

HONORABLE ROBERT MORRILL
Mediation, Arbitration and Private Adjudication

MEDIATION POLICIES

Attendance

In order to increase the likelihood of a final resolution, all parties, attorneys, insurance adjusters, and anyone else with settlement authority should attend the mediation session. Having someone with settlement authority available by telephone decreases the chances of resolution. Accordingly, the other party/ies and I must agree upon absences.

Pre-Mediation Statements

If the parties agree, mediation summaries should be exchanged and sent to me at least five (5) days prior to the mediation. Generally, summaries plus attachments should not exceed ten (10) pages. Longer submissions may result in additional hourly charges. See my explanation of Mediation Fees. Email is preferred but not required.

Preparation

All parties should be fully prepared for the mediation. Accordingly, all relevant information should be exchanged prior to the mediation. The presence of witnesses and experts will only be allowed with the consent of all the parties.

Starting Time

I prefer to begin a mediation session in the morning in order to allow the whole day in the event the time is needed. Arbitrary time limits sometimes result in failure to reach an accord. My calendar will be clear so I can devote the entire day to the mediation. Attendees are encouraged to do likewise.

Conclusion of Mediation

A mediation session terminates either with a written settlement agreement or absent that the consent of all parties and myself. No party or individual may unilaterally terminate a mediation.

Resolution: If the parties wish a settlement agreement or a release to contain particular language or provisions, he or she should draft a version prior to the mediation and bring it. I am not permitted to provide legal services.

Additional Time: If a resolution is not achieved by the conclusion of the mediation session, the parties may schedule additional time.

Release: Unless advised in advance of the mediation, all parties and counsel consent to my including their names, the name of their firms, and the name of their company or other organization to my list of clients. (The details of the mediation and any resolution will remain confidential.)

Confidentiality: By engaging in mediation all parties and their attorneys agree that all statements made during the mediation are confidential and privileged settlement discussions. N.H. R. Ev. 408; F.R.E. 408 (both available on my website, www.bobmorrill.com). “A mediator shall maintain the confidentiality of all information obtained by the mediator in mediation, unless otherwise agreed to by the parties or required by applicable law.” Model Standards of Conduct for Mediators, Standard V, section A. Each attorney and party agrees not to ask the mediator to testify and agrees not to subpoena the mediator and/or his notes or other work product in any future proceeding.

THE MEDIATION PROCESS

Good Faith: Each party agrees that mediation is voluntary and no party is required to accept or agree to any offer at any time. Each party agrees to participate in good faith.

Opening Session: The mediation will usually commence in a session including all attendees. At this opening session, each party will have an opportunity to summarize their position. This is your chance to educate me about the merits of your position and to explain your view to the other attendees.

Private Caucuses: If it seems advantageous and the parties concur, the mediation may continue with everyone present. Or it may be more beneficial to break into private caucuses, where each party can discuss the dispute and negotiations confidentially with counsel and me. In these private sessions, I can assist the parties with evaluating offers, considering other options, and negotiating toward an equitable resolution. At times, it may be helpful for me to meet with counsel or parties, individually or together. This would only be done with the consent of the affected attorneys and parties.

Meals: Coffee and other refreshments are available at my office. Lunch will be brought in so the mediation may continue without interruption.