

## **National Arbitration Forum Mediation Rules**

The National Arbitration Forum (FORUM) encourages disputing parties to use mediation to resolve their differences. Mediation is a consensual process whereby a neutral third party helps disputing parties resolve their dispute by working toward and achieving a mutually satisfactory solution. The neutral party, known as a mediator, assists the parties with settlement negotiations but does not have authority to impose a decision on the parties.

### **Part I – Initiation of a Mediation Proceeding**

#### **A. Mediation Agreement**

The National Arbitration Forum Mediation Rules may be adopted by the agreement of the parties before or after a dispute has arisen. Where the parties have not agreed to mediate, a party or parties may request that the FORUM invite another party or parties involved in the dispute to mediate. The FORUM will contact the other party or parties and attempt to facilitate a mediation agreement.

#### **B. Request for Mediation**

1. A party or parties may request mediation by contacting the FORUM by telephone, facsimile, or mail including electronic mail. The requesting party shall at the same time notify the other party or parties of the request. Parties may use the FORUM's Request For Mediation form, or simply provide a written request for mediation that contains the information listed in subsection 1 below.

2. The request for mediation shall contain or be accompanied by:

- a. the names, addresses and telephone, fax, e-mail or other contact information for the parties to the dispute and their authorized representatives;
- b. a copy of the mediation agreement or a statement that the party seeks to mediate a dispute with another party or parties;
- c. a brief statement of the nature of the dispute;
- d. the Mediation Filing Fee of \$50 per party.

3. All submissions to the FORUM may be made through the FORUM's website at [www.arbitrationforum.com](http://www.arbitrationforum.com), by facsimile, telephone, or by mail to:

National Arbitration Forum  
PO Box 50191  
Minneapolis, MN 55405  
Attention: Mediation Coordinator

Telephone 800.474.2371, ext. 6460; Facsimile 952.345.1160

4. The FORUM will notify the parties of the acceptance of the mediation. The FORUM reserves the right to decline a mediation request.

### C. Selection of the Mediator

1. The parties may agree on a mediator from the appropriate panel of FORUM mediators who have experience with the type of dispute needing mediation. The FORUM will provide the names, resumes, and compensation rates of FORUM mediators after the parties submit a Request for Mediation and the appropriate fee. If one of these mediators is used by the parties, the parties agree that the FORUM will administer the mediation, and the parties will not privately use any mediator listed by the FORUM.

2. The parties may also select a mediator who is not listed as a FORUM mediator, and request that the FORUM administer that mediation. The FORUM will contact that mediator and determine if that mediator is available and whether the FORUM can appoint that person as mediator.

3. If the parties are unable to agree upon a mediator or the FORUM is unable to appoint the mediator proposed by the parties, a mediator shall be appointed by the FORUM as follows:

a. Two-party mediation. In cases where there are two parties in interest, the FORUM may submit a list of three potential candidates. Within five business days, each party may provide the FORUM with its preference by submitting a writing to the FORUM by which that party may strike one of the mediators and rank the other mediators in order of preference. The remaining mediator, or the mediator with the lowest combined score, will be appointed by the FORUM. If more than one mediator has the same score, the FORUM will appoint one of those mediators. A party who fails to timely notify the FORUM is deemed to accept all the listed candidates.

b. Multiple-party mediation. In cases where there are three or more parties in interest, the FORUM may submit a list of three or more potential candidates, depending upon the number of parties, their common interests, the damages or remedies at stake, the factual and legal issues in dispute, and related matters. The FORUM will inform the parties of the available candidates and how they are to be selected, including how mediators may be ranked, stricken, or accepted, by the parties.

c. Parties in Interest. The FORUM shall determine how many parties in interest appear in a mediation in relation to mediators appointed pursuant to Rule I.C.3.b.

4. By accepting an appointment, the mediator agrees to remain impartial and asserts that there is no known conflict of interest or circumstance that would cause the mediator to be unfair or biased. The mediator and the FORUM shall comply with all disclosure requirements pursuant to applicable laws. Any party who knows or should know of any

conflict of interest or material circumstance that would cause the mediator to be unfair, biased, or prejudiced shall immediately disclose the information immediately on its discovery to the mediator, the parties, and the FORUM. A party who fails to immediately disclose this information waives any claim to assert the mediator had a conflict or was unfair, biased, or prejudiced. The FORUM may appoint another qualified mediator if the initially appointed mediator is unwilling or unable to serve.

5. The mediator also agrees to make sufficient time available to conduct the mediation efficiently and fairly.

6. In the event that parties to a mediation administered by the FORUM also enter into arbitration before the FORUM, and absent agreement of the parties to the contrary, a different individual will be appointed by the FORUM to serve as the arbitrator than that which served as the mediator.

## **Part II – Conduct of the Mediation**

### **A. Authority and Representation**

Each party shall be represented at mediation sessions by individuals with full authority to settle the dispute. The parties may be represented by legal counsel at any stage of the mediation.

