

STATE OF NEW HAMPSHIRE

PROBATE COURT

PROCEDURE BULLETIN 23

PROBATE MEDIATION PROCEDURES

This procedure bulletin is prepared for informational purposes in processing case files. It is not intended to provide parties with legal advice.

Following are general procedures for processing mediation cases in the probate courts. Refer also to Administrative Order 11 for additional information. An appendix of forms is attached for reference.

DISSEMINATION OF INFORMATION

1. Brochures will be available to the public at each of the probate courts, at the counter, in judge's chambers and in courtrooms.
2. Using the structuring order form (NHJB-2177-P) at structuring conferences will lead to a discussion of the availability of mediation; brochures may be distributed at that time as needed.

SCHEDULING MEDIATION

3. Mediation may be initiated at the structuring conference by using the structuring order form (NHJB-2177-P) or, if a party decides at a later time that they would like to pursue mediation, by a general motion to the court.
4. Each court may want to designate a specific day or days per month for mediation sessions (ex: first Wednesday; second and fourth Thursdays) in order to avoid conflicts with other courts that will be using the same mediator resources. When mediation is needed, the courts will know when the next available mediation date will be, and will have reserved space for the sessions.
5. At the structuring conference, the parties will agree to a mediation date based on ones suggested by the court. At that time, the court will also determine who the parties to the mediation are; those parties will be the only ones to receive notice of the mediation session and will also be expected to attend the mediation session. Parties will be advised at the hearing that they will receive a mediation notice telling them which mediator has been assigned to the case and also confirming the mediation date. The court staff will then select a mediator from the List of Mediators, and call to confirm the mediator's availability for the date selected. This last step may be done after the parties have left.

- a. All mediation sessions will be held in the courthouse unless the parties make other arrangements. Courthouse space may not be available if the parties vary from the court's usual mediation schedule.
 - b. Other people may be invited to attend the mediation by mutual consent of the parties to the mediation identified in #5 above. However, these invitees shall not be parties to any agreement reached during that mediation.
 - c. If a new mediation date is required, parties should contact the mediator and opposing parties to reach agreement about a new mediation date. The mediator will then contact the court. In all cases, the new mediation date must be prior to the trial date. Trial dates will not be continued to accommodate mediation dates.
 - d. If the court receives notification that the mediation will not occur, the court should contact the mediator to make sure they have been notified.
6. In order to have the case data accurately reflect that mediation is scheduled for a case; court staff should enter the mediator as a party (Sustain) or participant (Odyssey) to the case and a hearing for the mediation session. (This information will also be critical for statistical information about the mediation program.)

Sustain Procedure. Since there is no document filed with the court to initiate mediation, use the following codes to set up the scheduled event:

Document type code:	MEDIAT	Description:	Mediation Alternative
Event code:	CON	Description:	Conference
Form type:	946	Description:	Notice of Mediation

Odyssey Procedure. No special document or event code is needed to schedule a mediation session. The mediation would be scheduled in either the session for mediations held at the court or in a session for off-site mediations. A Notice of Mediation can then be printed right from the notices section of Odyssey.

7. Court staff will send a Notice of Mediation (PRD1012) showing the mediator, the mediation date, time and place to all parties identified during the structuring conference.

Note: Courts are not required to send copies of any documents in the probate case file to the mediator. Refer to Administrative Order 11, regarding Mediation, in the "Party Submissions" section.

8. Mediation Reports are due from the mediator immediately after completing the mediation session. Court staff should set a manual time standard for 1 workday after the scheduled mediation session to indicate when the mediation report is due.

MEDIATION OUTCOME

9. When the mediation process has been completed, the mediator will file a mediation report (NHJB-2180-P), which indicates the outcome of the mediation, with the court. Following are the possible outcomes and next steps required.

<u>Outcome</u>	<u>Trial status</u>
Case settled	Trial cancelled
Case settled in part	Trial on reduced issues
Case did not settle	Trial as scheduled

10. After receiving the mediation report (NHJB-2180-P), the mediation outcome should also be docketed. In Odyssey, after docketing the mediation report, add a related event showing the outcome. In Sustain, go to the document entry of Mediation Alternative (code: MEDIAT) and enter one of the document disposition codes listed below.

