

United States Court of Appeals for the Federal Circuit

Frequently Asked Questions about Volunteer Mediators

1. Is the use of volunteer mediators new?

The Federal Circuit Court of Appeals has always used volunteer mediators in the mediation program. However, in response to declining funding and the sequestration of funds, the court had to eliminate the permanent court staff that previously conducted many of the court's mediation sessions. The mediation program now depends entirely on volunteer mediators.

2. How are cases assigned to volunteer mediators?

Administration of the mediation program is now overseen by the court's Circuit Executive. The Office of General Counsel screens cases by reviewing docketing statements submitted by the parties. The Circuit Executive's office contacts principal counsel in a case selected for mediation and contacts a volunteer mediator to assign the matter. Each volunteer mediator has indicated the number of cases that he or she would accept in a year. After assignment to a mediator, the mediator informs the parties how the matter will proceed and reports to the Circuit Executive at the conclusion of the mediation.

3. How does someone apply to be a volunteer mediator?

An applicant should complete the application provided on the court's mediation website at the forms tab. The application should be forwarded to the Circuit Executive, who provides the application to the Mediation Committee. The Mediation Committee consists of three Federal Circuit judges appointed by the Chief Judge. The Circuit Executive and the Mediation Committee review the applications to determine whether there is a need for a volunteer with the applicant's expertise, and whether the applicant meets the other requirements, including that the applicant "not be in active practice" as defined in the Mediation Guidelines. The applicant is then informed of the results of the application review.

4. Must a magistrate judge interested in becoming a volunteer mediator for the court complete an application?

Because a full-time magistrate judge may not engage in the practice of law (Canon 4A(5) of the Code of Conduct for United States Judges), the court has determined that review by the Mediation Committee is not necessary. So, a full-time magistrate judge is not required to complete an application. Instead, a magistrate judge should be assigned by his or her Chief District Court Judge by letter or email to the Chief Judge of the Federal Circuit Court of Appeals. Magistrate judges serving as volunteer mediators will only be assigned to matters originating in their home district.

A part-time magistrate judge may be permitted to engage in the active practice of law, subject to certain limitations. See "Compliance with the Code of Conduct," following Canon 4 of the Code of Conduct for United States Judges. Any part-time magistrate judge interested in serving as a volunteer mediator should complete an application so that the Mediation Committee can determine whether the part-time magistrate's law practice comports with the limits on "active practice" set out in the Mediation Guidelines.

5. What are some considerations in determining whether an applicant is "in active practice" or not?

The Mediation Guidelines' requirement that the applicant not be "in active practice" means that the applicant is not currently appearing as counsel for a party or amicus in any appeal to the Federal Circuit Court of Appeals, and while a member of the court's mediation panel will not appear as counsel for a party or amicus in any matter that could be appealed to this court. An applicant should indicate on the application form why he or she is not "in active practice."

This requirement, however, does not apply broadly to an applicant's law firm. Thus, an applicant's law firm may be in "active practice" as defined in the guidelines. Of course, if the firm is involved in matters that are already before the court, or could be appealed to this court, then the volunteer mediator would have to consider whether he or she may participate as a mediator in any particular matter. In other words, someone may be a volunteer mediator, but may not serve as a mediator in certain cases that would be subject to other restrictions listed in the court's Mediation Guidelines.

If a volunteer mediator decides to withdraw from the court's roster of volunteer mediators, the individual is not prohibited in general from participating in cases before the court, and there is no waiting period before the individual may resume "active practice." Of course, the individual should not work on any case that might violate a relevant ethics provision if the individual assisted the court as a volunteer on the same or a related case. The court cannot advise whether a particular post-volunteer activity would violate any ethics provisions, and thus the individual must make his or her own determination in that regard.