



Mediation Policies and Agreements

Policy:

The process of mediation seems to work best when all parties have shared in the payment of the mediation fee. The policy of ADR Of counsel, LLC is to provide mediation services at a reasonable cost. In fact, the cost to each party is usually less than each party would spend on costs and attorney's fees for a deposition for the corresponding amount of time.

Description of Services and Expenses:

The mediation fee includes:

- Scheduling and administering the session;
- Any pre-mediation attorney conferences;
- Conducting mediation session; and
- Conducting the post-session telephone facilitation, correspondence and preparing settlement proposals as needed.
- *Your mediator will set aside all of his/her other practice needs during the mediation time and will focus entirely on your case. Your mediator will accept no phone calls except for emergencies.*

A typical full day mediation begins at 9:30 a.m., includes a working lunch (lunch is provided if mediation is in-person), and continues until completed. While most sessions conclude by about 5:30 p.m., a session may extend into the evening.

A typical half-day mediation begins at 9:00 a.m. and continues until 12:00 p.m. or begins at 1:00 p.m. and continues until 4:00 p.m. A half-day session may extend briefly beyond the scheduled time or be continued at a later date as the schedules of the parties and mediator allow.

Evenings and Weekends are available for mediation if requested by the parties or required by scheduling limitations.

Basis for Determination of Fee:

Fees are charged on the basis of a flat fee, per party, for each mediation day and are payable in advance. You may pay the mediation fee by check, Zelle, cash, credit card, ACH/Wire, or money order. The fee varies with the number of parties, the subject matter, and the amount in controversy (the aggregate amount of all claims for affirmative relief, including attorney's fees if a basis for a separate award exists, but excluding exemplary damages or statutory penalties). For purposes of dividing the mediation fee, all litigants in the case represented by the same attorney or law firm are defined as one "party" since their

interests are aligned. In those cases where the actual parties on one side significantly outnumber the actual parties on the other side, division of the fee in a different manner may be more appropriate and equitable and will be so arranged. Generally, the fee is slightly higher per party the more that is at stake.

Cancellation Charge:

We do not charge a cancellation fee but would request as much notice as possible if there is any need to cancel or reschedule.

Agreed Terms of Mediation:

If you mediate with an ADR Of Counsel, LLC Panel Mediator, these terms apply to the mediation and participation in the mediation constitutes your agreement to these terms.

Process. The Panel Mediator will begin engaging in dispute resolution promptly after being retained:

- A formal mediation date and time will be arranged, but the mediator will try to gather information to assist in resolution and/or engage the parties before the mediation date to narrow the dispute to the point where the first hours of mediation are not spent on unproductive positional bargaining.
- Your mediator may ask each side to exchange a narrow set of documents or information if the other side *needs* the documents or information to make an informed assessment of its case.
- Your mediator will work with each side – separately and confidentially – to develop a realistic assessment of the case based on each counsel’s judgment as to the likelihood of prevailing in the case, the likely range of damages, and the future expenses to take the case through trial.
- Your mediator will then work with each side through shuttle diplomacy to exchange offers based on realistic case assessment and principled negotiation, as opposed to game-playing positional bargaining.
- The idea is that you make the best use of time at the scheduled formal mediation. Your mediator wants to make certain that the mediation is focused and productive as opposed to a mediation where the parties don’t start getting serious until an hour before the scheduled time is to end.

Good faith. The process works very well if both parties commit to proceed in good faith with civility, promptness through each step of the process, and a commitment to seek resolution based on realistic assessments of the case.

Voluntary. Dispute resolution is a voluntary process. But we ask that the parties rely upon the mediator to decide if impasse has been reached. Due to the confidentiality of the process, the parties will not know all that is going on in the other room – only the mediator will know. The parties may be much closer to resolution than they think. A party deciding to quit is non-productive and could end up having wasted everyone’s time, efforts, and money in the process.

Decision makers. Each party agrees they will have in actual attendance at the mediation the person(s) with the authority to resolve this dispute. If additional authority is required, the parties agree they will have that additional authority available by a call to additional decision makers, if at all possible.

Confidentiality. In addition to existing rules and statutes applying to mediation, the parties agree to the following confidentiality provisions:

- a. If a party shows the mediator something that is not to be shared with another party, please indicate that to the mediator. Even if the party does not express that, the common practice is to use common sense and to share only what is apparent should be shared to move the process toward resolution.
- b. Despite confidentiality, if a party shares something in the mediation, that evidence or information that is otherwise admissible or discoverable doesn’t become inadmissible or not discoverable solely because it was disclosed during the process.
- c. When the dispute is settled in mediation, a “Mediated Settlement Agreement” signed by the parties and/or counsel may be used in a legal proceeding to prove the settlement.
- d. There is only one exception to confidentiality. If your mediator learns of child abuse, a real threat to hurt someone physically, or a plan to commit or conceal a crime, your mediator is not obligated to treat that information as confidential.
- e. The conduct of any party and all communications and exchanges that are part of the mediation process, whether oral or written, between or among the parties, including those with the mediator, constitute compromise negotiations under Texas Rule of Civil Evidence 408 and Federal Rule of Evidence 408 and their other state counterparts; and
- f. Communications and any written materials, tangible items, and other information used in the mediation process shall not be discoverable or admissible in any proceeding relating to the dispute, or in any other proceeding between or among any parties to the dispute, unless the communications or materials would be admissible or discoverable independently of the mediation process. This restriction does not apply to the admissibility of a full or partial settlement agreement entered into as

part of the mediation process, which would be governed only by the confidentiality or other restrictions, if any, in that agreement.

You Cannot and Will not Call you Panel Mediator or any representative of ADR Of Counsel, LLC as a witness or name either as a party. Neither is a is a necessary party to any legal proceeding related to this process. Neither is liable to any party for anything they do or don't do in connection with this process.

The Panel Mediator is not a Lawyer for any Party in the Mediation. The mediator and ADR OF Counsel, LLC are neutral and are not lawyers for either client/party. You should not rely on anything the mediator may say as legal advice.