

# LAW OFFICE OF PETER A. MANKIN

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SANDRA LOWENSTEIN, OF COUNSEL

21 ORINDA WAY, SUITE C-193  
ORINDA, CA 94563

TELEPHONE (925) 935-0300  
FACSIMILE (925) 944-1146  
PMANKIN@SMLAWYERS.COM  
www.mankinmediation.com

## PETER A. MANKIN, MEDIATOR

### MEDIATION PROCEDURES

#### INITIATING MEDIATION

If all parties have already agreed to mediate, call or email me to discuss preferred dates. If you wish our assistance in obtaining the agreement of others to mediate, call or send to us the name, address, and telephone number of the attorney or other representative of each party whose participation is necessary for a comprehensive resolution. Mediations may be conducted remotely, by Zoom or other remote online platform. We will discuss the logistics and details when the mediation is set up.

#### PRIOR TO THE MEDIATION

The following issues should be addressed:

1. Parties who must participate in the mediation for productive negotiations to occur.
2. Participants to be present on behalf of each party. It is essential that everyone whose decision is necessary for settlement participates, such as insurance representatives.
3. Information to be exchanged in advance of the mediation session to assist all parties in making realistic settlement decisions during the Mediation.
4. Mediation Statements. Submission of Mediation Statements is optional, but highly recommended. Statements should not exceed ten typed pages (plus exhibits) and should be received by the mediator at least **five days** in advance of the Mediation.

Statements are normally exchanged among the parties, but confidential written information may be conveyed to the Mediator only.

## **AT THE MEDIATION**

Some mediations start with a joint session with all the attorneys and parties. Some start with private sessions. I will first introduce myself to the parties and describe the mediation process. Please be prepared to discuss the issues during this session. Bear in mind that the goal is not to prove or argue a case but to clarify the issues and your views for decision makers among the other parties while educating the Mediator. Statements or input by the parties themselves is encouraged, but not mandatory. If you have any concerns about having a joint session, I would be happy to discuss them before the mediation commences.

The joint session, if conducted, will be followed by private confidential meetings ("caucuses") between the Mediator and each party. In caucus, you can discuss information which may assist in working toward a resolution, but which you would prefer not to disclose in direct negotiations. The Mediator will assist all parties in gaining the most balanced possible evaluation of the matter. Strengths and weaknesses of the case will be discussed but in most cases, the Mediator will not, at least in the early phases of mediation, give an opinion on the merits of an issue or on the settlement value of the case. Finally, the caucuses provide an opportunity to assess realistic and creative options for resolution, without endangering any party's negotiating posture. Joint sessions may be reconvened at some point in the proceeding.

Caucusing will generally continue until a resolution or plan for further action has been developed which all sides feel is acceptable. At that point, the Mediator will summarize the terms of the settlement agreement or resolution plan. The parties will then typically draft and execute a memorandum stating the key terms of the agreement. It is useful to have available at the mediation a standard form settlement agreement, leaving the terms of the settlement to be filled in. Counsel are encouraged to prepare a draft of a customized Settlement Agreement to be used at the time of resolution.

## **FOLLOW-UP**

If a resolution is not reached in the initial mediation session, the parties may elect to authorize follow-up. This can consist of telephone or Zoom caucusing, further investigation or information exchange among the parties, and/or an additional mediation session.

## **CONFIDENTIALITY**

The parties agree that statements made in the course of joint sessions are privileged settlement discussions and agree that any statements made or information disclosed to the Mediator in private caucus is privileged and that disclosure cannot be compelled under any circumstances. All records, reports, or other documents prepared by the Mediator or submitted to the Mediator in confidence by any party are confidential, and disclosure cannot be compelled under any circumstances.

## **FEES AND COSTS**

Mediation fees are based on an hourly rate for time, including preparation, review, telephone conferencing, mediation and follow-up. There are no additional filing or administrative fees. Current rates are \$425.00 per hour, generally divided by the parties. A refundable deposit equal to six to eight hours of time is generally due **7-10 days before** the mediation session.