

2009
Jefferson County, Alabama
COURT MEDIATION PROJECT

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I. Overview of the Project

Created in September 1999, and begun in August 2000, the Jefferson County Court Mediation Project primarily provides *pro bono* mediation services to *pro se* parties on the Small Claims Docket and for *ad valorem* tax appeals. Most mediation sessions are conducted the day of trial in private areas of the Jefferson County Courthouses and Annex. Conference rooms, courtrooms and jury rooms are used on a first come-first served basis. Mediation services are also provided to specially selected Circuit and District, Civil and Criminal cases according to a flexible fee arrangement and at reduced hourly rates. The parties' participation is voluntary and all matters disclosed in the mediation sessions remain strictly confidential.

Attorneys who have been trained in basic mediation processes conduct the Small Claims mediations. Currently, approved trainings consist of a minimum of 20 hours of instruction over a 3-day program. A list of training programs is available at www.AlaBar.org under ADR. Troy Smith, Esq. has been working with the Alabama State Bar and the Alabama Supreme Court for over a decade to provide training that meets all the necessary criteria. He can be reached at troy.smith@mediationmedia.com or (800) ADR-FIRM. The website is <http://www.mediationmedia.com>. The *ad valorem* tax appeal mediations are conducted by volunteer mediators with a background in property appraisal methodologies and tax assessment. Circuit and District Criminal and Civil mediations are conducted by specially appointed mediators selected on a case by case basis according to the Court's ADR plan.

Lead mediators, mediation mentors and mediation coordinators are recruited from among those who regularly mediate Small Claims cases for the Court, and from the rolls of the Academy of Attorney Mediators, www.AttorneyMediators.org and from the roster of experienced attorney mediators compiled by the Alabama State Bar Center for Dispute Resolution in Montgomery, Alabama <http://www.alabamaadr.org/>. An individual who has completed an approved training course, but is not yet on one of these rosters may become a mediator by first observing other experienced mediators and then by assisting in three (3) mediation sessions. Law students with third-year practice cards are welcome

to participate, however non-attorneys or students without the practice card are welcome to observe, but may not conduct a mediation session for the Court.

II. The Ways a Case Can Get to Mediation:

Since most mediation sessions are arranged the day of trial, mediators are available at the Docket call. Prior to the Judge calling the docket and setting the order of cases for trial, a mediator will announce the availability of mediation services and briefly explain the benefits of participation in the program. Historically, at least two or three sets of parties in each Court will acknowledge a willingness to mediate while they await their trial. If the parties are unable to reach agreement, then they will go forward with trial at their scheduled time. It is also possible for the Judge to refer a pending case to mediation. Additionally, the parties may specifically request mediation in advance.

III. Covering a Docket

The *pro se* dockets for Judges Lowther, Bynon and Amari are always on Friday. Mediators are asked to arrive at 8:30 a.m. During the first four years of the Project, the Judges rotated according to a 'home court' schedule. However, as of March 2004, mediators have been available in all three courts each week. Upon arrival, the mediator should ask to review the files for the cases on the docket, ask for a copy of the docket, and ask for the packet of mediation forms which is kept by each Judge's staff. The packet contains copies of all forms a mediator may need during the course of the mediation, as well as informational materials to be passed out to the parties while waiting for the first call of the docket. When the Judge calls his docket, the mediator should indicate on the docket sheet which parties were present and whether the case was tried, mediated, dismissed or a default judgment entered. This marked up docket sheet should be left in the forms packet when it is returned to the Judge's staff.

IV. Forms and Record Keeping

The following forms are used during the mediation and for record keeping:

(A) Agreement to Participate in Mediation (Attachment A to this handout). This document is signed by all the parties at the commencement of the mediation.

The Agreement to Participate in Mediation Form: (1) Spells out the ground rules for the session; (2) Sets out the voluntary nature of the process; (3) States that any settlement is the result of an agreement between the parties; (4) States that mediation, if successful, will result in a binding contract; (5) States that settlement negotiations are confidential, and (6) Confirms the fee arrangement.

(B) Mediated Settlement Agreement - (Attachment B to this handout). This document sets forth the terms of the agreement between the parties, states the administrative disposition of the case, and clarifies the consequences of noncompliance by either of the parties.

In most situations, the **parties agree to a set of monetary terms**. The case is then disposed of in one of two ways: 1) Dismissed. 2) Placed on the Settled / Paying docket. However, in some cases, the **parties agree upon specific performance**. In this circumstance, the specific performance must be detailed and have a definite performance drop-dead date (usually no more than a calendar year in the future unless the Court approves a longer period of payment). Additionally, the parties **must also agree on a monetary judgment to be taken on a precise date where specific performance is not carried out as promised and who is to bear the Court costs**. The case is then placed on the Settled / Paying docket.

