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Los Angeles, California
90015

T 213.736.1145
www.lls.edu/lccr

Bill Hobbs, Founding Director



Date: _____

LCCR File Number: _____

Assigned Mediator(s): _____

Dear Mediation Participant:

Thank you for your willingness to speak with us about setting up a mediation or conciliation in your case. We are writing to clarify the details of our process. If you have any questions about this information please contact us at the above telephone number. We have included important information sheets about our process, confidentiality and any potential conflicts of interest that might preclude us from mediating your case.

As a neutral mediation service, all of our services are voluntary and confidential. We offer a party-centered process, which means that it is very important for all parties who are involved in the conflict to be ready to speak at the mediation or conciliation, even if represented by counsel. It is also very important that all parties with authority to settle be present at the mediation.

Because all writings prepared for purposes of a mediation are generally considered confidential (with some exceptions), if you would like your written settlement agreement to be admissible and/or enforceable in a court of law, all parties may choose that the agreement itself not be confidential.

As a mediation training facility, there will be law-student mediators in-training observing the mediation. They sign a confidentiality agreement promising not to speak to anyone about your dispute.

No Court Involvement

Due to confidentiality, if we are not able to set-up mediation or conciliation in your case, we will not be able to give you verification of that in writing or testify about that in court.

The law provides that we are not competent to testify (see Evidence Code Section 703.5). Additionally, all conversations that we have, even prior to the mediation (consultations), are considered confidential. (See Evidence Code Sections 1115 (c) and 1119) Similarly we are not able to submit a report to the court, other than one that is mandated by the court. (See Evidence Code Section 1122) Even if the court mandates that we submit a report - and it has not done so

here - such report may state only if the case was settled or not. (See Evidence Code Section 1122).

Were we to state that a case has not been settled, when we are not able to set up a mediation, we feel this may mislead the court into believing that a mediation had indeed taken place, when it has not.

The mediation laws were set up so that mediation programs like ours do not have to be involved in litigation if cases are not able to be convened or settled. Subjecting mediators to subpoena disrupts the delivery of services and is particularly detrimental to programs like ours that rely heavily on volunteers with limited budgets.

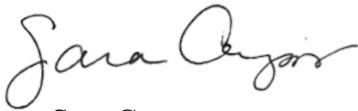
Under our promise of confidentiality and the California Evidence Code Sections, attached, we are legally and ethically obligated to keep all information confidential. Moreover, the law provides that we would be entitled to attorney's fees if we were to have to fight off an inappropriate subpoena. (See Evidence Code Section 1127).

Therefore, we respectfully request your understanding, in not involving any of our mediators or Loyola Center for Conflict Resolution in your court case, should we be unable to set up a mediation or settle your case.

We are available to discuss this with you further should you have any questions or concerns. Please contact your assigned mediator. And we promise to do our best to try to set up a mediation in your case to help resolve your conflict. You may request a copy of our fee schedule at any time and if you have any concern about our services please feel free to contact our Acting Director.

Thank you for your patience and understanding.

Sincerely,



Sara Campos
Director
Loyola Center for Conflict Resolution

These Services Are Made Possible Through Major Support From the Los Angeles County Department of Workforce Development, Aging and Community Services through the California Dispute Resolutions Programs Act.

Loyola Center For Conflict Resolution

INFORMATION STATEMENT

Who We Are And Our Process

The Loyola Center for Conflict Resolution (LCCR) is a bilingual (English/Spanish) community mediation program that provides facilitative mediation and conciliation services. Services are provided by supervising professional mediators alongside Loyola Law School students, and other community volunteers. Our office hours are 9 a.m. to 6 p.m. Monday through Friday, and on evenings and weekends by appointment.

In mediation, a neutral person (the mediator) helps the parties discuss ways to resolve their conflict either in person in a face-to-face mediation, or over the telephone (conciliation). Your mediators will **not** take sides, give legal advice or represent you. The mediators are there to make sure that each of you understands the other person's viewpoints and concerns, and to help you work out a solution to each issue that is acceptable to all parties. Your participation is **voluntary** and you may withdraw at any time. If you allow us to assist you by choosing mediation, statistics indicate that we will be able to help you resolve your dispute about 80% of the time.

