

**DAUPHIN COUNTY BAR ASSOCIATION  
CIVIL DISPUTE RESOLUTION PROGRAM**

**MEDIATION PROGRAM GUIDELINES**

***Introduction***

The Dauphin County Bar Association ("DCBA") is pleased to sponsor and administer a Mediation Program as a service to its members and the community. The goal of the program is to provide a process to foster the resolution of civil disputes that are, or may become, pending as civil actions in the Court of Common Pleas of Dauphin County. The Program is available to individuals, businesses, associations, insurance carriers, and all other entities for any civil dispute, except for matters involving divorce, equitable distribution, custody, child or spousal support, alimony, alimony pendent lite, or paternity.

***Mediation Defined***

Mediation is a nonbinding, consensual process where an impartial person (the "Mediator") facilitates communication between the conflicted parties (the "Parties") to aid the Parties in resolving the conflict. The Mediator does not have the authority to make decisions or impose a resolution on the Parties. The fundamental principle of Mediation is the Parties' self-determination in the resolution of their dispute.

During the Mediation session(s), the Parties have the opportunity to listen to and talk with each other, share information, consider each other's perspectives, brainstorm regarding viable solutions, and make voluntary, informed decisions, all with the assistance of the Mediator. The Mediation process continues as long as the Parties are willing to participate, or until such time as the Mediator determines that sufficient progress is not being made towards the resolution of the dispute to warrant further participation by the Parties.

***The Mediator's Role***

The Mediator assists the Parties in reaching a resolution of the dispute through engaging the Parties in group discussion, and by meeting separately with the Parties in confidential caucuses. The Mediator serves neither as a Judge, nor as an advocate of any particular Party, renders no decisions regarding the Parties' dispute, and provides no legal advice. The Mediator does not guarantee a resolution or take responsibility for any understandings reached by the Parties at Mediation. The resolution of the issues in dispute primarily rests upon the Parties themselves.

This Program does not require counsel for all Parties, but Parties are encouraged to consult with an attorney, and obtain representation for the Mediation session(s), especially if the dispute involves legal issues. The Mediator, even though trained as a lawyer, does not represent any Party and will not give legal advice to any of the Parties. **By participating in the Program, all**

**Parties understand and agree that the Mediator shall have no liability, express, implied or otherwise, for any act or omission in connection with the Mediation.**

### ***Dauphin County Bar Association's Role***

DCBA will facilitate and administer the selection and/or appointment of a Mediator from a list of Mediators approved by the DCBA's Alternative Dispute Resolution Committee ("ADRC"). The DCBA will also ensure that all Parties have submitted all required forms and payment of initial fees prior to the appointment of the Mediator. **By participating in the Program, all Parties understand that DCBA shall have no liability, express, implied or otherwise, with respect to the Mediation Program, including the actions or omissions of the Mediator.**

### ***List of Approved Mediators***

The DCBA maintains a list of approved Mediators for the Program. All of the Mediators approved for the Program are attorneys who are members of the DCBA and have demonstrated sufficient experience and training in the mediation process for inclusion in the Program. All Mediators for the Program have agreed to abide by the Model Standards for the Conduct of Mediators (September 2005) adopted jointly by the American Bar Association, the American Arbitration Association and the Association for Conflict Resolution. Biographies of the Mediators for the Program are maintained on the DCBA website at [www.dcba-pa.org](http://www.dcba-pa.org).

### ***Program Fees***

The fee for participation in the Program is \$950 ("Mediation Fee"), to be divided equally among the Parties (or as otherwise agreed by the Parties). Of this fee DCBA will retain an administrative fee of \$200, and will transmit the remaining \$750 to the Mediator as prepayment for three hours of the Mediator's time ("Initial Time Period"). The Mediator may use the Initial Time Period for pre-Mediation proceedings, Mediation preparation and/or attendance at the Mediation session. In the event that the Initial Time Period is not sufficient to conclude the Mediation, and the Parties desire to continue working with the Mediator, the Parties shall bear equally (or as otherwise agreed by them in the Agreement to Mediate) the Mediator's hourly rate, as indicated in the Mediator's Biography made available to the Parties by the DCBA ("Additional Fees"), for all additional time incurred by the Mediator to conclude the Mediation. The Mediator may require the prepayment of the Additional Fees prior to continuing beyond the Initial Time Period. Payment of any Additional Fees beyond the Mediation Fee shall be made directly to the Mediator.

