



**MEMO OF TERMS OF ENGAGEMENT AND
REQUEST FOR SUBMISSIONS**

September 10, 2026

To: Counsel

From: Gary D. McCallister, Mediator

Re:

Mediation Date:

Mediation Location:

Dear Counsel:

I have been asked to convene a Settlement Conference/Mediation as stated above.

PERSONS TO BE IN ATTENDANCE:

I will require at least one attorney and one person “with authority” to be present for each interest involved.

With respect to the person with “authority,” I am using the definition that Judge O’Hara used, which is a person who could, if they chose, pay up to the claimant’s last offer, or the claimant’s prayer, whichever is less, without having to call for authority. D. Kan Rule 16.3I (2) specifies “*Attendance by a party or its representative with settlement authority at the mediation is mandatory unless the court orders otherwise. The purpose of this requirement is to have the party or representative who can settle the case during the mediation present at the mediation*”. Even if this is not a federal case, it is instructive.

The importance of this in the mediating process, if a person with limited authority (meaning a person who has to call the home office or regional office for more authority) is involved understands the dynamics of the process, and is involved with the mediation, but the person who is actually making the decision is remote and uninvolved, communication and decision making is more difficult.

Customarily a plaintiff comes with the authority to stand on their original demand or to dismiss the lawsuit with an apology and settle anywhere in between. It is expected that the process involving the defense will have the same latitude for the people who are involved in the process.

Liability Insurers: If an interest is represented by a liability insurer, it is recognized that in some circumstances there may not be such a person as a “person with authority” as described above. In that case person attending for the insurer’s interest should come as close as possible to meeting that criteria. If the insurance representative does not meet the criteria in full, that should be discussed with opposing parties to obtain consent for the person to attend that the insurer intends to send.

If the Liability insurer is the one to make a payment, the insured may be excused if they have no personal risk or interest in the outcome and the insurer has not reserved rights in the representation.

If a party is not going to have a person with “authority” present, they should obtain the permission to proceed from all adverse parties. Otherwise, the parties may want to consider obtaining a court order, which will regulate such person’s attendance. I have a form available for that purpose upon request.

Alternatively, the attached form may be considered with respect to those persons who absolutely cannot come to the mediation to be supplied by the person requesting the absence of a person with “authority” to obtain the adverse party’s consent.

Submissions:

To prepare for the mediation, I would invite you to submit to me any information you want me to review in a letter to brief of **no more than 10 pages and 10-25 pages of highlighted materials by no later than ten (10) days before the mediation. It is imperative that I receive your submissions by this deadline, so I can have time to prepare for our mediation.**

This will be the maximum volume I can accept to prepare for mediation. PLEASE DO NOT EXCEED THIS SO I DON’T HAVE TO SHRED EXCESS MATERIAL.

The submission should contain the following specific information:

- (a) Prepare a chronology of the facts.**
- (b) Identify the issues, evidence and the position of each party as to those issues.**
- (c) In the event of liability, the most likely jury verdict for all damages.**
- (d) The assessment of the party as to the chances expressed as a percentage of the Plaintiff prevailing.**

- (e) In the event any Defendant, third party or fourth party Defendant is found at fault, the percentage of fault as to each party. (Or for the phase of the project in which you were involved.

The above specific information will allow me to do the following:

- (f) Prepare a chronology of the facts, and
- (g) Write an analysis of the parties' strengths and weaknesses prior to the mediation.

PLEASE PRECISELY FOLLOW THESE PRE-MEDIATION REQUIREMENTS

CONTENTS OF SUBMISSION

If you wish to provide me with medical records, the records that I would be interested in reviewing include the following:

- (a) Records of health care providers prior to admission, as well as any records relative to the following:
- (b) ER visits
- (c) History & Physicals
- (d) Consulting Reports
- (e) Operative Reports
- (f) Lab results (please highlight the results you want me to focus on)

If you are going to provide me with any records, medical chronologies, expert reports, technical literature, significant discovery, portions of depositions that may be critical to understanding the argument that counsel makes about the strength of their position etc., ***please highlight those parts of those pages that you want me to review. I do not want undigested, mini-script depositions for me to read.***

Please do not send voluminous records and ask me to identify the issues for you. Previous experience has shown this is not a good use of my time and pulls me away from identifying and analyzing the key issues in the case.

The reason I need records highlighted is because of the process I go through to prepare for mediation:

- (a) Read the submission to identify the key issues

(b) Prepare a draft of the key issues

(c) Convert the draft into a final version which is presented at mediation

Following this format precisely is the only way I can make this review process efficient as it often takes many hours to prepare for mediation.

ANY RECORDS THAT ARE NOT HIGHLIGHTED WILL NOT BE REVIEWED BUT SHREDDED TO PROTECT RESIDENT INTERESTS UNDER HIPAA.

