

UNITED STATES DISTRICT COURT
Eastern District of New York

Robert C. Heinemann
Clerk

James Giokas
Chief Deputy

GERALD P. LEPP, ESQ.
ADR Administrator

Please Reply to:
BROOKLYN OFFICE
U.S. COURTHOUSE
225 CADMAN PLAZA EAST
BROOKLYN, NEW YORK, 11201

Telephone 718-260-2577 Fax 718-260-2546
Gerald_P._Lepp@nyed.uscourts.gov

**LETTER OF INSTRUCTIONS
TO COUNSEL IN EDNY MEDIATION
(last updated 1/15/02)**

I. Date for mediation session and selecting Mediator

Unless otherwise provided in the Mediation Referral Order, the first mediation session will be scheduled approximately four to six weeks after the date of the Mediation Order. Plaintiff's counsel is directed to speak with his or her client and then to telephone all other counsel to determine available dates for mediation and selection of a mediator. A mediation session should be scheduled for an entire day. Counsel, their clients, and insurers shall attend the mediation sessions in person.

Counsel may select the Mediator from the EDNY Panel of Mediators which is listed on the ADR website www.nyed.uscourts.gov/adr and also schedule the session. The names of the mediators, their areas of concentration together with addresses and telephone numbers are listed on the website. The mediators on the panel serve pro bono and without compensation. Counsel may also agree to a particular mediator whether or not he/she is 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.

Alternatively, the Mediation Department may be requested to select the Mediator. In such case, three potential dates when all counsel, their clients, and insurers will be available should be advised to the Mediation Office, telephone number 718-260-2577; fax number 718-260-2546.) The Mediation Office will thereafter select a mediator who will conduct the mediation session on one of the three proposed dates. The Mediation Office will notify all counsel of the date selected for the mediation session as well as the name, address and telephone number of the selected mediator.

If Counsel select the mediator, then the name of the Mediator, date, time and place of the mediation, should be confirmed in a written letter to all Counsel with a copy to the Mediation Office.

II Submissions

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.

The Local Civil Rule 83.11(b) (4) provides that "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. 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."

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

II Attendance in Person by Trial Counsel and Party Representative at each Session and Session Location.

Attendance in person at each mediation session is required of both trial counsel and the party or its representative in the case of a business or governmental entity or a minor, with authority to settle the matter and to bind the party. 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. **Availability by telephone is unacceptable.**

Mediation sessions may be conducted at the offices of the mediator, the Courthouse of the Eastern District at Central Islip or at the Courthouse in the Southern District of New York in Foley Square, Manhattan. Telephone the Mediation Office for reservations at the Courthouses. (Telephone 718-260-2577 or FAX 718-260-2546)

IV 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. A form of stipulation of discontinuance is attached hereto.

V. Other Resources

EDNY Local Civil Rule 83.11 Court-Annexed Mediation
(Eastern District Only)

EDNY ADR website www.nyed.uscourts.gov/adr

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***UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK***

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned parties:

6. The parties shall participate in a mediation, whereby a neutral and impartial person will assist them in attempting to reach a mutually acceptable negotiated resolution of the dispute between them (the "Mediation").
7. The Parties jointly accept _____ to provide mediation services to them (the "Mediator").
8. The Mediation shall be non-binding.
9. The Mediator shall not have authority to render a decision that shall bind the parties.
10. The parties are not obligated to agree to any proposals which are made during the Mediation.
11. No party shall be bound by anything said or done during the Mediation, unless either a written and signed stipulation is entered into or the parties enter into a written and signed agreement.
12. The Mediator may meet in private conference with less than all of the parties.
13. Information obtained by the Mediator, either in written or oral form, shall be confidential and shall not be revealed by the Mediator unless and until the party who provided that information agrees to its disclosure.
14. The Mediator shall not, without the prior written consent of both parties, disclose to the Court any matters which are disclosed to him or her by either of the parties or any matters which otherwise relate to the Mediation.

15. The mediation process shall be considered a settlement negotiation for the purpose of all federal and state rules protecting disclosures made during such conferences from later discovery or use in evidence. The entire procedure shall be confidential, and no stenographic or other record shall be made except to memorialize a settlement record. All conduct, oral or written, made during the Mediation by any party or a party's agent, employee, or attorney are confidential and, where appropriate, are to be considered work product and privileged. Such conduct, statements, promises, offers, views and opinions shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties. Provided, however, that evidence otherwise subject to discovery or admissible is not excluded from discovery or admission in evidence simply as a result of it having been used in connection with this mediation process.
16. The Mediator and his or her agents shall have the same immunity as judges and court employees have under Federal law and the common law from liability for any act or omission in connection with the Mediation, and from compulsory process to testify or produce documents in connection with the Mediation.
17. The parties (i) shall not call or subpoena the Mediator as a witness or expert in any proceeding relating to: the Mediation, the subject matter of the mediation, or any thoughts or impressions which the mediator may have about the parties in the mediation, and (ii) shall not subpoena any notes, documents or other material prepared by the mediator in the course of or in connection with the Mediation, and (iii) shall not offer in evidence any statements, views or opinions of the Mediator.
18. The Mediator's services have been made available to the parties through the dispute resolution procedures sponsored by the Court. In accordance with those procedures, the Mediator represents that he has taken the oath prescribed by 28 U.S.C. 453.
19. Any party to this Stipulation has a right to withdraw from the Mediation at any time for any reason.

20. An individual with final authority to settle the matter and to bind the party shall attend the Mediation on behalf of each party.

Dated:

Plaintiff

Defendant

Attorneys for Plaintiff

Attorney for Defendant

Consented to:

Mediator

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STIPULATION
OF SETTLEMENT
CV

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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 Plaintiff

Counsel for Defendant

SO ORDERED:
U.S. DISTRICT JUDGE