

DISCOVERY FACILITATOR AND EVALUATOR PROGRAM

The purpose of the Discovery Facilitator and Evaluator Program (“Program”) is to give parties and counsel a vehicle to seek the resolution of discovery disputes in a manner that is less expensive, more flexible and participant-controlled than a standard discovery motion, and that avoids the risk of the imposition of sanctions inherent in formal discovery motion practice.

Facilitator/Evaluator Panel Members:

The Facilitator/Evaluator Panel shall consist of volunteers with at least fifteen years of full-time civil litigation experience. The Court’s ADR Committee shall select panel members from among those who apply.

Voluntary Program

Participation in the program shall be strictly voluntary, except as set forth below. Parties to a discovery dispute may stipulate to use the program either before or after a formal motion is filed.

Pre-filing of Discovery Motions

Before a motion has been filed, parties shall complete a standard form stipulation to use the Program. The form will, among other things, contain an extension of the forty-five (45) day limit to file a motion seeking further discovery responses. See Exhibit A hereto. The stipulation will be sent to the Mandel-Gisnet Center (“Center”) for assignment to a Facilitator/Evaluator (“Facilitator”).

The Center shall supply the parties with a list of possible panel members – the number of names will be the number of sides in the dispute, plus one. The parties can either agree on one of the names on the list, or each side may strike one and the remaining name shall be the Facilitator.

The Facilitator will attempt to resolve the dispute by telephone or in person after a review of the discovery requests and responses in dispute, and any written “meet and confer” communications. If a resolution is reached, it will be memorialized in a stipulation that will be filed with the Court. If no resolution is reached, the Facilitator will serve each party with a Notice of Termination of Facilitation. The Notice shall certify that the parties met and conferred in good faith, if that is the case. See Exhibit B hereto.

Post-filing of Discovery Motions

If the parties elect to use the Program with respect to a pending discovery motion, they shall prepare a stipulation and order continuing the scheduled hearing date on the motion and setting a briefing schedule dictated by the new Court hearing date. The parties are encouraged to notify the Court of their election to participate in the Program at least seven (7) court days before the scheduled hearing date.

A copy of the stipulation and order will be sent by the parties to the Center at

the same time that it is submitted to the Court. The Center shall process the appointment of the Facilitator in the same manner as it uses for pre-motion submissions.

The Facilitator will follow the same procedure as in the case of a pre-filing submission, except that he or she may have motion papers to review as well.

If the parties reach a resolution on all or some of the issues, the agreement shall be memorialized in a stipulation to be filed with the Court. The parties are encouraged to notify the Court of a written stipulation at least seven (7) court days before the hearing.

If no resolution is reached the Facilitator will file and serve a Notice of Termination of Facilitation.

Benefits of Participation in the Program

Participation in the Program is not a prerequisite to filing a formal motion, but: 1) good faith participation shall be considered by the Court in determining if the “meet and confer” requirement has been met; and 2) the Court may consider non-participation as a ground to deny sanctions that otherwise might be awarded.

Involuntary Program

If the Law and Motion Judge considers a motion appropriate for referral to the Program, he or she may continue the motion hearing date and order the parties to participate in the Program before the continued hearing date. A copy of the order continuing the hearing date and directing participation in the Program shall be served, by the Court, on the parties and the Center, which shall then treat that matter in the same fashion as it treats voluntary participation. Such an order may be entered at any time up to and including the date set for the hearing on the motion. The selection of a Facilitator/Evaluator and the process of review shall be the same as in the case of voluntary participation unless the Court directs otherwise.

When the parties reach a resolution on all or some of the issues, the agreement shall be memorialized in a stipulation to be filed with the Court at least seven (7) court days before the scheduled Law and Motion hearing date. If the stipulation is not received seven (7) court days before the hearing, the Court will assume the parties were not able to reach an agreement and will proceed with the hearing.

Additional Issues

As in the case of the Court Directed Mediation Program, a Facilitator/Evaluator shall donate preparation time and up to two (2) hours of conference time, following which the parties and the Facilitator may negotiate compensation for additional time unless, as is the case with many of the mediators on the Court-Directed Mediation Program panel, the Facilitator waives any fee.

This Program will operate as a neutral evaluation program. Unlike mediation, it

is not confidential. However, it is anticipated that the only communication to the court regarding the proceedings will be limited to information from the Facilitator regarding the termination of the proceedings and certification of the parties' good faith participation, if indeed that is the case. Any communication sent by the Facilitator to the court will also be served by the Facilitator on the parties.

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