As a mediation training facility, law students and/or other mediation trainees may be present to observe your mediation in the room, through a two-way mirror, or via a live feed camera in to other observation stations at LCCR. Trainees may also co-mediate with one of our professional staff mediators. All observers are trained in mediation confidentiality and required to sign a confidentiality agreement. Please do not engage observers in discussion during the mediation.

Our process is **simple**. In mediation, you talk about what happened in the **past** in order to understand the **present**, so that you can make an **agreement** about what will happen in the **future**. A session usually lasts **3 to 4 hours**. In telephone conciliation, agreements might be reached in 2 to 6 weeks after several telephone calls.

Our process is **informal**. We often use first names and we offer a party (client)-centered process. That means that we ask each person involved in the conflict to speak for him or herself regarding what happened in the conflict. We understand that you see the situation differently and would like to hear how each person sees the situation. In the beginning, **each** party speaks to the mediator **without interruption** by the other parties. Later in the process, we help parties and other participants to have an interactive discussion, if you choose to do that.

Mediation is more like an informal meeting than a trial. You decide if you want to end your conflict and on what basis. We will not make decisions for you. We hope that all who attend our mediations participate in good faith, and that we are able to help you resolve your dispute. The LCCR will refer you to attorneys or other professionals for advice when you feel that might help.

Confidentiality

With some exceptions, anything said or written during a mediation or a conciliation is **confidential**, which means that it cannot be used in any **noncriminal proceeding**, in which testimony can be required, unless everyone agrees. If you reach a written agreement, you may include a paragraph that says that you want it to be admissible in evidence and/or enforceable at law, so that the agreement is not confidential. You do not have to agree to anything that you do

not want to. You will be asked to sign a Confidentiality Agreement at the mediation. A copy is enclosed along with California Evidence Code Sections 1115-1129 that outline confidentiality. Everyone will be asked to sign a copy of this statement at the mediation.

At some point in the mediation, your mediator may find it helpful to meet with the parties individually or in groups. These private meetings are called **caucuses**. Any caucus information will not be shared with the other party without your permission.

When No Party Is Represented by An Attorney

Mediation was *originally developed* with only the disputing parties attending the mediation, to discuss their issues with the help of a neutral mediator. Although attorneys and witnesses generally do not attend community (not court) mediation sessions, you have the right to have an attorney present, and to call and question witnesses.

As mediation evolved in the court system, and at government agencies, attorneys are now often present at these types of mediations, with the exception of neighbor-to-neighbor and family mediations, which remain strongly community based. Regardless of who is present in the mediation, **Mediation the LCCR Way is set-up so that each person involved in the mediation has an opportunity to speak and be understood.**

When Only One Party Is Represented By An Attorney

If only one, or fewer than all parties, is represented by an attorney, the parties are asked to speak for themselves and the attorney's role is mainly to advise the client. The attorney will not be allowed to question the other parties. There is no cross-examination. The attorney and his or her client may talk privately, provided it does not disrupt the flow of the process. The mediator will work with the attorney in a caucus session to maintain balance in the process.

When All Parties Are Represented By An Attorney

Even if all parties are represented by counsel, the process begins by all participants - even the represented ones - making an opening statement, about how he or she sees the situation. The attorneys are asked to highlight important facts and laws with respect to the case during their opening statement. When everyone's viewpoints are understood, the mediator will assist the parties to negotiate a settlement based on the needs and interests expressed in those viewpoints. When an agreement is reached, the mediator will write a memorandum of understanding at the request of the participants.

No Service of Summons at Loyola on Mediation Day

To facilitate a mediation settlement, we ask that you **not** serve a lawsuit summons on any other person involved in the mediation, on the day of the mediation.

Funding and Service Concerns

The Los Angeles County Department Of Workforce Development, Aging and Community Services, pursuant to The California Dispute Resolution Programs Act, partially funds the LCCR. They also monitor our files. If you have any concerns about the LCCR services, you may contact the Associate Director and/or request a **Grievance Form**.

Conflict of Interest

It is important that your mediators not have any personal, professional or financial relationship with you or anyone close to you that might interfere with your mediators' ability to be neutral. Your mediators will reveal any known personal, professional or financial interests.

It is also important that you inform your mediator if you believe that any person involved in the mediation has any personal, professional or financial relationship with the mediators that might interfere with your mediators' ability to be neutral.

