



OGC MEDIATION HANDBOOK

*A Guide to the Office of General Counsel's
Dispute Resolution Program*

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*Commonwealth of Pennsylvania
Office of General Counsel
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OGC Mediation Handbook

Why You Should Consider Mediation

It is no secret that resorting to the court system or the Commonwealth's administrative tribunals/Commonwealth Court system to resolve disputes costs time and money and, even with the substantial investment of both, there are no guarantees that you will be satisfied with the outcome. Mediation, on the other hand, is a voluntary process aimed at reaching mutually acceptable dispute resolution while avoiding costs and prolonged litigation. Surprisingly, mediation often helps parties view the factual circumstances from a fresh perspective permitting solutions to evolve even after no solution has been developed in the actual mediation sessions. Best of all, nothing is lost if mediation does not resolve a particular issue. The parties can still litigate the matter in an administrative tribunal or through the court system.

Because of mediation's many benefits, more and more state governments and court systems are implementing mediation programs for particular types of cases. In Pennsylvania, the state Supreme Court has issued a rule calling for mediation in medical malpractice cases, and the U.S. District Court for the Middle District has had in place a mediation program since 1994.

What is Mediation?

Mediation is a voluntary, informal process through which a trained, impartial mediator assists the parties in reaching a mutually acceptable resolution of their dispute. Mediation is non-adjudicative. It is up to the parties themselves to decide if they can agree to resolve the dispute and, if so, to determine the terms of the settlement as opposed to having a judge or arbitrator determine the outcome.

Contrary to popular belief, the use of mediation does not weaken a party's position. Instead, it identifies areas of agreement and uses those areas to forge a settlement that is satisfactory to all involved.

Mediation is Not Arbitration

Arbitration, like the court system, empowers a third party to make a decision that will bind the parties. In arbitration, each side presents its case, but it is the *arbitrator* who decides how the case will be resolved. The results of arbitration are legally enforceable and often reviewable by the courts. Mediation, on the other hand, is based on the parties themselves reaching mutual agreement and, as a result, appeals are not an issue.

Why Use Mediation?

There are several compelling reasons to use mediation, including:

- Avoiding costs and prolonged litigation
- Achieving quick resolution of claims and disputes
- Reaching agreement that reflects the satisfaction of all parties
- Avoiding appeals or adverse publicity
- Eliminating outside counsel expenses
- Enabling parties to reach a voluntary agreement resolving their disputes

- Enabling parties who are in an ongoing relationship to put the dispute behind them and forge a basis of continuing that relationship
- Permits the parties to control their respective destinies while achieving long-term conflict resolution.

What are the Benefits of Mediation?

Mediation is a completely voluntary process that, because of its informality, allows for the true needs of the parties to be addressed. By using an impartial third party, communication and negotiation are encouraged between the parties in a non-adversarial manner. These communications are not only privileged, but also are not subject to discovery or admissible as evidence. These factors distinguish mediation from other forms of dispute resolution and make it the preferred choice for parties interested in obtaining an acceptable outcome in a short period of time and at the lowest possible cost.

What is the OGC Mediation Program?

The Commonwealth encourages parties to seek negotiated settlements of contested proceedings as an alternative to incurring the time, expense and uncertainty of more structured processes such as administrative hearings and litigation in courts wherever that is possible. To that end, the Commonwealth issued an Executive Order in 2002 that directed the integration of mediation into state government (see Tab “A”). The Executive Order requires each Commonwealth agency, department, board, commission, and council to become familiar with the mediation process and to encourage its use whenever possible to resolve disputes.

Thanks to intensive training, the Commonwealth has many highly skilled mediators on staff. Each has received specialized training through an intensive multi-day mediation training program. OGC is continuing to train attorneys specially selected for their backgrounds and expertise to ensure that the Commonwealth can meet the demand for mediators. Although the OGC Mediation Program is initially focused on resolving disputes within state government, it is anticipated that OGC mediators may be available to mediate disputes not directly involving the Commonwealth, but for which OGC’s assistance has been requested.

How Does the OGC Mediation Program Work?

