear, and shall be accompanied by one with full settlement authority. The latter will be the parties if natural persons, or representatives of parties which are not natural persons, but may not be counsel (except in-house counsel) or a person who is not directly or actively associated with the party or parties. Other interested entities such as insurers or indemnitors shall attend and are subject to the provisions of this Rule. Governmental entities and boards shall send a representative and counsel who, together, are knowledgeable about the facts of the case

and the governmental unit's or board's position, and have, to the greatest extent feasible, authority to settle.

(b) **Full Settlement Authority.** A plaintiff or representative of a plaintiff must be able to make a binding decision on behalf of the plaintiff or plaintiffs. A defendant or representative of a defendant must have authority to decide to offer the plaintiff a sum up to the existing demand of the plaintiff or the policy limits of any applicable insurance policy whichever is less.

(c) **Requests to be Excused.** A party may be excused from attending a summary bench trial in person or attending with less than the full settlement authority required only after a showing that such attendance would impose an extraordinary or otherwise unjustifiable hardship. Attendance may only be excused by filing proper application with the assigned judge, with copies to opposing counsel, setting forth the considerations supporting the request and indicating whether the other party(ies) joins or objects to the request. Any party excused from appearing in person shall be available to participate by telephone, if required.

7.4 Submission of Written Materials to the Court.

Findings of Fact and Conclusions of Law, exhibits, with appropriate service on opposing counsel shall be filed by each party in accordance with the Court's order(s). Agreed stipulations and evidence, proposed trial streamlining measures, expert witness reports, etc., may also be offered for summary bench trial proceedings.

7.5 The Summary Bench Trial Process.

(a) **Case Presentations.** All evidence shall be presented through the attorneys, who may incorporate arguments on such evidence in their presentations, and only evidence that would be admissible at trial upon the merits may be presented. Live witnesses are permitted only in the interest of special needs for a particular

case. Statements, reports, and depositions may be read from, but not at undue length. Physical exhibits, including documents, may be exhibited during a presentation and submitted for the judge's consideration.

7.6 Limitation on Use of Summary Bench Trial Information.

Unless specifically ordered by the Court, the proceedings will not be recorded, although counsel may arrange for a court reporter at their own expense. The assigned judge shall not admit at a subsequent trial any information concerning the summary bench trial, the nature or amount of any finding, or any other matter concerning the conduct of the summary bench trial or negotiations related to it, unless the evidence would otherwise be admissible under the Federal Rules of Evidence, or the parties have otherwise stipulated. Summary bench trial proceedings are considered pretrial settlement negotiations and are subject to such protections as the law may allow.

7.7 Conclusion of the Summary Bench Trial.

(a) **Settlement Negotiations.** Following the summary bench trial and prior to the Court's decision, a settlement conference may be held by another judicial officer or other settlement judge.

(b) **Judicial Deliberations and De-briefing of Judicial Officer.** Deliberations will be limited in time. Written findings and conclusions are not required unless the parties have agreed to be bound by the decision. After the Court makes its findings and renders its conclusions, the presiding judicial officer shall hold a conference in chambers to discuss the results. Counsel are permitted to ask questions of the presiding judicial officer. The presiding judicial officer may now conduct settlement discussions as well.

(c) **Trial.** If the case does not settle as the result of the summary bench trial, it will proceed to trial on the scheduled trial date.

7.8 Optional Consent to Binding Summary Bench Trial.

Counsel may stipulate at any time that the Court's opinion will be deemed a final determination on the merits and that judgment may be entered thereon by the Court, or may stipulate to any other use of the Court's opinion that will aid in the resolution of the case.

C. EXECUTIVE MINI TRIALS

8.1 Court-Annexed Executive Mini Trials - Description.

The Executive Mini Trial, sometimes referred to as the business mini trial or just "mini trial", may be either a court-annexed procedure using a judicial officer, usually a magistrate judge, or an out-of-court procedure, utilizing the services of a well-respected neutral, termed "neutral advisor," to oversee the process. This informal procedure consists of an "adversarial information exchange" presented to the Mini Trial Panel followed by management negotiations which may be facilitated by the judicial officer/"neutral advisor" who may offer an advisory opinion or candid assessment if requested. It allows each high level corporate or business representative to gain perspective of both the risk and reward of the litigation as well as the strengths and weaknesses of their and their opponent's cases. It is the business executives who make the decision or fashion a solution to the problem. The negotiated agreement frequently results in a more creative or business-oriented solution than one based on legal issues or dollars.

