MEDIATION PLAN
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

Effective December 6, 2022

Introduction

The court adopts this Mediation Plan in accordance with 28 U.S.C. § 652, which requires each district to provide litigants in all civil cases with at least one alternative dispute resolution (ADR) process and requires litigants in all civil cases to consider the use of an ADR process at an appropriate stage in the litigation. By means of this Plan, any district, bankruptcy, or magistrate judge may by order refer a case to mediation when the judge determines the nature of the case and the amount in controversy make resolution of the case by mediation a practical possibility.[1]

This Plan's content is organized into three sections. **Section I** pertains to the court's maintenance of a List of Court Approved Mediators and the procedures required when a judge refers a case to a mediator from the List. **Section II** pertains to referrals by the court to *other* mediators, including but not limited to referrals to private mediation services, centers affiliated with the Nebraska Office of Dispute Resolution, and other qualified mediators. **Section III** sets forth relevant information about the Federal Practice Fund.

I. Referrals to Court Approved Mediators

A. Maintenance of List

1. Qualifications

The court maintains a List of Court Approved Mediators who, because of training, experience, and compliance with the requirements of this Plan,

[1] The magistrate judges in this district will routinely remind counsel to explore resolving their disputes through informal settlement discussions, mediation, or settlement conferences. The scope of this Plan pertains only to mediation. For information about the magistrate judges' case management practices, including those pertaining to settlement conferences, see the Civil Case Management page on the court's website.

have been approved to mediate cases in this court. Copies of the List shall be available to the public in the clerk's office and on the court's website. To be eligible for listing as a Court Approved Mediator, applicants must:

- have 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 have other comparable mediation experience;
- be an attorney in good standing in the State of Nebraska and in this court;
- be admitted to practice law in any state for at least five years;
- have 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 judgment, OR represented a client in at least five trials to verdict or judgment in state courts;
- have demonstrated by experience practicing law or otherwise sufficient proficiency in litigation, negotiations, or dispute resolution that they are able to command respect and credibility in the mediation process; and
- agree to accept cases referred pursuant to this Plan and to abide by the provisions of this Plan and the orders of the court in such cases.

2. Application

To be added to the List of Court Approved Mediators, an applicant must complete the Court Approved Mediator Application. Approval shall be effective for a period of five years. Reapplication to the List is required every five years by completing the Court Approved Mediator Renewal Application. Any approval of reapplication will require satisfactory performance in any mediation referred under this Plan.

3. Review

The court may require a mediator to attend additional training, or it may remove a mediator from the List for good cause after affording the mediator an opportunity to respond.

B. Proceeding to Mediation Before a Court Approved Mediator

The following provisions apply when a judge refers a case to a mediator on the List of Court Approved Mediators.

1. Initial Discussions and Report to Court

When a judge determines a case should be mediated, the judge will discuss the Mediation Plan with counsel and/or pro se parties and ask them to select a mediator from the List who is satisfactory to all parties. Once a mediator from the List has been selected, counsel must schedule the mediation and report the following information to the court: the name of the mediator, the date of the scheduled mediation, and whether the parties want to stay progression of the case pending outcome of the mediation.

2. Mediation Reference Order

A judge will formally refer a case to the mediator selected by the parties by entering a Mediation Reference Order. The order will set forth the date and time of the mediation and require party representatives (in addition to counsel) with authority to settle and all other persons necessary to negotiate a settlement to attend the mediation session. In addition, the order will address matters such as whether the progression of the case will be stayed pending outcome of the mediation. Finally, the order will direct the clerk of the court to provide a copy of the Mediation Reference Order to the mediator selected by the parties.

Any objection to the order must be filed within seven days of the entry of the order and must explain the reasons for any opposition. The objection and any related submissions shall be filed with the judge who referred the case

to mediation. After conferring with counsel, the judge will determine whether the reference order will remain in place or be withdrawn.

3. Mediation Session

a) Attendance; Fees

Failure to attend the mediation session as required by the Mediation Reference Order may result in the imposition of sanctions.

The cost of the mediation shall be 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 shall be divided equally unless otherwise agreed by the parties. At the conclusion of the mediation the mediator shall present a payment request to the parties attending and their counsel.

b) Confidentiality

Except as otherwise provided in the Nebraska Uniform Mediation Act, all communications made during mediation (other than communications concerning scheduling, whether a final agreement was reached, or mediation fees) are confidential, are protected from disclosure, and may not be disclosed to anyone, including the court, by the provider or the parties.

c) Standards of Professional Conduct and Disqualification of Mediators

Court Approved Mediators are required to conduct mediation sessions in accordance with, and otherwise comply with, the State of Nebraska's ethical guidelines for mediators. These ethical guidelines are summarized in the Nebraska Office of Dispute Resolution Manual of Standards and Ethics for Center Mediators, Directors, and Staff.

Issues concerning potential mediator conflicts shall be filed with the judge who referred the case to mediation.

C. Conclusion of Mediation

Within seven days of completion of the mediation process, plaintiff's counsel shall notify the court of the completion of the mediation procedure and whether the case has settled. If the case has not settled, the referring judge shall reinstate the case to the active docket and enter an appropriate scheduling order.

II. Referrals to *Other* Mediators

There may be times when the parties ask the court to formally refer a case to a mediator who is not on the court's List of Court Approved Mediators. When this occurs, counsel will inform the court of the name of the mediator and the date of the scheduled mediation. If the court approves referring the case to the mediator selected by counsel then the court will enter a Mediation Reference Order. The order will address whether the progression of the case will be stayed pending outcome of the mediation.

When a case is referred to a mediator who is not on the List of Court Approved Mediators, the parties and counsel must proceed in good faith in accordance with the selected mediator's chosen procedures. The court may not impose the training, fee, or procedural requirements set forth in Section I of this Plan.

When the procedure utilized by the parties and their selected mediator has been completed, plaintiff's counsel shall notify the court of the completion of the mediation procedure and whether the case has settled. If the case has not settled, the referring judge shall reinstate the case to the active docket and enter an appropriate scheduling order.

III. Information About the Federal Practice Fund

If any party is unable to pay the expenses of mediation, counsel for that party, or the party if proceeding pro se, may apply to the judge for approval to incur mediation expenses reimbursable from the Federal Practice Fund. Such an application must set forth the mediator's name and a summary of the mediator's qualifications.

The procedures for submitting applications for authorization and seeking reimbursement from the Federal Practice Fund are set forth in the Amended Plan for the Administration of the Federal Practice Fund and the Federal Practice Committee (Federal Practice Fund Plan). The following notes are provided for reference:

- applications must be submitted in a pending case; however, they may be submitted *ex parte* or under seal if disclosure of the application or its purposes would compromise the litigation or negotiation strategy of the party (Federal Practice Fund Plan, Section VI.C);
- applications must set forth the purposes for incurring the expenses, the estimated cost, the applicant's efforts to keep the cost as low as possible, and the applicant's efforts to obtain funds from other sources to pay the expenses (Federal Practice Fund Plan, Section VI.C); and
- if approved, a judge must file the authorization order in the pending case (under seal, if appropriate) (Federal Practice Fund Plan, Section VI.E.1).