The OGC Mediation Program is available to individuals and entities and to Commonwealth agencies and their employees who have a dispute with a state agency. If the parties agree to submit their case for mediation, the agency completes a Request for Mediation form and submits it to OGC (see Tab “B”). Once mediation is approved for a case, OGC will provide the parties with a list of trained mediators from which they will select an individual to mediate their case. The list will provide background information on each potential mediator to ensure that the individual has the expertise the parties are seeking and is not from an agency involved in the dispute. In the alternative, the Mediation Director may assign a mediator. Once selected, OGC will send the mediator an Appointment Letter (see Tab “C”) assigning him or her to the mediation.

Prior to the mediation, the mediator will send correspondence to the parties (see Tab “D”) providing them with Good Faith Ground Rules to guide their conduct during the mediation session. These ground rules include the need for the parties to agree to (1) be fully prepared to

discuss the dispute and offer possible resolutions; (2) take turns speaking and listening; (3) try to understand the other party's interests; (4) refrain from engaging in negative behaviors; (5) explore creative resolutions; and (6) have a representative with settlement authority present or readily available.

The parties are also given an Agreement to Mediate (see Tab "F"), which they will be asked to sign at the first mediation session. The parties must agree to be bound by the conditions of the agreement. In addition, the parties are asked to provide a Mediation Statement in which they provide a description of the dispute (see Tab "E"). The Mediation Statement, like other communications concerning the mediation, is confidential.

At the mediation session, the mediator will work with the parties to assist them in understanding each other's point of view. The mediator will look for areas of agreement and work to build on those areas to reach a resolution the parties find satisfactory.

At the conclusion of the mediation, the mediator will complete a Mediation Summary form, which will be submitted to the OGC Mediation Coordinator and kept for statistical purposes (see Tab "G"). The summary form will document the parties involved in the mediation; their attorneys, if any; the mediator; the date, time, and place of the mediation; and whether the mediation resulted in a settlement. After the mediation has concluded, the survey form will be sent by OGC to the Chief Counsel of the requesting agency (see Tab "H"). All documents given to the mediator by the parties will be promptly destroyed. If no agreement has been reached at the end of the mediation, the parties and the mediator will sign a form acknowledging and confirming that no agreement has been reached (see Tab "I").

Who are the Mediators?

The mediators are OGC attorneys who represent a wide range of experience and expertise. Among their practice areas are contracts, labor and employment, licensure, permitting, procurement, and education law. Many of the mediators have extensive litigation experience both in administrative tribunals and before state and federal courts. OGC's mediators have undergone intensive multi-day mediation training. A substantial number have received additional training. During such training, the mediators' skills are refined as impartial listeners, information gatherers, problem solvers, consensus builders and impasse breakers.

What Do OGC Mediators Do?

The job of the OGC mediator is to facilitate communication among the parties in a non-confrontational manner and to promote respect between the parties so that all participants have an equal opportunity to be heard and listened to. As noted elsewhere in this OGC Mediation Handbook, the mediator, who has a duty of impartiality, works to identify areas of agreement between the parties as well as to identify alternative ways of thinking about the dispute and possible solutions.

What the mediator does not do is act as a judge or make decisions. The mediator has no authority to impose a settlement on the parties and will not decide the outcome or terms of settlement. At no time will the mediator represent either of the parties or provide legal advice or any counseling to either party.

What is the Role and What are the Rights of the Parties?

The parties come to mediation voluntarily. They are expected to participate in the process in a meaningful way and listen attentively to the other side. The parties are also expected to identify the issues in dispute and explore areas of mutual agreement. In order for the mediation to be successful, each party must have settlement authority or ready access to a person with settlement authority.

At any time during the mediation process, any party has the right to seek legal counsel. In addition, any party may choose to end the mediation at any time.

What Disputes Can be Mediated?

Most disputes can be mediated, and it is not necessary to have pending litigation to enter the mediation process. Mediation is most appropriate where there are recurring disputes, a need for an ongoing relationship between the disputants, communication breakdowns, workplace disputes, controversies involving governmental bureaucracy, bankruptcy or potential bankruptcies, industry-wide disputes, Equal Employment Opportunity Commission claims and those cases where there may be a need for privacy and confidentiality that is not available in a public forum. If you have a question about whether a particular case would be appropriate for mediation and are agency counsel, consult your Chief Counsel; if you are counsel for a third party, contact the OGC Main Office.

What About Confidentiality?

