

Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser-in fees, expense, and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will still be business enough.

Abraham Lincoln  
1860

## HUEGLI MEDIATION

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### Mediation Confirmation

**From:** James D. Huegli

**Re:**

**Date:**

**Time:** 9 am Plaintiffs, 9:30 am Defendant(s)

**Place:**

## STYLE OF MEDIATION

There are several types of mediation but the two most common are the facilitator and the evaluator. My style is that of evaluation.

By far the most common type of mediation in legal settings is evaluative mediation. Other types of mediation are used in common business disputes, and in non-judicial settings such as property disputes between homeowners. However, evaluative mediation can be very successful there as well.

My mediation style is more exploratory in nature. It is modeled on adjudicated settlement conferences. I work with the parties to find a satisfactory resolution by identifying the weakness and strengths in their argument and even making predictions regarding the reaction of the judge or jury. I may even go so far as to recommend consequences and results of a case. This type of mediation is more focused on the legal and factual aspects of the party's case as opposed to simply guiding the party's emotions. It is outcome based. In this type of mediation there will be more of an inclination toward cost/benefit analysis and other similar tools for guiding the parties to an agreement that is acceptable for all involved.

Under no circumstances do I profess to be more accurate or prepared than the lawyers on both sides. I am only another resource to be used as a tool by the parties to settle a dispute.

On occasion I have had attorneys say to me "Don't tell me I have a bad case or try to evaluate my case; I know what my case is all about". In those cases I try to emphasize that I do not know the case as well as the lawyer, but I place myself in the position of a disinterested third party, with 40 years of jury trial experience, and try to provide the lawyer and his or her client with an unbiased view of the case. As a trial lawyer, when I was representing one of the parties, I found myself believing my own press! Intervention by a mediator can avoid that trap.

This type of mediation is also very important when there are client control issues and the client has expectations that far exceed the value of the case, or conversely, believe the case is defensible and has little value. In those instances, I am able to provide a buffer between the client and the lawyer to move the parties towards a resolution. I have also had decades of experience

working with carriers from both sides, as a plaintiff's lawyer and as defense counsel, and use that experience to assist the carriers in understanding concepts that they might otherwise ignore.

I tell the parties and lawyers not to "shoot the messenger". An unbiased evaluation with suggestions is valuable for all parties to hear. Even if the case does not settle, which is uncommon, the parties can leave the mediation with a fresh outlook on the case and possibly evaluate the case from a different perspective.

I have every confidence in this case that the parties can leave the mediation with a satisfactory outcome.

### **Mediation Terms**

The parties and counsel are deemed to have agreed to the following mediation terms, unless the mediator is informed by email or other writing of any disagreement about the terms within 3 days of the confirmation being sent to counsel for the parties.

### **Submissions**

**In order to assure that your mediation submission will receive appropriate review, it is due on or before.** You need send only material that will give a general factual outline of the dispute, a discussion of important strengths and weaknesses in the parties' positions, and the history of any settlement negotiations. The mediator would also request key documents, legal briefs filed with the court, and a summary of client control issues, if any.

### **Fees**

**Full day/Half day reserved:** \$4,950 for full day reserved.

If the mediation exceeds 8 hours but less than 12 hours, a further half day will be charged. Each additional hour beyond 12 hours in the same day will be charged at \$600 per hour. If the mediation is **more than** 3 hours from Portland by road, a fee of \$500 (one charge for round trip) will be charged for travel time in addition to mileage and mediation fees listed above, each way.

Travel expense will be charged at \$.50 per mile and actual expenses of accommodations and meals. Accommodations and meals will be charged based upon moderate accommodations only, and not first class accommodations. Air fare will be based upon the lowest rate and class available.

Generally there is no charge for pre-mediation review. Most pre-mediation reviews take less than 5 hours. However, if the materials are complex and extensive, the mediator reserves the right to bill for preparation at the rate of \$450 per hour for each hour exceeding 5 hours.

Mediation outside the State of Oregon will be charged at the above stated rate, together with a fee of \$500 for travel time per day to and from the State of Oregon, regardless of the State involved. The exception to the above would be travel that is within 3 hours of Portland. **There is no additional travel charge for travel time within 3 hours of Portland.**

Billings are sent electronically at the conclusion of the mediation and are due on receipt.

**RESPONSIBILITY:** The law firms representing the parties are guarantors of *timely* payment of their share of the mediation fee.

Neither the individual client nor the insurance carrier is considered a party to this agreement in relationship to the payment of the mediator's fees and costs. The law firms are responsible. As I am sure all parties understand, the mediator does not know the parties, carriers or individuals and relies entirely upon the firms for the payment of the billings.

**Fee shares:** The firms should make any agreement concerning sharing of the mediator's fee *before* the mediation. If the firms have not agreed on the allocation, the mediator will bill the firms in equal shares as determined by the mediator. For instance, there might be two or more firms with identical interests, in which case generally they would be billed one share instead of multiple shares based simply on a head count.

If any firm wishes to negotiate their share of the mediator's fee at the mediation, the mediator will leave that to them to do directly with the other party or parties without the mediator's involvement.

**Cancel/postpone: Please take note:** There is no charge if the mediation is postponed or canceled **more than 10 days** before the date reserved.

When there is a cancellation or postponement, for any reason, **3 days or less** before the date reserved, a charge of \$500 will be assessed to be paid by the firm cancelling the mediation.

### **Document retention**

I destroy documents immediately after the mediation and do not retain documents at all.

### **Personal attendance by decision-maker(s)**

A decision-maker with adequate authority to settle the dispute **must be physically present** at the mediation, unless all other parties have been notified by email or in writing otherwise, and expressed by email or in writing their agreement to participation of the decision-maker by phone. The decision maker is that person that has full authority to settle this claim. In medical malpractice or professional malpractice actions, the mediator requires the plaintiff and defendant professionals to be present regardless of insurance coverage

## **Joint sessions**

Joint meetings of all participants at the mediation occur if all participants and counsel believe that such meetings will be productive. As a general practice, joint meetings are not encouraged, absent an identified purpose, expressions of a strong desire by all participants to have such meetings, and commitments by all that they will participate with the goal of moving toward resolution of the dispute.

## **Confidentiality**

By participating in the mediation, the parties agree that Idaho law governs confidentiality of the mediation and agree the mediation is confidential. The parties further agree that the mediator will not be required to testify about the mediation, unless the parties and the mediator agree otherwise. The mediator will not be a signer to any documents

## **Mediator's role – Site visits**

The mediator will not give legal advice to any party. The parties must rely on their own legal counsel for legal advice at the mediation.

It is sometimes useful for the mediator to visit the scene of an accident. This is included in the fee for the mediation service and the sole purpose for such a visit is to better understand what litigation risks the parties may face because of the physical facts. The purpose is not to reach any conclusions about who is 'right' or 'wrong' about those facts. Nevertheless, if any party prefers that the mediator not visit the scene, they should make that wish known a few days before the mediation and the mediator will respect their request. Such visits are rare and are done only when the mediator perceives it will be especially helpful in conducting the mediation.

**IMPORTANT**

It is not uncommon at the end of the mediation when the parties have finally settled their case to want a confidentiality agreement or a similar agreement. This must be discussed in advance. Please do not allow this to be a deal breaker because it was not covered earlier.

The parties agree to the above terms and conditions

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Attorney for Plaintiff (s)

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Date

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Attorney for Defendant

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Date

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Attorney for Defendant

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