

STEVE NELSON'S RULES FOR MEDIATION

The appearance by any party, non-party, or counsel at a mediation (whether in person or virtually) conducted by Steve Nelson shall constitute an agreement by that person or entity to abide by these Rules for Mediation unless timely written objection to these Rules is delivered to the Mediator and all other parties in advance of the scheduled mediation.

- 1) **Definition of Mediation.** Mediation is a process under which an impartial person, the Mediator, facilitates communication between the parties to promote reconciliation, settlement or understanding among them. The Mediator may suggest ways of resolving the dispute, but may not impose his own judgment on the issues for that of the parties.
- 2) **Disclosures by Mediator.** Prior to accepting an appointment, the Mediator will disclose those circumstances likely to create a presumption of bias or prejudice. Steve Nelson has been active in the construction, surety, and dispute resolution industries/professions for some time. His company bonds many construction entities and bonds to many contractor entities. Inasmuch as these relationships are confidential, the fact that a party is an account, obligee, or claimant to or against Markel or SureTec will not be disclosed unless Steve has been personally involved to the extent an actual conflict of interest might arise. All parties should assume that some prior contact with other parties through trade, bar, and professional organizations and past mediations is not only possible, but likely, and may not be disclosed unless the contact or relationship was significant. Steve Nelson stays in touch with many of his contacts through Facebook, LinkedIn, and other social media. The fact that someone is a "friend" or "contact" on Facebook or LinkedIn does not necessarily indicate a relationship other than a means of staying in contact and may or may not be disclosed as significant.
- 3) **Authority of Mediator.** The Mediator does not have the authority to decide any issue for the parties, but will attempt to facilitate the voluntary resolution of the dispute by the parties. The Mediator is authorized to conduct joint and separate meetings with the parties and attendees at mediation and to offer suggestions to assist the parties achieve settlement. The Mediator is authorized to adjourn or recess the Mediation or declare an impasse.
- 4) **Parties Responsible for Negotiating Their Own Settlement.** The parties understand that the Mediator will not and cannot impose a settlement in their case. The Mediator may, as an advocate for compromise and settlement, use reasonable efforts to

facilitate the negotiations of the parties. All parties are to be represented by Counsel, who shall be responsible for reviewing and counseling with their clients regarding the advisability of entering into any settlement and the terms of any settlement reached. The Mediator does not provide legal advice.

- 5) **Authority and Attendance of Representatives.** Each party shall have one or more representatives physically present at the mediation with full authority to settle the disputes. Unless excused by the Mediator, the Mediator requires the following be in attendance:
- a) The named Parties themselves shall be present during the entire Mediation process, in addition to any other agents or representatives. If a party is not a natural person, such entity must be represented by an authorized director, officer or employee of the organization. In those situations where there are no insurance coverage issues and all settlement authority rests solely with an insurance company representative attending the mediation, the party may be excused from attendance with approval of the mediator.
 - b) Counsel for the named parties shall be present. Trial Counsel must be present.
 - c) Personal counsel should be present if coverage issues exist. Trial counsel shall advise its client as to the advisability of retaining and bringing separate personal counsel.
 - d) Especially in construction defect cases, if there are Additional Insured (“A.I.” coverage issues being handled by separate adjusters or counsel, and no insured party is conditioning its settlement offers on the release of dispute A.I. rights, A.I. adjusters and A.I. coverage counsel need not attend.
 - e) If any carrier anticipates demanding a release of disputed A.I. claims as a condition to settlement of the claims against its insured, this must be brought to the attention of the Mediator and all parties prior to mediation. We either need everyone in attendance necessary to settle all A.I. disputes or we need to leave all of those for another day.
 - f) If a party is a public entity, non-profit Board or other entity which will not or cannot delegate final, absolute and binding decision-making authority to its representative(s) at Mediation, or which requires ratification of such Board or entity after Mediation, at least one elected or appointed member of the Board of Directors, Trustees, Council, or Governing Body should attend in person. In the case of a Board, Governing Body, or other entity which cannot delegate final, absolute and binding decision making authority to its representative(s) at Mediation, or which

requires ratification by such Board or entity after Mediation, any agreement by the representatives present at Mediation should constitute their personal commitment to make an unqualified recommendation of settlement to the Board in open session of such Board.