8.2 Referral and Setting an Executive Mini Trial as a Court Procedure.

Referral is at the discretion of the Court or on motion of one or all of the parties usually when the parties agree that the significant pertinent information has been discovered and developed. At the time of referral, counsel and the Court shall agree on a mutually acceptable date for the mini trial and an order setting the date and other mini trial requirements will be issued to counsel. The assigned judge may refer the case for mini trial to the assigned magistrate judge to act as the "neutral advisor."

8.3 The Mini Trial Panel - Composition and Selection.

The Mini Trial Panel shall consist of the judicial officer/neutral advisor (hereinafter "neutral advisor") and one senior executive or high-level management representative from each party who shall have full authority to negotiate a settlement on behalf of that party. Immediately upon referral, all parties shall designate their executive representative with corporate title in writing to opposing counsel and the neutral advisor. Also any change in the designated representative shall be immediately so communicated.

An impartial and independent neutral advisor other than or in addition to the assigned judicial officer may be selected by agreement of all the parties if certain settlement or technical skills are desired. If independent expert advice on critical technical or legal issues is needed, the parties may agree on the selection of the neutral expert or empower the neutral advisor to select one. (If there is no agreement on selection, see ADR Procedure for Executive Mini Trials - Selection of Neutral Advisor or Expert, available from the ADR Staff - Court Clerk's office.)

8.4 Attendance at Executive Mini Trial and Settlement Authority Requirements

(a) **Who Shall Attend.** In addition to The Mini Trial Panel, the lead attorney who will try the case for each party shall appear and shall present that parties' case at the Information Exchange. Other interested entities such as insurers or indemnitors shall attend and are subject to the provisions of this Rule. Governmental entities and boards shall send a representative and counsel who, together, are knowledgeable about the facts of the case and the governmental unit's or board's position, and have, to the greatest extent feasible, authority to settle.

(b) **Full Settlement Authority.** A plaintiff or representative of a plaintiff must be able to make a binding decision on behalf of the plaintiff or plaintiffs. A defendant or representative of a defendant must have authority to decide to offer the plaintiff a sum up to the existing demand of the plaintiff or the policy limits of any applicable insurance policy whichever is less. Both are to have full authority to negotiate a settlement.

8.5 Written Statements and Materials for Submission.

A Joint Statement of the Case stating the facts and issues in dispute and such other materials or information as the parties may agree upon for the purpose of familiarizing the neutral advisor with the case shall be submitted to the Mini Trial Panel according to the Court's Order. Parties shall comply with any request for additional information from panel members.

Prior to the Information Exchange, in accordance with the Court's order, all parties shall exchange all documents, exhibits or other information on which they intend to rely at the information exchange.

8.6 Communications with Neutral Advisor.

Generally there should be no ex parte communications between the neutral advisor and any counsel or party prior to the information exchange except with respect to scheduling matters unless authorized by the neutral advisor or as agreed between the parties. The neutral advisor may conduct a joint conference or conference call for purposes of discussing procedural issues or materials to be submitted and may initiate follow-up settlement discussions, if appropriate.

8.7 The Mini Trial Information Exchange Process.

Generally counsel make a brief, summarized presentation of its best case to the senior executives or principals of the companies. Each party is entitled to rebuttal. The judge or presiding neutral will act as moderator of the information exchange. Rules of evidence will normally not apply; however rules pertaining to privileged communications and work product will apply. The form or method of presentations and rebuttals are flexible and presentations by fact witnesses and expert witnesses are permitted, if appropriate. Only members of the panel may interrupt the presentations for clarifying information preferably at the conclusion of a party's presentation. There will be a scheduled open question and answer exchange(s) at which time panel members and counsel may ask questions of opposing counsel and witnesses.

8.8 Negotiations between Executives or Management Representatives and Role of the Neutral Advisor.

At the conclusion of the information exchange, the panel shall meet privately and shall make reasonable efforts to reach a resolution to the dispute. The principles may meet alone without counsel or neutral advisor. At the request of any executive representative, the neutral advisor may act as a facilitator or mediator for the dispute, and if requested, at the discretion of the

neutral advisor, propose settlement terms or give an oral or written opinion concerning issues raised and possible outcome at a trial.

