

(2011) Amended to correct a mis-citation to Federal Rule of Procedure 26.

(2011) Amended to eliminate language regarding experts redundant of the governing Federal Rule of Civil Procedure.

RULE 16.2 COURT ANNEXED MEDIATION

(a) General Provisions.

(1) *Definitions.* Mediation is a supervised settlement conference presided over by a qualified, certified, and neutral mediator, or anyone else whom the parties agree upon to serve as a mediator, to promote conciliation, compromise and the ultimate settlement of a civil action.

A certified mediator is an attorney, certified by the Chief Judge in accordance with these Local Rules, who possesses the unique skills required to facilitate the mediation process including the ability to suggest alternatives, analyze issues, question perceptions, use logic, conduct private caucuses, stimulate negotiations between opposing sides, and keep order.

The mediation process does not allow for testimony of witnesses. The mediator does not review or rule upon questions of fact or law, or render any final decision in the case. Absent a settlement, the mediator will report to the presiding Judge only as to whether the case settled (in full or in part) or was adjourned for further mediation, whether the mediator declared an impasse, and pursuant to Local Rule 16.2(e), whether any party failed to attend the mediation.

(2) *Purpose.* It is the purpose of the Court, through adoption and implementation of this Local Rule, to provide an alternative mechanism for the resolution of civil disputes leading to disposition before trial of many civil cases with resultant savings in time and costs to litigants and to the Court, but without sacrificing the quality of justice to be rendered or the right of the litigants to a full trial in the event of an impasse following mediation. Mediation also enables litigants to take control of their dispute and encourages amicable resolution of disputes.

(b) Certification; Qualification of Certified Mediators; Compensation of Mediators.

(1) *Certification of Mediators.* The Chief Judge shall certify those persons who are eligible and qualified to serve as mediators under this Local Rule, in such numbers as the Chief Judge shall deem appropriate. Thereafter, the Chief Judge shall have complete discretion and authority to withdraw the certification of any mediator at any time.

(2) *Lists of Certified Mediators.* Lists of certified mediators shall be maintained in the offices of the Clerk of the Court and shall be made available to counsel and the public upon request.

(3) *Qualifications of Certified Mediators.* An individual may be certified to serve as a mediator in this District provided that the individual shall:

(A) be an attorney who is currently a member in good standing and has been admitted for at least ten (10) years to a State Bar or the Bar of the District of Columbia; and

(B) be admitted to the Bar of this Court or demonstrate knowledge of the Local Rules of this Court by passing the attorney admissions examination; and

(C) have substantial experience either as a lawyer or mediator in matters brought in any United States District Court or Bankruptcy Court; and

(D) have been certified and remain in good standing as a circuit court mediator under the rules adopted by the Supreme Court of Florida.

The advisory committee may recommend for certification an attorney to serve as a mediator in this District if it determines that, for exceptional circumstances, the applicant should be certified who is not otherwise eligible for certification under this section.

Any individual who seeks certification as a mediator shall agree to accept at least two (2) mediation assignments per year in cases where at least one (1) party lacks the ability to compensate the mediator, in which case the mediator's fees shall be reduced accordingly or the mediator shall serve pro bono (if no litigant is able to contribute compensation).

The Chief Judge shall constitute an advisory committee from lawyers who represent those categories of civil litigants who may utilize the mediation program and lay persons to assist in formulating policy and additional standards relating to the qualification of mediators and the operation of the mediation program and to review applications of prospective mediators and to recommend certification to the Chief Judge as appropriate.

(4) *Standards of Professional Conduct for Mediators.* All individuals who mediate cases pending in this District shall be governed by the Standards of Professional Conduct in the Florida Rules for Certified and Court–Appointed Mediators adopted by the Florida Supreme Court (the “Florida Rules”) and shall be subject to discipline and the procedures therefor set forth in the Florida Rules. Every mediator who mediates a case in this District consents to the jurisdiction of the Florida Dispute Resolution Center and the committees and panels authorized thereby for determining the merits of any complaint made against any mediator in this District.

(5) *Oath Required.* Every certified mediator shall take the oath or affirmation prescribed by 28 U.S.C. § 453 upon qualifying as a mediator.

