

1. Agreement to Mediate

The Mediation Rules and Procedures of ADR West may be adopted by the agreement of the parties, with or without modification, before or after a dispute has arisen. Any party or parties to a dispute may initiate mediation by filing with ADR West a submission to mediation or a written request for mediation. A request for mediation shall contain a brief statement of the nature of the dispute and the names, addresses, and telephone numbers of all parties to the dispute and those who will represent them, if any, in the mediation. The initiating party may simultaneously file the original request with ADR West and copies with every other party to the dispute. If the parties have agreed to mediate, the process may be initiated simply by contacting ADR West by telephone and speaking with a Case Manager. Where there is no submission to mediation or contract providing for mediation, a party may request ADR West to invite another party(ies) to mediate their dispute. Upon receipt of such a request, ADR West will contact the other party(ies) involved in the dispute and attempt to obtain a submission to mediation.

2. Selection of the Mediator

The Mediator shall be selected from the ADR West Panel of Neutrals. If the parties cannot promptly agree upon a Mediator, they may seek the assistance of ADR West in the selection process. Those parties seeking assistance should provide to ADR West any preferences as to matters such as subject matter expertise, proclivities of the Mediator, available dates and mediation style. ADR West will submit to the parties a list of potential candidates, with their resumes and hourly rates. The parties then have five (5) days to agree upon a Mediator. If the parties are unable to agree on a candidate from the list within five (5) business days following receipt of the list, each party will then have an additional five (5) business days to strike two (2) names off the list, number the rest in order of preference, and return the list to ADR West. The candidate that remains on all lists with the lowest combined score will be appointed as Mediator by ADR West; ADR West will break any ties.

3. Qualifications of the Mediator

No person shall serve as a Mediator in any dispute in which that person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to the mediation the prospective Mediator shall disclose any circumstance likely to create a conflict of interest, if such circumstances exist. Upon receipt of such information, ADR West shall immediately communicate the information to the parties for their comments. In the event that the parties disagree as to whether the Mediator shall serve, ADR West will aid in the selection of another Mediator pursuant to the procedures listed above.

4. Procedural Rules

The following procedural rules will apply to mediations conducted under the auspices of ADR West, subject to any changes on which the parties and the Mediator agree.

- a) The process is voluntary. Any party may withdraw at any time. Withdrawal is accomplished by written notice to the Mediator and the other party(ies) or by abandoning the mediation hearing.
- b) The Mediator must conduct the mediation in a manner that supports the principles of voluntary participation and self-determination by the parties. Any resolution of the dispute during the mediation process requires a voluntary agreement of the parties.
- c) The Mediator shall maintain impartiality toward all participants in the mediation process at all times.

- d) The Mediator shall control the procedural aspects of the mediation, including the decision as to when to hold joint and separate meetings with the parties. Formal rules of evidence do not apply, and there will be no record of the sessions.
- e) Each party shall have a representative with the authority to bind said party to a settlement agreement present at each mediation session. Whether that representative is allowed to appear via telephone or other methodology shall be determined at the discretion of the Mediator or by the agreement of the parties.
- f) In mediation, any party may be represented by person(s) of the party's choice. The name(s) and address(es) of such person(s) shall be communicated in writing to all parties and to ADR West.
- g) The Mediator shall not reveal information received in confidence from any party to any other party or any third party unless authorized to do so by the party revealing the information or if ordered to do so by a court of competent jurisdiction.
- h) Unless the parties agree otherwise, they will refrain from pursuing litigation or any judicial remedies during the mediation process, as long as they can do so without prejudicing their legal rights. If the dispute goes to arbitration, the Mediator shall not serve as arbitrator without the express, written agreement of the parties and the Mediator.

5. Date, Time, and Place of Mediation

The Mediator, with the agreement of the parties, shall fix the date and the time of each mediation session with the concurrence of the parties. The mediation shall be held at the appropriate office of ADR West, or at any other convenient location agreeable to the Mediator and the parties. The Mediator may withdraw at any time by written notice to the parties. Reasons for withdrawal may include: health or personal reasons, if the Mediator believes that one party is not acting in good faith, or if the Mediator determines that impasse has been reached.

