

# EASTERN DISTRICT OF NEW YORK

## MEDIATION PROGRAM

### **MEDIATOR INSTRUCTIONS**

(Last updated 03/22/2023)

#### **1. Parties Pre-Hearing Mediation Statement**

Under the Local Civil Rule 83.8, no less than fourteen (14) 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. Insist on timely receipt of the mediation statements and promptly advise me as to any lack of cooperation. Where appropriate a conference with the referring judge will be requested by me.

#### **2. Clients to attend Mediation Sessions**

Attendance at all mediation sessions (in-person or remote) of the actual clients is important and strongly encouraged. The Court or the Mediator may require the attendance of a party or its representative with authority to settle the matter and bind the party. If parties are not presented at the mediation sessions as per the Mediator's request, please advise me promptly.

Moreover, the Court requires of each party that the attorney who has primary responsibility for handling the trial of the matter attend the mediation sessions.

#### **3. No Conflict of Interests**

Your service is appropriate only if no conflict of interest would compromise your impartiality or the appearance of your impartiality. Please follow the guidelines set forth in 28 U.S.C. section 455 (below) to determine whether any conflict of interests exists. Promptly review the Docket and any other materials submitted by the parties or the Clerk's Office respecting the matter. Notify me (in writing or by telephone) immediately whether there is a conflict that would prevent you from serving in this action.

#### **4. Oath**

Please complete the Oath as a Mediator prescribed by 28 U.S.C. section 453, have your signature notarized, and return the executed Oath to me.

## **5. Confidentiality Stipulation**

The Confidentiality Stipulation should be signed at the beginning of the first mediation session by all persons attending the mediation session including the mediator, counsel and the parties. If the mediation is conducted remotely, each person may sign their own copy of the Confidentiality Stipulation. Copies of the signed Confidentiality Stipulation should be retained by the mediator and the parties, and a copy should be sent via e-mail to [nyed\\_adr@nyed.uscourts.gov](mailto:nyed_adr@nyed.uscourts.gov).

## **6. Settlement**

If an agreement is reached in whole or in part, the agreement should be put into writing before the parties leave the mediation session. A handwritten agreement is sufficient. If an agreement settling the entire case is reached, Counsel should execute a Stipulation of Discontinuance and forward it to the District Judge to be so ordered.

## **7. Courthouse Room Assignments**

For room reservations at the Brooklyn or Central Islip Courthouses please send your request via e-mail to [nyed\\_adr@nyed.uscourts.gov](mailto:nyed_adr@nyed.uscourts.gov). Sessions that take place in the Eastern District courthouses must obtain confirmation of a room assignment at least two business days prior to the session.

## **8. Last Minute Cancellations**

All cancellations or adjournments within 48 hours of scheduled mediation sessions will be denied. Where appropriate a request will be made by me that a conference before the referring judge be scheduled with counsel and their clients.

## **9. Assessment Forms**

To assist in the continued development of the Mediation Program, we ask that you complete a Mediator Assessment Form within twenty-four hours of the completion of each mediation session.

All forms and documents discussed above can be found on the Program's website, at <https://www.nyed.uscourts.gov/adr-forms>.

Thank you for your commitment to the Eastern District's Mediation Program. If you have any questions, please telephone me at 718-613-2578 or e-mail me at [danielle\\_shalov@nyed.uscourts.gov](mailto:danielle_shalov@nyed.uscourts.gov).

28 § 455. Disqualification of Justice, Judge, or Magistrate

- (a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
- (b) He shall also disqualify himself in the following circumstances:
- (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
  - (2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;
  - (3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;
  - (4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
  - (5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
    - (i) Is a party to the proceeding or an officer, director, or trustee of a party;
    - (ii) Is acting as a lawyer in the proceedings;
    - (iii) Is, known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
    - (iv) Is to the judge's knowledge likely to be a material witness in the proceeding.
- (c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.
- (d) For the purposes of this section the following words or phrases shall have the meaning indicated:
- (1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;
  - (2) the degree of relationship is calculated according to the civil law system;
  - (3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;
  - (4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

- (i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;
- (ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization,
- (iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
- (iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.
- (e) No Justice, judge, or magistrate shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record.