

**COURT ANNEXED MEDIATION RULES
FOR CIVIL LITIGATION**

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**COURT ANNEXED MEDIATION RULES
FOR CIVIL LITIGATION**

These rules shall govern the referral of cases by the Circuit, Chancery and County courts of this state to mediation.

I. POLICY

It shall be the policy of the courts of the State of Mississippi (1) to encourage the peaceable resolution of disputes and early settlement of pending litigation by voluntary action of the parties, and (2) to identify cases appropriate for referral to mediation pursuant to the guidelines set out in these rules.

II. CASES APPROPRIATE FOR REFERRAL TO MEDIATION

All Civil cases shall be considered appropriate for referral to mediation in the discretion of the court, giving consideration to such facts as the subject matter of the case, the amount in controversy, the complexity of the case, the number of parties, the interest of the parties in pursuing mediation, the availability of mediation, and the likelihood of settlement by mediation.

III. REFERRAL OF CIVIL CASES

Civil Cases may be referred to mediation in the following manner:

A. Any circuit, chancery and county court in this state may, either on its own motion or on the motion of any party, determine that a case is appropriate for mediation. A court may not order a case to mediation more than one time.

B. If the court on its own motion determines that a pending dispute is appropriate for referral to mediation, the court shall enter its order which shall direct the clerk or court administrator to notify the parties to complete a mediation as set forth in this rule within a time period as the court may specify. Any party, within 10 days of the date of entry of the court's order, may file written objection to the referral order and request a hearing by the court.

C. Any party may apply to the courts of this state for referral of a case to mediation by motion upon giving notice to all other parties. A hearing may be conducted on the motion at which the court shall make a determination as to whether mediation is appropriate and if the case is referred shall enter its appropriate order.

D. Upon the court entering its final order referring a case to mediation all objections having been heard by the court, the parties shall have a period of 20 days from the date of entry of the court's final order to schedule the mediation. If the parties are unable to agree on a convenient date and mediator, the clerk or administrator of the court shall assign a date, time, location and mediator to conduct the mediation procedure, which assignment will be binding on the parties upon their being notified by the clerk or court administrator of the court. Any objections any party may have with regard to the date, time or location assigned for the mediation or the selection of the mediator shall be filed with the court in writing within 10 days of entry of the notice of the clerk or court administrator.

IV. AUTHORITY TO SETTLE

The attorneys for all parties must appear at the mediation unless otherwise ordered by the court. Each party including a person with authority to settle the case on the party's behalf shall be present during the mediation unless otherwise ordered by the court.

V. MEDIATION

A. Mediation is a forum in which an impartial person, the mediator, facilitates communications between parties to promote reconciliation, settlement or understanding among them.

B. A mediator may not impose his or her own judgment on the issues for that of the parties.

VI. SANCTIONS

If a party or a party's attorney fails to obey an order made pursuant to this rule, fails to appear at the scheduled mediation, or fails to participate, the other party shall report such circumstances to the court. The court may make such orders with regard thereto as are just within the discretion of the court, including requiring the party, or the attorney representing the party, or both, to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's and mediator's fees; provided; however, the mediator shall not be called as a witness or otherwise be required to give evidence at a sanctions hearing.

VII. CONFIDENTIALITY OF COMMUNICATIONS IN MEDIATION

A. Except as provided by subsections C and D below, a communication relating to the subject matter of any civil dispute made by a participant in a mediation is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding.

B. Mediation is confidential and no record shall be made. The participants or the mediator may not be required to testify in any proceedings relating to matters occurring during the mediation session, nor shall they be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

C. Any oral communication or written material used in or made a part of a mediation is admissible or discoverable only if it is admissible or discoverable independent of the mediation.

D. If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to the court having jurisdiction of the proceedings to determine, in camera, whether the facts,

circumstances and context of the communications or materials sought to be disclosed warrant a protective order of the court or whether the communications or materials are subject to disclosure.

VIII. EFFECT OF WRITTEN SETTLEMENT AGREEMENT

A. If the parties reach a settlement and execute a written agreement disposing of the dispute or any part thereof; the agreement is enforceable in the same manner as any other written contract.

B. The court in its discretion may incorporate the terms of the agreement in the court's final order disposing of the case.

IX. COST OF MEDIATION

The fees and expenses of the mediation shall be established by agreement between the mediator and the parties charged with those fees and expenses. Unless otherwise agreed to by the parties or ordered by the court, the party seeking mediation shall pay the fees and expenses of the mediation. When mediation is ordered by the court on its own motion, the court shall allocate the fees and expenses of the mediation, or such fees and expenses may be taxed as costs of the litigation. The attorney's fees of the parties shall not be included in the fees and expenses of mediation

X. ADMINISTRATIVE FUNCTIONS CONCERNING MEDIATION

The following procedures will be utilized for the conduct of administrative functions necessary to make mediators available as needed for the referral of cases.