(6) *Disqualification of a Mediator.* Any person selected as a mediator may be disqualified for bias or prejudice as provided in 28 U.S. C. § 144, and shall be disqualified in any case in which such action would be required of a justice, judge, or Magistrate Judge governed by 28 U.S.C. § 455.

(7) *Compensation of Mediators.* Mediators shall be compensated (a) at the rate provided by standing order of the Court, as amended from time to time by the Chief Judge, if the mediator is appointed by the Court without input or at the request of the parties; or (b) at such rate as

may be agreed to in writing by the parties and the mediator, if the mediator is selected by the parties. Absent agreement of the parties to the contrary, the cost of the mediator's services shall be borne equally by the parties to the mediation conference. A mediator shall not negotiate or mediate the waiver or shifting of responsibility for payment of mediation fees from one party to the other. All mediation fees payable under this rule shall be due within forty-five (45) days of invoice and shall be enforceable by the Court upon motion.

(c) Types of Cases Subject to Mediation. Unless expressly ordered by the Court, the following types of cases shall not be subject to mediation pursuant to this rule:

- (1) Habeas corpus cases;
- (2) Motion to vacate sentence under 28 U.S.C. § 2255;
- (3) Social Security cases;
- (4) Civil forfeiture matters;
- (5) IRS summons enforcement actions;
- (6) Land condemnation cases;
- (7) Default proceedings;
- (8) Student loan cases;
- (9) Naturalization proceedings filed as civil actions;
- (10) Statutory interpleader actions;
- (11) Truth-in-Lending Act cases not brought as class actions;
- (12) Letters rogatory; and
- (13) Registration of foreign judgments.

(d) Procedures to Refer a Case or Claim to Mediation.

(1) *Order of Referral.* In every civil case excepting those listed in Local Rule 16.2(c), the Court shall enter an order of referral similar in form to the proposed order attached hereto which shall:

(A) Direct mediation be conducted not later than sixty (60) days before the scheduled trial date which shall be established no later than the date of the issuance of the order of referral.

(B) Direct the parties, within fourteen (14) days of the date of the order of referral, to

agree upon a mediator. The parties are encouraged to utilize the list of certified mediators established in connection with Local Rule 16.2(b) but may by mutual agreement select any individual as mediator. The parties shall file a “Notice of Selection of Mediator” within that period of time. If the parties are unable to agree upon a mediator, plaintiff’s counsel, or plaintiff if self-represented, shall file a “Request For Clerk To Appoint Mediator,” and the Clerk will designate a mediator from the list of certified mediators on a blind, random basis.

(C) Direct that, at least fourteen (14) days prior to the mediation date, each party give the mediator a confidential written summary of the case identifying issues to be resolved.

(2) *Coordination of Mediation Conference.* Plaintiff’s counsel (or another attorney agreed upon by all counsel of record) shall be responsible for coordinating the mediation conference date and location agreeable to the mediator and all counsel of record.

(3) *Stipulation of Counsel.* Any action or claim may be referred to mediation upon stipulation of the parties.

(4) *Withdrawal From Mediation.* Any civil action or claim referred to mediation pursuant to this rule may be exempt or withdrawn from mediation by the presiding Judge at any time, before or after reference, upon application of a party and/or determination for any reason that the case is not suitable for mediation.

(e) Party Attendance Required. Unless otherwise excused by the presiding Judge in writing, all parties, corporate representative, and any other required claims professionals (insurance adjusters, etc.), shall be present at the mediation conference with full authority to negotiate a settlement. If a party to a mediation is a public entity required to conduct its business pursuant to Florida Statutes Chapter 286, and is a defendant or counterclaim defendant in the underlying litigation, that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity. The mediator shall report non-attendance and may recommend that the Court enter sanctions for non-attendance. Failure to comply with the attendance or settlement authority requirements may subject a party to sanctions by the Court.

(f) Mediation Report; Notice of Settlement; Judgment.