For the most part, all communications concerning mediation are confidential. 42 Pa.C.S. § 5949(a). As a result, communications and documents related to the mediation are privileged, not discoverable and cannot be submitted as evidence in another proceeding. The parties will agree prior to mediation not to subpoena the mediator to testify and mediators will refuse to testify as to the mediation process. In addition, all documents given to the mediator by the parties will be promptly destroyed at the conclusion of the mediation.

There are some limited exceptions to these confidentiality provisions. First, confidentiality does not apply to documents that exist independently of the mediation. Second, the settlement document itself is not confidential to the extent it is introduced to enforce the settlement. Third, communications of threats that constitute crimes and fraudulent communications relevant in an action to enforce or set aside a mediation agreement are not subject to confidentiality.

How Do I Submit a Case for Mediation?

Once all parties agree to pursue mediation, a Request for Mediation form (see Tab “B”) should be submitted to the OGC Mediation Coordinator. This can be accomplished by working with your agency Office of Chief Counsel. OGC will put the mediation process in motion and will provide to the parties a list of potential mediators or the name of a proposed mediator, along with information about their backgrounds. Once the parties agree on a mediator, the mediator will be in contact with them to set up the mediation session.



**COMMONWEALTH OF PENNSYLVANIA
OFFICE OF GENERAL COUNSEL
DISPUTE RESOLUTION PROGRAM**

www.ogcdr.pa.gov

Frequently Asked Questions

1. What is mediation?

Mediation is a form of Alternative Dispute Resolution (“ADR”) that is offered by OGC as an alternative to traditional litigation. Mediation is an informal means of resolving a dispute with the active, direct participation of the parties and the assistance of a trained mediator. The mediator has no authority to impose a settlement on the parties.

2. What are the benefits of mediation?

Because the mediator helps the parties come up with their own ideas for resolving their dispute, the parties are able to control the resolution. The parties can establish better relationships through the improved communication and constructive problem solving that is part of the mediation process. Mediation saves time, money and judicial resources. Because the parties have crafted a solution that is acceptable to them, there is also a higher degree of compliance achieved through mediation.

3. What types of issues are mediated?

Mediation is most appropriate where there are recurring disputes, a need for an ongoing relationship between the disputants, communication breakdowns, workplace disputes, controversies involving government red tape, bankruptcy or potential bankruptcies, industry-wide disputes, Equal Employment Opportunity Commission claims, and those cases where there may be a need for privacy and confidentiality that is not available in a public forum. If you have a question about whether a matter is appropriate for mediation, contact your agency Office of Chief Counsel.

4. Who are the mediators?

The mediators are OGC attorneys who have received mediation training from the Office of General Counsel.

5. Is a mediation agreement binding?

The parties create a signed mediation settlement agreement as a contract that is intended to be legally binding.

6. Is the mediation process confidential?

All parties will be asked to sign an Agreement to Mediate (see Tab “F”) prior to initiating a mediation session. The agreement states that the participants and the mediator agree to keep

the session confidential, and that the participants agree not to compel the mediator's disclosure of mediation communications or documents. In addition, under state law, 42 Pa.C.S. § 5949, all mediation documents and communications are privileged (except for narrow exceptions). Confidentiality extends to all communications during the mediation process, unless otherwise provided for by law.

7. Can I mediate a case if there is a violation of state or federal law?

A violation of law may be resolved through mediation. An attorney should weigh the pluses and minuses of the alternatives – mediation, complaint, hearing – and decide which is the best option.

8. Who can request mediation?

Mediation is available at the request of any Commonwealth agency under the Governor's jurisdiction, any OGC attorney, any Commonwealth employee, or any party engaged in a dispute with a Commonwealth agency.

9. How much does mediation cost?

There is no cost for the mediation, unless the mediator incurs travel expenses. Each party, of course, pays for the party's own counsel and other costs.

10. Who will provide and pay for meeting facilities?

It is anticipated that Commonwealth facilities will be utilized for mediations. If the parties mutually wish to incur the cost of another meeting facility, it will be up to the parties (with the assistance, if necessary, of the mediator) to determine how the costs will be shared.

11. Who will provide and pay for amenities (for example, refreshments) at prolonged mediations?

The parties will provide for their own amenities at mediations.

