

# Barker Mediation

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John R. Barker

[Date]

## Mediation Confirmation

**To:** Lawyers for the parties  
**From:** John Barker  
**Re:** Names of parties to the lawsuit/dispute  
**Date:** Of the mediation  
**Time:** 9:00am for plaintiff and counsel  
9:30am for defendant and counsel  
**Place:** 1000 SW Broadway, Suite 1700, Portland

## Mediation Terms

The parties and counsel are deemed to have agreed to the following mediation terms, unless the mediator is informed by email or other writing of any disagreement about the terms within 3 days of the confirmation being sent to counsel for the parties.

### Submissions

**In order to assure that your mediation submission will receive appropriate review, it is due 3 business days before the mediation.** You need send only material that will give a general factual outline of the dispute, a discussion of important strengths and weaknesses in the parties' positions, and the history of any settlement negotiations.

### Fees

**Full/half day reserved:** \$4,000 full day/\$2,000 half day, which includes up to one hour of preparation time, an eight-hour mediation session (full day), four-hour (half day) and up to one hour of post-mediation phones calls and emails necessary to conclude a settlement. Preparation time includes substantive discussions with counsel and review of mediation submissions prior to the mediation session. If preparation time and post-mediation activities require more than two hours' time, the mediator may bill such time at \$400/hour.

Billings are sent electronically at the conclusion of the mediation and are due on receipt.

**Deposits:** The law firms representing the parties are guarantors of *timely* payment of their client's share of the mediation fee, unless a deposit acceptable to the mediator is received by the first "Cancel/postpone" deadline set out below.

**Fee shares:**

The parties should make any agreement concerning sharing of the mediator's fee *before* the mediation. If the parties have not agreed on the allocation, the mediator will bill the parties in shares as determined by the mediator, in his discretion.

If any party wishes to negotiate their share of the mediator's fee at the mediation, that party must do so directly with the other party or parties without the mediator's involvement. Any such negotiation should take place before a settlement is reached as to all other terms.

**Cancel/postpone:**

**Please take note:** there is no charge if the mediation is postponed or canceled **more than 14 days** before the date reserved.

When there is a cancellation or postponement, for any reason, **less than 14 days** before the date reserved, the mediator will post the reserved date on the website as being available. If other parties do not schedule a replacement for the cancelled or postponed mediation, the canceling/postponing party(ies) will be charged the minimum for the time reserved. The postpone/cancellation fee will be allocated among the parties based on the mediator's discretion.

The parties can avoid the postponement/cancellation fee by rescheduling and holding the mediation on a date shown as available on the mediator's web site that is within 30 calendar days of the originally scheduled date.

If the mediator, for any reason, cancels or postpones **14 days or less** before the date reserved, the parties will be entitled to reschedule and there will be no fee charged for the mediation.

**Please note** when reserving time for the mediation that it is necessary to strictly enforce this term of the agreement for the mediation.

### **Document retention**

If the case settles at the mediation, documents submitted to the mediator will be destroyed after 60 days. If the case does not settle at the mediation, documents submitted to the mediator will be destroyed after 90 days, unless there are ongoing settlement negotiations involving the mediator. The parties may request return of their submissions at the mediation session.

### **Personal attendance by decision-maker(s)**

A decision-maker with adequate authority to settle the dispute must be physically present at the mediation, unless all other parties have been notified by email or in writing otherwise, and expressed by email or in writing their agreement to participation of the decision-maker by phone.

### **Joint sessions**

As a general practice, joint meetings are not encouraged, absent an identified purpose, expressions of a strong desire by all participants to have such meetings, and commitments by all that they will participate with the goal of moving toward resolution of the dispute. Joint meetings of all participants at the mediation occur *only* if all participants and counsel convince the mediator that such meetings will be productive.

### **Confidentiality**

By participating in the mediation, the parties agree that ORS 36.220 et seq govern confidentiality of the mediation and agree the mediation is confidential. The parties further agree that the mediator will not be required to testify about the mediation, unless the parties and the mediator agree otherwise.

### **Mediator's role**

The mediator will not give legal advice to any party. The parties must rely on their own legal counsel for legal advice at the mediation.

### **Hotels Nearby for Out of Town Participants**

The **Heathman Hotel** is directly across SW Broadway from the office where the mediation will be held -- [www.portland.heathmanhotel.com](http://www.portland.heathmanhotel.com)

The **Downtown Portland Hilton** is on SW 6th Ave. in the block next to this office - [www1.hilton.com/en\\_US/hi/hotel/PDXPHHH-Hilton-Portland-Executive-Tower-Oregon/index.do](http://www1.hilton.com/en_US/hi/hotel/PDXPHHH-Hilton-Portland-Executive-Tower-Oregon/index.do)

### **Information about mediation**

Clients can visit the Mediation page at [www.barkermediation.com](http://www.barkermediation.com) for information about what to expect at the mediation.