

# DAVID S. COOK

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## **MEDIATION POLICIES AND PROCEDURES**

### **The Basics**

(See full text for details.)

#### **Traditional Mediation**

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

#### ***FasTrac<sup>SM</sup> Mediation***

Limited to 3 Hours  
Fixed Fee of \$975

#### **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 Conference, the Mediator explains to all present the procedures and protocols to be observed during the Mediation Conference.

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.

## **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 *FasTrac<sup>SM</sup> Mediation* for resolving disputes that involve multiple parties or complex issues, or in which significant emotional content may be involved.

### ***FasTrac<sup>SM</sup> Mediation***

*FasTrac<sup>SM</sup> Mediation* is a fast-paced no-frills alternative to the traditional Mediation process.

Unlike the traditional Mediation process, which allows for much argument and thorough discussion, but which can become time-consuming, *FasTrac<sup>SM</sup> Mediation* is *strictly limited to 3 hours*. An excellent vehicle for resolving pre-litigation disputes, *FasTrac<sup>SM</sup> Mediation* is 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 *FasTrac<sup>SM</sup> 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 *FasTrac<sup>SM</sup> 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 *FasTrac<sup>SM</sup> 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.

*FasTrac<sup>SM</sup> Mediation* is a registered service mark of David S. Cook, A Professional Law Corporation, all rights reserved.

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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 Conference, regardless of the number of parties. The Administrative Fee is not applied unless the Mediation Conference 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. *There is no charge for travel time or travel expense anywhere within the State of Louisiana.*

Apart from those items incidental to the scheduling and giving notice of the Mediation Conference, and which are covered by the fixed Administrative Fee, the Mediator's hourly charge 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.

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

#### ***FasTrac<sup>SM</sup> Mediation***

*FasTrac<sup>SM</sup> Mediation is subject to a fixed fee of \$975, which includes up to three hours of Mediation, all Administrative Fees and preparation time, and all travel anywhere within the State of Louisiana. 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.*

#### **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 Conference, 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 Conference, indicating their mutual intentions. Should all the parties participating in the Mediation Conference 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 Conference. The costs of Mediation are payable upon invoice, within 30 days.

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### **Scheduling**

The coordination of the date, time and place of the Mediation Conference may be handled by any party to the proceedings, or by this office.

Because of the typical duration of a traditional Mediation Conference, it is generally preferred that traditional Mediation conferences begin by 9:00 a.m. or 10:00 a.m.; traditional Mediation Conferences may also be commenced in the afternoon if the parties understand that they may be required to work into the evening hours.

*FasTrac<sup>SM</sup> Mediations* are scheduled from 9:00 AM to Noon or from 1:00 PM to 4:00 PM.

The Mediation Conference may be held, according to the preference 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, the Mediator will arrange to secure such conference facilities, at the cost of the parties.

Once the parties have agreed upon a date, time and place for the Mediation Conference, this office should be provided with that information, along with the names, addresses, telephone numbers, fax numbers and email addresses of all parties, counsel or representatives to whom notice of the Mediation should be given. This office will then send to all such parties or representatives a notice confirming the date, time and place of the Mediation Conference, together with other information pertinent to the proceedings.

### **Disclosures**

All parties are furnished, in advance of the Mediation Conference, 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 *FasTrac<sup>SM</sup> Mediation*, which is subject to

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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 Conference. (Due to time constraints, it is often not possible to read materials received on the same day as the Mediation Conference.) Submissions via email should be sent directly to the Mediator at [davidcook@lusfiber.net](mailto:davidcook@lusfiber.net). Documents sent via email should be sent in either MicroSoft Word or PDF format.

### **Participation in Mediation Conference**

#### Participation of Parties

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

- (1) All individual parties should be personally present for the Mediation Conference;
- (2) All corporate parties should be represented in the Mediation Conference by a representative with full settlement authority; 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 *FasTrac<sup>SM</sup> Mediation*, however, will be promptly terminated at the end of three hours, without regard to whether settlement possibilities have been exhausted.)

#### Participation of Parties By Telephone

When a party, representative or counsel finds it is impossible or impractical to be personally present for the Mediation Conference, and elects to participate in the Mediation Conference 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 FasTrac<sup>SM</sup> 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 bring a close friend, relative or adviser with them to the Mediation Conference; such persons often provide needed

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emotional support, and can make a substantial contribution to a successful Mediation. Occasionally parties also bring to the Mediation Conference a 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.

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 at a Mediation Conference, *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 Conference, 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 Conference.

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

- (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 Conference;
- (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 Conference; and
- (3) Any party intending to bring to the Mediation Conference 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 Conference.

### **Cancellation and Rescheduling**

Before it gives notice of the scheduling of a Mediation Conference, this office is 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 Conference, and must decline other Mediation Conferences 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 Conference, 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.

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**There are no fees for cancellation or rescheduling, but when a Mediation Conference 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.**

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