- *Each of agreements must: a) state the obligation, b) whether successful completion of the obligations serves as full and final settlement, and c) if the exchange of money is an issue of the mediation, the agreement should specify the time, manner, method of payment and delivery system. If the resolution is one of specific performance, then the agreement must include a dollar amount for the consent judgment in the event specific performance does not occur. d) specific instructions as to which party bears court costs and an indication of whether court costs have been included in the dollar value established.*

- (C) Mediator's Report - This document (Attachment C to this packet) is used by the mediator to record the disposition of the case and to provide comments about the session.

V. Post-Mediation Administration

The Project Director maintains the current and archived official records of the Mediation Project. The record includes mediation documents such as the Mediator's Report, Agreements to Mediate and the marked up docket sheet. The record is maintained by the date of the mediation.

Upon request, the Project Director will maintain records of a particular mediator's *pro bono* time and the number of mediations conducted and will forward appropriate documentation to the Alabama Center for Dispute Resolution.

After mediation, the case files are reviewed by the Judge and disposed of in the following manner:

- (A). Unsuccessful Sessions - the Mediator's Report and the marked-up docket sheet are given to the Judge's staff for pick up by the Project Director. These documents will be filed in the official Project records.
- (B). Successful Sessions - three copies of the completed Mediation Settlement Agreement are made. The original is placed inside the case folder, each party is given a copy, and a copy is mailed to the Project Director or left with the Judge's staff. The District or Circuit Judge will make an appropriate disposition notation on the case action summary.

Style and Case #:

Agreement to Participate in Mediation

We understand that mediation is a voluntary process and is not a court proceeding and that if we do not reach an agreement we will return to Court to resume legal proceedings.

We understand that mediation communications shall be kept strictly confidential.

We understand that the mediator cannot impose a settlement on us; however we agree to abide by whatever agreement we may choose to make during mediation and understand that it will be reduced to a writing that requires our signatures and acceptance by the Court.

We understand that our written agreement will be entered into the Court record as a final disposition of the case and that the Court will retain jurisdiction to enforce it.

We understand that the mediation will be conducted either on a *pro bono* basis or alternatively that the mediator has agreed to provide services at a rate of \$150 / \$250 / \$325 per hour, or alternatively that the mediator has agreed to a flat fee, or alternatively that the mediator has agreed to submit the number of hours expended in mediation activities to the Court and agrees to accept the Court’s determination of a reasonable fee and allocation among the Parties.

We consent to participate in the mediation process with the undersigned mediator according the following fee schedule: _____

Date: _____ Court Mediator: _____

Plaintiff(s): _____

Defendant(s): _____

IN THE _____ COURT OF JEFFERSON COUNTY, ALABAMA

_____)	
)	
_____)	
)	
_____)	
Plaintiff)	Case No. _____
)	
v.)	
)	
_____)	
)	
_____)	
Defendant)	

MEDIATED SETTLEMENT AGREEMENT

The following sets forth the Mediated Settlement Agreement done this day and witnessed by the mediator for the Jefferson County Court:

State the obligation (including the time, manner and method of payment, how delivery will be accomplished, whether court costs have been negotiated as part of the agreement **and** who is to bear court costs in the event of default):

Completion of the above obligation serves as full and final settlement of this matter.

This settlement is agreed to in good faith and completion of its terms will resolve this claim upon the voluntary agreement of the parties. **The parties do further agree that these terms are binding and constitute a valid, enforceable contract and that either party may seek damages for noncompliance with the terms specified herein. In such a breach of contract action, the court will only look the terms of the Mediated Settlement Agreement.**

By mutual agreement of the parties, in the event the terms of this agreement are not fulfilled by _____ (date), the Defendant(s) agree(s) that a judgment may be entered against him/her/it in the amount of \$ _____ for which execution may issue. This amount includes court costs.

The parties agree that this matter shall be:

_____ Settled / Paying Docket until the ___ day of _____, 20__ for an Order.

_____ Dismissed _____ with prejudice or _____ without prejudice.

Done this _____ day of _____, 20_____.

Plaintiff

Defendant

Plaintiff's Attorney

Defendant's Attorney

Mediator / Witness

Mediator's Report

Mediator's Name: _____ Date: _____

Total Mediation Time: _____

Case Style: _____

Docket Number: _____ Docket: Small Claims / Civil / Criminal

Type of Claim: _____

Original Claim Amount: _____ Original Counterclaim Amount: _____

Disposition:

- _____ Settled
- _____ No settlement, returned to court for trial.
- _____ Partial Settlement
- _____ Mediator unable to mediate with parties because:
 - _____
 - _____
- _____ Other _____
 - _____

Mediator's Comments: (do not included confidential information)