A. The Mississippi Supreme Court assisted by the Mississippi Bar will establish qualifications for inclusion on a list of mediators and prepare such list. The list shall be distributed to all circuit, county and chancery court clerks. The Mississippi Bar staff will provide administrative assistance. An administration fee for inclusion on the list may be established and charged to the approved mediators. Courts and parties are encouraged, but not required, to select mediators from this list.

B. Administration will be conducted through a committee designated the Court Annexed Mediation Committee which will be composed of the Officers and Executive Committee members of the Alternative Dispute Resolution Section of The Mississippi Bar, ex officio.

C. The Court Annexed Mediation Committee, with the advice of the Supreme Court, shall determine, on at least a semi-annual basis, whether there is an adequate number of qualified mediators to meet the demands of this Plan. If there is a determination that there is a need for training of additional mediators, The Mississippi Bar shall train or provide training to persons to serve as mediators. Persons receiving training elsewhere may qualify

for inclusion on the list if said training meets the qualifications established by the Mississippi Supreme Court.

D. Within 60 days following the adoption of this plan, the Mississippi Bar shall submit to the Supreme Court proposed qualifications for mediators and administrative procedures for the implementation of the plan. Within 60 days following the appointment of members to the Annexed Mediation Committee, the committee will report to the Supreme Court the names, addresses and qualifications of mediators, and will update the list from time to time as needed.

[Amended effective July 1, 2009 to revise the composition of the committee; amended effective January 11, 2007, to increase the term of committee members to three years; Amended effective January 26, 2006, to remove limitation of number of members on the Court Annexed Mediation Committee.]

XI. EFFECTIVE DATE OF PLAN

This mediation plan shall become effective upon adoption by the Supreme Court of the qualifications for mediators and administrative procedures identified in Part X above.

XII. TERMINATION OF EXISTING PILOT MEDIATION PROGRAM

The pilot mediation program adopted by the Supreme Court on June 20, 1996 by order dated June 12, 1996 will terminate on its existing expiration date or upon the effective date of the plan herein adopted, which ever is the earlier.

XIII. SUSPENSION AND TERMINATION OF THE PLAN

The plan may be suspended or terminated by the Supreme Court upon a determination by the Court that there is an inadequate number of qualified mediators available to meet the demand without undue delay in the disposition of cases, or for such other reason as the Court may deem appropriate.

[Amended effective June 27, 2002; amended effective September 30, 2004 to remove the automatic termination provision from the rules.]

XIV. REPORTING REQUIREMENTS

The following procedures will be utilized to gather information concerning cases ordered to mediation pursuant to these Rules.

A. Each circuit and chancery court clerk shall file, on a monthly basis, a written report with the Administrative Office of Courts reporting the hereafter specified information concerning cases ordered to mediation by an order of that court entered pursuant to these rules. The report shall be filed no later than the last day of each month following the month for which activity is being reported. The report shall state (a) the number of cases ordered to mediation; (b) the general subject matter of the cases; and (c) the information obtained from mediators concerning those cases pursuant to paragraph B of this Rule. Reports concerning county court cases ordered to mediation shall be filed by the circuit court clerk in like manner.

B. Each mediator selected by the parties in a matter ordered to mediation or appointed by the Court pursuant to Rule 3D shall, within 10 days of the conclusion of the mediation, report to the clerk of the court whether the case was settled. The report shall not disclose any particulars of the settlement.

[Amended November 2, 2000.]

XV. STANDARDS OF CONDUCT FOR MEDIATORS

The following standards shall apply to and govern the conduct of mediators conducting mediation pursuant to these Rules.

Comment

_____ These standards are drawn from Model Standards of Conduct for Mediators promulgated by the American Arbitration Association and the Alternate Dispute Resolution Section of the American Bar Association. Certain adjustments have been made in the Model Standards to conform this Rule XV to the text and practices set forth in the other sections of these Court Annexed Mediation Rules for Civil Litigation.

A. Self-Determination: A Mediator Shall Recognize that Mediation is Based on the Principle of Self-Determination by the Parties.

Self-determination is the fundamental principle of mediation. It requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement. Having complied in good faith with any order entered under Rule III, any party may withdraw from mediation at any time.