- g) Authorized licensed adjusters of all carriers providing insurance coverage for damages alleged in the dispute, with authority to make decisions and authorize settlement with policy limits. In the event that any carrier is defending under a reservation of rights, the insured should have personal or coverage counsel present.

The failure by parties and their counsel and representatives to have sufficient authority to settle at a mediation wastes the time of all persons involved, is not conducive to effective dispute resolution, and often further polarizes the parties. Please respect the process.

- 6) **Date, Time and Place of Mediation.** Unless agreed by the parties, the Mediator shall fix the time and date of each mediation session and whether it will be conducted virtually or in-person. The mediation shall be held at the office of Mediator or at any other convenient location agreeable to the Mediator and the parties, as the Mediator shall determine. In the event of scheduling conflicts, requests for postponement, or the Mediator's determination that the matter is not ready for Mediation, the Mediator may cancel, postpone or reschedule the Mediation.
- 7) **Identification of Matters in Dispute.** Prior to the first scheduled mediation session, each party will be expected to produce information reasonably required for the Mediator to understand the issues presented and the interests impacted by the dispute.
- 8) **Identification of Persons in Attendance.** Prior to the scheduled mediation session, each party will be expected to identify the persons who will be attending the mediation, their contact information, and their role in the dispute. Counsel for insurance retained defense counsel are encouraged to provide the Mediator with full contact information on all known coverage counsel, personal counsel for insureds, adjusters, and insurance representatives, such that those parties are aware of the mediation process and have an opportunity to attend and participate if they so desire or their presence is necessary for a complete resolution of issues.
- 9) **Privacy and Confidentiality. Notice:** In the event that the applicable dispute resolution rules of the jurisdiction controlling the mediation shall provide more or less privacy or confidentiality than these rules require, the parties agree that the rules or laws requiring greater privacy and greater confidentiality shall apply to the maximum extent allowed by law.

- a) Mediation sessions are private and confidential. The parties and their representatives may attend mediation sessions. Other persons may attend only with the consent of the Mediator.
- b) Confidential information disclosed to a Mediator by the parties or by others in the course of the mediation shall not be divulged by the Mediator without permission. The “course of the mediation” shall include all pre-mediation communications with the Mediator and with other parties, representatives, and counsel regarding the mediation, all activities associated with the mediation session, and all post-mediation communications between and among the parties and Mediator associated with any ongoing effort at settlement.
- c) All records, reports or other documents generated or received by a Mediator while serving in that capacity shall be confidential and not subject to subpoena, disclosure, or production. The Mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum. Any party that violates this rule shall be obligated to indemnify and hold the Mediator and other parties harmless from all cost and expense associated with resisting any effort to compel such testimony or disclosure.
- d) The parties shall maintain the confidentiality of the mediation and shall not rely on, offer, or introduce as evidence in any arbitral, judicial or other proceeding: Views expressed or suggestions made by another party or the Mediator with respect to a possible settlement of the dispute, admissions made by another party in the course of the mediation proceedings, proposals made or views expressed by the Mediator, the fact that another party had or had not indicated willingness to accept a proposal for settlement made by another party or the Mediator; or mediation presentation exhibits, Power Points, charts, graphs, summaries, etc. unless such information is otherwise discoverable.

10) Applicable Law May Require Disclosure. Notwithstanding the rule of mediation confidentiality, in certain instances applicable law may require disclosure of information revealed as part of the mediation process. For example, Texas statutes require the Mediator to report the abuse, neglect or exploitation of elderly persons, disabled persons or children, and ongoing or intended criminal activities or fraud.

11) Clerical, Administrative, Other Personnel or Co-Mediators Assisting Mediator. The Mediator’s scheduling assistant, student observers, and other clerical/administrative personnel or interns or observers assisting the Mediator have been counseled regarding confidentiality. Information handled by them, including position statements, settlement

agreements, and settlement funds, shall be treated as if those clerical and administrative personnel and interns were Co-Mediators.

