

Chester County Bar Association
Mediation Program

Mediation Agreement

Background

The Chester County Bar Association (“CCBA”) administers a Mediation Program as a service to its members and to the public. The procedure for the Mediation Program requires the parties to complete and sign this Mediation Agreement. If you agree with the provisions of this agreement, please sign below.

Mediation and the Mediator’s Role

1. Mediation is a consensual process in which an impartial person (the “Mediator”) facilitates communication between the conflicted parties (the “Parties”) to aid the Parties in resolving the conflict. The Parties have the opportunity to listen to and talk with each other, share information, consider each other’s perspectives, and make voluntary informed decisions, with the assistance of the Mediator. The Mediator does not have the authority to make decisions or impose a solution on the Parties. The fundamental principle of Mediation is the self-determination of the Parties. The Mediator assists the Parties in reaching a resolution of the dispute but does not guarantee a resolution or take responsibility for the merits of any understandings reached at mediation. The resolution of the issues in dispute primarily rests upon the Parties themselves. Understandings reached during the Mediation by the Parties are always voluntary. This program does not require counsel for all Parties, but Parties are encouraged to consult with an attorney if the dispute involves legal issues. The Mediator, even though trained as a lawyer, does not represent any Party and does not give legal advice. The Mediator will have no liability for any act or omission in connection with the Mediation. CCBA will have no liability, express, implied or otherwise, with respect to the Mediation Program, including the actions or omissions of the Mediator.

Parties’ Agreement as to the Mediator

2. Each of the Parties agrees not to call the Mediator as a witness or as an expert or to produce any records or documents in any pending or subsequent judicial, administrative or arbitration proceeding involving the Parties and relating in any way to the dispute which is the subject of the Mediation. Each of the Parties agrees to disqualify the Mediator as a witness or as an expert in any such proceeding.

3. Each of the Parties agrees not to subpoena the Mediator for any records or documents of any nature; and each of the Parties agrees that, if this occurs, while the Mediator has no duty to object, if the Mediator does object or defends against the subpoena, the Party issuing the subpoena shall be responsible to the Mediator for all costs

and expenses incurred by the Mediator in connection with objecting to and defending against such subpoena, including, without limitation, attorneys' fees.

4. Each of the Parties agrees to also defend and indemnify the Mediator from any subpoenas from outside parties arising out of the understandings reached at Mediation or outside the Mediation. The Parties agree to maintain the confidentiality of the Mediation and not attempt in any proceeding to rely on or introduce discussions regarding settlement, admissions made by any party during the course of the Mediation proceeding, or any matter relating to proposals made and /or views expressed by the Mediator.

5. Each of the Parties agrees that the Mediator shall not have any liability for any act or omission in connection with the Mediation or in connection with any agreement or understanding reached during the Mediation.

Mediation Fees

6. The Parties understand that they are to complete a Party Information Sheet (which is to be obtained from the CCBA), and send this duly executed Mediation Agreement and the completed Party Information Sheet together with a fee of Seven Hundred Fifty Dollars ("Required Package") to the CCBA. The Parties agree that the CCBA may assume that the fee will be shared equally by the Parties unless the Party Information Sheet otherwise specifies to whom the CCBA will pay a refund if a refund of the fee (or any portion of the fee) is to be made by the CCBA.

7. The Parties agree that \$150 of the fee is a non-refundable administration fee for the CCBA. The remainder of the fee is payment for the Mediator's initial review, preparation and up to three hours of mediation. If the parties notify the CCBA prior to the selection of a Mediator that they desire to withdraw the matter from mediation, they shall receive a refund of \$600. If the parties notify the CCBA after selection of a Mediator that they desire to withdraw the matter from mediation, they will receive a refund of \$450; provided, however, that in the event notice of withdrawal is received within five business days prior to the date established for the mediation, then no refund will be provided. Refunds will be made by CCBA to the respective Parties as specified by the Parties in the Party Information Sheet; provided, however, that if unspecified in the Party Information Sheet, the refund will be distributed in equal shares to each of the parties. CCBA will distribute the funds to the Mediator when such funds are no longer subject to refund.

8. The Parties agree that if the Mediation exceeds three hours the Parties are to pay an equal share, or such division of the fee as the Parties and the Mediator otherwise agree, of the Mediator's listed mediation fee which is to be provided by the Mediator to the Parties prior to the commencement of the first Mediation session. The Parties understand and agree that any Party may withdraw from mediation at any time. The Mediator may require that the Parties, in addition to Mediator's listed mediation fee, pay the Mediator for the time incurred in reviewing and preparing for subsequent sessions and for expenses incurred in connection with the Mediation.