12. How does a party begin the mediation process?

Once both parties agree to mediation, the agency's Office of Chief Counsel will complete a Request for Mediation form (see Tab "B") and submit it to OGC. All requests for mediation must come through OGC. OGC will then provide the parties with a list of trained mediators from which they can make their selection or will appoint a mediator with the consent of the parties.

13. How will mediators be selected for particular mediations?

OGC will provide the parties with a list of potential mediators. It will be up to the parties to agree on a mediator to handle their case. It is anticipated that this selection will be based on the nature of the dispute and the mediator's experience and expertise.

14. What happens after the mediator has been selected?

The mediator will receive an Appointment Letter (see Tab "C") from OGC. The mediator will then be in contact with the parties to schedule the mediation. The mediator will also schedule a meeting room for the mediation session in a Commonwealth meeting facility.

Prior to the mediation, the mediator will communicate with the parties, which includes Good Faith Ground Rules to guide their conduct during the mediation session (see Tab “D”). The parties will also be given an Agreement to Mediate (see Tab “F”) and will be asked to complete a Mediation Statement in which they provide a confidential description of the dispute (see Tab “E”).

15. What will happen during a mediation?

The mediator will contact the parties, or if counsel for the parties have initiated the request for mediation, the mediator will contact counsel and explain the process and answer any questions. Counsel will be asked to explain the situation and identify all participants, who may also be contacted by the mediator. If everyone agrees to participate in mediation, a time and place will be set. During the mediation, the mediator will ask questions to clarify each participant’s needs and issues. Each issue will be separately addressed for possible solutions. If everyone is satisfied with the proposed resolution, it will be incorporated into a written agreement that the parties will prepare for all to sign.

Separate caucus rooms will be available at all times during the mediation for private, confidential meetings and discussions with the mediator. The mediator or either party may ask for time to caucus privately during the mediation session.

16. What is counsel’s role during the mediation?

The role of counsel shifts from that of an adversarial representative to that of a consultant, advisor, or coach. Counsel may need to advise the parties as to whether the alternative resolution being explored by the parties is legally acceptable or help the parties to frame alternative resolutions in ways that are legally appropriate.

17. What is an effective pre-mediation strategy for counsel?

Counsel should look at the dispute from the other party’s point of view. This will help counsel to determine if there are factors driving the other party’s position that might be capable of resolution in a different way. Counsel should focus on how the opponent views the case and the assumptions, evidence and legal analysis that support that view. Counsel should also consider the motivation of the opponent’s decision maker and the factors that are likely to change or influence that view. Counsel should consider what will happen if settlement is not reached. If there are benefits to settlement, counsel should encourage the parties to be open-minded and to explore solutions that might alleviate the other party’s concerns.

18. What is a mediator’s role in mediation?

A mediator’s role is to facilitate communication and restate issues and needs in a clear and non-confrontational manner. The mediator may meet with the parties privately to discuss information the party does not wish to share with the other side. If necessary, the mediator can help to provide a “reality check” regarding unrealistic expectations of a participant, in a private setting. A mediator has a duty of impartiality. Mediators do not judge evidence or decide a case. Mediators do not decide the terms of any resulting agreement but may assist the parties in drafting issues.

19. What information about the mediation will be collected by OGC?

The mediator will be required to provide OGC with a Mediation Summary form (see Tab “G”) that will document only the parties involved in the mediation; their attorneys, if any; the mediator; the date, time and place of mediation; the hours involved in the mediation sessions;

and whether the mediation resulted in a settlement. The Mediation Survey Form, completed by agency counsel attending mediation, will be maintained by OGC for statistical purposes (see Tab “H”).

20. What documents, including the mediators’ notes, should the mediators retain?

Mediators should not retain their notes or any documents provided by the parties. At the conclusion of the mediation all documents related to the mediation should be promptly destroyed except the Mediation Summary form, which must be submitted to OGC.

21. To what degree should mediators restrict their involvement in authoring settlement agreements?

The parties, not the mediator, should author settlement agreements. The mediator may assist in resolving drafting issues.

22. What is expected of the parties at a mediation?

The parties are expected to come to the mediation with an open mind and willingness to listen to the other party. The parties should be respectful of one another and of the mediator and should think creatively about possible solutions to their dispute. The parties should act in good faith at all times.

23. What if one party decides the mediation process is not working and wants to terminate the process?

At any time during the mediation either party has the option to terminate the mediation and pursue a resolution in another forum such as an administrative tribunal or in the courts.

