
vs.

CIVIL ACTION FILE #: _____

GUIDELINES FOR CASE EVALUATION

Case evaluation is an advisory process which is most effective if the parties work within the following Guidelines:

1. Case Evaluation is an alternative means of dispute resolution where an impartial, trained evaluator will listen to all sides of a dispute, assist the parties (and Counsels if present) identify the issues in contention, offer an impartial assessment of the strengths and weaknesses of each side of the case, and, if appropriate, explore the possibility of settlement. In that the Evaluator will ask each party to present a summary of the facts and legal merits of the case, Case Evaluation is generally not recommended for parties without legal representation.

2. The assessment of the Case Evaluator is in no way an opinion of the Judge or the Jury who would hear the trial of the case; it is merely an assessment by a neutral attorney who is expressing an impartial analysis of the facts and legal merits presented. The Evaluator will not act as an attorney or advocate for any party. Any comments made by the Evaluator are advisory only; the Evaluator has no authority to impose a settlement of the case or to dictate any agreement regarding pre-trial procedures or management of the case.

3. Each side will be given the opportunity to present an opening statement outlining their respective position; this statement will generally be made without interruption. The opportunity to ask questions and for discussion will generally follow if the Evaluator deems it appropriate.

4. During the Case Evaluation process, all discussions are confidential and information gathered during the Case Evaluation process is confidential and privileged. This Evaluator, the parties, the attorneys, and any other participants in the evaluation process specifically and expressly pledge to abide by this and to in fact treat all information gathered as confidential and privileged. The parties and their attorneys agree not to call the Evaluator as a witness in any subsequent proceeding or to subpoena or otherwise seek discovery of any written materials developed for or in the course of this Evaluation. Furthermore, neither the Evaluator nor any court-designee shall willingly testify for or against either party involved should either party end the Case Evaluation and litigate the case in Court. By signing this document, all parties and Counsels are acknowledging that they have been advised that they may not subpoena the Evaluator or any other court-designee to testify in any subsequent court proceeding concerning this Evaluation and any information learned in this process.

5. Rules of Evidence generally do not apply, and there is no formal examination or cross-examination. Any discussions held as well as any offers of settlement are not admissible in Court.

6. There may be time when the Evaluator deems that a “caucus” is needed; this is when the Evaluator will meet with one party (and Counsel) separately and in private for discussion and clarification of issues. The caucus is the only time during the Case Evaluation that information given to the Evaluator could be confidential between the parties; if – in caucus – the party or Counsel tells the Evaluator something that is not to be shared with the other side, then the party or Counsel should advise the Evaluator of this.

7. Information gathered during the Case Evaluation process is confidential and privileged. All information gathered in the mediation session(s) is confidential and privileged but for one exception; all participants acknowledge and understand that this confidentiality and privileged clause does not excuse the Mediator’s statutory duty to report any abuse revealed during the mediation process. This Mediator, the parties, the attorneys, and any other participants in the mediation specifically and expressly pledge to abide by this and to in fact treat all information gathered is confidential and privileged. The parties and their attorneys agree not to call their Evaluator as a witness in any subsequent proceeding or to subpoena or otherwise seek discovery of any written materials developed for or in the course of this Evaluation. Furthermore, neither the Evaluator nor any court-designee shall willingly testify for or against either party involved should either party end the Case Evaluation and litigate the case in Court. By signing this document, all parties and Counsels are acknowledging that they have been advised that they may not subpoena the Evaluator or any other court-designee to testify in any subsequent court proceeding concerning this Evaluation and any information learned in this process.

8. Each person signing this document understands that the confidentiality of the Case Evaluation process shall not excuse the Evaluator’s duty to report any abuse, acts of violence or threats or violence revealed during the process.

9. After the Evaluator has heard all pertinent information in the case the parties choose to present, then the Evaluator shall formulate a legal opinion, assess the strengths and weaknesses of each party’s position, and, when applicable, offer an opinion as to possible outcome or an overall value of the case. **This statement of the Evaluator’s opinion of the case may be in private or in join session; it is the responsibility of each party to advise the Evaluator of the desire as to setting for this statement.**

10. During the Case Evaluation, upon agreement of all parties and Counsels, the issues in contention may be mediated by the Evaluator. Should all agree to participate in Mediation; all understand that these Guidelines still apply during the mediation process. Additionally, if there is to be a reasonable chance to be successful and reach that mutually acceptable resolution of your dispute, open and honest communication and negotiation is absolutely essential. Thus, all parties agree to and commit to making

complete and accurate disclosure of all matters relevant to the dispute and its resolution, including but not being limited to all relevant information that would be available through the discovery process in a legal proceeding. All parties are hereby informed and acknowledge that the deliberate withholding of information or the purposeful supplying of incorrect information could result in any resolution reached being set aside. All participants agree to conduct himself or herself so as not to disrupt or hinder the discussions or the negotiations; each participant shall treat all others with respect and acknowledges each's right to state fully and without interruption his/her facts and contentions. Additionally, any remarks asserting blame of another participant or making any personal attack will not be made during any joint session, being reserved for a private session (a caucus) with the Mediator.

11. By signing these Guidelines, all parties and Counsels agree to participate in this evaluation (and possible) mediation process in GOOD FAITH. All parties and Counsels understand that complete and accurate disclosure of all matters relevant to the dispute and its resolution, including but not being limited to all relevant information that would be available through the discovery process in a legal proceeding, significantly facilitates the evaluation process and impacts the effectiveness of the process.

12. The Evaluator is acting as a facilitator/ evaluator to assist the parties as best he can to resolve their dispute. It is agreed that absent misconduct, fraud, or gross negligence, the Evaluator shall not be subject to liability to the parties as a result of his services as the Evaluator (or Mediator).

13. The payment of the Evaluator is the responsibility of the parties. The current hourly fee of the Evaluator is \$300.00 per hour. The Mediator shall be compensated for all time in the evaluation session(s), for up to one hour preparing for the evaluation when reviewing documents or other material relevant to the evaluation process or submitted by the participants, and for all time preparing any agreement reached as a result of the Evaluation. Unless otherwise specifically agreed, the fee will be divided equally between the parties, and payment shall be due at the end of each Case Evaluation session.

This ____ date of _____, 20____.

(Case Evaluator)