

AGREEMENT TO MEDIATE FORMS – CIVIL

OVERVIEW

An agreement to mediate is the form that the parties and the mediator sign to put everyone on the same page as to the process that will be followed in the mediation, what is to be considered confidential, and the parameters of the process. The agreements, therefore, should be precise in their language and they should be written in easily understood language so as to avoid any future misunderstandings.

Using a standard agreement to mediate for all court-referred mediations helps to ensure that all parties are undertaking the process with the same information and the same expectations. In situations where use of the forms is required, the court has control over how issues such as confidentiality are presented to the parties, helping to reduce missteps and misunderstandings. Even in situations where the forms are simply offered as a tool, they present a defined approach to provide guidance for all participants.

GOOD EXAMPLES

Civil Guidelines for Mediation – Cobb County, Georgia

This agreement to mediate form takes an interesting tack: it provides guidelines about party behavior in the mediation that can lead to a more effective process without making that behavior a point of agreement. It covers all the right topics, including a reminder to get legal advice before signing an agreement, an explanation of the mediator's role, and confidentiality. The language is legible and friendly.

Courts adapting this rule may wish to amend it by rewriting the confidentiality section to be more specific. It states that information gathered in the mediation process is confidential. This could explain what "information gathered" means (e.g., written and oral communications, exhibits made specifically for the mediation, etc.).

Civil Case Mediation Agreement – Cook County Circuit Court, Illinois

This is an example of an agreement to mediate that is signed before the date of the mediation. It does a good job of explaining what the mediator's role is, as well as what is confidential in the mediation. Also done well is the separation of confidentiality from mediator privilege.

Even though mediation in this context is undertaken with representation, courts adapting the form for their own use might want to make the language more accessible to the litigants as well as the attorneys by removing some of the legalese (such as "may elect to terminate its furtherance", "authority to caucus", and "defend and indemnify").

VS.

CIVIL ACTION FILE #

CIVIL GUIDELINES FOR MEDIATION

Mediation is a non-adversarial process that is most effective if the parties involved work within the following guidelines:

1. Leave fault and blame aside. Accusations only hinder the process and are not relevant to the issues to be discussed in mediation. Mediation differs from litigation in that the parties, with the assistance of the mediator, reach their own agreement. The mediator will not make decisions for the parties. The mediator will lead the negotiations in assisting the parties to reach a decision that is acceptable to all.

2. Accept responsibility for yourself. State what you want and need. Include your intent, reasons and feelings. This helps facilitate the process.

3. The mediator is not acting in the capacity of an attorney and **does not offer legal advice**. All parties are encouraged to have independent legal counsel. Parties are also encouraged to have their attorney review any settlement prior to the acceptance of any agreement or the signing of any documents. An outline may be completed to incorporate all issues discussed/agreed upon during the mediation session. All parties are also responsible for having their own accountant or tax advisor look over tax ramifications of agreements reached.

4. There may be times when the mediator feels a "caucus" is needed. This is when the mediator will meet with each party separately for clarification of issues. The caucus is the only time during the mediation process that information could be confidential between the parties. Information will not be shared unless permission of that party is obtained.

5. Information gathered in the mediation process is confidential and privileged. Neither the mediator nor any court designee shall willingly testify for or against either party involved should either party end the mediation process and litigate the matter in court. By signing this agreement, all parties are acknowledging that they have been advised that

they may not subpoena the mediator or any court designee to testify concerning this mediation in any subsequent court actions.

6. I understand that the confidentiality of the mediation process shall not excuse the mediator's duty to report any abuse, acts of violence or threats of violence revealed during said process.

7. By signing this agreement, all parties acknowledge they are under court order, from Cobb County Superior Court, to mediate. All agree to participate, in good faith, in each scheduled mediation session. All parties agree to work towards resolution of the issues.

8. I understand that payment of the mediator shall be agreed upon at the mediation conference. The agreed upon fee for this mediation shall be _____ hourly or _____ daily.

I have read and understand the above guidelines for mediation. I understand that neither the Mediator(s) nor court designee shall provide legal or financial advice. I understand that I have been directed and encouraged to seek independent legal advice. I further understand that by signing this agreement I am agreeing to mediate in good faith, at the agreed upon rate, and that I am under court order to do so. I have also been advised that I may not subpoena the mediator or any court designee to testify in court in any subsequent court action.

