

06/12/97

IN THE SUPREME COURT OF MISSISSIPPI

NO. 89-R -99026 SCT

**IN RE: AUTHORIZATION OF COURT ANNEXED MEDIATION IN
CHANCERY, CIRCUIT AND COUNTY COURTS**

ORDER AMENDING AND EXTENDING PILOT MEDIATION PROGRAM

This matter is before the Court, en banc, on its own motion for consideration of the extension of the Pilot Mediation Program which was adopted by this Court under Order dated June 12, 1996, entered June 20, 1996 and amended by Order dated August 27, 1996, entered August 28, 1996. At present this program expires December 31, 1997. Upon consideration, the Court finds that the extension of the program through December 31, 1998 will allow further opportunity for the determination of its effectiveness and is in the interest of the fair and efficient administration of justice.

IT IS THEREFORE ORDERED that, effective upon the entry of this Order, the Pilot Mediation Program be and the same is extended through December 31, 1998, and that as to all circuit, chancery and county courts which are now participating in the program, their participation shall be extended through such date.

IT IS FURTHER ORDERED that, likewise effective upon the entry of this Order, the form of the Order Instituting Pilot Mediation Program, attached as Exhibit "A" to the Order of this Court entered August 28, 1996 authorizing the program be and the same is amended to reflect such extended period, and a true copy of such Order Instituting Pilot Mediation Program, Amended, is attached as Exhibit "A" hereto.

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this Order upon

the minutes of the Court and shall forthwith forward a true certified copy hereof to West Publishing Company for publication as soon as practical in the advance sheets of *Southern Reporter, Second Series (Mississippi Edition)* and in the next edition of *Mississippi Rules of Court*.

SO ORDERED, this, the _____ day of June, 1997.

MICHAEL SULLIVAN, PRESIDING JUSTICE FOR THE COURT

EXHIBIT "A" TO

ORDER AMENDING AND EXTENDING PILOT MEDIATION PROGRAM

IN THE _____ COURT OF _____ COUNTY, MISSISSIPPI

ORDER INSTITUTING PILOT MEDIATION PROGRAM

Pursuant to Order Authorizing Pilot Mediation Program of the Supreme Court of Mississippi dated June 12, 1996, as amended, the following Pilot Mediation Program is hereby adopted and ordered for this Court.

Section 1. Scope of the Program

Mediation is a process in which a neutral assists the parties in reaching their own settlement, but does not have the authority to force the parties to accept a binding decision. Most cases in this Court are settled short of trial. The involvement of an impartial, trained mediator can assist parties in reaching settlement of their dispute at an early stage. The procedure is non-binding and shall not prejudice any party's right to full judicial process, including trial by jury if otherwise provided by law.

The Pilot Mediation Program will commence on , 199_ and terminate on December 31, 1998, unless otherwise extended by Order of this Court. All judges of this Court are participating in the pilot program. **[For Circuit and County Courts, insert, "However, the program shall not apply to criminal or juvenile matters."]**

Section 2. Public Education

Because of the general unawareness of the mediation process, and in order to facilitate the Pilot Mediation Program in this county, this Court will conduct short public programs on the basics of the mediation process on **[insert dates]** during the Pilot Mediation Program. Members of **[insert organization]** have agreed to conduct these programs for the benefit of the public and, especially, the litigants seeking access to this Court. All litigants in civil cases filed after , 199_ shall be informed of such programs and the dates and locations thereof and shall be encouraged, but not compelled, to attend one of these programs within thirty days after issue is joined. The programs are open to the

public.

Section 3. Institution of Mediation

The Court Administrator for the judge assigned to a case will mail a form letter to all parties after issue is joined. The form letter will advise litigants of the mediation program and will encourage participation and specifically encourage attendance at a public program provided for in Section 2 above. Any party shall then have the right to request mediation formally, but no case will be mediated without the written consent of all parties. A formal request, with or without consent, may be submitted in writing to Mississippi Center for Dispute Resolution (The Center) and shall be served upon all other parties to the case and filed with the clerk of this Court. Upon receiving the written request from the party to a lawsuit in this Court, the Center shall acknowledge receipt of the request with a copy to all other parties. The Center will then follow its normal procedures for processing any request for mediation and the selection of an impartial, trained mediator. If the request does not already contain the written consent of all parties, the Center shall then endeavor to learn whether written consent can be obtained. If written consent cannot be obtained, it shall report this result to the clerk of this Court and all parties in a written notice.

