UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALTERNATIVE DISPUTE RESOLUTION PROCEDURES HANDBOOK

May 2018 Edition

This version of this Handbook applies to cases filed on or after May 1, 2018

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Why Does the Court Offer ADR?

A Message from the Judges of the U.S. District Court

It is the mission of this court to do everything it can to help parties resolve their disputes as fairly, quickly and efficiently as possible. The cases filed in our court present a wide range of issues and circumstances. No single process can be expected to meet the needs of all of these cases.

While traditional litigation can serve parties' interests well in some situations, most cases are resolved voluntarily through other procedures. We offer a wide selection of non-binding alternative dispute resolution (ADR) options—each of which provides different kinds of services—so that parties can use the procedure that best fits the particular circumstances of their case.

As discussed in the following pages, ADR processes can offer numerous advantages over traditional litigation. In contrast to traditional litigation, ADR procedures may lead to resolutions that are faster, less expensive, more creative, and better able to meet the parties' underlying interests. Our ADR processes are available in every civil case, at any time, and are governed by the court's ADR Local Rules.

ADR is most effective when the process and timing are tailored to meet the needs of the parties in a particular case. It's important to consider early on what information you need to exchange in order to be prepared for a meaningful settlement discussion, when to have an ADR session, and what type of ADR is most likely to help the parties resolve their dispute. The judges in our court make it a priority to discuss these ADR questions with you at the initial case management conference. To ensure that you are adequately prepared for that discussion, attorneys and unrepresented parties must certify early in the case that they have met and conferred about ADR.

This handbook provides information about the benefits of ADR, available ADR options, selecting an appropriate ADR process, and procedures in the court's ADR programs. So that you can make informed choices, attorneys and parties must certify that they have read this handbook and considered the ADR options. Reading this handbook is not a substitute for understanding the ADR Local Rules. Be sure to consult the rules when selecting and participating in an ADR process. The court's ADR staff is available to answer your questions, and you may request an ADR phone conference with an attorney if you need help to select a suitable option or to customize an ADR procedure to meet your needs.

We have committed substantial resources to our ADR programs because we are confident that litigants who use them conscientiously can save significant money and time and often will obtain more satisfying results.

Phyllis J. Hamilton
Chief Judge
Northern District of California

How Can ADR Help in My Case?

The Court offers a range of alternative dispute resolution (ADR) options, including mediation, early neutral evaluation, and judicial settlement conferences. Each ADR process offers at least some of the following advantages over traditional litigation.

Overcome obstacles to settlement

The adversarial nature of litigation often makes it difficult for counsel and parties to negotiate a settlement effectively. An ADR neutral can help overcome barriers to settlement by focusing on the key information provided by each side to:

- Help parties engage in productive dialogue;
- Help each party understand the other side's views and interests;
- Communicate views or proposals in more palatable terms;
- Gauge the receptiveness to proposals;
- Help parties realistically assess their alternatives to settlement; or
- Help generate creative solutions.

Produce more satisfying results

After litigating a case through trial, even the winners may feel they have lost. The costs and time commitment on both sides may be enormous. Sometimes neither side is satisfied with the result, and any relationship that may have existed between the parties is likely to have degraded as a result of the litigation. Using ADR rather than litigation may:

- Help settle all or part of the dispute much sooner than trial;
- Permit a mutually acceptable solution that a court could not order;
- Save time and money;
- Preserve ongoing business or personal relationships; and
- Increase satisfaction and the likelihood of a lasting resolution.

Allow more flexibility, control and participation

In formal litigation, the court must follow a narrow set of procedures, and the remedies available are limited. Submitting a case to a judge or jury can be extremely risky because the outcome typically is all or nothing. ADR processes are more flexible and permit parties to participate more fully and in a wider range of ways. They afford parties more control and self-determination by providing opportunities to:

- Tailor the procedures used to seek a resolution;
- Broaden the interests taken into consideration;
- Fashion a business-driven or other creative solution not available from the court;
- Keep the negotiations and any resolution confidential; or
- Eliminate the risks of litigation.

Enable a better understanding of the case

In traditional litigation, sometimes the parties stop communicating directly, and it is only after a significant amount of time and expensive discovery or motions that the parties understand what is really in dispute. ADR can expedite the parties' access to information. It also can

improve the quality of justice by helping the parties obtain a better understanding of their case early in the litigation. It may:

- Allow clients to communicate their views directly and informally;
- Help parties get to the core of the case and identify the disputed issues; or
- Enhance the parties' understanding of the relevant law and the strengths and weaknesses of their positions.

