

## Lexington County Magistrate Mediation Program

Phone: 803 – 785 – 8330

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- Mediation Court correspondence shall be directed to 231 West Church Street, Batesburg, SC 29006.
- Mediation Court sessions are held at the Lexington County Summary Court Center at 139 East Main Street Lexington, SC 29072.

# The Supreme Court of South Carolina

RE: Pilot Magistrate Mediation Program in Lexington and Richland Counties

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### ORDER

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Pursuant to the provisions of Article V, Section 4, South Carolina Constitution,

IT IS ORDERED that a pilot project is established in the magistrate courts of Richland and Lexington Counties and requires that the litigants in all civil cases in which a jury trial is requested must participate in Alternative Dispute Resolution (ADR) through mediation, as described in this Order. The pilot project applies to all civil cases in the Richland and Lexington County magistrate courts in which a jury trial has been requested and is pending as of March 1, 2007, and to all civil cases filed in those magistrate courts thereafter when a jury trial is requested.

Mediation shall take place on the same day as a Pre-trial hearing is scheduled on the case in a location designated by the Chief Summary Court Judge of the County. The mediation will occur immediately after all pre-trial hearings where a disposition of the case is not effected unless otherwise directed by the court for a specific and substantial reason. All mediations shall be conducted by mediators provided by the Community Mediation Center. These Mediators shall not be required to be Attorneys. Upon a showing of good cause the court may appoint other Mediators, provided no fee may be charged by or paid to such Mediator.

Mediation in each case shall last no less than thirty (30) minutes and may be extended as the mediator determines to be necessary. The mediation shall be conducted in

accordance with the following provisions contained in the Alternative Dispute Resolution Rules:

All attorneys should fairly and objectively inform their clients about mediation and arbitration.

Unless otherwise agreed to by the mediator and all parties, or as approved by the Chief Judge, or his designee, the following persons must physically attend the mediation:

- (1) The mediator;
- (2) All named individual parties; or an officer, director or employee having full authority to settle the claim for a corporate party and having a non-attorney authorization on file with the court;
- (3) The party's counsel of record, if any; and
- (4) For any insured party against whom a claim is made, a representative of the insurance carrier who is not the carrier's outside counsel and who has full authority to settle the claim.

The mediator or presiding judge may require, prior to the scheduled mediation conference, that each party provide a written statement of their position with regard to the issues that need to be resolved. This statement shall not exceed 250 words and shall be delivered to the court three business days prior to the pre-trial hearing. With the consent of all parties, such memoranda may be mutually exchanged by the parties.

The parties and their representatives shall cooperate with the mediator.

Communications during the mediation settlement conference shall be confidential.

Additionally, the parties, their attorneys and any other person present must execute an approved Agreement to Mediate that protects the confidentiality of the process. The parties and any other person present shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding, any oral or written communications having occurred in a mediation proceeding. This does not prohibit the following:

- (1) Disclosures as may be stipulated by all parties;
- (2) A report to or an inquiry from the Chief Judge for Administrative Purposes regarding a possible violation of these rules;
- (3) The mediator or participants from responding to an appropriate request for information duly made by persons authorized by the court to monitor or evaluate the ADR program;

(4) Threats of harm or attempts to inflict physical harm made during the mediation sessions; and

(5) Any disclosures required by law or a professional code of ethics.

The mediator may meet and consult individually with any party or parties or their counsel during a mediation conference. The mediator shall not divulge confidential information disclosed to a mediator in the course of a private consultation without consent.

No communication by a party or attorney to the mediator in private session shall operate to waive any attorney-client privilege.

The mediator shall at all times be authorized to control the conference and the procedures to be followed.

The mediator shall define and describe the following to the parties:

(1) The mediation process, including the difference between mediation and other forms of conflict resolution;

(2) The fact that the mediation conference is not a trial; the mediator is not a judge, jury or arbitrator; and the parties retain the right to trial if they do not reach a settlement;

(3) The inadmissibility of conduct and statements as evidence in any arbitral, judicial or other proceeding;

(4) The circumstances under which the mediator may meet alone with either of the parties or with any other person;

(5) Whether and under what conditions communications with the mediator will be held in confidence during the conference;

(6) The duties and responsibilities of the mediator and the parties; and

(7) The fact that any agreement must be reached by mutual consent of the parties.

The mediator has a duty to be impartial and to disclose any circumstance likely to affect impartiality or independence, including any bias, prejudice or financial or personal interest in the result of the mediation or any past or present relationship with the parties or their representatives.

It is the duty of the mediator to timely determine when the mediation is not viable, that an impasse exists, or that the mediation should end. Mediation cannot be unilaterally ended without the permission of the mediator.

The mediator shall not be compelled by subpoena or otherwise to divulge any records or to testify in regard to the mediation in any adversary proceeding or judicial forum. All records, reports and other documents received by the mediator while serving in that capacity shall be confidential.

The mediator shall have immunity from liability to the same extent afforded judicial officers of this state.

Upon reaching an agreement, the parties shall, before the adjournment of the mediation, reduce the agreement to writing and sign along with their attorneys. The parties shall then appear before the Judge conducting Pretrial hearings and the agreement shall be included in the record of the court as an order of the court.

The court may issue a Rule to Show Cause as to why sanctions should not be imposed in all cases where mediation is not conducted pursuant to this Order.

This Order is effective immediately and shall remain in effect unless amended or revoked by further Order of the Court.

s/Jean Hofer Toal  
FOR THE COURT  
Jean Hofer Toal  
Chief Justice

January 29, 2007  
Columbia, South Carolina