

## SOUTH CAROLINA

16.03: *Alternative Dispute Resolution (“ADR”) Statement and Certification.* Within the time set forth in the Scheduling Order (Local Civil Rule 16.02(C)(4)), counsel for each party shall file and serve a statement certifying that counsel has: (1) provided the party with any materials relating to ADR which were required to be provided by the Local Civil Rule 16.01 Pre-Scheduling Order; (2) discussed the availability of ADR mechanisms with the party; and (3) discussed the advisability and timing of ADR with opposing counsel.

16.04: *Mediation: Definitions.*

(A) *Mediation.* An informal process in which a third-party mediator facilitates settlement discussions between parties. Any settlement is voluntary. In the absence of settlement, the parties lose none of their rights to trial by judge or jury.

(B) *Mediator.* A neutral person who acts to encourage and facilitate the resolution of a pending civil action. The mediator has no authority to make a decision or impose a settlement. Mediators are normally compensated by the parties. *See* Local Civil Rule 16.11.

16.05: *Actions Subject to Mediation.* All civil actions filed in the District are subject to mediation under these Local Civil Rules. Parties may, however, decline to participate in mediation by so notifying the Court.

16.06: *Appointment of Mediator.*

(A) *Eligibility.* A mediator may be a person who:

- (1) Is a certified mediator under Local Civil Rule 16.12; or
- (2) Is not a certified mediator but in the opinion of all of the parties is otherwise qualified by training or experience to mediate all or some of the issues in the action.

(B) *Roster of Certified Mediators.* The Clerk of Court shall maintain a roster of mediators certified under Local Civil Rule 16.12 who are willing to serve in the District. A certified mediator shall notify the Court if the mediator desires to be added or deleted. The roster shall be available to the public.

(C) *Selection of a Mediator by Agreement of the Parties.* Unless otherwise ordered, the parties must select a mediator within twenty-one (21) days after the date on which the Court issues its order referring the case to mediation.

(D) *Appointment of Mediator by the Court.* If the parties cannot agree upon the selection of a mediator within twenty-one (21) days after the Court issues its order referring the case to mediation, the plaintiff’s attorney shall advise the Court of this fact and request appointment of a mediator.

(E) *Disqualification of Mediator.* Any party may move the Court for an order disqualifying the mediator. If the motion is granted and the mediator is disqualified, an order shall be entered appointing a replacement mediator.

16.07: *The Mediation Conference.*

(A) *When the Conference is to be Held.* Unless otherwise ordered, the initial mediation conference shall be held within thirty (30) days of the agreement upon or order appointing a mediator. Unless otherwise ordered, mediation shall be completed within thirty (30) days after the initial mediation conference.

(B) *Discovery, Motions, and Trial.* The case will not be called for trial during the period allotted for completion of mediation as set by these Local Civil Rules or Court order. Extensions of time allotted for mediation shall be obtained from the Court only on a showing of good cause. Except by order of the Court, the mediation conference shall not be cause for delay of other proceedings in the case, including the completion of discovery, the filing and hearing of motions, or any other matter which would delay the trial of the case following the period allotted for mediation.

(C) *Privacy.* Mediation conferences are private and reserved for the parties and their representatives. Other persons may attend only with the permission of all the parties and the mediator.

16.08: *Duties of the Parties, Representatives, and Attorneys at Mediation.*

(A) *Attendance.* The following persons shall attend a mediation conference in person unless otherwise ordered by the Court or agreed upon by the parties and mediator:

(1) The mediator;

(2) All individual parties; or an officer, director, or employee having full authority to settle the claim for a corporate party; or in the case of a governmental agency, a representative of that agency with full authority to negotiate on behalf of the agency and recommend settlement to the appropriate decision-making body of the agency;

(3) The party's counsel of record, if any; and

(4) For any insured party against whom a claim is made, a representative of the insurance carrier who is not the carrier's outside counsel and who has full authority to settle the claim.

(B) *Identification of Matters in Dispute.* The mediator may require, prior to the scheduled mediation conference, that the parties provide brief memoranda setting forth their positions with regard to the issues that need to be resolved. The memorandum should be no more than five (5) pages in length unless permitted by the mediator. With the consent of all parties, such memoranda may be mutually exchanged by the parties.

(C) *Confidentiality.* Communications during the mediation conferences shall be confidential. The parties, their attorneys, and other persons present shall maintain the confidentiality of the mediation and shall not rely on, introduce, or attempt to introduce as

evidence in any arbitral, judicial, or other proceeding, any event, document, or communication relating in any way to the mediation.

(D) *Finalizing Agreement*. If agreement is reached, the parties shall, before the adjournment of the mediation, reduce the agreement to writing and sign along with their attorneys. If the agreement executed by the parties and their attorneys in mediation envisions the execution of a more formal agreement, the mediator shall assign one of the parties' attorneys to prepare the formal agreement and such papers to be filed with the Court as may be necessary. Such documents shall be executed by the parties within fourteen (14) days of the date of the mediation conference. A copy shall be forwarded to the mediator.

16.09: *Sanctions for Failure to Attend Mediation Conference*. If a person fails to attend a duly ordered mediation conference without good cause, the Court may impose upon the party or the party's principal any lawful sanctions, including, but not limited to, the payment of attorney's fees, mediator's fees, and expenses incurred by persons attending the conference, and any other sanction authorized by Rule 37(b) of the Federal Rules of Civil Procedure.

16.10: *Authority and Duties of Mediators*.

(A) *Authority of Mediators*. The mediator shall at all times be authorized to control the conference and the procedures to be followed.