Selection of the Mediator

9. Mediators will be chosen by the CCBA by taking the first individual, who has not opted out of the type of case desired to be mediated, on the revolving mediator list maintained by the CCBA (the “Mediator List”) and notifying the Parties of the name of the individual selected. The individual selected will be deemed to be acceptable to the Parties unless, within seven days of the CCBA’s notification, (1) any Party objects to such appointment or (2) all Parties agree to the appointment of another person from the Mediator List. In the former event, CCBA will choose the next name on the Mediator List to serve as Mediator, subject to the procedure set forth in the immediately preceding sentence. In the latter event, the individual selected by the Parties to serve as the Mediator will be deemed acceptable to the Parties.

10. When the proposed mediator is deemed acceptable by the CCBA, the proposed mediator will be provided a copy of the Party Information Sheet and Mediation Agreement. If the proposed mediator believes that he/she has a conflict or cannot be impartial or is unable to handle the mediation for any other reason, the proposed mediator is to contact the CCBA. The Parties acknowledge and agree that the CCBA is to advise the Parties of any potential conflict conveyed to CCBA by the proposed mediator, and the Parties will be deemed to have waived the conflict unless they respond within five (5) days of receiving the notice of potential conflict.

11. If the proposed mediator is unable to handle the mediation or does not believe he or she can be impartial or if there is a conflict that is not waived by one of the parties, the CCBA will choose as the proposed mediator the next individual on the Mediator List, and the above-described process will apply

Mediation Procedure

12. After selection, the Mediator will be responsible for promptly calling the Parties and setting up a pre-mediation conference call. The Mediator may assign the responsibility of coordinating the pre-mediation conference call to one of the Parties, particularly where there are multiple Parties. During the conference call, the Mediator will explain the mediation process, set ground rules, determine what if any information needs to be exchanged by the Parties prior to Mediation, identify the persons with negotiating authority needed to participate in the mediation process, determine the time when the mediation statements (that is, a brief statement of facts and proposals for settlement not exceeding ten pages) are to be delivered to the Mediator by each party, and schedule the first mediation session.

13. The Mediator will endeavor to schedule the first mediation session within thirty

days from the preliminary conference call, or at the earliest date thereafter that the Parties and Mediator are all available.

14. The Mediation will be held at such location as is acceptable to all Parties and to the Mediator. If space at the CCBA is selected as the location, an additional fee of \$150.00-\$200.00 (based on room requirements) for up to three hours will be paid by the parties to the CCBA prior to the first Mediation session.

Confidentiality of Mediation

15. The entire mediation process is a compromise negotiation. All offers, promises, conduct, statements, and other communications, verbal or non-verbal, oral or written, made by, between or among the Parties, their agents, employees, experts, attorneys, the Mediator and CCBA in furtherance of the mediation are confidential. Such offers, promises, conduct, statements and communications will not be disclosed to third parties and are privileged and inadmissible for any purpose, including, without limitation, impeachment under Rule 408 of the Federal Rules of Evidence, Rule 408 of the Pennsylvania Rules of Evidence, and any other applicable federal or state statute, rule or common law provisions. This confidentiality provision applies to all such offers, promises, conduct, statements, and other communications the purpose of which is to further the mediation process (whether occurring during a mediation session or outside a session) and to all writings, including copies, prepared for the purpose of, in the course of, or pursuant to the mediation, including, but not limited to, memoranda, notes, files, records and work product of the Mediator. The foregoing notwithstanding, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or not discoverable as a result of its use in the mediation.

16. Except as explained in this agreement and as otherwise provided by law, the Mediator will not voluntarily disclose any information obtained solely through the mediation process without the Parties' prior consent. Notwithstanding anything to the contrary above, the Mediator is not obligated to hold confidential any allegations of child abuse, threats that bodily injury may be inflicted on a person, communications of a threat that damage may be inflicted on real or personal property, or conduct during a mediation session causing or threatening direct bodily injury to a person.

17. In the event that there are any complaints against the Mediator resulting from this mediation, the Parties agree to waive confidentiality in order for each Party and the Mediator to present and defend against such complaints.

18. If one or more of the Parties is represented by an attorney(s), the Parties agree that the mediator may communicate with such attorney(s).

19. The Parties understand and agree that notwithstanding anything to the contrary above, confidentiality limitations do not extend to mediator's communication with

supervisory or accrediting organizations. The Parties expressly consent and agree to the Mediator's sending one or more reports to the CCBA regarding whether the conflict has resolved, partially resolved, or not resolved.

Agreement to Act in Good Faith

20. The Parties each agree that they will enter into the mediation in good faith. Each will sincerely attempt to resolve the dispute, agree to cooperate with the Mediator, and give serious consideration to all suggestions made in regard to developing a realistic solution to the dispute.

The parties hereto, intending to be legally bound hereby, have signed this Mediation Agreement on the date indicated below in acknowledgement of and agreement with its scope and terms.

PARTIES:

DATE:

