

**BERKS COUNTY BAR ASSOCIATION  
CIVIL DISPUTE RESOLUTION PROGRAM  
AGREEMENT TO MEDIATE**

**Introduction**

The Berks County Bar Association is pleased to sponsor and administer a Civil Dispute Resolution Program as a public service to the community. The goal of the program is to provide an opportunity for an expeditious resolution of disputes which are, or could, be pending as civil actions in the Berks County Court of Common Pleas. This includes all civil actions, except for cases involving divorce, equitable distribution, custody, child or spousal support, alimony, alimony pendent lite, or paternity.

**Role of the Bar Association**

The Berks County Bar Association sponsors the Civil Dispute Resolution Program. The role of the Bar Association in the Civil Dispute Resolution Program, however, is merely one of administrating the request for mediators. The undersigned parties, by voluntarily participating in the program, accept and recognize that:

**The Berks County Bar Association shall have no liability, expressed, implied or otherwise, with respect to any aspect of the Civil Dispute Resolution Program, including the actions or omissions of any mediator.**

**Definition of Mediation**

Mediation is typically a settlement discussion. Negotiations are assisted by a neutral, impartial third party who promotes or facilitates an understanding among the parties of their common interests in reconciling or settling the matter. The mediator does not make any decision for the parties, except by special agreement. The mediator holds in confidence all information received during a mediation. Although the mediator assigned will be a member of the Berks County Bar Association and a practicing attorney, no attorney/client privilege attaches to the communication between the parties and the mediator. No attorney/client relationship is established. The parties may have consulted with their personal attorney as part of the mediation process, and it is recommended that the parties consider having their respective attorney and/or insurance adjustor present at the mediation. **THE MEDIATOR WILL NOT BE SERVING AS AN ATTORNEY FOR ANY PARTY.**

**Request to Mediate**

The parties seeking to submit a dispute for mediation need to complete a “Request to Mediate” form and submit it to the Berks County Bar Association, along with a fee in the amount of \$950.00, representing a \$200.00 administrative fee for the Bar Association and a \$750.00 fee for payment of the mediator’s fee for the first three (3) hours of mediator time. The Request to Mediate must represent that all parties to the action view the mediation as a potential aid to the resolution of their dispute.

### **Potential Mediator's List**

The Berks County Bar Association maintains a listing of approved mediators who have participated in the formal mediation training program approved by the Bar Association's Civil Dispute Resolution Committee. The approved members of the list also have met the experience criterium set by the Bar Association's Civil Dispute Resolution Committee.

The Berks County Bar Association will provide to each party in the dispute the listing of approved mediators at the time the parties receive the "Request to Mediate" form.

### **Selection of a Mediator**

The parties will have twenty days from the date they submit the completed Request to Mediate to review the roster of approved mediators and select a mediator acceptable to all parties. In the event that the parties agree on the mediator, that name should be supplied immediately to the Berks County Bar Association. In the event that there is no agreement on the mediator within twenty (20) days, the Berks County Bar Association will assign a mediator. This assignment will be based on a rolling, random assignment of approved mediators on the list.

### **Scheduling the Mediation**

After the Bar Association has been notified of the selection of a mutually agreeable mediator, or after the Bar Association has appointed a mediator in the instance where there has been no agreement, it will then be the mediator's responsibility to schedule the date, time and place of the mediation, and to notify the parties and the Bar Association of the schedule. All meditations will be held in Berks County, unless there is special agreement otherwise.

It is suggested that the mediator circulate a list of three proposed hearing dates to the parties, allowing a five (5) day response period for the party to indicate any of the three dates which are not acceptable. After the close of the five (5) day response period, the mediator should proceed with the scheduling of a date. Should the mediation require more than one meeting, any additional meetings shall be scheduled by the mediator at the close of the prior mediation meeting.

### **Exchange of Pre-mediation Memoranda**

No later than fourteen (14) days prior to the date of the mediation, the parties shall exchange, among themselves and with the mediator, Pre-mediation Memoranda. The Memoranda shall not exceed three (3) pages in length, unless a differing length is otherwise agreed upon by the parties. The Memoranda shall include a statement of the facts of the case, as well as any issues of liability and damages deemed relevant by the parties.

