



# Mediation Offices of G. Thomas Harper

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## **To the Party Being Sued in a Commercial Dispute,**

The lawsuit against you is going to mediation. What does that mean? First, it's important to know what is not going to happen at mediation. Mediation is a voluntary process even though it may be court-ordered. By voluntary, this means that no one is going to make a decision for you or force you to accept a resolution.

Mediation is a process where a neutral person, called a mediator, acts to encourage and facilitate the resolution of a dispute between two parties. Mediation is an informal, non-adversarial process with the objective of helping the parties reach a mutually acceptable and voluntary resolution. In mediation, decision-making authority rests with the parties.

I have been appointed by the Court or selected by the parties to mediate, in part, because I am an experienced trial lawyer. I have been designated by the Florida Supreme Court as a Circuit Court Civil mediator. I have attended over 100 mediations and received many hours of training in civil mediation.

Before accepting this case as a mediator, I have determined that I have no "conflict" or interest in the parties or the outcome. I will be "neutral," with no "stake" in the case for either side. Mediators are trained in locating the issues that will be important when the case is brought before the Court. The role of the mediator includes assisting the parties and identifying the issues, fostering joint problem-solving and exploring resolution alternatives. The mediator's goal is to explore what the parties are seeking through the dispute to see if there is a resolution available that is satisfactory to both sides.

A mediator is decidedly not a judge. No one is going to rule on or decide on your case at mediation. The mediator will not tell you how he thinks a judge or jury will rule on your case! I will not predict what I think will happen when

your case goes to court. I will not give any legal advice. Further, I will not make any decision that will bind or affect your case as it proceeds through the court system.

### **The Process:**

Every case is unique. However, I will usually begin mediation with both parties in a joint meeting. I will explain the mediation process and what I anticipate happening during our conferences. Then I will turn to the plaintiff (the party initiating the action) and give him or her, or their lawyer, a chance to tell about their case. After the plaintiff is heard from, I will ask the party defending the action to respond and tell their story. This begins a process of gathering information, clarifying interests and generating options. I will be attempting to anticipate each party's concerns and generate options that deal with those concerns.

One purpose of a joint meeting between the parties will be to give each side an opportunity to hear the arguments that will be made by the other side when the case goes to court. I may ask questions about your case and how certain facts and events will be portrayed before the court. These are questions that a judge or jury may think about as your case proceeds. These may be questions that you and your lawyer have already thought about. When you hear an outside "neutral" ask these questions, however, it may give you a different perspective in evaluating how a judge may analyze your situation.

### **Who Should Attend the Mediation?**

Mediation requires that each party have a representative who has complete authority to resolve the matter. Normally, the Court has issued an Order that requires that both sides have a representative in attendance with full authority to resolve all of the claims in the case. That authority will be confirmed by the mediator.

### **How does the process work?**

After giving the parties the opportunity to hear the other side's story, I will normally place the parties in different rooms and will work back and forth between the parties. Part of the process will be for me to select and assess different options for the parties.

I will be listening, focusing and asking questions to try to determine what the parties really want. What are their concerns? I will be trying to come up with creative ideas that might meet the different interests of the parties. In addition, I will be looking for objective criteria or standards that can help both sides figure out what is a fair resolution of the matter.

One of the goals that you should set for the mediation is to listen to help you evaluate your chances of success. The analysis of your case, which is usually jointly reached by you and your lawyer, will play an important part in evaluating what you would like to see as a result.

### **Do you have to worry about what you say during mediation?**

All that occurs during the mediation process will be confidential. Confidential means that what is said at mediation is not discussed with anyone who did not attend the mediation. Whatever happens or is said also may not be revealed in any subsequent legal proceedings. All parties agree not to start any legal action based on the mediation or to testify or produce any records concerning what happened at mediation.

Both sides and all parties will be required to not make any public statements concerning the mediation. All inquiries from the news media or other interested parties should be directed to me. If contacted, I will only acknowledge the existence of the mediation and report that the parties are attempting to negotiate an acceptable resolution to the dispute.

The entire mediation process is confidential. All offers, promises and statements, whether oral or written, made during the mediation, by the parties or their attorneys, will be confidential. Offers, promises and statements will not be disclosed to any outside persons and I will not disclose to the other side any statements or information that you ask me to keep confidential.

Unless the parties agree otherwise, I will only report to the Court whether the case was settled, was adjourned to be continued for further mediation, or was terminated because settlement was not possible and I have declared an impasse.

## **How long will mediation take?**

You should plan and come prepared to devote the rest of the day to your mediation. As long as I believe the parties are making progress, I will continue working with the parties. I have observed that commercial cases have emotions and, for this reason, the parties need time to express and digest their feelings.

During the process it may seem like I am spending an inordinate amount of time with the other side. Don't read anything into this or think that I am not giving your side of the case a fair hearing. Instead, I may just feel that more time is needed to work with the other side.

Remember, mediation is a voluntary process. There is no need for you to be "stressed" or "concerned" about mediation. No one at mediation is going to force you to accept a resolution.

## **Why Mediation is Important:**

Mediation is important because it is an opportunity for you to participate in how your case is decided! That's right. The great advantage that you will have at mediation is that the parties will decide how the case will be resolved.

If your case is not resolved prior to trial, our legal system provides that a judge and/or a jury will decide the issues for you. You will not be involved as a decision-maker. Of course, you (or your attorney) will be able to argue and present facts, evidence and witnesses to the decision-makers. If they rule in your favor, that will be the result you want and you will be pleased. If, however, they don't see the case the way that you see it, they can rule differently--dividing the case, or even ruling against you. In mediation, however, you will participate and decide how the case is resolved. No one else will be making decisions for you.

This letter complies with Rule 10.420 of the Florida Rules for Certified and Court-Appointed Mediators. If you need any special accommodation or special foods while at mediation, please let me know. I do not want any distraction to lessen your focus during our sessions.

I am confident that a resolution of your case can be reached on terms that you can live with. I look forward to meeting and working with you.

G. Thomas Harper  
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