

EASTERN DISTRICT OF NEW YORK MEDIATION

MEDIATION INSTRUCTIONS TO COUNSEL

(Last updated 02/14/2024)

Mediation is a confidential process in which parties and counsel meet with a neutral third party who is trained in settling disputes. More information about the purpose and process of mediation is available on the [Court's website](#).

1. Selecting a Mediator:

- a. By Agreement: Parties whose cases are referred to the Court's mediation program may select a mediator from a list of qualified [EDNY Panel Mediators](#). Parties may also elect to engage a private mediator who is not on the EDNY Panel or use the services of a private Alternative Dispute Resolution (ADR) organization. Please note that all deadlines regarding selection and completion of mediation remain in effect regardless of the mediator's panel status.
- b. With the Assistance of Alternative Dispute Resolution Department: If the parties cannot reach an agreement regarding mediator selection, they should contact the ADR Administrator at nyed_adr@nyed.uscourts.gov for assistance.

2. Mediator Fees:

- a. EDNY Panel Mediator: In accordance with Local Rule 83.8(f)(1), each mediator shall receive a fee of \$600 for the first four hours of the mediation session. Thereafter, the mediator shall be compensated at the rate of \$250 per hour through the conclusion of the mediation. The mediator's fee shall be split equally by the parties to the mediation unless an alternative agreement is reached. Time spent preparing for the mediation is not compensated. Parties will promptly make payment directly to the mediator at the conclusion of the mediation or other agreed upon date.

* Please be aware that many of the EDNY Panel mediators conduct private mediations. It is very important that you identify yourself to the mediator as a party in a case which was court-ordered to mediation to ensure you are charged the EDNY Panel Mediator Fee Rates.

- b. Private Mediator or ADR Organization: The fee will be determined by agreement between counsel and the mediator.
- c. Mediation Fee Waiver: Any party that is unable or unwilling to pay the mediator's fee may apply to the referring judge for a fee waiver, with a right of appeal to the District Judge in the event the referral was made by a Magistrate Judge. In the event a mediation fee waiver is granted, the ADR Department will assist the parties in appointing a pro bono mediator.

3. Scheduling Mediation:

Unless otherwise provided in the Mediation Referral Order, the first mediation session must take place within six weeks from referral. The date and time of the mediation shall be agreed to by the parties and mediator. Parties and counsel should reserve an entire day to complete the mediation session unless other arrangements are made with the mediator.

4. Required Filing of Mediator Selection and Schedule:

Counsel must file the name of the mediator and the date and time of the initial mediation session. Counsel may complete this [form](#) allowing the ADR Department to file the selection. Alternatively, counsel may electronically file via CM/ECF (using the event "Selection of Mediator"): (1) the name of the mediator; and (2) the date, time, and place of the first mediation session.

5. Before the Mediation Session:

Mediation preparation is a significant part of the mediation process that can contribute to the successful resolution of a case.

- a. Pre-Mediation Session Discussions: EDNY mediators may hold joint and/or ex-parte conferences with counsel and/or the parties to review the procedures and requirements of the mediation and to answer questions in advance of the first session. Counsel should be prepared to provide an overview of the case and the issues to be resolved, advise the mediator of the procedural history (including any pending motions or companion cases). Counsel should indicate if their clients have any special needs or concerns prior to the initial mediation session.
- b. Pre-Mediation Session Information Exchange: Mediation may occur before or after formal discovery has taken place. The parties are encouraged to exchange relevant documents, information, and damages calculations prior to a mediation session. The selected mediator may assist in facilitating this exchange.
- c. Confidentiality Stipulation: Prior to the initial mediation session, anyone planning to attend the session remotely (including counsel, parties, observers, or others) shall sign the [confidentiality stipulation](#) and email the executed stipulation to the ADR Department at nyed_adr@nyed.uscourts.gov. For in-person mediations, the mediator will have all participants sign at the initial mediation session.
- d. Pre-Mediation Session Submissions: Local Civil Rule 83.8(b)(4) provides that "no less than fourteen days prior to the first mediation session, each party shall submit directly to the mediator a mediation statement not to exceed ten (10) pages double-spaced, not including exhibits, outlining the key facts and legal issues in the case. The statement will also include a description of motions filed and their status, and any other information that will advance settlement prospects or make the mediation more productive. Mediation statements are not briefs and are not filed with the Court, nor shall the assigned Judge or Magistrate Judge have access to them."

The mediation statement is intended to inform the mediator about the case from the party's view. Before drafting the mediation statement, counsel should discuss with the mediator any requests

or requirements that the mediator may have. EDNY Mediators have discretion to adjust pre-mediation submission requirements and deadlines.

Unless otherwise agreed to by the parties and the mediator, the submissions shall not be exchanged among counsel.

- e. Additional Preparation: Counsel should come to the mediation prepared to discuss their client's claims, defenses, and relevant legal authority. Counsel should also ensure that their clients are informed about the mediation process and have spent time considering achievable goals and outcomes.

6. Attendance at Mediation:

- a. Trial counsel, insurance adjustors (if any), and knowledgeable party representatives with full settlement authority are required to attend each mediation session whether such session is conducted in person or remotely.
- b. In the case of a business or governmental entity, the names and general job titles of the employee(s) or agents of the entity or insurance company who will attend the mediation session should be included in the mediation statement.
- c. In the case of a minor, the name and relationship of the minor's parent or guardian who will attend the mediation session should be included in the mediation statement.

7. Continuation of the Mediation Process

If the parties wish to continue with mediation past the initial session, they should contact the ADR Department at nyed_adr@nyed.uscourts.gov to report that mediation is ongoing.

8. Reaching Agreement at Mediation

The parties may reach agreement on some or all issues at the mediation. Mediated agreements should be reduced to writing signed by the parties to the agreement. If the parties reach agreement on all issues, a [stipulation of discontinuance](#) should be prepared and filed. If the mediation limited the number of issues/parties remaining, the parties should reduce this agreement to writing and agree upon what will be reported to the Court as litigation continues.

9. Mediation Report:

Upon completion of the mediation, all counsel must submit the EDNY Mediation [Report](#). The report is due two weeks after the final mediation session.

10. Other Resources

- [EDNY ADR Website](#)
- [EDNY Local Civil Rule 83.8 Court-Annexed Mediation \(Eastern District Only\)](#)
- ADR Office: nyed_adr@nyed.uscourts.gov (718)613-2577