

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI**

FACT SHEET #10

FREQUENTLY ASKED QUESTIONS FOR ALTERNATIVE DISPUTE RESOLUTION (ADR)

WHEN MAY MEDIATION BE REQUESTED? A mediation may be requested at any time and is used at every stage of litigation. Usually, the first mediation is held shortly after the Rule 16 conference.

WHAT IF A CASE DOES NOT SETTLE THROUGH MEDIATION? If a case does not settle during mediation, it will proceed through the court system as if there were no mediation.

HOW LONG DOES MEDIATION TAKE? Mediation typically takes five or more hours, although the mediator may call off the sessions if no progress is being made.

WHAT ARE THE STAGES OF MEDIATION? The Mediation process consists of: (1) initial discussion; (2) Judge issues Order; (3) parties appoint a neutral or the ADR Coordinator appoints one; (4) lead counsel contacts the neutral, opposing counsel and submits written statements; (5) initial joint session; (6) initial separate sessions; (7) additional separate and joint sessions; (8) If claim settles, counsel files a written settlement agreement or if scheduling changes are made the counsel files a proposed litigation plan, within fourteen days after the last ADR conference.

HOW IS A NEUTRAL APPOINTED? The parties should agree on a neutral, which they select from a list provided by the Clerk. If the parties do not agree on a person to serve as a neutral from the Clerk's list, the Clerk may appoint a neutral for the ADR session. The list of neutrals is available online at www.moed.uscourts.gov

WHO CONTACTS THE NEUTRAL? Lead counsel contacts the mediator and opposing counsel, usually after the Rule 16 conference, to set the date, time and location for the initial conference. At this time written statements, which include a written summary of the disputed facts and position relative to liability and damages, are submitted to the neutral according to the date set in the Order. The summary is not given to the other side or filed with the Court.

WHAT IS THE INITIAL ADR JOINT SESSION? The mediator explains the mediation process and hears a brief case presentation from each party. Each party has an opportunity to say what they want about the case. The mediator may ask open-ended questions to clarify positions and interests. All parties and their counsel are required to attend the joint session and participate in good faith.

WHAT HAPPENS DURING THE INITIAL SEPARATE SESSIONS? The mediator probes individual priorities, explores underlying interests and concerns, meaningfully considers the private positions of parties to the action, all in a confidential setting. He or she helps the parties look at different ways to resolve each parties' claims, and presents to each side whatever proposals have been made by the opposing party.

WHAT HAPPENS DURING THE ADDITIONAL SEPARATE AND JOINT SESSIONS? The mediator helps the parties develop and evaluate options and alternative proposals that may result in a mutually acceptable solution.

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WHAT ARE THE STAGES OF ENE? The Mediation process consists of: (1) initial discussion; (2) Judge issues Order; (3) parties appoint a neutral or the Clerk of Court appoints one; (4) lead counsel contacts the neutral, opposing counsel and submits written statements; (5) single joint session; (6) case presentations; (7) additional sessions; (8) case assessment; (9) If claim settles, counsel files a written settlement agreement or if scheduling changes are made the counsel files a proposed litigation plan, within fourteen (14) days after the last ADR conference.

HOW IS AN EVALUATOR APPOINTED? The parties should agree on a neutral, which they select from a list provided by the Clerk. If the parties do not agree on a person to serve as a neutral from the Clerk's list, the Clerk may appoint a neutral for the ADR session. The list of neutrals is available online at www.moed.uscourts.gov.

WHO CONTACTS THE EVALUATOR? Lead counsel contacts the evaluator and opposing counsel, usually after the Rule 16 conference, to set the date, time and location for the initial conference, and submit written statements, which include a written summary of the disputed facts and position relative to liability and damages to the neutral according to the date set in the Order. The summary is not given to the other side or filed with the Court.

WHAT HAPPENS DURING THE SINGLE JOINT SESSION? During the Single Joint Session the evaluator begins by making an opening statement explaining the purposes of the process and outlines the procedures to be followed.

WHAT HAPPENS DURING THE CASE PRESENTATIONS? During the Case Presentations the evaluator hears a brief case and/or position summary from each party, clarifies arguments and evidence, and pinpoints the strengths and weaknesses of each party's position.

WHAT HAPPENS DURING THE ADDITIONAL SESSIONS? This phase of ENE may occur in either a joint or private session (or both). During the additional sessions the evaluator helps the parties focus upon the issues in their case, and identify substantive areas of agreement and dispute.

WHAT IS A CASE ASSESSMENT? The evaluator prepares and announces an assessment of each party's position. He or she may offer a reasoned judgment of the value of the case, anticipating the likelihood of liability and estimating the possible range of damages or other relief.

CAN THE EVALUATOR ASSIST WITH CASE PLANNING? The evaluator may help the parties discuss and reach an agreement on case management issues. Parties may be able to reduce cost and delay by streamlining discovery, reducing motion activity, and eliminating unnecessary pleading in this way.