

Henry Mediation, P.A.

Memo to Mediation Participants Regarding Mediation Process

Your case has been or will be scheduled for mediation. Mediation is an informal settlement conference, and the judge normally requires that mediation be completed before the case goes to trial. The mediation is conducted by a neutral mediator (normally selected by the attorneys) who acts as a facilitator. The mediator is not a judicial officer. Unless excused, all parties and their attorneys are expected to attend. If you are an insured defendant, your liability insurance company claims representative will be in attendance. The purpose of mediation is simply to bring the key decision-makers together in an effort to reach a settlement. There will be no judge or jury, no factual determination or formal hearing. This is an informal settlement conference normally conducted via Zoom or at the offices of an attorney or mediator. The mediator's fee is normally split and shared equally by all parties or insurers in attendance. The mediator cannot provide legal advice and serves as a neutral middle-man in an effort to reach a settlement.

At the beginning the mediator will explain the process and the confidentiality rules. Even in what client's think are "simple" cases, a mediation may take several hours to complete. This is because the resolution of a lawsuit is an unusual event and involves difficult decisions that are not always made quickly. Typically, at the discretion of the parties and mediator, there are initial presentations by the attorneys which normally last only a few minutes, the parties share some information and then they are separated, and private meetings (called caucuses) are held with the mediator. The mediator attempts to determine common points of agreement, a settlement framework, possible settlement scenarios, and shuttles between the parties exchanging information and offers as they attempt to negotiate a settlement.

Any offers made and communications shared during mediation are confidential. With few exceptions, statements made in mediation are not admissible in court. The judge will only be told if the case settles or if an impasse is reached, nothing further. You will not be required to say anything, but mediators typically seek to engage the litigants in discussion during the private caucus. Your lawyer will speak for you and be with you at all times. There is no questioning under oath or any other formality. If a settlement agreement is reached it will be signed by the parties and their attorneys. A mediated settlement agreement is enforced like any other contract.

You should expect to spend all day at the mediation. Please wear clothing that would be appropriate for court unless your attorney tells you differently. Women should avoid excessive jewelry, high heels, and excessive cologne or perfume. If you have unusual or special health, dietary, or personal needs that you anticipate may arise during the mediation session, please contact your lawyer in advance. If you intend to bring someone such as a family member or friend, please let your lawyer know in advance. Mediation works best when the parties devote the time and attention needed to the process and work in good faith to reach an agreement. Patience is required to reach an agreement.

The mediation will continue until the case settles or until the mediator declares an impasse. The mediation can be suspended and resumed if the parties and mediator deem it advisable.

If you are being sent on behalf of a corporation or other business entity, it is important that you have full and complete authority to resolve all of the issues in the lawsuit. If you are required to consult with someone else in your company before making a deal, be sure to have that individual available by telephone. It is strongly recommended that the person attending the mediation have full authority to reach an agreement without further consultation. Mediations may run late in the day. Due to

time-zone differences, it may be impossible to reach individuals in the company. For this reason, the mediation rules and our firm policy requires that key decision makers be present. Mediation works best when key decision-makers are present and have an opportunity to explore possible outcomes with the mediator.

The number one rule is the most difficult to follow. Be patient. Even experienced litigants familiar with this process often become annoyed or discouraged because of the time involved, the appearance that nothing is happening, or are alarmed at the apparent unwillingness of the other side to negotiate. There are a number of personal, financial, emotional, and legal issues at play which often take time to resolve in the context of mediation. Though commonly said, it is imperative that mediation participants be open minded and listen to the suggestions and concerns voiced by the mediator and the other side. Mediation settlements may take a variety of forms and can include terms that are not part of the judicial process. Be open to creative solutions for resolving your case. Ideas which at first blush seem unreasonable may nonetheless be the basis for arriving at a solution. Ultimately you may decide that settlement is not in your best interest, but you should give the process a meaningful chance. Participation in mediation does not suggest weakness in your case. Most courts require mediation before any trial.

Many times, settlements are reached late in the day after hours of no apparent movement by either side. There may be issues internal to the opposing party beyond your control that take time to resolve or which prior to the mediation were not considered. It is no easy thing to decide in one day to terminate litigation that may have been on-going for months or years. Hence, the need for patience as parties modify their positions or reevaluate their objectives. The mediator's behavior is calculated to achieve one goal - settlement. The Mediator has no relationship to the attorneys or parties and must be neutral. Mediation is a process and often a winding

road. Mediators may also provide insight into issues one or both parties had not previously considered.

The time spent in mediation may be difficult or draining, but if the case is settled countless hours and expense can often be saved and a cost-effective or strategically beneficial result obtained. Even if no agreement is reached during the conference, the exchange of information is useful and may open the door to future discussions or a change in litigation objectives or strategy.

Mediation is required by the courts in Florida and provides the litigants with a valuable opportunity to make an agreement of their choosing. A mediated settlement agreement avoids the uncertainty of the litigation process and eliminates the burden of continued litigation.