

HAPPE MEDIATION, PLC - POLICIES AND PROCEDURES (January 1, 2020)

Mediation Philosophy

Parties to mediation do not want a messenger; they want an energetic and aggressive mediator who has a plan to move the case to a full and final settlement. The parties should be ready for a highly interactive mediation. The mediator will suggest and recommend, and at times, argue and push--but be assured that all parties to the mediation will be equally challenged.

The Mediation Process

Generally, a joint session of the parties will not be held but, upon request and with the agreement of all parties, a joint session may be held. In select cases, the mediator will recommend a joint session, either with party presentations or his own opening statement. Usually the mediator will begin discussions with the Plaintiffs.

In multi-party litigation, it is typical to have a joint session among party groups and, particularly, in contested defense situations, it is wise to have a defense telephone conference call before the mediation so that the Defendants can work out their respective issues before engaging the Plaintiffs in mediation.

Separate attorneys-only discussions will be considered during the mediation at the discretion of the mediator.

The parties and attorneys will be asked to sign a confidentiality agreement that will include a provision that the mediator may not be called to testify as to any fact other than the terms of a settlement agreed to by the parties. When the case settles, the mediator will prepare a memorandum of the terms of the settlement and if asked, will prepare a draft release for the parties to comment on and continue mediation of terms.

Fees

The hourly fee for mediation is \$285, including preparation time. Out-of-pocket expenses, such as hotel, travel and meals will be billed to the parties and the cost of mediation participant lunches will be included in the mediator's invoice when the mediation is held at the mediator's office.)

The mediator will assume that fees will be divided equally among the parties (including participating lien holders) unless otherwise specified. Lien holders should be consulted prior to the mediation concerning their willingness to participate in the cost of the mediation.

No administrative fee will be charged for setting up the mediation and there is no hourly minimum. Further, no deposit for mediation will be required in all but the most complex cases and in typical cases there is no cancellation fee for continuation, rescheduling or cancellation of the mediation. Each party's law firm is equally responsible with his or her client for payment of the mediator's fees.

Mediation-Arbitration Option

The parties may want to consider utilizing a Med-Arb option for Residential Construction Defects cases. For example, after limited discovery and disclosure of a limited number of experts, the parties will mediate the case and if a settlement is not reached, proceed to arbitration.

Complex Litigation

For mediations in complex litigation or where there are many parties, some special rules may be applied at the discretion of the mediator. In highly complex matters, it may be necessary for a cancellation fee of four hours of time to be billed to the parties, typically divided equally among the parties unless otherwise specified. Further, should a case involve “mass mediation,” the mediator may establish a different fee schedule entirely.

To Schedule a Mediation

To schedule a mediation or arbitration, please either contact the mediator directly or email: joe@happemediation.com. Available dates can be viewed at: www.nadn.org/joseph-happe

Conflict of interest and knowledge of the parties and counsel

The mediator will endeavor to disclose all past and present relationships between the mediator and any of the participants in the mediation. This disclosure is contained in the confirmation letter the mediator sends to counsel. The mediator will have very few conflicts since he is retired from litigation.

Because the legal community in Iowa is close-knit and the mediator has over 34 years of experience, it should be assumed that the mediator knows the attorneys involved in the mediation, has worked with them in the past, and may even have social media connections with them (Linked In, Facebook, etc.). These connections are not reviewed and disclosed.

Travel Charges

There are no charges for travel time inside Polk, Story, and Dallas counties. The travel time for other nearby counties may be waived at the discretion of the mediator. A special hourly rate for travel time of \$100.00 per hour will be charged and special arrangements will be made for travel fees to locations outside of central Iowa. Also, mediations may be conducted at the Iowa State Bar Association office or offices of neutral firms.

Mediation Briefs

Attorneys participating in the mediation may prepare either confidential or shared mediation statements. These statements should outline the facts of the case, the legal positions, strengths and weaknesses and any supporting case law. Additionally, any information helpful to the mediator will be appreciated. In smaller cases, the parties are invited to provide explanatory pleadings or discovery responses, at their discretion.

Proper Preparation for the Mediation

It is important to have special damages information available and all lien information. If Medicare is involved, the parties should go to www.mymedicare.gov to register and download

Medicare information. Actual claims and payments are downloadable up to a 36-month period. Decision makers must attend or be readily available for consultation.

After the mediation

After the mediation, copies of pre-mediation statements and documents submitted by the parties will be destroyed. The mediator will also destroy his notes from the mediation after 30 days.