

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

**ORDER AMENDING RULE 16 AND
REPEALING RULE 16.1 OF THE
SUPERIOR COURT RULES OF CIVIL PROCEDURE**

This 5th day of February, 2008, IT IS ORDERED that:

(1) Superior Court Civil Rule 16 is amended by deleting subparagraph (b) and by substituting in lieu thereof the following new subparagraph (b):

(b) *Scheduling and planning.* Except in categories of actions identified in this rule or any specific action exempted by the Court as inappropriate, the Court shall, at a time deemed appropriate by the Court, enter a scheduling order that either establishes or limits the time:

- (1) To join other parties and to amend the pleadings;
- (2) To file and hear motions.
- (3) To complete discovery.

(4) To engage in compulsory alternative dispute resolution ("ADR"), the format of which is to be agreed upon by the parties. Such ADR may include, but shall not be limited to, non-binding or, if agreed to by the parties, binding arbitration, mediation or neutral case assessment. If the parties cannot agree on the format of ADR, the default format shall be mediation unless otherwise ordered by the Court.

(a) In the event the parties cannot agree on an ADR Practitioner, they shall file a joint motion with the Court within thirty (30) days of the issuance of the scheduling order requesting that the Court appoint an ADR Practitioner for the parties. The Court may impose sanctions upon a party or both parties if it determines that the parties have not attempted to agree upon an ADR Practitioner in good faith.

(b) The parties shall pay the ADR Practitioner in accordance with the allocation and amount of fees established by the ADR Practitioner and agreed to by the

**ORDER AMENDING RULE 16 AND
REPEALING RULE 16.1 OF THE
SUPERIOR COURT RULES OF CIVIL PROCEDURE**

parties or ordered by the Court. The ADR Practitioner may apply to the Court for sanctions against any party who fails to comply with the terms of engagement established by the ADR Practitioner and agreed to by the parties including, but not limited to, dismissal of the action or default judgment.

(c) The ADR Practitioner may not be called as a witness in any aspect of the litigation, or in any proceeding relating to the litigation in which the ADR Practitioner served, unless ordered by the Court. In addition, all ADR Practitioners, when serving as an arbitrator, mediator or neutral assessor, shall be immune from civil liability for, or resulting from, any act or omission done or made while engaged in ADR, unless an act or omission was made or done in bad faith, with malicious intent, or in a manner exhibiting a willful, wanton disregard of the rights, safety, or property of another. Each ADR Practitioner shall remain bound by any confidentiality agreement signed by the parties and the ADR Practitioner as part of the ADR.

(d) The following definitions apply to this rule:

(i) "Arbitration" is a process by which a neutral arbitrator hears both sides of a controversy and renders a fair decision based on the facts and the law. If the parties stipulate in writing the decision shall be binding, in which instance the case is removed from the Court's docket.

(ii) "Mediation" is a process by which a mediator facilitates the parties in reaching a mutually acceptable resolution of a controversy. It includes all contacts between the mediator and any party or parties until a resolution is agreed to, the parties discharge the mediator, or the mediator determines that the parties cannot agree.

(iii) "Neutral case assessment" is a process by which an

**ORDER AMENDING RULE 16 AND
REPEALING RULE 16.1 OF THE
SUPERIOR COURT RULES OF CIVIL PROCEDURE**

experienced neutral assessor gives a non-binding, reasoned oral or written evaluation of a controversy, on its merits, to the parties. The neutral assessor may use mediation and/or arbitration techniques to aid the parties in reaching a settlement.

(iv) "ADR Practitioner" shall include the arbitrator, mediator, neutral case assessor or any other Practitioner engaged by the parties to facilitate ADR.

(e) The compulsory ADR set forth in this rule shall not apply to the following civil actions, unless otherwise ordered by the Court: matters subject to Superior Court Rules 23 and 81(a), replevin, foreign or domestic attachment, statutory penalty and mortgage foreclosure actions, and *in forma pauperis* actions.

(5) Any other deadlines or protocols appropriate in the circumstances of the case including, but not limited to, appropriate sanctions for failure to meet the deadlines and requirements established by the scheduling order to include, in the Court's discretion, dismissal of the action or default judgment.

The scheduling order may also include:

(6) The date, or dates for conferences before trial, a final pretrial conference, and trial; and

(7) Any other matters appropriate in the circumstances of the case.

(2) Superior Court Civil Rule 16.1 is repealed.

(3) These amendments shall take effect for all civil actions filed after March 1, 2008.