

Bruce W. Thiele

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31 October 2018

Attention: «First Name» «Last Name»
«Company»
«Business_Address»

By email: «E-mail Address»

Attention: «First Name» «Last Name»
«Company»
«Business_Address»

By email: «E-mail Address»

Dear «First_Name» and «First_Name»

**RE: << Test Your client's last name >> AND << Test Other party's last name >>
MEDIATION**

I confirm that I have been appointed as mediator in this private or court ordered mediation, scheduled for **<< Test Mediation Date >>** at **9:30 A.M.**

I request that you, as the respective solicitors for the parties, familiarise yourselves with, and ensure compliance with, the contents of this letter. Please also ensure that any counsel engaged by you is similarly familiar and complies.

Unless you advise me to the contrary, promptly and in writing, I will assume the contents of this letter are accepted by the parties.

Costs agreement, standards and scheme limitation:

I proceed on the basis I am being retained as mediator by you as the respective solicitors for the parties. Insofar as the *Legal Profession Act* 2007 (Qld) applies to my appointment, this letter constitutes my offer to enter a costs agreement with you.

There is no scale of fees which applies to my appointment. Further:

- I am bound by the ethical and cognate standards set out in the *Legal Profession Act 2007* (Qld) and the *2011 Barristers' Rule*.
- my immunity from suit under common law, for work done out of court and affecting the conduct of a matter in court, applies to my appointment.
- as a Class A Ordinary Member of the Bar Association of Queensland, my professional liability is limited by a scheme approved under the *Professional Standards Act 2004* (Qld). In this regard, see the statement to that effect at the base of the first page of this letter, and see also the Professional Standards Council website at <http://www.psc.gov.au/sites/default/files/BAQ.zip> for further information. Note there are exceptions to the scheme's operation specified in section 6 of the Professional Standards Act in respect of a Queensland claim.

Please read below important information regarding payment of expected fees into a trust account at least seven days PRIOR to the commencement of the mediation.

Court ordered mediation / Private Mediation

If Court Ordered:

If this mediation is court ordered and you have not already done so please provide me with a copy of the filed court order.

Being a court ordered mediation, no mediation agreement is required. However, I draw your attention to the following applicable provisions:

- Chapter 10 of the *Family Law Rules (Cth) 2001*;
- Section 131 of the *Evidence Act (Cth)*.

If Private (Non-Court Ordered) Mediation:

If this mediation is not court ordered but rather is consensual, a mediation agreement will be required to be entered into with me which incorporates the relevant terms of the *Family Law Act (Cth) 1975*. **My standard mediation agreement can be sourced [here](#).**

Please peruse it carefully.

Please ensure the mediation agreement is signed by you and your client(s) and returned to me by 5 pm on the fifth last working day (that is, a full week) prior to the day of the mediation. It will suffice if the respective solicitors sign the document and forward it separately as a counterpart. In any event, you, as solicitors, must sign the agreement.

Unless all parties comply with this requirement, the mediation will be deemed cancelled.

Date and duration of mediation:

The mediation will take place on << **Test Mediation Date** >> commencing at **9:30 A.M.**

The duration is one (1) day (not exceeding 7 hours). This includes any agreed breaks. I can extend this timeframe if requested, with such request to be implied or explicit, including on the day.

Venue for mediation:

The venue for the mediation is << **Test Mediation Venue** >>.

Any venue costs arranged by me will be absorbed into my mediation fee. Any other venue arranged by the parties will be by the parties as they might agree.

Mediation brief:

Please deliver a brief to me no later than the fifth last working day before the mediation.

In particular, the brief should include all salient documents, filed or otherwise, which the parties, by agreement or by court order, wish me to read before the mediation.

To save printing and postage costs to the client I am happy for the brief to be emailed to me or I can establish a cloud folder (via Dropbox) for the joint contribution of scanned material.

Procedure at mediation:

On my website I have posted an article about the proposed mediation structure and process, which must be provided to the parties prior to the mediation. I require confirmation that the parties have read the article before proceeding with the mediation. [The article is located here.](#)

In terms of my expectations of lawyers and conduct of all participants generally the above article provides further information. I require confirmation from the lawyers that they have also read that article as it pertains to their role within the mediation.

