



MEDIATION RULES

RULE 1. INTRODUCTION

Cincinnati Bar Alternative Dispute Resolution (“CBADR”) Mediation consists of the voluntary submission of a dispute to an impartial neutral Mediator for assistance in reaching a mutually agreeable resolution of the dispute in accordance with these Rules. The CBA has established CBADR Mediation as a service to the community because mediation has proven to be a fair and effective method to resolve disputes privately, expeditiously, and economically. The mission of CBADR Mediation is to provide superior administration services for cases entrusted to it at lower cost than the services available from alternative providers. As part of this mission, CBADR Service Committee has established a Roster of Mediators consisting of the region’s leading dispute resolution professionals ready to promptly serve the parties.

RULE 2. APPLICABILITY

The CBADR Mediation Rules shall apply to all mediations where the parties have selected mediation under the auspices of the Cincinnati Bar Alternative Dispute Resolution Service (“CBADR”) or mediation administered by the Cincinnati Bar Association (“CBA”). Unless otherwise agreed, the version of CBADR Mediation Rules, including all amendments, shall be applied in the form posted on the CBA website (www.cincybar.org) at the time CBADR receives a Mediation Agreement.

RULE 3. PROGRAM DIRECTOR

The Board of Trustees of the CBA shall appoint a Program Director, who shall be a member of the CBA and who may also be a member of the Roster of Mediators. In the event the Program Director is appointed or serving as a Mediator for any Mediation that requires action by the Program Director or otherwise has a conflict of interest, the CBA Executive Director or the Director’s designate shall appoint another qualified individual to serve in his or her stead.

RULE 4. MEDIATORS

- A. CBADR shall establish and maintain a Roster of Mediators available for CBADR Mediations. Such Mediators shall be members in good standing of the CBA. The CBADR Service Committee (“Committee”), which is appointed by the CBA’s Board of Trustees, shall establish standards and qualifications for Mediators on the Roster of Mediators and shall vet and approve applicants for inclusion on the Roster of Mediators based on review of their experience and knowledge of legal disputes and mediation proceedings, including professional reputation.
- B. Mediators on the Roster of Mediators shall provide the CBADR with information concerning their background, qualifications and rates. CBADR will include this information for all Mediators on the Roster of Mediators on the CBA website.

RULE 5. INITIATION OF CBADR MEDIATION

- A. A CBADR Mediation may be initiated by filing a CBADR Request for Mediation in the form available on the CBA website. Filing may be made either by delivery to the offices of the CBA at 225 E. Sixth Street, Cincinnati, Ohio 45202-3209 or electronically on the CBA website
- B. Upon its receipt of a Request for Mediation for which the filing requirements are satisfied, CBADR shall send via regular mail, fax or email a letter acknowledging the submission to all parties and their respective attorneys or representatives named in the Request for Mediation. In the event any Request for Mediation is deficient for any reason, CBADR will send notice to that effect to the party or parties filing the defective Request for Mediation and their respective attorneys or representatives by ordinary mail, fax or email.

RULE 6. MEDIATION FEES

- A. The CBA website will publish each mediator’s standard rates. The mediator will bill the parties directly and be responsible for the collection of his/her fees.
- B. Within 30 days after the mediator’s fees have been paid, the mediator will provide to the CBA an accounting of the fees collected and remit 15% of those fees to the CBA.
- C. The website will include optional fees for room rental.

RULE 7. ADMINISTRATIVE CONFERENCE

At the request of any party or upon CBADR’s initiative, the CBADR Program Director or a CBA employee designated by the Program Director may at any time prior to the selection of the Mediator conduct an administrative conference, in person or via telephone, with the parties and/or their counsel or representatives. The conference may address such issues as Mediator selection, the required qualifications of potential Mediators, mediation of the dispute, the nature and amounts of the claims, any time requirements and any other administrative matters.

RULE 8. SELECTION OF MEDIATOR

- A. Parties may request any of the Mediators on CBADR’s Panel. In the event the requested Mediator is disqualified or unable to serve, the parties may select another mutually agreeable Mediator from the Panel. In the absence of a mutually agreeable Mediator, parties may proceed with the following selection process.
- B. CBADR shall provide all parties a list of up to six individuals with background or experience commensurate with the dispute being mediated. The parties are encouraged to agree upon a mediator from the submitted list and advise the CBADR of their agreement. In the absence of agree-



ment, each party, after striking any individuals, shall rank the remaining Mediators in the order of their preference, with the number one (1) being the highest ranking and return the list with strikes and rankings to CBADR by the date specified by CBADR, ordinarily ten (10) days. The Mediator candidate with the averaged highest ranking shall be appointed as Mediator. In the event of a tie, the Program Director shall make the determination from the highest ranked individuals. If the chosen Mediator is disqualified or otherwise unable to serve, the parties shall be able to choose the next highest ranking Mediator or receive a new list from which to select.

