

# TEXAS – EASTERN

## Appendix H

*(As Amended November 19, 2007)*

### **I. PURPOSE**

It is the purpose of this Mediation Plan to provide an alternative resolution for civil disputes. This plan is not to be considered or construed to be any abridgement of a litigant's right to a trial by jury as guaranteed by the 7th Amendment. Rather, it is designed to encourage parties to:

- (a) Confront the facts and issues in the case;
- (b) engage each other in a discussion of those issues;
- (c) analyze the risk of litigation;
- (d) consider all the costs, monetary and otherwise, involved in the dispute; and
- (e) discuss methods of resolving the dispute.

### **II. MEDIATION DEFINED**

Mediation is a private process in which an impartial third party, the mediator, facilitates communication and negotiation and promotes voluntary decision making by the parties to the dispute.

### **III. QUALIFICATIONS**

Any person may serve as a mediator who has been ordered by the court to serve as a mediator or is approved by the parties.

Any person selected as a mediator may be disqualified by the court.

### **IV. ETHICS**

Any person serving as mediator pursuant to this plan is subject to the Model Standards of Conduct for Mediators that were adapted by the American Bar Association in August, 2005 or similar ethical standards or guidelines. The mediator shall advise mediation participants what ethical standards he or she will follow.

### **V. COMPENSATION**

Mediators shall be compensated at a reasonable rate. Absent agreement of the parties to the contrary, the cost for the mediator's services shall be borne equally by the parties to the mediation. The court has the right to review the reasonableness and apportionment of the mediator's compensation.

## **VI. MEDIATION REFERRAL**

Any civil suit may be referred to mediation through the agreement of the parties and or by order of the court. Where the court enters an order referring the parties to mediation the court shall appoint the mediator and establish a deadline for convening the mediation.

## **VII. SCHEDULING MEDIATION AND ATTENDANCE**

A. The parties shall cooperate with the mediator in scheduling the mediation.

B. **Attendance.** All parties or party representatives shall be present at the mediation. Where attendance of a party is required, a party other than a person satisfies the attendance requirement if it is represented by a person or persons, other than outside or local counsel, with authority to enter into stipulations, with reasonable settlement authority, and with sufficient stature in the organization to have direct access to those who make the ultimate decision about settlement. In addition, if an insurance company's approval is required by any party to settle a case, a representative of the insurance company with significant settlement authority shall attend in person. If it appears to the mediator that a case is not being reasonably evaluated by the representative present, the mediator may meet privately with one or both sides to request the analysis that has gone into the evaluation of the case, including the names and authority of the individual involved in the analysis. The mediator may request identified individuals or designate a level of authority to be present if a subsequent mediation is scheduled.

The mediator may vary the mandates of this section, with respect to scheduling and attendance of parties or party representatives in accordance with law.

C. **Rescheduling.** The mediator may reschedule the mediation to any date before trial with or without the approval of the parties. Any rescheduling beyond the date of trial must be approved by the court.

## **VIII CONFIDENTIALITY**

All proceedings of the mediation, including statements made by a party, attorney, or other participant, are privileged and confidential in all respects.

The mediation process is to remain confidential. Mediation proceedings may not be reported, recorded, placed in evidence, made known to the trial court or jury, or construed for any purpose as an admission against interest. A party is not bound by anything said or done at a mediation conference unless a settlement is reached.

A mediator shall protect confidential information obtained by virtue of the mediation process and shall not disclose such information to anyone else. Notwithstanding the foregoing, a mediator may disclose information (1) that is required to be disclosed by

operation of law; (2) that he or she is permitted by the parties to disclose or; (3) that is related to an ongoing or intended crime or fraud. If confidential information is disclosed, the mediator shall advise the parties that disclosure is required and will be made.

## **IX. MEDIATION REPORT**

Within five (5) days following the conclusion of the mediation, the mediator shall electronically file the mediation report with the court using the CM/ECF filing system. The report shall indicate whether the case settled, was continued, or whether the mediator declared an impasse.