

MEDIATION MEMORANDUM

[Date]

TRANSMITTED VIA FACSIMILE

COMPLAINANT/GRIEVANT

[Address]

MANAGEMENT OFFICIAL

[Address]

Re: Mediation Conference Between _____
[Complainant/Grievant] and _____ [Management
Official]

Dear: _____ [Complainant/Grievant] and _____
[Management Official],

As we discussed, mediation is a voluntary, informal, and confidential process to resolve disputes. I am writing to confirm the scheduling of the mediation conference that we discussed. Because mediation may be new to you, I thought you should know what to expect.

A. Mediation Conference: Schedule and Expected Duration

I will conduct the mediation at the location and time shown on the last page of this letter. It is not unusual for the mediation session to last 4-6 hours. If this amount of time is not possible, please advise me immediately and I will reschedule the mediation for another day or time.

B. What is Mediation and How Does it Work?

This is not a legal proceeding. Equally important, as a mediator I do not provide legal advice or legal counsel. Also important, by agreeing to mediation _____ [name of Complainant/Grievant] ***is not*** waiving his/her right to proceed with the formal legal dispute resolution process, provided that he/she files a timely complaint/grievance. Accordingly, if you are unsure of the amount of time you have to file a complaint or grievance, please be sure to check with your counsel/representative or the appropriate officials.

Success in mediation depends on all participants being prepared to participate fully in the mediation process, including presenting documentation you feel is necessary to support your position.

1. Phases of the Mediation Conference

The mediation conference begins with an opening statement from me regarding my role as a neutral. I am not an advocate or legal representative for or against either party. After the opening statement, I will ask the Complainant/Grievant, to tell me in his/her own words about the complaint and what type of remedy he/she is seeking. I will then give the management representative an opportunity to describe the dispute from their standpoint. After the opening statements, you and the other party will enter into a joint discussion where clarifying questions can be asked, and potential solutions, if any, can be discussed.

At this point, I may ask to meet privately (caucus) at least once with each participant. Information discussed in your caucus that is given to me in confidence will not be shared with anyone else, subject to the limitations discussed below. Following the caucuses, I may reconvene the joint session and determine if there is any area of agreement on any issue. If not, the parties will continue to negotiate, possibly re-caucusing with me until it is clear that a settlement is or is not going to emerge at this session. Either party will be free to consult with appropriate legal, union, or management representatives to apprise them of their legal rights and/or authority to agree to certain terms in the proposed settlement agreement.

If a settlement is reached, I will draft the terms of a settlement agreement that is acceptable to all parties and, if present, their representatives. Appropriate management or legal personnel also will need to review and authorize a commitment to the settlement terms before they are effective.

A signed settlement agreement is intended to be binding on the parties. Accordingly, the agreement can generally be used as evidence in a later proceeding in which either of the parties alleges a breach of the agreement. It is also important that the participants understand that any written agreement reached during the course of the mediation could eventually become public record.

2. Confidentiality

Confidentiality is a critical part of the process. ***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 tell me you plan to commit 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, after an appropriate proceeding is held, that disclosure of our private confidential discussions is necessary to prevent a manifest injustice, or 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.

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 neither the mediation agreement nor the resulting settlement agreement, if any, are 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.

You must agree that, should this mediation not resolve your dispute, you will not request information from me in any future legal proceeding -- unless of course you have a dispute with me as a result of the mediation process. If anyone asks you to provide information about what was discussed in this mediation session, it is very important that you say nothing and that you immediately notify the local ADR Champion or Staff Judge Advocate. The ADR Champion or SJA will provide guidance about how to respond. As a matter of policy, the Air Force will defend you and me against all discovery requests that seek information related to this mediation session.

3. Your Right to Representation

Either party may choose to come to the mediation conference alone, with a representative, or with legal counsel, subject to locally negotiated policies for bargaining unit employees. If you plan to have a representative present, I need to know that prior to the mediation session so that the other party has the opportunity to bring a representative as well. Failure to notify me of your intent to bring a representative prior to the mediation session could lead to a cancellation of this mediation.

C. Conclusion

To sum up, mediation is an informal process designed to achieve a solution to the problem which satisfies all parties and negates the need for further legal action on anyone's behalf aside from those steps that may be agreed to as part of a settlement agreement. I look forward to working with you in an effort to resolve the dispute to everyone's satisfaction.