24. What if the mediation fails to result in a mutually satisfactory agreement?

Nothing is lost if mediation does not resolve the dispute. Issues may have narrowed between the parties. Lines of communication may have opened. Parties may have had the opportunity to see the dispute from the other side’s perspective. Both parties still have at their disposal access to more traditional means of dispute resolution, including administrative tribunals and the courts. Many times settlement occurs after the mediation sessions end as a result of the efforts expended in the mediation process.

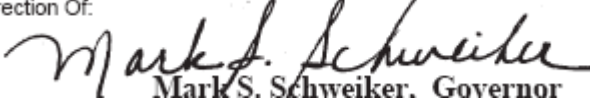
TAB “A”

(Executive Order)

EXECUTIVE ORDER

Commonwealth of Pennsylvania

Governor's Office

Subject: Integrating Mediation Into State Government		Number: 2002-7
Date: June 14, 2002	Distribution: B	By Direction Of:  Mark S. Schweiker, Governor

WHEREAS, traditional adjudicatory processes have become increasingly costly, time consuming, and contentious; and

WHEREAS, this Administration is committed to ensuring that state departments, boards, commissions, and agencies utilize more efficient and less expensive methods of resolving disputes; and

WHEREAS, mediation is a voluntary (unless otherwise ordered), informal process through which a neutral third party (the mediator) assists the parties in reaching a mutually acceptable resolution of their dispute, and the parties themselves control the outcome as opposed to having the outcome determined by an adjudicator; and

WHEREAS, mediation offers an efficient, less expensive, and more satisfactory method for resolving disputes, and allows the process to be tailored to the disputants' needs; and

WHEREAS, an increased use of mediation by state departments, boards, commissions, and agencies will enhance the operation of state government and better serve the public; and

WHEREAS, the Commonwealth of Pennsylvania has an interest in promoting and modeling the values, understanding, public awareness, and practice of mediation and collaborative problem solving.

NOW, THEREFORE, I, Mark S. Schweiker, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania and other laws, do hereby adopt the policy of integrating mediation into state government as follows:

1. Each department, board, commission, council, and agency under my jurisdiction shall become familiar with mediation, where and how it might be used and regularly explore, encourage, and facilitate its use.

2. Each department, board, commission, council, and agency under my jurisdiction shall designate a Mediation Coordinator who shall encourage and facilitate the use of mediation and report directly to the secretary, director, commissioner(s), or other designated official(s).

3. Effective Date. This order shall take effect immediately

TAB “B”

(Request for Mediation Form)



**COMMONWEALTH OF PENNSYLVANIA
OFFICE OF GENERAL COUNSEL
DISPUTE RESOLUTION PROGRAM**
www.ogcdr.pa.gov

REQUEST FOR MEDIATION

DATE:

TO: Derek Riker, Deputy Chief of Staff

THRU: Alexis Dinniman and Nicole M. Werner
OGC Mediation Coordinator OGC Mediation Director

FROM:

RE: Request for Mediation

Requesting Agency:	
Requesting Agency Contact Person: (Include name, address, phone, and e-mail address)	Contact Person Name: Address: City, State, Zip: Phone Number: Email Address:
Case Name:	
Tribunal & Docket Number, if any:	
MMS No:	
Name of Parties:	
Name of Counsel & Law Firm Representing Non-Commonwealth Party: (Include name, address, phone, and e-mail address)	Contact Person Name: Address: City, State, Zip: Phone Number: Email Address:

<p>Commonwealth Counsel: (Include name, address, phone, and e-mail address)</p>	<p>Commonwealth Counsel Name: Agency Name: Address: City, State, Zip: Phone Number: Email Address:</p>
<p>Critical date(s) or time frame, if any, by which mediation needs to take place:</p>	

Summary of Dispute:

Why dispute is appropriate for mediation:

OGC Approval:

Nicole M. Werner **Date**
OGC Mediation Director

TAB “C”

(Appointment Letter)



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

DATE

VIA EMAIL

NAME OF MEDIATOR
TITLE
DEPARTMENT
ADDRESS
CITY, STATE, ZIP

RE: **NAME OF CASE**
PHRC or DOCKET NUMBER

Dear NAME OF MEDIATOR:

You have been selected to act as mediator concerning the dispute between [NAME OF CASE]. As such, I have enclosed for your information a copy of the *Request for Mediation*.

