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MEDIATION POLICIES AND PROCEDURES

(Effective 1/1/24)

The Basics

(See full text for details.)

Traditional Mediation

Administrative Fee: \$300 per case
Mediator's Fee: \$300 per hour

FasTracSM Mediation

Limited to 3 Hours
Fixed Fee of \$975

Via ZOOM or In-Person in Lafayette or Contiguous Parishes

All Mediations

No deposit required
No charge for travel
No charge for cancellation or rescheduling

Overview of Mediation

Mediation is a process in which an impartial third party, a Mediator, facilitates the resolution of a dispute by promoting voluntary agreement between or among the parties to the dispute. A Mediator assists the parties in reaching their own agreement by facilitating communication, promoting understanding, and helping to narrow the issues in dispute.

The Mediation proceedings conducted by this office are conducted in a manner consistent with the methods and protocols established and taught by the American Arbitration Association. A typical Mediation proceeding is generally divided into two parts: a plenary session, in which all parties and counsel participate, and a series of private caucuses, in which the Mediator meets privately with each side, and in which new offers and counteroffers are usually made through the person of the Mediator. At the beginning of the Mediation, the Mediator explains to all present the procedures and protocols to be observed during the Mediation.

This office subscribes to the Model Standards of Conduct for Mediators, as adopted by the American Bar Association, the American Arbitration Association and the Association for Conflict Resolution.

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Mediation Services Offered

Traditional Mediation

A Traditional Mediation is that process described above, in which, among other things, the parties are more or less expected to lay out and defend their principal arguments in the plenary session, and in which the Mediator, in private caucus, typically engages the parties in dialogue regarding the relative merits of their positions. The Mediator also facilitates the negotiation process by helping the parties explore the options for settlement, and by communicating new offers and counteroffers between or among the parties.

Although most Traditional Mediations are concluded within a single business day, there is typically no artificial time limit imposed on the process. The Traditional Mediation process can, therefore, become time-consuming; but the Traditional Mediation process is still much preferred to the time-limited *FasTracSM Mediation* for resolving disputes that involve multiple parties or complex issues, or in which significant emotional content may be involved.

FasTracSM Mediation

FasTracSM Mediation is a fast-paced no-frills alternative to the Traditional Mediation.

Unlike the Traditional Mediation process, which allows for much argument and thorough discussion, but which can become time-consuming, *FasTracSM Mediations* are *strictly limited to 3 hours*. An excellent vehicle for resolving pre-litigation disputes, *FasTracSM Mediations* are also particularly suitable for matters in litigation in which the issues are straightforward and in which the parties mainly want to “cut to the chase”.

Like a Traditional Mediation, a *FasTracSM Mediation* includes a brief opening session with all parties, but the Mediator’s comments and the arguments of the parties are kept to a minimum.

Like a Traditional Mediation, a *FasTracSM Mediation* includes private caucuses, but there is little time for “hand-holding” by the Mediator or for a detailed exploration of the issues. It is assumed in a *FasTracSM Mediation* that all parties are very familiar with the issues involved, as well as the strengths and weaknesses of their own positions; and the parties are encouraged to get down to the business of negotiation as quickly as possible.

Due to its *fixed fee of \$975*, and the policy of this office regarding lack of charges for travel, *FasTracSM Mediations* will be conducted only (1) via ZOOM, or (2) in-person in Lafayette Parish or its contiguous Parishes: St. Landry, St. Martin, Iberia, Vermilion or Acadia.

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Costs

Traditional Mediation

For a Traditional Mediation, a fixed Administrative Fee of \$300.00 per case (the equivalent of one hour at the Mediator's hourly rate) covers the entire cost of scheduling and giving notice of the Mediation, regardless of the number of parties. The Administrative Fee is not applied unless the Mediation actually takes place, and appears on the final invoice as one hour at the Mediator's hourly rate.

For a Traditional Mediation, the Mediator's fee is \$300.00 per hour, plus expenses, if any, including the cost of renting any necessary conference facilities.

Apart from those items incidental to the scheduling and giving notice of the Mediation, and which are covered by the fixed Administrative Fee, the Mediator's hourly charge for a Traditional Mediation is applied to all Mediation Conferences, the Mediator's review of all Position Papers and supporting materials, all correspondence and documentation prepared by the Mediator, and all telephone conferences. *There is no charge, however, for travel time or travel expense anywhere within the State of Louisiana.*

A Traditional Mediation usually lasts between five and seven hours. Including the Administrative Fee, total fees for a Traditional Mediation usually range between \$1,800.00 and \$2,400.00.

