

Rule 6.02 (FRCP 16) Referral to Alternative Dispute Resolution and Duties of Participants; Appointment of Counsel.

(A) Order Referring Case to Alternative Dispute Resolution.

(1) **Designation and Duties of Lead Counsel.** The Order will designate a lead counsel who is responsible for coordinating the ADR process with the parties and neutral, including selecting an agreeable date, time, and if necessary, location for the initial ADR conference. By the date set by the Court, lead counsel shall notify the Clerk of the agreed choice of neutral selected by the parties and the date, time, and location of the initial ADR Conference (see Designation of Neutral/ADR Conference Report form, www.moed.uscourts.gov, ADR, forms). Upon selection of the neutral, lead counsel shall send a copy of the ADR referral order to the neutral and will inform counsel and the parties of their additional obligations regarding ADR.

(2) **Termination and Extension of Referral Date.** The Order will specify a date on which the ADR referral will terminate. Upon motion of a party for good cause shown, the Court may extend the referral termination deadline. In addition, the neutral may elect to extend the deadline for a period not to exceed fourteen (14) additional days by filing an Alternative Dispute Resolution Compliance Report indicating the neutral's election and the length of the extension. Unless otherwise ordered, referral to ADR does not abate or suspend the action, and no scheduled dates will be delayed or deferred, including the date of trial.

(B) Vacating Order of Referral

If the parties agree that the referral to ADR has no reasonable chance of being productive, the parties may jointly move the Court for an order vacating the ADR referral prior to the selection of the neutral.

(C) Duties of Participants.

(1) **Attendance.** All named parties and their counsel are required to attend the ADR conference, participate in good faith, and possess the requisite settlement authority unless excused under paragraph (C)(2), below. The attendance requirement is satisfied by appearing in person or by video conference, provided all parties and the neutral agree to video conferencing as an alternative to personal appearance.

(a) **Corporation or Other Non-Governmental Entity.** A party other than a natural person (e.g., a corporation or association) satisfies this attendance requirement if represented by a person (other than outside counsel) who has authority to settle and who is knowledgeable about the facts of the case.

(b) **Government Entity.** A unit or agency of government satisfies this attendance requirement if represented by a person who has authority to settle, and who is knowledgeable about the facts of the case, the government unit's position, and the procedures and policies under which the governmental unit decides whether to accept proposed settlements. If under applicable law proposed settlement terms can be approved only by a governing board or public official, the person attending on behalf of the government entity must have full authority to negotiate on behalf of and to recommend settlement to the governing board or public official. When the entity is precluded by law from delegating full settlement authority to a representative, the entity must disclose this fact in writing to all other parties and the neutral not less than fourteen (14) days before the scheduled ADR conference. The Court may deem a government party's failure to comply with this notice requirement as the party's failure to attend. If the action is brought by the government on behalf of one or more individuals, at least one such individual also must attend.

(c) **Counsel.** Each party must be accompanied at the ADR conference by the lawyer who will be primarily responsible for handling the trial of the matter.

(d) **Insurers.** Insurer representatives are required to attend in person unless excused under paragraph (B)(2), below, if their agreement would be necessary to achieve a settlement. An insurer satisfies this attendance requirement if represented by a person (other than outside counsel) who has authority to settle and who is knowledgeable about the facts of the case.

(2) **Request to be Excused.** A person who is required to attend an ADR conference may be excused from attending in person only after a showing that personal attendance would impose an extraordinary or otherwise unjustifiable hardship. A person seeking to be excused must file a motion to be excused, no fewer than fourteen (14) days before the date set for the conference, simultaneously copying all counsel and the neutral. The motion must:

- (a) Set forth all considerations that support the request;
- (b) Identify an appropriate substitute; and
- (c) State whether the other party or parties join in or object to the request.
- (d) State whether such person can attend by video conference pursuant to (B)(1) above.

(3) **Memoranda.** Not later than ten (10) days prior to the initial ADR conference, each party will provide the neutral with a memorandum presenting a summary of disputed facts and a narrative discussion of its position relative to both liability and damages, together with such other information as shall be appropriate to the individual case. These memoranda shall be treated as **Confidential Communications** and shall not be filed in the

public record of the case nor provided to any other party or counsel. The author of the memorandum may send a copy to other counsel in his/her sole discretion.

(4) **Disclosure of Participants and Duty to Attend.** Not later than ten (10) days prior to the ADR Conference, each party will provide to the opposing party, and to the neutral, a list of all persons who will participate in the ADR Conference on behalf of the party making the disclosure. This list shall state the names of the individuals attending and their general job titles.

(D) **Appointment of Counsel.**

(1) Upon request of an unrepresented party, the Court may appoint counsel for the limited purpose of providing legal advice and representation in preparation for and during the course of mediation or early neutral evaluation ordered under this rule. Although the scope of this representation is limited, counsel will provide such services as counsel deems appropriate to the mediation, including but not limited to review of the pleadings, communication with opposing counsel, and interviews with the client and such key witnesses as may be necessary in advance of the mediation or early neutral evaluation. Counsel may conduct or participate in such discovery, if any, as may be necessary in advance of the mediation or early neutral evaluation.

(2) Counsel appointed under this paragraph must be a member in good standing of the bar of this Court, must agree to serve without compensation from the party and must file a Limited Representation Appearance on a form provided by the Clerk of Court confirming counsel's consent to serve pro bono for the limited purpose of assisting the otherwise unrepresented party in the alternative dispute resolution process ordered for the case. The client will be required to sign the Limited Representation Appearance to indicate the client's consent to and understanding of the nature of the limited scope representation.

(3) The Court-appointed representation will terminate, and appointed counsel will have no further obligation to advise or otherwise appear on behalf of the party, when the ADR process is concluded and any resulting settlement agreement is executed. Nothing in this rule prohibits the self-represented litigant and limited scope counsel from agreeing to continue the legal representation after the ADR process is concluded on terms they may negotiate, subject to approval of the Court. Appointed counsel may not condition the undertaking of the party's initial limited scope representation on the making of any agreement.

(Amended October 1, 2001, effective November 1, 2001; Amended July 10, 2006, effective August 28, 2006; Amended September 8, 2009, effective December 1, 2009; Amended July 9, 2010, effective August 16, 2010; Amended June 24, 2011, effective September 1, 2011; Amended August 11, effective September 19, 2011; Amended May 8, 2013, effective July 1, 2013; Amended November 5, 2014, effective December 15, 2014; Amended October 2, 2019, effective November 1, 2019)