11.

<u>Sustain Code</u>	<u>Odyssey Code</u>	<u>Description</u>
WITH	WITH	Withdrawn (Use if parties decided not to mediate and will proceed with trial)
SETP	SPMED	Case settled prior to mediation
SETD	SMED	Case settled during mediation
SETS	PSMED	Case partially settled during mediation
SETNO	DNSMED	Case not settled by mediation
ONMED	ONMED	On-going mediation

11. The judge will review and act on the documents filed.
12. If the judge accepts the document filed, the court should send to all parties a letter canceling the trial. If the case is any equity case type, the case can be closed at that time.
13. If the time standard set in #8 of this procedure is listed on the time standard exception report indicating that the mediator has not filed the mediation report, court staff should telephone the mediator to tell him or her that the mediation report must be filed within one day.
14. If the report is not filed within one day, the court will send a Notice of Conference for "Failure to file Mediation Report". Such failure to file may result in the mediator being removed from the list of probate mediators.
15. Mediators should submit their bills to the courts within 30 days of the mediation, using the statement for payment form (NHJB-2154-P). Once approved by the judge, the court should send the original bill to the Administrative Office of the Courts for usual processing and keep a copy for the file. Verify that the date of the mediation and number of hours spent on the mediation sessions are

completed in the "Service" section of the form. No other documents are required for payment.

16. The mediator will distribute mediation questionnaires (AOC-236-003) to all parties to be completed at the end of the mediation session and placed in a sealed addressed envelope. The mediator will give the envelope to court staff prior to leaving the courthouse. Staff will then forward the envelope to the Office of Mediation and Arbitration.
17. The general rule is that documents filed with, or required by, the court will become part of the case file. As a point of clarification for cases mediated, the following guidelines apply:

Docket and put document in case file

- Mediation Report (NHJB-2180-P) – shows general outcome of mediation session.
- Statement for Payment (NHJB-2154-P) – shows amount to be paid mediator for mediation session, and approval by the judge.
- Mediation agreement a/k/a memoranda of understanding a/k/a stipulation agreement (no standard form) – document developed at end of mediation specifying agreement of the parties. Use a document code of STIP for docketing.

DO NOT docket or put document in case file

- Agreement to mediate (NHJB-2179-P) – completed at the beginning of the mediation session. Copies are given to the parties by the mediator but no copy should be filed with the court.
- Case/Mediation Summaries – overview of case sent by parties to mediator prior to mediation. Courts should not even see these documents but if they are sent to the court in error, forward them to the mediator.
- Mediation questionnaires (AOC-236-003) – completed on a voluntary basis by the parties involved in the mediation session. The mediator will instruct the parties to put the questionnaires in a sealed envelope and to give them to the court.

David D. King
Administrative Judge of Probate Court

History

Revised September 25, 2009

Revised July 16, 2008

Revised August 1, 2007

Revised October 31, 2003

Effective September 19 2002

Appendix

Mediation Forms

1. Structuring Order (NHJB-2177-P). At a structuring conference, the judge would determine if mediation would be appropriate and complete item #5 accordingly. The judge and each party's counsel sign the form. A specific date will be selected at this time, but the specific mediator will be confirmed following the conference and named in the Notice of Mediation.
2. Notice of Mediation Session (PRD1012 or 2425 in Odyssey). A Notice of Mediation Session is issued by the court specifying the date and time of mediation, as well as the mediator's name.
3. Agreement to Mediate (NHJB-2179-P). The mediator and the mediation parties use this form at the beginning of the mediation session. Copies are given to the parties, but no copy is filed with the court.
4. Mediation Report (NHJB-2180-P). The Mediator advises the court of the outcome of the mediation session. This form should be filed immediately following the mediation before the parties leave the court building. If the mediation is successful, parties will file a copy of their agreement and further hearings will be cancelled. If mediation is not successful, hearings will occur as originally scheduled.
5. Statement for Payment (NHJB-2154-P). The mediator should file this request for payment within 30 days of providing the authorized service.
6. Mediation Questionnaires (AOC-236-003). Questionnaires will be given parties at the end of the mediation session for immediate completion. They should then be returned in a sealed envelope to court staff.