FasTracSM Mediation

FasTracSM Mediations are subject to a fixed fee of \$975, which includes up to three hours of Mediation, all Administrative Fees and preparation time. Due to its fixed fee of \$975, and the policy of this office regarding lack of charges for travel, however, FasTracSM Mediations will be conducted only (1) via ZOOM, or (2) in-person in Lafayette Parish or its contiguous Parishes: St. Landry, St. Martin, Iberia, Vermilion or Acadia.

There are no additional fees or costs, *unless the Mediation should exceed the three-hour time limit, or unless the Mediator should be required to rent conference facilities for the Mediation.* Should the Mediation exceed the three-hour limit, the Mediation will be billed as a Traditional Mediation, as described hereinabove; should the Mediator be required to rent conference facilities, those costs will be passed along as well.

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Responsibility for Costs of Mediation

The parties are encouraged to resolve, between or among themselves, the question of responsibility for the costs of Mediation. This office need not be advised, prior to the Mediation, of the agreement of the parties in this regard, although the parties will be asked to sign an "Agreement on Costs of Mediation" upon the commencement of the Mediation, indicating their mutual intentions. Should all the parties participating in the Mediation fail to clearly indicate their mutual intentions with respect to responsibility for the costs of Mediation, the costs of Mediation will be distributed equally among the parties participating in the Mediation. The costs of Mediation are payable upon invoice, within 30 days.

Scheduling

The Mediator's available dates may be checked by using the Mediator's online calendar:

<https://www.louisianamediators.org/david-sherman-cook>

Each month is there represented by a graphic, showing the dates that are Available, those that are Booked and those that are On Hold.

Once the parties have determined the Mediator's available dates, all counsel should cooperate with one another in selecting from among the Mediator's available dates a single DATE on which all expected participants in the Mediation would also be available. Once a single DATE has been agreed upon as being available for all participants, that DATE may be reserved by any interested party going to the online calendar and clicking on the requested DATE, filling in the requested information and then clicking "Submit Request."

Clicking on "Submit Request" will immediately RESERVE the requested DATE and immediately send an email to the Mediator, letting the Mediator know that this DATE has been RESERVED. Upon the Mediator's receipt of this automatically generated email, the Mediator will respond with an email to the person who clicked "Submit Request," and will ask to be provided with the following additional information necessary to set up the Mediation:

- **Whether the Mediation is to be a Traditional or *FasTrac*[™] Mediation**
- **A CAPTION for use on pertinent documents**
- **The TIME of the Mediation**
 - o Traditional Mediations typically start at 9:00 or 10:00 AM
 - o *FasTrac*[™] Mediations may be set from 9:00 AM to Noon or from 2:00 PM to 5:00 PM.
- **The PLACE where the Mediation is to be conducted or if the Mediation is to be via ZOOM**
 - o The Mediation may be held, according to the agreement of the parties, at any available facility, such as the office of one of the attorneys involved. If it is necessary to secure neutral conference facilities from a commercial provider of such facilities, e.g. the Lafayette Bar Association, the Mediator will arrange to secure such conference facilities, at the cost of the parties.
 - o ZOOM Mediations will be scheduled and hosted by the Mediator
- **The CONTACT INFORMATION: names, addresses, telephone numbers, and email addresses of all parties, counsel or representatives to whom notice of the Mediation should be given**

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. Upon the Mediator's receipt of the requested information, the Mediator will send out, also via email, a Notice to all participants confirming the scheduling of the Mediation.

Disclosures

All parties are furnished, in advance of the Mediation, a Disclosure Statement identifying any known past or present relationships which the Mediator may have had with the parties or their counsel; in the event that any person or party has any concerns regarding any of the relationships disclosed, that party is invited to express those concerns in order that they might be addressed, either by way of further disclosure, or by making arrangements for a different Mediator.

Position Papers

Although not required, the parties are encouraged to submit brief Position Papers in advance of the Mediation proceedings. The *content* of Position Papers and the *nature or identity* of specific materials submitted for review may be designated as confidential by the submitting party. But any party submitting materials for the Mediator's review should notify all adverse parties of the *fact* that some submission has been made. And, although the *content* of Position Papers and the *nature or identity* of specific materials submitted for review will remain confidential, if so requested by a party, the Mediator's final invoice for a Traditional Mediation will necessarily disclose the time and charges associated with the review of any submitted material. Unless otherwise specified by the parties, the Mediator's fees for review of Position Papers or other materials submitted for review in connection with a Traditional Mediation shall be apportioned between or among the parties in the manner in which the parties have otherwise agreed to be responsible for the costs of Mediation. In a *FasTracSM Mediation*, which is subject to a fixed fee, there is no additional charge for the Mediator's prior review of Position Papers or other materials submitted for review.