Improve case management

Discovery can be broad and expensive, and it sometimes fails to focus on the information most relevant to settlement. An early ADR session may help parties agree to a focused, cost-effective discovery plan or may help them agree to exchange information informally. An ADR neutral can help parties:

- Streamline discovery and motions;
- Narrow the issues in dispute and identify areas of agreement and disagreement;
- Reach factual and legal stipulations; or
- Agree to exchange key information directly.

Reduce hostility

Due to its adversarial nature, litigation sometimes increases the level of hostility between sides, which can make communication more difficult and impede chances for settlement. In contrast, a trained ADR neutral can:

- Improve the quality and tone of communication between parties;
- Decrease hostility between clients and between lawyers; and
- Reduce the risk that parties will give up on settlement efforts.

When ADR May Not be Useful

Although most cases can benefit in some way from ADR, some cases might be better handled without ADR. These include suits in which:

- A party seeks to establish precedent;
- A dispositive motion or cross-motions requiring little preparation will probably resolve the matter;
- A party needs the protections of formal litigation; or
- There is an extreme imbalance of power between the parties.

If your dispute might benefit from one or more of the listed advantages, you should give careful thought to selecting the most appropriate process for your case.

Which ADR Processes Does the Court Offer?

What is the ADR Multi-Option Program?

Most civil cases are assigned to the ADR Multi-Option program governed by ADR Local Rule 3. This assignment typically is made in the initial case management scheduling order. Because of the proven value of ADR in fostering early resolution of litigation and increasing party satisfaction, for cases in this program the court presumptively requires participation in one non-binding ADR process offered by the court or, with the assigned judge's permission, in an ADR process offered by a private provider.

The court sponsors three major ADR processes:

- Early Neutral Evaluation
- Mediation
- Settlement Conferences (ordinarily conducted by magistrate judges)

ADR planning is a critical part of the case management process. To ensure that you are prepared to make the best use of the ADR resources offered by the court, the court requires that counsel and their clients (1) read this handbook, (2) discuss with one another the available ADR options provided by the court and private entities, and (3) consider how the case could benefit from any of the available ADR options. Counsel and clients must certify that they have complied with these requirements; this is done by filing an ADR Certification on or before the date specified in the initial case management scheduling order. *See* ADR Local Rule 3-5(b).

In addition, counsel are required to meet and confer regarding ADR and to certify to the court that they have done so. During that meet and confer process, counsel are required to discuss the available ADR processes, to identify the process each believes will be most helpful to the parties' settlement efforts, to specify any formal or informal exchange of information needed before an ADR session, and to attempt to agree on an ADR process and a deadline for the ADR session. *See* ADR Local Rule3-5(a). Whether or not you have stipulated to an ADR process before your case management conference, you should be prepared at the initial case management conference to discuss these ADR-related issues with your assigned judge.

Each of these processes is described separately in the next few pages. The court also makes available other dispute resolution processes and, subject to court approval, parties are welcome to consider retaining the services of private sector ADR providers as discussed in this handbook and in ADR Local Rule 8-2. Please consult the ADR Local Rules for more information. Where appropriate, the court's ADR attorneys can help parties customize an ADR process to meet their needs.

Early Neutral Evaluation

Goal

The goals of Early Neutral Evaluation (ENE) are to enhance direct communication between the parties about their claims and supporting evidence; to provide an assessment of the merits of the case by a neutral expert; to provide a "reality check" for clients and lawyers; to identify and clarify the central issues in dispute; to assist with discovery and motion planning or with an informal exchange of key information; and, when requested by the parties, to facilitate settlement discussions.

ENE aims to position the case for early resolution by settlement, dispositive motion or trial. It may serve as a cost-effective substitute for formal discovery and pretrial motions. Although settlement is not the major goal of ENE, the process can, and frequently does, lead to settlement. To ensure that all parties know what facts and arguments are being considered and thereby foster greater trust in the process, *all* communications with the evaluator must include the other party or parties to the case. No *ex parte* communication is permitted until the evaluation has been committed to writing.

