

Mediation Checklist

Case Name: _____

Case No.: _____

Today's Date: _____

Attorney: _____

Advising Your Client During Mediation

Overall Approach

- Assist your client in achieving an outcome that is best for the Postal Service.
- Provide information to the other side, unless revealing it damages your legal case significantly. This will encourage settlement.
- Build trust by: listening actively, behaving credibly, and empathizing (expressing an understanding of how the other party feels without agreeing with them).

The Agreement To Mediate

- Be sure you have read and understand any confidentiality provision.
- The mediator will not voluntarily testify in court about anything that is said or any document that is produced in mediation.
- The parties may not subpoena the mediator to testify about what was said in the mediation.

Presenting Your Case

- Make An Opening Statement**
 - Prepare your client to present a short opening statement, that avoids finger pointing, inflammatory rhetoric, and name calling. Highlight the Postal Service's needs.
 - The mediator may ask the other side to go first. Listen carefully for new information, and clues to what is really important to the other side, whether legally relevant or not.
- Listen To The Mediator's Summaries**
 - Listen carefully. Summaries and feedback should reflect what you have said, with nothing added by the mediator.
 - Correct any misstatements or misunderstandings. Amplify on points if necessary so that the mediator and the other side understand your client's interests.

Manage The Client

- Tell your client to talk to you privately before revealing information he or she is hesitant to reveal.
- Encourage your client to listen sincerely to the other side.
- Allow your client to express his feelings.

 Present The Client's Desired Outcomes

- Many mediators will ask what outcome each side wants from the mediation.
- Generally, your response will not be your bottom line. State what you would like to have, including the principles upon which you base your statement.
- Include intangible outcomes if possible (e.g., respect, better relationship). Seek to maximize the outcome for both sides.

Private Sessions With Mediator **Reveal Interests**

- Reveal interests, so as to help the mediator understand the case and help you and your client identify options for satisfying these interests.

 Use The Mediation To Understand Interests Of Other Side

- Make sure the mediator is not just conveying successive offers. If you are not learning more about the other side's needs and interests, ask to meet together again.
- Ask the mediator to help you understand the other side's rationale for any offers. Understanding what motivates the offer will lead to a better understanding of your opponent's interests and may hold the key to more creative solutions.

 Develop Options

- The mediator can assist parties in identifying options for resolution.
- Do not hesitate to suggest creative options that you and your client can develop.

Manage Confidentiality

- Make sure the mediator knows which information, if any, you have decided to keep confidential, if revealed in private session.

 Request Joint Sessions

- It is appropriate to ask the mediator for joint sessions with the other party if you feel joint sessions would help.
- Certain types of disputes, in fact, can be handled more expediently and productively by meeting together. Example: if the parties understand a technical dispute better than the mediator, it would be a waste of time for them to educate the mediator before s/he can effectively carry information between them.

Private Sessions With Client **Revisit Interests**

- Use time while mediator is meeting privately with the other side to process new information and reevaluate your case.
- Reassess your client's interests and options for resolution. Discuss the other side's positions, interests and case with client.

Conclusion Of Mediation **No Final Agreement**

- Ask the mediator to summarize what has transpired so far, the specific areas of continuing disagreement, and the reasons presented by each side for their positions.
- Make sure some structure is in place for continued discussions, if appropriate.
- Write down areas of agreement, if some exist, in clear language. Both sides should receive a copy of this document.

Agreement

- Either you, opposing counsel, or the mediator may draft an agreement. It is common to allow the mediator to draft the agreement, but you, your client, and the other party must ensure that the agreement says what it is supposed to say.

- Agreement terms may need approval from Agency personnel not at the mediation. If this is the case, bullet point areas of agreement that need to be written down with specifics. The precise language should be drafted by one counsel and shared back and forth until finalized. A follow up session should be scheduled with the mediator, to resolve any problems that arise. If parties agree at the table and work in good faith to finalize the agreement, the follow up session will never be needed.