



## SMALL CLAIMS MEDIATION NEWS

**MADISON COUNTY COURTHOUSE**  
HUNTSVILLE, ALABAMA, AUGUST, 2016

### **ACH Withdrawals**

Disputes about loan agreements that give lenders the right to use Automated Clearing House withdrawals to obtain money from a borrower's bank account are becoming more common in small claims court. This type of lending agreement is offered by local loan companies, internet loan sources, and through the mail in the form of something resembling a credit card or a printed check which can be "activated" or "cashed" by calling a phone number printed on the item.

Many borrowers are unaware that automatic withdrawals can be stopped, and that any loan agreement involving ACH withdrawals must describe how they can be stopped or the agreement is invalid. Borrowers have the right to notify the lender to stop automatic withdrawals and to ask their bank to stop automatic payments. They also have the right to make different payment arrangements with the lender if they cannot keep up with automatic withdrawals.

<http://www.nolo.com/legal-encyclopedia/how-stop-automatic-payments-payday-loan.html>

When we mediate ACH withdrawal cases, we need to find out from the lender if a new payment agreement that involves automatic monthly withdrawals less frequently than once a month would be acceptable to the lender. An alternate option would be an agreement that involves cash payments but not ACH withdrawals.

### **Volunteer Immunity**

Has a mediator ever been sued in Alabama? The answer is "no" according to Judy Keegan, Executive Director of the Alabama Center for Dispute Resolution.

The Basic Mediation Training Course, recommended by ACDR and taught by Troy Smith, has always emphasized professional standards of conduct for mediators, ethics, and compliance with Alabama Civil Court Mediation Rules. From the beginning of their training, Alabama mediators are taught to avoid situations and behaviors that might appear unprofessional and result in a lawsuit. Lawyers who have taken out malpractice insurance can easily add mediation to their policy coverage, but

non-salaried volunteers usually cannot afford malpractice insurance. So, how are they protected from liability?

Mediators who volunteer in Alabama courts are protected by State and Federal Laws and also by Rule 42 of the Alabama Supreme Court's Rules of Judicial Administration.

The Volunteer Service Act, Sect 6-6-336 of the Code of Alabama, provides immunity to volunteers for negligence if the volunteer "was acting in good faith and within the scope of the volunteer's official functions." This law was designed to protect the individual who volunteers, but does not protect the company or organization they serve.

The Federal Volunteer Protection Act was passed by Congress in 1997 to support volunteerism in America by protecting volunteers from the fear of liability. It protects volunteers in non-profits and government entities. The VPA protects these individuals from harm caused by their acts as long as they were acting within the scope of their responsibilities and were properly licensed, certified, or authorized to act.

Rule 42 of the Alabama Supreme Court's Rules of Judicial Administration gives guidelines about establishing a Judicial Volunteer Program in a circuit or county court. Section (E) states that volunteers must receive 20 hours of program-specific training in addition to their 20 hours of Basic Mediation Training. Section (F) requires that Mediators take the "Oath of a Judicial Volunteer" and a written form of the oath must be "signed by the judicial volunteer and verified by the Alabama circuit judge or a district judge in the county in which the volunteer will

serve." These rules for specific training and a verified oath correspond to the requirements of the Federal Volunteer Protection Act that protects volunteers as long as they are properly trained and authorized to act.

One of the court forms received by volunteer mediators during their program-specific training is the Voluntary Agreement to Participate in Mediation form. (This form, along with other court mediation forms, can also be downloaded from the Alabama Center for Dispute Resolution website.) Judy Keegan encourages all court volunteer mediators to use the Voluntary Agreement form because it provides further protection against lawsuits. She also suggests that mediators keep this form once it is signed if the court where they mediate does not scan it into court records. Litigants who sign this form agree not to subpoena or otherwise involve the mediator in any future legal action related to the case, and to keep specific details of the mediation confidential. They also acknowledge that they have been informed of their right to withdraw from mediation and return to court at any time.

Volunteer mediators should remember that "an ounce of prevention is worth a pound of cure" when it comes potential lawsuits, but they can be confident that federal and Alabama laws and judicial rules have been written to encourage volunteerism and protect volunteers.

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