

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, as Ordered by the Court or authorized by the neutral. When appearing by video conference, persons must be visibly present in front of their camera with audio and video turned on so that audio and visual interaction with all parties can occur.

(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 (C)(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 if the person can attend by video conference pursuant to (C)(1) above, and the Court orders or the neutral authorizes attendance by videoconference.

(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, and shall include any requests to attend by videoconference for each individual requesting it.

(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; Amended July 7, 2021, effective September 1, 2021)

Rule 6.03 (FRCP 16) Neutrals.

(A) Certification of Neutrals.

(1) The Court will certify those persons who are eligible to serve as neutrals (mediators or evaluators) in such numbers as the Court deems appropriate. The Court will have the authority to establish qualifications for and monitor the performance of neutrals, and to withdraw the certification of any neutral. A list of certified neutrals will be maintained by the Clerk, and will be made available to counsel, litigants, and the public for inspection upon request.

(2) To be eligible for certification under this rule a person must:

- (a) File an application for certification on a form provided by the Clerk;
- (b) Be admitted to practice law in the highest court of any state or the District of Columbia for at least five (5) years;
- (c) Be a member in good standing in each jurisdiction where admitted to practice law at the time of application for certification;
- (d) Complete at least thirty-two (32) hours of approved professional training in mediation;
- (e) With the consent of the parties, observe as a non-participant at least two (2) mediations conducted by a mediator who has completed at least twenty-five (25) mediations and is either certified under this rule or qualified under Missouri Supreme Court Rule 17;
- (f) Agree to serve for reduced or no compensation from a party who has qualified pursuant to paragraph (C)(2) of this rule for appointment of a pro bono neutral;

(g) Complete four (4) hours of accredited continuing legal education in alternative dispute resolution on or before January 31 of each odd numbered year for the two preceding years; and

(h) With the consent of the parties, after having completed twenty-five (25) mediations, agree to be observed for two (2) mediations each year by interested individuals who would otherwise be qualified for certification under this rule.

(3) The training requirement established in paragraph (A)(2)(d) above is satisfied by the completion of accredited continuing legal education course work which includes the following:

(a) Conflict resolution and mediation theory, including causes and dynamics of conflict, interest-based versus positional bargaining, negotiating theory, and models of conflict resolution;

(b) Mediation and co-mediation skills and techniques, including information gathering skills, conflict management skills, listening skills, negotiations techniques, power issues, caucusing, management of joint session, cultural and gender issues, and modeling with self-represented as well as represented individuals;

(c) Mediator conduct, including conflicts of interest, confidentiality, impartiality, ethics and standards of practice; and

(d) Mediation simulations or role play activities.

(4) An attorney certified under this rule who is not admitted to practice law in this Court is bound by the Rules of Professional Conduct as approved and amended from time to time by the Supreme Court of Missouri and this Court's Rules of Disciplinary Enforcement, in accordance with Local Rule 12.02, to the same extent and under the same conditions as a member of the bar authorized to practice before this Court.

(5) Any member of the bar of this Court who is certified as a neutral will not for that reason be disqualified from appearing as counsel in any other case pending before the Court.

(6) After January 31 of each odd-numbered year, the Clerk will examine the list of certified neutrals to determine which neutrals did not receive appointments during the previous two years and which neutrals did not complete the continuing legal education required in paragraph (A)(2)(g) above. The Clerk will determine the neutral's interest in continuing to be carried on the Court's list of certified neutrals. If the neutral desires to remain on the list, the neutral will submit by April 1 information demonstrating completion of the continuing legal education requirement during the previous two years as well as information demonstrating the neutral's continued interest in mediation. If such information is not provided, the Clerk will recommend to the Court that the neutral be removed from the list. A person applying for certification as a neutral after having been removed pursuant to this rule must satisfy the requirements for certification in effect at the time of the new application.

(7) In addition to the removal process set forth in paragraph (6) above, the Court may withdraw the certification of any neutral at any time, provided that the neutral will be given notice in writing including the reason for the withdrawal of certification at least 30 days prior to the proposed date of withdrawal. If the neutral objects to the withdrawal, the neutral must respond in writing to the Clerk prior to the proposed date of withdrawal and may request an opportunity to be heard. Upon receipt of the neutral's request, the Court will stay the withdrawal, furnish the neutral an opportunity to be heard, and respond to the neutral in writing as to the manner of the hearing. The hearing will take place within 30 days of the neutral's request. After the hearing, the Court will advise the neutral in writing as to its final determination of the neutral's status.

(B) Appointment of Neutrals.

