

Monroe County Bar Association Alternative Dispute Resolution Program

Agreement to Mediate

The undersigned Parties ("Parties"), along with their legal representatives, agree to submit the Parties' dispute to Mediation pursuant to the Monroe County Bar Association ("MCBA") Alternative Dispute Resolution Program ("Program"). The Parties, in executing this Agreement, warrant and represent that they have reviewed and agree to abide by the Program Guidelines, which are incorporated by reference and made a part of this Agreement. The Parties further agree to the following:

Selection of Mediator

1. The Parties have independently reviewed the qualifications of the Mediators on the MCBA's panel of approved Mediators and have conducted their own due diligence regarding the qualifications of the Mediators available to them.
2. Based upon this review, the Parties select their Mediator as follows [check one]:

☐ We have selected _____ to serve as our Mediator, subject to his/her acceptance of the appointment.

☐ We request that the MCBA appoint a Mediator from the Panel of Mediators, subject to his/her acceptance of the appointment.
3. In the event that the Mediator designated above is unable or unwilling to serve, the Parties will be contacted by the MCBA to provide another selection, or to authorize the MCBA to appoint a Mediator from the remaining members of the Panel.

Parties' Agreement as to the Mediator

4. Each of the Parties agrees not to subpoena or otherwise call the Mediator to testify as a witness or to produce any records or documents in any pending or subsequent judicial, administrative, or arbitration proceeding involving the Parties and relating in any way to the dispute which is the subject of the Mediation. Each of the Parties further agrees to disqualify the Mediator as a witness or as an expert in any such proceeding. Each of the Parties further agrees that any Party issuing a subpoena in violation of this paragraph shall be responsible to the Mediator for all costs and expenses incurred by the Mediator in connection with objecting to and defending against such subpoena, including, without limitation, attorneys' fees.
5. Each of the Parties agrees that the Mediator shall not have any liability for any act or omission in connection with the Mediation or in connection with any agreement or understanding reached during the Mediation.
6. The initial fee for participation in the Program is \$950.00 ("Mediation Fee"), to be divided equally among the Parties (or as otherwise agreed by the Parties). Of this fee MCBA will retain an administrative fee of \$100.00 and a rental fee of \$ 50.00 (includes two (2) rooms for up to

four (4) hours) and will transmit the remaining \$800.00 to the Mediator as prepayment for the Mediator's pre-hearing preparation and two (2) hours of the Mediator's time in the hearing ("Initial Time Period"). The Mediator may use the Initial Time Period for pre-mediation proceedings, mediation preparation and or attendance at the mediation session. *Please note: the quoted participation fee refers to Mediation occurring during standard MCBA business hours (Monday – Friday, 9:00 AM – 4:45 PM). Mediation occurring outside of standard MCBA business hours will incur additional fees.*

7. In the event that the Initial Time Period is not sufficient to conclude the Mediation, and the Parties desire to continue working with the Mediator, the Parties shall bear equally (or as otherwise agreed by them in the Agreement to Mediate) the Mediator's hourly rate, as indicated in the Mediator's Biography made available to the Parties by the MCBA ("Additional Fees"), for all additional time incurred by the Mediator to conclude the Mediation. IF THE PARTIES DESIRE TO LIMIT THE MEDIATION TO THE INITIAL TIME PERIOD, THE PARTIES SHALL SO ADVISE THE MEDIATOR, IN WRITING, PRIOR TO THE COMMENCEMENT OF THE MEDIATION SESSION AND BE PREPARED TO PRESENT THEIR SIDE OF THE DISPUTE AND TO LISTEN AND RESPOND TO THE OTHER SIDE WITHIN THAT TIME PERIOD.
8. The Mediator may require the prepayment of the additional fees prior to continuing beyond the Initial Time Period. Payment of any Additional Fees shall be made directly to the Mediator. Failure by one or more of the Parties to prepay the additional fees when requested by the Mediator may result in the suspension or termination of the Mediation, at the discretion of the Mediator.
9. The aforementioned administrative fee is nonrefundable. The Mediator compensation portion of the Mediation Fee is refundable only until a Mediator has been appointed. Refunds, when allowed, will be made by the MCBA to the respective Parties in equal shares, unless the MCBA is notified in writing by all Parties as to a different proportion.

Confidentiality of Mediation

10. The Parties acknowledge that, pursuant to Pennsylvania statute, all mediation communications and mediation documents, except as provided below, are privileged. Disclosure of mediation communications and mediation documents may not be required or compelled through discovery or any other process. Mediation communications and mediation documents are not admissible as evidence in any action or proceeding, including but not limited to a judicial, administrative, or arbitration action or proceeding.
11. The Parties further acknowledge that exceptions to the general rule of confidentiality, include the following: (1) a written settlement agreement may be introduced in an action or proceeding to enforce the settlement; (2) communications of a threat of personal injury or property damage under circumstances constituting a felony, or conduct during a Mediation causing injury to a person, may be introduced as relevant evidence in a criminal proceeding, and (3) fraudulent communications may be introduced as relevant evidence in an action to enforce or set aside a mediated settlement agreement.

12. The Parties further recognize that facts or documents that exist independent of the Mediation, and are otherwise discoverable, are not rendered inadmissible or undiscoverable as a result of their use during mediation.
13. The Parties further acknowledge and agree that the Mediator may report to the MCBA whether the Mediation has resulted in a resolution of the dispute, without disclosing the nature or content of the resolution, and that such reporting shall not be considered a breach of any confidentiality requirements imposed by the MCBA Program, statute, or decisional law.

Agreement to Act in Good Faith

14. The Parties agree that they, along with any persons acting on their behalf, will enter into, and participate during, the Mediation in good faith. Good faith includes, among other things, the following: (1) being fully prepared to discuss all aspects of the dispute and possible solutions for resolving it; (2) being willing to create options to resolve the dispute, considering how the solution must address the interests of all Parties as opposed to taking an unyielding position; (3) having the person with the authority to approve the terms for resolution attend the mediation session, or, at the least, be available to confer with the Party's representative during the mediation regarding the approval of terms; (4) demonstrating a willingness to listen and understand the perspectives of all participating Parties, and (5) treating the Parties, the Mediator and all other participants with civility and respect.

Agreement as to MCBA

15. By executing this Agreement, the Parties acknowledge that the MCBA serves the limited role of administering the commencement of the Mediation. The Parties further acknowledge that the MCBA makes no representations or warranties regarding the mediation services to be provided by the Mediator to the Parties. The Parties fully release the MCBA, its officers, directors, members, agents and employees, of and from any and all claims and or damages arising out of or relating to the Mediation and or the Parties' participation in the Program.

Mediator's Rights Under Agreement

16. The Mediator selected by the Parties, or otherwise appointed by the MCBA, shall be deemed a third party beneficiary of this Agreement for purposes of enforcing the obligations of the Parties with respect to the Mediator pursuant to this Agreement. The MCBA shall have no obligation to enforce any rights on behalf of the Mediator.

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have signed this Agreement to Mediate on the date(s) indicated below in acknowledgement of and agreement with its scope and terms.

PARTIES:

DATE:
