

# HONORABLE ROBERT MORRILL

## Mediation

### MEDIATION POLICIES

#### **Conflict of Interest**

Having mediated over 1200 cases, having sat as a judge for 21 years, and having been appointed arbitrator for nearly 200 more, my potential conflicts are too innumerable to list for every mediation request. If the conflict is one that I feel uncomfortable with, I will disclose it or decline the assignment. Otherwise, parties and attorneys should assume that conflicts, which in my opinion will not affect my impartiality or performance, exist in every case. However, a list of potential conflicts will be provided upon request.

#### **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**

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.

In New Hampshire the practice is to exchange mediation summaries, which I endorse. If counsel wish to submit their mediation summary confidentially, they should notify opposing counsel that they will not be sharing their mediation statement. If counsel has confidential information, they may file an additional, confidential mediation summary for my eyes only, call me to discuss, or inform me right before or during mediation.

#### **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 me. 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.

**Confidentiality:** By engaging in mediation all participants agree that all statements, documents, and information shared during a mediation session are confidential and inadmissible. N.H. Superior Ct. Rule 32(d)(1) and (3), N.H. Rule of Evidence 408 and Federal Rule of Evidence 408. (available on my website, [www.bobmorrill.com](http://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. All participants agree not to ask the mediator to testify and agree not to subpoena the mediator and/or his notes or other work product in any future proceeding.

**Recording:** Mediations may not be recorded. N.H. Superior Ct. Rule 32(d)(2). All participants agree that they will not electronically record any part of a mediation. I do not record the proceedings of any mediation.

## 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 the opposing party and me about the merits and weaknesses of your position.

**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 provided so the mediation may continue without interruption.