

ERIE COUNTY BAR ASSOCIATION MEDIATION PROGRAM

I. GENERAL GUIDELINES

A. PURPOSE

As a service to its members and to the public, the Erie County Bar Association (ECBA), through its Alternative Dispute Resolution Committee ("ADR Committee"), will administer a Mediation Program ("ECBA-Mediation Program") available to individuals, corporations, insurance carriers and all other entities who seek the expeditious resolution of disputes which are, or could be, pending as civil actions. This includes all civil actions, including family law matters.

B. BASIC PARAMETERS

1. Definition of Mediation

Mediation is a relatively unstructured discussion between parties which is assisted by a neutral, impartial third party (the "mediator") who helps facilitate an understanding among the parties of their common interest in reconciling, or settling a dispute. The mediator does not make any decision for the parties, and generally avoids offering opinions on the strength or merits of particular positions or claims.

2. No Attorney/Client Relationship

Although the person assigned as mediator will be a member of the Erie County Bar Association, no attorney client privilege attaches to the communications between the parties and the mediator, and the mediator will not be deemed to be serving as an attorney or advocate for any party involved in the mediation.

C. RESPONSIBILITY OF THE ADR COMMITTEE

It shall be the duty of the ADR Committee to develop, approve, and, from time to time, amend the procedures for administering the ECBA-Mediation Program, to select the approved list of mediators which is to be made available through the ECBA-Mediation Program, and to oversee administration of the ECBA-Mediation Program.

II. PROCEDURE

A. REQUEST FOR MEDIATION

The parties seeking to submit a dispute to mediation must complete a Request for Mediation form and submit it and the required fee to the Erie County Bar Association. The Request for Mediation represents that all parties to the action view mediation as a potential aid to the resolution of their dispute.

B. MEDIATION AGREEMENT

The parties must also complete and sign an "Agreement to Mediate" using the forms prepared for that purpose by the ECBA. The Agreement must be submitted to the ECBA with the Request for Mediation and the basic fee indicated below.

C. FEES

1. Basic Fee

The basic fee for a mediation is \$600.00, of which \$150.00 represents an administrative fee for the ECBA and \$450.00 represents prepayment of the mediator fee for the preparation and attendance at the initial mediation. The initial mediation shall consist of up to three (3) hours in duration. The basic fee is payable in advance and, unless otherwise agreed upon, shall be shared equally between the parties. All time thereafter will be billed at the rate of One Hundred Fifty Dollars (\$150.00) per hour.

2. Refunds / Additional Fees

The \$150.00 administrative fee to the ECBA is not refundable. The \$450.00 initial mediator fee is only refundable up until the point in time when a mediator has been appointed.

3. Expenses

Any necessary out-of-pocket expenses incurred by the mediator, such as travel outside of Erie County, long distance telephone calls and/or photocopies, shall be borne equally by the parties.

D. SELECTION OF MEDIATOR

1. Agreed-Upon Selection

The parties will have 20 days from the date they submit the completed Request for Mediation to review the list of approved mediators and select a person acceptable to all parties. In the event that the parties agree, that name should be supplied immediately to the Erie County Bar Association.

2. No Agreement for Selection

In the event that there is no agreement on a mediator within 20 days of the filing of the Request for Mediation, the ADR Committee will provide the parties with written notice of 3 possible choices, whose selection will be based on a rolling, random assignment from the list of approved mediators. Each side may strike one name. The remaining person, or the first one selected by the ECBA if more than one remain, shall be assigned as the mediator.

E. SCHEDULING THE MEDIATION

After the ECBA has been notified of the selection of a mutually-agreeable mediator, or after the ECBA appointed a mediator where there has been no agreement, it will then be the responsibility of the mediator to schedule the date, time, and place of the mediation and to notify the parties and the ECBA of the schedule. All mediations will be held in Erie County, unless there is special agreement otherwise.

III. APPROVED LIST OF MEDIATORS

A. APPOINTMENT

The ADR Committee shall be responsible for periodically appointing qualified mediators to the ECBA-Mediation Program's approved list which is to be made available for circulation by the ECBA. The number of mediators on the approved list, and the frequency of new appointments, shall be at the discretion of the ADR Committee, and shall be based on usage and demands. Periodic retraining of the approved mediators may be required from time to time as a criterion for continued listing as an approved mediator.

B. MEDIATOR STANDARDS

1. Minimum Standards

It is the responsibility of the ADR Committee to set and maintain the standards which must be achieved in order for an individual to be placed on the list of qualified mediators. Such standards shall include, but not be limited to, appropriate practice requirements as well as suitable mediation training.

2. Waivers

Any person meeting the practice requirements established by the ADR Committee, can request a waiver of the training requirement, subject to the following guidelines:

(a) The applicant for the waiver will have the burden of proving to the ECBA-ADR Committee that the applicant received training substantially similar to that required, within a reasonable time before requesting the waiver.

(b) The decision as to whether to grant a waiver will be made by the ECBA-ADR Committee, with no right to appeal that decision.

(c) If a waiver is allowed, the applicant nevertheless will be required to receive training regarding the protocol to be followed as a mediator in the ECBA--ADR Program.

IV. CONFIDENTIALITY

The agreement to mediate shall contain this confidentiality agreement:

All statements made during the course of the mediation are intended by the parties to be privileged settlement discussions made without prejudice to any party's legal position and non-discoverable for any purpose in any legal proceeding. Any information disclosed by any party, or by a representative of a party, or by a witness on behalf of a party to the mediator is intended to be confidential. No privilege is intended to be waived by any such disclosure.

Disclosure of any records, reports or other documents received by the mediator cannot be compelled. The mediator shall not be compelled to disclose or turn over any written materials or to testify in any proceeding as to information disclosed or representations made in the course of the mediation conference or communicated to the mediator in confidence.

The parties agree that no party to this mediation will attempt to subpoena the mediator for testimony, deposition or discovery related to any documents or discussions arising during ADR. If a party attempts to subpoena the mediator, that party will be liable for and shall indemnify the mediator for any costs, expenses, liabilities and/or fees, including attorneys' fees, that might be incurred by the mediator in objecting to the subpoena. The parties agree to maintain the confidentiality of the mediation conference and shall not in any proceeding attempt to rely on or introduce discussions regarding settlement, admissions made by any party during the course of the mediation, or any matter relating to proposals made and/or views expressed by the mediator.

The parties intend that the provisions of 42 Pa.C.S.A. § 5949 shall apply to this mediation.

The mediator shall have no liability for any act or omission in connection with the mediation. Although the person assigned as mediator will be a member of the Erie County Bar Association, no attorney client privilege attaches to the communications between the parties and the mediator, and the mediator will not be deemed to be serving as an attorney or advocate for any party involved in the mediation.