(1) *Mediation Report.* Within seven (7) days following the mediation conference, the mediator, if an authorized user of the Court’s electronic filing system (CM/ECF), shall electronically file a Mediation Report. If the mediator is not an authorized CM/ECF user, the mediator shall file the Mediation Report in the conventional manner. The report shall indicate whether all required parties were present and whether the case settled (in full or in part), whether the mediation was adjourned, or whether the case did not settle.

(2) *Notice of Settlement.* In the event that the parties reach an agreement to settle the case or claim, counsel shall promptly notify the Court of the settlement by filing a notice of settlement

Trial having been set in this matter for _____, 20 ____, pursuant to Federal Rule of Civil Procedure 16 and Local Rule 16.2, it is hereby

ORDERED AND ADJUDGED as follows:

1. All parties are required to participate in mediation. The mediation shall be completed no later than sixty (60) days before the scheduled trial date.
2. Plaintiff's counsel, or another attorney agreed upon by all counsel of record and any unrepresented parties, shall be responsible for scheduling the mediation conference. The parties are encouraged to avail themselves of the services of any mediator on the List of Certified Mediators, maintained in the office of the Clerk of the Court, but may select any other mediator. The parties shall agree upon a mediator within fourteen (14) days from the date hereof. If there is no agreement, lead counsel shall promptly notify the Clerk of the Court in writing and the Clerk of the Court shall designate a mediator from the List of Certified Mediators, which designation shall be made on a blind rotation basis.
3. A place, date and time for mediation convenient to the mediator, counsel of record, and unrepresented parties shall be established. The lead attorney shall complete the form order attached and submit it to the Court.
4. Pursuant to Local Rule 16.2(e), the appearance of counsel and each party or representatives of each party with full authority to enter into a full and complete compromise and settlement is mandatory. If insurance is involved, an adjuster with authority up to the policy limits or the most recent demand, whichever is lower, shall attend.
5. All proceedings of the mediation shall be confidential and privileged.
6. At least fourteen (14) days prior to the mediation date, each party shall present to the mediator a confidential brief written summary of the case identifying issues to be resolved.
7. The Court may impose sanctions against parties and/or counsel who do not comply with the attendance or settlement authority requirements herein who otherwise violate the terms of this Order. The mediator shall report non-attendance and may recommend imposition of sanctions by the Court for non-attendance.
8. The mediator shall be compensated in accordance with the standing order of the Court entered pursuant to Local Rule 16.2(b)(6), or on such basis as may be agreed to in writing by the parties and the mediator selected by the parties. The cost of mediation shall be shared equally by the parties unless otherwise ordered by the Court. All payments shall be remitted to the mediator within forty-five (45) days of the date of the bill. Notice to the mediator of cancellation or settlement prior to the scheduled mediation conference must be given at least three (3) full business days in advance. Failure to do so will result in imposition of a fee for two (2) hours.
9. If a full or partial settlement is reached in this case, counsel shall promptly notify the Court of the settlement in accordance with Local Rule 16. 2(f), by the filing of a notice of settlement signed by

counsel of record within fourteen (14) days of the mediation conference. Thereafter the parties shall forthwith submit an appropriate pleading concluding the case.

10. Within seven (7) days following the mediation conference, the mediator shall file a Mediation Report indicating whether all required parties were present. The report shall also indicate whether the case settled (in full or in part), was adjourned, or whether the case did not settle.

11. If mediation is not conducted, the case may be stricken from the trial calendar, and other sanctions may be imposed.

DONE AND ORDERED this ____ day of _____, 20 ____.

U.S. District Judge

Copies furnished:
All counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. ____ -CIV-[JUDGE/MAGISTRATE]

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CAPTION :
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_____.

ORDER SCHEDULING MEDIATION

The mediation conference in this matter shall be held with _____ on _____, 20 ____, at ____ (am/pm) at _____, Florida.

ENTERED this ____ day of _____, 20 ____.

U.S. District Judge

Copies furnished:

All counsel of record

Effective Dec. 1, 1994. Amended effective April 15, 1996; April 15, 1997; April 15, 1999; April 15, 2004; April 15, 2005; April 15, 2007; April 15, 2009; April 15, 2010; Dec. 1, 2011.

