

WEST VIRGINIA – NORTHERN

LR Civ P 16.06. Mediation.

(a) Cases to Mediate: The judicial officer may order mediation *sua sponte* or at the request of any party. The Northern District of West Virginia also supports the voluntary use of alternate dispute resolution and will endeavor to facilitate mediation or similar proceedings when the presiding judicial officer finds a request to do so appropriate and timely. The parties are free to engage in mediation without court involvement so long as it does not interfere with court-ordered deadlines.

(b) Selection of Mediator; Notice of Nomination: The parties are expected to agree upon a mediator, the amount of the mediator's fee, and the responsibility for payment. If the parties are unable to agree on a mediator, then the parties shall promptly notify the presiding judicial officer, who shall appoint a mediator, set the amount of the mediator's fee, and assign responsibility for payment. The parties may request that a judicial officer (who is not the presiding judicial officer) conduct the mediation. Such requests are particularly appropriate in complex cases or in cases in which a party is financially unable to bear its proportionate share of the mediation expense. Except with consent of the parties, a magistrate judge who has conducted a mediation shall not thereafter handle discovery disputes or other substantive matters in the case.

(c) Preparation for Mediation Conference: Attendance at the mediation conference is mandatory for counsel and the parties or their representatives who have full authority to make final and binding decisions, in accordance with the order scheduling the case for mediation. All parties and their counsel shall be prepared to knowledgeably discuss the facts and issues of the case and shall participate in mediation in good faith.

(d) Mediation Statements: The mediator may require the submission of written mediation statements. If the mediator does not require submission of written mediation statements, any party may submit a written mediation statement. Mediation statements submitted in writing to the mediator are confidential.

(e) Confidentiality: Mediators shall maintain strict confidentiality with respect to all information that is communicated by the parties and their counsel in connection with the Settlement Week conferences. The only information relative to an individual conference that will be reported to the Court by the mediator will be: (1) the fact that the conference was actually held; (2) whether the mediator intends to conduct further mediation in the case in the future; and (3) whether, in the opinion of the mediator, the case should continue routinely through the judicial process or might profit from being scheduled for a status or settlement conference before the Court. The mediator is also required to advise the Court if a representative without settlement authority attends the conference or if either party disrupts the mediation process, fails to appear or fails to negotiate in good faith. Mediation shall be regarded as confidential settlement negotiations, subject to Rule 408 of the Federal Rules of Evidence. A mediator shall keep confidential from opposing parties information obtained in an individual session unless the party to that session or the

party's counsel authorizes disclosure. A mediator may not be subpoenaed or called to testify or otherwise be subject to process requiring disclosure of confidential information in any proceeding relating to or arising out of the dispute mediated.

(f) Impartiality of Mediator: A mediator shall not serve in a case in which the mediator's impartiality might reasonably be questioned. Possible conflicts of interest shall be promptly disclosed by the mediator to counsel and pro se parties.

(g) Immunity: A person acting as a mediator under these Rules shall have immunity in the same manner and to the same extent as a judicial officer.

(h) Mediation Report. Unless a different time period is set by the judicial officer, within seven (7) days of the conclusion of mediation, the mediator shall file with the Clerk's Office a Mediation Report Form, whether the mediation did or did not result in settlement. This form can be found at the Court's web page at www.wvnd.uscourts.gov under the "Forms" link. This form shall be filed with the Clerk's Office where the case is pending. It is the responsibility of the parties to ensure compliance with this Rule.

(i) Settlement Proceedings: In the event mediation of a pending civil matter by a judicial officer who is not the presiding judicial officer in the case, results in a complete settlement of the case the mediation judicial officer is authorized, in addition to filing the obligatory mediation statement, to forthwith convene a Court proceeding with the parties, parties representatives, and counsel present, to spread on the record the terms of the settlement agreement reached; to call upon the parties, parties representatives and counsel present to confirm the terms of the settlement; and to authorize the entry of an appropriate order of dismissal by the presiding judicial officer.