Comments

The mediator may provide information about the process, raise issues, and help parties explore options. The primary role of the mediator is to facilitate a voluntary resolution of a dispute. Parties shall be given the opportunity to consider all proposed options.

A mediator cannot personally ensure that each party has made a fully informed choice to reach a particular agreement, but it is a good practice for the mediator to make the parties aware of the importance of consulting other professionals, where appropriate, to help them make informed decisions.

Mediation under these rules is conducted in association with proceedings pending in the courts of the state, pursuant to orders of the courts in which the subject cases are pending as described in Rule III. Mediation is commenced by an order of the assigning court, which must be complied with in good faith. Failure to abide by such an order is subject to sanctions under Rule VI. Therefore, prior to withdrawing from or terminating a mediation, the parties must have fully performed her or his obligation under such an order and under the rules.

B. Impartiality: A Mediator shall Conduct the Mediation in an Impartial Manner.

The concept of mediator impartiality is central to the mediation process. A mediator shall mediate only those matters in which she or he can remain impartial and evenhanded. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is obligated to withdraw.

Comment

A mediator shall avoid conduct that gives the appearance of partiality toward one of the parties. The quality of the mediation process is enhanced when the parties have confidence in the impartiality of the mediator. When mediators are appointed by a court, the appointing court shall make reasonable efforts to ensure that mediators serve impartially.

A mediator should guard against partiality or prejudice based on the parties' personal characteristics, background or performance at the mediation.

C. Conflicts of Interest: A Mediator shall Disclose All Actual and Potential Conflicts of Interest Reasonably Known to the Mediator.

After disclosure, the mediator shall decline to mediate unless all parties the mediator,

or the court has assigned the mediator by order. The need to protect against conflicts of interest also governs conduct that occurs during and after the mediation.

A conflict of interest is a dealing or relationship that might create an impression of possible bias. The basic approach to questions of conflict of interest is consistent with the concept of self-determination. The mediator has a responsibility to disclose all actual and potential conflicts that are reasonably known to the mediator and could reasonably be seen as raising a question about impartiality. If all parties agree to mediate after being informed of conflicts, the mediator may proceed with the mediation. If, however, the conflict of interest casts serious doubt on the integrity of the process, the mediator shall decline to proceed, and the parties shall immediately notify the court that the mediator has so declined.

A mediator must avoid the appearance of conflict of interest both during and after the mediation. Without the consent of all parties, a mediator shall not subsequently establish a professional relationship with one of the parties in a related matter, or in an unrelated matter under circumstances which would raise legitimate questions about the integrity of the mediation process.

Comments

A mediator shall avoid conflicts of interest in recommending the services of other professionals. A mediator may make reference to professional referral services or associations which maintain rosters of qualified professionals.

Potential conflicts of interest may arise between administrators of mediation programs and mediators and there may be strong pressures on the mediator to settle a particular case or cases. The mediator's commitment must be to the parties and the process. Pressure from outside of the mediation process should never influence the mediator to coerce parties to settle.

Although it is desirable that all parties accept the mediator, when the mediator is designated by order of the court under Rule III, the mediator shall conduct the mediation, unless she or he has a conflict of interest, or is relieved by the court.

D. Competence: A Mediator shall Mediate Only When the Mediator has the Necessary Qualifications to Satisfy the Reasonable Expectations of the Parties.

Any person may be selected as a mediator, provided that the parties are satisfied with the mediator's qualifications. Training and experience in mediation, however, are often necessary for effective mediation. A person who offers herself or himself as available to

serve as a mediator gives parties and the public the expectation that she or he has the competency to mediate effectively. In court-connected or other forms of mandated mediation, it is essential that mediators assigned to the parties have the requisite training and experience.

Comment

Mediators should have information available for the parties regarding their relevant training, education and experience.

The requirements for appearing on the list of mediators must be made public and available to interested persons.

When mediators are appointed by a court, the appointing court shall make reasonable efforts to ensure that each mediator is qualified for the particular mediation.

E. Confidentiality: A Mediator shall Maintain the Reasonable Expectations of the Parties with Regard to Confidentiality.

The mediator shall follow the requirements of Rule VII regarding confidentiality. The reasonable expectations of the parties with regard to confidentiality shall be met by the mediator. The parties' expectations of confidentiality depend on the provisions of Rule VII, the circumstances of the mediation and any agreements they may make. The mediator shall not disclose any matter that a party expects to be confidential unless given permission by all parties or unless required by rule, law or other public policy.

Comment

Within the limitations of Rule VII, the parties may make their own rules with respect to confidentiality, or other accepted practice of an individual mediator, or the appointing court may dictate a particular set of expectations. Since the parties' expectations regarding confidentiality are important, the mediator should discuss these expectations with the parties.

