

MEDIATOR'S GUIDE

To assist Members in
maintaining harmony
within their Lodges



*Benevolent and Protective Order of Elks
of the United States of America*

GRAND LODGE COMMITTEE ON JUDICIARY

“Elks Care — Elks Share”

Mediator's Guide

INTRODUCTION

The purpose of this guide is to provide information to members of our Order who are tasked with the responsibility of serving as Mediators in Local Forum proceedings. The mediation process is a critical part of a Local Forum proceeding, and every effort should be made to try to bring the parties together to reach a resolution of their dispute before it expands into a larger disruption within the Lodge and creates further disharmony and bitterness among its members.

Time and experience have given us a body of information that has been shown to produce the greatest possibility for success in the mediation process. Many books and other materials are available to provide guidance regarding the process, and this guide is simply a synthesis of some of the more common procedures. It is not intended to be looked at as comprehensive, mandatory, nor even necessarily useful in every situation, but it nevertheless attempts to provide a general overview of how mediation proceedings are commonly handled. Nothing is intended to dissuade you from taking a different approach should you believe the circumstances warrant.

The Order of Elks extends its sincere appreciation to those who have volunteered their time and talents to offer assistance in what are typically among the most difficult and contentious chapters in the life of any Lodge.



Fraternally,
Robert L. Duitsman, *Chairman*
2014-2015 G/L Committee on Judiciary

A GENERAL OVERVIEW OF THE MEDIATION PROCESS

Time is of the essence in beginning the process of conducting a mediation proceeding. While everyone has competing commitments that make demands on their time, our laws direct that you make every effort to initiate and conduct the process in a timely manner. The notice and preliminary matters to be alert to are provided in our laws, specifically Grand Lodge Statutes (GLS) §8.015 and thereafter. Some good additional material addressing issues brought before the Grand Forum can be found in the Guide to the Courts of the Order. A review of these two resources might be a good first step.

BEFORE THE SESSION OCCURS

Before the session is held, you should review the Notice of Intent to familiarize yourself with the factual allegations stated in the notice, as well as what law(s) of the Order are alleged to have been violated. For a good cause finding by a Local Forum, identifiable factual allegations must be proven that have violated some identifiable law of the Order. Many of the various violations are specified in GLS §9.060 and §9.070, which you may want to review. While you are not tasked with being a judge of the facts, and for the most part may have to assume the allegations are true for purposes of the mediation process, you may nevertheless raise any infirmities in the allegations that you think may affect the weight of evidence in any later trial.

The central guiding authority to direct your actions is GLS §8.015:

Section 8.015. A written “Notice of Intent” to file a complaint shall be served upon the Secretary prior to the filing of any Complaint. The Member preferring the charges shall be the “Accuser,” and the Member charged shall be the “Accused.” The Notice of Intent will contain the name of the Accused and the Accuser, and a brief factual statement of the conduct upon which the alleged offense is predicated. The Accuser shall sign and verify the Notice of Intent under the Obligation of the Order. Upon receipt of the Notice of Intent, a mediation session shall commence as follows:

- (a) The Secretary shall promptly serve a copy of the Notice of Intent on the Accused and, within two (2) business days of receipt, notify the Mediator of the filing of the Notice of Intent. If the Mediator cannot be contacted within two (2) days, the Exalted Ruler shall appoint another Member to act as Mediator for the purpose of this hearing only.
- (b) The Mediator shall immediately contact the Accused and Accuser and arrange an informal mediation session within five (5) business days of the filing of the Notice of Intent.

