

SAMPLE MEDIATOR'S OPENING STATEMENT

Good afternoon, my name is _____. I am a certified mediator and have been trained to hear disputes such as the one before us today. My purpose here today is to act as the mediator in this case and to assist you in the resolution of the dispute that brings us to this table.

Let me begin by stating that I am not acquainted with the parties involved in this dispute. I am not here to represent either side, any particular position. I will not express partiality or take sides during this process. My goal is to assist each of you in reaching an acceptable settlement of this matter. I have no power to impose a decision on you or to decide how this matter should be settled. This is where mediation differs from other forms of dispute resolution...you are still empowered with the ability to design a settlement that meets your needs, and addresses your interests.

I sent each of you a letter outlining what you should expect in a mediation session and asking you to verify that you willingly accept the opportunity to participate. So that you are both comfortable with each other's good intentions, I want to assure each of you, I have signed agreements to participate in this process from each of you. I want to remind you that this is not a court of law or a legal proceeding. Therefore, we are not bound by the formal rules of evidence. Should you desire at a later time, to pursue this matter in a court of law or an administrative system, this proceeding will in no way delay or interfere with your right to do so. I will not willingly testify for or against either of you in an administrative or court proceeding regarding the information unique to this conference.

Confidentiality is a critical part of the process. Generally, if you tell me something in private and ask me to keep it confidential, I am bound by law not to disclose this information voluntarily. There are some obvious exceptions to this rule, but I do not expect them to arise during our mediation. For example, if you confess to the commission of a criminal offense, or to an act of fraud, waste, or abuse, or that you plan to commit a violent physical act, I may be required to share this information with appropriate authorities. If a judge determines that disclosure of our private confidential

discussions is necessary to prevent a manifest injustice, establish a violation of law, or prevent harm to the public health or safety, we may be required by a court to disclose our private discussions. As a point of reference as to how often these circumstances occur, the Air Force has conducted hundreds of mediations to date and the confidential discussions between a mediator and a party have never been disclosed by an Air Force mediator.

Having said that, I want you to please remember that facts that were discoverable before the mediation session do not become confidential merely because they were presented during a mediation conference. It is only those things you say or write in confidence to me during the mediation that I will not disclose, unless one of the unusual exceptions I discussed above applies. This means that both the mediation agreement and the resulting settlement agreement, if any, are not confidential. For example, certain Air Force officials will have to review the proposed settlement agreement before it becomes binding on the Air Force -- so the agreement itself cannot be kept completely confidential.

Before we begin, let me explain the procedure we will use. When I complete these preliminary statements each of you will have the opportunity to make an uninterrupted opening statement to describe the problem as you see it. It is customary for the party that brought the matter to our attention to begin first, therefore, Mr./Ms. _____ I will ask you to begin. When you have completed your opening remarks, I will ask Mr./Ms. _____ to make an uninterrupted opening statement.

After that, we will transition into a joint discussion centering on possible solutions, I ask that each of you be thinking of how you might like to resolve this matter. At some point, I will meet with each of you separately. This is called a caucus. I will use the caucus to help me clarify in my mind some concerns I may have as we talk, and to be of more assistance in helping you resolve your dispute. I may use the caucus any number of times, and the length of each caucus should not be of concern to either of you. The

information you share during the caucus is also confidential and will not be shared during open discussion unless you specifically give consent to such disclosure.

When you reach agreement, it will be written, and each of you will be asked to verify and sign it. I will also sign it as a witness. Each of you will be provided with a copy of the agreement today. Appropriate authorization may be required for the agreement to become binding and if so, we will note that in the agreement.

Let me once again congratulate you for being here today to try to work this out. Your presence here today demonstrates your willingness to attempt cooperative problem-solving.

Are there any questions at this point? If not, let's proceed with Mr./Ms. _____'s opening statement.