

Agenda for Pre-Mediation Conference Call

The following agenda identifies the issues to be covered during our pre-mediation conference call. Please review in advance and feel free to ask if you have questions.

- 1. Claims and Defenses:** Provide a brief description of the claims and defenses as you see them - enough to provide a general sense of what the case is about. Identify the parties to help me determine whether I have conflicts. If you have not already provided a pleading, I will ask for the caption.
- 2. Mediator disclosures:** As appropriate.
- 3. Status:** Provide a brief summary of where the case stands: Are you in the mediation process voluntarily or by court order? Is discovery complete? Are motions pending? Have important motions been decided? Have you engaged in settlement talks to date, and if so, where do the talks stand? Have you been through case evaluation? Is any additional discovery necessary before mediation can proceed?
- 4. Scheduling:** The date, time and place where the mediation should occur.
- 5. Duration:** How much time should be set aside? I prefer to set aside the entire day and if we are able to leave early, so much the better. Do you anticipate needing more than one day?
- 6. Written Submissions:** I recommend exchanging written mediation summaries. I also recommend providing the other side with a duplicate copy to share with clients. In my experience, the more clients know before getting together face-to-face, the greater the chances of reaching an agreement. Do you prefer to exchange summaries simultaneously? What will the summaries contain? Have you been to case evaluation? Would you prefer using your case evaluation summaries? Do you prefer to draft something especially for mediation? Would you like the option of submitting something on a private and confidential basis that you do NOT exchange, as well? Often lawyers in mediation like to supplement the materials publicly disclosed with a private letter to me on an "eyes only" basis describing their client's underlying needs and interests, and how they size up the underlying needs and interests of the other side. If you believe there are particular impediments to settlement that you or your opponents face, the letter would be a good place to describe them. Is there something you believe would be helpful in resolving the case but you're not yet ready to share it with the other side? Are you familiar with interest based bargaining as described in Getting to Yes? Consider the option of presenting your legal position in the materials you exchange, but sharing your interests and needs in the confidential letters. If you opt for confidential letters to supplement your submissions, I will not, of course, reveal them to the other side

without your express authorization.

7. Due Dates: When can you provide your written submissions? I prefer to have your materials at least the weekend before the mediation date in order to have time to read and absorb them. You can submit them by U.S. mail to Sheldon J. Stark, Suite 102, 2431 Jackson Avenue, Ann Arbor, MI 48103 or email shel@starkmediator.com. I do not accept submissions by fax. If you submit lengthy submissions by email, I do charge a print/copy fee.

8. Participants: Who will be present and will there be someone present for each side with complete authority to settle the case?

9. Special Needs: Does anyone have special needs requiring accommodation?

10. Style of Mediation: What style of mediation do you prefer? Most lawyers are accustomed to an all caucus/all the time model with a highly evaluative mediator who shuttles back and forth helping the parties face up to the weaknesses and risks presented. The mediator may offer his prediction of the likely outcome if the case is not resolved and trial occurs. The evaluative model may be just right for your case. Alternatively, lawyers are becoming more familiar with the SCAO approved facilitative model taught in ICLE's 40-hour, hands-on mediation training. In this model, the parties spend more time in joint session, the parties themselves are more involved, we move to caucus when needed and the mediator helps parties explore their risks without expressing his own views on the likely outcome. For some disputes, the facilitative model may be best. I am flexible and can mediate equally well using either model, or some combination of each. Every case is different. I encourage you to think through which model is likely to be most effective in your individual case so we can discuss it during the conference call. If you have been reluctant to participate in joint sessions in the past, I encourage you to review my article listing the many reasons joint sessions could add real value. <http://www.starkmediator.com/why-you-should-consider-joint-sessions-in-your-next-mediation-2/> Regardless of the style of mediation you prefer, please consider approaching mediation with a "joint problem solver" mindset. We can discuss this more fully during the call.

11. Confidentiality Rules: In April, 2011, the Michigan Supreme Court adopted MCR 2.412 governing confidentiality and exceptions to confidentiality in mediation proceedings. The court rule is extensive. I encourage counsel to review its provisions with their clients. I intend to touch on this subject briefly at the start of mediation. My practice generally is to rely on counsel to explain the rule to clients in detail before they arrive at the table.

12. Written Settlement Agreement: During the call I will ask defense counsel to provide a copy of their standard, or boiler plate settlement agreement language to plaintiff's counsel as soon as the conference call concludes. By

addressing the standard language of an agreement in advance, my hope is that if we reach a settlement at the mediation table, we can simply fill in the blanks and sign a final and binding settlement agreement on site, saving time, hassle and effort. If there are concerns about language in the document, please work them out in advance and bring an electronic copy of the agreement with you to the mediation.

13. Fees and Costs: I do not currently charge for travel. We can discuss my fees and cost arrangements during the call.

14. Other: Any other items you would like to discuss. Please call if you have suggestions.

If you have questions or concerns before our pre-mediation conference call, feel free to contact me at 734-417-0287.