

**CONTRA COSTA COUNTY BAR ASSOCIATION
PREPARING FOR MEDIATION -
GUIDELINES FOR PARTIES IN FEE MEDIATION PROCEEDINGS**

WHAT IS MEDIATION?

Mediation of a fee dispute is a voluntary, consensual process where the client and attorney, with the assistance of a trained, neutral mediator, try to resolve their dispute together.

INTENT

The Bar Association wishes to address our conviction that mediation is a serious process, and we hope that the decision you have made to mediate has not been entered into lightly. It is important to remember that the mediators are volunteering their time for the first four hours of the session, so you should come prepared to investigate options and explore creative solutions in negotiating a settlement which fits your needs. The client and responsible attorney attending the session should have knowledge of the events in contention and the authority to authorize a financial resolution.

To reiterate, participation in mediation is voluntary. No party to the fee dispute is required to mediate and any party may terminate the mediation at any time, if they think the process is unfruitful. Any dispute not resolved through mediation will proceed to arbitration.

FEES

The filing fee paid to begin fee arbitration through the CCCBA includes one mediation session of up to four hours in length with no additional payment to the mediator. Upon agreement of the parties and consent of the mediator, after the first four hours, the session may be prolonged or additional sessions may be scheduled with mediator compensation set at an amount agreed upon by the parties and the mediator, but shall be no more than \$150 per hour. Payment should be paid directly to the mediator by the parties at the time of the mediation.

MEDIATOR'S ROLE

The mediator is a neutral facilitator whose objective is to assist each of you in exploring your own interests, understanding the perspective of the other, and, if possible, reaching an agreement that you consider satisfactory. The mediator should not attempt to influence the outcome of this matter. He or she is not an advocate for any party and will not attempt to protect the legal rights of either party.

In many cases, differences of opinions, desires and sometimes culture, interfere with direct negotiations; anger and distrust may hamper settlement. Additionally, direct bargaining between parties and their attorneys can be very argumentative with each side trying to achieve the best possible outcome for themselves. A mediator will discourage unnecessary or unproductive talk and will encourage meaningful discussions, and will guide the discussions in the direction of a settlement agreeable to all parties.

HOW DOES A MEDIATION SESSION WORK?

Beginning with a joint session, the mediator will explain his or her role, the importance of confidentiality and outline the proceedings including order of presentation and the use of private meetings. During this full session, each party will have an opportunity to make an opening statement. In some cases, parties may use this opportunity to exchange documents. The mediator will continue with a joint session as long as there appears to be a meaningful exchange of information. When the mediator determines that a joint session is no longer worthwhile, the mediator will separate the parties and begin the private meetings. A mediator tries to obtain an open discussion of the issues and desires of each party. Gaining certain knowledge or facts from these meetings, a mediator can carefully use the information learned from each side to:

- Reduce the obstacles between the parties and help them have a meaningful talk regarding the issues;
- Open talks into areas not previously considered or partially developed;
- Present positions or proposals in understandable terms;
- Investigate and uncover additional facts and the real interests of the parties;
- Help each party better understand how the other party views a particular issue without breaking confidences;
- Identify what is important and what is unrelated;
- Investigate alternatives and search for solutions;
- Structure a settlement to resolve current problems and meet future needs of the parties, if appropriate.

The mediator will continue to shuttle between the parties until an understanding is reached. If the dispute is resolved by the parties, the points of the agreement will be written down at the session and signed by all parties.

HOW DO I PREPARE?

It is strongly recommended that all parties send a brief summary of the dispute to the mediator at least five days prior to the mediation. Please limit the summary to three pages. Copies of the summary should also be sent to the other parties at the same time.

Prior to the first mediation session, the attorney will provide copies of the relevant detailed billing records to the mediator and the other party.

The parties may agree to exchange other documents containing information relevant to the dispute. It is recommended that this information be exchanged at least five days before the mediation session.

Each party should come prepared to engage in good faith discussions regarding the dispute. If there are any outstanding issues that need to be resolved for any party to participate in good faith, please identify those in advance by reference in your brief summary.

SETTLEMENT

The goal of mediation is to reach a settlement agreement that is final and binding. Therefore, if the dispute is resolved by the parties, the points of agreement shall be reduced to writing at the session and it shall be signed by the responsible attorney and the client. In the event the parties agree that the client shall receive a refund of previously paid fees and/or costs, the mediated agreement shall include the name of the individual attorney(s) responsible for making the refund.

A duplicate original of the signed agreement shall be distributed to each party who signed it and to the CCCBA.

With the consent of all parties, the parties may prepare a more formal agreement which shall become effective upon signature of all parties. The mediator shall not draft any release, or provide legal advice to any party concerning the terms of the agreement.

If an agreement has been reached, the CCCBA shall provide the parties a copy of the State Bar approved "Notice of Rights After Mediation".

NON-SETTLEMENT

If the parties are unable to reach a resolution of the fee dispute through mediation, the mediator shall immediately notify the CCCBA and the matter shall proceed to arbitration under the local rules of procedure.

Except as otherwise set forth in the rules, all communications, negotiations, or settlement discussions by and between participants and/or mediators shall remain confidential and shall not be used in any subsequent arbitration or other proceeding.

SUMMARY

The mediation process exists solely to assist the parties in resolving fee disputes. This requires both parties to come prepared to listen to the other side and to participate in good faith in the process.

Please refer to the "Rules of Procedure for the Hearing of Fee Arbitration & Mediations by the Contra Costa County Bar Association" for more detailed information regarding this program.

REMINDER

MEDIATION IS A SERIOUS PROCESS. TO INSURE THE MOST EFFICIENT USE OF EVERYONE'S TIME, PLEASE COME PREPARED TO EARNESTLY DISCUSS SETTLEMENT.

CHECKLIST

- The responsible attorney must attend the mediation session. (At the discretion of the mediator, any mediation session may be conducted by telephone.)
- The attending parties must have the authority to authorize a financial settlement.
- Send your summary to the mediator and the other party at least five days prior to the mediation.
- Cooperate with the mediator to schedule a date for the session by responding immediately to requests for your availability.
- Any dispute not resolved through mediation will proceed to arbitration where the third party arbitrator issues an award making his or her own determination regarding your fee dispute.

Just remember, through mediation you will be participating in molding a solution which allows you control over the settlement. In this way the Contra Costa County Bar Association thinks mediation serves your best interest.