Mediation Briefs

Attorneys wishing to present mediation briefs are asked to keep them to a minimum and submit them at least 3 days prior to the mediation. **Although all briefs are confidential, we encourage you to share them with the other parties and their counsel.** The following helpful information may be included: a brief procedural history, a summary of the facts from your client's perspective, personal issues important to your client, factual issues in dispute, legal issues in dispute, a summary of the law, what you believe it will take to settle the case and a description of previous settlement discussions.

Fees

No one will be charged a fee for the services of the LCCR who cannot afford to pay. A sliding fee schedule will be used for those who can afford to pay.

Office Hours

Regular office hours are from 9:00 a.m. until 6:00 p.m. Monday through Friday, and on evenings and weekends by appointment. Additionally, when staff is available, office hours may be extended until 8:00 p.m. Monday through Thursday. Please call (213) 736-1145.

Date:

Parties to the Mediation: X _____

I have spoken to my attorney and he/she has no objection to my participating in this mediation
(please initial): _____

Loyola Center for Conflict Resolution: _____

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Workforce Development, Aging and Community Services through the California Dispute Resolution
Programs Act.*

Loyola Center for Conflict Resolution

CENTER # _____

CONFIDENTIALITY AGREEMENT *(This is not an Agreement to Mediate.)*

All Parties, and the **Loyola Center for Conflict Resolution**, agree that California Evidence Code Sections 1115 through 1129 apply to this mediation, except for Section 1125(a)(5). For purposes of confidentiality, this mediation does not end until all Parties and the mediator(s) agree that it has ended. Evidence Code Sections 1115-1129 are printed on the back of this page. What this Agreement means is that, with some exceptions, anything said and anything written during this mediation cannot be used in any **noncriminal proceeding** in which testimony can be required, unless everyone agrees.

Confidentiality, as described in California Evidence Code Sections 1115 through 1129, does not apply to **criminal proceedings**. What this means is that we might be required to testify and that we might have to give our file to the court. And, if you tell us that you have committed a crime or that you plan to commit a crime, we might have to report you to the proper authorities.

Because of the sensitive nature of confidential mediation discussions, all participants in the mediation, including Parties and their attorneys, agree not to call the mediator(s) or other Center Staff to testify about anything with respect to the mediation, or to subpoena the Center's records, in a later civil or criminal proceeding.

The Loyola Center for Conflict Resolution shall not reveal information that is provided by participants to third parties without the consent of all participants. However, without disclosing participants' names or other identifying information, the mediator may consult with colleagues about this matter, and may describe this matter in publications or in a training class about mediation.

Date: _____

Parties to this Mediation: X _____

Loyola Center for Conflict Resolution: _____

**California Evidence Code Sections
1115-1129**

1115.

For purposes of this chapter:

- (a) "Mediation" means a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement.
- (b) "Mediator" means a neutral person who conducts a mediation. "Mediator" includes any person designated by a mediator either to assist in the mediation or to communicate with the participants in preparation for a mediation.
- (c) "Mediation consultation" means a communication between a person and a mediator for the purpose of initiating, considering, or reconvening a mediation or retaining the mediator.

1116.

- (a) Nothing in this chapter expands or limits a court's authority to order participation in a dispute resolution proceeding. Nothing in this chapter authorizes or affects the enforceability of a contract clause in which parties agree to the use of mediation.
- (b) Nothing in this chapter makes admissible evidence that is inadmissible under Section 1152 or any other statute.

1117.

- (a) Except as provided in subdivision (b), this chapter applies to a mediation as defined in Section 1115.
- (b) This chapter does not apply to either of the following:
 - (1) A proceeding under Part 1 (commencing with Section 1800) of Division 5 of the Family Code or Chapter 11 (commencing with Section 3160) of Part 2 of Division 8 of the Family Code.
 - (2) A settlement conference pursuant to Rule 3.1380 of the California Rules of Court.

1118.

An oral agreement "in accordance with Section 1118" means an oral agreement that satisfies all of the following conditions:

- (a) The oral agreement is recorded by a court reporter or reliable means of audio recording.
- (b) The terms of the oral agreement are recited on the record in the presence of the parties and the mediator, and the parties express on the record that they agree to the terms recited.
- (c) The parties to the oral agreement expressly state on the record that the agreement is enforceable or binding or words to that effect.
- (d) The recording is reduced to writing and the writing is signed by the parties within 72 hours after it is recorded.

1119.

