

**IMPLEMENTING A MEDIATION
PROGRAM FOR GENERAL
SESSIONS COURT**

**Tennessee General Sessions
Judges Conference**

September 17, 2014

Presented By:

**Judge Dwight Stokes
Judge Deborah Henderson
Stephen L. Shields
E. Haavi Morreim**

**DOCUMENTS RELATING TO
MEMPHIS
MEDIATOR OF THE DAY
PROGRAM**

GENERAL SESSION COURT MEDIATIONS PROGRAM

Selection of Cases

Each Judge selects those cases he/she believes appropriate for Mediation; in the case of General Sessions Division 4, any case in which the Plaintiff begins as a pro se litigant is invited to the mediation docket, regardless of whether attorneys are added subsequently. Until September 1, 2014, the mediation docket has been held at 9:00a.m. Wednesday mornings.

Initiation of Mediation

- Prior to 9:00am docket, go to Probate Court Clerk's office, room 124 and ask Mr. Gary Harshman for the key to Probate Clerk's Conference Room (room 119).
- The Bailiff usually makes several announcements, including that there is a Mediator of the Day program.
- Mediator of the Day then informs Parties gathered in courtroom about the mediation option and briefly discusses the process of mediation (see "Draft Script for Pro Se Mediation").
- Judge enters courtroom, calling parties case-by-case; Parties wishing to mediate inform Judge of their interest. If Judge wishes to order Parties to mediation (e.g. cases in which members of a family have sued one another), Judge will inform the Parties at this time.
- Mediator of the Day briefly takes interested Parties out to hall, gathers relevant information about parties' names, Docket #; if mediator and parties plan to mediate on a future date mediator also gathers phone numbers, email addresses and any other needed contact information (see "Contact Information" sheet below); Mediator then returns to Courtroom for duration of 9:00 docket, to gather other cases whose parties wish to mediate
- Judge signs a Rule 31 Order for each case, referring case(s) to Mediation via appropriate form (depending on whether mediation is voluntary or court-ordered).
- At conclusion of 9:00am Docket and upon receipt of Rule 31 Order(s), mediator leads first group of Parties to mediation room; other mediation parties have already indicated whether they wish to wait, or to mediate at a future date/place

- After signing a Mediation Agreement the Parties engage in the mediation (see typical mediation outline enclosed)
- At conclusion of mediation, Mediator submits Mediation Report to Court indicating: settlement, no settlement, continued or partial settlement
- Where Mediator and Parties agree to mediate at a future date/place, Mediator follows up by phoning/emailing parties to set mutually convenient time, location

Typical Mediation Session

1. Introductions.
2. Uninterrupted time for each Party.
3. Discussion and exchange between Parties.
4. Setting an Agenda.
5. Discussing possible solutions.
6. Writing the Agreement – if settled.
7. If not settled return to court.

DRAFT SCRIPT FOR PRO SE MEDIATION
(for another option see just below: Steve Shields's Notes)

Good morning.

You were invited to come at 9:00 a.m. instead of the usual starting time of 10:00 a.m. because at the time the Plaintiff filed the case, he or she was not represented by an attorney. I am _____, a Rule 31 Tennessee Supreme Court listed mediator. I am part of a group of attorneys who belong to the Dispute Resolution Section of the Memphis Bar Association. We have agreed to provide our services to the Court without charge. This is a voluntary option. Except in the unusual situation where a court orders people to mediate, it is entirely up to you whether you go through with a trial or try mediation instead. Almost everyone in a mediation comes to an agreement, but if you mediate and don't reach an agreement, you can still go to trial in front of the judge, just as you were planning to today.

I would like to explain a few things about mediation. Have any of you participated in a mediation? Mediation is an informal process in which a neutral mediator sits down with the people who are in a lawsuit and tries to help them reach a settlement acceptable to all of them. The mediator isn't there to decide anything; the mediator is just there to help you figure out where you have common ground and can come to your own agreement.

