

In the Matter of the Mediation Between

^, *Claimant/Plaintiff*

vs.

^, *Respondent/Defendant*

Case Number:

Mediator Disclosures of Philip E. Cutler

Consistent with the MODEL STANDARDS OF CONDUCT FOR MEDIATORS (AAA, ABA and ACR), any court or provider-organization rules applicable to this case and, to the extent applicable, the Washington Mediation Act (RCW Chapter 7.07), I make the following disclosures. By making any general or specific disclosure below I do not ascribe, or intend to ascribe, any level of significance to the fact disclosed, or to suggest that the disclosure might conceivably affect my, or any other mediator's, neutrality or impartiality. (*See* Section V below, confirming that none of the disclosures in this document constitute, in my judgment, a conflict of interest or raise an appearance of fairness issue, and that I can carry out my duties as a neutral and impartial mediator.) Rather, the following disclosures are made to apprise the parties and their representatives of facts which in my judgment it is appropriate to disclose. Any concerns relating to these disclosures, or any subsequent disclosures I may make, should be handled as provided below in Section IV.

I. General Disclosures and Limitations

- A. Our law firm consists of three lawyers (me, Bob Nylander and Tom Hayton). We have one paralegal (Amylyn Riedling) who assists us. I rely on our paralegal to organize the case papers and assist in administrative matters relating to mediations in which I am involved as a neutral. While Messrs. Nylander and Hayton are aware of my mediation cases, they are not involved in my work as an mediator.

- B. As disclosed on my profile, since 1973 I have practiced law with three firms in Seattle prior to my association with my present firm in 1990 – Perkins Coie, Sax and MacIver, and Karr Tuttle Campbell. My present firm has been known as Cutler Nylander & Hayton since 2002; prior to that time it was known as Talmadge Friedman & Cutler (1990-91), Talmadge and Cutler (1991-94) and Cutler & Nylander (1995-2002). I do not, however, have access to client records from firms with which I was previously associated (Perkins Coie, Sax and MacIver

and Karr Tuttle Campbell), and thus will not be disclosing any matters relating to my work at those firms unless they occur to me; if they do, they will be disclosed below; if recollected later, I will make a supplemental disclosure.

- C. My colleague **Bob Nylander** practiced with Karr Tuttle Campbell from 1987-1990. He joined our firm in 1990. Although he retired as a shareholder and director of the firm in September 2011, he continues to practice with us under contract.
- D. Prior to joining our firm in the mid-1990s my colleague **Tom Hayton** practiced with the Washington State Attorney General and with three other Seattle-area law firms (Ferguson & Burdell, Schwabe Williamson & Wyatt and, for a short period, Tousley Brain Stephens).
- E. Our firm employs one senior paralegal: **Amylyn Riedling** has been with us since 1998. She is active in the Washington chapter of NALS (the Association for Legal Professionals) and in that capacity has frequent contact with paralegals from other law firms, principally in the Northwest.
- F. If I or any of the employees in our firm are aware of a potential conflict of interest or appearance of fairness issue related to any client work I or another member of our firm has performed, I will disclose it below. I do not, however, have access to client records from firms with which I was previously associated (Perkins Coie, Sax and MacIver and Karr Tuttle Campbell). Similarly, none of my law firm colleagues has access to client records from firms with which they were previously associated. Accordingly, I will not be disclosing any matters relating to my or their work at those firms unless they occur to me or to them; if they do, they will be disclosed below; if recollected later, I will make a supplemental disclosure.
- G. My practice has always focused on resolution of commercial and business disputes through trial, arbitration, appeal, mediation, and private settlement. Since the early 1990s a significant portion of my professional time has been spent as a neutral arbitrator or mediator both privately and under the auspices of the American Arbitration Association, the National Association of Securities Dealers (now FINRA), the U.S. District Court for the Western District of Washington's Rule 39.1 ADR program, and the King County Superior Court's mandatory arbitration program. I speak frequently at continuing legal education programs on mediation, arbitration and negotiation sponsored by state and local bar associations, the AAA and the University of Washington Law School. I do not have records reflecting other lawyers' attendance at any of the continuing education programs at which I have spoken.

