

WOTITZKY MEDIATION CENTER, LLC

Civil Mediation Policies and Procedures

WHO MUST ATTEND: In order to reach final agreement, all parties, counsel, insurance carriers, and any other decision-makers must be present in person (unless otherwise agreed or ordered by the court) with authority to settle the case. **All attendees are asked to clear their calendars for the entire day.**

DISCOVERY/EXPERTS: The exchange of all relevant information by the parties in advance of the mediation session to assist all parties in making realistic, informed settlement decisions during the mediation is encouraged. Although witnesses are not typically a part of the mediation process, if expert opinion is essential to reach a resolution in this matter, please make arrangements through our office to ensure that all participants concur.

PREPARATION: Preparation of all participants is an integral part of reaching resolution. Participants should be prepared to come with an open mind, ready to analyze new information, not simply to argue their position.

SUBMISSIONS: Pre-mediation submissions are an important first step in the mediation process and should not be overlooked or downplayed. Submission of briefs, mediation statements, live pleadings, pending motions, relevant documents, photos or calculations that will help illustrate the facts of the case should be submitted at least one week in advance of the mediation to allow sufficient time for review. Time spent reviewing pre-mediation submissions will count as mediation time for billing purposes.

FEES/PAYMENT: Our policy is payment in full at the conclusion of the mediation session. All fees and costs are the joint and several liabilities of each party and their respective legal counsel. Late fees will be assessed on all unpaid balances at the rate of 1½% per month. The mediator is entitled to full compensation for all time spent on the case, including preparation, telephone time, and travel to mediation sessions (There is no charge for travel for mediations held in Charlotte, Collier, Hendry, Lee, DeSoto, Sarasota, or Manatee County). This includes any time spent (telephonically or otherwise) subsequent to a mediation session in connection with the case. Costs include reimbursement for facility fees and other necessary costs incurred by the mediator in the performance of the mediation.

RATES: See Fee Schedule.

CANCELLATIONS:

If the mediation is cancelled by any party within 7 days of the scheduled mediation date, or where a party or parties fail to appear, will result in a cancellation fee equal to the minimum fee being charged for such mediation. The cancellation fee will be divided equally amongst the parties.

AT THE MEDIATION: The mediation typically begins with a joint session involving all participants. The mediator will begin with a statement describing the mediation process

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and the rules applicable to the mediation. Each party and their attorney will then have the opportunity to present their best case. Experience suggests it's important for the aggrieved parties to feel that the mediator has heard their strongest arguments on the major points involved in the dispute before they can talk meaningfully with the mediator about settlement. It also gives each party a real feel for the strengths of each other's case and showcases each attorney's skill, knowledge, and expertise of the issues in dispute. The goal is not to prove your case, but to clarify your views for decision-makers among the other parties while educating the mediator.

Later in the session, the mediator may use private caucuses with each party. In caucus, the mediator will discuss with each party independently the merits of the issues underlying the dispute and engage in protracted discussions with them. The purpose is twofold: (1) to introduce a sense of reality into the picture; and, (2) to reach a common satisfactory level at which the dispute can feasibly be settled. We will then spend our time working on the terms of the settlement. Once negotiations generate acceptable terms a mediation agreement will be prepared for each party's signature.

CONFIDENTIALITY: Communications made during the mediation are confidential, except where disclosure is required by law.

(a) The entire mediation process is confidential. The parties, their representatives, and the mediator will not disclose any information during the mediation or regarding the mediation, other than that it is in progress, to any persons other than the parties, their representatives, and the mediator, unless otherwise agreed by the parties. All records, reports, or other documents received by a mediator while serving in such capacity shall be confidential. The mediator shall not be compelled to divulge such records in regard to the mediation in any adversary proceeding or judicial forum. The mediator shall be disqualified as a witness, consultant or expert in any pending or future adversary proceeding relating to the subject matter of the mediation.

(b) Unless the parties otherwise agree in writing, the parties shall not seek to discover, rely on, or introduce as evidence in any arbitral, judicial, or other proceeding the following:

(i) conduct occurring or statements made in the mediation by any other party, the mediator, or any expert who participates at the request of the parties in the mediation;

(ii) views expressed or suggestions made by any other party with respect to a possible settlement of the dispute;

(iii) admissions made by any other party in the course of the mediation proceedings;

(iv) proposals made or views expressed by the mediator or any expert who participates at the request of the parties;

(v) the fact that any other party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

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(c) Evidence otherwise discoverable or admissible is not excluded from discovery or admission merely because it has been presented in the mediation.

(d) The mediation shall be treated as a compromise negotiation for purposes of the Federal and State Rules of Evidence; and is subject to the "Mediation Confidentiality and Privilege Act" as set forth in Section 44.401-44.406 F.S.

PUBLICATION: By attending this mediation session, unless we are notified to the contrary, all participants authorize the Mediator to describe this matter to colleagues for educational purposes, and may publish the fact pattern and results of this mediation provided no disclosure is made of the participant's names or any other information which would specifically identify the participants.