The mediator will meet with you together and may also meet with you privately. The mediation will take place in a private conference room down the hall, unless you and the Mediator have planned to schedule it for a different date and place.

All discussions in the mediation are confidential and cannot be used *by* you, or *against* you, if your case ends up going back to court. You are not required to settle your case and you have the right to submit it to the judge for a final decision. However, if you do reach a settlement, the mediator will prepare a settlement memorandum and your case will be dismissed, or continued until the terms of the agreement have been met. That settlement document is a legally binding contract, and both sides are expected to keep the promises they make.

STEVE SHIELDS' MEDIATOR OF THE DAY NOTES

First thing in the morning, go to Gary Harshman's office at the Probate Court and get the key to the Probate Court's office and remember to return the key when you are finished.

Judge Henderson's courtroom has a special 9:00 a.m. docket for *pro se* plaintiffs. They must be *pro se* at the time of the filing although if subsequently they have retained an attorney, that is ok.

At approximately 9:00 a.m., the bailiff will stand up and discuss that this is a *pro se* "docket", then introduce the mediator of the day.

At that point, the mediator of the day stands up. Below are my comments:

1. Introduce myself and the MBA program - these programs are taking place not only across the state but across the country.
2. Here is what the judge wants you to understand – Mediation is usually voluntary. But the judge can order parties to mediation. Also, when you "stand up" for a trial date, you can tell the judge either you agree or are prepared to go to mediation and she will ask the other side if he/she wants to go to mediation and if that is the case, the judge will refer the case to mediation.
 - Takes both parties' agreement to go to mediation. But in some instances, the judge can order the parties to mediation.
 - Mediator is not your lawyer or a judge and cannot force an agreement.
 - But as will be explained, if you choose to go to mediation, you will still want to set a trial date and if it does not settle, you will have your day in court.
3. What can you expect at the mediation?
 - Obviously, both sides will be present.
 - It may not get scheduled today. We may have to schedule at a time and different place before trial.
 - You will be asked to sign a mediation agreement.
 - It will emphasize the voluntariness of your agreement;
 - It will emphasize confidentiality;
 - It will emphasize that the mediators cannot be called as a witness in court;
 - It will emphasize that the mediator is not a judge or your lawyer;
 - It will emphasize that if settlement is reached, a settlement agreement will be signed.
 - What will happen?
 - Parties will be together;
 - Mediator will provide a safe, respectful place in order for both parties to explain their positions as fully as possible.

4. Explain what will happen when the judge comes in.
 - Asked parties to step forward
 - She will ask plaintiff what he/she is demanding
 - She will ask defendant whether or not they agree the demand is correct (e.g. Plaintiff says you owe \$3000 in back rent; defendant says I agree or do not agree)
 - She may ask parties if they want to go to mediation; as she may order the parties to mediation.

5. Once parties have agreed to mediation, fill in the Consent Order (either by parties' consents or by Court Order). Return to the judge and have her sign the Consent Order for referral to mediation.

CONTACT INFORMATION

Party Name: _____

Address: _____

Phone #: _____

Cell #: _____

Email: _____

Other Contact Information:

Party Name: _____

Address: _____

Phone #: _____

Cell #: _____

Email: _____

Other Contact Information:

**IN THE GENERAL SESSIONS COURT OF
SHELBY COUNTY TENNESSEE**

Plaintiff(s)

v.

Civil Action No. _____

Defendant(s)

**CONSENT ORDER REFERRING MATTER TO MEDIATION PURSUANT TO RULE 31
OF THE RULES OF THE TENNESSEE SUPREME COURT**

It appears to the Court upon the announcement of the parties that they both request that this matter be referred to mediation pursuant to Rule 31 of the Rules of the Tennessee Supreme Court.

