

PENNSYLVANIA- MIDDLE

CHAPTER VI ALTERNATIVE DISPUTE RESOLUTION

LR 16.7 Alternative Dispute Resolution.

Litigants in all civil cases shall consider the use of an alternative dispute resolution process at an appropriate stage in the litigation. A judge may in his or her discretion set a civil case for an alternative method of dispute resolution approved by the court's Civil Justice Reform Act Expense and Delay Reduction Plan: the Mediation Program, the Settlement Officer Program, or the Summary Jury Trial Program; provided, however, that he or she gives consideration to any reasons advanced by the parties as to why such particular alternative method of dispute resolution would not be in the best interests of justice.

LR 16.8 Court-Annexed Mediation Program.

LR 16.8.1 General Rule.

The court adopts this rule for the purpose of implementing a court-annexed mediation program to provide litigants with an alternative method to dispose of their case. As hereinafter provided, commencing January 1, 1994 (and continuing until further action by the court) each judicial officer of this court may refer civil actions to mediation. Cases may be subject to mandatory mediation under the Mandatory Mediation Program of the court as set forth in the Standing Orders of Court, which can be found on the court's website @ www.pamd.uscourts.gov

LR 16.8.2 Certification of Mediators.

- (a) The chief judge shall certify as many mediators as determined to be necessary under this rule.
- (b) An individual may be certified at the discretion of the chief judge as a mediator if: (1) he or she has been a member of the bar of the highest court of a state or the District of Columbia for a minimum of ten (10) years; (2) he or she has been admitted to practice before this court; and (3) he or she has been determined by the chief judge to be competent to perform the duties of a mediator; and (4) he or she has successfully completed the mediation training program established by the Middle District. The training requirement may be waived by the chief judge when the qualifications and experience of the applicant are deemed sufficient.
- (c) The court shall solicit qualified individuals to serve as mediators.
- (d) Each individual certified as a mediator shall take the oath or affirmation prescribed by 28 U.S.C. § 453 before serving as a mediator.
- (e) A list of all persons certified as mediators shall be maintained in the office of the clerk.

(f) A member of the bar certified as a mediator may be removed from the list of certified mediators by the chief judge.

LR 16.8.3 Compensation and Expenses of Mediators.

(a) The mediator's preparation time and the first six hours of mediation services shall be provided *pro bono*. After six hours of mediation, the parties and the mediator shall agree to one of the following courses of action:

(1) to terminate the mediation; (2) to continue the mediation with the mediator providing his or her services on a pro bono basis; or (3) to continue the mediation with the mediator providing his or her services at the mediator's regular hourly rate for professional services rendered to the mediator's typical clientele or, in the absence of a standard hourly rate, at the rate of \$200.00 per hour.

If the parties and the mediator are unable to agree on a course of action, the mediation shall be terminated. If the parties and the mediator select option (3), all terms and conditions of the mediator's fee agreement must be set forth in writing. The parties shall pay the mediator directly. The court assumes no responsibility for the supervision or enforcement of the parties' agreement to pay for mediation services.

(b) An individual certified as a mediator shall not be called upon more than three times in a calendar year to serve as a mediator without prior approval of the mediator.

(c) Except as provided herein, a mediator shall not accept anything of value from any source for services provided under the court-annexed mediation program.

LR 16.8.4 Cases Eligible for Mediation.

Every civil action filed in the Middle District of Pennsylvania is eligible for mediation except any case which the assigned judge determines, after application by any party or by the mediator is not suitable for mediation.

LR 16.8.5 Scheduling Mediation Conference.

(a) When the court makes a determination that referral to mediation is appropriate, it shall issue an order referring the case to mediation, appointing the mediator, directing the mediator to establish the date, time and place for the mediation session and setting forth the name, address, and telephone number of the mediator. The order will also direct the mediator to fix the date for the initial mediation session to be a date within sixty (60) days from the date of the order of referral unless otherwise extended by the court.

(b) The mediation session shall be held before a mediator selected by the assigned judge from the list of mediators certified by the chief judge.

(c) The clerk shall provide the mediator with a current docket sheet. The mediator shall advise the clerk as to which documents in the case file the mediator desires copies of for the

mediation session. The clerk shall provide the mediator with all requested copies.

(d) Any continuance of the mediation session beyond the period prescribed in the referral order must be approved by the assigned judge.

(e) A person selected as a mediator shall be disqualified for bias or prejudice as provided by 28 U.S.C. § 144, and shall disqualify himself or herself in any action where disqualification would be required under 28 U.S.C. § 455 if he or she were a justice, judge, or magistrate judge. A party may assert the bias or prejudice of an assigned mediator by filing an affidavit with the assigned judge stating that the mediator has a personal bias or prejudice. The judge may in his or her discretion end alternative dispute resolution efforts, refer the case to another mediator, refer the case back to the original mediator or initiate another alternative dispute resolution mechanism.

LR 16.8.6 The Mediation Session and Confidentiality of Mediation Communications.