(date) _____
signature

(date) _____
signature

(date) _____
signature

(date) _____
signature

(date) _____
signature

(date) _____
signature

Mediator

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – LAW DIVISION**

))
)) No.:
))
Plaintiff(s),)
))
v.) Judge:
))
))
))
Defendant(s).)

MEDIATION AGREEMENT

1. Parties And Mediator: In the matter of [Plaintiff] v. [Defendant] in the action now pending in the Circuit Court of Cook County as Case No. _____, the undersigned parties and mediator agree to participate in a mediation procedure pursuant to the following terms and conditions. The parties and the mediator are satisfied as to the ability of the mediator to act as a neutral and unbiased participant in these proceedings.

2. Date, Time And Place Of The Mediation Conference: The mediation conference shall be held on [date], at [time], [location].

3. Role Of The Mediator: It shall be the role of the mediator to assist the parties in reaching a settlement of their dispute. It is agreed that the mediator will not provide legal advice although the mediator may express opinions on the applicability of the law to the facts to the extent such opinions may, in the judgment of the mediator, be helpful in facilitating a settlement. The parties agree they will rely solely on the advice of their own attorneys as well as their own judgment in arriving at a resolution of their dispute.

4. Good Faith Participation: The parties agree that they are entering into this mediation process in good faith and shall make a sincere effort to arrive at a mutually acceptable resolution of the dispute. During the proceedings, any party or the mediator may elect to terminate its furtherance. In the event of termination, each party will remain responsible for its share of fees and expenses incurred to that point.

5. Attendance: All the parties shall appear at the proceeding with their attorney of record, if any. A non-individual party shall appear by a duly authorized representative with authority to negotiate settlement of the dispute on behalf of that party. If any party shall not be able to attend the session on the scheduled date, the fact shall be communicated to the mediator and the other parties not less than seven (7) days in advance thereof.

6. Pre-Conference Submissions: The parties agree that a summary of each party's understanding of the facts and theory relative to the issues of liability and damages presented to the mediator, prior to the conference, would facilitate the role of the mediator in conducting a more expeditious and effective mediation. The summary should be submitted to the mediator and exchanged between the parties not less than seven (7) days prior to the conference and should not exceed six (6) pages. Portions of the summary may be designated as "Confidential: Solely for the Mediator."

7. Authority To Caucus: The mediator is authorized to meet and caucus with each party separately during the conference. Any communication or document disclosed to the mediator during the caucus may be communicated and disclosed to the other party unless the mediator is otherwise advised.

8. Confidentiality: The parties agree and understand that the mediation proceedings constitute settlement negotiations between them. Therefore, all statements made by the parties or their representatives, relating to the mediation process, and any documents created for or during the mediation process, are inadmissible and not discoverable for any purpose, including impeachment, in any pending or subsequent proceeding. However, evidence that is otherwise admissible or discoverable is not rendered inadmissible or non-discoverable as a result of its use in the mediation process. A settlement agreement shall be signed and binding upon all parties thereto.

9. Mediator Privilege And Immunity: The parties agree they will neither request nor subpoena the mediator to testify in any matter for any reason, nor will the parties request or subpoena the mediator's notes, records or any materials in the possessions of the mediator, for any purpose. The parties agree that the mediator shall have the same limited immunity as judges and court employees have under the laws of the State of Illinois and agree to defend and indemnify the mediator in connection with any summons or subpoena arising out of the mediation proceeding. The parties also agree the mediator is not a necessary party in any judicial, quasi-judicial or administrative proceeding arising out of this mediation.

10. Fees And Expenses. The mediator shall be entitled to be compensated at the rate of _____ Dollars (\$_____) per hour or any portion thereof, including time required for review of the pre-conference submissions, plus actual expenses incurred in the procedure. A minimum of three (3) hours of billable time shall be due the mediator for the first conference unless it is cancelled not less than ten (10) days prior to the date scheduled.

The cost of the mediator's fees and expenses shall be borne equally by each side of the controversy and shall be paid within thirty (30) days of receipt of the billing statement

[Additional provisions, if any, not inconsistent with Circuit Court of Cook County Local Rule 20.]

IN WITNESS WHEREOF, by their signatures thereto, each party, individually, or by their duly authorized representative, certifies that it agrees with the provisions herein. This agreement may be signed in counterparts.

Dated: _____

PARTIES:

By: _____

By: _____

MEDIATOR:
