



Public Service Commission State of Missouri

MEDIATION

The Public Service Commission (PSC) will help the parties settle this case through the process of mediation if the parties agree to that process. This document helps the parties prepare for mediation, but it is not a substitute for consultation with legal counsel.

Basics

Mediation is an opportunity to discuss the possibilities for settlement. The PSC's Regulation 4 CSR 240-2.125 sets forth the PSC's provisions for mediation. A PSC Regulatory Law Judge will conduct the mediation session. Each party, or a representative, and the parties' legal counsel may attend, and all are encouraged to do so. The parties may find it helpful to discuss matters in addition to the legal issues that the PSC will decide if the case goes to hearing, but they should maintain a focus on, and relate all matters discussed to, the resolution of the case now pending before the PSC.

Decision or Settlement?

The PSC is a neutral and independent tribunal that decides cases brought before it. However, the parties to a case before the PSC may settle it. The two processes differ as follows.

If the PSC Decides the Case

The PSC will make findings on all the important factual issues.

The PSC applies the law.

The PSC controls the outcome, based on its view of the facts and its reading of the law.

Almost everything is open to the public.

In some cases, a party may prefer to submit the case to the PSC for decision, especially when they cannot get the terms that they need. Only the parties can decide whether, and on what terms, to settle. The parties always have the right to submit the case for a PSC decision.

If the Parties Settle the Case

The parties may agree on the facts, or may leave certain issues of fact unresolved.

The parties may apply other standards, like what they need, what they want, or what they think is fair.

The parties have more control over the outcome.

The parties may be able to keep certain matters private.

What Does the PSC Have to Do With a Settlement Between the Parties?

Neither the PSC nor the Mediator has any stake in whether, and on what terms, the case settles. If the parties do not settle the case, the Mediator will not decide the case, nor will the Mediator take part in deciding the case. The Mediator's only purpose is to help the parties explore possibilities for settlement. The Mediator can help with issues related to settlement by:

- Helping the parties to sort out what they need in a settlement;
- Suggesting ways for the parties to get what they need;
- Conveying offers between parties in a neutral fashion; and
- Sharing experience with procedural and substantive issues before the PSC.

The Mediator has no authority to impose any terms on any party. Nothing will come of mediation unless the parties agree to it. The Mediator will not pressure anyone into anything.

How Will a Mediation Session Proceed?

The Mediator will give an introduction outlining the process. The Mediator will ask each side to state their positions. The Mediator will then help the parties understand what they want, help them structure the offers they make, and help them evaluate offers that they receive. The Mediator can meet separately with either side, or with their lawyer, for confidential discussions, and will do so if you ask. The Mediator will *not*:

- Give anyone any legal advice;
- Pressure anyone to give up their right to a hearing;
- Discuss the weaknesses of your case, or anything you want kept confidential, with the other side; or
- Meet with any party outside their lawyer's presence, if the party has brought their lawyer with them.

At the end of the session, the Mediator will ask everyone to fill out an anonymous evaluation before they leave.

Confidentiality

Settlement works best when the parties are open and candid with one another and with the Mediator. The law encourages such openness and candor by generally making settlement negotiations inadmissible in evidence and protecting them from discovery.

The Mediator will not discuss what happens in the session with the PSC Commissioners (except, in the most general terms, whether the parties have settled or are considering offers), unless the parties agree otherwise.

As to other persons, section 435.014.2, RSMo 2000, provides:

Arbitration, conciliation and mediation proceedings shall be regarded as settlement negotiations. Any communication relating to the subject matter of such disputes made during the resolution process by any participant, mediator, conciliator, arbitrator or any other person present at the dispute resolution shall be a confidential communication. No admission, representation, statement or other confidential communication made in setting up or conducting such proceedings not otherwise discoverable or obtainable shall be admissible as evidence or subject to discovery.

Further, section 435.014.1, RSMo 2000, provides:

If all the parties to a dispute agree in writing to submit their dispute to any forum for arbitration, conciliation or mediation, then no person who serves as arbitrator, conciliator or mediator, nor any agent or employee of that person, shall be subpoenaed or otherwise compelled to disclose any matter disclosed in the process of setting up or conducting the arbitration, conciliation or mediation.

Under section 435.014.1, RSMo 2000, no one can try to make the Mediator reveal any matter disclosed in the process of setting up or conducting the mediation if the parties or their attorneys agree in writing to mediation.

How to Prepare for Mediation

Each party must appear at the session with an idea of what they want, and what they need, in a settlement.

Each attorney must appear at the session with clear authority to settle. Therefore, each attorney must meet with their client or client's representative before the session to clarify what the client wants, and what the client needs, in a settlement. If the client is not present at the session, the client must be accessible by telephone.

This list of the issues is not exhaustive, but parties deciding whether to settle usually prepare for mediation by considering the following matters:

- What is the least that I can accept (or the most the other side can give) before I turn this case over to the PSC?
- If I turn this case over to the PSC, what is the best that can happen? The worst that can happen?
- What are the consequences of the offered settlement (or likely PSC decision) beyond this particular case?

Feel free to contact the mediator if you have any questions or suggestions about how the session will proceed.