

Administrative Rules for Mediation

Transportation ADR Council, Inc.

1. INITIATING MEDIATION

Any party may initiate the process of mediation by mailing or faxing a request or referral form to the Administrator. Upon receipt of the request, the Administrator will contact the other parties, solicit their participation in the mediation process, provide the information on the mediation process to all parties and make the final arrangements for the mediation.

2. SELECTION OF A MEDIATOR

The Administrator will provide the parties background information about potential mediators and will confer with all parties regarding the selection of the mediator. The Administrator will make an effort to obtain agreement among the parties regarding the selection of the mediator.

If parties are not able to agree on the selection of a mediator within thirty (30) days following the initiation of the procedure, they shall either agree to be bound by the selection to be made by the Administrator in its sole discretion, or, alternatively, shall abandon the mediation with notice to the Administrator and all other parties.

3. CONFLICTS OF INTEREST AND CONFIDENTIALITY

The parties and the mediator have a duty to make prompt disclosure to the Administrator of any fact or circumstance which would reasonably call into question the neutrality or impartiality of the mediator. Such facts or circumstances include (without limitation) any past, present or prospective direct or indirect representational, business, organizational, family or other affiliation between the mediator and the parties.

If the mediator is a member of a law firm a diligent effort must be undertaken to determine and disclose whether a conflict may or does exist with any of the attorneys of the firm or its clients.

If any such disclosure is made, the Administrator will inquire if the parties wish to waive any possible conflict and proceed. If any party objects to the selection for cause, the mediator will be excused and the selection process will be, at the option of the parties, either reinstated or the process will be terminated. If all parties waive any objection after disclosure, and in writing, the mediator will proceed to mediate the case.

The mediator shall maintain the confidentiality and privacy of the mediation proceeding.

4. FINAL ARRANGEMENTS FOR THE MEDIATION

The Administrator will confer with the parties regarding the following:

- A. the exchange of documents or other information prior to the mediation, if requested;
- B. the identity of person present for the mediation and any issues involving authority to settle; and
- C. any other relevant matters.

The parties will be provided with a written agreement to mediate at least fourteen (14) days prior to the mediation. The parties will be required to execute the agreement at the outset of the mediation. By executing this agreement, the parties waive any potential conflict or appearance of conflict between the mediator and one or more of the parties for which advance written disclosures were made to the parties.

The scheduling of a convenient time and location of the mediation and the issuance of notice will be the responsibility of the mediator based on the agreement between the parties,

subject to the intervention of Administrator, only if necessary. The mediator and the Administrator are authorized to postpone the mediation in their discretion.

Federal law (or, alternatively, the law of the state in which the mediation is conducted) will determine all procedural issues involving the mediation process, including confidentiality, unless the parties otherwise agree.

If the mediation to be conducted is court-ordered, the procedure will comply with the applicable rules of such court.

5. THE MEDIATION

The real parties in interest to the dispute shall be present at the mediation and shall be accompanied by counsel, provided that in disputes in which an insurance company is involved and insurance coverage for the claim in dispute is not questioned, on behalf of the insured a claims representative may appear at the mediation in lieu of the insured, with or without defense counsel.

The parties shall have reasonable authority to settle the case and are encouraged to make advance arrangements to be able to confer by telephone with persons, if necessary, having additional settlement authority. who will not be physically present at the mediation session.

The mediation will consist of a joint session followed by a series of separate and private meetings or caucuses between each side and the mediator.

The mediator shall not disclose any information received by a party to the other parties in the mediation without prior express permission from the disclosing party.

The mediation session is confidential in that:

- A. no participant or person in the mediation may later testify or seek to compel the testimony of another in any proceeding as to what statements were made or omitted by any person in connection with the mediation session or with respect to any event or occurrence during the mediation.
- B. no statements made or omitted in the mediation shall be subject to discovery in any proceeding; and
- C. the disclosure by a party or by the mediator of any information given to the mediator in the course of the mediation shall not alter its confidential or privileged character or be the basis of argument that a waiver of such privilege occurred.

