

Rule 9019-2

Alternative Dispute Resolution ~~Mediation~~

(a) Requirement in Adversary Proceedings

The parties in adversary proceedings shall consider alternative dispute resolution and be prepared to discuss it at the time of the first scheduling conference.

~~Unless otherwise ordered, no later than 28 days after an answer or other response to the complaint is filed in an adversary proceeding and whenever ordered by the court in other matters, each party shall file a Certificate of Compliance (ADR Form 2) certifying that he or she considered mediation to resolve the dispute.~~

~~(b) Order~~

~~(1) Mediation Initiated by Parties. Parties to a dispute may stipulate to setting the matter for mediation by filing a Stipulation Regarding Selection of Mediator (ADR Form 3) and submitting an Order Appointing Mediator (ADR Form 4).~~

~~(2) Mediation Initiated by Court. Participation in mediation is voluntary, except when ordered by the court. If the federal government or other party not authorized to pay for mediation is involved, this information shall be given to the court prior to the entry of order. The parties will normally be given the opportunity to confer and designate a mutually acceptable mediator as well as an alternate mediator, and upon agreement, should follow the procedure set forth in subparagraph (1). If the parties cannot agree, the clerk of court will select a mediator.~~

(b) Stay

Mediation shall not alter or affect any time limits, deadlines, scheduling matters or orders in any adversary proceeding, contested matter or other proceeding, unless specifically ordered by the court.

(c) Mediation Panel

(1) *The judges of the district shall establish and maintain a register of qualified attorneys who have volunteered to serve, without compensation, as mediators in civil cases. Under appropriate circumstances, it may be necessary for the parties to provide payment at usual and customary rates as determined by the court, for the services of an attorney designated under this rule.* Appointment of a mediator is made from a

panel of mediators maintained by the court. A list of members appointed to the panel as well as a biographical sketch of each is available on the court's website. The selection of a particular mediator, and an alternate, is based on the preference of the parties.

- (2) Applications for appointment to the Mediation Panel shall be submitted on the prescribed local form (ADR Form 17).
- (3) Panel mediators shall serve on the panel until they request to be removed or are removed by the court.
- (4) *No mediator may serve in any matter in violation of the standards set forth in 28 U.S.C. § 455. An attorney mediator shall also promptly determine all conflicts or potential conflicts in the same manner as an attorney would under the Washington Rules of Professional Conduct if any party to the dispute were a client. A non-attorney mediator shall promptly determine all conflicts or potential conflicts in the same manner as under the applicable rules pertaining to the mediator's profession. If the mediator's firm has represented one or more of the parties, the mediator shall promptly disclose that circumstance to all parties in writing. A party who believes that the mediator has a conflict of interest shall promptly bring the matter to the attention of the mediator. If the mediator does not withdraw from the mediation, the matter shall be brought to the attention of the court by the mediator or any of the parties.*
- (5) Nothing herein shall preclude parties from using a judge or other non-panel mediator with subject matter expertise.
- (6) *The presiding judge may refer matters for mediation to a magistrate judge, a district judge, or a bankruptcy judge designated by the presiding judge in his or her sole discretion. Matters referred shall be governed by the directives in the assigned judge's scheduling order or standing order regarding mediation.*

~~(e) Compensation~~

- ~~(1) Other than matters to be mediated on a pro bono basis, mediators are authorized to charge each party to the mediation, whether or not represented by counsel, \$500 for up to 6 hours of mediation services rendered, exclusive of the initial conference, and with a minimum of 4 hours spent in the mediation conference. For any services rendered in excess of the initial 6 hours, with the consent of the parties, a mediator may charge the parties a rate not to exceed a total of \$300 per hour for services rendered, to be split evenly among the parties, except as provided in subsection (2) below.~~
- ~~(2) The mediator shall have discretion to determine whether a particular party, other than the federal government or other party not authorized to pay for mediation, is entitled to participate in a matter without charge or at a reduced charge because of the party's financial circumstances. Other parties participating in a pro bono matter who have the~~

~~ability to pay the fee and who are not, in the discretion of the mediator, entitled to participate without charge, shall pay the fee described in subsection (1) above. After rendering 6 hours of mediation services as provided in subsection (1) above, and subject to the consent of the parties, the mediator may continue to provide additional services at the hourly rate described in subsection (1) above only if the party participating without charge agrees to pay an equal share of the additional fees or the mediator agrees to continue the mediation without charge to such pro bono party and the other parties sharing the mediator's additional fees are not charged for the pro bono participant's share. Each mediation in which at least one party participates without charge shall count towards the satisfaction of the mediator's annual requirement to conduct not less than one pro bono matter (see Application for Appointment to Bankruptcy Mediation Panel (ADR Form 7)).~~

~~(3) Any party not authorized to pay for mediation should bring this fact to the attention of the mediator prior to the entry of the order of his or her appointment.~~