Section 4. Qualifications of Mediators

Both attorneys and non-attorneys are eligible to mediate in the Pilot Mediation Program. However, in order to qualify for appointment in the pilot program, interested persons must have participated in and successfully completed a mediator training and certification course of at least thirteen hours credit sponsored by the Mississippi Bar, the American Arbitration Association, or any other provider certified by the Mississippi Bar. All persons who wish to be considered for placement on the approved list of mediators shall submit an application, resume, and agreement to the fee established by the Center to the Center and shall certify that they have successfully completed an approved course in mediator training and certification. The Center shall follow its normal procedures for processing these applications but may also appoint mediators who meet the requirements of this Order from other applications or applications already on file with the Center.

Parties choosing to mediate are encouraged to accept the mediator appointed by the Center, which will have made its selection from a broad list of trained mediators that have backgrounds suitable to the particular case to be mediated. However, if they agree, parties are also free to choose their own mediator independently of the Center. In the event that the parties agree upon a mediator, the name, address, and telephone number of the agreed upon mediator shall be provided to the Center within fifteen days after service of the written request for mediation.

As a condition precedent to mediation in this Court, eligible mediators, whether appointed by the Center or agreed upon by the parties, shall agree to mediate ten percent of their assigned cases without charging a fee. Thus, *in forma pauperis* proceedings may also be subject to mediation.

Section 5. Costs of Mediation

The costs of the mediation shall initially be born equally by the parties, unless the parties agree otherwise, and shall ultimately be taxed as costs of litigation in the event the mediation does not resolve the dispute. At the close of mediation, whether or not successful, the parties shall pay the

mediator's fee according to the fee schedule maintained by the Center, or as agreed upon, and the amount of the fee shall be certified by the mediator and filed with the clerk of this Court in the record of the case. All court filings made by the mediator shall be accepted by the clerk without any filing fee. If the parties agree upon a mediator independent of the Center, the mediator's fee schedule shall be agreed upon by the parties in writing.

Section 6. The Mediation Process

The appointed mediator, or the mediator agreed upon by the parties, shall coordinate with the parties and schedule mediation sessions as appropriate. The mediator shall report to the Court and the Center within the time limits noted in Section 8, advising the Court whether the litigation has been settled.

Section 7. Confidentiality

Mediation shall preserve and maintain the confidentiality of mediation proceedings. They shall keep confidential from opposing parties any information obtained in individual caucuses unless the party or parties to a caucus permit disclosure. They shall maintain confidentiality in the storage and disposal of records and shall render anonymous all identifying information when materials are used for research, training or statistical compilations.

Further, all proceedings of the mediation, including statements made by any party, attorney or other participant, whether made in the presence of opposing parties or not, are privileged in all respects. The proceedings may not be reported, recorded, placed into evidence, made known to this Court or any jury, or construed for any purpose as an admission against interest. The mediator shall not be named as a witness, nor may the mediator's records be subpoenaed or used as evidence, nor may the mediator's deposition be taken, or any other discovery had against the mediator.

Section 8. Time of Mediation

Mediation shall be completed within ninety days of service of the written request for mediation unless extended by order of the Court or by stipulation of all parties.

Section 9. Duties of the Mediator

- (a) The mediator shall file with the Court notice of the appointment.
- (b) The mediator shall encourage and assist the parties in reaching a settlement of their dispute but may not compel or coerce the parties to enter into a settlement agreement.
- (c) Unless expressly authorized by the disclosing party, the mediator may not disclose to either party information given in confidence by the other and shall at all times maintain confidentiality with respect to communications relating to the subject matter of the dispute.
- (d) Unless the parties agree otherwise, all matters, including the conduct and demeanor of the parties and their counsel during the settlement process, are confidential and may never be disclosed to anyone, including the Center and this Court. The mediator shall be limited to informing the Court and Center whether or not the case settled.

Section 10. Effect of Written Settlement Agreement

If the parties reach a mediated settlement and execute a written agreement disposing of all or any portion of the dispute, the agreement is enforceable in the same manner as any other written contract. Unless the settlement agreement provides for confidentiality, upon the application of any party thereto, the Court may in its discretion incorporate the terms of the agreement in an order.

SO ORDERED, this the ____ day of _____, 19__.

[Signature of all judges of the trial court]