

**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.

(C) Duties of Participants.

(1) **General Attendance Requirements.**

(a) Attendance and Participation. 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 this Rule. The attendance requirement is satisfied by appearing in person or by video conference, unless in-person attendance is Ordered by the Court or required by the neutral. Unless excused by the neutral for good cause shown, 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.

(b) Disclosure of Participants and Manner of Attendance. Not later than fourteen (14) days prior to the ADR Conference, each party will provide to all parties, 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 state whether each person is attending in person or by videoconference.

(c) Contesting Attendance. Any party contesting the manner of attendance listed in another party's disclosure, or the lack of attendance by any party who would be necessary in any way to achieve settlement, must inform the neutral in writing of their contest, simultaneously copying all counsel, no fewer than ten (10) days prior to the date set for the conference. The neutral may contact the parties and attempt to resolve the contest but must make a final determination in writing to all parties on attendance requirements no fewer than seven (7) days prior to the date set for the conference. The neutral may allow attendance by videoconference, require in-person attendance, or excuse attendance. Any party contesting any attendance determination by the neutral may file a motion with the Court no fewer than four (4) days prior to the date set for the conference, stating the reasons for the objection to the neutral's

determination and providing alternatives for attendance compliance. The Court may Order attendance by videoconference, in-person attendance, or excuse attendance; or the Court may enter any other appropriate Order necessary for the attendance of the parties. On its own authority, the Court may alter the deadlines set forth this in section.

(2) **Specific Attendance Requirements.**

(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 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.

(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.

(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; Amended December 14, 2022, effective March 1, 2023)