After a date has been scheduled for the mediation, the mediator, depending on the case, may also contact each of the parties by telephone to determine whether or not there are any issues unique to the case. At this time, the mediator may also confirm that the persons with ultimate settlement authority will be present at the mediation.

## **Confidentiality**

Any information disclosed by any party, or by a representative of a party, or by a witness on behalf of a party, to the mediator is confidential; no privilege shall be affected by any such disclosure. The mediator shall not be an advocate for any party.

Disclosure of any records, reports or other documents received by the mediator cannot be compelled. The mediator shall not be compelled to disclose or to testify in any proceeding as to information disclosed or representations made in the course of the mediation or communicated to the mediator in confidence.

The parties agree that no party to this mediation will attempt to subpoena the mediator for testimony, deposition or discovery related to any documents or discussions arising during the time of the mediation. If a party breaches this Agreement and attempts to subpoena the mediator, that party will be liable for and shall indemnify the mediator for any costs, expenses, liabilities and/or fees, including attorneys' fees, that might be incurred by the mediator in objecting to the subpoena. The parties agree to maintain the confidentiality of the mediation and shall not in any proceeding attempt to rely on or introduce discussions regarding settlement, admissions made by any party during the course of the mediation proceedings, or any matter relating to proposals made and/or views expressed by the mediator.

**The mediator shall have no liability for any act or omission in connection with the mediation.**

## **Conclusion of Mediation**

If a settlement is facilitated between the parties, the mediation shall be concluded by the execution of a settlement agreement to be drafted by the parties themselves at the conclusion of the mediation. The mediation can also be terminated in the event that any party or the mediator determines that any further efforts at mediation would no longer be worthwhile.

## **Expenses of the Mediator**

The parties have agreed that they will each be responsible for an equal share of the fees and expenses of the mediator, unless there is specific written agreement otherwise. The initial cost is \$950.00.

The initial \$200.00 administrative fee paid to the Bar Association is not refundable. The \$750.00 initial mediator fee is only refundable up until the point in time that a mediator has been appointed. After the appointment of the mediator, the \$750.00 fee is not refundable.

The initial \$750.00 covers three (3) hours of the mediator's time. In the event the three (3) hours are exceeded, the parties agree to pay an equal share of the mediator fee of \$250.00 per hour for all hours or portions of hours exceeding the initial three (3) hours covered by the base fee.

In larger cases, multiple party cases, or document intensive cases requiring large blocks of time prior to the mediation, parties may be asked to escrow additional fees with the mediator.

Any expenses of the mediation incurred by the mediator, such as travel outside of Berks County, long distance telephone calls, and/or photocopies, shall likewise be borne equally by the parties.

While the initial base fee and forms should be made payable and submitted to the Berks County Bar Association, all invoices for additional time will be issued directly by the mediator, with payment likewise being made directly to the mediator.

**The undersigned parties, intending to be legally bound, do hereby execute this document in acknowledgment and agreement with the terms and scope of the Mediation set forth above.**

Name of Party: \_\_\_\_\_ Name of Party: \_\_\_\_\_

By (Signature): \_\_\_\_\_ By (Signature): \_\_\_\_\_

By (Typed Name): \_\_\_\_\_ By (Typed Name): \_\_\_\_\_

Dated: \_\_\_\_\_ Dated: \_\_\_\_\_

Name of Party: \_\_\_\_\_ Name of Party: \_\_\_\_\_

By (Signature): \_\_\_\_\_ By (Signature): \_\_\_\_\_

By (Typed Name): \_\_\_\_\_ By (Typed Name): \_\_\_\_\_

Dated: \_\_\_\_\_ Dated : \_\_\_\_\_

Please sign this Agreement and return it to:

**BERKS COUNTY BAR ASSOCIATION  
CIVIL DISPUTE RESOLUTION PROGRAM**

Berks County Bar Association  
P.O. Box 1058  
Reading, PA 19603-1058

REV. 6/2012