## Procedures for Mediation in Judge Walker's Cases

Requests for judicial mediation in one of Judge Walker's cases shall be made by motion. If the motion is filed jointly, an order will be entered without hearing giving direction and information to the parties.

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## Procedures for Mediation in which Judge Walker is assigned as Mediator

Consideration of settlement is a serious matter, and a settlement conference requires thorough preparation. Below are the procedures that Judge Walker requires the parties to follow in preparing for the settlement conference and the procedures that the Court typically will employ in conducting the proceeding. Counsel should provide a copy of this document to their clients and discuss these procedures with them prior to the conference.

### Position Papers

The settlement process is generally more productive when the parties have advised each other, and the court, of their settlement positions in writing in the form of a position paper. The position papers will be exchanged, with a copy provided to chambers via email, approximately three business days prior to the conference. (CR2calendar@tnmb.uscourts.gov)

DO NOT FILE POSITION PAPERS ON THE COURT'S DOCKET. Position papers should include the following:

a. A brief summary of the evidence and legal principles that each party asserts will allow it to either establish liability or a defense;

b. A brief explanation of why damages or other relief would or would not appropriately be granted at trial;

c. An itemization of damages plaintiff believes can be proven at trial and a brief summary of the evidence and legal principles supporting those damages;

d. A settlement proposal; and

e. Any additional information the parties believe would be helpful to the Court in facilitating a resolution of the dispute.

These papers will enable the Court to assist the parties in exploring settlement. Position papers are limited to three (3) pages. In extraordinary circumstances, the Court may grant a request for leave to exceed the page limitation.

Parties in Attendance

Parties with full settlement authority are required to attend the conference in person. If a party is an individual, that individual must attend in person. If a party is a corporation or government entity, a representative of that corporation or government entity (in addition to counsel of record) *with full settlement authority* must attend in person. "Full settlement authority" means the authority to negotiate and agree to a binding settlement agreement at any level up to the settlement proposal of the plaintiff. If a party requires approval by an insurer to settle, then a representative of the insurer with full settlement authority must attend.

The Court strongly believes that the personal presence of the individuals with a stake in the outcome of the settlement conference, and their participation in the settlement discussions and the "give and take" that occurs at the conference,

materially increases the chances of settlement. Thus, absent a showing of unusual or extenuating circumstances, the Court will not permit a party, party representative, or an insurance representative merely to be available by telephone.

## Conference Format

The Court generally will follow a traditional mediation format. Each side will have an opportunity to make an opening presentation to the other side, which will be followed by joint discussion with the Court and private meetings by the Court with each side. The Court expects the lawyers and the parties or their representatives to be fully prepared to participate in these discussions. The Court also encourages all parties to be willing to reassess their previous positions and to be willing to explore creative means for resolving the dispute.

## Confidentiality

The pre-conference letters and the settlement conference will be treated as confidential and not disclosed to any party, including the Court before which the matter is pending.

## Topics for Discussion During Mediation

The parties and their counsel should consider and be prepared to discuss the following topics, among others, at the settlement conference:

a. What are your objectives in the litigation?

b. What are the strengths and, just as important, the weaknesses of your case?

c. Do you understand the opposing side's view of the case? What is wrong with their perception? What is right with their perception?

d. What are the points of agreement and disagreement between the parties? Factual? Legal?

e. Does a settlement require the participation or input of a third party not a party to the case?

f. Are there any impediments to a settlement that are not discussed in the parties' settlement letters?

g. If the party hoping to prevail at trial does prevail, what remedy (i.e., damages, injunctive relief, statutory award or penalty, attorneys' fees, interest) does the law allow?

h. Are there possibilities for creative resolution of the dispute?

i. Have you considered how to deal with any outstanding liens?