



5775 Wayzata Blvd., Suite 960

Minneapolis, MN 55416

Phone: 800-474-2371

Email: [info@adrforum.com](mailto:info@adrforum.com)

[www.adrforum.com](http://www.adrforum.com)

## **MEDIATION PROCEDURE**

**April 1, 2019**

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## **INTRODUCTION**

Disputes can often be resolved through out-of-court resolution processes, including Mediation. Forum administers Mediation procedures using technology, knowledgeable case management teams, and skilled and neutral Mediators. The result is an efficient and affordable procedure to resolve your dispute.

Special protections are included in these Mediation Procedures for employees in FORUM's Code of Procedure for Resolving Employment Disputes in order to ensure a level playing field between the parties. FORUM provides all Employees with due process protection, regardless of their status.

FORUM administers Mediation procedures using its sophisticated technology, knowledgeable case management teams, and skilled and neutral Mediators and Arbitrators. Employees and Employers are encouraged to engage in dialogue and Mediation prior to Arbitration.

The result is a predictable, efficient, and affordable proceeding that allows employees and employers to focus on building and maintaining successful relationships.

These Mediation Procedures, will govern all cases filed after April 1, 2019, unless otherwise specified or agreed upon by the parties.

Employment disputes governed by an arbitration agreement naming FORUM or its Code, or those naming any other provider or rules and accompanied by a FORUM Submission to Arbitration form, may be filed for immediate processing.

To include FORUM and these Mediation Procedures in agreements, you may insert one of the clauses below or customize to fit your needs.

### **Standard Mediation Clause**

*The parties agree that any claim or dispute relating to this agreement, or any other matters, disputes, or claims between us, shall be subject to non-binding mediation if agreed to by you and us within 30 days of you or us making a request to the other by letter. Any such mediation will be held in the federal judicial district in which you reside, and shall be conducted according to the mediation rules of FORUM.*

## **Intellectual Property-Specific Mediation Clause**

*The parties agree that any claim or dispute relating to this agreement, including, but not limited to disputes over patent infringement and patent validity, shall be subject to non-binding mediation if agreed to by you and us within 30 days of you or us making a request to the other by letter. Any such mediation will be held in the federal judicial district in which you reside, and shall be conducted according to the mediation rules of FORUM.*

Parties may agree to modify an existing mediation agreement that names an administrator other than FORUM, or that names no administrator, to instead call for the arbitration or mediation to be administered by FORUM and/or conducted in accordance with the FORUM rules.

Please complete and submit the Forum Request for Mediation form found as Appendix A attached, along with the appropriate filing fee to:

**FORUM Mediation Coordinator**  
**5775 Wayzata Blvd., Suite 960**  
**Minneapolis, MN 55416**  
**Phone: 800-474-2371**  
**info@adrforum.com**

## **MEDIATION PROCEDURES**

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 disputes 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**

FORUM Mediation Rules may be adopted by agreement of the parties before or after a dispute has arisen. Where parties have not agreed to mediate, a party or parties may request FORUM invite another party or parties involved in the dispute to mediate. 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 Forum by telephone, facsimile (fax), 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 Request for Mediation form, or simply provide a written request for mediation that contains the information listed below.
2. The request for mediation shall include:
  - 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, if none, 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; and
  - d. the Mediation Filing Fee of \$100.
3. Submissions to FORUM may be made through FORUM's website at [www.adrforum.com](http://www.adrforum.com), or by mail, telephone, email or fax to:

FORUM Mediation Coordinator  
5775 Wayzata Blvd.  
Suite 960  
Minneapolis, MN 55416  
Telephone: 800.474.2371  
[info@adrforum.com](mailto:info@adrforum.com)

