

Judge Morton Denlow's

# MEDIATION PROCEDURES



*I currently mediate all of my cases on Zoom. I have mediated hundreds of cases on Zoom since March 2020. I have found a Zoom mediation to be a convenient, efficient, cost-effective and beneficial method of settling disputes. Lawyers and clients have responded positively to Zoom mediations.*

*My mediation process has proven effective, so it is necessary that you understand the procedures I use. With thoughtful preparation by the parties and me prior to the Mediation Conference, the potential for a successful mediation will be maximized.*

## A. Steps to a Successful Zoom Mediation

### 1. Initial Conference Call.

Soon after receiving the case information for a new dispute to mediate, I conduct an initial joint conference call with counsel for all parties. Dial-in instructions and an agenda for the initial conference call will be provided by my case manager. The purpose of the call is for you to familiarize me with the dispute and for me to discuss a number of issues with you, as set forth in the agenda. The initial conference call helps me determine whether the case is ready for mediation or whether additional information should be exchanged. During the call we will set firm mediation submission dates, confirm that parties with settlement authority will be present at the mediation, and answer any questions. I want to avoid surprises.

Following the initial conference call my case manager will send you a written schedule for the exchange of pre-mediation submissions along with delivery instructions.

### 2. Pre-Mediation Exchange of Mediation Statements, an Itemization of Damages and Settlement Proposals.

In advance of the mediation session, I require the Parties to exchange written mediation

statements and settlement proposals, with a copy to me. It is important the Parties understand the positions of the other side. This allows me to remain in the role of the Neutral.

Accordingly, at least twenty-one (21) days prior to the Mediation, Plaintiff's counsel will submit a mediation statement to Defendant's counsel discussing the merits, which includes a written itemization of damages and a settlement proposal. A copy is also sent to me.

No later than seven (7) days prior to the Mediation, Defendant's Counsel will submit a mediation statement to Plaintiff's counsel which includes a written settlement offer. A copy is also sent to me.

**Please note, I require the parties to include their initial settlement demand or offer in their mediation statements, rather than waiting for the mediation to do so.**

### 3. Attendance of Parties with Full Settlement Authority is Required to Personally Participate in the Zoom Mediation.

A mediation can be successful only if the Parties in attendance have authority to negotiate a settlement. The use of Zoom makes it convenient for all necessary parties to participate regardless

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## Mediation Procedures continued

of location. An insured Party should appear with a representative of the insurer who is authorized to negotiate and who has *authority to settle the matter up to the limits of the opposing Parties' existing settlement demand*.

An uninsured corporate Party should appear by a representative authorized to negotiate and who has *authority to settle the matter up to the amount of the opposing Parties' existing settlement demand or offer*.

### 4. Mediation Format.

The purpose of the mediation is to reach a financial or business resolution - not a legal decision. While I will provide my input on the issues presented, the ultimate decisions regarding settlement rest with the Parties.

When the parties appear on Zoom, they will be placed in separate breakout rooms. After everyone arrives, we will meet in a joint session for introductions and preliminary comments by me to make sure everyone understands the process and the necessary steps to successfully mediate with me. I will sometimes share a document I prepared on the Zoom screen with all parties.

The parties' counsel will be invited to make brief introductory remarks thanking the other side for participating and demonstrating a willingness to participate in good faith. Arguments on the merits should be addressed in your mediation statements.

In class action cases the parties will meet with me in a joint session to discuss the class action checklist in an attempt to reach agreement on the structure of the settlement before returning to your separate breakout room.

Following the joint session, I generally shuttle back and forth between the breakout rooms to continue the negotiations until a settlement is reached. Counsel and the party representatives

are expected to be fully prepared to participate. All participants are encouraged to keep an open mind in order to re-assess their previous positions and to explore creative means for resolving the dispute. Once a settlement is reached, the parties should prepare and execute a term sheet at the conclusion of the mediation.

### 5. Statements Inadmissible.

The Parties are expected to address each other with courtesy. Statements made by any Party during the Mediation are not to be used in discovery and will not be admissible at trial.

### 6. Issues to Be Considered And Discussed.

Parties should consider the following topics in preparation for the Mediation:

1. What are your goals?
2. What do you believe are the opposing parties' goals?
3. What are all of the issues to be resolved?
4. What are the points of agreement and disagreement between the Parties? Factual? Legal? Financial?
5. What are the impediments to settlement? Financial? Emotional? Legal?
6. Are there possibilities for a creative resolution of the dispute?
7. Do the advantages of settlement outweigh the possible advantages of litigation?

## B. Involvement of Clients

For many Clients this will be the first time they will participate in a Mediation. In addition, every mediator is different. Therefore, Counsel should provide a copy of these Mediation Procedures to their Client and discuss the points contained herein prior to the Mediation.

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# Mediation Procedures continued

## C. Prepare for Success

In anticipation of a settlement, the Parties should review and be prepared to complete Judge Denlow's Settlement Checklist/Term Sheet or a similar document at the conclusion of the Mediation Conference. Attached please find a Word version of the Settlement Checklist/Term Sheet for your review.

In class action cases, Judge Denlow utilizes his Class Action Checklist. In a successful mediation, this document is converted into a Class Action Settlement Term Sheet at the mediation. A copy of the Class Action Checklist will also be provided in a class action case.

*To learn more about Judge Denlow, please visit [jamsadr.com/denlow](http://jamsadr.com/denlow).*

*Disclaimer: The content is intended for general informational purposes only and should not be construed as legal advice. If you require legal or professional advice, please contact an attorney.*

**To set a case with Judge Denlow, contact Case Manager Deborah Stewart:  
[dstewart@jamsadr.com](mailto:dstewart@jamsadr.com) or 312.655.9192.**

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