

## Rule 9072-8

**The Mediation**

**(a) Initial Telephonic Conference.** Promptly, but no later than 14 days of receipt of notification of appointment, the mediator shall conduct a telephone conference with counsel of record for the parties (or the parties, where appearing pro se) to discuss (1) fixing a convenient date and place for the ADR Conference; (2) the procedures that will be followed during the ADR Conference; (3) who shall attend the ADR Conference on behalf of each party; (4) what material or exhibits should be provided to the mediator before the ADR Conference; and (5) any issues or matters that it would be especially helpful to have the parties address in the Submission materials.

**(b) Time and Place of ADR Conference.** After consulting with all counsel and pro se parties, the mediator shall schedule a convenient time and neutral place for the ADR Conference, and promptly give all counsel and pro se parties at least 14 days advance written notice of the time and place of the ADR Conference. The mediator shall schedule the ADR Conference to begin as soon as practicable after entry of the order of appointment.

**(c) Submission Materials.** Not less than seven days before the ADR Conference, each party shall submit directly to the mediator, and shall serve on all counsel and pro se parties, an ADR statement (the "Submission"). The Submission shall not be filed with the court and the court shall not have access to the submission of any portion thereof. The Submission may include any information that the parties would consider useful, but must:

- (1) Identify the person(s), in addition to counsel of record, who will attend the ADR Conference as representative of the party with decision making authority;
- (2) Describe briefly the nature and scope of the substance of the dispute;
- (3) Address whether there are legal or factual issues whose early resolution might reduce appreciably the nature and scope of the dispute or significantly contribute to settlement;
- (4) Identify the discovery that could contribute most to equipping the parties for meaningful settlement discussions;
- (5) Set forth the history of past settlement discussions, including disclosure of prior and any presently outstanding offers, counteroffers, and demands;
- (6) Make an estimate of the cost and time to be expended for further discovery, pretrial motions, expert witnesses, and trial;
- (7) Indicate presently scheduled court dates for further status conferences, pretrial conferences, trial, or otherwise; and
- (8) Attach copies of the document(s) from which the dispute has arisen or other relevant documents or information whose availability would materially advance the purposes of the Mediation Conference.

**(d) Attendance at ADR Conference.**

(1) **Persons Required to Attend.** The following persons must attend the ADR Conference:

- (A) Each party who is a natural person;
- (B) If a party is not a natural person, a representative who is not the party's attorney of record and who has full authority to negotiate and settle the matter on behalf of the party;
- (C) If the party is a governmental or quasi governmental entity that requires settlement approval by an elected official or legislative body, a representative who has authority to recommend a settlement to the elected official or legislative body;
- (D) The attorney who has primary responsibility for each party's case. The attorney shall come prepared to discuss all liability issues, all damage issues, and the position of the party relating to settlement, in detail and good faith; and
- (E) Other interested parties such as insurers or indemnitors, or one or more of their representatives, whose presence is necessary for a full resolution of the matter assigned to the ADR program.

(2) **Excuse.** A person required to attend the ADR Conference is excused from appearing if all parties and the mediator agree that the person need not attend the ADR Conference. The court for cause may excuse a person's attendance at the ADR Conference. Any party or attorney who is excused by the mediator from appearing in person at the ADR Conference may be required by the mediator to participate telephonically. Telephonic

participation at the ADR Conference should be the exception rather than the rule and shall only be permitted upon good cause shown. This decision is within the mediator's sole discretion.

(3) **Failure to Attend.** Willful failure to attend any ADR Conference, and any other material violation of these Local Rules, shall be reported to the court by the mediator and may result in the imposition of sanctions by the court or other appropriate relief. Any such report of the mediator shall comply with the confidentiality requirements of the Local Rules. The court will take whatever action(s) it deems necessary and appropriate under the circumstances to resolve the issue of such willful failure to attend the ADR Conference and/or other violations of the Local Rules.

(e) **ADR Conference Procedures.** The mediator may establish appropriate procedures for the ADR Conference. The ADR Conference shall proceed informally. The Rules of Evidence shall not apply. There shall be no formal examination of witnesses.

(f) **Confidentiality of ADR Proceedings.**

(1) **Protection of Information Disclosed at ADR.** Unless otherwise agreed by the parties, the mediator and the participants in the ADR process are prohibited from divulging, outside of the ADR proceeding, any oral or written information disclosed by the parties or by witnesses in the course of the ADR Conference including the Submission of materials or any portion thereof. No person may rely on or introduce as evidence in any arbitral, judicial, or other proceedings, evidence pertaining to any aspect of the ADR proceeding, including but not limited to: (a) views expressed or suggestions made by a party with respect to a possible settlement of the dispute; (b) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator; (c) proposals made or views expressed by the mediator; (d) statements or admissions made by a party in the course of the ADR Proceeding; and (e) documents prepared for the purpose of, in the course of, or pursuant to the ADR proceeding or Local Rules. In addition, without limiting the foregoing, and notwithstanding Local Rule 9072-8(e), Rule 408, Fed.R.Evid. and any applicable federal or state statute, rule, common law, or judicial precedent relating to the privileged nature of settlement discussions, mediation, or other ADR procedure shall apply. Information otherwise discoverable or admissible in evidence, however, does not become exempt from discovery, or inadmissible in evidence, merely by being used by a party in a ADR Conference.

(2) **Discovery from Mediator.** The mediator shall not be compelled to disclose to the court or to any person outside the ADR Conference any of the records, reports, summaries, notes, communications, testimony, or other documents received or made by a mediator while serving in such capacity. The mediator shall not testify or be compelled to testify in regard to the ADR proceeding in connection with any arbitral, judicial, or other proceeding. The mediator shall not be a necessary party in any proceeding relating to the ADR proceeding. Nothing contained in this subsection shall prevent the mediator from reporting the status, but not the substance, of the ADR proceeding to the court in writing, from filing a final report as required by Local Rule 9072-8(g), or from complying with any of the other obligations set forth in Local Rule 9072-9.

(3) **Protection of Proprietary Information.** The parties, the mediator, and all ADR participants shall protect proprietary information obtained during the ADR Conference.

(4) **Preservation of Privileges.** The disclosure by a party of privileged information to the mediator or at the ADR Conference does not waive or otherwise adversely affect the privileged nature of the information.

(g) **Recommendation by Mediator.** The mediator is not required to prepare written comments or recommendations to the parties. Mediators may present a written settlement recommendation memorandum to the attorneys or pro se litigants, but not to the court