Process

ENE is not simply an evaluative mediation process. It is a highly structured event in which the evaluator, an experienced attorney with expertise in the subject matter of the case, hosts an informal meeting of clients and counsel at which the following occurs:

- Each side–through counsel, clients or witnesses–presents the evidence and arguments supporting its case (without regard to the rules of evidence and without formal direct or cross-examination of witnesses);
- The evaluator identifies areas of agreement, clarifies and focuses the issues and encourages the parties to enter procedural and substantive stipulations;
- The evaluator writes an evaluation in private that includes:
    - An estimate, where feasible, of the likelihood of liability and the dollar range of damages;
    - An assessment of the relative strengths and weaknesses of each party's case;
    - The reasoning that supports these assessments; and
- The evaluator offers to present the evaluation to the parties, who may then ask either to:
    - Hear the evaluation (which must be presented orally if any party requests it and may be presented in writing if the evaluator so chooses); *or*
    - Postpone or forego hearing the evaluation to:
        - Engage in settlement discussions facilitated by the evaluator, which often includes separate meetings with each side; *or*
        - Conduct focused discovery or make additional disclosures.

If settlement discussions do not occur or do not resolve the case, the evaluator may:

- Help the parties devise a plan for sharing additional information and/or conducting the key discovery that will expeditiously equip them to enter meaningful settlement discussions or position the case for resolution by motion or trial;

- Help the parties realistically assess litigation costs; or
- Determine whether some form of follow up to the session would contribute to case development or settlement.

Preservation of right to trial

The evaluator has no power to impose settlement and does not attempt to coerce a party to accept any proposed terms. The parties' formal discovery, disclosure and motion practice rights are fully preserved. The confidential evaluation is non-binding and is not shared with the trial judge, with any other court personnel outside the ADR program, or with anyone not involved in the litigation. The parties may agree to a binding settlement. If no settlement is reached, the case remains on the litigation track.

The neutral

The court's ADR staff appoints an evaluator who has expertise in the substantive legal area of the lawsuit, is available and has no apparent conflict of interest. The parties may object to the evaluator if they perceive a conflict of interest. All evaluators on the court's panel have been admitted to the practice of law for at least 15 years, have experience with civil litigation in federal court, have expertise in the substantive law of the case and have been trained by the court. Many evaluators also have completed the court's mediation training.

Attendance

The following individuals are required to attend in person: clients with settlement authority and knowledge of the facts; the lead trial attorney for each party; and insurers of parties. Requests to permit attendance by phone rather than in person may be made to the ADR Magistrate Judge at least 14 days in advance of the scheduled ENE session. Such requests will be granted only if personal attendance would impose an extraordinary or otherwise unjustifiable hardship. Clients are strongly encouraged to participate actively in the ENE session to maximize the value of the process. *See* ADR Local Rule 5-10.

Confidentiality

Unless one of the exceptions set out in the ADR Local Rules applies or all parties agree to disclosure, communications made in connection with an ENE may not be disclosed to the assigned judge, to other court personnel outside the ADR program, or to anyone else not involved in the litigation. *See* ADR Local Rule 5-12.

Timing

ENE may be requested at any time. The time for holding the ENE session is presumptively within 90 days after the referral to ENE, unless otherwise fixed by the court.

The evaluator contacts counsel to schedule an initial telephone conference to set the date, time and location of the ENE session and to discuss how to maximize the utility of ENE.

Written submissions

Counsel exchange written statements with one another and submit them to the evaluator at least 7 days before the ENE session. ADR Local Rule 5-9 lists special requirements for intellectual property cases. The statements are confidential and thus are not to be filed with the court.

Appropriate cases/circumstances

All civil cases are eligible. Cases with the following characteristics may be particularly appropriate:

- Counsel or the parties are far apart on their views of the law and/or valuations of the case;
- The case involves technical or specialized subject matter, and it is important to have a neutral with expertise in that subject;
- Case planning assistance would be useful;
- Communication across party lines (about merits or procedure) could be improved;
- Participants value the ability to see and hear all communications with the neutral that would form the basis for an evaluation; or
- Equitable relief is sought and the parties, with the aid of a neutral expert, might agree on the terms of an injunction or consent decree.

Cost

The evaluator volunteers up to two hours of preparation time and the first four hours of the ENE session. If the parties agree, they may continue with the ENE and pay the evaluator's regular hourly rate (or another agreed-upon rate) for additional time devoted to the case. If the parties agree that additional preparation time is required and should be compensated, the evaluator should obtain approval from one of the ADR attorneys and then may charge the parties for that time. Cost and billing typically should be discussed in the pre-ENE phone conference.