(B) *Duties*. The mediator shall set up the mediation conference. The mediator shall define and describe the following to the parties at the beginning of the conference:

- (1) The process of mediation;
- (2) The difference between mediation and other forms of conflict resolution;
- (3) The fact that the mediation conference is not a trial; the mediator is not a judge, jury, or arbitrator; and the parties retain the right to trial if they do not reach a settlement;
- (4) The inadmissibility of conduct and statements as evidence in any arbitral, judicial, or other proceeding;
- (5) The circumstances under which the mediator may meet alone with either of the parties or with any other person;
- (6) Whether and under what conditions communications with the mediator will be held in confidence during the conference;
- (7) The duties and responsibilities of the mediator and the parties;
- (8) The fact that any agreement will be reached by mutual consent of the parties; and
- (9) The costs of the mediation conference.

(C) *Private Consultation/Confidentiality*. The mediator may meet and consult separately with any party or parties or their counsel during the conference. Confidential information disclosed to a mediator by parties or by witnesses in the course of mediation shall not be divulged by the mediator.

(D) *No Waiver of Privilege*. No communication by a party or attorney to the mediator in private session shall operate to waive any attorney-client, work product, or other privilege.

(E) *Mediator not to be Called as Witness.* Except when ordered by the Court for exceptional circumstances shown, the mediator shall not be listed or called as a witness or be compelled by subpoena or otherwise to divulge any records or to testify in regard to the mediation in any adversary proceeding or judicial forum. All records, reports, and other documents received or created by the mediator while serving in that capacity shall be confidential.

(F) *Duty of Impartiality.* The mediator has a duty to be impartial and to advise all parties of any circumstances bearing on possible bias, prejudice, or partiality.

(G) *Declaring Impasse.* It is the duty of the mediator to determine when an impasse exists in the mediation or when the mediation should end. A mediation cannot be unilaterally ended without the permission of the mediator.

(H) *Reporting Results of Conference.* The mediator shall, within thirty (30) days of conclusion of the mediation, forward a completed Alternative Dispute Resolution Tracking Form to the attention of the ADR Program Director.

(I) *Statistical Data.* The Clerk of Court may require additional statistical data from the mediator or parties.

(J) *Immunity.* The mediator shall not be liable to any person for any act or omission in connection with any mediation conducted under these Local Civil Rules.

#### 16.11: *Compensation of the Mediator.*

(A) *By Agreement.* When the mediator is stipulated to by the parties, compensation shall be agreed upon between the parties and the mediator.

(B) *By Court Order.* When the mediator is appointed by the Court, the mediator shall be compensated by the parties at an hourly rate set by agreement of the parties or by the appointing Court.

(C) *Payment of Compensation by the Parties.* Unless otherwise agreed to by the parties or ordered by the Court, fees for the mediation conference shall be paid in equal shares per party. Payment shall be due upon conclusion of the conference unless other arrangements are made with the mediator, or unless a party advises the mediator of his or her intention to file a motion to be exempted from payment of mediation fees pursuant to Local Civil Rule 16.11(D).

(D) *Indigent Cases.* A party may move before the Court to be exempted from payment of mediation fees based upon indigency. Applications for indigency shall be made and considered by the Court before the mediation conference has been scheduled. *See* Local Civil Rule 16.12(F).

16.12: *Mediator Certification and Decertification.* The Clerk of Court or designee may receive applications for certifications of persons to serve as mediators. Approval shall require the consent of at least one district judge. The application shall be on a form approved by the

Clerk of Court. For certification, a person must:

(A) Be admitted to practice law in this state, in the highest court of another state, or of the District of Columbia and meet the following qualifications:

- (1) Have practiced law for at least five (5) years;
- (2) Have received a juris doctorate degree or its equivalent from a law school approved by the American Bar Association or the South Carolina Supreme Court under Rule 402(c)(3), South Carolina Appellate Court Rules, as now in force or as hereafter modified;
- (3) Be a member in good standing in each jurisdiction where he or she is admitted to practice law;
- (4) Not have been, within the last five (5) years,
  - (a) Disbarred or suspended from the practice of law;
  - (b) Denied admission to a bar for character or ethical reasons; or
  - (c) Publicly reprimanded or publicly disciplined for professional conduct;and
- (5) If not a member of the South Carolina Bar, agree to be subject to the Rules of Professional Conduct, Rule 407, South Carolina Appellate Court Rules, as now in force or as hereafter modified; to the Rule on Disciplinary Procedure, Rule 413, South Carolina Appellate Court Rules, as now in force or as hereafter modified, and/or Local Civil Rule 83, to the same extent as an active member of the South Carolina Bar practicing before this Court.

(B) Have completed a civil mediation training program approved by the South Carolina Supreme Court or its designee, or this District Court, or any other equivalent training program or experience;

(C) Demonstrate familiarity with the statutes, rules, and practice governing mediation conferences in the District of South Carolina;

(D) Be of good moral character and adhere to any ethical standards applicable to attorneys or mediators practicing before this Court, or in the courts of the State of South Carolina;

(E) Pay any administrative fees established for mediators by the District of South Carolina; and

(F) Agree to provide mediation to indigents without pay (or with pro rata reduction in fees to be paid if fewer than all parties are indigent). It is the duty of every person approved as a mediator to notify the Clerk of Court of any change in his or her ability to satisfy all requirements for mediators set forth above. Certification may be revoked or not renewed at any time it is shown to the satisfaction of the chief judge or his or her designee that a mediator no longer meets the above qualifications or has not faithfully observed these Local Civil Rules.