

General Order No. 98-7

JUN 3 1998

DAVID J. MALAND, CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

DEPUTY J. Henderson

**GENERAL ORDER AMENDING MEDIATION PLAN**

It is hereby ORDERED that the attached amendments to the Court's Mediation Plan (Appendix H to the Local Rules), having been approved by the judges of this court, are adopted for immediate implementation:<sup>1</sup>

This general order supersedes General Order 92-16, the general order that adopted the original Mediation Plan. Also, General Orders 92-17, 93-7 and 95-15 regarding compensation of certified mediators under the Plan are hereby REVOKED.

Signed this 3<sup>rd</sup> day of June, 1998.

FOR THE COURT:



RICHARD A. SCHELL  
Chief Judge

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<sup>1</sup>New language appears in underlined text; deleted language appears in ~~strikeout~~ text.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

~~C.J.R.A.~~ COURT-ANNEXED MEDIATION PLAN

(a) GENERAL PROVISIONS

(1) DEFINITIONS.

(A) Mediation is a supervised settlement conference presided over by a qualified, ~~certified~~ and neutral mediator to promote conciliation, compromise and the ultimate settlement of a civil action.

(B) The mediator is an attorney, ~~certified by the Chief Judge in accordance with this plan~~, who possesses the unique skills required to facilitate the mediation process including the ability to suggest alternatives, analyze issues, question perceptions, use logic, conduct private caucuses, stimulate negotiations between opposing sides and keep order.

(C) The mediation process does not allow for testimony from witnesses. The mediator does not review or rule upon questions of fact or law, or render any final decision in the case. Absent a settlement, the mediator will report only to the Presiding Judge as to whether the case settled, was adjourned for further mediation (by agreement of the parties), or that the mediator declared an impasse.

(2) PURPOSE.

It is the purpose of the Court, through adoption and implementation of this plan, to provide an alternative mechanism for the resolution of civil disputes (a court annexed, ~~mandatory~~ mediation procedure) leading the disposition before trial of many civil cases with resultant savings in time and costs to the litigants and to the Court, but without sacrificing the quality of justice to be rendered or the right of the litigants to a full trial in the event of an impasse following mediation.

(b) ~~CERTIFICATION; QUALIFICATION AND COMPENSATION OF MEDIATORS~~

~~(1) CERTIFICATION. The Chief Judge shall certify those persons who are eligible to serve as mediators under this plan, in such numbers as~~

~~the Chief Judge shall deem appropriate. Thereafter, the Chief Judge shall have complete discretion and authority to withdraw the certification of any mediator at any time.~~

~~(2) LISTS. Lists of certified mediators shall be maintained in each Division of the Court, and shall be made available to counsel and the public upon request.~~

~~(3) QUALIFICATIONS. An individual may be certified to serve as a mediator if-~~

~~(A) He or she is a former state court judge who presided in a court of general jurisdiction and was also a member of the bar in the state in which he or she presided; or~~

~~(B) He or she is a retired judicial officer of the United States; or~~

~~(C) He or she is a licensed attorney and has been a member of a state Bar for at least seven (7) years and is currently admitted to the Bar of this Court.~~

~~In addition, an applicant for certification must have completed a minimum of forty (40) hours in mediation training and be found competent by the Chief Judge to perform mediation duties.~~

~~At the direction of the Chief Judge, an advisory committee may be constituted to assist in formulating policy and additional standards relating to the qualifications of mediators and to assist in reviewing applications of prospective mediators.~~

~~(4) OATH. Every mediator shall take the oath or affirmation prescribed by 28 U.S.C. §453 upon otherwise qualifying as a mediator.~~

~~(5) DISQUALIFICATION. Any person selected as a mediator may be disqualified for bias or §144 prejudice, and shall be disqualified in any case in which such action would be required by a justice, judge or magistrate judge governed by 28 U.S.C. §455.~~

~~(6) COMPENSATION. Mediators shall be compensated at the rate provided by standing order of the Court, as amended from time to time by the Chief Judge. Absent agreement of the parties to the contrary, the cost of the mediator's services shall be borne equally by the parties to the mediation conference.~~

~~(7) LIMITATIONS OF COMPENSATION. Except as provided by this plan, no mediator shall charge or accept in connection with the mediation of any particular case, any fee or thing of value from any other source whatever, absent written approval of the Court given in advance of the receipt of any such payment or thing of value.~~

~~(8) MEDIATORS AS COUNSEL. Any member of the Bar who is~~

~~certified and designated as a mediator pursuant to this plan shall not for that reason be disqualified from appearing and acting as counsel in any other case pending before the Court.~~

(c) CASES SUBJECT TO MEDIATION; WITHDRAWAL.

(1) COURT REFERRAL. Upon order by the presiding judge, any civil action or claim may be referred by the Court to a mediation conference except:

(A) Appeals from rulings of administrative law agencies;

(B) Habeas corpus and/or extraordinary writs;

(C) Bankruptcy appeals.