If an agreement is reached, its terms shall be reduced to writing and signed by each party as soon as possible and, once signed, shall be legally binding on the parties.

8.9 Confidentiality.

The neutral advisor, all counsel and parties, and any other persons attending the mini trial shall treat as confidential all written and oral communications made in connection with or during any phase of the proceedings. The Court extends to all such communications all the protection afforded by Rule 408 Federal Rules of Evidence and by Rule 68 Federal Rules of Civil Procedure. In addition, unless otherwise stipulated by all parties and the neutral advisor, the Court prohibits disclosure of any written or oral communication made by any party, counsel, neutral advisor or other participant in connection with or during any portion of the mini trial proceedings to anyone not involved in the litigation. Nor may such written or oral communication, absent stipulation by all parties and the neutral advisor, be disclosed to the assigned judge who may try the case or used for any purpose, including impeachment, in any pending or future proceeding in this Court.

There shall be no stenographic or electronic record, e.g., audio or video, of the entire process.

The neutral advisor shall not be required to testify in any proceedings or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

8.10 Conclusion of Executive Mini Trial Proceedings.

Unless otherwise agreed by the parties and authorized by the Court, the parties have thirty (30) days after the close of the information exchange or until the time for filing final trial

submissions, whichever is earlier, to secure an executed written settlement agreement of the case. The proceeding shall be deemed terminated if no written settlement is executed within the allowed or agreed time period. If the case does not settle as the result of the mini trial process, it will proceed to trial on the scheduled trial date.

D. SPECIAL MASTERS

9.1 Special Masters.

The Court may appoint a magistrate judge or other qualified person to be a special master at any time to serve a wide variety of functions, including discovery manager, fact finder or facilitator of settlement negotiations. Generally the parties pay the master's fees unless a magistrate judge is designated to serve as master. (See Fed. R. Civ. P. 53).

IV. LITIGATION/TRIAL PROCESS OPTIONS

A. ABBREVIATED LITIGATION AND TRIAL ALTERNATIVE - THE "COST REDUCTION TRIAL TRACK"

10.1 "Cost Reduction Trial Track" with Limited Discovery and Pretrial Requirements.

With approval of the Court and the agreement of all parties, a case may be placed on an agreed "cost reduction track" and will then be subject to these rules. Some of these rules must be agreed upon by all parties to adopt the track. Others may be adopted or modified by agreement of the parties. It offers a trial by a judge or a jury but at less cost because of the agreement to limit or waive certain customary discovery procedures and to modify certain trial procedures. It is made available to the parties as a part of the Court's effort to provide alternatives which may reduce the costs and time involved in federal civil litigation, but allowing for trial by judge or jury.

10.2 Selection, Referral and Requirements for Adoption of the "Cost Reduction Trial Track."

Counsel and all parties are to agree to the selection of this "track" at or prior to the first status/scheduling conference, or as soon thereafter as practicable, then prepare, sign and submit the Agreement and Stipulation Adopting the "Cost Reduction Trial Track" for the Court's approval. (The Agreement shall conform to the form provided herein as Exhibit II to these ADR Rules). Unless excused from attendance at the status/scheduling conference by the Court, all counsel will comply with LCvR16.1. Once the Agreement has Court approval and is filed in the case, the case is referred.

10.3 Scheduling Order Procedure.

At the status and scheduling conference or within ten (10) days from the filing of the parties' Agreement and approval by the Court of the parties' adoption of the "Cost Reduction Trial Track", the parties will obtain from the Court available trial dates within the next nine (9) months. The parties shall then agree upon dates for identification of witnesses, exchange of exhibits and exhibit lists, discovery cutoff and other dates on the Court's standard scheduling order. A completed standard scheduling order (see Appendix III), including a trial date, approved by all counsel shall be immediately submitted for the Court's approval. After approval of the scheduling order, it may be modified as follows:

In the event all parties agree upon changing one or more scheduled dates, the parties shall submit an Agreed Order which will be granted by the Court if such order is submitted with a schedule with dates that do not affect the trial date.

In the event all parties agree upon a continuance of a trial date, they shall verify the next available trial date from the assigned district judge or magistrate judge. The Court will grant one agreed continuance if said continuance is requested ten (10)

days prior to the assigned trial date. The case will be reset by the Court for the next chosen available trial date

All other continuances or scheduling changes will be granted only by Order of the Court.

