

United States District Court  
District of New Hampshire

**PROCEDURAL STEPS/SUGGESTED DEADLINES  
FOR MEDIATION**

- Pursuant to LR 53.1(c)(1), counsel include in their discovery plan a date by which mediation will occur. Cases may also be referred for court sponsored mediation by counsel filing a joint mediation statement, counsel requesting mediation by phone or letter, or a court officer referring the case for mediation. LR 53.1(c)(2).
- Within 2 business days (48 hours) of making the request, counsel shall conventionally file a list of 5 possible mediators from the court's approved list.
- Magistrate Judge will issue an Order Appointing Mediator selecting the first person on the parties joint list. [See Exhibit A]. Docket the order using the Mediator Appointment Order event in CMECF, which includes a directive to the mediator, counsel of record and the litigants to review the district's Mediation Code of Conduct and Mediation Guidelines. The mediator will receive the Order of Appointment, a Post-ADR Reporting Form and list of counsel.
- The mediator will schedule the mediation with participants and appropriate case manager. After the date/time of the mediation is established, the mediator should file a Notice of Mediation (available on court's website) either conventionally or electronically with the court and send the Notice and Mediation Preparation Outline to the parties. [See Exhibits B and C]
- The mediator may want to have the parties complete a consent to mediation form. [See Exhibit D]
- The mediator may review the case file at the Clerk's Office or require parties to submit copies of documents he/she deem appropriate.
- Five (5) calendar days before the mediation parties shall exchange and deliver to the mediator a Mediation Conference Statement. Parties shall also submit a Mediation Conference Statement Confidential Addendum only/directly to the mediator.
- On the day of the mediation, the mediator should check in with the case manager before it begins and notify her when it concludes.
- Within 5 calendar days of the mediation, the mediator shall file with the magistrate judge the Post ADR Reporting Form. [See Exhibit E] The magistrate judge will issue an order.
- Documents may be destroyed 60 days after the filing of the report of the results of the mediation.

**EXHIBIT A**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE**

\_\_\_\_\_  
**v.**  
\_\_\_\_\_

**Civil No.**

**ORDER APPOINTING MEDIATOR**

\_\_\_\_\_ is appointed to mediate this case. THE MEDIATOR WILL SCHEDULE THE MEDIATION DIRECTLY WITH COUNSEL AND NOTIFY THE COURT OF THE DATE OF THE MEDIATION. The mediator is to file with the magistrate judge a report of the results within five (5) calendar days following completion of the mediation. No aspect of the case is stayed during the mediation period.

**SO ORDERED.**

\_\_\_\_\_  
**James R. Muirhead  
United States Magistrate Judge**

**Date:**

**cc:**

**EXHIBIT B**

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

\_\_\_\_\_  
**v.**  
\_\_\_\_\_

**Civil No.**

**NOTICE OF MEDIATION**

The above matter has been referred for mediation. The mediation will be held on \_\_\_\_\_, 20\_\_, at \_\_\_\_\_ a.m./p.m. at \_\_\_\_\_

\_\_\_\_\_. **THE ATTORNEYS WHO WILL BE LEAD COUNSEL DURING THE TRIAL OF THE CASE SHALL APPEAR AT THE MEDIATION WITH THE PARTIES AND WITH THE PERSON OR PERSONS HAVING FULL AUTHORITY TO NEGOTIATE AND TO SETTLE THE CASE ON ANY TERMS. At least five (5) calendar days before the mediation the parties shall exchange, and deliver to the mediator, a Mediation Conference Statement, limited to ten (10) pages, which should not be filed with the Clerk of Court.**

**The Mediation Conference Statement shall include the following:**

- 1. A brief statement of the facts of the case, and of the claims and defenses, i.e., the statutory or other grounds upon which the claims are founded. This statement should identify the major factual and legal issues in dispute.**

2. An itemized statement of the damages claimed and of any other relief sought.

3. A summary of the proceedings to date.

4. A history of past settlement discussions, offers and demands. If no discussions have taken place, the mediator directs the attorneys to discuss settlement, and exchange demands and offers prior to the mediation conference.

The parties shall also prepare a Mediation Conference Statement Confidential Addendum, limited to two pages, which shall be delivered directly to the mediator only, along with the Mediation Conference Statement. The Confidential Addendum shall not be filed with the Court or served upon the other parties. The Confidential Addendum shall contain:

1. A forthright evaluation of the party's likelihood of prevailing on each of its claims and/or defenses.

2. The attorney's fees, time and costs expended to date, and an estimate of the fees, time and costs to be expended for further discovery, pretrial and trial.

3. The party's evaluation of the terms on which the case could be settled fairly.

At the mediation, the parties, by counsel, shall give a brief (10-15 minute) presentation outlining the factual and legal highlights of their case. Then separate, confidential caucuses will be held with each party and the party's representative(s). Attached is an outline for counsel to review with the parties prior to the mediation to make the best use of the time allotted.

