

MEDIATION CHECKLIST

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Prepared by Table 3
Webster-Batchelder AIC

The following checklist is a non-comprehensive list of items to think about, draft or deal with prior to sitting down at the table to mediate a civil case, or at least prior to leaving the table. It is based on the experience of members of Table 3, so far; if there's anything that hasn't blown up on us but has blown up on you, please feel free to add to the list!

What payment terms will govern?

- Amount of payment
- Time for payment
- To whom is check delivered/made out?
- How is payment allocated? Lost wages, emotional distress, contract damages, costs and fees?
- Have you included express language referencing likely tax implications?

Are there non-monetary terms?

- Describe all such terms clearly; to the extent possible agree on precise wording of recommendations, references, apologies, etc.
- In real property cases, does an agreement to exchange land or change property lines comply with local zoning ordinances?
- If work is to be performed by a third party contractor, who selects the person, how is the person paid, and what happens if either party is dissatisfied with the contractor's performance?

On What Terms Will the Dispute be Resolved?

- Release language – broad, specific or other?
- Does either side have claims against third parties? Are they mentioned in release?
- Does either side have claims or potential claims against the other side that are not at issue in the present dispute? Have they been dealt with in the release?

- Are there related business entities (e.g., parents, subsidiaries, subcontractors) or business ventures that are not party to or at issue in, the dispute? Are their rights and responsibilities covered by release?
- Is there more than one other party to the dispute? Whether or not they are at the table, have you agreed on the specific release language as to each of them?

Is the settlement Confidential?

- Clearly defined language about what each party may say if asked about the matter?
- Is either party a public entity governed by RSA 91-A? Have you explained to your client the limitations on confidentiality entailed by the statute?
- Are there exceptions to the confidentiality language? How broad are they (i.e., court order or other disclosure required by law? To professionals with a duty of confidentiality such as accountants and lawyers? To close family members?)
- What happens in event of a breach? Liquidated damages? Costs and fees? How enforced?

How Will Breaches be Handled?

- ADR? On what terms?
- Forum Selection Clause?
- Costs of enforcement?