10.4 Judicial Officer to Try the Case.

The United States District Judge to whom the case is assigned will retain the case unless the parties agree to a jury or non-jury trial before a United States Magistrate Judge and the Court orders assignment of the case to the magistrate judge. The Consent to Trial Before a Magistrate Judge and Order of Reference is required only if an agreement for referral to a United States Magistrate Judge has been reached. This form is available in the Court Clerk's office. No such consent is required for adoption of the "Cost Reduction Trial Track."

10.5 Final Award Options.

The parties may agree upon a minimum and maximum award for all claims, including attorneys fees, if applicable. If an agreement is reached, a final judgment will not be entered for more or less than the pre-agreed awards. If the trial results in a award between the agreed maximum and minimum award, final judgment will be entered as awarded. If the trial results in a award of less than the agreed minimum, final judgment will be entered for the minimum agreed award. If the trial results in a award of more than the maximum agreed award, then the final judgment shall be entered for the maximum agreed award. A jury will not be advised of any such agreement.

10.6 Appeal Options.

The parties may agree and stipulate that there will be no appeal by any party from the final judgment. No such stipulation is required.

10.7 Jury Options.

All parties may waive a jury trial if a jury has been previously requested. In the event a jury trial is waived and an appeal has been waived, the parties are not required to submit findings and conclusions and the Court will not include specific findings and conclusions in its final judgment.

10.8 Motion Practice Waived.

The parties waive the right to file or obtain a ruling upon motions to dismiss and motions for summary judgment. A motion to modify this waiver may be filed only in the event of newly discovered evidence which provides a basis for such a motion.

10.9 Modifications for Discovery Motions.

No party may make more than one motion to compel related to all discovery matters. All local civil rules and Federal Rules of Civil Procedure concerning discovery disputes apply except the parties may confer by telephone conference call to discuss such disputes.

10.10 Limitations on Discovery.

(a) **Discovery Requests.** Limitations are as follows:

1. Requests to Produce - maximum number: 15
2. Requests to Admit - maximum number: 15
3. Interrogatories - maximum number, including sup-parts: 20

The parties may modify these limitations by written agreement.

(b) **Responses to Request to Produce.**

(1) The party responding to a request to produce may produce documents categorized and identified according to the requests or may produce the documents as they are kept in the ordinary course of business at a time and place to be agreed upon by all parties. In the event the parties cannot agree upon the time and place for document review, the review shall

be on the first working day following five working days after responses are served, during regular business hours, at the producing party's counsel's office or at the producing party's offices located the shortest travel distance from Oklahoma City. (The purpose of this rule is to discourage extremely broad discovery requests and to reduce the cost of compliance with such requests.)

(2) A privilege log is required identifying any documents not produced due to a claim of privilege. This log shall be served on all counsel within five (5) days after the date the production of documents began.

(c) **Deposition Limitations.** Unless the parties agree otherwise, depositions will be taken only of parties, relatives of parties, employees or former employees of parties and witnesses whose trial testimony must be taken by deposition. Depositions may also be taken of any witness that (1) will not agree to an interview and (2) will not agree to provide a written or recorded statement to any requesting counsel if written certification is given by requesting counsel to all other counsel that the witness would not agree. Subpoenas may be issued for the deposition of any witness that refuses to cooperate. The parties may agree to waive any claim of privilege related to former employees of a party and allow interviews rather than depositions of those former employees.

Depositions are limited to five (5) hours of deposition time for each witness.

(d) **Expert Witnesses.** The parties may agree that each party may be limited to a specific number of experts that may be presented for testimony at trial.

Without the necessity for a request, each party is obligated to produce at its counsel's office, five (5) days prior to the date of the expert's deposition, all expert documents, materials and other information gathered, reviewed and prepared by the expert as

part of the expert's work in this case. An expert report is not required.

Alternatively, the parties may agree that expert reports will be exchanged on a date certain and that depositions of experts will or will not be taken by a subsequent date certain.

Experts' depositions are limited to seven (7) hours of deposition time for each expert witness.

