

MASSACHUSETTS DISPUTE RESOLUTION • • • • • S E R V I C E S

Mediation Guidelines

- 1. REPRESENTATION BY COUNSEL** — Any party may either represent himself or be represented by an attorney or other authorized representative at a mediation session before MDRS.
- 2. MEDIATION AGREEMENT** — Mediation is voluntarily entered into by both parties. Prior to the commencement of the mediation session, the parties and their counsel or authorized representatives shall agree in writing to the mediation of their dispute. For this purpose, an MDRS Agreement for Mediation will be provided to the parties incorporating by reference these guidelines.
- 3. THE MEDIATOR** — The parties shall jointly agree upon the selection of a mediator from the MDRS panel of mediators. The mediator shall have no personal or financial interest in the outcome of the dispute. In advance of the mediation session, the mediator shall disclose to the parties any circumstances which may create a presumption of bias or conflict of interest. In the event of such disclosure, the parties shall have the right to request the disqualification of the mediator.
- 4. DATE, TIME & PLACE OF MEDIATION SESSION** — The parties and MDRS shall agree upon the time, place and date of the mediation session. Notice of the mediation shall be mailed to the parties at least ten (10) days prior to the mediation unless agreed to by the parties.
- 5. WRITTEN MEDIATION SUMMARY** — A party may submit to MDRS, prior to commencement of the mediation session, a brief written summary or memorandum and/or other documents concerning the relevant issues involved in the dispute. A copy of any such summary or memorandum or documents should ordinarily be submitted to all parties. A party may, however, elect to submit a confidential mediation summary or memorandum or documents to the mediator. If such a summary or memorandum or documents are clearly marked as confidential, their contents shall not be disclosed by the mediator to the other parties. The mediator may inform the other parties that such a confidential mediation summary or documents have been provided to him, but shall not disclose their contents.
- 6. ATTENDANCE AT MEDIATION SESSION** — It is necessary for all parties to attend the mediation session whether or not they are represented by counsel or other authorized representative(s). It is not necessary for any witnesses to attend the mediation session. If counsel is representing an insurance company or an insured, it is necessary that the insurance representative, with full authority to settle the dispute, attend the mediation. In any event, any person with actual authority needed to settle the dispute must attend the mediation. If such person(s) cannot attend the mediation, or even if they can only participate by telephone or video conference, MDRS and all other parties must be notified as soon as possible before the mediation session.
- 7. CONDUCT OF MEDIATION SESSION** — Unlike a trial, a mediation is informal and non-adversarial in nature. The mediator shall conduct the mediation session in a manner that permits a fair opportunity for each party to present their position and discuss resolution of the dispute. The mediator may choose to have private confidential conferences with each party. The mediator shall assist the parties to reach their own negotiated resolution of the dispute, with the best interests of all parties in mind.
- 8. PRESENTING YOUR SIDE AT THE MEDIATION HEARING** — Although the mediation session is informal in nature, the parties should be well prepared to discuss all relevant issues involved in the dispute. Each party will be given a full opportunity to state their position in a manner that is comfortable for them. Each party will be allowed to submit relevant documents that are necessary for the mediator to review in order to fully understand the dispute. Documents that a party intends to submit to the mediator for review should, except in rare circumstances, be provided to the other parties in advance of the mediation.
- 9. CONFIDENTIALITY** — It is important that all participants at a mediation session understand and agree that any and all communications made in the course of the mediation process relating to the subject matter being mediated are confidential communications and are not subject to disclosure in any judicial, administrative or private proceeding, and that the mediator will not be called as a witness in any judicial, administrative or private proceeding. All or part of this mediation may, by agreement, be taking place using a telephonic or video conference online format. The parties understand and agree that all communications during the mediation are expressly confidential, regardless of the method of participation. Participants pledge that no unidentified or unauthorized parties are present during online meetings and that no other person will be in the room or within hearing distance when using any information and communication technology to participate in the mediation. Recording meetings and other conversations related to this agreement, whether taking place in person, by telephone, by video conference, or through any online technology is strictly prohibited.