- 12) **No Stenographic Record or Recording.** There shall be no audio or visual record of the mediation process and no person shall record any portion of the mediation session.
- 13) **No Service of Process at or Near the Site of the Mediation Session.** No Subpoenas, summons, complaints, citations, writs, deposition notices, or other process may be served upon any person at or near the site of any mediation session upon any person entering, attending or leaving the session.
- 14) **Attendance at Mediation Does Not Constitute an Appearance or Contact with the Jurisdiction in Which the Mediation Session is Held.** Participation in, or attendance at, the mediation shall not constitute an appearance within the locale of the mediation or contact with the locale of the mediation for purposes of determining whether or not a person or entity is subject to the jurisdiction of, or the laws of, the courts for such locale. Attendance shall be considered a “Special Appearance” for mediation purposes only.
- 15) **Settlement of Fewer Than all Issues or by Fewer Than all Parties.** All parties should be aware that a multi-party mediation may involve settlements of fewer than all parties or issues. All parties should be aware that the Mediator may be asked to become involved in “settling around” one or more parties, or in facilitating agreements between multiple parties to the exclusion of others. The parties should be aware that the Mediator’s obligations of confidentiality may preclude the Mediator from advising a party that such discussions are ongoing.
- 16) **No Guns or Weapons.** You’d think I wouldn’t have to say this. But, with concealed handgun and “open carry” laws being what they are, I never cease to be amazed at who is carrying, and who doesn’t see anything wrong bringing a gun to mediation. No guns or weapons! Leave them at home. I respect your Constitutional rights. But no guns at mediation!
- 17) **Termination of Mediation.** The mediation shall be terminated: (a) by the execution of a settlement agreement by the parties, or (b) by declaration of the Mediator to the effect that further efforts at mediation are no longer worthwhile; provided, however, the mediation shall be deemed to continue for confidentiality and privacy purposes for all post-impasse communications, Mediator proposals, and follow-up settlement efforts. A Mediation may be adjourned or recessed in the discretion of the Mediator if neither of the foregoing do not apply.

- 18) **Mediator's Proposals.** In the event of an impasse, the Mediator may or may not offer to make a Mediator's proposal, suggesting a final compromise and soliciting confidential "yes" or "no" responses from each party. All parties must agree to the use of this process; otherwise, such a proposal may be made only to those parties agreeing to the process. If such a proposal is made, the Mediator may decline to communicate qualified responses, (i.e. "No, but we would pay \$ x ...).
- 19) **Settlement Agreements.** The resolution of construction disputes seldom involves simply the payment of money in exchange for a release. There are often issues regarding the scope of releases, ongoing obligations for latent defects or warranties, further releases of insurers or sureties, issues regarding additional insureds, duties to defend, assignment of claims, releases of liens and bonds, etc. The drafting of terms of some of these non-monetary points often requires skillful drafting beyond a simple memorandum of settlement. The Mediator strongly encourages parties to draft and bring to the mediation written settlement language to accomplish any non-monetary settlement points. If the Mediator suggests language or drafts an initial written proposal, it is the responsibility of the parties and their counsel to carefully review such language and adopt the final language and terms as their own.
- 20) **Mediator is Neither Practicing Law nor Representing any Party.** The Mediator does not represent any party in the dispute and any suggestions or drafting of initial settlement agreements or memoranda of understanding by the Mediator does not constitute legal advice or the practice of law.
- 21) **Qualifications and Certifications of Mediator.** The Mediator is qualified as a court annexed Mediator under the Texas Alternative Dispute Resolution Act, is a Credentialed Distinguished Mediator by the Texas Mediator Credentialing Association, a member of the Association of Attorney-Mediators, a Mediation Panel Member of the American Arbitration Association and a Distinguished Fellow of the International Academy of Mediators. The Mediator agrees to abide by the rules, creeds, and guidelines of ethical conduct of such authorities and organizations and applicate State Law and Court Rules. Almost all of the Mediator's engagements are by agreement of the parties and not by court appointment. Accordingly, the Mediator may or may not be certified, qualified, or licensed under the applicable Laws of the jurisdiction in which the dispute is to be resolved. The absence of such qualification, certification, or license will not impair the confidentiality and privacy of the proceedings, nor invalidate any agreement reached in the mediation.