It further appears to the Court and the Court finds that this matter is appropriate for mediation pursuant to the aforesaid Supreme Court Rule 31, and such matter should hereby be referred for mediation under Rule 31, by consent of the parties to _____, Mediator.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, by **PARTIES' CONSENT**, as follows:

1. This matter is referred to mediation pursuant to Rule 31 of the Rules of the Tennessee Supreme Court, to _____, Mediator.
2. In the event that the mediation fails to resolve the outstanding issues in this cause, the matter shall be and hereby is set for trial on _____, 20__ at _____ a.m./p.m.

JUDGE
GENERAL SESSIONS COURT
CIVIL DIVISION ____
DATE: _____

IN THE GENERAL SESSIONS COURT OF
SHELBY COUNTY TENNESSEE

Plaintiff(s)

v.

Civil Action No. _____

Defendant(s)

ORDER REFERRING MATTER TO MEDIATION PURSUANT TO RULE 31 OF THE
RULES OF THE TENNESSEE SUPREME COURT

It appears to the Court that this matter should be referred for **court-ordered mediation** pursuant to Rule 31 of the Rules of the Tennessee Supreme Court.

It further appears to the Court and the Court finds that this matter is appropriate for mediation pursuant to the aforesaid Supreme Court Rule 31, and such matter should hereby be referred for mediation under Rule 31, to _____, Mediator.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, by **COURT ORDER**, as follows:

3. This matter is referred to mediation pursuant to Rule 31 of the Rules of the Tennessee Supreme Court, to _____, Mediator.
4. In the event that the mediation fails to resolve the outstanding issues in this cause, the matter shall be and hereby is set for trial on _____, 20__ at _____ a.m./p.m.

JUDGE
GENERAL SESSIONS COURT
CIVIL DIVISION ____
DATE: _____

AGREEMENT BETWEEN MEDIATOR AND PARTIES

On this ____ day of _____, 20____, this Agreement is entered into between the parties, namely _____ and _____, concerning their pending dispute in the Shelby County, General Sessions bearing docket number _____, as it is the parties' desire to use mediation in an effort to reach a resolution of their issues quickly and economically.

1. The Mediator and the Role of the Mediator. The parties appoint _____, Esquire, as their non-binding Mediator. The Mediator shall not serve as the mediator in any dispute in which he/she has a financial or personal interest in the result of the mediation. Prior to accepting this appointment, the Mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt meeting with the parties. Likewise, should the parties have any knowledge of a potential conflict of interest or any facts which would indicate a potential bias on the part of the Mediator, then the party or parties with this knowledge shall promptly disclose this information in writing to each other and to the Mediator.

Additionally, the parties understand and acknowledge that the Mediator will not act as an advocate or attorney for either of the parties, but that she will act solely as an advocate for settlement. The parties are entitled to counsel with their attorneys at any time and to have their attorneys present with them during the mediation sessions should they so desire.

2. The Mediation Process In General. The parties understand that the Mediator does not have the authority to decide any issue for the parties nor to impose any settlement in their case, but that the Mediator will attempt to facilitate the voluntary resolution of any disputes the parties have. The Mediator does not warrant or represent that any settlement will result from the mediation process.

The Mediator is authorized to conduct joint and separate meetings with the parties and to offer suggestions to assist the parties in achieving settlement. If necessary, the Mediator may also obtain expert advice concerning technical aspects of the dispute, provided that all parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining this type of advice shall be made by the Mediator or the parties, as shall be decided by the Mediator.

3. Law. The parties and the Mediator agree to be bound by the law of the State of Tennessee with regard to this mediation and all issues raised therein. They also specifically agree not to be bound by the evidentiary and procedural laws, and by way of clarification and not limitation, the Rules of Procedure and Evidence shall not be applied.

4. Record. The parties agree that there shall not be a record transcript made of the proceedings.

5. Issues. The parties agree that the issues presented in the parties affidavits, pleadings, and through statements of counsel and witnesses will be submitted to mediation prior to a trial on the issues.

