

# MONTGOMERY COUNTY COMMON PLEAS COURT

## GENERAL DIVISION

### AGREEMENT TO MEDIATE

CASE NO. \_\_\_\_\_

The undersigned parties, participants, and legal counsel hereby understand and agree that mediation is a process in which a neutral and impartial person, the Mediator, works with the parties to assist them in exploring settlement of their dispute. They acknowledge that mediation is not a trial. That the Mediator is not a Judge or Magistrate, and that she/he does not make any decisions for the parties concerning the outcome of the dispute.

The parties, participants, and legal counsel further understand and agree that the Mediator does not give legal advice of any kind, and that any statements made by the Court Mediator will not be regarded as legal advice. The parties are expected to rely solely on their lawyers for any legal guidance they may need.

The undersigned parties, participants, and legal counsel acknowledge that disclosure of communications made during the mediation process may cause immediate and irreparable harm to one, some, or all of them. The undersigned further agree that a “mediation communication” as used herein shall mean a communication by any signatory to this agreement made at any time during the process, including those made while scheduling or concluding the mediation, and those relating to the subject matter of the dispute.

All mediation communications made in furtherance of the attempt to resolve the dispute herein are and shall remain confidential as between the undersigned parties, participants and legal counsel. Unless otherwise required to be disclosed pursuant to Chapter 2710 of the Ohio Revised Code, or unless such disclosure is required to put into effect the terms of any settlement reached in mediation, or unless disclosure is otherwise agreed to in writing by the undersigned, no signatory of this Agreement to Mediate shall disclose the communications made during the process to anyone not a signatory to this Agreement.

This agreement does not prevent or inhibit the disclosure, discovery of, or admission into evidence of a statement, document, or other matter that is a mediation communication but that, prior to its use in a mediation proceeding, was subject to discovery or admission under any law or rule of evidence, or was subject to disclosure as a public record under R.C. 149.43. This section does not affect the admissibility of a written settlement agreement signed by the parties to this mediation or the status of a written settlement agreement as a public record under R.C. Section 149.43.

The parties, participants and legal counsel understand and agree that the matters discussed during the mediation process are “privileged communications” pursuant to R. C. Section 2710.03. As such, a privileged communication is both non-discoverable and inadmissible in any subsequent civil or administrative proceeding, unless the privilege is waived according to R. C. Section 2710.04.

However, the parties, participants, and legal counsel further acknowledge that pursuant to R. C. Section 2710.05, the following types of communications during the mediation process are not privileged, and therefore may be admissible or discoverable in a subsequent proceeding:

- 1.) Those contained in a written agreement evidenced by a record signed by all parties to the agreement;
- 2.) Those available to the public under R. C. Section 149.43 or made during a session of a mediation that is open, or is required by law to be open, to the public;
- 3.) Those involving an imminent threat or statement of a plan to inflict bodily injury or commit a crime of violence;
- 4.) Those intentionally used to plan, attempt to commit, or commit a crime or to conceal an ongoing crime or ongoing criminal activity;
- 5.) Those sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator.
- 6.) Those sought or offered to prove or disprove a claim or complaint of profession misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation;

- 7.) Except as provided in R. C. Sections 2317.02 and 3109.052, those sought or offered to prove or disprove abuse, neglect, abandonment. Or exploitation in a proceeding in which a child or adult protective services agency is a party, unless the case is referred by a court to mediation and a public agency participates;
- 8.) Those required to be disclosed pursuant to R. C. Section 2921.22 concerning the reporting of felonies;
- 9.) Those sought in connection with or offered in any criminal proceeding involving a felony, a delinquent Child proceeding based on what would be a felony if committed by an adult, or a proceeding initiated by the state or a child protection agency in which it is alleged that a child is an abused, neglected, or dependent child; and
- 10.) Those which are determined by a court, administrative agency, or arbitrator, after a hearing in camera, to be otherwise unavailable as evidence, the disclosure of which is necessary in the particular case to prevent a manifest injustice, and are sought or offered in either a court proceeding involving a misdemeanor or a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation .

The parties, participants, and legal counsel understand that the Judge has ordered them to participate in the mediation process, and that they are expected to cooperate with each other and the Court Mediator in doing so. However, they also acknowledge that they are not expected or required to settle this dispute unless they voluntarily choose to do so. The Court merely expects them to engage in the negotiations in good faith and with an open mind.

The parties, participants, and legal counsel further agree not to subpoena or otherwise seek to call the Mediator as a witness in any subsequent proceeding. They further understand and acknowledge that any notes made by the Mediator during the mediation shall be destroyed at the conclusion of the mediation and will therefore not be available at any later time.

Finally, the parties, participants, and legal counsel understand that any questions, concerns, and/or suggestions they might have about the mediation process or the manner in which the Court Mediator facilitates the negotiations should be brought to the attention of the Court Mediator as soon as possible. The Court Mediator welcomes any comments or feedback that would assist him in performing his duties.

AGREED, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Party/Participant

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Legal Counsel

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Party/Participant

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Party/Participant

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Legal Counsel

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Date

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Date

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MEDIATOR