### **B. Cooperation**

Each party is expected to cooperate in good faith with the mediator to advance the mediation efficiently and fairly and shall spend as much time as necessary until the case is settled or until an impasse is declared or the parties elect to pursue an alternative procedure. Mediation is a voluntary process and any party may withdraw at any time, either by notifying the mediator and other parties in writing or by leaving the mediation hearing. The parties may be represented by legal counsel at any stage of the mediation. Perseverance and steadfastness often contribute to the success of a mediation, and the mediator shall continue with a mediation until it is clear that no settlement may be reached. The mediator is authorized to end the mediation session whenever, in the judgment of the mediator, the parties have reached impasse in their attempts to forge a resolution. A party who wishes to withdraw from a mediation may do so by requesting that the mediator declare an impasse or may notify the mediator and other parties in writing or by leaving the mediation hearing.

### **C. Impasse**

An impasse may occur if a party withdraws from mediation, the parties fail to arrive at a settlement, or a mediator declares an impasse. An impasse may affect the parties' rights and remedies and may trigger the provisions of other agreements between the parties. If the parties to mediation are also parties to an agreement to arbitrate before the FORUM, an impasse may allow a party to immediately pursue arbitration before the FORUM.

#### D. Role of Mediator

The function of the mediator is to promote and facilitate voluntary resolution of the issues. The mediator has no authority to impose a settlement on the parties. The mediator does not legally represent any of the parties. The mediator has no responsibility concerning the fairness or legality of the resolution. Mediators are independent contractors and not employees or agents of the FORUM. The mediator will determine the procedural aspects of the mediation hearing including the timing and occurrence of separate caucus sessions. At no time shall the mediator reveal confidential information without the specific consent of the parties. The mediator is authorized to end the mediation session whenever, in the judgment of the mediator, the parties have reached impasse in their attempts to forge a resolution.

#### E. Exchange of Information

1. Information may be exchanged through written and confidential submissions, telephone conference calls, meetings prior to the mediation or a combination of these methods. The mediator may establish which methods will be used and their timing, and parties may offer suggestions to the mediator.
2. At least ten (10) business days prior to the first scheduled mediation session, each party shall provide the mediator with a written brief not to exceed five pages summarizing the background and present status of the dispute, including any settlement efforts that have occurred. Parties may also submit copies of documents and other written submissions that will assist the mediator in understanding the case and their position. The mediator may at any time during the mediation request that a party provide such additional information or materials, as the mediator deems useful. The mediator shall not, without authorization of the party submitting the brief or disclosing information, disclose such information to other parties or non-parties.
3. Any party may at any time submit to the mediator, for consideration by the mediator only, written information or materials that it considers to be confidential. The mediator shall not, without the authorization of that party, disclose such information or materials to other parties or non-parties.
4. The parties may have entered into agreements, including the applicability of supplemental rules and/or procedures, or the exchange of information, that relate to the mediation but are external to these Rules. The parties are directed to meet the terms of such agreements.

#### F. Mediation Sessions

1. Unless otherwise agreed to by the parties, the mediation session will be held at a time and place established by the FORUM in consultation with the mediator and the parties. Requests for changes of the scheduling of such a mediation session must be handled through the FORUM, with copies to all parties.
2. Requests to reschedule a session may result in the assessment of a rescheduling fee by

the FORUM.

3. The FORUM may assess fees against any party who fails to attend a mediation session.

#### G. Settlement

1. If a settlement is reached prior to the initial mediation session, the parties shall immediately notify the FORUM. The FORUM will assess additional fees, if any, based on the FORUM expenses and any fees due the mediator. Unless otherwise agreed to by the parties, these expenses will be borne equally by the parties.

2. If a settlement is reached during the mediation, the parties or their representatives, in conjunction with the mediator and prior to the conclusion of the mediation, may complete a document listing the points agreed upon by the parties. The mediator will inform the FORUM that a settlement has been reached, without revealing details of the settlement.

#### H. Confidentiality

1. The mediator shall not, without the authorization of that party, disclose privileged or confidential information or materials to other parties or non-parties.

2. The following provisions shall apply to all mediations, and the mediator may ask the parties to sign a confidentiality agreement prior to the commencement of mediation. If any provision below conflicts with the laws of the applicable jurisdiction, these provisions shall apply unless the parties agree otherwise.

a. No evidence of the mediation session or any fact concerning the mediation may be admitted in a subsequent arbitration, hearing, or trial or any other subsequent proceeding involving any of the issues or parties to the mediation.

b. Statements made and documents produced during mediation, which are not otherwise discoverable, are not subject to discovery or other disclosure and are not admissible as evidence for any purpose at trial, including impeachment.

c. Notes, records, and recollections of the mediator and the FORUM are confidential and shall not be disclosed to anyone, including the parties and the public.

d. All copies of materials produced during the mediation will be returned to the originator upon request at the termination of the mediation.

e. All individuals involved in the mediation, including the mediator, the parties and their representatives, and any other persons present during the mediation, shall respect the confidentiality of the mediation and may not, unless otherwise agreed by the parties and the mediator, use or disclose to any outside party any information concerning, or obtained in the course of, the mediation and which may be included in a confidentiality statement to that effect.