4. FORUM will notify the parties of the acceptance of the mediation. 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 mediating the relevant type of dispute. 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 FORUM will administer the mediation, and the parties will not privately use any Mediator listed by FORUM.
2. The parties may also select a Mediator who is not listed as a FORUM Mediator, and request that FORUM administer that mediation. FORUM will contact that Mediator and determine if that Mediator is available and whether FORUM can appoint that person as Mediator.
3. If the parties are unable to agree upon a Mediator or FORUM is unable to appoint the Mediator proposed by the parties, a Mediator shall be appointed by FORUM as follows:
  - a. *Two-party mediation.* In cases where there are two parties in interest, FORUM will submit a list of three potential candidates. Within five business days, each party will provide FORUM with its preference, striking not more than one of the Mediators and ranking the other Mediators in numerical order of preference (with one being the most preferred). The remaining Mediator, or the Mediator with the lowest combined score, will be appointed by FORUM. If more than one Mediator has the same score, FORUM will appoint one of those Mediators. If a party fails to timely submit its strike and rank list, FORUM will deem all the listed candidates are equally acceptable to that party.
  - b. *Multiple-party mediation.* In cases where there are three or more parties in interest, 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 considerations. 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.* FORUM shall determine how many parties in interest may appear in a mediation session in relation to Mediators appointed.

#### D. Impartiality, Efficiency and Fairness

1. 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 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 disclose the information immediately on its discovery to the Mediator, the parties, and 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. FORUM may appoint another qualified Mediator if the initially appointed Mediator is unwilling or unable to serve.
2. The Mediator also agrees to make sufficient time available to conduct the mediation efficiently and fairly.
3. In the event that parties to a mediation administered by FORUM also enter into arbitration before FORUM, and absent agreement of the parties to the contrary, FORUM will appoint a different individual to serve as the arbitrator than the individual(s) who served as 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 resolution 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. Perseverance and steadfastness often contribute to success in mediation, and the Mediator shall continue with a mediation until it is clear that no settlement can 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 informing the Mediator and leaving the mediation session.

### 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 FORUM, an impasse may allow a party to immediately pursue arbitration before FORUM.

### D. Role of Mediator

The role of the Mediator is to promote and facilitate the voluntary resolution of the issues in dispute, such that:

1. The Mediator has no authority to impose a settlement on the parties.
2. The Mediator does not provide legal representation to any of the parties.
3. The Mediator has no responsibility concerning the fairness or legality of the resolution to the parties.
4. Mediators are independent contractors and not employees or agents of FORUM.
5. The Mediator will determine the procedural aspects of the mediation session including the timing and occurrence of separate caucus sessions.
6. At no time shall the Mediator reveal confidential information without the specific consent of the parties.
7. 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 and video 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 Mediation Statement not to exceed five pages summarizing the background and present status of the dispute, including any previous settlement efforts. Parties may also submit copies of documents and other written submissions that will assist the Mediator in understanding the dispute and their positions. 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 Statement 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 and is labeled as such. 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 FORUM in consultation with the Mediator and the parties.
2. Requests for changes of the scheduling of such a mediation session must be handled through FORUM, with copies to all parties.
3. Requests to reschedule a session may result in the assessment of a rescheduling fee by FORUM and a cancellation fee charged by the Mediator.
4. 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 FORUM. FORUM will assess additional fees, if any, based on FORUM expenses and any fees due the Mediator. Unless otherwise agreed 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 FORUM that a settlement has been reached, without revealing details of the settlement.

#### H. Confidentiality

1. The Mediator shall not, without the authorization of the disclosing 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.
  - 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 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 destroyed or 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.

### **Part III – Mediation Fees**

All fee amounts to be charged to the parties shall be based on the fees in effect on the date the mediation is accepted by FORUM. The parties' fees for mediation include a filing fee and the rate set by the Mediator for compensation and expenses. Unless otherwise agreed by the parties, FORUM will divide the fees equally among the parties; however, the maximum the Employee shall pay for a Mediation involving an Employment dispute is \$100, with the balance of the cost being borne by the Employer.

#### **A. Filing Fee**

A non-refundable Mediation Filing Fee of \$100 shall be submitted at the same time as the Request for Mediation by the requesting party. The Mediation Filing Fee covers the administrative costs associated with preparing a case for mediation. If the Mediation Request is submitted by the Employee and the Employer declines to participate in the mediation, the Employer shall reimburse the Employee for the \$100 fee paid to FORUM.

#### **B. Mediator Compensation Rates**

The Mediator sets his or her own rate of compensation and that compensation rate will be communicated to the parties prior to appointment of the Mediator.