Governing rule

ADR Local Rule 5.

Mediation

Goal

The goal of mediation is to reach a mutually satisfactory agreement resolving all or part of the dispute by carefully exploring not only the relevant evidence and law, but also the parties' underlying interests, needs and priorities.

Process

Mediation is a flexible, non-binding, confidential process in which a neutral lawyer-mediator facilitates settlement negotiations. The informal session typically begins with presentations of each side's view of the case, through counsel, clients, or both. The mediator, who may meet with the parties in joint and separate sessions, works to:

- Improve communication across party lines;
- Help parties clarify and communicate their interests and understand those of their opponent;
- Probe the strengths and weaknesses of each party's legal positions; and
- Identify areas of agreement and help generate options for a mutually agreeable resolution.

The mediator generally does not give an overall evaluation of the case. Mediation can extend beyond traditional settlement discussion to broaden the range of resolution options, often by exploring litigants' needs and interests that may be independent of the legal issues in controversy.

Preservation of right to trial

The mediator has no power to impose settlement and does not attempt to coerce a party to accept any proposed term. The parties' discovery, disclosure and motion practice rights are fully preserved. The parties may agree to a binding settlement. If no settlement is reached, the case remains on the litigation track.

The neutral

The court's ADR staff appoints a mediator who is available and has no apparent conflicts of interest. The parties may object to the mediator if they perceive a conflict of interest. Most mediators on the court's panel are lawyers who have been admitted to practice for at least seven years. The panel also includes a few mediators who have other professional credentials. The court's ADR staff will appoint a non-lawyer mediator only after obtaining the parties' permission. All mediators on the court's panel have experience in communication and negotiation techniques, knowledge about civil litigation in federal court and training provided by the court.

Attendance

The following individuals are required to attend the mediation session: clients with settlement authority and knowledge of the facts; the lead trial attorney for each party; and insurers of parties. Requests to permit attendance by phone rather than in person may be made to the ADR Magistrate Judge at least 14 days in advance of the scheduled mediation. Such requests will be granted only if personal attendance would impose an extraordinary or otherwise

unjustifiable hardship. Clients are strongly encouraged to participate actively in the mediation to maximize the value of the process. *See* ADR Local Rule 6-10.

Confidentiality

Unless one of the exceptions set out in the ADR Local Rules applies or all parties agree to disclosure, communications made in connection with a mediation may not be disclosed to the assigned judge, to other court personnel outside the ADR program, or to anyone else not involved in the session. *See* ADR Local Rule 6-12.

Timing

Mediation may be requested at any time. The time for holding the mediation session is presumptively within 90 days after the referral to mediation, unless otherwise fixed by the court. The mediator contacts counsel to schedule an initial telephone conference to set the date, time and location of the mediation session and to discuss how to maximize the utility of mediation.

Written submissions

Counsel exchange written statements with one another, share them with their clients, and submit them to the mediator at least 7 days before the mediation. The mediator may request or accept additional confidential statements that are not shared with the other side. The statements are confidential and thus are not to be filed with the court. ADR Local Rule 6-8 lists special requirements for intellectual property cases.

Appropriate cases/circumstances

All civil cases are eligible. Cases with the following characteristics may be particularly appropriate:

- The parties desire a business-driven or other creative solution;
- The parties may benefit from a continuing business or personal relationship;
- Multiple parties are involved;
- Equitable relief is sought - if parties, with the aid of a neutral, might agree on the terms of an injunction or consent decree; or
- Communication appears to be a major barrier to resolving or advancing the case.

Cost

The mediator volunteers up to two hours of preparation time and the first four hours of the mediation session. If the parties agree, they may continue with the mediation and pay the mediator's regular hourly rate (or another agreed-upon rate) for additional time devoted to the case. If the parties agree that additional preparation time is required and should be compensated, the mediator should obtain approval from one of the ADR attorneys and then may charge the parties for that time. Cost and billing typically should be discussed in the pre-mediation phone conference.

Governing rule

ADR Local Rule 6.

Settlement Conference

Goal

The goal of a settlement conference is to facilitate the parties' efforts to negotiate a settlement of all or part of the dispute.