10.11 Final Pretrial Order Requirements.

The final pretrial order shall be in the format of the final pretrial order form (Appendix IV to the Local Civil Rules) with the following modifications:

(a) **Exhibit Lists.** Exhibits will be listed in a separate document in a format for use by the Court during trial to reflect exhibits admitted. Objections to exhibits must be filed within five (5) days after the date for submission of the Final Pretrial Order and shall be in a separate document with the grounds for the objection and applicable Federal Rule of Evidence identified. No brief in support of objections listed is required. However, a brief may be submitted if desired within five (5) days of the date of filing of the pretrial order. The Court may request briefs on any objections. Any responses must be filed within five (5) days thereafter. The Exhibit List should be attached to the Agreed Pretrial Order.

(b) **Witness Lists.** The Final Witness List should be attached as an exhibit to the Final Pretrial Order. The "proposed testimony" description contained in the list shall constitute a concise statement of the areas in which the witness may give testimony and is not intended as a summary of all proposed testimony.

(c) **Trial Briefs.** Trial briefs are not required but may be filed.

(d) **Agreed Joint Statement of the Case.** An Agreed Joint Statement of the case shall be submitted as the first section of the

Final Pretrial Order. It is for use by the Court in advising the jury about the case during the jury selection process.

(e) **Voir Dire, Jury Instructions and Proposed Findings.** Each party shall submit proposed voir dire, jury instructions or proposed findings in accordance with the schedule agreed upon in the Scheduling Order. In the event an Appeal has been waived in a non-jury case, no proposed findings are required.

10.12 Trial Modifications.

(a) The parties may agree that the number of courtroom hours or trial days be limited. The Court may impose such limits, if the parties have not so agreed.

(b) Exhibit books for the jury will not be required.

10.13 Settlement and Alternative Dispute Resolution Procedures.

A judicial settlement conference will be required. Other ADR procedures offered by the Court are available for adoption upon consent of all parties.

10.14 Escape Clause.

A party may seek leave of Court to withdraw from the stipulation that applies these procedures to a case. However, such motions are discouraged and shall be granted only for good cause.

10.15 Applicable Rules.

All Federal Rules of Civil Procedure and the other Local Civil Rules of this Court apply except as modified by these Rules.

B. TRIAL ALTERNATIVE.

11.1 Consent to Magistrate Judge Trials. In addition to a full trial on the merits (either jury or non-jury) before a United States District Judge, the parties may consent to a full civil trial (jury or non-jury) before a United States Magistrate Judge. An earlier

and firm trial date may be possible by consent of all parties to this procedure. The appropriate form is available in the Court Clerk's office. (See 28 U.S.C. § 636(c) and LCvR73.1)

V. EXTRA-JUDICIAL DISPUTE RESOLUTION.

12.1 Voluntary Binding Arbitration.

Notwithstanding the provisions of § 5.1, et seq., of these rules, the parties to any action filed in this Court may voluntarily stipulate to its referral to binding arbitration upon such terms as they agree, subject to approval by order of the assigned judge. In cases of such referral, or in portions of cases in arbitration pursuant to a contract, the case may be stayed and the provisions of state and federal law governing voluntary arbitration shall control.

If cases are stayed for the purpose of completing binding arbitration, the Court may request progress reports and counsel are requested to notify the Court promptly of completion of that process. Although usually administered by private organizations or managed solely by the parties, counsel may request use of the Court's arbitration program administration and panel for such voluntary binding arbitration.

13.1 Private, Out-of-Court ADR.

There are numerous private sector providers of ADR services. Private providers may be lawyers, law professors, retired judges or other professionals with expertise in dispute resolution techniques. Public dispute mediation with volunteer providers is also available in our community. If a pending dispute in this Court is resolved through private ADR, counsel are requested to advise the Court promptly and file the appropriate dismissal or closing papers.

EXHIBIT I - ADR RULES

LIST OF ADR ORDERS AND PROCEDURES

[Reference LCvR16.3 Supp. § 1.1]

ADR Practice Orders/Procedures for Federal Panels

- Misc. Order 22 Regarding Selection, Qualifications and Compensation of Mediators (Jan. 31, 1992).
- Misc. Orders Appointing Mediators
- Administrative Procedures for Applicant Selection and Complaint Procedures for Panel Members.

