

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
*Pro Se Prisoner Civil Rights Litigation Early Mediation Program***

PROGRAM DESCRIPTION

I. PURPOSE

The purpose of the *Pro Se Prisoner Civil Rights Litigation Early Mediation Program* (PEM) is to provide early mediation conferences in civil rights cases filed by *pro se* incarcerated persons at no cost to the parties. Early mediation allows the parties the opportunity to be heard in a confidential and informal setting while exploring settlement options with the assistance of a trained neutral mediator. The goal of PEM is to settle cases in their entirety without the need for further Court action.

II. THE MEDIATOR

The mediator is a neutral and impartial party who has no stake in the outcome of the case. The mediator may be a United States Magistrate Judge, a United States Bankruptcy Judge, or a lawyer who has received mediation training and has agreed to provide their services without cost to the parties. The mediator does not represent any party. The mediator will not make any decision related to the case, will not provide legal advice, and will not have any involvement in the case following mediation.

III. REFERRAL

Only civil rights cases filed by *pro se* incarcerated persons may be referred to PEM at the discretion of the Court. Early mediation is intended to occur before the defendant(s) are formally served, an answer is filed, or the discovery process begins.

The Court will issue an order staying the case and referring the case to PEM (stay order). The Court will send a copy of the stay order to plaintiff. All parties who have previously elected to receive notification of cases referred to PEM shall receive a copy of the stay order and a copy of the complaint. In the event that any other party is identified to the ADR Administrator, as set forth in the stay order, the ADR Administrator shall provide notice to that party. Notice by the ADR Administrator does not constitute service or waiver of service under Federal Rule of Civil Procedure 4.

IV. PARTICIPATION

PEM mediation is a voluntary process. All parties consenting to participate in PEM shall do so on a good faith basis.

The plaintiff consents to participate in PEM by not excluding the case from early mediation. The plaintiff shall have the opportunity to exclude the case from PEM by filing a timely statement of exclusion in the manner set forth in the stay order. In the event that the plaintiff excludes the case from PEM, the Court will remove the case from early mediation. All parties who have previously

elected to receive notification of cases referred to PEM shall receive a copy of the order removing the case from early mediation.

Defendant(s) consent to participate in PEM by filing a limited appearance for purposes of early mediation in the manner set forth in the stay order and in accordance with the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Western District of Michigan. A limited appearance for mediation purposes does not waive service; the defendant(s) are not required to answer or otherwise respond to plaintiff's complaint during the mediation process.

PEM is intended to allow the parties to resolve the entire case and, thus, requires the participation of all parties. If any defendant fails to consent to participate in PEM by the deadline set by the Court, the case will be removed from early mediation.

V. MEDIATION STATEMENTS AND SUPPLEMENTS

To assist the parties in a productive mediation conference, the parties shall prepare and submit a mediation statement and a mediation supplement as ordered by the Court. The mediator will be better able to assist the parties if the mediation statements and supplements provide concise, accurate, and straightforward information about the factual and legal issues in the case. *Failure to submit a mediation statement and/or supplement does not excuse a party from participation in the mediation conference.*

- A. **Mediation Statement.** The Mediation Statement must be *submitted to the ADR Administrator and the attorney(s) for the opposing party* (typically the Assistant Attorney General). A form that may be used for this purpose will be provided to the parties. The mediation statement is limited to 5 pages and should contain a brief statement about the nature of the case and a brief discussion of disputed factual, legal, damages, and evidentiary issues. In addition to the 5-page statement, up to 5 pages of exhibits may be submitted. The envelope containing the mediation statement must clearly state, "Contains Mediation Statement."
- B. **Mediation Supplement.** The Mediation Supplement must be *submitted to the ADR Administrator only*. A form that may be used for this purpose will be provided to the parties. The mediation supplement is limited to 1–2 pages and should contain a discussion of the party's strongest points, an honest discussion of the weakest points, realistic settlement options, including both monetary and non-monetary options, and a brief discussion of anything else that is important for the mediator to know before starting the mediation. *The mediation supplement will be viewed only by the mediator and is not to be shared with, or sent to, the opposing side.* The envelope containing the mediation supplement must clearly state, "Contains Mediation Supplement."

The ADR Administrator will send the mediation statements and supplements to the assigned mediator. *The mediation statement and supplement are for mediation purposes only. They are not to be filed or e-filed with the judge or Clerk's office.*

All documents may be sent to the ADR Administrator at the following address:

U.S. District Court for the Western District of Michigan
ADR Administrator
399 Federal Bldg.
110 Michigan St. NW
Grand Rapids, MI 49503

After mediation ends, the mediator and ADR Administrator will shred and/or permanently delete the mediation statements and supplements to ensure confidentiality.

VI. MEDICAL RECORDS

If medical claims are raised in the complaint and all parties have consented to participate in mediation, the Court will enter an order directing the release of the relevant medical records to the ADR Administrator in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying rules and regulations governing the disclosure, maintenance, use, and disposal of protected health information. The ADR Administrator will provide the medical records to the appointed mediator, who is authorized to share the medical records as needed to conduct an effective mediation conference. Medical records shall be provided electronically where practicable.

All medical records produced for the purposes of PEM will be confidential, maintained for the purposes of mediation only, and will not become part of the court record. After mediation ends, any person or entity in possession of Plaintiff's protected health information pursuant to the Court's order shall return or destroy all copies in accordance with the order of the Court.

