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A Client's Guide to Mediation

1. **WHAT IS MEDIATION?** Mediation is a process in which a neutral third party, the mediator, attempts to facilitate a discussion that will lead to a resolution of a dispute.
2. **WHAT IS THE PURPOSE OF MEDIATION?** Mediation is designed to provide you, the party, with every opportunity to consensually and voluntarily resolve your dispute in a timely and cost effective manner.
3. **WHAT ARE THE ADVANTAGES OF MEDIATION?** Mediation minimizes costs, avoids delay, and also avoids risk. No one knows with certainty what will occur at trial. Moreover, mediations permit the parties to participate directly in forging a consensual agreement. Parties are more in control. Amiable agreements leave open the possibility for future relationships. Early resolution of disputes allows the parties to avoid the rigors of discovery and trial.
4. **IS THE MEDIATOR LIKE A JUDGE?** No. A mediator does not declare a winner or loser, make findings of fact, or rule on issues of law.
5. **MAY THE MEDIATOR FORCE THE PARTIES TO SETTLE?** No. It is the parties who decide to settle their dispute and a mediator must not coerce the parties to reach a settlement.
6. **HOW LONG DOES THE MEDIATION PROCESS TAKE?** The length of mediation depends upon the nature and complexity of the case. Most mediations are completed in eight hours or less. Very complex cases may take more than one day to mediate.
7. **DO THE PARTIES DIRECTLY PARTICIPATE IN THE MEDIATION PROCESS?** Absolutely. The parties own the dispute and are active participants in all aspects of the mediation process. The parties participate and speak in joint sessions and in private caucuses.
8. **DO LAWYERS PARTICIPATE IN THE MEDIATION PROCESS?** Yes. The lawyers prepare their clients for the mediation, prepare a confidential pre-mediation statement of the dispute for the mediator, make an opening statement, and assist their clients with negotiations. The lawyers do not make evidentiary objections like they do at trial, and adapt their trial skills to the more conciliatory theme of the mediation process.
9. **HOW DOES THE MEDIATION UNFOLD?** Every mediation is different and the process is flexible. Good mediators use the best format for a particular case. Generally speaking, the phases of a mediation are as follows: the mediator's introduction; opening statements in joint session with counsel and the parties; private sessions (called the separate caucus); additional

joint sessions (if necessary); and drafting a memorandum of agreement if settlement is reached.

10. WHAT IS THE SEPARATE CAUCUS? The separate caucus is an opportunity for the mediator to meet privately with each side. The communications in such private meetings are confidential. Unless the mediator is authorized to disclose something to a party in another room, the mediator discloses nothing. The initial caucus is case evaluation in nature. The mediator, as a neutral with no interest in the outcome of the dispute, plays devil's advocate and asks the parties to identify both the strengths and weaknesses of their case.

11. WHO SHOULD ATTEND THE MEDIATION? The parties and lawyers attend. Further, should insurance be involved, a representative fully authorized to resolve the dispute should attend. In cases in which structured settlements are involved, a structure specialist should attend. In cases involving governmental entities, representatives whose recommendations will be strongly considered by the governing body should attend. In medical negligence cases, the physician should attend. Any necessary decision-maker should attend. Should there be any questions regarding who should attend, counsel should arrange for a conference call with the mediator before the session.

12. HOW SHOULD I DRESS FOR MEDIATION? Dress comfortably. Mediation is an informal proceeding and the parties should feel as comfortable as possible.

13. WILL THE MEDIATOR EVER BE A WITNESS? No. The law provides for confidentiality. Should the matter not resolve, the mediator will not testify in court.

14. DOES THE MEDIATOR EVER TELL THE COURT WHAT OCCURRED AT THE MEDIATION? No. The mediator may submit a report to the Court that the mediation took place and that the matter did or did not settle. Otherwise, the mediator discloses nothing else to the court.

15. DOES MEDIATION WORK? General statistics indicate that mediation resolves over 70 percent of all disputes. Private mediators report successful resolutions in over 80 percent of all disputes.

16. WHAT IF THE MATTER DOES NOT SETTLE? The parties, by virtue of their participation in mediation, do not lose their right to trial. Many cases that do not settle at the mediation session itself, do settle prior to trial. At the very least, mediation often narrows the issues and thereby streamlines the trial.

17. WHAT DO PARTICIPANTS THINK ABOUT MEDIATION? Public and private surveys demonstrate that consumer satisfaction with the mediation process is extremely high.