

### INSTRUCTIONS FOR REFERRALS TO EDNY MEDIATION WITH A FEE WAIVER

(Last updated 02/14/2024)

#### I. Date for Mediation Session and Selecting Mediator

Unless otherwise provided in the Mediation Referral Order, the first mediation session should take place within four weeks after mediator selection. The ADR Administrator will provide you with a list of available *pro bono* mediators (mediators who offer their services free of charge). Both parties are to confer with each other and to speak directly with the potential mediator, in scheduling the first mediation session. Once the mediator has been selected, the parties must electronically file the name of the mediator, date, time, and place (in-person or remote) of the first mediation session using the [Selection of the Mediator Form](#) on the ADR Forms website under Mediation Forms/For Counsel and Parties: <https://www.nyed.uscourts.gov/adr-forms> or via CM/ECF using the event “Selection of Mediator.” A mediation session should be scheduled for an entire day. Trial Counsel, a representative of their client with full settlement authority, and the insurance adjustor (if any) shall attend the mediation sessions in person.

Please be aware that many of the EDNY panel mediators also provide private mediation services. It is very important that you identify yourself to the mediator as a party in a court ordered fee waiver mediation.

#### II. Submissions

The 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, you should discuss with the mediator any particular requirements that they may have.

Unless otherwise agreed by the parties and the mediator, the submissions are not exchanged with the other party/parties.

#### III. Confidentiality Stipulation

Mediation is a confidential process. All participants, including the mediator, must sign the Confidentiality Stipulation available at: <https://www.nyed.uscourts.gov/adr-forms> under ADR Forms/Mediation Forms/For Counsel and Parties. The Confidentiality Stipulation ([in-person](#) or

# EASTERN DISTRICT OF NEW YORK

## ADR Program

[remote](#)) must be signed at or before the initial mediation session by all participants and the Mediator and returned via e-mail to [nyed\\_adr@nyed.uscourts.gov](mailto:nyed_adr@nyed.uscourts.gov).

#### **IV. (Attendance in Person Required of Trial Counsel, Insurance Adjustor, and Party Representatives with Full Settlement Authority at Each Session and Session Location)**

Attendance in person 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. Availability by telephone is unacceptable.

Mediation sessions may be conducted at the offices of the mediator, the Courthouses of the Eastern District at Central Islip and Brooklyn, and with the consent of all Counsel, a Counsel's conference room. Contact the ADR Office for reservations at the Courthouses. ([nyed\\_adr@nyed.uscourts.gov](mailto:nyed_adr@nyed.uscourts.gov) 718-613-2577).

#### **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.

#### **VI. Mediation Report**

After the mediation has taken place, please report the outcome of the mediation and evaluate the performance of your mediator using our [Mediation Report](#) form available at: <https://www.nyed.uscourts.gov/adr-forms> under ADR Forms/Mediation Forms/For Counsel and Parties.

#### **VII. Other Resources**

EDNY Local Civil Rule 83.8 Court-Annexed Mediation (Eastern District Only) EDNY ADR website: [www.nyed.uscourts.gov/adr](http://www.nyed.uscourts.gov/adr)

#### **VIII. ADR Contact**

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