~~(f) **Suggestions and Recommendations of Mediator**~~

~~If the mediator makes any oral or written suggestions to a party's attorney as to the advisability of a change in that party's position with respect to settlement, the attorney for that party shall promptly transmit that suggestion to the party. The mediator shall have no obligation to make any written comments or recommendations, but may, as a matter of discretion, provide the parties with a written settlement recommendation memorandum. No copy of any such memorandum shall be filed with the clerk of court or made available in whole or in part, directly or indirectly, to the court.~~

(d) **Dispute Resolution Procedures**

(1) *The parties, or the court, shall prepare for entry an order appointing mediator (ADR Form 2).*

~~i. Availability of Mediator. Should events render an appointed mediator unable to act, the mediator shall notify the parties and the alternate mediator of that unavailability. The alternate mediator shall thereafter serve as the mediator.~~

(2) *Participation and Preparation by Counsel. The attorney who is primarily responsible for each party's case shall personally attend the mediation conference and any adjourned sessions of that conference. The attorney for each party shall come prepared to discuss the following matters in detail and in good faith:*

- a. All liability issues;*
- b. All damages issues; and*
- c. The position of his/her client relative to settlement.*

~~i. Initial Telephonic Conference. As soon as practicable after notification of appointment, the mediator shall conduct one or more telephonic conferences with pro se parties and/or counsel for the parties. The mediator may establish procedures and deadlines relating to the mediation, taking into account deadlines in the court's scheduling order.~~

(3) *In Person Attendance. Attendance by a party and its representative with full settlement authority at the mediation is mandatory, unless the mediator permits otherwise.*

~~Mediation Conference. In addition to the attorneys involved, a person with full settlement authority must also be present at the conference or readily available. The purpose of this requirement is to have representatives present or readily available who can reach a resolution during the course of the conference, or if necessary, shortly thereafter. If the estate is a party to the matter at issue, this authority may be subject to notice requirements of the Bankruptcy Code or Rules.~~

(4) *Failure to Attend. Willful failure to attend the mediation conference, unless excused by the mediator, shall be reported to the presiding judge by the mediator and may result in the imposition of sanctions.*

(5) *When appropriate, the mediator may offer an evaluation of the case and/or recommend a settlement.*

(e) **Confidentiality**

(1) Written and Oral Communications. All written and oral communications made in connection with or during any mediation conference, ~~including the mediation statement referred to in (i)(4),~~ shall be subject to all the protections afforded by Fed. R. Evid. 408 and by Fed. R. Bankr. P. 7068. The mediator may ask the parties to sign a confidentiality agreement. Any confidentiality agreement shall be retained by the mediator and not filed with the court.

(2) Evaluations and Written Agreements. No provision of this rule shall be construed to prevent parties, counsel or mediators from responding in absolute confidentiality to inquiries or surveys by persons authorized by this court to evaluate the mediation. Nor shall anything in this section be construed to prohibit the parties from entering into written agreements resolving some or all of the matters or entering or filing procedural or factual stipulations based on suggestions or agreements made in connection with a mediation conference.

~~(i) Service of Mediator This section moved to (c)(4)~~

~~No mediator may serve in any matter in violation of the standards set forth in 28 U.S.C. § 455. An attorney mediator shall also promptly determine all conflicts or potential conflicts in the same manner as an attorney would under the Washington Rules of Professional Conduct~~

~~if any party to the dispute were a client. A non attorney mediator shall promptly determine all conflicts or potential conflicts in the same manner as under the applicable rules pertaining to the mediator's profession. If the mediator's firm has represented one or more of the parties, the mediator shall promptly disclose that circumstance to all parties in writing. A party who believes that the mediator has a conflict of interest shall promptly bring the matter to the attention of the mediator. If the mediator does not withdraw from the mediation, the matter shall be brought to the attention of the court by the mediator or any of the parties.~~

(f) Civil Immunity of Mediators

All persons serving as mediators under this rule shall be deemed to be performing quasi-judicial functions and shall be entitled to all of the privileges, immunities and protections that the applicable law accords to persons serving in such capacity.

(g) Parties Retain Option to Pursue Settlement

Nothing in this rule shall prohibit parties from pursuing settlement by any other means not contrary to statute or court rule.

~~Procedures Upon Completion of Mediation Conference~~

~~Upon the conclusion of the mediation conference, the following procedure shall be followed:~~

- ~~(1) Agreement Reached. If the parties have reached an agreement regarding the disposition of the matter, the parties shall determine who shall prepare the writing to dispose of the matter, and they may continue the mediation conference to a date convenient to all parties and the mediator if necessary. The court will reasonably accommodate parties who desire to place any resolution of a matter on the record during or following the mediation conference. Where required, the parties shall promptly submit the fully executed stipulation to the court for approval.~~
- ~~(2) Mediation Report. Within 14 days of the conclusion of the mediation conference, the mediator shall file with the court a Mediation Report (ADR Form 6). Regardless of the outcome of the mediation conference, the mediator will not provide the court with any details of the substance of the mediation conference.~~

Related Provisions

18 USC 4	Misprision of Felony
18 USC 3057	Bankruptcy Investigations
28 USC 651	Authorization of Alternative Dispute Resolution