

Pactum Factum Mediation Policy and Fees

A prospective client of Pactum Factum is advised not to hold preconceived notions of what our mediation style and process might look like. For example, people ask us about our mediation style, “Are you facilitative or evaluative?” Our answer is: “Neither. And both. It depends on where we are in the process and what the parties need to assist them in their goals.” Many attorneys expect the mediation to conform to a certain process and our process may or may not conform to such expectations. We do not track our “wins.” “Winning” does not necessarily mean settling cases; “winning” somehow implies that our ego is invested in the outcome. Tracking the number of cases we have helped parties settle, we believe, could risk compromising our impartiality.

As you prepare for mediation, bear in mind the hallmarks of the process: (1) Voluntariness (that the parties want to be there); (2) Self-determination (that, you, the parties are in control of the outcome, rather than yielding that control to a judge or jury); (3) Impartiality of the mediator; (4) Confidentiality (no offers made during mediation may be disclosed later on, if the parties do not reach a deal)

Mediation Fees

\$3,000 flat fee for up to 4 hours paid up front / \$750 per hour after 4 hours. This fee is divided evenly between the parties.

Preparation work in advance of mediation (phone / Zoom conferences; pre-mediation briefs; correspondence) billed separately at \$750/hour and in addition to the 4-hour minimum mediation session fee.

\$2,000 each scheduled day cancelled with less than 7 days advance notice

Travel Fees & Expenses (If Applicable)

Travel time: \$325/hour
Actual travel expenses
Business Class for all flights

Mediation Policies

The Mediation is not just the session(s) itself. It is all of the pre-mediation work and communication, and all communications in between sessions. Often a mediation requires more than one session (especially using Zoom, which works best in shorter sessions) and a combination of modalities.

CONFIDENTIAL PRE-SESSION INFORMATION: Before the mediation, I will send counsel (or parties themselves, if not represented by counsel) an intake questionnaire. The purpose of the questionnaire (and any follow up phone discussion) is to obtain a candid briefing about the case, to understand goals and concerns counsel or the parties may have.

MEDIATOR'S FEE: The rate is applicable to pre-mediation preparation and communications (including phone, email, texts), study and review of any written submissions, the mediation session(s) and any post-session follow-up. The fees will be divided equally between the parties, unless notice of a different arrangement is provided in advance of the mediation session.

DEPOSIT REQUIREMENT: An advance deposit against fees is required from each party. The deposit is intended to cover the time spent on pre-session preparation, the mediation session, and any follow-up necessary to finalize a settlement. If fees and expenses exceed the amount deposited, the parties will be billed for the difference. Additional deposits may be required if more session dates are set. When the mediator's fees are subject to allocation in a settlement agreement, the full amount due will be withdrawn from the amounts on deposit. The party entitled to reimbursement will be responsible for collecting any amounts due from the other party.

MEDIATION STATEMENTS: The parties have the option of submitting pre-mediation statements (limited to 3 pages; this isn't a trial brief) by email. Attach any relevant pleadings, agreements, correspondence, policies, witness statements, financial calculations, expert reports, or other documents.

MEDIATION AGREEMENT: To ensure the confidentiality of the process and to formalize my relationship with the parties, a Mediation Agreement is to be signed by all participants in advance of the session.

AUTHORITY OF PARTICIPANTS: The individuals who participate in the mediation must have authority to make a deal. This process will not work if, five hours into the process, someone needs to call a third person (who has not been a part of the process) for authority.