OFFER/COUNTEROFFERS:

Finally, I request that Plaintiff serve its current settlement offer on all parties by (two weeks before mediation). All other parties should then serve their counter-offers by (one week before mediation) stating the amount they are willing to contribute toward a global settlement. Please copy me on the demands/offers.

Any information that should be maintained confidential should be placed in a separate section of the letter and specified to be *confidential*.

I am attaching an agreement that should be signed as we commence the conference.

FEES:

I look forward to meeting with all of you and seeing if we can resolve this dispute. My fee will be as follows and presumably will be apportioned equally between the parties:

Fee Schedule per hour:

2 parties	\$400.00
3-4 parties	\$425.00
5-8 parties	\$450.00
9 or more parties	\$500.00

Any case involving more than 5 million dollars (realistic value not just claimed) will be a minimum of \$500.00 an hour.

In addition, travel time is charged outside of Topeka plus actual expenses.

The lawyer or law firm will be billed and is responsible for paying the mediator's invoice.

MEDIATION AND CONFIDENTIALITY AGREEMENT:

I am attaching an agreement that should be executed by signing the Sign in Sheet as we commence the conference. Counsel, please review this agreement with your client before the mediation.

It is understood by all parties that my role is as a neutral intermediary and that I cannot and will not act as an advocate for any party. In the event mediator's minutes are prepared at the end of the mediation, each participant should have those minutes independently reviewed by the participant's counsel before the execution of the approval of the minutes.

CANCELLATION POLICY

Unfortunately, a high number of mediations are either being canceled or rescheduled. Any cancellation or rescheduling within 14 days of the mediation date which has been agreed will bear a charge for the actual time spent up to that point or 4 hours, whichever is greater. **Inability to obtain Medicare or ANY lien information will not result in a waiver of cancellation charge.**

The above cancellation fee may be waived if the time can be filled or in case of real emergency or with the agreement of the mediator.

Very truly yours,



Gary D. McCallister
gdm@mcclawllc.com

GDM: pb
cc:

[ONLY FOR PERSONS NOT TO BE PRESENT FOR THE MEDIATION]

Representations of “A Person with Authority” To Be Relied Upon by Adverse Parties for the Purposes of the Mediation of

1. I, _____, the undersigned, do represent that I am the _____ of the _____ which is either a party or an insurer of a party participating in the above-described mediation.

2. That I am a person with authority as that term is used in the United States District Court for the District of Kansas (i.e., if representing a defendant, I am a person who could, if they chose, pay up to the claimant’s last offer or the claimant’s prayer, whichever is less, without having to call for additional authority.)

3. That prior to the date of the mediation I will confer with my counsel and review information in order to be in a position to exercise my authority.

4. On the day of the mediation from the time that the mediation is scheduled to start, or advised by my counsel that the mediation has been concluded, or excused by the mediator, I will be able to communicate in the following ways:

a. I will have a land line available to me and my number is

() _____, and

b. I will also carry a cell phone and my number is

() _____, so that I can be immediately notified if either my counsel or the mediator needs to speak with me regarding issues in the mediation.

5. If there is any other person in my organization whose permission, I need to exercise my authority, or to whom I feel responsible to report prior to exercising authority, that person will be equally available to my own availability as described in Paragraph No. 4.

6. This document is signed by me in order to induce adverse parties to consent to my absence from the physical place of the mediation.

Name (Printed)

Position: _____

Party for Whom I Am Exercising Authority:

MEDIATION AND CONFIDENTIALITY AGREEMENT TERMS

Each person by signing the “Sign in and Consent to Mediation and Confidentiality Agreement” in this matter has agreed:

1. Gary D. McCallister has been selected to serve as a neutral mediator by all parties.
2. The signers agree that the mediator shall not be subpoenaed or otherwise compelled to disclose any matter disclosed in the process of setting up or conducting the mediation, except to the extent such disclosure may be necessary to enforce a settlement agreement if a settlement agreement is reached among the parties as a result of the mediation process.
3. The parties further agree that the mediation proceedings shall be regarded as settlement negotiations. Any communication relating to the subject matter of the dispute made during the resolution process by any participant or the mediator or any other person present at the dispute resolution proceedings shall be regarded as confidential communication. No admission, representation, statement or other confidential communication made in setting up or conducting the mediation not otherwise discoverable or obtainable shall be admissible as evidence or subject to discovery in accordance with either K.S.A. 60-452a or Rule 408, Fed. R. Evid. or the comparable evidentiary or discovery rules of the jurisdiction where the case is pending.
4. It is understood by all parties that Mr. McCallister’s role is as a neutral intermediary and that he cannot and will not act as an advocate for either party. In the event mediator’s minutes are prepared at the end of the mediation and each participant will have those minutes independently reviewed by the participants’ counsel before the execution of the approval of the minutes and are not relying upon the legal advice of Mr. McCallister for such action.