**ANY FAILURE OF THE TRIAL ATTORNEYS, PARTIES OR PERSONS WITH AUTHORITY TO ATTEND THE MEDIATION OR TO PARTICIPATE IN GOOD FAITH MAY RESULT IN SANCTIONS (TO INCLUDE THE FEES AND COSTS EXPENDED BY THE OTHER PARTIES IN PREPARING FOR AND ATTENDING THE MEDIATION). FAILURE TO TIMELY DELIVER A MEDIATION CONFERENCE STATEMENT AND CONFIDENTIAL ADDENDUM MAY ALSO RESULT IN REFERRAL TO A JUDICIAL OFFICER FOR SANCTIONS.**

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**Mediator**

**Date:**

**cc: Clerk, U.S. District Court  
Counsel of Record/Pro Se Litigants**

## **EXHIBIT C**

### **MEDIATION PREPARATION OUTLINE**

**Experience shows that in negotiations the party who is best prepared usually obtains the most satisfactory result. Mediation can be conducted more efficiently if all parties and counsel are prepared. The following are some areas to consider in order to increase the effectiveness of your mediation.**

#### **A. FORMAT**

- 1. Parties with ultimate settlement authority must be personally present.**
- 2. The court will use a mediation format, including private caucusing with each side; the mediator may address your client directly.**

#### **B. ISSUES**

- 1. What issues (in and outside of this lawsuit) need to be resolved?**
- 2. What are the strengths and weaknesses of each issue? What is your most persuasive argument? What is your opponent's most persuasive argument?**
- 3. What remedies are available?**
- 4. Is there any ancillary litigation pending/planned which affects case value?**
- 5. Do you have enough information to value the case? If not, how are you going to get more information before the mediation?**
- 6. Do attorney's fees, other expenses, or liens affect settlement? Have you communicated this to the other side? Why not?**

#### **C. AUTHORITY**

- 1. Are there outstanding liens? Have you verified amounts and whether they are negotiable? Do we need to include a representative of the lien holder? If so, contact the mediator immediately.**

2. Is there valid insurance coverage? In what amount? If coverage is at issue, or the amount/type affects settlement value, have you notified the other side? Do we need to include the representative from more than one company/carrier? If so, notify the mediator immediately.

#### **D. NEGOTIATIONS**

1. Where did your last discussion end? Are you sure?
2. Should you have any discussions before the mediation to make it proceed more efficiently?
3. What value do you want to start with? Why? Have you discussed this with your client?
4. What value do you want to end with? Why? Have you discussed this with your client? Is it significantly different from values you have placed on this case at other times? How do you explain to the other party the change in value?
5. Is there confidential information which affects case value? Why can't/won't/ shouldn't it be discussed? How can the other side be persuaded to change value if it doesn't have this information?
6. What happens if you don't settle the case at the mediation? What is your best alternative to a negotiated settlement? Why?
7. What are the transactional costs to continue this litigation?

#### **E. CLOSING**

1. If settlement is reached, do you want it on the record?
2. Have you discussed settlement formats with your client? Does the client understand structured settlements, annuities, Rule 68 offers of judgment?
3. How soon could checks/closing documents be received?
4. If settlement is not reached, and further discovery is needed, what is your plan for continued settlement

**discussions? Do you want court involvement in these talks?**



**EXHIBIT D**

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

*SAMPLE*

\_\_\_\_\_  
v.

Civil Case No. \_\_\_\_\_

**CONSENT TO MEDIATION**

The parties in the above-captioned matter agree that \_\_\_\_\_ is an acceptable mediator.

It is further agreed that both counsel and parties will participate in good faith and shall cooperate with the mediator.

The parties have agreed to pay (directly to mediator) the \$\_\_\_\_\_ hourly rate as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Counsel for Plaintiff                      Date

\_\_\_\_\_  
Plaintiff                                      Date

\_\_\_\_\_  
Counsel for Defendant                      Date

\_\_\_\_\_  
Defendant                                      Date

(Form to be sent directly to Mediator-DO NOT FILE WITH COURT)

**EXHIBIT E**

***UNITED STATES DISTRICT COURT***

District of New Hampshire  
Warren B. Rudman United States Courthouse  
55 Pleasant Street, Room 417  
Concord, New Hampshire 03301-3938  
603-225-1423

**POST-ADR REPORTING FORM**

**\* \* \* TO BE COMPLETED BY MEDIATOR \* \* \***

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**Docket No:**

**Case Name:**

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**Date of Mediation:** \_\_\_\_\_

**Case Type:**

- |  |                                    |  |
|--|------------------------------------|--|
| <input type="checkbox"/> § 1983        | <input type="checkbox"/> Title VII | <input type="checkbox"/> Intellectual Property   |
| <input type="checkbox"/> Environmental | <input type="checkbox"/> Diversity | <input type="checkbox"/> Complex Tort/Commercial |

**The following results were obtained:**

- ☐ Settled
- ☐ Settled prior to ADR
- ☐ Continued for further ADR, due to: \_\_\_\_\_
- ☐ Still pending; restore to trial docket
- ☐ \_\_\_\_\_ failed to appear or participate in good faith. The following sanctions are recommended: \_\_\_\_\_
- ☐ Other \_\_\_\_\_

**ADR case summaries were filed in a timely manner:**

- ☐ Yes
  - ☐ No
- If no, please detail: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Mediator: