MEDIATION IN FEDERAL COURT

The federal court's mediation program was suggested by the practicing bar of Nebraska through the Civil Justice Reform Act Committee as a means to expedite cases and seek earlier settlements. It is also the court's ADR program required by the Alternative Dispute Resolution Act of 1998, 28 U.S.C. § 651 et seq.

What is Mediation?

Mediation is a method of dispute resolution which enables people to reach a mutually agreeable solution to their conflict with the assistance of a neutral mediator.

Mediators are not judges. They make no decision for the parties. A mediator helps parties realize and explain their needs, clarify issues, explore solutions and negotiate an agreement. The purpose of mediation is to help parties find a solution that will work for them.

Mediation is different from other settlement techniques in that: (1) the discussion is not limited to the strictly legal issues in the case, but expanded to include other needs and interests of the parties in order to broaden resolution options; (2) the mediator does not decide issues or evaluate the parties' positions; and (3) because self-determination is fundamental, the parties themselves are actively involved.

What Are the Benefits of Mediation?

Compared to a trial, mediation offers parties:

- lower cost resolution of the dispute
- prompt resolution of the dispute
- private resolution of the dispute
- better understanding between parties
- greater likelihood of compliance with the resolution
- control over the outcome of the dispute

How Does the Mediation Process Work?

A typical mediation progresses through the following stages:

- Preparing for mediation: Attorneys submit a brief written statement prior to the session.
- Initial joint session: The mediator explains the process, hears short presentations from the parties, asks questions about issues and interests.
- Separate sessions: The mediator often meets privately with each party to explore interests and concerns, both legal and non-legal.
- Subsequent separate and joint sessions: The mediator helps parties develop options and evaluate alternatives.
- Completing the process: The mediator will outline the agreement to be written in final form by the attorneys. The agreement may, but need not be submitted to the court and the case will be dismissed. If no agreement is reached, the case returns to the active court docket.

What Types of Disputes Can Be Mediated?

Mediation has proved useful in many kinds of disputes. In Nebraska, the assigned judges will assess the suitability of individual cases considering the comments of counsel and the following factors, among others:

- Whether the parties are in a continuing relationship;
- The extent to which the parties have previously engaged in administrative conciliation or "work out" efforts;
- The extent to which the controversy involves policy or practice issues regarding future action by one of the parties;
- The amount in controversy;
- The relation of the amount in controversy to the expected litigation costs.

How Long Does it Take?

Mediations may vary in length from four to eighteen hours. Several sessions may be necessary, depending on the complexity of the case. The mediation session must be held no later than sixty (60) days following the entry of the order of referral, unless all parties agree to a continuance, in which case the mediation session must be held no later than ninety (90) days following the entry of the order of referral.

How Much Does It Cost?

The cost of the mediation is borne by the parties to the mediation session at the rate negotiated by counsel and the mediator, plus mileage expenses if the mediator is required to travel. The fee will be divided equally unless otherwise agreed by the parties. In the event any of the parties is proceeding in forma pauperis, the mediation fees of that party may, upon proper application and approval under NEGenR 1.2(i), be paid from the Federal Practice Fund, unless the mediated settlement includes payment of that party's mediation fee by another party.

Who Are the Mediators?

An individual may serve as a mediator if he or she has qualified as a mediator under the requirements of the Nebraska Dispute Resolution Act, and, in addition:

(1) Is an attorney in good standing in the state of Nebraska and in this court;

(2) Has been admitted to practice law in any state for at least five years;

(3) Has either represented a client in at least five federal court cases, at least one of which has culminated in a trial that proceeded to verdict or judgement, OR represented a client in at least five trials to verdict or judgment in state courts;

(4) Has demonstrated by his or her past experience practicing law or otherwise sufficient proficiency in litigation, negotiations, or dispute resolution that he or she is able to command respect and credibility in the mediation process;

(5) Has satisfactorily completed not fewer than 24 hours of specialized training in mediating cases in federal court, and satisfactorily completed such

additional supplemental training as may be required by the court or has other comparable mediation experience; and

(6) Agrees to accept cases referred pursuant to the Mediation Plan for the United States District Court, District of Nebraska, and to abide by the provision of the Plan and the orders of the court in such cases.

For more information, see “Mediation Plan for the United States District Court, District of Nebraska (As Amended, April 30, 2010).”