Process

A judicial officer, usually a magistrate judge, helps the parties negotiate. Some settlement judges also use mediation techniques to improve communication among the parties, probe barriers to settlement and assist in formulating resolutions. Settlement judges might articulate views about the merits of the case or the relative strengths and weaknesses of the parties' legal positions. Often settlement judges meet with one side at a time, and some settlement judges rely primarily on meetings with counsel.

Preservation of right to trial

The settlement judge has no power to impose settlement and does not attempt to coerce a party to accept any proposed terms. The parties may agree to a binding settlement. If no settlement is reached, the case remains on the litigation track. The parties' formal discovery, disclosure and motion practice rights are fully preserved.

The neutral

A magistrate judge or, in limited circumstances, a district judge conducts the settlement conference. The judge who would preside at trial does not conduct the settlement conference unless the parties stipulate in writing and the judge agrees. Parties may request a specific magistrate judge or rank several magistrate judges in order of preference.

Magistrate judges have standing orders setting forth their requirements for settlement conferences, including written statements and attendance. Questions about these issues should be directed to the chambers of the magistrate judge assigned to conduct the settlement conference.

Attendance

Settlement judges' standing orders generally require the personal attendance of lead counsel, the parties, and any insurers. This requirement is waived only when it poses a substantial hardship, in which case the absent party may be required to be available by telephone. Persons who attend the settlement conference are required to be thoroughly familiar with the case and to have authority to negotiate a settlement.

Confidentiality

Communications made in connection with a settlement conference ordinarily may not be disclosed to the assigned judge or to anyone else not involved in the litigation, unless otherwise agreed. *See* ADR Local Rule 7-4.

Timing

The assigned judge may refer a case to a magistrate judge for a settlement conference at any time. The timing of the settlement conference depends on the schedule of the assigned magistrate judge.

Written submissions

Written settlement conference statements, when required, are submitted directly to the settlement judge. The statements are not filed with the court.

Appropriate cases/circumstances

All civil cases are eligible. Cases with the following characteristics may be particularly appropriate:

- A client or attorney strongly prefers to appear before a judicial officer;
- Issues of procedural law are especially important; or
- A party is not represented by counsel.

Please note that because of the many other duties and functions performed by magistrate judges in this district, the court refers only a limited number of cases for settlement conferences scheduled in the early phases of the litigation. Cases in which the parties demonstrate that involving a judge is substantially more likely to aid the parties in their settlement efforts are given priority.

Cost

There is no charge to the litigants.

Governing rule

ADR Local Rule 7.

Other ADR Processes

Customized ADR Processes

The court's ADR legal staff will work with parties to customize an ADR process to meet the needs of their case. *See* ADR Local Rule 8-1. An ADR legal staff member is available for a telephone conference with all counsel to discuss ADR options. Clients are invited to join such conferences.

Non-binding Arbitration

Non-binding arbitration is an adjudicative process in which an arbitrator or a panel of three arbitrators issues a non-binding judgment ("award" or "decision") on the merits after an expedited, adversarial hearing. Either party may reject the non-binding award or decision and request a trial de novo. A non-binding arbitration occurs earlier in the life of a case than a trial and is less formal and less expensive. Because testimony is taken under oath and is subject to cross-examination, arbitration can be especially useful in cases that turn on credibility of witnesses. Arbitrators do not facilitate settlement discussions. Parties considering a non-binding arbitration should request an ADR phone conference for assistance in structuring a process tailored to their case.

Non-binding Summary Bench or Jury Trial

A summary bench or jury trial is a flexible, non-binding process designed to promote settlement in complex, trial-ready cases headed for long trials; to provide an advisory verdict after an abbreviated presentation of evidence; to offer litigants a chance to ask questions and hear the reactions of the judge and/or jury; and to trigger settlement negotiations based on the judge's or jury's non-binding verdict and reactions. Parties considering a non-binding summary bench or jury trial should request an ADR phone conference for assistance in structuring a process tailored to their case.

Special Masters

The assigned judge may appoint a special master, whose fee is paid by the parties, to serve a wide variety of functions, including:

- Discovery manager;
- Fact-finder;
- Host of settlement negotiations; or
- Post-judgment administrator or monitor.

The precise roles and responsibilities of the special master are defined in the specific order of reference.

Private ADR Providers

The court encourages parties to consider private-sector ADR providers, who offer services including arbitration, mediation, fact-finding, neutral evaluation and private judging. Private providers may be lawyers, law professors, retired judges or other professionals with expertise in dispute resolution techniques. They generally charge a fee.

