

## MEDIATION DETAILS

**Pre-Mediation Submissions** - Please take the time to prepare a **confidential** issue paper for me and send it to me as soon as possible. It should be for my eyes only so that you can frankly and candidly share with me, in confidence, what your case is about and the critical issues from your perspective. If time does not permit the preparation of a formal issue paper, please provide me with at least some of the key documents and/or pleadings/motions so I can get a better understanding of the matters in dispute.

**Opening Sessions** - I am not a big fan of opening presentations. That being said, I will not stop any party from doing an opening presentation.

**Attire.** Business casual.

**Communications.** Please feel free to call, write or e-mail me with any questions, comments, concerns, etc. prior to the mediation. If there is something important that I need to know about your case, it is better to know it before the day of the mediation.

## MEDIATION AGREEMENT

In advance of a mediation beginning, the parties and/or their counsel will be required to sign a Mediation Agreement that will include, among other things, the following terms:

1. James H. ("Hamp") Moody, III, having been requested or appointed to mediate this case, is authorized to conduct the mediation.
2. In all respects, the mediation shall be governed by and conducted in accordance with (a) this Agreement, (b) TEX. CIV. PRAC. & REM. CODE §154.001, et seq, and (c) the "Rules for Mediation" outlined below.
3. The parties acknowledge that the mediator shall be serving as a neutral intermediary only and will act neither as an attorney nor advocate for any party, nor render any legal advice or legal services to any of the parties.
4. The mediator has the discretion to terminate the mediation at any time if he believes that an impasse has been reached, or that the mediation should not be continued for any other reason. Upon the conclusion of the mediation, the Court, if there is one, will be advised by the mediator only whether the case was settled.

## RULES FOR MEDIATION

**Definition of Mediation** - Mediation is a process by which an impartial person, the mediator, facilitates communication between the parties to promote reconciliation, settlement or understanding among them. The mediator may suggest ways of resolving the dispute, but may not impose his own judgment on the issues for that of the parties.

**Conditions Precedent to Serving as a Mediator** - The mediator shall not serve as a mediator in any dispute in which he has any financial or personal interest in the result of the mediation.

Prior to accepting an appointment, the mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt meeting with the parties.

**Authority of Mediator** - The mediator does not have the authority to decide any issue for the parties, but will attempt to facilitate a voluntary resolution of the dispute by the parties. The mediator is authorized to conduct joint and separate meetings with the parties and to offer suggestions to assist the parties in reaching a settlement.

**Parties Responsible for Negotiating Their Own Settlement** - The parties understand that the mediator will not and cannot impose a settlement in their case. The mediator, as an advocate for settlement, will use every effort to facilitate the negotiations of the parties. The mediator does not warrant or represent that settlement will result from the mediation process.

**Authority of Representatives** - Party representatives must have authority to settle, and except in the case of a Zoom mediation, all persons necessary to the decision to settle shall be present in person. The names and addresses of such persons shall be communicated in writing to all parties and the mediator.

**Time and Place of Mediation** - The mediator shall fix the time of each mediation session. The mediation shall be held online or at any convenient location agreeable to the mediator and the parties, as the mediator shall determine.

**Privacy** - Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.

**Confidentiality** - Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports or other documents received by the mediator while serving in that capacity shall be confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.

The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding: A) Views expressed or suggestions made by another party with respect to a possible settlement of the dispute; B) Admissions made by another party in the course of the mediation proceedings; C) Proposals made or views expressed by the mediator; or D) The fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

Any party that violates this order shall pay all reasonable fees and expenses of the mediator and other parties, including reasonable attorneys' fees, incurred in opposing the efforts to compel testimony or records from the mediator.

**No Stenographic Record** - There shall be no stenographic record of the mediation process and no person shall tape record any portion of the mediation session.

**No Service of Process at or Near the Site of the Mediation Session** - No subpoenas, summons, complaints, citations, writs or other process may be served upon any person at or near the site of any mediation session upon any person entering, attending or leaving the session.

**Termination of Mediation** - The mediation shall be terminated: A) By the execution of a settlement agreement by the parties; B) By declaration of the mediator to the effect that further

efforts at mediation are no longer worthwhile; or C) After the completion of one full mediation session, by a written declaration of a party or parties to the effect that the mediation proceedings are terminated.

**Settlement of Fewer Than all Issues or by Fewer Than all Parties.** While the goal of mediation is global resolution, all parties should be aware that a multi-party mediation may involve settlements of fewer than all parties or issues. All parties should be aware that the mediator may be asked to become involved in “settling around” one or more parties, or in facilitating agreements between multiple parties to the exclusion of others. The parties also should be aware that the mediator’s obligations of confidentiality may preclude the mediator from advising a party that such discussions are ongoing.

**Interpretation and Application of Rules** - The mediator shall interpret and apply these rules.