



**USNYWD'S ADR HANDBOOK
SECTION 2: OVERVIEW
[ALL-IN-ONE DOCUMENT]**

Alternative Dispute Resolution
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TABLE OF CONTENTS | SECTION 2 | OVERVIEW

#	Item	Title	Page
B01	2.1	Referral to ADR	4
B02	2.2	Relief from ADR Referral	5
B03	2.3	Violations of the ADR Plan	6
B04	2.4	Evaluation of the ADR Plan	7

-	n/a	Appendix	8
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ADR PLAN

US DISTRICT COURT, NEW YORK, WESTERN DISTRICT

SECTION: 2 OVERVIEW

AUTHOR: US DISTRICT COURT, NEW YORK, WESTERN DISTRICT

DATE: January 1, 2008

ITEMS: 2.1 through 2.4



2.1 | REFERRAL TO ADR

A. New Cases. All civil cases filed on and after the Effective Date of the ADR Plan shall be referred automatically for ADR. Notice of the ADR requirements will be provided to all parties immediately upon the filing of a complaint and answer or a notice of removal. ADR intervention will be scheduled at the conference held pursuant to **Local Rule of Civil Procedure 16.1**. The following categories of actions are exempted from automatic referral:

1. Habeas Corpus and extraordinary writs;
2. Applications to vacate a sentence;
3. Social Security appeals;
4. Bankruptcy appeals;
5. Cases implicating issues of public policy, exclusively or predominantly;
6. IRS summons enforcement actions;
7. Government foreclosure actions;
8. Civil asset forfeiture actions; and
9. Prisoner civil rights actions.

B. Pending Cases. The assigned Judge on any pending civil case may, sua sponte or with status conference, issue an order referring the case for ADR. The order shall specify a date on which the ADR intervention is to be completed.

C. Stipulation. A case may be referred for ADR by stipulation of all parties. Stipulations shall be filed and shall designate the specific ADR intervention the parties have selected, the time frame within which the ADR process will be completed and the selected Neutral. Stipulations are presumed acceptable unless the assigned Judge determines that the interests of justice are not served.

*(US District Court, New York, Western District // Buffalo, NY 14202
Judy Hernandez, Staff Attorney)*



2.2 | RELIEF FROM ADR REFERRAL

A. Opting Out Motions. Any party may file, with the assigned Judge for that case, a motion to opt out of, or for relief from, ADR.

B. Motion. Opting Out Motions must be made within ten (10) days from

(i) the date of the first discovery conference under Local Rule 16.1 in new cases, or

(ii) the date of a *sua sponte* ADR Referral Order in pending cases.

C. Criteria. Opting Out Motions shall be granted only for "good cause" shown. Inconvenience, travel costs, attorney fees or other costs shall not constitute "good cause." A party seeking relief from ADR must set forth the reasons why ADR has no reasonable chance of being productive.

D. Judicial Initiative. The assigned Judge may, *sua sponte*, exempt any case from the Court's ADR Plan.

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2.3 | VIOLATIONS OF THE ADR PLAN

A. Report of Violation. A Neutral or party may report to the assigned Judge any failure to attend an ADR conference, to substantially comply with the **ADR Referral Order**, or to otherwise participate in the ADR process in good faith.

B. Proceedings and Sanctions in Response to Report of Violation. Upon receipt of such a report, the Court may take whatever actions it deems appropriate, including issuing an order to show cause why sanctions should not be imposed. *Show Cause* hearings shall be conducted on the record, but under seal. If sanctions are imposed, objections thereto and any other comment thereon shall be filed with the Court within ten (10) days from the date of the notice of sanctions and contemporaneously served on all other counsel, unrepresented parties and the Neutral.

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2.4 | EVALUATION OF THE ADR PLAN

Congress has mandated that the Courts' ADR programs be evaluated. Neutrals, counsel and parties shall promptly respond to any request from the Court for an evaluation of the ADR Plan. Responses will be used for research and monitoring purposes only. The sources of specific information will not be disclosed to the assigned Judge or in any report.

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APPENDIX



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Congratulations! You're now **booked up** on Section 2 of USNYWD's **ADR Handbook**!