6. Exchange of Information and Presentation to the Mediator

At least **five (5) business days** prior to the first scheduled mediation session, each party shall provide the Mediator with a written statement summarizing the background and present status of the dispute, including any settlement efforts that have occurred and such other material and information as the Mediator requests or the other party deems helpful to familiarize the Mediator with the dispute. The Mediator may request any party to provide additional information and clarification. The parties are encouraged, but not required, to exchange their written statements with each other prior to the mediation session. The parties may also agree to submit jointly certain writings and other materials. If the parties wish to submit confidential briefs, they are free to do so. To ensure confidentiality, the briefs must be clearly marked as such.

7. The Mediation Session

Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend with the consent of the Mediator. The Mediator may facilitate settlement in any manner the Mediator believes is appropriate. The Mediator will help the parties focus on their underlying interests and concerns, explore resolution alternatives and develop settlement options. The Mediator will decide when to hold joint caucuses and when to meet separately with the parties. If the parties fail to reach mutually agreeable settlement terms, before terminating the mediation session and with the consent of the parties, the Mediator may submit to the parties a "Mediator's proposal." This may be an actual settlement figure or an evaluation of the case if it were tried to final judgment based upon the experience of the Mediator. Efforts to reach a settlement will continue until a written settlement is reached, one of the parties withdraws from the process, or the Mediator declares an impasse. In the event that after one party withdraws, there remain additional parties that wish to continue, they may do so until a resolution or impasse is reached. If a resolution is not reached, the Mediator may discuss with the parties other forms of Alternative Dispute Resolution (ADR) including, but not limited to, arbitration (binding and non-binding), mini-trial, private trial, and neutral evaluation.

8. Settlement

If a settlement is reached, the parties or the Mediator shall draft a written memorandum of understanding involving the necessary terms of the agreement before adjourning the mediation session. The Mediator is available to provide assistance to the parties in the drafting of the terms and structure of the agreement, but at no time shall the Mediator act in an advisory capacity to one or more parties in a manner that can be construed as the practice of law or a showing of partiality for one party or another.

9. Confidentiality

The Mediator shall not divulge confidential information disclosed to a Mediator by the parties or by witnesses in the course of the mediation. All records, reports, or other documents received by a Mediator while serving in that capacity shall be confidential. The Mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.

10. Exclusion of Liability

Neither ADR West nor any Mediator is a necessary party in judicial proceedings relating to the mediation. The Mediator, ADR West and any persons assisting the Mediator will be disqualified as a witness, consultant or expert in any pending or future investigation, action or proceeding relating to the subject matter of the mediation (including any investigation, action or proceeding which involves persons not a party to this mediation). The parties may not call the Mediator, the Case Manager or any other ADR West employee or agent as a witness or as an expert in any pending or subsequent litigation or other proceeding involving the parties and relating to the dispute that is the subject of the mediation. The Mediator, Case Manager and other ADR West employees and agents are also incompetent to testify as witnesses or experts in any such proceeding. The parties shall defend and/or pay the cost (including any attorneys' fees) of defending the Mediator, Case Manager and/or ADR West from any subpoenas from outside parties arising from the mediation.

11. Interpretation and Application of Rules

The Mediator shall interpret and apply these rules insofar as they relate to the Mediator's duties and responsibilities. All other rules shall be interpreted and applied by ADR West.

12. Fees and Expenses

The Mediator's rate of compensation will be determined before appointment. The parties will share such compensation, and any other costs of the process, equally unless they otherwise agree. If a party withdraws from a multi-party mediation, but the process continues, the withdrawing party shall not be responsible for any costs incurred, provided he/she/it has notified the Mediator and the other parties of his/her/its withdrawal, so long as proper written notice has been given and other requirements of the ADR West Fee Schedule have been met. Payment of fees is the joint responsibility of the parties and their representatives, including counsel. ADR West shall not be responsible for any fees related to the mediation. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the Mediator, and the expenses of any witness and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the parties unless they agree otherwise. Before the commencement of the mediation, ADR West shall estimate anticipated total expenses. The estimated length of the mediation is determined by the parties, and payment will be due for the time reserved, whether or not the entire time has been utilized. If the mediation goes beyond the time estimated, a supplemental bill will be issued. Each party shall pay its portion of that amount as per the agreed upon arrangement. Payment of fees for time reserved is due in advance. ADR West reserves the right not to proceed with the hearing if the requisite fees have not been paid.