

Administrative Rules for Mediation

Transportation ADR Council

1. This mediation process is administered by the Transportation ADR Council ("TAC"). TAC is administered by members of the Transportation Lawyers Association, Inc. ("TLA").
2. INITIATING MEDIATION
Any party may initiate the process of mediation by submitting a request or referral form to the TAC Administrator ("Administrator"). Upon receipt of the request, the Administrator will contact the opposing parties, confirm their participation in the mediation process, provide the information on the mediation process to all parties and make arrangements for the appointment of the mediator.
3. SELECTION OF A MEDIATOR
The mediator's curriculum vitae shall be available on the TLA website and will otherwise be available upon request. The Administrator will confer with all parties regarding the selection of the mediator.

If parties are not able to agree on the selection of a mediator or abandon the mediation process within thirty (30) days following the initiation of the procedure, the Administrator shall randomly select a mediator.

TAC shall establish and maintain a register of persons who are qualified to be mediators with access to their qualifications as mediators. The parties may select a mediator therefrom. Each mediator's curriculum vitae shall contain a summary of the mediator's training and experience and also include the mediator's fee schedule. The fee schedule shall include hourly and daily fees and expenses.

Mediators on the TAC roster will have complied with the following:

- A. be a member in good standing of the bar of his or her local jurisdiction, and a member of Transportation Lawyers Association or the Canadian Transport Lawyers Association;
 - B. has been engaged in the practice of transportation law for a minimum of ten (10) years;
 - C. has accurately completed and submitted the mediator's application form to the Administrator;
 - D. has agreed to abide by the administrative rules as set forth herein and as may be amended from time to time; and
 - E. has obtained and provided proof to the Administrator of a minimum of forty (40) hours of mediation training or shall submit a request that the training requirement be waived. Such request shall be accompanied with requisite background information to support the request. The decision of the Administrator with respect to the evidence of the requirements herein or any relief therefrom shall be binding.
4. 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, the mediator will proceed to mediate the case.

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

5. FINAL ARRANGEMENTS FOR THE MEDIATION

Upon appointment, the mediator 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 who shall be 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 before or 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,

The mediator is authorized to postpone the mediation in his/her 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.

6. THE MEDIATION

Unless excused by the mediator, the real parties in interest to the dispute with full settlement authority shall be present at the mediation and shall be accompanied by counsel (if represented), 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.

The format of the mediation shall be determined by the mediator.

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, the Administrator or TAC 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. 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.

7. 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. Administrative costs shall be paid at the time of the request to initiate the mediation procedure and are payable to TAC. Unless otherwise agreed among the parties, the administrative fee shall be paid by the party initiating the mediation. A mediator will only be appointed after receipt of the Administrative fee.

Mediator's fees and costs shall be billed directly by and paid to the mediator chosen or assigned. In the mediator's discretion, the mediator may require a deposit or payment in full of anticipated fees and costs prior to conducting the mediation.

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, e-mail 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 TAC agree that any dispute referred to TAC for mediation shall be governed by the rules of TAC as they may exist at the time of the referral initiating the procedure is received by the Administrator.

10. APPROVAL AND AMENDMENTS

TLA and TAC shall approve these administrative rules, set their effective date and make such amendments as it believes necessary and appropriate for the prompt, reliable and cost-effective settlement of disputes arising from the transportation industry.