(1) Within the time prescribed by the Order Referring Case to Alternative Dispute Resolution, the parties must notify the Clerk in writing of the parties' choice of a neutral. If the parties fail timely to select a neutral, the Clerk will select a certified neutral from the list and notify the parties.

(2) Notwithstanding subsection (B)(1), the Court, in consultation with the parties, may appoint a neutral who has special subject matter expertise germane to a particular case, whether or not the individual is on the list of certified neutrals. Parties must file a:

(a) Motion for leave to designate a neutral not on the list of certified neutrals maintained by the Court. The motion must include the reason for the selection of the neutral; and

(b) Notice of non-court certified neutral request form, which may be found on the Court's website [here](#).

(3) The Clerk will send a Notice of Appointment of Neutral to the parties and to the individual designated by the parties, after lead counsel has confirmed the neutral's availability. Upon receipt of the Notice of Appointment, lead counsel must send to the neutral a copy of the Order Referring Case to Alternative Dispute Resolution. The appointment will be effective until the neutral notifies the Court in writing that the referral has been concluded.

(C) Compensation of Neutral.

(1) Unless otherwise agreed by all parties or ordered by the Court, one-half the cost of the neutral's services will be borne by the plaintiff(s) and one-half by the defendant(s) at the rate listed in the neutral's fee schedule filed with the Court. In a case with third-party defendants, the cost will be divided into three equal shares. Except as provided in subsection (C)(2), a neutral may not charge or accept in connection with a particular case a fee or thing of

value from any source other than the parties. The Court may review the reasonableness of the fee and enter any order modifying the fee. Compensation will be paid directly to the neutral. Failure to pay the neutral will be brought to the Court's attention promptly, by the neutral or by any party.

(2) A party who demonstrates a financial inability to pay all or part of that party's pro rata share of the neutral's fee may file a motion asking the Court to appoint a neutral to serve pro bono. The Court may waive all or part of that party's share of the fee. A neutral appointed to serve pro bono may apply to the Court for payment of that share of the neutral's fee waived for an indigent party, consistent with regulations approved by the Court. When so ordered by the Court, payment to the neutral will be made by the Clerk from the Attorney Admission Fee Non-Appropriated Fund. Other parties to the case who are able to pay the fee will bear their pro rata portions of the fee.

(D) Disqualification of Neutral.

(1) The term "conflict of interest" as used in this rule means any direct or indirect financial or personal interest in the outcome of a dispute, or any existing or prior financial, business, professional, family or social relationship with any participant in an ADR process that is likely to affect the neutral's impartiality or reasonably create an appearance of partiality or bias.

(2) A neutral must avoid a conflict of interest or the appearance of a conflict of interest during and after a mediation or early neutral evaluation. A neutral must make a reasonable inquiry to determine whether there are any facts that would cause a reasonable person to believe that an actual or potential conflict of interest exists for the neutral in connection with service in a particular case referred to ADR by the Court.

(3) A neutral must disclose to all participants, as soon as practicable, all facts and information relevant to any actual and potential conflicts of interest that are reasonably known to the neutral. If, after accepting a designation by the parties, a neutral learns any previously undisclosed information that could reasonably suggest a conflict of interest, the neutral must promptly disclose the information to the participants. After the neutral's disclosure, the ADR may proceed if all parties agree to continued service by the neutral.

(4) Notwithstanding the agreement of the parties to waive a conflict of interest, a neutral must withdraw from or decline a designation in a case if the neutral determines that an actual or potential conflict of interest may undermine the integrity of the mediation or early neutral evaluation.

(5) Any party who believes that an assigned neutral has a conflict of interest may request the neutral to recuse. If the neutral declines, the party may file a motion for disqualification of the neutral within five (5) days after learning the basis for disqualification. Failure to timely file a motion will waive the objection.

(E) Unavailability of Neutral. A neutral who cannot serve within the period of referral must notify lead counsel who will arrange for selection of a different neutral by agreement of the parties or by the Clerk.

(Amended October 1, 2001, effective November 1, 2001; Amended February 10, 2004, effective March 12, 2004; Amended July 10, 2006, effective August 28, 2006; Amended April 6, 2009, effective May 11, 2009; Amended July 9, 2010, effective August 16, 2010; Amended September 5, 2013, effective January 1, 2014; Amended November 5, 2014, effective December 15, 2014; Amended September 7, 2016, effective December 1, 2016; Amended January 3, 2018, effective March 1, 2018; Amended October 2, 2019, effective November 1, 2019; Amended July 7, 2021, effective September 1, 2021)