

Wisconsin *Ad Hoc* Mediation Rules

1. Scope of Application of These Rules.

Whenever the parties to a business or commercial relationship or transaction agree to mediate a dispute between or among them, they may make these rules a part of their mediation agreement. The parties may modify these rules in writing with the consent of the presiding mediator. These rules, as so modified, shall govern the mediation except where any of them is in conflict with a mandatory provision of applicable law, in which case such law shall govern.

2. Notices.

Notices relating to mediations conducted under these rules shall be given in writing to the address previously specified in writing by the recipient, or, if no address has been specified, to the then business or residence address of the recipient. Notices may also be given by e-mail or facsimile transmission. Time periods specified by these rules or established by the mediator start to run on the day notice is delivered, unless the mediator specifically determines otherwise or the parties otherwise agree.

3. Commencement of Mediation.

Mediation subject to these rules shall be commenced by delivery of a request to mediate to one or more opposing parties. The request shall identify the parties to the dispute and their legal counsel, if any, as well as the general nature of the dispute.

4. Selection of Mediator.

- (a) The mediator shall be selected by the parties by any means they may deem appropriate.
- (b) The mediator thus chosen shall reveal to the parties promptly all circumstances known to him/her that might give rise to a justifiable doubt as to the mediator's impartiality. Any party may challenge a mediator if the party knows of any circumstance that might give rise to a justifiable doubt as to the mediator's impartiality, in which event a substitute mediator shall be chosen by the parties.

5. Costs of the Mediation.

- (a) The mediator's compensation and the basis of any related charges shall be determined by agreement of the parties and the mediator before the start of

mediation. Unless the parties otherwise agree, the mediator's compensation and expenses, as well as other costs of the mediation, will be shared equally among the parties.

- (b) The mediator may request from each of the parties a deposit of anticipated fees and expenses to be made prior to the commencement of the first mediation session. The mediator may also request supplementary deposits as appropriate in the course of the mediation.
- (c) If any party withdraws from a multi-party mediation before its completion, the withdrawing party shall not be responsible for any part of the costs and fees of the mediation incurred after written notice of its withdrawal has been delivered to the mediator and all other parties. The withdrawing party will remain obligated for all costs and fees of mediation that accrue up to the time of the notice of withdrawal, including any cancellation fees.
- (d) At the conclusion of the mediation, the mediator shall return to the parties any unearned and unexpended balance of accumulated deposits for compensation and expenses, or invoice the parties for any balance owed, as appropriate.

6. Mediation Principles.

The following principles will apply to the mediation, subject to amendment as the parties and the mediator may agree:

- (a) The mediation process is non-binding unless and until the parties reach a settlement;
- (b) Any party may withdraw from the mediation at any time before a settlement is reached;
- (c) The mediator shall be neutral and impartial;
- (d) The mediator shall, in consultation with the parties, control the procedural aspects of the mediation, including if and when to hold joint sessions or separate sessions with the parties;
- (e) The parties shall cooperate fully with the mediator;
- (f) The mediator is free to meet and communicate separately with each party or its legal counsel;
- (g) In consultation with the parties, the mediator shall set the date, time and place for each mediation session;

- (h) Formal rules of evidence or procedure shall not apply to mediation sessions;
- (i) Each party shall be represented at each mediation session by one or more persons fully authorized to negotiate a resolution of the dispute;
- (j) Each party may also be represented in the mediation by legal counsel;
- (k) The mediation shall be conducted as expeditiously as possible;
- (l) Unless otherwise required by law, the mediator shall not reveal to any person any information received in confidence from any party in the course of the mediation;
- (m) Unless otherwise required by law, the mediator shall be disqualified as a witness, consultant or expert in any investigation, action or proceeding relating to the subject matter of the mediation;
- (n) In the event that the dispute in mediation proceeds to arbitration, the mediator may consent to serve as arbitrator in such proceeding at the request of all parties;
- (o) With the prior consent of the parties, the mediator may, at the expense of the parties, obtain assistance and independent expert advice to facilitate the mediation;
- (p) Any independent expert retained to assist the mediator shall disclose to the parties and the mediator all circumstances known to him/her that might give rise to a reasonable doubt as to the expert's impartiality;
- (q) The mediator may withdraw from the mediation at any time by written notice to the parties;
- (r) Except as may be required by law, in the event the mediator withdraws from the mediation, s/he shall not be required to state his/her reason(s) for withdrawal; and
- (s) The mediator shall not be liable for any act or omission, except for willful misconduct, connected with the mediation.

7. Exchange of Information.

- (a) If any party to the mediation has a substantial need for documents or other materials in the possession of or subject to the control of another party, or for other discovery that might facilitate a settlement of the dispute, the parties may agree upon reasonable terms for such discovery. In the event that no agreement for such discovery is reached, any party may request a joint consultation with the mediator for assistance in reaching such an agreement.

- (b) Before the start of the mediation, the parties shall exchange with each other and provide to the mediator a list of the names and affiliations of all persons who will attend the mediation.

8. Presentations to the Mediator.

- (a) Before meeting to address the substance of the dispute, the parties and the mediator may consult, via telephone conference call or otherwise, on any preliminary matters, including possible modifications of these procedures, the location and timing of mediation sessions, and each party's need, in order to facilitate the mediation, for any documents or other materials in the possession of or subject to the control of any other party.
- (b) Before the first mediation session, each party may submit to the mediator, in confidence, a brief written statement summarizing the nature, background and status of the dispute, including a description of any settlement efforts that have occurred, together with any other information or materials that the mediator may request or that a party believes will facilitate the mediator's understanding of the dispute. The parties may agree to submit information or materials jointly. The mediator may request any party to provide additional information or clarification of any submission.

9. Negotiations.

- (a) The mediator may facilitate settlement negotiations in any manner s/he deems appropriate.
- (b) The mediation may continue until a settlement agreement is reached or the mediator concludes (and informs the parties) that further mediation efforts would not be useful or one of the parties or the mediator withdraws from the mediation.
- (c) If some but not all of the parties to a multiparty mediation withdraws from the mediation, the remaining parties may elect to continue the mediation.

10. Settlement.

If settlement of the dispute is reached, a memorandum of the terms of settlement shall be prepared and signed by the parties or their legal counsel.

11. Mediator May Serve as Arbitrator.

At the request of the parties, and subject to such safeguards as the parties and the mediator may determine, the mediator may serve as arbitrator as to any issues unresolved by mediation.

12. Confidentiality.

- (a) Under these rules, the entire process of mediation, including all related documentary disclosures and statements made by or on behalf of the parties, shall be deemed confidential settlement or compromise negotiations under all applicable rules of procedure in civil actions.
- (b) The mediator shall promptly notify all parties of any attempt to compel the mediator to disclose any confidential information or materials submitted to him/her in the course of the mediation.