



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: MOUNTAIN STATE UNIVERSITY LITIGATION Civil Action No. 12-C-9000

THIS DOCUMENT APPLIES TO ALL CASES

ORDER RECONVENING MEDIATION

On December 23, 2013, the Court ordered mediation of the nursing program cases reconvened at a time and place to be determined by the Resolution Judges. *Order Memorializing Rulings During the December 23, 2013 Status Conference* (Transaction ID 54922405). Having conferred with one another, the Resolution Judges **ORDER** mediation of the Mountain State University Litigation nursing program cases shall be reconvened **on March 26, 27, and 28, 2014**, at the **Embassy Suites, 300 Court Street, Charleston, West Virginia 25301**. Mediation will begin at **9:00 a.m. on, March 26, 2014**, and shall continue from day to day thereafter at the sole discretion of the Resolution Judges.

Mediation will not include cases referred to the Mass Litigation Panel that arise from MSU's Certified Nurse Anesthetist Program ("CRNA Program") or that arise from *Dale Burger, et al. v. Mountain State University, Inc., et al.*, Civil Action No. 12-C-1293 KAN, the putative class action arising from MSU's loss of its school-wide accreditation.

PRE-MEDIATION CONFERENCE CALL

1. Liaison Counsel for the parties shall participate in a conference call with the Resolution Judges at **12:00 p.m. on March 12, 2014**, to discuss any outstanding issues related to the mediation.

MEDIATION PARTICIPANTS

2. If a Plaintiff has executed an authorization giving **full authority** to their attorney to act on their behalf, including full authority to negotiate settlement of their case and to respond to

developments during the mediation process, the Plaintiff may, but is not required to attend mediation. If a Plaintiff chooses to attend mediation, the Plaintiff must sign in and produce proof of identification.

3. The following persons are required to attend mediation **in person**:

(a) lead trial counsel for Plaintiffs;

(b) lead trial counsel and the corporate representative for Defendants, both in the underlying action and the declaratory judgment action; and

(c) lead trial counsel and the corporate representative for University of Charleston.

FAILURE OF ANY PERSON REQUIRED TO ATTEND MEDIATION IN PERSON SHALL SUBJECT THAT PERSON TO SANCTIONS.

4. Lead trial counsel and any corporate representative participating in mediation must be familiar with the cases to be mediated and must have **full authority** to act on behalf of the party or parties they represent, including full authority to negotiate a resolution of the cases and to respond to developments during the mediation process.

COUNSEL AND CORPORATE REPRESENTATIVES MUST ARRIVE AT MEDIATION BY NO LATER THAN 9:00 A.M. ON MARCH 26, 2014, TO SIGN IN.

INFORMED CONSENT

5. Lead trial counsel for Plaintiffs must obtain Plaintiffs' informed consent to any settlement reached. If an aggregate settlement is reached and the terms of the aggregate settlement do not determine individual amounts to be distributed to each client, detailed disclosures are required. For example, if a lump sum is offered in an aggregate settlement and the Plaintiffs' attorney is involved in dividing the settlement sum, the Plaintiffs' attorney must, before obtaining the client's consent to the settlement, disclose to each client the number of his or her clients

participating, specifics of each client's claim relevant to the settlement, and the method of dividing the lump sum. In addition, the attorney must disclose prior to obtaining the client's consent, the total attorney fees and costs to be paid, payments to be made other than to clients, to their attorneys and for costs, the method by which the costs are to be apportioned among the clients and ultimately the amount each client receives.

6. If an aggregate settlement is reached, Plaintiffs' counsel will be required to provide to the Presiding Judges documentation showing the client is informed of and agrees to the attorney's method of allocation and distribution of settlement proceeds; documentation showing an accounting of the individual client's settlement allocation and distribution; and documentation showing authorization by the client to enter into the proposed settlement.

CONFIDENTIALITY

7. **The contents of mediation statements and mediation discussions, including any resolution or settlement shall remain confidential; shall not be used in the present litigation or any other litigation, whether presently pending or filed in the future; and shall not be construed as or constitute an admission. Breach of this provision shall subject the violator to sanctions.**

SUPPLEMENTAL MEDIATION STATEMENTS

8. The parties are **ORDERED** to submit supplemental mediation statements to Lead Resolution Judge Booker T. Stephens, Resolution Judge Jay M. Hoke, and Resolution Judge David W. Hummel, Jr by no later than **March 12, 2014**. The supplemental mediation statements shall discuss the position of the party regarding resolution of the Mountain State University Litigation in light of the Court's December 17, 2013, Order granting in part and denying in part the nursing program Plaintiffs' and United Educators' motions for summary judgment.

(Transaction ID 54718844.) Supplemental Mediation Statements shall either be hand delivered or delivered by Federal Express, UPS or any other express mail service with tracking capability.

9. **Mediation statements are confidential.** Mediation statements shall state on their face “CONFIDENTIAL MEDIATION STATEMENT” and shall be placed in envelopes marked “CONFIDENTIAL MEDIATION STATEMENT.” Mediation statements **shall not** be filed with the Clerk’s office, **shall not** be exchanged among the parties or counsel (unless the parties or counsel so desire), **shall not** be provided to the Presiding Judges, and **shall not** become part of the record in this matter. **Mediation statements shall not be electronically filed and served since they are not part of the Court record.**

MEMORIALIZATION OF SETTLEMENT

10. If the parties reach a resolution of their dispute, the Resolution Judges will have a court reporter available to record the terms of any settlement reached by the parties.

EX PARTE CONTACTS

11. Before, during and after the reconvened mediation, the Resolution Judges may find it necessary and useful to communicate with one or more parties outside the presence of the other party or parties.

OBLIGATION OF GOOD FAITH PARTICIPATION

12. The required participants shall attend the entire mediation in person and shall be available and accessible throughout the mediation process. No party may be compelled by this Order, the Mass Litigation Panel, or The Resolution Judges to settle a case involuntarily or against the party’s judgment. However, the Resolution Judges expect the parties’ full and good faith cooperation with the mediation process, and expect the participants to be prepared to participate fully, openly and knowledgably in a mutual effort to examine and resolve issues. The Resolution

Judges encourage all participants to keep an open mind in order to reassess their previous positions and to find creative means for resolving the dispute.

IMPOSITION OF SANCTIONS

13. **All counsel are reminded of their obligations to read and comply with this Order.**

To avoid the imposition of sanctions, counsel shall advise the Resolution Judges immediately of any problems regarding compliance with this Order.

It is so **ORDERED**.

ENTER: February 18, 2014

Booker T. Stephens
Lead Resolution Judge
Mountain State University Litigation