6. Reservation of a Right to Trial. No party shall be bound by anything said or done at the mediation unless a written settlement is reached and executed by all necessary parties. If a settlement is reached, the agreement shall be reduced to writing in the court prescribed form by the Mediator and/or by counsel for the parties. Each of the parties expressly agrees that they reserve their right to a trial in the event they are unable to reach a settlement of their issues.

7. Mediation Time and Place. The hearing on all issues shall be held at the Courthouse at 140 Adams Avenue, or any other place agreed to by the Mediator and the parties, and at a time agreed to by the parties and the Mediator prior to the commencement of the proceedings. As the mediation process is a voluntary one, it may be terminated at any time by either party or by the Mediator.

8. Confidentiality and Privacy. Mediation is a confidential process. Any documents submitted to the Mediator and statements made during the mediation are for settlement purposes only. The parties agree not to request nor subpoena the Mediator nor any document prepared by or submitted to the Mediator during the mediation process. However, nothing in this paragraph is meant to restrict the use of documents prepared by that party at the trial of his or her cause.

Additionally, the parties agree that they shall not, in any judicial, arbitral or other proceedings, rely upon any of the following:

- (a) Any views expressed or suggestions made by the Mediator or another party with respect to a possible settlement of the dispute;

- (b) Admissions made by another party in the course of the mediation proceeding;
- (c) Proposals made or views expressed by the Mediator;
- (d) The fact that another party had or had not indicated willingness to accept the proposed settlement made by the Mediator.

Further, the parties acknowledge that the mediation sessions are private. The parties and their representatives may attend mediation sessions. However, other persons may attend only with the permission of the parties and the consent of the Mediator.

Finally, the parties acknowledge that while the mediation process is a confidential and private one, the Mediator (and perhaps other participants) are in no way relieved of their mandatory obligation to report their knowledge of known or reasonably suspected child abuse of child sexual abuse as required by statute and applicable case law.

9. No Service of Process. The parties hereto agree that neither of them shall serve nor cause to be served any process of any nature at or near the location of the mediation upon any person attending or participating in the mediation.

10. In compliance with The Americans With Disabilities Act, please let our office know in advance of the mediation if you have any special needs or require any special accommodations.

IT IS SO STIPULATED AND AGREED.

Plaintiff

Defendant

Attorney for Plaintiff (if applicable)

Attorney for Defendant (if applicable)

Mediator

Co-Mediator

MEDIATOR'S REPORT

Mediator's Name: _____ Date: ___/___/___

Case Style: _____

Docket Number: _____

TIME SPENT: _____

TYPE CLAIM: _____

DISPOSITION:

_____ Settled

_____ Settled, pending completion of contract obligations;
case is continued until (date) _____.

_____ Continued, additional session scheduled

_____ Partial settlement, returned to court

_____ No settlement, returned to court

MEDIATOR

DATE: _____

IN THE GENERAL SESSIONS COURT OF SHELBY COUNTY, TENNESSEE

_____)
vs.) CASE NO. _____
_____)

MEMORANDUM OF MEDIATED SETTLEMENT

The following sets forth the mediation settlement agreement done this
date _____ in Shelby County General Sessions Court.

The parties have voluntarily agreed to all of the above terms, and completion of these
terms will resolve this claim. The parties understand that these terms are binding and that either
party may seek enforcement of the terms of this agreement if there is non-compliance with the
terms specified therein. The parties agree that this matter shall be:

- ___ Dismissed with leave to reinstate until the _____.
- ___ Dismissed _____
- ___ Other _____

Done this _____ day of _____, 20__.

Plaintiff Defendant

Plaintiff Defendant

Plaintiff's Attorney Defendant's Attorney

THIS IS A BINDING AGREEMENT OR CONTRACT BETWEEN THE PARTIES,
WHICH IS ENFORCEABLE UNDER ITS TERMS AS OUTLINED ABOVE. ANY
FURTHER COURT ACTION WILL BE TO ENFORCE THE TERMS OF THIS
AGREEMENT ONLY.

