

## **DELAWARE SUPERIOR COURT REVAMPS ADR PROCEDURES**

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On March 1, 2008, a new rule governing Alternative Dispute Resolution went into effect in Delaware. Superior Court Civil Rule 16.1 was repealed and replaced with an entirely new mandatory Alternative Dispute Resolution (“ADR”) scheme.

Old Rule 16.1 required the parties to participate in early mandatory ADR in all cases unless the plaintiff’s attorney certified a case value of at least \$100,000. New Superior Court Civil Rule 16 requires mandatory ADR in all cases *regardless of value*. The ADR may be in the form of non-binding arbitration, binding arbitration, neutral assessment, or mediation.

If the parties can’t agree on which ADR format to use, the default format will be mediation, unless otherwise ordered by the Court. If the parties can’t select a mutually acceptable ADR practitioner, the parties must file a joint motion within 30 days after the issuance of the Scheduling Order asking the Court to make the appointment.

Of note, the term “ADR practitioner” is not defined by the new rule, and so unlike the current practice, the arbitrator, mediator or neutral assessor need not be a lawyer. For example, if the parties agree, an architect or engineer could conduct a construction accident mediation or a physician could decide a medical malpractice arbitration.

Under the old rule, in those cases valued at less than \$100,000, written discovery was deferred until after non-binding arbitration. The new rule permits interrogatories, requests for documents and

requests for admissions to be served in such cases as soon as the complaint has been answered. Thus, from a practical standpoint the new rule will provide defense counsel the ability to find out more about a plaintiff’s claim and to conduct a more detailed evaluation before ADR in these less than \$100,000 cases. At the same time, discovery costs that under the old rule had been deferred until after arbitration will be shifted to earlier in the case.

In the past, parties in cases with a value in excess of \$100,000 were encouraged but not compelled to participate in mediation. Under the new rule, some form of ADR is *mandatory* in every case, regardless of value.

The new rule also changes the way ADR practitioners are compensated. Under the old rule, the arbitrator’s fee for a non-binding arbitration was set at \$300 and was shared equally by the parties. Some arbitrators would charge an additional amount if the time spent was more than two hours. Under the new rule each ADR practitioner will set his or her own fee.

The new rule applies to cases filed after February 29, 2008. Cases filed before that date will continue to be governed by the old Rule 16.1.

The lawyers in the Wilmington office of White and Williams LLP stand ready to answer any questions you may have about these new mandatory ADR provisions.

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