MEDIATION PROGRAM
UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

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THE DISTRICT COURT MEDIATION PROGRAM

The District Court Mediation Program gives litigants an opportunity to confidentially discuss - with a specially trained, neutral third person - the possibility of settling their dispute. Mediation offers many advantages over formal litigation. Mediation can lead to resolutions that are faster, less expensive, and may better address the interests of all parties than a judicial remedy. Mediation is offered by the District Court without any fees or charges to the parties.

WHAT IS MEDIATION?

Mediation is an informal, confidential and voluntary process in which a trained neutral helps the parties reach a mutually agreeable settlement. Mediation can be completed in one day or over a period of time. *The mediator has no power to render a decision or require a settlement.* However, the mediator assists the parties clarify their interests, as well as the strengths and weaknesses of their positions. The mediator can identify areas of agreement and help generate options that lead to a settlement. When requested by the parties, mediators may also provide a neutral and confidential evaluation of the case.

If there is no settlement in mediation, the case remains in litigation, and discovery and motion practice rights are fully preserved. Mediations are governed by Local Civil Rule 84.

WHICH CASES ARE ELIGIBLE FOR MEDIATION?

All civil cases in which parties are represented by counsel are eligible for mediation. Where a party is *pro se*, or unrepresented, the judge in the case may decide to appoint pro bono counsel for mediation.

HOW DOES A CASE GET INTO MEDIATION?

The Court's Mediation Program is voluntary. Parties may request mediation or the judge may suggest it. The judge issues an order referring the case to the Mediation Program for a specified period of time, usually 60-90 days. The referral may take place at any time while the case is pending, from the first status conference to the morning of trial.

Local Rule 16.3 requires counsel to confer at least 21 days before the first scheduling conference to discuss settlement. Counsel also must discuss and report to the Court whether alternative dispute resolution might be useful, including when during the litigation it would be appropriate and whether they have discussed it with the parties.

WHAT MAKES A CASE APPROPRIATE FOR MEDIATION?

Most civil cases can be mediated. The following are some of the many factors that can help you decide whether a case is appropriate for mediation:

Relationship between the parties. Do the parties in your case have an ongoing business or other relationship? If so, is this an incentive to resolve the problems that generated the lawsuit? Are emotions so high or impeding settlement that a mediator could assist the parties better communicate with each other?

Reluctance to exchange information in direct negotiation. Could a mediator assist the parties identify and exchange information that will enable them to begin serious settlement discussions?

Adequacy of a judicial remedy. Will a judicial ruling give the parties what they really want and need? It is often possible to find creative solutions that address litigants' unique needs that would not be possible even with a judicial finding in their favor.

Divergent views about the value of a case. Do the parties have widely divergent views about the *value* of a case; that is, about what will happen if the case goes to trial or what amount of damages a judge or jury might award? Would the parties benefit from a neutral evaluation of their case by a Court mediator who is an expert in this type of litigation?

Need for privacy. Do the parties want to avoid a public airing of their dispute? For example, the break-up of a law firm or claims of discrimination or harassment often present this issue.

Difficulty in fashioning a remedy. Has liability been established, leaving the Court with the sometimes more difficult problem of fashioning a remedy or money damages? Class action discrimination cases often present this problem. In such cases, the Court may decide the institution's past practices are unlawful yet leave it to the parties to craft injunctive relief for the future.

Need for mediation to resolve continuing disputes. Could a mediator assist the parties to develop and agree upon a dispute resolution mechanism they could use *after* the lawsuit is settled to resolve disputes that flow from the settlement?

Managing multiple parties or complex cases. Does the case involve multiple parties? Is this a class action, mass personal injury case, or multidistrict litigation?

Need for a precedent. Do the parties seek to establish a legal precedent and therefore require a judicial ruling? Government or institutional litigants may frequently be in this position. If so, mediation might *not* be appropriate.

WHEN SHOULD MEDIATION OCCUR?

Judges will often refer cases to mediation at the first Status Conference. However, cases can be referred at any point during the litigation process. Some questions to consider for the timing of a referral are:

Have *the parties' circumstances changed* in a way that would make settlement talks more productive than in the past?

