

**United States District Court  
District of New Hampshire**

**GUIDELINES  
FOR  
MEDIATION  
PROGRAM**

**July 15, 2014**

**1. Designation of Compliance Judge**

The court's full-time magistrate judge is designated to serve as the compliance judge for the court's mediation program. The compliance judge shall be responsible to the chief judge for administration of the program and shall respond to any procedural or substantive issues arising out of mediation. Complaints regarding the program, and requests for interpretation and/or enforcement of mediation guidelines, including the court's Mediation Code of Conduct, shall be made to the compliance judge.

**2. Panel of Mediators**

- (a) The compliance judge shall approve ten (10) or more mediators to serve on the court's mediation panel.
- (b) An individual may be approved to serve on the mediation panel if he or she:
  - (1) has been for at least ten (10) years a member in good standing of the bar of this court;
  - (2) is determined by the compliance judge to be competent to perform the duties of a mediator; and
  - (3) has participated in twenty (20) hours of mediation training from a recognized ADR organization, university or court.
- (c) All individuals approved to serve on the court's panel shall be bound by these guidelines and the court's Mediation Code of Conduct.

**2. Compensation of Mediators**

Each panel mediator shall be compensated at their hourly rate as published on the court's website for service in each civil action referred to mediation. The mediator's compensation shall be divided equally between/among the parties. Notwithstanding this provision, the court may request each mediator accept a pro bono mediation appointment once per calendar year.

**3. Mediation Procedure**

- (a) Counsel and the parties in each civil action referred to mediation shall participate in good faith and cooperate with the mediator,
- (b) Whenever a civil action is referred to mediation the parties shall immediately prepare and send to opposing counsel and to the designated mediator, a position paper not exceeding ten (10) pages in length. The parties may append to their position papers essential documents only. Pleadings shall not be appended or otherwise submitted unless specifically requested by the mediator. In addition, a confidential position paper shall be provided solely to the mediator which realistically assesses the case.
- (c) Counsel and the parties (including individuals with settlement authority) shall attend mediation sessions as requested by the mediator.

- (d) The mediator may meet with counsel and the parties jointly or *ex parte*. All information presented to the mediator shall, on request, be deemed confidential and shall not be disclosed by anyone, including the mediator, without consent, except as necessary to advise the court of an apparent failure to participate. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation shall be disclosed in any subsequent proceeding or construed as an admission.
- (e) No proceedings (including motion practice and discovery) shall be stayed upon referral to mediation except upon application. Any application for a stay of proceedings shall be made jointly by the parties and shall be considered by the presiding judge on the case or the magistrate judge.

#### **4. Ethical Standards for Mediators**

- (a) Impartiality. A mediator shall be impartial and advise all parties of any circumstances bearing on possible bias, prejudice, or impartiality. Impartiality means freedom from favoritism or bias in word, action, and appearance. Impartiality implies a commitment to aid all parties, as opposed to an individual party, in moving toward an agreement.
  - (1) A mediator shall maintain impartiality while raising questions for the parties to consider as to the reality, fairness, equity, and feasibility of proposed options for settlement.
  - (2) A mediator shall withdraw from mediation if the mediator believes he or she can no longer be impartial. In assessing whether the

mediator must withdraw, the mediator shall apply the disqualification provisions set forth in 28 U.S.C. § 455 et seq., as well as any professional rule of conduct by which the mediator may be bound.

(3) A mediator shall not accept or give a gift, request, favor, loan, or any other item of value to or from a party, attorney, or any other person involved in and arising from any mediation process.

(b) Conflicts of Interest and Relationships; Required Disclosures; Prohibitions.

(1) A mediator must disclose to the parties and to the compliance judge any current, past, or possible future representation or consulting relationship with, or pecuniary interest in, any party or attorney involved in the mediation.

(2) A mediator must disclose to the parties any close personal relationship or other circumstance, in addition to those specifically mentioned in subsection (b)(1) above, which might reasonably raise a question as to the mediator's impartiality.

(3) The burden of disclosure rests on the mediator. All such disclosures shall be made as soon as practical after the mediator becomes aware of the interest or the relationship. After appropriate disclosure, the mediator may serve if all parties so desire. If the mediator believes or perceives that there is a clear conflict of interest, the mediator shall withdraw irrespective of the expressed desires of the parties.

(4) In no circumstance may a mediator represent any party in any matter during the mediation.

- (5) A mediator shall not use the mediation process to solicit, encourage, or otherwise incur future professional services with any party.

**5. Admissions.**

Mediation statements and documents will be destroyed after the mediation. Neither the mediation statements nor communications of any kind occurring during mediation shall be construed as an admission or be deemed admissible at trial.