The mediation is to be conducted in accordance with the procedures set forth by the Office of General Counsel and 42 Pa. C.S. § 5949, relating to confidentiality. If there is any reason why you cannot conduct this mediation, please contact Mediation Coordinator Alexis Dinniman immediately at (717) 783-6563 or adinniman@pa.gov. Should you have any questions regarding this assignment, please do not hesitate to contact me at niwerner@pa.gov.

At the conclusion of the mediation, please submit a completed Mediation Summary to Alexis Dinniman.

Thank you for assisting in the Office of General Counsel's Mediation Program.

Very respectfully,

Nicole M. Werner
OGC Mediation Director

NMW/ad
Enclosure

c: Commonwealth Counsel, Department (w/o encl.)
Unrepresented Complainant or Counsel info (w/o encl.)
Unrepresented Respondent or Counsel (w/o encl.)

TAB “D”

(Engagement Letter)

[Agency Letterhead]

Sample Engagement Letter

RE: [Name or description of the dispute]

Dear [Name of party or party's counsel]:

This is to confirm that you have selected me as the mediator for the above-referenced dispute. The mediation is scheduled for [date] at [time] at [location]. Please be sure that you have allocated at least four (4) hours for the session.

Mediation is an informal, non-adjudicative process. I, the mediator, will not make a decision. It is you, the parties, who work together to resolve your dispute. I, as a mediator, use a facilitative approach. I will encourage your communications and negotiations, probe for common underlying interests, evaluate strengths and weaknesses of your individual positions, and assist you to both generate and respond to settlement proposals.

As you know, I am employed by the Governor's Office of General Counsel. I want to be sure to disclose that [additional conflict issues]. If this raises concerns regarding my ability to be impartial, please notify me at once. It is my obligation and duty to remain impartial throughout the mediation.

I will begin the mediation with a joint session and will use caucuses as necessary. Caucuses are separate, private and confidential meetings with the parties. When you make your initial presentations in joint session, please be ready to describe your perceptions of the events that gave rise to the dispute and, to the extent you are willing, describe the interests that will guide you in making and responding to settlement offers.

The parties should act in good faith. The following are Good Faith Ground Rules for your guidance.

1. The parties agree to be fully prepared to discuss the dispute and to offer possible resolutions.
2. The parties agree to take turns speaking and listening.
3. The parties agree to try to understand the other party's interest.
4. The parties agree not to engage in negative behaviors, and only to ask questions to gain clarity and understanding.
5. The parties are willing to explore creative resolutions.
6. The parties agree to have a representative with settlement authority present or readily available.

For more information on these rules, visit www.ogcdr.pa.gov. If you believe that you cannot comply with these rules, please inform me now in advance of the mediation session, because a lack of compliance may mean that the dispute may not be presently suitable for mediation.

Enclosed you will find an Agreement to Mediate. I will ask you to sign this agreement when the first mediation session commences.

I have enclosed a Mediation Statement Form, which will provide me with essential background information concerning this dispute. Please return your Mediation Statement Form to me by [Date]. Your response should succinctly and fairly portray the dispute. The information is for my use only and will not be disclosed to any party without your permission. At the conclusion of the mediation, the Mediation Statements will be destroyed.

I will telephone each party to discuss the dispute and mediation the week before the first mediation session. This telephone call also will be treated as confidential.

I look forward to meeting with you. Please let me know if you have any questions or if you require additional information.

Sincerely,

[Name]
[Address]
[Phone]

Persons with a disability who wish to attend the mediation session, and require an auxiliary aid, service or other accommodation to participate in the mediation, please contact [agency contact].

TAB “E”
(Mediation Statement)



**COMMONWEALTH OF PENNSYLVANIA
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MEDIATION STATEMENT

[Name or description of the dispute]

Please provide the following information to the mediator by _____. This information is for the mediator's use only and will not be disclosed to other parties without your permission. The requested information will assist the mediator in better understanding the dispute and, thereby, assist in effectively preparing for the mediation. The responses to these questions should not exceed three pages in length. At the conclusion of the mediation, this information will not be retained by the mediator and will promptly be destroyed.