Do the parties have *enough information* to engage in serious conversations about settlement?

Are there *outstanding legal issues* that the Court must resolve before settlement talks can effectively take place?

Has interest in settlement heightened because *trial is approaching*, with its costs, anxieties and potential for publicity?

Could a mediator assist the parties in *devising a proposal for injunctive relief or in agreeing upon the amount of monetary relief?*

WHO ARE THE MEDIATORS?

The mediators are very experienced members of the United States District Court Bar who have been selected by the Court to be on the panel of mediators. They are either professional mediators or have been trained in mediation by the Court. The District Court typically maintains a roster of approximately 60 mediators with a wide range of subject matter expertise. The Chief Circuit Mediator and the Circuit Mediators also mediate cases.

HOW IS A MEDIATOR ASSIGNED TO A CASE?

The Court's Mediation Program makes mediator assignments. Mediators are assigned cases based on their qualifications, experience, areas of expertise, and availability. A mediator with specific subject matter expertise usually will be assigned.

Program staff welcome suggestions as to the experience or style that would be most useful in a particular case and will often work with the parties to make the best possible selection. The parties may object to the mediator for any reason by contacting the Court's Mediation Program staff.

WHAT TAKES PLACE IN MEDIATION?

Mediation typically begins with a joint meeting of all parties, their counsel and the mediator. During that session, each participant has the opportunity to talk about his or her

perception of the dispute and to ask questions. Usually, the mediator then meets with each party separately to explore the issues further and to suggest and generate settlement options. Mediation may end in one day or continue over an extended period of time. Sometimes, the mediator may also confer with the parties by telephone or various online platforms.

The mediation process ends when: 1) the parties settle their dispute; 2) the mediator and the parties conclude that further discussions would be fruitless; or 3) the mediation deadline – a date established by the judge's referral order – is reached with no extension of time granted.

KEY POINTS ABOUT THE MEDIATION PROCESS

Mediation in the U.S. District Court is based on the following principles:

Confidentiality. All mediation proceedings are *confidential*. Documents generated for the mediation are also confidential and may not be used during trial if the case is not settled in mediation. The judge who is assigned to the case is not given any information about what happens during the mediation process other than timing and whether the case settles.

Participation. Counsel and parties *with settlement authority* must attend mediation sessions. Certain exceptions apply for institutions or if a party is a unit of government.

Mediation Statement. Each party must provide the mediator with a mediation statement with the key facts and legal issues in the case at least seven days before the first mediation unless the mediator explicitly waives this requirement. *Mediation statements are not briefs and are not filed with the Court.*

Litigation Deadlines. Unless the presiding judge indicates otherwise, referral of a case to mediation *does not stay or delay* other proceedings in the case or change litigation deadlines.

Mediation Deadline. The parties may request an extension of the Court-imposed *mediation deadline* by filing a motion. The motion may represent the mediator's views about whether an extension is advisable or whether progress is being made.

Case Monitoring. The Mediation Office monitors the progress of mediated cases on a confidential basis. *Questions or problems* arising during the course of mediation may be brought to the attention of Mediation Program staff by any party.

COMPLIANCE JUDGE

Information about the mediation is confidential and may not be disclosed to the presiding judge. To protect confidentiality, the Court has designated one judge to serve as the Dispute Resolution Compliance Judge. Complaints that litigants have not complied in good faith with the Court's mediation guidelines or with a judicial order referring the case

to the program must be brought to the attention of the Chief Circuit Mediator, who may then refer them to the Compliance Judge for appropriate action. *Litigants may not bring such matters to the attention of the Compliance Judge directly or to the attention of the judge who is presiding in the lawsuit.*

PROGRAM ADMINISTRATION AND CONTACT INFORMATION

The Court's Mediation Program is responsible for assigning cases to qualified mediators and providing parties with notification and instructions. The Mediation Program also monitors the progress of cases and serves as a resource for program mediators as they handle cases.

For information about using the Court's Mediation Program or about the procedures that apply once a case is referred, or for other information about dispute resolution, contact:

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