

FAQS ABOUT LIMITED MEDIATION AND CMADRESS

HOW DOES THE COURT DETERMINE WHERE A CASE WILL BE SENT?

At the Case Management Conference (CMC), the Court will inquire of counsel the nature of the case and the relief sought. The Court will determine whether the case has a value of less than \$ 50,000.00 or more than \$ 50,000.00.

IS THIS DETERMINATION OF VALUE BINDING ON THE CASE AND AFFECT THE RECOVERY?

No. It is only a way to assign the cases to the proper forum. Unless the case is a Limited Jurisdiction case (limited to a \$ 25,000.00 cap), the plaintiff may receive any verdict at trial.

WHAT HAPPENS IF THE CASE IS VALUED UNDER \$ 50,000.00?

If the case is determined by the Court to have a value of less than \$ 50,000.00, the Court will assign the matter to CADRe for a Limited Mediation in Lieu of Judicial Arbitration. The attorneys have 10 days from the date of the CMC to contact CADRe and have a mediator assigned to the case. The mediation does not have to occur immediately, but within a timeframe set by the Court at the CMC, i.e., by a date certain, but certainly before the date of the Mandatory Settlement Conference (MSC). The mediator reports to the Court on Judicial Council form ADR-100, which form states when the mediation occurred, how long it lasted and whether the mediation resulted in full agreement, partial agreement or no agreement.

WHAT HAPPENS IF THE CASE IS VALUED IN EXCESS OF \$ 50,000.00?

If the case is determined by the Court to be worth more than \$ 50,000.00, the Court will assign the attorneys as a continuation of the CMC to appear at CADRe within 10 days and be assigned a mediator to handle a CMADRESS (Case Management ADR Early Settlement Session).

WHO ATTENDS THE CMADRESS?

This session requires the attendance of the trial attorneys and all clients, except insured defendants who do not have to consent to a settlement, in which case a representative of the defendant's insurance carrier with full authority must be present.

WHEN IS CMADRESS HELD?

The CMADRESS must be held within 60 days of the assignment of a mediator. If additional time to set the CMADRESS is required for good faith reasons, the parties are charged with filing a request with the Court for the additional time along with the reasons for the delay. The Court will promptly rule on the matter.

WHAT HAPPENS AT CMADRESS?

The CMADRESS is up to three hours long, and during the session, the mediator explores the various ADR options available to the parties, discusses the case in some detail and will explore settlement of the matter. The Court pays for the mediator's time. The mediator is instructed to return to the Court a report of the CMADRESS indicating who was in attendance and whether the matter had settled.

DOES THIS REPORT BY THE MEDIATOR VIOLATE THE REQUIREMENT OF CONFIDENTIALITY?

No. The report on attendance is made by the assigned neutral acting as a Special Master of the Court on whether the conditions of the CMC order have been fulfilled. Any negotiation or mediation during the session is confidential.

WHAT HAPPENS AFTER THE SESSION?

The parties may continue to mediate with the assigned mediator or they may hire another mediator of their choosing at their own expense and their own timetable, as long as their efforts are concluded by the time set for the MSC and trial.

IS THERE AN ALTERNATIVE TO CMADRESS?

The parties may elect to hire their own mediator and arrange for private mediation of their case and opt out of CMADRESS. They must prepare and file with the assigned trial judge a stipulation prior to the Case Management Conference indicating that they have hired a mediator for their case and set forth the name of the mediator and the date selected for the first mediation session, which session would have no time requirements other than to have it occur prior to the Mandatory Settlement Conference date. The parties are solely responsible for the mediator's fees in this situation.

WHAT HAPPENS IF THE PARTIES IN GOOD FAITH NEED MORE TIME FOR MEDIATION AFTER THE SESSION AND FACE A LOOMING MSC AND TRIAL DATE?

If the parties elect to stay with the CMADDRESS mediator and they find a good-faith need for additional time to prepare for continuing mediation and/or discovery and/or trial, they may prepare a stipulation to the Court requesting additional time, and if the mediator signs the stipulation in full agreement with the request, the Court will honor the stipulation and assign a new MSC and Trial date upon submission.

WHAT DATES SHOULD WE BE CAREFUL ABOUT?

In both cases, the parties have only **10** days to appear at or contact the CADRe office for assignment of a mediator. Any party not appearing within the ten days will be sent an OSC re sanctions notice.

If the parties fail to have a CMADDRESS within the time allowed, they will be sent a notice re an OSC- sanctions hearing.

WHAT IF WE HAVE ADDITIONAL QUESTIONS?

Please contact the CADRe director who will handle all questions.