#### C. Deposits

1. FORUM may require that parties deposit estimated amounts as an advance on the costs of the mediation in consultation with the Mediator prior to commencement of the mediation session. Additional sessions or other work performed by the Mediator may require additional deposits. The maximum the Employee shall pay for the Mediation procedure is \$100, with the balance being paid by the Employer. 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, the remaining balances will be refunded.
2. 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, 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.

#### D. Additional Fees

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, however, the maximum the Employee shall pay for the Mediation procedure is \$100, with the balance of the cost being borne by the Employer. Parties shall be individually responsible for their own costs.

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

Parties and parties' counsel are jointly and severally liable for all fees and expenses, and are responsible for the prompt payment of such fees and expenses. 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. FORUM may assess, and the parties and their counsel agree to pay, additional fees and costs for late payments and for expenses, including FORUM's 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, if required, 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, parties who fail to appear at a mediation session, or cancel a mediation session or reschedule at party request less than ten (10) days prior to the scheduled mediation session, may be assessed a cancellation fee of an amount no greater than the time reserved for that mediation session. An Employee is required to pay no more than \$100 cancellation fee unless FORUM determines that the Employee was responsible for the cancellation being incurred, in which case the cancellation fee shall be borne by the Employee.

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

#### A. Exclusion of Liability

Neither 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 FORUM nor any Mediator is a necessary party in any judicial proceeding related to the mediation. The Mediator, 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 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 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 find or maintain any action for defamation, libel, slander, or any related complaint.

#### C. Claims

Every Party to any mediation administered by FORUM and FORUM agree that any Claim or dispute of any nature against FORUM or any agent, officer, employee, or affiliate of FORUM or any Arbitrator shall be resolved by final, binding arbitration conducted by a panel of three (3) Arbitrators. The Party or Parties shall select one Arbitrator; FORUM shall select a second Arbitrator; and these two Arbitrators shall select a third Arbitrator who is neutral and independent and who shall be the chair of the panel. The Arbitrators shall conduct the arbitration pursuant to the applicable Code of Procedure in effect at the time the arbitration is brought. The chair shall have the powers of FORUM and perform the responsibilities of the Director. All fees payable under the Fee Schedule shall be assessed by the chair and paid to the panel of Arbitrators. Neither FORUM, nor its Director, nor any employee or agent of FORUM shall administer the arbitration.

## Appendix A

### FORUM Request for Mediation

*Please complete this form and submit it to Forum with your non-refundable filing fee of \$100.*

#### **1. Identify the Claimant/Plaintiff:**

Claimant/Plaintiff's Name:

Claimant/Plaintiff's Attorney (if one):

*Please provide contact information you would like FORUM to use (Claimant or Representative):*

Address 1: Company or Law Firm:

Address 2: Street Address, Building/Suite:

City: State: Zip:

Telephone: Fax:

Email: CC Email:

#### **2. Identify the Respondent/Defendant:**

Respondent/Defendant's Name:

Respondent/Defendant's Attorney (if one):

*Please provide contact information you would like FORUM to use (Respondent or Representative):*

Address 1: Company or Law Firm:

Address 2: Street Address, Building/Suite:

City: State: Zip:

Telephone: Fax:

Email: CC Email:

#### **3. Is a legal action pending? If so, please forward a copy of the Scheduling Order.**

<b>4. Brief description of the dispute and relief being sought:</b>	
<b>5. Preferred location of the mediation:</b>	
<b>6. Is there an agreement between the parties related to ADR services?</b>	
<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>If yes, please attach a copy of the agreement and/or name of any Mediator agreed upon by parties.</b>	
<b>7. Sign and date this form.</b> <i>By signing you request mediation services be provided by FORUM in accordance with FORUM's Mediation Procedures.</i>	
Your Signature:	Today's Date:
Please Print Your Name:	Your Role in this Matter:
<b>8. Submit Request, Scheduling Order and \$100 non-refundable filing fee to:</b> FORUM, 6465 Wayzata Blvd, Suite 470, Minneapolis, MN 55426	
<b>9. Deliver a copy of this Request to the other parties.</b>	
<b>10. Keep a copy for your records.</b>	
<i>A Mediation Coordinator is available to answer your questions by phone at 800-474-2371 or 952-516-6400. For more information, please visit our website at <a href="http://www.adrforum.com">www.adrforum.com</a>.</i>	