(a) The mediation session shall take place as directed by the court and the assigned mediator. The mediation session shall take place in a neutral setting designated by the mediator. The parties shall not contact or forward documents to the mediator except as directed by the mediator or the court.

(b) If the mediator determines that no settlement is likely to result from the mediation session, the mediator shall terminate the session and promptly thereafter file a report with the Clerk of Court stating that there has been compliance with the requirements of mediation in accordance with the local rules, but that no settlement has been reached. In the event that a settlement is achieved at the mediation session, the mediator shall file a report with the Clerk of Court stating that a settlement has been achieved. The order of referral may direct the mediator to file the report in a specific form.

(c) Unless stipulated in writing by all parties and the mediator or except as required by law or otherwise ordered by the court, all discussions which occur during mediation shall remain strictly confidential and no communication at any mediation session (including, without limitation, any verbal, nonverbal or written communication which refers to or relates to mediation of the pending litigation) shall be disclosed to any person not involved in the mediation process and no aspect of the mediation session shall be used by anyone for any reason.

(d) No one shall have a recording or transcript made of the mediation session, including the mediator.

(e) The mediator shall not be called to testify as to what transpired in the mediation session.

LR 16.8.7 Duties of Participants at the Mediation Session.

(a) Parties. All named parties and their counsel are required to attend the mediation

session, participate in good faith and be prepared to discuss all liability issues, all defenses and all possible remedies, including monetary and equitable relief. Those in attendance shall possess complete settlement authority, independent of any approval process or supervision, except as set forth in subparagraphs (1) and (2) below. Unless attendance is excused under paragraph (d), willful failure to attend the mediation session will be reported by the mediator to the court and may result in the imposition of sanctions.

(1) Corporation or Other Entity. A party other than a natural person (e.g. a corporation or association) satisfies this attendance requirement if represented by a person (other than outside counsel) who either has authority to settle or who is knowledgeable about the facts of the case, the entity's position, and the policies and procedures under which the entity decides whether to accept proposed settlements.

(2) Government Entity. A unit or agency of government satisfies this attendance requirement if represented by a person who either has authority to settle or who is knowledgeable about the facts of the case, the government unit's position, and the policies and procedures under which the governmental unit decides whether to accept proposed settlements. If the action is brought by or defended by the government on behalf of one or more individuals, at least one such individual also shall attend.

(b) Counsel. Each party shall be accompanied at the mediation session by the attorney who will be primarily responsible for handling the trial of the matter.

(c) Insurers. Insurer representatives are required to attend in person unless excused under paragraph (d), below, if their agreement would be necessary to achieve a settlement. Insurer representatives shall possess complete settlement authority, independent of any approval process or supervision.

(d) Request to be Excused. A person who is required to attend a mediation session may be excused from attending in person only after a showing that personal attendance would impose an extraordinary or otherwise unjustifiable hardship. A person seeking to be excused must submit, no fewer than fourteen (14) days before the date set for the mediation, a written request to the mediator, simultaneously copying all counsel. The written request shall set forth all considerations that support the request and shall indicate whether the other party or parties join in or object to the request. A proposed order prepared for the signature of the Judge shall be submitted to the mediator with the request. The mediator shall promptly consider the request and shall submit the proposed order to the Judge with a recommendation that the request be granted or denied. In the absence of an order excusing attendance, the person must attend.

LR 16.9 Settlement Officer Program.

LR 16.9.1 General Rule.

Any time after an action or proceeding has been filed, the action may be referred to another judicial officer, including a magistrate judge, or to a neutral evaluator for the purpose

of conducting a settlement conference(s).

LR 16.9.2 Agreement of the Parties.

The parties may agree, with the approval of the court, upon the selection of the settlement officer.

LR 16.9.3 Discretion of the Court.

Notwithstanding any other provision of this rule, in all actions the court shall have the right to designate the settlement officer and make the referral.

LR 16.9.4 Participants and Settlement Authority.

(a) At least one attorney for each party who is a member of the bar of this court shall appear at the settlement conference, except in the case of attorneys admitted to practice in such cases under Local Rule 83.8.2.1, .2, .3, or .4. Any party appearing in a case *pro se* shall attend the settlement conference. At least one attorney for each party who is fully familiar with the case and has complete authority to settle the case shall appear for each party. If any attorney does not have complete settlement authority, the party or a person with full settlement authority shall accompany the attorney or shall be available by telephone. Parties may be required to attend and participate during the settlement session at the discretion of the settlement officer.

(b) No proceeding at any settlement conference authorized by this rule (including any statement made or written submissions provided by a party, attorney, or other participant) shall be disclosed to any person not involved in the settlement conference, unless otherwise stipulated in writing by all parties and the settlement officer. None of the proceedings shall be used by any adverse party for any reason in the litigation at issue.

LR 16.9.5 Fees.

No fees shall be assessed to any party for the costs of the settlement officer program. If a neutral evaluator is the settlement officer, the services of the neutral evaluator shall be provided *pro bono* to the court unless other arrangements have been approved by all parties and the assigned judge prior to appointing the neutral evaluator to the case.