Except as otherwise provided in this chapter:

- (a) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.
- (b) No writing, as defined in Section 250, that is prepared for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation, is admissible or subject to discovery, and disclosure of the writing shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.
- (c) All communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential.

1120.

(a) Evidence otherwise admissible or subject to discovery outside of a mediation or a mediation consultation shall not be or become inadmissible or protected from disclosure solely by reason of its introduction or use in a mediation or a mediation consultation.

(b) This chapter does not limit any of the following:

(1) The admissibility of an agreement to mediate a dispute.

(2) The effect of an agreement not to take a default or an agreement to extend the time within which to act or refrain from acting in a pending civil action.

(3) Disclosure of the mere fact that a mediator has served, is serving, will serve, or was contacted about serving as a mediator in a dispute.

(4) The admissibility of declarations of disclosure required by Sections 2104 and 2105 of the Family Code, even if prepared for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation.

1121.

Neither a mediator nor anyone else may submit to a court or other adjudicative body, and a court or other adjudicative body may not consider, any report, assessment, evaluation, recommendation, or finding of any kind by the mediator concerning a mediation conducted by the mediator, other than a report that is mandated by court rule or other law and that states only whether an agreement was reached, unless all parties to the mediation expressly agree otherwise in writing, or orally in accordance with Section 1118.

1122.

(a) A communication or a writing, as defined in Section 250, that is made or prepared for the purpose of, or in the course of, or pursuant to, a mediation or a mediation consultation, is not made inadmissible, or protected from disclosure, by provisions of this chapter if any of the following conditions are satisfied:

(1) All persons who conduct or otherwise participate in the mediation expressly agree in writing, or orally in accordance with Section 1118, to disclosure of the communication, document, or writing.

(2) The communication, document, or writing was prepared by or on behalf of fewer than all the mediation participants, those participants expressly agree in writing, or orally in accordance with Section 1118, to its disclosure, and the communication, document, or writing does not disclose anything said or done or any admission made in the course of the mediation.

(3) The communication, document, or writing is related to an attorney's compliance with the requirements described in Section 1129 and does not disclose anything said or done or any admission made in the course of the mediation, in which case the communication, document, or writing may be used in an attorney disciplinary proceeding to determine whether the attorney has complied with Section 1129.

(b) For purposes of subdivision (a), if the neutral person who conducts a mediation expressly agrees to disclosure, that agreement also binds any other person described in subdivision (b) of Section 1115.

1123.

A written settlement agreement prepared in the course of, or pursuant to, a mediation, is not made inadmissible, or protected from disclosure, by provisions of this chapter if the agreement is signed by the settling parties and any of the following conditions are satisfied:

(a) The agreement provides that it is admissible or subject to disclosure, or words to that effect.

(b) The agreement provides that it is enforceable or binding or words to that effect.

(c) All parties to the agreement expressly agree in writing, or orally in accordance with Section 1118, to its disclosure.

(d) The agreement is used to show fraud, duress, or illegality that is relevant to an issue in dispute.

1124.

An oral agreement made in the course of, or pursuant to, a mediation is not made inadmissible, or protected from disclosure, by the provisions of this chapter if any of the following conditions are satisfied:

(a) The agreement is in accordance with Section 1118.

(b) The agreement is in accordance with subdivisions (a), (b), and (d) of Section 1118, and all parties to the agreement expressly agree, in writing or orally in accordance with Section 1118, to disclosure of the agreement.

(c) The agreement is in accordance with subdivisions (a), (b), and (d) of Section 1118, and the agreement is used to show fraud, duress, or illegality that is relevant to an issue in dispute.

1125.

(a) For purposes of confidentiality under this chapter, a mediation ends when any one of the following conditions is satisfied:

- (1) The parties execute a written settlement agreement that fully resolves the dispute.
- (2) An oral agreement that fully resolves the dispute is reached in accordance with Section 1118.
- (3) The mediator provides the mediation participants with a writing signed by the mediator that states that the mediation is terminated, or words to that effect, which shall be consistent with Section 1121.
- (4) A party provides the mediator and the other mediation participants with a writing stating that the mediation is terminated, or words to that effect, which shall be consistent with Section 1121. In a mediation involving more than two parties, the mediation may continue as to the remaining parties or be terminated in accordance with this section.
- (5) For 10 calendar days, there is no communication between the mediator and any of the parties to the mediation relating to the dispute. The mediator and the parties may shorten or extend this time by agreement.

