

Instructions to the mediator

Dear Mediator:

Copies of the Eastern District's Local Civil Rule 83.11, the signed Mediation Order and a blank confidentiality stipulation are found on the ADR website at www.nyed.uscourts.gov/adr. I am available to answer your questions and make suggestions at any time.

1. Parties Pre-Hearing Mediation Statement

Under the Local Civil Rule 83.11, no less than seven 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 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. 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 enclosed Oath as a Mediator prescribed by 28 U.S.C. section 453, have your signature notarized, and return the executed Oath to me.

Instructions to Mediator

5. Confidentiality Agreement

The Confidentiality Agreement will be signed by all persons attending the mediation session including the mediator, counsel and by the parties at the beginning of the first Mediation session. Copies of the signed Confidentiality Agreement should be retained by the mediator and the parties.

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 hand written 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. A sample stipulation is attached.

7. Courthouse Room Assignments

Sessions that will take place in Eastern District courthouses need confirmation of a room assignment at least two business days prior to the session. For Central Islip, call Jean Bollbach, 631-712-6047. For Brooklyn, call Gerald Lepp 718-613-2577.

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 assessment forms be completed. At the end of the mediation process, please ask the counsels complete the Questionnaire for Attorneys in Mediated Cases. Mediators should complete their own Mediator Assessment Forms.

All documents can be found on the Program's website, at <http://www.nyed.uscourts.gov/adr>, if you need additional copies.

Thank you for your commitment to the Eastern District's Mediation Program. If you have any questions, please telephone me at 718-613-2577.

Attachments

- Oath
- Confidentiality Agreement
- Stipulation of Discontinuance
- Mediator Assessment Form

With best regards,

Gerald P. Lepp
ADR Administrator

3/26/2009

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.

TO: NEUTRALS APPOINTED PURSUANT TO EDNY LOCAL CIVIL RULES 83.10 AND 83.11.

I, _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as Mediator under the Constitution and laws of the United States. So help me God.

Sworn to and subscribed before me this _____ day of _____, 20____,
at _____.

Signature

OATHMED 28 USC 453

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

Plaintiff(s),

-against-

STIPULATION OF DISCONTINUANCE

Case No. Cv

Defendant(s)

----- x

It is hereby stipulated by and between counsel that this action is settled.

Therefore it is Ordered by the Court that this action is discontinued without costs and without prejudice to the right to reopen the action if settlement is not consummated.

DATED:

Counsel for the Plaintiff

SO ORDERED:

Counsel for the Defendant

UNITED STATES DISTRICT JUDGE

MEDIATOR ASSESSMENT FORM (1/3 page)

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PLEASE TYPE IF POSSIBLE

CASE NAME: _____

MEDIATOR: _____ CASE NO#: _____

1. Was an agreement reached in this case? _____ Yes _____ No

2. Date of designation as Mediator for this case: _____

Date designated for completion of mediation:

Was deadline extended ? Please explain:

3. Was a mediation session held ? _____ Yes _____ No

If yes, on what date was the session held ? _____

Were additional sessions held ? _____ Yes _____ No

If so, please list dates: _____

4. If a mediation session was NOT held in this case, please indicate why not.

a. The case settled prior to the mediation session. _____

b. The Court dismissed the case. _____

c. Other - please specify: _____

d. I don't know. _____

5. Who attended the mediation session:

<u>For plaintiff</u>	Sessions:	1 st	2 nd	3 rd
Party and Counsel		_____	_____	_____
Counsel Only		_____	_____	_____
Other _____		_____	_____	_____
<u>For defendant</u>	Sessions:	1 st	2 nd	3 rd
Party and Counsel		_____	_____	_____
Counsel Only		_____	_____	_____
Other _____		_____	_____	_____

6. If the parties were not present at the session(s), do you think their presence would have aided the process?

Yes _____ No _____

If the parties were present, did they appear to understand your role as mediator of the case? _____

7. Please indicate with an "x" which, if any, of the following events occurred during or as a result of the mediation session(s) you handled in this case.

a. Two or more of the parties reached a settlement agreement. _____

1. The agreement disposed of the entire case. _____

2. The agreement disposed of part of the case. _____

b. Parties discussed settlement. _____

c. A party indicated an intention to file a motion for summary judgment or for dismissal of all or part of the case. _____

d. Parties agreed about the scheduling or conduct of some discovery. _____

e. Parties agreed to exchange information informally. _____

f. Parties entered one or more stipulations of fact. _____

g. Other _____

8. How much time did you spend preparing for the mediation session(s)? _____ hours

9. How long was the initial mediation session? _____ hours

10. How much time did you spend on follow-up (a second meeting, phone calls, etc.)?
_____ hours

11. Did parties or counsels comply with the mediation procedures?
Yes _____ No _____

If not, please describe the procedural problems and how they were resolved.

12. Overall, do you think that the mediation process was sufficiently beneficial to the parties in this case to justify the resources devoted to it?

Yes _____ No _____

If yes, what were the key benefits?

If the case did not settle, please state the critical reasons for not settling:

13. Additional comments.

AT THE COMPLETION OF THE *MEDIATION* PROCESS, PLEASE RETURN THIS EVALUATION TO:

GERALD P. LEPP
ADR ADMINISTRATOR
225 CADMAN PLAZA EAST
BROOKLYN, NY 11201
(T)718-613-2577 (F) 718-613-2368