Which ADR Process Is Best for My Case?

Each ADR process meets different needs and circumstances. When selecting an ADR process, you should:

- Carefully consider the needs of your particular case or situation;
- Identify the goals you hope to achieve through ADR;
- Review the descriptions of each process in this manual and in the ADR Local Rules; and
- Select the ADR process that appears to maximize the potential for achieving your goals.

The likelihood that a particular ADR process will deliver a benefit depends not only on the type of process, but on numerous other factors including: the style of the neutral; the type and procedural posture of the case; and the parties' and counsel's attitudes and personalities, level of preparation, and experience with the particular ADR process. At your initial case management conference, the judge will help you to select the best ADR process and timing for your case. The ADR program also has attorneys on staff who can help select or customize an ADR process to meet your needs.

Due to resource constraints, referral to an early settlement conference with a magistrate judge generally is limited to circumstances in which a settlement conference is appreciably more likely than mediation or ENE to help the parties' settlement efforts.

The Parties' Role In Selecting A Neutral

Parties often ask whether they may have input into the selection of the neutral in their case. The answer is "Yes," but under no circumstances should the parties simply submit a proposed order calling for the appointment of a specific mediator or evaluator because the court cannot guarantee that any individual mediator or evaluator is available at any given time.

Parties wishing to have input into the selection of a mediator or evaluator for their case must first contact the ADR Unit. For cases assigned to the court's mediation or ENE programs, after consultation, the parties may submit to the ADR Unit a list of no fewer than five mutually agreed-upon names from the court's panel for consideration. That list should be submitted within seven days of an ADR referral unless otherwise agreed with the ADR Program or otherwise ordered by the Court. The ADR Unit will attempt to appoint someone from that list, but ultimately must balance the parties' wishes with neutral availability and the responsibility not to add unnecessary delay to the process.

For cases in which a settlement conference with a magistrate Judge is requested, the parties may advise the assigned judge of their preference.

If the parties feel strongly that a specific person on the court's mediation or ENE panel is especially well-suited to handle their case, the parties should consider hiring that person privately and request that their private process substitute for referral to any of the court's ADR processes. *See* ADR Local Rule 3-2.

Frequently Asked Questions

What If I Don't Have a Lawyer?

If you are not represented by a lawyer, the court suggests that you select the option of a magistrate judge settlement conference, where your questions and concerns can be addressed directly by a judge who has experience working with unrepresented parties.

Some volunteer mediators and evaluators lack experience working with unrepresented parties, making it more difficult to place your case in these programs and potentially slowing down the process. If you do select mediation or ENE and we are unable to find a suitable neutral, your case likely will be redirected to a settlement conference with a magistrate judge.

If you are not represented by a lawyer, the court also recommends that you consult with the Legal Help Centers located in the San Francisco, Oakland, and San Jose courthouses. In appropriate cases, the Legal Help Centers may be able to assist you with an application for appointment of an attorney for the limited purpose of representing you in mediation, ENE, or a settlement conference.

More information about the Legal Help Centers is at: cand.uscourts.gov/pro-se.

The court also publishes a comprehensive handbook for litigants without attorneys, available from the Clerk's Office, the Legal Help Centers and cand.uscourts.gov/prosehandbook.

How Do I Get My Case into an ADR Process?

There are three ways cases can enter an ADR process:

By stipulation/proposed order

Counsel may file a stipulation and proposed order with the assigned judge at any time. This is the preferred way to obtain a referral to ADR in advance of the initial case management conference. *See* ADR Local Rules 2-3, 3-5(c) & (d); 3-6. For your convenience, the court provides a standard form for stipulating to an ADR Process, the *Stipulation and Proposed Order Selecting ADR Process*.

By consideration of ADR at the case management conference

If all parties have not yet agreed on an ADR process before the initial case management conference, you will discuss ADR with the judge at the conference. You should be prepared to discuss all of the subjects about which you were required to meet and confer under ADR Local Rule 3-5(a). Your joint case management statement also must include a report on the status of ADR, specifying which ADR process option you have selected and a proposed deadline by which the parties will conduct the ADR session or, if the parties do not agree, setting forth which option and timing each party prefers.