DUPLICATE ORIGINALS

**INFORMATION ABOUT
DISTRICT COURT OF
MARYLAND
MEDIATION PROGRAM**

District Court of Maryland Alternative Dispute Resolution

The District Court recognizes that many conflicts may be better resolved through mediation or some other alternative to litigation.

District Court's Alternative Dispute Resolution (ADR) coordinators screen cases that come before the Court and identify those that may benefit from mediation. Parties involved in these disputes may be offered the opportunity to mediate prior to the day of trial. Some courts may offer mediation on the day of trial.

Participation in the mediation program is voluntary and offers many benefits.

Points to ponder

Should you mediate or go to court?

What could happen in court? What is the range of outcomes?

Are you comfortable with personal information being discussed in public?

How much time will it take and what will it cost to go to trial: to appeal a verdict; to resolve a countersuit?

How difficult will it be to collect a judgment? Will a favorable verdict resolve the underlying problem?

Does mediation work?

Mediation techniques have been proven effective in resolving a wide variety of conflicts, including those involving schools, businesses, government agencies and neighbors. In fact more than 50 percent of cases that go to mediation are resolved in mediation.

Studies have shown that agreements reached in mediation have a higher compliance rate than other settlements. Remember, the agreement is decided upon by all parties involved in the dispute, so it will more likely be a lasting solution.

You have nothing to lose in trying mediation.

If you can't reach an agreement, you can then go to court.

For More Information

District Court of Maryland
Alternative Dispute Resolution Office
Phone: 410-260-1676
Fax: 410-260-3536
www.mdcourts.gov/district/adr/home.html

For more information about the Maryland Judiciary and the District Court visit the website, at

www.mdcourts.gov

It is the mission of the District Court of Maryland to provide equal and exact justice for all who are involved in litigation before the court.

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What Is the
Best Way
to Resolve
a Dispute?

Mediation

- *Your brother owes you money and won't repay. Should you sue him in court?*
- *The neighbor's dog won't stop barking. How can you find a solution that works?*
- *Your mechanic said he fixed your car, but the problem persists. How do you resolve the dispute?*

Most people face a wide variety of conflicts on a daily basis. Historically people have used the court system in an attempt to resolve many of these problems. Is the court your only solution? Are there alternatives?

What is mediation?

Mediation is a process that brings people together to clarify issues, discuss options and, if possible, reach an agreement. It is a form of dispute resolution that is an alternative to trial. Mediation involves all parties in the dispute working with a professional mediator trained in conflict resolution.

Mediation is voluntary. All parties involved in the dispute must agree to mediation. However, by using mediation, parties do not give up their legal rights. If an agreement is not reached, parties can still go to court.

Should I go to court or mediate?

■ Court

Cost

Court fees, possible legal fees, cost of lost work and time

Discussion

Directed by judge
Adversarial by nature

Decision/outcome

Decided by judge
You win or lose

Privacy

None, discussion is public record

Time

Scheduled at convenience of court
Process may be lengthy with multiple court dates

■ Mediation

Cost

Generally free. No legal fees. Session may be scheduled during non-work hours or at convenient times

Discussion

Directed by you and other party
Cooperative by design

Decision/outcome

Decided by you and the other party

Privacy

Usually confidential

Time

Scheduled at a mutually-agreed time
May involve only a single session

Who are the mediators?

Mediators come from all walks of life, with diverse backgrounds and experiences. Every mediator receives extensive training in conflict resolution, listening skills and working with people.

Mediators are trained to remain neutral. They will not make decisions for you, provide any legal advice or recommend the terms of an agreement.

All communications with a mediator remain confidential, except as defined by law.

Can I request mediation?

The District Court of Maryland partners with community mediation programs throughout the State to provide an alternative to court litigation.

To find the community mediation program nearest to you, please visit Community Mediation Maryland's web site at www.mdmediation.org, or call our office at 410-260-1676 or 1-866-940-1729 and we will be happy to provide you with that information.

When people bring their disputes to mediation, they often develop creative solutions that last.