The parties shall not subpoena or otherwise seek to compel the mediator or the mediation service to testify or produce records, notes or work product in any proceeding as to what was said or produced in the mediation session or in any communication made as part of arranging for the mediation, with the sole exception being that the mediator may be called as a witness in an action to enforce a settlement reached in the mediator's presence. In such event, the court hearing the mediator's testimony shall be empowered to order either or both parties to pay all costs occasioned by the request to the mediator to testify, including all the mediator's travel and out-of-pocket expenses incurred in connection with the mediator's testimony, as well as the mediator's customary hourly fee (which the parties are advised is likely in excess of the per-day charge of the mediator in this program). The mediator's testimony shall be restricted to those events subsequent to declaration that the mediation was terminated, and this provision shall not waive the confidentiality of earlier discussions and events.

Any party may terminate the mediation at any time by so informing the mediator. The mediator, in his or her discretion, may terminate the mediation at any time with or without cause by declaring to the parties that the mediation is terminated.

If the parties agree to settle their case, the mediator will declare the mediation terminated for the purpose of allowing the parties to reduce the basic terms of the settlement to each other in writing, without the application of the mediation confidentiality statutes.

If the case does not settle, the parties may elect to have the mediator continue to make efforts by telephone or otherwise to mediate the case, and shall inform the Administrator accordingly.

6. COSTS

The administrative costs for mediation are \$250 for a two-party case and an additional \$50 for each additional unrepresented party or additional separately-represented party in excess of two parties.

- A. \$600 minimum for one-half day (4 hours)
- B. \$1,200 for full day (8 hours)
- C. a prorated rate for time in excess of half or full days, and
- D. travel, meal and lodging costs, if any, incurred by the mediator.

Each party's portion of the administrative costs are non-refundable and must be prepaid. A minimum advance of \$600 for the mediator's fee must be prepaid. If the mediation does not occur, the \$600 deposit will be refunded. Depending on the anticipated length of the mediation, Administrator reserves the right to require a deposit for the mediator's fee in excess of \$600.

Following the mediation, the mediator will advise the Administrator of his or her time and charges. The Administrator will promptly issue a statement and, upon receipt of payment, Administrator shall promptly pay the mediator.

7. QUALIFICATIONS OF MEDIATORS

Any person desiring to make his or her services as a mediator available under this program shall comply with the following:

- A. be a member in good standing of the Transportation Lawyers Association or the Canadian Transport Lawyers Association;
- B. accurately complete and submit the mediator's application form to the Administrator;
- C. agree to abide by the administrative rules as set forth herein and as may be amended from time to time; and
- D. obtain and provide proof to the Administrator of a minimum of sixteen (16) hours of mediation training or, alternatively, submit a written request that this training requirement be waived. The decision of the Administrator with respect to evidence of the training requirement shall be binding and shall be communicated to parties in any dispute which may involve a mediator for which this requirement shall have been waived.

8. NOTICES

All notices, communications or awards required by these rules to be made in writing may be made by first class mail, expedited commercial mailing services, telegram or facsimile transmission. The Administrator and the mediator may give notice by telephone.

9. PRE-DISPUTE MEDIATION PROVISIONS

Parties using pre-dispute mediation provisions in their contracts other than as may be provided by Transportation ADR Council, Inc. agree that any dispute referred to Transportation ADR Council, Inc. for mediation shall be governed by the rules of Transportation

ADR Council, Inc. as they may exist at the time of the referral initiating the procedure is received by the Administrator.

10. APPROVAL AND AMENDMENTS

Transportation ADR Council, Inc. shall approve these administrative rules, set their effective date and make such amendments as it believes necessary and appropriate for the prompt, reliable and inexpensive settlement of disputes arising from the transportation industry.

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