

# EASTERN DISTRICT OF NEW YORK

## ADR PROGRAM

### INSTRUCTIONS TO MEDIATOR

(Last updated 02/14/2024)

#### Accepting Assignments

Parties referred to mediation will contact you directly to schedule the initial mediation session. Mediators should ensure they are a panel member in good standing with the EDNY ADR Program (the “Program”) and have completed the Oath as a Mediator prescribed by 28 U.S.C. § 453 before accepting an assignment.

A panel mediator may accept an assignment after confirming that no conflict of interest would compromise your impartiality or the appearance of impartiality. Please follow the guidelines set forth in 28 U.S.C. § 455 (below) to determine whether any conflict of interests exists. Promptly review the docket and any other materials submitted by the parties or the Clerk's Office respecting the matter. Notify the ADR Office immediately if a conflict arises after you have accepted the assignment.

When accepting an assignment, please provide the parties with the date, time, and place (remote or in-person) of the initial mediation session and remind them of their responsibility to file their selection using the [Selection of the Mediator Form](#) on the ADR Forms website under Mediation Forms/For Counsel and Parties: <https://www.nyed.uscourts.gov/adr-forms> or via CM/ECF using the event “Selection of Mediator.” This will ensure you are listed as the mediator on the docket and will receive case updates.

#### Parties Pre-Hearing Mediation Statement

Under the Local Civil Rule 83.8, no less than fourteen (14) days prior to the first mediation session, each party will submit a mediation statement directly to you. This statement should outline the key facts and issues in the case and should not exceed ten pages double-spaced nor include exhibits. You may alter these requirements depending on what you believe is needed in that case. Please insist on timely receipt of the mediation statements and promptly advise the ADR Office if there is a lack of cooperation by one or both parties.

#### Clients to attend Mediation Sessions

Attendance at all mediation sessions (in-person or remote) of the actual clients is important and strongly encouraged. The Court or the mediator may require the attendance of a party or its representative with authority to settle the matter and bind the party. If you have requested a party's presence and they do not appear at the session, promptly advise the ADR Office.

The Court requires that the attorney who has primary responsibility for handling the trial of the matter attend the mediation sessions.

## Confidentiality Stipulation

The [In Person Confidentiality Stipulation](#) should be signed at the beginning of the first mediation session by all persons attending the mediation session including the mediator, counsel, and the parties. If the mediation is conducted remotely, each person may sign their own copy of the [Remote Confidentiality Stipulation](#) before the first mediation session.

Copies of the signed Confidentiality Stipulation(s) should be retained by the mediator and the parties, and a copy should be sent via e-mail to [nyed\\_adr@nyed.uscourts.gov](mailto:nyed_adr@nyed.uscourts.gov). Both confidentiality stipulations are available at: <https://www.nyed.uscourts.gov/adr-forms> under ADR Forms/Mediation Forms/For Counsel and Parties.

## Courthouse Room Assignments

For room reservations at the Brooklyn or Central Islip Courthouses please send your request via e-mail with the subject line "Mediation Room Reservation Request" to [nyed\\_adr@nyed.uscourts.gov](mailto:nyed_adr@nyed.uscourts.gov) or call (718)613-2577. Please provide us with as much advance notice (at least 48 hours) as possible to ensure we can reserve rooms.

## Last Minute Cancellations

All cancellations or adjournments requests made within 48 hours of scheduled mediation sessions should be denied and the ADR Office should be informed.

## Settlement

If an agreement is reached in whole or in part, the parties should put the agreement into writing before the end of the mediation session. A handwritten agreement is sufficient. If an agreement settling the entire case is reached, Counsel should execute a [Stipulation of Discontinuance](#) and forward it to the District Judge to be so ordered.

## Reporting the Outcome of Mediation and Assessment Forms

To assist in the continued development of the Program, please complete a [Mediator Self-Assessment Form](#) within 24 hours of the completion of each mediation session. This form will also alert the ADR Office to the outcome of mediation (settled/not settled/ongoing) which allows for the efficient administration of the Program.

Thank you for your commitment to the Eastern District's ADR Program. If you have any questions, please telephone me at 718-613-2578 or e-mail [danielle\\_shalov@nyed.uscourts.gov](mailto:danielle_shalov@nyed.uscourts.gov).

All forms and documents discussed above can be found on the Program's [ADR Forms](#) website, at <https://www.nyed.uscourts.gov/adr-forms>.

**28 § 455. Disqualification of Justice, Judge, or Magistrate**

- (a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
- (b) He shall also disqualify himself in the following circumstances:
- (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
- (2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;
- (3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material Witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;
- (4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
- (5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
- (i) Is a party to the proceeding or an officer, director, or trustee of a party;
- (ii) Is acting as a lawyer in the proceedings;
- (iii) Is, known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
- (iv) Is to the judge's knowledge likely to be a material witness in the proceeding.
- (c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.
- (d) For the purposes of this section the following words or phrases shall have the meaning indicated:
- (1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

- (2) the degree of relationship is calculated according to the civil law system;
- (3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;
- (4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:
  - (i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;
  - (ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization,
  - (iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
  - (iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.
- (e) No Justice, judge, or magistrate shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record.