

Kluwer Mediation Blog

Pilot Mandatory Mediation Program in New York

Rafal Morek (DWF LLP) · Saturday, August 9th, 2014

An apple a day keeps the doctor away. The judiciary in the Big Apple took an important step for promotion of mediation. On July 28, [the Commercial Division in New York County Supreme Court](#) introduced a pilot mandatory mediation program.



In 1993 New York pioneered in creating [a specialized commercial court to handle complex business lawsuits](#). Commercial Division judges regularly decide cutting-edge legal issues. However, with a mushrooming docket, the Commercial Division has become a victim of its own success. The new mandatory mediation Pilot Project is designed to override attorney resistance to opt for mediation before a trial commences, and as a result, to ease the backlog of cases.

The Project is also designed to retain the Commercial Division's stature as a leading commercial law standard setter, and a key reason why companies choose to do business in New York. The initiative was originally proposed in 2012 by the [Chief Judge's Task Force on Commercial Litigation in the 21st Century](#), which found that mediation is underutilized in commercial disputes in New York, and [endorsed by influential stakeholders in the New York Bar](#).

The program applies to "every fifth newly assigned case", i.e. each week, every fifth Commercial Division case in which a Request for Judicial Intervention was filed and an assignment to the Division was made during the previous week is designated for referral to mediation pursuant to the Administrative Order of the Administrative Judge for Civil Matters of the First Judicial District. The parties are required to participate in mediation in accordance with [the Rules and Procedures of](#)

the ADR Program; settlement, however, is, of course, purely voluntary.

The court maintains a roster of neutrals, who are required to have training in mediation. There are over 250 neutrals on the court's roster. The parties may choose a mediator, but, if they are unable to agree, the Coordinator will provide the parties with the names of three prospective mediators and the parties will rank the names, with the highest-ranked person becoming the mediator.

The first ADR session must take place within 30 days from the date the mediator is confirmed by the Coordinator, and the process is to conclude within 45 days from that date. The litigation is not stayed during the mediation process unless the court so directs, which occurs very rarely. No later than ten days prior to the first ADR session, each party must submit to the mediator a memorandum setting forth the party's opinions as to the facts and issues in the case, contentions, and suggestions as to the bases on which the case might be settled.

Attendance is mandatory for the first four hours of mediation, and there is no charge to the parties for those four hours. But if the mediation process continues beyond the four hours, the parties must compensate the mediator at a rate fixed under the ADR Rules and Procedures (300 USD per hour), or another rate if agreed upon.

The New York County pilot program will last 18 months, after which it will be evaluated and either expanded, modified or abandoned. If it turns out to be a success, it may serve as an inspiring example to other states and countries.

Time for an apple!

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