

Automatic Mediation for Employment Matters in SDNY

February 4, 2011

On January 3, 2011, the Federal District Court for the Southern District of New York began automatically referring all employment discrimination cases filed in SDNY, excluding cases arising under the Fair Labor Standards Act, for mediation under the Court's existing Alternative Dispute Resolution ("ADR") program. This requirement was made pursuant to an April 2010 amendment to SDNY Local Rule 83.12, which now allows for specific categories of cases to be automatically referred to mediation. The presiding magistrate will, however, retain the authority to exempt a case from automatic referral.

The Old Rule

Prior to this change, the decision of whether to mediate was left to the sole discretion of the parties. The parties often reported their preference to the Judge at the initial case management conference or at any point thereafter. Regardless, however, cases could not be referred to mediation unless both parties consented. Now, referral to mediation is automatic, irrespective of the parties' preference, thereby marking a significant change in the Southern District's method of administering their mediation program.

Reasons for the Amendment

The amendment was motivated by the belief that mediation, when attempted sooner rather than later, can be a far more effective tool for expedient case resolution and management. Further, as Chief Judge Loretta Preska has noted, there is often a higher likelihood of settlement when the parties come together while the plaintiff is still employed by the defendant.

The Role of Mediation in the SDNY

Mediation has long been a useful tool in the SDNY. By holding meetings, defining issues, diffusing emotions, and suggesting possibilities of resolution, mediators have assisted parties in reaching creative solutions to complex disputes that may not be available in traditional litigation. As with voluntary mediation, parties in an automatically referred mediation must consent to any proposed mediation settlement. Neither party is required to sign a settlement agreement. In addition, neither the mediator nor magistrate judge can force a settlement. If a resolution is reached, however, a settlement agreement will be executed, and the case will be dismissed.

Procedure for Automatic Mediation

When a case is automatically referred to mediation, the Mediation Supervisor will assign the next available mediator from the list of certified mediators and notify all parties of the assignment within ten (10) days of receipt of the Mediation Order from either the Judge or the Clerk of Court.

If counsel for all parties agree that a mediator with a particular expertise would be preferred, they must notify the Mediation Supervisor of this within five (5) days of the Mediation Order. The Mediation Supervisor will then, within ten (10) days of the parties' request, appoint the next mediator with expertise in that field, pursuant to availability.

Once a mediator has been assigned, he or she will schedule the first mediation session within thirty (30) days of the assignment. The first mediation session must be held in the Court's "ADR Center." The parties may decide the location of any subsequent mediation sessions. As before, the SDNY Mediation Program will remain cost-free for the parties.

The Southern District of New York covers the counties of New York, the Bronx, Westchester, Dutchess, Orange, Putnam, Rockland and Sullivan.

The lawyers in Proskauer's Employment Litigation & Arbitration Practice Group are experienced in all aspects of trial practice as well as mediation. If you have employment cases in the Southern District of New York for which you have questions, or if you have questions regarding mediation in general, please contact any of the attorneys listed on this alert for assistance.

[Related Professionals](#)

- **Steven D. Hurd**

Partner

- **Paul Salvatore**

Partner

- **Keisha-Ann G. Gray**

Partner

- **Nigel F. Telman**

Partner

- **Elise M. Bloom**

Partner