The administrative fee is nonrefundable. The Mediator compensation portion of the Mediation Fee is refundable only until a Mediator has been appointed. Refunds, when allowed, will be made by DCBA to the respective Parties in equal shares, unless the DCBA is notified in writing by all Parties as to a different proportion.

### ***Process for Commencing Mediation***

Parties seeking to commence a Mediation through the Program must complete and submit to the DCBA the following: (1) DCBA Request for Mediation Form; (2) DCBA Mediation Agreement; (3) Mediation Fee. **A Mediator will not be assigned by the DCBA until both forms and the Mediation Fee are received.** The forms and payment may be mailed or delivered to the DCBA office or may be submitted electronically following the instructions on the DCBA website.

### ***Selection/Appointment of Mediator***

The Parties are encouraged to review the Mediator Biographies available on the DCBA website or in hard copy from the DCBA, and to jointly select a mutually agreeable Mediator by designating the Mediator on the Request for Mediation Form. If the Parties are unable to agree upon a Mediator, or prefer not to select the Mediator, the DCBA will appoint a Mediator from the list of approved Mediators. A Mediator may decline to serve on any matter. If a Mediator selected by the Parties declines to serve, the Parties will be notified and given the opportunity to jointly select another Mediator, or to have the DCBA appoint a Mediator from the list of approved Mediators.

Once a Mediator has accepted appointment, the DCBA will notify the Parties, and forward copies of the submitted Forms and the Mediator's fee to the Mediator.

### ***Mediation Procedure Following Mediator Appointment***

After selection, the Mediator will be responsible for promptly calling the Parties and setting up a pre-mediation conference call. The Mediator may delegate the responsibility of coordinating the pre-mediation conference call to one of the Parties, particularly where there are multiple Parties.

During the conference call, the Mediator will explain the mediation process, facilitate the exchange of information prior to the Mediation session, identify the persons with negotiating authority needed to participate at the Mediation session, and schedule the initial Mediation session.

The Mediator may require the Parties to submit to the Mediator and the other Parties a Mediation statement and other documents in advance of the Mediation session. The Mediator may also request confidential submissions to the Mediator only, containing any information that a Party believes may be helpful for the resolution of the dispute. The Mediator will discuss the requirements for submissions with the Parties during the pre-mediation conference call.

The Mediator will endeavor to schedule the first Mediation session within 30 days from the preliminary conference call, or at the earliest date thereafter that the Parties and Mediator are available and/or otherwise agree to commence the Mediation session.

The Mediation will be held at such location as is acceptable to all Parties and to the Mediator. If space at the DCBA office is selected as the location, the Parties will pay an additional fee to the DCBA based upon the current room rental rates prior to the first Mediation session. The Parties should coordinate DCBA room rental directly with the DCBA.

### ***Confidentiality of Mediation***

Pursuant to Pennsylvania statute, all mediation communications and mediation documents, except as provided below, are privileged. *See* 42 Pa.C.S. §5949. Disclosure of mediation communications and mediation documents may not be required or compelled through discovery or any other process. Mediation communications and mediation documents are not admissible as evidence in any action or proceeding, including but not limited to a judicial, administrative or arbitration action or proceeding.

Exceptions to the general rule of confidentiality include the following: (1) a written settlement agreement may be introduced in an action or proceeding to enforce the settlement; (2) communications of a threat of personal injury or property damage under circumstances constituting a felony, or conduct during a mediation causing injury to a person, may be introduced as relevant evidence in a criminal proceeding; and (3) fraudulent communications may be introduced as relevant evidence in an action to enforce or set aside a mediated settlement agreement. In addition, facts or documents that exist independent of the mediation, and are otherwise discoverable, are not rendered inadmissible or undiscoverable as a result of their use during mediation.

Notwithstanding the above, by participating in the Program, the Parties acknowledge and agree that the Mediator may report back to the DCBA whether the Mediation has resulted in a resolution of the dispute, without disclosing the nature or content of the resolution, and that such reporting shall not be considered a breach of any confidentiality requirements imposed by the DCBA Program, statute or decisional law.

### ***Agreement to Act in Good Faith***

By their participation in the Program all Parties agree that they will enter into the Mediation in good faith. Good faith includes, among other things, the following: (1) being fully prepared to discuss all aspects of the dispute, and possible solutions for resolving it; (2) having the person with the authority to approve the terms for resolution attend the mediation session, or, at the least, be available to confer with the Party's representative during the mediation regarding the approval of terms; (3) demonstrating a willingness to listen and understand the perspectives of all participating Parties; and (4) treating the Parties, the Mediator and all other participants with civility and respect.