

**MEDIATION PROCEDURES
UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF OHIO**

PURPOSE, SCOPE AND EFFECT

Purpose. Mediation is a flexible and alternative procedure to traditional litigation. Due to its collaborative nature and because the mediator acts as a neutral facilitator, mediation allows for a greater degree of outcome control by the parties. The mediation is completely confidential. Mediation affords the parties an opportunity to select a mediator of their choice. The mediation may be scheduled to be held at any location agreed to by the parties and the mediator. These mediation procedures are intended to allow parties to resolve their disputes more quickly, for less cost, and without the pressures of discovery and a trial before a judge.

Scope and Effect. Any matter is eligible for mediation. The assignment of a matter to mediation does not relieve the parties from complying with any other court orders, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or the Local Bankruptcy Rules. At all times during the course of a mediation, the matter remains under the jurisdiction of the judge assigned to the case.

Impact on Deadlines. The assignment of a matter to mediation does not stay any deadlines imposed by court order, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedures, or otherwise. The parties shall seek any necessary orders of continuance.

MEDIATORS

Roster of Mediators. A roster of mediators shall be maintained on the court's website. Parties pursuing mediation are encouraged to select a mediator from the roster but are not required to do so. If the parties select a mediator who is not on the roster, court approval of the appointment is required.

Requirements. For an attorney to be eligible to be on the roster, the individual shall be a member in good standing of the bar of the State of Ohio and shall be admitted to practice in the United States District Court for the Southern District of Ohio. For a non-attorney to be eligible to be on the roster, the individual shall be licensed or accredited in their respective profession, e.g., accounting, engineering.

Application. The Mediator Application form is available on the court's website. Use of this form is mandatory. Applications may be submitted at any time but will be reviewed on an annual basis.

Approval. The court will approve individuals to be on the roster based upon the Mediator Application forms submitted, giving consideration to mediation training, mediation experience, bankruptcy experience, and other professional experience. Nevertheless, all persons interested are encouraged to apply. Lack of experience will not be a disqualifier in and of itself.

Biennial Renewal. Individuals on the roster of mediators shall be required to express their intent to remain on the roster every two years. The Mediator Renewal form is available on the court's website. Use of this form is mandatory.

Removal by Request. An individual may request to be temporarily or permanently removed from the roster by contacting the clerk's office at the email address shown on the Mediation Program page on court's website.

Service. All filed documents shall be served on the proposed mediator or mediator by email. The email address used by the sender shall be reflected in the certificate of service. Service is not effective if the sender receives a notice that the email did not reach the proposed mediator or mediator.

Immunity. Absent actual fraud or unethical conduct, there shall be no liability on the part of, and no cause of action shall arise against, any person who is appointed a mediator on account of any act or omission in the course and scope of such person's duties as a mediator.

No Discovery from Mediator. The mediator shall not be compelled to disclose to the court or to any person outside the mediation any of the records, reports, summaries, notes, communications, or other documents received or made by the mediator while serving in such capacity. The mediator shall not testify or be compelled to testify in regard to the mediation in connection with any arbitral, judicial or other proceeding. The mediator shall not be a necessary party in any proceeding relating to the mediation.

REQUEST FOR MEDIATION

Request for Mediation. Any party may file a request to refer a matter to mediation. The Request for Mediation form is available on the court's website. Use of this form is recommended.

Approval of Request for Mediation. If the Request for Mediation certifies that all parties consent, the court may enter an order approving the request without notice and hearing. The Order Approving Request for Mediation form is available on the court's website. Use of this form is recommended. The Order Approving Request for Mediation may be uploaded simultaneously with the filing of the Request for Mediation. If the Request for Mediation does not certify that all parties consent, the Request for Mediation may be set for hearing or otherwise addressed by the court.

Denial of Request for Mediation. A Request for Mediation may be denied at the discretion of the court.

SELECTION OF MEDIATOR

Selection of Mediator. If the parties did not indicate a proposed mediator in the Request for Mediation, the parties shall file a notice of selection of mediator. The Selection of Mediator form is available on the court's website. Use of this form is recommended. The Selection of Mediator shall be filed within seven (7) days from the entry date of the Order Approving Request for Mediation. If the Selection of Mediator is not timely filed, the court may select a mediator.

