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MEDIATION PRACTICE

A. FEES FOR MEDIATION

| Effective 1/1/19 | | |
|-------------------|-------------------|-----------------------------------|
| | Fee Per Party/Day | Fee Per Party/Day |
| Number of Parties | In Austin | Dallas, San Antonio, and Houston* |
| 2 | \$2,800.00 | \$3,800.00 |
| 3 | \$2,400.00 | \$3,000.00 |
| 4 | \$2,000.00 | \$2,500.00 |
| 5 | \$1,600.00 | \$2,000.00 |
| 6 through 9 | \$1,500.00 | \$1,700.00 |
| 10 or more** | \$1,200.00 | \$1,500.00 |

*Additional fee charged for mediation outside of those cities depending on travel time and distance. Out-of-State mediations will be fixed based on travel.
** For mediations of more than 10 parties, the Mediator will use discretion in adjusting the per party rates.

Hours. Unless otherwise agreed, mediations will begin at 9:30 a.m. We will try to end by 6:00 p.m., but I will continue sessions into the evening if progress is being made. Extensions into the evening are included in your fee.

Fees. Unless otherwise agreed in advance, I will charge a flat rate per day of mediation per party. A “party” is one represented by separate counsel. My fees include all preparation, pre-session conference calls if requested, post-session reasonable follow-up time (if necessary), travel time and expense (Texas mediations only), and lunch. Although rare, I reserve the right to issue supplemental invoices if post-mediation follow-up exceeds what is to be reasonably expected. The rates above are in effect until superceded.

Additional Charges. The parties may also be responsible for charges associated with rental space for mediations not held in the office of one of the attorneys (e.g., hotel/conference center charges).

Payment. Payments should be made to Shidlofsky Law Firm PLLC on or before the mediation date. Our Federal Taxpayer ID Number is 27-4448654. A W-9 is attached. Unless other arrangements are made, I will look to counsel as the responsible party to pay all mediation fees and expenses. Once a mediation begins, the full fee is deemed earned. A \$500 per party cancellation fee may be charged if the session is cancelled on less than five (5) business days’ notice at the discretion of the Mediator.

Attire. Business casual. I only wear ties when I have to say "Your Honor." Please don't dress up on my account.

B. RULES FOR MEDIATION

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.

Consent to Mediator. The parties consent to the appointment of Lee H. Shidlofsky as the Mediator in their case. The Mediator shall act as an advocate for resolution and shall use his best efforts to assist the parties in reaching a mutually acceptable settlement.

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 to offer suggestions to assist the parties achieve settlement. The Mediator is authorized to adjourn or recess the Mediation or declare an impasse.

Disclosures and Conflicts. I will disclose to you all relationships with the parties, their counsel, and any principals, witnesses, experts, consultants, insurers, etc. you identify for me. If there is any relationship that precludes me from serving in an impartial and neutral manner, I will decline the assignment. If any of the disclosures raise questions that are not answered to your satisfaction, please let me know and I will withdraw. When you consider the business dealings between my firm and many construction companies, insurance companies, bar and trade association activities, and prior legal and dispute resolution engagements, it is rare that I have not had dealings with some or all of the counsel, experts, insurance carriers or parties in major construction disputes. It is my hope that those dealings will not always be viewed as a disqualifying factor.

Persons in Attendance. All parties or their representatives must attend in person and be fully capable of making decisions. I highly encourage adjusters, if applicable, to attend in person.

No Guns or Weapons. Notwithstanding “open carry” and “concealed weapon” laws, no guns or weapons are permitted at the mediation. This is not a comment on the second amendment or an attempted infringement on anyone’s constitutional rights. Rather, it is a matter of self-preservation since everyone gets mad at the mediator at some point.

No Service of Process at or near the site of the Mediation Session. No subpoenas, summons, complaints, citations, writs, 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.

No Stenographic Record. There shall be no stenographic record of the mediation process and no person shall tape record any portion of the mediation session.

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.

Settlement Agreement. Each participant is advised that if an agreement is reached as a result of this mediation and the Mediator assists in the preparation of a written settlement agreement, then each participant should have the settlement agreement independently reviewed by their own counsel before executing the settlement agreement.

Settlement of Fewer Than all Issues or by Fewer Than all Parties. While the goal of mediation is global resolution, 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 also should be aware that the Mediator’s obligations of confidentiality may preclude the Mediator from advising a party that such discussions are ongoing.

Mediation Submissions. When I send the e-mail confirming mediation, I will outline what I am looking for in terms of confidential mediation statements and when they are due. I try to read everything that is sent to me, provided it is sent more than 24 hours prior to the mediation. Generally speaking, at least in construction defect mediations, I’m looking for: (i) a summary of your client’s position; (ii) your client’s role (i.e., what they did, didn’t do, what they are alleged to have done or not to have done . . . ; (iii) amounts owed to your client and/or amounts claimed against your client, any liens, damage models, etc.; (iv) any prior settlement negotiations; (v) insurance information for your client, if applicable, including any additional insured issues and reservation or rights / denial letters; (vi) contractual indemnity issues; (vii) whether there are any dispositive motions or otherwise significant motions on file; (viii) a **summary** of expert reports; and (ix) any other issues that I need to know from your perspective that would impact settlement or the mediation process. The list is a bit different for insurance coverage mediations. All submissions and supporting documentation provided in connection with the mediation will be destroyed shortly after the conclusion of a successful mediation session, or six-months after an unsuccessful one, unless all parties agree otherwise.

Opening Sessions. I am not a big fan of opening presentations—especially in multi-party construction defect disputes. My view is that, in addition to taking up valuable time, they generally do more harm than good. If you are planning a presentation, or if you feel that you need to do one for your client, I encourage you to discuss it with me before the mediation. That being said, I will not stop any party from doing an opening presentation.

Termination of Mediation. The mediation shall be terminated: a) by the execution of a settlement agreement by the parties; b) by declaration of the Mediator to the effect that further efforts at mediation are no longer worthwhile; or c) after the completion of one full mediation session, by a written declaration of a party or parties to the effect that the mediation sessions are terminated.

Confidentiality. Confidential information disclosed to a Mediator by the parties or by witnesses in the course of mediation shall not be divulged by the Mediator. All records, reports, or other documents received by a Mediator while serving in that capacity shall be confidential. 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 agreement shall pay all fees and expenses of the Mediator and other parties, including reasonable attorney’s fees, incurred in opposing the efforts to compel testimony or records from the Mediator. The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding: a) views expressed or suggestions made by another party with respect to a possible settlement of the dispute; b) admissions made by another party in the course of the mediation proceedings; c) proposals made or views expressed by the Mediator; or d) the fact that another party had or had not indicated a willingness to accept a proposal for settlement made by the Mediator.

Communications. Please feel free to call, write or e-mail with any questions, comments, concerns, etc. prior to the mediation. If there is something important I need to know about your case, it is better to know it before the day of the mediation.