

**DAUPHIN COUNTY BAR ASSOCIATION  
CIVIL DISPUTE RESOLUTION PROGRAM  
AGREEMENT TO MEDIATE**

Pro Bono DCBA Civil Dispute Resolution Program

**INTRODUCTION**

The Dauphin County Bar Association is pleased to sponsor and administer a Civil Dispute Resolution Program as a public service to the community. The goal of the program is to provide an opportunity for an expeditious resolution of disputes that are, or could be, pending as civil actions in the Dauphin County Court of Common Pleas. This includes all civil actions.

**Role of the Bar Association**

The Dauphin County Bar Association sponsors the Civil Dispute Resolution Program. The role of the bar association in the Civil Dispute Resolution Program, however, is merely one of administrating the request for mediators. The undersigned parties, by voluntarily participating in the program, accept and recognize that:

**Neither the Dauphin County Bar Association nor the mediator(s) selected by the parties shall have any liability, expressed, implied or otherwise, with respect to any aspect of the Civil Dispute Resolution Program.**

**Definition of Mediation**

Mediation is typically a settlement discussion. Negotiations are assisted by a neutral, impartial third party who promotes or facilitates an understanding among the parties of their common interests in reconciling or settling the matter. The mediator does not make any decision for the parties, except by special agreement. The mediator holds in confidence all information received during a mediation. Although the mediator assigned will be a member of the Dauphin County Bar Association and a practicing attorney, no attorney/client privilege attaches to the communication between the parties and the mediator. No attorney/client relationship is established. The parties may have consulted with their personal attorney as part of the mediation process, and it is recommended that the parties consider having their respective attorney and/or insurance adjustor present at the mediation. THE MEDIATOR WILL NOT BE SERVING AS AN ATTORNEY FOR ANY PARTY.

**Exchange of Documents**

No later than 10 days prior to the date of the mediation, the parties shall exchange among themselves and with the mediator a short mediation statement of the facts of the case, as well as any issues of liability and damages deemed relevant by the parties.

**Confidentiality**

All statements made and documents presented during the course of the mediation are privileged settlement discussions and documents, are made without prejudice to any party's legal position, and are non-discoverable for any purpose in any legal proceeding, unless otherwise provided for by law.

Any information disclosed by any party, or by a representative of a party, or by a witness on behalf of a party, to the mediator is confidential, unless otherwise provided by law. No privilege shall be affected by any such disclosure. The mediator shall not be an advocate for any party.

Disclosure of any records, reports or other documents received by the mediator cannot be compelled. The mediator shall not be compelled to disclose or to testify in any proceeding as to information disclosed or representations made in the course of the mediation or communicated to the mediator in confidence, unless otherwise provided by law.

The parties agree that no party to this mediation will attempt to subpoena the mediator for testimony, deposition or discovery related to any documents or discussions arising during the time of the mediation. If a party breaches this agreement and attempts to subpoena the mediator, that party, will be liable for and shall indemnify the mediator for any costs, expenses, liabilities and/or fees, including attorneys' fees, that might be incurred by the mediator in objecting to the subpoena. The parties agree to maintain the confidentiality of the mediation and shall not in any proceeding attempt to rely on or introduce discussions regarding settlement, admissions made by any party during the course of the mediation proceedings, or any matter relating to proposals made and/or views expressed by the mediator.

**Conclusion of Mediation**

If a settlement is facilitated between the parties, the mediation shall be concluded by the execution of a settlement agreement to be drafted by the parties themselves at the conclusion of the mediation. The parties, by special agreement have also entered into the following understandings regarding the conduct of the mediation:

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**Fees and Expenses of the Mediator**

The mediator has agreed to provide this mediation at no charge. However, unless otherwise agreed to by the parties and the mediator, any expenses of the mediation incurred by the mediator, such as travel outside of Dauphin County, long distance telephone calls, and/or photocopies, shall be borne equally by the parties.

The undersigned parties, intending to be legally bound, do hereby execute this document in acknowledgment and agreement with the terms and scope of the Mediation set forth above.

Date: \_\_\_\_\_

Parties:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

## **GOOD FAITH FACTORS FOR MEDIATION SESSIONS**

GOOD FAITH INCLUDES, AMONG OTHER THINGS:

1. GIVING THE PARTICIPANTS, PRIOR TO THE FIRST SESSION, THE INFORMATION THEY NEED TO KNOW IN ORDER TO RESOLVE THE CASE. (The Alternative Dispute Resolution Committee believes that formal discovery procedures are not appropriate in the informal mediation process.)

The Committee urges the participants to comply with Rule 5 of the Pennsylvania Bar Association Working Rules for Professionalism: “. . . Be mindful that . . . discovery processes . . . cost time and money. They should not be heedlessly used. If an adversary is entitled to something, provide it without unnecessary formalities.”

2. BEING FULLY PREPARED WITH FULL KNOWLEDGE OF THE CASE AND WITH POSSIBLE SOLUTIONS FOR RESOLVING THE CASE.

3. BEING WILLING TO CREATE OPTIONS TO RESOLVE A MATTER, CONSIDERING HOW THE SOLUTION MUST ADDRESS THE INTERESTS OF ALL THE PARTIES, AS OPPOSED TO TAKING AN UNYIELDING POSITION.

4. HAVING THE PERSON WITH THE AUTHORITY TO APPROVE THE TERMS FOR RESOLUTION ATTEND THE MEDIATION SESSION, OR, AT LEAST, BE AVAILABLE TO CONFER WITH THE PARTY’S REPRESENTATIVE DURING THE MEDIATION REGARDING APPROVAL OF TERMS.

5. DEMONSTRATING A WILLINGNESS TO LISTEN AND TO UNDERSTAND THE PERSPECTIVE OF THE OTHER PARTIES.

**REQUEST FOR MEDIATION**  
**DAUPHIN COUNTY BAR ASSOCIATION**  
**CIVIL DISPUTE RESOLUTION PROGRAM**

Date:

1. Party submitting request for mediation.

Name:

Address:

Phone Number:

Plaintiff                       Defendant

Name of legal counsel:

Firm name of legal counsel:

Address:

Telephone Number:

Email:

2. Other parties.

Name:

Address:

Phone Number:

Plaintiff                       Defendant

Name of legal counsel:

Firm name of legal counsel:

Address:

Telephone Number:

Email:

3. Brief description of the claim and amount of damages at issue.

4. Have the formal court pleadings been filed in this case?

Yes  No

If so, please set forth any discovery deadlines, arbitration dates, and/or trial dates currently pending, as well as the Court docket number and Judge assigned.

5. The mediation may be concluded by the drafting by the parties of a binding written agreement settling the dispute. Please state below who will be present at the mediation with authority to enter into a binding written agreement, and identify that person's capacity and authority.

6. I/We represent that I/we view the mediation as a potential aid to the resolution of the dispute and I/we will act in good faith throughout the mediation process including my/our compliance with the "Good Faith Factors for Mediation Session," attached to this request.

Date: \_\_\_\_\_

Parties:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name