



# HAMPDEN COUNTY BAR ASSOCIATION ARBITRATION & MEDIATION SERVICES

## MEDIATION RULES

The Hampden County Bar Association maintains, for the convenience of the bar, a roster of lawyers and retired judges who are willing and available to serve as mediators to assist in the resolution of civil disputes. Upon the request of the parties to any such dispute, the Administrator of the Arbitration and Mediation Service will endeavor to arrange a time and place for a mediation session with any member of the roster designated by the parties. In any case in which a member of the roster has been appointed by a justice of any of the trial courts to serve as a mediator in a particular case, the Administrator will, upon request, endeavor to arrange a time and place for a mediation session before the appointed mediator.

### 1. Application

Except as otherwise provided by law or agreed in writing, these Rules, in the form in effect at the time of the execution of an Agreement to Mediate, shall be deemed to be part of the parties' Agreement to Mediate, and shall govern all mediations and ancillary administration conducted under the auspices of the Hampden County Bar Association Arbitration & Mediation Service.

### 2. Fees

The fee of the mediator is **\$300.00** per hour. The Arbitration & Mediation Service administrative fee is **\$150.00** per representative and is non-refundable.

Mediations can be scheduled from two (2) hours to one (1) day. The fee of the mediator shall be divided equally between the parties (i.e. if there is one plaintiff and two defendants and the hearing is scheduled for one hour, the parties will each pay one-third (1/3) of the hourly fee or \$100.00). The fees shall be payable prior to the commencement of the scheduled hearing and should be paid to the Case Coordinator of the Arbitration & Mediation Service.

Requests for cancellations with less than three (3) business days notice are subject to cancellation fees as follows: \$300.00 payable to the mediator. Cancellations made within one (1) hour of the scheduled hearing time will be charged the full fee based on the amount of time reserved for said hearing.

### 3. Agreement to Mediate

In all cases in which a member of the roster has been designated to serve as a mediator for the resolution of an existing dispute, the parties shall execute a written Agreement to Mediate in substantially the following form before the hearing commences.

**AGREEMENT TO MEDIATE**

\_\_\_\_\_ COURT

DOCKET NO.: \_\_\_\_\_

In the matter of \_\_\_\_\_ (hereinafter Plaintiff/Claimant) v. \_\_\_\_\_ (hereinafter Defendant/Insured Party) the parties hereto do hereby agree as follows:

The Defendant/Insured Party is insured by \_\_\_\_\_ (hereinafter the insurer); and the Plaintiff/Claimant and the Defendant/Insured Party disagree as to liability and/or damages for which the Defendant/Insured Party may be liable. The parties agree to submit this dispute to \_\_\_\_\_ as Mediator to mediate the issues pursuant to the Mediation Rules of the Hampden County Bar Association Arbitration & Mediation Service.

1. The parties agree that \_\_\_\_\_ shall act as Mediator in this matter.
2. The mediation session is non-binding in all aspects.
3. The confidentiality of the mediation session shall be protect by the provisions of M.G.L.c. 233, sec. 23C.

In consideration of the foregoing, the parties hereto have hereunto affixed their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Plaintiff/Claimant

\_\_\_\_\_  
Insurer's Claim Representative

\_\_\_\_\_  
Plaintiff/Claimant's Legal Counsel

\_\_\_\_\_  
Insurer's Legal Counsel

Witness:

\_\_\_\_\_  
Mediator -



#### 4. Applicable Law

The confidentiality of the mediation session shall be protected by the provisions of M.G.L. c. 233, section 23C.

#### 5. Hearings

##### **(a) Date, Time and Place of Hearing**

The Administrator, with the concurrence of the parties, shall set the date, time and place for the initial hearing. The Administrator shall send a notice of hearing to the parties at least ten (10) days in advance of the hearing date unless otherwise agreed by the parties. The notice shall specify the number of hours reserved for the initial hearing.

In the event that the hearing is not completed on the date of the initial hearing, the hearing shall be continued to the earliest feasible date by the mediator with the concurrence of the parties and the Administrator.

##### **(b) Case Overview**

At least one day prior to the initial date of hearing, the parties shall each provide the mediator with a Case Overview and List of Damages setting forth the party's position with regard to the issues in dispute.

##### **(c) Representation**

Any party may be represented by counsel or other authorized representative. A party intending to be so represented shall notify the other parties and the Administrator at least three (3) days prior to the initial date of hearing of the name and address of the representative. When such a representative initiates a mediation or responds for a party, notice shall be deemed to have been given.

##### **(d) Interpreters**

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

##### **(e) Attendance at Hearings**

Any person having a direct interest in the mediation is entitled to attend the mediation session. It shall be discretionary with the mediator to determine the propriety of the attendance of any other person.

**(f) Postponements**

The mediator for good cause shown may postpone any hearing upon the request of a party or upon the mediator's own initiative, and shall grant a postponement if all of the parties agree.

**6. Extensions of Time**

The parties may modify any period of time prescribed by these rules by mutual agreement. The Administrator or the mediator may for good cause extend any period of time established by these rules. The Administrator shall notify the parties of any such extension.

**7. Service of Notice**

Each party shall be deemed to have consented to the rule that any papers, notices, or process necessary or proper for the initiation or continuation of a mediation under these rules may be served on a party by mail addressed to the party or its representative at the last known address.

The Administrator and the parties may also use facsimile transmission, telex, telegram, or other written forms of electronic communication to give the notices required by these rules.

**11. Exclusion of Liability**

Neither the Hampden County Bar Association, its officers, directors or employees, the Administrator nor any mediator shall be liable to any party for any act or omission in connection with any mediation conducted under these rules.