If the mediator holds private sessions with a party, the nature of these sessions with regard to confidentiality should be discussed prior to undertaking such sessions.

In order to protect the integrity of the mediation, a mediator should avoid

communicating information about how the parties acted in the mediation process, the merits of the case, or settlement offers. The mediator may report, if required, whether parties appeared at a scheduled mediation.

Where the parties have agreed that all or a portion of the information disclosed during a mediation is confidential, the parties' agreement should be respected by the mediator.

Confidentiality should not be construed to limit or prohibit the effective monitoring, research, or evaluation of mediation programs by responsible persons. Under appropriate circumstances, researchers may be permitted to obtain access to the statistical data and, with the permission of the parties, to individual case files, observations of live mediation, and interviews with participants.

F. Quality of the Process: A Mediator shall Conduct the Mediation Fairly, Diligently, and in a Manner Consistent with the Principle of Self-Determination by the Parties.

A mediator shall work to ensure a quality process and to encourage mutual respect among the parties. A quality process requires a commitment by the mediator to diligence and procedural fairness. There should be adequate opportunity for each party in the mediation to participate in the discussions. The parties decide when they will reach an agreement or terminate a mediation.

Comment

A mediator may agree to mediate only when he or she is prepared to commit the attention essential to an effective mediation.

Mediators should only accept cases when they can satisfy the reasonable expectations of the parties concerning the timing of the process. A mediator should not allow a mediation to be unduly delayed by the parties or their representatives.

The presence or absence of persons at a mediation depends on the agreement of the parties and the mediator. The parties and mediator may agree that others may be excluded from particular sessions or from the entire mediation process.

The primary purpose of a mediator is to facilitate the parties' voluntary agreement. This role differs substantially from other professional-client relationships. Mixing the role of a mediator and the role of a professional

advising a client is problematic, and mediators must strive to distinguish between the roles. A mediator should, therefore, refrain from providing professional advice. Where appropriate, a mediator should recommend that parties seek outside professional advice, or consider resolving their dispute through arbitration, counseling, neutral evaluation, or other processes. A mediator who undertakes, at the request of the parties, an additional dispute resolution role in the same matter assumes increased responsibilities and obligations that may be governed by the standards of other processes.

A mediator shall withdraw from a mediation when incapable of serving or when unable to remain impartial. If a mediator withdraws, the parties shall immediately report her or his withdrawal to the appointing court.

A mediator shall withdraw from a mediation or postpone a session if the mediation is being used to further illegal conduct, or if a party is unable to participate due to drug, alcohol, or other physical or mental incapacity.

Mediators should not permit their behavior in the mediation process to be guided by a desire for a high settlement rate.

G. Advertising and Solicitation: A Mediator shall be Truthful in Advertising and Solicitation for Mediation

Advertising or any other communication with the public concerning services offered or regarding the education, training, and expertise of the mediator shall be truthful. Mediators shall refrain from promises and guarantees of results. Further, advertising or other communications with the public by attorneys who offer themselves as mediators are governed by the Rules of Professional Conduct.

Comment

It is imperative that communication with the public educate and instill confidence in the process.

In an advertisement or other communication to the public, a mediator may make reference to meeting state, national, or private organization qualifications only if the entity referred to has a procedure for qualifying mediators and the mediator has been duly granted the requisite status.

H. Fees: A Mediator shall fully Disclose and Explain the Basis of Compensation, Fees, and Charges to the Parties.

The parties should be provided sufficient information about fees at the outset of a mediation to determine if they wish to retain the services of a mediator. If a mediator charges fees, the fees shall be reasonable, considering among other things, the mediation service, the type and complexity of the matter, the expertise of the mediator, the time required, and the rates customary in the community. The better practice in reaching an understanding about fees is to set down the arrangements in a written agreement.

Comment

A mediator who withdraws from a mediation should return any unearned fee to the parties.

A mediator should not enter into a fee agreement which is contingent upon the result of the mediation or amount of the settlement.

Co-mediators who share a fee should hold to standards of reasonableness in determining the allocation of fees.

A mediator should not accept a fee for referral of a matter to another mediator or to any other person.

I. Obligations to the Mediation Process: Mediators have a Duty to Improve the Practice of Mediation.

Comment

Mediators are regarded as knowledgeable in the process of mediation. They have an obligation to use their knowledge to help educate the public about mediation; to make mediation accessible to those who would like to use it; to correct abuses; and to improve their professional skills and abilities.

[Amended effective June 27, 2002.]