- C. In lieu of the Mediator selection procedures set forth in this Rule, the parties may agree on any other procedure of their choice regarding selection of the Mediator, such procedure to be reflected in their Mediation Agreement. The parties also may agree to a Mediator not on the CBADR Roster of Mediators, provided, however, that the appointment of any Mediator not on the CBADR Roster of Mediators must be confirmed by CBADR and any such Mediator must agree to the mediation being administered by CBADR in accordance with the CBADR Mediation Rules.
- D. All Mediators are independent contractors of the CBA and CBADR and are not employees, representatives or agents of the CBA or CBADR.

RULE 9. DISCLOSURE

- A. Any person being considered as a Mediator or selected as a Mediator, as well as the parties and their representatives, shall disclose to CBADR any and all circumstances reasonably likely to give rise to justifiable doubt as to the prospective Mediator's impartiality or independence, including without limitation any bias or any financial or personal interest in the result of the mediation or any past or present personal or professional relationship with the parties, their counsel or other representatives and any potential witness that reasonably could give rise to such justifiable doubt.
- B. Upon receipt of such information from the Mediator, a party or any other source, CBADR shall communicate the information to the parties and, if it deems it appropriate to do so, to the Mediator. Disclosure of information pursuant to this Rule is not an indication that the Mediator considers that the disclosed information is likely to affect his or her impartiality or independence.
- C. The parties have a continuing duty during the pendency of the mediation process to provide a complete disclosure of any information that may give rise to justifiable doubt as to the Mediator's impartiality or independence. Any doubt should be resolved in favor of disclosure.

RULE 10. DISQUALIFICATION OF MEDIATOR

- A. CBADR Mediators shall be impartial and independent and shall perform their duties with diligence and in good faith, and shall be subject to disqualification for:
 - 1. partiality or lack of independence;
 - 2. inability or refusal to perform the Mediator's duties with diligence and in good faith; and
 - 3. any grounds for disqualification provided by applicable law.
- B. Upon timely objection of a party to the continued service of a Mediator, or on its own initiative, the CBADR Program Director shall determine whether the Mediator should be disqualified under the grounds set forth above and shall inform the parties of his or her decision, which decision shall be conclusive, final and binding on all parties.
- C. Any objection to the continued service of a Mediator shall be filed with CBADR at the earliest reasonable opportunity and served promptly on all other parties and the Mediator. Failure on the part of a party or representative to present a timely objection or challenge to a Mediator after becoming first aware of grounds for such objection or challenge shall be deemed a waiver of the right to object to or otherwise challenge any Mediator.

RULE 11. DISQUALIFICATION OF MEDIATOR AS WITNESS; EXCLUSION FROM LIABILITY

- A. The CBA, CBADR, the CBADR Program Director and CBADR Mediators (collectively "CBADR Parties") are not necessary parties to any legal action based on the mediation or any mediation award. If any of the CBADR Parties are named in any such action, they shall be entitled to recover costs and attorney fees against the party naming them. Moreover, by commencing or participating in a mediation under these Rules, the parties agree that none of the CBADR Parties shall be liable for any act or omission arising out of or relating to the conduct of any Mediation proceeding under these Rules or administered by CBADR.
- B. No CBADR Mediator or any CBA or CBADR personnel shall be called as a witness in any proceeding relating to the claims in any CBADR Mediation, nor shall any notes, exhibits or other materials relating to the Mediation be subject to subpoena or discovery in any proceeding. By commencing or participating in any mediation under these Rules, the parties to any mediation conducted under these Rules or administered by CBADR agree that the Mediator, the CBA, CBADR and the CBADR Program Director shall have the same immunity from liability for any act or omission in connection with the mediation as judges would have under applicable state and federal law.



RULE 12. COMMUNICATION WITH MEDIATOR

Parties may communicate directly with the Mediator or a prospective Mediator, either jointly or separately.

RULE 13. VACANCIES

If for any reason a Mediator is unwilling or unable to perform the duties of the position, the CBADR Program Director may, on satisfactory proof, declare the position vacant. Vacancies shall be filled in accordance with the selection procedures in Rule VIII.

RULE 14. INTERPRETATION AND APPLICATION OF RULES

Upon request of the Mediator or any party, the CBADR Program Director will interpret and apply all other CBADR Mediation Rules. The CBADR Program Director's decision shall be final.

RULE 15. FIXING OF PLACE AND SEAT OF THE MEDIATION

The parties may mutually agree on the place and legal seat of the Mediation, which place may be in Ohio or any other place agreed to by the parties. In the absence of agreement of the parties, the seat of the Mediation shall be Cincinnati, Ohio. The preferred place for the Mediation Conference is the CBA, which has available hearing rooms with catering options available.