1. Please summarize the facts that led to this dispute.
2. Please describe the issues that you believe must be resolved in order to settle this dispute.
- 3(a). Please identify the interests or needs, both monetary and other types, that would be most important to you (or to your client, if you are an attorney) in a settlement of this dispute.

For instance, in a land dispute, some interests or needs might be retaining property that has been handed down over generations, seeking compensation for past wrongful possession, obtaining an apology, or having property to leave to one's children rather than obtaining economic damages for wrongs.

- (b) Please identify the interests or needs that you believe would be most important to the other party in a settlement of this dispute.
4. Please describe your settlement discussions to date, including demands and offers.
5. Please describe obstacles you believe interfere with settling this dispute.
6. Please describe your position, and cite, if possible, to relevant legal authorities (statutes, regulations, cases). Identify the strengths and weaknesses of your case, and the strengths and weaknesses of the other party's case.
7. Please attach a copy of any documents that you will rely on during the mediation.
8. Please explain whether you are entering into this mediation voluntarily or whether it is as the result of an order or some other mandate (please identify).

9. List the name of each person, including counsel, who will attend the mediation. Please ensure that a person with decision making authority is present.

10. Name the person answering this Request. (If an attorney provides the information, please also include the name of the party who is represented by the attorney).

TAB “F”
(Agreement to Mediate)



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AGREEMENT TO MEDIATE

The parties signing below acknowledge and agree they are willing to participate in a voluntary mediation process in an effort to reach a mutually acceptable resolution of the following dispute:

The parties acknowledge and agree to be bound by the following:

1. Mediator.

- a. The role of the mediator is to facilitate respect and communications between the parties with the intent that the parties identify and clarify issues and explore potential resolutions of their dispute. The mediator is not a judge or a decision maker. In mediation, the parties decide the outcome and, if they resolve their dispute, the terms of settlement.
- b. The mediator does not represent either party and shall not provide legal advice. The parties may seek legal advice at any time and are encouraged to do so.

2. Mediator Impartiality and Disclosures. The mediator is employed by the Governor's Office of General Counsel. The mediator shall conduct the mediation in an impartial manner. None of the parties know of any circumstances that would cause reasonable doubt concerning the mediator's impartiality. If the mediator has disclosed past or current relationships with one or more of the parties or their attorneys, the parties acknowledge the receipt of such disclosure and consent to the mediator's service in this mediation.

3. Confidentiality of Communications and Documents.

- a. Except as they shall otherwise specifically agree, the parties hereto shall keep the matters discussed at the mediation confidential. All mediation communications and mediation documents are privileged except as provided by 42 Pa.C.S. §5949 (Act of February 7, 1996, P.L. 7). The privilege applies to all mediation communications and mediation documents made in preparation for or during mediation. Disclosure of mediation communications and mediation documents may not be compelled through discovery or other process. Mediation

communications and mediation documents shall not be admissible as evidence in any action or proceeding, including, but not limited to, judicial, administrative or arbitration actions or proceedings.

- b. The confidentiality privilege may not apply to any document that exists independently of the mediation and that would not be privileged if the mediation did not occur. The privilege does not apply to:
 - i. A settlement document introduced in an action to enforce the settlement agreement, unless the settlement agreement states it is unenforceable or not intended to be legally binding;
 - ii. Communications of threats that bodily injury may be inflicted on a person, or threats that damage may be inflicted on real or personal property under circumstances constituting a felony; or, conduct during a mediation causing bodily injury; or
 - iii. Fraudulent communications made during mediation that are relevant evidence in an action to enforce or set aside a mediated agreement reached as a result of that fraudulent communication.
- c. In addition, the parties agree that the mediator may disclose to appropriate government entities a mediation communication or mediation document regarding a violation of, or an intent to violate, a Federal, State or local law if it constitutes one or more of the following:
 - i. Information that bodily injury has been or may be inflicted on a person;
 - ii. Information that damage has been or may be inflicted on real or personal property, the environment, or natural resources; or
 - iii. Information that fraud has been or may be conducted in relation to a government program.
- d. Mediation commences at the time of initial contact with the mediator or mediation program. No record, electronic or otherwise, is made of mediation sessions. Any notes taken by the mediator during the mediation process will be destroyed when the mediation process is concluded.