(b) For purposes of confidentiality under this chapter, if a mediation partially resolves a dispute, mediation ends when either of the following conditions is satisfied:

- (1) The parties execute a written settlement agreement that partially resolves the dispute.
- (2) An oral agreement that partially resolves the dispute is reached in accordance with Section 1118.

(c) This section does not preclude a party from ending a mediation without reaching an agreement. This section does not otherwise affect the extent to which a party may terminate a mediation.

1126.

Anything said, any admission made, or any writing that is inadmissible, protected from disclosure, and confidential under this chapter before a mediation ends, shall remain inadmissible, protected from disclosure, and confidential to the same extent after the mediation ends.

1127.

If a person subpoenas or otherwise seeks to compel a mediator to testify or produce a writing, as defined in Section 250, and the court or other adjudicative body determines that the testimony or writing is inadmissible under this chapter, or protected from disclosure under this chapter, the court or adjudicative body making the determination shall award reasonable attorney's fees and costs to the mediator against the person seeking the testimony or writing.

1128.

Any reference to a mediation during any subsequent trial is an irregularity in the proceedings of the trial for the purposes of Section 657 of the Code of Civil Procedure. Any reference to a mediation during any other subsequent noncriminal proceeding is grounds for vacating or modifying the decision in that proceeding, in whole or in part, and granting a new or further hearing on all or part of the issues, if the reference materially affected the substantial rights of the party requesting relief.

1129.

(a) Except in the case of a class or representative action, an attorney representing a client participating in a mediation or a mediation consultation shall, as soon as reasonably possible before the client agrees to participate in the mediation or mediation consultation, provide that client with a printed disclosure containing the confidentiality restrictions described in Section 1119 and obtain a printed acknowledgment signed by that client stating that he or she has read and understands the confidentiality restrictions.

(b) An attorney who is retained after an individual agrees to participate in the mediation or mediation consultation shall, as soon as reasonably possible after being retained, comply with the printed disclosure and acknowledgment requirements described in subdivision (a).

(c) The printed disclosure required by subdivision (a) shall:

- (1) Be printed in the preferred language of the client in at least 12-point font.
- (2) Be printed on a single page that is not attached to any other document provided to the client.
- (3) Include the names of the attorney and the client and be signed and dated by the attorney and the client.

(d) If the requirements in subdivision (c) are met, the following disclosure shall be deemed to comply with the requirements of subdivision (a):

Mediation Disclosure Notification and Acknowledgment

To promote communication in mediation, California law generally makes mediation a confidential process. California's mediation confidentiality laws are laid out in Sections 703.5 and 1115 to 1129, inclusive, of the Evidence Code. Those laws establish the confidentiality of mediation and limit the disclosure, admissibility, and a court's consideration of communications, writings, and conduct in connection with a mediation. In general, those laws mean the following:

- All communications, negotiations, or settlement offers in the course of a mediation must remain confidential.
- Statements made and writings prepared in connection with a mediation are not admissible or subject to discovery or compelled disclosure in noncriminal proceedings.
- A mediator's report, opinion, recommendation, or finding about what occurred in a mediation may not be submitted to or considered by a court or another adjudicative body.
- A mediator cannot testify in any subsequent civil proceeding about any communication or conduct occurring at, or in connection with, a mediation.

This means that all communications between you and your attorney made in preparation for a mediation, or during a mediation, are confidential and cannot be disclosed or used (except in extremely limited circumstances), even if you later decide to sue your attorney for malpractice because of something that happens during the mediation.

I, _____ [Name of Client], understand that, unless all participants agree otherwise, no oral or written communication made during a mediation, or in preparation for a mediation, including communications between me and my attorney, can be used as evidence in any subsequent noncriminal legal action including an action against my attorney for malpractice or an ethical violation.

NOTE: This disclosure and signed acknowledgment does not limit your attorney's potential liability to you for professional malpractice, or prevent you from (1) reporting any professional misconduct by your attorney to the State Bar of California or (2) cooperating with any disciplinary investigation or criminal prosecution of your attorney.

Date: _____ Parties/Participants Names: _____

Signatures: _____

Date: _____ Attorneys Names: _____

Signatures: _____

California Evidence Code Section 1129(e) Failure of an attorney to comply with this section is not a basis to set aside an agreement prepared in the course of, or pursuant to, a mediation.