Position Papers may be submitted via ordinary mail or via email, and should be received by the Mediator no later than the close of business on the last business day prior to the scheduled Mediation. (Due to time constraints, it is typically not possible to read materials received on the same day as the Mediation.) Submissions via email should be sent directly to the Mediator at davidcook@lusfiber.net. Documents sent via email should be sent in either Microsoft Word or PDF format.

Participation in Mediation

Parties, Representatives and Counsel

In order to create the most favorable conditions for settlement, it is suggested that all parties abide by the following recommendations regarding participation in a Mediation:

- (1) All individual parties should be personally present for an in-person Mediation or electronically available to the Mediator in a ZOOM Mediation;
- (2) All corporate parties should be represented in the Mediation by a representative with full settlement authority, whether in-person or via ZOOM; and
- (3) In a Traditional Mediation, all parties, representatives and counsel should be willing to work for as long or as late as is necessary, in the opinion of the Mediator, to fully exhaust settlement possibilities. (A *FasTracSM Mediation*, however, will be promptly terminated at the end of three hours, without regard to whether settlement possibilities have been exhausted.)

Participation By Telephone

When a party, representative or counsel finds it is impossible or impractical to personally participate in either an in-person or ZOOM Mediation, and elects to participate as needed by telephone, that party, representative or counsel should be easily accessible and readily available by telephone for the duration of the Mediation proceedings. *Immediate accessibility is extremely important in a FasTracSM Mediation*, as the limited time allotted for the Mediation does not allow for the luxury of time wasted “playing phone tag” with persons not personally present.

Participation of Non-Parties

Individual parties, with their own attorney's consent, occasionally have a close friend, relative or adviser accompany them to the Mediation; such persons often provide needed emotional support, and can make a substantial contribution to a successful Mediation. Occasionally parties are also accompanied in the Mediation by witness, expert, or consultant whose role is considered to be important to a proper understanding of the matter in dispute or of the options presented for settlement. And attorneys of record for parties are frequently accompanied by other attorneys or support staff.

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Given the informality of the Mediation process and the meaningful contributions that can often be made by persons who are not parties to a dispute, this office welcomes the constructive participation of non-parties in a Mediation, *subject to the consent of all parties*.

Recommendations Not Enforceable

The Mediator has no authority to enforce any recommendations herein, or to sanction any alleged departures from them. Where a party makes an objection or complaint concerning those individuals present or absent from the Mediation, the authority of a representative to act on behalf of a party, or the lack of prior notice of a particular circumstance, the Mediator will work with the parties to try to resolve the issue, but cannot force any objecting party to proceed with Mediation. Ultimately, the question will be put to the parties as to whether, under the circumstances, they are willing or unwilling to proceed with the Mediation.

In order to avoid potential surprise, delay, and possibly cancellation of the Mediation:

- (1) Any party unwilling or unable to comply with any recommendation herein should so advise all other parties well in advance of the scheduled Mediation;
- (2) Any party having concerns regarding the willingness or ability of another to comply with any recommendation herein should address those concerns to the party in question well in advance of the scheduled Mediation; and
- (3) Any party intending to be accompanied in the Mediation by any person who is neither a party, the representative or counsel for a party, nor the parent, child or spouse of a party, should give notice of such intent to all other parties well in advance of the scheduled Mediation.

Cancellation and Rescheduling

Before it gives notice of the scheduling of a Mediation, this office has been advised that the date and time selected have been approved by all concerned. When a conference is scheduled, the Mediator sets aside a unique block of time for a particular Mediation, and must decline other Mediations with other parties who would seek to use the same block of time. With adequate notice of a party's request to cancel or reschedule a Mediation, the Mediator has the opportunity to secure another engagement on the date and at the time that had otherwise been reserved for the cancelled or rescheduled conference. Without adequate notice, however, the Mediator loses the opportunity to secure another engagement at the appointed time.

There are no fees for cancellation or rescheduling, but when a Mediation must be cancelled or rescheduled, the parties are sincerely requested, as a courtesy to the Mediator, to provide as much notice as is possible under the circumstances.