Acceptance of Appointment. If the mediator accepts the appointment, the mediator shall file an acceptance of appointment. The Acceptance of Appointment form is available on the court's website. Use of this form is recommended. The Acceptance of Appointment shall be filed within seven (7) days from the filing date of the Selection of Mediator. If the proposed mediator was indicated in the Request for Mediation, the Acceptance of Appointment shall be filed within seven (7) days from the entry date of the Order Approving Request for Mediation. Failure to file a timely Acceptance of Appointment shall be deemed to be a declination of the appointment.

Declination of Appointment. If the mediator is unable to serve or elects not to accept the appointment, the mediator shall file a declination of appointment. The Declination of Appointment form is available on the court's website. Use of this form is recommended. The Declination of Appointment shall be filed within seven (7) days from the filing date of the Selection of Mediator. If the proposed mediator was indicated in the Request for Mediation, the Declination of Appointment shall be filed within seven (7) days from the entry date of the Order Approving Request for Mediation. If a Declination of Appointment is filed, the parties shall file a new Selection of Mediator within seven (7) days from the filing date of the Declination of Appointment; provided, if the court selected the mediator, the court shall select a new mediator.

Disqualification. Any person selected to serve as a mediator shall disqualify himself or herself from the matter if impartiality might be reasonably questioned. If a party believes that a mediator has a conflict of interest or that there are grounds for disqualification, the party shall initially bring this to the mediator's attention. If the issue is not resolved, this shall be brought to the attention of the court.

Replacement of a Mediator. If at any time the mediator becomes disqualified or opts not to continue with the appointment, the parties may file a new Selection of Mediator. The new Selection of Mediator shall be filed within seven (7) days from the time it is known that replacement of the mediator is necessary.

THE MEDIATION PROCESS

Time, Place and Manner. After consulting with the attorneys and pro se parties, the mediator shall schedule the time, place, and manner of the mediation conference. The mediation conference shall be scheduled to commence as soon as practicable.

Mediation Scheduling Notice. The mediator shall file a mediation scheduling notice. The Mediation Scheduling Notice form is available on the court's website. Use of this form is mandatory. The Mediation Scheduling Notice shall be filed immediately after the time, place, and manner of the mediation conference have been determined.

Mediation Statements and Materials. Each party shall submit to the mediator any statements and/or materials directed by the mediator. Prior to the mediation conference, the mediator may

confer with the parties to determine what items would be helpful. At a minimum, the mediator shall be provided with (1) the names and titles of all persons who will attend the mediation conference; (2) any pertinent documents filed in the case, e.g., complaint and answer; and (3) copies of all documents out of which the dispute has arisen, unless already included in (2). The statements and/or materials shall be submitted to the mediator in the format directed by the mediator. Unless otherwise directed by the mediator, the statements and/or materials shall be submitted at least seven (7) days before the mediation conference. The statements shall not be filed with the court and the court shall not have access to them. The mediator shall not share one party's statements with another party unless authorized to do so.

Required Attendees. The following persons shall attend the mediation conference: (1) each party who is a natural person; (2) if the party is not a natural person, including a governmental entity, a representative who is not the party's attorney of record and who has full authority to negotiate and settle the matter on the party's behalf; (3) if the party is a governmental entity that requires settlement approval by an elected official or legislative body, a representative who has authority to recommend settlement to the elected official or legislative body; (4) the attorney who has primary responsibility for each party; and (5) other interested entities such as insurers or indemnitors or one or more of their representatives, whose presence is necessary for a full resolution of the matter.

Excusal from Attendance. A required attendee may be excused from personal appearance at the mediation conference if all parties and the mediator agree. For cause, the court may excuse a person's attendance.

Personal Attendance. Although personal attendance at the mediation conference is preferred, the mediator may allow for attendance to occur by telephone, video conference, or other manner.

Authority of the Mediator. The mediator shall control all procedural aspects of the mediation process, including but not limited to (1) setting the time, place, and manner of the mediation conference; (2) requiring the submission of mediation statements and/or materials; (3) requiring the attendance of representatives of each party with sufficient authority to negotiate and settle all disputed issues and amounts in controversy; (4) designing and conducting the mediation conference; and (5) establishing a deadline for the parties to act on a settlement proposal.

General. The mediation conference shall proceed informally. The Federal Rules of Evidence shall not apply. There shall be no formal direct examination or cross-examination of parties.

