

TENNESSEE – WESTERN

LR 16.3

PRETRIAL AND SCHEDULING CONFERENCES: ALTERNATIVE DISPUTE RESOLUTION

(a) Initial Conference. At the initial scheduling conference held pursuant to Fed. R. Civ. P. 16(b), in civil cases in which all parties are represented by counsel, the possibility of settlement shall be discussed, and the Court will determine if a method of Alternative Dispute Resolution (“ADR”) should be utilized in the case. The attorneys shall be prepared to discuss the advisability of referring their cases to alternative dispute resolution. ADR, without limitation, may include mediation by a Court approved mediator pursuant to the Court’s Mediation Plan, private mediation, judicial settlement conferences, an early neutral evaluation, a mini-trial, summary jury trial or the like.

(b) Party Requests. At any time after the initial Rule 16 scheduling conference, any party may inform the Court that the case is ripe for ADR and request the Court to direct the case to mediation in accordance with the Court’s Mediation Plan or some other form of ADR. The parties may request a judicial settlement conference only after they have engaged in and certify to the Court that they have participated in good faith in at least one unsuccessful mediation under the Court’s Mediation Plan or private mediation.

(c) Court Ordered Alternative Dispute Resolution. The Court may order the parties to undergo any form of ADR, including but not limited to mediation pursuant to the Court’s Mediation Plan, (at <http://www.tnwd.uscourts.gov/mediation-plan.php>), attached hereto as APPENDIX D.

(d) Reporting Mediation Results. Within 7 days of completion of Court ordered ADR, the parties shall, without disclosing the parties’ respective positions at the ADR, file a notice that the ADR was conducted and was successful or unsuccessful and whether some other form of ADR might assist in resolving the matter.

(e) Relief From Alternative Dispute Resolution Requirement. By motion for good cause shown, a party may be relieved of the obligation to participate in ADR.

MEDIATION PROGRAM PLAN Appendix D

1. Selection of Court Certified Mediators

If the case is referred to the Court’s mediation panel, the parties will jointly select the Court Certified Mediator, with the assistance of the Clerk’s Office. The Clerk’s Office will provide the parties with a list of names of five Court Certified Mediators, selected randomly from the Court’s mediation panel. If the parties cannot reach agreement on a mediator from the list, they will so notify the judge assigned to the case who will then resolve the issue.

2. Process of Random Selection

a. Memphis Venue

The Clerk's Office will maintain a computerized file of Court Certified Mediators who agree to hear cases in Memphis. This may include mediators from the Jackson division. Mediators' names will appear in the mediator assignment pool four times each, representing four opportunities to be selected. Only the name of the Court Certified Mediator who is agreed upon by the parties will be credited for an assignment, leaving that mediator three more opportunities to be selected from the pool. One of the four "opportunities to be selected" will be confined to pro bono assignments only. When the pool is close to depletion (ten or fewer names), the Clerk's Office will replenish it, as outlined in the preceding paragraph.

b. Jackson Venue

The Clerk's Office will maintain a computerized file of Court Certified Mediators who agree to hear cases in the Jackson division. This may include mediators from Memphis. Mediators' names will be represented in an automated assignment pool as outlined above, except that separate rosters will be maintained of attorneys who live in the Jackson division and those who live in the Memphis division. Parties will select a mediator from a list of five mediators, three of whom will be from the Jackson pool and two of whom will be Memphis mediators agreeing to accept Jackson assignments.

3. Scheduling the Mediation

When the parties agree on a Court Certified Mediator, they will be asked to sign an Agreement to Mediate (see attached). The Agreement to Mediate will be retained in the Clerk's Office, copies will be given to the parties, and a copy will be forwarded to the mediator. Upon receipt of the Agreement to Mediate, the mediator will notify the Clerk's Office whether he or she will accept the assignment. If the assignment is accepted, the mediator will contact the parties and schedule the mediation. Rooms in the Federal Building will be made available through the Clerk's Office, if desired.

4. Certification and Training of Mediators

The initial group of Court Certified Mediators will be nominated by the CJRA Advisory Group. A subcommittee of the CJRA Advisory Group will screen and select proposed mediators from the names submitted. The requirements for mediators are:

- a. license to practice in the state of Tennessee;
- b. ten or more years trial experience; and
- c. substantial trial experience in Federal Court.

The list of proposed mediators selected by the subcommittee will be submitted to the Advisory Group for an assessment of qualification. The Advisory Group will rate the mediator candidates as highly qualified, qualified, or not currently qualified and will recommend the highly qualified and qualified candidates to the court for its consideration. Attorneys approved by the court will be contacted to determine their interest in participating. They must agree to the following requirements:

b. To complete federal mediation training at their own expense (approximately \$500). The mediation training program will be scheduled by the Clerk's Office;

c. To abide by the fee structure outlined in the Agreement to Mediate;

d. To accept at least one pro bono case per year, if assigned; and

e. To complete evaluation forms following each mediation.

In addition, the mediators will be asked whether they are willing to accept mediation assignments in Memphis or Jackson, or both. If available for both venues, an administrative fee of Two Hundred Dollars (\$200) to cover time and travel expenses will be provided by the parties to mediators who are required to travel between Jackson and Memphis to mediate.

Attorneys who meet all requirements will be considered for certification by the Court to participate on the Court's mediation panel. As soon as the Mediation Program is implemented and the initial group of Court Certified Mediators are trained, the Clerk's Office will advertise and solicit applications from attorneys interested in serving as Court Certified Mediators.

Applicants will be screened by a subcommittee of the Advisory Group and rated by the Advisory Group before submission to the Court for consideration. A maximum of fifty (50) mediators in Memphis and twenty (20) mediators in Jackson will be selected. These numbers include the mediators on the initial list. Thereafter the Clerk's Office will accept and hold applications to be screened as vacancies occur on the lists of mediators.

5. Evaluation of the Program

The Clerk's Office will design and distribute Mediation Evaluation Forms to be completed by the parties, their counsel, and the mediator at the end of mediation and returned to the Clerk's Office. The Clerk's Office will periodically compile the results on the forms and summarize them in a report to the Court, along with any recommendations for improvements to the mediation program.

The Court will periodically assess the mediation program and make any needed modifications in the Mediation Procedure for the United States District Court for the Western District of Tennessee.

6. Report on the Outcome of Mediation

When the mediation is completed, the mediator shall immediately submit to the Clerk's Office a report of the status of the case on a form supplied by the Clerk's Office. If the case is resolved, it is the duty of the parties to file a stipulation of dismissal or consent judgment. If the case is not resolved, the mediator will indicate whether further mediation at a later time is planned or recommended. In any event, the case proceeds without further order of the court in accordance with the local rules of the Court.

7. Costs

To the extent provided in F.R.C.P. 54(d)(1), if the case is litigated to a verdict, the prevailing party may request payment of the fees and expenses of the mediator as costs.

9. Private Mediation

Parties are free, at any time, to engage in private mediation or other forms of alternative dispute resolution (ADR) independent of or in addition to mediation with a Court Certified Mediator. The parties shall give notice to the Court of an agreement to engage in private ADR proceedings in order to assist the Court in maintaining its docket.

[Appendix D](#)