RULE 16. PRELIMINARY CONFERENCE

- A. The Mediator may, but need not, schedule a Preliminary Conference as soon as practicable after he or she has been appointed, irrespective of the size and complexity of the Mediation. The Preliminary Conference may be conducted in person or by telephone and may be attended by any party, in addition to legal counsel or other representative.
- B. At the Preliminary Conference, or in individual conferences with the parties, the parties and Mediator, subject to his or her discretion, should address and discuss with the parties the procedures for achieving a fair, efficient and economical resolution of the dispute, including each of the following specific matters:
1. whether the Mediator will require Mediation Statements and, if so, if they are to be shared with the other parties;
 2. what documentation the parties wish to share with the Mediator; and
 3. what documentation the parties wish to share with each other.

RULE 17. DEPOSITS AND COSTS

The Mediator may require the parties to enter into his/her own mediation agreement. The Mediator may require the parties to make a deposit before proceeding with the mediation. Any additional fees which have exceeded the deposit will be invoiced after the Mediation. Failure to make the required deposits may result in delay or cancellation of the mediation. If one party fails to pay the required deposit, the party or parties not in default may advance the amount due from the defaulting party or parties.

RULE 18. SETTLEMENT AUTHORITY

Because it is crucial to the success of the mediation to have actual decision makers physically present, all parties shall have an individual present at the mediation who has complete settlement authority. Any party may participate without representation, or by a representative of that party's choosing, or by counsel. Unless excused by the mediator:

- A. if a party is not a natural person, such entity must be represented by an authorized director, officer or employee of the organization, with full settlement authority.
- B. if there is a potential for insurance coverage for the damages alleged in the dispute, authorized representatives of all carriers with full settlement authority must be present.

RULE 19. CONFIDENTIALITY

- A. All parties deem the mediation process to be a settlement discussion. The mediator shall maintain the confidentiality of all information obtained in the mediation and all records, reports, or other documents received by a mediator while serving in that capacity shall be confidential. Subject to applicable law or the parties' agreement, all offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts, and by the mediator for purposes of these compromise negotiations, are confidential. Such offers, promises, conduct, and statements will not be disclosed to third parties and are privileged and inadmissible for any purpose, under Rule 408 of the Federal Rules of Evidence or the state law equivalent, and any applicable federal or state statute, rule or common law provisions, without the agreement of all the parties, including the mediator.
- B. No party may seek to introduce, for any purpose, evidence of a statement or of conduct during mediation at any pending or subsequent trial, arbitration or other proceeding, without the consent of all parties, including the mediator. However, discoverable or admissible information is not automatically rendered undiscoverable or inadmissible simply because it was also disclosed in mediation.



- C. If the applicable dispute resolution rules of the jurisdiction controlling the mediation shall provide more confidentiality than these Rules require, the parties agree that the rules or laws requiring greater privacy and greater confidentiality shall apply to the maximum extent allowed by law.
- D. Confidential information disclosed to a mediator by the parties or by others in the course of the mediation shall not be divulged by the mediator without permission. The “course of the mediation” shall include all pre-mediation communications with the mediator and with other parties, representatives, and counsel regarding the mediation, all activities associated with the Mediation Conference, and all post-mediation communications between and among the parties and mediator associated with any ongoing effort at settlement. All records, reports, or other documents generated or received by a mediator while serving in that capacity shall be confidential and not subject to subpoena, disclosure, or production. The parties shall maintain the confidentiality of the mediation and shall not rely on, offer, or introduce as evidence in any arbitral, judicial, or other proceeding:
1. views expressed or suggestions made by another party or the mediator with respect to a possible settlement of the dispute;
 2. admissions made by a party in the course of the mediation proceedings;
 3. proposals made or views expressed by the mediator;
 4. the fact that another party had or had not indicated willingness to accept a proposal for settlement made by another party or the mediator; or
 5. mediation presentation exhibits, PowerPoints, charts, graphs, summaries, etc. unless such information is otherwise discoverable.
- E. Notwithstanding the rule of mediation confidentiality, in certain instances applicable law may require disclosure of information revealed as part of the mediation process. Additionally, all parties authorize the mediator to disclose any threat of physical harm made by any participant.
- F. There shall be no stenographic record of the mediation process and no person shall record any portion of the mediation session. No subpoena, summons, complaint, citation, writ, deposition notice, or other process may be served upon any party at or near the site of any mediation session or upon any party entering, attending, or leaving the session.

RULE 20. SUMMARY OF SETTLEMENT TERMS

If a settlement is reached, the parties should ordinarily prepare and sign a written summary of the terms of the settlement before leaving the mediation. Such summary will be enforceable as a contract.

RULE 21. TERMINATION OF MEDIATION

- A. The mediation shall be terminated:
1. by the execution of a summary settlement agreement; or
 2. by declaration of the mediator to the effect that further efforts at mediation would not contribute to a resolution of the parties’ dispute; or
 3. by declaration of any party to the effect that the mediation proceedings are terminated; or
 4. when there has been no communication between the mediator and any party or party’s representative for 30 days following the conclusion of the mediation conference.