- (c) The mediation session shall only be attended by the Mediator, the Accused, the Accuser, and, if desired, a Member designated by each as counsel. No person attending a mediation session shall disclose to anyone any matter discussed during the mediation. The Mediator shall, in his or her absolute discretion, have the right to allow any person to appear if the Mediator believes that person has meaningful information that will assist in resolving the case. The Mediator shall have the authority to limit or prohibit any questioning of that person by any party or counsel during the course of the mediation.
- (d) No record of the mediation session shall be made except as hereinafter provided. No reference to the proceedings, nor any statement or occurrence at said proceeding, shall be introduced for any purpose in any subsequent Local Forum proceeding against the Accused based upon the same or similar charges.
- (e) At the conclusion of the mediation, a simple written mediation statement shall be prepared by the Mediator and filed with the Secretary.
 The statement, which will be signed by the Mediator, the Accused and the Accuser, shall state either:
1. that the Accused and Accuser have resolved their differences and provide a brief description of how the dispute was resolved, or
 2. that the Accused and Accuser were unable to resolve the dispute.
(See also Section 8.050)
- (f) The time for mediation may be continued, as necessary, by the Mediator but only with the consent of the Accused and Accuser.
- (g) If the Mediator is unable to resolve the dispute, a written Complaint may be filed as provided in Section 8.030 within ten (10) business days of the filing of the statement required in subdivision (e) of this Section.
- (h) If the Accuser does not appear without good cause at the mediation session, then, in that event, the Complaint cannot be filed as provided in Section 8.030 and the Accuser cannot again file a Notice of Intent stating the same alleged offense. The Presiding Justice shall determine if the Accuser's failure to appear is excused for good cause.
- (i) Any other procedural issues concerning this Section may be raised by written application to the Presiding Justice.

(NOTE: See "Exhibit A" to Forum Rules for Form of Notice of Intent to File Complaint, and "Exhibit B" for Mediation Statement.)

It is not uncommon for delays to occur to reasonably accommodate the time constraints of the parties, but when a date, time and place are agreed to, then some confirmation should be sent to them which may also include any explanation of what they can expect and what your expectations might be of them. Sample letter A is attached for possible use.

THE SESSION

(1) When you meet with the parties, first talk with them together to explain what will be happening and try to establish a measure of trust. Tell them you will do your best to be fair and objective in your role, and that your position is to try to help the parties find some mutually agreeable solution to their problem. You can tell them that you intend to make every effort to try to understand their respective positions, but at the same time will offer what you believe to be an objective assessment of the situation and solutions you think they should consider. Make it clear that nothing can be resolved unless the parties agree to it. Then review the charge(s) to make sure everyone is clear on what exactly is being alleged.

(2) Sometimes you may find yourself being branded as partial to one side or another; a response to that claim is again that you have no authority to make any binding decision unless the parties themselves agree to it, and that your position is to try to evaluate the strengths and weaknesses of the respective positions to assist the parties as they hopefully look for some reasonable resolution to the charges brought.

(3) There seems to be a desire for parties to want to share the substance of mediation sessions with those not directly involved in the proceeding. You should, at the outset, make it clear that anything said as part of the session(s) is to be considered confidential as provided in GLS §8.015(c) and not be discussed outside of the session under penalty of their Obligation.

(4) You might briefly touch on the negative impact these sorts of proceedings have on a Lodge, but at the same time make it clear that the parties have a right to full participation in the process, including a trial if needed. You should tell them they should not feel pressured by anything you might have to say or offer, but that hopefully your comments and suggestions will have some bearing on what a reasonable resolution might be.

(5) Then you might have a discussion with the Accuser first and then the Accused separately to try to get some sense of what they are each really looking for, and perhaps offer your suggestions on strengths and weaknesses as you see them, and what you think might be reasonable resolutions (but again trying not to sound pressuring).

It also is suggested that you make it clear with each party that there are two types of information: the type that may be communicated with the other party, and the type that is to remain confidential and not be disclosed without subsequent permission. The parties may appreciate knowing those boundaries exist (if you are looking for props, consider having two separate notebooks ... one to take notes of the confidential material and the other to take notes of the material to be shared, to make it clear that you take the difference seriously). These breakouts can go back and forth multiple times if needed to hopefully reach common ground or at least narrow the differences of opinion.

(6) When the parties have expressed their respective views and you think it productive, have a joint session with both parties together to share the non-confidential parts of the discussions and offer what you think might be reasonable ways to solve the problem. You should be respectful of each party's position, while pointing out the strengths and weaknesses as you see them. If, after this joint session, the matter remains unresolved, you might have another round of breakouts to go back over potential settlement options and consider any additional information obtained in the joint session.

(7) You can conduct mediation in several sessions if it looks like it will be productive.

