

**Voluntary E-Mediation Program
Of the United States District Court
For the Northern District of Illinois**

PROCEDURES

October 1, 2013

1. Mission Statement

The expense and delay that can be caused by electronic discovery issues are well-recognized. Although lawyers practicing in the Northern District of Illinois have made substantial efforts to educate themselves about electronic discovery, the fast pace of adoption of new technologies continues to create significant barriers. Even a lawyer who is highly knowledgeable in some technologies may become involved in a dispute involving unfamiliar technology. There may be some cases in the District which could benefit from having available a mediator to assist the parties to the discovery dispute in reaching a resolution. As a supplement to the Seventh Circuit Electronic Discovery Pilot Program (“Pilot Program”) Education Sub-Committee’s efforts, the Pilot Program Committee (“Committee”) has established an electronic discovery mediation program (the “E-Mediation Program”) to mediate electronic discovery disputes. The E-Mediation Program will be used in civil cases only. The mediator’s services will be provided on a voluntary basis at no cost to the parties or to the Court. The E-Mediation Program is not intended as a substitute for meaningful cooperation and dialog between the parties prior to submission of the dispute to the E-Mediation Program. However, there are instances where a third party mediator may be able to bridge the remaining gap of disagreement between the parties by providing additional electronic discovery education and experience specific to the dispute at issue. If successful, the E-Mediation Program could help reduce the time the Judges of the District must devote to discovery disputes, and enable discovery disputes to be resolved more quickly and at a lower cost to the parties, thus furthering the goals of Federal Rule of Civil Procedure 1 and the Pilot Program.

2. The E-Mediation Panel

- A. The panel of mediators (“E-Mediation Panel”) will be comprised of experienced electronic discovery lawyers from the District. Every effort is made to draw mediators from the plaintiffs’ bar, the defense bar, the government, in-house counsel and the public interest sectors.
- B. E-Mediation Panel members agree to accept at least one case per year. All E-Mediation Panel members serve without fee or compensation.
- C. E-Mediation Panel members will not be considered Special Masters, unless appointed as such under the procedures set forth in the Federal Rules of Civil Procedure and applicable Local Rules.
- D. At least one member of the E-Mediation Committee and the E-Mediation Panel shall at all times be a current or retired Judge or Magistrate Judge of the District.

3. Panel Member Selection

- A. Mediators will be selected by the Volunteer Mediation Program Sub-Committee of the Pilot Program Committee (the “E-Mediation Sub-Committee”).

B. All Panel members will complete training to be administered by the E-Mediation Sub-Committee and approved by a Judge on the Committee.

4. Cases Eligible for Submission

A. In its first phase, only civil cases from the Northern District of Illinois will be eligible for submission.

5. Submission of Electronic Discovery Dispute Under the E-Mediation Program

A. The E-Mediation Program Sub-Committee shall be responsible for creating (i) a Submission Form; and (ii) a Mediation Agreement. Both forms must be approved by the Judge on the E-Mediation Program Sub-Committee.

B. An electronic discovery dispute may be submitted to mediation under the E-Mediation Program by agreement of all parties to the discovery dispute (which may be fewer than all parties to the action). Judges may recommend that parties submit a discovery dispute to mediation.

C. The mediator will be chosen by a random selection process administered by Ben Weinberg (Pro Bono Coordinator of Dentons US LLP) from the E-Mediation Panel.

D. It is not necessary for the parties to file a motion to compel before submitting an electronic discovery dispute to mediation under the E-Mediation Program. The parties should be encouraged to avoid the time and expense of motion practice by mediating before filing a motion. However, the parties should conduct a meaningful meet & confer conference before submitting the dispute to mediation.

E. To submit a dispute to the E-Mediation Program, each party to the dispute must submit (i) a Submission Form (to be submitted separately by each party); and (ii) a Mediation Agreement jointly executed by the parties on the form provided by the Program.

F. Mediators are expected to run conflicts checks and either represent to the parties and to the Court that they have no conflict, or disclose all party relationships to the parties and the Court. A mediator may decline an appointment for any reason. A mediator may consider the following factors, among others, in deciding whether to accept an appointment: complexity and scope of the electronic discovery dispute, ability of the parties to pay for private mediation services, the mediator's experience with the technologies at issue and the parties' attempts to resolve the dispute prior to mediation.

G. Prior to the start of the mediation process, each party is expected to familiarize itself with the relevant parts of, The Seventh Circuit Electronic Discovery Committee Principles Relating to the Discovery of Electronically Stored Information, The Sedona Conference Principles Addressing Electronic Document Production, Second Edition, The Sedona Conference Cooperation Proclamation, The Sedona Conference Cooperation Guidance for Litigators & In-House Counsel, and *Mancia v. Mayflower Textile Servs. Co.*, 253 F.R.D. 354 (D. Md. 2008) as well as any materials provided through the E-Mediation Program or by the mediator.

6. Mediation Format

A. Mediations shall be held at the offices of the mediator unless otherwise specified by the mediator.

B. Ordinarily, at least one mediation session should be conducted in person (although this is not required, so as to encourage participation in the E-Mediation Program for cases involving out-of-town parties).

C. The mediator has discretion to conduct additional sessions by telephone or otherwise.

D. There is no prescribed format for the mediations. The format is left to the discretion of the mediator.

7. Communications with the Court

A. The fact that the parties have agreed to mediate under the E-Mediation Program shall be disclosed to the Court. However, neither the mediator, nor the parties to the mediation, should communicate with the Court about the substance of the mediation unless all parties to the mediation agree, except as otherwise provided by law.

B. Statements made during the mediation by the parties or the mediator may not be disclosed in motions, filings or other documents, except as otherwise provided by law.

8. Confidentiality

Except as otherwise provided by law, communications between the mediator and parties are confidential and should not be disclosed other than to participants in the mediation, and will not be a part of the public record. The mediator may agree to be bound by the terms of any protective order in effect in the case.

9. Tracking the Effectiveness of the Program

A. To measure the effectiveness of the E-Mediation Program, the E-Mediation Sub-Committee will create a form to be completed by the mediator for the purpose of gathering statistics. The form to be used must be approved by a Judge on the Committee. The E-Mediation Sub-Committee will collect the statistics and then prepare a report to the Chief Judge of the District and to the Seventh Circuit Electronic Discovery Pilot Program Committee on a periodic basis.

B. Statistics are to be collected anonymously. The names of the parties and the case number would not be collected. Instead, the mediator would report to the Committee on the characteristics of each litigant in the dispute (individual, private company, public company, government agency etc.), the type of case (Title VII, federal securities fraud, breach of contract), the type of resolution, the name of the Judge and Magistrate Judge, and such other anonymous information as the E-Mediation Program Subcommittee may specify, working in conjunction with the Surveys Sub-Committee.

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