### **Part III – Mediation Fees**

*All fees described in this section shall be based on the fees in effect on the date the mediation is accepted by the FORUM. Unless otherwise agreed by the parties, the FORUM will divide the fees equally among the parties.*

#### A. Filing Fee

A non-refundable Mediation Filing Fee of \$50 per party shall be submitted at the same time as the Request for Mediation. The Mediation Filing Fee covers the administrative costs associated with preparing a case for mediation. The FORUM will not take any action on the request until the Mediation Filing Fee is received.

#### B. Mediator Compensation Rates

The mediator's compensation rate will be communicated to the parties prior to appointment of the mediator.

#### C. Deposits

1. The FORUM may require that parties deposit with the FORUM amounts as an advance on the costs of the mediation, based on the FORUM's estimate of the mediation fees and expenses. The FORUM will provide an estimate the total costs of the mediation. The estimated time necessary for the mediation shall be determined by the FORUM. The FORUM will provide that estimate and seek the deposits from the parties prior to commencement of the mediation. Unless agreed otherwise by the parties, the parties will contribute in equal shares. All deposits will be accounted for and credited to a party in the amount that party paid. In the event that deposits are not used at all or in total for the mediation, remaining balances will be refunded. In the event that the deposit is exhausted, parties may be billed for additional charges and/or requested to make additional deposits for further proceedings.

2. The FORUM will maintain an ongoing accounting of expenses and, if the incurred expenses sufficiently deplete the deposited funds, additional contributions may be required of the parties.

3. Failure by a party to make a required deposit may result in termination or suspension of the mediation. Mediation Fees are based on the total time spent by the mediator to prepare for and conduct the mediation. Preparation time shall be reasonable, taking into account the nature and complexity of the case. The parties and mediator will discuss any special circumstance that calls for more extensive preparation time.

4. Upon termination of the mediation, the FORUM will provide to the parties a statement of expenses and fees. Unless otherwise agreed, any amount remaining of the initial or subsequent deposits will be returned to the parties according to the ratio contributed by the parties. Any balance due or additional fees and expenses will be billed to the parties on the same basis.

#### D. Additional Fees

The FORUM may assess additional fees to parties that have agreed to supplemental rules and/or procedures, or the exchange of information, that relate to the mediation but are external to these Rules.

#### E. Expenses

All expenses not covered by the fees above, including, but not limited to, mediator travel expenses, conference calls, facility charges and session expenses will be shared equally by the parties unless otherwise agreed. Parties shall be individually responsible for their own costs.

#### F. Collection and Disbursement of Fees and Expenses

Parties and parties' counsel are responsible for the prompt payment of all fees and expenses. The FORUM has the sole responsibility for collecting and disbursing payment to the mediator, and retains a portion of the Mediation Fees for its services. Parties agree to pay FORUM within thirty (30) days of their receipt of a final fee and expense invoice. Counsel, as well as the parties, are responsible for the payment of fees. FORUM may assess additional fees and costs for late payments and for expenses, including legal expenses and reasonable attorney fees to arbitrate or litigate a case to collect payment.

#### G. Cancellation Fees

Parties are strongly encouraged to meet and confer at least fifteen (15) days before the scheduled mediation session to ensure readiness for the matter and to request postponement or cancellation of any scheduled mediation session. Due to demands on the calendar and the reality of turning away other matters because dates are reserved, if the parties fail to appear at a mediation session, or a mediation session is cancelled or rescheduled at party request less than ten (10) days prior to the scheduled mediation session, the parties may be assessed a cancellation fee of an amount no greater than the time reserved for that mediation session.

### **Part IV – Limitations for Mediation**

#### A. Exclusion of Liability

Neither the FORUM nor the mediator shall be liable to any party for any act or omission in connection with any mediation administered under these Rules. Neither the FORUM nor any mediator is a necessary party in any judicial proceeding related to the mediation. The mediator, the FORUM and its employees are incompetent to testify as witnesses in any proceeding relating to the mediation or the subject matter of the dispute. The parties release and agree to indemnify the FORUM and the mediator jointly and severally against all claims the parties may have arising out of or in any way referable to any act or omission in the performance of any obligation under this agreement, including all expenses, costs, and attorney fees incurred by the mediator and the FORUM.

### B. Defamation

No statements or comments, whether written or oral, made or used by the parties, their representatives, or the mediator either in preparation for or in the course of the mediation shall be relied upon to found or maintain any action for defamation, libel, slander, or any related complaint.

### C. Claims

Any claim or dispute between the FORUM and any party or between the FORUM and any mediator arising out of or related to these rules or related to any mediation administered by the FORUM shall be resolved by binding arbitration under the rules then in effect of a national arbitration administrator agreed to by the disputing parties. Any award of the arbitrator(s) may be entered in any Court of competent jurisdiction. This arbitration provision shall be governed by and interpreted under the United States Federal Arbitration Act, 9 U.S.C. Sections 1-16.