(2) APPLICATION OF COUNSEL. Any action or claim may also be referred to a mediation conference through the stipulation of the counsel of record and approval of the Court. ~~Such application shall also certify agreement to pay the mediator's fee in accordance with this plan.~~

(3) WITHDRAWAL. Any civil action or claim referred to mediation pursuant to this plan may be withdrawn from mediation by the presiding judge at any time, before or after reference, upon a determination, for any reason, that this case is not suitable for mediation.

(c) COMPENSATION Mediators shall be compensated at the rate agreed to by the parties. Absent agreement to the contrary, the cost of the mediator's services shall be borne equally by the parties to the mediation conference.

(d) PROCEDURES FOR REFERRAL. In every case in which the Court determines that referral to mediation is appropriate pursuant to this plan, the Court shall enter an order of referral which shall:

(1) Designate the mediator. ~~On its own motion, or upon motion of any party and showing of good cause, the Court may order appointment of a mediator from outside the roster.~~

(2) Define the window of time in which the mediation conference may be conducted, ~~preferably not sooner than forty-five (45) days and not later than ten (10) days before the scheduled trial date.~~

(3) Designate lead counsel, who shall be responsible for coordinating ~~two alternative~~ mediation conference dates agreeable to the mediator and all counsel of record.

(e) SCHEDULING OF CONFERENCE.

~~(1) Report of Lead Counsel. Not later than twenty (20) days after the entry of the order of referral pursuant to this plan, lead counsel shall file a report indicating the agreeable alternative mediation conference dates.~~

~~(2) Scheduling Mediation Conference Date. Upon receipt of the report of lead counsel, or upon failure of lead counsel to either file the report or secure mutually agreeable mediation conference dates, the court shall fix the date for the mediation conference by order. Unless otherwise provided by order, the mediation conference shall be conducted in the United States Courthouse.~~

~~(3) Party Attendance Required. Unless otherwise excused by the presiding judge in writing, all parties, corporate representatives, and any other required claims professionals (e. g. insurance adjusters, etc.) shall be present at the mediation conference with full authority to negotiate a settlement. Subject to the approval of the mediator, the mediation conference may proceed in the absence of a party who, after due notice, fails to be present. Failure to comply with the attendance or settlement authority requirements may subject a party to sanctions by the Court. And upon motion of an attending party, sanctions may be imposed by the Court on any party who, absent good cause shown, failed to attend the mediation conference.~~

~~(4) (2) Continuance. Subject to the availability of mediation conference space in the Courthouse, the~~ The mediator may, with the consent of all parties and counsel, reschedule the mediation conference to a date certain not later than ten (10) days prior to the scheduled trial date. Any continuance beyond that time must be approved by the presiding judge.

(f) MEDIATION REPORT. Within five (5) days following the conclusion of the mediation conference, the mediator shall file submit a mediation report to the presiding judge indicating whether all required parties were present. The report shall also indicate whether the case settled, was continued with the consent of the parties, or whether the mediator declared an impasse. The presiding judge will file the mediation report with the clerk of court.

~~(g) NOTICE OF SETTLEMENT In the event that the parties reach an agreement to settle the case or claim, lead counsel shall promptly notify the Court of the settlement by filing a settlement agreement signed by the parties and the mediator within ten (10) days of the mediation conference, and the Clerk shall enter judgment accordingly.~~

~~(h) TRIAL UPON IMPASSE. If the mediation conference ends in an impasse, the case will be tried as originally scheduled. All proceedings of the mediation conference, including statements made by any party, attorney, or other participant, are privileged in all respects. The 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 the conference, unless a settlement is reached.~~

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

\_\_\_\_\_ DIVISION

PLAINTIFF

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v.

§

CIVIL ACTION NO. -----

DEFENDANT

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**ORDER REFERRING CASE TO MEDIATION**

Comes now the Court and ORDERS that this case be submitted to mediation in accordance with the Court's Mediation Plan. The mediator assigned is \_\_\_\_\_.

The mediator's address and telephone number is \_\_\_\_\_.

The mediation conference shall be conducted by the following date:

\_\_\_\_\_.

The Court appoints \_\_\_\_\_ as lead counsel who shall be responsible for working with the mediator and counsel to coordinate a date for the mediation.

Upon completion of the mediation, the mediator shall submit a report to the presiding judge within five days of the completion of the mediation conference.

So ORDERED and SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Judge Presiding



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

\_\_\_\_\_ DIVISION

PLAINTIFF

§

v.

§

CIVIL ACTION NO. \_\_\_\_\_

DEFENDANT

§

**MEDIATOR'S REPORT**

In accordance with the Court's order, a mediation conference was held on \_\_\_\_\_ . The conference resulted in \_\_\_\_\_ (settlement, impasse or will be continued). All parties and counsel were / were not present. [List those persons who were not present.]

Note from the mediator [if any]:

SIGNED this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Assigned Mediator