Domestic or Family Violence:

I request the practitioners to make appropriate arrangements for the separate arrival of the parties to the mediation where issues of domestic or family violence have been asserted or there exists a domestic violence protection order of a relevant jurisdiction. The parties should wait in separate rooms until I have had an opportunity to conduct the introductory sessions.

Directions for mediation / Outline:

Three (the claimant) and one (the respondent) clear working days prior to the mediation date, the parties must serve on each other, on a without prejudice basis, an outline (or position statement), **not to exceed 5 pages**, of essential arguments. Each outline/position statement must include a schedule of the relief which the party considers apposite on the facts. Where possible, each outline/position statement should include the party's offer to the other party.

In turn, the outlines/position statements and the accompanying schedules must be provided to me contemporaneously. The parties may, by agreement, enlarge or shorten these delivery times or vary the scope or particulars of the outlines/position statements. It is essential that I am advised of any such changes contemporaneously.

Also, it is essential that the parties have read and are familiar with the outlines/position statements and the accompanying schedules prior to the commencement of the mediation.

Directions for mediation / Offers and decision maker:

Each party should be in a position to make an offer, irrespective of what it may be, at the latest, by the end of the party's opening at the mediation. (As noted above, it is preferable that each party make an offer in the prior delivered mediation outline/position statement.)

Each party, or a person authorised to make a decision on behalf of each party, must attend the mediation.

Mediation fees:

My professional charges for the mediation ("my fee") will be **\$4,400.00** (being **\$4,000.00** plus GST of **\$400.00**).*

My fee includes any time spent in respect of my appointment as mediator, comprising all reading of the mediation documents prior to the mediation, the mediation itself, and prior and subsequent administration.

Any additional time in reading, (i.e. where the brief is comprised of more than two lever arch folders, printed single-sided) or in an extended mediation hearing, with the duration beyond the period allocated (consent thereto evidenced by continued participation therein) will incur an additional fee charged at a rate of **\$400.00** plus GST per hour ("additional fee").

This fee ordinarily **include** my traveling to the mediation location from my chambers in Brisbane. Where my travel is likely to exceed 3 hours an additional fee charged at a rate of **\$200.00** plus GST per hour will be charged ("travel fee").

*The daily rate is reduced to \$3,850 (being \$3,500 plus GST of \$350.00) where the mediation is conducted on the Sunshine Coast or where successive mediations are conducted in the same regional area.

Share of fees:

The parties will bear my fee, and any additional fee, in the equal 50% shares and unless otherwise ordered or agreed I will issue separate invoices to the relevant solicitor acting for that client.

Each party is liable to me only for its share of my fee and any additional fee (i.e. the obligation is several, not joint).

Payment of fees / Expected Mediation Fee to be secured in trust:

I am treating my appointment as a retainer by the respective solicitors, with each being responsible for their client's share of my fee and any additional fee.

It is a condition of my retainer (and in order to secure any mediation booked) that sufficient funds to cover a client's expected mediation fee is retained in the trust account of the solicitor.

Where a solicitor does not operate a trust account, or a party is self-represented, I will provide you with the trust account details of a firm of solicitors who have agreed to hold expected mediation fees on my behalf without charge to a solicitor / client. I will require your firm / or the relevant party, to sign an irrevocable authority to that solicitor to release payment to me upon presentation by me of my tax invoice.

I issue tax invoices upon completion of the mediation. My fee and any additional fee are payable by the respective solicitors within 7 days of the date of my invoice.

Cancellation:

If:

- one or more of the parties cancels or postpones the mediation, irrespective of fault, or the matter settles, thereby dispensing with the mediation; and
- the same is communicated to me, or to any member of my staff, later than 5.00 pm on the third last working day prior to the mediation, then:

in addition to any then expended reading or preparation time, a fee based on 1 ½ hours preparation time calculated at the rate of \$400 per hour (\$660.00 being \$600.00 plus GST of \$60.00) is payable by the parties in accordance with their respective shares. This fee is payable by the respective solicitors within 21 days of the date of my invoice.

Conclusion

Any party who requires clarification of, or who does not accept, the contents of this letter must advise me and the other promptly and in writing.

Yours faithfully

Bruce W. Thiele LLB
Barrister-at-Law
Nationally Accredited Mediator
Family Dispute Resolution Practitioner
Member of the Australian Institute of Family Law Arbitrators and Mediators

Notice: Liability limited by a scheme approved under Professional Standards Legislation.