

# WEST VIRGINIA – SOUTHERN

## **CR Civ P 16.6. Mediation**

### (a) Cases to be Mediated.

The judicial officer may order mediation *sua sponte* or at the request of any party. When so ordered, the following provisions of this local rule shall control. The Southern District of West Virginia also supports the voluntary use of alternative 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) Motion for Exception to Mandatory Mediation.

An attorney or a *pro se* party may file a motion for leave not to engage in mediation. The presiding judicial officer may grant the motion for good cause shown.

## **LR Civ P 16.6.1. Timing of Mediation**

Mediation shall take place at any time ordered by the court. The parties may consult with each other and agree upon a mutually convenient date, time, and place for the mediation and ask the court to approve such arrangements.

## **LR Civ P 16.6.2. 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. Not later than 7 days before the date set for mediation, or as otherwise directed by the court, the parties shall file a notice of nomination with the clerk, setting forth the name, address, telephone number, facsimile number, and e-mail address of the nominated mediator. The form "Notice of Nomination," available from the clerk and on the court's web site, shall be used. If the parties are unable to agree on a mediator, then the parties shall promptly notify the presiding judicial officer, who shall without delay 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.

## **LR Civ P 16.6.3. Appointment of Mediator**

Upon the filing of a Notice of Nomination, or upon selection of a mediator by the presiding judicial officer, an Order Appointing Mediator will be entered, using the

form available from the clerk and on the court's web site.

#### **LR Civ P 16.6.4. Attendance at Mediation**

Unless the court directs otherwise, the following persons shall attend the entire mediation in person: (a) all lead trial counsel; and (b) any party who is prosecuting a claim (i.e., the plaintiff(s) and any defendant who has made a counterclaim, cross claim, or third-party complaint). Unless the court directs otherwise, any other party or his/her/its representative who is knowledgeable about the facts of the case, and who has full authority to negotiate on behalf of the party and to approve or recommend a settlement, shall attend the entire mediation in person or, with prior approval of the judicial officer, by telephone or other electronic means such as videoconference.

#### **LR Civ P 16.6.5. Mediation Statements; Confidentiality**

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. Oral statements made during the mediation are confidential.

#### **LR Civ P 16.6.6. 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.

#### **LR Civ P 16.6.7. Compensation of Mediator**

Mediators will be compensated at the rate established when the mediator was selected, with payment as agreed by the parties or ordered by the presiding judicial officer.

#### **LR Civ P 16.6.8. Notification to Judicial Officer; Report of Mediator**

Immediately upon the completion of mediation resulting in the settlement of all or part of a case, the parties shall notify the chambers of the presiding judicial officers. Within 7 days of the close of mediation, the mediator will file with the clerk a report which states that all or part of the case was settled (specifying which part of the case settled) or that it was not settled. If all or part of the case was settled, the parties shall, at the mediation, place in writing the terms of the settlement, and all participants shall sign the terms of the settlement, with the mediator retaining the original. Within 30 days of the mediation, the parties shall submit to the chambers of the presiding judicial officer, an agreed order of dismissal as to all or part of the case that was settled.