Comments

(1996)[B.3(c).] Deletion of reference to Trial Bar to conform to new Local Rules 1 through 4 of the Special Rules Governing the Admission and Practice of Attorneys, effective January 1, 1996.

(1997)[C.] Letters rogatory and registrations of foreign judgment made exempt from mediation requirements as unnecessary.

(1997)[E.] Florida’s “Government in the Sunshine” Law, Florida Statutes Section 286.011, as incorporated into the Florida Government Cooperation Act, Florida Statutes Section 164.016, does not permit public entities to settle litigation against them without a public hearing preceded by due public notice. Public entities have therefore at times found themselves unable to comply with Local Rule 16.2.E. and have had to seek an exception from the rule in order to permit mediation. This amendment relaxes the requirement that parties be present with full authority to consummate a settlement where a public entity is a defendant, and provides instead that a representative be present who can negotiate settlement on the entity’s behalf and recommend settlement to the entity.

(1999)[B.6] Language is added to clarify that mediators appointed by the Court without input by the parties are compensated at the rate set by the standing administrative order.

(2005)[B.3 and B.4] In addition to the requirement of completing the forty hour Florida Supreme Court Circuit Court Mediation Training course, a mediator will now also be governed by the Standards of Professional Conduct in the Florida Rules for Certified and Court–Appointed Mediators, which provide ethical standards of conduct for certified and Court appointed mediators and incorporate procedures for the discipline and/or suspension of certified mediators or non-certified mediators appointed to mediate a case pursuant to Court rules. The purpose of these Rules of discipline, specifically under Part III, is to provide a means for enforcing the ethical requirements set forth therein.

[B.7] This revision is intended to prevent the parties from using mediator fees as a negotiating wedge. The mediator is now prohibited from engaging in fee shifting negotiations. In addition, a provision was

added to assist the Court in enforcing payment of mediation fees.

[C.] This revision expands the types of cases subject to mediation based on experience demonstrating the effectiveness of mediation in resolving disputes.

[F.1] Under the Florida Rules for Certified and Court–Appointed Mediators, now adopted by these Local Rules, a mediator, pursuant to Rule 10. 420(b) of the Florida Rules for Certified and Court–Appointed Mediators *shall* adjourn the mediation under any of five specified circumstances, four of which do not require the parties’ consent.

[G.2] This revision makes “all proceedings” of the mediation confidential, leaving no room for misinterpretation of the definition of what is considered to be confidential. It is intended to broaden the confidentiality provision.

(2007) Amended to conform to CM/ECF Administrative Procedures.

[G.2] This revision is intended to make the privileges and confidentiality of mediation in the District consistent with state law. The adoption of what constitutes privileged and confidential information under Florida Statutes Section 44.405 is exclusive of any remedies.

(2009) Local Rule 16.2.B.3 is amended to prescribe new qualifications for certification as a mediator in this District. Local Rule 16.2.D.1(b) is amended to clarify procedure for mediator selection by agreement of the parties or for mediator designation by the Clerk of the Court when the parties are unable to agree on a mediator.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure and change the calculation of time periods to correspond to the amendments to the various federal rules.

(2011) Local Rule 16.2(b)(4) amended to clarify the applicability of the Florida Rules for Certified and Court–Appointed Mediators adopted by the Florida Supreme Court and to provide a jurisdictional basis for imposing discipline. Local Rule 16.2(f)(1) amended to conform with Florida Mediator Ethics Advisory Committee Opinion 2010-007 (“The terms ‘impasse’ and ‘termination’ are terms of art used to signal particular outcomes of mediation. Those terms ... are not appropriate to be included in a mediation report to the court as they reveal information obtained in mediation communications.”).

RULE 16.3 CALENDAR CONFLICTS

Calendar conflicts will be resolved and notice shall be given in accordance with the Resolution of the Florida State-Federal Council Regarding Calendar Conflicts Between State and Federal Courts (available on the Court’s website: www.flsd.uscourts.gov) or as otherwise agreed to between the Judges in a given case.

Effective April 15, 2000. Amended effective April 15, 2006; April 15, 2007; Dec. 1, 2011.

Authority