- H. Both as a result of the foregoing and my active involvement over the years in activities of the American Bar Association [Sections on Antitrust (Civil Practice & Procedure Committee (mid-1980s)); Litigation; and Dispute Resolution (Membership Chair (2002-2008))], the Washington State Bar Association [Sections on Antitrust, Consumer Protection and Unfair Business Practices; Litigation; and Dispute Resolution (Chair, 1998-99)], the King County Bar Association [Section on Alternative Dispute Resolution (Chair, 2001-2002)], the Federal Bar Association of the Western District of Washington [ADR Committee (1982-1998); Trustee (1998-2000)], and the ADR Roundtable (an informal association of Seattle lawyers and law teachers with an active interest in arbitration and mediation, *see* www.adrroundtable.com,¹ of which I have been a member since 1997), I am professionally and personally acquainted with hundreds of lawyers both in Western Washington and nationally. Although I will separately disclose significant personal and/or professional associations with counsel in this matter (and/or their law firms) during the last 5 years, you should assume that over the years I have had, or may have had – as advocate or as neutral mediator or arbitrator – cases in which other lawyers in their respective law firms have been involved. A c.v. highlighting my professional activities since 1973, more information about my ADR practice, articles I have written on ADR, and other materials concerning ADR are available on my website – www.cutleradr.com.
- I. I currently have a profile on LinkedIn and have links with people on that profile. I typically accept a request from most professional acquaintances who request to be linked to my profile. I also have a profile on AVVO. These profiles are publically available for viewing.
- J. I am asked frequently to serve as an arbitrator or mediator, both in connection with matters assigned by or through a service provider (*e.g.*, AAA, FINRA) or privately. If I am subsequently appointed (and confirmed) as a mediator or arbitrator in a matter involving any of the parties to this case, or their lawyers or law firms, I will make an appropriate disclosure in that case – and, if this matter is still active, to the parties and counsel in this case.
- K. I am a member of the Washington Athletic Club (since 1973). I am a former member of the Rainier Club (1990-2007), College Club of Seattle (1999-2010) and Columbia Tower Club (2008-2010).
- L. The disclosures made in this document are based on my review of the papers or

¹ The Roundtable meets monthly from September to June (excluding December) to discuss developments in mediation and arbitration training, law, practice and procedure. Members do not discuss individual cases in which they or members of their firms are involved.

other information provided to me by the parties as of this date, and such review of my and my law firm's client records and files – and discussions with my law firm colleagues – as to me seemed necessary and appropriate.

II. Disclosures Related to Family

A. My family² consists of:

- (1) My wife None of our children reside in our home.
- (2) Our oldest son and his wife reside in....
- (3) Our middle son and his wife reside in....
- (4) Our youngest son and his wife reside in....
- (5) My sister is single and resides in....

B. I have apprised my wife of my appointment in this case and either (1) make any appropriate disclosure below in Section III or (2) she has advised that she has no business or social relationship with any of the parties or their counsel. *Unless* requested by a party prior to the parties' delivery to me of their mediation materials in this matter, I do not intend to make any inquiry of our sons, their spouses or my sister concerning my appointment in this case as I do not discuss any of my arbitration or mediation assignments with them.

C. *Unless* requested by a party prior to the parties' delivery to me of their mediation materials in this matter, to the extent any member of my family changes employment or state of residence during the pendency of this case I do not intend to make any additional disclosures related to that change, or make any further inquiry of the parties or their counsel, unless the change appears to me to be relevant, based on my knowledge of the case, parties and counsel.

III. Specific Disclosures

To the best of my knowledge, formed after reasonable inquiry and subject to the foregoing limitations:

A. Neither I nor either of my colleagues in my law firm know or have had any relationship of any kind with any of the parties to this mediation [**except as**

² My father and mother resided in the Chicago area. Both are deceased.

described immediately below:].

(1) mmmore]

- B. Neither I nor either of my colleagues in my law firm have ever met or have had a relationship of any kind with, any of the lawyers representing the parties to this mediation, their law firms, or any of the potential witnesses disclosed by the parties in materials provided me to date [except as described immediately below:].

(1) mmmore]

IV. Request to Counsel Regarding These Disclosures; Dealing With Concerns Over Disclosures; Limitations on Disclosures

Counsel are asked to share and discuss these disclosures with their clients, and to discuss with all other parties – prior to signing and returning to me the Private Mediation Agreement – any relationships of which they are aware that I have not disclosed above and any concerns they may have regarding either these disclosures or such relationships. If, following such discussions, any party believes that I should not serve as Mediator in this case, the parties should jointly notify me and I will withdraw. If any party or counsel desires that I provide further information concerning any of the disclosures made above, general or specific, I will do my best to do so.

V. Conclusion

I do not regard any of the foregoing disclosures as constituting either a conflict of interest or raising an appearance of fairness issue requiring me to decline my appointment in this case. I am confident that I can carry out my duties as a neutral and impartial mediator and give each party to this case a fair hearing.

Dated: _____

PHILIP E. CUTLER