



MEDIATION PROCEDURES
Instructions regarding the Mediation Process
by Layne T. Rushforth

1. **INTRODUCTION:** This memo is for the attorneys of parties who have engaged an attorney of Rushforth Lee & Kiefer LLP to serve as the mediator in a dispute involving a trust or estate. In this memo, “you” and other second-person pronouns refer to the parties attorneys, and “we”, “us”, and other third-person plural pronouns refer to Rushforth Lee & Kiefer LLP, a Nevada limited-liability company doing business as Rushforth Lee & Kiefer LLP
2. **Mediation Briefs:** Each party shall submit mediation briefs and other supporting documents to the mediator at least seven business days before the mediation session.
 - a. There is no required style or format of the briefs, but the briefs should be in 11-point type or larger. To facilitate discussion, use a paragraph numbering system so that each paragraph has a number or letter that can be referred to. In the alternative, use pleading paper with numbered lines and make sure the pages are numbered.
 - b. Briefs should be sent via an upload link that will be provided or via e-mail as an attachment. Ideally, the briefs should be provided as one file in Adobe Acrobat (.pdf) format with bookmarks for exhibits and other documents. Sending a brief in WordPerfect (.wpd) or Microsoft Word (.doc or .docx) format is acceptable, but exhibits should be in a bookmarked Acrobat (.pdf) file. Sending a printed copy by postal mail or courier is permitted but discouraged because it takes more billable time to find things in a printed copy than an electronic version. Please do not send anything via fax.
 - c. Unless you agree otherwise, each party will provide a brief without disclosure of that brief to the other party. If the parties decide to exchange briefs:
 - i. The parties should stipulate as to whether a response to the other party’s brief is permitted. The briefs and any responses must be received by the mediator seven business days before the mediation.
 - ii. In addition to the exchanged briefs, each party must provide a confidential statement that is not shared in which the parties set forth their positions, their settlement objectives, prior settlement offers made and received, the barriers that have prevented settlement up to this point, and an explanation of any elements of the case for which their positions are non-negotiable.
 - d. Unless you agree to a page limitation as to the briefs and other submissions, there will be none. To reduce the billable time for the mediator to review the briefs, conciseness is encouraged, and the parties' counsel may want to stipulate on their own page limitations.
3. **Submission of Documents:** You are encouraged to provide key documents that will help the mediator understand the facts and the parties’ positions.
 - a. To avoid being given duplicate copies of pleadings, exhibits, and/or other documentary evidence ("documents"), if possible, you should agree on the documents to be provided and arrange for one set of those documents to be provided to us.

- b. Documents not submitted jointly should be submitted as an exhibit to the mediation brief.
 - c. If there are factual or legal issues that are not in dispute, please provide a written summary with the joint submission of documents.
 - d. Exhibits and documents that are provided — either as part of a brief or with the jointly submitted documents — should be Bates-stamped so that when a brief contains a reference to the documents, the reference will include the Bates numbering to facilitate the mediator’s review.
4. **Participation by the Parties is Required:** The mediation will not proceed unless all parties are present or represented by a person who has authority to make a settlement decision. It is sufficient if the party or the person with settlement authority can be reached by telephone at all times during the mediation.
 5. **Schedule:** Unless other arrangements are made, the mediation will start at 8:00 a.m., with a one-and-a-half-hour break for lunch close to 12:00 p.m. To shorten the lunch break, you can arrange for the delivery of sandwiches or other food to our office, but our office will not handle those arrangements or pay for the food.
 6. **Stages of the Mediation:** Unless the parties agree otherwise, the mediation will be conducted in three stages, with an optional opening statement:
 - a. If the parties so stipulate, the parties will meet in a combined group where each party will be allowed to give an opening statement. This is not recommended in most cases because the parties already know each other’s positions.
 - b. Stage one is the “Parties’ Positions Stage” (or “venting stage”), in which the parties explain to the mediator their positions, their concerns, and their objectives. During this stage, it is preferred that the parties and not their attorneys express their positions to the mediator.
 - c. Stage two is the “Evaluation Stage” (or “reality-check stage”) where the mediator will explain to the parties what the strengths and weaknesses of their respective positions are, giving the mediator’s opinion as to how their arguments might be received by the judge if the case goes to court.
 - d. Stage three is the “Negotiation Stage” (or the “let’s-make-a-deal stage”) where the mediator will talk to each party about how each element of the dispute might be settled. It is anticipated that each party will make offers for the other party to consider, which the mediator will then take to that other party for consideration and response.
 - e. Stage one and stage two involve the mediator meeting with each party once. Stage three will involve the mediator going back and forth between the parties as often as is required to make offers and counter-offers with a view to reaching a mutually acceptable settlement agreement. The mediator will continue stage three until the parties conclude that each of them has given its “final offer” which has been determined unacceptable by the other party.
 - f. If the mediation has not concluded by 6:00 p.m. (or some earlier time stipulated by the parties), we can reschedule one or more additional days.

7. **Settlement:** If a settlement is reached, the mediator will work with you to prepare a preliminary settlement agreement that will be signed by each party (or by an authorized agent) and by the parties' counsel. It is anticipated that the parties' attorneys will subsequently draft a more formal and complete settlement agreement; however, the preliminary agreement will state that it is binding on the parties and that a change of heart (or "buyer's remorse") is insufficient justification for rescinding the agreement or for making any modification except for clarifications and enforcement provisions.

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