4. Mediator's Confidentiality/Indemnification.

- a. The mediator shall refuse to testify regarding any mediation communication or mediation document or to produce mediation documents in any action or proceeding in accord with the confidentiality privileges applicable to mediation described above and in 42 Pa.C.S. §5949. Except as set forth in paragraph 3, above, the mediator will not disclose mediation communications or mediation documents unless the parties authorize disclosure or disclosure is required by law. The mediator may report the status but not the content of the mediation to the Governor's Office of General Counsel.

b. Each party agrees not to subpoena or otherwise seek to compel the mediator's disclosure of mediation communications or mediation documents. Each party, intending to be legally bound, agrees to indemnify the Commonwealth of Pennsylvania and/or the mediator against any liabilities, costs or expenses, including attorneys' fees, that the Commonwealth and/or mediator may incur in resisting such subpoena or compulsion.

5. **Fees & Expenses.** There shall be no fee for the mediation. If the mediation session is held in Commonwealth government offices in _____, Pennsylvania, any travel expenses incurred by the mediator shall be covered by the Commonwealth agency requesting the mediation; otherwise the parties shall be equally liable for such expenses.

6. **Termination of Mediation.** Mediation is voluntary. Mediation may be terminated without cause at any time by any party or the mediator.

7. **Voluntary Acknowledgment.** The parties affirm that they have read, understood, and voluntarily sign this Agreement to Mediate.

Party Date

Counsel Date

Party Date

Counsel Date

Mediator Date

TAB “G”

(OGC Mediation Summary Form)



**COMMONWEALTH OF PENNSYLVANIA
OFFICE OF GENERAL COUNSEL
DISPUTE RESOLUTION PROGRAM**

www.ogcdr.pa.gov

OGC MEDIATION SUMMARY

1. Name of Case:
2. Name of OGC Mediator:
3. Names, addresses, and email addresses of all parties and counsel present for the mediation.
4. Location of the mediation.

Address:
City, State, Zip:
5. Mediation Sessions:
 - a. Number of sessions:
 - b. Dates of sessions:
 - c. Amount of time per session:
 - d. Total hours of all sessions:
6. Did the parties settle the dispute as a result of the mediation?
7. If yes, did the parties reduce their Settlement Agreement to writing?

TAB “H”

(Mediation Survey)



**COMMONWEALTH OF PENNSYLVANIA
OFFICE OF GENERAL COUNSEL
DISPUTE RESOLUTION PROGRAM**
www.ogcdr.pa.gov

MEDIATION SURVEY

Case Caption:

Agency:

Name of agency counsel:

Brief description of case:

1. How much did the Mediation process alone, including preparation, cost your agency?
(Please include in your estimate all out-of-pocket costs and attorneys' fees, including the cost of agency counsel time.)

\$ _____

2. Please provide the total litigation costs incurred by your agency to date in this case.

\$ _____

Please show a breakdown of the costs, e.g., expert fees, filing fees, outside counsel, transcripts, etc.

\$ _____ - Type of Service

\$ _____ - Type of Service

\$ _____ - Type of Service

\$ _____ - Type of Service

3. Did your agency save time as a result of Mediation in this case?

Yes No

If yes, estimate the amount of time saved and its value.

4. Specifically, which of the following court events would have been likely to occur if the case had not gone through Mediation? *Please check all that apply.*

- Discovery Motion
- Summary Judgment Motion
- Other Motion
- Case management Conference or Status Conference
- Judicial Settlement Conference
- Pretrial Conference
- Trial
- Appeal
- Other (explain)

If none, please explain your answer.

5. Did using Mediation in this case increase, decrease or have no effect on your agency's likely total litigation costs through settlement, judgment, or other disposition had this case not been mediated? (Exclude any judgment or settlement you would have paid.)

Increase Decrease No Effect

6. Please estimate the amount by which mediation increased or decreased your agency's total litigation costs and explain your answer.

\$ _____

7. Did your agency realize any other benefits besides reduced time and reduced litigation costs?

Yes No

8. Please explain the nature of and estimate the value of such benefits.

9. Please complete the following summary totals:

- a. Litigation costs saved: \$0.00
- b. Value of time saved: \$0.00
- c. Value of other benefits: \$0.00

Total: \$0.00

Please complete and return this survey within ten days of completed mediation.

TAB “I”

(Acknowledgement of No Agreement)