By other order of the court

The assigned judge may order the case into an ADR program at any time at the request of a party, based on a recommendation from the ADR program, or on the judge's own initiative, subject to the provisions of 28 U.S.C. § 654. *See* ADR Local Rules 2-3, 3-5(c) & (d); 3-6.

How Do I Schedule an ADR Phone Conference with an ADR Attorney?

Many ADR questions can be answered simply by reviewing the ADR Local Rules or by calling the ADR office at the number listed on the last page of this handbook. For help with more complex issues, you have the option of requesting an ADR phone conference with one of the two attorneys in the ADR program. You can do this at any stage in the case by filing the form Request for ADR Phone Conference.

Like a case management conference, an ADR phone conference is a facilitated opportunity to customize the ADR plan for your case, to obtain guidance from an ADR attorney with specialized expertise in the field, or to obtain a recommendation to the assigned judge about ADR options and timing.

When Is the Best Time to Use ADR and Do I Need to do Discovery First?

You should consider using ADR early, whether you are seeking assistance with settlement or case management. Conducting full-blown discovery before an ADR session may negate potential cost savings and make it harder for you to settle the case. On the other hand, if you are using ADR for settlement purposes, you should know enough about your case to assess its value and to identify the major strengths and weaknesses of the claims and defenses asserted.

Scheduling an early ADR session can be helpful to:

Get settlement discussions started

Sometimes advocates are reluctant to initiate settlement discussions. The availability of multiple ADR options and the ability to consult with the ADR legal staff allows a party to explore settlement potential without indicating any litigation weakness.

Save time and money

For various reasons, direct settlement discussions often do not occur until late in the lawsuit after much time and money have been spent. A substantial amount of time and money can be saved if parties actively explore settlement early in the pretrial period. An ADR process can provide a safe and early opportunity to discuss settlement.

Provide momentum and a "back up"

Often parties successfully negotiate an early resolution to their dispute on their own. Even if you are negotiating a settlement without the assistance of a neutral, you should still consider having your case referred to an ADR process to use as a "back up" in the event the case does not settle. Meanwhile, knowing that you have a date for the ADR process may help provide momentum and a "deadline" for your direct settlement discussions.

Will ADR Affect the Schedule for Disclosures, Discovery, Motions and Trial?

Assignment to an ADR process generally does not affect the status of your case in litigation. Disclosure, discovery and motions are not stayed during ADR proceedings unless the court orders otherwise. Judges sometimes postpone case management or status conferences until after the parties have had an ADR session. If your case does not settle through ADR, it remains on the litigation track.

Will I Risk Giving Away My Trial Strategy in ADR?

About 98 percent of civil cases in our court are resolved without a trial. If you don't present your best arguments and evidence in settlement discussions, you risk failing to achieve the best result for your side. Although you need not reveal in an ADR session sensitive information related to trial strategy, you might find it useful to raise it in a confidential separate session with the neutral (available after the evaluator prepares the evaluation in ENE, or at any time in mediation or a settlement conference). You can then hear the neutral's views of the significance of the information and of whether or when sharing it with the other side may benefit you in the negotiations.

Where Can I Get More Information?

Website

Our website at cand.uscourts.gov/adr offers much more information about the court's ADR Programs, including:

ADR Local Rules
ADR Forms
Program attorney profiles
Neutral profiles
Application to serve as a neutral
This handbook.

Clerk's Office

You may obtain copies of this handbook and the ADR Local Rules from the intake counter at each of the Clerk's Office locations. The phone numbers for the Clerk's Office locations in San Francisco, Oakland and San Jose are as follows:

- San Francisco: (415) 522-2000
- Oakland: (510) 637-3530
- San Jose: (408) 535-5363

Court Library

The court's library on the 18th floor of the Federal Building and United States Courthouse in San Francisco is open to counsel and parties who have cases pending before the court. The library has a collection of resources on ADR. The collection includes copies of the court's ENE and Mediation Handbooks, which were prepared by the court to train evaluators and mediators, but which might be helpful to counsel and clients referred to the respective programs. The library's telephone number is (415) 436-8130.

ADR Unit

For information about selecting an ADR process or customizing one for your case, requesting an ADR Phone Conference, conflicts of interest, becoming a neutral or for other information, contact:

ADR UnitU.S. District Court
450 Golden Gate Avenue
San Francisco, CA 94102

Tel: (415) 522-2199

Email: ADR@cand.uscourts.gov

Web: cand.uscourts.gov/adr