POST-MEDIATION PROCEDURES

Settlement. Unless otherwise ordered by the court, if the mediation conference results in a full or partial settlement, the parties shall submit an agreed order or file a motion to approve compromise under Rule 9019 of the Federal Rules of Bankruptcy Procedure. The agreed order shall be

tendered or the motion to approve compromise shall be filed within twenty-one (21) days from the conclusion of the mediation conference.

Report of Mediation. The mediator shall file a report of mediation. The Mediator's Report form is available on the court's website. Use of this form is mandatory. The Mediator's Report shall be filed within seven (7) days from the conclusion of the mediation conference. If the mediation conference is continued to a future date or dates more than seven (7) days beyond the date set forth in the Mediation Scheduling Notice, the mediator shall file a status report indicating the future mediation conference date or dates.

Survey. The mediator is encouraged to complete a mediation survey for each acceptance of appointment. The Mediation Survey form is available on the court's website. Use of this form is recommended. The Mediation Survey shall not be filed with the court but shall be submitted to the email address specified on the court's website. Attorneys and pro se parties are invited to submit the Mediation Survey. No confidential information shall be disclosed in the Mediation Survey.

Mediator's Recommendation. The mediator shall not be required to prepare written or verbal comments or recommendations to the parties. Upon request, the mediator may present a settlement recommendation to the parties, but not to the court.

TERMINATION OF MEDIATION

Definition. Upon the filing of the Mediator's Report, the mediation is deemed terminated. The mediator may terminate the mediation whenever the mediator believes in his or her professional opinion that the ability or willingness of any party to participate meaningfully is so lacking that a settlement is unlikely or that continuing the mediation would be futile. This termination may be reflected either in the Mediator's Report or a separately filed notice of termination of mediation.

Release of Mediator. Upon termination of the mediation, the mediator is excused from further responsibilities from the matter without further court order.

Incomplete Settlement. If the mediation does not result in a resolution of all the matters assigned to mediation, the remaining matters shall be deemed to be returned to the court's active docket without further court order.

FAILURE TO PARTICIPATE

Willful failure to attend a mediation conference or any other material violation of the mediation procedures shall be reported to the court by the mediator. Any report by the mediator shall comply with any confidentiality requirements.

MEDIATOR COMPENSATION

Fees and Expenses. Mediators are strongly encouraged to provide voluntary, uncompensated services when appropriate under the circumstances. However, the parties and the mediator may agree to reasonably compensate the mediator for the mediator's time and services and out of pocket expenses, including travel expenses. Any compensation agreement shall be made as early as possible in the mediation process.

Shared Cost. If the parties have agreed to compensate the mediator, the parties shall share equally all such fees and expenses, unless the parties and the mediator have agreed otherwise. The court may, in the interest of justice, determine a different allocation than an evenly shared cost.

Estate as Party. If one of the parties is a trustee or debtor in possession, prior court approval is required. Prior approval shall be requested by filing an application to approve an administrative expense.

CONFIDENTIALITY

Protection of Information. Participation in mediation under this program shall be deemed an agreement that any written, verbal or non-verbal communication made during the course of any aspect of the mediation is confidential, unless otherwise agreed by the parties. The unauthorized disclosure of confidential communication by any person may result in the imposition of sanctions. Without limiting the foregoing, Rule 408 of the Federal Rules of Evidence and any other applicable federal or state statute, rule, common law, or judicial precedent relating to the privileged nature of settlement discussions, mediation, or other alternative dispute resolution procedure shall apply. Information otherwise discoverable or admissible in evidence does not become exempt from discovery or inadmissible in evidence by being used by a party in mediation.

Choice of Law. Participation in mediation under this program shall be deemed an agreement that any issues of confidentiality and privilege shall be construed under the laws of the State of Ohio, including Ohio Revised Code § 2701.01 through .10 as may be amended (Uniform Mediation Act).

Proprietary Information. All mediation participants shall protect and keep confidential any proprietary information before, during and after the mediation.

Preservation of Privileges. The disclosure by a party of privileged information to the mediator or to another party during the mediation process does not waive or otherwise adversely affect the privileged nature of the information.

HISTORY

The following procedures were amended by General Order 48-2: MEDIATORS (renewal period changed from annual to biennial). The following forms were amended by General Order 48-2: MEDIATOR APPLICATION (training and experience sections simplified); MEDIATOR RENEWAL (renewal period changed from annual to biennial; training and experience sections simplified).