(8) Only the Mediator, the parties and their counsel have a right to attend the session(s). The Accused may name any member of the Order to serve as counsel. The person need not be an attorney. You as Mediator and in your absolute discretion have the right to allow witnesses to testify at your direction if you believe they have meaningful information that will assist in resolving the case. You should not allow the session to be turned into a mini-trial or a deposition of any witness for purposes of later proceedings.

(9) The reason that all parties are required to be personally present at each mediation session is so that if there is an agreement you can hopefully draft some sort of agreement to have the parties sign. It may be helpful to have a computer and printer available to print out the terms of any settlement agreement, and possibly to save time if you think you have some idea how the problem may be solved, you might have some settlement language already drafted and ready for use. Of course, if all else fails then regular old paper and pen may also work.

(10) At the end of the mediation process you need to submit a statement reflecting whether the process was successful or not. A sample form B is included at the end of this guide as well as in the exhibits in the Statutes book.

(11) You may choose to consider any related issues that might lie behind the listed point(s) of contention. While at trial the issues are largely limited to the allegations in the complaint, at the mediation stage sometimes some attention to related issues as part of a global settlement of some existing dispute(s) may be productive. Sometimes it is those ancillary issues that may bear on the chances of settling the case before you.

(12) By general policy the members of the Committee on Judiciary do not advise parties to a pending action as to their rights or suggested courses of action, but should you as the Mediator have questions that can't be answered through the standard resources you can contact your area member of the committee to see if he can provide any assistance.

_____ LODGE NO. _____

BENEVOLENT AND PROTECTIVE ORDER OF ELKS U.S.A.

Date: _____

To: _____, Accuser

_____, Accused



Re: NOTICE OF UPCOMING MEDIATION SESSION

Date: _____ ; Time: _____ ; Place: _____

Dear Members:

As you have each agreed, a mediation session in the present matter has been scheduled as shown above. As provided under the laws of the Order, your personal presence is required. I sincerely hope you will both plan to attend this session with the goal of reaching some resolution. As you hopefully recognize, these proceedings can disrupt the harmony of a Lodge, and where possible, an early resolution can be a most helpful healing tool.

I can assure you that I have every intention of hearing both of your positions in a fair and objective manner, entering into meaningful discussions with each of you on the various aspects of your respective positions, and as a result hopefully offer one or more proposals for your consideration to achieve settlement.

Toward that end, I ask each of you to review the following rules:

1. Please plan to be present at the agreed time. The session may take the form of both joint and individual discussion sections to ensure both of you have the opportunity to share your views and opinions in a comfortable environment. Overall, the process may take some time, and if needed there may be a subsequent session if circumstances warrant. Please avoid the consumption of alcohol in the hours leading up to the session.
2. You will each be expected to conduct yourselves with due order and propriety during the course of the session. You will each refrain from personal or ad hominem attacks on the other party, and confine yourselves to the issues presented.
3. You will not disclose any of the matters discussed in the session with any outside person. This under the laws of the Order as well as your Obligation as an Elk.

Following review, please sign below and bring this notice with you to the session.

Thank you for your cooperation in this matter. I look forward to meeting with you.

Fraternally,

Mediator

Acknowledged and agreed to:

Accuser

Accused

LODGE NO. _____

BENEVOLENT AND PROTECTIVE ORDER OF ELKS U.S.A.

Accuser

MEDIATION

vs.

CLOSING STATEMENT

Accused

(GLS 8.015(e))

I, _____, as Lodge Mediator, a member in good standing in _____ Lodge No. _____, B.P.O.E., under the reporting requirements of Sec. 8.015(e) of the Laws of the Order, hereby report as follows:

- 1. Accuser's name and address:
- 2. Accused's name and address:
- 3. Date Notice of Intent filed with Lodge Secretary:
- 4. Date Lodge Secretary served copy of Notice of Intent on Accused:
- 5. Date Mediator was notified of filing of Notice of Intent:
- 6. Date Mediator contacted Accused and Accuser:
- 7. Date Mediation actually held:
- 8. If Mediation continued, date continued to:
- 9. Results of Mediation: _____

Dated _____

Lodge Mediator

Accuser

Accused

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