ADR Practice Orders/Procedures for Court-Annexed, Non-Binding Arbitration

- Selection Procedure for Arbitrator(s) in Multi-Party Cases

ADR Practice Orders/Procedures for The Executive Mini Trial

- Selection Procedure of Independent Neutral Advisor for the Executive Mini Trial

G.O. 98-__ General Order Regarding Special Settlement and ADR Procedures for Patent, Copyright, or Trademark Cases

EXHIBIT II - ADR RULES

FORM FOR
AGREEMENT AND STIPULATION OF ALL PARTIES ADOPTING THE "COST
REDUCTION TRIAL TRACK" WITH LIMITED DISCOVERY AND PRETRIAL
REQUIREMENTS

[Reference LCvR16.3 Supp. § 10.1, et seq.]

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

_____,)
Plaintiff(s))
v.) CIV-_____
)
_____,)
Defendant(s))

AGREEMENT AND STIPULATION OF ALL PARTIES
ADOPTING THE "COST REDUCTION TRIAL TRACK"
WITH LIMITED DISCOVERY AND PRETRIAL REQUIREMENTS

All parties to this case consent, agree and stipulate as follows:

1. In the event of a finding for plaintiff(s), the maximum Judgment that may be entered is as follows (include attorney's fees, if applicable):

In the event of a finding for defendant(s), or in the event of a finding for plaintiff(s) in an amount less than the minimum agreed award, nevertheless an award in an amount as follows will be entered (include attorney's fees, if applicable):

Unless an appeal has been waived, an agreement in this regard shall not affect the right of any party to appeal any judgment entered herein. However, in no event shall an appeal result in a judgment for more than the maximum or less than the minimum agreed upon.

IN THE EVENT THE PARTIES DO NOT AGREE TO A MINIMUM AND MAXIMUM AWARD, THE PARTIES WILL STATE "NO AGREEMENT HAS BEEN REACHED."

2. _____ No appeal will be taken by an party from the final judgment entered herein.

_____ An appeal of final judgment is available pursuant to applicable Rules.

(CHECK **ONE** OF THE ABOVE.)

3. The parties hereby waive the right to file motions to dismiss and/or motions for summary judgment or obtain a ruling on any such previously filed motions. The Court or any party may raise matters related to subject matter jurisdiction at any time and rights to file such a motion are not waived.

4. Each party may make only one Motion to Compel if justified under applicable Rules.

5. Written discovery requests are limited as follows:

(a) Requests to Produce - maximum number: 15;

(b) Requests to Admit - maximum number: 15;

(c) Interrogatories - maximum number (including sub-parts): 20.

(IN THE EVENT THE PARTIES AGREE TO DIFFERENT NUMBERS, THESE SHOULD BE SUBSTITUTED FOR THE NUMBERS REFERENCED ABOVE.)

6. Depositions of parties, relatives of parties and employees of parties may be taken. Claims of privilege related to former employees of a party are waived and former employees of a party may be interviewed by any counsel. Depositions are limited to five (5) hours of deposition time. Additional stipulations related to deposition discovery are as follows:

(IN THE EVENT STIPULATIONS CONCERNING ADDITIONAL DEPOSITIONS OR THE MANNER AND TIME OF TAKING ARE TO BE MADE, THEY SHOULD BE INSERTED AND THE TEXT CHANGED TO REFLECT THOSE AGREEMENTS.)

7. Additional stipulations concerning expert witnesses are as follows:

(ANY AGREEMENTS CONCERNING LIMITATION ON NUMBER OF EXPERT WITNESSES, VARIATIONS IN DEPOSITION TIME FROM THOSE SPECIFIED IN THESE RULES OR OTHER STIPULATIONS CONCERNING EXPERTS SHOULD BE INSERTED.)

8. The number of trial courtroom hours shall be limited as follows:

9. All parties agree and understand that motions for withdrawal from these agreements and stipulations are discouraged and shall be granted only for good cause shown due to unusual and newly discovered circumstances.

ALL PARTIES THERETO HEREBY AGREE AND STIPULATE to each of the matters set forth herein and request that the Court place this case on the "Cost Reduction Trial Track" with Limited Discovery and Pretrial Requirements and that this case further be handled in accordance with the provisions of the Local Civil Rules and ADR Plan concerning said "Cost Reduction Trial Track" and the stipulations and agreements set forth herein.

DATED this ____ day of _____, _____.

PLAINTIFF(S)

ATTORNEY(S) FOR PLAINTIFF(S)

DEFENDANT(S)

ATTORNEY(S) FOR DEFENDANT(S)

APPROVED AND SO ORDERED.

Dated this _____ day of _____, _____.

UNITED STATES DISTRICT JUDGE