

MEDIATION INSTRUCTIONS TO COUNSEL REMOTE

(Last updated 03/23/21)

I. Mediator Selection and Fees

Parties whose cases are referred to the court's mediation program may select their own mediator from a list of the EDNY Panel of Mediators located on the court's website.

The list of EDNY Panel Mediators is available here:

<https://www.nyed.uscourts.gov/adr/Mediation/displayAll.cfm>

In accordance with Local Rule 83.8(f)(1), each mediator shall receive a fee of \$600 for the first four hours or less of the actual mediation. Time spent preparing for the mediation will not be compensated. Thereafter, the mediator shall be compensated at the rate of \$250 per hour. The mediator's fee shall be paid by the parties to the mediation.

Any party that is unable or unwilling to pay the mediator's fee may apply to the referring judge for a waiver of the fee, with a right of appeal to the District Judge in the event the referral was made by a Magistrate Judge. In the event a mediation fee waiver is granted, the ADR Department will assist the parties in appointing a pro bono mediator.

Counsel may also agree to a particular mediator (whether or not they are on the EDNY Panel), or to use the services of an independent Alternative Dispute Resolution organization. Compensation of mediators not on the EDNY Panel is determined by agreement among counsel and the mediator.

Please be aware that many of the EDNY Panel mediators conduct private mediations. **It is very important that you identify yourself to the mediator as a party in a case which was court-ordered to mediation.**

In the event the parties are unable to reach an agreement regarding mediator selection, the ADR Department will provide the parties with a list of available EDNY Panel Mediators with experience in the subject of the case. Counsel shall rank their choices for the mediator and submit their respective rankings via e-mail to the ADR Department. Counsel are to numerically rank their preferences for the mediator; for example, the first choice "1", the second choice "2", the third choice "3", etc. The ADR Administrator will select the mediator who receives the highest combined ranking.

II. Scheduling Mediation

Unless otherwise provided in the Mediation Referral Order, the first mediation session will take place approximately four to six weeks after the date of the Mediation Order. Counsel are to select the mediator, schedule the first mediation session, and electronically file via CM/ECF (using the event “Selection of Mediator”): (1) the name of the mediator; and (2) the date, time, and place of the first mediation session. Counsel are to confer with each other and speak directly with the potential mediator, in scheduling the first mediation session. Parties should reserve an entire day to complete the mediation session. Trial counsel, a representative of their client with full settlement authority, and any insurance adjusters, shall attend the mediation sessions.

III. Submissions

Local Civil Rule 83.8(b)(4) provides that “no less than fourteen days prior to the first mediation session, each party shall submit directly to the mediator a mediation statement not to exceed ten pages double-spaced, not including exhibits, outlining the key facts and legal issues in the case. The statement will also include a description of motions filed and their status, and any other information that will advance settlement prospects or make the mediation more productive. Mediation statements are not briefs and are not filed with the Court, nor shall the assigned Judge or Magistrate Judge have access to them.”

The mediation statement is intended to inform the mediator about the case from the party’s view. **Before drafting the mediation statement, counsel should discuss with the mediator any particular requirements that the mediator may have.**

Unless otherwise agreed to by the parties and the mediator, the submissions shall not be exchanged among counsel.

IV. Attendance is Required of Trial Counsel, Insurance Adjustor, and Party Representatives with Full Settlement Authority at Each Session

EDNY mediation sessions are being conducted remotely via video conference platforms until further notice. Remote attendance at each mediation session is required of the trial counsel, insurance adjustor (if any) and the party or its representative with full settlement authority to settle the matter in the case of a business or governmental entity or a minor. The names and general job titles of the employee(s) or agents of the corporation or insurance company who will attend the mediation session should be included in the mediation statement.

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V. Finalizing Agreement

Oral agreements should be committed to writing and signed at the mediation session. In addition, a stipulation of discontinuance should be prepared and filed.

The Stipulation of Discontinuance is available here:

<https://img.nyed.uscourts.gov/files/forms/Stipulation%20of%20Discontinuance.pdf>

VI. Confidentiality Agreement

Prior to the mediation, all counsel and parties shall sign the remote confidentiality stipulation and return it via e-mail to the mediator.

The Remote Confidentiality Stipulation is available here:

<https://img.nyed.uscourts.gov/files/forms/EDNY%20Confid%20Stip%20and%20Remote%20Med%20Agrmt%206.12.20.pdf>

VII. Mediation Report

Upon completion of the mediation all counsel must submit the EDNY Mediation Report via e-mail to nyed_adr@nyed.uscourts.gov.

The Mediation Report is available here:

<https://img.nyed.uscourts.gov/files/forms/Mediation%20Report.pdf>

VIII. Other Resources

EDNY Local Civil Rule 83.8 Court-Annexed Mediation (Eastern District Only)

https://img.nyed.uscourts.gov/files/local_rules/localrules.pdf

EDNY ADR Website

<https://www.nyed.uscourts.gov/alternative-dispute-resolution>