VII. MEDIATION CONFERENCE

Mediation conferences will be conducted in accordance with the ADR Plan of the United States District Court for the Western District of Michigan (ADR Plan), where applicable. As required by the ADR Plan, mediators shall comply with the Model Standards of Conduct for Mediators, jointly adopted in 2005 by the American Bar Association, the American Arbitration Association, and the Association for Conflict Resolution (Model Standards of Conduct for Mediators).

All mediation conferences will be conducted via video conferencing technology.

In preparation for and participation in mediation, the parties should be prepared to explain to the mediator the factual and legal issues involved in the case. The mediator may meet jointly with all parties, as well as separately and confidentially with each party and his or her attorney, to discuss the case and to obtain and present settlement offers or proposals.

By consenting to participate in PEM, the parties understand and agree that the documents filed or exchanged between the parties and the discussions and negotiations that occur during the mediation conference are confidential and may not be disclosed outside of the early mediation process except to the extent permitted by law. Neither the mediator nor any party or attorney may inform the judges assigned to the case what was discussed or what offers were made during the

mediation conference.

The parties are strongly encouraged to take full advantage of the settlement opportunity provided by the mediation conference. This requires that each party make a good faith effort to settle the case based on a fair and reasonable view of the facts and the law.

VIII. ATTENDANCE

- A. **Plaintiff.** The plaintiff must attend the mediation conference. The Michigan Department of Attorney General shall arrange with the MDOC for the plaintiff's participation in the video conference.
- B. **Individual Defendants.** Each individual defendant must attend the mediation conference unless an attorney has entered an appearance, limited or otherwise, on the defendant's behalf.
- C. **Attorneys.** An attorney who has entered an appearance, limited or otherwise, on behalf of a defendant shall attend the mediation conference.
- D. **Individuals with Settlement Authority.** In addition to an attorney of record, if applicable, each defendant participating in the mediation conference must have a representative in attendance with full authority to settle the case (subject to any legally required approval). If a defendant has insurance that may provide coverage for the claims, a representative of the insurance company with full settlement authority must attend the mediation conference.
- E. **Other Attendees.** If a defendant agency believes that the presence of a particular agency representative would facilitate mediation, the representative of the agency should arrange for that person to attend the mediation conference. Other representatives of defendant entities may be required to attend the mediation or be available by other means if requested by the mediator.
- F. **Sanctions for Failure to Attend.** If a party or its attorney fails to have the necessary person(s) with settlement authority present during the mediation conference, the mediator may cancel the mediation conference. The mediator will promptly notify the Court of the reason for the cancellation, and the Court will determine what, if any, sanctions may be appropriate.

IX. MEDIATOR AUTHORITY

The mediator has full authority to conduct the mediation in accordance with this Program Description, the ADR Plan where applicable, and Model Standards of Conduct for Mediators. In addition, the mediator has the authority to:

- A. **Conduct Telephone Conferences.** Before mediation, the mediator may contact the parties to arrange informal telephone conferences to discuss any issues concerning

the mediation. The mediator may contact the MDOC, the Assistant Attorney General as applicable, and counsel for any other defendant to arrange this. Telephone conferences are not required by the Court and will only be scheduled at the mediator's request. Telephone conferences are confidential and may not be recorded or reported on the record. Detailed instructions regarding scheduling a telephone conference with a prisoner may be found on the Court's website.

- B. Request Additional Information.** The mediator may request additional information and documents concerning the case at any time before or during the mediation.
- C. Request Additional Attendees.** The mediator may require other representatives of defendant entities to attend the mediation or be available by other means if the mediator believes that their involvement will facilitate mediation.

X. SCHEDULING OF THE MEDIATION CONFERENCE

The Court will enter an order setting the date and time for the mediation conference and identifying the mediator assigned to the case. Requests to reschedule mediation are disfavored. Any request to reschedule the mediation conference or to be excused from early mediation after the parties have agreed to mediate must be made by motion to the Court with good cause shown.

XI. RESULTS OF THE MEDIATION CONFERENCE

At the conclusion of the mediation conference, the results of mediation will be placed on the record. The mediator will complete and file a report following early prisoner mediation within two (2) business days of the completion of mediation.

If a settlement is reached, all material terms of the agreement must be placed on the record before the close of the mediation conference. By consenting to participate in PEM, the parties understand and agree that any settlement reached is a final resolution of the case and is not appealable.

XII. AFTER MEDIATION

If the case has settled in its entirety, the Court will waive the remainder of the filing fee due and dismiss the case. The court retains full jurisdiction and authority to monitor the settlement agreement until all terms are fulfilled.

If the case does not settle in its entirety, the Court will lift the stay, order collection of the filing fee, and the 90-day time period for service under Federal Rule of Civil Procedure 4(m) will begin, returning the case to the normal course of litigation.

XIII. REMOVAL FROM PEM

The following circumstances will result in the removal of the case from PEM:

- Appearance of counsel on behalf of the plaintiff;
- Failure of all parties to consent to early mediation; and
- Plaintiff's release from custody.

If the case is removed from PEM, the Court will enter an order lifting the stay and ordering collection of the filing fee, and the 90-day time period for service under Federal Rule of Civil Procedure 4(m) will begin, returning the case to the normal course of litigation.